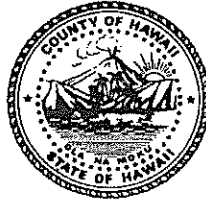


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA, LEED™ AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

September 29, 2008

Gerald T. Walsh
P.O. Box 90
Kealahou, HI 96750-0090

Dear Mr. Walsh

Additional Farm Dwelling Agreement Application (FDA-08-000222)
Applicant: Gerald T. Walsh
Dorothy Walsh
Owner : Gerald T. Walsh, Trustee
State Land Use: Agricultural
County Zoning: Agricultural (A-20a)
Land Area: 10.000 acres
TMK: (3) 8-1-005:004

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 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.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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. Maintain and harvest 75 Macadamia Nut trees (5 acres).
 - ii. Maintain and harvest 100 Saba Banana trees (1.5 acres).
 - iii. Maintain and harvest 3 Avocado trees (1/4 acre).

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- iv. Maintain and harvest 5 Guava trees (1/4 acre).
 - v. The current labor man-hours 15-20 hours per week to maintain and harvest.
- b. Proposed agricultural activities include the following:
- i. Maintain, harvest, and distribute 2,500 tropical exotic plants (1.5 acres).
 - ii. Maintain, harvest, and distribute existing crops (Macadamia nut trees, Saba Banana trees, Avocado trees and Guava trees) listed above.
 - iii. The proposed labor man-hours are 27-34 hours per week to maintain, harvest and distribute. The total labor man-hours will be 42-54 hours per week to maintain, harvest and distribute.
4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.
5. Applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

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, 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 (W20500538-01), 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 (DWS) (Letter dated August 22, 2008):

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

Please be informed that the subject parcel does not have an existing water service with the Department as the parcel is beyond the service limits of the Department’s existing water system.

However, as the applicant indicates a water catchment system, the Department has no objections to the application.

Should there be any questions, please contact Mr. Ryan Quitariano of our Water Resources and Planning Branch at 961-8070, extension 256.”
- b. Real Property Tax Office (RPT):

No comments were received.
- c. Department of Health (DOH):

(Memorandum dated August 25, 2008)

“The Department of Health’s Safe Drinking Water Branch authority on drinking water quality is based on the definition of a “public water system.” A “public water system” means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing water system.

“Concerns on water quality for lead, copper, algae and microbial and chemical contamination in private water systems have identified the need for self monitoring. The Department of Health does not support the use of private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

“We recommend that you review all of the Standard Comments on our website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.html. Any comments specifically applicable to this project should be adhered to.”

Decision:

In view of the above, your request to construct a **second farm dwelling** is 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. The First Party shall adhere to 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 primarily on proposed agricultural activity as summarized previously in this letter. It is recognized that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) year 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 the 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 September 30, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

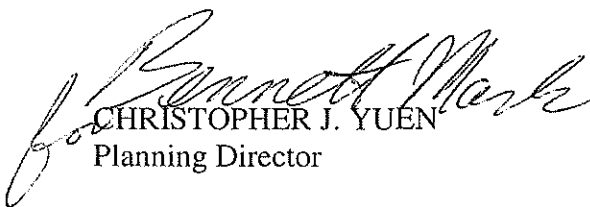
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

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.

If you have any questions please call Rosalind Newlon of our West Hawaii Office at 327-3510.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

Gerald T. Walsh
September 29, 2008
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Enclosure: AFDA document
AFDA document instruction sheet

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

Scanned Map
Unavailable
Due to Size

See File

