

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
AUGUST 14, 2008**

**A. CALL TO ORDER**

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Randall Endo at approximately 1:34 p.m., Thursday, August 14, 2008, 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 Randall Endo: Now we will be allowing public testimony on each of the items on today's agenda. Generally, we like to hear the testimony prior to the actual item coming up, but if you have to leave early, you can give your testimony out of sequence if you have to, but you will only be allowed one opportunity to testify. At this time, is there anyone who wishes to speak in the public? Seeing none, we'll close public testimony on all items, and call the first item on the agenda.

**B. PUBLIC HEARING**

1. **CHRIS HART & PARTNERS representing A&B KANE, LLC requesting a variance from Maui County Code, §18.04.030 to allow open space, landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan Business/Commercial and State Land Use Urban, whereas "[t]he director shall not approve any subdivision that does not conform to or is inconsistent with the county general plan, community plans, land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land" for the Kane Street Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawai'i; TMK: (2) 3-7-005:003, 011, and 023 (BVAV 20080002).**

Ms. Trisha Kapua`ala read the agenda item into the record.

Ms. Kapua`ala: And I just have a quick video so you can familiarize yourself with the property. So right now, I am standing in front of the Foodland parking lot on Kane Street. And right in front of you is the subject property or properties. I think you might be familiar with this use of land now. It's a go-cart ring. It's a Sacred— No, I'm sorry. It's a — there's the Kaahumanu Shopping Center parking lot structure, Foodland. This is now Vevau Street and Kane Street. Again, the subject properties: Parcels 3, 11, and 23. This is towards — more towards the end of the subject property. Maui Community College has their student housing; the library, which is behind the cars; and again, the subject properties. And there is one more shot after this. The vantage point here is from the parking lot of the library. Again, MCC student housing. Those are the MEO buildings located on Kane Street, and the property that is the subject matter before you today, and the public library. Thank you very much.

Chairman Endo: Thank you, Ms. Kapua`ala. At this time, I'd like to ask the applicant to come forward and make an appearance. After that, we'll allow the applicant to make a presentation on their application. And then we'll deliberate on the application.

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Mr. Grant Chun: Good afternoon, Mr. Chairman, and members of the Board. My name is Grant Chun. And I'm here representing the applicant: A&B Properties. Would you like me to proceed with our presentation?

Chairman Endo: Yes, please.

Mr. Chun: Thank you. As I indicated, my name is Grant Chun. And I'd like to thank you all for the opportunity to present our request to you. With me this afternoon are Mr. Greg Garneau, our attorney in this matter; Mr. Michael Summers, of Chris Hart and Partners, our consultant; and Mr. Daren Lake, who's the project manager on this Aina O Kane Project. We hope that you'll find that this particular situation presented in the Aina O Kane Project presents a unique set of circumstances worthy of your favorable consideration.

The specific provision from which we're seeking relief from this Board today is Maui County Code Section 18.04.030 which states that "The Director shall not approve any subdivision that does not conform or is inconsistent with the County general plan, community plans, land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land."

This is a rendering of the Aina O Kane Project which the staff just showed you a video of. Looking in the direction of Vevau Street from Kane Street here towards the back part of the project kind of diagonally across the street, you can see the MCC dorms which have already been constructed.

Just for your background, Aina O Kane is a mixed use commercial and multi family residential facility. It will contain 103 two and three-bedroom condominium residences. Over half of those residential units will be priced 120% of the HUD median income. The project is unique insofar as it will also provide for ground floor retail, commercial, and restaurant space. So it's a true mixed use project. The project area is 3.8 acres. And to date, the project has received its SMA approval as well as its NPDES permit. The building permit is still pending.

This is an elevation – a rendering of the elevation of the project site from School Street, which is the side where the Kahului Library is and from Vevau Street where the dormitories are located.

The project has a number of key objectives, which we'd just like to share with you today. These objectives include providing quality housing in Central Maui while also producing quality in-fill construction on an underutilized site. The site has been deemed to be most attractive to MCC faculty and students. And it is ideally situated to help us in our overall goal for the area of establishing a dynamic pedestrian-oriented corridor connecting the different hubs in Kahului Town. We see this project as really just the start of the revitalization of this area which was once a very vibrant center of town for Kahului.

