

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawaii Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawaii 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawaii Office
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 6, 2015

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
RR2 Box 3918
Pahoa, HI 96778

Dear Mr. Yunis:

SUBJECT: Application: Ohana Dwelling Unit Permit Application (OHD-14-000157)
Applicant: Muhammad Yunis
Land Owners: Tropical Vacation Homes LLC, Muhammad & Lynette Yunis
Proposal: Construct a Detached Ohana Dwelling Unit
Tax Map Key: (3) 1-4-011:020

Upon a showing of a substantial change of circumstances, the director may allow a reversal of an application that has been denied. Your application was denied on January 29, 2015 due to the fact that a co-landowner did not authorize, and objected to, the application. On February 25, 2015, said co-landowner, Lynette Yunis, submitted a retraction of the objection to the application. Therefore, the Director has reconsidered that denial and hereby **approves** permission to construct a detached Ohana Dwelling Unit (OHD) on the subject property.

REQUEST

The applicant is requesting an OHD to construct an additional dwelling unit on the subject property.

PROPERTY DESCRIPTION

The subject TMK parcel, comprising 11,379 square feet, is located in Kapoho, on the Island of Hawai'i. The property is zoned Single-Family Residential (RS-10) by the County and is situated within the State Land Use Urban district. The lot is situated within the Special Management Area (SMA). SMA Minor Permit No. 14-000321 was issued on December 2, 2014 to allow the OHD on the property.

AGENCY COMMENTS

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

1. The Department of Public Works (DPW) See attached memorandum dated October 13, 2014;
2. The Department of Water Supply (DWS): See attached memorandum dated September 17, 2014;

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
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3. The State of Hawai'i Department of Health (DOH): See attached memorandum dated January 26, 2015;
4. The Hawai'i County Fire Department (HFD): See attached memorandum dated January 12, 2015;
5. The Department of Water Supply (DWS): See attached memorandum dated January 30, 2015.

ADDITIONAL FINDINGS

We note the following documents that accompanied your application:

The original and notarized affidavit of **Muhammad Yunis**, dated October 30, 2014, included with the OHD application states:

"I, Muhammad Yunis resident of Pahoa, County of Hawaii declares under oath that,

1. *Tropical Vacation Homes LLC is the Title Holder of this Parcel and I am its Manager.*
2. *That provisions of any restrictions, covenant or any other land use restrictions applicable to the lot by way of a deed or lease or other provision do not prohibit the construction or placement of a Ohana dwelling Unit or a second dwelling unit.*
3. *I have mailed a copy of the notice of the application to all parties listed in the application who did not execute the application as title holder, to owners of properties within three hundred feet of the perimeter boundary of this parcel, to and any known association of such property owners, informing them that an application for an Ohana dwelling unit permit has been filed with County of Hawaii Planning Department."*

The letter of **Lynette Yunis**, dated February 25, 2015, in reference to the OHD application stating, in pertinent part:

1. *"...I Lynette Yunis, wife of Muhammad Yunis withdraw my objection to the Ohana Unit..."*

ANALYSIS

The proposed building site for the subject OHD application is a legal lot of record of at least 10,000 square feet located within the RS district and is designated Urban by the State Land Use Commission. Additional dwellings are not normally permitted on this lot, and there is no guest house located on the property. There are no pending subdivision actions affecting the subject TMK property, nor has any variance, Planned Unit Development, Cluster Plan Development, or other preemption from requirements of the Hawai'i County Code been granted. There has not been a previously approved variance from the Subdivision Code (Chapter 23) and the Zoning Code (Chapter 25) on the property, nor are there any conditions within a change of zone ordinance that would prohibit an OHD. The applicant has not submitted any OHD applications in the previous two years. Therefore, the application meets the requirements for an OHD Permit.

DECISION AND CONDITIONS

In view of the above, by this letter, you are hereby **granted** permission to construct an attached single-family OHD subject to the following conditions:

1. The proposed Ohana Dwelling Unit shall comply with Ordinance No. 96-47 and Rule 12, the County of Hawai'i Planning Department's Rules of Practice and Procedure relating to OHD's.
2. **Non-transferability:** The permit for the OHD shall be personal to the applicant until construction of the OHD has been completed. The permit shall not be transferable or assignable to any other person prior to completion of its construction to the satisfaction of the Chief Engineer, DPW.
3. **Prohibition of Advertising, Sales, Transfers:** No person shall advertise or represent to the public that a permit to construct an OHD is transferable with the sale of the property on which the permit has been granted.
4. **Building Permit:** The applicant is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the OHD on or before February 27, 2016.

