

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
JULY 25, 2013**

**(Approved: 8/8/2013)**

**A. CALL TO ORDER**

The meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Rick Tanner at approximately, 1:30 p.m., Thursday, July 25, 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.)

Chairman Rick Tanner: The meeting of the Board of Variances and Appeals will now come to order. Let the record show it is 1:30 p.m. and we have a quorum. It doesn't look like we have . . . Do you know if there's public testimony on that? No? OK. So will the staff read the first item on the agenda into the record?

**B. PUBLIC HEARINGS**

- 1. MAUI ECONOMIC OPPORTUNITY, INC. (MEO) requesting variances from Maui County Code, §§16.04B.140, 18.20.010, and 14.05.090 to delete the requirement of providing a fire hydrant within the MEO access driveway near Hansen Road, for the First Assembly of God Subdivision (DSA File No. 3.2224) located between Mokulele Highway and Pulehu Road, Puunene, Maui, Hawaii; TMK: (2) 3-8-006:004 (por.) (BVAV 20130011).**

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

Ms. Kapua`ala: Mr. Chair, I'm gonna let the applicant step up, and he has a power point presentation that will help orientate you with the property.

Chairman Tanner: OK. If the applicant would come to the microphone and state your name for the record?

Mr. John Min: Good afternoon, Members of the Board. My name is John Min. I'm the project manager for Maui Economic Opportunity, Inc. This is one of the projects that I've been handling. We've put together a power point presentation. I'm checking if you all have copies of it.

Chairman Tanner: John, if you'll give me one second? Are you agreeable to the waiving of the reading of the staff report for the record? Do you have a copy of the staff report?

Mr. Min: I do.

Chairman Tanner: So if you're OK with that, we'll continue on. If not, we can read the entire thing into the record.

Mr. Min: We have no objections.

Chairman Tanner: OK. Go ahead and proceed with your presentation.

Mr. Min: OK. The orientation, the subject project . . . Well, let me orient you to some of the roadways. Mokulele Highway would be in this area here. Hansen Road runs along here. The A&B Sugar Museum is located at that point. And HC&S Mill is behind. The area to the north is the Maui Business Park Phase II. That's being developed by Alexander & Baldwin. Hookele Street runs along here. And this blue dot is Zippy's Restaurant. The subject property is located in this area here immediately behind the A&B Sugar Museum.

This is another location map that was included as part of our subdivision application. Our lot is part of a larger 230-plus-acre parcel. This is a view of the site looking towards Zippy's. A&B Sugar Museum would be in this lower part of the photo. The Mokulele Highway is over to the left. You can see Hookele Street and Zippy's up in this area here. The First Assembly of God Church is located on the corner of Dairy Road and Puunene Avenue. This is a view of the site looking in the opposite direction facing Kihei. Again, the Mokulele Highway is in this direction here. The Sugar Mill is in the back. And the A&B Sugar Museum is located in this general area here.

The variance request is to delete the requirement for a fire hydrant at Hansen Road in conjunction with our subdivision application, File No. 3.2224. The subdivision would establish a ten-acre lot that would be owned and developed by Maui Economic Opportunity, Inc., for a bus transportation facility. I'd like to note that within the MEO lot, there'll be four fire hydrants installed as part of our transportation facility project. The variance request is to delete the requirement for a fifth fire hydrant in a driveway easement at Hansen Road. The MEO lot will be serviced by the Maui Business Park Phase II private water system.

This is a site plan of our lot. This is a ten-acre lot. This is our driveway easement that connects to Hansen Road. A&B Sugar Museum is in this area here. Maui Business Park Phase II is in this area here. And this is Hookele Street and Zippy's would be right here at the corner. The dots represent the fire hydrants that will be installed as part of this project. Within the ten-acre lot, there'll be four fire hydrants. And the fifth fire hydrant would be located within the driveway easement near Hansen Road. This is the fire hydrant that we're requesting to delete.

A little background information: in 1969, MEO began transportation service for the elderly with a used van. Today, MEO maintains a fleet of over a hundred buses for the elderly, youth, and persons with special needs. In 2007, MEO entered into a purchase agreement with Alexander & Baldwin Incorporated to acquire five acres of land at a discount price. A&B then donated an additional five acres for the ten-acre transportation center site. In 2008, the Maui Planning Commission filed a Chapter 243 environmental assessment and findings of no significant impact for the MEO transportation center, and recommended approval of the community plan amendment for light industrial use and change in zoning for M-1 light industrial district. Then in 2009, the Maui County Council voted to approve the community plan amendment and change in zoning for the MEO transportation center. And also in 2013, MEO was awarded the contract by the County of Maui to buy para transit services as part of the Maui Bus System.

Just a few comments about our overall plan: the MEO transportation facility will be developed in phases over the next ten to 20 years. At full build-out, improvements would include infrastructure. That's water, sewer, utilities, access, fire protection, drainage, office buildings, a maintenance

building, paved bus storage, paved vehicle parking, a utility structure for an emergency generator, electrical panels and storage, a bus wash, vacuum and fuel station, a bus transfer station, perimeter fencing, landscaped planting, and related improvements.

