

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
AUGUST 23, 2012**

(Approved: 9/27/2012)

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, August 23, 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: Okay. Good afternoon. I'll now call the meeting of the Board of Variances and Appeals to order. It is now 1:32 and we have our quorum of eight members. First item on the agenda, Trisha?

B. PUBLIC HEARING

- 1. JESSICA I. CAUDILL, TIARE ROBERSON, & JOHN L. ROBERSON requesting variances from (1) Maui County Code (MCC), §18.16.060(C) requiring rights-of-way width for access streets to be at least 24 feet; and (2) MCC, §18.20.040 requiring pavement on existing access streets to be at least 20 feet in width, for an agricultural subdivision (Hui Kuai Aina O Peahi, DSA File No. 2.3128) located at 490 Haumana Road, Haiku, Maui, Hawaii; TMK: (2) 2-8-004:043 (BVAV 20120004).**

Ms. Trisha Kapua`ala read the agenda item into the record and gave a presentation of the property and surrounding area.

Ms. Kapua`ala: And I see the applicants are here. This concludes my presentation. You may go ahead and take the stand.

Ms. Tiare Roberson: Hi. How are you? Hi. My name is Tiare Roberson. I was born here on Maui. And I currently live on the property down Haumana Road for the past six years with my husband. We have three kids. And prior to our house in Haumana, we have lived across the gulch right where it forked, which is Kulike Road that goes down. I've lived there for the past ten years with him. And he was born and raised down there, so right across the gulch from it.

We love our neighborhood and feel extremely lucky to be raising our sons in the same area as their father was raised. Also living on the property is my sister-in-law with her fiancé and five-year-old son. And my father-in-law also shares the property with us. We are a very close family and we love that we are able to share this property together. Seeing that we all have kids and would like to leave this property to our children and grandchildren, we have requested that our one 8.66-acre lot be subdivided into a three-lot subdivision between my family, my sister-in-law's family, and my father-in-law.

The final approval of this three-lot subdivision is contingent on the compliance of the conditions required by the County. We are able to meet all requirements; however, we are asking to be excused from two: MCC 18.20.040, Subsection B.3; and 18.16.060 requiring the pavement on existing streets providing access to the subdivision be a minimum of 20 feet in width. The current condition of the street in question, Haumana Road, is paved, and not only allows two cars to pass, but I've even seen fire trucks go down there to the bottom past our property, which actually we're on the very bottom. There's only two lots after us. And I've seen them go down there. And they actually even use our driveway to turn around because the very end, the dead-end, has a hard turnaround.

So, also, the Paia-Haiku Community Plan states the roadway shall be a minimum pavement width of 16 and a shoulder width of two feet. And most of the road is in compliance with that except for there are some areas, but in that areas, there's staggered MECO electric poles. So widening that would mean having to relocate all these electrical poles going down. Also, the widening would go into neighbors' properties as well. So it's causing this particular issue to be more than an inconvenience but an unnecessary hardship for all.

And just on a side note, which I didn't write, my mother currently lives with us and so upon the approval, I would be able to make a little ohana for her, and have her move out. And so that's really why I'm here. Thank you for your time. Oh, do I stay?

Chairman Tanaka: Yeah, actually, I have a question. Well, first of all, as Trisha took us through that viewing, was that heading from where you were located going back up towards the highway?

Ms. Roberson: No, it's Hana Highway going down.

Chairman Tanaka: It was from going down.

Ms. Roberson: Yeah. So this is about halfway down right at the fork in the road where it goes down Kulike Road.

Mr. John Roberson: . . . (inaudible) . . .

Ms. Jessica Caudill: . . . (inaudible) . . .

Ms. Roberson: No, no. Keep going. One more. A little more.

Ms. Caudill: . . . (inaudible) . . . So this is the upper corner of the lot closest to Hana Highway so that would be west, the west end, and then it goes down the road from there.

Chairman Tanaka: Thank you. So it appears as though – well, the description was between 14 and 18 feet of pavement. So it is actually paved all the way down.

Ms. Caudill: Yeah, it is paved all the way down.

Mr. Ray Shimabuku: Mr. Chair, who's the speaker?

Chairman Tanaka: Oh, sorry, can you identify yourself for the record, please?

Ms. Caudill: Yes. My name is Jessica Caudill. And would you like me to do mine? My dad was gonna go first, but I can do mine.

Chairman Tanaka: Either.

Ms. Caudill: Do you wanna go, Dad?

Mr. Roberson: Go ahead.

Ms. Caudill: Okay, okay, okay, okay. So I can actually just use this microphone. My name is Jessica Caudill and I'm a landowner with my extended family members. You have the tax map key number there on Haumana Road. We have our preliminary subdivision approval. And our intention is to subdivide the property in an effort to keep our growing families together. And I won't – you know, there's a couple things that we have repeated in testimony so I'll skip down a little bit.

But I've lived on Haumana Road since I was two years old. I was raised there. And my dad owns his property across the valley and he's our land partner who helped us to buy this property so we could stay close to the family. And like Tiare mentioned, the final subdivision approval is contingent on compliance with the conditions listed in the letter received from the County. And we will be able to comply with most of these conditions, including the requirements for Maui Electric Company to put in an extra power pole for the middle, what would be the middle lot. We've already complied with the SHPD requirements. We've had extensive land surveys, and archaeological field inspection, archaeological site inspection. We've had to do all of that in the past. We do plan to dedicate ten feet of property along the property line to the County for future use.

And the Fire Department requirements will be met. We did have a meeting with Lieutenant Kono Davis, and he recommended that we put in a turnaround at the farthest driveway at the end of the property, which we can do for the Fire Department, and put in two fire hydrants that will pump water from our private well because we're not in County water. So that would help the neighborhood have more fire protection if we do that.

So we are asking to be excused from the two Maui County Codes that you have. I could say them again if you want.

Chairman Tanaka: No, that won't–

Ms. Caudill: Okay. So again, the existing street is Haumana Road, and it is a County-maintained road, and like you pointed out, it is currently paved from Hana Highway all the down to the end, which is a no outlet road.

So also, I wanted to mention that according to the maps that we have, there is a 20-foot wide road allotted down the highway. So I – we have copies of this in our – in the application that I submitted but – with this survey drawing. So although the road isn't 20 feet, it's not paved 20 feet wide, there is a 20-foot right-of-way for Haumana Road going down the road. And as it happens, right in front of this portion of the property, the upper close to the highway end, the County road – the actual

paved road is on our property, and the right-of-way goes over the other side into the other neighbor's property. So that would be— And you can really see it on this map that you guys do have in the — if you have that big—

Chairman Tanaka: Yeah, yeah, we see it.

Ms. Caudill: You can see it there. So it's mostly at this upper end of the property. So if we did have to widen the road in front of our property, we could certainly make it as wide as what is allotted for on the maps. But it would go way over into our neighbor — what our neighbor considers their yard, basically. So that would be hard to do. I think it would be a hardship for them.

And then also as Tiare mentioned, according to the Paia-Haiku Community Plan stating roadways be a minimum width of 16 feet and two feet of shoulder. So for us to pave it to 20 feet is the County Code, but it's more than the Pa`ia-Haiku Plan, if that makes a difference. Otherwise, it's pretty close in most areas.

And then again, the special physical geographical circumstance would be that those telephone poles go down on every other side all the way down. And some of them are only a foot from what is the actual paved road. So a lot of telephone poles would have to be moved in order to widen the road and pave it all the way down. Any questions?

Chairman Tanaka: Yeah, actually, I do. You said you had discussions with the Fire Department. I'm sorry, if you could repeat, who is that you met with?

Ms. Caudill: Lieutenant Kono Davis.

Chairman Tanaka: Did he have any comments as far as the accessibility of their fire trucks getting down Haumana Road?

Ms. Caudill: Yeah, so he did have comments related to that. He did say, you know, would they prefer to have the 20, 24-foot wide road? Yes. Can they get down there? Yes. So what he said would be acceptable for them if we made a 35 by 35 turnaround at the farthest end of our property at the last driveway. And he called it — I forget it if it was a jackknife, or a hammerhead, or — he named it something, but a little — so where they could go down, back in, and go out. Yeah, so a total cement turnaround, so we are, you know, ready to do that. And then we have our well and we have all the different water tanks. So we'd have to go to the engineer and draw up the plans. He said we would need two fire hydrants 500 feet apart on the property line. And the property line is the — the longest property line is along the road. It's about 781 feet. So we would have two about 200 or so feet in from each end. And then we'd have two fire hydrants stand pipes there, and would be able to provide all of the immediate neighbors with fire protection since we don't have any County water.

Chairman Tanaka: Okay. Board Members, any questions?

Mr. Shimabuku: I have a question. We have a letter from John and Theresa Harrisson. Have you spoken to this couple? They're citing objections to the application.

Ms. Caudill: No, we meant to go talk to them, but we didn't end up–

Mr. Roberson: . . . (inaudible) . . .

Ms. Caudill: Oh, you talked to John last night?

Mr. Roberson: . . . (inaudible) . . .

Ms. Caudill: Okay.

Mr. Shimabuku: Where is their residence in comparison to your home?

Ms. Caudill: I can show you here.

Chairman Tanaka: Could you carry the mic. with you? Sorry, we're recording.

Ms. Caudill: So this is our lot here. So I believe that they are actually, this last, tiny, little one-acre lot. So we have the Mizners, the Imaries, and then the Harrissons. And then this lot just sold. The people who own this big one own this lot over here, and I think they sold it to A&B. So they're the last smaller lot there.

Chairman Tanaka: Okay. And it is directly across the street?

Ms. Caudill: It is directly across the street, yeah.

Chairman Tanaka: Road.

Ms. Caudill: Road. Yeah, but we do have a letter – we have letters from the owners of this property. They did give us a letter in favor also, though. And we didn't speak to them. They didn't contact me but, Dad, you spoke to them last night?

Chairman Tanaka: Yes, if you can please – yeah, if you can come forward, identify yourself?

Mr. Roberson: Want me to start with my speech and then I'll–?

Ms. Caudill: Why don't you say what they said last night?

Mr. Roberson: Okay, starting back to what they said is–

Ms. Caudill: Identify yourself.

Mr. Roberson: My name is John Roberson. I'm a landowner with extended family members on tax map key: 2-8-04-43:109 in Haiku on Haumana Road, 490 Haumana Road.

Anyway, I spoke to John Harrison last night. Originally, when we were doing the subdivision, and I spoke to him about the fire protection, he was gonna let me us access to his – he has like a 40,000-gallon water tank, and a well, and everything. And we're good friends. And basically, last

night when I called him, it was like – we made up several letters from our neighbors that were in favor. All the way up to last night was a surprise to me that he said that all of a sudden, we're not in favor of the subdivision because basically, he has own reasons like – I don't know what they are, but basically, as I was asking to use his water tank, you know, to tap into fire protection. So, I mean, I don't know what his reasons are, but it was a surprise to me last night because I was expecting him to – you know, be behind us all the way like all the rest of our neighbors. So that's all I really know about him. You know, I mean, I painted their house. We're good friends. We paddle canoe together with his wife, and then all of a sudden, they spring this on me, and it's like, okay, I didn't wanna argue with him. I even gave him a copy of the letter to sign for us, you know, but I told him go ahead and take a look. I can't– Everybody has a right to their opinion. You know what I mean? So basically that was a surprise to me.

Chairman Tanaka: Thank you. You had a–

Mr. Roberson: As far as talking to Kono Davis and stuff, I was there with Jessica at the meeting with him. And he basically agreed that they weren't gonna make us widen the road, or fix the road, or anything as far as the variances were concerned, but he was concerned about a turnaround and basically be able to do fire protection.

My main concern on the practicality of doing these improvements, from the shot that you saw up at Jessica's house up above, there's not a lot of – it's kind of like – it has a pretty good drop-off on the side, so it's not really practical to widen the road in this one place. I mean, it would be a hardship as far as doing the work and stuff if we had to go up 200 feet because of the terrain and stuff. On the other side of the street, like Jessica was explaining, the trees, there's a whole row of ironwood trees that are actually on John Harrison's land. That's another reason he might not be in favor because he'd have to move his trees if we were to have to do the widening of the road, which that's why we're here to try not to have to do it so that we wouldn't have to take out his hedge, and go onto this property, and clear out the trees that the previous owners, Ted Ice, who he bought his land from or whatever, planted. And you know what it's like when you plant ironwood trees, man, they grow, and to take 'em out is a real hardship. So that's probably one of the reasons why he's not real happy as far as if he had to do the work and pay for taking a row of trees that is in the wrong place. So who knows?

But anyways, it's just– Let's see. I'm just basically glad that I have my family and my grandkids. And, you know, you see a lot of people, the parents sell their land. The kids move away. And the next thing you know, they don't have their family unit together. We're a little bit different. We're a surfing family. Work together. My son puts on surf contests for all the kids. He rides for Volcum. We do a lot for the community as far as in the surfing world. My grandsons are six years old and four year's old. They've already been in five surf contests, six surf contests. And they're really gonna be professional surfers. And basically, we'll all get to stay together and live on our land. This is our life. We raise cattle. We have eight acres of lease below us where we raise cattle. We have cattle on our property. I have cattle on my property. Between me and my son we have seven adult animals, and babies, and stuff. So that's what we're doing. We're keeping it agricultural and just want the right to exist in a community that we've loved and been there. I've been here since 1970. I was the first – oh, besides Chris Gardener, I was like the first person to ever live down there, and I've been there ever since. And I'm still here. Everybody else has sold their land, made a profit, and moved on, but we're not really into moving out and leaving. I mean, we love where we

live, and we have a great family, and we hope to be around for – we're already a third generation. And so, grandfather, son, and grandsons. And pretty soon, they'll be having their kids, and we want 'em around us too. So thank you very much for your time.

Chairman Tanaka: Thank you. Before you step away, I have a question. As part of your application, you have resided and owned property in this area for over 40 years.

Mr. Roberson: Yeah.

Chairman Tanaka: But you purchased this parcel in 2004, is that correct?

Mr. Roberson: Right. This was basically owned by the Smythes along time ago, Charlie Smythe, the electrical inspector. And it was always promised to me. Even Ted Eison's land where the Harrissons live was promised to me by the Yap Family. But then you know how things turn around? Okay, we just sold it, yeah. And, you know, he's got a waterline going up on . . . (inaudible) . . . all the way down to . . . (inaudible) . . .

Ms. Caudill: . . . (inaudible) . . .

Mr. Roberson: Okay, my other property is totally across. We're almost adjacent touching the other property.

Chairman Tanaka: Across the gulch, you're saying?

Mr. Roberson: This is where I live right here. That's where I live. And it's connecting and we have our cattle— Oh, we also – two – these two parcels are leased to us by the . . . (inaudible) . . . Family. And that's where we have our cattle there so basically, we have like, 29 acres all around us. And that's what we use to cut grass every night. You'll see me on the side of the road for my cattle in the morning. Keep 'em fat. And they feed me and I feed them. But, you know, no hormones.

Chairman Tanaka: So you started this subdivision process— When was your actual preliminary subdivision, preliminary approval granted?

Ms. Caudill: Our preliminary approval was granted on October.

Chairman Tanaka: Sorry, just how many years?

Ms. Caudill: October 4th 2011. There's an October date. But anyway, October 4th 2011.

Chairman Tanaka: Okay. Thank you. Board Members, any questions for Mr. Roberson?

Mr. Bart Santiago: Just a quick question. How long is the road, Haumana Road, from the top to the Hana Highway?

Ms. Caudill: So from the top, which is Hana Highway, down the road, so we're on the ocean side, it's about a mile to our house, and then it goes on probably just another quarter of a mile, and it's

a dead-end road.

Mr. Santiago: Just so I'm clear, what's the distance that would need to be paved?

Ms. Caudill: It would have to be all the way from the highway all the way to the property which is a mile, about a mile.

Mr. Santiago: Thank you.

Ms. Caudill: And can I make a comment on the letter from the neighbors or--? Because it does say -- it says "As we understand it, the condominium status of the property already allows for family proximity on which the application is based in part." I don't think we're condominiumized on our property.

Mr. Rick Tanner: I noticed that, too, and I don't see-- I think there must be a mistake there.

Ms. Caudill: Maybe his understanding is mistaken. And so my dad's property where I grew up is across the valley. My dad lives over there. He just helped my brother and I buy the property so, you know, he could be our land partner because he had equity in his property and this and that. So he's not planning to live over there. And really, it's not -- the other neighbor said that they didn't think it's going to add any increased traffic because it's still just us down there. We're not planning to sell one of the lots to pay the other ones off. And my fiancé is a general contractor, and he built our house practically by himself. So we're not gonna have a bunch -- that's what they mentioned, too, a bunch of construction people down there. If we did build anything, he would do it, and he's kind of a one-man show.

Mr. Tanner: On this letter, I mean, to me it appears that their opposition is not to the variance or the widening of the road. They don't mention that. Their opposition is to the subdivision which is not something that's -- we're not here to judge whether it should be a subdivision or not. We're here just for the variance on the widening of the road. So I don't see that they're-- I understand they don't wanna see more traffic. They may not want to see construction, but that's not what we're talking about.

Mr. Roberson: As far as the Harrissons are concerned--

Ms. Caudill: . . . (inaudible) . . .

Mr. Roberson: No, no, no, but let me just say something. Their house is on the market right. They wanna sell their house for \$600,000 and move up to Pukalani Terrace Subdivision. So they're here trying to lay down the law for everybody, and they're trying to sell their house right now. You know what I mean? They're ready to move out. This is what I couldn't understand last night. The last time I talked to the guy, it's like, well, we wanna move up to Pukalani, and just live on the golf course, and have a smaller house, and this and that. And then all of a sudden, this is like-- I don't understand. Their house is on the market right now so they're ready to capitalize and move out.

Mr. Shimabuku: How long have they lived there?

Mr. Roberson: They've been there—

Ms. Caudill: 2004 . . . (inaudible) . . .

Mr. Roberson: Yeah. And the whole thing is we're good friends. I mean, you know, I . . . (inaudible) . . . their house. My boss, you know.

Chairman Tanaka: Okay. Thank you. Before I move on, is there anyone in the public who wishes to testify on this matter? Seeing none, public testimony is now closed. Okay, Board Members, any other questions? Discussion?

Mr. Tanner: I'm prepared to make a motion.

Chairman Tanaka: Sorry, Rick, before you do that, let me just state, and I'm making an assumption in the direction you are going, we've had a handful of these in this area or basically that side of the island. And it's refreshing that the fact that you spoke with the Fire Department and the Fire Department came to a compromise.

Mr. Lance Nakamura: Kevin?

Chairman Tanaka: Yeah.

Mr. Nakamura: Can I make one quick comment as it relates to Fire? Just so you know that regardless of what you decide today, because this is a variance only from Title 18, and these are Public Works' roadway improvement requirements, the Fire Code has their own roadway and fire protection requirements. None of those will be affected by what you decide today. So whatever – you know, they have roadway access and fire access requirements. That's still gonna apply. They're still gonna have to get their full approval. So they're gonna have to comply with what Fire requires anyway regardless of what you do today.

