

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
OCTOBER 14, 2010**

(Approved: October 29, 2010)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Pro Tem William Kamai at approximately, 10:40 a.m., Thursday, October 14, 2010, at Hale Mahaolu, Hale Kupuna O Lanai Community Hall, 1144 Ilima Avenue, Lanai, Hawaii.

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

Chairman William Kamai: This meeting for the Board of Variances and Appeals for October 14th is now in session. Let the record reflect that we do have a quorum with Members Phillips, Shimabuku, Castro, Santiago, and Kamai present.

At this time, I wanna tell the public if anybody hasn't signed up to testify, you can do so at this time. We have two agenda items today. The Chair is gonna allow more than three minutes. Hopefully, you can get your point across to us and we can decide based on your testimony. But the Chair is gonna do the first item first, and those who signed up for the second item on our agenda can testify at that time. Okay? First item on the agenda, Staff?

B. PUBLIC HEARING - VARIANCES

1. **LORI ANN NAOMI OHASHI of NO KA 'OI GRINDZ requesting a variance from Maui County Code, §§19.36A.010, 19.36A.070 and 19.36A.080 to delete the requirement of providing seven (7) paved and appropriately landscaped parking stalls for a proposed restaurant (No Ka 'Oi Grindz) to be located at 335 Ninth Street, Lanai City, Lanai, Hawaii; TMK:(2) 4-9-006:015 (BVAV 20100016).**

Ms. Kapua`ala read the agenda item into the record.

Chairman Kamai: Okay, at this time, we're gonna open up for public testimony. First one signed up to testify is Gerald Rabaino. Gerald, please have a seat.

Mr. Gerald G. Rabaino: Thanks for coming, first of all, to Lanai.

Chairman Kamai: Please state your name for the record before you begin.

Mr. Rabaino: Gerald G. Rabaino, Lanai resident. Okay. Thank you for coming to Lanai. I have one testimony here from John Ornellas. I'm gonna read his one first before I give mine, okay?

Chair of Maui County Board of Variances and Appeals. Support for Lori Ann Naomi Ohashi for No Ka `Oi Grindz requesting a parking variance. Aloha. Please accept my testimony in support of this parking variance by Lori Ann Naomi Ohashi for No

Ka`Oi Grindz. Naomi and her husband have been lifelong residents of Lanai. She has been making ono food for many years. Lanaians have flocked to buy her food where ever and whenever she sells her products. It was only a matter of time before she would seek a storefront and establish a business. For over a year, she has ran into so many obstacles preventing her from her dream. Parking is not an issue on Ninth Street, and there is room for many vehicles in that general area. I feel that most residents of Lanai feel the same as I do and support the creation of No Ka`Oi Grindz and support the parking variance. Mahalo, John Ornellas.

Chairman Kamai: Is that part of your testimony as well?

Mr. Rabaino: Yeah.

Chairman Kamai: Any questions for the testifier? Hearing none, thank you.

Mr. Rabaino: Okay. Now for my part– Oh, you meant this together, Mr. Kamai?

Chairman Kamai: That's what I just asked.

Mr. Rabaino: Oh, sorry.

Chairman Kamai: That's okay.

Mr. Rabaino: Okay, well, I'm in favor with her getting her business started, too, and the parking variance, 'cause we look at other areas across by Richard's side, you know, look like they didn't need a parking variance. So it's only fair that she gets her established, yeah? Thank you.

Chairman Kamai: Members, any questions for the testifier? Hearing none, thank you, Gerry.

Mr. Rabaino: Thank you, Chair. And I'll submit this. Okay? Mahalo.

Chairman Kamai: Thank you. Up next we have Alberta deJetley.

Ms. Alberta deJetley: Good morning. My name is Alberta deJetley. Thank you very much for coming to Lanai. I am appearing to you to ask you to grant Naomi her variance for her parking. Small businesses are the lifeblood now of our community. And it's really important that we do everything possible to support them. When people come to Lanai, they think that it's only Castle & Cooke and Four Seasons Resort. Small businesses like Naomi's are really, really important to our community.

In my newspaper, *Lanai Today*, which I started in December of last year, this is a list of all of – many, not all of them, but many of the small businesses that we have on Lanai. We really need to have the County help us do everything possible to support our small businesses on this island. So I hope that you will grant Naomi and her husband their variance request. Thank you.

Chairman Kamai: Members, any questions for the testifier? Hearing none, thank you.

Ms. deJetley: Thank you.

Chairman Kamai: Up next to testify is Onaona Maly.

Ms. Onaona Maly: Aloha. My name is Onaona Maly. And mahalo to you guys for coming to Lanai. I'm just gonna read my testimony to you folks. It says:

Aloha kakou. I humbly come before you to request a variance that is fitting with the historic setting of Lanai City allowing No Ka `O'i Grindz Lanai, Naomi Ohashi's small restaurant, to be developed without the burden of a parking lot as now being required. Lanai City is not a big town. It has a gentle flow of vehicular traffic during the day. And the requirement of parking stalls other than what exists is burden beyond our ability to develop. Thank you for your consideration, and for coming to Lanai, and for helping us develop small community-based, economic opportunities in these difficult times.

In my manao, I feel it is healthy and good for our community to have more food choices, and more so especially, if it is offered by Lanai ohana who have generational ties to our `aina. I personally – for me, personally, I admire Naomi for taking on this large responsibility of running a small business especially during these hard economic times.

I worked temporarily for nearly a year as the Lanai Community Resource Coordinator for the Office of Hawaiian Affairs, and many of our meetings and functions were catered by Naomi, who always followed through with all our requests from communication, tasty dishes, and plenty food. We never, ever ran out.

Most recently, this past Sunday, 10/10/10, I attended a wedding reception catered by Naomi Ohashi. Not only was her food tasty and delicious as always, the presentation of each dish was amazing. The cold food was kept cold; the hot food kept hot. Every dish was perfectly seasoned. And more so what also impressed me is this reception was held at a location with no electricity. Everything was fully prepared and organized. On a side note for me, personally, the food was so ono, for the first time ever in my life, I ate everything on the plate, didn't go back for more. I was so full, maana, and satisfied. It goes to show – I didn't even go back for – go for any desserts. I usually like a dessert, but her food was so ono, I was maana, and that was it. It was just perfect.

Our strength is in unity. I ka lokahi, ko kakou ola ai. Don't make this opportunity unreasonable. We are not like other islands. Lanai is a unique place like no other in the world. Please allow Naomi, who is a native Hawaiian with generational ties to Lanai, this opportunity to run No Ka `O'i Grindz Lanai in her own hometown. Mahalo.

Chairman Kamai: Members, any questions for the testifier?

Mr. Ray Shimabuku: Making me hungry.

Ms. Maly: No Ka `O'i Grindz Lanai. Mahalo.

Chairman Kamai: Next we have Royalene Fernandez.

Ms. Royalene Fernandez: Aloha and welcome to Lanai. My name is Royalene Mamo Fernandez. I lived in Lanai all my life. And I'm so proud of Naomi as a Hawaiian to mortgage off her house, borrow money from her father, to try and get her own business. And I'm hoping that you let her do her business because her food is so delicious. I'm a cook myself and I love her food. It's very delicious. She makes good Hawaiian food, Filipino food, Japanese food. She's a good cook. And Lanai deserves to have a good restaurant because a lot of places are not like Naomi's, the way she cooks. And the way she greets people, she makes you feel aloha. Welcome to this island, you know. So give her a chance. She spent so much money trying to build a business. Let her have her business. I just hope that you have the love in your heart for us Hawaiians to start a business, you know. You guys— All the Haoles coming in taking over Lanai. Where's the Hawaiians? Let her have her business. That's all I'm asking you. Give her a chance. Thank you.

Chairman Kamai: Members, any questions for the testifier? Hearing none, thank you. Signed up next we have Fairfax Reilly.

Mr. Fairfax "Pat" Reilly: Aloha. My name is – actually, I go by "Pat," but Fairfax "Pat" Reilly of 468 Ahakea Street. Thirty-two-year resident of Lanai and recent retiree of Lanai High School as a school counselor.

