

APPROVED: 6/25/2015

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
May 14, 2015**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Abbott at approximately, 1:31 p.m., Thursday, May 14, 2015, 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 Abbott: Board of Variances and Appeals meeting is now called to order.

B. PUBLIC TESTIMONY

Chairman Abbott: Any members from the public want to testify before any of the articles before the Board right now please step forward now, because you cannot be called after the item has been presented. Your time is three minutes.

Sir, if you please identify yourself and speak into the mic, we'd really appreciate it.

Mr. John Torres: My name is John Torres. I live in Haiku, very close to the Fire Department project going on. I'm all for the Fire Department in Haiku, cause we need one. But, I'm not for them widening the road above East Kuiaha Road.

I don't think it should be widened. That's too much of a cost, too much big of a project and it's a big project. A big cost already, just putting the Fire Department in, by subdividing the land and everything. So I don't think that the road should be widened. That's it.

Chairman Abbott: Ok. Thank you very- -

Mr. Torres: 'Cause I live directly at that intersection. Thank you.

Chairman Abbott: Thank you. Do we have any questions for the gentleman? Guess not. Ok. Thank you.

Chairman Abbott and Ms. Richelle Thomson: ...discussion...

Chairman Abbott: Is there anyone else wishing to testify?

Ok Malia, could you give please us a description of what's before the Board?

C. PUBLIC HEARING

- 1. JEFFREY MURRAY, FIRE CHIEF, representing THE COUNTY OF MAUI, DEPARTMENT OF FIRE AND PUBLIC SAFETY is applying for a variance from Maui County Code (MCC) §18.20.040(B) "Existing Streets" to delete the road widening requirement on East Kuiaha Road from the existing 15 feet to 20 feet and to delete the 300 minimum linear feet of shoulder grading which is required by code, for the property located on East Kuiaha Road, Haiku, Maui, Hawaii; TMK (2) 2-7-007:008 (BVAV 2015/0006) (M.Balberdi)**

Mrs. Malia Balberdi: My name is Malia Balberdi with the Planning Department. *Reads item into record.*

Chairman Abbott and Ms. Richelle Thomson: ...discussion...

Mrs. Balberdi: Before he starts. . . There is a presentation that's prepared for you today. First, I would like to familiarize all of you with the subject property that relates to the variance application.

This is the parcel of land that is owned by the County of Maui, which is approximately 27.9 acres. This is Hana Highway, and when you turn mauka, off of Hana Highway, is East Kuiaha Road and the area which applies to the variance is this area right here.

So I'd like to introduce the applicant, Fire Chief Jeff Murray.

Fire Chief Jeff Murray: Aloha and good afternoon. I'd like to talk a little bit about the project. So, it's a four lot subdivision. Approximately six acres of that we're going to utilize for our Fire Station and the remaining lots is approximately 21 acres.

If you see here, there's a picture of our design for that station as it stands right now. The construction cost in 2011 was estimated at 11 million. In 2017 utilizing an escalation percentage, it cost up to 13 million. It's a building little over 9,000 square feet. It's got two apparatus base for our fire trucks, they are two deep and housing for our fire fighters, 24 hours a day.

We are here to ask for the variance so we can move on to the next step for our Environmental Assessment. In 2016, the Land Use Amendments is what we are looking for and then hopefully, if things go well, 2017 we can request for construction funding and then start construction in fiscal year 2018.

On this slide here, shows you our run count from 2011 and 2012. We weren't able to get the information that was current. But I have below, our actual run logs from 2014. But it doesn't. . . the color scheme on this map, might be slightly different than the one from 2011 and 2012. But this gives you a visual idea of the response and the locations from Paia Station and the new Haiku Fire Station and how much more outreaching we will be to their community.

Next slide, the two of our stations that overlaps the responsibility in these districts are Makawao Fire Station, which is this one and the one previous is Paia Fire Station. So you can see the locations of the three Fire Stations and the call volume.

One of the key things that you need to be aware of is the distance and average response time. So this one is 15, and I believe before it was 16.5 and that's a lot of time between getting a call, making it to the emergency scene. Regardless what it may be. . . house fire. . .

