

V499

CERTIFIED MAIL

April 14, 1993

Ms. Joan Dorsey for
Dave Archibald
1173 Deer Lake Circle
Apopka, Florida 32712

Dear Ms. Dorsey:

Variance Application (V 93-4)
Applicant: David Archibald by Joan Dorsey
Sideyard Encroachment
Tax Map Key: 9-2-100:37; Kau

According to your application, both a carport and a storage room were built on the subject houselot in the Hawaiian Ocean View Estates Subdivision, besides the main dwelling. The carport and a storage room were recently found to be in violation of the Zoning Code. Specifically, according to the drawing submitted by Wes Thomas and Associates, the buildings are set back 2 ft. and 6ft. from the side boundary where 20 ft. are required.

Your letter states the subject buildings were built "8 or 9 years ago". This would mean they were constructed after the main dwelling which was built in 1981-82.

County records show that the storage and carport buildings were constructed without building permits. The only permits on record for this lot are for the main dwelling, done in two stages.

Had building permits been applied for in this case, the builder would have been notified of the proper setback for the location of the structures. By not following the building permit procedure and then placing the buildings improperly, the owner has doubly jeopardized the situation.

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The owner on his own volition failed to obtain a building permit for these structures.

Having reviewed the subject variance application and the supporting evidence, the Planning Director has concluded that this variance request should be denied, based on the following:

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.

Although the land is sloping, there are sufficient areas of level ground which to place the carport and storage buildings on this 1 acre sized corner lot. Being a corner lot, there are also two streets from which driveways could be built. The owner originally had numerous options for the siting of the carport while planning the dwelling but considered one which would not readily accommodate both the carport and the code requirements. The zoning violations were therefore of his own making and are considered self-induced.

ALTERNATIVES

There is adequate space on this 1 acre lot upon which to enplace the carport and storage buildings while complying with the code requirements. Using the same driveway, off Tiki Lane, the area to the left (southeast) adjacent to the porch could have contained the carport and still be on fairly level ground. Or, by utilizing Keaka Parkway, the driveway could lead to lower but ample groundspace for accessory buildings. In other words, the violations could have been prevented.

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INTENT AND PURPOSE

The intent and purpose of the building setback requirements is to afford an adequate amount of light, air, space and related spatial considerations between buildings and property lines. In this case, although the entire Hawaiian Ocean View Estates Subdivision is very sparsely inhabited, the A-la zoning has called for, and the community expects 30 ft. frontyards and 20 ft. sideyards. Lacking special and unusual circumstances to justify their present locations, the buildings are encroaching into the sideyards by a significant margin, considering the overall scale of the community.

Based on the above reasons, it is found that granting of this variance request would be contrary to the intent of the Zoning Code and the County General Plan. Therefore, this variance request is denied. As a consequence of this denial, the applicant shall, within 90 days of receipt of this letter, obtain a building permit showing the removal of the buildings to a proper location, or their dismantling. Within 120 days of receipt of this letter, the applicant shall describe to this department, the action he has taken to correct the improper siting of these buildings, and the status of this situation.

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.

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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.

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
8614D

xc: Crawfoot Realty
Public Works-Building
West Hawaii Office