

CERTIFIED MAIL

November 22, 1985

Mr. Edward M. Gans  
73-1392 Hikimoe Street  
Kailua-Kona, HI 96740

Dear Mr. Gans:

Ohana Dwelling Application (OD 85-118)  
Edward M. Gans  
Tax Map Key: 7-3-47:7

Reference is made to your letter dated November 15, 1985 and the attached copy of a Warranty Deed dated July 15, 1975, recorded in the State of Hawaii Bureau of Conveyances in Liber 10816 at page 44. We regret to inform you the Planning Director is hereby denying your ohana dwelling 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 copy of the Warranty Deed includes restrictive covenants running with the land and dated July 15, 1975 and recorded in Liber 10816 at page 44.

Exhibit "B," Kona Heavens Subdivision, Unit I, Restrictive Covenants, a, states: "(a) Residential Purposes. The above-described premises and every portion thereof shall be used for private residence purposes only (except public roads and recreational areas) including private garage and/or servants' quarters and other similar purposes reasonably necessary in conjunction with such private residence, and for no other purpose; and no building other than a private dwelling house designed and built for the use and occupancy of a single family,

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not exceeding twenty (20) feet in height from the highest point of the building site to the highest point of the structure, which shall not exceed twenty-four (24) feet in height, shall be constructed, placed or maintained upon said premises during said term; nor shall any portion of said premises be used for through roadway between public roads bordering said premises."

The purpose of the ohana dwelling request is to permit the renovation of a single family dwelling into a duplex. The Zoning Code defines a duplex dwelling "a building containing two dwelling units."

The Zoning Code's definition for "dwelling unit" is "one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping and living area of the single-family only and occupied by no more than one family and containing a single kitchen."

The Planning Department interprets the Kona Heavens Subdivision, Unit I, Restrictive Covenants as precluding your submitted proposal until January 1, 2006. 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.

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d. A statement explaining:

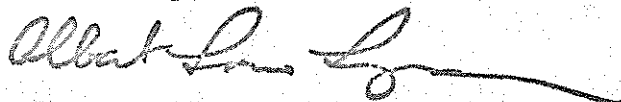
- 1) How the decision appealed from violates the law;  
or
- 2) How the decision appealed from is clearly  
erroneous; or
- 3) How the decision appealed from was arbitrary or  
capricious, or characterized by an abuse of  
discretion or clearly unwarranted exercise of  
discretion.

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 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