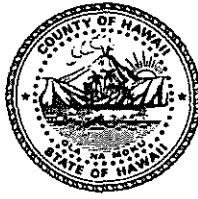


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**

7099 3220 0000 4868 8013

**PLANNING DEPARTMENT**

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

July 19, 2000

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

Dear Mr. Triantos:

Variance Application WH(VAR 00-038)  
Variance No. 1138  
Applicant: ROBERT D. TRIANTOS, ESQ.  
Owner: HELEN E. VOGEL  
Request: Variance From Minimum Front Yard, Rear Yard and Open Space  
Requirements  
Tax Map Key: 7-7-018:022

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 14.78 feet front yard in lieu of the minimum 15 feet front yard; a 14.90 feet rear yard in lieu of the minimum 15 feet rear yard; a 8.60 feet rear yard open space in lieu of the minimum 10 feet rear yard open space; and an existing above grade swimming pool that is 6 feet 6 inches in height with a 1.9 to 3.15 feet rear yard open space in lieu of the minimum 10 feet rear yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A)(B), Ordinance 97-88 and Article 4, Division 4, Section 25-4-44(a)(3).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. At the present time there is a shortage of staff. This personnel shortage will soon be resolved and will result in more timely responses to future applications. Your patience is appreciated.

The subject property is located at White Sands Beach Estates Subdivision, Lot 19, Unit 3, F.P. 1102, at Laaloa 1st, North Kona, Hawaii, Tax Map Key: 7-7-018: 022.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 7,625 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. 03006 opened on June 20, 1978 and closed on November 27, 1978 for a single family dwelling.
3. A survey map prepared by Don McIntosh Consulting on May 10, 2000 shows the two story single family dwelling with a 14.78 feet front yard in lieu of the minimum 15 feet front yard. As such, the dwelling encroaches 2-5/8 inches into the required 15 feet front yard.
4. The survey map shows the two story single family dwelling with a 14.90 feet rear yard in lieu of the minimum 15 feet rear yard. As such, the dwelling encroaches 1-1/4 inches into the required 15 feet rear yard.
5. The survey map shows the two story single family dwelling with a 8.60 feet rear yard open space in lieu of the minimum 10 feet rear yard open space. As such, the dwelling encroaches 1 foot 4-7/8 inches into the required 10 feet rear yard open space.
6. The survey map shows the existing above grade swimming pool that is 6 feet 6 inches in height with a 1.9 to 3.15 feet rear yard open space in lieu of the minimum 10 feet rear yard open space. As such, the swimming pool encroaches 6 feet 10-1/4 inches to 8 feet 1-1/4 inches into the required 10 feet rear yard open space.
7. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling. There is no indication that the swimming pool was permitted by the Department of Public Works, Building Division.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1978 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 22 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which she had no

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control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.

10. The variance application was filed with the Planning Department on May 11, 2000.

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 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 her own volition is honestly trying to resolve this long standing problem which was not created by her. 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 owner 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. As such, the dwelling encroaches 2-5/8 inches into the required 15 feet front yard, 1-1/4 inches into the required 15 feet rear yard and 1 foot 4-7/8 inches into the required 10 feet rear yard open space. The swimming pool encroaches 6 feet 10-1/4 inches to 8 feet 1-1/4 inches into the required 10 feet rear yard open space. These encroachments will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while Zoning Code requires a minimum 15 feet front yard, 15 feet rear yard and 10 feet rear yard 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

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rest of the existing dwelling and swimming pool comply with the minimum yard requirements of the Zoning Code.

The Department of Public Works, Engineering Division in their comments dated May 30, 2000 state: "Any encroachments within the County right-of-way should be removed." The applicant should schedule the removal of these encroachments and contact the Department of Public Works, Engineering Division when this is completed.

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. Applicant shall obtain a building permit for the swimming pool from the Department of Public Works, Building Division.
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.

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Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,



*f*VIRGINIA GOLDSTEIN  
Planning Director

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xc: West Hawaii Office