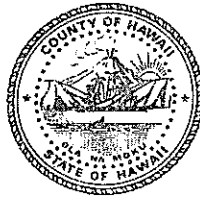


Harry Kim
Mayor



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

November 13, 2002

Mr. Shane K. Perez
P.O. Box 1307
Kapaau, Hawaii 96755

Dear Mr. Perez:

Additional Farm Dwelling Agreement

Applicant: Shane K. Perez

Land Owners: Shane K. Perez and Williette K. P. Apollo

Tax Map Key: (3) 5-5-012:003

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.

01272/BA

Exhibit A

NOV 14 2002

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November 13, 2002

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:
 - (a) Ongoing agricultural activities include the following:
 - i. Two producing avocado trees.
 - (b) Proposed agricultural activities include the following:
 - i. The planting of approximately 2,000 square feet of the subject property in taro;
 - ii. The planting of approximately 2,400 square feet of the subject property in soybeans;
 - iii. The planting of approximately 500 square feet of the subject property in green onions;
 - iv. The planting of approximately 1,800 square feet of the subject property in pumpkins;
 - v. The planting of approximately 1,800 square feet of the subject property in squash;
 - vi. The planting of approximately 2,400 square feet of the subject property in bananas and papaya trees; and
 - vii. The planting of approximately 600 square feet of the subject property as an herb garden.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

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November 13, 2002

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 property is Lot 11 of Kaauhuhu Homesteads, which was created prior to June 4, 1976. Therefore, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be used as a single-family dwelling.
3. The Farm Plan, GE Tax License (ID number 30097036), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Letter dated October 28, 2002):

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

For your information, an existing service lateral for a 5/8-inch meter is available to 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 6-inch waterline in Hawi Road, approximately 700 feet from the subject parcel (through Parcel 8) with a signed “Policy & Conditions for Water Service (Premises not within service limits of the Department).”

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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 as the existing service is.
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, 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. Service Lateral Installation Charge (Install one meter on Hawi Road, a State road)	<u>4,000.00</u>
Total (Subject to Change)	\$8,350.00

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

(b) Real Property Tax Office (Memorandum dated October 17, 2002):

“There are no rollback tax consequences.

Real Property taxes are paid through December 31, 2002.”

(c) Department of Health (Memorandum dated October 10, 2002):

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

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November 13, 2002

Decision:

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

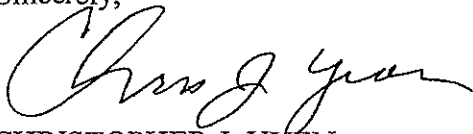
1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall 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 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. 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. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications 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.

Mr. Shane K. Perez
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November 13, 2002

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 November 7, 2004 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,



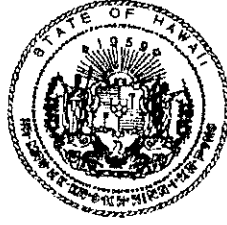
CHRISTOPHER J. YUEN
Planning Director

LMB:cps

P:\WPWIN60\Larry\FDA\Perez 5-5-12-3 apvl.doc

Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Dept. – Kona



R-514
STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 03, 2003 08:02 AM
Doc No(s) 2003-038296



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

12 1/1 Z2

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: SHANE K. PEREZ and WILLIETTE K. P. APOLLO

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-5-012:003

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 7th day of November, 2002, by and between SHANE K. PEREZ and WILLIETTE K. P. APOLLO, herein called the "First Party," whose mailing address is P.O. Box 1307, Kapaau, Hawaii 96755, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a third farm dwelling located on the property described by Tax Map Key (3) 5-5-012:003 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) 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 one 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.

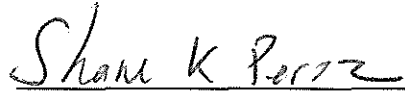
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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:




Shane K. Perez, Legal Owner



Williette K. P. Apollo, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 18th day of December, 2002 before me personally appeared SHANE K. PEREZ and WILLIETTE K. P. APOLLO to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

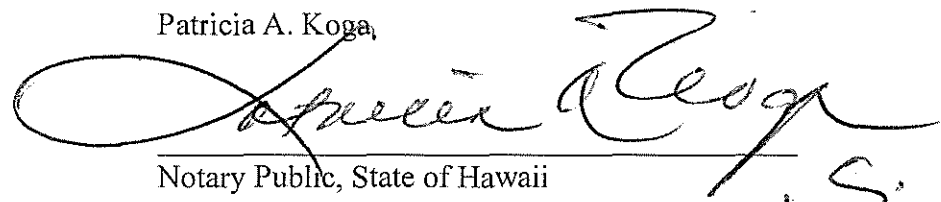
Lee Ann Ashimine
Lee Ann Ashimine
Notary Public, State of Hawaii

LS

My commission expires: 12/20/2004

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 4th day of February, 2002 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Christopher J. Yuen 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: 07/17/06

TMK # 3-5-5-012-003-0002-001

Additional Farm Dwelling Proposal by Shane K. Perez

TARO

Lot is 341.71' X 127.475'
Scale is 10' per block.

Unit 2
Proposed
Dwelling

Soy Beans 60' X 40'
Green Onions 10' X 50'
Pumpkin 20' X 90'
Squash 20' X 90'
Taro 40' X 60'

SOY BEAN

Existing Avacado trees

Green Onion

Existing green house

PUMPKIN

SQUASH

Existing Driveway