

November 15, 1991

Mr. David Wysocki
712 Seabreeze Drive
Seal Beach, CA 90740

Dear Mr. Wysocki:

Ohana Dwelling Permit (OD 91-479) 2489
Tax Map Key: 7-3-23:26, Lot 26

The subject application has been reviewed by the concerned agencies and note:

1. The subject tax map key parcel is served by an acceptable street;
2. The subject application can meet with the State Department of Health wastewater treatment and disposal systems requirements;
3. The copy of document(s) received relating to subject tax map key parcel to establish title and exhibits contained therein do not include any deed restriction or covenant to prohibit construction of requested ohana dwelling; and,
4. The site plan denotes two off-street parking stalls on the property.

In view of the above, by this letter, you are hereby granted permission to construct the Ohana Dwelling, subject to the following condition(s):

- (a) The building permit for the Ohana Dwelling shall be secured on or before November 15, 1992. It should be noted that the permit is effective for only one (1) year and should applicant fail to secure a building permit within this period, a new application must be applied for.

Please bring or attach a copy of this Permit to expedite processing the building plans and building permit application to construct the ohana dwelling.

- (b) Off-street parking space for two vehicles is designated on the submitted site plan to fulfill the off-street parking requirement. The off-street parking spaces may not be

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Mr. David Wysocki
Page 2
November 15, 1991

employed for storage or other use unless and until approved alternative on-site parking arrangements are established.

- (c) All construction drawings together with approved site plan drawn to scale submitted with the ohana dwelling building permit application shall denote location and identify required two (2) off-street parking spaces.
- (d) The ohana dwelling shall conform to all requirements of codes and statutes pertaining to access and building construction. Please refer to your copy of the Department of Public Works memorandum dated November 4, 1991.
- (e) The applicant shall conform to State Department of Health standards and regulations and following comment(s) dated November 6, 1991:

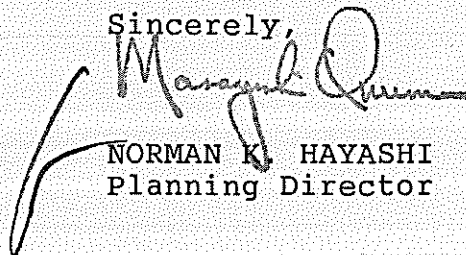
"The subject proposal is located in a Critical Wastewater Disposal Area. The existing cesspool may service a total of 1,000 gallons per day of wastewater. A total of five bedrooms are allowed in the two dwelling units. A second cesspool is not allowed."

Please contact the Chief Sanitarian's Office, Ph. 933-4371 for additional information.

- (f) This Ohana Dwelling permit is subject to all other applicable rules, regulations and requirements, including but not limited to those of the Planning Department, Department of Public Works, and State Department of Health.

Should you have any questions regarding the above, please feel free to contact either Masa Onuma or William Yamanoha of my staff at 961-8288.

Sincerely,

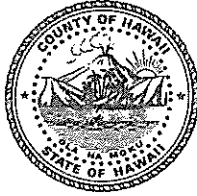


NORMAN K. HAYASHI
Planning Director

WRY:eti
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cc: Department of Health,
Chief Sanitarian
Department of Public Works
Real Property Tax Division - Kona
West Hawaii Office

Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

January 7, 2000

Ms. Roxanne Baker
Kona Coast Realty Corporation
75-240 Nani Kailua Drive, Suite 8
Kailua-Kona, Hawaii 96740

Dear Ms. Baker:

Ohana Dwelling Permits (OHD 91-479 & OHD 95-6)
Tax Map Key: 7-3-023:026, Lot 26

This letter is in response to your inquiry dated November 4, 1999, regarding the above-referenced ohana dwelling permits and related issues. Please accept our sincere apologies for this tardy response to your letter. At the present time there is a shortage of staff. This personnel shortage will be resolved and result in more timely responses to future applications. Your patience is appreciated.

In your letter you state that it has been brought to the attention of the real estate sales industry and learned through the Planning Department that ohana dwelling permits no longer expire. You note, however, that the current ohana dwelling regulations indicate that there is an expiration of the ohana dwelling permits, one year from the date the permit is issued. You conclude your letter with a request for clarification regarding time extensions for ohana dwelling permits.

In response to your questions, we offer the following information to clarify the requirements for ohana dwelling permits.

1. When the revised Zoning Code was adopted effective December 7, 1996, a one year time limit was imposed on ohana dwelling permits. Section 25-6-39.2 states:

"(a) A building permit for the construction of an ohana dwelling unit shall be secured within one year from the date that the ohana dwelling unit permit was issued. A thirty day time extension may be granted by the director if it can be demonstrated by the applicant that non-performance was not the result of the applicant's fault or negligence. In the event that the applicant fails to secure a

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Ms. Roxanne Baker

Page 2

January 7, 2000

building permit for the construction of the ohana dwelling unit within the one year time period, or any extension granted by the director, the ohana dwelling unit permit shall be void.

"(b) The time extension provided for an ohana dwelling permit under subsection (a) above shall be the only time extension available to an applicant, and no further time extension shall be allowed. Further, the failure to obtain any further time extension of an ohana dwelling permit shall not be cause to petition the director, the commission or the board of appeals for relief from the time limitation for an ohana dwelling permit as provided under this section."

Therefore, all ohana dwelling permits issued after the adoption of the revised Zoning Code on December 7, 1996, are subject to a one year time limit with no more than a single thirty day extension allowed if approved by the director.

2. Prior to the revision of the Zoning Code, the Planning Department attempted to place time limitations on ohana dwelling permits, although such authority was not provided either by the ordinance or adopted rules. Based on a recent opinion received from the Corporation Counsel's Office, such limitations are of no effect. Furthermore, since the current Zoning Code does not include a transition provision establishing a specific time limit during which holders of "old" ohana permits must obtain building permits, "old" ohana permits are still in effect.
3. As suggested by the Corporation Counsel's Office, the Planning Department will be initiating amendments to the Zoning Code to establish a reasonable time during which holders of "old" ohana permits would have to obtain building permits, or be barred from doing so. Once these amendments are adopted, all "old" ohana dwelling permits will be subject to a specific time limit.
4. In the interim, all "old" ohana dwelling permits will be honored. Anyone applying for a building permit to construct an ohana dwelling as allowed by an "old" ohana permit, however, must comply with all current applicable requirements of the Planning Department, Department of Public Works, and other affected state and county agencies. Also, for land that is classified as Agricultural by the State Land Use Commission, Chapter 205 farm dwelling restrictions apply.

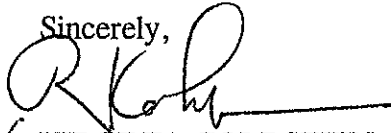
Ms. Roxanne Baker

Page 3

January 7, 2000

Should you have any questions regarding this letter or require more information, please feel welcome to contact Pamela Harlow of our West Hawaii office at 327-3510.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

August 7, 2013

Lori Mikkelson
All Aina Services
P.O. Box 291
Laupāhoehoe, Hawai'i 96764

Dear Ms. Mikkelson,

**SUBJECT: Ohana Dwelling Permits (OHD 91-479 & OHD 95-6)
73-1037 Ahikawa Street
TMK: (3) 7-3-023:026, Lot 26, Kona Coastview Subdivision, No. Kona**

This letter is in response to your request dated July 11, 2013, for a determination on the two Ohana Dwelling Permits that have been granted to the subject TMK property. We apologize for the delay in responding. The property, which comprises 16,278 square feet, is zoned Agricultural, five acres minimum, or A-5a, by the County of Hawai'i, and is situated within the "Urban" State Land Use district.

BACKGROUND

On November 15, 1991, Ohana Dwelling Permit number OHD 91-479 was granted to Mr. David Wysocki, which stated, in part,

"The building permit for the Ohana Dwelling shall be secured on or before November 15, 1992. It should be noted that the permit is effective for only one (1) year and should applicant fail to secure a building permit within this period, a new application must be applied for."

No building permit was issued for this property within the specified time period. Subsequently, a new owner, Mr. Russell Battisto, applied for and was granted Ohana Dwelling Permit number OHD 95-6 on May 15, 1995. This Ohana Dwelling Permit did not impose a deadline for securing a building permit; however, no building permits were ever issued to Mr. Battisto for the subject property.

Lori Mikkelson
All Aina Services
Page 2
August 7, 2013

On February 1, 2000, Building Permits Nos. 005130 and 005131 were issued to Mr. David Thielen for a primary dwelling and an Ohana dwelling, respectively.

As you note in your letter, without first obtaining a Building Permit an unidentified previous owner has built a dwelling unit including kitchen, bedroom, bathroom, and living area in the basement area of the Ohana dwelling. As the property is currently bank-owned and available for sale, prospective buyers Ryan Richards and Carole Coburn are interested in obtaining an "As-Built" Building Permit for the basement apartment.

FINDINGS

The Zoning Code in force at the time that both Ohana Dwelling Permits Nos. 91-479 and 95-6 were issued (see attached excerpt from 1983 ordinance) lacked the authority to impose a deadline for securing the Building Permit necessary to construct a permitted Ohana dwelling. In 1996, the Zoning Code was substantially revised with regard to Ohana Dwelling Permits, to include time limitations for securing Building Permits, prohibition of transferring unused Ohana Dwelling Permits with sale of the property, explicit limitation to one Ohana dwelling per building site, etc. However, it is the policy of this department to recognize and honor Ohana Dwelling Permits that were issued prior to the revision of the Code.

While the 1983 ordinance did not limit the time allowed to obtain a Building Permit, nor did it explicitly limit the number of Ohana Dwelling Permits allowed for one property, multiple references imply that only one Ohana dwelling may be constructed on any property:

"The purpose of this article is to describe the conditions under which an 'ohana dwelling,' as defined in section 25-4 of this chapter, shall be permitted in furtherance of the legislative intent of Act 229, Session Laws of Hawaii 1981, which is to assist families to purchase affordable individual living quarters and, at the same to, to encourage the preservation of the extended family. It is not the intent of this article to supersede private deed restrictions or agreements which may prohibit the construction of an additional dwelling on the lot." (1983 Ordinance, Section 25-270, emphasis added)

"Notwithstanding any law, ordinance, or rule to the contrary, two dwelling units may be constructed on any lot with all State land use urban, agricultural, rural and conservation districts..." (1983 Ordinance, Section 25-271, emphasis added)

“An ohana dwelling shall comply with all other requirements of this article and of the County Code, except with regard to density. On any lot where a dwelling unit is permitted, an ohana dwelling may be constructed....” (1983 Ordinance, Section 25-272(a), *emphasis added*)

“‘Ohana dwelling’ means a **second dwelling unit** permitted to be built as a separate or an attached unit on a lot where a dwelling unit is permitted pursuant to the provisions of article 25 of this chapter.” (1983 Ordinance, Section 25-4(43), *emphasis added*)

Further, the second Ohana Dwelling Permit was applied for and granted based on the presumed expiration of the first one. Had the first permit not been presumed expired, a second would not have been granted, even under the Code in force at the time.

DETERMINATION

In view of the above, it is determined that **only one Ohana Dwelling is permitted on the subject TMK property**. The intent of the Zoning Code as it relates to Ohana Dwellings was, and continues to be, to allow one dwelling unit in addition to the primary dwelling.

“‘Dwelling unit’ means one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping and living area of a single-family only and occupied for no more than one family and containing a single kitchen” (Zoning Code Section 25-1-5. *Definitions.*).

Further, “‘Kitchen’ means a room or a portion of a room designed to be used for the preparation of food and containing at least one item from both of the following categories:

- (A) Fixtures, appliances or devices for heating or cooking food; and
- (B) Fixtures, appliances or devices for washing utensils used for dining and food preparation and/or for washing and preparing food.” (Zoning Code Section 25-1-5. *Definitions.*)

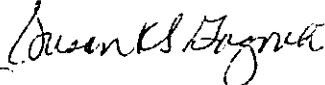
On the subject TMK property, two dwelling units are permitted, including the primary dwelling and one Ohana dwelling. Therefore, the second kitchen must be removed from the basement area of the Ohana dwelling, and the “as-built” living area can be permitted as an addition to the Ohana dwelling. Please be aware that the Ohana dwelling complete

Lori Mikkelson
All Aina Services
Page 4
August 7, 2013

with basement addition, can be occupied by one single family only. For guidance in the removal of the kitchen, and to schedule an inspection to confirm that the kitchen has been removed, please contact Planning Inspectors Horace Yanagi or Randy Lovato of the West Hawai'i office of the Planning Department at (808) 323-4770.

Should you have further questions regarding this matter, please feel free to contact Zoning Clerk Kevin Reardon at (808) 961-8145 or kreardon@hawaiicounty.gov.

Sincerely,


DUANE KANUHA
Planning Director

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cc: West Hawai'i Planning Department
West Hawai'i Planning Inspectors
GIS Section—via email

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Due to Size

See File

