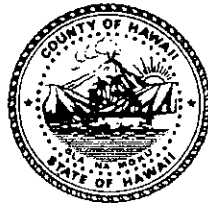


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

May 17, 2013

Stanley and Patricia Blackwell  
405 West E. Street  
Encinitas, CA 92024

Dear Mr. & Mrs. Blackwell:

**SUBJECT: Application: Variance VAR-13-000129**  
**Applicant: STANLEY AND PATRICIA BLACKWELL**  
**Owners: STANLEY AND PATRICIA BLACKWELL**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into Southeast Side Yard Setback)**  
**TMK: 1-4-068:061 (Lot 70)**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance 13-000129 (VAR-13-000129), subject to conditions. The variance will allow the single-family dwelling to remain on Lot 70, with a minimum 8.4-foot side yard setback in lieu of the required minimum 10-foot side yard setback requirement. This variance is from the subject property's minimum side yard setback and associated side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-76. Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 10,000 square feet and is situated within the Kapoho Vacationland Subdivision, District of Puna, Hawai'i. The subject property's street address is 14-4909 Kahi Ina Place.
2. **County Zoning.** Single-Family Residential – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban.

4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 2, 2013. The variance survey map dated March 4, 2013 is drawn to scale, and prepared by Roy G. Hollowell, LPLS, and denotes the position of the single-family residence constructed into minimum 10 foot side yard setback. The request affects the southeast side yard setback area.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#55273) was issued on March 8, 1973 to the subject property for a single-family dwelling consisting of a 3 bedroom, 1 bath, living room, kitchen and dining area, garage and detached water tank.
6. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated April 16, 2013.  
(See attached)
  - b. No comments were received from the Department of Public Works – Building.
7. **Public Notice.** The applicant submitted a copy of notice sent to surrounding property owners, including affidavits, stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on April 11, 2013 and April 17, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 30, 2013.
8. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

#### GROUNDS FOR APPROVING VARIANCE

##### **Special and Unusual Circumstances**

- (a) *There are 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 the property.*

##### **The variance application meets criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to allow portions of the single-family dwelling to remain “as built” with an 8.4 to 9.8-foot side yard setback.

The owner/applicant was unaware of any encroachment of the single-family dwelling when

they purchased the subject property in 1986, and would not have discovered any problems affecting the property until a modern survey was conducted by Roy G. Hollowell, LPLS revealing the setback violations.

The single-family dwelling side yard (southeast) encroachment of 0.2 feet (2.4 inches) qualifies under the “De Minimis” regulations of the Zoning Code. The single-family dwelling southeast side yard setback encroachment is considered miniscule and is not visually perceptible from neighboring lots and public view. There is a pond located on the subject property which limited area for the placement of the single-family dwelling.

No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single-family residence into the property’s minimum 10-foot side yard setback required by the Zoning Code.

#### **Alternatives**

*(b) There are no other reasonable alternatives that would resolve the difficulty.*

#### **The variance application meets criteria (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front and rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the as-built, single-story dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would leave large and unattractive reconstruction disfigurement to the single-family dwelling. This alternative would be deemed unreasonable, especially when the owners were under the impression that the single-family dwelling was in compliance with all County requirements at the time of purchase.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

#### **Intent and Purpose**

*(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area’s character or to adjoining properties.*

**The variance application meets criteria (c) for the following reasons:**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan. The variance request 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 can be substantiated, to some degree, by the fact that this office did not receive any comments or objections from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. No permit shall be granted to allow an ohana, a second single-family or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. The single-family dwelling built upon the subject property ("LOT 70") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the single-family dwelling (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

Stanley and Patricia Blackwell  
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6. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-13-000129 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN: nci

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xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)

Stanley and Patricia Blackwell  
Page 6  
May 17, 2013

NEIL ABERCROMBIE  
GOVERNOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2013 APR 17 AM 10: 02



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

LORETTA J. FUDDY, A.C.S.W., M.P.H.  
Director of Health

MEMORANDUM

DATE: April 16, 2013  
TO: Bobby Jean Leithead Todd  
Planning Director, County of Hawaii  
FROM: Newton Inouye *EJA*  
District Environmental Health Program Chief  
SUBJECT: Variance VAR 13-000129  
Applicant: STANLEY AND PATRICIA BLACKWELL  
Owner: STANLEY AND PATRICIA BLACKWELL  
Request: Variance from Chapter 25, Zoning, Section 25-5-7  
Minimum Yards and Section 25-4-44(a), Permitted  
Projections into Yards and Open Space Requirements  
(Encroachment into Southeast Side Yard Setback)  
TMK: 1-4-068:061, Lot 70

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

WORD: VAR13-000129 ch.

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