

CERTIFIED MAIL

May 17, 1991

Mr. and Mrs. Robert Doherty
74-5080 Kau Place
Kailua-Kona, HI 96740

Dear Mr. and Mrs. Doherty:

Ohana Dwelling Application (CD 91-96) 2138
Robert Doherty, et al
TRK: 7-4-89;80, Lot C-3

This acknowledges ohana dwelling application and related submittals received March 6 and April 3, 1991.

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 lessee 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 January 28, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14457 at Page 432 includes restrictions, covenants and conditions which states:

"(a) Residential Purposes. The above-described premises and every portion thereof shall be used for private residence purposes only (except public roads and recreational area) including private garage and/or servants' quarters and other similar purposes reasonably necessary in connection with such private residence, and for no other propose; and no building other than a private dwelling house designed and built for the use and occupancy of a single family...shall be constructed, placed or maintained upon said premises during said term..."

MAY 20 1991

Mr. and Mrs. Robert Doherty
Page 2
May 17, 1991

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.

Mr. and Mrs. Robert Doherty

Page 2

May 17, 1991

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

Sincerely,


NORMAN K. HAYASHI
Planning Director

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cc: Corporation Counsel

West Hawaii Office