This is a rendering of the project at full build-out. And again, this is a ten to 20-year effort. Currently, we are developing Phase IA. So this is a portion of the overall plan. And this work includes site work—grading and grubbing; the installation of infrastructure—water, sewer, utility lines, a driveway access, fire protection improvements, and drainage improvements. We'll also be relocating our portable office buildings to the site. This will be for our dispatch and administrative offices. We'll be paving the area for bus storage and vehicle parking. We'll be putting in perimeter fencing and landscaped planting around the perimeter. Again, this phase of construction is currently underway and it's expected to be completed in February of 2014.

This is a plan of our Phase IA. It doesn't show up too well but all these areas along the edge here will be basically unimproved areas. We won't be paving these at this time. The actual improvements will be within this area here. This will be for our bus storage. Our portable office buildings will be relocated in this area here. We'll be putting in paved parking in this area and paved parking along the driveway area. This will be graveled parking. This is the nature of our Phase IA improvements. We'll be putting in, of course, the fire protection, the driveway access connection to Hansen Road.

Again, these are the five fire hydrants that we're required to install as part of the subdivision requirement. As part of the initial phase, we'll be installing these four fire hydrants, and we're requesting from the BVA, approval to delete this fifth fire hydrant.

These are existing fire protection improvements on Hansen Road. Hansen Road goes along here. The MEO driveway access is in this area here. The post office building is located here. There's a driveway, one-way driveway, into the HC&S facilities. The HC&S office building is in this area here. A&B Sugar Museum is in this location here. There's currently an existing fire hydrant connected to a County waterline across the street from the Sugar Museum. This is the subject fire hydrant that MEO is required to install on Hansen Road. And across the street near the HC&S office building, there's an existing fire hydrant in that location. And then on the other side is a standpipe.

A few pictures of the area: this is a picture of the MEO driveway access looking toward the mill. The post office is over here to the right. The HC&S office building is located behind the cars. You can barely see it, but there's a red fire box located here. And then this is a bougainvillea hedge. And right around the corner is the location of the standpipe. The fire hydrant which is located near the HC&S office building is behind that fire box. The MEO . . . the subject fire hydrant within the driveway access would be located approximately in this area here.

This is a closer view of the driveway, the one-way driveway, into the HC&S property. Again, this is the fire box. The fire hydrant is located right behind. This is the post office building.

This is the standpipe that's located around the corner next to the HC&S office building which is over to the right. And this is that bougainvillea hedge that was in the earlier photograph. And this is a closeup again of the fire box, HC&S office building, fire hydrant. And in this area along here is

parking. The Sugar Museum . . . across the street from the Sugar Museum is a fire hydrant connected to the County waterline.

A few general comments: the four fire hydrants installed within the MEO lot would be the primary fire protection for our transportation center project. The subject fifth fire hydrant in the driveway would be too far away. It's over 800 feet, 266 yards. That's the distance between the fifth fire hydrant and the fourth fire hydrant, and it would be too far away to provide fire protection for our MEO facility.

The following fire protection improvements are available along or near Hansen Road. We've already covered this, but there's the, again, the fire hydrant across from the Alexander and Baldwin Sugar Museum. It's about 450 feet from the subject fire hydrant under consideration. The standpipe that's next to the HC&S office building across from our driveway is about 180 feet from our fire hydrant. And the fire hydrant next to the HC&S office building is about 185 feet from the subject fire hydrant. And again, this shows the location of the existing fire hydrants, and standpipe, and the distances from the subject fire hydrant within the MEO driveway.

The comments on the variance criteria, if it's OK with the Board, I'll simply refer you to the staff report which I think covers this. We concur with the comments presented in the staff report.

A couple of closing remarks: we have begun construction of Phase IA of the MEO transportation project, and again, scheduled for completion in February of 2014. The contractor is Goodfellow Brothers. As I've noted before, this project will be built over the next ten to 20 years in many phases. So this is just the initial phase of our project. The granting of the variance would reduce a substantial hardship in cost to MEO, which is a nonprofit agency for an unnecessary . . . (inaudible) . . .

This concludes our presentation. Are there any questions?

Chairman Tanner: Thank you, John. So at this time we'll move to questions and discussion amongst the Board. And I would point out that we do have Lieutenant Scott English with the Maui County Fire Department here. Scott, we appreciate you taking the time to attend this hearing. Questions from the Board?

Mr. Ray Shimabuku: I have a question. This driveway where we talking about that fire hydrant, is that an exclusive driveway for MEO?

Mr. Min: Yes, yes, it is. This is the driveway that connects to Hansen Road. We have an easement to provide access to our lot.

Mr. Bart Santiago: That fifth required fire hydrant, the placement of that by the driveway, who dictates that?

Mr. Min: Well, perhaps Lieutenant English can clarify that?

