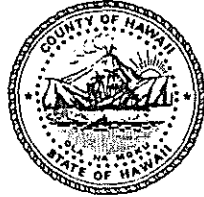


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL  
P 417 370 170

November 5, 1998

Robert D. Triantos, Esq.  
Carlsmith Ball  
P.O. Box 1720  
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

Variance Application WH(VAR 98-062)  
Variance No. 968  
Applicant: ROBERT D. TRIANTOS, ESQ.  
Owner: PAUL M. MARSH, TRUSTEE OF THE PAUL M. MARSH REVOCABLE TRUST  
Request: Variance From Minimum Front Yard, Rear Yard and Side Yard Requirements  
Tax Map Key: 7-6-022: 018

---

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling, above ground pool and deck with a 19.59 to 19.61 feet front yard in lieu of the minimum 20 feet front yard, a 15.79 to 16.65 feet rear yard in lieu of the minimum 20 feet rear yard, and a 4.32 to 4.36 feet side yard in lieu of the minimum 10 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(B), Chapter 25, Article 4, Division 4, Section 25-4-44(a)(3) and Ordinance 97-88.

The subject property is located at Lot 18, Komohana Kai Subdivision, Unit 1, F.P. 1737, at Holualoa 1 and 2, North Kona, Hawaii, TMK: 7-6-022: 018.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 15,000 square feet of land area.

010579

NOV 10 1998

Mr. Robert D. Triantos, Esq.  
Page 2  
November 5, 1998

2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. K06027 opened on September 20, 1983 and closed on April 25, 1985 for the construction of a dwelling and detached garage.
  - b. Building Permit No. 860938 opened on June 5, 1986 and closed on July 14, 1986 for an above ground swimming pool.
  - c. Building Permit No. K07566 opened on June 30, 1986 and closed on March 23, 1987 for a bath house addition.
3. A survey map prepared by Don McIntosh on July 27, 1998, shows the EXISTING ONE STORY SINGLE FAMILY DWELLING and ABOVE GROUND SWIMMING POOL AND DECK with a 19.59 to 19.61 feet front yard in lieu of the minimum 20 feet front yard, a 15.79 to 16.65 feet rear yard in lieu of the minimum 20 feet rear yard, and a 4.32 to 4.36 feet side yard in lieu of the minimum 10 feet side yard. As such, the garage portion of the dwelling encroaches .39 feet or 4 and 3/4 inches to .41 feet or 4 and 15/16 inches into the required 20 feet front yard. The existing swimming pool deck encroaches 3.35 feet to 4.21 feet into the required 20 foot rear yard and 6.64 feet to 6.68 feet into the side yard.
4. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and attached swimming pool deck.
5. When approved by the Planning Department, the plans would have had to have shown that all minimum required setbacks were going to be adhered to for the dwelling and attached swimming pool deck in 1986.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1983 and 1986 when the dwelling and attached swimming pool deck were constructed. There also appears to have been a minor siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
7. It has been over 16 and 13 years since the construction of the existing dwelling and attached swimming pool deck were approved by the County, and the applicant is trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and attached swimming pool deck.

Mr. Robert D. Triantos, Esq.

Page 3

November 5, 1998

8. The variance application was filed with the Planning Department on September 15, 1998.

There were no objections from any of the participating government agencies or any surrounding property owners.

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.

#### ALTERNATIVES

The owner on his own volition is honestly trying to resolve this long standing problem which was not created by him. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.

1. Any architectural alterations or design changes to the dwelling and attached swimming pool deck to conform with the minimum setbacks would create undue and excessive hardships for the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable solutions available without excessive demands being placed on the owners 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. As such, the garage portion of the dwelling encroaches .39 feet or 4 and 3/4 inches to .41 feet or 4 and 15/16 inches into the required 20 feet front yard. The existing swimming pool deck encroaches 3.35 feet to 4.21 feet into the required 20 foot rear yard and 6.64 feet to 6.68 feet into the side yard. These encroachments into the front, rear and side yard, will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 20 feet for the front and rear yard and 10 feet for the side yard in this particular case, these encroachments 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.

Mr. Robert D. Triantos, Esq.  
Page 4  
November 5, 1998

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

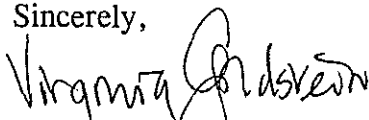
This variance request is approved, subject to the following conditions:

1. The owner, 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. If applicable, approval from the Board of Appeals for all Building Code Violations will be obtained.
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.

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

RHY: rld  
a:\76022018\vmars.h.app

xc: West Hawaii Office