

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
May 25, 2017**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Howard Kihune at approximately, 1:30 p.m., Thursday, May 25, 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 Kihune: The meeting of the Board of Variances and Appeals will now come to order, it is approximately 1:34p.m. Let the record show we do have a quorum.

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

Chairman Kihune: Basically our agenda today will be adopting the Findings of Fact, Conclusions of Law, Decision and Order for several items that we have in front of us.

Are there any other comments or anything before we get started? No? Ok.

Ok the first item. *Reads item into record.*

1. Having voted on July 10, 2014, to deny the variance for Douglas J. Albanese & Mary M. Lynch (BVAV 2014/0002), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Chairman Kihune: So basically if all of the members have had a chance to at least review and go over that particular Decision and Order, we will call for a motion to approve- -

Mrs. Richelle Thomson: And the records and minutes- -

Chairman Kihune: Oh yes, minutes and record and if so, we can make a motion to approve or deny.

Vice-Chairman Raymond Sung: I think it's only a motion to adopt the Findings of Fact- - ...*(in audible)*...

Chairman Kihune: Correct. Sorry. Make a motion to adopt. Sorry.

Vice-Chairman Sung: I so move, Mr. Chair.

Chairman Kihune: Ok. Second?

Mrs. Junaita Reyher-Colon: I'll second.

Chairman Kihune: Any comments or discussion? All those in favor say "Aye."

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Members: "Aye."

Chairman Kihune: Any "Nays?" None. **Motion adopted.**

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2014/0002).

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

Chairman Kihune: Ok, second item. *Reads item into record.*

2. Having voted on October 22, 2015, to approve the variance for Kahonua O Kale LLC (Maui Sunseeker) (BVAV 2015/0017), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Chairman Kihune: Any comments? Can we get a motion if everyone had a chance to review the minutes and facts of finding and if so, can we ask for a motion?

Vice-Chairman Sung: So moved Mr. Chair, to approve.

Chairman Kihune: Second?

Mrs. Reyher-Colon: I'll second.

Chairman Kihune: Ok. Any comments or discussion? Seeing none, all those in favor say "Aye"?

Members: "Aye."

Chairman Kihune: D&O, Facts of Findings have been **moved to adopt.**

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0017).

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

Chairman Kihune: Ok, item number three. *Reads item into record.*

3. Having voted on January 14, 2016, to approve the variance for Amori Tract Subdivision (BVAV 2015/0019), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Chairman Kihune: Any comments or questions? Everyone had a chance to review the minutes and the Findings of Facts? If so, can we get a motion?

Mrs. Reyher-Colon: I move to adopt.

Vice-Chairman Sung: Second.

Chairman Kihune: Ok. All those in favor, say "Aye".

Members: "Aye."

Chairman Kihune: Any "Nays"? Seeing none. **Motion adopted.**

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0019).

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

Chairman Kihune: Ok. Item number 4. *Reads item into record.*

4. Having voted on February 25, 2016, to approve the variance for Friedman Investment Group-Mariners (BVAV 2015/0020), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Chairman Kihune: Everyone had a chance to review the Fact of Findings and Decision and Order? With that being said, motion please?

Mrs. Reyher-Colon: I move to adopt.

Vice-Chairman Sung: Second.

Chairman Kihune: Ok. Any comments or questions? All those in favor?

Members: "Aye."

Chairman Kihune: Any "Nays"? None seen. **Motion is adopted.**

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0020).

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

Chairman Kihune: Item number five, I will be recusing myself as I do have interest in this project personally and for the record I want to recuse myself, so I will pass that over to Vice Chair Sung.

Vice-Chairman Sung: Thank you Mr. Chair. *Reads item into record.*

5. Having voted on February 25, 2016, to approve the variance for Kaiaulu Subdivision (BVAV 2015/0021), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

Vice-Chairman Sung: Members of the Board, there is one typo that we need to fix on page 11 of the draft. Item 4.B, that first line reads "no parking should be allowed on the access roadway and the project shall- - " a word is missing, that word I believe is include, so we will add the words "include" and then the sentence continues- - "...the project shall include additional 23 public/guest parking stalls over the required number of parking stalls" and that's the end of that sentence.