Lt. Scott English: Yeah, the Fire Code requires when the lot was subdivided under the Subdivision No. 3.224 requires the infrastructure on the frontage of the property. Because this is a flag lot, the frontage is the Hansen Road with this narrow, 800-foot driveway going there, so our code requires

a hydrant to be on the frontage. And what happened in the first building permit phase when it first came in, because of the zoning, the change of zoning, from ag to business, the fire flow required . . . the fire used to be 2,000 gallons per minute. The hydrants on that street on Hansen Road right now will produce about 1,500 gallons a minute, so the lines are too small, which are County lines. So I think one time they talked to the County of upgrading that line. And they had to upgrade that line from somewhere near Wal-Mart and bring a 12-inch line all the way to that area, so very costly. In that time, they met with A&B, and did the 12-inch line off the private system.

Mr. Santiago: So the code dictates that it has to be at the entrance of the subdivision. To the extent that the facilities or the buildings are located quite a ways, would make sense to . . . I guess, it's code. Does it make sense to locate that fire hydrant, that fifth fire hydrant, within where the structures are located?

Lt. English: When they come in for a building permit, our code requires a hydrant to be so far from the building, but in a subdivision phase, we just make sure that the infrastructure is taken care of on the frontage because we're not sure what they're gonna do on the inside. So in the subdivision phase, we make sure the streets are wide enough, the hydrants are there for us.

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

Lt. English: I met with them. I agree with what they're doing, bringing the hydrants, because that hydrant 800 feet away . . . we carry 750 feet of hose. It's not gonna be of use to us. The hydrant in the property is what we're gonna be using, so I agree with what they're doing, but our code still says we need it at the frontage.

Mr. Santiago: In your opinion, does the four fire hydrants nearby the facility, the buildings, are they adequate? Or do you need a fifth within the facility itself?

Lt. English: Those four hydrants would be more than adequate.

Mr. Santiago: Thank you.

Mr. Chad Fukunaga: I have a question for John. John, so where is your fire line coming in from? Where's the meter?

Mr. Min: The meter would be from Hookele Street. The waterline . . . the line along Hookele Street would be extended over to our lot. And our meter would be right about in that location.

Mr. Fukunaga: That line is just for your use or . . . ?

Mr. Min: Yes, it is.

Mr. Fukunaga: Did Water Supply have any requirements for you guys to loop the waterline to Hansen Road?

Mr. Min: Not under this . . . they don't have a requirement because we're connecting to a private water system. Maybe a little bit of background: initially, we . . . we're working with the Water

Department to see if we could connect to the County water system. A&B at the time did not have any extra capacities for our lot. Over a period of about a year, we had discussions. And something happened where the State Department of Transportation approached A&B and said, "We wanna buy a couple of your lots in the Maui Business Park for an airport clear zone." Now, by doing that, it freed up some capacity for water. So we talked to A&B and said, "Are there any opportunities for us to be part of the private water system?" And so they looked at it and said, "We do have extra capacity." In working with the County, one of the issues that we struggled with was in order to meet their requirements, we'd have to put a lot of front-end improvements. We'd have to upgrade the waterline and it was just very costly. Whereas working with A&B, it allowed us to connect to the private water system with a much lower front-end cost. Their water rates are higher than the County, but we feel over the life of this project, we can spread that cost out and make it work. So that's the reason we worked with A&B to try to secure water to their private water system.

Mr. Fukunaga: So just to clarify, the variance you're asking for is a condition of the subdivision?

Mr. Min: Correct.

Mr. Fukunaga: So, Scott, you mentioned that for building permits, there's also a trigger that would require fire hydrants, but that's just in proximity to whatever buildings are proposed to be built?

Lt. English: Yes. When the applicant comes in for a building permit, our code requires hydrants to be between so many feet of the building. So right now, we're just doing the subdivision requirements requiring the hydrant of the frontage, which would be Hansen Road, trying to get a variance from that.

Mr. Fukunaga: OK. So I imagine if any other lots were to be later subdivided out of that larger parcel or any other structures between MEO and Hansen Road were to seek approval that that may trigger requirements for hydrants at that time along Hansen?

Lt. English: Yes, that would be correct. They would have to put some kind of infrastructure on Hansen if they continue to subdivide along Hansen Road.

Mr. Fukunaga: OK. Thank you, Scott.

Mr. G. Clark Abbott: Question, if I may, please? On your proposed site, are you going to be storing . . . or what are your plans for fuel systems for the trucks? And my next question is, Scotty says there's adequate fire protection with the four standpipes, but I'm concerned if you're going to store fuel there, or handling fuel, or flammables, is it sufficient?

Mr. Min: In the future, we do plan to put in a fuel station which would be located in this area here. Just a comment, the four fire hydrants that are located within the MEO lot were designed to reflect our future build-out.

Maybe . . . I'm kind of stepping back a little. This area here is the location of our future maintenance building, so there's a fire hydrant located here. This is where our portable office buildings are. In the future, we plan to build a more permanent building which would be located in this general area here. So we'll have fire hydrants in close proximity. And then our hydrant will be

located here near our future bus transfer station. Again, our fuel station is here. At the time that that request comes in for a building permit, it will be reviewed by Fire Department. If, by chance, there's a need to do other protective measures other than fire hydrants, we'll certainly implement that. So that review will be forthcoming when we actually move on that project.

