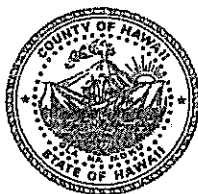


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

January 29, 2004

James B. Melcher III and Donna Marie Melcher
P.O. Box 2505
Kailua-Kona, Hawaii 96745

Dear Mr. and Mrs. Melcher:

SUBJECT: Ohana Dwelling Permit Application (2003-022)
Applicant: James B Melcher III
Land Owner: James B. Melcher III and Donna Marie Melcher
Proposal: Construct A New Detached Ohana Dwelling Unit
Tax Map Key: (3) 8-1-006:137

The subject Application for an Ohana Dwelling Unit Permit was reviewed by the required agencies and their respective comments are as follows:

1. The Department of Public Works (DPW) (Memorandum dated January 6, 2004:

“No comments.”

2. The Department of Water Supply (DWS) (Memorandum dated January 14, 2004):

“We have reviewed the subject application and have the following comments and conditions.

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at an average of 400 gallons per day. Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant would normally be required in accordance with Department regulations. However, as this parcel is outside of the Department's service limits, a second service is not available for the proposed ohana dwelling unit. Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting that the Department cannot provide water

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James B. Melcher III and Donna Marie Melcher
Page 2
January 29, 2004

service to the proposed ohana dwelling unit. Further, should the application be approved, both dwellings shall not share the existing meter..

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 1.”

3. The State of Hawaii Department of Health (DOH-HILO) (Memorandum dated January 6, 2004:

“The existing wastewater system can continue to be utilized provided that wastewater flows do not exceed 1,000 gallons per day which is equivalent to a total of five bedrooms or bedroom like rooms from one or two dwelling units.

The construction of a new individual wastewater system on the property is not allowed as there is insufficient land area.

The project lot is 18,322 square feet. Under current provisions, a total of one (1) individual wastewater system can be utilized on this lot. Any new building permits taken for this property would need to connect to the existing IWS (cesspool) and shall be limited to five (5) bedrooms/two (2) dwellings (max) total.”

4. The Hawaii County Fire Department (HFD) (memorandum dated December 29, 2002):

“We have no comments to offer at this time regarding the above-referenced ohana dwelling permit application.”

There were no comments received from the surrounding property owner(s) regarding this application for an Ohana Dwelling Unit Permit:

The original and notarized affidavit of **James Bartlett Melcher III and Donna Marie Melcher** dated November 25, 2003 included with the Ohana Dwelling application states:

“We are the property owners of TMK: 8-1-006-137-0000, 81-1050 Mamalahoa Hwy., Captain Cook, HI 96704. We further state that there are no provisions of any restriction, covenant or other land use restrictions applicable to subject property by way of a deed or lease or other provision that prohibits construction or placement of an ohana dwelling or second dwelling unit.”

The County Zoning Code in Article 6, Division 3 states in part:

“Ohana dwellings shall be permitted ... provided that: ...

James B. Melcher III and Donna Marie Melcher

Page 3

January 29, 2004

The following public facilities are adequate to serve the ohana dwelling unit: ...

Potable Water Supply. The building site shall be served by an approved public or private water system meeting with the requirements of the department of water supply which system can accommodate the ohana dwelling and the main dwelling unit. An ohana dwelling that is not served by an approved public or private water system may use a water catchment system **provided that the director determines that there is sufficient annual rainfall in the area to accommodate a water catchment system** and water catchment system meets the requirements of the department of health and the department of water supply. (emphasis added).

The Planning Department's Rules of Practice and Procedure, Rule 12-4(d)(2) states in part:

“An ohana dwelling unit that is not served by an approved water system may be permitted to use a water catchment system **in an area which receives an annual rainfall of at least eighty inches** (The University of Hawaii Water Resources Research Center construction guideline of eighty inches of annual rainfall for catchment systems is being used for this purpose). In the event that an annual rainfall requirement is adopted in a future amendment to the Hawaii County Code, then the annual rainfall as reflected in the code amendment shall be used for this purpose. The requirements of the State Department of Health and the Department of Water Supply must also be met.” (emphasis added).

Our research indicates that the area in which the subject parcel is located, Keopuka, receives only 60 inches of rainfall annually. This information was obtained from the Water-Resources Investigations Report 95-4212 disseminated by The U.S. Department of the Interior U.S. Geological Survey and prepared in cooperation with the State of Hawaii Commission on Water Resource Management, Department of Land and Natural Resources.

In view of the above, by this letter, you are hereby **denied** permission to construct the proposed detached Ohana Dwelling Unit.

Please be aware that decisions by the Planning Director may be appealed to the Board of Appeals per Section 25-6-39.7:

“Any person aggrieved by the decision of the director in the issuance of an ohana dwelling permit decision, except for a decision regarding the duration of a permit under section 25-6-39.2, may appeal the director's action to the board of appeals, in accordance with this chapter, within thirty days after the date of the director's written decision.”

An application for General Petition for Appeal of Decisions by Planning Director is enclosed for your convenience should you decide to petition to the Board of Appeals.

James B. Melcher III and Donna Marie Melcher
Page 4
January 29, 2004

Should you have any questions regarding the above, please contact Jonathan Holmes of this office.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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Enclosure

xc: Dept. of Health, Chief Sanitarian
Dept. of Public Works
Real Property Tax
Dept. of Water Supply
Planning Dept. - Kona

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: (Bus.) _____ (Home) _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY: (land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TITLE: _____ TELEPHONE: (Bus.) _____

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.