

CERTIFIED MAIL

March 11, 1985

Mr. William DeBernardi, Jr.
P. O. Box 291
Captain Cook, HI 96704

Dear Mr. DeBernardi:

Ohana Dwelling Application (OD85-26)
William DeBernardi, Jr.
Tax Map Key: 7-3-38:3, Lot B-25

Reference is made to your Ohana Dwelling application received on March 6, 1985. We regret to inform you that after reviewing your application and related submittals, the Planning Director is hereby denying your ohana application. The reason(s) for the denial are as follows:

Section 25-271 (3) of the Zoning Code, Governing regulations for Ohana Dwellings, specifies "That at the time of application for a County Building Permit for a second dwelling unit, the subject lot or land 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."

The Warranty Deed, Exhibit "A," which you furnished includes restrictive covenants running with the land and dated August 26, 1968 and recorded in the Bureau of Conveyances in Liber 6208 at page 437.

Covenant (1) and (2), respectively, states "That no more than one single family dwelling house, together with appurtenant garage and servants' quarters and other outbuildings, shall be constructed or permitted upon said lot; that no house shall have a ground floor area of less than 800 square feet;" and "That no structure of a temporary character, or trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on said property as a residence either temporarily or permanently."

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The Planning Department interprets the above provisions as precluding your submitted proposal. Your options are to take steps with the covenantees to have the restriction removed or waived or appeal our determination through the procedures set forth below.

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.
 - 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.

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

Sincerely,


ALBERT LONO LYMAN
Planning Director

WRY:wkm

cc: Chief Engineer, DPW
Chief Sanitarian, DOH