Mr. Abbott: Thank you.

Chairman Tanner: Is there anyone here from the public that would like to speak on this item? Please state your name and you have three minutes.

Ms. Lynn McNeff: I am the CEO of Maui Economic Opportunity. And I have a letter from our Board of Directors to you, and you have a copy.

Mr. Abbott: Identify yourself.

Ms. McNeff: Lynn McNeff. I'm sorry.

The Board of Directors of Maui Economic Opportunity respectfully asks to approve the MEO's request for a variance from the Maui County Code requirement for a fire hydrant on Hansen Road for the First Assembly of God Subdivision. As part of its transportation project, which includes the installation of infrastructure, relocation of an office modular and establishment of a bus storage area, MEO will be installing four fire hydrants to provide the required fire protection for the facility. A fifth fire hydrant on Hansen Road is not necessary to provide fire protection for this project. MEO is a nonprofit organization that serves low income, elderly, youth, and persons with special needs. MEO strives to maximize its service to the community with the resources that are available. The funding for this project is severely limited and including a fifth fire hydrant as part of this project is a unnecessary hardship to this organization. Thank you for your consideration.

Sincerely,  
Scott Okada, MEO Board President

Chairman Tanner: Thank you. Any other members who would like to speak?

Mr. Grant Chun: Good afternoon, everyone. I'm Grant Chun from A&B Properties. I'm also a member of the Board of Maui Economic Opportunity. I'm just here to indicate our support for the request of MEO. We have no objections to their deletion of that fifth fire hydrant.

Chairman Tanner: Thank you. If there are no other members of the public who like to speak on this, we'll close public hearing. Staff, do we have any other letters in support or . . . than what we already have?

Ms. Kapua`ala: No, sir.

Chairman Tanner: OK. Any further questions from the Board Members for the applicant or for Lt. English?

Mr. Santiago: Just a question for John. What is the estimated cost of the build-out over that ten-year period? I'm just curious what the cost is, the project cost.

Mr. Min: The estimate that we have, and it's probably a few years old, is about 23 million.

Mr. Santiago: Thank you.

Chairman Tanner: Trisha?

Ms. Kapua`ala: Before the Board begins to deliberate, the staff would like to ask for a recess.

Chairman Tanner: Certainly. We'll take a five-minute recess and reconvene at five after 2:00.

*(A recess was then taken at 2:02 p.m., then the meeting reconvened at 2:20 p.m.)*

Chairman Tanner: The meeting will come to order. And at this time, I'm gonna call on staff to provide some information with regard to some details in the variance regarding Title 14 that has just come to light. So if the Board would pay close attention to that.

Mr. John Rapacz: Thank you, Mr. Chair. John Rapacz, on behalf of the Planning Department. I did discover during the meeting today that the variance request is for variances from Titles 14, 16, and 18. And those are water, fire, and subdivision, respectively. The Fire Department or the Department of Fire and Public Safety provided a staff report regarding the Title 16 variance. And they essentially recommend approval of that variance. The applicant, in its application forms, did present evidence regarding a compliance with the variance from . . . variances from Titles 14 and 18, as well as Title 16. So there is information on the record that appears sufficient to grant the variances. The question that has arisen is whether or not this Board has the authority to grant variances from Title 14 which is essentially the Water Code. And rather than making a final determination on that question right now, and still wishing to move ahead as much as possible, the Planning Department is recommending that the Board grant the . . . or proceed with the variances from Title 16 and Title 18, and defer action on the variance from Title 14.

Chairman Tanner: So in summary, if the Board or a Board Member would choose to make a motion to deny the variance, then we would follow the normal procedure for denying the variance. If the Board is in favor of an approval of the variance, what we would do is approve a variance for Title 16 and Title 18. And in that, make a statement that we're gonna defer on Title 14 until further determinations can be made. So for example, we would move to accept the Department of Fire and Public Safety's staff report regarding the application for a variance from Title 16, and grant the application for a variance from Title 18 based on the applicant's statement in the application, and defer Title 14 until further determination. So that's how a motion could be done. So any further discussion from the Board?

Mr. Shimabuku: Any comment on the Title 14 situation from the applicant?

Chairman Tanner: Well, I understand staff has discussed it with the applicant. The applicant is agreeable to defer that so that a determination can be made on where the authority rests with regard to a variance on that.

Mr. Abbott: Would it then come back to the Board for 14?

Chairman Tanner: It could or could not, correct. So what we're doing is being very careful not to overstep our authority and grant variances where we don't really have any business granting them. So we'll be very clear on doing it that right. So if there are no further questions, we will entertain a motion.

Ms. Jacqueline Haraguchi: OK. I would like to make a motion. I move to accept the Department of Fire and Public Safety's staff report regarding an application for a variance from Title 16, and to grant the application for a variance 18 based on the applicant's statement in the application, and defer Title 18 . . . 14, I'm sorry.

Chairman Tanner: And would you like to include in that a motion, the hold harmless agreement and . . . ?

Ms. Haraguchi: I would like to put the hold harmless agreement upon it, and I would like to have the County of Maui as an additional insured on this project. The amount would be one million.

Chairman Tanner: OK. So we have a motion to . . . a motion and a second to grant variances on Titles 16 and 18 with a deferral on Title 14; a hold harmless agreement; and a Maui County additional insured for one million dollars. Any further discussion? OK. I'll call for a vote. All those in favor? Any opposed?

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

**VOTED: To grant variances on Titles 16 and 18, with a deferral on Title 14; a hold harmless agreement; and Maui County additionally insured for one million dollars.**

**(Assenting: J. Haraguchi, G. Abbott, R. Shimabuku, T. Espeleta, C. Fukunaga, B. Santiago.)**

**(Excused: P. De Ponte, H. Kihune.)**

Chairman Tanner: **The variances on 16 and 18 are granted, and 14 is deferred.** Thank you very much. Thank you, Lt. English, for helping us with this.

Mr. Min: Thank you.

Chairman Tanner: OK. Would the staff read the next on the agenda into the record?

- 2. ALLAN DOWSETT of KALAMA LAND COMPANY, LTD. requesting variances from Maui County Code, §§19.36A.010 and 19.36A.190 to delete the requirements of providing three (3) additional parking stalls and one (1) additional loading zone for the showroom expansion of Lifestyle Maui Furniture, located at 703 Lower Main Street, Wailuku, Maui, Hawaii; TMK: (2) 3-8-036:089 (BVAV 20130010).**

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

Ms. Kapua`ala: With that, I think I can bring the applicant up. We have his architect here. The applicant may be away on an unexpected trip.

Mr. Greg Skog: I'm Greg Skog and Allan Dowsett asked me to come here today even though Allan's the applicant and I'm not. From the report, the matter arises from a building permit application, which I was the architect on the building permit application to turn the warehouse portion of this building into a retail showroom. Allan's in Colorado. He's got a veteran . . . disabled veterans . . . (inaudible) . . .

Chairman Tanner: OK. You have a copy of the staff report, then?

Mr. Skog: I do.

Chairman Tanner: OK. Are you agreeable to the waiving of the reading of the staff report into the record? It is part of the record but . . .

Mr. Skog: I have a question on that. I am agreeable to it, but anything . . .

Chairman Tanner: It doesn't mean we don't discuss it.

Mr. Skog: . . . (inaudible) . . . report in order to answer any questions so . . .

Chairman Tanner: Yeah, no, no, no, you can ask any questions you want on it.

Mr. Skog: No, for me to answer any, I would end up reading the report because I didn't prepare the report while I read it and understand the situation.

Chairman Tanner: Right. It's just to show that you've got it.

Mr. Skog: Yes, I would do that, yes.

Chairman Tanner: All right. So at this point, you can make any comments you want to or we'll just have questions.

Mr. Skog: I would refer you to the report and read it in full because he's kind of in a box. The County took away part of this property, and the loading zone went with it, and the warehouse can't be used really for a warehouse. And the owner, the existing tenant, has been there for six or seven years. He just wants to move more furniture showroom in his spaces.

Chairman Tanner: And we do have staff analysis in this report, which is very helpful. So at this point, we'll open questions from the Board.

Ms. Haraguchi: So are they currently using the warehouse?

Mr. Skog: It's vacant.

Ms. Haraguchi: So what they wanna do is put more . . . open it up and make it another showroom?

Mr. Skog: Correct. On that picture . . . It's roughly half and half. It's maybe 50% showroom and 45% warehouse in this building with a wall separating the two. The warehouse is totally vacant. On the furniture side, it's a large space, and they have set up partitioned walls where they put a bed, a night stand, you know, to kind of show how the furniture looks in your home. And they want to expand into that area with more showroom. So the whole building would be a furniture showroom. And because the warehouse portion is one parking stall per 750 square feet, it satisfies the requirement, currently. When it becomes a showroom, they need one stall per 500 square feet, which triggers additional three parking stalls for the property, and there's no room to put them, or reconfigure the parking lot, or re-stripe. The only way to get three more stalls would be to cut down a chunk of the building and somehow . . . You just can't do it, really, so . . .

Mr. Fukunaga: Was it also that it currently does not meet the required loading zone? The number of loading zone stalls?

Mr. Skog: Before the County put the driveway or the sidewalk in, there were two driveways for the property, and the trucks could come in and back up, and that kinda got . . . the loading zone doesn't work as well as it used to. But they have one and because of the size of the building, they're required two. There's one loading stall. There's also a loading dock. The truck actually ramps down so that there's a . . . and that's an unusable piece of parking lot also at this point.

Mr. Santiago: Is there streetside parking spaces or that's all . . . ?

Mr. Skog: No, because there's an intersection.

Mr. Fukunaga: Are you looking to tear down the partition wall between the two uses? Between the warehouse and the retail area?

Mr. Skog: No, they're looking at . . . I'm guessing. I forget the exact length, but this might be 80 feet long, you know, from down the whole building. They're looking to put about a 20-to30-foot cutout towards the front and a 20-foot cutout towards the back so the people can move around. And then it's all one contiguous showroom and there's places set up with your den furniture and your dining room furniture. It's a typical furniture store. So the line . . . Right down where all these air vents are, that's the dividing wall. And this side is all showroom and this side is all warehouse. And they would put an opening in that separation wall about here and one back here. And then you would just . . .

Ms. Haraguchi: So it would be a complete showroom?

Mr. Skog: Correct. The plans submitted for a permit has a section over here kind of walled off which is also a showroom. That would be left with one large space. It's for closeout furniture. When their showroom pieces get dinged or dents, they kind of move them in there. You get your furniture for half price in that spot.

Ms. Haraguchi: But the entrance to the building would still be the same?

Mr. Skog: Yes.

Mr. Santiago: There's no access on the back side of the building?

Mr. Skog: There's a door . . . (inaudible) . . . on each side just for fire exits, the emergency exit doors, but the main building is . . . the main entrance is where I'll point to.

Mr. Fukunaga: You pointed to two locations: one is for the warehouse and the other is for the retail area?

Mr. Skog: No, currently, the furniture store only has the retail portion of the building. The warehouse is vacant. They wanna move in and occupy that warehouse portion as retail. So there is no more warehouse if this application is approved and the building permit.

Mr. Fukunaga: So where's the existing entrance for the warehouse?

Mr. Skog: It's the two pull-up doors right there by the end, but it's unused because this tenant is not using it. The current tenant leases only half of the building. He wants to lease the other half to expand the showroom. So he's not using that warehouse for a furniture store. There's nothing in there.

Ms. Haraguchi: So you can't use one of the existing parking spaces as another loading space?

Mr. Skog: No, right now, they have exactly 18 stalls which satisfies the current use. And they're short . . . They have one kinda grandfathered loading zone, loading stall. And they can't fit any more by reconfiguring or doing it in the parking lot. It's . . .

Mr. Santiago: I just have a quick question. There's not ample space on the lefthand side of the warehouse to get to the back and put additional parking spaces in the back?

Mr. Skog: There's five feet.

Mr. Santiago: Five feet.

Mr. Skog: And in the back is the sand hill that's been . . .

Mr. Santiago: Thank you.

Mr. Skog: The applicant does mention that, you know, it is a furniture store. It's kind of like a large retail or like refrigerators. So it's not like a Longs Drugs where there's a lot of items in there. And to date, the parking lot's never been filled, ever, according to the tenant.

Mr. Fukunaga: Just as long as it's a furniture store. If the furniture retail were to move out and something else . . . another retail like Longs or something else that had a higher foot traffic moved in, they would then need the stalls.

Mr. Skog: Possibly so. The owner bought this about seven years ago. He's leased it to the furniture store for six. Mansanto was in the warehouse portion for a time, and they left for a better warehouse space. The current lease he has with the furniture store is for an additional four years with options for more.

Mr. Fukunaga: Would you be able to show us approximately how much area was lost to the roadway improvements?

Mr. Skog: I don't have that information.

Mr. Fukunaga: It seems as though when this lot was developed, there was a particular plan, and it was designed and built out to maximize that area. And now in trying to change it, it's almost circumventing the original requirements, but recognizing that the County . . . they were impacted by improvements by the County infrastructure. If we could understand how that impacted the lot, it would certainly make it easier to make a decision.

Mr. Santiago: Wouldn't that be County records as far as what was taken by the County for the sidewalk improvements or additional . . . ? I don't know if it was a one-lane highway at one point that made it two lanes.

Ms. Kapua`ala: Yes, that would be a Department of Public Works' engineering project. And we could either have the Department of Public Works come here at a future meeting date, or we can have the applicant, which actually is his burden to provide that evidence, come with more evidence if you would like to . . . if that would satisfy your concerns.

Mr. Skog: I could tell you approximately. There were two lanes there. And the County basically put in the two-foot gutter, the four-foot sidewalk, and the two-foot plant strip, so it's really a . . . you know, the sidewalk, the edge of the road sidewalk system that was improved.

Mr. Santiago: I guess the question is even with that additional land, would you have been able to reconfigure the parking spaces, the additional three that's required now?

Mr. Skog: I couldn't answer unless I had . . . Maybe not.

Mr. Santiago: Just thinking about it. I suppose you could have parallel parking where the sidewalk would be. You could have three, four spaces there.

Mr. Skog: Where the street used to be before the street moved?

Mr. Santiago: Where the sidewalk is now, yeah.

Mr. Skog: Possibly so.

Mr. Abbott: Question: it says to provide one additional loading zone. Where's the other one on here on the parking? I mean, there's the entrance to the retail existing space, but I don't see an entrance for . . .

Mr. Skog: There's a roll-up door for the warehouse, and one here, and this is the dock that goes down, and this is the loading zone stall in here. There's two roll-up doors for the warehouse. So this would be basically left as-is, and the main entrance into the showroom would be here, and they would just expand into that area.

