

CERTIFIED MAIL

May 30, 1986

Mr. Douglas W. Schilling
Schilling Construction
P. O. Box 3118
Waikoloa, Hawaii 96743

Dear Mr. Schilling:

Ohana Dwelling Application (OD86-55)
David Herschelrode, Etal
Tax Map Key: 6-8-18:31, Lot 222

We regret to inform you that after reviewing the ohana dwelling - public facilities form and submittals, the Planning Director is hereby denying your ohana application. The denial of your ohana dwelling application is due to a deed restriction that only one single family dwelling may be constructed on the property.

The reason(s) 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 recorded Deed submitted with your application dated August 22, 1980 includes restrictive covenants running with the land. Reference is made to item no. 2 on page 1 and items no. 3 and no. 4 on page 2 of the copy of the deed dated August 22, 1980.

Mr. Douglas W. Schilling
Page 2
May 30, 1986

The enclosed copy of Declaration of Protective Covenants, dated May 27, 1971, submitted with your application on page 4 states:

"S. Single-family Residential. No improvement except a Single-family Dwelling and such outbuildings as are usually accessory thereto shall be constructed, placed or permitted to remain on any Lot designated for Single-family Residential use in a Supplemental Declaration . . ."

The Planning Department interprets the above provision in your deed and language contained in the Declaration of Protective Covenants as precluding the construction of more than one dwelling on the subject property until January 1, 1995, after which time the same shall be extended for successive periods of ten (10) each unless, prior to the expiration of the Declaration of Protective Covenants, action is initiated to amend the covenants as contained in item 14. Your options are to take steps with a majority of the then recorded owners of all lots agreeing to change the covenants by the procedure set forth by the Declaration of Protective Covenants, item 14, page 10, TERM AND AMENDMENT, or appeal our determination through the procedure 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.

Mr. Douglas W. Schilling
Page 3
May 30, 1986

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.

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

Sincerely,



for ALBERT LONO LYMAN
Planning Director

WRY/MO:wkm

cc: Chief Engineer, DPW
Chief Sanitarian, DOH