To give you a sense of the project's location from a broader perspective, here's an aerial view of the site, and you can see the site we're talking about here along Kane Street. This is the Foodland Store right across the street. Zooming in a little closer, you get a better view of the project site. It is surrounded by Kane, Vevau and School Streets here. And you can see the Kahului Library in this photo just as a landmark.

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This is a site plan for the project. And you can see how the buildings are sort of pushed up with frontages along the three surrounding streets so as to create a pedestrian-friendly streetscape, when all is said and done. The area that is subject to the variance is this triangular jog here in the property line, which will contain no structures.

This slide gives you a better vantage point on the situation at hand. Here you can see the three surrounding streets: Kane, Vevau, and School Streets. And you can see the Foodland across the street, as well as the library across the street on the other side. This 3.67-acre triangle – I mean, I'm sorry, rectangle, referred to on the slide as Parcels 3 and 11 will contain all of the project structures and is not necessarily the subject of this variance. It holds the appropriate commercial business designation, as well as the consistent zoning of a B-2 community business district. This 5,900 square foot area, this jog in the property line, if you will, referred to on the slide is Parcel 23 will, as I said, contain no structures, but it will be used – landscaped for use as a barbeque and a tot lot area. And that is, in fact, the – basically, the subject of the variance today as although it holds a community plan designation of business commercial, its zoning is R-3 residential. Just by way of background, we found in some of our work in some of the older neighborhoods in Kahului, it's not really that uncommon to have a situation arise where old settlement patterns sort of surface in the form of old zoning designations that are no longer in sync with current land use – urban land use patterns. This block, for instance, was at one time located at what was basically, the edge of the Port Town of Kahului. And the edge of town was essentially – the town was bounded by Kamehameha and Kaahumanu Avenues. And the town was a very densely populated mixed use neighborhood of small house lots, shops, and retail establishments. I actually know this from personal experience because my grandmother's house was actually in this block. And anyway, of course, land use patterns have changed over time. And so the fact that there happens to be this remnant triangular area of substandard size by today's standards and actually with no visible independent access to surrounding roadways as they exist today is not all that unusual or surprising.

For background, we thought it would be helpful to provide you all with a brief timeline on this project to give some context to the question at hand and how it has arisen. On June 14<sup>th</sup>, the Planning Commission approved the SMA permit for this project. The permit was covered what was then three contiguous parcels which constituted the project area. In approving the SMA permit, the Planning Department at the time concurred that the proposed project was consistent with the applicable zoning and community plan designations for the parcels. On March 8<sup>th</sup>, 2006, we filed for preliminary subdivision approval for the purpose of consolidating the three parcels that comprised the project site essentially making the three adjacent parcels into one larger parcel. On April 21<sup>st</sup>, we received a list of conditions from the Development Services Administration that outlined what we need to comply with in order to receive final subdivision approval. And in January, on January 24<sup>th</sup>, 2007, we met with representatives of the County Zoning and Enforcement Division who indicated that the consolidation of the parcels should not pose a problem and that we should make sure to comply with the SMA conditions on the project. On May 31<sup>st</sup>, 2007, just about two years after the SMA had been granted, we received a letter from the Planning Department indicating that the Department would not be able to recommend final subdivision approval because of the R-3 zoning of Parcel 23. The followup was that on June 5<sup>th</sup> of that year, we responded to the Planning Department's concern by asking the Development Services Administration for confirmation that the subdivision was exempt from this requirement because it was being processed under

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Ordinance 2372 which actually is an accommodation in the ordinance for situations like this where you – you're actually winding up with fewer lots than you start out with. On that same day, we received email confirmation from DSA that this subdivision or consolidation was indeed exempt. On September 17<sup>th</sup>, we received final subdivision approval. On October 12<sup>th</sup>, we received an email from DSA which indicated that the Department was considering revising its then standard policy of not reviewing building permits on the question of zoning and community plan consistency. So on that same day, October 12<sup>th</sup>, we responded to DSA via correspondence with a reminder that the subdivision for this project was exempt from this requirement which was now being considered for implementation at the building permit stage of the project. On March 12<sup>th</sup>, DSA sent us a letter adding an additional condition that requires us to now show zoning conformity and consistency before building permits will be issued. On April 12<sup>th</sup>, we met with the Department of Public Works and we all agreed that the best means of essentially, addressing this issue that has arisen is to come before your honorable Board for what we hope will be favorable consideration of our request for a variance.

