

OD 87-178

CERTIFIED MAIL

November 16, 1987

Mr. and Mrs. Walter Sugi
P.O. Box 286
Capt. Cook, HI 96704

Dear Mr. and Mrs. Sugi:

Proposed Ohana Dwelling Application
Walter Sugi, Etal.
TMK: 8-4-04:41

Reference to October 30, 1987 ohana dwelling application and related submittals received.

Article 25, Regulations for Ohana Dwelling, states in part: "Notwithstanding any law, ordinance, or rule to the contrary, two dwelling units may be constructed on any lot," provided "that at the time of application for a county building permit for a second dwelling unit, the subject lot or land parcel is not restricted by a recorded covenant or recorded lease provision (in a lease having a term of not less than fifteen years) which prohibits a second dwelling unit."

Copy of recorded Lease No. 23,346 with stated term of 45 years from "January 1975", Page 6, Item 7, Use, states, "Lessee will use said productive area solely for the cultivation of truck, orchard, flower or nursery crops or such other crops as may be approved in writing by Lessors and any part of said premises for accessory buildings and other improvements useful for or incidental to said agricultural purposes, and will use any house site hereby demised solely for one single-family dwelling and appurtenances, and will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or any part thereof." (Emphasis added). We interpret foregoing language as restrictive covenant to disqualify you from constructing second single family dwelling pursuant to Article 25.

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Therefore, in consideration of above, we regret to inform you we cannot accept and process application submitted and deny request to construct proposed ohana dwelling.

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 appellants 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.
 - 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

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the Board of Appeals disposes the petition in your favor, its decision is meaningless.

We enclose two (2) copies of Ohana Dwelling - Public Facilities Form and site plan received. One (1) copy of the foregoing together with copy of recorded lease will be retained in referenced file. Should you have any questions, please feel free to contact this office.

Sincerely,



ALBERT LONO LYMAN
Planning Director

WRY:etn

Enc.

cc: Department of Public Works
Department of Health
DPW, Bldg. Division - Attn: Colbert Nozak
bcc: Royden