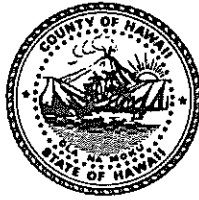


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
Z 179 517 419

MAY 28 1998

Mr. and Mrs. Tim Mann
P.O. Box 430
Honokaa, HI 96727

Dear Mr. and Mrs. Mann:

Use Permit Application (USE 97-17)

Applicant: Tim and Jeannie Mann

Request: Establishment of Two Additional Bedrooms for the Existing Bed and
Breakfast Operation Within an Existing Dwelling and a Proposed Guest House

Tax Map Key: 4-5-16:55

The Planning Commission at its duly held public hearing on May 15, 1998, voted to reaffirm their decision made at the September 26, 1997, meeting to approve the above-referenced application, for the proposed guest house only. Use Permit No. 163 is hereby issued to allow the establishment for the existing bed and breakfast operation (Luana Ola) within the proposed guest house only, situated on approximately 77,829 square feet of land within the County Single Family Residential (RS-7.5) zoned district. The property is located within Honokaa Town off of Koa and Kawila Streets and approximately 330 feet north of Mamane Street, Hamakua, Hawaii.

Approval of this request is based on the following:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission Rules of Practice and Procedures relating to Use Permits, and Section 25-2-65, relating to the Criteria for granting a Use Permit, of Chapter 25 (Zoning Code), require that such action conform to the following guidelines:

- (A) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan;
- (B) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and

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- (C) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

The applicants are requesting to allow two additional bedrooms for bed and breakfast accommodations, one within one of the existing efficiency dwelling and the other within a proposed guest house. There are four existing dwellings situated on the same building site and the applicants reside in the main residence. The applicants propose to attach and convert the existing guest house, consisting of approximately 400 square feet, as an addition to their main residence. It should be pointed out that according to the Zoning Code only one guest house may be established on a building site.

Inasmuch as the applicants' foregoing request, the approval of only the proposed guest house for additional bed and breakfast use meets the guidelines for approval of a Use Permit, for the reasons outlined below. It should be pointed out that in July, 1997 the Planning Commission issued Use Permit No. 157 to the applicants to use one of the two existing efficiency dwellings for the existing bed and breakfast operation. However, the Commission denied the use of the other existing efficiency dwelling for the bed and breakfast use as it was not consistent with the bed and breakfast standards of the Zoning Code.

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan. According to the Zoning Code, Single Family Residential districts "provide for low density residential area, for urban and suburban family life." Single-family dwellings, family care homes, neighborhood parks, and "buildings and uses normally considered directly accessory to the above permitted uses" are permitted in this district. The subject property is designated Single Family Residential with minimum lot size of 7,500 square feet (RS-7.5). It consists of approximately 77,829 square feet and; therefore, with the RS-7.5 zoning a maximum of 10 dwellings may be permitted on the property, provided that the minimum setback yards and other requirements of the Zoning Code and affected agencies are met.

Bed and breakfast accommodations have increasingly become a part of a worldwide trend towards alternative lodging sites in residential areas such as this particular location. They are becoming popular for visitors who seek a more localized and authentic experience in a home-type setting. The County has recognized this trend and the Zoning Code, Section 25-4-7, provides guidelines for establishing bed and breakfast operations. On Single Family Residential zoned lands within a State Land Use Urban district, impacts from the proposed bed and breakfast use can be properly addressed and mitigated through the Use Permit.

The Zoning Code defines *Bed and Breakfast Establishment* as "a single-family dwelling, including a single guest house, in which overnight accommodations and only breakfast meals are provided to a maximum of ten guests, for compensation, for periods of less than thirty days." Section 25-4-7 of the Zoning Code, relating to Bed and Breakfast establishments, states that "A bed and breakfast establishment may be permitted in the RS districts provided that a use permit is obtained for each such use and that plan approval for each such use has been secured from the director." Besides

other restrictions and standards for bed and breakfast establishments, this section further states that "The bed and breakfast establishment shall be accessory and subordinate to the principal use as a residence by its owners or lessee" and that "The bed and breakfast establishment may be located within a single-family dwelling unit and a guest house, pursuant to section 25-4-9, on a building site." The Zoning Code defines *Guest House* as "an accessory building used as sleeping quarters for guests of the occupants of the main dwelling and having no cooking facilities." It should be pointed out that Section 25-4-9, relating to Guest Houses, states that "One guest house may only be established on a building site that is at least seven thousand five hundred square feet in area. A guest house shall not exceed five hundred square feet in gross floor area, shall not be more than twenty feet in height, and shall not have a kitchen."

As previously noted, the applicants reside within the main residence, one of the four existing dwellings located on the same building site. The applicants propose to attach and convert the existing guest house, consisting of approximately 400 square feet, as an addition to their main residence, thereby removing the use as a guest house. A condition of approval will be included to require that the applicants comply with the guest house conversion as only one guest house may be established on a building site. The bed and breakfast use will occur in a new proposed guest house, in addition to the already approved one existing efficiency dwelling, and would be accessory and subordinate to the principal residential use of the property by the applicants. The applicants will be operating the bed and breakfast establishment and anticipate to hire a housecleaner and a landscaping maintenance person. There is an existing parking area that can accommodate the guests at the proposed guest house. Thus, the use of the proposed guest house for additional bed and breakfast accommodations will be consistent with the intent and purpose of the Zoning Code for the Single Family Residential zoned district.

The General Plan designation for this area is Low Density Urban Development, which allows for single-family residential uses, ancillary community and public uses and convenience-type commercial uses. The bed and breakfast use within the proposed guest house would complement the following goals and policies of the General Plan.

Economic Element

- * Provide residents with opportunities to improve their quality of life.
- * Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- * The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- * The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- * The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical and economic goals of the residents of the County.

Land Use Element

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- * The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Therefore, the requested bed and breakfast use would operate within the parameters of being single-family residential in character, is consistent with the General Plan designation and is in keeping with the goals and policies of the General Plan.

The Northeast Hawaii Community Development Plan (CDP) and the Honokaa Urban Design Plan and its Land Use Concept Map reflect the maintenance of single family residential uses at the subject property and surrounding area.

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. The bed and breakfast use has been established on the subject property since June 1994, nearly 3 years ago. An additional studio-type unit bed and breakfast accommodation will be established within the new proposed guest house which should not alter the appearance or character of the single family residential neighborhood. The bed and breakfast establishment would be open to the visitors on a daily basis. The surrounding uses in the area are primarily in single family residential uses. The subject property has adequate landscaping to mitigate any possible visual or noise impacts on the neighbors. There are adequate public services and utilities available to accommodate the bed and breakfast use.

The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure. Kawila Street leads to the first efficiency dwelling and the proposed guest house site, and a private driveway easement off of the end of Kawila Street leads to the second efficiency dwelling, which is presently used for the bed and breakfast operation. Kawila Street is a County road and has an approximate 10-foot wide pavement (in poor condition), with varying 1 to 5-foot wide grass shoulders, within an approximate 30-foot right-of-way. The Department of Public Works has expressed that the minimum acceptable two-way vehicular traffic pavement width should be 16 feet, poor sight distance occurs at the end of Kawila Street and that safe vehicular turnarounds in the parking areas should be provided. However, there will be no recommendations for roadway improvements for the proposed guest house for the bed and breakfast use as it will contain a studio-type unit for no more than two guests and as such, the potential for a minimum one car traffic. County water service is currently available to the subject property. Wastewater system for the proposed guest house will meet the Department of Health's requirements. All other essential utilities and facilities are available to support the requested use.

Based on the above considerations, the proposed guest house for additional bed and breakfast use is hereby approved, in addition to the already approved one efficiency dwelling.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

1. The applicants, successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to Final Plan Approval for the new proposed guest house for bed and breakfast use, Final Building Inspection shall be secured from the Department of Public Works for the structural attachment and conversion of the existing guest house to be as an addition to the applicants' main residence.
3. Construction of the proposed guest house shall be completed within two (2) years from the effective date of this permit. Prior to commencing construction, Final Plan Approval for the proposed guest house for bed and breakfast use shall be secured from the Planning Director in accordance with the Zoning Code, Section 25-2-72, 25-2-73 and 25-4-7. Plans shall identify existing and proposed structures, landscaping, fire protection measures, driveway and one gravel parking stall, and exterior signs associated with the business.
4. The bed and breakfast business on the building site shall be limited to the use of two (2) bedrooms, one within the proposed guest house and the other within the approved efficiency dwelling.
5. Comply with all applicable requirements as stated in the Zoning Code, Section 25-4-7, regulating bed and breakfast establishments.
6. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
7. Comply with all applicable laws, rules, regulations and requirements of other affected agencies for approval of the use, including the Department of Water Supply, Department of Public Works and the Department of Health.
8. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
9. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successor, or assigns, and that are not the result of their fault or negligence.

