

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

JIAN ZHONG

SPECIAL PERMIT APPLICATION PL-SPP-2024-000068

Upon review of the request against the guidelines for granting a Special Permit, the Planning Director recommends that the request to **establish a two (2) bedroom bed and breakfast establishment within an existing single-family dwelling on a 1,547-square foot portion of an approximately 20.029-acre parcel of land in the State Land Use Agricultural District be approved by the Planning Commission.** Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this position based upon additional information presented at the public hearing. The approval recommendation is based on the following findings:

The applicant, who resides on the property, is requesting a Special Permit to allow a two (2) bedroom bed and breakfast operation in an existing two-story, 2,447-square foot, three (3)-bedroom single-family dwelling. The bed and breakfast will operate within the existing footprint of the single-family dwelling, with the intention to provide accommodation for a maximum of four (4) registered guests. A minimum of two (2) unpaved parking stalls will be provided to accommodate the proposed bed and breakfast operation. The applicant intends to be the primary host and will work as the operator of the bed and breakfast. The proposed use will commence immediately following approval of the Special Permit, subject to any building permit requirements, and the applicant does not anticipate construction costs.

The applicant states that the approval of this permit will allow the ability to generate supplemental income during the times her family members are away. The applicant's objective is to generate income that would help to offset the increasing cost of living, pay for her children's tuition and home improvements.

The grounds for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be and (b)

the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes, as amended.

In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The subject property is a 5.287-acre portion of a 20.029-acre condominium property regime unit (“CPR Unit 1”), of which the applicant proposes to use an existing single-family dwelling for the proposed use, which is situated within the County’s Agricultural (A-20a) zoning district. The remainder of the property will continue to be used for growing bamboo, avocado trees, orange trees, apple trees, and coffee.

The request is unusual in that the proposed uses are not strictly agricultural in nature. However, the proposed bed and breakfast uses and activities will occur within an existing structure and will not require any further clearing of the parcel, thus the proposed use will not diminish the potential for agricultural activity on the property. Therefore, it is reasonable that this use be allowed in the Agricultural district. In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

(A) Such uses shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The State Land Use Law and Regulations are intended to preserve, protect, and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai‘i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The soils on the property are classified by the Land Study Bureau’s rating system as class “E” or “Very Poor” soils for agricultural productivity and designated “Other

Lands” on the Agricultural Land of Importance to the State of Hawai‘i (ALISH) map. Based on the preceding, the lands are not considered to have high agricultural potential. Furthermore, as the proposed use will be conducted within the existing dwelling, it will not displace any existing agricultural activity or diminish the agricultural potential of the property. Therefore, the use will not adversely affect the preservation and agricultural use of the County’s agricultural lands of high agricultural potential and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties.

Lands surrounding the subject parcel are zoned Agricultural-7 acre (A-7a), Agricultural-10 acres (A-10a) and Agricultural-20 acres (A-20a), with uses consisting of agriculture and farm dwellings. The subject property is bordered by dwellings toward the north and the west, with the closest dwelling approximately 475 feet from the proposed bed and breakfast structure to the north of the subject dwelling. There are no known B&B operations nearby, but there are 4 B&B’s at lower elevations in the subdivision that were established by Special Permit in 1996, 1998, 1999, and 2011.

The proposed use will abide by the rules and regulations for bed and breakfast operations as stated in Hawai‘i County Code Chapter 25 (Zoning). No traffic impacts are anticipated due to the limited number of rooms for rent (2) and the applicant’s limit on the number of guests allowed at any one time (4). The applicant has proposed to schedule guest check-in and check-out times before 11 A.M. and after 3 P.M. respectively. In an effort to limit disturbances to surrounding neighbors, the applicant intends to post signs on the property to direct guests to the B&B and will provide detailed driving directions for guests prior to their arrival. As such, the proposed development is not anticipated to generate adverse traffic impacts on the local roadway system.

As the proposed uses will occur within an existing dwelling and the applicant will be managing the bed and breakfast on site, the proposed use should not generate significant noise and thus not impact surrounding properties.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The subject property is accessible via Hao Street which intersects Kaloko

Drive, which are County owned roadways that connect to Māmalahoa Highway. No improvements to the roadway system will be needed to support the proposed use.

According to the Department of Water Supply (DWS), one (1) unit of water is available to the subject parcel that is potentially servicing three homes and exceeding the allotment. DWS has also indicated that multiple dwellings on the property, including the dwelling proposed for use as a bed and breakfast, may be using one water meter which is limited in use. The applicant will need to work with DWS to determine if a new water meter is required or available.

The single-family dwelling is serviced by a cesspool wastewater system as permitted by the State Department of Health (DOH). The applicant will need to implement any upgrades to the individual wastewater system if required by DOH.

All essential utilities and services are available to the site, thus the proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, or police and fire protection.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. Since the State Land Use district boundaries were established in the 1960's, demand has increased for alternative overnight accommodations for guests who seek a more peaceful, remote environment as an alternative to resort venues. The proposed use would meet this demand by providing visitors with an opportunity to have a more remote and peaceful stay on the island.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The land is suitable for agriculture and is currently being used for bamboo, avocado trees, orange trees, and apple trees. However, the proposed use will take place within an existing dwelling on a small portion of the larger property. Based on the discussion above, the proposed use will not diminish agricultural opportunities on the subject property and thus will not adversely impact the agricultural potential of the land.

(F) The use will not substantially alter or change the essential character of the land and the present use. The essential characteristic of the property and surrounding area is primarily native forest with some agricultural and residences. The

proposed bed and breakfast establishment will operate within an existing dwelling on the property and will not require any construction to establish this use. Therefore, the proposed use will not substantially alter the essential character of the land and its present use.

(G) The request will not be contrary to the General Plan and Community Development Plan (CDP) and Zoning Code. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is identified by the LUPAG map as Important Agricultural Lands (ial) which refers to land that has better potential for sustained high agricultural yields because of the soil type, climate, topography, or other factors.

As previously mentioned, the proposed request will not displace any active or potential agricultural activity on the property. The proposed request is consistent with the following goals and policies of the Land Use and Economic elements of General Plan:

Land Use Element

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social, and cultural environments of the island of Hawai'i.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical, and economic goals of the residents of the County.

The proposed request will allow the applicant an opportunity to improve their quality of life, provide an economic environment that allows this new economic opportunity, and increase the development of the visitor industry for Hawai‘i Island in a manner that is compatible with the County’s cultural, natural, and social environment.

The proposed use is consistent with the zoning code criteria for a “bed and breakfast establishment” as the bed and breakfast will operate out of a single-family dwelling, two (2) bedrooms will be rented out to four (4) guests at any one time for periods of less than 30 days, and only breakfast meals will be provided. The applicant proposes to secure a building permit for the unfinished basement. A condition of approval will require the applicant to secure this and any other applicable building permits prior to commencement of the proposed bed and breakfast use.

The proposed operation is located on land with the State Land Use designation of Agricultural, which allows for the establishment of bed and breakfast operations via a Special Permit. Accordingly, the proposed operation will not be contrary to Zoning Code.

The Kona Community Development Plan (KCDP) identifies the preferred land use pattern for the Kona districts and supports the current strengths in agriculture and tourism for the region. Although the KCDP does not provide guidance on Special Permit applications, Section 4.8.2 identifies the importance of enhancing agricultural tourism. As the bed and breakfast operation will host visitors within an existing dwelling, the request is consistent with the goals and objectives of the KCDP.

Based on the preceding, the proposed use will not be contrary to the General Plan, Community Development Plan, and the Zoning Code.

The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management. The property is not situated in the Special Management Area as it is located approximately 6.1 miles away from the nearest shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources.

There is no record of a designated public access to the shoreline or mountain areas that traverses the property. Therefore, the proposed use will not adversely impact any

recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai‘i Revised Statutes.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai‘i State Supreme Court’s “PASH” and “Ka Pa‘akai O Ka‘Aina” decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kama‘āina accounts of the area, historical survey of documentary records, or botanical study was included in the application.

The valued cultural, historical, and natural resources found in the special permit area: According to the applicant, no archeological or historical features are known to exist on the subject property nor is the property listed as a historic site on the State or National Register of Historic Places.

The subject property has been cleared for construction of a dwelling and driveway. The remainder of the property is used for growing bamboo, avocado trees, orange trees, apple trees, and coffee. There are no known endangered or listed plant species on the property.

No professional surveys were conducted of the flora/fauna resources on the property. According to the applicant, they are unaware of any endangered flora/fauna.

Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted by the proposed development due to the already impacted property as mentioned above.

Feasible actions to protect native Hawaiian rights: According to the applicant, there are no known traditional or customary Native Hawaiian cultural rights being practiced within the subject property or any known cultural or historic resources existing on the property. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Building Code and Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, the proposed two-bedroom bed and breakfast establishment is an unusual and reasonable use of land which would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant, its successors, or assigns (“Applicant”) shall be responsible for complying with all stated conditions of approval.
2. The operation of the two-bedroom bed and breakfast establishment and related improvements shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit application dated April 12, 2024 and representations made to the Leeward Planning Commission. Any substantial expansion of the facility or uses beyond what is represented in these documents shall require an amendment to this permit.
3. The Applicant shall comply with all requirements of Section 25-4-7 of the Zoning Code, Hawai‘i County Code Chapter 25, as amended, relating to Bed and Breakfast Establishments.
4. The bed and breakfast operation shall be limited to the use of two (2) bedrooms.
5. The Applicant shall comply with food service operations notification and permit requirements in the State Department of Health’s Administrative Rules, Title 11, Chapter 50, Food Safety Code, as it pertains to bed and breakfast operations.

6. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements in connection with the approved use, prior to its commencement upon the subject property.
7. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this Special Permit.