

VAR 510
(denial)

CERTIFIED MAIL

June 17, 1993

Mr. Llewellyn Farden
76-6297 Kololia Street
Kailua-Kona, HI 96740

Dear Mr. Farden:

Variance Application (VAR 93-13)
Applicant: Llewellyn Farden
Carport in Rear Yard
Tax Map Key: 7-6-23:22; North Kona

You are applying for an after-the fact variance from the rear yard requirements of the Zoning Code to permit a newly-built carport structure to remain 10 ft. from the rear boundary of your houselot in lieu of the required 20 ft. The subject houselot is 10,530 sq. ft. in area and is zoned RS-10. Your original garage, which was part of your dwelling, was recently transformed into a family room according to Building Permit No. 935227, for which a building permit was not obtained prior to construction.

The carport is constructed of light metal with pipe-like supports and frame, has 20 ft. x 10 ft. dimensions according to your drawings, and is attached to the new family room.

By transforming the garage into a family room and making no other provision for replacement parking you contend you are left with the rear yard as the only suitable space for off street parking. You subsequently constructed the metal carport alongside the former garage without obtaining a building permit and have decided to request a variance to allow it to remain where placed (see photos attached and site plan).

Letters from two surrounding property owners have been received protesting the granting of this variance.

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Having reviewed your application and related information, the Director has determined that the application should be denied, for the following reasons:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and 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 on that property.

The property is basically a rectangle with dimensions of 96' x 105' x 76' x 116'. The dwelling is centered on the lot and is a modified "t" in shape. What has caused the building violation is a recent building renovation, the conversion of the 2-car garage into a family room, 20' x 20' in area. This renovation resulted in the displacement of covered parking for the applicant's vehicle(s).

However, the applicant violated the Zoning Code by later adding to the renovation, a 20' x 10' carport of light metal construction which projected into the rear yard and its clear space.

ALTERNATIVES

There are reasonable alternatives to granting the variance. The Zoning Code allows limited projections into the setback areas if they are of "open" type design, which this carport is. However, the limit is 6 ft. of projection for a 20 ft. setback requirement. Thus, the projection must end 14 ft. from the rear boundary to be in conformance with the Zoning Code. It would mean, cutting down the width of the carport.

Other slightly more costly alternative would involve moving the cesspool or building over it (by reinforcing the cover as designed by an engineer). The areas north, south and west of the lanai are also available (see site plan) for utilization.

INTENT AND PURPOSE

Intent and purpose of the building setback distances are to provide an amount of open space, air, light, circulation and related spatial considerations between buildings in a community or area which would be commensurate with its expectations and character.

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Specifically, the applicant of his own accord did away with his existing 2 car garage without seeking a suitable code-complying substitute.

As a consequence of this denial of your variance application, the applicant is hereby required to remove the carport which violates the Zoning Code's rear yard regulations. Since the Zoning Code allows certain projections into the setback area, and since the carport is considered an "open type construction" it can project 6 ft. into the rear yard, or, extend such that it is not closer than 14 ft. from the rear boundary.

If the applicant intends to keep a conforming section of the carport rather than remove it entirely, he shall apply for a building permit for its construction within 60 days of receipt of this letter.

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.

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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.

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

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

DT:mjs
9282D

xc: DPW - Engineering, Kona
West Hawaii Office