

CERTIFIED MAIL

July 10, 1986

Mr. and Mrs. Sebastian D. Afaga  
76-6179 Pakalana Road  
Kailua-Kona, HI 96740

Dear Mr. and Mrs. Afaga:

Ohana Dwelling Application (OD86-62)  
Sebastian D. Afaga Etal  
Tax Map Key: 7-6-19:35, Lot 165

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. Pursuant to Article 25, Regulations for Ohana Dwelling, the reason(s) for the denial follow:

Section 25-271 General Provisions (3), states: "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 that certain Deed dated the 17th day of February, 1965, recorded in the Bureau of Conveyances of the State of Hawaii in book 4971 at page 41 thru 47 includes restrictive covenants running with the land.

Covenant No. 1 states "The above described premises and every portion thereof shall be used for private residence purposes only (except public roads and recreational areas) 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 designed and built for the use and occupancy of a single family, not exceeding two (2) stories in height, together with one (1) outbuilding not exceeding one (1) story in height, shall be constructed, placed or maintained upon said premises during said term, excepting Lots 12 through 39, inclusive, and Lots 59 through 81, inclusive, and known as 'Border Lots', upon which duplex-type dwelling may be constructed (emphasis added)."

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Section 25-272, Requirements, states in part: ". . . On any lot where a dwelling unit is permitted, an ohana dwelling may be constructed, provided that:

(2) It meets with State department of health wastewater treatment and disposal system requirements. Additional standards will not be imposed by the County."

Pursuant to the enclosed copy of the State department of health memorandum dated June 30, 1986, "A minimum of 5,000 square feet of land area is required for a residence if cesspool is the means of sewage disposal system. The land area of 9,256 square feet is not adequate for ohana development at this time (emphasis added)."

The above provisions preclude your proposal to convert an existing single family dwelling into a duplex pursuant to Article 25. Your options are to take steps with the covenantees to have the restriction removed pursuant to covenant no. 10 which states: "The foregoing covenants shall continue in effect and shall bind the Grantees, their heirs, executors, administrators and assigns, during successive ten ten-year periods following January 1, 1980, except to the extent that the same shall be modified or amended prior to commencement of any such period by agreement of the owners of a majority of the residential lots contained therein," 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.

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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 and the State Department of Health requirement of 5,000 square feet of land area per residence.

Meanwhile, we are enclosing plans, building permit application and envelope containing \$70 in cash with this letter.

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

Sincerely,



ALBERT LONO LYMAN  
Planning Director

MO/WRY:wk

Encl.

cc: Chief Engineer, DPW  
Chief Sanitarian, DOH