Please bring or attach a copy of this Permit to assist the reviewing agencies in understanding and expediting the review and processing of the building construction plans and building permit application for the additional building improvements necessary to establish the OHD on the subject parcel.

- a) A one time 30-day time extension to obtain the building permit may be granted by the Planning Director. A written request for a time extension shall be filed with the Planning Director not less than forty-five (45) days prior to the expiration date of the OHD permit. The Planning Director shall render a decision on the request for a time extension prior to the expiration date of the permit.
 - b) The applicant shall not be able to obtain further extensions beyond the initial 30-day time extension. Further, such failure to conform to the time requirement shall not be cause to petition the Planning Director, Board of Appeals or any other governmental body for relief from the time requirement.
5. Requirements for Height, Site Area (Lot size), Yard (Setback) and Off-Street Parking (Parking spaces):
- a) Height limit: The height limit for the proposed attached OHD shall be **twenty-five (25'-0")** feet.
 - b) Zoning and Minimum Building Site Area (Lot Size): The subject TMK parcel, containing 11,379 sq. ft., is zoned Residential (RS-10) by the County and is situated within the State Land Use "Urban" district.

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
Page 4 of 5
March 6, 2015

- c) Minimum Yards (Setbacks) and Open Space: The proposed dwelling unit is required to comply with the yards and open space requirements of the Hawai'i County Zoning Code.

The respective minimum open space, front, rear, and side yard requirements for the proposed detached OHD to be located on the subject TMK property shall be as follows:

- Front yard - minimum **twenty-five** (25) feet required;
- Rear yard – minimum **twenty-five** (25) feet required;
- Side yards – minimum **fifteen** (15) feet required;

- d) Off-Street Parking: The OHD shall be provided with a minimum of two (2) off-street parking spaces that comply with the requirements of Section 25-4-53 of the Zoning Code. All existing and additional parking spaces shall be arranged so as to be individually accessible.

6. This OHD permit is subject to all other applicable rules, regulations and requirements of the Planning Department, DPW, HFD and DOH and other reviewing agencies/divisions listed on the Building Permit Application.
7. OHD's are prohibited on a building site that is the subject of an approved variance from the Subdivision Code (Chapter 23), the Zoning Code (Chapter 25), and property where a second dwelling unit is specifically prohibited by a change of zone ordinance.
- a) No variance from the requirements of Chapter 23 and Chapter 25, Hawai'i County Code, as amended, shall be granted to permit the construction or placement of an OHD.
- b) An OHD shall not be permitted on a lot which has been the subject of a previously granted variance from any provision of Chapter 23 and Chapter 25, Hawai'i County Code, as amended.

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

Sincerely,



DUANE KANUHA
Planning Director

JRH:nci

\\COH33\planning\public\Admin Permits Division\Ohanal\2014\OHD-14-000157 Yunis 14011020\APVL.docx

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
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March 6, 2015

xc: Dept. of Health, Chief Sanitarian
Dept. of Public Works
Dept. of Water Supply
Hawai'i Fire Dept.
GIS Section (via email)



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
345 KEKUANAO'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

January 30, 2015

TO: Mr. Duane Kanuha, Director
Planning Department

FROM: Quirino Antonio, Jr., Manager Chief Engineer

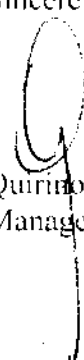
SUBJECT: **OHANA DWELLING UNIT PERMIT APPLICATION (OHD 14-000157)**
APPLICANT – MUHAMMAD YUNIS
TAX MAP KEY 1-4-011:020

Please be informed that the water distribution system in the area is privately owned and operated by the Kapoho Water Company, Inc., which gets its water from the County of Hawai'i, Department of Water Supply (DWS) through two master meters. The current usage through the two master meters exceeds the amount of water that is allotted to the Kapoho Water Company. Therefore, DWS cannot support the additional dwelling and no additional water is available for service to new dwellings in the area served by the Kapoho Water Company.

Should the Ohana dwelling be allowed on the basis of requiring an alternative water source such as a water catchment system, the applicant shall be informed that the existing service shall not be shared with other dwellings, and the plumbing between dwellings shall not be interconnected in any way.

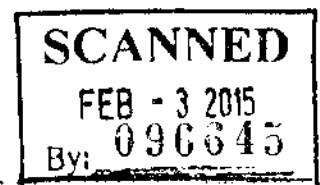
Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,


Quirino Antonio, Jr., P.E.
Manager-Chief Engineer

TS:dfg

copy Tropical Vacation Homes LLC, Muhammad and Lynette Yunis
Kapoho Water Company, Inc.



... Water, Our Most Precious Resource ... Ka Wai A Kane .

The Department of Water Supply is an Equal Opportunity provider and employer.




STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: January 26, 2015

TO: Duane Kanuha
Planning Director, County of Hawaii

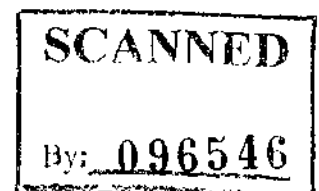
FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Ohana Dwelling Unit Permit Application (OHD-14-000157)
Applicants: Muhammad Yunis
Land Owners: Tropical Vacation Homes LLC, Muhammad & Lynette Yunis
Proposal: Construct a Detached Ohana Dwelling Unit
Tax Map Key: (3) 1-4-011:020

The alterations to the existing wastewater system, submitted on November 25, 2014 are adequate to serve the proposed project. Approved expansion of the leach field must be completed prior to application for a building permit.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.



William P. Kenoi
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Room 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

January 12, 2015

TO : DUANE KANUHA, PLANNING DIRECTOR

FROM : DARREN J. ROSARIO, FIRE CHIEF

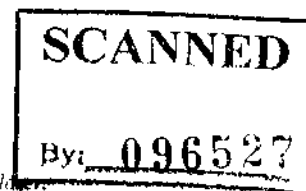
SUBJECT: OHANA DWELLING UNIT PERMIT APPLICATION (OHD-14-00157)
APPLICANT: MUHAMMAD YUNIS
LAND OWNERS: TROPICAL VACATION HOMES LLC, MUHAMMAD &
LYNETTE YUNIS
PROPOSAL: CONSTRUCT A DETACHED OHANA DWELLING UNIT
TAX MAP KEY: (3) 1-4-001:020

The Hawai'i Fire Department has no issues with regards to the Ohana Dwelling application as noted above.

A handwritten signature in black ink, appearing to read "Darren J. Rosario".

for **DARREN J. ROSARIO**
Fire Chief

KV:lpc



Feb 25, 2015

To: Hawaii County Planning Dept. #15
 Aupuni Center
 101 Pauahi St, suite 3 (808)
 Hilo, HI 96720 961-8288
 961-8742 Fax #

Attn: John Holmes & Planning Director
 Attn: Duane Kanuha

From: Lynette Yunis 3 pages
 149 Cutter Dr. attached
 Watsonville, CA 95076 see 3rd
 page #7
 item #7

Subject: Tax Map # 14-1120
 Tropical Vacation Homes request
 For Ohana Dwelling on-at
 14-4998 Laimana Ave. and 14-5000
 Laimana Ave. Kapoho, HI (Two
 existing homes already on-at this
 location)

I Lynette Yunis, wife of
 Muhammad Yunis, withdraw my
 objection to the Ohana unit pending
 approval, providing Muhammad
 agrees that he will take no
 further steps to plan or build
 the Ohana unit pending a settlement
 between the two of us. This
 was advised by our attorney and
 we both signed an agreement in
 front of the attorney.

Sincerely, Lynette Yunis

Lynette Yunis

SCANNED

By: 097197

THE MEDIATION CENTER
550 WATER ST., SUITE J-3
SANTA CRUZ, CA 95060
(831) 429-9721
(831) 429-8561 FAX

MEMORANDUM OF TEMPORARY AGREEMENTS

Lynette Yunis and Muhammad have entered into the following temporary agreements in the mediation sessions indicated by the dates following the agreements. It is the intent of the parties that these agreements, although temporary, be binding and enforceable by the court, and shall remain in force until such time as they are modified by mutual agreement or order, or are superseded by the signing of a final written agreement. The parties have not yet commenced a proceeding under the Family Code of California. Notwithstanding that fact, the parties request that, once the jurisdiction under the Family Code has been acquired, the court will enforce the terms and conditions of this agreement including any provisions that allow for retroactive decisions. The parties understand that neither party can unilaterally withdraw from or terminate these agreements. In the event that either party terminates the mediation process, these agreements shall remain in full force and effect until modified by subsequent agreement of the parties or order of the court.

