

CERTIFIED MAIL

July 28, 1993

Mr. Wolfgang Nachsel
75-5767 Makalina Place
Kailua-Kona, HI 96740

Dear Mr. Nachsel:

Ohana Dwelling Application (OD 93-214) 3218
Wolfgang Nachsel and Lucra J. Nachsel
Tax Map Key: 7-5-28:16

This acknowledges ohana dwelling application and related submittals received June 22, 1993.

Section 25-271 (3), Article 25, Regulations for Ohana Dwelling, of the Zoning Code, states "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 the recorded Deed dated September 26, 1973, recorded in the Bureau of Conveyances of the State of Hawaii on December 3, 1973, in Liber 9623, Page 470, 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 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 eighteen (18) feet in height from the high point of the lot, shall be constructed, placed or maintained upon said premises during said term."

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The aforesaid Deed further states that:

"(14) Terms.

These covenants are to run with the land, shall be binding on all parties and all persons claiming under them until December 31, 1990 and shall apply to and bind all of the lots in Kona Heights Subdivision, after which time the covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change the covenants in whole or in part."

The Planning Department 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 restrictions 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

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- 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 questions, please feel free to contact Gilbert Bailado of this office.

Sincerely,



for VIRGINIA GOLDSTEIN
Planning Director

GB:mjs
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xc: Corporation Counsel
West Hawaii Office