

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JUNE 25, 2009**

APPROVED

Maui County Board of Variances and Appeals
Meeting Date: Aug. 27, 2009

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Randall Endo at approximately, 10:12 a.m., Thursday, June 25, 2009, in the Meeting Hall, Mitchell Pauole Center, Kaunakakai, Island of Molokai.

A quorum of the Board was present. (See Record of Attendance.)

Chairman Randall Endo: I would like to call the meeting of the Board of Variances and Appeals to order. And let the record reflect that we have a quorum present of six Members of the Board. At this time, I would like to call our first item on the agenda: Item B-1.

B. PUBLIC HEARING - VARIANCES

- 1. RONALD KIMBALL requesting variances from Maui County Code, §§16.08.060(A) and (E)(3) to allow a covered deck expansion and roof overhang to be within less than one (1) to five (5) feet from the rear property line whereas six (6) and three (3) feet are required (respectively) for an after-the-fact building permit (B T20090021) for property located at 2260 Kamehameha Highway, Kawela, Molokai, Hawaii; TMK: (2) 5-4-017:029 (BVAV 20090004)**

Chairman Endo read the agenda item into the record.

Chairman Endo: At this point, we would like to ask the applicant to step forward, state their name, and you'll be allowed to make a presentation. After that, we'll take public testimony and then we will deliberate.

Mr. Ronald Kimball: Good morning, Commissioners. Thank you for coming over, and coming out to my house, checking out the property and everything. The application before you for a variance, you guys saw the building today. And I just wanna restate, you know, some of the facts here. The eight-foot extension, you guys saw the ten-foot deck, and it will be cut back by two feet. That's the first item: it will be cut back to meet the County standards. The shoreline there, again, as I showed you on the three certified shoreline maps that I showed you at the property site that the land has been accreting since I've been there 20 years now since my house has been built. And it's accreted by about, you know, close to 30 feet on one boundary side – well, in excess of 30 feet on the side of the property, and about 28 feet on the west side of the property. The project does not hinder or cause any problems for the community or for the public. My covered deck, I don't know if you guys saw all of those one-man canoes in my yard, but I coach outrigger canoeing. I've coached outrigger canoeing for about 30-plus years. And every Sunday, my crews, as well as some of our younger crews, they meet at my house. They meet at that site, and they do a lot of cross training, outrigger paddling in that area. And the covered deck serves as a meeting area a lot of times for our crews before we go out on our runs and afterwards. So in a sense, you could say that it's serving a community purpose by providing a meeting site for a huge community activity. I have no complaints form, as far as I know, I have no complaints from my neighbors: the County being on the property on the west side; and Mr. Reed Saxon, being on the owner on the

east side; and Kawela Homeowners Association being the property directly across the street from me. I do again, I apologize for going after-the-fact and putting up the building without first trying to do a – you know, getting my permit. Being a former Planning Commissioner, and a Member of the Molokai community plan, I should've known better. So I apologize for that. Those are just some of the facts that, you know, pertaining to my case. And I wish you guys could approve my variance. I see no other reason why it should not be approved. Thank you.

Chairman Endo: Thank you. At this time, we'll now open the matter up for public testimony. Is there anyone who wishes to speak on this matter? Okay.

Mr. Kimball: Excuse me, Mr. Chairman. I think I have my name on the public testimony not realizing I had an opportunity to speak, so you can scratch me.

Chairman Endo: Okay, you are deemed scratched. Now, we'll go to DeGray Vanderbilt. Please state your name and you'll have three minutes to provide testimony.

Mr. DeGray Vanderbilt: Three minutes? I'm sorry. My name is DeGray Vanderbilt. I recently stepped down my term ended as Chairman of the Molokai Planning Commission. I follow planning and issues on Molokai quite closely, water issues, and I'm in support of this variance being granted. I don't think it creates a hazard for the shoreline. The shoreline's accreted out there. Ron is an ocean person. He's very respectful of the ocean. And as he said, he is coaching the paddlers doing a lot of cross training out there with the youth. And he's been involved with youth not only in paddling, but everywhere else, and has also contributed his time to various commissions like you all volunteering his time for the betterment of this community. And so I don't think there would be anybody I know of in this community that would be in opposition to this variance. And I must say that you all granted a variance in Wailua at – near the Wailua Pavilions when oceanfront lot to encroach closer to the . . . (inaudible) . . . lot out there when somebody wanted to get closer on the side yard setback. So he encroached right next to an empty lot where somebody else is gonna build shortly. So that was really tight. And then that ended up being a transient vacation rental. And whoever that person is, I don't even know who they are, but – so there was that situation. Ron is not encroaching on the neighbors. And no complaint from the neighbors.

