

CERTIFIED MAIL

November 27, 1990

Mr. and Mrs. Martin E. Smith
P.O. Box 5165
Kailua-Kona, Hawaii 96745

Dear Mr. and Mrs. Smith:

Ohana Dwelling Application (OD 90-248)
Martin E. Smith, et al
TMK: 7-3-38:81, Lot B-80

This acknowledges ohana dwelling application and related
submittals received June 22, 1990.

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 recorded Warranty Deed dated December 21, 1987,
recorded in the Bureau of Conveyances, State of Hawaii on December
23, 1987 in Book 21455, Page 1 is subject to Declaration of
Covenants and Restrictions dated August 26, 1968, recorded in the
Bureau of Conveyances of the State of Hawaii on September 4, 1968,
in Liber 6208 at Page 437. The aforementioned recorded Declaration
of Covenants and Restrictions states:

"(1) That no more than one single family dwelling house,
together with appurtenant garage and servants' quarters and
other outbuildings, shall be constructed or permitted upon said
lot; that no house shall have a ground floor area of less than
800 square feet;"

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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 on subject tax map key parcel. 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.

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 further questions, please feel free to
contact this office at 961-8288.

Sincerely,

William L. Moore

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DUANE KANUHA
Planning Director

WRY/MO:etn

cc: Corporation Counsel