

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
August 10, 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, August 10, 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: The meeting of the Board of Variances and Appeals will now come to order and we do have a quorum.

C. PUBLIC HEARING

- 1. BC RESTAURANT OPERATOR INC DBA MERRIMAN'S HAWAII, is applying for a variance from Maui County Code (MCC) §19.36A.010 "Designated Number of Spaces" and 19.36A.190 "Loading Space" to delete the requirement of having to provide thirty-nine (39) additional parking stalls and one (1) additional loading space for the outdoor dining area of the Merriman's restaurant located at 1 Bay Club Place, Lahaina, Hawaii; TMK (2) 4-2-004:025 (BVAV 2017/0002)**
 - a. LANCE D. COLLINS, attorney on behalf of ASSOCIATION OF APARTMENT OWNERS OF PUNA POINT, LLC (AAOPP), and PAUL ENGLER, its President submitting a Petition to Intervene dated July 31, 2017 on the above mentioned applications from BC RESTAURANT OPERATOR INC. DBA MERRIMAN'S HAWAII**
 - 1) Action on the Petition to Intervene**
 - 2) If the Board acts to grant the Petition to Intervene, then the Board may select a Hearing Body/Hearings Officer**
 - b. If the Board denies the Petition to Intervene, then it may take action on the application.**

Chairman Kihune: There will be a slight change, the applicant has requested that we postpone this hearing meeting until a later date. Is that correct? Can I get counsel or the applicant itself?

Mr. Calvert Chipchase: Yes.

Chairman Kihune: Ok, now we have the date of August 24th, which is two weeks from today. The next day available after that will be the 28th of September. Ok, the applicant has agreed to move the date to September 28th. If there's no individuals opposing that date, I request that the Board make a motion to move this hearing meeting to the 28th of September and that would be all the items under Item No. C, 1 and 1a.

Vice-Chairman Raymond Sung: Mr. Chair, I will make the motion to defer Item C. to September 28th.

Ms. Richelle Thomson: I would go ahead and add everything under C.

Vice-Chairman Sung: I restate the motion so that all items under part C of the agenda be deferred to September 28th.

Chairman Kihune: Do we have a second?

Mr. Chad Fukunaga: I second that.

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

Members: "Aye."

Chairman Kihune: Any "Nays?" Hearing none, we will post-pone this hearing until September.

Mr. Chipchase: Thank you Mr. Chair.

Chairman Kihune: Thank you very much.

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

VOTED: Motion to defer Merriman's Variance Hearing and all the items under Item C. to September 28th, 2017 meeting date:

(Assenting: R. Sung, C. Fukunaga, W. Greig, J.Reyher-Colon, M. Kincaid Jr. R. Masuda, J. Borge, W. Kamai)

Chairman Kihune: **The motion carries.** Thank you.

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

- 1. Having voted on March 24, 2016, to deny the variance for My-Khanh Thi Nguyen & Loc Phuc Truong (BVAV 2016/0004), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.**

Chairman Kihune: With this proceedings being postpone we will go ahead and jump to Item D and that's Findings of Facts Conclusions of Law, Decision and Order. Has everyone had a chance to review those D&Os?

Members: Yes.

Chairman Kihune: Do we have a motion to approve the D&O under Item No. 1 under D?

Mrs. Juanita Reyher-Colon: Chair, I move to approve the D&O of March 24th.

Chairman Kihune: Thank you.

Vice-Chairman Sung: Second.

Chairman Kihune: Seconded. Comments?

Mr. Fukunaga: I have a comment.

Chairman Kihune: Sure.

Mr. Fukunaga: I think there's two D&Os on March 24th. Is the motion to approve both or just Item No. 1?

Chairman Kihune: Motion to approve D.1. Any other comments? Seeing none, all those in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nays?" Seeing none, motion is moved to approve the D&O regarding March 24th.

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 2016/0004)

(Assenting: C. Fukunaga, W. Greig, J.Reyher-Colon, M. Kincaid Jr., R. Masuda, J. Borge, W. Kamai)

Chairman Kihune: **Motion passed.**

Chairman Kihune: D.2, can I get a motion for D.2?

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

- 2. Having voted on March 24, 2016, to approve the variance for WV Sub, LLC-Whalers Village, Leilani's on the Beach and Hula Grill Parking (BVAV 2016/0005), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.**

Mr. Fukunaga: Chair, I make a motion on Item D.2 dated March 24th.

Chairman Kihune: Can I get a second?

Mrs. Reyher-Colon: I'll second.

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

Members: "Aye."

Chairman Kihune: Any "Nays?" Seeing none.

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

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2016/0005)

(Assenting: C. Fukunaga, W. Greig, J.Reyher-Colon, M. Kincaid Jr., R. Masuda, J. Borge, W. Kamai)

Chairman Kihune: **Motion passed.**

E. APPROVAL OF THE FEBRUARY 9, 2017, APRIL 13, 2017 AND JUNE 9, 2017 BVA MEETING MINUTES

Chairman Kihune: Item No. E, approval of the meeting minutes from February 9th, April 13th and June 9th of 2017. Can we get a motion or- -

Vice-Chairman Sung: Excuse me Mr. Chair, but in my packet I only got the February 9th and May 25th minutes, but I do not have the April 13th minutes

Chairman Kihune: Is that correct for all of our members?

Mr. Fukunaga: Me too.

Vice-Chairman Sung: And in fact, the second one in my packet is actually May 25th, which is not even listed on the agenda. The agenda Item E. list February 9th, which I have but not April 13th and not June 9th.

Chairman Kihune: Ok.

Mrs. Reyher-Colon: I have February 9th and May 25th.

Vice-Chairman Sung: Correct.

Ms. Chalsey Kwon-Secretary to Boards and Commission II: Hands out hard copy of April 13, 2017 draft meeting minutes to Board.

Chairman Kihune: I'd like to have a motion to amend the agenda with the change of the date of this particular meeting minutes in a motion to correct this.

Vice-Chairman Sung: Mr. Chair I move to correct Item E of the agenda so that it reads approval of the February 9, 2017, April 13, 2017 and May 25, 2017 BVA meeting minutes. The reference to June 9th is an error. Thank you.

Chairman Kihune: Alright. Do we have a second?

Mrs. Reyher-Colon: Second.

Chairman Kihune: Any comments? Hearing none, all those in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nays?" Seeing none. **Motion passed.** Agenda changes, replacing June 9th with May 25th meeting minutes. Let's take a couple minutes and read through the April 13th minutes.

Vice-Chairman Sung: Thank you.

Chairman Kihune: Ok, is that enough time for everyone?

Vice-Chairman Sung: Few more minutes.

Chairman Kihune: Ok. Alright. Can we get a motion for the approval of meeting minutes from February 9th, April 13th and May 25th, 2017?

Vice-Chairman Sung: Before we do that Mr. Chair, may I ask for a correction on page 18 of the draft for the April 13, 2017 minutes as presented?

Chairman Kihune: Go ahead Mr. Sung.

Vice-Chairman Sung: Ok. On page 18 near the bottom of that page, the third paragraph from the bottom where it says Vice-Chair Sung, the last sentence or question reads currently "or gets a quick q-u-i-c-k claimed-deed", that word quick should instead be quit q-u-i-t and then put a hyphen and then claim-deed. So the full last sentence reads "or gets a quit claimed-deed?" thank you Mr. Chair.

Chairman Kihune: Thank you Member Sung. So noted, we'll have that change made. With that change being made, can we get a motion to approve all three minutes at one time? February 9th, April 13th and May 25, 2017.

Vice-Chairman Sung: Mr. Chair, I move that we approve the minutes of the respective meetings of February 9, 2017, April 13, 2017 as corrected and May 25, 2017 meeting minutes. Thank you.

Chairman Kihune: Second please.

Mr. Fukunaga: I second.

Chairman Kihune: Any comments? Seeing none. All those in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nays?" Seeing none, minutes of those three minutes are approved.

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

VOTED: Motion to approve BVA meeting minutes dated February 9, 2017, April 13, 2017 and May 25, 2017.

(Assenting: C. Fukunaga, W. Greig, J.Reyher-Colon, M. Kincaid Jr., R. Masuda, J. Borge, W. Kamai)

Chairman Kihune: **Minutes approved.**

F. NEXT MEETING DATE: AUGUST 24, 2017

Chairman Kihune: Our next meeting is scheduled for August 24, 2017. Do we have anything on the schedule at this point Chalsey?

Ms. Kwon: For the August 24th meeting, no.

Chairman Kihune: No, ok. Thank you.

G. ADJOURNMENT

Chairman Kihune: Alright ladies and gentleman thank you very much. This meeting is adjourned.

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 S. K. Kihune, Chairman
Raymond Sung, Vice Chairman
Chad Fukunaga
William Greig
Juanita Reyher-Colon
Max Kincaid Jr.
Ralph Masuda
Jeffrey Borge
William Kamai

Others:

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