Chairman Tanaka: Thank you, Lance. Okay, so that – what I was gonna say was to make the statement that any approval would be on the additional fire safety, fire protection implements for the project. But as it has been pointed out, the applicant will have to comply without us putting any additional conditions on it. Okay, with that being said, Rick.

Mr. Tanner: I would make a motion that the request for a variance be granted based on the information provided by the applicant as it relates to our criteria, and that a hold harmless agreement for Maui County be included.

Mr. Teddy Espeleta: Second.

Chairman Tanaka: It has been moved and seconded. Any discussion by the Board?

Mr. Espeleta: I call the question.

Chairman Tanaka: Sorry?

Mr. Espeleta: I don't have a question. Calling the question.

Chairman Tanaka: Okay, with that, I'll call for a vote. All those in favor of granting the variance as stated, please say aye. Any opposed?

It was moved by Mr. Tanner, seconded by Mr. Espeleta, then

VOTED: That the variance be granted based on the information provided by the applicant as it relates to the criteria, and that a hold harmless agreement for Maui County be included.

(Assenting: R. Tanner, T. Espeleta, R. Shimabuku, P. De Ponte, G. Abbott, J. Haraguchi, B. Santiago.)

(Excused: B. Vadla.)

Chairman Tanaka: **The motion has carried. The variance application is granted.**

Mr. Gary Murai: Excuse me, Mr. Chair. You know, I do have a question, and maybe staff might know better than I, but does the Board's decision require any kind of basis or findings of fact to the, you know, foundation for the Board's decision?

Mr. Tanner: Yeah, and they're all provided to us.

Chairman Tanaka: Yeah, more or less specifically what's stated in the motion.

Mr. Murai: All right. Okay. Okay.

Mr. Tanner: If I find it again, I can give it to you.

Chairman Tanaka: The applicant's justification.

Ms. Kapua`ala: Hi, Trisha Kapua`ala for the Planning staff. The Planning Department works with Deputy Corp. Counsel, James Giroux, to produce a written findings of fact, conclusions of law, decision and order, which the Chairperson signs off.

Mr. Murai: So we don't need to articulate it now?

Mr. Tanner: I referenced it in the motion, "based on the information provided by the applicant."

Mr. Murai: That's fine.

Chairman Tanaka: Yeah, to the variance justification. **Okay, so the variance is approved.** Thank you very much. Okay, the next item on the agenda, Trisha?

C. VARIANCES

1. WAYNE I. ARAKAKI representing ANTHONY L. NACUA requesting a variance

from Maui County Code, §19.35.050 to allow two 500 square feet accessory dwellings on proposed Lot N-3 whereas a maximum of one accessory dwelling is permitted for the Waiakoa Makai Homesteads (DSA No. 3.2128) located at 373 Kenolio Road, Kihei, Maui, Hawai'i; TMK: (2) 3-9-015:008 (BVAV 20060006).

- a. **Request to delete or lower the \$250,000.00 liability insurance requirement from the conditions of the variance approval.**

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

Ms. Kapua`ala: And we have Mr. Wayne Arakaki here who put in a written request to lower the previously approved condition of \$250,000 in liability insurance.

Mr. Wayne Arakaki: My name is Wayne Arakaki. I'll give you a background on this project. I'm doing a subdivision for this Nacua Family. They've owned the property for many years. The father and mother used to own this property and they deeded it over this to the son, Tony. And the family stills lives on it, and Tony got married, and then he also lives on the property.

We're trying to subdivide this property in three lots, a three-lot subdivision. There's actually four permitted buildings on the property, and then there's a metal warehouse in the back. So at the most, even though we do these three lots, the most would probably be another dwelling on the property.

Well, anyway, the road is on Kenolio Road. It's on Kenolio Road. And then the variance that I got was that we had one main house and two cottages along Kenolio Road. The cottages are quite close to the front of the road. So in order to – what we needed was to get a variance because only one accessory building is permitted and we have two. So we got the approval for that. And it was agreed that – well, even the owner said that in one day when the building becomes too old, he's just gonna demolish it. And then, you know, they won't be putting two buildings. They'll go with whatever the building requirements are at that time. Okay? On the picture you can see those two lots along–

Chairman Tanaka: Wayne, can you hold on to the microphone, please?

Mr. Arakaki: Okay, thank you. This is the Tony Nacua's property, this long property over here. There's an existing road over here. So these are the two cottages that we got the variance for. This is Kenolio Road. As you notice, it's quite close to the road. The father lives on this property. His family lives here. Tony and his wife lives on this property. There's a vacant piece and then there's a metal warehouse in the back. Again, it's all permitted. He did get building permits. So the variance, when we did this subdivision, when we doing the subdivision, there's a 20-foot easement road that comes that goes over this cottage. So we got the approval from DSA already, but we needed a variance because it was two accessory dwellings and a main house on this first lot. So that was approved.

Over the years, you know, I'm trying to get final subdivision approval on this three-lot subdivision. The insurance was a factor. He's paying like \$1,200 a year to cover the \$250,000-dollar insurance.

So again, the variance was for that additional cottage. And one day when it gets too old or whatever, this cottage will be torn down, and he'll abide by the new building codes at that time. So what I'm asking is to either delete or lower the insurance requirements for the variance that we got approved in – I guess it was in 2007. Any questions?

Chairman Tanaka: Yeah. Wayne, the insurance you mentioned \$1,200 a year. Do you have the numbers that would reflect if the number came down to \$100 or—?

Mr. Arakaki: No, sorry, I don't have that.

Chairman Tanaka: Okay. Board Members, any questions for Mr. Arakaki? Okay, another question. There are those two cottages that will one day become one, I guess.

Mr. Arakaki: That's right.

Chairman Tanaka: How old are they?

Mr. Arakaki: I'm guessing, but I would say about 25 years old.

Mr. Santiago: Are they currently occupied?

Mr. Arakaki: Yes, it's rented to tenants. They've been there for many – over ten years.

Chairman Tanaka: Board Members, any questions or discussion?

Mr. Abbott: Not for me.

Chairman Tanaka: In the past, I've expressed my personal feelings towards the insurance requirement. The – you know, I'd prefer seeing \$1,200 a year be put in some kind of improvements rather than— I'll stop short there. With that, I would entertain any motion.

Mr. Tanner: Chair, I would make a motion that the request be granted.

Chairman Tanaka: Can you elaborate? The request is either deleted or lowered.

Mr. Tanner: That the requirement originally placed on the variance be deleted.

Chairman Tanaka: Okay, we have a motion to delete.

Mr. Santiago: I will second it.

Chairman Tanaka: It has been seconded. Discussion before we take a vote. The standard hold harmless agreement would still be intact, correct?

Mr. Arakaki: Yes, that's right.

Chairman Tanaka: Okay, we have a motion and a second. Any discussion? Any questions?

Mr. Abbott: Yes, do we have something by the owners that if the building does – one of them, they won't build another one if that one falls done? Is there anything in writing?

Chairman Tanaka: I believe that the process would – I mean, for any kind of building permit, they would be cut off. Right, Trish? They go to–

Ms. Kapua`ala: I would have to look at the application when originally submitted. Usually variances are based on what the applicant represents at the time. I'm not too sure if it would carry over at this point should one of the dwellings be destroyed. I can't answer that question right now.

Chairman Tanaka: Now, procedurally, can we–? I'm under the assumption that if the two structures were knocked down and they wanted to build another one, through the building permit process, a flag would be raised that they would only be able to build a single structure.

Ms. Kapua`ala: That's my inclination as well, unless there's some type of language submitted for – right, that I can see that the Board allowed that.

Chairman Tanaka: Let me pose a question to our Corp. Counsel. We are acting on a request specific to the insurance. And we, in our decision today, can we add on a condition to the original variance as part of this deletion? Is that possible, procedurally?

Mr. Murai: I'm not sure whether that actually would have to be agendized. I'd have to punt on that.

Chairman Tanaka: Okay, Mr. Arakaki, you see our dilemma?

Mr. Murai: With abundance of caution, I'd probably recommend that the Chair defer on that action and perhaps the applicant– If the applicant wishes to pursue that or for us to clarify that, put it on the agenda for the next meeting.

Chairman Tanaka: Okay, Mr. Arakaki, you see our dilemma? We would like to go ahead and grant you this, I'm assuming, before we've taken a vote, but we wanna make sure that as part of what was stated, you know, that we're assuming that in the building permit process down the road that there wasn't any condition in the original variance that said, okay, if you knock down the two structures, you can build two more structures. I'm trying to be accommodating here. Is it possible to go ahead and grant this request, and as part of a condition to this, verify that there was no wording in the original variance so it's not – we're not adding a condition?

Mr. Murai: I don't know if Trisha has any comment.

Ms. Kapua`ala: I think it would be cleaner to defer this action until we can give you more information. What I can do is do a little research and provide you with the previous decision and order, maybe a copy of the minutes. We could even provide a recommendation for this request at the next available agenda. I'm trying to get the D&O. Maybe I can give you more answers right at this moment.

Chairman Tanaka: It would take just a little while, hopefully?

Ms. Kapua`ala: Sure, five minutes.

Chairman Tanaka: Okay, in an effort, we'll take a five-minute recess. It's 2:15. We'll be back at 2:20.

(A recess was then taken at 2:15 p.m. and the meeting reconvened at 2:25 p.m.)

Chairman Tanaka: We are back in session. At this point, we are in discussion after we have had a motion and a second. The item was – Trisha, if you can fill us in?

Ms. Kapua`ala: Thank you. I have a copy here of the final order of the Board. And Condition No. 1 is that the variance request be applicable to the proposed request as described in the applicant's application; the hold harmless agreement with a \$250,000-dollar insurance certificate naming the County as an additional insured. And three that the subject subdivision shall be limited to six dwellings: one main house, one accessory dwelling on Lot N-1; one main house on Lot N-2; and one main house and two accessory dwellings on Lot N-3 provided that in the event that one or more of the subject accessory dwellings are destroyed, each one of the three lots may have one main house and one accessory dwelling.

Chairman Tanaka: Okay, which is what was stated. Okay. Thank you very much, Trisha. Okay, so–

Mr. Santiago: Can I make a comment?

Chairman Tanaka: Yes.

Mr. Santiago: I was just thinking about this over the break. Waiving or eliminating the insurance coverage, is it safe to assume that they would have a current home insurance, homeowners' insurance, or do we make it contingent that they have an active insurance in place if we waive these types of clauses?

Chairman Tanaka: That's – I mean, that is interesting.

Unidentified Speaker: . . . (inaudible) . . .

Mr. Santiago: You would think, but it's a possibility that they're not carrying insurance.

Chairman Tanaka: Well, for the past five years, they have been paying an additional insurance premium, but, yeah, that's true.

Mr. Santiago: It's a hypothetical. I'm just wondering if it's a loophole that we haven't thought about that potentially some homeowner would choose not to have insurance, and if we waived that clause or that covered–

Chairman Tanaka: Yeah, but I think specific to this item, if that were the case, if we grant this request, and then they say, okay, they don't have to spend that extra \$1,200 a year, and they cancel their insurance entirely to save – to make up that – what they've already spent, that's still

outside of what— So if the house burns down, and they don't have any insurance, but if something were to occur by the deletion of the insurance part of the variance would not affect any original insurance that they would've had, if that helps. I mean, because the insurance requirement is in addition to – well, I shouldn't say in addition to it's directly related to the County's involvement with the variance. So if they were to have canceled any and all insurance, and the house burns down, as far as the County's – as far as the variance is concerned, it has no bearing on what we are looking at.

Mr. Murai: May I comment? I realize I'm not the counsel that normally advises this Board, but my understanding of why we require the homeowner to indemnify and to carry insurance is because we're granting them the variance. Sometimes in some situations, the County may expose themselves to further – to potential liability because of the variance. And the insurance basically protects the County, whereas a homeowner's policy would protect the homeowner from somebody getting hurt on their property or that kind of thing. Now, in this case while the – what the homeowner is requesting is that they're saying, as I understand it, we'll still indemnify the County, we just don't wanna have to pay for insurance. The benefit of insurance, of course, is that there's someone with the wherewithal to help indemnify the County. And quite often, let's say there's a fatal car accident, \$250,000, one million, is not gonna nearly cover it. But another benefit of having insurance is that in most cases, the insurance company would also defend the homeowner, and by extension, the County as well. So that is one additional benefit of having an insurance policy is that your carrier defends you.

Chairman Tanaka: Bart, did that answer you?

Mr. Santiago: Sorta, kinda.

Chairman Tanaka: Yeah, I mean, you see the difference in that?

Mr. Santiago: It's for a specific – whatever this variance is that we granted, specifically for that, not so much a fire.

Chairman Tanaka: Yeah, if it burns down, yeah, the variance has nothing to do with any agreement or insurance. So we have – it has been verified, the statements that Mr. Arakaki made. So we've had a motion and a second. Any other discussion? With that, I'll call for a vote. Oh, sorry, Trisha.

Ms. Kapua`ala: Thank you, Mr. Chair. Could the maker of the motion provide justification as to the reasoning for the granting of Mr. Arakaki's request? This is for the final decision and order, findings of fact of why you feel that the condition should be removed.

Mr. Tanner: Well, I guess short of repeating what the representative for the applicant already said, based on the information that the applicant's provided.

Ms. Kapua`ala: Thank you.

Chairman Tanaka: Okay, at this point again, I'll call for a vote, then. All those in favor, please say aye. Any opposed?

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

VOTED: That the requirement originally placed on the variance be deleted.

**(Assenting: R. Tanner, B. Santiago, T. Espeleta, R. Shimabuku,
P. De Ponte, G. Abbott, J. Haraguchi.)**

(Excused: B. Vadla.)

Chairman Tanaka: **The motion carries. The request is granted.**

Mr. Arakaki: Thank you.

Chairman Tanaka: Okay, moving on. Next item, Item D, Appeals, Trisha?

D. APPEALS

- 1. TOM PIERCE representing MAUI TOMORROW FOUNDATION, INC., SOUTH MAUI CITIZENS FOR RESPONSIBLE GROWTH and DANIEL KANAHELE appealing the Director of the Department of Public Works' decision to issue mass grading permits (G 2012/0030 & 0039) for the Pi'ilani Promenade located at 376, 451 and 524 Kaonoulu Street, Kihei, Maui, Hawaii; TMK: (2) (2) 3-9-001:016, 117, 171, 172, 173, 174. (BVAA 20120006).**
 - a. Appellee David Goode, Director, Department of Public Works, County of Maui's proposed findings of fact, conclusions of law, and decision and order**

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

Chairman Tanaka: Okay. Procedurally, we have included in what we were given is the – is Ms. Lovell's findings of fact, conclusions of law, and decision and order. We also have the appellant's exceptions to the County's findings of fact, conclusions of law, and decision and order. Okay, so we'll recognize that both Mr. Pierce and Ms. Lovell is here. Board Members, you have it your packet. Any – if you have any direct questions or if there's any discussion. Otherwise, the action to be taken by this Board would be to adopt in full, adopt in part, amend the County's findings of fact, conclusions of law, and decision and order. Members, any questions or any discussion? If there's no discussion or any questions, I would entertain a motion for this Board to adopt the document.

Mr. Tanner: Chairman, I make a motion that the Board adopts in whole the County of Maui's proposed findings of fact, conclusions of law, and decision and order.

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

Mr. Teddy Espeleta: Second.

Chairman Tanaka: It has been moved and seconded. Any discussion? Okay, so with that, I'll call for a vote. All those in favor of adopting the proposed findings of fact, conclusions of law, and decision and order prepared by Corp. Counsel, Jane Lovell, all those in favor, please say aye. Any

opposed?

It was moved by Mr. Tanner, seconded by Mr. Espeleta, then

VOTED: To adopt the proposed findings of fact, conclusions of law, and decision and order prepared by Corp. Counsel, Jane Lovell.

(Assenting: R. Tanner, T. Espeleta, R. Shimabuku, P. De Ponte, G. Abbott, J. Haraguchi, B. Santiago.)

(Excused: B. Vadla.)

Chairman Tanaka: **The motion carries. The Board has adopted the document, the aforementioned document.** Thank you very much.

Mr. John Rapacz: Excuse me, Mr. Chair, if I could just so the record reflects my appearance on behalf of Piilani Promenade North and South? My name's John Rapacz and I'm appearing on their behalf today. Thank you.

Chairman Tanaka: Thank you. The next item would be approval of July 12th 2012 meeting minutes.

E. APPROVAL OF THE JULY 12, 2012 MEETING MINUTES_____

Mr. Tanner: I make a motion to approve.

Mr. Abbott: Second.

Chairman Tanaka: It has been moved and seconded. All those in favor, please say aye. Any opposed?

It was moved by Mr. Tanner, seconded by Mr. Abbott, then

VOTED: To approve the minutes of the July 12, 2012 meeting minutes.

(Assenting: R. Tanner, G. Abbott, T. Espeleta, R. Shimabuku, P. De Ponte, J. Haraguchi, B. Santiago.)

(Excused: B. Vadla.)

Chairman Tanaka: **Motion carries. The meeting minutes have been adopted.** Next item, Director's report, status, Trish?

F. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: I have no updates for you. There has been no movement other than billing from Judge McConnell.

Chairman Tanaka: Okay. The next meeting date is scheduled for September 13.

G. NEXT MEETING DATE: Thursday, September 13, 2012

Chairman Tanaka: Sorry, Tremaine, I'm kinda lost. The 13th was – that date will be cancelled, is that correct because of the fact of the Planning Conference?

Ms. Kapua`ala: Correct.

Chairman Tanaka: Okay. So anything that would've been scheduled at that time has already been rescheduled?

Ms. Kapua`ala: I'm still trying to determine the rescheduled date, but, yes, the parties have been notified, and it was an appeal. The whole day was reserved for a contested case: the Cameron Maui Trust, the Hoyochi Nikko Condominium, where Jim Geiger was appealing the Department of Fire and Public Safety's decision to not approve a building permit because of enclosures. Fire sprinklers were required throughout the entire building. That appeal, we'll move it to October.

Chairman Tanaka: Okay. But I guess in theory, the next regularly scheduled date would be the September 27th.

Ms. Kapua`ala: Correct.

Chairman Tanaka: But you've already moved that. I hate anything to do with Fire. Okay. Anything else?

Mr. Abbott: So the next meeting will be whenever?

Chairman Tanaka: Yeah, if anything, the September 27th.

Ms. Kapua`ala: Yes, we have a full agenda on that day.

Chairman Tanaka: Okay, thank you very much. Meeting is adjourned.

H. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 2:39 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice-Chairman
Ray Shimabuku
Teddy Espeleta
Gene "Clark" Abbott
Patrick De Ponte
Jacqueline Haraguchi
Bart Santiago

Members Excused:

Bernice Vadla

Others:

Francis Cerizo, Staff Planner, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
Lance Nakamura, Civil Engineer, Department of Public Works
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel