

August 12, 1992

CERTIFIED MAIL

Mr. Damien Ching  
P. O. Box 1193  
Kamuela, HI 96743

Dear Mr. Ching:

Variance Application: (V91-19)  
Applicant: Damien Ching  
Frontyard Building Encroachment  
TMK: 6-4-12:80

Having reviewed the subject variance request, the Planning Director has concluded that the variance request to permit a carport's wall to encroach into the front building setback distance be denied. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special and unusual circumstances applying to the real property which deprives the owner of substantial property rights that would otherwise be available or to a degree that obviously interferes with the best manner or use of that property. The property is level and one acre in area; the dwelling and carport are built in one front corner only, occupying less than 3000 sq. ft. and thus there is more than ample space to properly site a carport or similiar accessory structure. The applicant is not physically constrained by the property to place a full size carport on just this portion of the lot. The lot is also typical of the many other one acre lots in this subdivision.

In fact, by establishing a carport in this precise location, the applicant would early on have been confronted with the spectre of only 16 ft. being available depth for his vehicles' covered parking space.

The only reason for the request for a 4 ft. roof eave forward of the front gable end of the carport is because the carport, by his own design, is 4 ft. "short" of a usual standard length carport.

In summation, there are no special or unusual circumstances regarding this property which disenfranchise the owner, as the situation is completely self-imposed.

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### ALTERNATIVES

Locational and spatial alternatives abound for the placement of the carport on this property given the lot's size, shape and topography. It is contended, in the review of this situation, that it is the owner's own preference which has caused the front setback problem confronting him. The need for a variance request is not at all attributable to the real property.

### INTENT AND PURPOSE

The intent and purpose of the building setback requirement is to afford a reasonable amount of air, light, circulation and open space between properties and buildings commensurate with the character and density of the area and the community's expectations and scale.

In this case, the 30 ft. front yard was publicly adopted and imposed in the zoning code and has been the standard for some 20+ years. Additionally, the community association of this area, to which the applicant belongs has adopted the same building setback standards.

The carport's single projecting wall is considered a full wall and not a permitted projection.

For these reasons, it is found that the granting of this variance would be contrary to the intent and purpose of the zoning code and general plan, the community's standards and expectations in the absence of special and unusual circumstances applying to the real property.

The variance request to allow the existing carport wall to remain as is where it projects 6 ft. beyond the dwelling's front wall line is, therefore, denied. The variance request to permit a 4 ft. front eave forward of the front gable end of the structure is also denied.

The applicant is, therefore, instructed to remove the carport wall which projects forward (toward the street) from the dwelling. Said carport wall may extend only to the point where it is flush with the existing tool shed and existing laundry which by the applicant's measurements are 30 ft. from the front property line. The front gable end of the carport and its support posts are permitted to remain as is.

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As a consequence of this denial, the applicant shall immediately proceed to remove the subject carport wall and shall complete its removal within four (4) months of receipt of this denial. At its completion, the applicant shall submit a sworn statement to the Planning Director attesting to its full and complete removal.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral.

If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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Should you have any questions, please feel free to contact  
Donald Tong of this office at 961-8288.

Sincerely,

  
NORMAN K. HAYASHI  
Planning Director

DT:ms  
5930D

cc: Building Division  
West Hawaii Office