And I just wanted to say one thing that you do have on the agenda that comes out on the agenda, it might be good just to say that where documents can be reviewed. I don't think it says that on the agenda. And then some way hopefully you can change the rules so that applicants like Ron can advertise in our local paper. We only get about 60 *Maui News* here, but Ron has to do three or four ads in the *Maui News*, which is a lot more costly than our paper, and the notice is much less effective than if it was in our local paper, the *Dispatch*, which comes out once a week, but goes in everybody's mailbox. So that's the most effective way to really get the word out on Molokai where you really want it. So that's just my mana`o and I sure hope you guys can support Ron's application today. Thank you.

Chairman Endo: Thank you. Any questions for Mr. Vanderbilt? Hearing none? Thank you. Is there anyone else who wishes to testify on this matter? Please feel free to sign up. Thank you. If anyone wants a copy of the staff report by the Department of Public Works, we have a few extra copies here in front of the table. So Ms. Caparich?

Ms. Judy Caparida: Caparida.

Chairman Endo: Oh, sorry, Caparida. Please state your name, and you have three minutes to testify.

Ms. Caparida: Okay. My name is Judy Caparida. And I'm a resident of Molokai. And I know the Kimball Family very well. And I know the situation they are in right now. But you know, anything that's all you got. It's all the land you got, and so you gotta make the best of it. And for me is that that's our livelihood. That's where we live. There's no intention of moving anywhere else. So I really support what they have to do, and, yes, to be pono in what they gonna do because this is their livelihood, and this is Molokai. Thank you.

Chairman Endo: Thank you.

Ms. Caparida: Any questions?

Chairman Endo: Any questions? Hearing none, thank you. Oh, sorry, we have one question.

Ms. Caparida: Okay, bruddah.

Mr. William Kamai: Mrs. Caparida?

Ms. Caparida: Yes?

Mr. Kamai: As a lifelong Molokai resident, do you know of any other areas along the south shore that over the years that the beach extended itself?

Ms. Caparida: Well, if you look at the weather today, you know, the water is extra high now because of what – the weather is all over world. It's so getting so extra high they getting on our roads now, and it's eating away at the land. On all of our shorelines, they have to kinda backfill even to put roads so it's safe. So that's why I gotta say that you know what? We do everything. It's only common sense to do the things you know that gonna save your life and that is what to protect what you got. And that's the way we are on Molokai making the best of what life has for us. And sometimes it's because of the erosion. You know it's hard to protect the water from coming in and eating up your land. So we're going through the same problems on our highway and in the front of our place where we have to put a wall to protect it because the water is eating away at it. And the ocean, he knows his house. And there's no way we can stop the ocean from coming in. So that's why I just needed to share that, bruddah. Yes, around the island is all getting erosion all the way around the island. So thank you, bruddah.

Mr. Kamai: In this case, Mr. Kimball, the applicant, his – the beach fronting his property is getting bigger, so not–

Ms. Caparida: Well, he's an unusual site because let me tell you, it may be erosion on the other side, which is pushing it down that way, but it's nothing that we asked for. You know what I trying to say? It's something that it's give and take. That's the way life is. I mean, God created – He makes everything good. You know, man can move only – we are limited to move things, but His

way of doing things is that we cannot – it's unstoppable. So what you like me tell you, bruddah?

Mr. Kamai: If you know of any other properties along the south shore that the beach was bigger instead of--?

Ms. Caparida: Yeah, they either growing one side and then it's eating up on the other side.

Mr. Kamai: Okay.

Ms. Caparida: Yeah, so this is why they gotta try to protect what they got on that's getting erosion. Good luck to them if it's growing. It's not because they doing it. It's because God's doing it. So whatever they need to do, bruddah. Just say you know what, bruddah? Do what is pono because he don't intend to move. His family has been raised from there and that's all they have. I talking for myself because Molokai, we're blessed. We cannot stop what's going on around us, but all we can do is to do what is right to keep our life together. Today the life is so up war. Everybody now is so greedy. They wanna do everything that they wanna do for what? They cannot even take it with them. So whatever we need to do that is pono for our families and for our lives, that's good enough. So if they need to do anything, let them know what they gotta do so they can do it right. Anything else, bruddah?

Mr. Kamai: No, thank you.

Ms. Caparida: Anything else, bruddah?

Mr. Kamai: No, thank you very much.

Chairman Endo: Thank you. Okay, anybody else who wishes to testify, please come up and sign on the sign-up sheet. Okay, please come up to the podium, state your name, and I'll be timing you. You have three minutes to provide testimony.

Ms. Nancy McPherson: Thank you. My name's Nancy McPherson. I'm a resident of Kawela on the makai side just a few lots to the east of Mr. Kimball. I'm also the County Planner for Molokai. So I work for the County of Maui Planning Department. And I am reviewing his after-the-fact SMA assessment. So I'm testifying as far as the accretion phenomenon on Molokai, and because I have studied the shoreline especially in that area because I live in that area and I can walk along the shoreline. There are definitely certain points where there is erosion. There are adjacent properties that are accreting. In some cases, it's a function of the ancient fishpond, and in some cases, it's not. I'm not a coastal geologist, but I have observed that in the area of Mr. Kimball's property, it is – it has accreted significantly. Where I live which is about four or five lots to the east, it is also accreting significantly. And further to the east, those properties are also accreting up to about 90 feet in some cases seaward. So there are certain areas that are definitely accreting. That doesn't mean they'll always accrete, but the thing is I wanted to say on behalf of this application is that it is meeting the Molokai Shoreline Rules because the property was created prior to 1989 and because of the average lot depth. Basically, the minimum setback of 25 feet is what we've – I have not completed the determination, but that's my preliminary determination is it's 25 feet. So he is meeting the shoreline setback from the State certified shoreline. So I just wanted to let you know that he won't need a variance, a shoreline setback variance, and he's good to go except for the

Building Code.

Chairman Endo: Thank you. Any questions for Ms. McPherson? Hearing none, thank you. Is there anyone else in the public who wishes to testify on this matter? Hearing and seeing none, we'll now close public testimony. At this point, we'll like to allow the applicant to make any further statements before we deliberate.

Mr. Kimball: Yeah, Commissioners, following up with Auntie Judy, for Auntie Judy Caparida, her family lives way up east. And I'm trying to compare where Auntie Judy lives to places on Maui. And the best I can think of is like Waiehu, Kahakuloa side. Where if you guys have driven out the east, she lives up Kainalu, Wailua area. And unlike my place, if you guys noticed the reef, I don't know if you guys noticed the waves breaking outside, the contiguous reef that runs from way west all the way out east, I have that reef area. So my – the shoreline water activity, it just rises and falls. Where Auntie Judy lives by her area, it didn't have an erosion problem because if you can picture the Waiehu, Kahakuloa side like almost the ocean is direct access straight into the property line. So they get pounded. They get hit hard by the wave action which causes a lot of the erosion problems that the east side people face and Auntie Judy and her family where their property is. So it's like two different things. If you guys were to stop and look out from the ocean at my place and see the – the reef, and drive out and see where Auntie Judy lives, it's like really, really two different things. Auntie Judy's place, you enter the water, and like you're right in the ocean. In my place, you have to go out to the reef, get beyond the reef, then you into the ocean. So it's like two different things. And residents of east side, they do have problems with the wash and the erosion up that side. So I just wanted to follow up on that one.

Chairman Endo: Thank you. You can stay up there. I forgot to ask you earlier, but are you amendable to the waiving of the reading of the Department of Public Works' staff report?

Mr. Kimball: What is that now?

Chairman Endo: We want to dispense with reading of the Public Works' report. Are you agreeable to that?

Mr. Kimball: Yeah, that's fine. Like I said at my house, I had that one item where I had some concerns with regard to the shoreline, so other than that.

Chairman Endo: Did you also want to submit that additional shoreline survey?

Mr. Kimball: You know, that's what bothers me because I sent 25 copies of everything. Staff Member Trish on Maui asked for 25 copies of the '86 shoreline survey, '88 survey, as well as the '08, 2008 shoreline survey, and it should be in you guys' files, but I'll be more than happy to resubmit it if it's needed.

Chairman Endo: Well, I noticed we do have some of the shorelines, but we don't seem to have all of them, but what we'll do is we'll just – if somebody asks for it during deliberation, maybe you can just bring it out, and we'll just look at it.

Mr. Kimball: Yeah, yeah, whatever you guys need.

Chairman Endo: Okay. Thank you.

Mr. Kimball: Can I make one more?

Chairman Endo: Sure. Go ahead.

Mr. Kimball: Thank you, Mr. Chairman. That's okay.

Chairman Endo: Okay. At this point, we'd like to allow the Board Members to ask questions and make statements.

Mr. Kamai: This is for the applicant. What is the difference in, I guess, in your survey from the – we have the '88 and we have the 2008. The only one missing is the '86 survey.

Mr. Kimball: From what I can see between the two, is it's really small. It's almost exactly the – about exactly the same. The numbers here, well, what they're showing me looks exactly the same. It's just a two-year period. And 20 feet accretion on one side, 19 feet accretion on the other side, 20 feet on the west side boundary, 19 feet on the east side boundary. On both surveys shows the exact same thing.

Mr. Kamai: Okay. Thank you.

Chairman Endo: At this time, I would like to ask the Department of Public Works if they want to make any comments, or if there's a recommendation from their Department.

Mr. Jarvis Chun: Jarvis Chun with Public Works. We do not give recommendations and we have no further comments.

Chairman Endo: Thank you, Mr. Chun. I have a quick question for Planning, and just more of an informational item. I note that this property is in the interim zone, and so that's why apparently, we are dealing with a building permit variance rather than a Title 19 Zoning Code setback variance. Is that correct?

Mr. Francis Cerizo: That's correct. The Zoning Code currently, for interim zoning, there is no setback, no side rear or front yard setbacks currently, as the code is in its present state.

Chairman Endo: Just a followup question: is there currently a bill to amend the interim zoning at the Council level? And if that passes, what would happen to this particular case?

Mr. Cerizo: The code is – was approved by the first reading just recently, and they expect to approve it on the second reading in the first – the second week of July. The impact on this application is, if the building permit is not issued before the effective date of the update, there could be – the requirement – there will be new requirements on your application. Currently, there's no setback requirements, but come the effective date, which is typically when the Mayor signs or automatically I believe it's ten days after the Council takes action, whichever is the more – whichever is first, if you don't have your permit by then, if you don't have your building permit, your SMA permit, all of the permits, you will be subject to the new rules unless the ordinance itself has

some provisions that would waive that requirement. Sometimes the ordinance has grandfathering clauses that may affect – usually it's for permits that's already issued, but sometimes they have – if the application is in – well, sometimes they have based on the applications also. So I'm not sure what the current draft shows.

Mr. Chairman: Thank you, Francis. Any further questions from Members? Otherwise, the Chair would urge someone to make a motion either to deny or approve.

Mr. Kamai: Mr. Chair, I'd like to make a motion that we approve this variance predicated that the applicant do what he told us at his house to cut back his deck the two feet setback, yeah, that you agreed to. That in the analysis, I agree with the staff's analysis – oh, I'm sorry, I disagree with the staff's analysis on number one regarding the practical difficulty or unnecessary hardship is self-imposed by the applicant in that although it might be self-imposed that living on a property for 20 years and seeing your beachfront continue to grow, it's hard to abide by current setbacks when the beach in front of you is changing every 20 years. As far as number two, I agree with the staff analysis that the shoreline area remains open unobstructed, and that the building meets the minimum public safety and welfare. As far as number three goes, I suspect that by granting this variance that the applicant has a few more hurdles to go through with DLNR, and that good luck with that. As far as number four, I'd have to go back to number three that the purpose is for public safety that the only harm or injury would be – there would be no public injury or harm. That the granting of this variance would fall directly on the applicant in terms of all the materials, regulating and control the design, construction, and the use of his property.

