

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
September 10, 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, 1:30 p.m., Thursday, September 10, 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: The meeting of the Board of Variances and Appeals will now come to order, it 1:32 p.m. Let the record show we do have a quorum.

**B. PUBLIC TESTIMONY**

Chairman Abbott: As I see no Public Testimony we are going to have Malia . . . would you please read the agenda item and state the purpose of the application please?

**C. APPEALS**

1. **PETER KNAPMAN** representing **NATURAL GLOW LLC AND IMPORTAL ALOHA, INC, (LESSEES)** and the **GALLERY, LTD (OWNER)** appealing the Planning Director's Notice of Violation (NOV 2015/0012) for the unlawful solicitation of business in a public space occurring within the historic district pursuant to §19.52.090(E), Maui County Code (MCC), for property located at 716 Front Street, Lahaina, Maui, Hawaii; TMK (2) 4-6-009:031 (BVAA 2015/0004)

Ms. Balberdi: *Reads item into record.*

Chairman Abbott: Thank you. Is there a presentation?

Ms. Balberdi: No, there isn't.

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

Mr. Peter Knapman: Good afternoon. Peter Knapman representing the appellants.

Chairman Abbott: Thank you. Go ahead.

Mr. Knapman: An agreement has been reached with the County of Maui. Myself and Corporation Counsel, Tom Kolbe are here to put it on the record that the Appeal will be withdrawn. A \$1,000 initial fine has been paid and no additional fines are being façade under the Notice of Violation. So the payment of the \$1,000 fine will resolve the Notice of Violation and the Appeal is withdrawn.

Chairman Abbott: Thank you very much. Any questions?

Mr. Mike Hopper: So they'll be a filing of a notice of withdraw of the Appeal with the Board, so we can be aware that-that Appeal's been withdrawn?

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Mr. Knapman: Yes.

Mr. Hopper: Ok.

Mr. Knapman: Yes. The written filing will be done tomorrow.

Mr. Hopper: Correct. Ok.

Chairman Abbott: Thank you very much.

### **C. APPEALS**

2. **JACK R. NAIDITCH** representing **DAN BLESSING, owner of ISLAND CREAM**, appealing the Planning Director's decision to revoke permit S2015/0087 for a 2<sup>nd</sup> business identification sign at the Lahaina Gateway Plaza which is located at 305 Keawe Street, #511, Lahaina, Hawaii; TMK (2) 4-5-011:008 (BVAA 2015/0003)

Chairman Abbott: Next item.

Ms. Balberdi: *Reads item into record.*

Chairman Abbott: Thank you. Mr. Kolbe?

Mr. Kolbe: Hi. Good afternoon. If I recall the purpose of this hearing was to determine whether or not the parties were able to choose a Hearings Officer from the BVA approved list.

Chairman Abbott: Or work it out themselves.

Mr. Kolbe: Or work it out themselves, that's correct. And in fact I've had conversations with Mr. Naiditch who informed me prior to this that he wasn't going to be present at this hearing; and that I could represent our positions today.

We have chosen Guy Haywood who is one of the attorneys in town who is on that list and are also pursuing a resolution of this particular appeal in this interim period. But I've spoken personally with Mr. Haywood who has agreed that he can take this case and so the only real issue that I see is . . . as long as the Board is okay with Mr. Haywood being the Hearings Officer, then I think we can take make any further scheduling with him.

Chairman Abbott: Any questions from the Board? Do we need to make a motion to approved Mr. Haywood?

Mr. Hopper: Well, as I understand it- - was a previous motion made to regarding this issue of appointing a hearings officer? Did you guys already do this and authorize the parties to choose one?

Mr. Sung: Well, my recollection was that we- - they had asked for a longer period to essentially suspend the appeal. We gave them a short period and said "You guys talk it out, see if you can come up with a hearings officer on a fast track and come back to us in two weeks' time and report back to us." So I think this is the report. But I think that we as a Board would need to A. Confirm that -that's an acceptable hearing officer, because we've only been extending the appeal a little bit at a time.

Mr. Hopper: Well, if you wanted to appoint- - which is the action on your agenda today. Guy Haywood

is the hearing officer for this matter; you could certainly do that by vote. If that has not been done formally in the past and that's probably something that can be done and if the parties can work it out before there really needs to be much done in the case . . . then great you could just get a withdrawal of the appeal before much is done.

But if the parties have agreed on that then yeah, normally you would vote to- -I essentially concur with the parties' choice of Guy Haywood and appoint him as hearing officer to serve in this matter. So if you wanted to take a vote, you would need five votes to do that at this point. But you can take that vote now.

Chairman Abbott: Is a motion necessary?

Mr. Hopper: I'd advise it. You could do that by unanimous consent, but it's probably a good idea to do a motion and a vote.

Mrs. Juanita Reyher-Colon: I'll make the motion to appoint Guy Haywood as the hearings officer for the Island Cream's appeal process.

Chairman Abbott: I'll second. Any questions? Any discussions?

Mr. Hopper: Are you the Chair?

Chairman Abbott: Yes.

Mr. Hopper: Normally the Chair wouldn't be the second.

Mr. Sung: I'll second it.

Chairman Abbott: Ok thank you. It's been moved and seconded, any discussion? All in favor of the motion say "Aye."

Members: "Aye."

Chairman Abbott: No opposed, **motion's carried**. Thank you.

Mr. Kolbe: Thank you very much.

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

**VOTED: Motion to appoint Guy Haywood as the Hearings Officer for the Island Cream's appeal.**

**(Assenting: G. Abbott, C. Fukunaga, R. Sung. J. Reyher-Colon, M. Kincaid)**

**(Excused: P. DePonte, T. Espeleta, H. Kihune, W. Greig.)**

#### **D. APPROVAL OF THE JULY 9, 2015 MEETING MINUTES**

Chairman Abbott: Moving on. We've come to D. the approval of the July 9<sup>th</sup> meeting. My suggestion - -my idea is, as we're missing three essential Board members who may have some input on this,

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would we be wise to delay it for another time or another meeting where more people here to - - or do we want to go ahead with it as it is?

Mr. Hopper: If you're just approving minutes I don't think it necessary to have other members to come in and vote on that. It's up to the body, if you want to wait that's fine. But there is a requirement in H.R.S 92 that the minutes be released 30 days after the meeting, no later then.

Draft minutes are ok, so they don't actually have to be approved for the department to give it out to members of the public who may want the minutes. But generally minutes you need five votes just like anything else.

So if you're comfortable that's certainly authorized. If you want to wait, you could. But in the meantime if it's 30 days after the last meeting, which it would then those minutes have to be made available to the public, even if they're in draft form. So it's up to the body.

Chairman Abbott: Ok.

Mr. Sung: I think that in light of Mr. Hopper's comments and the requirement under the statute to release minutes to the public that it's better to get something out there that's not in draft form but actually approved, then just a draft form.

That having been said, I do have corrections and the corrections are in the form of typo corrections as opposed to substantive changes and I've checked with Chalsey and I guess I'll ask Mr. Hopper for concurrence that it's okay to instead of reading those typo corrections item by item into the record to just give it to her to incorporate; if they're non-substantive and just technically typo graphical errors and corrections.

Mr. Hopper: I don't think that's a problem. I mean how many do you have? Is it a lot? Just so the body knows. If the body's okay with that then that's fine, but if there's going to be changes to the minutes and the body wants to actually read them, they can if they would like.

Mr. Sung: I'd say that they number in the dozen. The great bulk of them- - I'd say at least 80% or 90% have to do with those segments in the minutes where the transcript has me speaking. And I'm rather precise with my words so I know exactly what I said, and so those are just really corrections. They're not substantive changes but they'd make it correct.

Mr. Hopper: Chalsey, do you have or does staff have all of these and reviewed them and seen that they are okay and you understand what they are? You may want to just confirm with staff- - so you're all okay with them?

Ms. Chalsey Kwon: Yes.

Mr. Hopper: Ok. I don't have a problem with that if the body doesn't; I mean the body can take whatever action they'd like. If they're not comfortable with approving a bunch of changes without actually looking at them, that's fine. As long as they're not substantive- - these aren't of course minutes - - these are Sunshine Law minutes so they have to- - you can't go back and change like in some types of meetings you can go back and add things to the minutes or take things out that we're actually said but you don't want noted in the minutes. These are different; they have to be just typos and errors like that corrected; and if that's what happening that's not a problem.

So it's up to the body if you want to make the change or review the document first and then vote on the change. It's up to you guys.

Mrs. Reyher-Colon: I'm ok.

Chairman Abbott: I'm fine with that.

Vice-Chairman Fukunaga: I'm fine with that.

Mr. Sung: Before we vote, I did want to say on the record I previously discussed it with Richelle Thompson, Corporation Counsel. You may have noticed that shortly after the July 9<sup>th</sup> meeting, there was an article in the Maui News regarding the parking lot case in Lahaina; and they had inaccurately described not what the variance sought but inaccurately described what we the Board approved as the variance and they still essentially used the old wording of the variance application that they were seeking a reclassification of the property as a building rather than as a shopping center.

But we took deliberate pains on the record to make clear that we were only voting as a Board on whether to approve the change in the ratio of square footage to parking stalls. So that's what we did but never less the newspaper inaccurately described what we did. And so I wanted to just reiterate here on the record now, that we did no such thing. Our variance as approved changed the ratio for parking stalls to square feet, not anything of the sort of the classification of the property as one thing or another.

Thank you.

Chairman Abbott: I have no problem with accepting the minutes.

Mrs. Reyher-Colon: I'm ok.

Mr. Sung: I'll make a motion to accept the minutes with technical corrections as submitted.

Chairman Abbott: It's been motioned. Second?

Mr. Max Kincaid: Second.

Chairman Abbott: We have a second from Max. Any discussion? All in favor say "Aye."

Members: "Aye."

Chairman Abbott: "Aye." **Minutes are accepted.**

It was moved by Mr. Sung seconded by Mr. Kincaid,

**VOTED: Motion to accept the July 9, 2015 meeting minutes.**

**(Assenting: G. Abbott, C. Fukunaga, R. Sung. J. Reyher-Colon, M. Kincaid)**

**(Excused: P. DePonte, T. Espeleta, H. Kihune, W. Greig.)**

**E. NEXT MEETING DATE: SEPTEMBER 24, 2015**

Chairman Abbott: Next meeting is September 24<sup>th</sup>.

**F. ADJOURNMENT**

Chairman Abbott: As I don't see anything further on the menu . . . does anybody have anything to discuss? If not, the meeting's adjourned.

There being no further to come before the Board, the meeting adjourned at 1:44 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  
Raymond Sung  
Juanita Reyher-Colon  
Max Kincaid Jr.

**Members Excused:**

Patrick De Ponte  
Teddy Espeleta  
Howard S. K. Kihune  
William Greig

**Others:**

Carolyn Cortez, Staff Planner, Department of Planning  
Malia Balberdi, Staff Planner, Department of Planning  
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning  
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

**Others Excused:**

John Rapacz, Planning Program Administrator, Department of Planning  
Nancy Mahi, Secretary to Zoning Administration Division