

CERTIFIED MAIL

November 30, 1990

Ms. Gladys Mann
75-5771 Poni Place
Kailua-Kona, HI 96740

Dear Ms. Mann:

Ohana Dwelling Application (OD 90-396)
Gladys Mann
TMK: 7-5-26:44, Lot 71

This acknowledges ohana dwelling application and related submittals received November 16, 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 Deed dated December 22, 1978 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13402 at Page 259 includes restrictions, covenants and conditions. The aforementioned recorded Warranty Deed states:

"(1) Residential Purposes. The premises described herein 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 18 feet in height from the high point of the lot, shall be constructed, placed or maintained upon said premises during said term."

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

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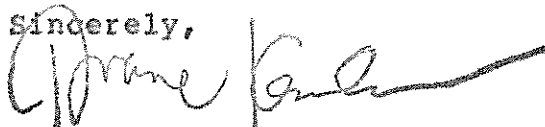
restriction removed or waived or appeal our determination through procedure set forth below.

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.

Should you have any further questions, please feel free to contact this office at 961-8288.

Sincerely,



DUANE KANUHA
Planning Director

WLM/WRY/MO:etn
cc: Corporation Counsel