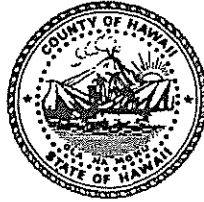


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

August 23, 2004

Michael J. Berg and Robin Walling
P.O. Box 5451
Kailua-Kona, Hawaii 96745

Dear Mr. Berg and Ms. Walling:

SUBJECT: Ohana Dwelling Permit Application (2004-0017)
Applicants: Michael J. Berg and Robin Walling
Land Owners: Michael J. Berg and Robin Walling
Proposal: Construct a New Detached Ohana Dwelling Unit
Tax Map Key: (3) 7-3-028:063

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 Water Supply (DWS) (Memorandum dated August 11, 2004):

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

For your information, this parcel does not have water service through the Department. The parcel is located within the Kona Coastview and Wonderview Subdivisions, which are in the process of an Improvement District that will provide a water system to all the parcels within the two subdivisions. Once the Improvement District is completed, the applicant may inquire about the water availability for the ohana dwelling with the Department.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting that water is not available from the Department at this time.

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 252.”

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2. The Hawaii County Fire Department (HFD) (memorandum dated August 11, 2004):

“Fire apparatus access roads shall be in accordance with UFC Section 10.207:”

‘Fire Apparatus Access Roads

‘Sec. 10.207. (a) General. Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

‘(b) Where Required. Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

‘EXCEPTIONS: 1. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of this section may be modified.

‘2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

‘3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

‘More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

‘For high-piled combustible storage, see Section 81.109.

‘(c) Width. The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

‘(d) Vertical Clearance. Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

‘EXCEPTION: Upon approval vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

‘(e) Permissible Modifications. Vertical clearances or widths required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

‘(f) **Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.’ (20 tons)

‘(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief.’ (45 feet)

‘(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

‘(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

‘(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief.’ (15%)

‘(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.

‘(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.’

“Water supply shall be in accordance with UFC Section 10.301.

‘(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

‘Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

‘The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county water requirements. All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207.’

No comments were received from the Department of Public Works and the Department of Health.

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Written comments were received from interested surrounding property owners, Alberto and Elaine Pucong:

“We do not agree with this request for Ohana as this will most likely be used for rental purposes. This will begin a trend in our subdivision that will bring congestion and more traffic. We decided to build here because of the spacing of homes and privacy. We feel this will make a negative change to our subdivision.

We ask that this application be denied.”

We note the following documents that accompanied your application:

The original and notarized **Affidavit of Title** signed by Michael J. Berg and dated June 24, 2004 states:

“This is to certify that I am a co-owner and title holder of certain real property located at 73-973 Ahikawa Street in North Kona, Hawaii.
Tax Map Key: 3-7-3-028-063, by virtue of that certain Deed recorded in the Bureau of Conveyances of the State of Hawaii on April 12, 2000 as Document No. 2000-049270.”

The original and notarized memo to the Planning Department dated June 24, 2004 and signed by Robin Walling:

“Re: Application for Ohana Dwelling Unit Permit for property located at
73-973 Ahikawa Street, North Kona, Hawaii Shake & Shingle
Tax Map Key 3-7-3-028-063

This is to certify that I am a titleholder to the above property and I join in with Michael J. Berg in the application for an Ohana Dwelling Unit Permit.”

The original and notarized **Affidavit Re: No Restrictions for Ohana Permit** dated June 24, 2004:

“**Michael J. Berg**, being first duly sworn on oath, hereby deposes and says:

1. That affiant is a co-owner and title holder of certain real property located in the County and State of Hawaii, bearing Tax Map Key 3-7-3-028-063 by virtue of that certain Deed recorded in the Bureau of Conveyances of the State of Hawaii on April 12, 2000 as Document No. 2000-049270.
2. That the foregoing described real property is not subject to any restrictions, covenants or other applicable land use restrictions, by way of deed, lease or otherwise, prohibiting the construction or placement of an ohana dwelling or a second dwelling unit upon the subject real property.”

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

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

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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, Kona Coastview Subdivision, North Kona, receives only 40 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, we must regretfully **deny** permission to construct the proposed detached Ohana Dwelling Unit. In consideration of the Improvement District (referenced by the Department of Water Supply) for your area, the Department will entertain a new Ohana Dwelling Application when the Improvement District has been completed. Should the Improvement District be completed prior to June 26, 2006 there shall be no water-related restriction to your application.

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

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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.

If you have any questions please call Deborah Chang of our West Hawaii Office at 327-3510.

Sincerely,


for CHRISTOPHER J. YUEN
Planning Director

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Encl.

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