

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
DECEMBER 13, 2007**

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, 1:38 p.m., Thursday, December 13, 2007, 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.)

B. PUBLIC HEARINGS

- 1. DOUGLAS GOMES of ENGINEERING DYNAMICS CORP representing WENDY J. FRANKEL, TRUSTEE OF THE KALANI TRUST requesting a variance from Maui County Code, §18.16.060(C) to allow a subdivision with portions of Alae Road (totaling approximately 870 feet) to have a right-of-way (ROW) that ranges from 21 to 23 feet whereas a continuous 24-foot ROW is required for the Fleetwood Subdivision (DSA File No. 2.3008) located at 410 Alae Road, Kula, Maui, Hawaii; TMK: (2) 2-2-009:003. (BVAV 20070014)**

Ms. Trisha Kapua`ala read the agenda item into the record, and showed a video presentation of the subject property and surrounding areas.

Mr. Douglas Gomes presented an overview of the variance request.

Mr. Gomes: In applying for the subdivision, we were made aware of the problem with the narrow right-of-way. And we did go ahead, and did an investigation, and determined and verified that indeed, the right-of-way in many sections are less than the 24 required. The Realtor that sold the property attempted to talk to some of the adjoining property owners about the possibility of acquiring – well, giving up some of their property a few feet along the frontage for the purpose of widening the roadway, the right-of-way, at no cost to them. And basically, none of them was willing to do that. We did get one letter basically, substantiating that they weren't interested in giving property for widening the right-of-way. And a number of others just didn't want to be bothered. So that's the reason why we're here: we're in a situation where we've been declined by these other residences to possibly try to attempt to widen that right-of-way.

One of the other issues is obviously the narrowness of the road is of some concern. And we acknowledge that the roadway width is ranging between 16 and 18 feet. But both the right-of-way – the narrowness of the right-of-way and the narrowness of the road is a pre-existing condition. This is a condition that existed for the past 60, 70 years when the road was originally constructed. And it seemed odd that when we looked at

the property, there is a section on the upper portion of the road that is 40 feet wide. And apparently, an attempt was made by a subdivision in the past to widen that right-of-way. And so there is a section above us, and in fact, fronting our portion of the road width that is 40 feet wide. It's the lower portion of the roadway that we have a problem.

The video does seem to indicate it's a very narrow roadway, but the pavement width is sufficient that if the cars were approaching each other did so slowly, they can pass each other. It's not really a one-way situation. We've gone up a number of times up and down the road and have passed cars. And so it is narrow. It's tight. But you can make that transfer – I mean, passing without extreme difficulty.

The other thing we wanted to point out is that there's about 33 other lots that use that road. And most of the lots are already – have been subdivided into less than two acres – three acres or less. There appears to be only four other lots that are larger than four acres like our client's parcel is 12 acres which may be subject to some further subdivision, but none of them have water meters. So we're in a situation where we have a piece of property that's allowed to be subdivided and to create another two-acre lot. We have the water meter. And the only problem that we face with this is the substandard right-of-way width. And therefore, we're here today to ask for a variance that'll allow us to proceed because we're really not able to do much about the existing conditions.

I think, too, I'd like to add to that that some of the concerns about the width and the Fire Department's concerns, whether or not the subdivision is – the variance is granted and the subdivision proceeds, some of those issues would still have to be addressed. Presuming that the client goes for a building permit application after the subdivision, the issue with the right-of-way width is something that we believe will be brought up by the Fire Department. And in the past, we've been able to work with them and deal with them to address their issues of access to the subject property. I doubt that we could address the full concern of the access along the whole length of the roadway. And basically, we'd like to request that you grant the variance.

Chairman Randall Endo: Does that complete your presentation?

Mr. Gomes: Yes.

Chairman Endo: Okay. We'd like to now open it up for a public testimony. Is there anyone in the public who wishes to testify on this matter? Seeing none, we'll close public testimony as to this agenda item only. Does the Planning Department or Public Works have any letters in opposition or support?

Ms. Lesli Otani: The only letter that I received from Trish was the Department of Fire and Public Safety letter.

Chairman Endo: Okay. Thank you. I'm assuming that there's no Public Works recommendation report on this one?

Mr. Cerizo: No, there's no recommendations.

Chairman Endo: Okay. Thank you. Okay, questions from the Board or discussion on this item?

Mr. Uwe Schulz: Yeah, Randy?

Chairman Endo: Yes, Member Schulz?

Mr. Schulz: Doug, is that road a one-way road or a two-way? I just want to clarify that.

Mr. Gomes: It's a two-way road. It's not designated as a one-way with respect to signage or that I know – that I'm aware of. We didn't notice when we did the survey. And like I said, the roadway actual pavement width varies between 16 and 18 feet. So there are some sections that are a little narrower. In most cases, two-way traffic.

Mr. Schulz: Okay. Thank you. Now, I have a question for staff. Do you have any recommendations from the Fire Department yet?

Mr. Cerizo: It's the – we have two comments that was provided in your staff reports: one from the Fire Department and the other from the Police Department. And they have their comments noted and it's attached to your staff report.

Mr. Schulz: Okay, thank you.

Mr. Warren Shibuya: Yeah, Exhibit C, Uwe, is the Fire Department. And Exhibit – it's not marked here. D? Oh, it's Exhibit D, I stand corrected, is the Police. Mr. Gomes, if I may? I just have a question or two. You mentioned that it is a two-way street or roadway, and yet on the photograph, I noticed that there were only two car tracks. If there were two ways, then they would have to share it. And in some areas, it appears as though two cars passing would not be able to do it because you have a cliff or some kind of a restriction there in terms of the widening road. The road seems less than 20 feet wide. It looks like it's about 12 feet, in my estimation.

Mr. Gomes: Yes, I don't think I represented that the roadway width was anywhere near 20 feet. I think in actuality there are – most of the sections of the road ranges between 16 and 18 feet. There are some sections that are a little narrower approaching 12, 14 feet, but most of the roadway, the upper sections, are wide enough for two cars to pass. As I indicated we've basically, during our survey and during our preparation were able to pass other cars by going slowly. But there are sections that are narrower than one

car would have to pull to the side and let the other car pass, but that condition doesn't exist throughout the entire length.

Mr. Shibuya: Yes, I understand.

Mr. Gomes: Yeah. And the Fire Department's concern I think is a valid one, but I guess the question is, this is something that exists now. And I guess the question is, who is responsible for correcting that situation? Certainly, to – well, of course, it hasn't been placed on the requirement for this two-lot subdivision which we haven't gotten that to that point yet, but it would seem unreasonable to put such a heavy burden on a two-lot subdivision to be responsible for getting the necessary right-of-way width which is at this point, the client is not able to do. Certainly that's something that the County might be able to do through some type of district improvement – I mean, road-widening district improvement where they have the authority to condemn property and do assessments to do the road improvements, but that's certainly – the burden shouldn't be, I don't think, be fair to place it upon this two-lot subdivision.

Mr. Shibuya: Thank you.

Chairman Endo: Kathleen?

