

APPROVED: 8/10/2017

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
February 9, 2017**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Abbott at approximately, 1:30 p.m., Thursday, February 9, 2017, 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 Howard Kihune: Good afternoon everyone the Board of Variances and Appeals will now come to order. It is exactly 1:38 p.m. and let the record show that we do have a quorum.

D. COMMUNICATION

- 1. CALVERT G. CHIPCHASE AND CHRISTOPHER T. GOODIN OF CADES SCHUTTE LLLP representing D AND S VENTURES, LLC Appeal of the Planning Director's Notice of Violation (NOV 2014/0013) for the zip line activity within the County's Agricultural District without a Special Use permit pursuant to MCC §19.30A.060 (H) for property located at 2065 Kauhikoa Road, Haiku, Maui, Hawaii; TMK (2) 2-7-012:086 (BVAA 2015/0002), (J. Rapacz/P. Critchlow)**
 - a. Department to give an update on the adoption of the Findings of Fact, Conclusions of Law, Decision and Order (D&O) for the County Special Use Permit before the Maui Planning Commission.**
 - b. The Board may consider it for possible action.**

Chairman Kihune: Before we get started I'm going to make one quick change to the agenda and let me explain, item number D regarding D&S Ventures LLC, we're going to be removing from the agenda because this particular item is premature because there's some other issues and items going on outside of our Board and with that being said, there will be another date that will be set that those items outside of this Board has to be taken cared of first before we can come back here. Ok, so those of you that are here either to testify or support, we apologize but this was brought to our attention a little earlier in the day and with Corp Counsel's discussion we need to move that off of the agenda for today. But again thank you very much and there will be a hearing that will be scheduled later - -

I mean a date with that agenda at some point in the near future. Ok? Thank you very much.

B. PUBLIC TESTIMONY

Chairman Kihune: Ok. With that being said, this body will be taking some public testimony on any item other than that particular item which was removed, should there need to be because of time restraints. Is there anybody here that would like to testify prior?

C. PUBLIC HEARING

1. **WAYNE I. ARAKAKI of WAYNE I. ARAKAKI ENGINEER LLC representing HUI AINA O'MAILEPAI SUBDIVISION, is applying for a variance from Maui County Code (MCC) §18.20.040 and §18.20.130, to: 1) delete the requirement for the installation of curbs, gutters, power poles and a sidewalk; and 2) delete the requirement for drainage improvements for property located at 4695 Lower Honoapiilani Road, Lahaina, Hawaii; TMK (2) 4-3-015:036 (BVAV 2016/0002), (A. Cabais)**
 - a. **Letter from Peter Horovitz, appointed commissioner, requesting a 3 month continuance.**
 - b. **The Board may consider it for possible action.**

Chairman Kihune: Ok with none seen. We're going to go ahead and move onto our first item. Which is Item number one and if the staff would read the notice of the public hearing and state the purpose of this application that would be great.

Mrs. Avelina Cabais: *Reads item into record.*

In your packet we have attached a letter from the Commissioner Peter Horovitz requesting a continuance for three months. If you have a question, the applicant is here.

Chairman Kihune: Mr. Horovitz, please.

Mr. Peter Horovitz: I'm happy to be here. Peter Horovitz I'm the recorded appointed commissioner on this is. I'm happy to answer any questions the Commission might have, other than that we stand on our request.

Chairman Kihune: Ok. Any Board Members have any questions or comments? Is any other attorney or any other body representing any of the owners that would like to make some comments? Or the owner's themselves?

Public: *...inaudible...*

Chairman Kihune: Adjacent properties also. But you know what, let us- - should I have them go first? - -Excuse me- -

...inaudible discussion with Corporation Counsel Richelle Thomson...

Chairman Kihune: You're welcome to come up and make comments but if the Board decides to go ahead and grant the extension, all your comments will be on the record and so you may need to be here on a later date . . . but you're welcome to come up and make comments if you want to.

Mr. Michael Cook: My name is Michael Cook I live at 20 Kahana Place on the lower road, the property in question is a lot directly in front of me the ocean side. As property owners directly in front of that piece of property, we just don't understand exactly what's going on with the property because we keep hearing there's been changes, they may want to divide it three ways, and they may want to divide just two ways. We don't know heights, we don't know - - we don't understand where they would set them on the lots because it might affect our viewing of being able to see through the ocean. We just don't have enough information to really put a case together to know, because we have no idea what's going to happen on the property and I think it's still in flux and as I hear they're asking for a three month extension, so that may be part of that. But that corner for years has had problems with drainage, had problems with visibility of people on the street trying to pull out of the corner that a number of us live on. It's got a lot of flooding issues, poles that are getting old and have some few little minor accidents and had some repairs. There's some other people here that may have to say some other things. But right now we're sort of a little clueless about what the plans are for that piece of property and what would be allowed to be built on there if it was subdivided since we know the property has been affected by the tides and has cut into that dramatically from the last time that it has been plotted and how much of the setback it would be and what size could be built on. And those are our concerns. Jim, do you want to say anything?

Mr. Jim Kingwell: I'm Jim Kingwell, I live at 40 Kahana Place. I'm just trying to understand if the variance is approved, what affect it would have on our properties--have the road widening and give up on some of the improvements of sidewalks and that sorts. That's our major concerns and like we mentioned, the site views of the traffic and the pedestrians along the roadway there. So, it's got us concerned but at this point to be opposed to it but I'd like to hear more information about it. I appreciate your time.

Chairman Kihune: Thank you.

Mrs. Kristen Kingwell: I'm Kristen Kingwell at 40 Kahana Place. One thing about this property, what borders the lower road is a small low wall- -a four foot wall and over time a night blooming cereus cactus has gotten up to about 25 feet tall, so it continues. I called the County, he comes back and tries to cut it back but I don't know what the residential height of a wall is but we live right behind this and it's kind of blooming down the highway

and getting higher and higher because the night blooming cereus just dies on it and it builds and dies and builds and builds and it's up to about 20-25 feet. So consideration about that and the continuity of the low road and being able to see the beach area there.

Chairman Kihune: Thank you. Any other comments? Go ahead.

Mr. Paul Horikawa: Hi, good afternoon. My name is Paul Horikawa, I represent James Robinson and Lorraine Robinson who are present today but they're not going to be testifying unless the Board denies the motion and also present is Kelly Robinson who is the son of Gordon Robinson and I'd just like to say that we join in the commissioner's request to have this hearing postponed.

Chairman Kihune: Thank you Mr. Horikawa. Mr. Horikawa while you're there, or maybe even Mr. Horovitz can I ask- -could you explain in layman's terms the variance? Because they seem to be talking about building heights and all that stuff and it has nothing to do with this variance, so without me trying to convolute it; if you could let them know exactly what the variance is about?

Mr. Horovitz: Right now?

Chairman Kihune: That would be great. So we can kind of clear some of that up right now.

Mr. Horovitz: Sure. Essentially this is a property that has been in the same family for multiple generations and there are four or five family groups that are untitled, about 20 or 30 people all total and they're at the point that they are - -there's no real agreement as to what they want to do with the property. Some want to keep it and some want to sell. The court appointed me to subdivide the property on their behalf so that those who want to stay on the property can stay on and those who want to sell can sell. So, were not in - - and the court ordered us initially to do three lot subdivision which then triggers certain subdivision improvement requirements which are fairly expensive.

We are contemplating going down to a two-lot subdivision which might be below the threshold of some of those requirements but I need time to go back to the court and get permission to do that and give the parties an opportunity to chime in on that.

As part of what I'm doing, we're not contemplating building anything, we're not coming in for building permits of any kind. It's simply dividing the property. I'm assuming in future years if one of the people who end up with the properties want to knock down a structure that's there and build something new, they'll have to go through whatever normal process that is; which in that area because you're right on the ocean will require certain amounts of public notice. But that's not what we're asking here. The variance was initially simply that there are some very costly parts of a three-lot subdivision they were hoping to avoid and by going down to a two-lot subdivision, the code allows you not to- -to stay underneath the threshold of those.

So that's the request. But I just need a little bit of time to go back to the court to see if I have permission to go down to a two-lot subdivision to accommodate the family's wishes. If not, we'll be back here for a request along the lines that we have before you today.

Chairman Kihune: Thank you very much. Go ahead, you can come up to the mic Mr. Cook.

Mr. Cook: Thank you. Michael Cook again 20 Kahana Place. So my question would be, certain portions of that road appear to be through the age of how long that house has been there, what the county says is their property and what is inside that wall and outside that wall that runs down that road; it appears that there's probably in some places five to ten feet of the other side of the wall which is county property. If it was ever subdivided, I would guess that the county might wish to look at putting whatever wall or what is left of a wall actually on the property itself instead of inside taking up roadway area that could be used to bring the county property into county property and not behind the wall where there's a road that they run through the houses.

Chairman Kihune: We appreciate that. Let me just real quick so that- - I appreciate Mr. Horovitz giving his comments and information. The subdivision from what we understand, Public Works is looking at doing a bunch of work on that road at some point in the future and that could be five months or it could be 50 years, we just don't know right?

Mr. Cook: I remember 12 years ago- -

Chairman Kihune: Right, so until that plan is determined and until they reach an agreement probably with the property owners in the area, I would assume that that would stay pretty much the way it is until that point. And if there was some improvements that may be made and I don't want to speak out of turn but there will be some cost would be associated to some of the property owners with regards to some improvements. I don't know for sure, but that's usually the normal route.

Mr. Cook: I would guess that if they subdivide the property they'll be putting another driveway in somewhere between that wall. So that would be affected in some way but it seems like it would be a good time in which to the county to take the county property with the county property and the private property and make sure there was a delineation between where that exists.

Chairman Kihune: And that still can be done between the three owners if they go to three properties or if they go to two. That's not something that we would deal with here in this meeting. But your comments are appreciated. But there'll be due time. If someone decides to build or expand that property as far as building heights and walls they have to go through a whole different set of rules and that will be an SMA application because they are on the ocean which is a very costly and lengthy process which you'll have time to comment. And then they'll go before building permits where there will be other comments and things you can share.

Mr. Cook: I do appreciate everyone's time. Thank you.

Chairman Kihune: And we appreciate you being here. Thank you. Any other comments? I'm looking for a motion members, to go ahead and grant the extension and at that time give us a status update.

Mr. Clark Abbott: I make a motion to grant the continuance.

Mr. Willy Greig: Second.

Ms. Richelle Thomson: Before you vote, just to clarify. The continuance is- -we're continuing the hearing, we're not having a hearing in three months we're just requesting that the parties come back for a status update at that time.

Mr. Abbott: Right, correct. Thank you.

Chairman Kihune: Any comments or questions from our members? All in favor say "Aye".

Members: "Aye."

Chairman Kihune: Any "Nays?"

It was moved by Mr. Abbott, seconded by Mr. Grieg, then

VOTED: Motion to grant continuance to three months and request for parties to provide status update at that time.

(Assenting: R. Sung, T. Espeleta, C. Abbott, C. Fukunaga, W. Greig, J.Reyher-Colon, R. Masuda)

(Absent: M. Kincaid Jr.)

Chairman Kihune: **The motion is granted** continuance for 90 days. Thank you.

D. COMMUNICATION

- 1. SAM YEH appealing the Planning Director's Notice of Violation (NOV 2016/0055) for the construction of a porch within the 6 foot side yard setback, the expansion of a porch into the 15 foot front yard setback, and for the location of a storage shed within the 6 foot rear yard setback for property located at 2028 Kaohu Street, Wailuku, Maui, Hawaii (BVAA 2016/0001), (A. Cabais)**

a. Department to give compliance report with possible action by the Board.

Chairman Kihune: Item no. D2 Sam Yeh, Department to give a compliance report with possible action by the Board. Go ahead.

Mrs. Cabais: *Reads item into record.* The violation has been updated and if there's any questions we have Tom Kolbe and Gail Davis.

Chairman Kihune: So, as we understand it that actual violation has been resolved? Correct?

Mrs. Cabais: Yes.

Chairman Kihune: Based on the picture that we have and information? Ok. Any members have any questions or comments regarding the item. Well we appreciate that information and glad that it's been resolved and hopefully it doesn't come back.

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

- 1. Having voted on November 25, 2015, to approve the variance for Kahului LDS Meeting House Steeple (BVAV 2015/0018), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.**

Chairman Kihune: Ok, now I have the D&O Facts Conclusions of Law regarding LDS Church. Any questions or any corrections members, regarding the D&O?

Mr. Abbott: I move to accept the D&O as set forth.

Mrs. Juanita Reyher-Colon: Second.

Chairman Kihune: Any comments or questions?

Vice-Chairman Raymond Sung: Yes Mr. Chair, I was not present on that day for the matter that was heard so, I have read the Findings of Facts, Conclusions of Law and Decision and Order Draft, but as much as I was not there on the day, I cannot say for certain one way or the other whether it's accurate or not. So, I will choose not to vote on whether to accept to draft order but I understand my not voting is a primitive vote. Thank you.

Chairman Kihune: Thank you very much Member Sung. All in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nos."

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0018)

(Assenting: T. Espeleta, C. Abbott, C. Fukunaga, W. Greig, J.Reyher-Colon, R. Masuda)

(Abstain: R. Sung)

(Absent: M. Kincaid Jr.)

Chairman Kihune: **Motion passed**, acceptance or adoption of the D&O.

F. APPROVAL OF THE FEBRUARY 25, 2016 BVA MEETING MINUTES

Chairman Kihune: Approval of the meeting minutes from February 25, 2016. Was that our last meeting? Any comments, corrections and motion?

Mrs. Reyher-Colon: I move to accept.

Mr. Espeleta: Second.

Chairman Kihune: Any additional comments? All in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "No's?"

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

VOTED: Motion to approve the February 25, 2016 meeting minutes.

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

(Absent: M. Kincaid Jr.)

Chairman Kihune: Approval of **minutes passed**.

G. NEXT MEETING DATE: FEBRUARY 23, 2017

Chairman Kihune: Ok. Our next meeting is scheduled for February 23, 2017.

H. ADJOURNMENT

Chairman Kihune: Other than that everyone have a good week. Meeting adjourned at 1:58 p.m.

There being no further to come before the Board, the meeting adjourned at 1:58 p.m.

Respectfully submitted by,

Chalsey Kwon

CHALSEY R. K. KWON

Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

Howard Kihune Jr., Chairman
Raymond Sung, Vice-Chairman
G. Clark Abbott, Chairman
Teddy Espeleta
Chad Fukunaga
William Greig
Juanita Reyher-Colon
Ralph Masuda

Excused:

Max Kincaid Jr.

Others:

John Rapacz; Planning Program Administrator, Department of Planning
Avelina Cabais; Staff Planner
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation
Counsel