- B. Granting of the time extension would not be contrary to the original reasons for granting of the permit.
- C. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- D. The time extension granted does not exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

The denial for the existing efficiency dwelling for use as a Bed and Breakfast operation is based on the following findings:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission Rules of Practice and Procedures relating to Use Permits, and Section 25-2-65, relating to the Criteria for granting a Use Permit, of Chapter 25 (Zoning Code), require that such action conform to the following guidelines:

- (A) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan;
- (B) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and
- (C) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

The applicants are requesting to allow two additional bedrooms for bed and breakfast accommodations, one within one of the existing efficiency dwelling and the other within a proposed guest house. There are four existing dwellings situated on the same building site and the applicants reside in the main residence. The applicants propose to attach and convert the existing guest house, consisting of approximately 400 square feet, as an addition to their main residence. It should be pointed out that according to the Zoning Code only one guest house may be established on a building site.

Inasmuch as the applicants' foregoing request, the approval of the existing efficiency dwelling for the bed and breakfast operation will not meet one of the guidelines for approval of a Use Permit, for the reasons outlined below.

Although the granting of the proposed use will be consistent with the General Plan, it will not be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code. According to the Zoning Code, Single Family

Residential districts "provide for low density residential area, for urban and suburban family life." Single-family dwellings, family care homes, neighborhood parks, and "buildings and uses normally considered directly accessory to the above permitted uses" are permitted in this district. The subject property is designated Single Family Residential with minimum lot size of 7,500 square feet (RS-7.5). It consists of approximately 77,829 square feet and therefore, with the RS-7.5 zoning a maximum of 10 dwellings may be permitted on same building site, provided that the minimum setback yards and other requirements of the Zoning Code and affected agencies are met.

The Zoning Code defines *Bed and Breakfast Establishment* as "a single-family dwelling, including a single guest house, in which overnight accommodations and only breakfast meals are provided to a maximum of ten guests, for compensation, for periods of less than thirty days." Section 25-4-7 of the Zoning Code, relating to Bed and Breakfast establishments, states that "A bed and breakfast establishment may be permitted in the RS districts provided that a use permit is obtained for each such use and that plan approval for each such use has been secured from the director." Besides other restrictions and standards for bed and breakfast establishments, this section further states that "The bed and breakfast establishment shall be accessory and subordinate to the principal use as a residence by its owners or lessee" and that "The bed and breakfast establishment may be located within a single-family dwelling unit and a guest house, pursuant to section 25-4-9, on a building site." The Zoning Code defines *Guest House* as "an accessory building used as sleeping quarters for guests of the occupants of the main dwelling and having no cooking facilities." It should be pointed out that Section 25-4-9, relating to Guest Houses, states that "One guest house may only be established on a building site that is at least seven thousand five hundred square feet in area. A guest house shall not exceed five hundred square feet in gross floor area, shall not be more than twenty feet in height, and shall not have a kitchen."

In accordance with the foregoing provisions of the Zoning Code, the bed and breakfast establishment may be located within a single-family dwelling unit and a guest house on a building site. It should be pointed out that in July 1997, the Planning Commission issued Use Permit No. 157 to the applicants to use one of the two existing efficiency dwellings for the existing bed and breakfast operation. However, the Commission denied the use of the other existing efficiency dwelling for the bed and breakfast use as it was not consistent with the bed and breakfast standards of the Zoning Code. Therefore, the existing bed and breakfast use within the existing unapproved efficiency dwelling was to immediately cease and desist. The applicants have other alternatives such as renting the existing efficiency dwelling on a long-term basis. Further, as previously pointed out, the subject property consists of approximately 77,829 square feet and, therefore, with the RS-7.5 zoning a maximum of 10 dwellings may be permitted on the same building site, provided that the minimum setback yards and other requirements of the Zoning Code and affected agencies are met. Thus, the applicants' request to use the existing efficiency dwelling for the bed and breakfast accommodation will not be consistent with the intent and purpose of the Zoning Code for the Single Family Residential zoned district.

Based on the above considerations, the request to use the existing efficiency dwelling for additional bed and breakfast use on the subject property is hereby denied.

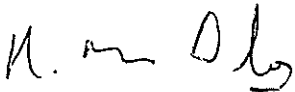
Mr. and Mrs. Tim Mann
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As stated in Rule 7-9 of the Planning Commission Rules of Practice and Procedure, "The Commission's decision is appealable to the Board."

Please be advised that pursuant to Rule 8-3 of the Board of Appeals Rules of Practice and Procedure, "An appeal from the decision of the Director, the Commission, or the Chief Engineer shall be filed within thirty days after the decision."

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

LMann05.PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Kazu Hayashida, Director/DOT-Highways, Honolulu
Department of Health
Fire Department