

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JANUARY 10, 2013**

(Approved: 2/14/2013)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Vice-Chairman Rick Tanner at approximately, 1:33 p.m., Thursday, January 10, 2013, 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 Tanner: The meeting of the Board of Variances and Appeals has now come to order. It is now 1:33 p.m. Let the record show we have a quorum.

Public testimony will be taken at the start of this meeting on any agenda item in order to accommodate those individuals who cannot be present when the agenda item is considered by the BVA. However, a person testifying at this time will not be allowed to testify again when the agenda item comes up unless new or additional information will be offered. Public testimony will 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 at this time who would wish . . . who wishes to come forward now, or you can wait until the agenda item and come forward at that time? OK. If you'll state your name and the agenda item that you're speaking on?

Ms. Jeannie Skog: Sure. Happy to. Jeannie Skog. I'm president and CEO of Maui Economic Development Board. And I'm here in regard to Maui Brewing Company's request.

Vice-Chairman Tanner: OK.

Ms. Skog: Very simply, we support their request for the variance. They are going to be our neighbor, and we're actually very pleased about that, but we do support what they're trying to do there. I wanted to share that with you.

Vice-Chairman Tanner: Thank you very much.

Ms. Skog: OK.

Vice-Chairman Tanner: Please state your name and the agenda item.

Mr. Steve Perkins: Good afternoon. My name is Steve Perkins. And I'm the project manager for the Maui Research and Technology Park. And I'm testifying about the Maui Brewing Company request for a variance. And again, essentially, to keep things short for you folks, I know your time is valuable, we're in support of the request for a variance. We've filed written testimony that I believe has probably been presented to you, but our master plan is currently in the process of being updated. We're going to be reducing setbacks from roadways in any event over the next year to

18 months. We don't see any impact to the development or neighbors. We haven't had any type of negative feedback as a result of these plans and we're in strong support. I'll stay here for the remainder of the hearing if any questions come up that I can be helpful in answering, but I'd urge you to support this request for a variance. Thank you.

Vice-Chairman Tanner: Thank you. Appreciate your testimony. Do we have anyone else at this time? And again, you'll have an opportunity when the agenda comes up. OK.

We do have a very full agenda today and I would really like to accommodate everyone that's here that's on the agenda. So please, if you would, if you're gonna come up and speak, keep it as brief as you can. And if somebody else has already said basically what you wanna say, then you can just come up and "I ditto what the person before just said," and we'll put that into record. So we're gonna try to go as quickly as we can while at the same time being fair and give everybody the time that they need, and try to accommodate everybody here, because I know you go to a lot of trouble to arrange this in your schedule, and this is not an easy thing to . . . process to go through, get on the agenda, so we don't want to have you come back and revisit it all over again. So with that, we'll go ahead and get started. And will the staff read the notice of public hearing and state the purpose of the first application?

B. PUBLIC HEARINGS

- 1. GARRETT W. MARRERO of MAUI BREWING CO. requesting a variance from Maui County Code, §19.33.060(A) to allow a 35-foot building setback from Lipoa Parkway whereas 60 feet is required, for property located at 605 Lipoa Parkway and 1335 North Holopono Street, Kihei, Maui, Hawaii; TMK:(2) 2-2-024:005 and 006 (BVAV 20120009).**

Ms. Trisha Kapua`ala read the agenda item into the record and presented depictions of the proposed project site and surrounding area.

Vice-Chairman Tanner: Thank you, staff. We got the applicant at the podium. Is the applicant agreeable to waive the reading of the staff report? You got a copy of that and you've seen the staff report?

Mr. Garrett Marrero: Yes, I've got a copy so I'm OK with that.

Vice-Chairman Tanner: All right.

Mr. Marrero: Thank you for having us today, too. Thank you.

Vice-Chairman Tanner: Yeah, thank you for coming. So at this time, would you provide your presentation?

Mr. Marrero: Sure. I'll be very brief. I think you all have the reports in front of you as well as all the information. I think we have elevations of the building. We're excited to be in the Research and Technology Park, and continue to grow our local business. I think the last time I was here was eight years ago. And we've grown from a very small hope-we-can-make-it type of company to one

that's in desperate need of more property to create more local products. So I'm really here to answer any questions for you, but in the interest of your time, I'd like the presentation to stand on what's in front of you.

Vice-Chairman Tanner: OK. At this time, does the Board have any questions for the applicant?

Mr. G. Clark Abbott: Has he identified himself?

Vice-Chairman Tanner: I should've told you to do that when you . . . (inaudible) . . . I apologize. Please do.

Mr. Marrero: No problem. My name is Garrett Marrero and I'm the founder of Maui Brewing Company.

Vice-Chairman Tanner: Mr. Marrero. Go 'head, Clark.

Mr. Abbott: I have no questions.

Vice-Chairman Tanner: Oh, you have no questions? That was the question?

Mr. Abbott: That was the question.

Vice-Chairman Tanner: Any of the other Board Members have any questions? I think this one is a pretty straightforward one. And the staff report was very detailed and helpful on this. So at this point, I don't have any questions for the applicant. Staff, do we have any other letters in support or opposition in addition to what's been brought forward already?

Ms. Kapua`ala: Only what's been brought forward already and those individuals have also testified again today.

Vice-Chairman Tanner: Nothing in addition to what we got, then?

Ms. Kapua`ala: Nothing in addition.

Vice-Chairman Tanner: OK. Well, I'll now open . . . well, actually, public hearing. Is there anybody else that hasn't spoken that would like to come up and speak at this time on this agenda item? Hearing no one else from the public, we will close public hearing. Any further discussion with the Board regarding this? Short of that, I will open it up to a motion and I would remind the Board that when offering a motion that you would include the details as to why you chose to either grant the motion or deny the motion. And I think the staff report helped in that.

Mr. Abbott: Mr. Chair?

Vice-Chairman Tanner: Yes, sir?

Mr. Abbott: I'll make a motion to suggest the approval of the variance based on the findings of the Planning Department and their approval. And justification of the setback, and everything,

everybody seems to be happy.

Vice-Chairman Tanner: Do I have a second?

Ms. Jacqueline Haraguchi: I'll second.

Vice-Chairman Tanner: I have a motion and a second. Any discussion?

Ms. Richelle Thomson: Can we clarify that the motion includes the adoption of the staff recommendation and report?

Mr. Abbott: Yes, I'm sorry, that's what I meant.

Vice-Chairman Tanner: OK. So we've got a first and a second. Any further discussion? OK. At this time, I'll take a vote. By show of hands, all those in favor? Any opposed?

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

VOTED: To approve and adopt the Planning Department's recommendation and staff reports.

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

(Excused: K. Tanaka.)

Vice-Chairman Tanner: **The motion passes and the variance is granted.**

Mr. Marrero: Thank you very much. I appreciate it. I look forward to making you proud down there. Aloha.

Vice-Chairman Tanner: OK. Would the staff read the next item on the agenda?

- 2. STANFORD CARR DEVELOPMENT, LLC for KEHALANI 511-MAUI, LLC requesting a variance from Maui County Code, §16.26.106.4.4 which restricts permittees to a total of two (2) 180-day time extensions for building permits (B 2010/0926, 0927, & 0928) for The Villas at Kehalani located at 1100 Alakea Street, Wailuku, Maui, Hawaii; TMK: (2) 3-5-001:074 (CPR No.'s 0030 - 0040) (BVAV 20120010).**

Ms. Trisha Kapua`ala read the agenda item into the record and presented depictions of the proposed project site and surrounding area.

Mr. Rick Papa: Sorry. This is the shadow of Building 12 that is a . . . you can see concrete foundations in place, and this is footings that have been completed. Should I introduce myself now? It's probably appropriate.

Ms. Kapua`ala: Please.

Vice-Chairman Tanner: Yeah, if you would.

Ms. Kapua`ala: Thank you.

Mr. Papa: Vice-Chair Tanner and Committee Members, my name is Rick Papa with Stanford Carr Development. I'm the project manager for the Villas at Kehalani. And in front of you we have sort of three buildings that were under construction towards the last phase of our work in March of 2011. We completed 12 of the 30 buildings at the end of about 2011 when the market sorta slowed down. And at that point, those buildings stopped. The partners decided that it was time to pull construction. And we've been trying to extend the permits through the process, and we're now at a point where we're actually getting ready to start construction again in that portion of the site. And while the permits remain open at the Building Department level with the building inspector, we need to get this variance in order to allow construction to continue. And I'm here to answer any questions that the Board might have.

Vice-Chairman Tanner: OK. Board Members, questions?

Ms. Haraguchi: Do you have an estimated date as to when construction will continue?

Mr. Papa: We've been actively working with the contractors over the last 18 months. We recently completed a pricing exercise at the end of November. And pricing and the market seemed to be close enough where we're looking at proceeding within the next 60 to 90 days. And we'd actually be going forward with six of the remaining 18 buildings with a projected completion of all 18 buildings within the next 30 months.

Ms. Kapua`ala: Mr. Chair, I'd like to also let you be mindful that we have DSA representation in-house. We have building inspectors who are responsible for granting time extensions for building permits here from DSA.

Vice-Chairman Tanner: OK. Thank you. I've got a question. At what point or I should say how long exactly has construction been halted?

Mr. Papa: We had the last inspections in March of 2011, March and April of 2011. So approximately, a year and a half. This March would be two years.

Vice-Chairman Tanner: Board Members, we have any further questions?

Mr. Abbott: Mr. Chairman, if I may question the point of fact, point of interest? I'm reading what we have here and I'm concerned with Paragraph 6 on the second page. It's been a year and a half since anything was done on the building. That's abandonment as far as I can tell. And I'm trying to justify in my own mind nothing could have been done in that period of time the permit was active?

Vice-Chairman Tanner: Or was anything done in that period of time? Was there zero activity or . . . ?

Mr. Papa: There hasn't been any activity. The project's . . . each building went to its current completion point. The next step on Building 10 and 11 is to go vertical. And an investor is not

gonna go and spend money to go vertical when there's no market. And Building 12 is the same situation where the foundations were stopped. It all was stopped sort of at the same point. The investor sold the last unit and they made the determination to sort of mothball the project, and evaluate it on a six-month period. So we've been doing that over the last 18 months.

Vice-Chairman Tanner: So would you say the cause for the halting of the project was lack of market more so than costs?

Mr. Papa: It's a combination of both. When the costs continue to increase and the market continues to go down, it doesn't become profitable to go to work.

Vice-Chairman Tanner: I understand that. I didn't see that anywhere in the application with regard to lack of market. That certainly makes sense. It's probably more sense to me than increased costs. But, yeah, they can go hand-in-hand. I guess my concern now is the timing for the starting back of the project. And you're suggesting that it's 60 to 90 days you're looking to start.

Mr. Papa: Correct. We've recently completed a pricing exercise and a market study in the month of November, and we've been evaluating it through December and into January to determine if we can get going. And it's fairly promising. We do have the support of the Building Inspecting Department in the County to continue to keep these permits open so we can put the 100-plus Maui employees back to work that are locally representative of various subcontractors.

Vice-Chairman Tanner: OK. So your studies have found that inventories are shrinking and prices are coming back?

Mr. Papa: Correct, inventory in Kehalani, in Central Maui is very limited. There's no new construction. We have a few other communities within our Kehalani master plan that we're developing right now. Hoolea Terrace for the first time in three years, we have 48 active units under construction in a 174-unit project. We recently turned over 48 units and have started the remaining eight building foundations. This is the most construction that's probably gone on in Kehalani in the last three years. Milo Court which is a Towne Realty project is actively . . . they pulled all their permits and they're going forward completing their townhome development as well. So the goal for everybody right now is to get back to work and start to bring projects online. Our construction cycle for this project per building is about nine months. So we need to get started so as the market continues to increase, we'll be there and have units for people to have a date.

Vice-Chairman Tanner: Now, if you were granted this extension, do you see anything that would prevent starting in 60 to 90 days?

Mr. Papa: No.

Vice-Chairman Tanner: If the Board doesn't have any questions at this moment, I'll reserve the right to bring you back. Do you have any comment?

Mr. Papa: I just have one comment. I mean, our project, as well as Hoolea Terrace, and Towne Realty's project, as well as any other developer that's out there and been out there during this market, the permits are all pulled at a time when you think you're gonna get started. And then

things happen that you can't start, but you've paid your fees for the permits and have all these things in place. And then nobody expected that we would be on hold this long. There's rework costs for us. We just can't go on and build. And the question about abandonment came up. We have a full . . . geo-technical consultants, structural engineer. It all goes back and everything is reevaluated. And those are all costs that, you know, we bear due to the delay and the time. And by no means has the project been abandoned.

Vice-Chairman Tanner: OK. I appreciate that.

Mr. Abbott: I have a question. Buildings 10 and 11 have been completed up to the foundation according to what the information I have. And Building 12 construction has not even started?

Mr. Papa: No, it has started. The foundation for the stem walls was put in place through footings, basically. And on top of those footings, we build a poured-in-place, concrete, stem wall, which then we put our joist floor system on which provides our first floor. Due to the topography out there, we have a very elaborate foundation system.

Mr. Abbott: Well, I understand. I'm just going by what I have here. I don't know if that's been changed to you guys or not. The remaining 15 buildings have active building permits that you could've worked on in this process.

Mr. Papa: No, there's no market up until now to go forward on these other permits. Those other permits were pulled due to the process and time. It was required that they be pulled before that code change.

Mr. Abbott: Understand I'm not trying to put stumbling blocks and I'm trying to find out what's going on.

Mr. Papa: We did a . . . the last inspection on Building No. 12 was on 2/9/2011 for footings.

Vice-Chairman Tanner: If there are no further questions, I think, staff, if we could hear from Public Works at this time?

Mr. Papa: Thank you, Committee.

Vice-Chairman Tanner: Thank you. And if you could state your name and title for the record, please?

Mr. Bill Scrote: My name is Bill Scrote. I'm a building inspector for the County of Maui.

Vice-Chairman Tanner: Thank you. And what can you share with us with regard to this permit?

Mr. Scrote: The three permits that are in question for buildings . . . for Lots 10, 11, 12 are as has been stated by Mr. Papa. The stem walls have . . . the foundations are complete on 10 and 11, and footings only are completed on Building 12. They were all . . . excuse me, all inspections ceased as of March 28th, 2011. And no further inspections have been made. In reference to your comments, I believe you said there was 15 other permits?

Mr. Abbott: That's what it says here, 15 buildings have active building permits.

Mr. Scrote: OK. Those 15 buildings have been completed.

Vice-Chairman Tanner: So those permits are closed out then?

Mr. Papa: . . . (inaudible) . . .

Mr. Scrote: You have 15 more permits? I wasn't aware of it. OK. Yeah. We're on the same page then.

Vice-Chairman Tanner: Any other information that you can think of that's relative here?

Mr. Scrote: No, other than the fact that we have been working with the developers, all of them, to complete the process as quickly as possible. You know, we understand that the market is bad and people are having difficulties out there. We . . . excuse me. My fault. Let me turn this off. Anyway, we have been working with developers in getting this completed. We have permits that have gone back as far as 2008 that are just now in the process of completing. His is 2011. But, you know, developers tend to purchase their permits in blocks. And if it goes bad, then they're sort of stuck out there. And we have been working with the developers to try to get them to . . . try to help them complete as much as we can.

Vice-Chairman Tanner: Right. Board Members, you have any questions for the inspector?

Mr. Ray Shimabuku: I guess I have a question. In regards to the extensions on this timeframe of the permits, is there any problems with the time allotted to keep on extending as far as your inspection . . . (inaudible) . . . ?

Mr. Scrote: Only in that we have reverted to the . . . not reverted, excuse me, we have gone . . . we have left the 1997 code and are now in the 2006 code. And so we're trying to get as many of those old permits closed out as quickly as we can. And it is our department's policy that if the allotted number of extensions have been granted, no more can be granted.

Vice-Chairman Tanner: Per your rules?

Mr. Scrote: Per our rules. It doesn't mean that we don't try to work with the developers and get them past that point.

Vice-Chairman Tanner: Right. And of course, our job here is to, you know, as you do, take it on a case-by-case basis and try to do what we can.

Mr. Scrote: If there's signs that things have been completely abandoned for years, we'll go ahead and expire the permit. But if it's a situation like Stanford Carr, the Building Department's policy has been to work with them and get them there as quickly as we can.

Vice-Chairman Tanner: Right.

Mr. Abbott: Another question if I may, please? I'm sorry. Is the request for the two-year variance whatever . . .

Vice-Chairman Tanner: Extension of permit.

Mr. Abbott: Does this apply to the three: 10, 11, and 12? Or does it apply to the 18 buildings which includes the 15 that already . . . (inaudible) . . . ?

Mr. Scrote: That, I don't know. You'd have to talk to . . .

Vice-Chairman Tanner: We'll let the applicant come back and ask him that question. Any more questions for the inspector? Thank you, sir. Oh, Bart?

Mr. Santiago: Well, maybe it's more for Mr. Papa that I have a question for—the timing of the construction.

Mr. Papa: To answer that first question, the variance . . . the only permits that we have that have expired and reached the maximum extension are for 10, 11, and 12. It was at a time when we were building 19, 20, and 21 which is at the top of the site. We also pulled those permits and everybody thought we would just continue. And again, like Inspector Scrote said, we do pull 'em in blocks. We recently pulled the remaining building permits. So they are all active in the sense that we have a year to start work and we would be eligible for subsequent extensions. Once . . . if we are granted this extension, the permit would stay in effect as long as there's active construction. So that's essentially what we're asking for—the ability to extend so that we can continue to complete the buildings because what would happen is we'd have three uncompleted buildings and . . . of 30 just sitting there. So to answer the question, it only applies to these three buildings which unfortunately, we were unable to start prior to this recent expiration. I think two of them expired and one is due to expire. The last one expired on January 7th for Building 12. And there was one other question on timing?

Vice-Chairman Tanner: Bart?

Mr. Santiago: No, he answered my question.

Mr. Papa: OK. Thank you very much.

Vice-Chairman Tanner: Before I go further, staff, is there any letters in support or opposition in addition to what we have?

Ms. Kapua`ala: None.

Vice-Chairman Tanner: At this time, I'm going to open the floor to public testimony if anybody would like to come and speak on behalf of this item. Not everyone at once. OK. All right, we'll close public testimony. And, staff, discussion?

Ms. Kapua`ala: Mr. Chair, I'd just like to have the Board take notice of the Department of Public Works' staff report, which does not provide you a recommendation, but it does somewhat give you

an analysis that seems like they concur and even suggests your support, you know, for your action.

Vice-Chairman Tanner: And I'll be honest, when I first read this, I was with Clark that it did . . . you know, there was a lot of unanswered questions there. And so this was very, very helpful to me in understanding exactly what we're looking at, the type of project it is, greater clarity on the reasons for the halt in construction, and the reasons for going forward. And I'm very optimistic, I guess, to hear that the plans to commence are 60 to 90 days. Very positive.

Mr. Shimabuku: Mr. Chair, I have a comment. Listening to, yeah, I guess, what I was reading also, I was kinda . . . had a lot of questions about it, but I think one word that triggered in this discussion was "back to work." You know, we've been out of work for a long time and for me, because of the back to work situation, I would be in favor of this granting the variance.

Vice-Chairman Tanner: And I would also agree with the research that's been done, it shows a real lack of inventory out there. To me, it seems like overnight the inventory disappeared and prices started climbing back up, which is a good thing because it means back to work, and I think that's good too. I think the applicant clearly shown what their position is and made it much more understandable to myself. So without further discussion, I'll open for a motion.

Mr. Santiago: I'll make a motion to approve the variance to unexpire the building permits, and be granted an additional two years to begin construction, and accept the reasoning provided by the applicant as additional fact to the motion.

Mr. Teddy Espeleta: I'd like to second.

Vice-Chairman Tanner: OK. So we have a motion and a second. Any discussion?

Ms. Jacqueline Haraguchi: Yeah, I have discussion. Can we put a condition on the extension of the permit that they are to start within 60 to 90 days, or come to us within a six-month period, or . . . ?

Ms. Thomson: You could do that as an amendment to the motion, if you'd like.

Vice-Chairman Tanner: You wanna make a friendly amendment?

Ms. Haraguchi: Yeah, I do. I wanna make an amendment to the . . .

Vice-Chairman Tanner: A friendly amendment. And if you'll . . . I'll let you state that.

Ms. Haraguchi: I wanna make an amendment to the motion that was made that the project be started within 60 to 90 days as the developer has stated.

Vice-Chairman Tanner: How about stating it at 90 days as opposed to the 60 to 90?

Ms. Haraguchi: Yeah, in 90 days, in a 90-day timeframe.

Vice-Chairman Tanner: Applicant?

Mr. Papa: I guess I'd like to just make a plea for the typical extension. It would be 180 days. That's what we asked for originally. I would just request that it be that because these things take time to get going. And while we have the pricing, and while we're ready to go, I can't stand here and promise that we will start in 60 days.

Vice-Chairman Tanner: Are you acceptable to the 180 days? Bart, do you accept that as a friendly amendment?

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

Vice-Chairman Tanner: OK.

Ms. Thomson: Go ahead. And did you . . . ? I didn't see if there was a second to that motion to amend.

Vice-Chairman Tanner: Do you still want to second or did you second?

Mr. Espeleta: I second the . . .

Vice-Chairman Tanner: You seconded the original motion?

Mr. Espeleta: The original, yes.

Vice-Chairman Tanner: Do you still second the original motion with the friendly amendment?

Mr. Espeleta: Can you clarify that amendment?

Ms. Haraguchi: The amendment is that the developer will start construction within the next 180 days as the developer has stated.

Mr. Espeleta: Yeah, OK, I'll second that.

Vice-Chairman Tanner: Motion and a second. Discussion?

Mr. Abbott: Yes, I support everything that's going on here, but I think two years is too long. I would go for a year.

Vice-Chairman Tanner: No, 180 days.

Mr. Abbott: No, but they originally wanted a two-year variance or two years.

Vice-Chairman Tanner: But the two years is the construction time, not to start, yeah. So it's basically two years you gotta be done. But the stipulation within this extension is that you have to begin construction in 180 days. And he still has to complete . . . (inaudible) . . . I'll give a moment. Staff's got . . . Right. And the two years' completion date would start at the start of construction. That's acceptable? OK. Staff, was there . . . ?

Ms. Kapua`ala: Yes, for your consideration, and this might throw a kink in your plans, but would the Board consider the typical hold harmless agreement, and if you like, the insurance, the liability insurance requirement? And keep in mind that that, once submitted to our office as being executed and notarized by the applicant, it needs to be executed by the Mayor's Office, as well as signing off by Corp. Counsel, and then recorded by the Bureau of Conveyances which takes months. So we have approved variances without hold harmless agreements and as you know, without liability insurances, insurance policies. Is that something that the Board would consider? And maybe Corp. Counsel can help you.

Vice-Chairman Tanner: Well, Bart made the motion. I'll let you speak.

Mr. Santiago: Yeah, from my perspective, I don't think it's a requirement for the magnitude of this project. In certain cases, I would consider it when we're talking about an individual. You gotta look at the case-by-case basis, but I think the magnitude is probably . . . would probably protect . . . there's provisions in there or insurance that's in place that would protect the County from our decision. So I would not move to include it.

Vice-Chairman Tanner: OK. Staff?

Mr. Joseph Alueta: Excuse me, Chair. Just to clarify. I was just talking with Public Works on it. As I hear the motion right now, it's 180 days to start, restart the construction, but the variance is for two years from today, not two years from the time they start, restart. It's two years from today if you grant the variance. I was just trying to get it clarified.

Ms. Thomson: I think that the motion on the floor, and you can correct me if I'm wrong, is that construction must start within 180 days and completion within two years of the start of construction.

Mr. Alueta: OK. That's what your . . . that's what the motion is on? OK.

Mr. Santiago: Yeah, because the amendment added that 180 . . . (inaudible) . . .

Mr. Alueta: That's what we're trying to find out. And typically, it would be . . . what their understanding was that it's two years from today. Thank you.

Ms. Thomson: And if that's not comfortable for the Board, you can either withdraw the motion or amend it a second time to clarify.

Vice-Chairman Tanner: I'm gonna just for a moment hold off. Applicant, did you have another question or comment?

Mr. Papa: I guess with respect to the insurance, we have a full insurance policy on the entire property as well as on the project. The work that we're talking about in reference to your comment about back to work represents about five and a half million dollars of construction, direct construction costs. And we're doing this as an in-house contracting entity so that we can make the project go. We make our fee on the back end, but there's a . . . it's basically all subcontractors and again, it's about a hundred employees. It's a fairly substantial multi family project.

Vice-Chairman Tanner: Thank you. OK. So we have a motion and a second. Any further discussion?

Mr. Shimabuku: I do have a comment. You got me all excited working within 60 to 90 days. Where did that 60 to 90 days come from?

Vice-Chairman Tanner: The applicant's original estimation was 60 to 90. And my understanding is you may well start within 90 days but, you know, there potentially could be unforeseen things that may push it back a little bit, so you asked for the 180. But, I mean, that said, what is your feeling? I know you probably wanna get started as soon as possible.

Mr. Papa: We're ready to get started as soon as we get committee approval from our investment committee within 30 days. And actually, I could probably have guys out there a week from today because there's that much excitement to get back to work. Part of the thing that is nice, and I'll share this with you, is that the pricing that we did 18 months ago is still about the same price that it is today with some minor increases in materials. And that's because of the relationships we have with the local subcontractors that they really want to do this project. They wanna put their people back to work. I can't promise 60 to 90 days. That's our time window that we're looking at right now internally, but anything can happen to delay the process. So if we're able to get the conditional extension for the 180 days which is a typical process, that's all we're asking for at this point.

Vice-Chairman Tanner: OK. Thank you.

Mr. Shimabuku: Please try your best to start in 30 days. (Laughter)

Vice-Chairman Tanner: Any further discussion, Board? OK. We have a first and a second. I'll call for a vote by a show of hands. All those in favor? Any opposed?

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

VOTED: To approve the variance granting the extension so that construction must start within 180 days and completion within two years of the start of construction as discussed.

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

(Excused: K. Tanaka.)

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

Mr. Papa: Thank you, Members. Appreciate it.

Vice-Chairman Tanner: Thank you. Will staff read the notice of public hearing?

- 3. ELIJAH and GELASIA PETERSON requesting variances from Maui County Code, §§16.08A.R302.1, 16.08A Table R302.1, and 19.30A.090(A) to allow an existing dwelling and its deck to be located 1.2 to 3.3 feet away from the**

southern boundary line whereas a 15-foot setback and one-hour fire-resistive construction for exterior walls are required, and openings (windows/doors) and projections (roof eaves) are not permitted, for property located at 40 Pulehuiki Road, Kula, Hawaii; TMK: (2) 2-3-053:030 (BVAV 20120007).

Ms. Kapua`ala read the agenda item into the record and presented depictions of the proposed project site and surrounding area.

Mr. Elijah Peterson: Hi, Members. Thank you for having me. My name's Elijah Peterson. And I'll try and be brief. I kind of wrote out some information that might be helpful with how this played out. So the sale of the house was on December 31st. We're first-time home buyers, 2011. And we were aware of the unpermitted decks when we bought the home. But . . . and we . . . but we didn't know that the house didn't meet any codes. So it's the house that's really in . . . that we're trying to save here.

So we talked to the first inspector who cited the violation for unpermitted decks. It was William Scrote. He said . . . he let me know. He said it'd be easy because decks don't have electrical or plumbing that you can get it permitted. So when we . . . (inaudible) . . . the home, I thought, OK, I can do that. But there was an outcropping and I have some pictures of the old house. They built some kind of little room, office room, so I tore that down and got rid of it. And then when we realized that that boundary line is a little wrong . . . (inaudible) . . . gets it wrong sometimes, but we realized that our property line was about two feet away from our house. So we would never be able to do anything. But . . . so what we did is we talked to our neighbor. We let him know the situation. We were trying to figure out solutions. So we got the deck and stairways off of his property, and really tried to cooperate with that, and started the process of applying for an after-the-fact permit. And that was in January 10th. And then by July 18th, we removed the deck and the stairways. And after removing the outcropping, and stairway, and portion of the deck, we went down to the Planning Department to apply for an after-the-fact permitting realizing our house didn't meet the zoning setback laws. So we got in contact I think it was with Neil and it was really hard to figure out who to talk to. It would've been really nice if we showed up and maybe the inspector said "Talk to Trish," because she was extremely helpful. It would've saved us a lot of time.

But after going through the process and figuring it out, Nicholas said, "You're in a catch-22 because you can't comply with the building permits because your house doesn't meet codes." And we didn't know what to do, so we got in touch with the Deputy Director Rowena who was very helpful and she explained our options. She said Option 1, tear down the decks and abate the fines, but we'd always have this problem hanging over our heads, our kids' heads, and even whoever bought this property, even our neighbors, you know, because this was something like you could just take these decks down. Nobody would ever know, but we just couldn't legally ever do anything. We'd just have to keep it a secret.

So Option 2, we could apply for a variance, see the outcome, and if it gets passed, apply for the after-the-fact permit for the front and back decks. And we didn't want to tear down the decks because we'd closed up three entryways. And it'd create a lot of financial hardship because of, you know, having to put up walls, and windows, and tearing it down.

And also, we decided that the issue we inherited by purchasing this home should be settled and

made legal to benefit our family, our neighbors. So I'm really respectfully asking for this variance so we can apply for these permits. And we really think it'll benefit the neighborhood, our family, and whoever else might buy this home. It would benefit them. And I do have . . . our neighbor is here if you have any questions for me or for him, and the Akamai Surveying who placed our house and showed us what the situation is going on. So if you guys have any questions for me?

Vice-Chairman Tanner: Yeah, I'll start. When you purchased the home, the real estate disclosure simply noted the unpermitted decks and nothing else?

Mr. Peterson: That's correct.

Vice-Chairman Tanner: When was the home purchased again?

Mr. Peterson: December 31st, 2011.

Vice-Chairman Tanner: 2011. Have you gone back to the seller, the seller's realtor, with regard to this non disclosure because it's pretty serious?

Mr. Peterson: I did and he said he didn't know. And Bank of America apparently, had no record. They knew about the unpermitted decks, but they never notified me about . . . I mean, our house is permitted. I even have in these records showing that our house is permitted. So whoever permitted the house, I don't know how the permitting process works, I never built a home, but I'm assuming that when they approve it, they maybe see a boundary line, a flag, whoever they can go to, to say, yes, this is where the house should be. And that never happened. I'm not sure how it happened or how it got signed off. So when we showed up, it was very confusing even to the Planning Department or whatever department we went to what the real issue was with our house. It was a lot of back and forth, and figuring it out, and what we had to do.

Vice-Chairman Tanner: Board Members, questions?

Mr. Santiago: I just have a question. Was it a bank-owned property?

Mr. Peterson: It was. It was a foreclosure, Fannie Mae.

Mr. Santiago: You've consulted with a lawyer for any recourse you might have?

Mr. Peterson: They . . . we really haven't.

Ms. Bernice Vadla: I have a question. So just to get it straight, you actually have a permit. You received a permit for the house. It was permitted when it was built?

