

BEFORE THE BOARD OF VARIANCES AND APPEALS

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Application of

**PBR HAWAII & ASSOCIATES, INC.,
representing CORPORATION OF THE
PRESIDING BISHOP OF THE CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS**

Requesting a variance from §19.08.050, Maui County Code (MCC), "Height Regulations" to allow a steeple to be 58.77 feet in height, therefore exceeding the 30-foot height limit, for the Kahului Latter-day Saints Church located at 125 W. Kamehameha Ave., Kahului, Hawaii; TMK (2) 3-8-017:044

DOCKET NO.: BVAV 2015/0018

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER;
CERTIFICATE OF SERVICE**

HEARING DATE:

NOVEMBER 25, 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER

On November 25, 2015, the Board of Variance and Appeals ("Board"), pursuant to Chapter 19.520, Maui County Code ("MCC"), and §12-801-10(h), Rules of Practice and Procedure for the Board of Variances and Appeals ("BVA Rules"), held a public hearing ("Hearing") regarding variance application BVAV 2015/0018 ("Application") submitted by PBR HAWAII & ASSOCIATES, INC representing the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ("Applicant"), owner of real property located at 125 W. Kamehameha Avenue, Kahului, Maui, Hawaii, and identified for real property tax purposes as TMK (2) 3-8-017:044 ("Property"). The Board unanimously voted to grant the variance.

The Board makes the following Findings of Fact, Conclusions of Law, and Decision and Order based on the record in this case, including all documents submitted and

testimony provided to the Board, as well as all other items of record.

FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. The Property is approximately 117,046 square feet with a state land use classification of Urban, Wailuku-Kahului community plan designation of Public/Quasi-public, county zoning designation of R-3 Residential district, and Maui Island Plan designation as within the urban growth boundary. The Property has a flood designation of X, and is not located within the Special Management Area. (See the Director of Planning's Report and Recommendation ("Director's Report") pp. 4-5)
3. On July 17, 2015, the Applicant submitted to the Department of Planning ("Department") an Application, with revisions resubmitted on August 24, 2015, September 9, 2015, September 29, 2015, and October 2, 2015. The Application requests a variance from §19.08.050, MCC "Height Regulations" to allow a 58.77-foot-high steeple for the Kahului Latter-Day Saints Meetinghouse ("Church") located at 125 W. Kamehameha Avenue, Kahului, Hawaii to exceed the 30-foot height limit for the Residential District by 28.77 feet. (See Director's Report, p. 2, Application, p. 1)
4. The Church was allowed as a permitted use pursuant to Ordinance 286, "The Comprehensive Zoning Ordinance" since it was originally built in 1961. By 1971,

the Maui County Code was amended, and churches in the Residential District were required to obtain an approved County Special Permit. (See Director's Report, p. 2)

5. On October 9, 2015, the Application was determined to be complete by the Department and a public hearing ("Hearing") was scheduled for November 25, 2015, pursuant to §12-801-78, BVA Rules. (See Director's Report, p. 3)
6. On October 9, 2015, the Applicant mailed, by certified mail, a Notice of Application to all owners and lessees of record, adjacent to and across the street from the Property, pursuant to §19.520.020(B)(3)(f), MCC, and §12-801-77, BVA Rules. (See Director's Report, p. 2)
7. On October 16, 2015, the Applicant mailed, by certified mail, a Notice of Public Hearing that included the date, time, place and subject matter of the public hearing to all owners and lessees of record adjacent to and across the street from the Property, pursuant to §19.520.050(B), MCC, and §12-801-78(2), BVA Rules. (See Director's Report, p. 2)
8. On October 26, 2015, the Planning Director published, in the Maui News, a Public Hearing Notice that included the date, time, place, and subject matter of the public hearing, pursuant to §19.520.030(C), MCC, and §12-801-78(1), BVA Rules. (See Director's Report, p. 3)
9. On November 4, 2015, November 11, 2015, and November 18, 2015, the Applicant published, in the Maui News, a *Public Hearing Notice* that included the date, time,

place and subject matter of the public hearing, pursuant to §19.520.050(B)(2), MCC, and §12-801-78(3), BVA Rules. (See Director's Report, p. 3)

