

APPROVED: 10/13/2016

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
January 14, 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, January 14, 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: 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 there's only one item, I won't ask for public testimony at this time.

C. PUBLIC HEARING

- 1. WAYNE I. ARAKAKI OF WAYNE I. ARAKAKI ENGINEER, LLC representing TERRENCE KAI ON WONG** requesting a variance from §19.08.040(A), Maui County Code (MCC), "Area regulation for R-1 residential districts" to allow the consolidation of two lots that will have a combined lot area of 3,976 square feet and will have a lot width of 45.44 feet, when MCC requires that the minimum lot area shall be 6,000 square feet and the minimum lot width shall be 60 feet for the Amori Tract Subdivision (SUBD 3.2309) located at 92 Mission Street, Wailuku, Maui, Hawaii; TMK (2) 3-4-018:031 and (2) 3-4-018:114 (BVAV 2015/0019); (M. Balberdi)

Chairman Abbott: Will the staff please read the agenda item and state the purpose of the application please?

Ms. Malia Balberdi: Hi Malia Balberdi from the Zoning Division. *Reads item into record.*

Chairman Abbott: Thank you. Is there a presentation?

Ms. Balberdi: Yes, just a brief one.

Chairman Abbott: Thank you.

Ms. Balberdi: The property is located in Wailuku off of East Vineyard and Mission Street. This property was considered to be one lot until a separate lot determination was made by the Department of Public Works on July 25, 2013. As you can see, the parcel 114 is 1,034 square feet and the one in the front is 2,042 square feet.

The applicant applied for a building permit on June 19, 2013 to construct a two story main dwelling, which was issued on October 24, 2013 and as you can see the dwelling is almost right in the center of the two lots. A subdivision permit was submitted by the applicant on May 27, 2014. Upon speaking with Public Works, they informed me that Preliminary Plat Approval allows permits to be issued, however the dwelling cannot be occupied until Final Plat approval is obtained.

This picture represents what the house used to look like before it was demolished and this is what the new dwelling looks like. It passed final inspection on July 12, 2015.

That concludes my portion of the presentation we have Wayne Arakaki.

Chairman Abbott: Good afternoon Wayne. We know who you are you don't have to tell us.

Mr. Wayne Arakaki: Thank you. It's a short presentation. The owner is just trying to comply and consolidate the property based on the County's request. So, it was built with a building permit, he went through all of this and from what I understand- - the owner is here, Terrence is here so if you have any questions you can ask him- - but, as I understand- - I'll let him speak as to why this think came about. Just a moment.

Mr. Terrence Kai On Wong: Good afternoon.

Chairman Abbott: Thank you sir, would you state your name please?

Mr. Wong: Terrence Kai On Wong.

Chairman Abbott: Thank you.

Mr. Wong: I'm trying to correct what I presumably made a mistake on with a letter I got from Real Property, due to the fact that the mortgage company for my son requested to find out if it originally or was two separate properties on that one parcel of 92 Mission Street. So I had to get a letter from Real Property so they indicated that it was, so I gave them the letter and in that letter it requested that if I wanted to have a new tax map key and which I mistook to be giving me a new tax map key for the whole property; consolidating it into one and that was the mistake where I did request that and it ended up with two separate TMKs.

So now I'm trying to correct this before anything happens to me and my son has a problem with this later. That's about it as to what happened and why it happened and if you have any questions-
-

Chairman Abbott: Thank you very much. Questions for Mr. Wong?

Vice-Chairman Fukunaga: I have a question.

Chairman Abbott: Sure.

Vice-Chairman Fukunaga: How did you acquire the property? Was it- -

Mr. Wong: I bought it from the estate of my grandmother for my parents to live.

Vice-Chairman Fukunaga: So you received a deed?

Mr. Wong: Yes.

Vice-Chairman Fukunaga: Did the deed describe that it was in fact two lots?

Mr. Wong: All the paper work- -actually it was three separate lots under my grandfather's name, because one is attached to Vineyard Street below that. Below the Correira house I think it is and Uweda (Sp?) house, there's one long property that's back there which is where I live. That was one and then 92 Mission Street were two separate properties originally which the state had consolidated into one tax map key way back when.

Somehow my grandfather acquired it, but I don't know how. I read what he bought pieces of certain people but I can't figure it out. You know how it was way back then yeah?

Chairman Abbott: So your property is behind or?

Mr. Wong: Right below.

Chairman Abbott: Ok. Below. Thank you. And that was the Vineyard Street property?

Mr. Wong: Correct.

Chairman Abbott: Any other questions?

Mr. Max Kincaid: Both of the lots are substandard as far as the county's concerned. And even in the corporation of the two lots it's still substandard . . . I mean as far as 6,000 square feet.

Chairman Abbott: Any further discussion? Staff, remarks?

Mrs. Carolyn Cortez: Carolyn Cortez with the Zoning Administration. So what Member Max said about the two lots are existing substandard and then the consolidation of the two lots are still substandard that's why Mr. Wong needs the variance because you cannot create a lot in the R1 residential district that is less than 6,000 square feet and 60 feet in width.

Chairman Abbott: Juanita please.

Mrs. Juanita Reyher-Colon: So being that the consolidated lots are still substandard how the setback requirements are going to affect the property? Does it?

Mr. Arakaki: On the setback requirements it was noted that the building inspection was in May and it passed inspection so it met all the setback, normally it's like six feet on the side and 10 feet from the back so yeah, it's ok.

Mrs. Carolyn Cortez: Mr. Chair?

Mrs. Cortez: For clarification the setbacks are unaffected. It would still remain at six feet for one story side and rear and 15 feet in the front and then for a two-story its 10 feet side and rear and 15 feet in the front.

Chairman Abbott: Questions? Discussions? Raymond? Anything? Howie?

B. PUBLIC TESTIMONY (Continued...)

Chairman Abbott: We'll open up for public testimony if there is any. There isn't. Public testimony closed.

C. PUBLIC HEARING (Continued...)

Ms. Thomson: Can I ask a question for the staff?

Chairman Abbott: Go ahead.

Ms. Thomson: Does the Planning Department have an opinion on whether or not the standard insurance is recommended?

Mrs. Cortez: We did put the standard condition in but it's up to the Board whether they want to waive it or not.

Mr. Arakaki: On behalf of the owner, I'm requesting if we could waive or reduce the amount because it's a residential lot and it doesn't really affect any kind of right-a-way or anything like that.

Chairman Abbott: And we have no information or input from either the Fire Department or anything which would be a safety factor due to the clearances? Property lines etc.

Ms. Balberdi: Malia from the Planning. I requested comments from both departments and both had none to offer.

Chairman Abbott: Ok. Do we have any letters of support or recommendations not to?

Ms. Balberdi: No we don't.

Chairman Abbott: Ok thank you. Raymond, please.

Mr. Raymond Sung: Question for Corporation Counsel. Richelle, as to the question that you just asked regarding the insurance; are there any other factors that you think that the members of this Board should be aware of in considering whether or not to waive the insurance requirement?

Ms. Thomson: No, not necessarily. When I was going through the staff report - - the insurance - - so the Hold Harmless, I would recommend you keep it in. The insurance is really at your discretion and you're balancing the risk to the County . . . does the variance cause certain risks that we're

trying to insure against and in this case as far as my personal opinion, I didn't see that consolidating these two smaller lots into one lot caused a great risk to the County.

Mr. Sung: I would concur. Thank you.

Chairman Abbott: I have a question. On this picture, looking at the two lots that were consolidated into one, judging if its fractionally comparable to the lot 8030 and 8032, the size is virtually identical as far as I can read; and the location of the house on 8030 is right next to his property line; and I just can't - it appears that they're both the same size lot and ones there and one isn't. Maybe I'm just not seeing something but it doesn't follow any rule or regulations that I can see. They're all very narrow long lots. I'm not in the construction business and don't understand a lot of this. So if anybody can help me.

Mr. Kihune: Comment?

Chairman Abbott: Please.

Mr. Kihune: As far as I'm concerned, I'm okay with the support of the variance in regards to - as long as it's within the setbacks which has been mentioned and has been inspected I'm pretty sure Fire is comfortable that's why there was no comments. I'm pretty sure there's enough fire safety or fire hydrants in the area to support them.

I think in that area based on - it's an old subdivision it's been there for I don't know how many years but a lot longer than I have, I'm pretty sure but I think although we're going to - looking at consolidating the two lots to make one, is still not up to standard but I think it's a lot better than it is now, the two smaller lots one that's barely a thousand square feet and the other one too. It's almost - they're basically unbuildable to some degree.

And I think in good measure the applicant applied for his building permits, got the building permits subject to occupying based on approval of the consolidation of that time, and I'm pretty sure that the owner at some point is carrying some of the cost of impeded interest on the construction of this home too for the last probably six or seven months that's just been completed. I'm assuming, and he can correct me if I'm wrong.

But, my comment is that I would support the variance and I would like to eliminate the insurance of it. I would still have the Hold Harmless Agreement in place. But, I think a question for the owner is that - I'm assuming the property is mortgaged? I mean the house is mortgaged, correct? So they'll probably have to have insurance on the house itself, right? So I feel comfortable with that the mortgage company will require that.

With that being said, should we make a motion or if a motion is made I would like to see the insurance clause - the Liability Insurance be eliminated from this motion.

Chairman Abbott: Raymond?

Mr. Sung: I would concur with Board Member Howard's analysis and just really to elaborate . . . in essence we have two substandard lots right now we want to or the applicant wants to combine them and even once combined or consolidated it would still be substandard as to minimum area

and minimum width, but the way that I say it as that at worst it's no different then what it already is. Possibly you eliminate the problem of having two substandard lots which future ownership may separate as to one of them being inherited or sold to one party and the other being transferred to another party and then you still have these two smaller substandard lots.

At least by consolidating them you sort of- -whatever risk or negative aspect there might be you've now essentially not eliminated it but minimized by having it all put into just one consolidated lot going forward, so to me that's a plus.

So I would support Board Members Howard's recommendation as well.

Chairman Abbott: Thank you. Any further comment? Would someone like to make a motion if there's no further discussion?

Mr. Kihune: I'll make a motion Mr. Chair. Motion that we approve the application with all the standard clauses that we normally do with the exception of eliminating the comprehensive liability insurance of a million dollars.

Chairman Abbott: Ok. We have a motion.

Mr. Teddy Espeleta: Second.

Chairman Abbott: Alright, seconded. Discussion? Seeing no discussion I'll ask for a vote. I'll ask for a vote, all those in favor?

Members: "Aye."

Chairman Abbott: Are there any opposed? **Variance granted.**

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

VOTED: Motion to approve variance with all standard clauses with the exception of eliminating the Liability Insurance requirement.

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

(Excused: P. DePonte)

Mr. Arakaki: Thank you.

Chairman Abbott: Thank you.

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

1. Having voted on May 28, 2015, to approve the variance for Tatiana Botton Parking Variance (BVAV 2015/0008), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.
2. Having voted on July 9, 2015, to approve the variance for The Outlets of Maui (TOOM 1) Parking Variance (BVAV 2015/0009), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.
3. Having voted on July 9, 2015, to deny the variance for the Smentek Residence Setback Variance (BVAV 2015/0010), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

4. Having voted on July 23, 2015, to deny the variance for the Lagoy Water Tank Setback Variance (BVAV 2015/0012), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Chairman Abbott: The next item on the list is Adoption of Findings of Facts, Conclusions of Law and Decision and Orders; and they are listed them in order.

The first is the Tatiana Botton parking variance.

Ms. Thomson: May I say something?

Chairman Abbott: Yes, please.

Ms. Thomson: What's important in adopting these Decisions and Orders is that if you had not had a chance to refer to the record related to each one of these D&Os then state that so that you can either have the time to review it now or that you would recuse yourself from voting. So if you have had the chance to refresh your memory and look at these D&Os and make sure adequately reflect the record and then you don't have to say something.

Mr. Sung: Question.

Chairman Abbott: Please Raymond.

Mr. Sung: In reviewing the draft D&O order for the Smentek, I did notice a typo and so I was wondering how would we address that?

Chairman Abbott: We'll do them one at a time, there are four of them. So we'll get to Mr. Smentek, I noticed them too.

Mr. Sung: Ok. Thank you.

Chairman Abbott: Let's complete the Tatiana Botton. Do we have any discussion? Anybody need additional time for reading or to be brought up to date? Questions? I will ask for a vote for approval of the D&O as specified here? All those in favor?

Members: "Aye."

Chairman Abbott: Any opposed? Thank you. That **motion is carried.**

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0008)-Tatiana Botton Parking Variance.

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

(Excused: P. DePonte)

Chairman Abbott: Moving on to Item 2 which is the Lahaina Partners and the Harry and Jeanette Weinberg. Again, the same things that Richelle discussed with us, if you don't know or are unable and don't know much about what it is, if you need additional time, we can grant that.

The decision has already been made it's just making sure that it is stamped and ready to go. Anyone need more time? Ok, I'll call for a vote for approval of the D&O, all those in favor say "Aye."

Members: "Aye."

Chairman Abbott: Any opposed? Ok. That **motion is carried.**

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0009)-The Outlets of Maui (TOOM) Parking Variance.

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

(Excused: P. DePonte)

Chairman Abbott: Moving on to Item 3. This is the Scott Smentek and Michelle Smentek variance that was denied and Mr. Sung I believe you had some questions or comments for typos?

Mr. Sung: I did. On page 11 of the draft in paragraph numbered 43. The second sentence has the typo and specifically it should read as follows: "the Board found that although the applicant did not personally create the hardship, as the legal" - - and now the next word is successor but it should be "Successor-in-Interest to the parties who did," and then the rest of the next clause "and

interest in ownership of the property” can be deleted because we’ve said successor and interests above; and then continuing on-comma keep the rest of the sentence, “they should be treated as though they personally did it with parenthetical citation. Thank you.

Chairman Abbott: Thank you. Again, if you need time to review this, please do.

Mrs. Cortez: Mr. Chair, I have a question for Richelle. So for changes to the D&O, how would like us to- -do we need to go back and revise it before the Chair signs?

Ms. Thomson: No, I think what we can do is - - unless there are a lot of substantial errors, we probably can go ahead vote to approve it with those changes made and then the Chair can sign it at the next meeting or some time in between.

Mrs. Cortez: Ok. Thank you.

Ms. Thomson: One of the things that I wanted to bring up that I just saw is page 13, it’s the last Conclusion of Law “that the conditions creating a hardship were not the result- -I believe that-that should say “The Board found that this standard was not met”.

Mr. Sung: That’s correct.

Chairman Abbott: Under a?

Mr. Sung: Yes. 3a.

Ms. Thomson: Thank you for your careful read, I really appreciate it.

Chairman Abbott: Thank you. Do we need more time? If not, I will call for an approval with the recommendations and the corrections by both Richelle and Mr. Sung as to changing the minutes, making it correct. Any other questions? If not, I’ll call for a vote. All those in favor “Aye.”

Members: “Aye.”

Chairman Abbott: All those opposed? That **motion is carried**.

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/00010)-Smentek Residence Setback Variance.

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

(Excused: P. DePonte)

Chairman Abbott: Moving on to Item 4. Gregory Lagoy and Joyce Lagoy. This is the removal of the 36,000 gallon water tank. Again, time if you have not or were not purview to the meeting or want additional time to peruse the minutes. Anyone need additional time? I shall ask for a vote. All those in favor in accepting the D&O say “Aye.”

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Members: "Aye."

Chairman Abbott: Any negatives? No. Thank you. That **motion is carried.**

E. APPROVAL OF THE SEPTEMBER 24, 2015 MEETING MINUTES

Chairman Abbott: Next item on the agenda is the minutes of the September 24, 2015 meeting. Any discussion, corrections or modifications?

Mr. Kihune: Motion to approve the minutes of September 24th, 2015.

Chairman Abbott: I have a motion, do I have a second?

Ms. Juanita Reyher-Colon: Second.

Chairman Abbott: Any discussion? If not, I'll call for a vote. All those in favor of accepting the minutes as they are. Please say "Aye."

Members: "Aye."

Chairman Abbott: Any opposed? None. **Minutes are accepted.**

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

VOTED: Motion to approve the September 24, 2015 meeting minutes.

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

(Excused: P. DePonte)

F. NEXT MEETING DATE: JANUARY 28, 2016

Chairman Abbott: The next meeting is January 28, 2016. Malia, do we have anything set?

Ms. Balberdi: We don't have any items ready for that hearing.

Chairman Abbott: So there probably will not be a meeting? Ok

Ms. Balberdi: Yes.

Chairman Abbott: Ok. Unless there's an emergency we'll just cancel that one. The next one will be February 11, 2016.

G. ADJOURNMENT

Chairman Abbott: Ok any other questions or any other business? If not, the meeting is closed. Thank you very much everybody.

There being no further to come before the Board, the meeting adjourned at 2:02p p.m.

Respectfully submitted by,
CHALSEY R. K. KWON

Chalsey 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
Howard S. K. Kihune
Juanita Reyher-Colon
Max Kincaid Jr.

Excused:

Patrick De Ponte

Others:

John Rapacz; Planning Program Administrator, Department of Planning
Chelsea Rabago, 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