

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
February 25, 2016**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Abbott at approximately, 1:30 p.m., Thursday, February 25, 2016, 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 Clark Abbott: Good afternoon. The meeting of the Board of Variances and Appeals will come to order, it 1:31 p.m. Let the record show we do have a quorum.

B. PUBLIC TESTIMONY

Chairman Abbott: As we have a full audience today, I'm not going to juggle it around a little bit. We are going to take in the order as it is presented on the agenda.

C. PUBLIC HEARING

- 1. COLLIN MIYAMOTO of AVALON DEVELOPMENT COMPLANY LLC representing FRIEDMAN INVESTMENT GROUP-MARINERS LLC** requesting variances from §19.36A.010, and 19.36A.190, Maui County Code (MCC), "Designated number of spaces," and "Loading space" to allow a reduction in the amount of required off-street parking stalls from 56 parking stalls and 1 loading space to 11 off-street parking stalls and no loading space, for the business located at 125 Wahie Lane, Lahaina, Hawaii TMK (2) 4-5-001:016 (BVAV 2015/0020) (M. Balberdi).

Chairman Abbott: Staff will you please read the agenda item and state the purpose of the application please?

Ms. Malia Balberdi: Malia Balberdi from the Planning Department. *Reads item into record.*

Chairman Abbott: Thank you. Is there a presentation?

Ms. Balberdi: Yes. Unfortunately the board is broken so we have handouts for you.

If you look at page 1, it says update original variance request and it says on February 12, 2016, the applicant has modified its original variance request and is now requesting the elimination of 12 parking spaces and 1 loading zone. The applicant has provided 44 parking spaces which will include 11 on-site parking spaces and 33 off-site parking spaces; and on February 24, 2016 the Department received the recorded copy of the Unilateral Agreement for the off-site parking spaces located at 175 Lahainaluna Road, TMK (2) 4-5-001:036.

The next page, you can see the distance from the property is from the off-site parking lot which is less than the maximum distance allowed which is 400 feet. And again that off-site parking permit was approved.

On page 4 of your handout there's a location map which shows the property it fronts Front Street and Wahie Lane. The property is approximately 4,449 square feet.

On page 5 is the building that we refer to within the Staff Report as the Mariner's Alley and if you go to the right of the picture there's a yellow line and that's where the parking is located at, towards the back of the building and right now there are 11 parking spaces.

On page 7, this is where the off-site parking location is which is located at 175 Lahainaluna Road. This location will provide 33 parking spaces and like I said before the Department has received a copy of the recorded Unilateral Agreement.

That's it.

Chairman Abbott: Thank you Malia. Will the applicant please come forward, speak into the microphone and state your name and give your presentation please.

Mr. Collin Miyamoto: Good afternoon. My name is Collin Miyamoto with Avalon Development Company representing Friedman Investment Group-Mariners LLC; and I also have prepared a presentation or a power point for slides that should've been handed out as well. It looks like this.

If you go to the second page of that, it's the background that Malia had already discussed. 125 Waihe Lane or 844 Front Street was built in 1978. The lot area is approximately 14,450 square feet and the leasable area 12,348 square feet.

There are 11 parking stalls on-site and as Malia's presentation as well and you can see it on the next 2 pages. Portion of the property is within Lahaina Historic District No. 2. So it's a part of the building as well within the Historic District as well.

In 2007 a variance approved for only three years and at that time we were requesting for 17 stalls to be eliminated instead of 12. But now, this time around we do have requiring 56 stalls; 44 of which will be provided, 33 off-site and 11 on-site to requesting that 12 parking stalls and 1 loading zone be removed or have a parking variance for 12 parking stalls and 1 loading zone.

On the next page shows an aerial view of the property. It's circled in red, so the front portion, the 2/3 portion along Front Street which is the bottom portion and then you have Lahainaluna Road on the right side and on the left side is Papalaua and on the top is Waine'e Street. So the bottom 2/3 of the property along Front Street is developed with a building and the last approximately third is where the 11 on-site stalls are located.

On the next page again is the Lahaina Historic Map and as you can see it is circled in red, half of the property is actually within the Historic District. The property currently consists of retail and art galleries and vacant restaurant spaces right now. So what we're trying to do is we're proposing - those vacant restaurant spaces to have them tenanted and have them put back into use and open for business. So we're not increasing or making a significant changes to the property and

the uses or in the square footage or feasible area. One restaurant that would be open is in the former Avalon restaurant space and the second restaurant is in the former Moose McGillicuddy's space.

Going on into the justification for-I'm sorry...I'm skipping ahead. I didn't tell you - -

After Lahaina District map- - the third page- talking about the variance justification- -

The property was really developed abutting up against the sidewalk and in Lahaina Town in general along Front Street it was considered a pedestrian or a walking district where you encourage a lot of people to walk back and forth. Now with the new current County Codes for parking a lot of the properties and businesses in that area would require a variance in providing or trying to change the character requiring additional structures and parking structures or parking lots would change the character of Front Street of Lahaina.

The property that we're on and what we're requesting for - -the reason why we're requesting the variance is because we're not increasing the building area. We're not adding or making additions to the building, we're just trying to use what's there now. Fortunately we're one of the few properties in Front Street or Lahaina that actually has on-site parking and now that we have the off-site parking permit approved for 33 more stalls, we're in that much of a better position.

Without this variance that's to be approved, the two vacant restaurant spaces now and we do have tenants lined up for it would not be able to get a building permit and subsequently open for business.

Going on to the next justification regards to reasonable use of the subject property, kind of like I mentioned before; it's not located in that typical residential or commercial district, it is in the Lahaina Historic District and by altering the property in any way would alter pretty much that whole area as well. The property and the properties around us also rely on each other to create synergy or creating more business and energy to bring people to that area. With vacant spaces at any time that property or that area can start to lose businesses and employees and potentially lose jobs.

To meet the requirements of the current code, we will need to add on either a parking structure over the existing parking lot and over the existing building or demolish a part of the building to create more parking spaces. Both of which are not feasible for us or for the character of the community - - the character of the area as well.

For the last justification the conditions of creating a hardship were not the result of the previous applicant. We are not changing the building footprint or increasing it at all. We are taking the existing spaces that are there now that are restaurant and putting another restaurant into it. We are providing stalls, 11 parking stalls on-site and we did acquire those 33 parking stalls off-site as well. A previous variance that was approved in 2007 actually required 62 stalls but we reduced the amount for the type of uses to only require 56 stalls for this variance.

Finally, and I keep repeating myself again and again, to meet the current code will require us to reduce either the building size which is going to create the economic hardship for a lot of people,

not only for us but for the businesses around us. And to reduce the floor area or the uses of the building and the property.

That's all we have. Thank you.

Chairman Abbott: Malia, do we have any forms approving or against the application?

Ms. Balberdi: No we don't.

Chairman Abbott: Only the ones that we have in our own packets?

Ms. Balberdi: Yes.

Chairman Abbott: Thank you. Do we have any questions from the Board for Mr. Miyamoto?

Mr. Raymond Sung: One question for Mr. Miyamoto and then question for staff as a follow up. Mr. Miyamoto, the photo of this one, the off-site parking lot location, is this location going to be exclusive for the use of your client or the use of the general public or whoever wants to show up and park there?

Mr. Miyamoto: The off-site parking permit is for 844 Front Street or the 33 stalls are for 844 Front Street. Coincidentally the owner for 844 Front Street or 125 Waihe Lane is also the same owner as the Lahainaluna, as the off-site parking.

Mr. Sung: But is it intended that those 33 spaces are reserved essentially for employees or licensees of your client or is it open to the general public?

Mr. Miyamoto: They're not specifically reserved, but there is a recorded Unilateral Agreement on the 844 Front Street property.

Mr. Sung: Ok. Thank you.

Mr. John Rapacz: Sorry, Mr. Chair if I can respond to the previous discussion...I believe that you folks have what is entitled Exhibits A and B to the Staff Report and the second document, or the third document is the Unilateral Agreement. If you turn to page two of that, which will be the third to the last page, it says page two on the bottom and begins with "Now therefore..." if you look at paragraph number two, this Unilateral Agreement signed and recorded by the applicant says that the "stalls will be reserved for the exclusive use of the parcel". So by this agreement they are exclusively for that parcel.

Mr. Sung: And that's by the owner of the properties of the off-site lot?

Mr. Rapacz: That's correct.

