

January 26, 1983

Mr. Robert H. Berger
P. O. Box 4604
Kailua-Kona, HI 96740

Dear Mr. Berger:

Ohana Dwelling Application (OD 82-44)

Robert H. Berger

TMK: 7-3-47:64

We regret to inform you that after reviewing your application, the Planning Director is hereby denying your ohana dwelling application. The reasons for the denial are as follows:

1. Ordinance No. 804, relating to Regulations for Ohana Dwelling permits the construction of a second dwelling unit on a lot subject to certain provisions:
 - a. Art. 20, Sec. 1. Purpose and applicability. "It is not the intent of this Ordinance to supersede private deed restrictions or agreements which may prohibit the construction of an additional dwelling on the lot."
 - b. Art. 20, Sec. 2. General Provisions. "Notwithstanding any law, ordinance, or rule to the contrary, two dwelling units may be constructed on any lot within all State Land Use Urban, Agricultural, Rural and Conservation districts provided that: 3) That at the time of application for a county building permit for a second dwelling unit, the subject lot or land parcel is not restricted by a recorded covenant or a recorded lease provision (in a lease having a term of not less than fifteen years) which prohibits a second dwelling unit."

JAN 26 1983

Mr. Robert H. Berger

Page 2

January 26, 1983

2. A covenant contained in your deed states "All of said lots and every portion there of (except the roadway lot) shall be used for single family, private residence purposes only including garage and other similar structures reasonably necessary in connection with such private residence, and for no other purpose."
3. The building plans that were submitted to the Kona Office of the Building Department calls for the construction of a second complete unit on the lower level of the existing dwelling. This would classify the building as a duplex. A duplex is defined as "a building containing only two dwelling units."

A single family dwelling is defined as a building containing only one dwelling unit.

We have determined that the above covenant restricts the construction of more than one dwelling unit on the property thereby disqualifying this property from Ordinance No. 804 relating to Ohana Dwelling Regulations.

The Director's decision is final, except that within thirty (30) days after receipt of this letter, you may appeal the decision in writing to the Board of Appeals in accordance with the following procedures:

1. A non-refundable filing fee of one hundred dollars (\$100).
2. Ten (10) copies of the petition for the appeal incorporating the following:
 - a. The name, address, and telephone number of the appellant and the name, title, and address of the appellant's representative.
 - b. A description of the property involved in the appeal, including the tax map key number of the property, and the appellant's interest in the property.
 - c. A plain statement of the nature of the appeal and the relief requested.

Mr. Robert H. Berger

Page 3

January 26, 1983

d. A statement explaining:

- 1) How the decision appealed from violates the law; or
- 2) How the decision appealed from is clearly erroneous; or
- 3) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

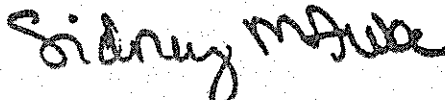
e. A clear and concise statement of any other relevant facts.

The denial of your ohana dwelling application was due to a deed restriction that only one single family dwelling may be constructed on the property. Therefore, it should be pointed out that even if the Board of Appeals disposes the petition in your favor, its decision is meaningless.

Should you decide to pursue this request, an alternative available is to have this restrictive covenant removed from your deed.

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

Sincerely,



SIDNEY FURE
Planning Director

MO:lqv

cc: Corporation Counsel
Chief Engineer, DPW
Chief Sanitarian, DOH
Colbert Nozaki w/plans