

CERTIFIED MAIL

October 8, 1990

Mr. and Mrs. Julian Silva
73-1158 Ahulani Street
Kailua-Kona, HI 96740

Dear Mr. and Mrs. Silva:

Ohana Dwelling Application (OD 90-245)
Julian Silva, et al
TMK: 7-3-22:75

This acknowledges ohana dwelling application and related submittals received May 31, 1990.

The ohana dwelling application and related submittals received May 31, 1990 were reviewed under Article 25, Regulations for Ohana Dwelling.

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."

The copy of recorded Warranty Deed dated November 4, 1977 and recorded in the Bureau of Conveyances of the State of Hawaii on November 10, 1977 in Liber 12547 at Page 44 includes restrictions, covenants and conditions. The aforesaid recorded Warranty Deed states:

"(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 purposes; 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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The Planning Department upon consultation with the Office of the Corporation Counsel has determined that the recorded deed language precludes the development of an ohana dwelling unit. Pursuant to Article 25 of the Hawaii County Zoning Code, we therefore regret to inform you a request to construct ohana dwelling on the subject tax map key parcel is denied. Your option is to take appropriate steps with the covenantee to have the restriction removed or waived or appeal our determination through procedure set forth below.

Based on this, the above provision precludes an ohana dwelling on the subject tax map key parcel. Consequently, we have no choice but to deny your ohana dwelling application.

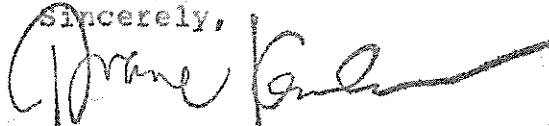
The Director's decision is final, except that within thirty (30) days after receipt of this letter, you may appeal the decision in writing to the Board of Appeals in accordance with the following procedures:

1. A non-refundable filing fee of two hundred dollars (\$200).
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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Should you have any questions, please feel free to contact this office.

Sincerely,



DUANE KANUHA
Planning Director

WLM/MO/WRY:etn

cc: Corporation Counsel

Scanned Map
Unavailable
Due to Size

See File

