

CERTIFIED MAIL

October 14, 1986

Mr. and Ms. Eugene T. Power  
74-1482 Hao Kuni Street  
Kailua-Kona, HI 96740

Dear Mr. and Ms. Power:

Ohana Dwelling Application (OD 86-105)  
Eugene T. Power, Etal  
Tax Map Key: 7-4-07:54, Lot 39

Reference is made to the ohana dwelling - public facilities form and submittals received on September 26, 1986. The Planning Director is hereby denying your ohana application for the following reasons:

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 recorded Deed dated April 13, 1984 furnished includes restrictive covenants running with the land. Exhibit A, Restrictive Covenants, Paniolo Subdivision Unit II, covenant (a) states "Residential Purpose. All Subdivision lots and every portion thereof shall be used only for private residence purposes (except public roads and recreational areas) including private garage and other similar purposes reasonably necessary in connection with such private residence, and for no other purpose, and no building other than a single private dwelling house designed and built for the use and occupancy of a single family shall be constructed placed or maintained upon each subdivision lot, provided that servants' quarters and guest quarters may be placed or maintained on the subdivision lot if placed or maintained in conformity with County and State regulations."

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The Planning Department interprets the above provision to preclude your proposal to construct an ohana dwelling on the subject TMK parcel. Your options are to take steps with the covenantees to have the restriction removed or modified pursuant to Covenant (j) which states "Successive Terms and Amendment". The foregoing restrictive covenants shall continue in force and effect and shall bind the grantee, his heirs, personal representatives and assigns, during successive ten-year periods following 1994, 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 subdivision lots. The covenants may be amended at any time by a vote of 80% of the owners of all of the lots in the subdivision. . . ." 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.

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- 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 LONG LYMAN  
Planning Director

WRY:wk

cc: Chief Engineer, DPW  
Chief Sanitarian, DOH