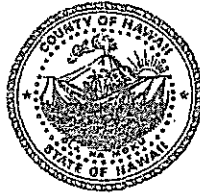


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

May 7, 2003

Scott and Zoe Johnson
4051 Sheridan Avenue South
Minneapolis, Minnesota 55410

Dear Mr. and Mrs. Johnson:

Additional Farm Dwelling Agreement

| | |
|------------------------|------------------------------|
| Applicants: | Scott and Zoe Johnson |
| Land Owners: | Scott and Zoe Johnson |
| State Land Use: | Agricultural |
| County Zoning: | Agricultural (A-40a) |
| Land Area: | 21.549-acres |
| Tax Map Key: | (3) 4-5-002:002 |

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.

EXHIBIT

A

Scott and Zoe Johnson

Page 2

May 7, 2003

Your farm plan included the following ongoing and proposed income producing agricultural activities:

(a) Ongoing agricultural activities include the following:

i. The activity is proposed to commence July, 2003.

(b) Proposed agricultural activities include the following:

i. 5-acres vegetables and herbs, 3-acres perennial tropical flowers, 4-acres fruit and nitrogen fixing trees and the remaining area to sheep and horse pasture along with home site(s). Your estimation of man-hours of labor that will be required upon full implementation of the farm plan is 120 hours per week.

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 7206) approved on January 6, 2000, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30131308), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity and the income is/will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Letter dated March 28, 2003):

EXHIBIT

A

“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.

As this application indicates that there will be farming activity on the parcel, the applicant shall have a licensed contractor install a backflow preventer (reduced pressure type) on the applicant’s property just after the existing meter. 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.

Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant would normally be required in accordance with Department’s regulations. However, the Department’s existing water system facilities cannot support an additional meter for the proposed additional farm dwelling at this time. Extensive improvements and additions, including source, storage, transmission, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting that the Department cannot provide water service to the proposed additional farm dwelling and a backflow preventer shall be installed just after the existing meter. Further, should the application be approved, both dwellings must not share the existing meter.

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

(b) Real Property Tax Office (Memorandum dated March 20, 2003):

“Property is receiving agricultural use value.

Real Property taxes are paid through June 30, 2003.”

(c) Department of Health:

“There were no DOH comments received by this Department.”

EXHIBIT

A

Scott and Zoe Johnson

Page 4

May 7, 2003

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 completely 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.
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

EXHIBIT

 A

Scott and Zoe Johnson
Page 5
May 7, 2003

before May 7, 2005 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

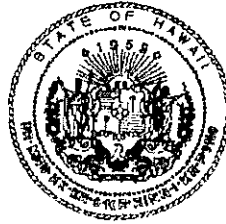
JRH:pak
p:\afda\afda\jrh\apvl\johnscnapvl.doc

Enclosure: AFDA document
AFDA document instruction sheet

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

EXHIBIT

A



R-1025
STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUN 12, 2003 08:02 AM
Doc No(s) 2003-117827



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z6

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: SCOTT JOHNSON and ZOE JOHNSON

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 4-5-002:002

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 5th day of May, 2003, by and between **SCOTT JOHNSON and ZOE JOHNSON**, herein called the "First Party," whose mailing address is 4051 Sheridan Avenue South, Minneapolis, Minnesota 55410, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 4-5-002:002 situated within the State Land Use Agricultural district and zoned Agricultural (A-40a) 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.

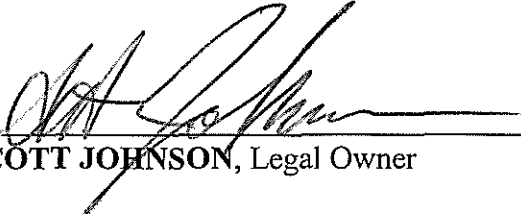
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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:




SCOTT JOHNSON, Legal Owner



ZOE JOHNSON, Legal Owner

SECOND PARTY:



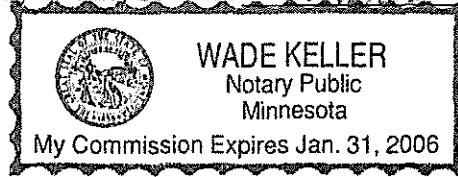
Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF ~~HAWAII~~ ^{Minnesota})
COUNTY OF ~~HAWAII~~ ^{Hennepin}) SS.
)

On this 15th day of May, 2003 before me personally appeared **SCOTT JOHNSON and ZOE JOHNSON** to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.



Notary Public, State of Minnesota

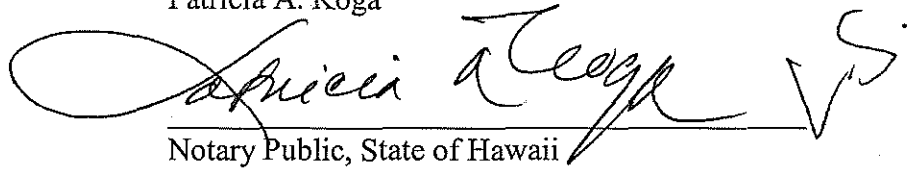


My commission expires: 1/31/06

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 2nd day of June, 2003 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

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: SCOTT AND ZOE JOHNSON

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 4-5-002:002

CANCELLATION OF AGREEMENT

THIS AGREEMENT made and executed this 13th of February, 2009, by and between SCOTT AND ZOE JOHNSON, herein called the "First Party," whose property address is 45-423 Lehua Street, Honokaa, Hawai'i 96727 and the COUNTY OF HAWAII, herein called the "Second Party,"

WITNESSETH

WHEREAS, on May 7, 2003, an agreement was entered into by and between the Owner and the County whereby the Owner was authorized to construct a farm dwelling (being the second dwelling) on the property described as Tax Map Key (3); 4-5-002:002 and

WHEREAS, the subject area is zoned Agricultural (A-40a) by the County of Hawaii and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawaii Bureau of Conveyances on June 12, 2003 as document number 2003-117827 and

WHEREAS, the First Party (successors to the property) and the Second Party agree that execution of said agreement should be cancelled as there is no longer any valid, compelling reason for it because there is only one dwelling on the parcel.

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The County agrees that the agreement dated May 7, 2003, recorded at the State of Hawaii Bureau of Conveyances, on June 12, 2003 as document number 2003-117827 between the Owner and the County is no longer applicable and that the agreement is hereby declared null and void.

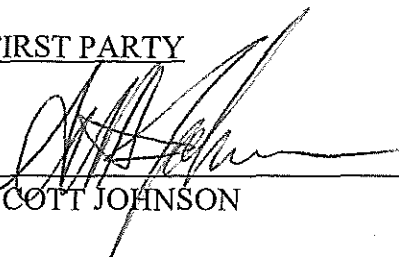
The Second Party agrees that the agreement dated May, 7, 2003 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Keys (3) 4-5-002:002.

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreement dated May 7, 2003 no longer constitutes an encumbrance on Tax Map Key (3) 4-5-002:002.

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

FIRST PARTY




SCOTT JOHNSON

FIRST PARTY



ZOE JOHNSON

SECOND PARTY:



BJ Leithead Todd, Acting Deputy Planning Director
County of Hawaii Planning Department

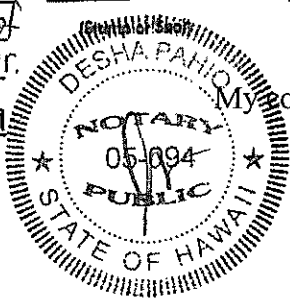
STATE OF HAWAII)

) SS:

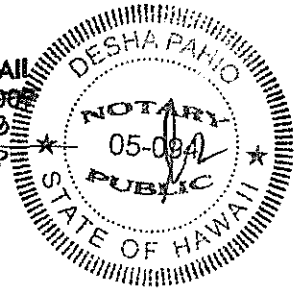
COUNTY OF HAWAII)

On this 24 day of February 2009, before me personally appeared SCOTT JOHNSON AND ZOE JOHNSON 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.

Doc. Date: undated @ notary # Pages: 11 Kusha Pali
 Name: Desha Pahio 301 Circuit Notary Public, State of Hawaii
 Doc. Description: cancellation of additional farm dwelling agr.
 Signature: Kusha Pali Date: 02.24.09
 NOTARY CERTIFICATION

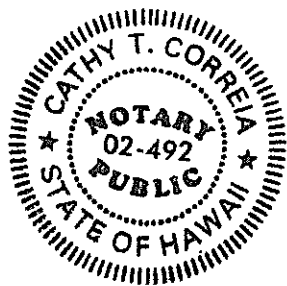



DESHA PAHIO
 NOTARY PUBLIC, STATE OF HAWAII
 COMMISSION EXPIRES: 02/20/2013
 My commission expires: _____

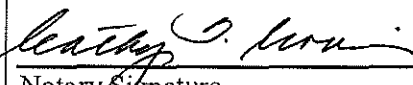


STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On March 16, 2009, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, 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 BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.




Cathy T. Correia
Notary Public, State of Hawai'i
My Commission Expires: 10-13-2010

| | |
|---|-------------------------------|
| Doc. Date: <u>February 13, 2009</u> | # Pages: <u>6</u> |
| Notary Name: Cathy T. Correia | Third Circuit |
| Doc. Description: <u>Cancellation of Additional Dwelling Agreement</u> | |
|  Notary Signature | <u>March 16, 2009</u> Date |

