

CERTIFIED MAIL

September 21, 1992

Mr. Cirilo Del Rosario
76-6206 Pakalana Road
Kailua-Kona, HI 96740

Dear Mr. Del Rosario:

Ohana Dwelling Application (OD 92-291)
Cirilo Del Rosario and Juana M. Del Rosario
Tax Map Key 7-6-18:99, Lot 147

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 Warranty Deed dated July 4, 1963, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 4546, on Pages 61-68, includes restrictions, covenants and conditions which states:

- "1. 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' 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 two (2) stories

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in height, together with one (1) outbuilding not exceeding one (1) story in height, shall be constructed, placed or maintained upon said premises during said term, excepting Lots 12 through 39, inclusive, and Lots 59 through 81, inclusive, and known as "Border Lots", upon which duplex-type dwellings may be constructed."

The Planning Department has determined that the above stated covenants have a restriction that no more than one single family dwelling can be constructed on the property. 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

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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,



NORMAN K. HAYASHI
Planning Director

GB:lm
6528D(4-6)

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