10. Pursuant to §12-801-67.1, BVA Rules, the Department referred the Application to the Department of Public Works and the Department of Fire and Public Safety Fire Prevention Bureau ("Fire Department") for review and comment. (See Director's Report, p. 4)
11. The Fire Department advised that their office has no comments regarding the variance application. However, the Fire Department reserves the right to comment on applications for building permits regarding the subject property. At that time, Fire Department access, water supply for fire protection, and fire and life safety requirements will be addressed. (See Director's Report, p. 4)
12. The Department of Public Works advised that they have no comments to provide regarding the Application. (See Director's Report, p. 4)
13. The Department did not receive any letters of support or opposition regarding the variance application. (See Director's Report, p. 4)
14. On November 25, 2015, at 1:30 p.m., the Board conducted a Hearing regarding the Application, at the Planning Department's Conference Room, located in the Kalana Pakui Building, 250 South High Street, Wailuku, Hawaii. (See Minutes of the November 25, 2015, Board Meeting ("Minutes"), p. 1)

15. Board members present at the Hearing were Chair G. Clark Abbott, Vice-Chair Chad Fukunaga, Teddy Espeleta, Howard S. K. Kihune, Juanita Reyher-Colon, and Max Kincaid, Jr. (See Minutes, p. 15)
16. Mr. Tom Schnell of PBR HAWAII, representing the Applicant, provided oral testimony to the Board regarding the Application and the Property. He stated that the proposed steeple is 58.77 feet from the ground and replaces the original steeple which was taken down in 2009 because it was structurally unsound. The Kahului Latter-day Saints Meetinghouse (Church) was built in 1961, and the original steeple was constructed shortly thereafter. He also stated that there has been a delay since the 2009 removal of the original steeple due to allocation of funds by the Church, and review of the steeple design. (See Minutes, p. 2)
17. Mr. Ed Reinhardt, representing the Applicant, provided oral testimony to the Board regarding the Property. He clarified that the building is called a "stake center," which houses regular gatherings, conferences, and meetings for multiple congregations. He also explained the significance of the steeple as a distinguishing feature that not only identifies the building as a place of worship, but also denotes spiritual meaning. To Church members, the steeple is an important physical reminder of the principles of the faith, including the belief of ascension towards heaven and the goal to be together as part of an eternal family. Mr. Reinhardt then stated that it is the hope of the Church to replace the original steeple to be able to institute their practices with a Meetinghouse that represents the principles of the Church of Jesus Christ of Latter-day Saints. (See Minutes, pp. 2-4)

18. Board member Max Kincaid, inquired about the dimensions of the proposed steeple and the materials that will be used to construct the steeple. Mr. Kincaid expressed concern for the adjoining parcels and structures that in the event that the steeple were to fall. (See Minutes, pp. 7-8)
19. Mr. Roger Bond, Project Manager for the Church of Latter Day Saints (“LDS”), testified that the proposed steeple will be constructed in a similar design to the Maui Lani and Lahaina LDS steeples with a stainless-steel infrastructure inside a fiberglass housing to protect against corrosion and that the Applicant will follow any further regulations regarding the construction of the steeple. (See Minutes, p. 7)
20. Mr. Reinhardt stated that the building had been fortified and that the existing structure would be able to safely support the new proposed steeple. (See Minutes, p. 7)
21. Mr. Schnell stated that the steeple will not alter the essential character of the neighborhood, calling attention to the gas station and several churches in this mixed-use area. He stated that steeples are commonly associated with churches and other places of worship. He also stated that the neighbors had been sent notices and legal notices had been published in the Maui News, and that no objections had been received. Mr. Schnell asserted that denying the variance is a substantial burden to the Church, as the steeple is needed as a symbol of the Mormon theology in the way that the cross is a symbol for other churches. (See Minutes, p. 4)

22. Mr. Boyd Mossman provided oral testimony in support of the Applicant. Mr. Mossman stated that the Church had been built in 1961 in an area specifically set aside for churches and religious worship, and that the original steeple had been there for 48 years. He stated that: 1) there is no opposition to the variance request; 2) the proposed steeple will simply be a replacement and thus will not pose a danger to the welfare, health, or safety of the community; and 3) the County's position is a literal interpretation of the zoning ordinances and should be reconsidered in terms of what is reasonable and common sense. He stated that replacing a steeple that had been there for 48 years with a new steeple with three additional feet is not unreasonable. Mr. Mossman reiterated the symbolic significance of the steeple to the Church of Jesus Christ of Latter-day Saints, and that denying a replacement steeple would deprive church members of this inspirational symbol. (See Minutes, pp. 4-6)
23. Mr. William Spence, the Planning Director, clarified that the Residential zoning is a holdover from when comprehensive zoning was done for this area long ago, and that the Property is currently designated on the applicable community plan for "Public/Quasi-Public 2" use. He stated that if the Planning Department were to rezone this Property to comply with the current community plan designation, the applicable zoning height would be 90 feet and the proposed steeple would thus not be an issue. He stated that the Planning Department is not averse to a steeple being put on a church building, but had felt compelled to recommend denial due to

the specific provisions of the County's variance ordinance and the Board's rules.
(See Minutes, pp. 8-9)

24. Mr. Schnell requested that the Board reduce the insurance policy from the recommendation and standard conditions of \$1,000,000.00 (one million dollars) to \$10,000.00 (ten thousand dollars) and for the condition to be eliminated in the event that the parcel is rezoned to Public/Quasi-Public 2 "P-2 P/QP" District. The Board found these requests to be reasonable. (See Minutes, p. 12)
25. The Board received information from staff regarding the federal Religious Land Use and Institutionalized Persons Act "RLUIPA". (See Minutes, p. 9)
26. Pursuant to §12-801-71(1), BVA Rules, the Board found that there is an exceptional, unique or unusual physical or geographical 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. The Board found the justification stated in the Applicant's application and as presented at the hearing regarding this standard to be credible:

- A. The proposed steeple for the Kahului Meetinghouse is a replacement of an original integral feature of the building that had stood for 47 years. The proposed steeple will not alter the essential character of the neighborhood because the meetinghouse and its steeple have become a part of the essential character of this particular neighborhood. The steeple is similar in style to other meetinghouses operated by the LDS Church. (See Director's

Report p. 8, and Application, p. 8)

27. Pursuant to §12-801-71(2), BVA Rules, the Board found that strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. The Board found the justification stated in the Applicant's application and as presented at the hearing regarding this standard to be credible:

A. Strict compliance with the height regulations of §19.08.050, MCC, would prevent reasonable use of the subject property as a place of worship for members of The Church of Jesus Christ of Latter-day Saints. The steeple is integral to identifying the Kahului Meetinghouse as a place of worship and specifically a place operated by The Church. The steeple immediately sets the structure apart and denotes its specific spiritual significance. (See Director's Report pp. 8-9, and Application, p.8)

28. Pursuant to §12-801-71(3), BVA Rules, the Board found that the conditions creating the hardship were not the result of previous actions by the applicant. The Board found the justification stated in the Applicant's application and as presented at the hearing regarding this standard to be credible:

A. The conditions creating the hardship were not the result of previous action by the Applicant. The Kahului Meetinghouse originally had a steeple, which was removed because it was structurally unsound. The original steeple was 51 feet in height and stood for 47 years. No action on the part of the Applicant caused the original steeple to become structurally unsound; it had simply exceeded its lifespan. (See Director's Report, p. 9)

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board hereby makes the following Conclusions of Law:

1. To the extent that any conclusion of law is more properly deemed a finding of fact, the Board adopts it as such.
2. Hawaii Revised Statutes §91-10(5) states that in a contested case proceeding, “[e]xcept as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.”
3. Section 8-8.7 of the Revised Charter of the County of Maui (1983), as amended, and §19.520.050(C), MCC, authorize the Board of Variances and Appeals to hear the application for a variance from Title 19, MCC, the zoning code.
4. Variances from Title 19, MCC, may be granted by the Board when the standards set forth in §12-801-71, BVA Rules, are met. Pursuant to the findings set forth, the Board found that the Application met the standards required for granting a variance.
 - A. That there is an exceptional, unique or unusual physical or geographical 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.

