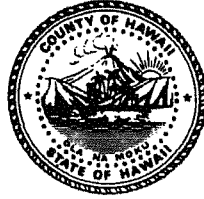


William P. Kenoi
Mayor



BJ Leithead Todd
Planning Director

Margaret K. Masunaga
Deputy Planning Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 19, 2012

Elizabeth Lee Stack
P.O. Box 37764
Honolulu, Hawai'i 96704

Dear Ms. Stack:

Additional Farm Dwelling Agreement Application (FDA-12-000318)

Applicant: Elizabeth Lee Stack
Owner: Elizabeth L. Stack
Elizabeth M. Stack
Allen M. Stack Jr.

State Land Use: Agriculture
County Zoning: Agricultural (A-5a)
Land Area: 5.448 acres
TMK: (3) 8-6-011:010

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 on the subject property:
 - (a) Existing, ongoing agricultural activities on .75 planted acreage:
 1. Fruit Tree Plantings: 5 mango trees, 2 jaboticaba trees, 5 orange trees, grapefruit, and a Surinam cherry tree.

MAR 23 2012

- (b) Proposed agricultural activities include the following on 2 acres:
1. Fruit Tree Plantings: 2 lychee trees, 8 mango trees, 2 avocado trees, 2 durian trees, 3 grapefruit trees, 1 lime tree, 1 lemon tree, 3 banana trees, poha, 5 cacao, 2 pomegranate, 10 surinam cherry trees, and 8 papaya.
 2. 1/8th acre of vanilla beans
 3. 1/8th acre of fig
 4. 10 pineapple
- (c) The labor man-hours for the above existing and proposed activities are projected to average, on an annual basis, 22 to 28 hours per week.
4. Evidence of engagement in agricultural productivity in the form of an approved agricultural dedication from the County of Hawai'i Department of Finance, Real Property Tax Division, 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, Hawai'i 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 created by subdivision (SUB 6352) approved on November 9, 1993, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, agricultural dedication, 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.

4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply:

No comments were received

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated March 6, 2012):

"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.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design."

Memorandum within transmittal:

"PROCEDURES

MARCH 1, 2012

TO: SANITATION STAFF

FROM: PETER OSHIRO, ENV. HEALTH PROGRAM MANAGER

SUBJECT: RESTROOM FACILITIES FOR REGULATED ESTABLISHMENTS

The description of the requirements for toilet facilities varies in the different rules that Sanitation Branch enforces. The terms "available," "adequate," and "convenient" are used but there has been a request to identify a standard that the sanitarians can apply to all facilities. The standard will therefore be as described in §11-11-9 (b) (2) of Chapter 11, Sanitation. It states "Toilet facilities shall be provided so as to be readily

accessible. Toilet facilities so located that employees must use more than one floor-to-floor flight of stairs to or from them are not considered as readily accessible. Toilet facilities shall be located within two hundred feet of all locations at which workers are regularly employed."

Unfortunately, there are other variables which may be subject to interpretation within the description such as the inclusion or the number of steps in the flight if stairs, split level floors such as those found commonly found in parking structures, how the two hundred feet is measured, how is distance measured if an elevator or escalator is available. Therefore, toilet facilities shall be deemed in compliance if they are:

1. Located within one floor-to-floor flight of stairs from the establishment; and
2. Within two hundred feet from the entrance of the establishment to the entrance to the required restroom. This distance is to be measured along the most direct path traveled and shall not include the distance traveled to arrive at the adjacent full floor by stairs, elevator, escalator, or other mechanical lifting device. Should an available elevator, escalator, or other mechanical lifting device travel more than one floor as the minimum change of elevation, it will be treated as having travelled one floor-to-floor flight of stairs provided that the vertical distance traveled does not exceed 30 feet."

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.**

Elizabeth Lee Stack
3/19/12
Page 5

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 March 20, 2014.** Failure to secure a building permit for this additional farm dwelling on or before March 20, 2014 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please contact Deanne Bugado of our West Hawai'i office at 323-4770.

Sincerely,


BJ LEITHEAD TODD
Planning Director

DEB:deb
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xc: Chief Sanitarian, DOH w/application
Manager, DWS w/appiication
Administrator, RPT w/application
Planning Department – Kona