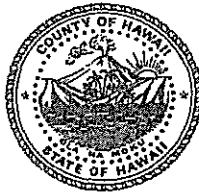


Harry Kim
Mayor



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

November 22, 2004

Louis A. and Joleen M. Nobriga
P.O. Box 72
Laupahoehoe, Hawaii 96764

Dear Louis A. and Joleen M. Nobriga:

SUBJECT: Additional Farm Dwelling Agreement (04-0010) Denied
Applicants: Louis A. and Joleen M. Nobriga
Land Owners: Russell Haslam, Jr., Louis A. and Joleen M. Nobriga
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 1.869 Acres
Tax Map Key: (3) 3-5-005-012

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. Name and address of the landowners.
2. 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.

Hawai'i County is an equal opportunity provider and employer.

MD 065298

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

(a) Ongoing agricultural activities:

- i. Four nanny goats and one billy goat in a fenced area.

(b) Proposed agricultural activities include:

- i. Addition of approximately 5 more goats into the same penned area for a total of ten, minimum.

(c) Combined labor man-hours are approximately 8-9 per week at present to care for the adult five goats and their kids with approximately double the hours at completion.

3. 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 prior to June 4, 1976 (Grant 7052), which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, GE Tax License (ID number 30053907), 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 (DWS) (Letter dated October 25, 2004):

“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 an average of 400 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 the Department’s regulations. Water is available from the 6-inch waterline in Hokumahoe Road fronting the subject property.

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 if 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 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, for three additional units of water at 1,800 gallons per day for the three additional farm dwellings, to our Customer Service Section:

•	FACILITIES CHARGE (FC):	
•	(One 2 nd service @ \$5,500.00 each)	\$5,500.00
•	SERVICE LATERAL INSTALLATION CHARGE	
•	(Install one meter on Hokumahoe Road, a County road)	2,600.00
	Total (Subject to change)	\$8,100.00

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 252.”

(b) Real Property Tax Office (RPT):

RPT did not comment on this application as of this date.

(c) Department of Health (DOH) (Memorandum dated October 11, 2004):

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.”

Decision:

Upon review of your application and submittals, we regret to inform you that your request for and AFDA is **denied** based on the following:

The scope and nature of the agricultural activity on this parcel, as presented, is deemed to be insufficient to justify the need for additional farm labor.

The following is an excerpt from the Zoning Code:

“Section 25-2-6. Waiting period after denial of application.

Unless otherwise provided in this chapter, whenever an application for an amendment to this chapter, or for a variance from this chapter, or for any other permit authorized under this chapter has been denied, no new application for the same relief, action or use covering all or any portion of the property involved in the original application shall be accepted by the director or the commission for a period of one year from the effective date of the final denial of the original application; **provided, however, that upon a showing of a substantial change of circumstances, the director or commission may permit the filing of a new application prior to the expiration of the one-year period.** Nothing contained in this section shall prevent the council or the director from initiating any proceedings at any time under this chapter.” (emphasis added)

It is understood that your desire to obtain an AFDA for this property is so that you can protect the herd from theft and that once you have secured the property you will expand the herd to a minimum of 10 animals. If you feel that there is more to this activity than the simple raising of the goats for sale (i.e. milking and other by-products processing), then you are welcome to present a revised farm plan that outlines the full extent of the agricultural activities that would justify a **minimum** of eight hours of labor required to pursue the endeavor. Enclosed, please find memorandum 01-21, which provides some guidance for acceptable levels of agricultural activity in relation to AFDA's.

Louis A. and Joleen M. Nobriga
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Once again, we regret to inform you that, as presented, this application must be denied for lack of sufficient agricultural activity to warrant the additional farm worker housing. You are welcome to present further information or to appeal this decision.

Section 25-2-20 (a) (c) of the Zoning Code states:

- (a) Any person aggrieved by the decision of the director or the commission in the administration or application of this chapter, except for decisions regarding variance applications and decisions which are directly appealable to the circuit courts under state law, may, within thirty days of the director or commission's written decision, appeal the decision to the board of appeals.

- (c) An appeal shall be in writing, in the form prescribed by the board of appeals, and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. Any such appeal shall be accompanied by a filing fee of \$250. The person appealing a decision of the director or commission shall provide a copy of the appeal to the director or commission, as appropriate, and to the owners of the affected property and shall provide the board of appeals with the proof of service.

A General Petition for Appeal of Decisions by Planning Director has been enclosed for your convenience.

Should you have any questions, please contact Jonathan Holmes of this office.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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enclosures: PD memorandum 01-21
BOA application