

CERTIFIED MAIL

July 25, 1990

Mr. Willy Mack  
73-1232 Ahikawa Street  
Kailua-Kona, HI 96740

Dear Mr. Mack:

Ohana Dwelling Application (OD 90-113)  
Willy Mack  
TMK: 7-3-22:4, Lot 3

We reviewed copy of recorded Warranty Deed dated December 26, 1963.

Section 25-271 (3) of the Zoning Code, Governing regulations for Ohana Dwellings, 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 recorded Warranty Deed dated December 26, 1963 and recorded on October 30, 1964 as Liber 4873 at Page 408 includes restrictions, covenants and conditions.

Warranty Deed states that:

- "(a) The above described premises, and every portion thereof, shall be used for private residence purposes only, 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 shall be constructed, placed or maintained upon said premises during said term."

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Upon further review of the above restrictive covenants of the subdivision, the Corporation Counsel's office has determined that the covenants permit the construction of only one dwelling on the property and prohibits a second dwelling unit. Based on this, the above provision precludes the development. Consequently, we have no choice but to deny your ohana dwelling application.

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:

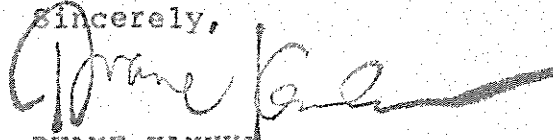
1. A non-refundable filing fee of one hundred dollars (\$100).
2. Ten (10) copies of the petition for the appeal incorporating the following:
  - a. The name, address, and telephone number of the appellant and the name, title, and address of the appellant's representative.
  - b. A description of the 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.

We apologize for the delay in our response on this matter. However, we wanted to be very clear with our Corporation Counsel as to our options and duties with regard to the review of this ohana dwelling application.

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Should you have any questions, please feel free to contact this office.

Sincerely,



DUANE KANUHA  
Planning Director

WLM/MO/WRY:etn

cc: Corp. Counsel