Mr. Sung: Ok. Just a question for clarification. Staff, so I noticed that this picture that's of the parking lot, on the left hand side of the picture . . . there's a sign that shows the two credit card symbols-MasterCard and Visa so I'm presuming it's a "For Paid" lot as opposed to a "Free" parking lot. As far as just a clarification, when the code requires a certain number of spaces of street

parking or the alternative equivalent for a particular business or location, does it specify whether it has to be for free or it just doesn't matter as long as there's space, whether you have to pay for it or not, it doesn't matter?

Mr. Rapacz: That's correct, the code does not specify.

Mr. Sung: Ok thank you.

Chairman Abbott: Any other questions or discussions?

B. PUBLIC TESTIMONY

Chairman Abbott: At this point we're going to take up Public Testimony for this particular project, if you wish to speak please come to the microphone, state your name and give us your remarks and limit it to three minutes if you would please.

Mr. Robert Blue: Good afternoon. My name is Robert Blue and I own the restaurant the street from this, Koa Seaside Grill and I am absolutely for the variance for the restaurants to go in across the street. I think it would help the area in general and I believe that by having it closed for the restaurants that are supposed to go in, I believe that it hurts the overall area in general. I know it's rare to have another restaurant or two right across the street wanting another restaurant to go in but I do believe it will help the area in general. And that's all I have to say, thank you for listening.

Chairman Abbott: Thank you.

Ms. Amber Meade: My name's Amber Meade and I support the restaurants being able to build.

Chairman Abbott: Thank you.

Ms. Larissa Dominquez: Good afternoon you guys. My name's Larissa Dominquez and I am all for building the community and having more restaurants come into the area. I think it would help everybody out. I have a lot of friends that need work and that'll definitely help them grow and prosper an opportunity. Thank you for your time.

Chairman Abbott: Thank you.

Mr. Doug Shumock: My name's Doug Shumock and I'm in support of it. What I found generally in that area also is the majority of the people are walking or taking taxis to that area. There's a lot of tourism there and I haven't seen that parking that much of an issue right down there on Front Street. It seems to me that people are walking and taking bicycles. Thank you.

Chairman Abbott: Thank you.

Mr. Sheldon Joaquin: Howzit my name is Sheldon Joaquin. I'm for the opening of the restaurant. I got a lot of friends out there that is waiting for work. Thank you.

Chairman Abbott: Thank you.

Mr. Tommy Tingle: Hi my name is Tommy Tingle and I am definitely in support of the restaurant open and have the stalls. I've lived in Lahaina for a while and I know there's Prison Street and there's over at the Outlets and then the one on Lahainaluna where most people park and parking really isn't an issue because everybody just walks that strip, back and forth, back and forth. So, I don't think there's really an issue but I'm definitely in support.

Chairman Abbott: Thank you.

Ms. Michelle Tessmer: Hello, my name's Michelle Tessmer. I've lived in Lahaina for five years, I've seen Mooses and different restaurants go in and out of that building but I do believe that parking is not an issue. I agree with pretty much everything that everyone else has already said and I appreciate your time. Thanks.

Chairman Abbott: Thank you.

Mr. Christopher Hegan: My name's Christopher Hegan. I've been around that courtyard for over 20 years and basically we need more traffic on Front Street, we need more people on Front Street, it creates more jobs and everybody needs jobs. With this restaurant, I'm fully in support of this restaurant opening and having the stall's variance go through. Thank you.

Chairman Abbott: Thank you.

Mr. Hoku Jano: Hi my name is Hoku Jano. I'm in full support of Dirty Monkey. Thank you.

Chairman Abbott: Thank you.

Mr. Mike Slaydate (sp?): Hi my name is Mike Slaydate and I'm in support of the restaurant going in there and just having that building vacant at this time creates a void in that portion of Front Street and walking there. I think putting in the new restaurants and getting them back alive will create vibrancy again and support for jobs and everything else that's in that area there.

Chairman Abbott: Thank you.

Mr. Nick Denser (sp?): Aloha, my name is Nick Denser, we're a contractor hired by the Dirty Monkey to build out the restaurant. So I want to make two points. We witnessed the parking conditions there and we've been in and out a lot of that building and have not ever really seen a parking problem. There's always been spaces for us. And number two for the comers, we expect to employ 30-40 people there; it'll probably be half Maui guys. And third, we've witnessed a hole in that area and it's just been impacting all the business around for the few months that we've been there. Thank you.

Chairman Abbott: Thank you.

Mr. Allen Craft: Hello, I'm Allen Craft. I'm in favor of having a new restaurant open. Having a vacant area does no good for anybody. Filing if with a new restaurant will employ other people and definitely a positive step forward. Thank you.

Chairman Abbott: Thank you.

Mr. Matthew Robb: Hello staff my name is Matthew Robb. I'm in support coming into Lahaina. It's going to great a numerous ability for jobs and local people to come enjoy a fresh new taste on Front Street.

Chairman Abbott: Thank you.

Ms. Robin Egan: Good afternoon, my name is Robin Egan and I'm here to support the restaurant opening up. I couldn't agree more with what everybody has to say today. Thank you.

Chairman Abbott: Thank you. Ok I'm going to close public hearing now. May we have the staff's recommendation please?

Ms. Balberdi: For the reasons that is stated in the staff report the Director recommends approval of the subject variance. He finds 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.

That strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property.

And that the conditions creating the hardship were not the result of previous actions by the applicant.

Chairman Abbott: Thank you. Any discussion from the Board regarding? Do we have a motion?

Mr. Teddy Espeleta: I'll make a motion to approve the variance.

Chairman Abbott: We have a motion to approve the variance. Do we have a second?

Mr. William Greig: Second.

Chairman Abbott: Any discussion on the motion? May I call for a vote? All those in favor of the variance say "Aye".

Members: "Aye."

Chairman Abbott: Any opposed? Say no. Seeing no opposition.

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

VOTED: To approve the subject variance as discussed.

(Assenting: T. Espeleta, H. Kihune, W. Greig, R. Sung, J.Reyher-Colon, M. Kincaid Jr.

(Absent: C. Fukunaga, P. DePonte)

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

...*Recess @ 1:53p-1:58p*

Chairman Abbott: Ok, we're back in session please.

Mr. Howard Kihune: Mr. Chair, I'd like to recuse myself from the next item on the list. It's a conflict of interest for me.

Chairman Abbott: I understand.

Mr. Kihune: With that being said, I'm going to sit in the audience for now. Thank you.

Chairman Abbott: Ok thank you.

Mr. Gary Murai: Mr. Kihune, for the record what you're going to be doing, is you will not be participating in the discussion or the voting for this item.

Mr. Kihune: Correct, thank you.

Chairman Abbott: Malia will you please read the agenda and state the purpose of the application please?

Ms. Balberdi: *Reads item into record.*

C. PUBLIC HEARING (Continued...)

2. **SANDRA DUVAUCHELLE of LEHUA BUILDERS GENERAL CONTRACTOR representing AINA LANI PACIFIC LLC** requesting variances from §18.16.130, Maui County Code (MCC), "Cul-de-sacs" to allow the Kualapa Loop cul-de-sac to serve 33 lots when the code requires that a cul-de-sac shall not serve more than 20 lots and §16.04C.440 Subsection 18.2.3.6.2, MCC, "Multiple access roads for subdivisions" to delete the requirement that multiple access roads must be provided on Kualapa Loop for the Kaiaulu Subdivision at Kaanapali (Subd 4.908) for property located in Kaanapali, Maui, Hawaii; TMK (2) 4-4-006:056 (BVAV 2015/0021) (M. Balberdi)

Chairman Abbott: Is there a presentation?

Ms. Balberdi: Yes, I handed a handout for you.

First, I would like to mention that there is no one here representing the Fire Department. They're at a training session for the new implantation of the fire code. However, if the Board has any questions I was told that Peter Davis will be standing by to answer your questions.

So, looking at your handout on page two, you can see the property location which would be on the mauka side of the Honoapiilani Highway, it is approximately 7.65 acres and is zoned R-3 Residential.

On page three you can see some of the pictures that were provided by the applicant they had to pick what the subject property looks like.

Finally on page four, there's a good outline of what the road looks like, the cul-de-sac and what the proposed subdivision will look like. That's it, thank you.

Chairman Abbott: Will the applicant please come forward, speak into the microphone and state your name please?