Are there any other proposed changes or comments or questions regarding the draft Findings of Facts and Conclusions of Law from members of the Board? Has everyone had a chance to review the record and the draft? Good. In that case, I'd like to entertain a motion from the Board to adopt the draft Findings and D&O.

Mrs. Reyher-Colon: I'll move to adopt with the corrections made.

Mr. Chad Fukunaga: I second.

Vice-Chairman Sung: Thank you. Any further discussion? Seeing none, let's vote all in favor of adopting please say "Aye".

Members: "Aye."

Vice-Chairman Sung: Any "Nays"? **Motion carries unanimously.** Thank you and we go back to Chair Kihune for the rest of the agenda.

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2015/0021).

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

Chairman Kihune: Thank you Chairman Sung and thank you Board members. Item C. *Reads item into record.*

C. COMMUNICATION

1. BVA Draft Letter to Mayor, Requesting that DPW Recommendations With its Staff Reports.
 - a. The Board may approve, revised and transmit its draft letter to the Mayor, requesting that the Department of Public Works provide recommendations with its Staff Reports on variances.

Chairman Kihune: This particular request should be in your packet, it has to do with basically getting some recommendations from Public Works on some of the variances that have been in front of us. Whether it's a recommendation of support or recommendation of denial. I think from a Board's standpoint, it's important that we do have that from that department, just as we do from Planning. It's very helpful for us when we're working with sensitive issues or items that are before us regarding variance. So that's basically in a nutshell what that means. Any other members have any other comments after that?

Mr. Fukunaga: I'd like to make a comment Mr. Chair. I agree it's helpful, but personally I try to read through all the documents and come to my own conclusion before I read the Department's opinion. So I'd like to just add on that I think it's important that we come to our own conclusions and not only rely on their recommendations.

Chairman Kihune: Thank you Member Fukunaga.

Vice-Chairman: I would wholeheartedly agree with Member Fukunaga's comments, it is our responsibility and our decision. I do think however that some of the previous recommendation reports can be lack of specificity as well as the lack of taking any position in those documents are at least frustrating to me as a member. Often times I have found that with the kind of recommendation report that we've seen in the past, the analysis is very thin so what's left is really the applicant or the appellant stating something and that's the only thing of record; and without an official position by the department one way or the other, I don't know how to decide. Obviously they can give the recommendation, that would give me some guidance but it's still my decision as one vote on this Board as to whether to accept that recommendation or not. But at least it gives me some guidance. But sometimes I just feel at a total lost when all I have is the applicants requesting something and the department is not taking any position and not even giving an analysis as to whether it's completely accurate or not.

So, that's part of my reasoning I think for the benefit of such a letter asking that the department going forward provide more clarity. Thank you.

Chairman Kihune: Thank you Board Member Sung. Any other comments or discussion?

... (In audible discussion in background)...

Mr. William Kamai: Why is it that Public Work's doesn't give recommendations?

Mr. Rapacz: I don't know why for sure. When it's come up before representative of the department has said that they don't believe in variances, they don't think there should be any and that's why they don't give recommendations. But, the code clearly provides for variances from Title 18, so there shouldn't be any question about whether- if the facts and the situations meet the criteria for the variance, the Board should be ruling on it one way or the other and I would think that on most occasions that the department would probably have an opinion on it. But, historically I don't know how that happened.

Chairman Kihune: So with regards to a matter coming before us regarding Public Works, and them not giving an opinion or recommendation does the Planning Department give one?

Mr. Rapacz: No we don't, we just act as staff for the Board. We help with transmitting the report but it's the Department of Public Works' report and it's within their jurisdiction.

Chairman Kihune: Thank you very much Member Kamai. Any other questions or comments? I think it's a double edge sword, I think that the recommendation by the DPW for some Board Members and for myself, may or may not help me make my decision. But like Member Fukunaga had mentioned I think we could come prepared and we understand what we're looking at and specifically the comments that may have been made from that department should be able help us make those decisions that we need to make. But again, from a Chair's standpoint it could be helpful and then at times it may not be.

Ok is there a motion on the table?

Vice-Chairman Sung: Mr. Chair, I so move to have the Board approve the draft letter to the Mayor.

Mrs. Reyher-Colon: I'll second.

Chairman Kihune: Any discussion?

Mr. Rapacz: Mr. Chair, if the Board does approve then we would finalize the letter and transmit it to the Chair for signature.

Chairman Kihune: As the letter is written in front of us?

Mr. Rapacz: Correct.

Chairman Kihune: I'll make that comment, that what will be transcribed and sent forward will be the letter that we received as a draft.

Mr. Rapacz: Correct.

Chairman Kihune: No discussion, no comments, seeing none, those in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nays?" It's so **moved and seconded** in regards to this letter being forwarded to the Mayor's office for signature as presented to us today.

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

VOTED: Motion to accept the BVA Draft Letter to Mayor.

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

D. APPROVAL OF THE JUNE 9, 2016 BVA MEETING MINUTES

Chairman Kihune: Approval of the June 9th, 2016 meeting minutes. Has everybody had a chance to review? Any comments or any corrections or anything that we need to take a look at? Seeing none, is there a motion to approve?

Vice-Chairman Sung: So moved Mr. Chair.

Mr. Fukunaga: I second.

Chairman Kihune: All in favor say "Aye".

Members: "Aye".

Chairman Sung: Any "Nays?" Seeing none, motion was moved and seconded, **minutes approved** for June 9, 2016 minutes.

It was moved by Vice Chairman Sung, seconded by Mr. Fukunaga, then

VOTED: Motion to approve June 9, 2016 BVA meeting minutes.

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

E. NEXT MEETING DATE: JUNE 8, 2017

Chairman Kihune: Next meeting is scheduled for June 8, 2017, any comments or anything?

Mr. Kamai: Do we have something on the agenda.

Ms. Chalsey Kwon: As of yesterday we did. But the applicant didn't meet the notification requirements in time, so we need to cancel that meeting. So we published it, it was set, but the applicant didn't do their publishing in time.

Chairman Kihune: So at this time, most likely we will not have a meeting?

Ms. Kwon: Unless there's something else that comes up with an appeal or request for a meeting by the Board to approve more D&O's. But those applicants are supposed to let us know when they plan to have their meeting.

Chairman Kihune: Ok.

F. ADJOURNMENT

Chairman Kihune: Alright, motion to adjourn the meeting?

Mrs. Reyher-Colon: I move.

Mr. Fukunaga: Second.

Chairman Kihune: All those in favor say "Aye".

Members: "Aye".

Chairman Kihune: **Meeting adjourned.**

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

VOTED: Motion to adjourn meeting.

(Assenting: R. Sung, C. Fukunaga, J. Reyher-Colon, J. Borge, W. Kamai)

(Excused: W. Greig, M. Kincaid, R. Masuda)

There being no further to come before the Board, the meeting adjourned at 1:48 p.m.

Respectfully submitted by,

Chalsey Kwon

CHALSEY R. K. KWON

Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

Howard Kihune, Chair

Raymond Sung, Vice-Chairman

Chad Fukunaga

Juanita Reyher-Colon

Jeffrey Borge

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William Kamai

Excused:

William Greig
Max Kincaid Jr.
Ralph Masuda

Others:

John Rapacz; Planning Program Administrator, Department of Planning
Danny Dias; Supervising Planner
Jared Burkett; Staff Planner
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning
Summer Enfield-Carlos; Secretary
Richelle Thomson, Department of the Corporation Counsel