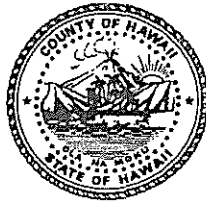


Harry Kim
Mayor



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

June 24, 2005

Thomas W. Pack
75-5629 Kuakini Hwy. Suite R-489
Kailua-Kona, HI 96740

Dear Mr. Pack:

SUBJECT: Ohana Dwelling Permit Application (2005-0042)
Applicants: Thomas W. Pack
Land Owners: Ho'awe LLC
Proposal: Construct a Detached Ohana Dwelling Unit
Tax Map Key: (3) 7-4-004:080

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 June 3, 2005):
"No Comments."

2. The Department of Water Supply (DWS) (Letter dated May 27, 2005):

"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 252."

3. The State of Hawaii Department of Health (DOH) (Memorandum dated June 9, 2005):

JUN 28 2005

Thomas W. Pack
June 24, 2005
Page 2

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on each lot will be determined by the wastewater rules in effect at the time of building permit application.”

4. The Hawaii County Fire Department (HFD) (letter dated June 3, 2005):

“We have no comments to offer at this time in reference to the above-mentioned Ohana dwelling permit application.”

The following comment was received from a surrounding property owner:

“On May 5, an application was filed for an ohana permit by Thomas Pack of Ho’awe LLC for lot TMK (3) 7-4-004:080. As you may recall, on January 21, 2005 the Hawaii County Council unanimously rejected an application for rezoning by Thomas Pack of Ho’awe LLC for this and three adjacent lots on Pamahoa Place, which opens onto upper Palani Road in Kailua-Kona. The reason given was the ever increasing traffic jams on Palani Road and the lack of affordable housing. A remark was made by one of the Council members that small-scale subdivisions such as this were causing “death by a thousand cuts” by adding more traffic to Palani Road. We wholeheartedly agreed with the Council on this vote.

Building ohanas is an established custom in Hawaii. We understand that they are meant to provide, by definition, housing for an extended family. We also are of the opinion that the building of large ohanas is currently being used as a way to do an end-run around zoning restrictions and land use planning. The above-mentioned application is a perfect example of this. The main house is to have 4 bedrooms and 4 bathrooms; the ohana will be identical, resulting in 8 bedrooms and 8 bathrooms on one lot. Two other lots in the Pamahoa subdivision already have been overbuilt in a similar manner. If this ohana is permitted, it will essentially override the decision made by the Council in January by compounding the traffic problems on Palani Road that were the main concern in the Council’s decision.

According to the Planning office, “Guest Houses” (an extra bedroom and bath without kitchen) are limited to a maximum of 500 square feet. We urge you to limit the size of ohanas as well. Each four bedroom ohana that is used as a rental could add at least four more cars to the Palani Road traffic-problem. Thank you for your consideration.

David Clausnitzer
Katherine J. Shears”

We note the following documents that accompanied your application. The original and notarized affidavits of **Applicant and Owners** of the subject property dated April 6, 2005 included with the Ohana Dwelling application states:

“I, Thomas W. Pack, do hereby certify that I am the sole member of Ho’awe LLC, the Titleholder of T.M.K. (3) 7-4-004:080.

Thomas W. Pack
June 24, 2005
Page 3

I further certify that the Pamahoa Estates Declaration of Covenants, Conditions and Restrictions signed on February 27, 2003 and recorded in the State of Hawaii Bureau of Conveyances do not prohibit the construction or placement of an ohana dwelling unit or a second dwelling unit. There are no other land use restrictions applicable to the lot by way of a deed or lease which would prohibit the construction or placement of an ohana dwelling unit or a second dwelling unit.

Thomas W. Pack”

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

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

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, Kealakehe, 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. The premise of approval for Ohana Dwellings is that the water availability is sufficient and assured, either through a public or private water system.

