

CERTIFIED MAIL

December 17, 1985

Ms. Susan S. Heassler  
P. O. Box 10706  
Hilo, HI 96721

Dear Ms. Heassler:

Ohana Dwelling Application (OD85-146)  
Susan S. Heassler  
Tax Map Key: 2-3-46:61

Reference is made to the ohana dwelling - public facilities form and submittals received on December 11, 1985. We regret to inform you that after reviewing your application, the Planning Director is hereby denying your ohana application. A discussion and reasons for denial follow:

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 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 copy of a Warranty Deed, Exhibit A, page 4, #3, states: "3. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Warranty Deed, dated April 26, 1963, recorded June 5, 1963, in the Bureau of Conveyances, State of Hawaii, in Book 4526, page 235."

DEC 18 1985

Ms. Susan S. Heassler  
Page 2  
December 17, 1985

The copy of the Warranty Deed dated April 26, 1963, recorded in the Bureau of Conveyances, State of Hawaii, in Book 4526, beginning on page 235, contains a restrictive covenant running with the land. On page 236, page 2, (A), states: "(2) Residential Purposes. The above described property and every portion thereof shall be used for private residence purposes only, including private garage and other similar purposes reasonably incidental to the occupation of such property as a private residence and for no other purposes; and no more than one single family dwelling house, together with appurtenant garage and servants' quarters and other out buildings, shall be constructed or permitted upon said lot (emphasis added)."

Pursuant to the above, the foregoing covenants continue in effect and in both deeds bind the present grantee, his/her heirs, executors, administrators and assigns during successive ten-year periods following December 31, 1980, except to the extent that the above restrictive covenants may be modified or amended by agreement of the owners of a majority of the residential lots contained in the subdivision to which these covenants are applicable.

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 following procedures.

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.

Ms. Susan S. Heassler  
Page 3  
December 17, 1985

d. A statement explaining:

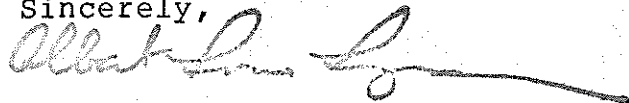
- 1) How the decision appealed from violates the law;  
or
- 2) How the decision appealed from is clearly  
erroneous; or
- 3) How the decision appealed from was arbitrary or  
capricious, or characterized by an abuse of  
discretion or clearly unwarranted exercise of  
discretion.

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

bcc: Subd. No. 2658