I appreciate your coming to Lanai, and I appreciate the decision you have to make. I sat on the Planning Commission for about five years. I understand the code. I read the code. You may be aware you've been here before on several variance requests a number of years ago. My own feeling is I strongly support this variance for Ms. Ohashi and her family. I believe— You may be aware that at one point, the corporation, Castle & Cooke, was talking about creating a special area for Lanai City. I think we're in the process of trying to keep Lanai, Lanai. And I understand the requirements of code and what the purposes that is, but that's why we have a Board of Variances. And I would ask your support for her request for a variance.

I have participated in a class with her. I'm an old retiree. I went to a business class sponsored by MEO, the Core Four. This woman is very organized. This woman has a business plan. This woman has worked her guts out to prepare her business plan. And we're hurting on Lanai, economically. My heart's in this community and anything we can do to support small business on this island. And I have participated in her catered services. If I had to put five stars on anybody, I would put five stars on this woman. Thank you.

Chairman Kamai: Thank you, Mr. Reilly. Members, any questions for the testifier? Hearing none, thank you. Up next we have Albert Morita.

Mr. Albert Morita: Aloha. Good morning. And thank you for coming to Lanai to consider this request for a variance from the Maui County Code. I'm fully in support of—

Chairman Kamai: Please state your name.

Mr. Morita: Albert Morita.

Chairman Kamai: Thank you.

Mr. Morita: I'm fully in support of this request for a variance. I believe that the parking requirement is – will be quite a burden on Naomi, in fact, maybe a deal-breaker for her. She has come a long way in her pursuit of opening her business. She's worked hard. She's tried to comply with every government requirement and requirement of the landlord. It's been quite a journey for her and her family. And I understand this is probably the last major hurdle that she has to jump over in order to open her business. Much of my feelings have been expressed by previous speakers. And so again, I hope that you review this request very favorably and allow her to proceed. Thank you.

Chairman Kamai: Thank you. Members, any questions for the testifier? Hearing none, thank you, Mr. Morita. Up next we have Sol Kahoohalahala.

Mr. Sol Kahoohalahala: Aloha, Board Members. My name is Sol Kahoohalahala. I'm here testifying on my own behalf as a Lanai resident. I wanna support Naomi's variance. One of the things that is very important for us here on Lanai is when you look at Lanai City, the core, we have planned for many years in looking at Lanai retaining its country town kind of architecture and ambience. And I think what the code will require her is not only for something that is not conducive to Lanai City, but it's almost urbanizing Lanai City. So to have her be required to put in a parking lot in the core of Lanai City would be totally out of keeping with the business town country planning that we have looked forward for in Lanai's long term future. So I think that if you walked around Lanai City, and you saw some of the other businesses, and you see the conditions of Lanai City, Naomi is not making any change to Lanai City that's going to be out of character. But if she were required to build a seven – parking lot, you know, that would definitely be changing the character of Lanai City. So that's one of the reasons I would ask that you give her consideration.

Secondly, Naomi, in our community, she has gained the notoriety. And you heard from the previous testifiers that at almost every event held in Lanai City, Naomi is there. And at every event that Naomi is at, you will know which is Lanai's food stand. Why? Because she'll have the longest line throughout the entirety of the event. Okay? So people would stand in line for hours just to get a taste of her food. She has worked hard. And she has gained, I think, that kind of respect in Lanai City. And I believe that this requirement by the Planning would be a burden placed upon her.

The other part is Lanai is waning in terms of jobs. And here's a person who's willing to take a step forward in the most difficult time, economically, for the Island of Lanai to try and give it a go, and try to impact – in fact, while possibly, allow others to have some kind of employment within her business. And it has taken her this long just to establish a business in Lanai City of which now we are putting her through this next loop before the Board of Variances and Appeals at additional cost just to have this application reviewed by you. So I think that if you really take a look at what you're dealing with here in Lanai City, you have to agree that it's almost a no-brainer for us to support a business, a Hawaiian, a respected cook and chef within our community, and one who is going to simply maintain her business within the core of Lanai City's business town environment, and atmosphere, and our vision for Lanai City. So for all those reasons, I would ask that you give her what she deserves, and give her the variance to this requirement. So thank you.

Chairman Kamai: Thank you. Members, any questions for the testifier? Hearing none, thank you. Up next we have Tyson Toyama.

Mr. Tyson Toyama: Hello. My name is Tyson Toyama. I'm a Senior Engineer with Okahara and Associates. And I am in strong support of this variance. We were retained by Ms. Ohashi to prepare building permit plans to renovate an existing commercial building into a family-owned restaurant. And this project began almost a year ago. And one of the last obstacles standing in our way is the issue with parking.

According to the Maui County Code, the restaurant is gonna require seven parking – a parking lot with seven stalls, and two trees and hedges. This construction of a new parking lot poses a hardship for Ms. Ohashi. And we submitted a variance pleading our case. We understand that the Planning Department is recommending against the variance, and we respectfully disagree with the findings. We believe that the historic nature of this town creates an exceptional and unique condition that places an unfair burden on Ms. Ohashi.

The proposed restaurant will be located within the Lanai City country town business district or B-CT for short. As you are all well aware, there are special rules related to the design and construction within the B-CT limits. Among the rules are the Department of Planning's Chapter 405 and the Maui County Code, Chapter 19.15. If I may paraphrase both documents? The documents state that design and construction within the B-CT shall follow the recommendations of the Lanai City Community Design Guidelines. Furthermore, it says in case of a conflict between the guidelines and the Maui County Code, it says that the guidelines shall prevail except with regard to public health and safety.

One of the principles of the guidelines is to establish design standards for the commercial civil center within the city. It's basically intended to protect and preserve the historic character of the town. One of the things it mentions is that construction of off-street parking, which we are requesting a variance for, would destroy the scale and landscaped areas of the city, which is what we're supposed to protect.

In summary, the construction of a parking lot would destroy what the guidelines were developed to protect: the historic character of the town. Maui County Code, Chapter 19.15 allows the guidelines to trump the requirements of other Maui County codes, including the parking requirement. And there is precedence for granting of a parking waiver, and we humbly ask you to extend the same privilege to us.

This morning when I was flying over on Island Air, I picked up one of their magazines. And in it, there's this nice article about Lanai City. And it says that the city is – has been nominated to the State Register of Historic Places. And it is the last intact plantation town in Hawaii. And I truly believe that the construction of a parking lot would serve to degrade the look and feel of the town. Thank you.

Chairman Kamai: Members, any questions for the testifier? Mr. Toyama, what is your title again? Senior—?

Mr. Toyama: Mechanical engineer.

Chairman Kamai: For—?

Mr. Toyama: Okahara and Associates.

Chairman Kamai: Thank you. Okay, the last testifier to sign up is Lori Ann Ohashi.

Ms. Lori Ann Naomi Ohashi: Is it okay if I stand?

Chairman Kamai: It's up to you. You can stand.

Ms. Ohashi: This comes from the heart:

Aloha and welcome, Board of Variances. My name is Lori Ann Naomi Ohashi. I am the owner of No Ka `O'i Grindz Lanai. I am married to Jason Ohashi who is a lifelong resident of Lanai. And we have four children; one granddaughter. I'm here today in hopes of having my variance request granted.

It has been a lifelong dream in owning and operating my own restaurant. My husband and I have waited ten years for this opportunity. The dream becoming a reality is finally here, but the parking requirements are hindering the start of our business. We have invested our entire life savings to this business with nothing more to spare. Leaving my job to pursue my new business, along with my husband's hours being cut to only 20 hours a week, has put our family, our entire family, in deep financial hardship. With great anticipation of the restaurant opening in January of 2010, in all honesty, we did not expect to have parking issues delay the start of the business. Being that we have done everything done by the book and have invested a lot of time, money, sweat and even tears only to be held back from opening has not only caused frustration, but also the feeling of being singled out as the only business required to provide parking. Denial of my variance request would threaten the business into bankruptcy thus resulting in the closure of the restaurant before the doors can even be opened to the community that has been very supportive to me and my husband.

In closure, I would like to thank the Board of Variances for coming here today and allowing me to present my variance in hopes of making my dream a true reality. Mahalo.

And I'd just like to thank everybody else here in support of me. Mahalo.

Chairman Kamai: Members, any questions for the testifier? Seeing none, could the applicant please have a seat? At this time, the applicant has the right to waive the reading of the recommendations from the County. Do you wish to exercise that right?

Ms. Ohashi: No, no.

Chairman Kamai: No to the reading of the recommendation?

Ms. Ohashi: No, you – read it. You can go forward with reading, yeah.

Ms. Kapua`ala: You want me to read the recommendation into the record?