Ms. Sandra Duvauchelle: Good afternoon Chair and Board. My name is Sandra Duvauchelle. My company is Lehua Builders Inc. and I'm here representing Aina Lani Pacific LLC and this application for the two variances. I didn't prepare any other handouts.

Chairman Abbott: Are you willing to accept the - - in agreeable to waiving the report of the staff? The staff report on the project?

Ms. Duvauchelle: I'm sorry I don't understand.

Mr. Rapacz: Thank you Mr. Chair. It's whether or not to waive the reading of the report so that we don't have to read the entire report into the record.

Ms. Duvauchelle: Oh, then yes Sir, I do.

Chairman Abbott: I'm sorry. I didn't explain it very well.

Ms. Duvauchelle: I'll give you a little bit of background on the project. Kaiaulu at Kaanapali is designed to be 33 work force housing residential development. Our project team is here, Howie Kihune Jr. is here who is the president of Aina Lani Pacific LLC; Tom Welch, our legal counsel as well as Stacy Otomo with Otomo Engineering, our civil engineer.

We do have the site plan here. Our lot sizes range from 5,000 square feet to 8,000 square feet. Our house sizes are 1,200 square feet to 1,600 square feet, net living area. We are under the Workforce Housing Agreement that's already been executed. So, 10 of those houses, will be below moderate income, 16 moderate and 7 above.

We're asking- -due to those constraints of the lot and of the topography we are asking for the variance from the two entrances at ingress and egress. And in addition to that, we have added two additional fire hydrants. We made our road width at 32 feet and we do have 52 foot radius on our turn around. Any questions?

Chairman Abbott: Do we have anyone from the public wishing to speak please? Please identify yourself and limit your comments to three minutes if you can. Thank you.

B. PUBLIC TESTIMONY (Continued...)

Mr. John Blanchard: Ok. My name is John Blanchard, I'm a resident of Kaanapali and a registered professional engineer and I'm here to speak in opposition of the variance for a couple of safety reasons.

First of all, there hasn't been an updated traffic study that's been prepared for this site. It was previously done in 2002 as part of an environmental assessment that was approved for the project in 2004. The traffic patterns that were established in that are completely different today. A couple of points, there were two points of access that went through Lanikeha to provide a secondary egress. Today, there's only one point of access and it ties into the Vintage's entrance which is on this map if you can see, it's farthest to the left.

The impact of this is it creates a number of issues for us. Number one, we don't have any problem with the land use; we're fully supportive of the ideals and principals of affordable housing. I'm joined by a number of other residences Board members from the Vintage at Kaanapali and Kaanapali Golf Estates and they share that sentiment. The problem is that it creates safety issues for Kualapa Loop and Kualapa Place; Place being the entrance to the Vintage.

Chairman Abbott: Excuse me.

Mr. Blanchard: Yes.

Chairman Abbott: If you could step over to the map please and show us or point to what you're talking about.

Mr. Blanchard: Sure. Kualapa Place is the primary entrance into the Vintage. The Vintage contains about 72-73 units of condo association. You've got Kualapa Loop going in here, down, across and over pass the highway down to Piihaa. Piihaa then goes down to the Kaanapali Parkway.

The previous plan showed this access point, which we're not opposed to but it also showed the secondary road that ran along the sugar cane train right-of-way over into Lanikeha; and then there was a network of roads that went through that development with access to the south and all the way up to the by-pass highway.

The added affect is that we have about 73 units with a population that is semi-resident, meaning that we may have a 146 people or so. This will have more full time people again being work force housing and we're fully in support of that, but they basically double the population of the development. The effect of it is that all of this traffic goes out to one point of connection. There's no secondary egress and that's our primary point of access today as well.

The off-site impacts have not been studied and that's really what we're asking for. Number one to consider the need for the secondary access, recognizing that there's going to be potential cost and other issues that need to be address but we feel are surmountable and to look at how to litigate some of these off-site affects long term.

If you go over there today and you drive over Kualapa Loop, you'll find that most of the residence today are trying to avoid conflicts with golf course traffic and maintenance traffic. There's a number of crosswalks that go on Kekaa today and most people are trying to get out to the highway by

going through the Fairways parking lot and using the egress that they have which has (...inaudible...) onto the highway. And we feel that those things need to be studied in order to justify development of a single access point for this property and to also look at the things that are needed overall for the Kaanapali area.

One other point. We know that the Hyatt has just built an 11 story building, its impacts have not been factored into signalization and things like that for Kaanapali Parkway, those things need to go into a study that we feel.

I guess in conclusion without having a good map to show this, we feel that there needs to be an updated traffic study with the actual traffic counts that are out there. Looking at the future development within Kaanapali Golf Estates which has about another 120 lots to come online and to than to look at a way to safely access this property both through egress and ingress. And that's all I have. Thank you.

Chairman Abbott: Thank you.

Mr. Ravi Bugga: Good afternoon ladies and gentlemen, my name is Ravi Bugga. I am a Board Member at the Vintage, I also live at the Vintage at Kaanapali. I only have couple of short points. As my colleague John pointed out, the previous EIS is about 12-14 years old, including the traffic study. Since that time, broader than just this issue when we go further down all of connect to Kaanapali Parkway; there's now an 11 story Hyatt Timeshare there. In addition to which the development of this which also uses the same Kualapa Loop entrance, Lanikeha; was originally when it was planned was supposed to have another access point to the highway. That has since been abandoned, I'm not quite sure why. So all traffic now flows entirely down Kualapa Loop to exit Lanihea.

So given the increase of traffic and people at the Hyatt and Lanikeha-and by the way there's still a 125 lots yet to built in Lanikeha and KGE, Kaanapali Golf Estates. So there's likely to be an enormous increase in the amount of traffic that is going to utilize this road.

In my personal feeling there's a strong need for even a possible traffic signal where Kekaa Drive which comes down from here, meets the Kaanapali Parkway. It is very difficult to access out of there. In my judgment, a new traffic study needs to be done to assess the requirement for a new traffic light, what the traffic flows are etc. etc. Thank you very much for your consideration.

Chairman Abbott: Thank you.

Ms. Sarah Fully: Aloha, I'm Sarah Fully and I'm president of the Condo Association at the Vintage and I am very thankful for this hearing because this really does represent a situation where we need another traffic study here. A lot of construction has gone on and will go on, so this shouldn't be looked at as just a single variance. We've gotta look at what should be done here and what is the right thing to do to provide- - not only for these people but also for others that are coming along here. This would not be a good situation for that community at all. What we want is another egress and entrance. Thank you.

Chairman Abbott: Thank you.

Ms. Ute Finch: Hi my name is Ute Finch, I'm the General Manager of Kaanapali Golf Estates. Kaanapali Golf Estates is all up in here as we mentioned the Vintage and Lanikeha. We have 378 home sites as they mentioned, we still have a 124 homes yet to be built; so with me as the General Manager I'm in charge of all the landscaping, security, maintenance of the common areas etc. and one of my charges is this road here, this Kualapa Place which the connecting road is Kualapa Loop and then there's a bridge that goes over Highway 30 and that over pass is partly owned by us and then there's a 25% share of the golf course; they own that bridge. So I'm in charge of the maintenance of that.

So these folks here, they would be coming across that bridge, coming up Kualapa Loop and coming up on Kualapa Place. So I'm already challenged by the Kaanapali Resort Association down here; I get those phone calls because we are currently still constructing homes and we have construction traffic already, so Kaanapali Resort folks get upset and call and say "Hey, you've got all these trucks and stuff and traffic coming up on our parkway and our drive".... So I'm always trying to mitigate that so now I'm going to probably have another 70 cars- -these are full time residents, they're going to be coming and going there so I can only imagine that-that will be an issue for Kaanapali Resort as well.

So I am asking that another traffic study be conducted because we do have all of these homes that have yet to be built have been approved by the County of Maui to be constructed. So I've got a lot more traffic that is coming down the pipe way. Thank you.

Owner at Vintage (Unknown...speaker did not state his name): Aloha everyone, I've an owner at the Vintage for 14 years, and my wife often accuses me of wanting to be a traffic engineer because I'm always commenting on traffic. I've noticed over the years is something that this map is not going to be able to show you. Assume that this is the main entrance to Kaanapali-actually it's over here; further north there's another entrance to Kaanapali and it enters and goes down Kekaa Road, the traffic on this road has been increasing significantly over the past few years because people from the north from Napili and from Kahana come down the main highway, come down Kekaa Road (?).