Thomas W. Pack
June 24, 2005
Page 4

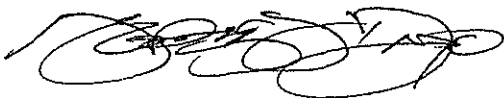
Please be aware that decisions by the Planning Director may be appealed to the Board of Appeals per Section 25-6-39.7:

“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.

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

Sincerely,

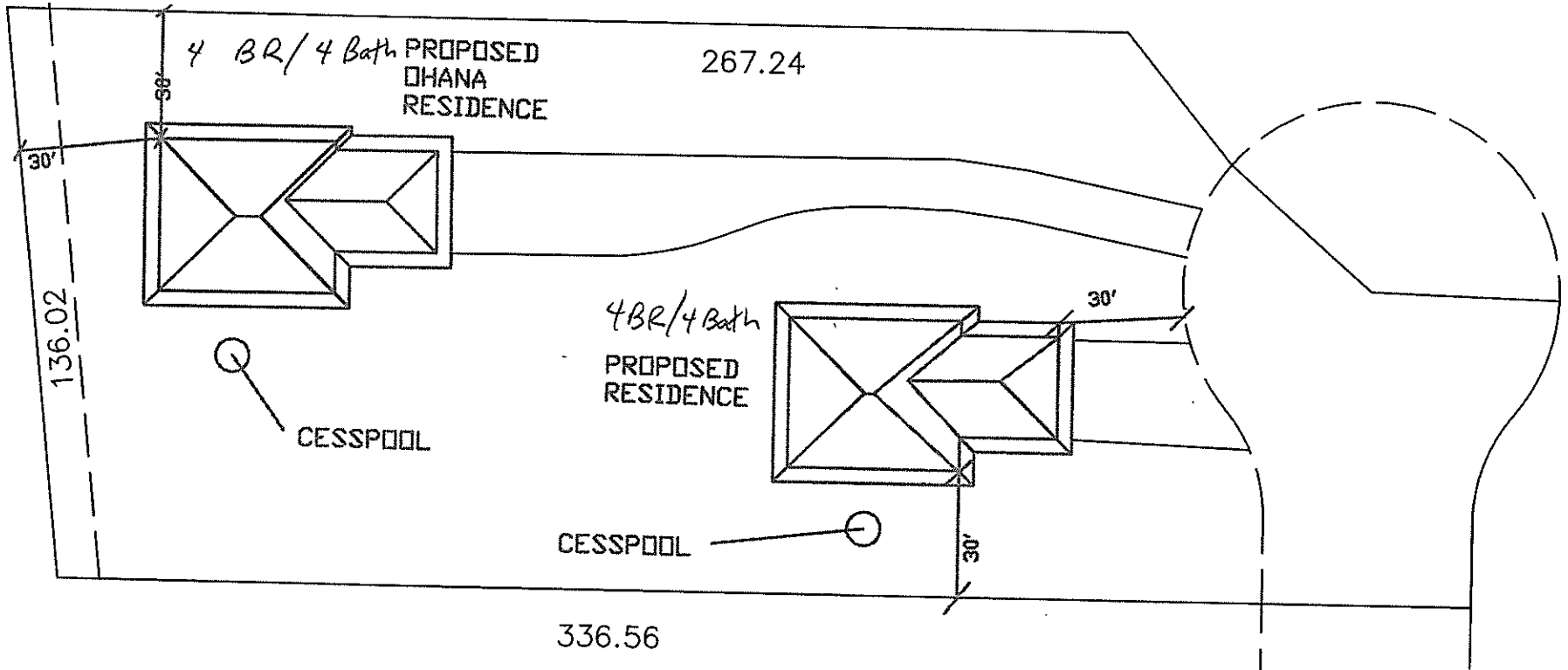


Jr CHRISTOPHER J. YUEN
Planning Director

BM:deb

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



PLLOT PLAN

OWNER: Ho'awe, LLC
 TMK: 7-4-4180
 Lot Area: 1.001 acres
 Proposed 4 bedroom house