Looking to the criteria that you folks are entrusted with reviewing, first, we respectfully submit that there are indeed, special geographical and physical circumstances or conditions affecting the property that are not common to all property in the area. In this instance, it is noteworthy that Parcel 23 is essentially, a substandard remnant parcel. It is landlocked, has no roadway access of its own, and it cannot be re-subdivided because of its substandard size. It's shaped like a small triangle which creates a scenario where it's challenging, if not impossible, to develop because of setback issues. And it cannot be combined with surrounding parcels because of differing ownership scenarios as well as differing zoning designations. So it's definitely in a unique situation not common to other properties in the area. Granting this variance will allow for the use of this underutilized site in a manner that is consistent with its existing zoning and actually compatible and complimentary to surrounding as well as proposed uses.

For your second criteria, we would assert that this variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this title because of the special geographical or physical circumstances or conditions affecting the property. Although the majority of the parcel is zoned B-2, which actually allows for construction of the condominium units, under the current interpretation of County policy, the maximum number of dwelling units that would be allowed on this property without triggering a demonstration of that conformity is three. This would mean a loss of 100 housing units to our local community, 40% of which are already reserved pretty much entirely by local people from Central Maui. We would respectfully submit that this loss of our ability to proceed with plans for the project would be an extraordinary hardship on these buyers, and in short, your favorable consideration of this variance would indeed preserve a substantial property right in this parcel.

Looking to your third standard of review, we submit that the special geographical or physical circumstances or conditions affecting the property are not the result of previous actions involving the granting of this subdivision. Basically, the reason we're here before the Board today is not because there has been a subdivision or a consolidation of the parcel. The reason we're here is because the current interpretation of County ordinance requires a demonstration of conformity between community plan and zoning at the time of building permit review. Further, interestingly and

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ironically enough, the consolidation actually serves to address the particular issues that exist with the parcel: its substandard size, its being landlocked, etc.

We feel most certain that the granting of the variance will indeed not be detrimental to the public's health, safety, and welfare, or injurious to other property in the vicinity. In fact, we would assert that our ability to proceed with the plans for this property will actually be beneficial to the public's health, safety, and welfare because the project will allow for the construction of much needed affordable housing, and it'll also create economic activity and job opportunities in a currently under developed area, and will hopefully contribute to the revitalization of a new pedestrian-oriented downtown Kahului. And looking specifically at Parcel 23, inclusion of the parcel in the project will provide landscaped recreational open space that will also help with management of storm water quantity and quality.

And finally, we respectfully submit that the property has indeed obtained an appropriate zoning designation and it is not in the interim zoning district. All of the proposed uses within this project are located in areas with zoning designations appropriate to those uses. The condominium apartments and retail establishments will be located in the B-2 community business district. And Parcel 23 which is the R-3 zoned area of the project site will be used as a mini park which is a permitted use in that zoning district.

So in conclusion, we just respectfully request your favorable consideration of this variance request which will allow the building permits to be issued for what we feel will be favorable – a very favorable addition to Kahului Town. Thank you very much.

Chairman Endo: Thank you, Mr. Chun. Is that it for your presentation?

Mr. Chun: Yes.

Chairman Endo: Okay. If I might just ask you, because some of us are more familiar with this issue having looked at more often than others, but I think for people who are looking at it for the first time, it can be a little bit confusing. So I was wondering if maybe you could just recap it real quickly just one more time just so we can start off with the best possible understanding of the situation?

Mr. Chun: Okay. So, Mr. Endo, would you like me to just explain how it is that this particular provision's interpretation raises question with this project?

Chairman Endo: Yeah.

Mr. Chun: Okay. So the provision reads that a subdivision basically shall not be approved unless it conforms with the various elements listed there: the County General Plan, community plan, land use ordinances, etc. The interpretation of this provision is that a subdivision occurs whenever more than three dwelling units are located on a parcel of land. So the current interpretation of this provision creates a scenario wherein although we're not in the subdivision process anymore, the fact that we're seeking to do more than three residential units on the property makes this provision kick in. This is, as I indicated, a new interpretation of this particular provision's administration. So the nonconformity as I indicated is on that small triangular area here, which has a community plan

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designation of business commercial, but a zoning designation of R-3 residential. So theoretically or technically, that could be viewed as a nonconformity which would need to be addressed.