If this variance is approved, this will increase the traffic on Kekaa Road and they could even worsen. Kekaa Road links up to the main Kaanapali Parkway. So I would urge that because of these changing conditions that a variance not- -that a study be done for this changing- - under these changing conditions. Thank you.

Chairman Abbott: I'm sorry would you please state your name for the record?

Mr. Norman Buzain (sp?): I'm sorry Norman Buzain is my name.

Chairman Abbott: Thank you.

Ms. Duvauchelle: Thank you. May we address some of the concerns? Or would you folks like to ask questions?

Chairman Abbott: Please proceed, you are here to tell us what's going on.

Ms. Duvauchelle: Ok. So I would like to ask Howard Kihune Jr. to come up please and address the EA questions.

Mr. Howie Kihune Jr.: Thank you Mr. Chair and Board Members. Regarding the study that was done in the - -

Chairman Abbott: Your name?

Mr. Kihune: Sorry, Howie Kihune Jr. Aina Lani Pacific, LLC. The study that was done in 2004 the traffic, the TIAR which was the Traffic Impact Assessment Report was based on the design of the subdivision at 26 homes with 26 ohanas. There was 52 structures that were originally to go on that parcel. That was what that study was calculated on. That also was calculating the fact that Lani Keha which at the time was called Palisades that was the name of the subdivision that they had put on that area.

When this study was done, which was part of the EA, in 2004; there were two road access points that they were looking at, not chosen but looked at. Alternate A which came down the railroad track area to Kualapa Loop. The other was Alternate B that went up across the railroad track and tying in to an access road that accessed the Vintage which is now called Kualapa Place that tied into Kualapa Loop.

And as the EA was presented and finalized the developer and the consultants chose Alternate B as the access point for this property. There is no other access to the property, we are land locked, and the easements are all in place. Kualapa Place which the Vintage people, bless their hearts they use that access to get to their property which is gated; is a non-exclusive easement and we also have an easement- a non-exclusive for that particular roadway itself too.

So just to clarify the EA; again it was studied and calculated at 52 units for this project, lot 33. The original design mentioned for the actual project is looking at 18 homes- - it went from 26, 26 down to 18, 18 but the study was never recalculated at 18 and 18 the study was calculated at 26 and 26. And then we came in- I came in and decided, let's make this- turn this into a nice workforce housing project. These are quality homes, market homes that'll be sold within the workforce housing ordinance as far as income is concerned.

With that being said, I just wanted to clarify that. Our study is well over and above in 2004 for what that project was going to become. Taken into account Lani Keha which was then called the Palisades, so just FYI-for your information. Thank you.

Chairman Abbott: Thank you.

Mr. Tom Welch: Thank you Mr. Chair and members of the Board. I'm Tom Welch I'm the attorney for the Aina Lani. I just wanted to make a comment on the things that the people from the Vintage and the other areas using Kualapa Loop mentioned.

Kualapa Loop is a major collector road that was established to serve this area of Kaanapali; and while we should all be sympathetic about the traffic in the area and the burden on Kualapa Loop, this variance is not about the question of whether we can use - - if this project can use Kualapa Loop or not; this project has the right and easement to use Kualapa Loop. This project is zoned

for the density of development that is being proposed and Kualapa Loop is designed to serve the area.

It may be good for the County at some point or for developers at some point to do a new regional traffic study. But this variance is not about that, this variance is about whether or not this development can proceed with one entrance to Kualapa Loop or two to Kualapa Loop. If we could come out the back and around and enter Kualapa Loop from the back of the project, we wouldn't be here today; and the reason the variance is being requested is because of the odd, difficult shape of the land and the fact that this is the only practical way to get out.

We believe that the safety issue- -these two rules that we're asking for a variance for, really relate to safety and convenience within the particular development and I hope we've satisfied those concerns with this submittal and so forth and the Staff Report from the Fire Department. Thank you.

Chairman Abbott: Thank you Mr. Welch. John, I have a question if I may. Is there any- -I'm not familiar with this area at all and they're speaking of roads and this road and that and this is meeting . . . do we have anything that Malia can maybe show the road system? I mean, I live in Pukalani and I know there's two ways to get in and out of it and I know it's a nightmare at certain times. That's why I want to know what's going on with the highways.

Mr. John Rapacz: Thank you Mr. Chair. I've been following along and I think that most if not all of the references to roadways are roadways that are indicated on the handout that you have that is substituting for the PowerPoint. I haven't even looked at the application for that yet. But on the colored which says property location, I think that you can see every intersection that it was referred to, and that's this here.

So the Kekaa Drive intersection with Honoapiilani Highway that one of the testifiers referred to, I think it was Mr. Zane; you can see that on the far left if you're holding this- - I'm sorry, it would be at the very top, in the center and there's a reference there, I think it says Maui Eldorado, I think that's where the intersection with Kekaa Drive is or at least one of the intersections with Kekaa Drive.

The Kualapa Loop again if you're holding this with the property location in the correct orientation with that language, that's going to be directly above the point of the red parcel, if you go up to the next intersection with the highway, that's where that loop would be. The Kualapa Place would be the small curved right off of that loop, if I'm correct about that and then the connection would be from the red - -the tip of the red parcel to that curved Kualapa Place that comes off of Kualapa Loop. It's not showing on our map but it pretty much goes directly from the tip of the parcel in red over to that small curved right hand section that's shown off of Kualapa Loop. I believe those are all the intersections that have been referred to.

Chairman Abbott: My question if I may. I understand the outline red, I understand the very top of it where it enters into Honoapiilani Highway and there is a small intersection road which goes up to another road that has no name on it- - if that is a road in deed.

Mr. Rapacz: And you're referring to that- - if you were going north on Honoapiilani Highway, and that's from the middle headed to towards the top of the sheet?

...Background discussion on the floor by Board, Staff & Audience...

Chairman Abbott: Just a minute.

Mr. Rapacz: And I believe and the Chair was referring to what appears to be a roadway segment that runs north-south from the Honoapiilani Highway, Kualapa Loop intersection directly to - - almost directly to the south and running almost parallel with the subject parcel. And I believe that on the other map or in the application . . . on the other map actually in the same packet, that's indicated as Old Cane Haul Road and I would defer to the applicant as to whether that's still accurate.

We also have in the application packet and unfortunately I think its black and white, but staff has a colored version that does show it as a dirt road.

Ms. Duvauchelle: Mr. Chair, if I may?

Chairman Abbott: Please.

Ms. Duvauchelle: The Old Cane Haul Road, you can see kind of a light outline of it, it is still the old road and the train tracks run beside it but we have right off any entrance off the Cane Haul Road.

Mr. Blanchard: I apologize, I know this is difficult without a map and again going back to what the-

Mr. Raymond Sung: One second.

Mr. Blanchard: Sorry.

Chairman Abbott: Is this public testimony?

Mr. Blanchard: Yes. It's to answer a question I guess.

Mr. Gary Murai: Well, actually this is the public hearing. You can testify once. However, if the Board Members have any questions they can- -

Mr. Blanchard: I'm sorry it's just to clarify a point on the map. Thank you.

Mr. Sung: May I ask a question?

Chairman Abbott: Yes.

Mr. Sung: May I ask that gentleman to clarify that point on the map please?

Mr. Murai: It's up to the Chair.

Chairman Abbott: Yes.

Chairman Abbott: We're trying to find all the points we can so we can give a proper decision.

Mr. Blanchard: I understand and I apologize, we should have brought a map because it's difficult to give the context here. This is the old sugar cane road that provided the second access that provided connection to the network to Palisades as it was studied back in 2002. That plan looked at traffic counts back in 2002 and forecasted traffic volumes to 2010; because they didn't have any actual counts for development for that time, they put in background growth for about 1.9% over a period of 13 years. But the traffic counts are much higher than that and this point right here is essential to both distribute the traffic that is going to occur and to provide secondary access in the event of an emergency.

You can see that this is a very long road . . . we have a very long road with 73 units in it. If there's an accident where the cars piled or something like that, there's virtually no way for our residence or theirs to get out. So the traffic study that evaluated the impacts and proposed that connection as opposed to an alternative A that went down along the highway here, is based upon this to distribute the traffic.

And I guess what we're asking is that there be a study that updates those traffic counts. Looks at what the impacts whether they be traffic controlled devise, such as stop signs or other pedestrian crossings in the area to mitigate that additional improvement.

0

We realize that there's other development and this can't solve all those problems, but this is not consistent with the original EA that was approved back in 2002 & 2004.

