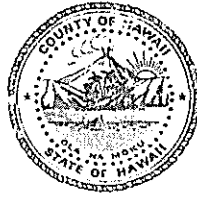


Stephen K. Yamashiro  
Mayor



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  
Z 188 431 810

June 8, 1999

Mr. Karl H. Nystrom  
73-1238 Kaiminani Drive  
Kailua-Kona, Hawaii 96740

Dear Mr. Nystrom:

Variance Application WH(VAR 99-026)  
Variance No. 1015  
Applicant: KARL H. NYSTROM  
Owners: KARL H. AND BONITA J. NYSTROM  
Request: Variance From Minimum Front Yard and Open Space Requirements  
Tax Map Key: 7-3-034: 026

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling with a 12.9 feet front yard in lieu of the minimum 20 feet front yard and a 3.5 feet side yard open space in lieu of the 5 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A) and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is located at Kona Palisade Subdivision, Lot 132 Unit II, File Plan 1087, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-034: 026

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,252 square feet.

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2. The subject property is part of the Kona Palisade Subdivision.
3. The following building permit was issued:
  - a. Building Permit No. 905467 opened on March 23, 1990 and closed on March 13, 1991 for the construction of a two story single family dwelling.
4. A survey map prepared by KKM Surveys on March 30, 1999, shows the existing two story single family dwelling with a 12.9 feet front yard in lieu of the minimum 20 feet front yard. As such the dwelling encroaches 7 feet 1-1/4 inches into the required 20 feet front yard.
5. The survey also shows the existing two story single family dwelling with a 3.5 feet side yard open space in lieu of the minimum 5 feet open space. As such the dwelling encroaches 1 foot 6 inches into the required 5 feet open space.
6. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
7. 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 in 1990.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1990 when the dwelling was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
9. It has been over 9 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.
10. The variance application was filed with the Planning Department on April 1, 1999

There were no objections from any adjacent or 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

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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

1. 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.
2. Any architectural alterations or design changes to the dwelling 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 building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling encroaches 7 feet 1-1/4 inches into the required 20 feet front yard and 1 foot 6 inches into the required 5 feet open space. These encroachments into the front yard and open space 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 front yard and 5 feet open space in this particular case, the 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.

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.

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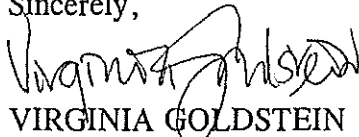
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2. The approval of this variance shall be recorded in the Bureau of Conveyances and a recorded copy of the document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. Any encroachments within the County right-of-way shall be removed.
4. The driveway shall be constructed to comply with Hawaii County Code, Chapter 22 requirements.
5. Comply with the requirements of the Department of Public Works, Engineering Division regarding obstructions within sight distance and drainage easement.
6. 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 Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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xc: West Hawaii Office