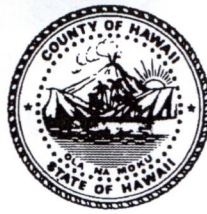


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June 1, 2021

Mrs. Juniper M. Adler  
Ms. Jacaranda R. Adler  
1254 Komohana Street  
Hilo, HI 96720

Dear Mrs. Adler & Ms. Adler:

**SUBJECT: Application: 'Ohana Dwelling Unit Permit (OHD-21-000206)**  
**Applicants: Juniper M. Adler & Jacaranda R. Adler**  
**Land Owners: Juniper M. Adler & Jacaranda R. Adler**  
**Request: To Construct One 'Ohana Dwelling Unit'**  
**Tax Map Key: (3) 2-4-048: parcel 096, Lot 12, Waiakea S. Hilo**

The above-referenced application for an 'Ohana Dwelling Unit (OHD) Permit has been reviewed and completed.

**REQUEST.** The landowner-applicants, Juniper Adler and Jacaranda Adler, requested an OHD Permit to construct one 'ohana dwelling' on the above-referenced TMK property, parcel 96, Lot 12. On parcel 96, the ohana dwelling will be the second single-family dwelling.

Two decisions were reached:

- The Planning Director's determination APPROVED the application for an OHD Permit;
- secondly, the approval is for construction of one residential building for an 'ohana dwelling, subject to the conditions stated in this letter.

**FINDINGS: Standards & Requirements for an OHD Permit Application.** Generally, before an OHD permit can be approved and issued to parcel 96, a Planning Director's review for findings or determinations are required of the following standards and requirements. These standards or requirements are from the the Hawai'i County Zoning Code Chapter 25, section (sec.) 25-6-30, and related code sections (secs.); and, Planning Department Rule 12, 'Ohana Dwelling Units.'

**Determinations & Findings.** For the Adlers' Ohana Dwelling permit application, the Planning Director has made the following findings or determinations.

- **Legal Lot of Record Requirement: The Planning Director's finds parcel 96, Lot 12 qualifies as a legal lot of record.** The 'ohana dwelling is required to be located on a legal lot of record, as determined by the County Planning Director. Hawai'i County Zoning Code sec. 25-6-30 (a) and Planning Department Rule 12-4 (a).

Parcel 96's legal lot of record status originates from an earlier-former county regulatory land subdivision code and ordinance. Rule 12-3 (b). The building site was officially created by county land Subdivision No. 2137 (approved: May 27, 1964). At that time, the parcel was approved according to the earlier - former county regulatory land subdivision code, Ordinance No. 24 (now no longer in effect).

- **OHD Permit Application and Completion of Subdivision Improvements for Building Site, Parcel 96, Lot 12:** sec. 25-6-31 (a) and Rule 12-5 (a) requires that the OHD permit application for parcel 96 shall only be accepted and processed *after the completion of all subdivision improvements* required by Haw. County Code Chapter 23 – the amended 1975 Subdivision Code.

**Finding:** Parcel 96 was legally created by a 1964 final subdivision approval, Subdivision No. 2137, a subdivision that predates the effective application of the current 1975 Subdivision Code. Consequently, the 1975 standards and requirements were not in effect and thus do not apply to this application for lots approved and created in 1964. See below discussion on 'variance-like stipulation.'

- **A variance-like stipulation 'excepting' and 'modifying' certain provisions of Ordinance No. 24** for sidewalks, sewers, points of curvature on roads, and that lot corners be marked: these were issued for Subdivision 2137 by the former Planning and Traffic Commission (written decision, dated May 27, 1964).

The **Planning Director finds** that the former Planning and Traffic Commission's variance-like stipulation does not violate sec. 25-6-38 and Rule 12-10 (b). The cited code section and rule prohibit approval of an 'Ohana Dwelling for a building site that received a variance from either the 1996 County Zoning Code or from the 1975 Subdivision Code.

**Finding:** the former Planning and Traffic Commission granted the variance-like stipulation in 1964, decades before the amended 1996 Zoning Code and the amended 1975 Subdivision Code became effective. Therefore, the 1964 created lots of Subdivision 2137 have not benefitted from a variance from the current 1996, 1975, and 1967 regulatory code standards.

- **County Zoning and State Land Use Classifications:** Parcel 96's county zoning is Single-Family Residential - 15,000 (RS-15) (requiring a minimum lot area of 15,000 square feet). Its State Land Use classification is Urban; and therefore, the lot is subject to Hawai'i County's regulatory jurisdiction, according to state law, Haw. Revised Statutes sec. 205-2 (b).

According to sec. 25-6-30, an **'Ohana Dwelling shall be permitted on a building site within a county RS zoning district.** See also sec. 25-5-8 (c); Rule 12-4. The parcel's

**Parcel 96's lot area:** 16,032 square feet, exceeds and complies with the RS-15 mandatory minimum 15,000 square-foot building site area requirement and sec. 25-6-35 (a); Rule 12-8 (b).

- **Yard Setback Standards for Detached Ohana Dwelling.** The proposed 'ohana dwelling shall comply with the minimum 20-foot front and rear yard and 10-foot side yard setback standards of county RS-15 zoning **PLUS an additional 5-foot setback from all property lines.** Sec. 25-5-7 (2) & 25-6-35 (b); Rule 12-8 (c).
- **Affidavit of Ownership or Title Interest to Parcel 96, Lot 12.** The landowner-applicants satisfied the two performance requirements of sec. 25-6-39 (a)(2), identifying the landowners of parcel 96 in the application; and secondly, Rule 12-11 (c)'s requirement for a notarized affidavit attesting to the applicants' titleholder status [see also, sec. 25-6-31 (b)].
- **Eligibility Criteria for an OHD Permit Application.** Consistent with sec. 25-6-31 (b), the landowner-applicants have not submitted any OHD applications in the previous two years. The Adler's OHD application is the only active application that has received processing.
- **The Requested OHD Permit Application is not Located in a 'Prohibited Area' of sec. 25-6-32 (a) through (f).** As indicated in the discussion sub-title, the 'ohana dwelling approved for parcel 96 will not be located in the six prohibited areas specified in the above-cited County Zoning Code sections.
- **Affidavit Requirement: Status of Restrictions or Covenants to Building Site.** The landowner-applicants satisfied sec. 25-6-39 (a)(3) and Rule 12-11 (d) and the notarized affidavit was received for the Ohana application.

Generally, the affidavit affirms there is no deed, lease, or other recorded document of restrictions or covenants to prohibit an 'ohana dwelling or second dwelling unit on the parcel 96 building site.

- **Public Facilities Standards and Service to the ‘Ohana Duplex Dwelling.**

County Zoning Code sec. 25-6-30 (d)(1) through (4) and Planning Department Rule 12 (d)(1) through (4) require four adequate public facilities to serve the building site of parcel 96 and the ‘ohana dwelling:

(d)(1): an adequate public or private sewage-wastewater disposal system;

(d)(2): an adequate potable water system:

**Finding:** the Department of Water Supply (DWS) confirmed that county water service is available for the ohana second dwelling. A determination of sufficient rainfall for a Water Catchment System (WCS) option need not be considered for parcel 96. See below discussion: Public Agency Written Comments, Exhibit A: County DWS.

(d)(3): adequate fire protection measures:

**Finding:** the Hawaii County Fire Department confirmed that parcel 96 is within the fire service area of the Haihai Fire Station.

(d)(4): access to a public or private street:

**Finding:** the 1964 final approval of Subdivision 2137 included public street access to parcel 96 via Komohana Street.

The above findings determined that adequate fire protection measures and access to a public street are satisfied.

- **General Findings: Public Facilities Infrastructure.**

In general, construction of the ‘ohana requires compliance with the county building permit (BP) application process, an officially approved and issued BP, and the inspection process.

**The Planning Director’s determination finds** that the County BP process effectively regulates the construction of an ‘ohana dwelling to include adequate systems for residential sewage-wastewater disposal and a water source to serve parcel 96.

The ‘ohana dwelling permit shall state conditions to require the infrastructure systems for adequate sewage-wastewater disposal and an adequate potable water system.

The above findings substantiates that the Adlers' application meets the minimum requirements for an Ohana Permit; as a result, the findings is the basis of the Planning Director's determination to **APPROVE** the Ohana Permit Application for parcel 96, Lot 12.

Approval of the Ohana dwelling is **SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The 'ohana permit is approved to construct **one single-family Ohana dwelling** (the second dwelling on parcel 96).
2. The approved Ohana dwelling is **subject to and shall comply with the standards and requirements for 'Ohana Dwellings** of Hawai'i County Zoning Code sections 25-6-30 through 25-6-39.7; and, the County of Hawai'i Planning Department Rule 12 - 'Ohana Dwelling Units; and, the State of Hawaii Department of Health or the County Department of Environmental Management.
3. **Non-transferability:** The Ohana permit approval shall be personal, only, to the applicant until construction of the Ohana has been completed; the permit shall not be transferable or assignable to any other person until construction of the 'ohana dwelling is completed and the Director of the County Department of Public Works has issued final approval on the completed construction. Sec. 25-6-39.3 (a) and Rule 12-17.
4. **No Advertising of Transferability:** No person shall advertise or represent to the public that the permit to construct the 'ohana is transferable with the sale of the property. Sec. 25-6-39.3 (b) and Rule 12-18.
5. **Guest House: Not Permitted.** A detached accessory guest house shall not be permitted or constructed with the 'ohana dwelling. Sec. 25-6-36.
6. **Variiances Prohibited.** For the parcel 96 building site, a variance from the Hawai'i County Zoning Code and the Subdivision Code shall not be granted to permit the construction of the 'ohana dwelling.
7. **The Building Permit (BP) Application Process for the 'Ohana Dwelling: Zoning Code Public Facilities Standards.** Construction of the 'ohana dwelling shall comply with the County Zoning Code's regulatory standards for public facilities, discussed above; in addition, construction of the ohana dwelling shall comply with the regulatory standards and approvals required of the County BP application process.

Two public facilities are required to service the parcel 96 building site and the 'ohana dwelling:

- a) **An adequate sewage-wastewater disposal system:** that complies with the requirements and standards of the State of Hawai'i Department of Health or the Hawai'i County Department of Environmental Management.
- b) **An adequate potable water system:** discussed above, the county DWS has available water service for the 'ohana second dwelling. The 'ohana dwelling shall comply with all requirements, conditions, and standards of the County Department of Water Supply to receive county water service.

8. **Requirements for Building Height, Yard Setback and Off-Street Parking Spaces:**

- a) **Height limit:** The height limit of the proposed detached 'ohana dwelling shall be **25'-feet**, an average building height, according to sec. 25-1-5 (b), definition of building height.
- b) **Minimum Requirements: Yard Setbacks, Open/Clear Space Standards, & Future Road Widening.** The proposed 'ohana dwelling is required to comply with the requirements for yard setback, open/clear space, and the additional setback for a detached ohana unit, according to County Zoning Code sections (secs.) 25-6-35 (b), 25-5-7 (2), and 25-4-44 (a). The front-yard setback is also required to include a future road widening along the street frontage.

Parcel 96's minimum yard setback requirements:

- **Front yard setback:** minimum total **45-feet:**

20-feet' front yard setback; plus an additional 5-feet 'from all property lines' for a detached ohana unit; plus a 20-feet future road widening along the Komohana Street frontage.

- Rear yard setback: minimum **25-feet** and
- Side yards: minimum **15-feet**

Both the rear and side yard setbacks include the additional 5-feet setback required of detached ohana units.

- Between the dwelling units or main buildings: minimum 15-feet, measured from wall-to-wall.

- c) **Off-Street Parking:** The ohana dwelling shall provide a minimum of two (2) off-street parking spaces; all existing and additional parking spaces shall be arranged to be individually accessible; on-site residential parking spaces are not required to be paved. Zoning Code secs. 25-4-51 (a)(7) and 25-4-54 (a) and (d).
9. The 'ohana dwelling is **not approved for a short-term vacation rental (STVR), a transient vacation rental or a tourist visitor accommodation.**
10. **One-year Time Period to secure Building Permit to Construct the Ohana Dwelling or OHD Permit shall be Void.** Z. Code sec. 25-6-39.2; Rule 12-16. Within one-year (or 12 month) time period from the date the OHD permit was issued – a building permit (BP) to construct the ohana dwelling shall be secured.

**A one-time thirty (30) day-time extension** to obtain the BP may be granted by the Planning Director: a written time extension request shall be filed with the Planning Director **not less than forty-five (45) prior to the expiration date** of the OHD permit. Rule 12-16 (a).

To discuss questions that may arise or if clarification is needed on the above findings and conditions, please contact staff planner, Earl Lucero at (808) 961-8160.

Sincerely,



ZENDO KERN  
Planning Director

EML:tb

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Encl: Zoning Code definition of 'Building Height'

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