- B. That strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property.
- C. That the conditions creating a hardship were not the result of previous actions by the applicant.

DECISION AND ORDER

It is hereby the final decision and order of the Board that the Application of PBR HAWAII & ASSOCIATES, INC., representing CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS for a variance from §19.08.050, Maui County Code (MCC), "Height Regulations" to allow a steeple to be 58.77 feet in height, therefore exceeding the 30-foot height limit, for the Kahului Latter-day Saints Church located at 125 W. Kamehameha Ave., Kahului, Hawaii; TMK (2) 3-8-017:044, is APPROVED; subject to the following conditions:

1. That the variance shall be applicable only to the request as approved by, and as reflected in the record of the board;
2. That the owner, its successors and permitted assigns, shall indemnify, defend, and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of the variance, and shall procure, the owner's own cost and expense, and shall maintain during the entire period of this variance, a policy or policies of comprehensive liability insurance, in the minimum amount of TEN THOUSAND NO/100 DOLLARS (\$10,000.00), naming the County of Maui as an

additional insured, insuring and defending the Applicant and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this variance approval, including but not limited to: (1) claims from any accident in connection with the approved variance, or occasioned by any act or nuisance made or suffered in connection with the approved variance in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this variance approval.

3. That in the event the property is rezoned from County zoning designation of Residential R-3 to the County zoning designation of Public/Quasi-Public 2 “P-2 P/QP” or a similar zoning that would outright allow the steeple height subject to this variance, Condition 2 shall no longer apply.
4. That the hold harmless agreement shall run in perpetuity with the land and shall be recorded on the property. Copies of the hold harmless agreement and the policy naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of mailing of the decision and order.

Pursuant to HRS §91-14, should any aggrieved party wish to appeal this final decision and order, it must be filed with the Circuit Court of the Second Judicial Circuit within thirty (30) days from the date of the mailing by certified mail.

Dated at Wailuku, Maui, Hawaii, this ____ of _____, 2017.

Chairperson

BOARD OF VARIANCES AND APPEALS
COUNTY OF MAUI

CERTIFICATION

I HEREBY CERTIFY that this is a full, true and correct copy of the Original.

WILLIAM R. SPENCE
Planning Director
Department of Planning

BEFORE THE BOARD OF VARIANCES AND APPEALS

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Application of

**PBR HAWAII & ASSOCIATES, INC.,
representing CORPORATION OF THE
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W. Kamehameha Ave., Kahului, Hawaii;
TMK (2) 3-8-017:044

DOCKET NO.: BVAV 2015/0018

CERTIFICATE OF SERVICE

**HEARING DATE: WEDNESDAY,
NOVEMBER 25, 2015**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Findings of Fact, Conclusions of Law and Decision and Order was duly served upon the party listed below by the means stated:

U.S Mail

(X)

Personal Delivery

Facsimile

Certified Mail No: (7015 1730 0000 5935 2831)

PBR HAWAII & ASSOCIATES, INC.
1001 Bishop Street, Suite 650
Honolulu, Hawaii 96813-3484

Certified Mai No: (7015 1730 0000 5935 2848)

Corporation of the Presiding Bishop of The
Church of Jesus Christ of Latter-day Saints

31500 Grape Street, Suite 3-200
Lake Elsinore, CA 92532

DATED at Wailuku, Maui, Hawaii, this ____ of _____, 2017.

WILLIAM R. SPENCE
Planning Director
Department of Planning

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