

VAR 511

CERTIFIED MAIL

June 24, 1993

Mr. John Ross
P. O. Box 327
Paauilo, HI 96766

Dear Mr. Ross:

Variance Application (V 93-1)
Applicant: John Ross
Sideyard Encroachment
Tax Map Key: 6-5-9: 22

As the most recent seller of this house and lot, you are asking for a variance from the sideyard requirements of the Zoning Code to permit an existing carport, constructed by the previous owner, Mr. Kellogg, from whom you purchased the property in 1988. Unknown to you, the carport built by Mr. Kellogg encroached into the required sideyard such that its roof edge is 1.3 inches from the side boundary where the minimum clearspace allowed is 4 feet. The lattice work, being attached to posts supporting the carport and to the main dwelling itself, constitutes an extension of the house, and that distance measures 8.5 inches where the requirement is 8 feet. If it were free standing and less than 6 feet in height, it could remain as a legal fence.

The Kellogg building permit was only for the main dwelling, and it indicated no wall closer than 19 feet to any boundary. The existing carport was not included in the building permit signed by Mr. Kellogg on May 18, 1976, and no further permits were drawn for that parcel of land since.

It is clearly understood that you are not the perpetrator of the encroachment of the carport, and you are attempting to resolve the issue for the current owner inasmuch as you were the seller.

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It is also clear that Mr. Kellogg was aware of the building permit process as he declared himself as the owner-builder of the main dwelling.

Having reviewed the application, the information submitted in its behalf and related data the Director has concluded that this variance request should be denied, for the following reasons:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.

The ground is normal in its topography, a fairly typical flag lot, larger (8890 square feet) than the minimum RS 7.5 size, and almost a perfect rectangle. The builder had many options for the siting of the dwelling and for a myriad of expansion designs. There was nothing about the land which prevented the builder from properly siting his dwelling. The standards imposed by the Zoning Code would have allowed him only a 10 feet wide carport.

An adjacent neighbor, the Ho-a family (TMK: 6-5-9: 15) strongly object to the granting of this variance.

ALTERNATIVES

The present nonconforming carport could be converted into a conforming addition. By removing approximately 4.75 feet of its 14.75 feet width (resulting in a 10 feet wide carport) the carport would revert to a conforming situation, provided the latticework along the west side boundary were also removed, or its height shortened to less than six feet, or replaced with "see through" material as chain link or hog wire. (See site plan and pictures).

The Zoning Code allows a 4 feet projection into an 8 feet sideyard, thus allowable clearspace for the carport permits 4 feet distance from the boundary to the roof eave.

INTENT AND PURPOSE

The intent and purpose of the sideyard requirements is to allow and maintain an adequate amount of open space, air, light circulation and related spatial considerations between adjacent properties and buildings commensurate with a community's expectations or standards.

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The extent of this particular encroachment has brought the carport's roof edge to within 1.3 inches of the boundary where 4 feet is required for this clearspace. Although the adjacent property (which is a flaglot) most affected by this encroachment utilizes the adjacent land as a roadway (the "pole") and not a building, still the vehicles that must drive over the "pole" can be perilously close to the roof edge. The higher-than-allowed-latticework structure also "crowds" the adjacent driveway because of height/proximity. This adjacent owner who is directly affected by the encroachment, furthermore strongly objects to the variance request.

Therefore, lacking the special and unusual circumstances applying to the real property, the Director has concluded that this application should be denied as the measured violations are too severe and there are reasonable alternatives which would correct the deficiencies.

As a consequence of the denial of this variance request, the applicant shall remove the encroaching carport and latticework within 3 months of receipt of this letter. Should either be retained in modified, code complying form, a building permit, as required, shall be applied for within the same time period.

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 copies of a statement of the specific grounds for the appeal.

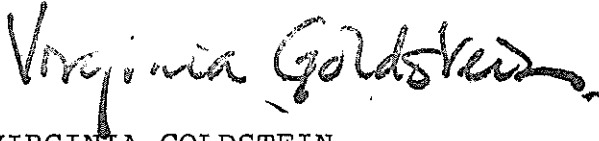
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning 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 shall be considered as having been affirmed.

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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.

Sincerely,

A handwritten signature in cursive script that reads "Virginia Goldstein". The signature is written in dark ink and is positioned above the typed name.

VIRGINIA GOLDSTEIN
Planning Director

NO:DT:mjh
9001D

xc: West Hawaii Office
Mr. Carl Toubman