Mr. Abbott: So they're going to move the main entrance into the showroom?

Mr. Skog: No, the entry to the furniture store stays exactly where it is which is here.

Mr. Shimabuku: They're requiring two . . . well, they asking a variance to delete the three required three stalls and the additional loading zone.

Mr. Skog: Correct.

Mr. Shimabuku: So there's only one loading zone right now. And this says "additional."

Mr. Skog: So what they'd like to do is leave the parking lot just as it is. They're three parking stalls and a loading stall short if the warehouse . . . if the furniture store expands in and uses that entire building for a showroom.

Mr. Shimabuku: So basically there's basically no room for three stalls and another loading zone.

Mr. Abbott: OK. Got you now. OK.

Mr. Fukunaga: Considering there's no side street parking, I guess one of the results I can foresee of not having enough parking is you would push your parking out, and it would overflow onto the other sides' parking or possibly even your neighbors' parking area. But in this case, I don't know where you'd push out any overflow parking. So really, you'd just burden yourself, and the other result would be you'd just have less foot traffic.

Mr. Shimabuku: If anything, street parking inside that Wailuku Industrial. There's street parking in the Wailuku Industrial that people probably can walk over.

Mr. Santiago: How far away is that?

Mr. Shimabuku: Right at that intersection.

Mr. Fukunaga: Yeah, it's kinda far.

Mr. Shimabuku: That's the closest parking you get to that area.

Mr. Skog: They don't have any walk-ins at this place. There's no pedestrian traffic.

Mr. Santiago: Was that picture on a Sunday?

Ms. Kapua`ala: It has a date.

Mr. Santiago: There you go. Is there a time too? If you look at the next door, it's choke full of cars, and you've got one car on the facility.

Mr. Skog: The tenant says it's never been full.

Mr. Fukunaga: Yeah, but, again, if it were to change tenants to some other retail operation that would have higher foot traffic, then they may need all the stalls. I don't really see them impacting the street parking which there aren't any or their neighbors. So I don't know if there is really a detriment to the public.

Mr. Skog: Yeah, but the application is to waive, I guess, the three additional stalls and loading zone for the expansion of Lifestyle Maui showroom. It's not just general for the building or anything. And I'm not sure if this, you know, attaches to this only as long as Lifestyle Maui is in there or how that works.

Mr. Fukunaga: Yeah, it goes with the land.

Mr. Santiago: I think it's really important . . . critical for you to determine if the land that was taken by the County would've provided the additional three or four stalls. And if that is the case, then you have legitimate argument case to be able to secure a variance. Not knowing that, it's very hard to make a determination based on how it's worded and the justification that's provided.

Mr. Skog: We'd have to look into it. I know for sure it affected the loading stall because they were able to maneuver and drive around the parking lot because they had an extra driveway. Part of the problem is because it's kind of an unusable warehouse given its location 'cause you can't access it easily as you did before the road improvement went in.

Mr. Teddy Espeleta: If never have the sidewalk, they could reverse right inside.

Mr. Skog: They could or they used to. This was built in the late '70s, I remember, the original building.

Mr. Abbott: In the "improvement" the County made where they expanded the roadway out or took part of the parcel, was there an entrance in there for the warehouse?

Mr. Skog: There was.

Mr. Abbott: So there were actually two entrances to that building: one for each section of the building.

Mr. Skog: There was a driveway at each end of the property.

Mr. Abbott: And they basically took that one driveway out and got rid of it entirely.

Mr. Skog: And after they did that, the person in the warehouse put the blocks on the gutter so he could drive over the plant strip anyway and get to the . . .

Mr. Espeleta: Yeah, I saw that.

Mr. Skog: You remember?

Mr. Espeleta: Yeah, I remember.

Chairman Tanner: OK. There are options. We can move forward with a motion. We could defer. If the variance is not granted, I think it's a year before you can come back again and seek another one. There's a deferral for more information. It's kind of at the pleasure of the Board, but at this time, I'll open the floor for a motion, if somebody would like to make a motion.

Ms. Haraguchi: I would like to make a motion.

Mr. Santiago: I just have a quick question.

Ms. Haraguchi: OK.

Mr. Santiago: Can the applicant request a deferral or is it our determination to defer for additional information? Who can request a deferral?

Chairman Tanner: Either the applicant needs to make a request for a deferral . . .

Ms. Kapua`ala: The applicant may make a request or the Board may defer it.

Chairman Tanner: So either one. So if the Board feels like we want to defer and wait for more information, or if we're ready to make a motion based on the staff analysis and reports . . .

Mr. Skog: Would it be possible for the Board to approve this conditioned that it's allowed only for the Lifestyle Maui operation—a furniture store?

Chairman Tanner: That condition could be placed in the motion, correct, yes.

Mr. Skog: Versus a large box appliance store or something in similar nature to it because there's nothing in the parking code versus like he mentioned a Longs Drugs or a restaurant that certainly wouldn't work. But if it could be just for the purpose of a furniture store, then that would be, I think, acceptable to the owner.