Mr. Cerizo: Excuse me, just for clarification, did the – does the motion include the standard conditions: hold harmless and–? Usually we have three conditions. Is that included in your motion?

Mr. Kamai: If you have me another minute, Francis, I'd have brought that up, brah. Yes, it does. Yes, it does, Francis. Thank you.

Chairman Endo: Okay, I'm looking up the standard conditions, so I can just read them off, so everybody's clear on what they are, but in the meantime, is there a second on the motion?

Mr. Stephen Castro, Sr.: Second.

Chairman Endo: Okay, it's been moved and seconded to grant the request for a variance subject to our standard conditions which require that the applicant indemnify and hold harmless the County from any liability arising out of the granting of this variance. And also requires that the applicant obtain insurance to protect the County from granting this variance from any liability arising out of the granting of this variance. And that that insurance is in the amount of a million dollars and should be in effect for the duration of the variance. So as long as you want the variance to be in effect, you would have to keep the insurance in effect. Okay. Discussion? Oh, okay. Okay. Sorry, the other standard provision of the condition is that the variance shall be applicable only to the request as approved by and as reflected in the record of the Board. Okay. Discussion? No? Does the applicant want to make any statement or anything?

Mr. Kimball: (Inaudible)

Chairman Endo: Sorry, you need to speak into the mic., so we can record everything you're saying.

Mr. Kimball: Just a concern about the million-dollar insurance waiver for the County. You know, what do I have to do about that? You know, what's required?

Chairman Endo: Okay.

Mr. Kimball: Sorry, I don't – you know, that's beyond my – I don't understand that.

Chairman Endo: I could either read the provision verbatim, or if the County wants to–

Mr. Kimball: I heard the provision, but if you could put it in laymen's terms? Tell me what I gotta do.

Chairman Endo: Okay. In laymen's terms, when it says you have to indemnify and hold harmless the County, that means by some bizarre set of circumstances someone is injured or for whatever reason wants to sue the County and say, County, you screwed up, you should not have given this guy a variance, by giving this variance, so and so got hurt, or something got damaged, so we're suing you, the County, in that case, we're going to turn around and say, oh, well, you guys have to indemnify us. So if we have to pay this other guy a million dollars, then actually you have to pay the County. You have to reimburse us for that million. That's the indemnity provision.

Mr. Kimball: Now, do I go to my policy guy, my insurance man, and–?

Chairman Endo: Oh, in terms of the practical thing, how to get this insurance?

Mr. Kimball: Yeah, yeah.

Chairman Endo: Yeah, you go to your homeowners–

Mr. Kimball: So he should know what it is, and all that, and put it on as a rider, or whatever it might be?

Chairman Endo: I would hope so, but I don't know, to tell you the truth. It's kind of an obscure kind of coverage. So I'm not sure if it would be covered by a typical homeowner's liability policy. It might. Or certain companies might have to give you a certain rider and charge an additional fee.

Mr. Kimball: So maybe if I make a copy of that wording in that provision, and I give it to him and say I need to do this, he'll probably know what needs to be done?

Chairman Endo: I would hope so, yeah, but actually, you raise a good question. I've just been asking staff myself early today. I thought that we should actually go out and talk to people who've actually obtained that type of insurance just so–

Mr. Kimball: Yeah, because I'd hate to be trying to build something and the County – the inspector comes over and says, where your insurance, and shuts me down, you know. I want to make sure I got everything right.

Chairman Endo: Okay. Francis?

Mr. Cerizo: The typical insurance is provided by your insurer. And there is – a lot of times there's an extra cost to it. And – but we're looking for a million-dollar – the limit is up to a million dollars. Your homeowners sometimes goes to a half a million dollars, but we're asking for an additional or one that would go up to a million dollars.

Mr. Kimball: (Inaudible)

Mr. Cerizo: We have no estimated cost on that insurance.

Chairman Endo: Member Kamai or Castro?

Mr. Castro: Is it mandatory for the million dollars or can it be—?

Chairman Endo: No, all of the conditions that we're imposing are at our discretion.

Mr. Castro: Okay, that was my question.

Chairman Endo: Yeah, these standard conditions are standard in the sense that they are standardized and written into our rules, but as stated in the rules, we may impose these conditions, okay, to prevent any detriment to the public interest, health, safety, convenience, or welfare; and to insure substantial compliance with representations. So we can impose these conditions, but we're not – we don't have to.

Mr. Castro: And just for your information, we had – one of our Members insured a million dollars insurance, and I believe he said it was like \$300 a year.

Chairman Endo: Yeah, I know Member Ajmani had mentioned at a recent meeting that he obtained umbrella coverage over his homeowners' policy which is excess protection of a million dollars and it costs him only several hundred dollars. The only question with that statement is, that's just excess coverage on the same risk that your underlying policy already covers. So it's not necessarily or exactly the same thing as saying, well, we want you to now protect the County in this special situation. So in other words, I'm saying it might not be exactly the same thing. So you can take that with a grain of salt.

Mr. Castro: Thank you.

Mr. Kimball: Okay, now, on this one more provision, everything is lining up right now. This hearing is one. It's gonna take me to the next step. It's gonna hopefully take me to the next step. It's hopefully I can get a building permit. Will I be able to work on the other two or three steps I need to get done while I'm getting this insurance, or I cannot move to my next step until I get proof that I have this insurance? Because I would hate to wanna go for my SMA and this is, you know, the Variance Committee, if you guys were to vote yes on this thing, if you voted yes, and you need to get the insurance, and, Ron, until you get that insurance, I cannot do the SMA. And then, you know, I running out of time here. This is going on one year already. And the other thing that real critical is my shoreline survey because the SMA people said the survey's good for one year. If I

don't get to the SMA people by October 2008, I gotta redo my whole shoreline survey and I really don't wanna do that.

Chairman Endo: Okay, for clarification, I'll read Subsection 3 of 12-801-76.1. It says that:

Copies of a hold harmless agreement and the policy naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety calendar days from the date of transmittal of the decision and order.

So you have a 90-day grace period in which to submit proof of that insurance. Francis?

Mr. Cerizo: One last item on the submittal or the conditions of the variance, all of the conditions have to be met before we issue our approval on the building permit. So it's the building permit that would be like the gate. In order to pass through the gate, you need to have the SMA, you have to have the shoreline, you have to get the building permits. And before the Planning Department signs off on the building permit portion, all the conditions of the variance, the conditions of the variance that may be approved today, if it is approved, would have to be met. So you'd have to have the insurance then by that time, and all of the documents that's required of this variance.

Mr. Kimball: Question for staff: I don't understand the need for putting on the County as an additional insured. You know, it brings on an added cost for me, and I don't understand the rationale for that. Can you guys explain that to me?

Mr. Cerizo: Maybe Corp. Counsel. That was a recommendation of previous Corp. Counsel. And maybe the current Corp. Counsel can explain the reason why we have the insurance provision in the hold harmless agreement.

Mr. James Giroux: I believe in the past we've run into situations where the County has issued permits where there were third party injured, I guess, and especially arising out of our SMA permits where there's massive grading, and that grading can become detrimental to the near shore waters and cause some massive damages. And so what happened was the County was sued in issuing those permits. And what we needed was for the owner to actually come in and take some of that responsibility off of the County because it was their activity, but it was allowed because of our permit. And in that situation, the County wasn't defended, and there wasn't adequate backing from the owner to actually rectify the situation in the County side. So this indemnity and insurance is an attempt to limit liability to the County where there's sensitive situations where there is a possibility of a third party injured. In the past because that scenario came out of SMA, we did put in a clause that says that the Board can reduce that coverage as it seems fit because in the variance context, it kind of leads to some absurd results where somebody came in for a two-inch variance on a height, and it really didn't amount to – seem in our eyes of real liability. I mean, if somebody climbed to the top of roof, and fell broke their neck, could they blame it on the two-inch variance? You know, so that kind of stuff where the Board can take into account, what does it see as possible liability to the County? And that million dollars is just our standard language. And the Board does have the ability to discuss, you know, what is the possibility of third party injury, and to adjust that coverage as it sees fit.

