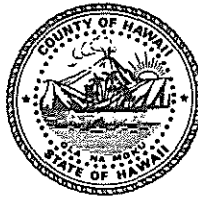


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
P364 320 208

October 2, 1996

Mr. Bennett J. Bolek
73-1273 Awakea Street
Kailua-Kona, HI 96740

Dear Mr. Bolek:

Ohana Dwelling Permit (OHD 3767)
Bennett J. Bolek et al.
TMK: 7-7-12:9, Lot 112

By our letter of September 12, 1995, you were granted permission to construct the proposed Ohana Dwelling. This letter of September 12, 1995, contravened our earlier letter of May 18, 1996, in which the Planning determined that an Ohana Dwelling could not be constructed on this parcel. We regret to inform you of our error in granting permission. Our letter of September 12, 1996, is hereby rescinded and the permission to construct the Ohana Dwelling is hereby revoked. (95-61)

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 Warranty Deed dated July 22, 1994, which conveyed this parcel from Maximo Manlic to Bennet J. Bolek and Aurora Ligia Naghel, in Exhibit A refers to Covenants contained in the Deed dated July 16, 1970 recorded in the Bureau of Conveyances in Book 7113, Page 416. Paragraph (b) on Page 2 of the Warranty Deed recorded in Liber 7113 Page 416 of the Bureau of Conveyances reads:

"The above described premises, and every portion thereof, shall be used for private residence purposes only, including private

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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 one (1) story in height, including basement, shall be constructed, plated, or maintained upon said premises during said term."

Paragraph (g) on Page 3 of same document recorded in Liber 7113 Page 416 of the Bureau of Conveyances reads:

"That the foregoing covenants shall continue in effect, and shall bind the buyers, their heirs and assigns, executors and administrators, during successive ten-year periods following December 31, 1980, except to the extent that the same shall be modified or amended prior to the commencement of any such period by agreement of the owners of a majority of the residential lots in the subdivision."

The Planning Director 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:

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- 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.

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

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

RKN:pak:lk1

LBrolek2.rkn

xc: Corporation Counsel
West Hawaii Office