

CERTIFIED MAIL

November 14, 1985

Mr. Thomas H. Lodge, Etal  
16-1596 Pahoa Highway  
Keeau, HI 96749

Dear Mr. Lodge:

Ohana Dwelling Application (OD 85-137)  
Thomas H. Lodge, Etal  
Tax Map Key: 2-4-40:32

We regret to inform you that after reviewing your application and Ohana Dwelling Application (OD 84-33), Tax Map Key: 2-4-40:32, 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 Assumption Deed, Exhibit "A" refers to a deed dated November 13, 1978, and recorded in Liber 13267 at page 181, is subject to the restrictive covenants contained in that certain Deed dated August 14, 1967, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 6119, at Page 446.

A copy of that certain Warranty Deed in file OD 84-33, dated August 14, 1967, and recorded in Liber 6119, at page 446, on page 2, states "2. One home only of new materials and providing a minimum floor area of 760 square feet, excluding garage and open patios, may be constructed on said premises."

Mr. Thomas H. Lodge, Etal  
Page 2  
November 14, 1985

The ohana dwelling application is for the conversion of an existing single family dwelling to a duplex which is defined as "a building containing two dwelling units." A single family dwelling is defined as a building containing only one dwelling unit.

The Planning Department interprets the above provision 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.

Mr. Thomas H. Lodge, Etal  
Page 3  
November 14, 1985

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

bcc: OD 84-33