Chairman Endo: Mr. Shefte?

Mr. James Shefte: Mr. Chair, excuse me, in considering the amount of the insurance, I don't – I believe in this case, the million dollars is excessive although I can see some potential for liability, and the fact that the applicant, you know – there's some great community service, and working with young kids in, I guess, not canoeing, but some sort of activity. And I would suggest that we consider an amendment that would reduce it to \$500,000.

Chairman Endo: Are you making a motion to amend to that effect?

Mr. Shefte: Yes, I am.

Chairman Endo: Okay. Is there a second?

Ms. Sandra Duvauchelle: I'll second.

Chairman Endo: Okay. It's been moved and seconded to amend the main motion to reduce the insurance requirement from one million dollars to \$500,000. Discussion? Hearing none, all those in favor of the motion to amend, please say aye. Opposed, please say no.

It was moved by Mr. Shefte, seconded by Ms. Duvauchelle, then

VOTED: To Reduce the Insurance Requirement from One Million Dollars to \$500,000.

**(Assenting: J. Shefte, S. Duvauchelle, W. Kamai, S. Castro, R. Ball.)
(Excused: H. Ajmani, K. Tanaka)**

Chairman Endo: **Okay, the motion is carried, and the main motion is amended, and the insurance requirement is now \$500,000.** So back to the main motion. Further discussion? The applicant wants to say anything? No? I'm just giving you the opportunity, you know. Okay. Okay, if there's no further discussion, all those in favor of the main motion to grant the variance with the conditions as stated previously, please say aye. Opposed, please say no.

It was moved by Mr. Kamai, seconded by Mr. Castro, then

VOTED: To Grant the Variance With the Conditions as Stated Previously.

**(Assenting: W. Kamai, S. Castro, J. Shefte, S. Duvauchelle, R. Ball.)
(Excused: H. Ajmani, K. Tanaka)**

Chairman Endo: **Okay, the motion is carried, and your variance is granted with the conditions as stated.** Thank you. We'll now move on to our next item, which is the approval of the June 10, 2009 meeting minutes.

C. APPROVAL OF THE JUNE 10, 2009 MEETING MINUTES

Chairman Endo: If no one has any discussion, can I have a motion to approve?

Ms. Rachel Ball Phillips: Sorry, Randy, I have a correction on page 11. The voting record for the two items should be changed from "dissenting" votes to "excused" on those two items.

Chairman Endo: Yes, I see that. That's actually in two spots on page 11, Right, there are two votes?

Ms. Phillips: Yes, that's correct.

Chairman Endo: Okay. Anything else? If not, the Chair would recommend a motion to approve with that correction.

Ms. Phillips: So moved.

Chairman Endo: Okay. Is there a second?

Mr. Castro: Second.

Chairman Endo: Okay, it's been moved and seconded to approve the minutes with the corrections previously noted. Discussion? Hearing none, all those in favor, please say aye. Opposed, please say no.

It was moved by Ms. Phillips, seconded by Mr. Castro, then

VOTED: To Approve the Minutes With the Corrections Previously Noted.

**(Assenting: R. Ball, S. Castro, W. Kamai, J. Shefte, S. Duvauchelle.)
(Excused: H. Ajmani, K. Tanaka)**

Chairman Endo: **Motion is carried and the minutes are approved with the amendment as stated.**

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chairman Endo: Does the Planning Department have a status update on the BVA's contested cases?

Mr. Cerizo: We have no status update.

Chairman Endo: Okay. Thank you.

E. NEXT MEETING DATE: July 9, 2009

Chairman Endo: Our next meeting date is July 9, 2009. Is there any further business of the Board? Hearing none, the meeting is adjourned. Thank you.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:59 a.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Randall Endo, Chairman
James Shefte
Sandra Duvauchelle
William Kamai
Stephen Castro, Sr.
Rachel Ball Phillips

Members Excused:

Kevin Tanaka, Vice-Chairman
Harjinder Ajmani

Others:

Francis Cerizo, Staff Planner, Planning Department
Carolyn Cortez, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of Corporation Counsel
Jarvis Chun, Supervising Land Use and Building Plans Examiner, Development Services Administration, Department of Public Works