An example, we had a Kahului fire, a couple weeks ago and our units were there in four minutes. We made a really good stop. Stopped it from getting to the neighbor's homes and of course in these areas, some of the homes are far apart. But regardless of that, we were able to do that within four minutes.

So, I'm just trying to bring some relevance to response issue here and the timing that it has. And also, when you look at the last slide, Paia's jurisdiction goes all the way to Honumanu Bay right before Keanae, which is an average of hour and ten minutes for our response there.

The situation is what it is but, administration. . . previous administrations had the foresights to purchase this land for the use of a Fire Station. So, we've been holding on - having a holding pattern.

We've had the design for about six years now. And being here for the variance is one of the hurdles that is up against us. So were just here trying to plead our case. On the variance facts, I'd like to have Baron Sumida come up and speak about that. Thank you.

Chairman Abbott: Thank you Jeff.

Mr. Baron Sumida: My name is Baron Sumida. I'm a CIP Coordinator with the Department of Management. As far as variance facts go, the first item, there are no special geographical and physical circumstances or conditions affecting the property that are not common to all property in the area.

In the lower section of East Kuiaha Road, is about 200 feet where there's a steep embankment and having to widen that area would require a lot of excavation and is not

typical of all properties in the area. If you look at photos three and six in your application packet, there's some shots of the. . . pictures might not be very bright, but it kind of shows you the steep embankment. It's right at the intersection of Hana Highway and East Kuiaha Road.

The upper section of East Kuiaha Road has steep drop offs on both sides of the road and they drop down approximately 30 feet on both sides. So it would be very difficult for us to widen in those areas.

If you look at photo two, it kind of shows you a little bit of. . .you can see a lot of brush on the side of the road. But it's. . . you know, you walk five feet into the bushes then it just drops right on after that.

Variance fact number two, variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from the strict compliance with the provisions of this title, because of the special geographical circumstances or conditions affecting a property.

The required road widening and showed improvements would result in extraordinary hardship for the County. As I mentioned, East Kuiaha Road is extremely narrow in its existing state, there's steep drop offs on both sides of the road at the upper half and the high embankment on the lower section.

There's very little room to widen the road. There is no room to improve the shoulder area. There's sections of the existing road that are only 15 feet wide and having only five feet on both sides to widen and to improve the shoulder would be very, very difficult.

Variance fact number three, special circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision. The property has remained unchanged since the County has purchased it 2007. The special geographical or physical circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision. So nothing has been done on this property.

Variance fact number four, granting of the variance should not be detrimental to the public health, safety or welfare or injurious to other property in the vicinity of said property. A granting of the variance will not increase traffic flow along East Kuiaha Road. The main ingress and egress for the Fire Station will be from Hana Highway.

There has been. . . according to MPD, there has been no major traffic accidents in recent history in this vicinity.

Variance fact number five, a property has obtained an appropriate zoning designation provided, that for the purposes of this chapter, districts with interim zoning shall not be

considered an appropriate zoning. Appropriate zoning for this property will be obtained as necessary prior to the issuance of any permit.

Any questions?

Chairman Abbott: Questions? Questions from the Board?

Vice-Chairman Fukunaga: I have some questions. Do you have the subdivision map from your Power Point? Or a site map? Ok. So your access is going to be off of Hana Highway, is that correct?

Mr. Sumida: That's correct.

Vice-Chairman Fukunaga: So are there. . . I'm not quite sure, but how is it going to be subdivided? Is the Fire Station property, the only property that would be adjacent to East Kuiaha? Or any of the other lots going to be adjacent to ...(inaudible)...

Mr. Sumida: I think I'm going to defer this question to the Chief Murray or Wendy Taomoto.

Mrs. Wendy Taomoto: Wendy Taomoto, County Capital Improvement Coordinator, Department of Management. The Fire Station- - it's a four lot subdivision, and the fire lot has sole access off of Hana Highway. And to answer your question, there is one lot that's going to be adjacent to East Kuiaha Road.

Vice-Chairman Fukunaga: And is that lot going to access off East Kuiaha?

Mrs. Taomoto: Well, to create an access is a problem so we have- - we don't have to demonstrate. . . I don't know maybe Lesli can answer that question technically, because it's adjacent to East Kuiaha so. . .

Mrs. Lesli Otani: Lesli Otani with the Department of Public Works. With the subdivision application that they have right now, they show access to be off the adjacent roadways. If in the future they wanted to come in for a driveway apron, off of East Kuiaha Road, we would review that with the driveway application.

So right now, they might have legal access but if they want to put in practical access, if it's off of Hana Highway, we would defer to the State. And if it's off of East Kuiaha at the time that they come in for the driveway apron approach then they would have to get a driveway permit. Like anyone else.

Vice-Chairman Fukunaga: What is the proposed use for the - -

Mrs. Taomoto: The remaining lots excluding the Fire Station lot will stay in ag. We are not changing the zoning of the Fire Station- - the remaining lots; just the fire lot is going through a Change in Zoning.

That decision lies with the administration, the Mayor. But it's ag and it's being considered how we can once we subdivide, utilize the property. But for now there's really no plan but to leave it in ag until a decision is made by the administration.

Vice-Chairman Fukunaga: Ok.

Chairman Abbott: Go ahead.

Mr. Raymond Sung: Actually a couple questions. So, for Wendy. . . the question would be as to the remaining three parcels, they will remain owned by the County though? There's no plans to sell of those parcels to private ownership?

Mrs. Taomoto: It's a four lot subdivision.

Mr. Sung: Right.

Mrs. Taomoto: Two of the lots that is created is going to be consolidated. We have a concurrent consolidation subdivision in process with DSA to consolidate two of the lots to make the fire lot. And that was done so we can obtain the three additional water meters from the Upcountry water meter list. If the lots will remain under County at this time.

Mr. Sung: Ok.

Mrs. Taomoto: There's no discussion whatsoever I've heard of selling the lots.

Mr. Sung: Ok. Thank you. And then I have questions for staff. Can you please enlighten me on the purpose of the road widening requirements? Is it for safety? Is it for just forward progress and the development of the roadways in the County, whenever there's a subdivision?

Mrs. Otani: It's a code requirement that got passed by council.

Mr. Sung: But we don't know the purpose is for that requirement? What the legislative purpose is as to what was intended?

Mrs. Otani: Well, I think the basic idea is that as development occurs, the adjacent roadways are approved.

Mr. Sung: I then I guess a question for Chief Murray. Giving the existing narrowness of the road and assuming that it does not get widened because the variance is granted. Is it sufficient from a safety and practical standpoint for the fire apparatus to go in and out along that narrow road?

Chief Murray: Well, I only can say that we do it already. I think in the future if that's something that needs to get done I'm sure the County will be trying to work on that. I think what we're trying to do is prioritize the importance of the necessity of the Fire Station above this short portion of road. And if I have to balance the two, my opinion would be the station would be much more important than the roadway at this specific time.

Mr. Sung: Thank you.

Chairman Abbott: I have a question if I may please, to either Jeff or the other gentleman. If the major egress access ingress is from Hana Highway for the proposed Fire Station, correct?

Mrs. Taomoto: Yes.

Chairman Abbott: Ok. Therefore, anything to do with East Kuiaha Road is only really germane to the traffic that's going to be generated possibly from the Fire Station using the narrower road. And is it my understanding that any future development for that particular section of property, the access would be from East Kuiaha Road, rather than Hana Highway?

Mrs. Otani: If it would be helpful I have the preliminary plat with me if you want to circulate. But, I believe and Wendy can correct me if I'm wrong. But 6A and 6D are proposed for the Fire Station and it's off of Hana Highway, and these other two lots are also being created. So if you want to take a look you can see where the Fire Station is in relation to the side road.

Chairman Abbott: Ok. That answers my question. Thank you. So Jeff, the maximum size of the equipment that's going to be stationed at the Haiku Fire House, is it one of the huge monster trucks? A medium size, four wheel drive typed?

Chief Murray: Our goal is to have a fire engine which is eight feet wide.

Chairman Abbott: Its eight feet?

Chief Murray: Eight feet wide, all of ours are eight feet wide. We won't be having any ladders in that area. We may be having a tanker which will be eight feet wide, it's kind of standard.

Chairman Abbott: Ok. And the length . . . and we know they're eight feet but what is the proposed length of the vehicle?

Chief Murray: It should be around 32 feet.

Chairman Abbott: Around 32 feet?

Chief Murray: Yea. Less than actually.

Chairman Abbott: So, even today with no change in East Kuiaha Road, it's a tight squeeze for the trucks?

Chief Murray: Yes.

Chairman Abbot: Ok. Thank you very much.

Vice-Chairman Fukunaga: Chair, I have a question for staff. Is this request for a variance with respect to the subdivision process? If someone were to come in later to seek entitlements of the other parcels, would that then trigger a need for improvements along East Kuiaha? Or is this variance applying to that also?

Mrs. Otani: My understanding of the variance process is that the variance is specific to the subdivision permit itself. When they come in they apply under the Title 18 variance. If they came in to development one of the other two lots that have legal access or proposed legal access off East Kuiaha Road, it would depend on the type of permit. Because the way the building code is worded, if you come in for permit, depending on the development ; like if it's commercial and how much improvements, there's a certain criteria. They have to do the adjacent road and improvements.

And again, I'm only speaking for the County road not the State Highway. But, if they came in for a residential dwelling, that would be exempt because three or less residential dwellings are exempt. So it just depends if it's a commercial structure, then they'd have to do it.

Vice-Chairman Fukunaga: Or rezoning- -

Mrs. Otani: Well, rezoning . . . with the change in zoning, of course things can be added on by Council and for our review that affects the type of improvements because our standards are different for ag versus urban. So if they get a change in zoning for the other pieces to urban, then we start adding the curbing and such.

Chairman Abbott: If I may. John, could you give us a little more information on the staff analysis report? Because I notice there's . . . it's saying "no comment" at this time. Could you bring us up to date on what the staff's doing?

Mr. John Rapacz: Sure, thank you Mr. Chair. When it's a Title 18 variance, the Staff Report is prepared by Lesli's division, so she could provide any additional information.

Chairman Abbott: Ok.

Mrs. Otani: As I explained in the previous meeting, based on our review and our requirements, it's difficult for the department to openly come out and say "to not comply with the code". So we complete the Staff Report to our comfort level and if you have questions I'm here right now, I'm happy to answer any questions you may have.

Chairman Abbott: Does anybody have any questions? Raymond, question?

Mr. Sung: Not so much a question Chair, but just really a comment. Which is just that . . . at least I find it relevant that in the Staff Report and the Recommendation section, it does say that the Department of Public Works recommends granting the variance request. And so even though there are sections within the report where the analysis is "no comment"; but at least the conclusion is overall the Department of Public Works recommends granting the variance request. And nothing that Lesli has said so far, has contradicted that.

Chairman Abbott: I understand that, I just wanted to put that on the record. So it's in the voice and in the meeting record. So everyone else knows where it is . . . where it went. At this point in time, if there are no further questions from staff.

Mrs. Balberdi: Excuse me Mr. Chair. If the variance is granted, can you state how you guys are meeting the criteria? Are you using the applicant's justification in meeting the five criteria?

Chairman Abbott: I'm sorry; I did not quite understand what you were saying.

Mrs. Balberdi: If you're granting the variance, can you state for the record that you are assuming that the applicant's justification will meet your criteria?

Chairman Abbott: Yes, I understand that.

Mrs. Balberdi: Ok.

Chairman Abbott: Is there any more public testimony? If not, we'll close that, that's over. If there's no further questions, may I have a motion from the Board?

Mr. Sung: May I ask a procedural question? And this is for Corporation Counsel. So, in the past when we have granted similar variance request from a requirement to widen the road, there have been times where we would require, at least as a private party requesting variance, the indemnity and Hold Harmless and insurance policy. But since it's the County itself or at least the division of the County itself that is the applicant, what is the procedure in this case?

Mrs. Thomson: Thank you and that's a good question. You would not need to require indemnity and insurance sine strictly within the County.

Mr. Sung: Thank you.

Chairman Abbott: Do I have a motion?

Mr. Sung: Mr. Chair, I move to grant the request for a variance as stated in the application and for purposes with the request of staff regarding the justifications, I would propose adopting the applicant's reasoning and justifications and find relevant that the Staff Report does not contradict that. Thank you.

Chairman Abbott: Thanks.

Mr. Teddy Espeleta: I second the motion.

Chairman Abbott: The motion is made, seconded. May we have a vote? Excuse me, any discussion? May we have a vote, yes or no? All in favor say "Aye".

Members: "Aye."

Chairman Abbott: Any opposed? The **variance is granted**.

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

VOTED: Motion to approve variance request as stated in application and Staff Report.

(Assenting: C. Fukunaga, T. Espeleta, W. Greig, R. Sung)

(Excused: P. DePonte, H. Kihune)

D. ADOPTION OF A. ARK CERAMICS STUDIO (YEKNICH) APPEAL (BVAA 2014/0012) DECISION & ORDER (D&O)

- 1. Having voted on February 12, 2015 to approve the appeal in the above matter, the Board will consider and may adopt the applicable draft Findings of Fact, Conclusions of Law and Decision and Order.**

Chairman Abbott: Ok we'll now go to Section D., the adoption of the Decision D and O Order. Richelle will give us some intro.

Mrs. Thomson: So what we're doing today is formally adopting the decision made on the Petition to Intervene. So what you need to just need to put on the record is that you have all reviewed the record. If you were not present at the time that- that decision was made. And that the D and O as drafted actually reflect the record. So it's a formalization of the prior decision.

Chairman Abbott: Is there any comment?

Mr. Sung: Just a question, so I understand procedurally wise, necessary or appropriate. Question being, why was . . . what was discussed at that previous meeting in February itself not sufficient for whatever purpose this D and O order is sought?

Mrs. Thomson. That's a good question and it's because your Administrative Rules require a formal D and O to be written and sent to the petitioner.

Mr. Sung: That's in any case of the request for intervention that's granted or even denied?

Ms. Thomson: Right.

Mr. Sung: Thank you.

Chairman Abbott: Do we have a motion regarding the D and O to accept or deny?

Mr. Sung: I move to accept.

Chairman Abbott: Do we have a second?

Mr. Willy Greig: Second.

Chairman Abbott: Moved and seconded. Any discussion? All those in favor say "Aye".

Members: "Aye."

Chairman Abbott: Any opposed? **Carried.**

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

VOTED: Motion to accept A. Ark Ceramics Studio Decision and Order.

(Assenting: C. Fukunaga, T. Espeleta, W. Greig, R. Sung)

(Excused: P. DePonte, H. Kihune)

E. APPROVAL OF THE FEBRUARY 26, 2015 MEETING MINUTES

Chairman Abbott: Ok. Now going to the approval of the February 26, 2015 meeting minutes. Do we have any changes, questions, comments regarding the minutes? Any comments, any questions, any changes anybody wants to make? I'll call for an approval of the minutes. All those in favor say "Aye".

Members: "Aye."

Chairman Abbott: Thank you. Motioned. **Minutes are accepted and approved.**

VOTED: Motion to accept the February 26, 2015 meeting minutes.

(Assenting: C. Fukunaga, T. Espeleta, W. Greig, R. Sung)

(Excused: P. DePonte, H. Kihune)

F. NEXT MEETING DATE: Thursday, May 28, 2015

Chairman Abbott: Next meeting date is the 28th of May.

G. ADJOURNMENT

Chairman Abbott: Any other business before the Board? Meeting's adjourned.

There being no further to come before the Board, the meeting adjourned at 2:04 p.m.

Respectfully submitted by,

Chalsey Kwon

CHALSEY R. K. KWON

Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

G. Clark Abbott, Chairman
Chad Fukunaga, Vice-Chairman
Teddy Espeleta
William Greig
Raymond Sung

Members Excused:

Patrick De Ponte
Howard S. K. Kihune

Others:

John Rapcaz, Planning Program Administrator, Department of Planning
Carolyn Cortez, Staff Planner, Department of Planning
Malia Balberdi, Staff Planner, Department of Planning
Chelsea Rabago, Staff Planner, Department of Planning
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel