

Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

August 28, 1998

Mr. James D. Barry
76-6015 Mamalahoa Highway
Holualoa, Hawaii 96725

Dear Mr. Barry:

Additional Farm Dwelling Agreement
Applicant: JAMES D. BARRY
Land Owners: JAMES D. & HAN SUNG BARRY
Tax Map Key: 7-6-005: 069 LOT 36A

should be
← 7-6-005:060

Pursuant to authority conferred to the Planning Director in Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for an additional farm dwelling on the subject property. Your submittal included the following information:

- a. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the proposed Additional Farm Dwelling Agreement.
- b. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
- c. Written authorization of the landowner.
- d. A farm plan of the applicant's continual agricultural productivity or farming operation within the County. The plan shows how the farm dwelling will be utilized for engagement in agricultural productivity or farming operation.
- e. In support, evidence of a State of Hawaii Department of Taxation's Gross Income License (GE 30086620) has also been presented.
- f. Real Property Tax Clearance form certified on June 22, 1998.

08450

SEP 8 1998

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Findings:

1. In Chapter 205, Hawaii Revised Statutes, the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling as defined in Section 205-4.5, Chapter 205, HRS, means a single family dwelling located on and used in connection with a farm, including clusters of single farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.**
2. The Farm Plan, GE Tax License, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is agricultural activity and that income is being/will be taxed.
3. In addition, the following agencies have submitted their comments as stated below:

- a. The Department of Water Supply (July 28, 1998):

"We have reviewed the subject application and have the following comments."

"For your information, an existing 5/8 inch meter services the property and is adequate for only one dwelling at 600 gallons per day. This application is proposing an additional detached dwelling so the installation of a separate 5/8 meter by the applicant is required in accordance with Department regulations."

"Therefore, the Department has no objection to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Install a second service lateral including the installation of a reduced pressure type back-flow preventer. A contractor licensed in the State of Hawaii shall do this work.
2. Submit construction plans showing this installation prepared by a professional engineer, registered in the State of Hawaii, for our review and approval.
3. Once the above plans have been approved, be responsible for the installation of the second service by applying at our Customer Service Section along with the remittance of the following charges:

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a.	Facilities Charge	\$3,375.00
b.	Capital Assessment Fee	500.00
c.	Service Connection Installation deposit	<u>90.00</u>
	Total	\$3,965.00

"Should there be any questions, please call our Water Resources and Planning Branch at 961-8660."

b. The State Department of Health (July 13, 1998)

"The subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more are required for the use of a cesspool. Only one (1) cesspool would be allowed on the lot. A septic tank system would be needed if a second wastewater disposal system is needed on this lot."

Decision

In view of the above, your request to construct an additional farm dwelling is approved subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. The applicant, successors or its assigns shall comply with the requirements of the Department of Water Supply and the State Department of Health.

The Planning Director has completed the appropriate portions of the Additional Farm Dwelling Agreement. You must record this approved Additional Farm Dwelling Agreement with the State Bureau of Conveyances and/or Land Court within thirty days of receipt of this approval. In sending this document out for recordation, please note the following:

1. The original and one copy of the document must be submitted for recordation.
2. A check in the amount of \$25.00 to cover the recordation fee should be made out to the State of Hawaii, Bureau of Conveyances and attached to the Agreement.

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Their address is as follows:
State of Hawaii
Bureau of Conveyances
P.O. Box 2867
Honolulu, Hawaii 96803

3. Also required is a self-addressed stamped envelope to have the recorded document returned to you.

You must submit a copy of the recorded Additional Farm Dwelling Agreement to the Planning Director prior to approval of the building permit for the farm dwelling.

Should you have any questions or require further information, please feel free to contact Royden Yamasato of our Kona office at 327-3510.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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Enclosure

xc: West Hawaii Office

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

James D. Barry
76-6015 Mamalahoa Highway
Holualoa, HI 96725

TITLE OF DOCUMENT:

Additional Farm Dwelling Agreement Form

PARTIES TO DOCUMENT:

James D. Barry
County of Hawaii

PROPERTY DESCRIPTION:

Mauka section of Holualoa partition lots, North Kona, Hawaii
Tax Map Key; 7-6-005: 060

Land Court System within thirty days from the date of receipt of approval. A copy of the recorded Additional Farm Dwelling Agreement shall be submitted to the Planning Director of the County of Hawaii prior to approval of the building permit.

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may imposed a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 22 day of June, 1998, by and between James D. Barry herein called the "First Party," whose mailing address is 76-6015 Mamalahoa Highway
Holualoa, Hi 96725, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described by Tax Map Key 7-6-005: 060 situated within the State Land Use Agricultural district and zoned A-1a Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner (legal owner/lessee) of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. The landowner or lessee shall record the approved Additional Farm Dwelling Agreement with the State of Hawaii, Bureau of Conveyances and/or with the

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY

Harley Bay - James D. Bay
(Legal Owner)

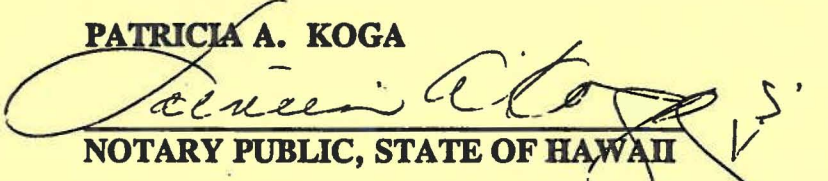
(Lessee)

SECOND PARTY

Russell Kohb
for Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 8th day of September, 1998, before me personally appeared RUSSELL KOKUBUN, to me personally known, who, being by me duly sworn, did say that he is the Deputy Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said RUSSELL KOKUBUN, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

PATRICIA A. KOGA

NOTARY PUBLIC, STATE OF HAWAII
MY COMMISSION EXPIRES: 7/17/02

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 22nd day of JUNE, 19 98, before me personally appeared
HAN SUNG BARRY ^{AND} JAMES D. BARRY to me known to be the persons described in and
who executed the foregoing instrument, and acknowledged that ~~he~~ ^{THEY} executed the same as
~~his~~ ^{THEIR} free act and deed.

Eugene M. Beale
Notary Public, State of Hawaii

L.S

My commission expires: 9-26-2000