Mr. Peterson: Well, we didn't . . . we researched, and we had to locate all these permits and find it, because in the records, the house showed . . . if the County pulls up records, they can say, yes, your house is permitted. That's not the issue. It's the decks. But by where our house is placed, if we ever want to make improvements, they're gonna see the setback line is right there, and we'd never be able to do anything regardless of the house being permitted. So we had to find a lot of these documentation showing that it is actually permitted.

Ms. Vadla: OK. So the house is permitted and the decks are not?

Mr. Peterson: Yeah.

Vice-Chairman Tanner: Staff, you had questions or comments?

Ms. Kapua`ala: According to the applicant's application, Building Permit No. 90416 was approved for this house. And I have here the inspections that were apparently passed by the Department of Public Works which includes building foundation, framing, and final. And from what . . . from my knowledge of the building permit process, the plans were approved, of course, to code, you know, with the proper setbacks. And in the 1990's, I don't think it was as accurate as it is now where we have laser technology to do surveys. So it seems obvious that it was . . . the building permit was approved, but the house was placed in the wrong place. And maybe the inspectors can help me understand or you understand how the inspection process occurs after the building and foundation is laid.

Vice-Chairman Tanner: Board Members, if we don't have any more questions for the applicant, we can bring up the building inspector, but I'll wait and see if there's any more.

Mr. Abbott: Can he be recalled?

Vice-Chairman Tanner: Yes, we'll reserve the right to recall you. So at this time, if we could have the building inspector come up? If you'd state your name and position?

Mr. Ernie Takitani: Ernie Takitani, Supervising Building Inspector.

Vice-Chairman Tanner: So if you could just give us kind of a little background on basically, how something like this possibly could've happened. You probably don't know firsthand exactly what happened, but give us an idea.

Mr. Takitani: It is the responsibility of the owner and the contractor putting up the structure to determine the property lines. And the contractor normally would place the structure appropriately according to the setbacks approved on the plans.

Vice-Chairman Tanner: Now, is . . . so once . . . does the County issue a certificate of occupancy, a completion of construction, or they just close the permit?

Mr. Takitani: A certificate of occupancy is not issued for residential properties, only for commercial.

Vice-Chairman Tanner: OK.

Mr. Takitani: So the answer is no. And we do close it upon a final inspection, yes.

Vice-Chairman Tanner: And the final inspection does not include a survey of whether it meets setbacks and so forth?

Mr. Takitani: No.

Vice-Chairman Tanner: OK. So in this case, it would appear that a mistake was made probably based on just as stated, the technology wasn't as good then maybe as it is today, and they weren't real clear on it, or . . . ?

Mr. Takitani: Very possible.

Vice-Chairman Tanner: OK. Any questions?

Mr. Abbott: Yes, please. When the permit to build is granted, let's say we've set the foundation, it's post and pier, from what I understand, is . . . what is . . . after the floor is put in, is there any inspection prior to the walls being erected?

Mr. Takitani: No.

Mr. Abbott: There is not?

Mr. Takitani: If it's a post and pier structure, the first inspection you'll get is a framing inspection after the building itself is totally constructed.

Mr. Abbott: But not roof?

Mr. Takitani: And roof, and normally your plumbing and your electrical roughly would be completed.

Mr. Abbott: So technically, it's almost ready to move into and nobody's checked to see if it's in the proper place?

Mr. Takitani: It would be almost ready to be enclosed like sheet rock and interior, yes.

Mr. Abbott: Mr. Chair, I have to tell you I'm a little bit familiar with what's going on here because my house was originally built six feet too close to the road because the contractor decided to fudge and give him a little bit more back yard and a little bit less front yard. And it took an act of God with Landco and every neighbor on the block to approve my house where it sits or they would have to tear the whole thing down. So I realize what you're doing. Believe me. I've been there and done that. So there's a lot of things that are wrong. Not with you. I'm not saying that, but the system's . . . (inaudible) . . .

Vice-Chairman Tanner: Any other questions for . . . ?

Mr. Santiago: Do we have any surveys from back when the original permit was granted to see where the property lines would've been back in 1990 or whenever it is that maybe the siting of the building was actually accurate based on that original survey? Now that we have a new survey, what's the property line to the street either way from the house? I don't know. I just asked.

Ms. Kapua`ala: My understanding of the Department of Public Works' procedure is that when building permits are issued, the plans are re-dispersed to the applicant, and they don't keep any of the plans. So all they would have is the building permit application. So I'm sure it was surveyed during the time of the building permit, the construction plans' preparation, and probably submitted

along with those plans. But unless the applicant has a copy of those plans, the County would have no record. Is that correct, Ernie?

Mr. Takitani: Correct. I have a question. You may . . . At one time the zonings were changed in certain areas of agricultural land. Did this particular area fall into that zoning change? Because it would have some implications upon where the structure would've been set at that time, you know, set on the property. I know Maui Meadows and Pukalani was part of it.

Vice-Chairman Tanner: OK. We've got another question from the Board, if that's . . . OK. We're gonna take a five-minute break at this moment.

(A recess was taken at 2:32 p.m. and the meeting reconvened at 2:37 p.m.)

Vice-Chairman Tanner: OK. We're back in session. And does anybody have any further questions for the building inspector? No? OK. Could we have the applicant come back up? Based on the information from the building inspector, do you have any more comments?

Mr. Peterson: I don't. I don't.

Vice-Chairman Tanner: Yes?

Ms. Kapua`ala: Thank you, Mr. Chair, to answer Ernie's earlier question as far as the change in zoning that happened within the region, according to the building permit which is again signed in the '90s, we didn't even have a Zoning Administrative and Enforcement Division with Planning yet, it was still a part of LUCA, Land Use and Codes with Public Works, so according to this, it does say that the zone was ag at the time. There are some properties on the island that were interim and then zoned automatically ag in 1998 when we had an ag ordinance adopted. But it's . . . without looking at a map, I don't have a map with me, I don't think that this is one of those properties that was interim and then turned ag. It looks like it was ag in 1990 when this building permit application was signed off by LUCA. And it's noted in the staff report that it had compliant setbacks at the time of approval, plan approval.

Vice-Chairman Tanner: Yes?

Mr. Peterson: Being that the house is two feet away from the property line, if it was six feet, it wouldn't make a difference if . . . I mean, I know there's no setbacks up there that are two feet in Kula from a property line. The good thing about this is that the property line falls on a gulch. So it is 50 feet from the neighboring house and I think that's why the neighbor who's here with me now isn't too distraught because I don't think he's gonna build anything on . . . in a flash flood zone.

Vice-Chairman Tanner: Any other questions for the applicant from the Board? OK. At this time, I'll open to public testimony if somebody would like to come and speak on this matter. If you'd state your name for the record.

Mr. Arthur M. Rautio: My name is Arthur M. Rautio. And I'm the neighbor in question on the other side of the gulch. I purchased the house in 2001. And I didn't have a survey done at that point in time. So to be honest, I didn't really know where my property line was on that side, but his house

was already built, obviously.

And I retired and started living in the house in February 2010. And at that time, there were squatters in the house. It had been foreclosed on. And we actually, I think, called the police once just to . . .

Vice-Chairman Tanner: In this house?

Mr. Rautio: In this house. And then it laid vacant for the next two years as it was under various foreclosures. So we were actually happy to have a nice family move in. So I just thought I'd add that. And obviously, to be honest, I didn't realize that my property line went all the way over there because it is, you know, substantial gulches, you know.

Vice-Chairman Tanner: And as you stated, the house was already there when you purchased yours?

Mr. Rautio: Yes.

Vice-Chairman Tanner: OK.

Mr. Rautio: And my house was built by Brian . . . (inaudible) . . . you may know who's . . . and lived in it by Brian for ten years. So he obviously was aware, you know. He built his in '89. He was aware of this thing being built across the way, and he knew where the survey line was, I would assume, because he's in construction. And somehow he let it happen.

Vice-Chairman Tanner: Now, we have a culprit. (Laughter) Board, do we have any questions for the testimony? OK. Thank you, sir. Staff, do we have recommendations? Oh, I'm sorry. Is there anybody else who'd like to speak? You need to state your name.

Mr. Sherman Dudley DePonte: I'm Sherman Dudley DePonte. I'm with Akamai Land Surveying. And we located and found the house where it is, and how close to their property line it is.

First off, I want to point out right on that screen there something that . . . (inaudible) . . . As you can see the property line . . . this is not where the property lines are. They're actually right in the road like right here. The property line falls right along the road. So even the GIS with modern equipment is just not doing it for the County. We need to do better. That's what I'm saying on that and leave it at that.

The property owner possibly believe that the center line of the gulch was the property line and they . . . (inaudible) . . . to there. The terrain, if you turn this . . . you had a different view on this, if you spun it a little bit, it shows the gulch is pretty steep. So placing that house with a carport on the roadside is just . . . it's a tough deal. This is all . . . this is like down. This is all sloping down. So placing it anywhere else, moving it, is gonna be a major financial burden for this family.

The only way that . . . the way I see it on these and as a surveyor . . . I'm licensed in California, Hawaii, and Arizona. In California, it is required that a house of this . . . when it gets close to the property line, anywhere close to a property line, it needs to be surveyed, marked, and pinned with

a tag on it, the tag of the surveyor. I've done it and it works because then you can come to the surveyor and say, "Hey, guy, the house is off, we need to move it," or whatever it is. That is not happening in our County and we need it. I see this happening daily. We get it. We do three . . . two to three lots a day. So I see it maybe one lot a day that there's . . . This is one that is huge. It's going over. It was over the property line. He corrected it. He's willing to work with the County as best as he can with his financial needs to get it to the right place. I commend him for doing that because a lot of people that we go in their back yards, they're not doing it. They're putting sheds right up against property lines. They got dogs. They got . . . It's a mess in our County. Our County looks really bad in the back yards.

And one of the reasons on this one here is they didn't have a survey. And it's not a matter of old technology, new technology, because the old technology to new technology, we have a de minimis law, act. I think it's HB 131 that got passed in 1997 by our legislature. And what happened is that gives you for commercial, it was .25, which is like three inches; .5 for rural, which is half a foot. For agriculture, it was .75 which is nine inches. We're talking nine inches not 15 feet. And the last was conservation land, which is one, one foot and a half. And you see that at the title companies.

Having a survey done when your purchase the property is very . . . it's recommended. This is a repo. Sometimes they say buy-it-as-is type of thing. And we seen a lot of those come into play here. What happened is the unknowing first-time buyers, they really take a gas on this kinda stuff. They don't know what's coming on.

And they way I look, you know, and again, it's just my opinion, and what I've seen in this County for so many years is that changing of zoning, the zoning laws, when they changed the setbacks, and this is not one that was in it, but when they changed setbacks from ten feet or six feet to ten feet, to 25 feet, to 35 feet of front yard, I seen that with my neighbors, and we have another case that will be coming before you guys, I'm sure, but in any case, it went from, you know, 15 feet, 20 feet to 35 feet. You've just taken the person's land. I mean, this is around a curve, a switchback, 35 feet. The house, the envelope, to build a house is like right here.

In this instance again, they built it . . . if you look at . . . now you can see the shadow where there's . . . that's a gulch. And very little place to build on that. You don't wanna put 'em more into the . . . where you see the gulch now, the bottom of the gulch. If he goes down there, that's flood inundation, water, flooding, whatever. It could be damaged. And we had some big storms that could take the whole house.

Another recommendation would be having a use permit which they used it for meadow lands, but it was for zero lot line. And that's only where they allow it. But if there was a use permit, a use easement that he could purchase from his next door neighbor, this would be null and void. Purchase 15 feet and say this is for setback purposes just to use for that, not to extend your house into this area, just for that. Now, if we can put that into law, that would be great.

Another thing into law is have something like this when it come in closer to property lines, have it marked. It's required by the County to have it marked and a certification letter from the surveyor. Don't take too much for a surveyor to punch out one of those boiler plate letters saying, yes, I did the survey, and yes, it is within compliance and within the . . . (inaudible) . . . of modern surveying, and we can clean that up.

My opinion, and why I'm here, I don't believe that he should be held more than what he has done already. He's really worked hard to get this thing cleaned up. He took out the side of the . . . He's trying to come clean with the County. Let's work with this man.

Vice-Chairman Tanner: I appreciate your testimony. That's been very helpful. If you hold on one second, the Board's got some questions.

Mr. Shimabuku: I have a question. You had mentioned that the property line is in the middle of the gulch?

Mr. DePonte: See, on this instance, sometimes people believe that their property falls in the middle of the gulch.

Mr. Shimabuku: OK. You said, "you believe."

Mr. DePonte: Yeah, they believe it is because it's so close. And the line, if you look at the line, how it starts when you put on the property line on that one, if you can put on the property line again even though it's off?

Mr. Shimabuku: Well, I was looking on the paperwork and I saw the map that it was a before and after map that, I guess, the deck was taken out that was encroaching the other property. But then I saw the ones that . . . the updated one which the house is close to the property, and I heard that you mentioned something about the . . . (inaudible) . . . bottom of the gulch, then that part be the question, but I understand what you said now.

Mr. DePonte: Right. The next . . . What I was thinking? It's kinda like a senior moment. (Laughter)

Mr. Shimabuku: So basically, the house is actually right there . . . the house is, yeah, right there on the property line, actually, according to this.

Mr. DePonte: Yeah, the house is right close. You see on that drawing that you have, you see 1.2 feet and 1.3? Let me see. One point, . . . 2.1 and 1.2 feet from the property line.

Mr. Shimabuku: I just wanted to get clarification.

Vice-Chairman Tanner: OK. If there are any questions, I'll ask the applicant to come back up. Thank you, sir, for the testimony. At this point, have all encroachments across the property line been removed?

Mr. Peterson: The roof actually encroaches. It's the overhang to the roof. And it was mentioned that the neighbor could actually cosign on the variance if you wanted to. That would allow the roof to encroach into his property. It would cover in the variance. Or I would have to cut it off leaving me about a one-foot overhang as opposed to a four-foot overhang.

Vice-Chairman Tanner: I see.

Mr. Peterson: But I'm willing to do whatever.

Ms. Vadla: I have a question then. You're looking at this variance, of course, to get your house in code and permitted legally. Now you say you wanna make some improvements to it? Do you have some ideas or are you already in process of . . . ?

Mr. Peterson: Possibly, you know, in the . . . you know, these are just ideas like, oh, maybe you could build up one day. A lot of them are maybes and what ifs. But the problem is, is if I ever go to do any of the what ifs, I wouldn't just kind of even consider it because the house doesn't meet. But once it gets to the Planning Department, they're gonna stop and say you don't meet the zoning.

Ms. Vadla: Right. So you don't have plans to put these decks back up or anything like that?

Mr. Peterson: The decks are up still.

Ms. Vadla: The ones that you had taken down already?

Mr. Peterson: The deck? No, no, not at all. Not at all. I totally understand. It had a stairway going down. And I have a slide show that shows the old house. And you can see here, it's the aerial view they have. It starts off with that. And you can see the boundary line cutting across. And I have the placement map, the one you have that shows . . . you can get an idea. That's like a ten-foot cliff and then steep hill on each side of the property showing that that's the only place the house can go. And then this is just a tax map showing more accurate boundary lines. And that's the . . . that's what the house looks like. You can see the outcropping right there. That got removed.

Ms. Kapua`ala: There's a pointer right to the left on the bottom below. There you go. And there's a red . . .

Mr. Peterson: So that's the outcropping back here. It got completely removed. So this is what the house looked like 12/15. I have the date stamp right down there, 2010. This is the rear deck, which is still the same way now that it was then. And none of this deck encroaches on the neighboring property. The property actually gets a little wider over here. The narrowest point is on the front part of the deck. You can see the overhang back here. This is the part that was removed. And this staircase by the color of it, and that they built over it on the top, existed with the house when it got passed. So this, I removed also even though it was there when they built this additional deck. You can tell by the blue color of it. And it was quite a big portion of deck that I removed. I removed all the way up to there. This all got taken out. And my kids helped. This is the outcropping that got removed. I had friends help me patch up the wall. You can kinda see the front view. You can see the overhang of the roof. This is the process of removal. I patched up the door that exited the house. And then you can see it removed. And then I completed . . . I fixed the deck. I re-put the railing back on. And now this is the new look. And this is what our house looks like today. I took these pictures about three days ago. You can see the overhang right here. The property line is the closest here, and then cuts away towards this tree, and then widens out into the gulch.

Mr. Shimabuku: So the 1.3 would be from that corner of that house?

Mr. Peterson: This would be the . . . yeah, right here. The property line shoots like that and then comes like this. And this is the view. This is the back part of the gulch looking up the property. You can kinda see how steep it drops right here.

Ms. Vadla: Thank you.

Vice-Chairman Tanner: Yes. So at this time, I know there are some challenges here, and maybe staff can help. Kind of give us some details within your recommendation of some of the challenges that we face?

Ms. Kapua`ala: Would you like me to go over the analysis or the recommendation?

Vice-Chairman Tanner: Yeah. Well, I think just the recommendation.

Ms. Kapua`ala: OK. Based on its analysis, the Department of Planning finds that there is an exceptional, unique, and unusual physical/geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area. However, the department finds that strict compliance with the applicable provisions of this title would not prevent reasonable use of the subject property. And if I may? That is because there was no evidence provided that there was a hardship. I think Mr. Peterson came here with some explanation that the staff could possibly accept as hardship. And because there was no hardship identified, it was impossible for us to say that the conditions creating the hardship were not the result of the applicant's own previous actions. As you know, the department views purchasing a property with a violation or any kind of nonconformity as a self-induced problem. You then inherit the problem. So the department said that the conditions creating the hardship were the result of previous actions by the applicant. So with that being said, the department recommends denial of the application based on the application analysis of the time.

Vice-Chairman Tanner: Based on all the information they had at the time.

Ms. Kapua`ala: At the time that we made the staff report.

Vice-Chairman Tanner: OK.

Ms. Kapua`ala: So 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 variance. Therefore, the staff recommends denial. In consideration of the foregoing, the department recommends that the BVA adopt the department's staff and recommendation reports prepared for January 10, 2013, 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.

Vice-Chairman Tanner: Thank you. Sure, legal counsel?

Ms. Thomson: Trish, can you just clarify that if the Commission . . . if the BVA feels inclined to grant the variance that the encroachments that exist, the roof would need to be . . . that all encroachments would need to be removed?

Ms. Kapua`ala: Yes, yes.

Ms. Thomson: And alternatively, if the . . . if your neighbor is agreeable to file a joint application for a variance as to both parcels, you'd need to come back before the BVA to be able to grant the

variance to both parcels because the other neighboring parcel would need to have the proper notice given to those neighboring properties. Does that make sense?

Mr. Peterson: I was told he could possibly cosign on top of my variance.

Ms. Thomson: He can, but the reason that the Board can't take action on it today is that the variance would apply to his parcel as well. And so he would have to notify his neighbors of the hearing. So it'd just need . . .

Mr. Peterson: So I could just remove the roof?

Ms. Thomson: If the Board takes action today, that would have to be a condition of that variance. If you come back as a co-applicant with your neighbor, it's possible that you would not have to remove the roof.

Mr. Peterson: I don't know if I'd want to put him through that much trouble.

Ms. Thomson: It may be worth discussing.

Ms. Kapua`ala: For the record, Mr. Art, that would include notifying your adjacent property owners, some of which have already been notified through Mr. Peterson. But whatever property owners that are adjacent to you that have not been notified of this hearing today would have to receive a certified mailing giving them the time, and place, and subject matter of what the Board is deliberating on, you know, considering a variance on. And once you do that, within 30 days from that notice, we can come back and the Board can take action on both parcels, grant the variance to apply to both parcels, and then Mr. Peterson would be able to keep the eave as is. The property, the structure in question, would be able to stay as is. So without you cosigning on this application and notifying your property, your adjacent property owners, adjacent neighbors, Mr. Peterson, if granted the variance, would remove that eave. That'll be a condition of this approval.

Vice-Chairman Tanner: So you have two options. You can let the Board make a decision here. If the Board chose to grant you a variance, you would have to remove the encroaching roof. Or you can choose to go back through the process again with the cosign as Trish explained.

Mr. Abbott: And keep the roof. Keep the house as it is.

Vice-Chairman Tanner: Trish?

Ms. Kapua`ala: I just . . . while you guys are discussing, please keep in mind that there is a Public Works staff report as well. And again, the Department of Public Works do not typically give us recommendations, but I invite you to take a look at the analysis yourself and determine whether it's in support or in opposition to the meeting of the criteria.

Vice-Chairman Tanner: Right.

Mr. Peterson: Just so you know, I'm just gonna take the roof off. I already looked into it. I looked through all my options. I'm amazed that my neighbor's here right now. So I just need a metal

cutting blade and a strap to tie myself down. I need Akamai to come out.

