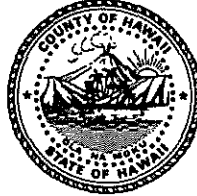


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

**CERTIFIED MAIL**

P 620 315 188

March 11, 1997

Mr. Klaus Conventz  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745

Dear Mr. Conventz:

Variance Application WH(VAR 97-6)  
Variance No. 812  
Applicants: ROBIN AND RICHARD NIMS  
Variance from Minimum Front Yard Requirements  
Tax Map Key: 7-7-017:030

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an EXISTING TWO STORY SINGLE FAMILY DWELLING with a 14.0 to 14.5 feet front yard in lieu of the minimum 15 feet front yard, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A).

The subject property is located at White Sands Beach Estates, Lot 9, Unit 1, at Laaloa 2, North Kona, Tax Map Key 7-7-017: 030.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property is part of the White Sands Beach Estates consisting of 8,371 square feet of land area.
2. The subject single family dwelling was issued the following Building Permits:
  1. Building Permit No. 8249 opened on May 20, 1987 and closed on March 29, 1988 for the single family dwelling

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2. Building Permit No. 8335 opened on June 24, 1987 and closed on April 25 1988 for an addition to the single family dwelling.
3. Building Permit No. 885174 opened on March 1, 1988 and closed on March 29, 1988 for a carport.
3. A survey map prepared by John D. Weeks, Inc., on November 15, 1996, shows the existing two story single family dwelling with 14.0 to 14.5 feet front yard. The subject dwelling encroaches into the front yard by 6 to 12 inches.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling.
5. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to be adhere to for the proposed dwelling in 1988.
6. There appears to have been a construction staking error occurred in 1988 when the dwelling was constructed in the siting of the structure on the property. There also appears that a very minor siting error was done at the time of construction with the encroachments. No other evidence has been found to show otherwise.
7. It has been over 9 years since the construction of the existing dwelling which was approved by the County and the applicant is trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
8. The variance application was acknowledged as received by the Planning Department on January 24, 1997.

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject 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 the subject property.

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### ALTERNATIVES

1. The applicant on their own volition are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
2. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.
3. While there are other alternatives available the more practical solution is the granting of the variance.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

### INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing one story single family dwelling has a 14.0 to 14.5 feet front yard. As such the subject dwelling encroaches into the front yard by 6 to 12 inches. These encroachments into the front yard are minor but are not visually perceptible that it will diminish the ability for adequate light, air and open space.

Therefore, while the Zoning Code requires a minimum 15 feet front yard, in this particular case, the encroachment is minor that will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling complies with the minimum yard requirements of the Zoning Code.

There were no objections from any surrounding property owners.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.


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This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. Any encroachments within the County right-of-way shall be removed by the applicant or permitted by the Department of Public Works Engineering.
4. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

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xc: West Hawaii Office