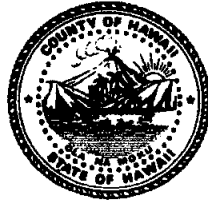


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

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Hilo, Hawai'i 96720
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Fax (808) 961-8742

December 19, 2011

Mr. Leslie Forrest Arnold and Mrs. Elena C. Arnold
54-247 Honopueo Road
P.O. Box 474
Hawi, HI 96719

Dear Mr. and Mrs. Arnold:

SUBJECT: Additional Farm Dwelling Agreement Application (FDA-11-000314)
Applicant: Leslie Forrest Arnold and Elena C. Arnold
Owners: Leslie Forrest Arnold and Elena C. Arnold
State Land Use: Agricultural
County Zoning: Agricultural (A-20a)
Land Area: 21.37 Acres
TMK: (3) 5-4-009:001

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 income-producing agricultural activities which together utilize approximately 3.2 acres of the subject property:
 - (a) Existing, ongoing agricultural activities:
 1. In-ground palm and bamboo nursery; and
 2. Raised-bed herb (arugula and basil) production – approximately 2,000 square feet.

(b) Proposed agricultural activities include the following:

1. In-ground nursery stock:

- a. 150 additional samoan palms; and
- b. 150 additional coconut palms.

2. Fruit Orchard: 200 tangerine trees (Honey and Satsuma varieties).

3. 5,000 square foot expansion of raised-bed herb (arugula) production.

(c) The labor man-hours for the above proposed activities are projected to average, on an annual basis, 18 to 24 hours per week.

4. Evidence of engagement in agricultural productivity in the form of General Excise Tax license No. W01438770-02 in the name of "Leslie F. Arnold, DBA Kohala Farms," has also been presented.

5. The 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.** (emphases added)

2. The subject lot was certified by this Department on November 5, 2003 as a pre-existing legal lot of record and therefore as having been created prior to June 4, 1976. We have also determined that a boundary adjustment made with an adjoining parcel, by way of a consolidation and resubdivision action approved by this Department as Subdivision No. SUB-11-000840 on January 28, 2009, does not change the effective date for creation of this pre-existing lot. Accordingly, pursuant to Hawai'i Revised Statutes §205-4.5(b), as a legal lot established prior to June 4, 1976, the first dwelling on the lot is allowed to be a single-family dwelling.

3. The Farm Plan, General Excise Tax License, 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 1, 2011; COR-11-069949):

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

Please be informed that the subject parcel is currently allocated one (1) unit of water through an existing master water meter serving several lots in the area. The one (1) unit of water assigned to the parcel is limited to an average daily usage of 400 gallons and suitable for only one single-family dwelling.

As the current water availability conditions in the area, which are subject to change without notice, can only allow one (1) unit of water per pre-existing lot of record, water cannot be made available for the proposed additional farm dwelling.

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

Should there be any questions, you may contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256.”

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health:

No comments were received.

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.
3. The enclosed Additional Farm Dwelling Agreement (“AFDA”) must be returned to the Planning Department with the appropriate notarized signatures of all persons comprising the “First Party” to the agreement along with a check made out to the Bureau of Conveyances in the amount of \$30.00 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 with all required attachments has been recorded at the Bureau of Conveyances.**
4. The First Party shall comply with 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.
5. Your Additional Farm Dwelling Agreement has been approved based on both your existing and your proposed agricultural activities as presented in your farm plan and summarized previously in this letter. **It is required that the First Party (owners and their lessees and their successors in interest) to the Agreement shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling.** The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.
6. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
7. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before December 19, 2013.** Failure to secure a building permit for this additional farm dwelling on or before December 19, 2013 may cause the Director to initiate proceedings to invalidate the AFDA.

With regard 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 “Guidelines on Rainwater Catchment systems for Hawaii” published by the University of Hawaii – College of Tropical Agriculture and Human Resources (CTAHR) as well as the State Department of Health standards related to water testing and water purifying devices.

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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.

Should you have any questions, please contact Keola Childs of our West Hawaii office at 323-4770.

Sincerely,


BJ LEITHEAD TODD
Planning Director

CKC:ckc

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Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Quirino Antonio, DWS
Mr. Mike McCall, RPT
Planning Department – West Hawaii Office