Ms. Ohashi: Yeah.

Ms. Kapua`ala: Based on its analysis, the Department of Planning finds that the applicant has not demonstrated that there is no exceptional, unique, or unusual physical or geographical condition existing on the property, which is not generally prevalent in the neighborhood or surrounding area. The surrounding neighborhood all share the same physical and geographical layout as the subject property. And that the applicant has not identified a condition which creates a hardship. Therefore, the applicant cannot provide justification that the conditions created were not the result of previous actions by the applicant.

Based on the foregoing findings of fact and conclusions of law, the applicant has not met all of the requirements for the granting of the subject variance. Therefore, the staff recommends denial of the subject variance.

In consideration of the foregoing, the Department recommends that the Board of Variances and Appeals adopt the Department's staff and recommendation reports prepared for this meeting, and authorize the Planning Director to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Board of Variances and Appeals.

Chairman Kamai: Thank you. Does the applicant have any presentation you wanna make before the Board? Does the owner want to make a presentation before the Board?

Mr. Kris Baptist: My name is Kris Baptist. I'm the Senior Project Coordinator for Castle & Cooke. And I guess on behalf of the company, we're just here to, you know, provide testimony that we are in favor of Naomi Ohashi. She's been through a great deal. And that we'd like to see her variance get approved and moved forward. We feel that the parking requirements for Lanai City are too strict and that the – I guess, the Maui County are trying to enforce Maui regulations on Lanai City is not what, as you've heard today, in favor of the community. We look to have, I guess, preserve the nature and the character of this town by preserving what's already here. By enforcing this regulation and having small business owners having to put in parking lots would really change the character of this town, and we're not in favor of that. We'd like to see Naomi's variance go through.

Chairman Kamai: Members, any questions?

Mr. Bart Santiago: I have a question. Has there been a long term lease that's been signed into? Or is that – will that trigger once the construction of the renovations proceed?

Mr. Baptist: I'm not sure what the terms of her lease are. I think–

Ms. Ohashi: We have a long term lease that's signed.

Mr. Santiago: So you had to pay installments when you tried to open in January of 2010?

Ms. Ohashi: Well, I paid a deposit, but because of what's been happening with the holdup, the Company is allowing me to wait until I open my doors.

Chairman Kamai: At this time, the Chair would like to make note of – enter into evidence, the application from the applicant. Also, to note that we did do a site visit today on behalf of the applicant's – her application. Members, any questions for the owner or the applicant? At this time, the Chair would open it up for discussion.

Mr. Santiago: I do have one more question. How long have you been planning for this business?

Ms. Ohashi: Like I stated, for the past ten years. And up to about two years ago, I've been granted lease space, but it took a while to get together with Tyson and tie everything out.

Mr. Santiago: So the permit process started a year ago or—?

Mr. Toyama: The permit process, I wanna say it was last winter when we started it. You know one of the things that Naomi told me when she approached us for help was she said she wanted to do everything by the book, and so we have. This is the latest issue to come up, but I believe that the government has requested a lot out of Naomi, more than anyone that's been required of other businesses. And it's very discouraging that somebody who's doing everything by the book, everything— And we still believe— I disagree with the Planning Department's findings. And I think that the code allows for – will allow for this variance, and we're asking for your help in this.

Chairman Kamai: Members, any more questions?

Mr. Shimabuku: I have no questions, Mr. Chair. Being that Lanai is a unique place to be; therefore, I'd like to make a motion to grant the variance for this applicant.

Ms. Rachel Ball Phillips: Second.

Chairman Kamai: Okay. It's been moved and seconded that this variance be granted. Member Shimabuku, would you like to enter the applicant's reasons for the variance into the record?

Mr. Shimabuku: Yes, Mr. Chair.

Chairman Kamai: Scratch that. Members, any discussion on the motion? Mr. Shimabuku, as part of the discussion, would you like to enter her reasons for granting this variance?

Mr. Shimabuku: Like I said, being on Lanai, there is a uniqueness to this island—physical, geographical conditions. That's the reason why I'd like to make a motion to grant the variance with the standard conditions.

Chairman Kamai: Okay.

Mr. James Giroux: The other two standards, do you have any other comments on the other two

standards? You commented on Standard no. 1. Is there any comment on Standard no. 2 and Standard no. 3? Standard no. 2 is that strict compliance with the applicable provisions of this title would prevent a reasonable use of the subject property.

Chairman Kamai: Or you can adopt the applicant's—?

Mr. Giroux: Yeah, you can refer to the application that's been entered into evidence.

Chairman Kamai: For Criteria no. 2 and 3?

Mr. Shimabuku: Yeah.

Chairman Kamai: Also, there's a standard hold harmless agreement. At this time, the Chair would entertain an amendment to the motion regarding the hold harmless agreement and the insurance dollar value at this time as an amendment to the main motion. Is there a discussion at this time from amongst the Members?

Mr. Stephen Castro, Sr.: What is the normal . . . (inaudible) . . . ?

Mr. Giroux: The standard in your rules now is a million-dollar coverage. However, the Board can waive it, if it feels or deems fit that it would not be a situation that would expose the County to liability.

Mr. Castro: I don't think that this . . . (inaudible) . . . for the County based on the other properties that are in close proximity that are in the same situation. Therefore, I would recommend to not have the hold harmless in the record.

Mr. Santiago: I have a question. Those are two items: the insurance requirement and a hold harmless document. I think a hold harmless document would be something that we should consider; not so much the insurance requirement, but I think a hold harmless would be—

Mr. Giroux: That is correct. The normal condition would create an indemnity, which would be a hold harmless and defend the County in case of a lawsuit. The insurance is just to cover the defense and damages. So it is two separate issues.

Mr. Castro: Then what would be a reasonable amount?

Mr. Giroux: Well, like I said, you can — as far as your analysis, you can waive it altogether, or you can look at what is reasonable on— You could ask what kind of insurance the business carries, and match that with the normal business insurance that would be carried to operate such an establishment.

Mr. Castro: I would ask the applicant then, what type of insurance do you have, currently?

Ms. Ohashi: Right now, general liability.

Mr. Santiago: At what coverage?

Ms. Ohashi: Two million.

Mr. Santiago: Yeah, I think that's fine, personally.

Chairman Kamai: So I would like to entertain a motion – a second to Mr. Castro's amendment to the main motion.

Mr. Giroux: Yeah, and is he addressing the insurance amount? Restate the . . . (inaudible) . . .

Chairman Kamai: Just reiterating Member Castro's amendment to the main motion to read that the hold harmless agreement be applied in the dollar amount of two million dollars currently carried in general liability by the applicant.

Mr. Castro: Correct.

Chairman Kamai: Is there a second?

Mr. Francis Cerizo: One moment. The minimum requirement is one million dollars. We don't need two million.

Mr. Santiago: So she exceeds it. She insures it herself.

Mr. Cerizo: Yeah, so do you wanna raise it from a million—?

Mr. Castro: No, no, no, no. Her coverage is sufficient.

Ms. Kapua`ala: That's not a condition of the variance. You're stating for the record that her coverage is sufficient and only a hold harmless will be required.

Mr. Castro: Correct. Yes.

Ms. Kapua`ala: Thank you.

Chairman Kamai: Okay, is there a second to Mr. Castro's amendment to the main motion?

Mr. Santiago: Second.

Chairman Kamai: Okay, it's been moved and seconded that there be a hold harmless agreement in place currently under coverage by the applicant. So we would vote on the amendment first. All those in favor of that amendment to the main motion by Member Castro, all those in favor, say aye. The Chair votes aye.

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

VOTED: That there be a hold harmless agreement in place currently under coverage by the applicant.

(Assenting: S. Castro, B. Santiago, R. Phillips, R. Shimabuku, W. Kamai.)
(Excused: R. Endo, K. Tanaka, B. Vadla, R. Tanner.)

Chairman Kamai: **So that's five-zero in favor of the amendment to Mr. Shimabuku's main motion.** At this time, Mr. Shimabuku's motion to approve this variance request citing the applicant's reasons for meeting the three criteria has been seconded by Ms. Phillips. All those in favor of granting the motion, signify by saying aye. The Chair votes aye.

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

VOTED: To approve this variance request citing the applicant's reasons for meeting the three criteria.

(Assenting: R. Shimabuku, R. Phillips, S. Castro, B. Santiago, W. Kamai.)
(Excused: R. Endo, K. Tanaka, B. Vadla, R. Tanner.)

Chairman Kamai: **Your variance is granted.** Okay, Item B, no. 2, Staff?

2. **STEVE and TINA STROMBECK requesting a variance from Maui County Code, §19.70.020(B)(5) to allow the construction of a single-family dwelling with the total height of 43 feet-6 inches, which includes up to 21 feet of fill, thereby exceeding the 30-foot height limit by 13 feet-6 inches for property located at 525 Hulopoe Drive, Manele, Lanai, Hawaii; TMK: (2) 4-9-023:006 (BVAV 20100017).**

Ms. Kapua`ala read the agenda item into the record.

Chairman Kamai: Okay, there's two members from the public that wish to testify on this item. The Chair will allow more than three minutes. First one up to testify is Caron Green.

Ms. Caron Green: Good morning and thank you for coming. My name is Caron Green and I am one of the full-time residents down at Manele. And I understand that this morning you went down to see the site that we're talking about. Our house is on Lot 85, which is just below the proposed building site.

We purchased that lot in 2004. At that time I believe Castle & Cooke had already built the pads, but they had to take them all down and rebuild them. The area, as you probably could tell, drops off pretty precipitously. So unlike our lot which had a ten-foot drop from top to bottom, it was pretty easy to stay within the variances that the County allows. But when you have a lot like they do where the natural grade is dropping off so precipitously and then the pad has been constructed, it's pretty difficult to stay within the variance.

From my perspective, there are three ways to look at the property from down at our house. And this morning before I left, I looked at the two poles that are standing up there to see what the view

would be from down below. And quite frankly, I mean, we can see the Lopez house up above, and I have no objection whatsoever to seeing a roof line at the height— Excuse me, that last testimony was so emotional, I got emotional. And then there's the curb from the curbside from actually on Hulopoe Drive. And I believe you've all seen the elevations that they have. I feel that it's attractive from what we'll be seeing most often is from the road. And then I think lastly, there's only one home that potentially would be affected from a view plain and that's the Lopez's up above. And it is my understanding that they have no problem. Their view is primarily looking down towards the bay over at Maui and everything, not to the west where this house would be. So from all view plains, I see no objection to accepting this variance.

Chairman Kamai: Members, any questions for the testifier?

Mr. Shimabuku: You live on the bottom portion? On the bottom side of the property?

Ms. Green: I do. Yes.

Mr. Shimabuku: Looking up then, you would you see their house?

Ms. Green: Yes.

Mr. Castro: I have one question.

Chairman Kamai: Member Castro?

Mr. Castro: Have you spoken to the Lopez people above?

Ms. Green: No, indirectly.

Mr. Castro: Indirectly. Are they here today?

Ms. Green: My understanding was that they were submitting written testimony.

Chairman Kamai: Any more questions for the testifier?

Ms. Green: I will also throw out that these people will be a wonderful addition to the island. They have a great sense of humor and we all need that.

Chairman Kamai: Thank you. Hearing none, thank you, Ms. Green. The next one signed up is Sol Kahoohalahala.

Mr. Kahoohalahala: Aloha, Board Members. Sol Kahoohalahala testifying as a Lanai resident. One of the things that the Manele Project District, when it was first conceived, was really an experiment in how development would be done within a project district. And that concept was created here on Lanai for the County of Maui. And when that was put in place, one of the things that we had talked about very early on during the development of the Manele area where grading was concerned, we wanted to maintain the viewing plains from the highest part of the properties looking down toward the ocean, and that there would never be construction that impedes the viewing plain from the

highest part. And for my only real concern at this point when we're looking at variances to height, what we are in fact possibly going to be entering into a project district, are going to be these variations in height now that might have an impact on what our intent was for this area to be able to look down from mauka to makai. And for us, that whole area is a real beautiful place. What can you say? The view plain is looking down into Hulopoe, the bay, looking at the peninsula, looking at Puupehe, and all those things that it would be a shame for us to come to these times many years after the project district concept is put in place and we're now looking at making changes in height.

And I don't know who the applicants are, per se, but my only concern is that the applicants' request to change their height requirement is in my view going to make changes to the project district in itself. So I would ask you to look carefully at this. And just keep the integrity of what the project district was intended for in the development from the moment it was conceived into the future. So it is for those reasons that I am here to support your position to deny the variance of this height increase.

Chairman Kamai: Members, any questions for the testifier? I have a question. Sol, have you witnessed any changes since the last flood that they had here?

Mr. Kahoohalahala: Because one of the major floods that we had at the Manele area, which was considered to be a hundred-year storm, it is the worst that I have ever seen the bay in my entire life. And part of it was because of all the changes to the terrain, the hardening of surfaces, inadequate drainages. And then the – you know, as you're driving into – I'm not sure how this all came about, but the grading that has taken place now builds mountains. And I had originally thought that in our support of the project district that we would be carving out from the slope so that houses would be built into the slope. But if you have gone there recently, you'll see now that the grading is such that the building pads that are now on the grade, so on the slope. So to build a home there now, you're gonna be placing it on a mountain, in my view. You build a mountain so you can build a house on a flat slab. And then that now takes away what the original slope and the view from mauka to makai. All of those changes are in part responsible for some of the impacts that this pristine bay – And remember now, Manele and Hulopoe is a conservation district that was created in 1978, and which was one of the most pristine bays in the State of Hawaii. And as a result of the changes to the land use, this bay was totally silted and was just mud, chocolate mud, and one that I had never, ever, seen in my whole life living on Lanai. But it just speaks to the fact that we are making changes to the land side of it. And so when you're changing the grading, and you're now adding land or soil to that to build mountains of pads, those are creating some of the instability of the area itself. And I just would hope that we would keep the integrity of the project district. And we allow for people that are going to live there to have an opportunity to build there, but when we're starting now to change the character of the place by allowing variances to height now – And allowing one means to me that someone else will come behind and say a variance was given to one other lot perhaps in the project district, and so therefore – And then what we end up having is various heights perhaps, throughout an area that we have always hoped would be a viewing plain from mauka to makai. And that's what I'm concerned with.

Chairman Kamai: Members, any questions for the testifier?

Mr. Shimabuku: Mr. Chair, I have a question.

Chairman Kamai: Member Shimabuku?

Mr. Shimabuku: In regards to the so-called hundred-year storm that was I believe in 2002, you mentioned that the bay was pretty much silt from the runoff. I'm sure there were other heavy rains after 2002. Does the bay come pretty brown as far as the runoff is concerned?

Mr. Kahoohalahala: Well, depending on the surf conditions. We're on the south side of Lanai. So when you get a good south swell coming in, that's the only time when the turbidity changes within the bay. But since that hundred-year storm, you know, all of the drainage structures that was put in place, we know that they all failed during that storm. And so since then, I believe Castle & Cooke has now tried to modify their drainage in making sure that their silt basins within those Kahawai areas are now being able to take a larger volume of water. So I don't know that we've had a major runoff issue, but nonetheless, whatever silt has already been dropped into the bay is still going to be there. It's just a matter of the current and the wave action that come into the bay that will change the turbidity of the bay once in a while.

Mr. Shimabuku: So other than that hundred-year storm in 2002, the bay pretty much didn't yet get as silty as it was back then?

Mr. Kahoohalahala: Because they changed their drains. They changed their capacity for runoff. The silt basins were all changed because the original design totally failed.

Chairman Kamai: Members, any more questions for the testifier? Hearing none, thank you. At this time, the Chair would— Is there anybody in the public wish to testify on this agenda item? Please state your name for the record.

Mr. Clay Rumbaoa: Good morning and welcome to Lanai, Chairman Kamai and Board Members. My name is Clay Rumbaoa. I'm the Director of Engineering for Castle & Cooke here on Lanai. We're also the lot owner for Lot 77. I'd like to present some of the key issues that was presented to you this morning at our site tour.

No. 1, the road, Hulopoe Drive, being on natural grade and approximately, 20 feet higher to the level of building area would entail a meandering with a multiple switchback driveway into the home. The driveway would encumber half the lot which would not be in character of the neighborhood and the adjacent properties.

No. 2, drainage from the roadway and upper watershed would deluge the lot causing an unsafe condition for the home and the occupants. Case and point was the 2002 flood that devastated Lanai and Manele. The runoff caused tremendous erosion to the lot requiring remediation. A grading permit was obtained in 2003 to elevate the lot and divert and control runoff.

No. 3, approximately, 50% of the single story home exceeds the 30-foot height limit at its highest point. As the roof line slopes lower, the fill decreases, thus the combined height of the structure and the fill actually is three feet or less.

No. 4, in 2007, approval was provided by the Department – from the Planning Department for a structure that exceeded the 30-foot height limit. Unfortunately, that transaction fell through, but

today, we have a renewed interest by the applicant with the lot, and the design was denied by the Planning Department. So we are here today to seek a variance.

No. 5, due to the low density, low rise of homes, and terrain of the surrounding area, future view plains of upgraded properties will not be impacted.

In summary, the applicant and owner of Lot 77 respectfully request your approval of this variance application to build the home on the existing grade.

And I'd like to address two different concerns that was presented by Mr. Kahoohalahala. No. 1 was the water quality of Hulopoe Bay. As part of the conditions for our SMA approval, we were required to monitor the bay quarterly, and we've been doing it now for 20 years. Except for that period in 2002 where all the shoreline around the island was impacted by mud, for the past 20 years, as I mentioned, our reports have come in clean. It's been filed. We send those reports to the County. And the Class AA waters, which is the Hulopoe Bay area has come in as clean, and the development and construction of the Manele Bay had no negative impact to these waters.

The second item was the drainage structures. And, yes, after that flood, we were required and we did implement remediation to all the drainage structures in the Manele project district. We put in debris basins to collect debris, silt, so that they would not be deposited into the Hulopoe Bay area. And again, the monitoring that we've done will support that claim. If you have any questions, I'd be more than happy to answer them.

Mr. Santiago: I have a question. Just as a perspective, the flood of 2002, the major runoff, it affected the whole island or was it more pronounced at the bay?

Mr. Rumbaoa: I think it affected the whole island. It was probably a statewide storm and it wasn't regulated to just Manele. I'm sure the east side – as you can see, if you go on the east side, they have a lot of silt there. It's probably not in the best condition. I believe Hulopoe Bay is probably more pristine and cleaner than on the east side of the island.

Mr. Santiago: You said you monitor water conditions or silt conditions throughout the island?

Mr. Rumbaoa: That's correct. It's a requirement for our SMA application. We monitor it from the Hulopoe Bay all the way west towards the end of the project district. And we report that quarterly to the County and the Department of Health.

Chairman Kamai: Members, any more questions for the testifier? I have a question. So regarding the buildup of that lot, the fill, that was done to address the shortcomings of the 2002 drainage plan or flood at the time?

Mr. Rumbaoa: That would be correct. During the 2002 flood, it created a tremendous erosion in that area. So we improved the drainage system and raised the lot to divert runoff.

Chairman Kamai: You had mentioned there was a three-foot variance from the actual height limit? A variance of three feet or less?

Mr. Rumbaoa: Well, probably from my comment that about half of the home actually exceeds the 30-foot height limit. As the roof line slopes lower and the fill is less, that area is below the 30-foot height limit.

Chairman Kamai: Because of the footprint?

Mr. Rumbaoa: Right. We measured the maximum height of that building to the highest point of the house. And we added the house height which is 22 and a half feet plus the 20 feet of fill. And as you slope away, the pitch of the roof, the fill, the . . . (inaudible) . . . of fill decreases from the 20 feet. So in essence, we probably come in below the 30-foot limit.

Chairman Kamai: And you had mentioned that the grading permit was approved?

Mr. Rumbaoa: We got our grading permit in 2003 to do remediation which involved raising that elevation of the lot. And then in 2007, there was a building permit that was approved for a structure that was 17 feet tall which exceeded the 30-foot limit. So there was already an occasion where an approval was provided exceeding the 30-foot total height limit of the structure plus fill.

Chairman Kamai: Members, any more questions for the testifier?

Mr. Cerizo: I have a question.

Chairman Kamai: State your name, please.

Mr. Cerizo: Francis Cerizo, Staff Planner. How does this grading affect the view plains of the above parcels of the lot?

Mr. Rumbaoa: We feel that it does not affect it because from mauka of Lot 77, you have a 60-foot wide road, then you have a slope, then you have hole no. 10, which is probably about 50-foot wide. And then above that, you have another setback, and then homes probably in 25 years will be built. So you have a far enough setback away from Lot 77, and you have about an elevation distance which is probably almost about a hundred feet whereby you probably won't, you know, consciously see the roof line of this home.

Mr. Santiago: I have a question with respect to sight line. We didn't go down to your lot, but as far as looking down from Lot 88 or—

Ms. Green: We're 85.

Mr. Santiago: How much of that roof line do you see looking up from your location?

Ms. Green: That's hard to say, but because of the setback of the property—

Chairman Kamai: Excuse me. Can you come up? Please state your name.

Ms. Green: Caron Green. It's hard to know, but we would see part of the roof line, but as I look at their plan, it looks like the roof peaks and then comes down. I will see part of that. I will see

probably a good share of the roof, but I already see the house. You know, if I come out and I look, I see a good share of the Lopez's house, too. I mean, I think when houses are built up there, there's no way that I won't see something that, you know, is not offensive to me at all.

Chairman Kamai: I have a question for you, Ms. Green. So you say your house was built in '04?

Ms. Green: No, we built – we started construction in '06. We purchased the lot in '04.

Chairman Kamai: So either of you, so I guess the fill was already in place prior to your purchasing your property?

Ms. Green: The fill for the lots up above? I believe that they – and I don't know what year it was, I know they had to take it down and rebuild it at some point. I think it was after 2004.

Mr. Rumbaoa: Yeah, the year was 2005 when I got here that we were starting to rebuild the lots.

Chairman Kamai: So your house was built after?

Ms. Green: Yes.

Chairman Kamai: So you saw the fill?

Ms. Green: Right. When we purchased the lot, we knew that there were pads up there. I mean, they were already fairly – I mean, pretty much in the same place that they are. And our lot did not have fill on it yet. We had to do that ourselves.

Chairman Kamai: Members, any more questions for the testifier?

Ms. Green: Could I say one thing?

Chairman Kamai: Sure.

Ms. Green: Because I know there was a discussion, and I'm very cognizant of the point of the view plain because that's part of why you wanna live there, but above the lot, and I think you must've noticed that today, there is no house directly above it. The Lopez house sits slightly off at an angle. And as I've said before, their view plain is going to be towards the southeast, not to the southwest where this house will be. So then there's this big gap. And it's my understanding that the only other houses that will be, will be above the next set of golf courses which is a considerable distance away. So I do not see, you know, except for the Lopezs, if they had an issue with it that this roof line will create any problem with visual plains.

Chairman Kamai: Mr. Rumbaoa?

Mr. Rumbaoa: Thank you. I believe in your packet there is a written testimony from Ms. Ann Lopez who could not be here today. Can I request that that be written or read into the record?

Chairman Kamai: Would you happen to have a copy?

Mr. Baptist: I'd have to go get it from my computer.

Ms. Kapua`ala: Did you include it in your packet, sir? Because I don't have a record of that being submitted to the County.

Mr. Baptist: I hand-delivered it. I have a stamped letter, a date-stamped, but unfortunately, that date-stamped letter is on Maui today.

Mr. Rumbaoa: Well, you may be rest assured that there was a letter provided. And my colleague, Kris Baptist, delivered it to the County office to insure that it would be in your packet.

Ms. Kapua`ala: For the record, that letter was in support of the variance application?

Mr. Rumbaoa: That's correct. It was in support of the variance application.

Mr. Cerizo: It would be in the bounded copy?

Mr. Rumbaoa: No, it came after our application. Would you like us to go get it, or move forward, and we can get it, and then read it?

Ms. Kapua`ala: If the Board concurs, I can add it into the decision and order provided that the Board grants the variance. It would be in support. It would be a finding of fact for the granting of the variance, to support the granting of the variance, provided that that is the decision.

Chairman Kamai: Members, you got a problem with that? Okay, Mr. Rumbaoa, are you done?

Ms. Kapua`ala: Ann Lopez?

Mr. Rumbaoa: That's correct.

Ms. Kapua`ala: I found the letter.

Chairman Kamai: Okay. Do we have copies?

Ms. Kapua`ala: No, I'm sorry, but I can read it.

Chairman Kamai: Okay, before you do, Mr. Rumbaoa, you have anything else to--?

Mr. Rumbaoa: No, that's it. Just any questions that you may have for me.

Chairman Kamai: Members, you have any questions for the testifier? Hearing none, thank you.

Mr. Rumbaoa: Thank you.

Chairman Kamai: At this time, the Chair would like to enter into evidence the applicant's application, and the fact that we did have a site visit this morning at 8:30 a.m. Could you please read into the record, the letter?

Ms. Kapua`ala: I am the co-owner of 480 Hulopoe Drive, also known as Lot 76 which is across the street and along the 4th fairway of the Challenge at Manele Golf Course. Although our home is not adjoining the subject property, being in the neighborhood, we wanted to express our support and appreciation for the Strombecks and Castle & Cooke Resorts for requesting our input in advance of this application in providing exhibit materials for our review. The purpose of this letter is to inform the Board of Variances and Appeals that we have reviewed the view corridor photos of the Strombecks' proposed residence and have no objection to their request for the proposed building height variance. Signed, Ann Lopez.

This letter is dated September 17th, 2010.

Chairman Kamai: Thank you. Is there anyone in the public wish to testify on this matter?

Mr. Steve Strombeck: My name is Steve Strombeck. I'm the applicant along with my wife who's in the audience, Tina. First of all, I'd like to just say thank you very much for all of you guys coming because I know you guys had to probably get up extra early morning to get here. So thank you very much for hearing our variance request. And thank you to Trish because I worked well with Trisha as far as e-mails, and faxes, and phone calls, so I really appreciate all the work that she has done.

My wife and I feel that we would really be a good fit. We worked well in our own community back home. And we've met a lot of people here in this community, and I've really taken a liking and just kind of fallen in love. The people here are very kind. And we really do like to join in the community and help where we can.

As far as building the house, I'm the contractor. And I'm excited about getting started, if that works out. I'm gonna be hiring some of the labor here. I've already met some people as far as in the construction field here and on Maui. And I'm excited about using some of the local people. So again, I just wanna say thank you for hearing our variance request. Thank you.

Chairman Kamai: Members, any questions for the testifier?

Mr. Castro: If the variance is granted, how soon will you start your project?

Mr. Strombeck: Probably, April, because we still have to get the drawings done for the construction drawings, and we have to get the permit issued, so there's still some things to do.

Chairman Kamai: Members, any questions for the testifier? Hearing none, thank you. At this time, the applicant, you have the right to waive the staff report.

Mr. Strombeck: I believe I'll waive that.

Mr. Rumbaoa: We'll waive that.

Ms. Kapua`ala: Before we move on to the recommendation, I'd like to add as a finding of fact in the background information that this project district went under extensive review by the Planning Commission in 1995. The SMA major was approved in 1995 as well as the phase two, project district phase two, plans were reviewed by the Planning Commission. Prior to that, the project, overall project district, was reviewed by the Maui County Council.

Based on its analysis, the Department of Planning finds that the neighboring lots all share similar sloping land with mass grading for the subdivision occurring before the lots were offered for purchase. Furthermore, the applicant has not identified an exceptional, unique, or unusual physical or geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area. And two, the condition stated in criteria no. 1 above has not been established. Therefore, the applicant cannot show that the condition creating the alleged hardship was not the result of the applicant's actions.

Based on the foregoing findings of fact and conclusions of law, the applicant has not met all of the requirements for the granting of the subject variance. Therefore, the staff recommends denial.

In consideration of the foregoing, the Department recommends that the Board of Variances and Appeals adopt the Department's staff and recommendation reports prepared for the October 14, 2010, meeting, and authorize the Planning Director to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Board of Variances and Appeals.

Chairman Kamai: Thank you. Members, any discussion?

Mr. Castro: You mentioned earlier that if the variance is not granted then the driveway coming in will take a portion of the property.

Mr. Rumbaoa: Yeah, that's correct. That would be the scenario if you were to build on its natural grade. Because of the steep slope of about 25%, and the height differential of about 20 feet or so to the level of buildable area, you would have to have several switchbacks meandering. And therefore, you would encumber half the lot, which would be not in character of the neighborhood.

Chairman Kamai: Members, any more questions? That was my question as well is, what percentage of the lot would be deemed unusable if you would abide by the variance?

Mr. Rumbaoa: Yeah, if you were to build on the natural grade, 50% of the lot would be unusable even before the roadway because you would have to construct at least . . . (inaudible) . . . And due to the width of the lot, you would have to again, have meandering, multiple switchbacks to get down to the flat area.

Mr. Castro: And that would incur additional costs to rebuild the grade?

Mr. Rumbaoa: Right now, yes.

Chairman Kamai: How would that affect the drainage?

Mr. Rumbaoa: In terms of the buildable pads being lower than the road, we would definitely have potential runoff from the roadway. So you would probably see more than an inordinate amount of normal runoff coming in if the pad would be lowered.

Mr. Santiago: I have a question. The adjoining Lot 78 and to the left of 77, those look like they haven't been filled, and there is a dropoff. Do you have any plans to fill those in?

Mr. Rumbaoa: Those adjacent lots are at its final grade. So there's no plans for us to add any more fill on those.

Mr. Santiago: Were the fill on these properties similar in height to Lot 77?

Mr. Rumbaoa: As you progress further, I guess, that's east, the fill gets less.

Mr. Santiago: It just seemed that they were quite steep in grade that there could be potential flooding activity.

Mr. Rumbaoa: Yeah, the adjacent lots about ten feet lower than Lot 77. And that the key was we wanted to get the lot to be at or close to the grade to the roadway. So again, minimize runoff, and also easy ingress, egress to the roadway.

Mr. Castro: Are there gonna be any retaining walls on either side of the property?

Mr. Rumbaoa: I believe not. Based on the preliminary plans that I've seen, there's no retaining walls. There's no new retaining walls proposed.

Chairman Kamai: Members, any more questions? Mr. Rumbaoa, regarding the neighboring lot—

Mr. Rumbaoa: Lot 78?

Chairman Kamai: The lot next door, the one with the dropoff, how much of a dropoff is that?

Mr. Rumbaoa: It's approximately, ten feet, currently.

Chairman Kamai: So that neighboring lot would be roughly about at grade—?

Mr. Rumbaoa: Of the roadway.

Chairman Kamai: The grade of the roadway?

Mr. Rumbaoa: Correct. It's at the hill, so the roadway kinda climbs up. And the goal was to again, trying to match the lot elevations with the roadway, and also handle — address the runoff drainage.

Chairman Kamai: This is to abide by the drainage plan after the storm?

Mr. Rumbaoa: That's correct.

Chairman Kamai: So if you were to address Mr. Strombeck's lot, if this variance is not granted, you would have to address the neighboring lot as well as far as drainage?

Mr. Rumbaoa: Again, it would depend on what structure would be proposed on that lot. Maybe I didn't get that – understand that question from you. Would you repeat that question again?

Chairman Kamai: The neighboring lot is lower about ten feet.

Mr. Rumbaoa: Yes.

Chairman Kamai: And currently, it was designed to address the flood?

Mr. Rumbaoa: Yes.

Chairman Kamai: All the pads?

Mr. Rumbaoa: Yes.

Chairman Kamai: The height at it is right now?

Mr. Rumbaoa: Correct.

Chairman Kamai: If you were to lower Mr. Strombeck's lot, and the variance is not granted, would that affect the drainage plan for the neighboring lots as well?

Mr. Strombeck: You'd have to lower it more because you have to have switchbacks for the driveways, so you couldn't – you'd have to lower it below that lot, as far as I can see.

Mr. Rumbaoa: Yeah, that's a tough call. I mean, again, if you lower this Lot 77 to its natural condition or to the one next door?

Chairman Kamai: To below what the variance height so he meets the variance height.

Mr. Rumbaoa: I mean, I'd have to see drawings, but I don't think it'll impact it, but again, we'd have to see what that proposed lowering is and – you know.

Mr. Cerizo: Wasn't the source of the flooding from the gulch above, directly above?

Mr. Rumbaoa: That's correct. The watershed above this subject property is hundreds of acres. And all the runoff channelizes to that gully that we saw this morning. And there's about a 40-inch culvert that goes underneath the road that allows the water to drain through. And to the east or the west of Lot 77, there's another silting basin there that carries – diverts the runoff down.

Mr. Cerizo: How did this runoff – did it get plugged up, and then it jumped the road, and flooded out the lot?

Mr. Rumbaoa: No, those drainage structures weren't there. And part of it was insufficient. So

when it outletted out of the pipe, it just spread out causing the erosion of Lot 77.

Mr. Santiago: Just 77? Seventy-eight wasn't affect or the neighboring lots?

Mr. Rumbaoa: I believe it filtered to 78 also. The outlet, it was just – again, it just sprayed the outlet flow, and also the runoff from the road at that time, because again, they were all lower, so runoff from the road, and the channelizing of the waters from the upper watershed just compounded the erosion in that area.

Chairman Kamai: So have there been any severe storms since with drainages?

Mr. Rumbaoa: I'm sure we've had since 2002. There was this – I forgot what year it was when we had those 40 days of straight rain. And since then, we've implemented a drainage remediation plan, which has worked where we've kept all the silt and retained the water, allowed it to percolate. And if it did go over the spillway, it would go over in the laminar way. So the plans that we had implemented have worked and protected the homes and the hotel in that area.

Chairman Kamai: Okay, Members?

Mr. Shimabuku: Mr. Chair, I have one question. On Lot 78 and Lot 77, were they filled at the same time?

Mr. Rumbaoa: Yes, that whole – yeah, 77, 78, 79, and 80.

Mr. Shimabuku: Looking at the pictures in this pamphlet, the first picture, as you look to the right of the picture, there's this slope that comes out from the road, I believe.

Mr. Rumbaoa: Is that the south boundary or—?

Mr. Shimabuku: Westbound. It looks like a picture of . . . (inaudible) . . . you're saying that the Lot 78 is ten feet lower than 77.

Mr. Rumbaoa: Yes.

Mr. Shimabuku: And then there is a bank of similar size on the right of the picture which looks like the height of the road down to the lot on 78.

Mr. Rumbaoa: That's correct.

Mr. Shimabuku: When was Lot 77 filled up to the height of the road?

Mr. Rumbaoa: I'd say 2005 or so. I mean, we had an issued grading permit in 2003. And then we had to redo it in – to its current condition in 2005.

Ms. Kapua`ala: Mr. Chair, may I ask something of the applicant or the applicant's representative? According to the County's records, the grading permit issued in 2003 only covered Lots 79 through 81. Obviously, that's not true. Could you say something to that effect so that we can be accurate

in the record? Perhaps the County didn't enter it in the computer system correctly, but it looks like Lot 77 wasn't included in that grading permit.

Mr. Rumbaoa: I believe it is, because I went on Kivanet and pulled all the historical grading permits. That whole area, 77 through 81 was all under one grading permit. So we didn't pursue those separately because they're so interrelated.

Ms. Kapua`ala: Thank you.

Mr. Shimabuku: Mr. Chair, going back to my question, how come 78 wasn't graded to like how 77 is? Are there plans to fill more on 78 to accommodate the roadway?

Mr. Rumbaoa: No. For Castle & Cooke, there's no plans to further increase the fill on Lot 78.

Mr. Santiago: Wouldn't you have the same problem with Lot 78? You'd have the driveway that – because it is in a slope to the road. You would need to have a driveway that goes back and forth. And as far as what's available as land, you'd have the same problem you would have on 77 that wasn't graded the way it's graded.

Mr. Rumbaoa: Yeah, but the depth's not as dramatic as Lot 77.

Mr. Santiago: I'm just trying to get a sense of how high that bank is on the roadside. If 77 and 78 is ten feet, would that bank on the roadside be six, seven feet?

Mr. Rumbaoa: I would say that would be accurate.

Mr. Santiago: Because there already is a road there that's to the right, right in the middle there. Is that a road going into the property?

Mr. Rumbaoa: I think that's just an access to that–

Mr. Santiago: Access road?

Mr. Rumbaoa: Right.

Chairman Kamai: That was my question, Mr. Rumbaoa. Looking at that picture, that if you were to – you stated that the lot grading was designed for drainage, and that if the Lot 77 was to be lowered to comply within the height variance, would Lot 78 have to be lowered as well to accommodate the drainage or the lot next to that as well?

Mr. Rumbaoa: I don't think so.

Mr. Santiago: I do have a question. So from 77 to 78, and assuming this at the bottom would be 79?

Mr. Rumbaoa: That's correct.

Mr. Santiago: Is the height from 78 to 79 similar in height to 78 to 77? It looks a little lower, doesn't it?

Mr. Rumbaoa: Yeah, they . . . (inaudible) . . . lower.

Mr. Santiago: So I guess my question for 77 is, would the fill need to be that high in order to mitigate the potential flooding that would occur?

Mr. Rumbaoa: Well, from the roadway.

Chairman Kamai: Without the lot being that level with the roadway, then there would be runoff from the road onto the lot?

Mr. Rumbaoa: It was to avoid – for Lot 77, avoid that condition.

Mr. Santiago: My condition is 78 would have an issue with runoff if it's below grade of the road, which is what 77 was previously. So I guess my question is, has the potential for flooding been addressed with Lot 78? Or are there plans to put in more fill to address that issue?

Mr. Rumbaoa: Well, Castle & Cooke, we have no plans for additional fill on Lot 78. It'll depend on the new owner who will purchase that and depending on their building design.

Mr. Santiago: And would it be safe to assume that you had to address 77 by putting in additional fill to address the flooding, it would stand to reason that 78 would need to be done in the same fashion to mitigate any flooding?

Mr. Rumbaoa: You could say that, yes.

Mr. Santiago: So what's the current fill in Lot 78—the height that's been filled in?

Mr. Rumbaoa: I'm not positive, but it's less than Lot 77.

Mr. Santiago: So potentially, all three lots could be at the same level in order to mitigate the flooding.

Mr. Rumbaoa: From the roadway, yes.

Mr. Cerizo: When you say "flooding," are you talking about the drainage that comes from the roadway itself or actually the flood source like a stream?

Mr. Rumbaoa: No, it would be from the roadway and the upper watershed.

Mr. Cerizo: The upper watershed, when we looked at it this morning, it was directly across from Lot 77. And my understanding is that that watershed jumped and then went onto Lot 77.

Mr. Rumbaoa: Correct.

Mr. Cerizo: So to reduce the – to mitigate that, you filled that up so it wouldn't drop onto 77 as much. So you're saying that 77 was lower than what it is now, so you raised it up to meet the grade. So I'm not sure if you wanna put a wall there or something to keep the water off in case the water jumps again. Because that's actually all I can think of because the road is – roads usually crowns in the middle and goes to one side. Goes one way. And so you're just looking at half the road that's coming off on their side. And since there's no curb and gutters, nothing to channelize that water, so you're just looking at sheet flow. The exception is that you have a stream coming down, which is at the top of 77. Let's say that stops the water . . . (inaudible) . . . debris, there is that potential of that water jumping that road again. But it looks like that Lot 77 is at the apex. Isn't that at the top of the curb?

Mr. Rumbaoa: That's correct, yes.

Mr. Cerizo: So the water could jump the road, go onto 77, split and go wherever. I'm not sure if that's what you're saying. It kinda just spreads across 77. But now that you put in a culvert, it's being contained.

Mr. Rumbaoa: Yeah, the majority of the runoff comes from the upper watershed. And you saw the little basin that will intercept that water. And that would drain into that 40-inch culvert underneath the road and drain out. So there will be – on the roadway drainage, there'll be runoff from it, but it would be almost insignificant compared to what we talking about the watershed.

Mr. Santiago: What was the size of that drainage system where – was there something there? Do you have a before and after picture of what was there that failed relative to what's there now?

Mr. Rumbaoa: Yeah, there was a culvert there, but it was much smaller than what it was today. So that was part of the remediation that was done to make it larger to accommodate a hundred-year storm and provide those silting basins inlet and outlet to collect the silt to prevent it from running into the ocean.

Mr. Cerizo: Yeah, it looks like from the inlet side, it looks like they built up the wall, three, four feet higher to give it more head so that the water can back up against the wall instead of going across the road. And the culvert . . . (inaudible) . . .

Mr. Rumbaoa: Correct.

Mr. Cerizo: . . . (inaudible) . . . whatever it was before.

Chairman Kamai: Yeah, I was thinking like you, Francis, that any runoff out of the drain, the culvert, would go from the road, but Lot 77 is relatively flat and long where the water would go either on the side of Lot 79 or Lot 78 which is lower. Any lowering of 77 would just invite more water onto that lot itself.

Mr. Rumbaoa: That's correct.

Chairman Kamai: Right now, 77 seems like that's the safest lot as is. It's across of the culvert. It's the highest fill. It's the longest being with the road. Anything from the road, from the lot itself,

would go towards 78 or down the street next door.

Mr. Santiago: Actually, from what I recall, it looks like there's a little bit of an . . . (inaudible) . . . on the right side of the property.

Mr. Rumbaoa: Where the culvert is?

Mr. Santiago: Yeah.

Mr. Rumbaoa: Yeah, there's a drainage culvert, and there's actually a golf cart path on that side that goes underneath the road.

Mr. Cerizo: I see Lot 77 and the survey lot. And I see the easement. That's the drainage that goes – brings the water across. And where does it outlet? Oh, right next to your lot. So there's a gulch right next to your Lot 77?

Mr. Rumbaoa: Yes, that's where the drainage again, from the upper watershed gets collected into that little basin that we saw, and then there's that 40-inch culvert adjacent to the lot and outlets there.

Mr. Cerizo: So by reducing the grade on Lot 77, you may cause it to make it worse?

Mr. Rumbaoa: You mean by the – 'cause that drainage easement is the surface flow. You could impact through that lot if it were to be lowered.

Mr. Cerizo: Just in case that culvert overflows.

Mr. Rumbaoa: That's correct.

Ms. Green: May I say something?

Chairman Kamai: Sure.

Ms. Green: Sorry. Caron Green again. I'm sitting here listening to the discussion and I think one of the things that's discussed here is, why not lower 77 to be the same height as 78? Am I correct in that? Is that – to take care of the variance? I'm just thinking as a homeowner, I wouldn't want my lot to be ten feet below the road level because of the water issue coming down to my lot.

And also, the second thing that I would wanna think about is they were talking about ten feet for the driveway. What they would have to do – what does that do to the building envelope? In other words, you couldn't get close to the road. You'd be shoving the house back. How far back would you be pushing it so that it could still be within the easement from the back line of the property?

So I think that there are two concerns if you think about trying to take that lot level down. One is the water issue with having the house be ten feet below grade, the grade of the road. And second, what you do to the building envelope. Those are just my thoughts back here.

Chairman Kamai: Any questions for Mr. Rumbaoa? Quick question. Exhibit 8, the conceptual house plan, the two poles we saw on the top, do they signify the ridge line?

Mr. Rumbaoa: Correct.

Chairman Kamai: The start of the hip from either—?

Mr. Rumbaoa: Correct.

Chairman Kamai: That's your highest point?

Mr. Strombeck: Correct. We did that because the Lopes were concerned about the height of the house. So they went ahead and erected the poles so that the Lopes could take a view from their home and see what it was gonna look like at the peak. And then they were very satisfied with what it was gonna be.

Chairman Kamai: So they were looking at the highest point between the two poles?

Mr. Strombeck: The highest point. And from their house, they wanted to see what that was gonna look like.

Mr. Rumbaoa: Yeah, we put ribbons, red ribbons, so that way they could see it from their patio, the back patio.

Chairman Kamai: Members, any more questions?

Mr. Castro: Just one. The second picture, that retaining wall.

Mr. Rumbaoa: Is that the eastbound view?

Mr. Castro: I guess the northbound. The northbound looking up from hole no. 3. That retaining wall up here, does it go across all the other lots as well?

Mr. Rumbaoa: It goes across 78, and portions of 79, and it just ends. It feathers to nothing.

Mr. Castro: And that retaining wall has met all the requirements as a retaining wall?

Mr. Rumbaoa: That's correct. We had a special inspector from the County of Maui come out and inspect that. We have building permit approvals on that.

Mr. Castro: Does the retaining wall have any weep holes in it?

Mr. Rumbaoa: Yes, these are the type of rock walls where if there's any infiltration of water on the fill behind it, it will flow through, so that way the . . . (inaudible) . . . pressure doesn't build up.

Mr. Castro: Thank you.

Chairman Kamai: Members, any more questions? Hearing none, at this time, the Chair would entertain a motion.

Ms. Phillips: Chair, I'd like to make a motion that we approve the variance. I think that the applicant has shown that there's a unique condition on the property because of the grade of the property and especially, the drainage concerns with its proximity to that drainageway. I think by not allowing the variance, we're gonna create more drainage problems. And now I think that that's been addressed. The second criteria that strict compliance would prevent reasonable use of the property, as came up in the testimony, if it was not allowed, they'd lose about 50% of the use of the lot, which I think would severely impact reasonable use of the property. And conditions creating the hardship were not the result of previous action by the applicant, obviously, they purchased the lot in that condition so they did not create that condition. And it was – the condition was created to address the drainage concerns. And I'd like to add the County's standard hold harmless agreement. For insurance, I don't really see liability to the County for this. So I would be okay with waiving it. I don't know how the rest of the Board feels about that.

Chairman Kamai: The motion is before the Board. Is there a second?

Mr. Shimabuku: So second.

Chairman Kamai: It's been moved and seconded that this variance be approved with the conditions as reiterated by Member Phillips. Members, discussion?

Mr. Castro: I just have a question on the insurance. You have insurance on the property now at this time?

Mr. Rumbaoa: No, I don't think we do. When it's a change of hands, I'm sure Mr. Strombeck will carry insurance.

Mr. Strombeck: Yeah, I'll be carrying insurance.

Chairman Kamai: Members, any more questions? At this time, the—

Mr. Santiago: I just have a question on the insurance. Can we impose the insurance on the owner, the current owner, Castle & Cooke, for potential liability down the road for 78 based on our decision to approve this on 77 by not lowering the grade?

Ms. Kapua`ala: Could you restate that? Can you impose the insurance requirement on Castle & Cooke for Lot 78 should the granting of this variance cause damage, or loss of life, or a lawsuit as a result of the granting of this variance?

Mr. Santiago: Yeah.

Chairman Kamai: Corp. Counsel?

Mr. Giroux: Yeah, sounds like a Corp. Counsel question. With variances, the insurance would run with the land. So the homeowner would always be responsible. So if this owner sells it to the next,

and the next sells it to somebody else, the County would still expect the new owners to be carrying some type of insurance to cover the variance.

Ms. Kapua`ala: So if the new owner of Lot 78 were to sue the County because of Lot 77's drainage problems, then should there be an insurance policy attached to this variance, then that would cover it. Is that correct, James?

Mr. Giroux: Yeah, again, I believe the conditions – the current rules require that it be recorded on the land.

Ms. Kapua`ala: On this land.

Mr. Giroux: Yeah.

Ms. Kapua`ala: Not 78.

Mr. Giroux: Right. Yeah, you only have jurisdiction over the property getting the variance, not on neighboring properties.

Ms. Kapua`ala: But if Lot 78 were to sue, if it's a lawsuit arising out of this property, it would be covered.

Mr. Santiago: It would be on the owner, the current owner.

Ms. Kapua`ala: Yes.

Mr. Santiago: Okay. So it goes back to Castle & Cooke.

Chairman Kamai: Members, any more discussion? At this time, the Chair would like to put this variance to a vote. All those in favor of approving the variance as stated by Member Phillips and seconded by Member Shimabuku, all those in favor say aye. The Chair votes aye.

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

VOTED: To approve the variance as stated by Member Phillips.

**(Assenting: R. Phillips, R. Shimabuku, S. Castro, B. Santiago,
W. Kamai.)**

(Excused: R. Endo, K. Tanaka, B. Vadla, R. Tanner.)

Chairman Kamai: **Your variance is granted.**

C. APPROVAL OF THE SEPTEMBER 23, 2010 MEETING MINUTES

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

VOTED: To approve the meeting minutes of September 23, 2010 as presented.

(Assenting: R. Phillips, S. Castro, R. Shimabuku, B. Santiago,
W. Kamai.)

(Excused: R. Endo, K. Tanaka, B. Vadla, R. Tanner.)

D. NEXT MEETING DATE: October 28, 2010, Thursday

E. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 12:33 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

William Kamai, Chairman Pro Tem
Rachel Ball Phillips
Steven Castro, Sr.
Ray Shimabuku
Bart Santiago, Jr.

Members Excused:

Randall Endo, Chairman
Kevin Tanaka, Vice-Chairman
Bernice Vadla
Rick Tanner

Others:

Francis Cerizo, Staff Planner, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel