

CERTIFIED MAIL

February 9, 1989

Mr. Robert Aday
76-6170 Lehua Road
Kailua-Kona, HI 96740

Dear Mr. Aday:

Ohana Dwelling Application (OD 89-05)
Robert Aday
Tax Map Key: 7-6-19:37

This acknowledges ohana dwelling application and related submittals for proposed duplex conversion received December 30, 1988.

Section 25-271 (3), Article 25, Regulations for Ohana Dwelling of the Zoning Code, 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."

In consideration of above, the copy of recorded April 2, 1979 Warranty Deed in Liber 13601 at Page 368, Exhibit "A", 2, makes reference to "Restrictive Covenants set forth in that certain deed dated October 15, 1963 and recorded in Liber 4614 at page 472." The copy of Exhibit "A", "Restrictive Covenants set forth in that certain deed dated October 15, 1963 and recorded in Liber 4614 at page 472 to-wit: "1", attached to copy of recorded deed received December 30, 1988 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

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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 dwellings may be constructed."

The Planning Department interprets the deed condition as precluding a request to construct and establish ohana dwelling (duplex conversion) on subject parcel. Therefore, we regret to inform you that your request to establish and construct an ohana dwelling on subject parcel is denied.

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.
 - e. A clear and concise statement of any other relevant facts.

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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,

William L. Moore
DUANE KANUHA
Planning Director

WRY/WLM:etn

cc: Chief Engineer, DPW
Chief Sanitarian, DOH