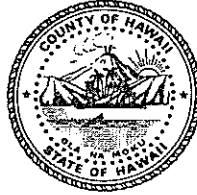


Harry Kim
Mayor



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

May 10, 2002

Nora O'Friel
Michael O'Friel
RR2, Box 4235
Pahoa, Hawaii 96778

Dear Mr. & Mrs. O'Friel:

Additional Farm Dwelling Agreement

Applicants: Nora O'Friel and Michael O'Friel

Land Owners: Nora O'Friel and Michael O'Friel

Tax Map Key: (3) 1-3-002:010

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 income producing agricultural activities:

019505 MD

Exhibit A

MAY 13 2002

Nora O’Friel
Michael O’Friel
Page 2
May 10, 2002

(a) Ongoing agricultural activities include the following:

i. Approximately four (4) acres of the subject property in mature Noni trees.

(b) Proposed agricultural activities include the following:

i. Increasingly additional harvest yields from existing orchard.

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 6853) approved on June 26, 1997, 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 30110511), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Letter dated April 9, 2002):

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

Nora O’Friel
Michael O’Friel
Page 3
May 10, 2002

Our records show that this property does not have an account with the Department and, therefore, does not have water service with us. As this lot was created with a variance from the subdivision water requirements, the Department has no objections to the application subject to the applicant being responsible for following the conditions of the approved variance. This means that the additional farm dwelling must be on a catchment system.

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

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated April 16, 2002):

“The Department of Health Wastewater Branch has concerns regarding the grade for the length of the wastewater line from the proposed farm dwelling to the existing cesspool. The Department supports the installation of a new septic tank system for the proposed farm dwelling. If you have any questions, please feel free to call our Wastewater Program at 933-0401.”

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. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate

Nora O'Friel
Michael O'Friel
Page 4
May 10, 2002

notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.

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.
4. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
5. 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 May 10, 2004 may cause the Director to initiate proceedings to invalidate the AFDA.

In reference to the Department of Water Supply's comment, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

Nora O'Friel
Michael O'Friel
Page 5
May 10, 2002

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:pakl
P:\WPWIN60\Larry\FDA\OFriel 1-3-2-10 apvl.doc

Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT