

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
June 9, 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, June 9, 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 is approximately 1:30p.m. Let the record show we do have a quorum.

B. PUBLIC TESTIMONY

Chairman Abbott: As there is no public testimony coming today, I will close that particular part of the agenda.

C. INTRODUCTION OF NEW MEMBERS

1. **Ralph Masuda**
2. **Raymond Sung (reappointed)**

Chairman Abbott: At this time we will introduce our new members. Ralph Masuda, will you give us a little bit of background on yourself, and welcome to our club.

Mr. Ralph Masuda: I'm a retired planner. Worked for the County for 20 years and then for Lana`I Company for another 20 years and retired about 5 years ago.

Chairman Abbott: Good, lots of experience and you'll be welcomed here because we need all the help that we can get.

And Raymond, a reappointed member. Thank you Raymond and welcome back. Will you please introduce yourself to everybody again?

Mr. Raymond Sung: Raymond Sung, former and new member for the Board of Variances and Appeals. Thank you.

Chairman Abbott: Thank you.

D. ELECTION OF OFFICERS FOR 2016-2017 COMISSION YEAR

1. **Chairperson**
2. **Vice-Chairperson**

Chairman Abbott: Ok, at this time we're going to go to the election of new officers for the Board.

Mr. Gary Murai: Board members, good afternoon. Normally when we have elections, the first thing we need to do is decide on how we're going to hold the elections. Normally what the chair would do is- - we're going to start with the election of the chair and the vice-chair. Clark is going to open the floor for nominations and of course anyone may nominate themselves or another Board member to be the chair. Once after each nomination, Clark is going to ask whether there are any other nominations and if there are no other nominations he will close the nominations and then we're going to have a vote.

We also need to decide on how we're going to vote, the different methods of voting would be things like voice vote, "all in favor say aye" - - or "all in favor of raise or your hand"- -or it could be by roll call or it could be by ballot. Mostly we just do a show of hands. If there are only two nominees than whoever has the most votes will prevail. If there are more than two nominees and no nominee gets more than a majority of the votes, than the top two will get a run off; and then after that we'll have the election for the vice-chair.

Is everybody ok with that? Because it's the Board's call on how they want to do the election?

Mr. Sung: Just for clarification, is it a majority of the seven members present or a majority of the nine members on the Board?

Mr. Murai: The members present.

Mr. Sung: Thank you.

Mr. Murai: Ok, Clark.

Chairman Abbott: Ok at this time I will call for nominations for Chairman.

Vice Chairman Chad Fukunaga: I nominate Howard for Chair.

Chairman Abbott: Ok we have a nomination for Howard.

Mr. Sung: I seconded it.

Chairman Abbott: Ok, discussion?

Mr. Murai: No, we have to ask if there are any other nominations.

Chairman Abbott: Excuse me, are there any other nominations? Seeing none, we'll vote.

Mr. Murai: No, you have to close the nominations.

Chairman Abbott: Ok, we'll close the nominations.

Mr. Murai: Now, of course the members are free to speak for Howie or against and that goes back and forth and if there's no discussion and no one wishes to add anything the Chair will call for the vote.

Chairman Abbott: Is he allowed to say anything? Like yes or no or whatever?

Mr. Murai: Of course.

Chairman Abbott: Anyone have anything to say?

Mr. Murai: If not, you can call for the vote.

Chairman Abbott: If there is nothing else, I'll call for a vote. All those in favor say "Aye."

Members: "Aye."

Chairman Abbott: Any opposed?

Mr. Murai: Ok, record will reflect that the vote was unanimous. Congratulations Board member Kihune.

It was moved by Mr. Chad Fukunaga, seconded by Mr. Raymond Sung, then

VOTED: To nominate Howard Kihune Jr. as Chairman

(Assenting: C. Fukunaga, H. Kihune, W. Greig, J.Reyher-Colon, R. Sung, R. Masuda)

(Dissenting: T. Espeleta, M. Kincaid Jr.)

Chairman Abbott: Congratulations Howie.

Mr. Murai: We will now open the floor for nominations for Vice-Chair.

Chairman Abbott: Now we open the floor for nominations for Vice-Chair.

Vice Chairman Fukunaga: I **nominate Raymond for Vice-Chair.**

Mr. William
Greig: Second.

Chairman Abbott: Good idea. Any other nominations? Do you have anything to say?

Mr. Sung: I'll be happy to serve.

Chairman Abbott: At this time I'll call for a vote. All in favor say "Aye".

Members: "Aye."

Chairman Abbott: Any opposed? **Motion is carried**, it is unanimous. Welcome Mr. Vice-Chair. Before I relinquish this whole thing I just wanted to thank everybody for all that you have done

and all the good things we've gone through. I really do appreciate all your help and I wish Howard luck. Thank you again for everything.

It was moved by Mr. Chad Fukunaga, seconded by Mr. William Greig, then

VOTED: To nominate Howard Kihune Jr. as Chairman

(Assenting: C. Fukunaga, H. Kihune, W. Greig, J.Reyher-Colon, R. Sung, R. Masuda)

(Dissenting: T. Espeleta, M. Kincaid Jr.)

Mr. Sung: We'd like to thank you Clark for your leadership and easy going manner.

Chairman Abbott: Now I'm going to turn this over to Howard.

Mr. Murai: Actually, I don't know what this Board typically does but - -

Chairman Abbott: This is what they did last time- -

... (laughter)...

Mr. Murai: All I'm saying is you could choose to finish the meeting or you could relinquish chair immediately. Sounds like you want to get out of it- -

Chairman Abbott: No, no, it's just that -that's how it's been handled for the past five years.

Mr. Howard Kihune: I think for good old time sakes, I'd like to see him finish the meeting. Is that ok?

Chairman Abbott: Ok. That's fine thank you.

E. ORIENTATION

- 1. Policy Against Discrimination (J. Takakura)**
- 2. Variances (C. Cortez)**
- 3. Title 12, Streets, Sidewalks, and Public Places, Maui County Code (MCC) (C. Cortez)**
- 4. Title 16, Buildings and Construction, MCC (C. Cortez)**
- 5. Title 18, Subdivisions, MCC (C. Cortez)**
- 6. Title 19, Zoning, MCC (C. Cortez)**
- 7. Appeals (C. Cortez)**
- 8. Rules of Practice and Procedure for the Board of Variances and Appeals (G. Murai)**
- 9. Ethics (G. Murai)**
- 10. Sunshine Law (G. Murai)**

11. **Maui County Charter (G. Murai)**
12. **Chapter 91, Administrative Procedure, Hawaii Revised Statutes (HRS) (G. Murai)**
13. **Chapter 92, Public Agency Meetings and Records, HRS (G. Murai)**

Chairman Abbott: Do you wish to direct the orientation as counsel?

Mr. Murai: No well, all we're going to do is get started. We'll have Jacky Takakura start and then move down the list.

Mrs. Jacky Takakura: Good afternoon everyone, my name is Jacky Takakura. I'm the Administrative Officer for the Department of Planning and I've been with the county since 1998. I'm going to go over the policy that you have in front of you, it's the Policy Against Discrimination. I actually handed out two policies, there's that one and the Violence in the Workplace Action Plan.

The presentation is mostly about the Discrimination Policy but we do have both of those policies in place if a situation were to arise. After the presentation there's a certification form for you to fill out and return to Chalsey.

Okay, just quickly the policy is simple and if you actually look at the County of Maui's Policy Against Discrimination handout that I gave you, which I give to all employees everywhere by the way. It is also a part of the new employee orientation so, everybody gets this information.

If you look at the second to the bottom paragraph, this policy applies to all employees - - as officers or agents of the county, members of the County's Boards and Commissions are also covered by this policy. And the policy prohibits discrimination in any form, including verbal, written & physical harassment. The policy itself is not complicated. We can't discriminate against or engage in the harassment or retaliation of another employee or the public or individual. People who come before the Board, Board members, employees and so forth, we're all required to follow this.

Decisions made solely because of an individual's race, sex, pregnancy, orientation etc. are considered discriminatory. And the whole list of protected classes are in the very first paragraph of the Policy against Discrimination, there's like 18 or so and on the next slide there's a whole list of them also.

There are a few situations where like arrest and court record might be important, like say if you work for parks and you work with young children or with senior citizens, maybe you work at Kaunoa or something like that, but here that's not applicable to this department.

Discrimination can be in many different forms, terms, or conditions, pay or harassment or retaliation and you can see that it wasn't that long ago let's say your race did matter, I mean that's what you got paid based on a century ago. It was by race to determine how much money you made. That's obviously not allowed any more.

Other examples of unequal terms would be only allowing men to work late or use flex time or making assumptions about people with disabilities and not training them or thinking that older

employees can't learn computer skills and not giving them computers would obviously be discriminatory and would be prohibited.

Harassment is also prohibited. As I mentioned there are different forms, there's verbal, like the jokes that the person saying and thinks their funny but their kind of insulting, stereotyping are kind of unwelcomed invitations. Physical harassment, like touching and crowding or blocking someone.

A visual would be having posters, or cartoons, or drawings that are derogatory, those are all prohibited.

Discrimination in terms of gender could be an unwelcome behavior of a sexual nature or discriminating based on if a woman is pregnant or breast feeding. Because pregnancy and breast feeding of course is only a woman can do and that's why it's considered discriminatory if you were to make a decision based on a woman being pregnant or breastfeeding.

Sexual harassment is included in this policy and it affects employees, private individuals, individuals under consideration of employment and it could be a request for sexual favors, verbal or physical contact and like I mentioned, it can be an officer, an employee or a private person. The main thing that I haven't read there, are the advances are unwelcomed. And the key here like I have in bold are so severe or pervasive that it creates a hostile work environment. So it may not be harassment if a person asks another person out and the other person says no and that's the end of it, but it can be harassment if they keep asking over and over and over or it's asked in such a way that it's offensive.

If any of these situations occur, we do investigate them because we have a zero tolerance and will investigate and take action if we need to.

When we look at situations as it happens, we look at it from the victim's point of view, not necessarily from that person's point of view who has done that potentially harassing behavior. Not necessarily the intent, because a lot of people will say "Oh, well I didn't mean it" but, still it had that intent or impact on that person.

Disability, it is illegal to discriminate against an employee who has a disability provided they can perform the essential functions of the job with or without a reasonable accommodation. A lot of times it's real simple it might be that they may need a special type of chair or maybe they need to stand at their desk. A lot of times a person may look like they have a disability but they actually don't. So it's really important to not make assumptions. When we have employees with disabilities, they usually come to the employer and then we have that conversations on what's a reasonable accommodation.

Disability has to substantially limit a major life activity and it's permanent not just like a broken leg or something like that. Like I've mentioned it's important to not make assumptions, and likewise, people who look perfectly healthy can be disabled.

Another protective class is religion. No unequal terms and conditions, no harassment. We do provide reasonable accommodations for religious practices if that comes up.

If any of you or employees see something that could be potentially illegal discrimination, these are the questions to ask;

-Is this person a member of a protected class?

-Is it based on gender or race?

-A sexual orientation etc.?

-Was there an adverse action and did that action happen because of that person's class?

-Was there any legally valid defenses to what happened?

And if the answer is yes to the first three and no to the fourth, then it's probably illegal. Like I mentioned, we do investigate these and take them very seriously.

If you observe something that you think is discriminatory or you have been discriminated against, the key word there in bold is 180 days. You have 180 days to report it, you can report it to the Chair person, the EEO officer for the County which is Ralph Thomas, Will Spence or Michele McLean or the Corporation Counsel and we can walk you through the steps. We'd probably conduct an investigation and take any corrective measures if we need to. But remember 180 days.

Sometimes people go directly to the EEOC which is the federal agency or they go to the Hawaii Civil Rights Commission, in those cases we work with those agencies to provide them the information that they need so that they can make their decisions. In those situations we work with corporation counsel.

When I'm doing investigations I do tell witnesses, the accused, the complainants that we do take every step to keep the investigation confidential but we can't promise confidentiality. So we're ever talking to you about something we would tell you the same thing that we need to know the facts but we don't want you to go and be talking about it or spreading gossip or anything. Usually there's his story and her story and then the truth is out there somewhere, so that's the hard part, getting to the bottom of that.

Also no retaliation. If someone comes forward and makes a complaint, we tell them to let us know if there's retaliation and if so, we would investigate that as another situation that we would look into. I tell this to everyone, witnesses, complainants, accused, there's no retaliation- - it's prohibited.

With all county facilities, the pools, the stadiums, the gyms, we don't discriminate against people because the county is committed to the county policies and this is what we follow.

That's why you see it even on the Board's agendas, that last paragraph, if you need accommodations, give us advanced notice and we can try and get that for you.

Ok, that is basically Discrimination in a nutshell. The other policy, which I'm not going to go over but it's the Violence in the Workplace Action Plan, likewise this applies to all employees, board and commission members, contractors that work with the county. If a situation occurs, this is what I pull out and follow when we do our investigations and this is what we look for to see if there was a violation to the county policy. If something were to happen in the meeting. You're never precluded from calling 911, if you feel that's necessary certainly do so but we will also investigate it administratively in terms if there was a violation to this policy that occurred.

If you can't remember much else about these policies, remember basically treat others the way you'd want to be treated and 180 days. That's it in a nutshell...any questions?

Mr. Kihune: This would apply to say if someone outside of the workplace, at a social event that gets discriminated by somebody who might be working with the county?

Ms. Takakura: It really depends on the situation and who. If I'm not sure, I would call Gary, Gary knows the answer to those things. Sometimes it's grey.

Mr. Murai: For example the workplace violence policy, you're workplace is broadly inclined- -(in audible)... it all depends on each situation. But another thing and Jacky mentioned it but I want to emphasize that even though you folks are- -well these policies they also protect county employees, county officers-which are you folks and the public. If the public may make a complaint against a county employee and a county officer, so even if board members and commission members are volunteers, they're still consider officers of the county.

Ms. Takakura: Thank you very much.

Chairman Abbott: Thank you very much. We appreciate it.

Ms. Takakura: That was on how to behave, now back to how to approve plans.

Chairman Abbott: Ok, we'll go to item 2. Mrs. Cortez would you please- -

Mrs. Carolyn Cortez: Good afternoon Board members. My name is Carolyn Cortez, I am the Supervising Planner in the Zoning Administration and Enforcement Division of the County of Maui Planning Department and our Division is tasked with the staffing of this Board. Just a little bit, I'm originally from the Leeward side of Oahu and I married a Maui boy and we moved here with our two daughters in 2004. My administrator and the head of our Division is John Rapacz and he took vacation today, that lucky bugga. He is not present. Now he created this PowerPoint so I have to make a little disclaimer that I'm not to be held responsible for any content mistakes in this presentation.

Ok, so what we'd like to do for you today is give a general overview of what are variances and appeals. There are similarities and differences and the procedures for hearing them and also the Board's duties. I have with me today Chelsea Rabago, she is a staff planner and she has been with the department for a year and a half. You will see more of her in the coming months, being that my staff of four planners has been widdled down to two; Chelsea, Paul Critchlow and myself.

So she and I will be giving the presentation today and I will turn over the podium to her so she can tell you a little bit about herself.

Ms. Chelsea Rabago: Hello everyone I'm Chelsea Rabago. Just a little disclaimer, we have two Chelsea's in our department; so I'm Chelsea with an 'a' at the end and we have our great secretary who is Chalsey with a 'y' so when you're emailing us, make sure you get the right one. But if I do get emails from you guys I'll just forward it to Chalsey.

I guess a little bit about me, like Carolyn said I've been with the department for about a year and a half, brand new to the county so that's fun. I'm a UH West Oahu Grad and I also graduated from Kamehameha Schools here on the Maui Campus. So been here on Maui for a little bit but like Carolyn, I'm also originally from Honolulu and my family's from Honolulu.

The Maui County Charter authorizes the Board to hear and determine applications for variances from the strict application from any zoning

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

1. Having voted on October 23, 2014, to issue a declaratory order concerning variance granted for the property located at 45 Kai Ala Place, Kaanapali, Maui, Hawaii; TMK (2) 4-4-006:011, the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order declaring effect of variance granted.

Chairman Abbott: Correct. Mr. Mancini, please state your name into the microphones please.

Mr. Paul Mancini: Thank you for taking this out of order. My name is Paul Mancini. I apologize for asking you to do this. Unfortunately, I had a medical conditions and just came out of Kaiser a few minutes ago and it's difficult for me to sit down, even standing up.

But this matter has been brought up in October 2014 and the Board had voted on it at that time and approved the Declaratory Order. Sometime after that, I submitted to Corporation Counsel a proposed findings and the changes they wanted in the proposed findings. I had presumed that it had gone on to the Board and had been approved but I found out recently it hadn't; so it was sent down by Mr. Hopper recently for the Board to approve the findings that were submitted at that point in time.

I ask the Board to consider it and approve it. As I said, this took place in October of 2014 and to the Commissioner's, I'd appreciate the ability to have it approved, subsequent to the approval of the applicant Kaapanali Beach Villas did go to the Planning Commission and they got approval of SMA permit pursuant to the Declaratory Order that the Board had approved at that time.

Chairman Abbott: Thank you.

Mr. Mancini: Ok. Thank you for your time.

Chairman Abbott: May I have a motion to approve the findings of facts on this which we have a copy of?

Mrs. Juanita Reyher-Colon: I make a motion to approve.

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

Mr. Teddy Espeleta: I'll second.

Chairman Abbott: Do we have a discussion. I'll ask for a vote. All those in favor?

Members: 'Aye.'

Chairman Abbott: Any opposed?

Mr. Raymond Sung: Opposed.

Chairman Abbott: Opposed. Ok thank you.

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

VOTED: To approve the Hale Kaanapali Villas Declaratory Order

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

(Dissenting: R. Sung)

(Absent: P. DePonte)

Chairman Abbott: **The motion carries.** Thank you very much.

B. PUBLIC TESTIMONY

Chairman Abbott: As we have two items on the agenda today, if there is anyone in the audience who cannot be here at the time that your object is called, I will entertain testimony now. This is only if you have other things where you have to be.

Please state your name and the project.

Mrs. Teena Rasmussen: Thank you Mr. Chair. I'm Teena Rasmussen, I'm the Director of the County of Maui, Mayor's Office of Economic Development and I'm here today regarding The Whaler's Village variance request for the parking stalls.

I'm here to today to express our support for General Growth Properties' application for the parking stall variance for Whaler's Village fine shops and restaurants. Due to the renovation plans that are on their way and the fact that the center has its two major restaurants, Leilani's and Hula Grill a parking stall recalculation was triggered for 77 new parking stalls.

Our office feels the variance request is very appropriate for the following reasons . . . with the shopping complex renovations, the two restaurants are not increasing their seating capacity, and they will remain the same size. Another reason we're supporting it is the Whalers Village is due to its close proximity to major resorts, enjoys a robust amount of foot traffic into the shopping

complex which reduces the need for car traffic and parking. Also, many trollies and busses drop off and pick up shoppers at the center.

The shopping complex is landlocked and finding 77 more parking stalls would severely impact Kaanapali Resort. This scenario would turn a high value revenue generating property into more paved parking. This would impact jobs, it would impact the viability for the complex and ultimately a tax revenue for the state and the county.

Kaanapali was Maui's first master plan resort, it is an aging and mature destination it is absolutely critical that we allow the properties to go forward with renovation and revitalization as needed and as they are strategically planned. With the demise of our large agribusiness on the island, Maui is more dependent on the industry sector of tourism than ever before. Regardless of our attempts to diversify our economy. . . It is imperative that we keep the visitor industry healthy and the properties fresh and well maintained.

So we urge your support today for this variance. Thank you very much.

Chairman Abbott: Thank you very much, I appreciate it.

Mr. Bill Kamai: Aloha and good afternoon Chair Abbott and Board of Variance Members. My name is Bill Kamai, I am a service representative for the Hawaii Carpenter's Union. I'm here to offer testimony in support of GGP's parking variance at Whaler's Village that was granted previously by this Board in 2013.

At the time of the original application was submitted for review to this Board, the exterior floor space or outside seating area of the two restaurants of Leilani's and Hula Grill was not taken into consideration by the department when it did its calculations for parking. Having discovered the error from the original calculations which is why we are here today.

What hasn't changed since 2013 is the square footage of the restaurant and its use. It's still a restaurant and they haven't expanded. Also what happened to use since 2013 is the criteria that the Board uses in granting variances. It's still unique and exceptional, it's the only commercially zoned area along the Kaanapali boardwalk, strict compliance would prevent reasonable use. The commercial zoning restricts the 35 feet parking structure from being added too. The conditions creating the hardships were not the result of the previous actions by the applicant.

I would like this Board to uphold its earlier ruling in granting this variance from 2013 for the reduction of 77 additional parking stalls at Whalers Village. Mahalo.

Chairman Abbott: Thank you. Ok we're going to close public testimony on that item and start with the regular agenda now. Will the staff please read the agenda item and state the purpose of the application?

D. PUBLIC HEARING

1. **MY-KHANH THI NGUYEN AND LOC PHUC TRUONG** requesting a variance from §19.08.060, Maui County Code (MCC), "Residential Yards" to allow the existing dwelling to remain two feet from the front property line and six feet from the rear

property line when a 15-foot front yard setback and a 10-foot rear yard setback is required within the residential district for property located at 330 South Alu Road, Wailuku, Hawaii TMK (2) 3-5-006:011 (BVAV 2016/0004) (M. Balberdi)

Mrs. Carolyn Cortez: *Reads item into record.*

Chairman Abbott: Thank you, is there a presentation?

Mrs. Cortez: Yes. Chair, if you look in your handouts, I have one that has the location of the property. This property is located in the old Wailuku Heights area, it's off of South Alu Road. On page one that is a pictometry of the property and on page two – same property. Please ignore the yellow TMK line that is not the correct property line. This is . . . the orientation is west, north is on the right, west is up, east is down and south is on the left.

Ok, and on page three we are looking from the north and the second house with the white deck, this is on page three. That property line where that deck runs along the front, that's the property line in question- -well not the property line, but the setback.

On page five, that is a picture of the house and that rock wall there is the property line and the deck above that structure is within the setback.

On page six, this is like looking down the front property line. There's a walk wall and then the deck above.

On page seven, I'm standing on the rock wall and the property line follows on the right side of that rock wall and the posts are approximately two feet in from the property line when there's a fifteen foot front yard setback that is required.

If you turn to page eight, the gray is where the original house was and then looking for that room with the glass doors, that area is also in the setback as well as the deck above.

Page nine is a photo of the interior of that little room and as you can see . . . what the homeowner told us was that when this room was built there were supporting structures that were deleted so as to integrate this room into the original house, and it's just photos showing that integration, page nine and page ten shows the roof line.

At this time I'll ask Mr. Truong to come up.

Mr. Loc Phuc Truong: Hello, I think I could put my presentation away already, that was everything I needed to say. [Laughter] and thanks for not pronouncing my middle name like it's spelled.

Alright, my name is Loc Truong and I'm here to ask for a variance on my house.

Chairman Abbott: Mr. Truong are you agreeable to the waiving of the reading of the staff report?

Mr. Truong: Yes sir.

Chairman Abbott: Would you like to make a presentation to the Board or make comments to the staff report?

Mr. Truong: Yes sir I would.

Chairman Abbott: Thank you.

Mr. Truong: This is my property here, it's a small lot back here.

Chairman Abbott: Make sure you speak into the microphone please sir, it's the only way we can hear you.

Mr. Truong: Yes sir.

Chairman Abbott: Maybe the hand mic may work better for him.

Mr. Truong: Thank you. My lot is an unusual lot, it's a landlocked lot with access to a small easement here so you can't see it from the road, this is road down here, you can't see so the variance shouldn't affect how the neighborhood looks at all, it's going to affect how the house looks.

My options right now is to take down the structures or ask for a variance and in taking down the structure would kind of compromise the original structure of the house, because as you can see here the roof right here was taken out to put the new structure in and the wall was taken out too to put that other structure in and all the supporting beams on this side were taken out. So if I have to take this structure out to meet the setback requirement, it would compromise the original house and I can't live in it. So I'm hoping for the variance to this code to keep it the way it is.

Yes sir?

Mr. Sung: Mr. Truong just for the record, when you say that the support were taken out in order to put the new structure in- -

Mr. Truong: Uh huh.

Mr. Sung: Was that taken out by you or by the previous owner?

Mr. Truong: Oh no, I had nothing to do with this. The owner did this in 2006.

Mr. Sung: Right.

Mr. Truong: And I think he tried to get the after-the-fact permit for this structure but he failed because of the setback. He didn't have the options of the variance like I do because he created all the problems. I'm trying to fix the problems and I didn't take anything down, I didn't do anything to it, so he did all that.

Mr. Sung: And at the time you acquired the property, were you aware of those supports having been taken out?

Mr. Truong: Not at all, I had no idea it was this bad.

Mr. Sung: Thank you.

Chairman Abbott: Further questions?

Mr. Howard Kihune: I do Mr. Chair.

Chairman Abbott: Howie.

Mr. Kihune: At the time that you purchased this property was it in foreclosure from what I understand?

Mr. Truong: Yes sir it was. The bank took care of it.

Mr. Kihune: So you bought the property as is regardless of what issues it might have correct?

Mr. Truong: Yes sir.

Mr. Kihune: So you were aware of this issues at the time that you purchased the property, as far as setbacks?

Mr. Truong: Not the setbacks. I'm not familiar with any of these stuff.

Mr. Kihune: But basically you bought it as is? You took it just the way it came?

Mr. Truong: Kind of - - I feel like the bank agents kind - -it was an interesting story, I don't want to waste anybody's time by telling it but, she kind of said it's a quick deal or invest . . . she told me the investor . . . there were some investor from the mainland and Oahu and they were going to turn it into a multi-family rental unit, they were going to invest it in.

And she knew the situation we had because we net earlier, she told when the bank was trying to evict this gentleman it was going to get violent and she asked us to take the kids away from the house when they tried to evict the gentleman. She knows the situation that we were in and she said that you have to buy right away and fast or new inspection and investor was going to take it. Bottom line, I didn't know all the problems.

Chairman Abbott: Any further questions? Do we have any letters of support or opposition or comments?

Mrs. Cortez: Mr. Chair, just the one that you have in your packet.

Chairman Abbott: Mr. Souza?

Mrs. Cortez: Yes.

Chairman Abbott: Ok. Thank you.

Mr. Sung: Question.

Chairman Abbott: Yes, Raymond.

Mr. Sung: Carolyn, could you point out on the map which parcel is owned by Souza the author of the letter?

Mrs. Cortez: Yes, if you turn over the page it is parcel 22 which is number two circled on the map in the back. Sorry, on the letter there's a map on the back of the letter.

Mr. Sung: Ok, I see it. Thank you.

Chairman Abbott: Any other questions? Chad?

Mr. Chad Fukunaga: So when you acquired the property, was it incomplete? Was the improvements incomplete? And did you do work after that to enclose it or complete what was being done?

Mr. Truong: The structure wasn't complete and it's still incomplete. It's like an eye sore for the whole neighborhood. It's like a construction site. But we didn't do anything to the unpermitted structure the after-the-fact, we didn't do anything to it all, it's still that way it is. We're waiting for the whole permitting process to start.

Mr. Fukunaga: Ok, so you didn't do any work since you purchased it?

Mr. Truong: We did throughout the main house, the house that was permitted because the gentleman that was evicted he gutted the whole place and he just destroyed the inside and we did what we can to make it livable in the inside.

Chairman Abbott: Did you have a question?

Mrs. Reyher-Colon: Yes. Just for clarification, we're dealing with just the main house and not the secondary structure?

Mr. Truong: Yes ma'am, just the main house.

Mr. Fukunaga: I thought that the secondary structure had an encroachment issue also?

Mr. Truong: Oh this right here?

Mr. Fukunaga: Yes.

Mr. Truong: There's no encroachment on that, I was concerned with the encroachment here and the encroachment here. But there is no- - it meets all the requirements.

Mrs. Cortez: Mr. Chair, originally the variance was requested for a setback in the back but that is a single story structure so it only needs to be setback six feet and it is setbacks more than six feet. So the concern now is just the front of the house that has a 15 foot setback.

Chairman Abbott: Ok. Could you again point out the part that we're questioning?

Mr. Truong: Yes, can I get a marker?

Chairman Abbott: No, just - -

Mr. Truong: Oh sure. This is the property line right here and the deck that we are looking at in the pictures is right here it is two feet back from the property line and it requires to be 15.

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Chairman Abbott: Right ok.

Mr. Truong: Now, overall it's still 39 feet from the next structure, so it's not close at all to the next structure but it is close to the property line.

Chairman Abbott: Thank you.

Mr. Truong: And the other variance that I thought I needed was back here but turns out I didn't need it because it falls in the requirement.

Chairman Abbott: I understand. Thank you. I'm going to open for public testimony now, if anybody from the public wants to come up and speak regarding this issue please do so. Seeing no one, I'll close public testimony. We'll now close the public hearing. May we have the staff's recommendation please?

Mrs. Cortez: Based on the foregoing Findings of Fact and Conclusion of Law, the applicant has not met all the requirements for the granting of the subject variance. Therefore, the Director recommends denial of the subject variance.

However, if the Board decides that the applicant has met all of the requirements for the granting of the variance, the Director requests that for the record, the Board state the basis on which it finds that each criteria has been met. If the Board orders that the subject variances be approved, the Director recommends the following conditions number 1-6.

Chairman Abbott: Thank you. Any discussion by the applicant regarding the recommendation?

Mr. Truong: Yes sir. I hope you folks grant me the variance because taking the house down is really disruptive to the neighborhood.

Chairman Abbott: Any Board discussion? Raymond?

Mr. Sung: Two items Mr. Chair. The first for Mr. Truong. So, Mr. Truong if you would - -thank you. So looking at the green outline of your property, the lower right corner of that property is basically a notch, a rectangular notch and so what is your - - what is on your neighbor's property in that rectangular area?

Mr. Truong: Right here?

Mr. Sung: Right there right.

Mr. Truong: It's a cesspool.

Mr. Sung: It's a cesspool.

Mr. Truong: Yes. So nothing can be built there.

Mr. Sung: Thank you. And then this second question, I don't know whether this is for corporation counsel or for staff but it has to do with the recommendation in Conclusion of Law number two regarding the strict compliance with the applicable provisions of this title will not prevent reasonable use of the property. And as I understand it there's a recent Hawaii Supreme Court case called the

Surfrider case that is right on that subject so I would like some guidance from either corporation counsel or staff for the benefit of all of us here on the BVA as to what that means and how it is to be consistently applied.

Mr. Murai: Well. . . Board member Sung, my understanding of the Surfrider Foundation decision address the question of whether the applicant would be deprived of reasonable use of the land or the building if the provisions of the zoning code were applied strictly. So basically if you find reasonable use and said that reasonable use is not necessarily the use most desired by the property owner but rather it's- -with the property owner be deprived of any reasonable use of the property and the owner must establish an inability to make that reasonable use without a variance. In other words, it's the applicant who was able to show if the Board were to apply the zoning code strictly that it would be deprived its reasonable use. They must demonstrate that without the variance he would be deprived of that reasonable use.

Mr. Sung: Thank you.

Chairman Abbott: John, do you have any further input? Anything that might make this- -

Mr. John Rapacz: Thank you Mr. Chair. I understand it was just a question about the Supreme Court. I'm not sure if Corp Counsel referred the Board to page 12 of the second item Staff Report. If you look at your Whalers Village Staff Report, and the reason I'm referring you there is because we've addressed the item just in a little bit of detail or some explanation there. So if you folks can find that and turn to page 12, that's the one entitled Tessa Munkeiyo, Vice-President Munkeiyo Hiraga representing SUB L.L.C and there should be I believe a variance application attached to that.

Chairman Abbott: What page?

Mr. Rapacz: That would be page 12 of the report. Under Director's Analysis. I'll just wait until the Board members have that.

Looks like everyone has it. There was a Hawaii Supreme Court decision last October based on a Honolulu proposed development and the variance criteria that they have is virtually identical to ours of the second criteria; which is that strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. The court discussed in some detail how that provision should be applied or how that requirement should be applied. And what they've said is that if you find that without the variance, if you do not grant the variance then these folks would be left without any reasonable use of their property; that's the time when you should consider granting - -in other words this requirement would be met.

So, if someone is using their property for something reasonable already or if they could be using it for something reasonable and they are asking for a variance, they would not meet this test. So the example and the reason that we've brought it up in the earlier case and I'm referring you back is the property in question now could reasonably be used to put a dwelling on it, even without the variance. The deck could be removed or moved back to where the setback line is, the property would maintain or could still have reasonable use even without getting a variance. If that's the case, then they don't meet the second test and the variance should not be granted.

This has been the test, it's a standard test pretty much nationwide, but the court has made it clear that this is how it is to be applied. Sometimes the Board has looked at it or other Boards have looked at it and said, "Is what the applicant is asking for reasonable?" and the court made it clear that's not the

test. It's not a question of whether it's a reasonable request, it's a question of whether there's any other use of the property that they can do without the variance.

Chairman Abbott: Thank you John, I appreciate it.

Mr. Kihune: Mr. Chair. Question for the applicant. How did this variance come about? Why are you here? I mean I know why you're here but, are you here because you found this out through the process of applying for a building permit or you just know that you're in the setback and you're trying to correct it? Just curious.

Mr. Truong: I didn't know there was an option of a variance at all. I started through the application process about a year ago and I'm not familiar, I just stumbled through this and someone recommended there's an option for a variance that I could go through. That's why I'm applying for a variance.

Mr. Kihune: So you were applying for a building permit a year ago for the main house is that what you're saying?

Mr. Truong: For the after-the-fact structure, I'm just trying to correct all the violation that the previous owner did.

Mr. Kihune: Ok, so you knew about this how long ago? To apply for the after-the-fact?

Mr. Truong: When I bought the place.

Mr. Kihune: Ok, so when you bought it you knew there were some issues with the place?

Mr. Truong: Actually a county gentleman came and said there's some problems here and you can start the after-the-fact application.

Mr. Sung: But was that before or after you already acquired title to the property?

Mr. Truong: Afterward.

Mr. Sung: Right, thank you.

Mr. Kihune: And he came for what reason?

Mr. Truong: He said there was some issues with this house and I need an after-the-fact application.

Mr. Kihune: Was he called because of you or was he called by a neighbor? Do you know?

Mr. Truong: I don't know sir.

Mr. Kihune: So he just showed up and said there's an issue, you've got to - -you need to apply for a permit?

Mr. Truong: Yes sir, because it's been on his record since 2006.

Mr. Kihune: Interesting. Ok, thank you.

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Chairman Abbott: Raymond?

Mr. Sung: Mr. Chair I'm going to make a suggestion or a request that may be unusual but I'm anticipating a similar discussion regarding this reasonable use and Surfrider Foundation application of that rule in the next matter before us. So I'm going to request that we defer or put on hold any resolution of Mr. Truong's agenda item until immediately after the next item which is the Whalers Village item so that we can have the benefit of the discussion and application of the Surfrider Foundation rule and reasonable use rule in that case.

Chairman Abbott: I will ask corporate counsel on that one for guidance.

Mr. Murai: Board member Sung, what you're saying is you're going to close the public hearing and defer decision making until later?

Mr. Sung: Until immediately after the next item on the agenda is heard and dispensed with.

Chairman Abbott: Until Item 2 is discussed.

Mr. Sung: So that we might have the benefit of any discussions regarding the application of the rule generally- -

Mr. Murai: As long as the record is clear and that any factors or considerations that the Board uses or applies to this application are clearly defined from any factors that are used from any testimony, evidence and such are used in any other application.

Mr. Sung: I'm hopeful and confident that won't be the case.

Mr. Murai: So Mr. Chair I'd recommend that if Board member Sung is going to make that motion- - I anticipate that you're going to make that motion?

Mr. Sung: Yes, please. I so move.

Chairman Abbott: Do we have a second?

Mrs. Reyher-Colon: Second.

Chairman Abbott: We have a second. Discussion? I would imagine we would call for a vote at this time for the deferment until after the second item on the agenda which is the Munkeiyo, so I will have to entertain all those in favor of the slight deferment say "Aye".

Mr. Sung: "Aye."

Mrs. Reyher-Colon: "Aye."

Mr. William Greig: "Aye."

Chairman Abbott: Any opposed?

Mr. Kihune: "No."

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Mr. Fukunaga: "No."

Mr. Teddy Espeleta: "No."

Mr. Max Kincaid: "No."

Chairman Abbott: We have four no's - -the motion is defeated. So we now proceed regarding the variance.

Mr. Kihune: I make a motion for the current variance that the application in front of us to deny the application.

Chairman Abbott: Ok, do we have a second?

Mr. Espeleta: I Second.

Chairman Abbott: We have a motion and a second. Discussion? Seeing no discussion, I'll call for a vote. All those in favor of the denial of the variance please say "Aye."

Members: "Aye."

Mr. Murai: Mr. Chair, may I please ask for a show of hands? That might be easier to count.

Chairman Abbott: Yes please. These are "Ayes". So we have six ayes and one opposed. The motion is denied. The motion is denied.

Mr. Murai: No, the motion to deny is granted.

Chairman Abbott: The motion to deny is granted. I'm sorry.

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

VOTED: Motion to DENY the My-Khanh Thi Nguyen and Loc Phuc Truong Variance request.

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

(Dissenting: R. Sung)

(Absent: P. DePonte)

Chairman Abbott: Thank you. Let's take a five minute break for just a moment.

...Recess at 2:12 p.m. ...

....Return from recess at 2:16 p.m.....

Chairman Abbott: The meeting is now back to order for Variances and Appeals. Will the staff please read the agenda item and state the purpose of the application?

D. PUBLIC HEARING (Continued...)

2. **TESSA MUNKEIYO OF MUNKEIYO HIRAGA representing WV SUB L.L.C.** requesting a variance from §19.36A.010, Maui County Code (MCC), "Designated number of spaces," to allow a reduction of 77 off-street parking stalls for Leilani's on the Beach and Hula Grill restaurants for property located at Whalers Village Shopping Center, 2435 Kaanapali Parkway, Lahaina, Hawaii; TMK (2) 4-4-008:001 (BVAV 2016/0005) (M. Balberdi)

Mrs. Cortez: *Reads item into record.*

Chairman Abbott: Thank you. Is there a presentation?

Mrs. Cortez: Yes, there will be a presentation by Tessa Munkeiyo.

Chairman Abbott: Will the applicant please come forward and state your name please?

Ms. Tessa Munkeiyo: Good afternoon Chair and Board Members. My name is Tessa Munkeiyo Ing of Munkeiyo Hiraga. We have a presentation, it's loading so just a second please.

Chairman Abbott: Ma'am are you agreeable to the waiving of the reading of the staff report.

Ms. Munkeiyo: Yes.

Chairman Abbott: Thank you. Would you like to make a presentation to the Board?

Ms. Munkeiyo: Yes please.

Chairman Abbott: Thank you. Please do.

Ms. Munkeiyo: It's going up right now the PowerPoint, I believe you guys all have a hard copy as well. But we're waking the computer up here.

Alright. Good afternoon again, my name is Tessa Munkeiyo Ing of Munkeiyo Hiraga we're here today on behalf of General Growth Properties requesting a variance from Maui County Code Section 19.36A relating to parking or the Whalers Village Leilani 's and Hula Grill restaurants.

The applicant for this variance is WV Sub, LLC which is the subsidiary of General Growth Properties and on behalf of the applicant team, we have with us today, Francis Gutierrez, Senior Director of Development, Corinne Arquero who's the General Manager of Whalers Village, Nick Galindo, Operations Manager at Whalers Village and Jimmy Vellas, Group Business Development representative and also from TS Restaurants which is the owner and manager of Leilani's and Hula Grill we have Dickie Moon. Munkeiyo Hiraga served as the Planning consultant and again the project site is the Leilani's Restaurant and Hula Grill Restaurant at Whalers village.

Our request today is for a reduction of a new 77 parking stall requirement at Whalers Village for the existing Leilani's and Hula Grill Restaurants and this is again from Chapter 19.36A relating to off-street parking and loading.

The need for the variance is because discrepancies in the calculation of parking requirements for existing dining area including outdoor dining areas for Leilani's and Hula Grill were recently discovered and because the parking requirement for restaurants spaces are based on dining area, the reassessment of the dining area resulted in the need for 77 additional parking stalls for these two restaurants. We met with the Planning Department to discuss the best way to address this discrepancy and the department recommended that a new parking variance for the reduction of these stalls be requested.

So this table here on the bottom of the slide just summarizes the original parking requirement which is shown here in this column for the two restaurants. You can see that prior to the - -previous requirements was for 72 parking stalls for the two restaurants, following the reassessment of the dining square footage and dining area of the restaurants the new parking requirement as of January 2016 is 149 stalls. So that's an increase in 77 stalls which is the request that we're here before you today.

The purpose of the variance is really to reconcile the parking requirement record. Leilani's and Hula Grill are long-standing restaurants at Whalers Village. Leilani's has been there for 33 years and Hula Grill has been there for 21 years in the same configuration. The variance will reconcile and correct the County records but no new dining area would be created in the restaurants. The variance would not allow for expansion of the restaurants nor will it generate any new vehicular traffic entering the center.

I think most of us are familiar with where the Whalers Village is. It's located in the heart of Kaanapali on Kaanapali Parkway to the south is the Westin Maui and to the north is the Whaler Condominium. And there's a beach boardwalk that fronts the Kaanapali Resort here. This is a site plan of the Whalers Village Shopping Center, as you can see Hula Grill and Leilani's are located on the Makai side of the shopping center directly accessible by the beach boardwalk, the beach boardwalk that fronts the resort.

Parking is provided in two main areas at the center. The majority of the parking is provided in this north parking lot here which includes a three-story parking garage. There's a smaller parking lot here on the south side of the property which includes 20 beach parking stalls and some parking for tenants. But again the majority is provided up here in the north lot.

In terms of parking there are 557 parking stalls on property, most of which are in that three-story parking structure, there are 20 beach parking stalls for members of the public for public beach access and not counted in that 550 stall total are 30 additional tandem parking stalls that are used daily by employees but not recognized by the County of Maui as two separate stalls. So that's in addition to the 557.

There's ample parking available for all tenants and the parking lot manager Standard Parking confirms that there's a surplus of parking available daily. We also have with us in the audience today someone - John Tavares from Standard Parking who's available to answer any questions if Board members may have any.

This chart depicts the average occupancy of the main north parking lot at Whalers Village and it's showing parking occupancy from May of 2015 through February just last month; and it's measuring the average parking structure occupancy at 6 p.m. everyday. So you can see that the average has fluctuated between under 50% to just over 60%. The overall average across this time span from May to February was 55% occupied. So that means on average over 200 parking stalls are actually vacant at 6 p.m. everyday.

So now I'd like to talk a little about each of the criteria for the variance. First criteria is whether there's a unique or unusual physical or geographical condition. Whalers Village is located in the heart of Kaanapali which is a high density resort area and the beach boardwalk provides a pedestrian connection to over 3,500 hotel and condominium units that are within walking distance of the shopping center; because of this unique condition a high percentage of the visitors to the shopping center walk rather than drive.

This map shows you the relationship of the Whalers Village with its resort neighbors. This redline represents the beach boardwalk, here's the Whalers Village here and we're showing this quarter mile radius which approximates a five minute walk. As you can see most of the properties do fall within five minutes walking distance from Whalers Village. The Marriott and Hyatt are just a little bit further away but still definitely within walking distance.

These are some photos of the restaurants. Here's Leilani's and Hula Grill. These photos were taken before the shopping center opens, just to give you a sense of its location with respect to the beach boardwalk but you can see down here the boardwalk is very heavily used during the day. And again the restaurants are on the Makai side just directly accessible from the beach boardwalk.

Because of this unique condition and again I mentioned there's a significant number of people who actually rather than drive to the shopping center and what this chart here is showing the results of a visitor intercept study that General Growth Properties had conducted in 2008 and 2012 asking people among other things how they get to the shopping center. So the different color bars represent different modes of transportation with green representing walkers, red representing people who drive and blue, people who took public transportation. So in 2012 46% people walked to the shopping center compared to just 37% of people who drove and that's a 10% increase from 2008 when 36% of people walked. A survey was done again in 2015 but that data is still being processed so we don't have that available but anticipate similar results. The only other thing I wanted to note about this data is that the intercept studies were conducted at locations within the center that are actually beyond the entrances of the restaurants; so for anyone who would be directly to the restaurants they would not actually be captured by this intercept study so when you add in people who walk directly to the restaurants but don't actually enter the shopping center the percentages of people who are walking would be higher than what's shown here.

Just to summarize the unique condition here is that the Whalers Village is the only commercial center on Maui that has primary beachfront pedestrian linkages with surrounding resort and residential properties.

The second part of that criteria is whether or not it would alter the essential character of the neighborhood. In this case, the variance would not change the restaurant use or size. There will be no change in overall Gross Leasable Area of the shopping center and there would be no change to the underutilization of parking stalls at Whalers Village. I'd just like to note that it's really in General Growth's Properties best interest to ensure that they are providing ample parking for guest and visitors to ensure that people continue to come to the shopping center and frequent it. So, we are all very confident that there is a significant ample parking at the shopping center.

The second criteria is whether compliance with the provisions of the code would prevent reasonable use. In this case, strict compliance would require 77 additional parking stalls to be constructed. The parking structure which is currently three-stories in height cannot be expanded vertically due to a unique 35-foot height limit. So in order to provide 77 additional it would require significant redesign of

the center and reconfiguration of commercial space and after all of that the additional parking stalls would not be utilized.

If 77 stalls weren't created, strict compliance would require a reduction in the existing dining area of two restaurants to eliminate the need to provide 77 stalls. This would result in the loss of up to 1/3 of the restaurant business and employees and would make continued operation of the restaurants unreasonable and unsustainable. Just to summarize really we see that it is unreasonable to force the closure of portions of restaurants that have been in operation for over 20 years because there's not enough parking on paper when there is enough parking in reality. And as a commercially zoned property, reasonable use is really defined as begin a successful business and for the shopping center to help all of their tenants be successful in their operations. In order to do that, the shopping center needs to be relevant, remain competitive and continue to offer a variety of services, retail, dining, and office operations and make sure that they have their ability to be the best that they can be.

The final criteria is that the hardship was not caused by the applicant. In this case the historical parking data has been used to determine the parking requirements for the shopping center. General Growth Properties purchased Whalers Village in 2005 and they inherited the parking allocation from the prior owner's records as approved by the county. New parking assessments were only carried out when there was change in use or tenant occupancy. I also wanted to note that leases for the restaurants spaces are based on gross square footage and not broken down by dining and non-dining areas which are the basis of the parking calculations.

The other hardship here is that the difference between the standard parking requirements and the reduced vehicular trips to Whalers Village are not recognized by the code. In terms of the development context surrounding Whalers Village has evolved over time and the population density around the center has increased resulting in visitor arrival patterns shifting towards more pedestrian arrivals. The standard parking requirements do not recognize the evolution of Kaanapali Beach Resort and the unique geographic conditions present today.

Before I conclude today I wanted to touch just briefly on the Whalers Village ongoing revitalization project. As many of you may know in 2013 GGP requested a variance to delete the requirement to provide 70 parking stalls to allow for an expansion of up to 15,400 square feet of gross leasable area. The BVA unanimously approved the variance. With that approval of the variance GGP began planning for comprehensive revitalization project that included renovation and expansion of the shopping center which had not undergone a renovation prior to that since the 1990's. An SMA Use Permit was obtained for the renovation project and the \$24 million construction project began in 2015.

This parking variance before you today for Leilani's and Hula Grill does not change the findings of the 2013 variance. The restaurants are the same size today as they were in 2013. These are just some of the rendering of the renovation project that's under construction now and approval of this variance for Leilani's and Hula Grill will allow for GGP to continue moving forward with this renovation project. We invest in Kaanapali Resort to ensure that it continues to be a high quality visitor amenity and to support Kaanapali Resort and remain competitive among national and international tourist destinations.

To summarize, GGP respectfully requests a variance to delete a new requirement for 77 parking stalls to reconcile the parking calculations and records for two long standing restaurants. No new dining area would be created in the restaurants the restaurants are the same size today as they were for over 20 years ago. And will not increase the maximum expansion potential of 15, 400 square feet made possible by the 2013 variance approval.

I just want to conclude today by also saying GGP and Whalers Village management have met with of the resort neighbors' tenants within the shopping center and others in the community. I believe you have copies of over 100 letters of support that have been submitted on behalf of various resort neighbors including Kaanapali Operators Association, Kaanapali Beach Resort Association many of the hotels in the area, tenants in the shopping center and other community organizations, residence and employees.

With that I'd like to conclude my presentation. Thank you very much for your time.

Chairman Abbott: Thank you very, very much. Are there questions from the Board? Seeing none. We have the letters of support, do we have any letter for not support?

Mrs. Cortez: No, Mr. Chair.

Chairman Abbott: Thank you.

B. PUBLIC TESTIMONY (Continued...)

Chairman Abbott: I will now open public testimony. For those please step to the microphone state your name and please limit your comments to three minutes if you can.

Mrs. Michele Chouteau McLean: Good afternoon Chair Abbott, Vice-Chair Fukunaga and members of the Board. My name is Michele Chouteau McLean I'm the Deputy Planning Director. I'd first like to tell you thank you for your service on the Board. The County's Boards and Commissions play a very important role in the overall functioning of our county government and the BVA often handles applications that can impact communities and housing business and employment like today's Whalers Village application. So I thank you for your time and consideration that you give to your work on behalf of the people of Maui County.

It is unusual for the Planning Director or myself the Deputy to appear before you and I'm here today because the Whalers Village application is unusual. You've seen in your staff report that we we're unable to give you a recommendation and I wanted to be there to take responsibility for that. As your staff report describes the BVA basically approved this same variance in 2013 consistent with the Department's recommendation to approve. Since then however there was a State Supreme Court Ruling that tied our hands from recommending approval again. That is why our analysis was inconclusive. As you know parking requirements are based on types and square footage of use, one's based for 500 square feet of retail, one's based for 100 square feet of restaurant dining area etc. It is inflexible. It doesn't account for situations like Whalers Village where many of its patrons walk from nearby hotels, they don't drive. Also, properties like Whalers Village are assessed for each use individually even though it's obvious that its patrons generally visit one more than one shop, service or restaurant when they're there.

Because of these factors many of Whalers Villages hundreds of parking stalls are often empty. The 2013 variance accounted for all this and allowed Whalers Villages existing parking to fulfill its requirements. After that approval though we realized that the square footage numbers used in the 2013 variance were wrong and that the variance was actually needed for a greater number. That's why Whalers Village is back again today. Not because they have more square footage than before or fewer parking stalls than before, they have the same square footage and the same number of stalls

now than they did in 2013, we just had the numbers wrong. If it wasn't for the State Supreme Court Ruling recommended approval would have been a no brainer.

I'd also like to add that the department is working to amend our parking requirements to account for situations like Whalers Village and others where flexibility is warranted. When you see variances for the same problem over and over like parking, it's time to amend the code. These code changes won't be inactive for a while still so in the mean time we hope that you can approve today's variance. Thank you.

Chairman Abbott: Thank you very much.

Mr. Sung: Question?

Chairman Abbott: Do we finish public testimony first?

Mr. Murai: No, members' are- -if members wish they can pose questions after each testimony.

Chairman Abbott: I'm sorry. Please go ahead Raymond.

Mr. Sung: Mrs. McLean I would like to understand from the Planning Department's perspective, let's just say I get it, I understand that Whalers Village and the two restaurants are an important part of the community, they provide jobs, they are a tourist destination, it's good for the economy, it's good for the people of Maui, and I get it. The question I have is how can the Planning Department get around the Surfrider Foundation case and the holding of the Hawaii Supreme Court that basically says, "You don't look at whether requiring the owners of the project or the managers of the project to reconfigure a reasonable or unreasonable use"? Surfrider Foundation says "if there's any reasonable use of the property absent the granting of the variance you can't grant the variance". I understand that you're now saying, 'well, therefore the recommendation is that we make no recommendation on this item number two". But to me the facts are the facts it's still there, there is according to the Surfrider Foundation case analysis a reasonable use left over for the property absent the variance. So just because you can't come out and say or you don't want to come out and say please ignore it. But that's essentially what it sounds like you're asking us but I'm asking you how are we supposed to ignore it giving that's what the Supreme Court says?

Mrs. McLean: Hmm. . . . I should have sat down when I had the chance. [Laughter] One of the reasons why we struggled is because we strive for consistency and when we get asked everyday a broad variety of questions, can I do this with my property? Can I build this? The first thing we do is look at the code and if the code is clear it's an easy answer. When the code isn't clear which is more often than we'd like, we try to look at whether this issue has been brought to us before. Same thing comes, same thing applies when we're making recommendations to our Boards and Commissions. What so hard about this one is that we recommended approval of literally the same thing just a couple of years ago and found it very, very difficult to change that recommendation because of the ruling?

I can't say ignore it, of course I can't say ignore it. That's why on that one criteria we were inconclusive because on the one hand we had previously recommended approval, the variance criteria hasn't changed, the circumstances of the applicant hasn't changed, and we want to be consistent. But at the same time there is the Supreme Court Ruling and that's why we were inconclusive on that one criteria.

Mr. Sung: Thank you. Mr. Chair at some point and I'll leave it to your discretion but I would request an executive session because I would like to or have this Board confer with cooperation counsel as to the ramification of a decision by this Board in light of the Surfrider case.

Mr. Murai: Why don't we do this, if Board member Sung wants to go into executive session, I suggest that we complete the public testimony.

Chairman Abbott: I would agree.

Mr. Sung: Thank you.

Chairman Abbott: Thank you very much.

Mrs. McLean: Thank you.

Chairman Abbott: Sir, thank you.

Mr. Richard Moon: Chairman Abbott and Board members my name is Richard Moon, I'm Vice-President w/TS Restaurants and we operate Hula Grill and Leilani's. I've been with the company since 1977 so even before Leilani's was going and operating in 1982. Just want to let you know that the restaurant configurations for both restaurants Leilani's and Hula Grill is the same as when we opened, the dining area hasn't increased or decreased. The purpose for this is to actually clarify again that there were - - that there was an error made when we came before the Planning Department to take a look at what we could do and renovate our restaurant space in the future and see what was going to happen with that and when we provided the plans for what we're thinking of Leilani's this is how it came up and we were following the direction that we were given by the Planning Department to make a new application for the variance.

We employee between the two restaurants some 387 employees and we have not - -as I said they're used to coming to work, working in this dining area and so on; and we feel a great need to support this and make the variance go through. So we appreciate your consideration. I'm here to answer any questions if you have anything about the restaurants in particular.

Chairman Abbott: Any questions for the gentleman? Apparently not. Any further testimony?

Mr. Francisco Gutierrez: Mr. Chair, my name is Francisco Gutierrez, I'm Senior Development Director for the Whalers Village. I wanted to testify or I wanted to share my thoughts because obviously the discussion on reasonable uses are going to be very important today and this is a very important decision for us. I want you to think about - - when you think about reasonable use about the fact that we have a commercial property and commercial zoning. So for us reasonable use is not whether we can have the smaller (in audible) business it's whether or not our business can be successful regardless of the size. Whether we can have this successful business and whether we can help all our tenants to be successful in their own businesses that is what really reasonable use is.

For the Whalers Village for us and our tenants to be successful, we need to remain relevant. The economy's moving, industry's moving, and we need to be up there willing to be relevant. We need to be our best, we need to be able to provide Kaanapali, West Maui, Maui, Hawaii, our best; and for us to do that we need to continue to invest . When we were granted the original variance we were given the opportunity to invest \$25 million dollars on this property. We are halfway in construction through

that. We are very, very concerned about any ability as far as to complete what we already started when we were granted the previous approval.

So again, this decision is very important to us, we believe that by finishing that project and by allowing the tenants to remain with the doors open during business, we are going to have the reasonable opportunity to remain relevant and to do our best. We think that it would be unreasonable to ask any of our tenants whether it's the restaurants or any other tenant having been there for a very long time with the business amount that has been evolving to simply close their doors; and just to do that to replace them with parking that we don't need. So we think again that closing down businesses that have an operation (?) in a business mall that is successful that has been evolving to replace them with unnecessary parking that is unreasonable. So I hope you can take that into consideration today. Thank you.

Chairman Abbott: Thank you. Questions for the gentleman? Thank you very much, just wanted to make sure. Yes sir, please come to the mic.

Mr. Ivan Lay: Good afternoon Chair Abbott, my name is Ivan Lay and I'm a field representative for Hawaii Regional Council of Carpenters and I'm here standing before you on behalf of the variance, to delete the requirements providing of additional 77 off-street parking stalls for Leilani's and Hula Grill. Back in October 2005 GGP became one of the owners of Whalers Village, in January of 2013 the Board of Variances and Appeal granted a variance to delete the requirements to provide 70 parking stalls. Now they're saying they have to add 77 stalls. From the time GGP purchased Whalers Village and Hula Grill and Leilani's restaurant the size of the restaurants themselves have not changed.

About half of the visitors who come to Whalers Village walk in from the beach or they walk in from the hotels on the side. Some are shuttled there and the remaining drive there. The parking in the parking structure are usually barely over 50% of use. Besides being surrounded by businesses, hotels and condominiums, adding more parking to a cluttered area would take away some of the charm and building that this small and surrounding area processes.

The parking structure itself has just been renovated to included photovoltaic on the top and they've already reached their height requirement. Looking at the customer traffic and the availability of parking that already exists adding more parking would add more harm than good. I'm asking you to please give this variance. You have the power and the body to make a decision. Not everything is black and white, sometimes there's color.

At Whalers Village there's a lot of color and we don't want to make it black and white. Adding more stalls is going to take away some of the beauty and we might be digging up some of the foliage that's in that area for stalls that we don't need. We already have adequate stalls there so you have the power to keep it that way there's no need for change at this time. Thank you. Any questions?

Chairman Abbott: Any questions for the gentleman please? None. Thank you very much.

Mrs. Laurie Nunez: Chairman Abbott and Vice-Chairman Fukunaga and Board Members thank you so much for this opportunity. My name is Laurie Nunez, our company Oceanology operates and manages the Whalers Village Museum it's the third most visited attraction on Maui and we're in a very unique position because we act as a visitors center and we know how important it is to enhance the visitors experience and give people something that they can remember. A memorable experience that brings them back over and over and this is going to support our tourism industry.

So, Leilani's and Hula Grill have played a vital role in creating this memorable experience. We talk to our visitors on a daily basis and they'll tell us, "we didn't rent a car, we don't like renting cars, we don't drive, we love that we can walk on the boardwalk"; and imagine many of these people save up a lifetime to come here for their very first time and then they come over and over and over and some people tell us they've been coming every year for 20-25-30 years. The museum itself celebrated its 30th anniversary and as you know Leilani's and Hula Grill have been here for over 20 and 33 years.

Imagine yourself walking along the boardwalk and Whalers Village serves as the anchor to the mini resorts and the first thing they come upon is they see Leilani's, they see Hula Grill, it's vibrant it's tropical, you've got music and it just welcomes you and the staff has that Aloha Spirit and they feel like they're in Hawaii they're having a Hawaii, a Maui specific experience. The food is incredible and they'll tell us that they'll come back to the restaurant many times.

I did want to share with you in particular a customer told us that their accountant thought something was wrong with their bill because on their bill there were 21 charges at Hula Grill during their stay; and it was all for the same amount and that's because they ordered the exact same meal, they love it so much and he comes back every year.

So, I just want you to think about the role that these restaurants play, not just in the tourism industry but they're extremely strong supporters of our community. I can speak on behalf of the Hawaii National Marine Sanctuary Foundation, I'm actually the Vice-Chair of the Foundation and I'm not sure if all of you are aware but Whalers Village sits on the Hawaii National Marine Sanctuary, this is one of the most protected bodies of water in the Hawaiian Islands and that's why they see about 12,000 to 15,000 whales each year coming to Whalers Village. From Hula Grill and Leilani's you can sit there in their dining areas and see whales breaching and you can even go out and board a boat to go out and see the whale watching, which again is so important to our tourism industry.

I just want you to know that over the years they've supported the community, they've donated food to reef cleanups, beach cleanups, we work with the National Oceanic and Atmospheric Administration, the volunteers give whale talks and they'll donate food, they'll help us with volunteer appreciation dinners; so they really reach out to the community and it's not just the restaurant, it's not just the business, you've heard about the employees, it's an experience and this is what people remember, this is Maui. Thank you so much and I hope you support the request for a parking variance. Do you have any questions?

Chairman Abbott: Any questions? Nope, thank you very much. Please limit your testimony to three minutes if you can because we're never going to - - [laughter]

Mr. Bo Petty: Hello Mr. Chair, I'm Bo Petty, I'm with the Hawaiian Islands Humpback Whale National Marines Sanctuary and I worked with my superintendent to come up with a letter of support, she's the superintendent of all the protected areas, all five here in the Hawaiian Islands. I just want to concur for the support of the parking variance but share my support in terms of what has been said, I will say that General Growth Properties, Whalers Village, Leilani's and Hula Grill have collectively worked together to support the sanctuary and public awareness of the sanctuary and they recognized the importance of the sanctuary to bringing business here.

So we just want to say that they've been terrific partners with us, we have memorandum of agreement with Whalers Village and General Growth at the national level and here to work together and they have really done a great job by giving us space, staffing to set things up for talks, for training in terms of the public. Ocean Awareness Training is what we call it. We have had as many as 50 people up at

Whalers Village Museum at 6 o'clock prime dining time and never had a problem with parking. I just wanted to say that during the day time, we talked with visitors that come through and I concur that so many times the visitors will say they're walking up and down the sanctuary walk while looking out over the sanctuary on the beach walk watching whales enjoying the species that are here in the sanctuary and doing a great - - having a great time and they're walking to and from Whalers Village to do that. And speaking personally when I come here I do the walk as well, I enjoy the restaurants there, I enjoy looking out and watching the whales or other areas on the beach and around.

I just want to say for the sanctuary that these have been great partners, they give back to the community, they donate in many ways has been said and I think Maui needs to keep that in mind and support organizations like that.

Chairman Abbott: Thank you. Questions? Thank you sir.

Mr. Wayne Hedani: Mr. Chairman and members of the Board, my name is Wayne Hedani and I'm testifying and writing to you as President and General Manager of Kaanapali Operations Association, Inc. (KOA) in support of this application for a parking variance for the above named restaurants. KOA is a membership organization which represents over 5,000 units of hotels, condominiums, commercial properties, recreational facilities and residences in the Kaanapali Beach Resort.

The Kaanapali Beach Resort is one of the first and remains one of the foremost master planned destination resorts in the world. Planning of the resort includes many features now replicated by other destination resorts. Several of these features are pertinent to the above named application as follows:

Master planned walkways throughout the resort. Each property in Kaanapali is required to provide walkways both mauka and Makai of their properties to tie into the walkway master plan. This system of walkways now stretches from the Hyatt Regency Maui to the south to the Honua Kai Resort to the North tying together over 6,000 units of hotels and condominiums and extends over three miles in length one way. It is estimated that over 18,000 people per day utilize this walkway. When I open the door to my office in the morning, I look Makai and count the number of seconds for the first person to appear. Usually it takes from one to five seconds for the first person to appear. I judge the resorts occupancy based on how many seconds elapse before the first resort guest appears. If I take an average of three seconds per person as an average this comes to 1,200 people per hour an 18,000 people per day for 15 hours (6am to 9pm). Many people also walk before 6am and after 9pm and more than once per day. This walkway system now ties into the County of Maui's walkway which leads towards Lahaina Town. At 18,000 people per day, this comes to 6,570,000 people trips per year using our walkways. It is a graphic success story of a master planned walkable community not centered on the automobile.

Integrated Intra Resort Transportation System (Kaanapali Trolley). KOA operates the Kaanapali Trolley which services 13 properties in the Kaanapali Beach Resort every 40 minutes and operates from 9am to 9pm daily. It carried 122,299 people in 2015. People who cannot or choose not to walk are accommodated on the trolley daily at no cost to the user, it is completely free. The bulk of these passengers go the Whalers Village as their destination or use Whalers Village as their connector terminal to Lahaina serviced by others. The trolley is designed to free resort guests from the need to rent a car while in Kaanapali Beach Resort. This helps reduce the demand for rental cars which clog our islands roadways. People who drive cars pay for parking (a disincentive to driving), people who ride the Trolley travel for free (an incentive to use mass transit).

The County of Maui Planning Department strives to create integrated planned communities which are livable and walkable in nature with concepts such as “complete streets”. Kaanapali is an example of this successful concept. Requiring additional parking where it has not been used in the past (Whalers Villages parking structure is approximately 55% occupied at any given time) and will not likely be used in the future based on antiquated codes is an anachronism and example of outdated bureaucratic thinking which contributes to and does not solve our traffic problems. The more cars you accommodate, the more they will proliferate.

The County of Maui in the past limited the height of the Whalers Village parking structure. The idea was to not impact surrounding properties views and setting it back from the Parkway so the structure does not loom over pedestrians using the mauka walkway along the Parkway. Requiring them to build more parking levels to accommodate unneeded parking conflicts with the County’s own restriction.

Based on all of the above, I urge the members of the Board of Variances and Appeals to consider and approve the variance request being brought forward by Whalers Village. There are clearly mitigating circumstances which should be considered in this case which is what the Board is designed to accommodate, to allow for reasoned exceptions to hard, fast, and antiquated rules. Thank you.

Chairman Abbott: Thank you.

Ms. Rhonda Ruidas: Hi Chairman and Board of Directors. I’m Rhonda and I am here on behalf of the????? (Inaudible) Gift Gallery and the owners of them. We are in support of the General Growth efforts to renovate and revitalize the Whalers Village fine shops and restaurants. It is important for Kaanapali Beach Resort to provide high quality (inaudible) to maintain the area as a premier visitors destinations. Maui competes with other worldwide resort destinations and it is essential that the resort properties update their facilities to maintain regular visitors and to attract new visitors.

The Whalers Village renovation project will help to keep the Kaanapali Beach Resort and Maui at a forefront of this competitive market. We understand that GGP has applied for a parking variance for the Leilani’s on the Beach and Hula Grill restaurants, the variance will allow the renovation of this center to continue to move forward as originally intended and both restaurants to continue providing the same critical service to the West Maui residence and visitors.

The Leilani’s on the Beach and Hula Grill restaurants are long standing restaurants that have been at Whalers Village for over 20 years. The restaurants serve as important dining amenities to the Kaanapali Beach Resort. We support the GGP efforts to ensure that Whalers Village and its tenants continue to serve as a high quality visitor’s amenity and help to maintain the Kaanapali Beach Resort as a premier visitors centers. As an employee on the property we ask a lot of people if they need parking validation for the parking structure many of them tells us, “no we walked today” or if they did walk, they’re really tired to go back, we always tell them about the transportation options that they have as well. So we do support the variance. Thank you.

Chairman Abbott: Thank you. Questions? None, thank you. I’m seeing none, I’m going to close public hearing now. I think we had a motion pending.

Mr. Sung: So Mr. Chair, may I please make a motion for this Board to enter into executive session to consult with Corporation Counsel on questions and issues pertaining to our powers, duties, privileges, immunities and liabilities pursuant to Section 92-5A4 of Hawaii Revised Statues. Thank you.

Chairman Abbott: Ok, we have a motion. Do we have a second?

Mr. Max Kincaid Jr. Second.

Chairman Abbott: Max seconds, any discussion? All in favor raise your hand, "Aye." So we have four and four.

Mr. Murai: Did you call for a vote? Did you call for those opposed?

Chairman Abbott: Any opposed?

Mr. Murai: its four to three Mr. Chair, how do you vote?

Chairman Abbott: **We'll go into executive session.**

Mr. Murai: You vote in favor?

Chairman Abbott: Yes, I'm voting in favor.

Mr. Murai: So, it's five to three.

Chairman Abbott: Yes, five to three. The room needs to be cleared.

Mr. Murai: Folks, if you could please clear the room and we'll let you know when we're done. Thank you.

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

VOTED: Motion to approve to move into Executive Session

(Assenting: R. Sung, W. Greig, J.Reyher-Colon, M. Kincaid Jr., G.C. Abbott)

(Dissenting: C. Fukunaga, T. Espeleta, H. Kihune,)

(Absent: P. DePonte)

...moved into Executive Session @ 3:04 p.m....

...returned from Executive Session @ 3:27 p.m....

Chairman Abbott: John, do you have any additional information or anything you wish to give us? Staff's recommendation?

Mr. Rapacz: Just the recommendation Mr. Chair. Based on the foregoing findings of fact and conclusion of law and the report, the Director in this matter makes no recommendation as to whether the applicant has met all of the requirements for granting the variance. However, if the Board does decide to grant the variance, the Director recommends the listed conditions one through six.

Chairman Abbott: Ok. Any further discussion? Do we have a motion?

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

Chairman Abbott: We have a motion to approve the variance.

Mr. Sung: I'll Second.

Chairman Abbott: We have a second. Any discussion?

Mr. Kihune: Yes, I do. Based on the findings and what was brought forth to us from the applicant, originally this variance was for 70 stalls back in 2013 and based on the fact that business as usual in the center in Whalers Village from that point on has not affected their parking or the limit of parking or patrons coming through the center and as mentioned in their presentation, I truly believe that majority of their visitors or patrons come via the walking paths and sidewalks and everything else that's within Kaanapali Resort itself. So, I'm in favor of voting to pass this motion.

Chairman Abbott: Ok. So may we have a vote, all in favor of granting the variance - -

Mr. Murai: Excuse me, before we vote- -

Chairman Abbott: I'm sorry.

Mr. Murai: Before we do that Mr. Chair, it's my understanding . . . well I would like to or instruct the Board to make a finding regarding for the basis of the motion to approve and I'm not sure whether any Board member would proffer the finding that the motion to approve is based- -would be based on a finding of fact that to not grant the variance would deprive the owner of reasonable use to their property.

Chairman Abbott: Ok, would you like to- -

Vice-Chairman Fukunaga: So can we just adopt the- - or agree with the applicant's argument? We agree with the applicant?

Mr. Murai: Yes, that's fine.

Mr. Espeleta: I made the motion and I agree to what corporate counsel has said.

Mr. Sung: I would also say that a large part of my decision to support the request for granting the variance comes from Deputy Director McLean's statement that it is the Planning Department's objective and intention to soon propose amendments to the code to allow for the Planning Department to have more discretion in getting to the right answer in similar situations going forward so that these kind of stuff doesn't have to come before this Board. Thank you.

Chairman Abbott: Any further discussion? I'm going to call for a vote. All those in favor for granting the subject variance, raise your hands...

Members: All raise their hands.

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

VOTED: Motion to approve the subject variance: Whalers Village, BVAV 2016/0005

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

(Absent: P. DePonte)

Chairman Abbott: It is a unanimous the **variance is granted**. Thank you very much.

Mrs. Munkeiyo: Thank you very much Board members.

E. APPEALS

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 appeal and on the scheduling of the Planning Commission hearing on the related County Special Use Permit.
 - b. The Board will consider the possible appointment of a Hearing Officer to preside over the above Appeal.

Chairman Abbott: Now I'm going to let you take over - -

Mr. Murai: I'm sorry Mr. Chair, did we call for Item E1 yet?

Chairman Abbott: No, we're calling it now.

Mr. Murai: Ok.

Chairman Abbott: Would anyone like to move to go into executive session?

Mr. Sung: I so move.

Chairman Abbott: Do we have a second?

Mr. Espeleta: Second.

Chairman Abbott: Any discussion? All in favor of going into executive session? It's unanimous.

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

VOTED: Motion to approve moving into Executive Session:

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

(Absent: P. DePonte)

Chairman Abbott: **It's unanimous, we're going into executive session.**

...moved into Executive Session @ 3:34 p.m....

...returned from Executive Session @ 3:50 p.m....

Chairman Abbott: The Board of Variances is now back in session. Mr. Kolbe would you - -

Mr. Tom Kolbe: Ok. Thank you very much. My name is Tom Kolbe and I'm the attorney for the County of Maui and the Department of Planning on this matter. To my left is Christopher Gooding who represents D&S Ventures. I want to apologize for not coming in person at the last meeting because I think that there were some questions that you may have needed answers to and I had provided a short written communication and evidentially that wasn't enough to answer some of your questions.

So we're here today to be able to do that. The request that we are making is based on the fact that all along the department and D&S Ventures, the appellant had reached an agreement where we were going to get them into compliance by applying for and being granted a County Special Use Permit; which takes place before the Maui Planning Commission. We had initially set status hearings in this matter to keep you apprised in that particular process; and at the request of the Department of Planning, Mr. Gooding and his office prepared the applicant D&S Ventures LLC's Status Report which I believe has been provided to all of the members of the Board, which has a lot of the information on what's happened to date.

My understanding after speaking to John Rapacz from the department as well as other is that at this point the application process is going along well, there has been a completed application that was submitted. It's gone out for agency appeal to the various agencies and there are several I's to dot and T's to cross related to that application and Mr. Goodin can speak to it; but I think one of the issues was for the traffic studies that's going to take place in April.

At this point, based on the closing counsel's calendar and the timing to have this Count Special Use Permit Application completed and heard before the Maui Planning Commission, I am requesting - - it's a joint request that we set this matter for further status in July. Or if you want something more definitive we could set it for hearing down the road. But it is my understanding that there may be other things that need to be addressed before the Special Use Permit is ready to be considered by the Planning Commission.

Those are my request. I'll be happy to answer any questions. Again, I'm sorry for not coming in person to the last meeting because obviously if you need further information that's what we're here to give you.

Chairman Abbott: Please, thank you Mr. Goodin.

Mr. Christopher Goodin: Thank you Mr. Chair and Members of the Board. We've gone in for the permit, we've retained the right consultants, they're working diligently for preparing the application, we've retained PBR Hawaii, and we've retained Austin Tsutsumi and even an archaeological consultant for our preservation plan. We're trying to do everything right here, move forward with the application process and the end is in sight.

We've requested that the application be set for early July and we're intent on moving forward with the hearing and completing the permitting process so we would just respectfully ask that this matter be deferred until the permitting process is completed and we can finally resolve this matter.

Chairman Abbott: If the matter were resolved earlier, would we be advised earlier?

Mr. Goodin: Absolutely.

Chairman Abbott: Any questions from the Board? Howard?

Mr. Kihune: I would like to have another update in 30 days at a couple more meetings. I just think it's important that we are aware of when this Planning Commission meeting will be held. I know you said July 12th but that could change right?

Mr. Goodin: It's possible. We made a written request to Paul Fasi, the Planner in charge to set it for - I believe its July 12th is the first Planning Commission meeting on calendar. So that has been requested, if we do receive written confirmation from Paul Fasi that the matter is set for that time then we can advise this body of the set date.

Mr. Kihune: That would be great. Even if it's a written confirmation to us here for us say in 30 days on what the status is, that would be great.

Mr. Murai: Board Member Kihune, are you asking Counsel for that or the department to update?

Mr. Kihune: It can go through the department. It doesn't have to be counsel. Just a written acknowledgement of the status - -

Mr. Murai: Just something on the next calendar?

Mr. Kihune: Right, in 30 days.

Mr. Murai: A status report of the application before the Planning Department.

Mr. Kihune: Correct.

Mr. Sung: Actually I would suggest or request that the written status update be provided in advance of the next meeting with sufficient time for the Board members to read it and digest it, so that by the time of the next meeting we are able to act on it appropriately.

Mr. Murai: In time to make it for the Board's packet.

Mr. Sung: Yes. Not just present it to us at the meeting.

Mr. .Murai: John or Carolyn can you let Paul Fasi know to send us a note whatever?

Mr. Rapacz: Sure and just to be sure, I heard 30 days and then I heard next meeting.

Mr. Kihune: 30 days is fine, as far as my comments go.

Mr. Rapacz: Ok and in terms of the Planning Department providing information, we could inform the Board whether or not there's a confirmed Planning Commission hearing date on July 12th or some other date. Beyond that, I don't know what we can provide you in terms of status.

Mr. Kihune: That's fine.

Chairman Abbott: Something that shows movement.

Mr. Sung: But is it the case that the application itself has already been submitted and you're just doing a follow up or you're waiting for the follow up so that you can then submit the application?

Mr. Goodin: No, the application has been submitted it was sent out for agency comments to the County and the State agencies and PBR our Planning Consultants have been addressing those comments; so we're just in the final stages of addressing those comments to set it for hearing before the Planning Commission at this point.

Mr. Sung: Board Member Sung, it's a very cumbersome and tedious process that involves.

Mr. Kihune: I make a motion to defer to July 30th.

Mr. Espeleta: Second.

Chairman Abbott: All member in favor say "Aye."

Members: "Aye."

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

VOTED: Motion to defer item to July 30, 2017.

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

(Excused: P. DePonte)

Chairman Abbott: Thank you.

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

1. Having voted on October 23, 2014, to issue a declaratory order concerning variance granted for the property located at 45 Kai Ala Place, Kaanapali, Maui, Hawaii; TMK (2) 4-4-006:011, the Board will consider and may adopt the draft

Findings of Fact, Conclusions of Law and Decision and Order declaring effect of variance granted.

Chairman Abbott: Ok going on to Findings of Facts. This is a review of the declaratory order as stated- - 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.

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.

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

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

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

(Excused: P. DePonte)

G. APPROVAL OF THE OCTOBER 8, 2015 MEETING MINUTES

Chairman Abbott: Do we have a motion to approve the minutes?

Mr. Fukunaga: Motion to approve.

Mr. Espeleta: Second.

Chairman Abbott: Ok. **Minutes approved.**

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

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

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

(Excused: P. DePonte)

H. NEXT MEETING DATE: APRIL 14, 2016

Chairman Abbott: Next meeting will be on April 14, 2016.

I. ADJOURNMENT

Chairman Abbott: Meeting's adjourned.

There being no further to come before the Board, the meeting adjourned at 4:20 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
Howard S. K. Kihune
Juanita Reyher-Colon
Max Kincaid Jr.

Excused:

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
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel