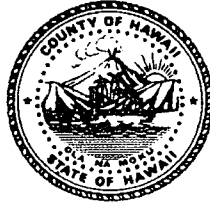


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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

June 19, 2015

Stephen A. Murakami  
Cheryl A. K. L. Murakami  
P. O. Box 505  
Keaau, Hawai'i 96749-0505

Dear Mr. Murakami:

**SUBJECT: Application: Variance VAR-13-000159**  
**Applicant: CHERYL A. K. L. MURAKAMI**  
**Owners: STEPHEN A. AND CHERYL A. K. L. MURAKAMI**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7**  
**Section 25-5-76, Minimum Yards, and Article 4, Division 4**  
**Section 25-4-44(a). Permitted Projections into Yards and Open**  
**Space Requirements (Encroachment into the South Side Yard**  
**Setback).**  
**TMK: 1-6-005:020 (Lot 12)**

---

The Planning Director certifies the **approval** of VAR-13-000159 subject to variance conditions. The variance will allow the single-family dwelling to remain on Lot 12, with a minimum 12 foot side (south) yard setback and associated roof eave with a minimum 10.5 foot side (south) yard open space. This is in lieu of the required minimum 20-foot (south) side yard setback and 14-foot side (south) yard open space. This variance is from the subject property's minimum south side yard setback and open space requirement pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

The variance request also referenced the cesspool encroaching into the adjacent parcel (Lot 13). The cesspool encroachment into the neighboring property is excluded from this variance approval, as a separate action is required by the State of Hawai'i, Department of Health.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 3 acres and is located in the Orchid Land Estates Subdivision, situated in the District of Puna, Hawai'i. The subject property's street address is 16-635 'Auli'i Street.
2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agriculture.
4. **Required Setback.** 30-feet for front and rear; 20-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 8, 2013. The variance site plan map is drawn to scale and denotes the position of the single-family dwelling constructed into the minimum 20-foot side yard setback. The request affects the south side yard setback.

The survey site plan shows that the single-family dwelling encroaches 8 feet into the south side yard setback and 3.5 feet into the south side yard open space.

6. **Cesspool.** According to the Department of health (DOH), the existing cesspool for the subject property, encroaches over the property line to an adjacent parcel. According to the Department of Health (DOH), this would be a civil matter.
7. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#940765) was issued on June 7, 1994, to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen, and dining area.
8. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated September 9, 2013. (See attached.)
  - b. State Department of Health (DOH) memorandum dated February 11, 2015 from Amy Cook. (See attached)
  - c. Department of Public Works – Building (DPW) e-mail dated August 27, 2013. (See attached)
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS, certificate of mailing receipts and affixed postal receipts, and the first and second notices were mailed on July 18, 2014 and July 31, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 27, 2013.

10. **Time Extension.** The applicant's completed variance application was received on September 10, 2013 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance application until June 20, 2015.

11. **Comments from Surrounding Property Owners or Public.**

- a. Objection letter received on September 6, 2013, from Frederick D. Langenheim (See attached.)
- b. Objection letter received on September 19, 2013, from Cynthia J. Oliver and James L. Oliver. (See attached.)

Subsequent letter with conditions received on September 26, 2013, from Cynthia J. Oliver and James L. Oliver, expressed no objections with conditions. (See attached)

- c. Objection letter received on October 25, 2013, from Keith Kohl – Managing Member Shenji LLC. (See attached)

**ANALYSIS OF GROUNDS FOR VARIANCE**

No variance will be granted unless it is found that:

*(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 address or resolve the encroachment of the single-family dwelling into the 20-foot south side yard setback and associated roof eave into the 14-foot side yard open space as required by the Zoning Code.

The site plan prepared by the owner/applicant shows that the single-family dwelling encroaches 8 feet into the south side yard setback and the associated roof eave encroaches 3.5 feet into the south side yard open space.

It appears that the single-family dwelling constructed nearly 21 years ago, was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises, by the agencies during construction of the one-car carport with storage, did not disclose any building encroachment issues or building setback irregularities at that time. Therefore, no evidence has been found to show indifference or

premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

*(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 side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family 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 complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

*(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.

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. The single-family dwelling has been in existence for approximately 21 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is

felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

An objection form letter was received and signed by Frederick D. Langenheim. Mr. Langenheim recommended moving the dwelling 4 feet to the north. As stated above, relocating the single-family dwelling would not be practical. Requiring the owner to relocate the single-family dwelling would involve the owner to do major excavation to his property by having to replace and move existing water lines. It should be noted that the Hawaii County – Building Division had no objections to the variance (see attached memorandum). Another objection letter was received from Keith Kohl (Shenji LLC) on October 26, 2013. No comments or reason for the objection were stated, except that they do not agree with this variance and do not want it approved. The property owners most affected by the encroachment (James and Cynthia Oliver) objected to the variance application initially, however, a letter dated September 19, 2013, stated that they had no objections to the variance with the following stipulations.

- “1. We would like the variance to stipulate that if any improvements or replacement of the Cesspool is required at any time in the future or the property is sold, that the cesspool be relocated to comply with the setback requirements in effect at that time.*
- 2. That by allowing the cesspool to remain where it is (2 feet on our property), we are in no way giving up ownership of nor giving permission to access any part of our property.”*

Since the variance does not apply to the encroachment issue regarding the cesspool, this stipulation is considered not applicable. This issue is considered a civil matter and shall be addressed by the property owners affected by the cesspool encroachments.

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.

#### **PLANNING DIRECTOR’S DECISION AND VARIANCE CONDITIONS**

Based on the variance application’s site plan, the single-family dwelling built upon the subject property (“LOT 12”) will not meet the minimum side yard requirements, pursuant to Hawai‘i County Code, Chapter 25, (Zoning Code).

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 Hawai‘i harmless from and against any loss, liability, claim, or demand for the property

Stephen A. Murakami  
Cheryl Murakami  
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June 19, 2015

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 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. Should the single-family dwellings (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.
5. 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-13-000159 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR 13-000159TMK1-6-005-020Murakami.doc

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

Stephen A. Murakami  
Cheryl Murakami  
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June 19, 2015

Page 1 of 1

**Nakayama, Larry**

PLANNING DEPARTMENT  
COUNTY OF HAWAII

**From:** Matsumoto, Joy  
**Sent:** Tuesday, August 27, 2013 9:36 AM  
**To:** Nakayama, Larry  
**Subject:** VAR 13-000159, 1-6-005:020

2013 AUG 27 AM 11: 09

Hi Larry,

Building has no objections to this variance as long as the water tank is on 1-6-005:020 and not on the neighboring parcel.

*Joy Matsumoto*  
Supervising Building Inspector  
County of Hawaii  
Tel. (808) 961-8471  
Fax (808) 961-8410  
Email: [jmatsumoto@co.hawaii.hi.us](mailto:jmatsumoto@co.hawaii.hi.us)

087151

8/27/2013

Stephen A. Murakami  
Cheryl Murakami  
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June 19, 2015

NEIL ABERCROMBIE  
GOVERNOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2013 SEP 10 AM 10:05



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

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

MEMORANDUM

DATE: September 9, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye ✓  
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000159  
Applicant: CHERYL A.L. MURAKAMI  
Owner: STEPHEN A. & CHERYL A.L.K. MURKAMI  
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-76 Minimum yards and Section 25-4-44(a),  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into the South Side Yard  
Setback.)  
Tax Map Key: 1-6-005:020, Lot 12

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

We recommend that you review all of the Standard Comments on our website:  
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.



Stephen A. Murakami  
Cheryl Murakami  
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Murakami Variance 13-000159 RE: Hopkins setback variance ... - Nakaya... Page 1 of 1

Murakami Variance 13-000159 RE: Hopkins setback variance VAR  
13-000151

Cook, Amy <amy.cook@doh.hawaii.gov>

Wed 2/11/2015 2:26 PM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

📎 2 attachments

00A4B7C9.pdf; VAR-13-000159 TMK 1-6-005--020. Lot 12.doc;

Hi Larry,

I don't remember having reviewed VAR 13-000159. I confused hers with the other. My apologies.

However, I have a record of her cesspool and the DOH response to the variance, which I have attached to this email. The department's response to this variance, "Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal."

The department's stance is the same for this situation as for the Hopkins': we do not require the relocation of functioning cesspools which encroach on boundary lines, the system owner and the affected neighbor will have to resolve any issues they have about the system between themselves.

Amy Cook  
Dept. of Health - Wastewater Branch  
East Hawaii Office  
1582 Kamehameha Ave.  
Hilo, HI 96720  
Phone: 808 933-0930  
Fax: 808 933-0400

---

**From:** Nakayama, Larry [mailto:Larry.Nakayama@hawaiicounty.gov]  
**Sent:** Tuesday, February 10, 2015 2:24 PM  
**To:** Cook, Amy  
**Subject:** RE: Hopkins setback variance VAR 13-000151

Amy: Thank you for your email, however I was inquiring about a variance for Cheryl Murakami, TMK 1-6-005:020 (VAR-13-000159). She claims that she talked to you about her cesspool encroaching on the neighbors property. Any information you have on this property will be greatly appreciated.

Mahalo: Larry

<https://webmail.hawaiicounty.gov/owa/>

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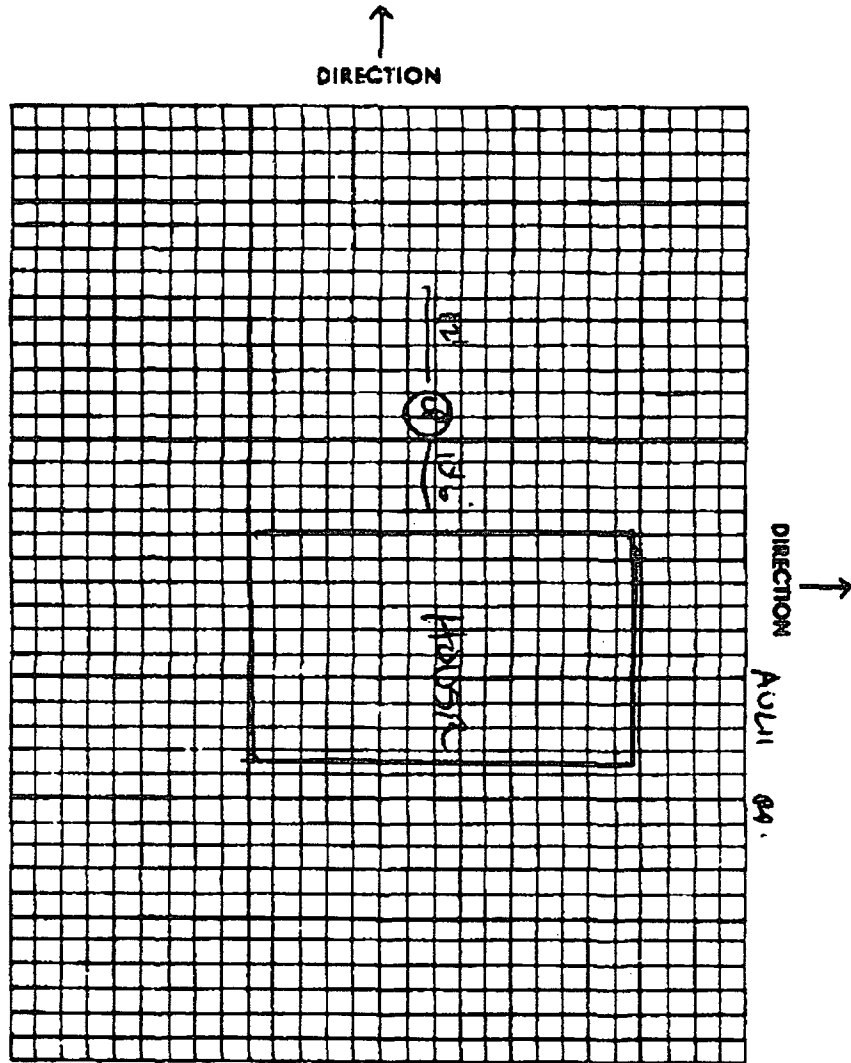
2/11/2015

PLANNING DEPARTMENT  
RECEIVED  
2015 FEB 11 PM 3:47

STATE OF HAWAII # 940765  
DEPARTMENT OF HEALTH ENVIRONMENTAL PROTECTION AND HEALTH  
SANITATION BRANCH  
CESSPOOL SURVEY SERVICES DIVISION

Property Owner STEPHEN & CHERYL MURAKAMI Address 16-635 AULI  
Tax Map Key 1-6-5:20 Lot No. 12  
Island HAWAII City UNION CAMP District PUNA  
Builder or Contractor RT BUILDERS Intended For RESIDENCE  
Primary  Secondary \_\_\_\_\_ Other \_\_\_\_\_  
Distance From Building 10' 6" Boundary 12" Stream, Well, Body of Water, Etc. \_\_\_\_\_  
Diameter (Clear) Ft. 6' Depth-Ft. 10' 6" Capacity (Gal.) \_\_\_\_\_  
No. Ft. Down to Water Table \_\_\_\_\_ Ground Slope FLAT  
Soil Profile (Starting from Surface) SPURDIE SOIL  
Type of Wall or Curb NAT Reinforced Concrete Cover YES  
Distance from Finished Ground to Top of Cover (Ft.) 1'  
Date Certificate Issued 10/6/94  
Date Approved 10/6/94 19 94-1 PSAV 323  
Sanitarian

SAM FORM 40



REMARKS

Stephen A. Murakami  
Cheryl Murakami  
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Murakami Variance 13-000159 RE: Hopkins setback variance ... - Nakaya... Page 1 of 2

Murakami Variance 13-000159 RE: Hopkins setback variance VAR.  
13-000151

Cook, Amy <amy.cook@doh.hawaii.gov>

Wed 2/11/2015 2:26 PM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

@ 2 attachments

00A4B7C9.pdf; VAR-13-000159 TMK 1-6-005--020, Lot 12.doc;

PLANNING DEPARTMENT  
COUNTY OF HAWAII  
2015 MAR 27 AM 8:49  
MAR 27 2015

Hi Larry,

I don't remember having reviewed VAR 13-000159. I confused hers with the other. My apologies.

However, I have a record of her cesspool and the DOH response to the variance, which I have attached to this email. The department's response to this variance, "Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal."

The department's stance is the same for this situation as for the Hopkins': we do not require the relocation of functioning cesspools which encroach on boundary lines, the system owner and the affected neighbor will have to resolve any issues they have about the system between themselves.

Amy Cook  
Dept. of Health - Wastewater Branch  
East Hawaii Office  
1582 Kamehameha Ave.  
Hilo, HI 96720  
Phone: 808 933-0930  
Fax: 808 933-0400

---

**From:** Nakayama, Larry [mailto:Larry.Nakayama@hawaiicounty.gov]  
**Sent:** Tuesday, February 10, 2015 2:24 PM  
**To:** Cook, Amy  
**Subject:** RE: Hopkins setback variance VAR 13-000151

097878

Amy: Thank you for your email, however I was inquiring about a variance for Cheryl Murakami, TMK 1-6-005:020 (VAR-13-000159). She claims that she talked to you about her cesspool encroaching on the neighbors property. Any information you have on this property will be greatly appreciated.

Mahalo: Larry

<https://webmail.hawaiicounty.gov/owa/>

3/27/2015

Stephen A. Murakami  
Cheryl Murakami  
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June 19, 2015

Murakami Variance 13-000159 RE: Hopkins setback variance ... - Nakaya... Page 2 of 2

*Larry H. Nakayama  
Planner  
Hawaii County - Planning Department  
101 Pauah Street, Suite 3  
Hilo, Hawaii 96720  
Phone: (808) 961-8149  
email: Larry.Nakayama@hawaiicounty.gov*

---

**From:** Cook, Amy <amy.cook@doh.hawaii.gov>  
**Sent:** Tuesday, February 10, 2015 8:41 AM  
**To:** Nakayama, Larry  
**Subject:** Hopkins setback variance VAR 13-000151

Hi Larry,

A few months back I got a copy of a survey of the Hopkins property. I should have written you then, but it slipped off the back burner, so to speak.

The survey showed 2' of cap intruding onto the neighboring property. The department does not, at this time, require existing cesspools to be relocated if they are in working order even if the system crosses a property boundary line. The property owners concerned must find a mutually satisfactory solution to this situation amongst themselves.

Thanks,

Amy Cook  
Dept. of Health - Wastewater Branch  
East Hawaii Office  
1582 Kamehameha Ave.  
Hilo, HI 96720  
Phone: 808 933-0930  
Fax: 808 933-0400