

CERTIFIED MAIL

September 21, 1992

Ms. Ruby Darnall
c/o University of the Nation #123
75-5851 Kuakini Highway
Kailua-Kona, HI 96740-2199

Dear Ms. Darnall:

2834

Ohana Dwelling Application (OD 92-246)
Ruby Darnall
Tax Map Key 7-5-29:8, Lot 88

We regret to inform you that after reviewing your application and comments received from the affected agencies, the Planning Director is hereby denying your ohana application. The reasons for the denial are as follows:

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."

The copy of recorded Deed dated March 25, 1976, recorded in the Bureau of Conveyances of the State of Hawaii on April 2, 1976, in Liber 11330, Page 492, includes restrictions, covenants and conditions. The aforesaid recorded 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 area) including private garage and/or servants' quarter 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 eighteen (18) feet in

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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 language precludes the development of an ohana dwelling unit. Pursuant to Article 25 of the Hawaii County Zoning Code, 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 restrictions removed or waived or appeal our determination through procedures 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 one hundred dollars (\$100).
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.

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- 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,



NORMAN K. HAYASHI
Planning Director

GB:lm
6528D(7-9)

cc: Chief Engineer, DPW
Chief Sanitarian, DOH
Real Property Tax Division - Kona
West Hawaii Office