

CERTIFIED MAIL

October 15, 1985

Mr. Roy H. Hidano, Etal  
P. O. Box 1496  
Kealahou, HI 96750

Dear Mr. Hidano:

Ohana Dwelling Application (OD 85-122)  
Roy H. Hidano, Etal  
Tax Map Key: 7-3-05:83, Lot 34

Reference is made to the Ohana Dwelling - Public Facilities Form and submittals received on October 8, 1985.

We regret to inform you that after reviewing your application and comments received from the affected agencies, 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 copy of a Satisfaction Deed furnished includes restrictive covenants running with the land and dated May 16, 1980 and recorded in Liber 14747 at Page 287.

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Covenant A states "That premises shall be used for single family residence purposes only and any house built thereon shall contain a minimum of 950 square feet of enclosed living area and shall be built in accordance with plans and specifications approved in writing by Seller; . . ." and further, "E. All of the foregoing covenants shall run with the land and shall be binding on all parties claiming under the Grantors through December 31, 1999. Grantor, its successors and assigns, may, and do hereby reserve the right to amend, modify or cancel with the approval of a majority of the lot owners of the subdivision, any of the covenants set forth above . . ."

The Planning Department interprets the above provision as precluding your submitted proposal until December 31, 1999. 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 in Covenant E.

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

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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