

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
OCTOBER 13, 2011**

**(Approved: 10/27/211)**

**A. CALL TO ORDER**

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Vice-Chairman Rick Tanner at approximately, 1:35 p.m., Thursday, October 13, 2011, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Vice-Chairman Rick Tanner: We will now call the meeting of the Board of Variances and Appeals to order. It is now 1:35 p.m. Let the record show we have a quorum. We're gonna change the schedule up a little bit, and move the Item C-1 to the first item on the agenda.

Public testimony will be taken at the start of the meeting on any agenda item in order to accommodate those individuals who cannot be present when the agenda item is considered by the Board of Variances and Appeals. However, a person testifying at this time will not be allowed to testify again when the agenda comes up before the Commission unless new or additional information will be offered. Public testimony will also be taken when the agenda item is taken up by the Board. There will be a maximum time limit of three minutes. Is there anyone in public who wishes to come forward at this time? Seeing none, we will move on.

Will the Staff read the notice of public hearing and state the purpose of this application?

**C. UNFINISHED BUSINESS**

1. **PAUL L. HORIKAWA, ESQ. representing GARY SHIM, KIMO SHIM, KATHRYN RENAUD, HOWARD SHIM, FLORENCE LEONG, LILLIAN MORREIRA requesting variances from: (1) Maui County Code (MCC), §18.16.060(C) to allow the use of an approximately 15-foot wide access street to a subdivision whereby the access street right-of-way shall be at least 24 feet wide; and (2) MCC, §18.20.040 to delete the requirement to install a minimum pavement width of 20 feet for the access street to an agricultural subdivision (Waiohuli-Keokea Homesteads; DSA File No. 2.3081) located at 9300 Kula Highway, Kula, Maui, Hawaii; TMK: (2) 2-2-003:004 (BVAV 20110007). (Deferred from the 7/14/11 and 9/22/11 meetings.)**

Mr. Francis Cerizo read the agenda item into the record.

Mr. Cerizo: I have a visual here—presentation. The project is located on — near Keokea Park. This is Keokea Park. Kula San is up in this area here. This is the Chang Store – Ching Store. I'm sorry. Thompson Road going mauka, and Kula Highway towards Hana is this way, or Ulupalakua. And the site is approximately in this area here. The area in question is the road improvements along Kula Highway up to there. We have an overall site plan of the parcel in question. Are there any

questions on the visual presentation?

Vice-Chairman Tanner: No? Thank you, Staff. Would the applicant come forward, speak into the microphone, and state your name?

Mr. Paul Horikawa: Hi. Good afternoon, Mr. Chairman. First of all, thank you for allowing us to come up first on the agenda. We did come the last time, and we didn't have enough time, but my clients appreciate you taking this matter up out of order.

Good afternoon. My name is Paul Horikawa. Also, present today is David Morreira.

Vice-Chairman Tanner: Paul, one second before you get – is the applicant agreeable to waive the reading of the staff report?

Mr. Horikawa: Yes, my clients waive reading of the staff report.

Vice-Chairman Tanner: Okay, proceed.

Mr. Horikawa: Also present is Lillian, also known as Maile, Morreira; and our consultant, Bruce Lee, who is handling the subdivision.

As Francis mentioned to you earlier, this project involves the subdivision of a parcel of land that's located off of Kula Highway behind Ching and Fong Store. And basically, by way of background, this is an agricultural-zoned property. This parcel of land, I don't think it's as big as it's depicted on the tax map key. It originally was 11 acres, but many years ago, portions of it was cut out and sold. So it's now 7.94 acres. And in the house, there was a picture earlier that Francis had showed you, Mr. and Mrs. Morreira live in that house.

By way of background, the Shim Family acquired the property in 1922 – excuse me, 1928, pursuant to a land patent grant that was issued by the Governor. . . . (inaudible) . . . Hello? You know, we had provided you with a copy of Land Patent Grant 9492 in a submittal to you, and it describes the 15-foot easement that goes – runs from here. And the requirement is that this be 20 feet – 24 feet, and that the paving – minimum pavement of 20 feet. And we have some pictures that we'll show you what the current condition is, but that's the nature of the request—to delete the requirement: one, that there be a 20 – minimum 24-foot access; and two, that they be required to pave the minimum of 20 feet for this particular property.

The purpose – the Shim Family, as I mentioned earlier has owned this property for more than 80 years, and Mrs. Shim was – I mean, excuse me, Mrs. Morreira was born on the property. She was raised on the property. And years later, she moved from the property to seek a career elsewhere. But, you know, she decided to retire and she's come back to Maui. So she built the house that's in the upper – to your left, that cottage that's there. And what they want to do is to subdivide so Mr. and Mrs. Morreira can have their own parcel of land. The idea is not to go and sell the property, or to make some type of profit. It's just so that Mr. and Mrs. Morreira would have their own parcel of land.

Just by way of background, from the material that was submitted to you, the property is currently

encumbered by a mortgage in which all of the Shim Family signed off and pledged the interest for the loan for Mr. and Mrs. Morreira to build their home. The plan is if they can subdivide the property, what they want to do is just have the mortgage encumber the portion of the property they would own and not the rest of the property. And in the future, Mr. and Mrs. Morreira's plan, you know, is to give the property to their children. So this is not by any means a profit-making venture. This is basically just trying to get their own piece of land so that they can live there, so they could live out their life.

I'm not gonna – I know you have a full agenda, so I don't want to take too much of your time, but I will just hit some highlights as far as the elements are concerned. And just state to the property that – state to the Board that– This is just the general – the big tax map key for this parcel of land. And the area that we're talking about is this parcel of land that's owned by Mr. and Mrs. Morreira as well as the Shim Family. And this is the vicinity where you have the Ching and Fong Stores. And their access is – this is up to Kula San in this direction. And this is the current access to the property here.

And one of the things that is in some respect unique about the property– Again, this is part of the Waiohuli Homesteads that was created in the '20s. And it's kind of unusual. This is where the Old Keokea School is located. And if you look at the maps, maybe we'll look here, this is where the Old Keokea School is. And there's an access that's on paper here that I believe it's 20 or 25 feet. But – and this is part of your packet as well, but we really weren't able to negotiate a purchase from the Land Department to get an easement here. But one of the interesting things I noted is that when I observed the tax map key, and this is part of your – what you have in your packet is on this tax map key is a 40-foot roadway here that is in the close proximity of my clients' property. So, I mean, they have this actual access that was granted to them by the Territory of Hawaii, this potential roadway that's labeled as a roadway, but is nonexistent. And you have another what's labeled here as a roadway. And if you look at Officer Kahookele's report as well as the pictures that we provided to you, this is totally overgrown, and there's signs here in which the State says no trespassing. You know, if you trespass, all kinds of bad things will happen to you, but that's what's there.

By way of pictures, this is the beginning of the access roadway and it goes down. You have the Mama's Coffee – Grandma's Coffee Shop, and the Ching and Fong Stores. And this is looking from the mauka side of Kula Highway looking down. And this is kind of what we looked at. There's a truck going down. And this is a view of the residence that Mr. and Mrs. Morreira have. And this is another view of this roadway more closer to Kula Highway. And as you go down and make the turn, this is what the roadway looks like as you're looking back in the Pukalani direction towards the Morreira residence. And this is from the Morreira residence looking back. And this is a view from the Morreira's residence looking back in the Ulupalakua direction. This is the shed that Mr. Shim had built in the '30s. And these are just photos of the Shim residence that's probably about 80 years old, I believe. And this is their residence that the Morreiras live in. A view of the subject property. This is the lower half of the property. If you look at this photo, this is a view that goes straight up that 25-foot access that goes through Keokea School that we had talked about earlier. The 25-foot roadway that you saw on the tax map plat doesn't exist, as you can see. And this is another photo of that same paper roadway that we talked about. And this is the other end of that paper–the 25-foot roadway again. And you can see it's blocked off, I guess. And then there's a sign there that says you're not supposed to trespass, dump, camp, and if you do so, the State of Hawaii will not be happy with you.