Chairman Abbott: Thank you. Does that answer your question?

Mr. Sung: Yes and no. Well, Mr. Chair if I can maybe summarize out loud where I think the arguments are and to the extent that either this gentleman or the representative of the Aina Lani Pacific want to further clarify then I suppose that would be good toward helping all of us including myself better understand the situation?

Mr. Murai: Yes, but you also have to keep in mind that we should focus our questions on what the application is for.

Mr. Sung: Understood. So if I can summarize and hopefully as correctly as I can. My recollection of the testimony of Mr. Kihune of Aina Lani Pacific was that the 2004 EA including the traffic study that was then included, essentially had already contemplated this project with a essentially- - for a lack of a better word- - a density of 26 plus 26 of which is higher than the existing for this proposed 33 units; and so- -

....in audible.....

Mr. Sung (continued): So the argument would be that there may be concerns that at least as of 2004 when the EA and traffic report that goes along with it was approved, those were essentially addressed within and accepted and then the concerns of the testifiers today from the Vintages and the other projects is that - - well a lot has changed since then, traffic is much heavier perhaps

than anticipated and so they wish for there to be a new traffic study to come in before this Board decides whether or not to allow Aina Lani Pacific relief on the requirement for a second point of ingress or egress.

Is that roughly accurate of both side's testimony?

Mr. Kihune: If I may?

Mr. Sung: Yes, please.

Mr. Kihune: Howard Kihune Jr. If I may. A study was developed and required. We had looked at two different access points, but it was determined that an Alternate B was going to be the access point and was approved and the exclusive easements were put in place for Alternate B.

We don't own the cane road, there's also a train track that we have to cross to get to our access, our easements. The access point on Alternate A would not be appropriate because you could not make a left turn or a right turn from that area. It is too sharp and too close to the edge of a cliff where the highway's down below.

So after much study, Alternate B was chosen. There's a gate above Kualapa, which is called Kualapa Place now; there's a gate up there for the Kaanapali Resort and Golf Estates. That gate was down- - I think, I believe, I could be wrong but a little bit further down, before they developed the upper side. But again like I said, the study was done with keeping in mind the growth of Kaanapali and the Palisades was already in place which was actually Lani Keha.

Again, we chose Alternate B because that was the most effective and safest way to get in and out and all the easements were put in place for that particular access point. If we had another access point, we would definitely choose one- -add that. But we're landlocked. There's a maintenance building on Kaanapali Golf Course . . . on the bottom side . . .it's an industrial area, we cannot go through that industrial area and Halelo cannot accommodate any other traffic because the roads are way too narrow.

We've already approached the landowner, they're not interested in working with us. So this subdivision was developed and designed with the one access point, being approved with the EA, that's the choice and with the fact that all the easements were put in place for that access point, for this piece of property.

Again the Vintage is identical to someday as this, they have 73 homeowners on a little bit of a bigger piece of property that access one point. From comparison I don't see it any different than this project itself. They have 73 homes there, we have 33. They access the same road and they don't have a second entrance.

Mr. Sung: A question for staff.

Chairman Abbott: Thank you Howie.

Mr. Sung: Question for the department I should say. Hypothetically speaking if there were a further traffic study, would the main purpose of that study be to determine the feasibility of a

second access point? Or is it that given the topography and geography of this general location, as Mr. Kihune said, a second access road or access point wouldn't be feasible anyway, so you're really then having the new traffic study really just look at density and usage and whether it's too heavy already and therefore further development should be limited.

What would the purpose of this traffic study be? This hypothetical additional traffic study?

Mr. Rapacz: Thank you Board member. This not being a Title 19 variance, its Title 18 and Title 16; so it's going to be the Department of Public Works and the Department of Fire Control and they each have their separate criteria for granting the variance. So I'll defer to Public Works on that question.

Mr. Lance Nakamura: Lance Nakamura, Public Works. That's a hard question to answer because it depends on who's requiring a traffic study and the reason for that requirement would dictate what's going to be in the traffic study. Public Works at this point is not requiring it, so I couldn't speak to the purpose or what would be studied.

Mrs. Duvauchelle: If I may. I'd like Stacy Otomo; Otomo Engineering our Civil to come up and address the traffic study and the questions if that's all right. No objection?

Chairman Abbott: None. Yes go ahead.

Mr. Stacy Otomo: Good afternoon Chair and members of the Board. My name is Stacy Otomo, I'm the civil engineer for the project. I want to make statement so maybe we can reel this whole thing back to why we're here today.

Like Howie mentioned, this property already has legal access in terms of easements coming from public roadways into the subdivision. As far as Title 18 of the code; it says on these Off-Site Streets . . . as long as you have 24 feet of right-a-way and 20 feet of pavement coming into the subdivision, that meets the code. So we meet the code from that area by Maui Eldorado all the way to the site.

Why we're here is because the County Code says that in a residential area for any cul-de-sacs that are more than 550 feet or servicing more than 20 lots of the cul-de-sac, you need to get either a variance or approval from the Public Works Director. We have approval from the Public Works Director on the length of the cul-de-sac because of the fact that this is a very unusual shape property. If you look at the layout, it's long and rectangular so by default we can come in with one road.

The second one is because of the Fire Department, it says anything serving more than 20 lots, and they want a second access out of the subdivision. Like Howard Kihune mentioned, we don't any of the properties around this thing. They tried working with the adjacent landowner, but they have no interest in renting us an access out of our property over theirs onto a public street.

With that being said, we're trying to meet the Fire Department requirements. In doing so, what we discussed with them was the cul-de-sac at the end, we have appropriate turning radius for that. What they wanted was 32 feet of clear space, all the way to the end of the cul-de-sac, which we are providing them. What we did - -

Chairman Abbott: Take the microphone please sir.

Mr. Otomo: - In a subdivision like this, one of the main concerns were people parking on the streets. So what we did was, there's a row of public parking here and here for residents, so there's 23 off-street parking spaces. What we're going to do is put signage along this roadway and this is going to be enforced by the homeowners association that they cannot park on the street. So there's going to be 32 feet of clearance all the way to the end. And that's the gist of working with the Fire Department.

Along with that in a residential area, we're required to put fire hydrants every 350 feet, but because we don't have that secondary access getting out there, we added additional fire hydrants in the subdivision to bring down the spacing from somewhere between 225-250 feet. That's what we're working with the Fire Department on and not being able to get this second access.

Chairman Abbott: Thank you. Think I'm going to close public testimony. I'd like the staff report please.

Ms. Balberdi: According to the Public Works' statement. The Department of Public Works does not object to the granting of the variance request. And according to the Fire Department, the conclusion is based on the foregoing Findings of Facts and Conclusions of Law, the applicant has met all the requirements for the granting of the subject variance. Therefore, the Fire Department recommends approval of the subject variance with the following conditions. They added number four as a condition.

Chairman Abbott: Thank you. Discussion from the Board? I have a statement to make following the directions, we're actually looking for whether they can have 33 or 20 lots that's what the variance is actually all about. So we're open for discussion among the Board or questions.

Well if there's no discussion, do we have a motion? To either approve or not approve the variance.

Mr. Sung: Mr. Chair, I'll make a motion to accept the Staff Report and Recommendations and including both the Department of Public Works and the Department of Fire and Public Safety and move to approve the variance as requested and stated with the subjects in the recommendation reports.

Chairman Abbott: We have a motion. Do we have a second?

Mrs. Juanita Reyher-Colon: I'll second.

Chairman Abbott: Any discussion? I'll call for a vote. All those in favor of the variance.

Members: "Aye".

Chairman Abbott: Any opposed? Seeing none, the **variance is granted**. Thank you.

It was moved by Mr. Sung, seconded by Mrs. Reyher-Colon, then

VOTED: To approve the subject variance as discussed.

(Assenting: T. Espeleta, H. Kihune, W. Greig, R. Sung, J.Reyher-Colon, M. Kincaid Jr.

(Absent: C. Fukunaga, P. DePonte)

D. COMMUNICATION

1. **CALVERT G. CHIPCHASE AND CHRISTOPHER T. GOODIN OF CADES SCHUTTE LLLP** representing **D AND S VENTURES, LLC** Appeal of the Planning Director's Notice of Violation (NOV 2014/0013) for the zip line activity within the County's Agricultural District without a Special Use permit pursuant to MCC §19.30A.060 (H) for property located at 2065 Kauhikoa Road, Haiku, Maui, Hawaii; TMK (2) 2-7-012:086 (BVAA 2015/0002)

- a. Update on the status of the County Special Use Permit.

Mr. Sung: I know it's already after the vote, but I would just also state for the record that I found very persuasive the explanation and testimony of Mr. Stacy Otomo.

Chairman Abbott: I agree. Ok, onward and upward let's go to Item D. Communication.

I don't know about you people but I am not pleased with this thing of their granting a 120 days or a three month - - and we've given them how many 30 day notices to try and get this thing settled and now they want another - - it's got to stop. Somehow we've got to nail this thing down. That poor man is being subjected to hell. Unless they've stopped the business, which I don't know. But this constant invasion, may it's not the right word but Mr. Kolbe I'm not pleased with that at all.

Mr. Sung: Is Mr. Kolbe here?

Mrs. Reyher-Colon: No.

Mr. Sung: I guess I would have a question Mr. Chair for Corporation Counsel, it's a procedural question and you can advise whether it would be appropriate to go into executive session to discuss it but I think it's suitable for open session just because it's a procedural question.

Mr. Murai: Well, why don't you ask the question? Typically we go into executive session to discuss the - - if there's questions about the Board's authority, powers, duties, liabilities, that kind of thing.

Mr. Sung: If it's about the authority but I think it's really just a question to what would happen next as an alternative. So I'm not sure if that's an appropriate question for executive session or not.

Mr. Murai: No, it's ok. That would be ok for open session. But it may not be a question that's best posed to me. It may be a question best posed to the department.

Mr. Sung: Ok.

Mr. Murai: I do know that I did see a memo from the Deputy Corporation Counsel Tom Kolbe, and he is also on behalf of the Department of Planning, recommending a three month continuance. Well, anyway as you folks know I'm just sitting in for today and I'm totally unfamiliar with this matter.

So Board Member Sung, maybe your question may be better answered by the department.

Mr. Sung: Why don't I pose the question to both the department and you and you can weigh in on if the answer should be given in executive session or not.

Mr. Murai: Well, why don't we see what the department says?

Mr. Sung: Ok. So the question is this. I don't know about the other members of this Board but I too share the frustration of Chair Abbott regarding the amount of time it has taken as well as the amount of time or time frame that was originally presented to us for addressing the problem. So the question I would have is at this point in time we had previously, essentially allowed the County and the Petitioner, the operator of the zip line company to enter into discussion with the ultimate and hopefully prompt goal of getting into a public hearing of some sort for their permit at which point, all constituents would have a chance to make their concerns heard.

But to me this continuing granting of time extensions, puts that goal and expectations into the distance into the future and it's not accomplishing much. So my question at this point whether it's for staff or corporation counsel is what ability does this Board have to say enough is enough? If we stop saying- if we say 'we don't want to agree with the granting of further continuances" at that point in time what happens? Does this whole process revert back to they're in violation, therefore they need to come before this Board as originally initiated to protest or appeal the violation being assessed against them.

And if that's the case, just thinking out loud, I don't think that's a bad idea; because I don't understand, based on the information presented to us, why there is a need to continue to delay.

Chairman Abbott: And this is the third continuance.

Mr. Sung: We did not want at the outset to grant a multiple month continuance. We wanted timely frequent reports 30 days at a time and we said essentially that we would agree to give 30 day continuances presumably so long as we were satisfied that progress was being made. So far, I have not heard any evidence presented to this Board that in fact progress is being made.

Mr. Kolbe is not here. I with Chair Abbott share a very serious concern that this Board not continue to grant continuance, especially one for three months as requested based on the lack of evidence of progress being made.

Mr. Murai: Is it fair to say your question is, 'What would happen if the Board said No?'

Mr. Sung: Yeah, what do we do? Do we go back to therefore they have to appeal the violation and the penalties?

Mr. Murai: And the answer is, speaking for myself, I don't know what would happen. I would defer.

Chairman Abbott: I don't know.

Mr. Rapacz: Thank you. I think as to the first question, if the Board were not to grant a continuance at all, then the Board would schedule the hearing of the appeal. I don't know what the parties would do if the Board did that. They might say 'Fine, I guess we're going to go through the appeal process'; "rather than going through the permit process."

The appeal process and the first question for the Board would be whether the Board was going to appoint a hearing officer and there's a contract involved in that and they hire a hearing officer and the hearing officer would hear the contested case of the appeal, make a recommendation, report back to the Board etc.

It's pretty time consuming and I think that's one of the things- -I think we discussed this back in the beginning and that's one of the things the Board weighed, was what's the cost, cost of hiring the hearing officer and how long will it take, how much of the Board's time and staff's time will it take verses going the permit route.

So in summary, the Board would schedule the hearing and then the parties would either proceed or someone might withdraw an appeal.

Mr. Sung: Before you continue. You're absolutely correct John. Those were things that we absolutely discussed, we were absolutely concerned about the potential for delay, or not even delay but just the time it would take to schedule a contested hearing, appoint a hearing officer, do all that and it was at least- - I won't say represented to us, but it was presented in a way that I and I won't speak for other members of this Board - - but I at least had the understanding that if we allowed a brief amount of time for the parties to try to work out a situation where they applied for the permit, then things could be resolved more quickly and with the ability of all constituencies to have their say or have their day in voicing their concerns in the ultimate hearing that takes place for the permit.

But right now, were no - - in my mind, based on the evidence or lack of evidence presented to us. We're no further along, so to me if they're going to be asking for more time, we might as well get the hearing scheduled on our end. That's just my feelings.

Mr. Murai: And if I may and like I said, I'm totally unfamiliar with matter. But, as I read Mr. Kolbe's memo, he's not real clear but it sounds to me as if there is something else going on. Sounds like a permit application that they're trying to schedule before a Planning Commission. Is that right?

Mr. Rapacz: Yes. I can give a status update as well. That's in more detail than what's provided here if the Board would like to hear that.

Mrs. Reyher-Colon: Yes, that was going to be my question. Where in the process for this permit are they at?

Mr. Rapacz: Right now, in the application process, the first thing that happens is the submittal - - well even before the submittal, the application, sometimes the applicants will work with whoever the assigned planner is, discuss the matter, make sure that they know what's expected of them

and so that they can provide it quickly. I don't know the extent to which that happened in this case because I'm not directly involved in the permit. After the application is submitted, frequently because they can be complex, the county staff planner will have to ask for additional information or clarification of items and then the applicant will provide those. And once the staff planner is satisfied that the application is complete, all the information that's required is there, then they send it to other agencies for comments, anywhere up to a dozen different departments, state agencies, etc. they all get a copy, they all are asked for comments; frequently they have none.

But when they provide a comment back, for example, the State Department of Health might say, "The plans do not adequately show the provisions for wastewater." So then the staff planner gets that comment back from the state agency, they provide the comment to the applicant and say they need to respond to this.

It sounds like that process has been completed based on Mr. Kolbe's statement that the D&S, through its planner PBR has responded to agency comment and is working with the Planning Department to provide supplemental information. So, sounds like the applicant has heard back from agencies and is providing the additional information that the agencies were looking for.

At that point, we're pretty deep into the process. We've made good progress, I know it's slow, it always is. Yesterday I was asked to review some language that's in the draft staff report to the Planning Commission which discusses just basically what's happening in the BVA right now, what's the position of this matter in the BVA and so I edited that and that's going into the staff report.

So I think they're getting close to doing the final staff report and then they'll be able to schedule with the Planning Commission. I don't know the extent to which the delay has been because the county is slow to act versus the outside agencies were slow to respond, versus the applicant was slow to respond. I have no idea where those delays have resulted from. But I would say that we are 75%-80% through the process on our end and then it'll go to the Planning Commission.

Mr. Sung: Thank you. Question Mr. Chair for Chalsey. When is our next scheduled meeting? Is it in two weeks or four weeks?

Ms. Chalsey Kwon: It will be in four weeks.

Mr. Sung: Four weeks. Ok.

Chairman Abbott: There is no meeting for the 1st of March?

Ms. Kwon: As of today, no.

Mr. Sung: So I'm wondering if whether it might be possible for this Board to consider rather than granting a three month continuance as requested to make it maximum one month and then let's have the parties here before this Board in one month because I'm not satisfied with the amount of detail that's being provided to us. So I am not prepared to grant a continuation of more than one month. I'm not even sure I'm comfortable granting a one month one. My personal feeling is enough time has been spent, possibly wasted and things really need to get going.