Mr. Michael Hopper: Trisha, have we ever granted a variance that does not run with the land that you can be aware of? I believe that variances would typically run with the land regardless of the landowner. I mean, we can talk about that as a condition but I don't know if that's ever been placed on a property. Usually zoning variances rather than . . . versus conditional permits and special permits are not applicant-specific. They typically do depend on . . . don't depend on who actually owns the property, as I recall. But perhaps staff can correct me if I'm wrong. But typically you have that because it's a more long term thing. It's typically an existing building, things like that, setback requirements where the intention for that encroachment or whatever else it is to stay in place perpetually. Now, I don't know if there's anything in your rules specifically on this. We can take a look at it, but I do not recall, at least in my experience with the Board, the Board ever granting a

variance that was applicant-specific. Essentially what you'd be doing is saying the variance is non transferrable which is what's been done for zoning permits. But variances typically don't have a time limit and they typically do not have a limit of transferability. And I would have to research that before I'd be comfortable proposing a condition unless staff had information at this time that they could share.

Chairman Tanner: Yeah, I would agree with that type of condition. I would be very hesitant because I think the variances that we approve should go with the property to the next owner, to the next owner. That's the purpose for what we're doing. We don't wanna devalue the property by putting a variance that only is good for the current owner. For the record, too, I need to state that I don't see any members of the public here, but if there are any that I do not see and you would like to speak on this item, please come up to the podium. OK. So we'll close public hearing (laughter) and continue on with discussion.

Mr. Shimabuku: Mr. Chair, with all this discussion of what if, whatever, there is a recommendation by the staff with a recommendation.

Chairman Tanner: Absolutely. And I wanna make sure that everybody has seen that specifically. The staff has been doing a very good job of granting guidance to the Board in a good format especially, the one page. Make sure you've read that as we continue.

Mr. Espeleta: You know, that hardship wasn't created by the owner. It was created by the County. My thing is I'd like to make a motion to grant the variance with the recommendations provided in the staff . . .

Chairman Tanner: It appears that at least some Members of the Board at this point are prepared to move forward with a motion, but it still is within the applicant's ability if you would like to see that or if you would like to defer. It's up to you.

Mr. Skog: Well, we would ask you to approve it. If you cannot approve it, we would ask you to defer it.

Chairman Tanner: All right. We're gonna roll the dice. So do I have a motion?

Mr. Espeleta: I made the motion already.

Mr. Abbott: Second

Chairman Tanner: OK. So we have a motion and a second. We wanna make sure this is very clear. In fact, I've gone through the notes and I've kind of written what a motion for approval would sound like. So if you want to just review that, and tell me if you're OK with that, and then we can go forward with the motion.

Mr. Espeleta: Yeah, we can go with this.

Chairman Tanner: OK. If you'll just go ahead and read that then.

Mr. Espeleta: OK. I would like to make a motion to grant the variance and accept the Department of Planning's staff report, conclusions of law, and recommendation. Also, accepting the applicant's statement in the application. I would include the standard hold harmless agreement and Maui County as an additional insured for one million dollars.

Chairman Tanner: OK. So as the motion stands, we have a second?

Mr. Abbott: Second.

Chairman Tanner: So we have a motion and a second. Discussion? OK. I'll call for a vote. All those in favor? Any opposed?

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

**VOTED: To grant the variance and accept the Department of Planning's staff report, conclusions of law, and recommendation; accept the applicant's statement in the application; and to include the standard hold harmless agreement and Maui County as an additional insured for one million dollars.**

**(Assenting: T. Espeleta, G. Abbott, J. Haraguchi, R. Shimabuku, C. Fukunaga, B. Santiago.)**

**(Excused: P. De Ponte, H. Kihune.)**

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

Mr. Skog: Thank you very much.

Chairman Tanner: Thank you. OK. Continuing on. Thank you. All right. The next item on the agenda would be the approval of the Board of Variances and Appeals' regular meeting minutes for July 11<sup>th</sup>.

#### **C. APPROVAL OF THE JULY 11, 2013 MEETING MINUTES**

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

**VOTED: To accept the July 11, 2013 meeting minutes as presented.**

**(Assenting: R. Shimabuku, J. Haraguchi, T. Espeleta, G. Abbott, C. Fukunaga, B. Santiago.)**

**(Excused: P. De Ponte, H. Kihune.)**

Chairman Tanner: **The minutes have passed.**

#### **D. DIRECTOR'S REPORT**

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

**E. NEXT MEETING DATE: Thursday, August 8, 2013**

**F. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 2:57 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Rick Tanner, Chairman  
Jacqueline Haraguchi, Vice-Chairman  
Ray Shimabuku  
Bart Santiago, Jr.  
G. Clark Abbott  
Teddy Espeleta  
Chad Fukunaga

**Members Excused:**

Patrick De Ponte  
Howard S. K. Kihune

**Others:**

John Rapacz, Planning Program Administrator, Planning Department  
Trisha Kapua`ala, Staff Planner, Planning Department  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
Scott English, Lieutenant, Fire Prevention Bureau