Vice-Chairman Tanner: Fortunately, it's a pretty long overhang so you've got some left.

Mr. Peterson: And he'll . . . my surveyor will mark where I need to cut it, and he can put that in the report showing that it's off the property line.

Vice-Chairman Tanner: Any other questions for the applicant? Any further discussion from the Board? At this time, I would be open for a motion.

Ms. Haraguchi: OK. I have a motion. I make a motion to approve the applicant's variance based on the analysis that was given and testimony that was given to the Board that they do meet the criteria that is unique, unusual, exceptional. And they do meet the hardship because of the area that their place is in, their home is in. And they tried everything that they could to try and fix it as it is now.

Ms. Thomson: Does the motion include the removal of any encroachments into the neighboring parcel?

Ms. Haraguchi: Yes.

Mr. Abbott: I second.

Vice-Chairman Tanner: So we have a motion and a second. One moment. Trish?

Ms. Kapua`ala: Hold harmless agreement and standard insurance policy?

Vice-Chairman Tanner: Now, you can do one or the other, or both.

Ms. Haraguchi: Yeah, a hold harmless agreement.

Vice-Chairman Tanner: OK. So you'll add . . . so we've got the motion which includes a hold harmless agreement. You still second that motion?

Mr. Abbott: Second.

Vice-Chairman Tanner: Any discussion? OK. We'll take a vote by show of hands. All those of favor, aye? All those opposed?

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

VOTED: To grant the variance as discussed with the hold harmless agreement.

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

(Excused: K. Tanaka.)

Vice-Chairman Tanner: **The variance has been granted.** Good luck. OK. Before we read the next notice of public record, I'd like to state for the record in interest of full disclosure that I do manage the property that sits next door to the shopping center that is seeking the variance. However, I do not represent the ownership of the property. I simply manage it. And I've discussed this with legal counsel, and unless there's any concern, we're ready to proceed. Staff, if you'll read the public hearing?

- 4. GENERAL GROWTH PROPERTIES for WV SUB, LLC requesting a variance from Maui County Code, §19.36A.010 to delete the requirement of providing 70 parking stalls, whereby 77 additional stalls are required, for the proposed Whalers Village Revitalization project located at 2435 Kaanapali Parkway, Kaanapali, Lahaina, Maui, Hawaii; TMK: (2) 4-4-008:001 (BVAV 20120013).**

Mr. Paul Critchlow read the agenda item into the record.

Ms. Kapua`ala: We do have some imagery.

Vice-Chairman Tanner: Staff, is there a power point or you got a presentation?

Ms. Kapua`ala: Very short presentation to familiarize yourself with the area.

Mr. Critchlow then presented depictions of the proposed project site and surrounding area.

(Ms. Bernice Vadla then left the meeting at approximately, 3:05 p.m.)

Vice-Chairman Tanner: OK. Thank you. If the applicant would come forward and state their name?

Mr. Mich Hirano: Good afternoon, Vice-Chair Tanner and Board Members. My name is Mich Hirano with Munekiyo and Hiraga. And we're the planning consulting firm assisting General Growth Properties and the Whalers Village Shopping Center with the parking variance application before you this afternoon.

We've prepared a power point presentation to provide some background on the variance application in addition to the staff report that you have received. By way of introductions, the applicant is General Growth Properties. They own the Whaler's Fine Shops and Restaurants Shopping Center. Representing General Growth Properties this afternoon is their director of development, Francisco Gutierrez. And we also have the general manager of the shops, Whaler's Village Shops, with us. That's Corinne Arquero. And assisting me with the power point is an associate planner with our firm, Munekiyo and Hiraga, Tessa Munekiyo Ng. And she'll do the power point presentation just to provide the background on the application before you.

Ms. Tessa Munekiyo Ng: Good afternoon, Board Members. Thank you for your time. So Whaler's Village is requesting a variance from Section 19.36A.010 from the Maui County Code relating to the designated number of parking spaces, off-street parking spaces. And specifically, the variance request is for a reduction of 70 required parking spaces at the Whaler's Village.

These 70 parking spaces represent the 70 unused stalls of the current requirement at peak times.

And at off peak times at the shopping center there's even a greater number of unused stalls available. And approval of this variance would allow the 70 existing unused parking stalls to be . . . would be used to enhance the Whaler's Village through additional retail and restaurant offerings for the center.

So I think many of you are familiar with the Whaler's Village, but it's located in the heart of Kaanapali on the Kaanapali Beach Boardwalk surrounded by a number of hotel and condominium properties. Directly adjacent is the Westin, and on the other side of the property is the Whaler, and on Kaanapali Parkway just across from the Kaanapali Golf Course.

So this is the site plan of the shopping center. It's an open-air shopping center with a number of retail buildings. The parking is primarily provided here on the north end of the property. The main parking lot consists of a three-story parking garage. There's a gate access here. It's ticketed-controlled. Parking is at a cost but free for patrons who . . . free with validation for patrons at the shopping center. There's also a smaller parking lot here on the south side and this is primarily for employees. But there are 20 beach parking stalls here that's reserved from 7:00 a.m. to 9:00 p.m. for free public beach access.

The shopping center was built in the 1970s and is in need of revitalization. So right now, a comprehensive revitalization plan is proposed for the Whaler's Village. And it would improve customer experiences and really enforce Whaler's Village as . . . and Kaanapali Resort as a premiere visitor destination.

So just some of the improvements that are being proposed: an overall improved sense of arrival and enhancement of the beach boardwalk. This here is the entrance from the Kaanapali Beach Boardwalk on the ocean side. This is a view of the interior of the shopping center. So, you know, some improvements that are proposed include a common area improvement throughout and instilling a Hawaiian sense of place into the shopping center. And as part of the revitalization, General Growth Properties is looking at up to 15,400 square feet of new restaurant and retail offerings to increase the diversity of offerings at the center.

In terms of parking, there's currently 557 parking stalls at the shopping center. Again, most of this is provided in the three-story parking structure. And this does include the 20 beach parking stalls for public use. The parking is adequate for existing tenants and surplus is available daily.

So as I mentioned, part of the revitalization plan is looking at up to 15,400 square feet of new retail and restaurant offerings. So this table here shows you the existing parking requirement and the parking requirement under the revitalization plan. So the existing requirement under current conditions is 550 stalls. And with the existing 557, there's a surplus of seven stalls at the center right now just in terms of requirements. With the proposed improvements of 15,400 square feet, that would require 77 additional parking stalls. So once the . . . the existing surplus is applied, there would be 70 additional parking stalls required. So that's the 70 stalls that are being requested through the variance today.

So now I'll just get into a little bit of the variance justification and address the criteria for which variances are granted. And the first is whether there's a unique or unusual physical and geographical condition. And in this case, the unique condition is that the Whaler's Village is located

in a high density area with a beach boardwalk that provides pedestrian connection. Whaler's Village is surrounded by hotels and condominiums. There's seven property . . . hotel and condo properties on the boardwalk with over 3,500 units within walking distance. And the high pedestrian connectivity results in a high percentage of visitors who walk to the center rather than drive.

So this just gives you a sense of some of the neighboring properties. Here's the Whaler's Village. And we show here a quarter mile radius from the shopping center. That's roughly a five-minute walk. So you can see that most of the properties are within a five-minute walking distance from the Whaler's Village along the beach boardwalk. A couple of properties fall beyond that radius, but it's still a very pleasant walk along the ocean. And many people do walk from their hotels, their condos, to the Whaler's Village.

These are some photos of the boardwalk. And you can see that it's really well used, vibrant activity, not only in front of Whaler's Village, which is right here, but throughout the boardwalk. And again, because of this, at least a high percentage of people who walk to the shopping center rather than drive.

So a study was done or several studies were done about the mode of arrival of visitors to the shopping center. So this graph shows in three different years: 2007, 2008, and 2012, how people came to the shopping center. The green bar show the percent who walk. The red bar show the percent who drove. The blue bar is the percent who took public transportation. And a few other categories. But you can see that there's been an increase in trend in the people who walk. And in 2012, 46% of visitors surveyed walked to the shopping center compared to only 37% who drove. And this was a random sample done by an independent research organization based on Oahu. And because of the high percentage of people who are walking, there are under-utilized parking stalls at the shopping center.

So a couple of studies were done in terms of the number of empty stalls. And this graph here shows the number of empty stalls at different times of day throughout a week. So here on the vertical axis, we have the number of empty stalls. On the horizontal axis here is the days of the week. In this case, the study was done back in November of 2011 around the Thanksgiving holiday. And the different colored bars represent the number of empty stalls at different times of day. So just to pick one, for example, here, Friday, November '11, which was Black Friday, at 8:00 a.m. you can see that had the most number of empty stalls. Over 400 stalls empty. At 11:00 a.m., about 100 stalls. And it ranged between 100 and 200 empty stalls on that day. But during this busy week, at least 96 stalls were empty at all times surveyed.

The study again was repeated this past July, July 2012. And this is significant because July is one of the busiest times of the year for the shopping center. The traffic at the shopping center is really highly correlated with the tourism season because of its location in the heart of Kaanapali. And statistics show that July is the busiest month in terms of arrivals to Maui and to the state as a whole. So same study done. Again, here on the vertical axis, the number of empty stalls. In this case, the number of . . . the minimum number of empty stalls counted throughout the week was 77, but you can see in many instances depending on time of day, it's even greater, you know, over 100 or over 200 stalls.

So just to summarize the unique condition of the Whaler's Village, it's the only commercial center

on Maui with primary beachfront pedestrian linkages surrounded by resort properties. Again, over seven . . . there are seven hotels and condominiums within walking distance.

The next criteria we're addressing is whether approval would alter the essential character of the neighborhood. From a parking perspective, this would not create a parking shortage. And the existing 20 beach parking stalls would remain. From a traffic perspective, Wilson Okamoto Engineers did a traffic assessment. That was in the application that you guys have in front of you and determined that a 15,400 square foot expansion would have a negligible impact on traffic. And also importantly from a visual perspective, approval of the variance would mean that the parking structure would not need to be unnecessarily expanded, and this would have no adverse visual impacts with the resort.

In terms of the criteria regarding compliance with provisions of the code preventing reasonable use, in this case, strict compliance of the code would mean that 70 additional parking stalls would be required at the shopping center. And this would require a significant redesign and reconstruction. In fact, the parking structure would need to be demolished. But all of these additional parking stalls would not be utilized. So that's really not seen as a reasonable use of the property. Rather, a reasonable use is seen as an appropriate balance between commercial uses and parking, which is what's there now.

The final criteria is whether the hardship was caused by the applicant. In this case, the hardship is caused by the imposition of standard parking requirements which don't recognize the unique character and condition of Whaler's Village. And the Planning Department in its recommendation concurred that strict compliance with the code does not reflect the unique geographic conditions of the property. And I'd also like to note that Whaler's Village is the only property on Kaanapali Beach Boardwalk with a 35-foot height limit established by its zoning which constrains the parking lot.

So just to summarize, again, the unique condition is the strong pedestrian connection given by the Kaanapali Beach Boardwalk with the adjacent hotel and condominium properties. An approval of the variance would allow for increased retail and restaurant offerings at the Whaler's Village. This would help to keep Kaanapali as a relevant and competitive visitor destination, and would support Maui's tourism industry and the economy as a whole.

And the final slide for you, I believe you have copies of letters of support that had been received relating to this variance. General Growth and Whaler's Village have met with the resort general managers in the area. A number of them have submitted supported letters of support, six general managers. We also received letters of support from tenants at Whaler's Village as well as a resident from the Whaler next door.

Mr. Hirano: Thank you very much, Tessa. And that concludes our power point presentation. And so we're available to answer any questions that the Board Members may have. Thank you.

Vice-Chairman Tanner: Board Members, questions?

Mr. Shimabuku: I have a question or I have a comment. That was a very good presentation with all that graphic stuff. Talking about support and opposition, there were a lot of support letters, but

I did see a . . . one that disapproves of that. And I guess it's one of the tenants of your group. Maybe some comment on your part on this issue?

Vice-Chairman Tanner: I don't think I should or could. Yeah, well, actually maybe at the discussion point we'll do that. So I've got a question. I'm gonna ask a question for Ray because Ray didn't ask this question. And that is, what is the anticipated . . . what's the budget for the renovation and construction of the new square footage?

Mr. Hirano: I'll have Francisco Gutierrez, the development manager, for General Growth Properties to respond to that.

Mr. Francisco Gutierrez: Mr. Chair, Members of the Board, thank you for having us here today. I think the question is, how much is . . . what is the budget of the renovation. Right now we're looking at a multi million dollar project in north of ten million dollars for full complete renovation plus expansion of the 15,000 square feet.

Mr. Santiago: I didn't catch the number. What's the dollar amount?

Mr. Gutierrez: Right now, the preliminary . . . depending on how much we build because the variance would allow us to build up to 15,000 square feet that doesn't mean we're gonna maximize that, but it'll be north of ten million dollars.

Vice-Chairman Tanner: And if . . . how do I put that? If everything goes according to plan, what would be say a groundbreaking date that you'd be looking at?

Mr. Gutierrez: As soon as possible. I mean, groundbreaking is hard to say because we still have to go through the SMA and all the other process, but we're committed to doing this project, and in fact, we are ready to start the design, and then we'll put . . . (inaudible) . . . when we encountered this issue. So we're ready to start design immediately and continue the design process so we can prepare drawings to come in for permit and SMA.

Mr. Santiago: I have a question. Of the 15,000 square feet, the expansion, what exactly are you proposing to put in? Restaurants, shops, or what is it exactly?

Mr. Gutierrez: I think we expect it to be a combination. But it really comes down to the interest we get from tenants to come in. So what we're trying to do is set the bar at the maximum to make sure that we can define how much we will build. So it would be up to 15,000. Now, the restaurant and the retail, they have different parking requirements. So if we bring more restaurants, then we will build less of it because we will meet the parking requirements sooner. If it is less restaurant and more retail, then maybe we max out to the 15,000 square feet because retail needs less parking. So more restaurant, more parking, less overall square footage.

Mr. Santiago: Yeah, I guess my concern is if it's a restaurant and you're bringing in 500 covers a night, you're not gonna have a parking space to begin with.

Mr. Hirano: I think, you know, there is a correlation, of course, with visitors and with the restaurant space, but I think what we found is that there's such a high percentage of people who walk to the

restaurants and the shops. When Wilson Okamoto looked at the traffic assessment with respect to the build-out, if there was an expansion, I think they concluded that because of the high percentage of people walking, the public transportation within Kaanapali Resort that it would be . . . it wouldn't draw from the parking requirements and the parking availability for tenants and patrons of the restaurant.

To just respond to the letter and, I guess, the comment from the Board Member, Mr. Shimabuku, that this is the first time we've seen this particular letter, but, you know, I think we addressed it as well in the response to the Department of Planning's letter. Beach parking is really I think a resort wide, I guess, constraint that the resort is looking at, I think, ways in which they can address that. And Whaler's Village and General Growth Properties is doing their share with respect to meeting beach parking requirements. But the parking is not . . . is really for the tenants. The parking is generated by the square footage of the development that it's serving. And that is the square footage of the shops at the Whaler's Village. So, you know, I think there's adequate parking for the shops. And there is a surplus of parking in that context. Whaler's Village will and continue to do whatever they can to try and address beach parking with the other properties at the resort.

Vice-Chairman Tanner: Thank you. Any other questions? OK. Seeing none, I'll open it up for public testimony if anybody would like to speak on this from the public. Yes, sir. State your name for the record.

Mr. Richard Moon: Good afternoon. My name is Richard Moon. I'm with TS Restaurants. And I'm the vice-president of operations here on Maui. And I have a letter. I think it's in your packets. So I'll just paraphrase it so I don't read everything. But we have Leilani's on the Beach and Hula Grill which is two beachfront restaurants in the complex. And we've been in Whaler's Village for over 30 years at Leilani's and over 20 years at Hula Grill. And they're located right on the walkway. And of interest is, and I was looking through some old pictures, when we first opened Leilani's there was no boardwalk in Kaanapali at all. So there was no method of walking between the hotels other than on the beach. And so we've experienced the need for parking, and a parking structure, and so on as a growth of that. And at this point in time, we really believe that 60% of our business comes from the guests, hotel guests, or condominium owner that's in Whaler . . . in basically, the Kaanapali Resort area. And they are walking. Whether they come on the beach walk, or they walk along the parkway, or they come from Kaanapali Royale which is down the hill that was in the slides earlier, and/or take the public transportation which is within the resort. So the parking itself we feel is the fact is that foot is the predominant mode of transportation. And on a busy day, our restaurants between the two of them will do 2,025 meals a day. So with 3,500 rooms, I'm proud to say that about two-thirds of them happen to come by and see us during the daytime. But we really want to let you know that we support this variance. We are gonna . . . we're planning to be part of the renovation process in there. And that will be a whole other step for us before the Planning Commission and the SMA approval process. But our buildings are very old and we need to do some work on it. We've been working on it slowly but surely. So do you have any questions for me? I'd be happy to answer them.

Vice-Chairman Tanner: No questions? Thank you, sir. I've got one more question for the applicant if you could come back up. Oh, before that, I'll close public testimony if there are no others that would like to speak. OK. So we'll close public testimony. There's a lot of information that we went through very quickly so I wanted to make sure I understood. Your . . . you have a barrier or a

restriction with regard to height code. That is just for the shopping center. Others in that area don't have that height restriction. So it's my understanding that the garage can't go up.

Mr. Hirano: That is correct. There's a . . . the property is zoned BR, business resort. And the height limit on a BR business resort is 35 feet which is at the current height now at the parking structure.

Vice-Chairman Tanner: Now, even without that code restriction, going up would be a big challenge because obviously, you're in an area where views are everything.

Mr. Hirano: That is correct. I think part of the application and the merit of this application is that it's using surplus parking that is not used to try and expand and grow the resort commercial area, but not impact the neighborhood, and to keep the character of Kaanapali as a low-rise resort area at least for the shops.

Vice-Chairman Tanner: Now, Whaler's Village is also the location for a lot of special events: marathons starting in there, 5K runs. I know Hyundai just did their 5K. Started in right at the Whaler's Village. You feel that even with special events like this, you have adequate parking your studies show?

Mr. Hirano: I'll let the general manager of Whaler's do that. But I think one thing that is advantageous with these events is that they are planned. They do happen, and there's plenty of notice to that. And that allows the property owners as well as Whaler's Village to plan for these events and accommodate special needs that may arise. And I'll just let Corinne Arquero just say what they do when these events happen.

Vice-Chairman Tanner: Thank you.

Ms. Corinne Arquero: Hi. Good afternoon. I'm Corinne Arquero. We do work in concert with the properties surrounding us. One of our, you know, long-running events is the Maui Onion Festival. And at that time, we do offer free parking. You know, it's two-fold. It's for the visitors to come and visit the shops, and partake in all of the events, and with the chefs with the surrounding resorts. But then we secure off-site parking for employees. So all of these events are planned out, and we secure off-site parking at the Lahaina Civic Center. So the employees and the merchants, you know, everyone's very willing to open up parking for these big events. For the Maui Marathon, we work with the resorts as well. And then even when like let's say the Westin has a big event going on, we work with them and provide parking because they sometimes don't have adequate parking. So it's a partnership with all of the resorts. So all the way from the Hyatt all the way down to the Sheraton, it's something that we all work with together. We get together regularly. And we're aware of the parking shortage.

And then if I can speak a little bit also about the beach parking. We have those 20 beach parking stalls on the south side of the property which sits between the Westin and Whaler's Village. You know, I'm gonna be very open with you. There are times that it's very challenging, but we work with the property. We police the beach parking to insure that the beach parking is available for beach use. And then it's a behavior and it's an awareness that we let people know that there is . . . some people don't know that they can go ahead and park at the north parking structure and we'll work with them on that as well. Any questions?

Vice-Chairman Tanner: The Westin also locates their required beach parking at that . . . (inaudible)
. . .

Ms. Arquero: Right. Right. They're required to provide 30, which they do, and then we're required to provide 20, which we do as well.

Vice-Chairman Tanner: They're close to each other, but they don't use the same entrance, do they?

Ms. Arquero: They do use the same entrance off of Kaanapali Parkway onto the south service road. Their beach parking stalls are located against the Westin building. And ours, you know, what we've done is we've located purposely our beach parking stalls close to the beach. So we're all about customer experience and making it a very, very pleasant experience because we do know that we're in the spine of this resort. And it's all about the transparency. When people come to visit Maui, we want them to be able to walk out of their resort, walk along the beach walk, right, and then still have that same experience when they walk into any of the resorts, as well as our property.