1. The parties wish to preserve any and all rights to which each might be entitled by agreeing that neither party shall be deemed to have waived any rights in the absence of an explicit waiver of those rights. Further, the parties agree that there shall be jurisdiction retroactive to whatever date is subsequently determined to be the date of separation for community property purposes, regarding all financial issues of the parties, including issues of support and reimbursement. Any agreement or order for spousal support shall terminate on the death or remarriage of the recipient.
2. Pending settlement of all issues, the parties agree that Muhammad will vacate the family residence at 149 Cutter Dr. Watsonville CA by Friday February 27 and only return to the property upon the agreed upon conditions contained herein. This is a temporary agreement that will be revisited by March 31st if the parties have not previously reached an agreement with one another.
3. While she has sole occupancy of the family residence, Lynette shall be responsible for a Watts fair market rental charge, in an amount to be determined by the parties, and that once agreed upon, she shall make payment directly to Muhammad for his one half of the net rent.
4. The parties will agree on a schedule so that Muhammad can have access to the home office for purposes of continuing to manage the real estate and vacation rental business of the parties. This shall consist of no less than three times each week for no less than three hours per visit. Muhammad agrees to respect the

Lynette's right to the exclusive use of the residence and Lynette agrees to cooperate in arranging access for Muhammad to use the boat and lake along with other family members as the parties agree on. The parties agree that no family records shall be removed from the premises at Cutter Dr.

5. The parties specifically reserve jurisdiction over the issue of compensation for Muhammad in his role as manager of the family's rental properties.

6. Reasonable access for Muhammad to remove property that he may need pending settlement of all issues shall not be withheld by Lynette and Muhammad agrees not to access the property in the absence of Lynette except as previously agreed upon.

7. Lynette agrees to make a formal withdrawal of her objection to the Ohana unit currently pending approval and Muhammad agrees that he will take no further steps to plan or build the Ohana unit pending a settlement between the parties.

The purpose of this agreement is to avoid prejudice to either party which may result by the mere passage of time as the parties attempt to analyze, discuss and negotiate these issues in mediation.

Date:

2/23/15

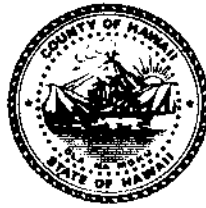
Lynette Yunis
LYNETTE YUNIS

Date:

2/23/15

Muhammad Yunis
MUHAMMAD YUNIS

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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101 Pauahi Street, Suite 3
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Phone (808) 961-8288
Fax (808) 961-8742

January 29, 2015

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
RR2 Box 3918
Pahoa, HI 96778

Dear Mr. Yunis:

SUBJECT: Application: Ohana Dwelling Unit Permit Application (OHD-14-000157)
Applicant: Muhammad Yunis
Land Owners: Tropical Vacation Homes LLC, Muhammad & Lynette Yunis
Proposal: Construct a Detached Ohana Dwelling Unit
Tax Map Key: (3) 1-4-011:020

The subject Application for an Ohana Dwelling Unit Permit was submitted by Muhammad Yunis, Manager of Tropical Vacation Homes, LLC.

We note the following document that accompanied your application. The original and notarized affidavit of **Muhammad Yunis**, dated October 30, 2014, included with the Ohana Dwelling application states:

"I, Muhammad Yunis resident of Pahoa, County of Hawaii declares under oath that,

- 1. Tropical Vacation Homes LLC is the Title Holder of this Parcel and I am its Manager.*
- 2. That provisions of any restrictions, covenant or any other land use restrictions applicable to the lot by way of a deed or lease or other provision do not prohibit the construction or placement of a Ohana dwelling Unit or a second dwelling unit.*
- 3. I have mailed a copy of the notice of the application to all parties listed in the application who did not execute the application as title holder, to owners of properties within three hundred feet of the perimeter boundary of this parcel, to and any known association of such property owners, informing them that an application for an Ohana dwelling unit permit has been filed with County of Hawaii Planning Department."*

However, co-landowner Lynette Yunis was not a party to the application and has since filed an objection to the application. Therefore, without Ms. Yunis' consent and her objection to the application, the Planning Director hereby **denies** permission to construct a detached single-family Ohana Dwelling Unit on the subject property.

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
Page 2 of 3
January 29, 2015

In accordance with Ordinance No.99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the directors written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals. The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:
 - (1) The director erred in its decision; or
 - (2) The decision violated this chapter or other applicable law; or
 - (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR form.

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

Sincerely,



DUANE KANUHA
Planning Director

JRH:nci

\\COH33\planning\public\Admin Permits Division\Ohana\2014\OHD-14-000157 Yunis 14011020\Dnl.docx

Mr. Muhammad Yunis, Manager
Tropical Vacation Homes LLC
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January 29, 2015

Encl.: GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC
WORKS DIRECTOR form

xc: Dept. of Health, Chief Sanitarian
Dept. of Public Works
Dept. of Water Supply
Hawai'i Fire Dept.
GIS Section (via email)