In any event, that's basically an overview of the property, and basically, we would submit to the court – I mean, to the Board that the property is unique in that it has these three accesses. Only – but they do have legal access over the property. And we would submit to the Board that this makes the property unique. We note that earlier – I mean, in last year, you had a variance application called in the matter of the application of Seldon Lewis in which the applicant said that the widening of the road was a unique situation. And the Board did find that that was one of the basis for granting the easement in that case. So we would submit just from what we've – the pictures and what you've seen today, the property is unique.

The second element is to show that the variance is necessary for the preservation and enjoyment of a substantial property right. You know, this property is out in Kula. The owners do enjoy a rural lifestyle. They really don't want to have the property – the roadway paved, at least. To that extent, when we talked about this last week – I mean, a couple of weeks ago at the last meeting when we had that matter in Huelo, I mean, a lot of the owners came down and said, hey, you know, this is what makes a property unique. They didn't want to have the road paved.

Officer Kahookele's report that was submitted to you notes that, you know, it appeared to her, anyhow, that the Morreiras were the only people who used the road. So there's – you know, at one time, it served as an access to Hawaiian Homes, but in a few minutes, Bruce will talk to you about this and tell you that most of the traffic that used to go through this road is now generated through the roads that was constructed by the Hawaiian Homes – by Hawaiian Homes Land Division.

We would note that if my clients were to – were required to pave this road, it will also create substantial flooding issues. And this was discussed when we met last – at the last meeting on that Huelo issue where the owners really didn't want – I mean, the neighbors didn't want the property – I mean, the road, the Door of Faith Road paved because of the flooding problem. In that Lewis case that I talked about earlier, the consultant in that case, Mr. Spence, had pointed out that there were runoff problems when you pave a road such as – in that particular case, it was Kamalii Road. We would submit that, you know, if they were required to pave the road, it would be some hardship not only on the part of my clients to pave it, but it would also create some issues with respect to downhill property owners specifically, the people who live downhill in the Hawaiian Homes Subdivision. So we would ask that you waive that requirement.

As far as the other elements, you know, my client's father acquired that property about 80 – over 80 years ago. We would submit that the physical or unique circumstances of the property were not the result of any action on the part of the applicant.

One of the other things I would like to note before I turn it over to Bruce, Mr. Lee, is that Officer Kahookele's report noted that the road was wide enough for two cars or two vehicles to pass each other. She also noted that she was able to obtain access to the property in her patrol vehicle. And she also issued an opinion that there is sufficient access for emergency vehicles to gain access to all of the residents of this particular property. So we would submit to the Board that the elements for granting a variance have been satisfied in this particular case.

There's one thing I did wanna address. And Linda Chu from the Hawaiian Homes Land did submit a letter where they expressed concern or their objection to the granting of the variance. And I think they're under the misconception that the Morreiras and the Shims do not have legal access to the

property. We submitted the land patent grant to you and as far back as 1928, they have had legal access to the property. So that premise is a little erroneous.

To the extent that they are insisting that my clients have a minimum of 24 feet access to the property, we would note— And we did review the files regarding the Hawaiian Homes Subdivision. And in that particular file, the Department of Public Works did require that Hawaiian Homes, you know, widen that particular roadway. I believe – I forgot how wide it was, but Bruce can address that issue. But they somehow got an administrative variance. They didn't come before the Board like the rest of us. They claimed that they were exempted from it. And that particular requirement to widen and improve that particular road, it was deleted. If Hawaiian Homes had not granted themselves a variance – or I don't really know if Hawaiian Homes granted the variance or if the Department granted the variance, but in any event, that requirement was deleted. But if Hawaiian Homes, you know, had performed as they were required to do by the County of Maui, we wouldn't be here today. That road would be improved and we wouldn't be asking for the variance that's before you today.

I'm gonna turn it over to Bruce Lee who's gonna address that particular issue that was raised by the Hawaiian Homes Land. If you have any questions for myself or Mr. Lee, we'll be available. We're gonna conclude, after Mr. Lee, with Mrs. Morreira speaking to you, and Mr. Morreira speaking just a little on their request before you to grant the variance.

One thing I wanted to note is that – before I leave is that we find it kind – in a way, unusual that Hawaiian Homes is – had objected because Mrs. Morreira has— You still have the lot?

Mrs. Lillian Morreira: . . . (inaudible) . . .

Mr. Horikawa: She is – because of her heritage, she's also entitled to a lot in the Hawaiian Homes Subdivision that's located just below her property. With that, if you have any questions, I'm here. And I'd like to turn it over to Bruce.

Mr. Bruce Lee: Good afternoon, ladies and gentlemen. My name is Bruce Lee. I'm the president and owner of Newcomer Lee Land Surveyors. I am the consultant for the Morreiras who is processing this subdivision through the County of Maui.

The first thing I wanna correct is if we go back to the photograph— Well, anyway, on the photograph, the road we talking about, it says "Kula Highway." It is not Kula Highway. Believe me. It's just a State road. Kula Highway just goes straight to Ulupalakua. Just clarification because I don't want you to be, oh, it's Kula Highway, what can we do?

Like Paul said, the Morreiras are trying to subdivide out their interest from the family, the family land, so they can build their house, or stay on the property, and then give it to the children.

You know, I was mainly – my concern as their consultant was the letter from Hawaiian Home Lands where they say they're against the subdivision. And I did make a courtesy call to Hawaiian Home Lands to kinda clarify the situation, but they had all the answers. What can I say? But just to clarify in their letter, they say that the Morreiras do not have an easement over Hawaiian Home Lands. That's correct. The easement the Morreiras has is over this roadway which abuts Hawaiian Home

Lands. The boundary of the easement as described in the original grant in 1928 is the same boundary that – for the perimeter of Hawaiian Home Lands. The easement is in fact, 15 feet wide. It's a State road. You seen it on the tax maps. There's no question that the right-of-way exists.

The other thing, you know, like Paul said, I process quite a few subdivisions through the County of Maui. So when I got the Hawaiian Home Lands' map, I was surprised that they weren't required to widen that road, because that's a standard requirement for any subdivision in the County of Maui. Hawaiian Homes Lands just – Hawaiian Home Lands does the right to waive certain conditions because they're Hawaiian Home Lands. They have the right to waive certain things from the County. In this case, I guess, I cannot find the letter, but they were granted the waiver. Interestingly enough, and I have the letter here, but the waiver was for the dedication or the road-widening lot, which was Condition 10 of the preliminary approval letter, but it didn't waive Condition 9, which said they had to create a road-widening lot along this road. Needless to say, it would've been waived.

You know, I find it– I'm Hawaiian. Don't get me wrong. My children live on Hawaiian Home Lands. I like what Hawaiian Home Lands has done for the Hawaiian community. But in this particular case, I find it quite concerning that they would object to a variance for the Morreiras to use an existing right-of-way because it's too narrow when they asked to waive the condition to widen this roadway. You know, to me, what's fair for Hawaiian Home Lands is fair to the Morreiras. They just want to get their piece of the land. They just wanna give their children a piece of the land. I've been surveying since 1971. And I've seen a lot of properties when the parents die and their children get undivided interest where they get hurt. In this case, the Morreiras want to straighten it out before the family gets bigger, and bigger, and bigger.

But you know my main point is that you see the road. It's being used. I think the only other property that really uses this road is that driveway right there at the entrance. And the other one that Paul showed you, the little driveway that going up that so-called 25-foot, that's the only two properties I see that use this road. Now, there are properties below the Morreiras, around the Morreiras that have acquired easements through Hawaiian Home Lands 'cause they were landlocked. The Morreiras are not landlocked. They have legal access. It's just too narrow. It's 15 feet at the narrowest point. And if you look at the tax maps, there's a – by the corner, it gets a little wider.

You know, I just wanted to clarify that, and I didn't want you all to misunderstand the Hawaiian Homes' letter. I think it's just – it would be just to grant the variance for the Morreiras as it was to grant the waiver for Hawaiian Home Lands. Thank you.

Vice-Chairman Tanner: Thank you.

Ms. Lillian Morreira: Good afternoon. My name is Lillian. Like Paul said, my home name is Maile. And I'm one of the Shims, one of 17 children. I do care for one of my oldest sisters. She's second from the top which she's now gonna be 92 years old, and she lives on the property. She lives in the ohana house. And Dave and I live on the cottage that we just built. So she also, with MEO, uses the road to come down to bring her home from her senior activities. So the road – the entrance is really needed for her also. I do have six children, and slowly, they kind of moving home. And whenever we have family – I come from a very large family, and we always wanted to keep the

ohana house especially, open to all the family, the grandchildren, the great-grandchildren. Of course, my mom and dad has since passed. And so they have come. And they always are elated to see where their roots started. So eventually, you know, we wanna pass this on to our children. I am one of the owners, but for this parcel, it's Dave and I. And hopefully someday when we're gone that our children will be able to reside on the property. We do have the other ones on the bottom, but that's for the other owners that is listed on your list. So if you would grant us the variance, we would be very much appreciated.

Vice-Chairman Tanner: Thank you. At this time, do we have any questions from the Board?

Ms. Bernice Vadla: I have a question. So the Hawaiian Home Lands has--correct me if I'm wrong-- has a separate entrance into their area? So you're the only ones that are coming down into your property? You don't have other traffic going by?

Ms. Morreira: I think there's a total of-- I would say there's three on the bottom below us, and then two, three on the side behind Fong's Store, behind Grandma's Kitchen. Those are the only-- So they're about six all together.

Ms. Vadla: There's six. And you don't have any flooding problems down there or any times that you've had trouble getting--?

Ms. Morreira: Home?

Ms. Vadla: Yeah.

Ms. Morreira: No.

Ms. Vadla: So you don't have direct with Hawaiian Homes? Hawaiian Homes is a total separate access? That's basically my main question. Am I--?

Mr. Horikawa: I'm gonna have Bruce answer that question.

Ms. Vadla: Yeah.

Mr. Lee: Hawaiian Homes built the road into their lot. So on their subdivision map, they don't need this road for access. They're entitled to use the road for access because what they have -- and I have a copy of the final map, but what they have is they have a large lot that abuts that road. It's quite a big map but-- Okay, the area we talking about is here. This is the road in question. Hawaiian Homes built this subdivision. Their main entrance is through a road. They have a full paved road. It joins up to the other development they had and it comes back up to the highway at the other end. This is a blow up of the area. If you remember the photograph-- Hello? Okay. If you remember on the photograph, the road coming down was shown a little brighter or lighter color. It came off Kula Highway. It came down to this road, and it went down this way. That's an existing easement that Hawaiian Homes created for the lots in back of the Morreiras. So the easement goes here like this and then to this lot back here. Okay? That's the only other lot that uses that.

Mr. Bart Santiago: So there's no connection on that road to the Hawaiian Home Land road?

Mr. Lee: None, none, yes, right, yeah. And that's why Hawaiian Home Lands asked to waive the requirement to widen this road. And so I guess the waiver was granted.

Mr. Santiago: I'm curious. That Hawaiian Home Land parcel that--

Vice-Chairman Tanner: Bart, you need to use the microphone.

Mr. Santiago: That parcel that's on Hawaiian Home Land, does the owner utilize that road, that 15-foot road?

Ms. Morreira: What you mean, the owner?

Mr. Santiago: Well, there's a Hawaiian Home Land parcel at the end of that road, no?

Ms. Morreira: No.

Mr. Lee: No. There's-- Okay, the parcel that abuts this road is all of this. It's Lot 167, the remainder lot. It's 23.865 acres. And it borders all along Kula Highway and the road that they created. So access to that lot would probably be off of this or Kula Highway. So I stand corrected. Kula Highway, they have no access over Kula Highway. So their access is off of their road.

Vice-Chairman Tanner: Paul, I have a question on the flooding issue that you brought up. Is the concern of flooding with a paved road simply that that hard surface is not gonna observe water so the water runs down at a faster pace at the lower level? Or is the concern that this paved road is gonna inhibit the natural movement of water from one side to the other as it is right now?

Mr. Horikawa: I think it's both of them: one, the hard surface will not allow the water to absorb into the existing roadway. That's one concern. And that's a concern that was expressed in several other variance applications. One was last December as well as the one we had at the last meeting with -- in Huelo. And the other concern is that it's gonna have to be -- you know, if you put in a hard surface, it's gonna be directed somewhere where it may create problems for the makai owners, and that's one of the concerns.

Vice-Chairman Tanner: Okay. Do we have any more questions from the Board? Staff, do we have any additional letters of support or opposition?

Mr. Cerizo: None.

Vice-Chairman Tanner: Thank you. At this point, we'll open the floor to a public hearing. And if anyone would like to speak on this item from the public, you'll have three minutes to do so. We have a list. Okay. I think it's Bruce. Is it Bruce? Yes, do you have anything further or you--?

Mr. Lee: Oh, no, no, no.

Vice-Chairman Tanner: Alright, good. And then, Lillian, anything further or--?

Ms. Morreira: . . . (inaudible) . . .

Vice-Chairman Tanner: Okay. Alright, those are the two that we've got on the list for that one. So there's no one else from the public who would like to speak at this time? Okay. We'll at this time, close public hearing, and may we have Staff's recommendation?

Mr. Lance Nakamura: Public Works doesn't have any recommendation or comment, but we're available to answer questions if you need it.

Vice-Chairman Tanner: Thank you. Does the Board have any questions of Staff? Okay. At this time, any discussion within the Board? With no discussion, the Board will hear any motions.

Mr. Santiago: I'll make a motion. I'd like to make a motion to grant the variance and accept the arguments submitted by Mr. Horikawa to validate the variance, and with the hold harmless for the County.

Vice-Chairman Tanner: Okay. Do we have a second?

Ms. Jacqueline Haraguchi: Second.

Vice-Chairman Tanner: We have a second. Okay. And we'll have discussion. There is a motion to grant the variance and accept the presentation. Any discussion? Okay. Bart, would you give your motion again in detail, the addendums?

Mr. Santiago: The motion is to grant the variance and accept the arguments submitted by Mr. Paul Horikawa to validate the variance with the hold harmless for the County.

Vice-Chairman Tanner: And we had a second on that. Okay. Alright. At this time—

Mr. Cerizo: Is there gonna be any insurance requirement? I'm sorry.

Vice-Chairman Tanner: Well, there was the hold harmless agreement. And did you request—? You didn't request the insurance?

Mr. Santiago: No, I did not.

Vice-Chairman Tanner: Would you like to request that or—?

Mr. Santiago: I don't think it's necessary.

Vice-Chairman Tanner: Okay. Alright. I'll call for a vote at this time, at this point. All in favor? Any opposed?

It was moved by Mr. Santiago, seconded by Ms. Haraguchi, then

**VOTED: To grant the variance and accept the arguments submitted by Mr. Paul Horikawa to validate the variance with the hold harmless for the County.**

**(Assenting: B. Santiago, J. Haraguchi, R. Shimabuku, P. De Ponte,  
S. Castro, B. Vadla.)**  
**(Excused: R. Phillips, K. Tanaka.)**

Vice-Chairman Tanner: **And the motion carries.**

Mr. Horikawa: Thank you very much, Mr. Chairman, and Members of the Board. Thank you.

Vice-Chairman Tanner: Okay, we'll move to the next item on the agenda. And that is Janet Marie Grantham.

Mr. Cerizo: Mr. Chair, can we have a little recess so I can reset the screen?

Vice-Chairman Tanner: Yes, alright. One moment, please. Bart needs a recess too. I'd like to thank everyone for their patience. We'll get right to it.

(A recess was then taken at 2:12 p.m. and the meeting reconvened at 2:16 p.m.)

## **B. PUBLIC HEARING**

- 1. JANET MARIE GRANTHAM requesting a variance from Maui County Code, §§16.08.060A and 19.08.060, to allow the existing east side of a residence to be located at the property line for property located at 225 Prison Street, Lahaina, Maui, Hawaii; TMK: (2) 4-6-011:013 (BVAV 20110010).**

Mr. Cerizo read the agenda item into the record.

Mr. Cerizo: To the left we have a visual presentation. We have the property located on Front Street – I'm sorry, Prison Street. And this – it's near Prison and Waivee Street. And Honoapiilani Highway is on the upper side. So we're about mid-block. And a close up view of the property is such. This is Prison Street. I'm looking toward – from the front side of the lot. And we're looking from the makai side. Rear side of the lot. This is a good view of the east side. And back to the front side of the lot.

So the variance is for the existing east side. And that's probably a good view from that. You can see it from here. So this is the part that's encroaching. It's located on the property line. So we have two variances that's being requested: one from the Housing Code that is staffed by the Department of Public Works; and also, the Zoning Code that we will be handling. That's the conclusion of my presentation.

Vice-Chairman Tanner: Okay, thank you. Will the applicant please come forward, speak into the microphone, and state your name?

Ms. Janet Grantham: Hi. My name is Janet Grantham, and I own the property at 225 Prison Street.

Vice-Chairman Tanner: Okay, is the applicant agreeable to waive the reading of the staff report?

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Ms. Grantham: Yes.

Vice-Chairman Tanner: Okay.

Ms. Grantham: Due to the overwhelming further cost of having an attorney represent me today, I'd greatly appreciate the Variance Committee to allow my life partner, Bart Mulvihill, to help me speak on my behalf, please.

Vice-Chairman Tanner: Okay, would you like to make presentation to the Board?

Mr. Bart Mulvihill: Yes.

Vice-Chairman Tanner: Okay.

Mr. Mulvihill: Good afternoon. Bart Mulvihill. Mr. Tanner, may I ask—am I limited to a three-minute statement prior to a presentation, or do I go straight to the meat and potatoes?

Vice-Chairman Tanner: You can go right to your presentation.

Mr. Mulvihill: Okay. This is a – not what it seems like on a whole. Mrs. Grantham's late husband acquired the property in 1985, 1986 here on the courthouse steps in an auction. He had to buy the property as is, where is, and did not have a survey to go by to determine where the property line was, and where the property improvements laid. If I may? Can I use that microphone? Thank you.

If you can see from where the property line is here, this is an enclosed structure that has two steel doors here and under the carport. The property line runs theoretically, within inches or a foot from one point to the other point, and then zigs back in to where this area is which was a permitted, applied for County permit to construct another bedroom suite.

Now, we had an ongoing problem with our abutting neighbor, this project property right here, 628-D Wainee Street owned by a gentleman named J. Nolasco, if I pronounced his last name right. He – this property and this building appeared to be specifically designed to be an apartment building, and has an additional structure underneath these icons. This side of the building had continuous noise, continuous problems. We've heard every expletive in the book. And these bedrooms here and here were occupied by our college-aged daughters. Janet's husband died in 2003 from complications of Non-Hodgkins Lymphoma. We met seven months later. And actually I was friends with Roger when I was kid, 14 years old, at the Royal Lahaina Tennis Club. So it was just a chance meeting.

And – well, anyway, more to the point, this land here, and you can see all these vehicles right here, this is a Maelua land tract that has specific – according to the property owner's family, has specific instructions in the trust that this property is not to be sold to anybody outside of the family. Or all five family members that have five equal shares are not to build on the property unless all agree. Okay? These vehicles have since been removed.

Now, back to this problem here at 628-D Wainee Street. Wainee runs this way, and then comes back, and kinda curls around. We've made multiple verbal complaints to the property owner and

said that his tenants that were on this side 'cause he lives down here in another structure, or at least we believe he does, that his tenants were rankest. They were raunchy. They were everything that you could imagine in a nightmare neighbor. It was bad enough that the property wasn't being maintained by the Maieluas, but the Maieluas were friends since 1985.

Now, when we – we were having to put up with the noise because it never went past 10:00 p.m., but one day we looked out the window, and we saw a construction crew boring a hole about 15 feet above our grass line, and to make a stairway. And we said, "What are you guys doing?" They say, "Oh, we're adding on." And if you look at either Hawaiiinformation.com, or the Maui property tax code records, or anything that would give you information, this is now a ten-bedroom, seven-bath home. Ten bedrooms. I don't even see ten bedrooms in multi million-dollar homes in Kaanapali or Kapalua. So what I did was is I said, "Hey, what are you doing?" And he said, "I'm adding on. I'm building on." I said, "It's already too much." And, you know, Mr. Nolasco took a very, very ardent stance that we were unreasonable to tell him or suggest that this structure was gonna be out of code, it was gonna be overwhelming in the neighborhood, and deeply disturb the character of our neighborhood.

We already had the junk pile here, the ongoing kava pile here. This structure here was the Ogawa property that was abandoned. And the family that lived here was using it as a baseyard. As you can see, that's the back of a large dump truck. They did oil changes there. They did everything there. We were feeling smarter. This wasn't the character of the neighborhood we continually hear and read about in *The Maui News*.

Mrs. Grantham and Mr. Grantham bought the home. Actually, let me correct that. Mr. Grantham bought the home in 1985. He bought the home in 1985 and he had a condo that he was living in with Mrs. Grantham. And then right after – right during the Gulf War had concluded, the economy had gotten so bad that he couldn't get the tenants to rent it out. He couldn't carry the two properties, so he decided to apply for that building permit in 1990 to build the white roof structure style back end of the house.

Now, okay. Let me back up. Mrs. Grantham was Janet Miller, an unmarried person, but was living with Mr. Grantham, or about to co-habitate with him when he bought this property at auction. Now, the – Mr. Grantham decided – they had since gotten married, and they had found that they were pregnant with their first child who is in college right now.

Vice-Chairman Tanner: Sir, I'm gonna interrupt you at this point. We're getting very little information related to the variance, so I'm gonna ask you to try to get on track.

Mr. Mulvihill: Okay. Real quick. No problem. I was trying to give you a little background. I didn't wanna read you a speech.

Mr. Welch and our surveyor suggested why don't you approach the neighboring property where all the junk cars are, and knowing their restrictions, and ask them for an easement that will settle the problem of being too close to the line, and in the end, ask for them to sign that. Tom Welch prepared an easement that I have in my hand, and we went – and we had to do research, but we found the principle property owner. His name is Vincent Marfil. He lives in Honolulu. I tracked him down. I went to his job. And he – I explained the situation to him, and he said, "You know what?"

We're never gonna build on that property. And if it will help you not have to tear your house down, or create any more fines, or any more problems, or cost, I'd be glad to do it." I have his signature. I even have his picture after he signed it with his name on it. One of the nicest people I've ever met.

He signed the easement as the majority stakeholder and as the executor and trustee of this property to provide 12 feet of space between the properties. And that they – if they ever decided to build on the property, we would have to alter our property, or they would maintain a 12-foot distance between our property – the home and the structure that they would propose to build. And so we had an easement drawn up. And then after we had that signed, sealed, and delivered on September 21<sup>st</sup> of 2010, Mr. Welch said to us, "Listen, you're gonna need to get an after-the-fact building permit, have plans drawn up," which we did. Fortunately, we found the cash, and we provided nine – we have nine sets of the plans of the structure that goes right here that could actually impede upon the setback.

So I don't know what else we can do. And now I need to say what the problem was. We did an RFS on the landowner that was directly behind us for what he was doing. He retaliated. He drove into our driveway unannounced, uninvited, unknown to us, and told us, "Why you making trouble for me? Why you making trouble for me?" I said, "Hey, you're making a condo complex back there. We already got Weinberg Court." And he said, "Just why you don't mind your own business?" I said, "Get the hell outta here," you know.

Vice-Chairman Tanner: That's not really relevant to this.

Mr. Mulvihill: Okay. Well, I'm sorry, sir, but, you know, there's – this was a vindictive retaliation of our RFS that he was over building and he was going to further cause noise and all that.

So, you know, Mr. Grantham's not here to speak on his wife's behalf. The person– Nobody ever knew this house to not have that existing enclosed portion. And the house was bought, you know, as is, where is, and the way it is. The adjoining – the abutting affected property owner has given us an easement of 12 feet to assure the County code stays as close as we can to it.

We beg of you. This has just been a nightmare for us. And we – the only thing we want to do is just continue to live in the house. If we have to tear down part of this house, it is gonna cost grave financial – it'll destroy Mrs. Grantham. And that's the bottom line. We have found – and we feel that we have found a nice way that the property owner has given us to give us the proper distance that was in the County code of assuring 12 feet: six feet one way, six feet the other way, so we can have an easement granted. So with that, you know, we humbly ask that you grant us a variance so we can just move on with our lives. And we have– Mr. Nicholas has come out and inspected. He looked at our property. Actually, it's Mrs. Grantham's property. I have no vested interest. And he told us, "Okay, do this, do that, do that, do that, do this, do that, do that," or suggested it, and we have done everything we could to make sure that those parameters were followed strictly. We're playing by the book, and we have not asked anybody– That's essentially it.

Vice-Chairman Tanner: Alright, thank you.

Mr. Mulvihill: Okay.

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Vice-Chairman Tanner: Staff, do we have letters of support or opposition?

Mr. Cerizo: We have one letter dated October 10<sup>th</sup> from Mr. Lincoln and Patricia Maielua. Copies of those letters have been placed on your desks.

Vice-Chairman Tanner: Can you show us on the photograph, the property from the letter writer?

Mr. Mulvihill: I'm sorry. Could you repeat that, please? Could I show you what?

Vice-Chairman Tanner: The – well, I'm talking to Francis.

Mr. Cerizo: The adjacent property is the vacant lot.

Vice-Chairman Tanner: There's a vacant lot right there? So is that the same property owner that you received the variance from?

Mr. Mulvihill: No, sir. They are the minority shareholders. They sent us to Vincent Marfil. They said, "We can't say yes or no on this. You have to go talk to Vincent in Honolulu." So I drove out to Nanakuli, and I found him, and I talked to him, and he agreed.

Vice-Chairman Tanner: So have you seen the letter?

Mr. Mulvihill: No, sir, I've not.

Vice-Chairman Tanner: It's a letter in direct opposition, and it's very clear that they are opposed to this.

Mr. Mulvihill: It's news to us, sir. We never got a copy of it.

Vice-Chairman Tanner: I'll give you a moment to read that.

Mr. Mulvihill: Thank you, sir. What's the date today?

Mr. Santiago: The 13<sup>th</sup>.

Mr. Mulvihill: So three days ago, they wrote a letter.

Vice-Chairman Tanner: Correct. The letter that you have, could I see that, because I don't think any of us have seen that? Have you provided that to anyone?

Mr. Mulvihill: No, sir. Tom Welch had told us to hold on to it. That is an easement that he signed. And when we asked them for help and appealed to them to give us the variance, to give us the easement to get the variance, they said, "You have to talk to Vincent."

Vice-Chairman Tanner: Okay.

Ms. Vadla: Who exactly is Vincent?

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Mr. Mulvihill: Pardon me, ma'am?

Ms. Vadla: Vincent is who?

Vice-Chairman Tanner: Is apparently one of the landowners or a share of the landowners.

Mr. Mulvihill: According to him, he is the majority landowner, and also, he is the executor of the estate.

Vice-Chairman Tanner: Unless he is all landowner, he cannot grant a variance unless all of them agree. It doesn't matter that he is majority. If all of them aren't in agreement, and clearly one is not in agreement, then he cannot grant that.

Mr. Mulvihill: Mr. Tanner, when we asked over a year ago for Pat and for Lincoln to give us the variance, they were on the Mainland, and they said, "We can't be bothered with this now. We have – my mother is dying, Pat Maielua, and we have to be with her. We cannot do this. We're not gonna get involved in this." And to be quite frank, they told us talk to Vincent because nothing's gonna happen without Vincent's approval.

Vice-Chairman Tanner: Yeah. Well, we've gotta go on the documentation that we have. So I'll return that to you.

Mr. Mulvihill: Sure. This is a total surprise to us.

Mr. Ray Shimabuku: Mr. Chair, can we get a verification from Staff that – the actual owners of this property? I mean, we all talking about Mr. Vincent and Maielua. Who is registered on the landowner?

Ms. Vadla: You had mentioned there was five owners in the trust?

Mr. Mulvihill: There is Vincent, his brother, I do believe a cousin, and Lincoln, and he has either got one share or two shares, but Vincent is the clear majority stakeholder according to Lincoln and according to Vincent. He is the majority holder. In light of the fact that he has written this letter three days before the meeting, we'd like to find out why because he has never called us, and actually, he's been a friend of the family for 20 years.

Vice-Chairman Tanner: Well, I can't speculate on why he chose to do this. All I know this is what he chose to do. The letter's pretty clear.

Mr. Mulvihill: Okay. Did – the copy that you gave me, did I give it back to somebody?

Mr. Shimabuku: Mr. Chair, can we get a verification on the property owner?

Vice-Chairman Tanner: Yeah, Francis, are you able to do that?

Mr. Cerizo: You want the names of the owners of the adjacent property?

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Vice-Chairman Tanner: Correct.

Mr. Cerizo: Okay, let me check.

Vice-Chairman Tanner: Okay.

Mr. Mulvihill: Would we be able to ask for an extension to find out what the reason was that they suddenly decided to object, and contact them, and see if we could work something out whether it be financial or some kind of agreement?

Vice-Chairman Tanner: Well, I don't know if that may or may not be helpful. I mean, this is just one of the issues that we're looking at here. You know, whether the homeowner and the adjacent property is in agreement or disagreement, that's only part of it. I mean, if they completely agree, that doesn't mean you get a variance. So are you requesting an extension or a postponement?

Mr. Mulvihill: A postponement so we can see if we can work it out with the whole family, and thus, we'd be able to re-present the case as a – because we were unaware that every single member had to be on board. So we've only been advised. We have never been told that this would not be enough or too little. It's Lincoln's mother's trust. Toshiro Trust is the property owner.

Vice-Chairman Tanner: Okay. Before we go any further, could I get Staff's recommendation?

Mr. Jarvis Chun: Good afternoon, Chair, and Board Members. My name is Jarvis Chun. I represent Development Services Administration. And the Department usually does not offer any recommendation; however, in this case, if you look at page 8 of the Public Works' staff report, Criteria No. 2 – well, actually, it's the staff analysis at the bottom of the page. It lists four items that actually continues on to page 9.

Vice-Chairman Tanner: Right. Has the applicant seen this?

Mr. Mulvihill: No, sir.

Vice-Chairman Tanner: You don't have a copy of the staff report?

Mr. Mulvihill: Oh, we have a copy of it. It's like 25 pages.

Vice-Chairman Tanner: Yeah. Would the applicant like to withdraw the application at this point, and then come back before the Board at another time?

Mr. Mulvihill: If that would help us achieve our goal, yes, sir, that's what we'd like to do.

Ms. Grantham: May I ask what would that require? Sending out the certified letters like starting all over again?

Mr. Cerizo: I think what you're saying is you're suggesting a deferral instead of a withdrawal. Is that correct?

Vice-Chairman Tanner: Yeah, if it's withdrawn then it would be brand new.

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Mr. Mulvihill: No, we don't want to do that. A deferral would be more appropriate.

Vice-Chairman Tanner: Alright, so you'd like to request a deferral at this time?

Mr. Mulvihill: Please, and find out what that is all about, and also – yes.

Vice-Chairman Tanner: Staff, could you offer some dates for that deferral at this point or–?

Mr. Cerizo: We'll have the Staff check.

Mr. Stephen Castro: I have a question. The document you have for the easement, is that a notarized document?

Mr. Mulvihill: No, sir. A notary was not available at Nanakuli High School the day I visited Mr. Marfil.

Mr. Castro: Thank you.

Mr. Mulvihill: Does the Board have that–?

Mr. Cerizo: Yes, we have– Our next meeting is October 27<sup>th</sup>. We have two items on the agenda. I'm not sure if those items are gonna be lengthy or not. That's a possibility. Next date after that is November 10<sup>th</sup> where we have also two items on the agenda. On November 23<sup>rd</sup>, there is no item scheduled so that would be a clear day.

Vice-Chairman Tanner: November 23<sup>rd</sup>, then?

Mr. Mulvihill: Yes.

Vice-Chairman Tanner: That's acceptable for a deferral?

Mr. Mulvihill: Yes, sir, it is. May I ask a question?

Vice-Chairman Tanner: Sure.

Mr. Mulvihill: Would we be able to purchase that piece? If we purchased that piece of land for a new subdivision, would that satisfy the Variance Committee as being an acceptable alternative to asking for a variance with the materials we've supplied so far?

Vice-Chairman Tanner: I'm not sure I understand the question. Are you talking about purchasing the property next door?

Mr. Mulvihill: A portion of it. Subdividing it and purchasing that 12 feet by 50 feet.

Vice-Chairman Tanner: Oh, I see what you're saying.

Mr. Mulvihill: That way it's our land and I'm sure that they'd be glad to see the money.

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Vice-Chairman Tanner: So like maybe buying six feet of it is what you're talking about?

Mr. Mulvihill: Well, whatever would be required by Staff, we would be glad to talk to them. I think if they had some cash, I think they'd be interested instead of it just sitting vacant. They're not making any money with it, and so it could solve the problem of the encroachment into the State's and to the County's setback.

Vice-Chairman Tanner: I understand. I don't think I'm able to answer that question whether that would satisfy all of the County's concerns with this or not. Francis, who might they ask that to?

Mr. Cerizo: Well, the – to consolidate with the adjacent property would not be possible. The zoning now is R-2 Residential. And the minimum lot size for R-2 is 7,500 square feet. The current area for that parcel is 6,500. You won't be able to–

Vice-Chairman Tanner: So it's already too small to subdivide into–?

Mr. Cerizo: It's an existing nonconformity lot. It's already substandard.

Mr. Mulvihill: Would a zero lot line overlay be a better approach?

Mr. Cerizo: I'm not sure if it's possible, but that's something you can explore between now and November.

Mr. Mulvihill: Okay, that was a suggestion that we had heard if we hit a roadblock here, which we obviously have.

Vice-Chairman Tanner: Okay, so we got a deferral date set, then?

Mr. Cerizo: Yes.

Vice-Chairman Tanner: Thank you.

Mr. Mulvihill: Thank you very much for hearing us today.

Ms. Grantham: . . . (inaudible) . . . notarized document that Vincent Marfil signed, would that be helpful to have that notarized before our next meeting?

Vice-Chairman Tanner: Having any documents notarized is a very good idea.

Mr. Mulvihill: Okay, we weren't sure. We weren't sure. That's why I took a picture of it.

Ms. Vadla: I would suggest to get every one of their signatures notarized.

Mr. Mulvihill: One of them is 101, and I think probably non compos mentis so–

Ms. Grantham: But . . . (inaudible) . . . agreed to and signed by a notary?

Mr. Mulvihill: Yeah, everybody's gotta sign. Okay. Alright, well, I guess we'll see you in November.

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Vice-Chairman Tanner: Okay. Before we end this portion of it, we'd like to give an opportunity for any of those from the public that came out for this particular hearing, an opportunity to speak. So you'll have three minutes, and I believe on this, we've got some of them signed in. Tell you what? If you would like to speak on that – on this particular item would you just approach the podium please, and state your name, and you'll have three minutes? Two and a half minutes? Would you like to speak?

Unidentified Member of the Audience: I defer on this.

Vice-Chairman Tanner: Oh, you defer on that till the–? Okay. Alright. Is there anybody else from the public who would like to speak?

Unidentified Member of the Audience: I defer.

Vice-Chairman Tanner: You defer as well? Okay. Alright, thank you. We'll close this portion and we'll move on to the next item.

Mr. Mulvihill: Mr. Tanner?

Vice-Chairman Tanner: Yes?

Mr. Mulvihill: Pardon me for interrupting, sir. Janet . . . (inaudible) . . .

Ms. Grantham: Since I have these nine after-the-fact building plans drafted up, should I just–?

Mr. Mulvihill: Hold 'em?

Vice-Chairman Tanner: I would bring them with you to the next hearing.

Ms. Grantham: So I file for the building permit before we have–?

Vice-Chairman Tanner: I don't know if that's a question for this Body.

Mr. Shimabuku: I think at this point, maybe they need to get legal counsel instead of trying to fish out from us what they need.

Vice-Chairman Tanner: That's good advice.

Mr. Shimabuku: I think that would be the best for you to get legal counsel.

Mr. Mulvihill: We had legal counsel, but, you know.

Mr. Shimabuku: We're the Board of Variances and Appeals. We're not here to give our opinion as to what you should do and should not do.

Mr. Mulvihill: Sure, I understand. Okay, well, thank you very much for your time, and hearing us, and aloha. Thank you.

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Vice-Chairman Tanner: Okay, the next item on the agenda: Kalani Ho. And if I can have Staff read the notice of public hearing and state the purpose of the application?

Mr. Cerizo: Can we have a short break to set up the next presentation?

Vice-Chairman Tanner: Certainly, yes, short break.

(A recess was then taken at 2:47 p.m., and the meeting reconvened at 2:52 p.m.)

Vice-Chairman Tanner: . . . and I'll ask Staff to read the notice of public hearing and state the purpose of the application.

2. **KALANI HO requesting variances from: (1) Maui County Code (MCC), '16.08.060(A) and 19.08.060(A) to allow a portion of a covered deck extension to be located between 3 to 6 inches from the western property line, and up to 2 feet 9 inches from the northern property line, whereas a six (6) feet setback is required; and (2) MCC, '16.08.060(E)(3) to allow a portion of a roof eave to be located on the northern property line whereas a three (3) feet setback is required, for property located at 5155 D Hanawai Street, Lahaina, Maui, Hawaii; TMK: (2) 4 3 011:022 (BVAV 20110011).**

Mr. Cerizo read the agenda item into the record.

Vice-Chairman Tanner: Staff, do you have a presentation or power point?

Mr. Cerizo: The property is located in Napili. This is Napili Shopping Center or Napili Shopping Center on Napili Highway. This is Honoapiilani Highway. Further north would be Kapalua in this area. The property is located in what's called the Napili Subdivision. And it's in the rear part of the subdivision next to the Honokeana Bay Gulch. A close-up of the property in question. Here's the actual dwelling. It is adjacent to an open gulch. Let's take a view from the opposite side. We're looking from actually, the makai side of the property. This is the rear side next to the gulch. This is the area that is in question that's encroaching within the setback area—the rear side. Another view of the encroachment. So the area that's encroaching is right in the corner.

Vice-Chairman Tanner: Thank you, Staff. Would the applicant come forward, and speak into the mike, and state their name, please?

Ms. Kalani Ho: Hi. Good afternoon. My name is Kalani Ho. Thank you for letting me come here today.

Vice-Chairman Tanner: Is the applicant agreeable to the waiving of the reading of the staff report?

Ms. Ho: Yes.

Vice-Chairman Tanner: And you have a copy of that?

Ms. Ho: Yes.

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Vice-Chairman Tanner: Okay. Do you have a presentation, then?

Ms. Ho: I do.

Vice-Chairman Tanner: Okay.

Ms. Ho: So I handed out – I didn't have a fancy power point, but I printed it out for you. If you could just follow along and we'll just sort of breeze through pretty quick. I wanted to give you some highlights of my application today.

The first page shows you the same map that was just shown that shows you where my subject property is. And we go right up next to the Napili Gulch or Honokeana Gulch, which is also an open space buffer for the Napili Hau Community Association.

On the next page, I wanted to run you through a little bit of background of my scenario. The property is located in the Napili Hau Planned Unit Development. So originally, building permits were issued in '73. My house was built in 1976. In August of 1988, there was a building permit issued for a bedroom, laundry, bathroom addition. In August 2006, which is right after I had purchased this house, I – and I after I did my covered deck extension, I put in an application for an after-the-fact building permit. In February of 2007, my building permit was actually approved pending SMA approval from the Planning Department. In March of 2010– My whole application went dormant for a few years. And then in March of 2010, I received a letter from the Planning Department requesting I go to get a variance for a setback. In April of 2010, the DSA retracted the building permit approval in response to the Planning Department's letter. In May of 2010, I submitted my variance application. We were scheduled to come before you last year November 2010, but found out a few weeks before the hearing that I needed to amend the application. So we cancelled that hearing, amended the application, have resubmitted back in April, and then now we're here today.

Next page: I just wanted to give you a little brief history on the Napili Hau Planned Unit Development. It was kind of a test neighborhood. It was a unique affordable housing project that was developed in the mid-70's as a joint venture of Honolua Plantation Company, which is Maui Land and Pineapple Company, and the Hawaii Housing Authority. The Napili Hau PUD was granted several zoning variances, which permitted the reduction of minimum lot size, minimum lot width, and front yard setback. In 2001, the Department of Planning adopted an unofficial policy of not issuing or processing building permits until the Napili Hau Community Association obtained Planning Commission approval of a comprehensive request for approved plans for the entire subdivision. The Napili Hau Community Association is basically almost bankrupt. Very, very little money. So the association has never come forward and revised all of the planned unit standards. But in 2009, the Department decided that they would go ahead and consider individual building permit applications for homeowners if it was sort of front and side yard setbacks, and not going over one story.

Next page: I just wanted to give you some photos of the existing neighborhood. The photo on the top left hand side shows a neighbor who has a roof similar to – or covered their deck similar to me. My next door neighbor, which is the photo on the upper right-hand side, which is one of the houses that actually has a shared party wall, that was one of the unique elements or characteristics of the neighborhood when it was originally designed. And then the bottom picture, which you guys saw a better on the screen here just shows you the gulch. And I have an arrow showing where the roof

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line is.

Next page shows you some pictures of the house before I put the roof on. On the picture on the right-hand side, the upper right, you'll see kind of the limits of the deck itself, and that was the original construction. So when you flip to next page, if you look at the picture that is on the upper right-hand side, I didn't extend the original deck itself, but did put the roof over it. So I kept their original kind of floor plan of the deck.

On the next page, it shows you a survey that I did for my property. On the upper right-hand corner is the area in question for the variance today. It's the little corner above the blue dotted line. And then I wanted to draw your attention to the box that I have on the bottom left hand side which shows the addition that was approved in 1988, which is actually within the setback. It's between 5.9 feet and 5.6 feet from that property line. And then the box, the text box that I have on the bottom right-hand side, which shows that the original construction of my house is actually within the setback's five feet. It's 5.3 inches from the property. And that's just to illustrate the improvements that I made to the house weren't grossly out of character for what the original construction was.

Justification: if I had to modify it the way that it is, it would just be pretty costly to cut back the corner of the deck. I'd have to remove the footings underneath, which will make it expensive to do. And I know that it's my bad that I did it without – I'm doing this after-the-fact, but had the building permit been – or the Planning Department been processing, I would've done it in advance, and probably not built it within the – you know, that corner being too big. So I apologize for that. But when I moved in the house, that whole side of the house was you could poke your finger through because it was so deteriorated from all the – it gets wind and rain every single day.

And then I also believe that the construction is not inconsistent with the preexisting construction of the house. I kept it to the exact same size of the deck. And if you look at my neighbor's house just to the right, you'll see she has a deck that was very – that is exactly the same as mine, and I just put the roof right over it. You can see the white.

The second point is the granting of the variance I don't believe shall be detrimental to the public health, safety, or welfare. My improvements are not out of character with the surrounding neighborhood. I have not received complaints from my neighbors, and I also have approval from the Homeowners Association. They've also recognized that it's within the setback. The improvement has been in place now for over five years with no negative impact.

And then the granting is not injurious to the adjacent lots. My house abuts an open space buffer. I don't go over my property line, and I feel like it's not too horrible for everybody else. And that's all I have. Thank you for your time.

Vice-Chairman Tanner: Thank you. At this time, I'll take any questions from the Board for the applicant. Very good presentation. Eliminated all questions.

Mr. Castro: I'm just curious why since 2007, the approval of the permit, the pending SMA approval gotta wait three years. Why so long?

Vice-Chairman Tanner: Did you get any explanation as to the length of–? You said it got bogged down, but–

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Ms. Ho: Yes. So the reason – so what happened was in the Planning Department – Francis, correct me if I speak out of turn, but in the Planning Department, because Napilihau Planned Unit Development doesn't have design standards, and there were so many applications that were coming in to change it, and they all require a– Because now I think the new zoning is we go to project district, and they don't do planned unit developments. So the zoning is a little archaic. And the original Planner that had my case said, "Oh, yeah, we just do – whenever we get an inquiry from your neighborhood, we just put it on the side because we don't know what to do because the rules aren't written." So really, it's sad. And I attempted to go in. I didn't chase it because I had the letter from the Building Department saying that I was approved. So I was like, okay, well, she's not gonna do anything, so I'm not gonna chase it because it's approved. I've built it within standards. It's safe and all of that. So I went in a couple – you know, passively, but didn't.

So in 2009, there was a similar case that came before the Board of Variances which was a setback variance. And I have a copy of that. And so the Variance Board actually approved it. It was for a bedroom addition. And then they went back to the Planning Commission. And this is when the Planning Department decided that they would start to do individual applications without waiting for the Homeowners Association to do the overall planning changes. So that's where we're at. So that was – that kind of new direction was taken in 2009, which then my application with a new Planner got some activity. So in 2010, they reviewed my application. But, yeah, it's a long time.

Mr. Castro: Thank you.

Ms. Ho: Thank you.

Vice-Chairman Tanner: Do we have any more questions from the Board?

Mr. Shimabuku: Is there any letter of support or–?

Vice-Chairman Tanner: Opposition?

Mr. Shimabuku: Opposition to this matter that you know of?

Mr. Cerizo: We have no letters.

Mr. Santiago: You said that there was an approval from the association?

Ms. Ho: I do.

Mr. Santiago: Do you have the letter?

Ms. Ho: I do have it. I submitted it to the Planning Department as part of my application process. I don't know if it made it into your packets because it came after, but I have a copy of it with me if you want it. I turned it in, in September 20<sup>th</sup> to the Planning Department when I was giving proof that I had done the mailings and sort of my public hearing, but I can pass that around, if you want.

Vice-Chairman Tanner: Is there any further questions from the Board while this is going around?

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Mr. Santiago: Just a question. Should that be signed by the Board President?

Ms. Ho: She sent it via e-mail. Yes, good observation. I didn't— I can get it, their validated— I have the e-mail from her with the attached . . . (inaudible) . . .

Mr. Santiago: Yeah, I don't recall seeing it in the packet.

Vice-Chairman Tanner: I didn't either, no.

Mr. Cerizo: Yeah, it came in on September 20<sup>th</sup>. And it's dated actually, January 25<sup>th</sup> 2011. And it's in response to letters requested for the after-the-fact approval. And it indicates that the directors met and approved the roof covering to your lanai. It also says it's aware that the roof line crosses the six-foot setback. And as noted, it's not signed.

Vice-Chairman Tanner: Okay, if there's no further questions from the Board, we'll open to public hearing. Anyone here from the public who would like to speak on this item, please come up to the microphone, state your name for the record, and present your testimony.

Mr. Gordon C. Cockett: Good afternoon, Vice-Chair, and Members of the Committee. My name is Gordon C. Cockett. And there are three Gordon Cocketts on this island, so I have to use my middle initial so the other two guys don't get blamed for anything I say.

I was concerned about neighbors in this property line thing. And I see from the map that this request would not hamper or interfere with the neighbor on the upper side. So I would like to defer any disagreement or complaint about this. Thank you very much.

Vice-Chairman Tanner: Thank you, sir. Are there any other comments from the public? Hearing none, we'll close public hearing. Do we have any staff recommendation you would like to read in addition to—?

Mr. Cerizo: Yes, the Planning Department has a staff recommendation. Based on its analysis, the Department of Planning finds 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. Strict compliance with the applicable provisions of this title would not prevent reasonable use of the subject property. And the conditions creating the hardship were the result of previous actions of 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 the October 13, 2011 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. Signed by the Director, William Spence.

Vice-Chairman Tanner: Is there any discussion by the applicant regarding the staff's recommendation?

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Ms. Ho: Yes, I would like to just appeal to the Board. I know that they're saying that I'm – that it shouldn't be granted, but I just would like to appeal to you that it's very – it's a small little corner, but it would be expensive for me to modify it. And just I ask for your consideration of granting me the variance. It does no harm to any of my neighbors, and it's been there for five years without any harm. So I appreciate your time today.

Vice-Chairman Tanner: Thank you. Is there any discussion by the Board Members? Hearing no discussion, we'll call for a motion.

Mr. Shimabuku: Mr. Chair, I'd like to make a motion based on the applicant's presentation, and all the information that she has that we award the variance, and have the hold harmless condition applied.

Vice-Chairman Tanner: Would that be with the requirement for additional insurance?

Mr. Shimabuku: I don't think it's necessary.

Vice-Chairman Tanner: Alright. So we have a motion to grant the variance with the standard hold harmless agreement. Do we have a second?

Mr. Castro: Second.

Vice-Chairman Tanner: We have a motion and a second. Any discussion? Okay. Can we have a vote on the granting of the variance? All those in favor? Any opposed?

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

**VOTED: To grant the variance with the standard hold harmless agreement.**

**(Assenting: R. Shimabuku, S. Castro, B. Santiago, J. Haraguchi,  
P. De Ponte, B. Vadla.)**

**(Excused: R. Phillips, K. Tanaka.)**

Vice-Chairman Tanner: **The variance is granted.**

Ms. Ho: Thank you very much.

Vice-Chairman Tanner: Thank you. The next agenda item we have is the minutes.

**D. APPROVAL OF THE MEETING MINUTES OF THE SEPTEMBER 8, 2011 MEETING  
(deferred from the 9/22/11 meeting), AND THE SEPTEMBER 22, 2011 MEETING**

Vice-Chairman Tanner: And as I recall, we have two sets of minutes: the September 8<sup>th</sup> and the September 22<sup>nd</sup>? Is that right? It is. Okay. So can I have a motion to approve the September 8<sup>th</sup> meeting minutes?

Mr. Castro: So moved.

Vice-Chairman Tanner: Do I have a second?

Mr. Shimabuku: I second.

Vice-Chairman Tanner: Okay, we have a motion and a second to approve the September 8<sup>th</sup> minutes. All those in favor? All those opposed?

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

**VOTED: To approve the September 8, 2011 meeting minutes.**

**(Assenting: S. Castro, R. Shimabuku, B. Santiago, J. Haraguchi,  
P. De Ponte, B. Vadla.)**

**(Excused: R. Phillips, K. Tanaka.)**

Vice-Chairman Tanner: Alright. Can I have a motion to approve the September 22<sup>nd</sup> Board minutes?

Mr. Shimabuku: So moved.

Vice-Chairman Tanner: Do I have a second?

Ms. Haraguchi: Second.

Vice-Chairman Tanner: I have a second. All those in favor? All opposed?

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

**VOTED: To approve the September 22, 2011 meeting minutes.**

**(Assenting: R. Shimabuku, J. Haraguchi, S. Castro, B. Santiago,  
P. De Ponte, B. Vadla.)**

**(Excused: R. Phillips, K. Tanaka.)**

Vice-Chairman Tanner: Alright. Do I have a motion to adjourn? Oh, I'm sorry, Director's Report. That's why you didn't adjourn. You knew I messed up.

## **E. DIRECTOR'S REPORT**

### **1. Status Update on BVA's Contested Cases**

Mr. Cerizo: We have no update on the status of the contested cases. It's unchanged.

Vice-Chairman Tanner: Okay. Now can I have a motion to adjourn?

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Mr. Shimabuku: So moved.

Vice-Chairman Tanner: Second?

Mr. Santiago: Second.

Vice-Chairman Tanner: All in favor?

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

**VOTED: To adjourn.**

**(Assenting: R. Shimabuku, B. Santiago, J. Haraguchi, S. Castro,  
P. De Ponte, B. Vadla.)**

**(Excused: R. Phillips, K. Tanaka.)**

Vice-Chairman Tanner: Thank you.

**F. NEXT MEETING DATE: October 27, 2011, Thursday**

**G. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 3:16 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Rick Tanner, Vice-Chairman  
Stephen Castro  
Ray Shimabuku  
Bart Santiago  
Bernice Vadla  
Jacqueline Haraguchi  
Patrick De Ponte

**Members Excused:**

Kevin Tanaka, Chairman

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Rachel Ball Phillips

**Others:**

Francis Cerizo, Staff Planner, Planning Department

Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

Lance Nakamura, Department of Public Works, Development Services Administration

Jarvis Chun, Department of Public Works, Development Services Administration