Chairman Endo: Okay, so just for that tiny triangle piece, they don't have complete consistency between community plan and zoning which is the interpretation of what's required under that other section you read?

Mr. Chun: Yes.

Chairman Endo: Even though the use you're proposing or the thing you're actually doing actually does conform to each piece if you were to apply it?

Mr. Chun: Correct. That's right. The use that's proposed for the area is actually consistent with the designations.

Chairman Endo: Okay. Okay, so at this time, I think I'll open it up to the Board. I guess I'll just say real briefly that there was a lot of information provided during the presentation, a lot of it for background, and to a certain extent, it's not really relevant to our criteria for the determination of the variance. So if you start asking them why they didn't put in a swimming pool in the project or stuff like that, I'm gonna try and limit you and redirect you to stay focused on the criteria to the extent possible. Okay, so questions from the Board? Member Shibuya or Member Tanaka?

Mr. Kevin Tanaka: No, no questions.

Mr. Warren Shibuya: I was wondering if the County has any proposed arguments or concerns that they wanna raise at this time before the Board handles it.

Ms. Lesli Otani: Hi, I'm Lesli Otani. I'm the civil engineer for Public Works. And the Department is not objecting to the variance.

Chairman Endo: Questions, Member Shibuya? No?

Mr. Shibuya: Yeah, I do. On one of your slides here, Grant, you mentioned it was minus hundred units which was 40% reduction in your proposed subdivision. It was caused by what?

Mr. Chun: No, I'm sorry. I may have misspoken. Actually what I meant was of the 103 units, 40% have been – have gone to market and have been reserved by purchasers.

Mr. Shibuya: Okay. And in terms of the structures that you have right now on plan, there was some mention in this document that was provided to us on setbacks. Where are the setback problems?

Mr. Chun: Well, as laid out in the site plan, there are no setback problems. But if the 5,900 square foot landscaped area was treated as not a part of the project, there would be a setback problem at that frontage.

Mr. Shibuya: It's because the structure – the planned structure would be right on the border line?

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Is that what it is? And that allowing for this R-3 to be made part of the whole project, then the setback would—

Mr. Chun: Be fine.

Mr. Shibuya: Be fine.

Mr. Chun: Correct.

Mr. Shibuya: So it's a presumption that you're doing here that the Board would approve of it and that the setback would disappear with the Board's approval.

Mr. Chun: Well, technically, Mr. Shibuya, this is already one parcel. It's already consolidated. So this is the boundary line of the parcel as it stands right now. But, yes, you're correct. The siting of the building is at the limit, if you will, of what it would — where it would need to be in order to conform with appropriate setbacks.

Mr. Shibuya: Okay. What impacts would have if you complied with the setback rules?

Mr. Chun: If we were to have to comply with the setback rules, it would create a scenario wherein we'd probably lose units. We'd have to do a new — a redesign essentially, of the project. And I guess from a purely sort of practical human sort of perspective, it could probably — it'll probably affect some of our buyers.

Mr. Shibuya: And what's the distance that you would have to move from that setback?

Mr. Chun: You know, I'm not sure, but I can ask the project manager where we're at.

Chairman Endo: Mr. Chun, just before we go any further, I just wanna clarify—there's no setback problem now. You're talking about if you chopped off that triangle piece, then there might be a setback problem.

Mr. Chun: Right. Right. But it's already, as I said, this parcel has already successfully gone through not only the SMA process, but also the consolidation process. So although we're referring to these as Parcels 3, 11, and 23, really, they're just one piece of land.

Chairman Endo: Okay.

Mr. Shibuya: It's just that the designations are different.

Mr. Chun: That's right, yes.

Mr. Shibuya: So what is the distance? What is the distance impact?

Mr. Chun: The distance between the — this side wall and the boundary is ten feet. So I guess theoretically, if you were to ignore the — this portion of the property, it would mean shifting the

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building over by that much at least.

Mr. Shibuya: Because I see an opening on the top of the building between buildings. So you could possibly shift the whole entire structure without having impact to possibly sales of items or units.

Mr. Chun: You know, I'm not sure that's really – that's necessarily the case. I know that before resorting to, you know, having to bother you folks this afternoon, we did look at, you know, all the different options as far as the site's layout design, parking is definitely a consideration, and found that the most ideal scenario would be to come here and hopefully receive your favorable review.

Mr. Shibuya: Where would this parking access and egress be?

Mr. Daren Lake: Hi. Daren Lake with A&B Properties. The parking access would be off of School Avenue here and then off of Kane Street here. But I just wanted to go back to the other point. Prior to the consolidation of the three parcels, the setback for this building would've had to have been ten feet from Parcel 23. So the building would've had to shift ten feet from here. But with the parcels, all three parcels consolidated, the setback was met because the building is ten feet from the boundary of Parcel 23.

Mr. Shibuya: I have a problem with the access in terms of how you – the vehicles will move. Again, can you be more specific as to how the access would come in? I can understand the one from School Street. Vevau—you have no access there. Am I correct?

Mr. Chun: No vehicular access. The—

Mr. Shibuya: The pedestrians may access it there.

Mr. Chun: Right. Right. The whole idea on – of the project is to try and really foster the kind of pedestrian orientation in the center of Kahului that actually was – that existed for a good part of Kahului's history. And so, the conscious decision was made that Vevau, although Vevau will and does for vehicular path-through, the idea is to minimize that and really encourage pedestrian orientation particularly in the context of the student housing that's just practically across the street.

Mr. Shibuya: Understand. I also want to— Your access on Kane Street now, can you go over that as to where it's located? Is it in front of Foodland's parking access, or is it by MECO, or Maui Land and Pine?

Mr. Chun: No, the frontage on Kane Street runs from the corner of Vevau to just about here which is about in line with the entrance to the Foodland parking lot. So it does not reach, you know, down to Maui Electric which is here or the Maui Pine offices which are located here.

Mr. Shibuya: Okay. I have more questions, but I'll let other members – I defer to other members.

Chairman Endo: Members, any other questions? No? Okay. Go ahead, Mr. Shibuya, although I would wanna say that I wasn't gonna let you go too much further on the access issue to the extent



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you never connected it back to the actual variance request. It sounded more like a project review type question that would come up at Planning Commission or something. So go ahead with your next question.

Mr. Shibuya: The next question was in terms of consistency with the community and general plans. You may not know the answer on this, but I just wanted to understand a little bit more. You are planning to use the Lot 023 and you have neighbors on the back side of this adjacent to this property. What types of neighbors do you have? You have residences there or do you have businesses there? Can you identify?

Mr. Chun: Yeah, no, there are no residences located in the area. The block has evolved so that the uses are primarily public/quasi-public. There's the Masonic Lodge and the various religious oriented usages on the adjacent parcels—some churches. There's a Japanese Church and there's the — not Hale Kaukau, but there's the ministry that First Assembly has here. So it's mainly — I think the Scientology Center is located here.

Mr. Shibuya: I was looking in terms of possible problems relating with the neighbors. If you kept this as open space, then you might have some noise problems, but apparently, it doesn't have residences as neighbors. So it seems very good. I do have concerns in terms of this open space, so-called park. It'll be maintained, as I understand it, with this subdivision, and not necessarily a County type of park, so access would be limited to the residences of this subdivision, would it not?

Mr. Chun: That's correct. It's an amenity for the residents.

Mr. Shibuya: But it would be not — would it be restrictive of residences in surrounding community for using it?

Mr. Chun: Well, there's gonna be a fence around the project site between the — all along this boundary. So access to this landscaped area would be through the project site right here.

Mr. Shibuya: You'll have businesses on the bottom floor, as you mentioned, the first floor, ground floor?

Mr. Chun: Yes.

Mr. Shibuya: And the parking for these businesses would occupy which stalls?

Mr. Chun: You know, off the top of my head, I don't know which stalls would be affiliated with the business uses although the parking is accommodated for for all of the uses within the project site. Maybe Daren could address that.

Mr. Lake: The businesses — the first floor would be retail within these buildings here. And there would be parking along Vevau Street for those. And then also the stalls that are fronting those businesses on the inside of the site would be reserved for the businesses. And there would be a gate that would prohibit business customers from parking in the reserved residential stalls, and that parking would be in this area here.

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Mr. Shibuya: Okay, thank you. I'm all done with my questions. Thank you.

Chairman Endo: Okay. Thank you, Member Shibuya. Any other questions? Deliberation? Okay. If not, I will – the Chair would request that someone make a motion one way or the other.

Mr. Kevin Tanaka: So move to approve the variance as requested.

Chairman Endo: Okay.

Mr. William Kamai: Second.

Chairman Endo: Okay, it's been moved and seconded to approve the variance request. Just for clarification before we deliberate and vote, you want standard conditions set forth in the regulations as part of your approval? Is that part of your—? Those would be like the insurance requirements, the indemnity requirements. So they're typical, but not necessarily have to be imposed in every application. So that's why I'm just asking.

Mr. Tanaka: Yeah, so moved to approve with . . . (inaudible) . . .

Chairman Endo: Okay. So at this point, we will consider it moved and seconded to approve the variance request with the standard conditions set forth in Section 12-801-76.1, and those have to do with insurance requirements and indemnity hold harmless provisions that are applicable to this particular situation. Okay, discussion? Seconded by Member Kamai. Any discussion? No? Seeing none, all those in favor, please say aye. Okay, opposed? No? Okay.

It was moved by Mr. Tanaka, seconded by Mr. Kamai, then

**VOTED: To approve the variance request with the standard conditions set forth in Section 12-801-76.1 having to do with insurance requirements and indemnity hold harmless provisions that are applicable to this particular situation.**

**(Assenting: K. Tanaka, W. Kamai, W. Shibuya,  
R. Ball Phillips, S. Duvauchelle.)**

**(Excused: H. Ajmani, S. Castro, J. Shefte.)**

Chairman Endo: **Okay, you're granted, Grant.**

Mr. Chun: Thank you very much.

Chairman Endo: Ms. Kapua`ala, do we have another item?

Ms. Kapua`ala: Yes, sir.

**C. APPEALS**

1. **JAMES W. GEIGER, ESQ., of MANCINI, WELCH & GEIGER representing UWE H. H. SCHULZ appealing the Department of Fire and Public Safety's decision to require an automatic sprinkler system for an existing lanai enclosure (Building permit application no. B T20080351) at the Ka'anapali Royal Condominium located at 2560 Keka'a Drive, Ka'anapali, Lahaina, Maui, Hawai'i; TMK: (2) 4-4-008:023-0059.**
  - a. **Mark Murakami, Esq. of Damon Key Leong Kupchak Hastert representing James F. Arbuckle and Natalie D. Arbuckle's Application to Intervene in the Appeal of Uwe H. H. Schulz**
  - b. **Mark Murakami, Esq. of Damon Key Leong Kupchak Hastert representing Brian Mallard's Application to Intervene in the Appeal of Uwe H. H. Schulz**
  - c. **Mark Murakami, Esq. of Damon Key Leong Kupchak Hastert representing James J. Gillogly and Marrietta S. D. Gillogly, Could-Trustees of the Gillogly Family Trust Dated July 29, 2003's Application to Intervene in the Appeal of Uwe H. H. Schulz**
  - d. **Mark Murakami, Esq. of Damon Key Leong Kupchak Hastert representing John L. Barneson, Jr. and Vickilee G. Barneson's Application to Intervene in the Appeal of Uwe H. H. Schulz**
  - e. **Mark Murakami, Esq. of Damon Key Leong Kupchak Hastert representing Douglas Duckworth and Priscilla Duckworth's Application to Intervene in the Appeal of Uwe H. H. Schulz**

Ms. Kapua`ala then read the agenda item into the record.

Ms. Kapua`ala: And representing the Department of Fire and Public Safety is Deputy Corporation Counsel, Mary Blaine Johnston.

Ms. Mary Blaine Johnston: Good afternoon. We were put back on the calendar for today because there were a number of individuals living in the Kaanapali Royal that wanted to intervene in this particular appeal that was brought by Mr. Schulz. We did – the parties, Mr. Geiger representing Mr. Schulz, myself representing the County, and Mark Murakami representing the intervenors signed a stipulation permitting that intervention. It was filed this morning. I don't know if you have a copy of the stipulation in front of you, but we've agreed to allow the – I think there are five or six individuals to intervene only on the single issue of the enclosed lanai. These individuals also have some other issues that are not part of this appeal. We already had – the Board had already appointed John McConnell as the Hearings Officer in this case, and the intervenors have agreed to him also as the Hearings Officer, so that should take care of us for a while until we have the – have a hearing. We don't have a hearing date set, but–

Chairman Endo: No, we don't have the stipulation before us at this point. So – but we'll just take your word for it.

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Ms. Johnston: It was – it was filed at 8:44. And I can pass a copy around, if you'd like to see that.

Chairman Endo: That's okay. So to summarize—everybody's okay with adding all the requested intervenors?

Ms. Johnston: That's correct. And I told Mr. Geiger who had another appearance that he didn't need to come that I would make the representation; Mr. Murakami, so he wouldn't have to come from Honolulu. So that's why we did the stipulation so they wouldn't have to appear. And I had to be here anyway. I have another matter after this one so—

Mr. Tanaka: So it's just the five, yeah, A, B, C, D, and E that you're adding?

Ms. Johnston: Let's see. Five, yeah, five additional intervenors.

Chairman Endo: Okay, let's see, Corporation Counsel Giroux, do we have to approve the interventions?

Mr. James Giroux: . . . (inaudible) . . . make a motion acknowledging the receipt of the stipulation.

Chairman Endo: Because we could take independent action and not allow it if we thought there was some reason why we didn't want to allow it so – but assuming there's nobody who cares, somebody make a motion.

Mr. Shibuya: I move that we accept these additional intervenors. And if there's other intervenors, this Board is very amenable to it. That's my motion. In other words, we'll accept these five. And if there's additional parties that are part of the complex, we'll accept them too.

Mr. Tanaka: Unique to that situation?

Mr. Shibuya: When they arrive.

Ms. Johnston: May I speak to that?

Chairman Endo: Yes, you may.

Ms. Johnston: There are 49 other apartment owners that are in the same position. So the alternative is 49 separate appeals brought before you. We have had several discussions on how we could get the other people that are in the same position to be bound by what happens in this hearing. We haven't quite come up with a way to force anybody to do that. And there may be some that don't want to do that. There may be some that will just sit by and depending on what the decision is will act accordingly, but that's a very real possibility you raise. And I suppose each person could come in and file a separate appeal if they decided to do that.

Mr. Shibuya: That's right, and I didn't want them to come in separately and again, prolong the whole proceedings.

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Ms. Johnston: Except we can't force them to intervene in this.

Mr. Shibuya: But if they did apply for it, they'd be automatically accepted.

Ms. Johnston: But we have to bring that back before the Board if new people come in. I think they would have to be approved.

Chairman Endo: Yeah, well, someone would need to second the motion, but I would have to say when we discuss that I would be hesitant to pre-allow people to intervene without having actually seen the petition.

Mr. Giroux: Yeah, I mean, they should at least– We should deal with what's on the record now. And I guess the attorneys can bring our attention to if any future activities occur.

Mr. Shibuya: Okay. So I amend the motion to accept these five intervenors as listed here.

Ms. Rachel Ball Phillips: Second.

Chairman Endo: Okay, it's been moved and seconded to accept or approve the petitions by the five parties listed, some of which are more than one person on our agenda. Any discussion? No? All those in favor, please say aye. Opposed?

It was moved by Mr. Shibuya, seconded by Ms. Ball Phillips, then

**VOTED: to approve the petitions by the five parties listed, some of which are more than one person on the agenda.**

**(Assenting: W. Shibuya, R. Ball Phillips,  
K. Tanaka, W. Kamai,  
S. Duvauchelle.)**

**(Excused: H. Ajmani, S. Castro, J. Shefte.)**

Chairman Endo: **Okay, motion is carried and petitions to intervene are all granted.** Is there anything else on this item?

Ms. Johnston: Not at present, no.

Chairman Endo: Okay. Moving on.

2. **B. MARTIN LUNA, ESQ. of CARLSMITH BALL, LLP representing W2005 KAPALUA/GENGATE HOTEL REALTY, LLC appealing the Director of Parks and Recreation's decision to apply the park dedication requirements of Maui County Code, §18.16.320 for the Ritz Carlton renovations located at 1 Ritz Carlton Drive, Kapalua, Maui, Hawai'i; TMK: (2) 4-2-004:014, 015 & 021. (BVAA 20070006)**

**a. Stipulation to Dismiss Appeal**

Ms. Kapua`ala read the agenda item into the record.

Ms. Johnston: Deputy Corporation Counsel, Mary Blaine Johnston, appearing on behalf of the Director of Parks and Recreation in this matter. We settled this case back in July. And there is a stipulation to dismiss the appeal. I don't know if you have that in front of you. It was filed with the Planning Department on July 3<sup>rd</sup>. And I'd be happy to explain what the settlement was if the Board is interested.

Chairman Endo: Sure.

Ms. Johnston: The Department of Parks – this is the Ritz Carlton who has renovated their hotel. And in the process of their renovation, they created 107 condo residential units in the hotel that people could actually buy and own these units as opposed to the other regular hotel rooms. The Director of Parks and Recreation initially took the position that all 107 of those units were subject to the park dedication fees that what they were was a subdivision upon subdivision, you have to pay the park fee. The developer– It was quite a bit of money. The amount assessed per unit was \$26,795 times 107. So it's a lot of money. The Ritz Carlton appealed that claiming that of the 107 units that were created, basically all but 11 were essentially hotel rooms just like the hotel rooms that were in the rest of the hotel. And the 11 that weren't were the 11 units with full kitchens in them, which actually made them more livable and more usable for residential purposes. The Director of Parks and her assistant, Pat Matsui–Tamara Horcajo and Pat Matsui–did an onsite inspection in about May. Went out, and looked at all the units, and came away convinced that, in fact, they agreed with the hotel that really, only 11 units were residential units. The other units were just – could be separated out from regular hotel rooms. The whole project, including the 11 with the full kitchens are run by a hotel management group. And the units must be maintained exactly like the hotel rooms. The owners, even with the ones with kitchens, they can't even so much as change a bedspread or a lampshade to something different. Everything has to go through the hotel management. So if you open the door, most of those are identical to all the hotel rooms. So based upon their evaluation, the Parks Department agreed that they would back off and that only 11 units would be subject to the park dedication fee, and the rest would not. The developer paid \$294,745 total park dedication fee to the County, and the case was dismissed. So we didn't go to hearing and I think it was a good resolution. If you have any questions, I'd be happy to answer.

Chairman Endo: Any questions? Okay, thank you.

Mr. Shibuya: You need acceptance, right? The Board accepting this?

Chairman Endo: Actually not, I think, because we lost jurisdiction when they withdrew the appeal.

Mr. Giroux: Once the appeal is dismissed, we actually lose jurisdiction. So we don't have to take action.

Chairman Endo: Okay, the next item is the approval of the July 24, 2008 meeting minutes.

**D. APPROVAL OF THE JULY 24, 2008 MEETING MINUTES**

Chairman Endo: Hopefully, you folks had a chance to review. Is there any motion on this?

Ms. Ball Phillips: I move to approve the minutes.

Mr. Shibuya: Second.

Chairman Endo: It's been moved and seconded to approve the minutes of July 24, 2008. Discussion? Seeing none, all those in favor, please say aye. Opposed?

**It was moved by Ms. Ball Phillips, seconded by Mr. Shibuya, then**

**VOTED: to approve the minutes of July 24, 2008.**

**(Assenting: R. Ball Phillips, W. Shibuya,  
K. Tanaka, W. Kamai,  
S. Duvauchelle.)**

**(Excused: H. Ajmani, S. Castro, J. Shefte.)**

Chairman Endo: **Motion is carried and the minutes are approved.** I think we're about the end of our agenda. Is there any new business? Other business? Questions? Announcements? Seeing none—

Mr. Shibuya: Trisha, on this other cases that are—

Chairman Endo: Oh, I'm sorry. You're right—Director's report: status on BVA contested cases. Okay, sorry. My bad.

**E. DIRECTOR'S REPORT**

**1. Status Update on BVA's Contested Cases**

Ms. Kapua`ala: There's actually several developments actually just with hearing officers' contracts. And no hearings – new hearings have been set, but there was a hearing for the water appeal, which is the Mahinahina Subdivision water appeal. And the parties have submitted their proposed findings, and therefore, Judge McConnell will be submitting his proposed findings to you very shortly. And other than that, no real developments.

Chairman Endo: Thank you, Trisha. Okay, our next meeting date is August 28, 2008, and meeting is adjourned.

**F. NEXT MEETING DATE: August 28, 2008**

**G. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 2:24 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Randall Endo, Chairman  
Warren Shibuya, Vice-Chairman  
Rachel Ball Phillips  
William Kamai  
Kevin Tanaka  
Sandra Duvauchelle

**Members Excused:**

Stephen Castro, Sr.  
James Shefte  
Harjinder Ajmani

**Others:**

Trisha Kapua`ala, Staff Planner  
James Giroux, Deputy Corporation Counsel  
Lesli Otani, Development Services Administration