Vice-Chairman Tanner: I would add my experience. The Whaler's Village Shopping Center, for lack of a better term, is a great amenity for all the resorts in Kaanapali Beach. It's a sales feature for all of us. It's very unique and kind of a landmark in West Maui. And it's got characteristics that you don't see almost anywhere else. And it was one of the . . . , if not . . . I mean, right up there with the first things that were put on Kaanapali Beach, and I think had a great deal to do with how the whole development was . . . came about. It's kind of an anchor there. So any other questions, Board?

Ms. Arquero: Thank you.

Vice-Chairman Tanner: At this time, can we have staff read recommendations?

Mr. Critchlow: Based on its analysis, the Department of Planning finds that there is an exceptional, unique, and unusual physical or geographic condition existing on the subject property, which is not generally prevalent in the neighborhood or surrounding area, and the use sought to be authorized by the variance will not alter the essential character of the neighborhood. Strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. And the conditions creating the hardship were not the result of previous actions by the applicant.

Recommendation: based on the foregoing findings of fact and conclusions of law, the applicant has met all of the requirements for the granting of the subject variance. Therefore, the staff recommends approval 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 January 10, 2013 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. William Spence.

Vice-Chairman Tanner: Thank you. At this time, discussion amongst the Board?

Mr. Critchlow: And one more thing. I think we'd like to add the standard hold harmless and any

dollar amount if you guys choose.

Vice-Chairman Tanner: Discussion?

Mr. Abbott: Comment, rather than perhaps discussion. A great deal of emphasis seems to be put on the amount of peoples that are walking to and from the Village. Am I not correct? With the fact that the automobile industry is pushing so hard for economical use of cars, do you not anticipate an increase in the amount of cars due to the fact that they're demanding more and more economy, and more and more people are taking them now to do things other than go to wherever? I just want to make sure that you're considering what's coming up in the future as far as economy, and electric vehicles, and whatever else because it's happening. We can't get out of it.

Mr. Hirano: I think the other offsetting trend that is prevalent within the resort and even on Maui is the emphasis more on public transportation as well. You know, I can't deny that with the . . . maybe the fact that fossil fuels and more fossil fuel efficient vehicles more people may drive, but I think the economy is doing a tremendous job in doing the public transportation. There's also a very good public transportation shuttle service within the resort. So, yes, there will be, you know, more efficient use of vehicles, but I think that these will be offset by other mitigating kind of measures which I think really are becoming more of an emphasis on Maui.

Vice-Chairman Tanner: I think, Clark, you've got a good point. However, with regard to this particular case, you know, people are gonna follow the path of least resistance. They're gonna do what's easiest. And within the resort area, it's two, three, sometimes four times faster to walk to Whaler's Village than it would be to get in your car and drive there.

Mr. Abbott: But I'm also anticipating not everybody works, drives, or stays in that area.

Vice-Chairman Tanner: No, I know, but if you look at the percentage of people that are, it's a very, very high percentage. You know, most of the resorts there don't have any shops. My resort has no shops. My resort has no food and beverage. When I'm full, I can have a thousand people in-house. And I guarantee you, 99.9% of those people will go to Whaler's Village. They will walk there. And they will do it multiple times a day. So that's . . . I mean, I don't know what the percentage is from the area that was drawn that go there, you know, compared to what comes in from the outside. It's an extremely high percentage. Very, very high.

Mr. Shimabuku: Mr. Chair, I think the graph that was . . . the presentation of the available stalls speaks for itself as far as available parking, so I don't think that would be any problem at this point.

Vice-Chairman Tanner: Well, without any further discussion, I'll entertain a motion.

Mr. Shimabuku: I'll make a motion. Hearing what was presented, and based on the recommendations of the staff, I'd like to approve the variance and add the hold harmless agreement in place.

Mr. Espeleta: I would like to second that motion.

Vice-Chairman Tanner: So we have a motion and a second. Any further discussion?

Mr. Santiago: Is there a hold harmless and insurance clause in there or just the hold . . . ?

Vice-Chairman Tanner: His motion was just hold harmless agreement. OK. With no further discussion, I'll call for a vote. By show of hands, all those in favor? All those opposed?

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

VOTED: To approve the variance as discussed with the hold harmless agreement provision.

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

(Excused: K. Tanaka.)

Vice-Chairman Tanner: **Motion passes unanimously. Your variance is approved.**

Mr. Hirano: Thank you very much, Members. Thank you.

Vice-Chairman Tanner: Thank you. I appreciate everyone's patience. This has been a long day. Appreciate it. OK. We are now to Stipulations on the agenda.

C. STIPULATIONS

- 1. RICK and DEBRA STRINI of the STRINI FAMILY TRUST appealing the Department of Fire and Public Safety's decision to not approve construction plans for failure to provide a 20-foot wide, all weather surface access road, for the proposed Manawai Homestead Subdivision (DSA File No. 2.2806) located at 263 Manawai Place, Haiku, Maui, Hawaii; TMK: (2) 2-8-003:041 (BVAA 20120005).**

a. Stipulation to Continue Hearing on Appeal

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

Ms. Kapua`ala: And I'd like to introduce Deputy Corporation Counsel, Mary Blaine Johnston, who represented the Department of Planning . . . I'm sorry, Public Works in this regard. Thank you.

Ms. Mary Blaine Johnston: Thank you. This will be very brief. Just an update on these two matters that are listed under Stipulations. The Strini matter has been moved over to April 13th. It is our understanding that they be withdrawing the appeal and coming in and asking for a variance in this. They're represented by Attorney Tom Cole. I haven't talked to him recently. So if they continue forward, then you'll see us again in April.

Ms. Kapua`ala: Mr. Strini has submitted his application today. Mr. Cole was not there, but he submitted it.

Ms. Johnston: OK. So being on the calendar, it got some action, so that's good.

Ms. Kapua`ala: . . . (inaudible) . . . instead.

Ms. Johnston: Yeah, but did they withdraw?

Ms. Kapua`ala: They did not withdraw their appeal. They'd like to retain their appeal rights. So right now, they paid two filing fees, \$550 a piece. One for an appeal which they'd like to hold. And then they have a variance application that just was submitted.

Ms. Johnston: All right.

Ms. Kapua`ala: OK? And if that's acceptable, we can move on to the next item.

- 2. WILLIAM C. BYRNS of MACDONALD RUDY BYRNS O'NEILL & YAMAUCHI representing LINEX INVESTMENTS, LLC appealing the Planning Director's decision to require a fifteen (15) foot agricultural setback for a garage/storage structure on property located at 3412 Kalua Koi Road, Kaluakoi, Molokai, Hawaii; TMK: (2) 5-1-007:064 (BVAA 20120001).**

- a. Stipulation to Dismiss Appeal**

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

Ms. Johnston: OK. The status on this is we've reached the settlement. We fully executed a settlement agreement. Today, we had hoped that we'd be able to dismiss, but the . . . and we sent the settlement agreement to the Bureau of Conveyances to be recorded. They bounced it. So the attorney for the appellants in this case wanna wait till that's been recorded. And it's just a paperwork thing, so we probably should do one of two things. I would say move it for two months, because I don't know how long it would take the Bureau to finally get the thing back to us. And if we get it sooner, we can perhaps just do a written stipulation.

Ms. Kapua`ala: Do you think the Bureau will get it back to you in two months?

Ms. Johnston: Maybe, maybe not. It's hard to predict.

Ms. Kapua`ala: I can do that. Hold on one moment. That would put us at March 14 or 28.

Ms. Johnston: OK. Let's say the 28th. Gives us a little more time. And hopefully, we can submit a written stipulation.

Ms. Kapua`ala: Thank you very much, Mimi. Mr. Chair, I think we can move on to the approval of the minutes.

- D. APPROVAL OF THE NOVEMBER 21, 2012 (deferred from the December 13, 2012 meeting) AND THE DECEMBER 13, 2012 MEETING MINUTES.**

Vice-Chairman Tanner: OK. We have two sets of minutes to approve because we were in such a hurry to get out of here last time. Do I hear a motion to approve the minutes for November 21st

2012?

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

VOTED: To approve November 21, 2012 meeting minutes.

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

(Excused: K. Tanaka.)

Vice-Chairman Tanner: **Those minutes are approved.** Do I have a motion to approve the minutes for December 13th 2012?

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

VOTED: To approve December 13, 2012 meeting minutes.

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

(Excused: K. Tanaka.)

Vice-Chairman Tanner: **Minutes are approved.** Director's Report? Next meeting date? Oh, Director's Report, I'm sorry.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: I have no update other than that we still have to adopt the Paddle Board, Stand Up Paddle Board decision and order. So that is in the works.

Vice-Chairman Tanner: OK.

2. January 24, 2013 Meeting on Lanai

Ms. Kapua`ala: And then, we'll see you on Lanai.

Vice-Chairman Tanner: Yeah, January 24th, 9:00 a.m. Was it 9:00 a.m.?

Ms. Kapua`ala: Is departure.

Vice-Chairman Tanner: Departure at 9:00. So if you're coming from this side, is there transportation from here over or on your own?

Ms. Kapua`ala: Yes, yes, we do have vehicles and drivers.

Ms. Tremaine Balberdi: If you want to catch a ride, meet us in front at 7:30.

Ms. Kapua`ala: And for the record, Mr. Giroux will not be with us, so Richelle will be joining us on Lanai.

Ms. Balberdi: If you can be at the harbor at 8:30 because we leave at 9:15.

Vice-Chairman Tanner: OK. So we need to be at the harbor at 8:30, if we're driving over to the harbor? OK.

Ms. Balberdi: Right. If not, meet us in front here at 7:30. Let me know, so I have enough . . . (inaudible) . . .

Vice-Chairman Tanner: Clark, you're not able to go. Are you going, Bart?

Mr. Santiago: I'll have to check my schedule again.

Mr. Shimabuku: I'm along for the ride.

Vice-Chairman Tanner: All right.

Mr. Espeleta: I going. I can go.

Vice-Chairman Tanner: Do we have a quorum for Lanai?

Ms. Balberdi: Well, the people that I have going is Bernice, Ray, Bart . . . not Bart, maybe Bart, Rick, Jackie, and Teddy. So six, possibly five, a bare quorum.

F. NEXT MEETING DATE: Thursday, January 24, 2013

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 3:50 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Rick Tanner, Vice-Chairman
Bart Santiago
Gene "Clark" Abbott
Patrick De Ponte

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Bernice Vadla (1:32 p.m. - 3:05 p.m.)
Jacqueline Haraguchi
Ray Shimabuku
Teddy Espeleta

Members Excused:

Kevin Tanaka, Chairman

Others:

Joseph Alueta, Acting Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
Paul Critchlow, Staff Planner, Planning Department
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel