

CERTIFIED MAIL

May 6, 1986

Mr. Cecil E. Garrett, Etal
c/o Mr. Donald C. McIntosh, R.L.S.
P. O. Box 2902
Kailua-Kona, HI 96740

Dear Mr. Garrett:

Ohana Dwelling Application (CD 86-45)
Cecil E. Garrett, Etal
Tax Map Key: 7-3-28:66

Reference is made to your letter dated April 23, 1986 from Donald C. McIntosh, R.L.S., ohana dwelling - public facilities form and submittals received for a proposed ohana dwelling on the referenced tax map key parcel. We have reviewed your application and regret to inform you the Planning Director is hereby denying the application. The reason for the 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 copy of the Assumption Deed dated January 24, 1984, and recorded in Liber 17637 at Page 578 and referenced restrictive covenants contained in that certain Deed dated February 13, 1969, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 6584 at page 13 refer and include restrictive covenants running with the land.

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The copy of Exhibit "A" referenced in the Assumption Deed and copy of "Exhibit A, Coastview Covenants, (a)," attached to copy of said Assumption Deed states the following: "The above described premises, and every portion thereof, shall be used for private residence purposes only, including private garage and/or servants' quarters and other similar purposes reasonably necessary in connection with such private residence, and for no other purpose; and no building other than a private dwelling house shall be constructed, placed or maintained upon said premises during said term (emphasis added)."

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

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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. In addition, we note the ohana dwelling - public facilities form does not bear the signature of Larry A. Weisz listed as buyer.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

WRY/MO:wkm

cc: Chief Engineer, DPW
Chief Sanitarian, DOE