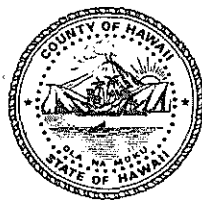


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

July 30, 2001

Mark and Emi Miller
74-1439 Hao Kuni Street
Kailua-Kona, Hawaii 96740

Dear Mr. and Mrs. Miller:

Additional Farm Dwelling Agreement

Applicants: Mark A. and Emi H. Miller

Land Owners: Mark A. and Emi H. Miller

Tax Map Key: (3) 7-4-007:039

Pursuant to authority conferred to the Planning Director by 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 submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner(s) if the lessee filed the request.
4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed agricultural activities:

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Exhibit A

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Mr. and Mrs. Mark Miller
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July 30, 2001

(a) Ongoing agricultural activities include the following:

- i. An existing macadamia nut orchard on an approximately 60'x120' plot of the subject property that is not currently in commercial use. This orchard is planned for removal in 2003.

(b) Proposed agricultural activities include the following:

- i. Growing of red and green Japanese onions for commercial purposes on approximately 13,200 sq. ft. of the subject property with an additional 800 sq. ft. for an onion seedbed.

5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes (HRS), 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 family farm dwellings permitted within agricultural parks developed by the State, **or where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. The subject lot was created by subdivision (SUB 4315) approved on June 4, 1979, which, pursuant to HRS §205-4.5(b), defines the first dwelling on the lot as a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30124009), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that will be income producing agricultural activity and the income will be taxed.

Mr. and Mrs. Mark Miller
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4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated July 2, 2001):

“We have reviewed the subject application and have the following comments and conditions:

For your information, an existing 5/8-inch meter services this 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-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 8-inch waterline in Hao Kuni Street.

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

1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons per day.
2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and assembly of the backflow preventer must be inspected and approved by the Department before the water meter can be installed. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.
3. Remittance of the following charges effective April 1, 2001, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 nd service at \$4,350.00 each)	\$4,350.00
b. Capital Assessment Fee	500.00
c. Service Lateral Installation Charge (Install one meter on Hao Kuni Street, a County road)	<u>+2,250.00</u>

Total (Subject to Change) \$7,100.00

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Should there be any questions, please contact our Water Resources and Planning Branch at 961-8070.”

(b) Real Property Tax Office (Memorandum dated July 9, 2001):

“Agricultural ded. expired for 2001. There is no new ag ded./ag use application on file.

Real Property taxes are paid through June 30, 2001.”

(c) Department of Health (Memorandum dated June 28, 2001):

“The subject lot is located in a Non-Critical Wastewater Disposal Area where cesspools are allowed under the current rules. More than one cesspool is allowed provided 10,000 sq. ft. per cesspool is available. Each cesspool can dispose of 1,000 gallons per day of wastewater.”

Decision:

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

1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
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. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.

Mr. and Mrs. Mark Miller

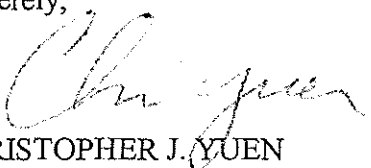
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July 30, 2001

4. Your Additional Farm Dwelling Agreement has been approved based entirely on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) years of approval of the building permit for the additional farm dwelling. Time extensions and modifications may be allowed by the Second Party (County of Hawaii Planning Department) of the Agreement for good cause shown by First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before July 31, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

LMB:cps

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Enclosure

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – West Hawaii Office

Exhibit A

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
25 Aupuni Street, Room 109
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: MARK A. MILLER and EMI H. MILLER

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-4-007:039

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 31st day of July, 2001, by and between MARK A. MILLER and EMI H. MILLER herein called the "First Party," whose mailing address is 74-1439 Hao Kuni Street , Kailua-Kona, Hawaii 96740, 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 (3) 7-4-007:039 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner 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 person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
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. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

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 impose 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.

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

FIRST PARTY:

Mark A. Miller, Legal Owner

Emi H. Miller, Legal Owner

SECOND PARTY:

Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 2001 before me personally appeared MARK A. MILLER and EMI H. MILLER to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Notary Public, State of _____

My commission expires: _____

1" = 40'

DATE

1.28 acres

