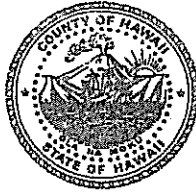


Harry Kim  
Mayor



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

February 6, 2004

Mr. Thomas W. Pack  
72-4116 Awalua Place  
Kailua-Kona, Hawaii 96740

Dear Mr. Pack:

**SUBJECT: Ohana Dwelling Permit Application (2003-023)**  
**Applicant: Thomas W. Pack**  
**Land Owner: Thomas W. Pack**  
**Proposal: Construct A New Detached  
Ohana Dwelling Unit**  
**Tax Map Key: (3) 7-4-004:082**

This is in response to your letter dated January 28, 2004 regarding the subject application.

The letter issued from this office returning the application was generated on the date that appears on it. There was, however, a delay in the mailing of said letter. Therefore pursuant to the following, I find that your application should have been accepted and deemed complete.

**Section 25-2-3. Review and acceptance of applications.**

- (a) Any application filed with the director or the commission, pursuant to this chapter, including but not limited to a zoning amendment, variance, use permit, plan approval, ohana dwelling permit, planned unit development permit, or cluster plan development permit, shall be reviewed by the director for completeness within fifteen days from the date that the application was filed by the applicant. An application may be filed with the director or the commission either by hand or mail delivery to the Hilo or Kona department. ...
- (b) During the fifteen-day period, the director shall either determine that the application is complete and accept the application as of the date that the application was filed by the applicant or shall determine that the application is defective.

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- (d) If the director determines that the application is defective, the application shall be returned to the applicant together with a deficiency notice, to be **postmarked within the fifteen-day review period**, which lists the information missing from the application. (emphasis added) ...
- (f) If the director fails to act upon any application within the fifteen-day period, the application shall be deemed complete and shall be considered accepted as of the date that the application was filed. ...

As to the reason given for the rejection of the application, I have this to offer:

**Section 25-1-5. Definitions.**

- (a) Building construction and development terms that are not defined in this chapter shall be given their respective definitions as found in the Building Code (chapter 5).
- (b) The following words and phrases, unless the context otherwise requires, are defined as follows: ...

- (80) "Ohana dwelling" means a **second dwelling unit** permitted to be built as a separate or an attached unit on a building site, but does not include a guest house or a farm dwelling. (emphasis added) ...

You may, if you wish, refile the Ohana Dwelling Permit Application; however, reference is made to the comments that were supplied by the Department of Water Supply to this Department in regards to previous applications for Ohana Dwelling Units in the "Pamahoa Estates Subdivision":

"We have reviewed the subject application and have the following comments.

For your information, the parcel has a service lateral for a 5/8-inch meter with the Department, which is adequate for only one dwelling unit at 600 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, the Department's existing water system facilities cannot support an additional meter for the proposed ohana dwelling at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

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

In light of the above, the following excerpts of the various relevant Planning Department rules and regulations are cited as they pertain to Ohana Dwelling Units and the lack of sufficient County or Private water supply systems:

The County Zoning Code in Article 6, Division 3 Section 25-6-30 states, in part,:

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

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

d(2) 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).

This Department’s research indicates that the area in which the subject parcel is located, Kealakehe Homesteads, receives between 40 and 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.

**Based on the above, this Ohana Dwelling Unit Permit Application, which is accepted for review by default, is denied on the basis of the lack of water units available and the lack of sufficient rainfall to support the use of water catchment systems. Additionally, this denial is for the original reason the application was returned to you, that is the lack of at least a building permit for the first dwelling on the property.**

Mr. Thomas W. Pack  
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Should additional water units become available through the DWS (or some other source) in the future, then our position may be reconsidered according to water availability and applicable Land Use Laws in effect at such time.

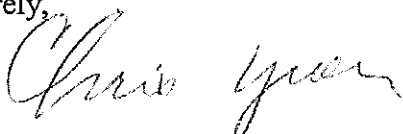
Please be aware that decisions by the Planning Director may be appealed to the Board of Appeals per Section 25-6-39.7:

“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.

Should you have any questions regarding the above, please contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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Enclosure: General Petition for Appeal

xc: Department of Water Supply  
Planning Department - 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.