Chairman Abbott: Yes, this has been since June of last year.

Mr. Kihune: Mr. Chair, question and my comments. I agree and also I think it's really difficult to understand if D&S Ventures is still operating illegally as we all know based on what we've been presented with. But, the fact that they're operating and continue to operate and applying for a Special Use Permit is contradicting. I mean so if you're applying for one, you know you're not in compliance but I'm going to apply for one so I can get into compliance.

But in the mean time they can still operate, the neighbors are not very satisfied with what's going on. And I agree with what's coming from Mr. Sung, I would agree for a 30 day, they have to be there for the 24th of March for our next meeting. Give us an update and I think I'd like to add if we could. That if not satisfactory to where they should be, we should be able to take that application and vote on it at that point.

Chairman Abbott: Yep.

Mr. Kihune: I don't know if that's possible, from a legal standpoint Counsel or John. But take it a step further.

Mr. Rapacz: Just to clarify. When you say take *that* application and vote on it. Do you mean schedule the appeal for a hearing?

Mr. Kihune: Well, the application that was presented to us at that time.

Mr. Rapacz: That's the appeal.

Mr. Kihune: Right. And make a vote on that at that point.

Mr. Sung: And appoint a hearing officer if necessary and just get the ball rolling.

Mr. Kihune: Yes. I don't know if that's possible.

Mr. Rapacz: Yes, I think the Board can simply not grant a continuance, schedule the appeal and hearing and as I said, generally the first thing that happens is the Board decides whether it wants to hear the entire case itself or appoint a hearing officer.

Mr. Sung: I had a question and then also just to talk about the point that John raised about whether the Board hears it or whether we appoint a hearing officer. The question I have is really just so I understand how all the different parts of the County Government works together or not work. Is I'm pretty familiar with what this Board can and cannot do, but as a practical matter with the situation that we know is going on and as touched upon by Mr. Kihune is if you have a private party that is currently in violation but they are never the less operating a business in a way that is in violation of that ordinance and yes, they're in the process of applying for a permit to allow them to do it. But right now they're still in violation. Is there no way for some arm of the county to basically issue a cease and desist order, get a court order to enforce it if necessary to say, 'this has to stop, until you either get a permit or not,' and then if not you're permanently shut down. But either way, you don't get to continue to essentially almost flout the existing law under the guides

of well, we're in the process of applying for something. It's allowing someone to essentially get a head start before getting permission to do it.

Chairman Abbott: Yes.

Mr. Sung: So who among the county has the ability to issue an injunction or a cease and desist or to say stop?

Mr. Murai: Well, I supposed the department through my office could go to court and seek injunctive relief. But if they are in violation, it would be a continuing violation.

Mr. Sung: Is that a discretionary decision on the part of the department or the corporation counsel, to seek that kind of remedy or is that something where if this Board were to say, 'We would like you to do that, please do it.' You would go do it?

Mr. Murai: I suppose like with all enforcement actions there's some degree of discretion. Now certainly though, now that I'm kind of myself, gathering bits and pieces of what's going on and I'm starting to understand it better. I do believe if there is any kind of application that may be coming up before the Planning Commission; I do know that the Planning Commission does not look kindly upon violators who continue to violate when they're coming before the Planning Commission for some kind of any kind of Special Use Permit.

So, Board Member Sung, just so I can clear my mind what you're contemplating and I know you haven't made a motion yet. But at first I heard - - what you're thinking about is putting this matter and so we clearly understand what's going to be on the agenda. You're suggesting that we set this matter for review at the next meeting so that the parties can appear.

Mr. Sung: Actually no. I was basically thinking out loud and saying that's the most I might be willing to do but I'm frankly not even sure I'm comfortable with doing that.

Mr. Murai: Oh, ok.

Mr. Sung: I was not making a recommendation or a request for that at all. I was saying for sure, I'm not comfortable with three months as requested. I'm not even sure I'm comfortable with one month. But I'm also trying to explore right now with you and with staff and with this body, what are the alternatives if any and what the procedural steps are and getting something done.

Mr. Murai: Well, I suppose if you're disinclined to grant any kind of continuance you can already start having the discussion as to whether the Board wants to hear the appeal or whether you're going to hire a hearings officer.

Mr. Sung: Right.

Mr. Murai: And then that touches upon what John had said - -

Mr. Sung: Which is what we discussed at the outset. If we hire a hearings officer, an outside one, that's at tax payer's expense. If this Board chooses to act as the hearing officer, either individually or collectively essentially it's just our time that we put in. We may have to have further discussion

on whether we can proceed just on regular every two week meetings or whether we would have to schedule additional meetings as needed to take care of that hearing plus additional regular Board business and that's certainly something for discussion. But, I think it's a significant concern to take into account. It's not necessarily drive the decision one way or the other way but we should at least bear in mind that there is expense to the county for referring this to an outside hearing officer and even if we were to try and save the county money by taking that upon ourselves as this Board to be the hearing officer, that mean essentially an additional investment for time for not just us but staff and corporation counsel and all concerned. I don't have an easy answer for this. But that's something we should all think long and hard about.

And as it is and I've said before, I'm not happy at all with the pace of things. To me it just sounds like foot dragging and in the meantime this operator seems to be, from what I've heard so far, continuing to be allowed to be in violation of county ordinance and at the significant potential expense of his neighbor who has complained bitterly to this Board and others.

Chairman Abbott: John?

Mr. Rapacz: Thank you Mr. Chair. If I could make a recommendation based on the discussion. If the Board would consider a 30 day continuance and order that the parties should appear, at that time either Mr. Kolbe or myself in discussion with the county planner that's assigned to this application, we will be able to tell you, number one either that the hearing of the application will be scheduled on a particular date or will we not be able to tell you that. And I will ask that if you would give us the opportunity to at least get the hearing schedule and be able to report that to you, before you make a decision to proceed with a contested case and the appeal. Because for example, the Planning Commission hearing on the application could happen in April and we could report that to you in March.

And at that time I would assume that if the application were to be heard in April you wouldn't want to proceed with a contested case hearing. And I'm sorry I don't have more precise and more definite information for you at this time. But I think it would be reasonable to say that we the staff must present that information next time, or else you'll make a different decision.

Chairman Abbott: I think that's good.

Mr. Sung: I like that recommendation too and again I won't speak for this Board, just speaking for myself and thinking out loud. Patience is extremely thin from my view point on the status as well as on the flow of information coming to this Board. I think that our forbearance has been asked for, but really there needs to better justification. I would venture to say that again, speaking only for myself, if I do not hear that a Planning Commission hearing has been scheduled within a date that I would find reasonable, I would be very much inclined to say enough is enough and schedule the hearing for the appeal for this and get the ball rolling from this Board's end immediately; whatever it takes and that's it, no more grace time.

Mr. Rapacz: Ok. We've heard that message loud and clear and I'll be sure that Mr. Kolbe hears it as well.

Mr. Sung: Please do thank you.

Chairman Abbott: Thank you. Moving on- -

Mr. Murai: You should probably make a motion first.

Mr. Kihune: Are we going to make a motion?

Mr. Murai: Yeah. Raymond if you want to put that in a form of a motion.

Mr. Sung: I will move to allow a continuance of the matter before us for no later than the next scheduled meeting, one month.

What is the exact date Chalsey?

Ms. Kwon: The 24th.

Mr. Sung: To no later than March 24th at which time we would expect a report that includes or doesn't include but we would hope that it includes a specified date already scheduled for the Planning Commission.

Chairman Abbott: I would only suggest again if everything you said was good. But I think starting it out and saying, "We reject your request for a three month application- - then follow up with what you said."

Mr. Sung: That's fine. I would move that we reject the request for a three month continuance and instead grant a variance of no more than one month; basically to the March 24th meeting- -

Mr. Murai: With the conditions?

Mr. Sung: - - With the conditions stated.

Chairman Abbott: Ok we have a motion.

Mr. Kihune: Second.

Chairman Abbott: We have a motion and a second. Any discussion?

Mrs. Reyher-Colon: I have a comment.

Chairman Abbott: Yes, please.

Mrs. Reyher-Colon: Are we going to require them to report to us in person or in written form? Because they wanted to send us a written report on their recommendation.

Mr. Sung: I would say that-that written report can come to us before the one month meeting. But I would like them to be here in person and I think that if you want to require the written report in advanced, we could certainly do that. So if you want to amend that motion, I would be in favor of that.

Board of Variances and Appeals
Approved Minutes-February 25, 2016
Page 28
Chairman Abbott: Discussion?

Mr. Max Kincaid Jr.: Is there any way we can cease and desist them at this point, until we get these reports? Because there are too many- -

Chairman Abbott: I myself, would like them to present the report in 30 days. Somebody here present it. Not send me a letter.

Mrs. Reyher-Colon: Physical. Yeah.

Mr. Kihune: Physically.

Mrs. Reyher-Colon: I would want them here in person.

Mr. Kihune: Yes, in person.

Chairman Abbott: Yes.

Mr. Murai: You could certainly request that the parties appear and it might be a good idea because that way, if you have instructions for the parties, you don't have to wait until we draft the letter and that kind of thing; and that way they'll know instantaneously what the Board's inclinations are. And they can better answer or address your concerns if they're present.

Mrs. Reyher-Colon: Can I make a motion to amend the previous motion?

Chairman Abbott: Please.

Mrs. Reyher-Colon: I make a motion to amend the previous motion, to have the parties present to provide us with their report.

Mr. Sung: In advance or at the meeting?

Mrs. Reyher-Colon: At the meeting.

Mr. Murai: You can ask that the report be provided before the meeting so you can review it and request that the parties appear so you can ask them questions.

Chairman Abbott: That's what I would like. I want a report first then - -

Mrs. Reyher-Colon: Ok. So have a written report prior to the meeting and have them present at the - -

Mr. Sung: March 24th meeting.

Mrs. Reyher-Colon: March 24th meeting.

Mr. Sung: I would second that motion for amendment.

Chairman Abbott: Any more discussion?

Mr. Murai: Vote on the amendment first and then vote on the main motion.

Chairman Abbott: Ok. Voting on the amendment. All those in favor?

Members: "Aye".

Chairman Abbott: Voting on the motion as amended. All those in favor, say Aye.

Members: "Aye".

Chairman Abbott: Any opposed? No ok. Carried- -

Mr. Kincaid: Opposed.

Mrs. Reyher-Colon: One opposed.

Chairman Abbott: One opposed?

Mr. Sung: Yes. Max wants justice now.

Mr. Kincaid: Yeah, you know how long are they going to play us?

Chairman Abbott: **Motion carried** as noted.

VOTED: Motion to approve a continuance of the subject matter to the March 24, 2016 meeting, with a condition for the Board to receive a written notice prior to the meeting and the parties' physical attendance at the meeting.

(Assenting: G. Abbott, T. Espeleta, H. Kihune, W. Greig, R. Sung, J. Reyher-Colon, M. Kincaid)

(Excused: C. Fukunaga, P. DePonte)

Mr. Sung: You're absolutely right. And I would really like more information on basically who at the county could initiate the cease and desist and back it up with a court order if necessary? And I understand that each department may have some discretion on whether to go further or not. But I'd also like to be given the advice of whether this Board has the ability to instruct or strongly urge that the exercise of discretion be in support of our desire to issue a cease and desist and back it up with a court order to basically get those guys to stop doing what they're doing until they actually get the approval or a permit to do it.

Mr. Murai: Well, this Board hears appeals. Although I supposed you could certainly request or recommend injunctive relief. That injunctive relief be taken.

Mr. Sung: And we could basically condition any decision regarding the appeal on that injunction going forward right?

Mr. Murai: I don't know. That part I'm not sure about. But also another thing you have to cognizant of is, generally speaking is we have to remember what is ajenized and we are constrained in taking actions or having discussions on matters that aren't on the agenda.

Now, if you wanted to place your concerns on the agenda for discussion at the next meeting, then that's fine but I would caution the Board not to take any Board action that is not properly ajenized.

Chairman Abbott: I agree.

Mr. Sung: By that are you saying that every specific thing that we could possibly do has to be on the agenda or it's just a general topic and if it fits under the umbrella of that general topic, it's ok?

Mr. Murai: Well, I guess I have to hear what it is before I can know. But for example, if the Board were to take any kind of action against the appellants today, that was not described on an agenda and they may say that, "Well, they never had a chance to appear or to address it" or that the public did not have an opportunity to come and testify for or against the matter.

Mr. Sung: Well for example today's agenda just simply states that it's the appeal for the Planning Director's Notice of Violation for the Zip line activity, etc. etc. Update on the County's Special Use Permit.

So the general topic is still the same and I think that everything that we have discussed so far today falls under the general umbrella of the - -

Mr. Murai: Yeah, I know right and I've been ok with everything I've heard so far. But when you start speaking of stopping the activity, if it's on going and that kind of thing. I think that would be premature for today.

Mr. Sung: Would it be appropriate to have something on the agenda for the March 24th meeting to say "This Board will consider additional action regarding the D&S Ventures"?

Mr. Murai: Yes, that's what you have to say. That the Board may take further action.

Mr. Sung: May we ask for your advice on crafting that language so that it does appear in the agenda for the next meeting?

Mr. Murai: I probably want to defer to Richelle Thomson, because she's the attorney that normally advises the Board.

Mr. Sung: But how do we get that done before the next meeting because after today's meeting, we don't meet again until the March 24th meeting.

Mr. Murai: Well, generally speaking the Chair sets the agenda. I'm not sure if there's an agenda setting- -Well, the Chair sets the agenda. Agendas are posted six days prior to the meeting. Up

until six days . . . up until the posting of the agenda. The Chair can work with staff with the Board Secretary in setting the agenda.

Mr. Sung: Even outside of an official meeting?

Mr. Murai: Oh yes.

Mr. Sung: So I would just ask the Chair to please consider working with Richelle Corporation Counsel and staff to get appropriate language in the agenda for the March 24th meeting that makes clear that this Board reserve the right to take additional action should there not be - -

Chairman Abbott: I'll discuss that with Richelle.

Mr. Sung: On how to craft that language? Ok thank you.

Mr. Rapacz: We can work with Richelle also to include language to the effect that the Board will consider a - - can be similar to this and that you'll review a communication in an update and consider and or take other action on the appeal. It can be something very broad like that so that you have some freedom in terms of what you do.

Mr. Sung: Thank you.

Chairman Abbott: We've got to come across as a united front. That would take all of them and us and Richelle, but we'll get it done. Any further discussion on that.

E. ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER (D&O)

1. Having voted on August 13, 2015, to approve the variance for Maui Hyatt Vacation Club-New Timeshare Addition (BVAV 2015/0011), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.
2. Having voted on August 13, 2015, to approve the variance for Lokahi Pacific Mokuahau Subdivision (BVAV 2015/0013), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Chairman Abbott: Ok going on to Findings of Facts. This is a review of the two things that Chris Hart - -the approval of the variance that was granted for the Hyatt - - it just has to be attested that everyone here has read or has had purview of this information. If you have any questions, please feel free. If not, I'll call for a vote for approval of the Findings of Facts.

Mr. Kihune: Approved.

Chairman Abbott: Do we have to vote on this?

Mr. Murai: Yes.

Mr. Kihune: I'll make the motion to approve both items with regards to Findings of Facts for today's meeting.

Chairman Abbott: Oh Ok. Thank you. We have a motion. Do we have a second?

Mrs. Reyher-Colon: I second.

Chairman Abbott: All in favor?

Members: "Aye."

Chairman Abbott: Any opposed? Hearing none. **Motion carried.** That's closed.

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0011) and (BVAV 2015/0013).

(Assenting: G. Abbott, T. Espeleta, H. Kihune, W. Greig, R. Sung, J. Reyher-Colon, M. Kincaid)

(Excused: C. Fukunaga, P. DePonte)

F. NEXT MEETING DATE: MARCH 24, 2016

Chairman Abbott: So there will be no meeting until the 24th of March. Ok. Thank you very very much for your help.

G. ADJOURNMENT

Chairman Abbott: Meeting's adjourned.

There being no further to come before the Board, the meeting adjourned at 3:19 p.m.

Respectfully submitted by,



CHALSEY R. K. KWON

Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

G. Clark Abbott, Chairman
Teddy Espeleta

William Greig
Raymond Sung
Howard S. K. Kihune
Juanita Reyher-Colon
Max Kincaid Jr.

Excused:

Chad Fukunaga, Vice-Chairman
Patrick De Ponte

Others:

John Rapacz; Planning Program Administrator, Department of Planning
Carolyn Cortez; Supervising Planner
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning
Lance Nakamura; Department of Public Works
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel