BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MAY 10, 2012

(Approved: 6/28/2012)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 1:32 p.m., Thursday, May 10, 2012, 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.)

Chairman Kevin Tanaka: Good afternoon. We can now call the meeting of Board of Variances and Appeals to order. It is now 1:32 p.m. At present we have a quorum of five. First item on the agenda, Trisha.

B. PUBLIC HEARING

1. COUNTY OF MAUI, DEPARTMENT OF PARKS & RECREATION requesting variances from Maui County Code, §§ 19.62.060 (A)(3)(a), (G)(1), and (G)(6)(a) to allow for the development of a proposed comfort station at grade, which is below the 17-foot mean sea level base flood elevation for the Baldwin Beach Park located off of Alawai Road at Hana Highway, Paia, Maui, Hawaii; TMK: (2) 2-5-005:046 and 47 (BVAV 20120001).

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

Ms. Kapua`ala: Board I'd like to introduce Staff Planner, Carolyn Cortez. She, along with Mr. Francis Cerizo are certified flood plain managers for the County of Maui and she has a presentation for you.

Ms. Carolyn Cortez: Hi. Good afternoon, board members. My name is Carolyn Cortez and I'm a planner with Zoning Administration and Enforcement Division, and this morning we're bringing to you, the board of, excuse me, Baldwin Beach Park comfort station. Okay, as you're familiar, this is the site. Baldwin Beach Park. The comfort station is going to be located approximately over here. So I have to drive from here. Okay, this is the area of the comfort station. The entire property is in a flood hazard area, special flood hazard area. As you can see the red area is a V zone, the light blue here is AE and this dark blue here is zoned AEF which is a floodway. And again, the location of the comfort station is approximately right here. The base flood elevation for the area, if you can see, this is 16 feet mean sea level. This is also 16 feet which is right around the area of the comfort station and then this is 17 feet here. So that's the general location and characteristics of the site. And now I'd like to call Neal Dixon who is representing the Department of Parks and Recreation for his power point presentation.

Mr. Neal Dixon: Good afternoon, members of the Board of Variances and Appeals. Good

afternoon. Thank you for taking the time today to hear our request and for your consideration of our request for a variance from provisions found in the Maui County Code, standards of development in flood hazard areas, and this is relating to the proposed comfort station at H.A. Baldwin Park in Paia.

With us today, we have the project team which includes, Robert Halverson of the Department of Parks and Recreation; Calvin Higuchi of Riecke, Sunnland and Kono Architects; Stacy Otomo & Satish Gholkar, they're project engineers; and then Munekiyo and Hiraga, we are the planning consultants. And we have Michael Munekiyo and I am Neal Dixon.

Baldwin Park, as you can see right here, is located along Hana Highway directly east of the Maui Country Club and about one mile to the west of Paia. Across the street and uphill as well as on portions of the eastern side, have sugarcane fields that are cultivated by HC&S. Also, along the east side we have the Paia Rinzai Zen Mission, and then a county-owned shoreline property.

Now, the proposed comfort station is located at the north corner of a grassed play field. It's inland of the shoreline, which you'll see a little towards the shore. And it's also inland of some of the parking areas as well as the picnic pavilion in the shoreline area.

We ask this afternoon for your favorable consideration of our request for a variance from portions of Chapter 19.62, Maui County Code, pertaining to flood hazard areas. These variances address standards of development, in particular, the elevation and flood proofing of structures, and flood hazard areas, and specifically, the structures in coastal high hazard areas. The variance will allow for the development of a replacement comfort station which will be located at grade, basically at existing ground level. This elevation that we're providing should help visualize what is being proposed. It's a pretty standard comfort station design. Has a men's and women's restroom and change facilities. It also houses a janitorial closet and storage area for the Department of Parks and Recreation.

Now, when the Department of Parks and Recreation first began seeking a replacement for a comfort station, the first consideration that they had to take on was its location. And you all remember this photo from last August. There was a photo very similar to this in the Maui News. It shows the effects of very intense seasonal shoreline erosion. This is at Baldwin Park. That is the old comfort station.

So moving the comfort station inland from the shoreline and the associated – associated erosion and shoreline hazards was a given. It was still important to make sure that the comfort station near where most of the parkees would spend their time. That's generally on the shoreline portion of the park.

Now this flood insurance rate map or FIRM, shows the project area. It's produced by the National Flood Insurance Program that's administered by FEMA, Federal Emergency Management Agency. Let me just point out, some of the landmarks. This is very similar to what Trisha showed – I mean, what Carolyn showed. You have Hana Highway running diagonal across the screen and Baldwin Park is in this area. The FIRM is very good at showing the outlines of the flood zones, and we have those called out in the blue shading. But what we want to focus on is what is seaward of this

white line. And that is the flood zone VE or flood zone with additional coastal wave hazards. As I said, this is very good at showing the outlines of the flood zones. But what it might not show is that the entirety of Baldwin Park, this photo is taken from Hana Highway, the entirety of Baldwin Park is within a flood zone. And it's a pretty standard, pretty uniformed flood zone all about – almost the same flood height.

In a moment, I'm going to go into the details of the variance that we're asking for. But before we do I wanted to just make sure that I cover all of the different terms that I'll be using, and these come from FEMA and the flood insurance program. This image, which was produced by FEMA, shows an area very similar to what Baldwin Park looks like from at a cross section. First we have the existing ground level. And if we're talking about putting a building at the same level as ground, I'll be referring to that as being "at grade." It's in relation to a shoreline area and sea level, in particular. And the last feature that we have is this blue line that goes diagonal and across. That blue line is the Base Flood Elevation or BFE. That's calculated based on the impacts of the flood waters, and then when you're in the area near the shoreline, you add on the additional impacts of velocity waves, and those could come from a storm surge or I suppose from a tsunami as well. The height of the base flood elevation is defined by the parameters of the worst storm in an average one hundred year period.

So members of the board, we ask for your favorable consideration of our request for variances from three specific parts of Section 19.62.060, Maui County Code, that says Development Standards for Flood Areas. The first part addresses elevation and flood proofing of structure. And basically, what this paragraph says is that the lowest floor in a flood zone must be at least one foot above the base flood elevation. Now, it gets a little bit defined, defined a little further in coastal high hazard areas that states you have the same elevation standards, but the bottom of the floor must be one foot above the base flood elevation, but then the structure itself must be elevated on pilings, or poles, or columns and secured to that.

Now to give you an example of what these two provisions are calling for, we have this other figure that's produced by FEMA, and it shows that coastal high hazard area. Kinda relating this to Baldwin Park, the top of the waves would be the base flood elevation. That includes flood waters as well as velocity waves. Down here we have the existing ground level. And then this building is elevated on poles to a minimum of one foot above the base flood elevation.

The final part of our request, Paragraph G.6.A, and that states an engineer must certify that the building meets these development standards. And because we are requesting a variance from one of these standards, we note that the elevation portion of the certification will be granted or we're seeking the variance.

This conceptual drawing was prepared by the project architect. It shows what the comfort station might look like if it were elevated on poles. So, let me point out the existing grade, the ground level, and the base flood elevation at 16 feet above sea level. The building is elevated on poles to one foot above that base flood elevation, which puts the floor level of the comfort station at approximately, ten feet. With the additional height, we need a couple other additional facilities added on. That includes a stairway. That would be – that would go up to first floor level, so we have one full story. And then we have an ADA accessible ramp. And because of ADA

requirements, that would end up being about 150 feet long. It's shown wrapping around the building in this configuration.

Now I'd like to address three criteria that are for the justification in order to grant a variance. The first one is that there must be a unique or unusual physical or geographical condition. So let's return to that photo that we showed earlier and it's that photo taken from Hana Highway. The park as you can see is very flat and resulting from that we have a very relative – you have a relatively uniformed and wide flood hazard area. This flood area is unique to the area of the park and in the immediate vicinity.

Next, it needs to be shown that strict compliance with the provisions of Maui County Code would prevent reasonable use. The reasonable use associated with the park comfort station is directly connected to its accessibility and its functional utility. Now, in order to maximize that functional utility, the Department of Parks and Recreation believes that the comfort station really needs to be located at grade. The added height would add barriers to public access. For those who would need to use the ADA Ramp, we have that barrier. But even for any other user coming to or from the beach, many of whom might have kids in tow or be carrying them upstairs, we have that added barrier to accessibility to a pretty standard park provision.

Finally, the conditions creating the hardship must not be created by the applicant. As illustrated by that photo that we showed earlier, the hardships are a result of the natural topography. They are pretty unique to this area. The topography affects the flood zones, which we find in this area and that we are contending with. But we note for a park use, there are additional provisions that are associated with this existing park use.

And before wrapping up this presentation, I just wanted to summarize for the board members, some special considerations that are given to variances that deal with flood hazard areas. First are the characteristics of flooding. As we stated earlier, base flood elevation is16 feet above sea level and includes wave actions from storm surges or tsunamis. The ground level in the area is seven and a half feet. The water from a storm would flow from upstream, so toward the mountain, and there are those additional hazards from storm waves. The context to the coastal park, these conditions are relatively common and have been considered in the design by the application. We'll go over that in just one – in just a short bit.

The other consideration that you should focus on is the site location. And first the site was selected specifically for convenience to users, but inland of the shoreline and away from the coastal and other erosion hazards. There are no properties downstream of this comfort station. And this consideration ties into the final one, that is, in terms of we need to assess the potential dangers to life and property that could arise. The Baldwin Park is a shoreline. No other properties are downstream, and that comes into play when you consider the danger that debris might be swept onto other properties. But the location is also quite far away from Hana Highway, about 600 feet away. So dangers of debris being swept inland are also relatively minimal.

The danger that could result has also been considered in the design of the structure. First, in the event of a large storm, the Department of Parks and Recreation staff would close the county parks. And if there were a tsunami evacuation, Hana Highway would be closed and used for

evacuation purposes.

Now, we have some design measures, but first what you're looking at right now is a cutaway section of the proposed comfort station that shows the men's and the women's restroom facilities. And then between those you have the storage locker and the janitorial closet. First, in the event of a potential flooding event, the Department of Parks and Recreation staff would close off the wastewater lines to prevent any effect to the wastewater system.

Now in terms of design for the building, we have the base flood elevation here, and everything, the walls and the fixtures below that level, so everything below there is designed to give way under the pressure of a rising flood. But that's not the case for the structural columns which hold up the roof. So those are designed to resist the pressures of a flood and hold up the roof, which is where the horizontal elements are located, as well as any other critical project components. These are all located above the base flood elevation. And in the event of a surge, the columns and the roof would stay, would stay in place. Now what this does with this design of the breakaway walls and then the stable roof and columns, is it minimizes the impact that the building would have on flood characteristics, and that it lets water through the building if the flood is coming on in that manner while also limits the amount of debris that this building could actually cause.

In the event of a flood, the County Department of Parks and Recreation does acknowledge the possibility of damage to the structure. But its location and its design would insure that damage is confined primarily to that structure. And in the event of damage, the Department of Parks and Recreation would assume responsibility for repairing the facility.

So in summary, the Department of Parks and Recreation, in proposing the comfort station, seeks to provide a service to park users, address the public health and welfare issue, and do so in a way that considers the flood hazards, and mitigates impacts associated with this development. We ask this afternoon for the members of the Board of Variances and Appeals for your favorable consideration to allow for the development of the comfort station at existing ground level. If any of you have questions, you may – I'm here and the rest of the project team is here to answer questions that you might have.

Chairman Tanaka: Thank you. Board members, any questions for the applicant?

Mr. G. Clark Abbott: Yes, if I may. Could you bring back the picture of the structure in question showing the – well, could you tell me on the bottom level, which is one foot above – where the flood level is or the water level?

Mr. Dixon: The water level is right below the roof structure.

Mr. Abbott: Okay, then what is at the bottom there? The dark, dark, dark line is what?

Mr. Dixon: This would be a concrete foundation.

Mr. Abbott: Okay. What – it says, "men" and "women." What is in that area? Is that where the facilities are?

Mr. Dixon: Yes, this is where the restrooms are.

Mr. Abbott: What is above?

Mr. Dixon: I'd like to bring Calvin Higuchi to the microphone.

Mr. Calvin Higuchi: Are you asking what's above that flood level line? Above–?

Mr. Abbott: Yes, I would like to know what's in the second story.

Mr. Higuchi: It's all open.

Mr. Abbott: It's all open?

Mr. Higuchi: . . . (inaudible) . . .

Mr. Abbott: Then may I ask what the necessity is of an ADA ramp going that high up if it's open?

Mr. Bart Santiago: That's only if it's elevated.

Mr. Abbott: Only if it's elevated?

Mr. Higuchi: Yeah, actually, for what we're asking for, we're not gonna have ramps.

Mr. Santiago: So, what's the cost for . . . (inaudible) . . . elevated verses ground level?

Mr. Higuchi: We didn't really look at that. . . . (inaudible) . . . And, you know, the other thing about the ramp is that we're not sure, and we've talked to Francis about this, whether or not that would be allowable below the BFE, because it's a structure. So the other option would have probably been an elevator, but even that would've been a problem.

Mr. Santiago: This rendering is showing it as below the BFE, right?

Mr. Higuchi: Yes.

Mr. Santiago: And you're saying that it's possible it could not be located below the BFE?

Mr. Higuchi: Yeah, maybe Francis can clarify that.

Mr. Francis Cerizo: Access to the second floor be it stairs, or elevator, or ramp is okay. It would be acceptable. One of the things is that you need to design it – that, you know, it breaks away. Or if it's designed to remain that it doesn't have an effect on the structure. So most times, something like this probably would break away. We would have it break away.

Mr. Santiago: The project cost as it stands if it's on the ground without being elevated?

Mr. Higuchi: We're looking at under $500,000.

Mr. Santiago: So approximately, what would it cost to elevate it? . . . (inaudible) . . .

Mr. Higuchi: Hard to say. I would say probably another hundred thousand or so.

Mr. Santiago: Do you know what the impact was with the tsunami last year, in that area?

Mr. Higuchi: Maybe Parks can answer that? I think there was some flooding, right? Minimal.

Mr. Santiago: In the last hundred years, do you know what kind of flooding impact has been in that area?

Mr. Higuchi: I'm not that old.

Mr. Santiago: . . . (inaudible) . . .

Chairman Tanaka: I don't know. Has that ballfield ever been saturated with salt water in our lifetime?

Mr. Higuchi: I think there was some flooding, you know, more toward where that channel is and in the parking lot. But I'm not sure if it got over into the parking, into the ballfield.

Chairman Tanaka: Alright. Board members, any other questions?

Mr. Santiago: I guess I got some questions that would be answered from a cost standpoint and then from a historical perspective . . . (inaudible) . . . that would fixate that this is required, and that maybe a ground level structure might be adequate, but we don't know . . . (inaudible) . . . It's hard to make a determination on the request, if we don't have all of the information.

Mr. Cerizo: Mr. Chair? As far as the flood maps, these maps are – shows the flood heights. And some of the flood heights are actually based on actual events, and they take those events, and further model it so that they can come up to a hundred-year occurrence. And we had the – a recent update in 2009. Many of the areas were reevaluated and confirmed as far as the flood heights. And we have some experience on flood damage near Kanawha Pond where there's several structures along the – within the park area that – or remnants of structures that was damaged. Seventeen feet, the flood height at that is – it shows here about eight, nine feet above the existing grade. Hopefully, we don't have that occurrence, but we rely on FEMA to develop these maps, and we don't have any reason to say the maps are not – it's not gonna occur, so– I think we should just, you know, as far as the flood height, it's – hopefully, it doesn't occur, but that's a hundred years. That's their estimation on what can occur. And we know that sometimes those things are under estimated like in Japan. It could be even more, so–

Chairman Tanaka: Yeah, because the hundred-year event is just a theoretical model. And Bart – and I guess you can correct me if I'm wrong, well, typically, especially with a state or a county agency's budgetary concerns, a lot of times we'll say the difference between $500,000 and

$600,000 is not much. The difference in the Department of Parks maybe whether it's done or it's not done. Yeah, so, you understand?

Ms. Jacqueline Haraguchi: We're not supposed to be considering the monetary – we're not supposed to be considering the cost of the structure itself or is that what we're here for?

Chairman Tanaka: Well, It's our collective opinion.

Ms. Haraguchi: Uh-huh.

Chairman Tanaka: And all factors are a part of it. So, I don't– If that– I mean, Bart, any other–?

Mr. Santiago: I just have one more question. The original comfort station, it was built. Do we know how far away it was from the water? To what extent the erosion has occurred over the last 50 or 64 years?

Mr. Dixon: We do not have definitive answers on that.

Chairman Tanaka: Yeah, it looks like the parcel line maybe at least another 50 feet out.

Mr. Santiago: 'Cause it looked like the building itself was okay. It's just the surrounding land or sand went down.

Mr. Teddy Espeleta: Use to have a forest over there.

Mr. Santiago: A forest?

Mr. Espeleta: Like trees. Had ironwood trees over there. I remember. This was back in the early '70's. They had – it was pretty wild. They had like – in '72–

Mr. Santiago: So the old comfort station, the old comfort station, it was in a forest setting?

Mr. Espeleta: It was, yeah, it was. Well, from what I remember, it was way up, away from the water. And I got to see it as a kid. And then last year, I think it was last year, I just saw it starting to – I saw the end of it. That's what I mean. I couldn't believe that much erosion happened.

Mr. Santiago: I guess, I wondered, the question–

Mr. Espeleta: Like I said, this is what I remember.

Mr. Santiago: Is 242 feet away from the shoreline adequate? Maybe in our lifetime, that's–

Mr. Mike Munekiyo: Mr. Chair? Board members? My name is Mike Munekiyo. The photo that Carolyn has put up shows probably a two-year age photo where the comfort station still is beyond the reach of the wash of the waves. In this area of the island, the coastal erosion rate is quite high. So on an annualized basis, you might have a couple feet or more washed away on an

annual average basis. And so, over the course of the life, you know – it could move back fifty feet or so. I don't think that's unreasonable. Where we've sited the new location is about 240-plus, 40-plus feet away, and that's outside of the shoreline setback area. And I think what we wanted to make sure is that over the useful life of the building and if there is to be further erosion in this area, hopefully not, we still have some practical usage of the building over the course of a lifetime of the building.

Chairman Tanaka: Board members, any other questions? Any discussion?

Chairman Tanaka: If there are no discussions, I will entertain a motion. Sorry, before we move forward, is there anybody in the public who wishes to testify on this matter? Seeing none, the public testimony portion is now closed. Back to our discussion. The Chair would entertain a motion for approval of the variance request.

Mr. Espeleta: I'd like to make a motion that we allow this.

Chairman Tanaka: It has been moved. Do we have a second?

Mr. Santiago: I'll second.

Chairman Tanaka: It has been moved and second. That'll call for a vote. All those in favor, please say "Aye."

All: "Aye."

Chairman Tanaka: Any opposed?

Mr. Cerizo: Mr. Chair. Excuse me, Mr. Chair. We did have recommendations. There were conditions. Are we including the conditions into the – as part as the–?

Chairman Tanaka: We have in front of us, I guess from the Department of Planning. Okay, I guess the assumption was made. Okay, back – let's backtrack a little here. Amend the motion to– Okay, okay. Let's see. We've all had – and I kinda looked through the staff analysis, comments and recommendations with – which I'm assuming that you have seen both and would be – have no comment or – regarding conditions that come with a variance, the granting of this variance?

Mr. Dixon: We have no comment or objections to the conditions.

Chairman Tanaka: I am making the assumption or as part of what was presented to us that we are granting – we are in process of granting a variance for the – specifically only the – let's see – lowest horizontal position of the structural members of the lowest floor. And the conditions being met, one of which – sorry I read it here – certification by an engineer or architect shall comply with the subsections this applies to, correct?

Mr. Dixon: Correct.

Chairman Tanaka: Okay, with that– Okay, from the Planning Director, with the granting of this variance, let me read this, "In consideration of the foregoing, the department recommends the Board of Variances and Appeals adopt the department staff and recommendation report." Meaning, the conditions included shall be followed. With that– Sorry, we need a– So we need another motion to amend our motion and second to include the Department of Planning's recommendations.

Mr. Espeleta: Moved.

Chairman Tanaka: So moved. Do we have a second?

Ms. Haraguchi: I'll second.

Chairman Tanaka: Okay, with that being added, let's try this again. All those in favor of the granting of this variance with the additional conditions, please say "Aye."

All: "Aye"

Chairman Tanaka: Any opposed? No.

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

VOTED: To granting of this variance with the additional conditions as stated.

(Assenting: K. Tanaka, J. Haraguchi, P. DePonte, T. Espeleta, C. Abbot, B. Santiago.)
(Excused: R. Tanner, B. Vadla, R. Shimabuku.)

Chairman Tanaka: **Motion passes**. Thank you.

Mr. Dixon: Thank you very much, board.

Chairman Tanaka: Okay, next item on our agenda–approval of the April 26, 2012 meeting minutes.

C. APPROVAL OF THE APRIL 26, 2012 MEETING MINUTES

Mr. Santiago: Comment on my comment. I think it should say – that – I'm sorry, lost the page.

Chairman Tanaka: For which item is – was that, Bart?

Mr. Santiago: The first item, where I questioned the penalty. Oh, I see where it is. Sorry. Oh yeah, it's right here. On page 5, right around the third – right after Chairman Tanaka's comment "Okay, again, on paper, the clock kept ticking. I believe that-" "Mr. Santiago: It makes sense when you're in a hearing or a contested case?" I think what I meant to say was "Does it make sense

when you're in a hearing or a contested case?" The way it's written is like, "It makes sense?" I think I meant to say, "Does it make sense?"

Chairman Tanaka: Oh, it's a question of does it make sense?

Mr. Santiago: . . . (inaudible) . . . makes sense . . . (inaudible) . . . affirmative.

Chairman Tanaka: Okay, so noted. Okay. Does–? This is a first for me. I've never had to correct anything stated in the– Does – Chalsey, do you go back and–?

Ms. Chalsey Kwon: It's a first for me too, but I believe that I just note it and then go back and make the change.

Chairman Tanaka: Okay, so part of the official record will be after your change?

Ms. Kwon: Yes.

Chairman Tanaka: Okay. Thank you. Thanks, Bart. Anything else? No? Okay. I'd entertain a motion to approve or accept the meeting as amended.

Mr. Santiago: So moved.

Chairman Tanaka: So moved. Second?

Chairman Tanaka: Seconded. All those in favor, please say "Aye."

All: "Aye"

Chairman Tanaka: Any opposed?

It was moved by Mr. Santiago and seconded by Mr. Abbott, then

VOTED: To approve the minutes of the April 26, 2012 meeting as amended.

(Assenting: K. Tanaka, J. Haraguchi, P. DePonte, T. Espeleta, C. Abbot, B. Santiago.)
(Excused: R. Tanner, B. Vadla, R. Shimabuku.)

Chairman Tanaka: **Minutes have been approved.** Next item, Director's Report. Status, Trisha?

D. DIRECTOR'S REPORT

Ms. Kapua`ala: At this moment I can report that the next – about two or three agendas, you'll be addressing appeals. We have about three or four appeals that have come in to your attention. The first one up will be the first ever for this board, an appeal for an ocean recreation activity

permit denial by the Department of Parks and Recreation. Thank you.

Chairman Tanaka: Okay, thanks.

E. NEXT MEETING DATE: Thursday, May 24, 2012

Chairman Tanaka: Next meeting date, Thursday, May 24, 2012. Board members, anything else? Any discussion? Alrighty, that was nice. Meeting is adjourned. Thank you.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 2:14 p.m.

Respectfully submitted by,

CHALSEY RAE K. KWON
Secretary I

RECORD OF ATTENDANCE

Members Present:
Kevin Tanaka, Chairman
Jacqueline Haraguchi
Patrick De Ponte
Teddy Espeleta
G. Clark Abbott
Bart Santiago

Members Excused:
Rick Tanner, Vice Chairman
Bernice Vadla
Ray Shimabuku

Others:
Aaron Shinmoto; Planning Program Administrator
Francis Cerizo; Planner VI, Department of Planning
Carolyn Cortez; Staff Planner, Department of Planning
Trisha Kapua`ala; Staff Planner, Department of Planning
Richelle Thomson; Department of Corporation Counsel