Ms. Kathleen Acks: Has there been any discussion about that becoming a one-way road? Would that alleviate some of the problems? Is there – is that a dead-end road?

Mr. Gomes: It is.

Ms. Acks: It is a dead-end road. So there is no way that it can't be made a–? Is there a possibility of building a cottage on the property without subdividing?

Mr. Gomes: No. There are already four – technically, four structures on the property. So we wouldn't– There may be. I'm not sure. But as far as I know, there's a limit to the number of structures that could be built based on the zoning.

Ms. Acks: What are the structures?

Mr. Gomes: There is one primary residence. There's two cottages, and there's a shed—an equipment shed.

Mr. Shibuya: Mr. Gomes, I just have a bias that I need to share with you. And the bias is, where the developer or this subdivider has a responsibility to insure that they have public safety. And in terms of providing for this, yes, the County would probably provide it in terms of access to it, but the problem here is that if we allow this variance to go, then it becomes a burden upon the County and the people of Maui to provide this. And

the County did not ask you to subdivide. You chose to subdivide. And so in so doing, as you admitted in terms of your briefing to us that it was less – they should've done more research on this particular matter, and now the burden becomes you want to shift it with this variance upon the County of Maui rather than have the owner come forward and make their own proper investment for their safety as well as for their neighbors' safety. And I'm – I would like to encourage all of the people along this road who can benefit from it to join in. And not only the subdivider, but the subdivider could go ahead and initiate this and lead this. Was there any effort to do this?

Mr. Gomes: I did mention that their Realtor on behalf of the owner did approach a number of the residences on the interest to acquire some of the property to widen the right-of-way and the roadway. And they basically did not want to do that, weren't willing to do it, and some of them didn't – you know, we got one letter from one of the persons that wrote a letter saying they weren't interested, but most of them weren't willing to go even that far.

Mr. Shibuya: Sure. Understand. And there's no community association or neighborhood association there?

Mr. Gomes: Not that I'm aware of.

Mr. Shibuya: Okay, thank you.

Chairman Endo: Yes, Hari?

Mr. Harjinder Ajmani: Yes, I want to understand the existence of the other cottages and things you have. The drawing that I got doesn't show four structures, so I was wondering what four structures are you talking about.

Mr. Gomes: (Inaudible)

Mr. Ajmani: So this is the place you're gonna build a new cottage?

Mr. Gomes; Right.

Mr. Ajmani: So this is for the new cottage. I thought maybe this was the new cottage. So this two-acre parcel created for the new cottage can also have another big house on it also without any – without seeking any more variances or anything from the County? Is that right?

Mr. Gomes: Well, yes. Let's say the variance is granted and the subdivision is received. The applicant would then prepare plans. And potentially, they could build another house and cottage. Well, the intent is to build another cottage on the property. But

potentially, they could build more than one structure on the new two acres that's created – that would be created.

Mr. Ajmani: Is that a separate meter for this?

Mr. Gomes: There already is two meters on that one–

Mr. Ajmani: They have two meters on this property. Actually, I have driven on this road, and it does feel like a very narrow road when I have driven it. Particularly when you come down to the highway, it's kinda scary.

Mr. Schulz: Randy?

Chairman Endo: Yes, Member Schulz?

Mr. Schulz: I just would like to make one comment. And I agree with Warren. On the Lower Honoapiilani Highway, condemnation has been in the works now for, Jim, 12 years or something like that to bring the Lower Road into compliance? And condemnation by the County is really not an option. And so I agree with Warren that the County is not gonna step forward, and improve that road, and condemn land. They're just not gonna do that.

Chairman Endo: Member Kamai?

Mr. William Kamai: Mr. Gomes, so you have no idea what the owner is gonna be building on that two-acre lot, that two-acre parcel?

Mr. Gomes: No plans have been prepared, but the intent is to build a cottage for his mother. That's what I've been told.

Mr. Kamai: Just the cottage?

Mr. Gomes: Yes.

Mr. Kamai: My thinking is what the impact would be, if your application was granted, your variance was granted, because it seems to me that if everybody did their fair share that there is a 40-foot wide road fronting the owner's property, and that efforts were made to acquire property to comply with the code, and that this condition was pre-existing prior to ownership, and that you guys already secured the water meters for this property, but again my concern is the impact to the road in terms of future traffic. But again, the owner told you just one cottage?

Mr. Gomes: Right. And this client is well to do. And basically, admittedly, they're not

living there and working out of that property. It's a vacation for them. But I think it might be more so a residence for the mother to be here and stay longer periods of time.

Mr. Kamai: Okay, thank you.

Ms. Acks: What is the size of the main house?

Mr. Gomes: I walked through it once, and just guessing I would say maybe 1,400, 1,500 square feet. I'm not certain of that, though.

Ms. Acks: That's alright. Thank you.

Chairman Endo: Member Schulz?

Mr. Schulz: Douglas, the zoning is ag?

Mr. Gomes: Right. It is ag currently, yes.

Mr. Schulz: So if you divide two acres out of it, you would be able to build a main house of unlimited square footage. You're also allowed to build a cottage less than a thousand square feet. And you're allowed to build a barn. So legally, you're able to build three buildings.

Mr. Gomes: Correct.

Mr. Schulz: Thank you.

Mr. Gomes: I think if you look at – there's some grades there on that parcel that's been subdivided. You can see the contours are fairly close. It's a little flat, and then it gets quite a bit of a slope on that. And so there may be from the standpoint, a very limited area that could be built. Actually, part of it is fenced off and has apparently been used by the neighbor as a pasture for some cows, cattle, cows.

Mr. Cerizo: Mr. Chair, I'd like to just comment on Mr. Schulz's comments on what can be built on the property. On the property, they can develop up to 10% of the lot area. So if that's 43,000 square feet per acre, so 10% of that would be 4,300x2. So you have 8,600 square feet is the total building area that you can have. So you can have two houses: one not more than a thousand. So you can one at a thousand square feet, and then the other house can be up to 7,600 square feet. So it's not unlimited, but it's pretty big. And then as far as the accessory structures, there's no limit on the accessory structures. You can have a barn. You can have another barn, another barn. You can have a hot house covering the whole entire two acres, if that's what you wanted as far as on ag. So it can be intensified, but due to the contours like Mr. Gomes said it's

unlikely you have that much structure – I mean, that higher use of the property.

Chairman Endo: I have a basic question for Public Works. The requirement of the 24-foot right-of-way that applies to the access street, is there – how does that work exactly? Does it matter how long the access street is? Say what if the street were ten miles long and only ten miles away was – didn't meet the 24-foot, is there like a proximity requirement? Or how do you determine which streets have to meet a minimum right-of-way to a property?

Ms. Otani: I usually calculate it to the nearest State highway or main improved County right-of-way. So if it was in Haiku, maybe Kaupakalua Road or something where you know that the pavement is adequate and the right-of-way is 40 feet or more. So in this case, I would take it from the property line down to – I'm not sure if it's Haleakala Highway or Kekaulike, but to the State highway right below.

Chairman Endo: Thank you.

Ms. Otani: You're welcome.

Mr. Shibuya: Mr. Chair?

Chairman Endo: Yes, Warren?

Mr. Shibuya: I'd like to make a motion and see where everybody stands on this one. I'd like to make a motion that this Board deny this request for a variance. And I'm looking at and basing it primarily on public safety. As related by the Fire Department, the width of that roadway is terribly undersized. And it does reflect a lot of accommodations just to move a fire truck up and have all of these residents from these 30 houses trying to evacuate at the same time. This is not a good situation, and I don't think this is part of the liability that I want the County to absorb. So therefore, I'm just gonna go ahead and make this motion to deny this variance request.

Ms. Acks: I'll second.

Chairman Endo: Okay, it's been moved and seconded to deny the subject variance application for the reasons stated by Mr. Shibuya. Would you also like to adopt–? I'm assuming that you would also want to adopt the Department of Public Works's staff report as your findings?

Mr. Shibuya: Yes, I would.

Chairman Endo: Okay. Okay, discussion?

Mr. Cerizo: Mr. Chair?

Chairman Endo: Yes?

Mr. Cerizo: I'd just like to point out that what we're looking at is – I just wanna just clarify the variance request. The variance request is for the right-of-way, not for the pavement width. If the pavement width was 20 feet wide– Looking at the right-of-way, it varies between 22 feet-plus. So they could – if the County wanted to put in a 20-foot pavement in, they could go in there, grub all the shoulders, tear out all the walls, tear out all the rock walls, tear out whatever's in the right-of-way, and put in the pavement that's 20 feet wide, and that would be like your ultimate County road in the ag district. So, you know, visually, you can see that the road is 11 feet, but that's not what's at issue here. It's not the width of the pavement. It's the width of the right-of-way. Is the right-of-way – is it gonna matter? I mean, you still have to meet all the requirements, but I'm just looking at it from the right-of-way perspective, in some areas, it's short by two feet, some areas a little bit more, but is that gonna make a difference? Maybe from that point of view, you should look at it instead of it's only 11 feet wide, and they can't even have two cars pass there. I mean, it's not – the County could go in there and improve the roadway, like I said, but it's not – I'm not sure there's a high priority in anyone's – and sometimes some of the residences don't want to have that widened road because it increases speed, more people come up the roadway, and so forth.

Chairman Endo: Ms. Otani?

Ms. Otani: To further add to Francis' comment, typically in our standards, the pavement width is narrower than the right-of-way width. And the extra right-of-way is to fit in the utilities, the drainage, the swales, things of that nature too. So even if the road were graded to the full pavement width at 20 feet, if there was 20 feet, you still would have to take into account the drainage and other situations that occur with utilities.

Chairman Endo: Yes, Member Ajmani?

Mr. Ajmani: I guess the question here is not the pavement width, I believe. I think the question is that we need a 24-foot right-of-way all the way up to the property and we don't have it. And the pavement doesn't really come in the picture. So, Francis, the variance is sought for the right-of-way, not for the pavement width, is that correct?

Mr. Cerizo: Yeah.

Mr. Shibuya: Yes, and in my view, yes, when I made the motion, it was actually – I did state it as a roadway, but I do adopt the Public Works' request for the right-of-way to be at whatever stated as 24 feet. The intent was fully to insure that you have that right-of-way for the public development later on.

Chairman Endo: Yes?

Mr. Ajmani: I think one other comment I would like to make is that we have had applications in front of our Board that out of the length of say 300 feet, only 20 feet length was below standard. And that was not an acceptable thing because we definitely wanted to maintain the right-of-way that is required by the County and the Fire Department. So I just wanted the members to know that.

Chairman Endo: I'm sorry, just for clarity you said on prior applications, you denied variance requests?

Mr. Ajmani: That's right, just based on that.

Chairman Endo: Okay. Further discussion?

Mr. Cerizo: Mr. Gomes, was there a proposal to relocate one of those cottages that's on the existing property to go to the new lot?

Mr. Gomes: Not shown on that there is an existing shed that's encroaching over the boundary of the adjoining property. They've agreed to relocate that shed back onto their property. That's the reason it's not shown. But as far as relocating one of the cottages, it wasn't . . . (inaudible) . . .

Chairman Endo: Okay, we have a motion on the floor. If there's no further discussion, no one wishes to make any comments or questions, we'll put it to a vote. All those in favor of the motion to deny the variance, please raise your right hand and say aye. Opposed?

It was moved by Mr. Shibuya, seconded by Ms. Acks, then

VOTED: To deny the subject variance application for the reasons stated by Mr. Shibuya regarding public safety concerns.

(Assenting: W. Shibuya, K. Acks, R. Ball Phillips, H. Ajmani, U. Schulz, and J. Shefte.)

(Dissenting: W. Kamai.)

Chairman Endo: **Okay, the motion carries with a vote of six in favor, one opposed. The variance request is denied.**

Mr. Gomes: Thank you.

Chairman Endo: Okay, next item.

- 2. WILLIAM BETHAM representing JANE LEONG requesting a variance from Maui County Code, §19.36.010 to delete the requirement of providing eleven parking stalls for a proposed 800 square foot expansion of restaurant seating area for Café des Amis located at 38 Baldwin Avenue, Pa`ia, Maui, Hawai`i; TMK: (2) 2-6-003:055 (BVAV 20070010)**

Chairman Endo read the agenda item into the record.

Chairman Endo: Is there a power point presentation?

Ms. Kapua`ala showed a video presentation of the subject lot and surrounding areas.

Chairman Endo: Will the applicant or representative please step forward? Introduce yourself.

Mr. David Jenkins: Good afternoon, Board, and representatives of the County, etc. My name is David Jenkins of Creation Design Company. I was asked by the Café des Amis Restaurant to help them with this variance application. If you could give me just a moment to set up a tripod and a few visual aids? And should I do that right here? Is that better so I'm by this microphone, if I just set the tripod up here?

Chairman Endo: That'll be fine. Before you do that, are you willing to waive the reading of the Planning Department's report?

Mr. Jenkins: Yes, we are.

Chairman Endo: Okay, thank you.

Mr. Jenkins: And let me introduce my assistant here. This is Bill Betham. This is the applicant. He's a co-owner of the existing des Amis restaurant right next door to the property that we're seeking the variance for. Also here today is Tina Pryor. She's also a co-owner of the restaurant.

With the Board's approval, in my presentation, if you don't mind, I'd like to ask both Bill and Tina to each provide a small piece of the puzzle regarding Bill's attempts to secure parking for the restaurant. Is that alright?

Chairman Endo: That's fine.

Mr. Jenkins: Okay, thank you. Okay, some of the details were already mentioned. This is Lot 7 of TMK: 2-6-3, Parcel 55. And this would be a good time to explain this TMK, for some reason, has two lots attached to it. On the video, we saw the existing Café des Amis to the left. That has its own TMK. And then the vacant lot in-between that the variance is sought for is on the same – that's Lot 7, and it's on the same TMK parcel as Lot 6 which is to the right and has the existing building that was a lighter-colored building that has retail and office space in it. So the variance is sought for Lot 7 which is half of Parcel 55. I hope I was able to make that clear. It's kind of an unusual situation here in town where we typically have just a bunch of narrow lots with buildings on them. For some reason, this is two lots: one with a building, and one that is as far as we can tell doesn't seem to have had a building on it. It's been undeveloped for quite some time.

The buildings on either side: the existing Café des Amis Restaurant and the other building on Lot 6 were both built in the late '20s. Café des Amis on Lot 8 was built in '27. And the other building on Lot 6 was built in 1929. Now, back in those days, of course, parking was not an issue. Traffic was not an issue. This town was set up with a bunch of small lots all in a row. As you can see on the TMK plat here, just a bunch of small lots. And if you go out there and you look, it's basically one building per lot, and the building pretty much takes up the whole lot. I didn't point exactly to it yet, but I think you can see here, it's also in your package, this map showing the location here. It's across the street from Bank of Hawai'i as you saw in the video.

Let me skip to the next plan here and it shows what we're planning to do. Maybe this will work better? Okay. This is the existing Café des Amis Restaurant. It's about 640 square feet of space. This rear portion—all these lots kind of back up into a hill, and the grade is about eight feet higher in the back here. And so this is the only usable portion of the downstairs of this building next door where the existing restaurant is. The idea is to put a pass-thru service window on an existing window there, build a small boardwalk, put in sand, or gravel, or some sort of pervious material, and then put tables with umbrellas for just expanding the seating for the restaurant—not expanding the kitchen or anything, but just expanding the seating.

Now, this is – the proposed seating is 800 square feet, and so for a restaurant according to the code, that's one stall for every 800 square feet. So that would require eight parking stalls. In addition to that, three stalls are required for staff in addition to that. Now, normally that would not be the case because we already have the existing restaurant next door and we're only expanding the seating, so there wouldn't be any – no need to double, you know, provide those three stalls again for the staff. The catch here is, and this came up a month ago, I think Corp. Counsel actually caught this, but because the variance is sought for – or this use is sought for an adjacent separate TMK parcel that that requirement for the three staff stalls is kicked in again. So that's why we're up from eight stalls to 11.

This restaurant has been in business for about six years. And they've – well, actually, let me just skip to another page here, and it'll help to illustrate as I talk along. Here's a view and this was in your handout as well. This is just a section through the property with the existing restaurant on the left, the proposed use in the middle, and existing Building Lot 6 on the right. Here's a cross section right through showing how the grade goes up in the back of the lot. This lot is similar even though it's opened. It has the same grade situation as the other building.

What I'd like to get to now is the parking situation. So we have photographs here showing this 20-foot wide lot in-between the two buildings, and the parking situation out front. We have diagonal parking along Baldwin Avenue. If we were to try to put parking onsite, you'd have to take away the two stalls fronting that lot right now. So first of all, onsite, it's only 20 feet wide. And so a normal backup width in a parking lot is 24 feet, plus you have the stall. There's not even – so there's not room for a standard 90-degree parking lot – parking situation. There's not enough for a 45-degree. The best you could do is parallel parking on one side. And the most you could get are two stalls. And the access to those stalls would take up the whole lot, and you'd have to lose these two spots on the street in order to provide it. So providing parking onsite is not an option due to the narrow width of the lot.

Now, the owners of the restaurant have sought – they've knocked on basically, every door in the community to see if it's possible to get designated parking from another area. And maybe this would be a good time to have Bill Betham step in and just talk about his attempts to do that. But basically, they knocked and knocked, and searched everywhere, and it just is not an option. Without further ado, here's Mr. Bill Betham.

Mr. Bill Betham: Good afternoon, ladies and gentlemen. If I could just give a part of these for you to pass around? This is a copy of the only recent response I got for a request to rent parking spaces from anyone with a parking lot in Paia. And it's from the – well, from David Spee who's the owner of the Paia 2000 Development up at the top of Paia Town. But apart from him, I also went to the Bank of Hawai'i across the street. I went to the Dharma Center up the road, which is where I gather Mana Foods rented some space. I also went to Paia Town Center who were much less polite in their reply. And I think that was – yes, that was all. And all were negative. They all were at capacity with no possibility.

Having said that, I estimate that within 200 feet of the café, there are already 17 parking spaces, 50 of which are in the small municipal lot just adjacent to Mana Foods. So there is plenty of parking nearby. In addition, we try and alleviate the obvious congestion parking in Paia by asking our staff to park in the main municipal lots on the Hana Highway. But at the same time, we do feel that probably increasing our seating area is not really gonna put any greater pressure on the parking because the people that would come and sit in our new patio restaurant are probably already in town looking

for a restaurant, possibly already waiting outside our restaurant because they know that's where they want to go. So they've found somewhere to park elsewhere in the town.

And maybe this would be a good time just to give you my idea of – well, my view of Paia. I'm sure everyone knows that it's a very historic town. And as David said, it was planned when cars were practically nonexistent. And I think that's probably why it's now become so popular as a destination not only for the resident population, but also the tourist population because it's such a charming, beautiful, busy, vibrant town. And so when people say – and I do occasionally hear, “Oh, it's so hard to come and park in Paia,” generally, those people are complaining about – they've got two bags of groceries at the Mana Foods, and they don't wanna have to walk a hundred yards to their car. But I think they – that's just the nature of the town.

And I do believe that although – I mean, I drive in probably every single day to Paia, and I always find a place within two or three minutes. If it's looking busy, I'll just go to the big municipal lot on Hana Highway and drive straight in. No problem at all. And so I believe that although parking is to some people an issue, it's impossible to in a historic town such as Paia be impossible to make a – to keep the charm of the town, and provide parking in front of every single shop.

And I believe in fact that rather than being a negative impact on the town that it's actually positive because it means there's more people walking around on the pavements which makes the town look more vibrant, more attractive. It's attracting more potential customers because they see why this looks like a busy place. This looks fun. Let's go. Let's stop. And the second thing of course is if you're walking from – for example, you park in the main municipal lots on the Hana Highway on your way to Café des Amis, we hope, you've gotta walk maybe 200, 300 yards. And on your way there, you're gonna be passing 50 or 60 different shops. So it's good for everyone because it's encouraging people to experience the whole town rather than just go to where they're going and leave.

So – what else? The last couple of things about parking: there is a point that restaurants, generally, and we certainly are busiest at nighttime, and that's the time when of course most of the retail shops are closed. And so the parking is in effect, shared with retail during the day and restaurants at night. So it's – increasing our seating area is really gonna have very little impact overall because it's mainly in the evening that the people are gonna be coming in.

And the last thing that I think would be great for Paia altogether would be if there was a way of enforcing this – the parking on the street, and probably in the small municipal lot next to Mana Foods. Because if we could enforce a two-hour limit, the parking, it means all the employees from all the businesses would have to park in the municipal.

And we'd have the streets free for people that just want to pop in, go and shop, shop at Mana Foods, or tourists passing through, etc. And as I say, I've never had to drive out of town having not found a parking space. And like I say, for me, that's the great charm of Paia that it is such a busy, little, compact place. And I think Dave was talking earlier on about – to me, saying, well, actually the modern town planning – plans for modern towns now are actually going back to this sort of style where you have parking on the outside of the town, and then the center is a pedestrian. And it certainly makes for a much more enjoyable shopping experience for residents and shoppers alike.

So I think that's the end of my piece except to just to really – our reasons for doing it. Well, obviously, a commercial, number one. We've got a very small business. It's becoming very hard these days with only 23 seats. Rent's going up. Insurance's going up. Food costs going up because of fuel and the rest of it. We still try and keep our prices affordable, but it's getting very hard to do that. If we can expand, we're gonna have – we'll be able to enjoy the economies of scale, the bigger restaurant, and hopefully, we'll be able to keep doing what we do which is try and feed people very good food for as little as possible. On top of that, though, we are going to, I think, improve Paia's amenities by offering an attractive outdoor seating area as opposed to a rather scruffy vacant lot.

And last – last two were we're gonna increase employment. Obviously, we're gonna be bigger so we're gonna have to employ more people, which I hope it would be good for the North Shore. And the other thing is that this land has been used by not only vagrants sleeping at the back, the ruff at the back, but also we've often noticed drug dealers using it because it's a hidden away, dark place. And we feel that if we can develop it, beautify it, landscape it, put security, it's going to just take one extra venue away for that sort of activity. So I think that's it really. If I can –? Okay. Thank you.

Mr. Jenkins: Thank you, Bill. I think you did a great job there probably better than I'm doing. Yeah, so just to underline what he was saying, this of course wouldn't be the first choice of the applicant to come and get a variance to delete the parking requirement. The first choice would be – of course be to provide parking onsite. The second would be to locate the parking offsite to designate for the restaurant. But basically, that's just is not an option in this case. So what that boils down to is the parking is a non-starter issue here. We either get – need a waiver for the parking and maintain the vacant lot status for this parcel, or we get a variance, or some other solution outside of the box to go forward and add something attractive to the ambience of this successful, country, walking town that Paia is.

I think it's easy to see that this is a similar situation. I know this has come up even before this Board with parking situations in Lahaina. Makawao, of course, is a similar country, walking town. These are old towns. They have all the same sorts of issues with parking. And yet, as Bill was saying, that's much of the charm because it ends up –

This happens just in Lahaina. You see all the tourists walking around. You park at one end of town, or the other, or some lot in-between. I think that would be the best solution for Paia. We've already seen a municipal lot at one end of town. If we can get more of that happening around say up on Baldwin Avenue up a bit higher, you know – in anywhere, anywhere we can do more parking. Another solution that I see for this to help further that goal would be if the clients who can't provide parking could maybe pay into a fund similar to what a developer does for a parks assessment. And that will help the County to have the funds and the wherewithal to provide some of this parking on the outskirts of these historic walking towns. If you don't mind, I'd like to have Tina come up and just share some of her insights?

Chairman Endo: Okay, but could you just try and not repeat yourself anymore, though?

Mr. Jenkins: Sure, sure.

Chairman Endo: Thanks.

Mr. Betham: (Inaudible)

Mr. Jenkins: Yeah, and that's probably a good point. If you think of any other point, you can grab me, but I think Bill did a very good job of covering things. So maybe I'll just wrap up then.

Chairman Endo: Okay, thank you.

Mr. Jenkins: So just quickly, I'd like to touch on the zoning. This is State urban zoning, County-country town business. The community plan is business. So this proposed use is consistent with all of the zoning and community plan. This is a reasonable use within that zoning and that plan designation.

So in summary, the compliance with the parking code prevents this reasonable use of the property in this extreme situation where we just – we cannot even find designated parking to purchase to provide for this. The unique nature and layout of Paia Town is actually what drives this request. It's this unique nature of the town that creates this parking situation.

This use will not alter the essential character of this neighborhood. In fact, it's gonna add something to this neighborhood. The conditions of hardship are typical throughout this town. This is not something just on this lot. And as with the other lots in the neighborhood, they were not created by this applicant or any of those owners of those other lots. That's it for me, unless you have any questions.

Chairman Endo: Alright, thank you. I'm sure we'll have questions, but before we do

that, I'd like to just open up for public testimony. Is there anyone here in the public who wishes to testify? Seeing none, we'll close public testimony as to this item. Staff, do you normally want to do the recommendation now, or shall we discuss and ask questions first?

Ms. Kapua`ala: Sure, I can read the recommendation now.

Chairman Endo: Okay.

Ms. Kapua`ala: Based on its analysis, the Department of Planning finds that:

1. There is no exceptional, unique, or unusual physical or geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area; and the use sought to be authorized by this variance will alter the essential character of the neighborhood;
2. Strict compliance with the applicable provisions of this title would not prevent reasonable use of the subject property; and
3. The conditions creating a hardship were the result of previous actions by the applicant.

Based on the foregoing findings of fact and conclusions of law, the applicant has not met all of the requirements for the granting of the subject variance. Therefore, the staff recommends DENIAL.

In consideration of the foregoing, the department recommends that the Board of Variances and Appeals adopt the department's staff and recommendation reports prepared for this December 13, 2007 meeting, and authorize the Planning Director to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Board of Variances and Appeals.

Chairman Endo: Thank you, Ms. Kapua`ala. Questions? Discussion from the Board? Jim?

Mr. Shefte: Yes, I have several questions. You're going to basically more than double your capacity? Is that not correct?

Mr. Betham: Yes, that's right – well, the seating capacity.

Mr. Shefte: Right. So how many new employees, additional employees would you anticipate hiring?

Mr. Betham: I would imagine that on any particular shift, there would be an extra two employees. So whereas it would be now between three and four on a shift, it would be six, up to six.

Mr. Shefte: Okay. And would this cause you to have to make major improvements to your kitchen?

Mr. Betham: Not really, no. I think we'd just have to probably increase our refrigeration, but nothing – we have a very simple food formula which allows us to – we can increase capacity without any problem. At present, we do quite a bit of takeout food, so we're quite – people know they can't find a seat in the restaurant so they take second best and take it home. So we're able to crank it out pretty well.

Mr. Shefte: I like your idea. I think the use of that property as an outdoor café will enhance the entire neighborhood.

Mr. Betham: Thank you.

Mr. Shefte: But I have one other question. When we were looking at the video, I noticed—and I'm not sure if it's your building, but I think it was—a bunch of dumpsters.

Mr. Betham: No, that wasn't our building.

Mr. Shefte: That wasn't yours?

Mr. Betham: No.

Mr. Shefte: Because they were pushed up against the building probably on public property.

Mr. Betham: That would be outside Café Mambo. And as far as I know, that's not public property. It's private land, outside.

Mr. Shefte: So how do you handle getting rid of your waste?

Mr. Betham: We use that dumpster.

Mr. Shefte: You do?

Mr. Betham: Yes.

Mr. Shefte: Okay. Now you're gonna have at least double, perhaps triple, the amount of waste. How are you gonna handle that?

Mr. Betham: I wouldn't say we would have that much extra.

Mr. Shefte: I've been in the restaurant business. I know what I'm talking about.

Mr. Betham: Yeah, there's gonna be a certain increase for sure, but actually we have just taken on a second dumpster, which is stored pretty much behind the building next to the café, and we started recycling there as well. So we've now got almost double the capacity than we did a month ago.

Mr. Shefte: So you're not gonna be looking for additional—?

Mr. Betham: No, I mean, I think the— And if it ever became necessary, then it just goes to daily pickup rather than I think at the moment it's twice or three times a week. So it would be with the same amount, the same dumpster, we could easily service the restaurant.

Mr. Shefte: Okay, thank you.

Mr. Betham: Okay. Should I stay here or—?

Chairman Endo: Probably.

Mr. Betham: Yeah, okay.

Chairman Endo: Yes, Member Ajmani?

Mr. Ajmani: Yeah, I have a few questions about this property. Who owns this adjacent lot? The same people who own this building where you are now?

Mr. Betham: No, they're separate landlords.

Mr. Ajmani: You said separate landowners?

Mr. Betham: Yes, the owner of the patio area where we want to make — we'd like the variance for, she is Jane Leong from Makawao.

Mr. Ajmani: Is it possible, staff, to get a variance over somebody else's property when the other owner is not here?

Ms. Kapua`ala: Yes.

Mr. Ajmani: That's okay. Now, I noticed in one of the pictures that there was somebody standing on the patio next to this patio door for the adjacent building. And I noticed that

you will be using the seating area under the existing overhang. Is that area currently being used by the next building or your building?

Mr. Betham: The building next door to the terraced area is vacant at the moment, but is about to become – I think it's only been vacant for a couple of weeks. We're about to take a section of it at the back for storage, and the front section is gonna be retail.

Mr. Ajmani: Okay, so they will not be – so this patio door will be closed or is that needed for some other purpose?

Mr. Betham: I think the shop and the retail units in the shop is gonna use that doorway as an entrance, as an alternative entrance to the shop, to the retail shop.

Mr. Ajmani: So that will run into your – one of the seats right—?

Mr. Betham: Yes, if that was the case, then we will just – the shop owner will have to – yes, there won't be seating there. So in fact it would reduce our seating area by 50 square feet or something.

Mr. Ajmani: So they will exit out of your seating area, if they use that for an entrance?

Mr. Betham: They would probably have a separate entrance, yeah.

Mr. Ajmani: I see. But you're going to keep the overhang as is?

Mr. Betham: Yes.

Mr. Ajmani: You're not making any changes to it?

Mr. Betham: No.

Mr. Ajmani: And you said the zoning for this lot is the same as the zoning where it can be zoned as a restaurant? Is that right, David?

Mr. Jenkins: Yes, certainly as . . . (inaudible) . . .

Mr. Ajmani: And I think you mentioned something about this whole area will be not paved in any way?

Mr. Betham: We – our first idea was to as on the plans was to have a boardwalk and sand areas. We still like the idea, but it might be impractical. So as Dave said, we might end up using gravel or even driveway blocks, but the idea is it would be – they wouldn't cause any drainage problems.

Mr. Ajmani: So, okay, that's all my concern was. So there will be no water draining out of the area?

Mr. Betham: No, whatever is there is gonna allow water to pass through.

Mr. Ajmani: Or onto the sidewalk or anything?

Mr. Betham: No, no, definitely not.

Mr. Ajmani: Okay, thank you.

Chairman Endo: Rachel?

Ms. Rachel Ball Phillips: I think this would be a great addition to Paia Town in terms of the concept of the restaurant, but I do have concerns about the additional impacts on parking because I think it will bring additional cars to Paia Town. And – but I realize your dilemma that you're just simply unable to provide it. If there were some type of parking fund ordinance established, would you be willing to pay your pro rata share into a fund like that?

Mr. Betham: As long as it was a reasonable contribution, yes. It seems like a good idea. I mean whether it would – I suppose the question is if that would just for us or would that be paid by everyone who's in effect got grandfathered parking allowances in Paia? It seems as if just if there's been a restaurant for 20 years, they don't need parking because it's been grandfathered in. So perhaps they should also be contributing to a parking fund which will allow the fund to grow that much quicker, and get it done quicker. It would seem like a reasonable thing to do, certainly.

Chairman Endo: Member Acks?

Ms. Acks: I know we've done this in the past. And I can't remember exactly how we worded it, but it seemed like we gave a limited variance for three years? Does that ring a bell?

Chairman Endo: Yes.

Ms. Acks: I like the idea of still holding on to those 11 spots for exactly that reason. I think if more and more people get grandfathered in, there's not gonna be anybody to pay into that eventuality. So I would like to at least put that on the table of maybe some kind of a termed variance.

Chairman Endo: Member Kamai?

Mr. Kamai: No, but I agree with Rachel when it comes to that outdoor café. It would be nice for Paia. My concern is your percentage of deviation from the requirement as is, is that you're not saying you're gonna provide 4% or 50% or even 2%. It's 100%, no can.

Mr. Betham: Well, in fact, because we're just about to sign a lease for the storage area in the back of the building next door, we do have an unofficial parking space that goes with that behind the shop. So, in fact, I've just discovered we do have one parking space we can offer.

Mr. Kamai: 10%.

Mr. Betham: 10%, yeah.

Mr. Kamai: What would you say to any of your neighbors who approach you and ask you for any stalls to expand their business?

Mr. Betham: If I had some – I think the trouble is, is not that they didn't want to. It's just that they've already got their capacity. I mean, for example, David Spee, the letter I have, he's one of the very few new people who's developed in Paia. And he provided parking space using up his land that he developed to do that, but he's got every single parking space allocated to his retail and office space. So there's just not one spare because he's complying with the recent building code for that so– And as I say, some of the responses were less than friendly. The Paia Town Center, they're very, very – well, they enforce their parking only for their own tenants very, very strictly so–

Chairman: Warren?

Mr. Shibuya: You're saying that you don't have any parking available, but yet on the photo there in front of the properties, there are angled or diagonal-type parking. You're saying all of those diagonal parkings are prescribed for somebody else?

Mr. Betham: No, they're just for anyone. As I said earlier on, there's within 200 feet of the restaurant, there are about 70 free municipal parking spaces either on the street or in the parking lot across the street. So there's plenty of parking in the area. It's just Paia is a busy town, and they get filled up. But having said that, there's continual movement. You only have to drive in and out, and there's always a place that will free up. so it's–

Mr. Shibuya: In terms of the slots in front of your structures, how many diagonal parking slots are available? I'm not saying dedicated to you, but at least available.

Mr. Betham: Well, where you see now, there's those two, and there's two in front of the restaurant, the existing restaurant. So there's four there. Then you go up a couple of –

there's a couple of spaces empty in front of the café because there's a fire hydrant. And then it's pretty much all the way up the street. And the same on the other side of the street: it's all angled or parallel parking.

Mr. Shibuya: Right. And do you have any loading zone?

Mr. Betham: No, but we do now because we have this parking space behind the property next door. So that's where we will do our loading and unloading.

Mr. Shibuya: So it's not parking, per se, because it is a loading area.

Mr. Betham: Well, we would be parking – it will be staff parking. So if anyone's going to Costco, they come back with a truck and empty it from there. But typically, big suppliers like Morad, they will park the truck anywhere in Paia, and they'll just push it down on a cart. So it's – they're used to that.

Mr. Shibuya: And it is a historical structure, or is not a historical structure? Is it designated historical?

Mr. Jenkins: You know, I don't know that. You mean the existing building where the restaurant is?

Mr. Shibuya: Yes.

Mr. Jenkins: I know it was built in 1927. I don't know what steps the County has taken to designate it.

Mr. Cerizo: Any structure that's over 50 years old is considered as a historical structure. So this would be considered as a historical structure.

Mr. Shibuya: Without any historical designation or application for a historic—?

Mr. Cerizo: The State law designates anything over 50 years as historical.

Mr. Shibuya: Okay.

Mr. Cerizo: And there's different types. You can have it registered. It may not be registered, but it'll be still a historical structure. It's protected to a certain extent.

Mr. Shibuya: Thank you for the clarification. So it is a historical— So in terms of modifying that structure or redoing it, that's not a possibility because it's a historical—

Mr. Betham: There's nothing that we need to do. We're not gonna really touch the

building at all. It's just purely – it's just the vacant lot is all we're actually gonna be developing. And that's very low impact: just some sort of pervious flooring, and then umbrellas, and probably some sort of fence up front, and landscaping.

Mr. Shibuya: On the second floor of your building–

Mr. Betham: On the second floor?

Mr. Shibuya: Yes, what is it?

Mr. Betham: Of the existing restaurant, the second floor is – there's an office at the front, and then I believe there's an acupuncturist at the back. Is that about right? Yeah. Yeah.

Mr. Shibuya: So it is occupied for business other than the restaurant?

Mr. Betham: Yeah.

Mr. Shibuya: And so they would need parking too?

Mr. Betham: I assume their parking spaces have been grandfathered in as well.

Mr. Shibuya: So, Board members, I just wanna– I didn't know about this. That's why I'm asking the dumb question here, and I'm finding out that it's not only the 11, Francis, the footprint of this structure includes at least two more parking stalls, would it not?

Mr. Cerizo: Well, as far as the existing structure, there's no – a lot of – since this building was built prior to any code requirements, there's no parking requirements like two stalls for their upstairs. Are we talking about the existing restaurant?

Mr. Shibuya: Existing restaurant. And on the second floor, this same building is being used by two other separate occupants.

Mr. Cerizo: Right, those are all – those are grandfathered in.

Mr. Shibuya: Grandfathered in to–?

Mr. Cerizo: For that use. Since that use–

Mr. Shibuya: Without parking?

Mr. Cerizo: Without parking. You know in 1927, there were no parking lots. Therefore, we're not gonna be – there's no retroactive. When the ordinances came out in 1962

and revised in '74 and so forth, that's when the actual parking law came out that whenever you build a certain building, you are required to put so many stalls in. But if they – if any structures were built prior to that are considered existing, legally, nonconforming.

Mr. Shibuya: Okay, I'm kind of perturbed because in Lahaina, it's a historical district. And yet, we have upstairs use and downstairs uses all being considered in a total equation for parking.

Mr. Cerizo: In the majority of the structures, and lot of these structures are built very similarly to this where the whole building is on the lot where there's no parking on that parcel. So those are all grandfathered also. That's why we don't have any parking lots on the actual parcels in Lahaina similar to here: the entire lot or most of the lot is occupied by structures.

Mr. Shibuya: Go ahead, Kathleen.

Ms. Acks: So let me clarify: the current restaurant won't be adding to that requirement? The only – the 11 additional spots are just for this current open area?

Ms. Kapua`ala: Yes.

Ms. Acks: So when you made the recommendation that maybe there should be an impact on people who were grandfathered in, part of you is already grandfathered in?

Mr. Betham: Yes, that's right, yes. But I suppose one could assume that all the parking spaces in the street in effect are the parking for the shops. I mean, if there was no parking, the shops wouldn't survive. They'd all be closed. And of course, Paia is a – people are trying very hard to get into Paia because it is a good commercial town. So I see that there's clearly enough parking to allow the town to become, well, economically, very viable and vibrant which I think is probably the best judge of whether or not there's a shortage or not of parking.

Mr. Schulz: Randy?

Chairman Endo: Uwe?

Mr. Schulz: First of all, I must say that it's a really wonderful idea, and it's definitely going to be an improvement compared to the weed-overgrown, empty lot. But I'm curious, a question for staff: if somebody owns this property, and puts an umbrella on his property, and sells hotdogs, why does it trigger parking?

Mr. Cerizo: That's what's happening now. They're proposing to put in–

Mr. Schulz: There's no structure.

Mr. Cerizo: It's the use. It's not the structure. It's the use of the property. They're converting that parcel into part of their restaurant. So the parking is driven by the use, component uses of the property.

Mr. Schulz: That doesn't seem to be logical to me that outside parking – seating triggers parking requirements on an empty lot.

Mr. Cerizo: Well, it's not – half of the lot – half of the parcel is occupied by building, and the other half is unused. So they're expanding that footprint by – it's like having a restaurant that has a patio seating. There's just outside seating. Anywhere that you would have an expansion from – let's say you're in Kaanapali, and you have a restaurant, and you wanna extend your seating out closer to the ocean, and put in patios, seating, and umbrellas that would be all accounted for. They would have to expand their parking area to accommodate that expanded use.

Mr. Schulz: But that's not really true. Leilani's, for example, they have outside seating, and the parking is only required for the footprint of the building.

Mr. Cerizo: We should check on that unit then.

Mr. Schulz: Yeah.

Mr. Cerizo: It may be required. If they haven't put in and they expanded that use, that's something that we can actually investigate and require additional parking.

Mr. Schulz: But I know that for a fact. So it doesn't seem to be logical for me that 11 parking stalls in a historic district where it's impossible to improve the parking situation, and you also cannot buy anything except if you go outside of town, it seems to be a hardship to me. And the improvement is so manini. It's umbrellas and benches. I could really understand it if they expand the restaurant and build a new building that would trigger the parking requirement, but seating and umbrellas, that's beyond me.

Ms. Kapua`ala: Keep in mind, sir, that the structure is not related to this request. Whether it has a structure, whether it's covered or uncovered, it's the use that is triggering this variance request. And I'd also like to clarify that this is a separate parcel from the Café des Amis Restaurant. So that is the reason why not only eight stalls are required for the 800 square feet that they're proposing, but the additional three stalls for – is the minimum for staff. So because it's a separate parcel, they couldn't absorb those three stalls from staff from their existing kitchen. It's a separate parcel. So I just don't want you to get confused or get muddled by the fact that the applicant for two parcels is the same. It's not an applicant-based request. It's a land-based request.

Even if this was a separate applicant, they'd be required the same amount of stalls whether it has a covering or not.

Mr. Schulz: I understand that, but I still find it mind-boggling that the umbrellas and seats on a tiny little parcel require 11 stalls, which you know cannot be provided. It's impossible.

Ms. Kapua`ala: That's true, and that's why they come here for a variance.

Mr. Schulz: Thank you.

Chairman Endo: I have a question: can you draw on this map where the one parking stall you're getting with your new leased storage space is located?

Mr. Betham: (Inaudible)

Chairman Endo: Okay, so for the record, you've drawn a parking stall on Lot 5 of – so it's right off the driveway?

Mr. Betham: (Inaudible) It's actually the back of this lot here.

Chairman Endo: The back of TMK, Parcel 57?

Mr. Betham: Yeah, the one on the corner here owned by the same person who owns these. She owns these three lots, the parking spaces behind this . . . (inaudible) . . .

Chairman Endo: Okay. So if you drive in the back, I see this is Lei Place in the back of the subject properties. Are there any parking opportunities on that street?

Mr. Betham: There's a sign up there that says "Don't even think of parking here."

Chairman Endo: What exactly is on the rest of Lot 8? I mean, we see where the restaurant is.

Mr. Betham: The back half is just dirt. It's – because the ground rises behind the café, there's a retaining wall at the back of the marked out café area. And behind that is just dirt. But the building on the second floor extends right at the full area of the lot.

Chairman Endo: But is the dirt area on the back of Lot 8 the same grade as Lei Place, the road?

Mr. Betham: Well, it's a bank. It rises up. So the back of the second floor of the building is level with Lei Place.

Chairman Endo: Okay.

Mr. Schulz: Look at Sheet A-2, the section.

Chairman Endo: Oh, okay. So if you built an additional retaining wall in the back of Lot 7, you could probably create some parking off of Lei Place driving into the back of Lot 7 although it'll probably be very expensive.

Mr. Betham: I think it would be too tight. I don't think there's enough depth to do that.

Chairman Endo: Further questions? Hari?

Mr. Ajmani: I want to comment on something that was said earlier about that you would you be willing to contribute some when the City or County comes up with a parking fee for these kinds of things. I think that is a positive movement to do something like that. And you said, yes, you will contribute to that fund.

Mr. Betham: Yes.

Mr. Ajmani: But then you qualified by saying that but that means that all the existing ones have to contribute to it and so on.

Mr. Betham: Well, that would seem logical.

Mr. Ajmani: No, I think most of these parking needs are being generated by change of occupancy or increase in usage are based upon that. And the County really has no means of going back to somebody who has been grandfathered 50 years ago, and say that you give us some parking charge at this point. So that will never happen.

Mr. Betham: I had heard, though, a rumor where people were considering actually creating a parking space in Paia for all the employees of the town. I think that was something that Mana Foods were looking into.

Mr. Ajmani: Yeah, I think that was one thing that when they came in for the variance they were saying that – and the suggestion was made by the Board that they should look for some place where they can bus the employees to the town and so on, but that's beside the point. I think this – I'm talking about the County coming up with a parking fee ordinance so they can maybe add a parking lot where they have this one level parking right now, or if the fund becomes big enough, they can increase the size.

Mr. Betham: All I can imagine, though, is that for it to be a reasonable fee, it was gonna take many, many years of contributing to this fund before it could even probably pay for a couple of parking spaces. So it just seems rather ineffective.

Mr. Ajmani: No, I think I want you to understand that it will never mean that everybody will pay the same fee, but not necessarily the people who are already grandfathered in, including you because of your space. So I think if you are – if you can modify your thinking on that, that's what I was trying to point to.

Mr. Betham: Okay. Thank you.

Chairman Endo: Kathleen?

Ms. Acks: I'd like to – and help me with the wording on this one, I'd like to set this one up the way we've done the others in the past where we grant a limited variance for three years for the full 11 stalls so that the 11 stalls stays in place giving the County and the owners of the businesses time to work out some kind of a parking arrangement. It's not gonna get any better if something isn't done. So I think it's really important to keep those 11 stalls on the books instead of grandfathering them in.

Chairman Endo: Okay, I'm gonna take – oh, let me just try and restate what I think because basically, you're making a motion, right, Kathleen?

Mr. Betham: I have a–

Chairman Endo: No, she needs to make her motion first, okay, if that's a motion. Okay, she's made a motion to grant the variance request but for a limited time of three years. Is there a second?

Mr. Schulz: I second it.

Chairman Endo: Okay, it's been moved and seconded to grant the variance but only for three years subject to the regular conditions. And you should probably state that you need to tell us what your findings of facts would be since we can't adopt the Planning Department's one which says that the–

Mr. James Giroux: Kathleen, I just wanna make some comments on the legal side. As far as if at the end of the three years, what do you envision happening with this variance? That puts–

Ms. Acks: I think that's the way we've set up several in the past with the intent of we've got the discussion later on today from – on the table. And just trying to give a little bit of – give some appropriate time. And I don't know how much time, so I just picked three years that the County and the business owners start actively working together to remedy this problem.

Mr. Giroux: My concern is with the time limit on variances like this is that it puts the

applicant in a precarious position because they have no control over what the County does in the future. And so if you grant them a variance now and then in three years, the County hasn't done anything, and then you take away the variance, or you put them in jeopardy of being in violation of the code, they've invested into what they're doing. So what I'm trying to avoid is a lawsuit against the County in that we basically, give them sort of an entitlement, and then without any cause of their own, taking it away.

Ms. Acks: I think my concern is without having a time – just to give the variance, nothing's gonna change.

Mr. Giroux: But that's the – well, the idea of a variance is that it runs with the land. And it's not – it's nothing that the applicant caused. It's a pre-existing problem. My suggestion would be that in your condition, you fashion something that says that when the County or upon the County coming up with a fair pro rata fee schedule that the applicant would pay into the fund to the full extent of the parking as required prior to the variance. So if you're gonna waive 11 stalls, for the lifetime of the project, they don't have to create 11 stalls, but when the County then creates a fair pro rata share based on a study, a needs assessment, that the applicant will then pay into the fund based on the full amount of stalls that were required prior to the variance. And then that means they'll pay for the stalls that you waived at this point.

Ms. Acks: The 11 stalls?

Mr. Giroux: The 11 stalls.

Ms. Acks: I'm fine with that.

Chairman Endo: Uwe?

Mr. Schulz: I just would like to express my opinion that three years is not long enough because the County doesn't move that fast. And I also would like to know from staff, I think at the beginning of the year, we submitted a proposal to waive parking requirements in historic districts, and I would like to know where that stands. It was supposed to go to the Council, but we haven't heard anything about that project for a long time.

Mr. Francis Cerizo: The letter was transferred or mailed to the Council. And it's just – it's an informational letter. I mean, it has no impact. We cite them our concerns and it's noted and filed.

Mr. Schulz: So there's no action and there's no date when it will go for a vote at the Council level?

Mr. Cerizo: As of now, there's parking fees. There's several fees that the County's looking at. One of them is parking fees as we – which is on the agenda, which was on yesterday's agenda that will be put on your next agenda to discuss that fee. And it will affect properties like this which is in country town business. And as far as the timetable on when that's gonna happen, I have no timetable on that.

Mr. Schulz: So see, Kate, five years.

Ms. Acks: Well, but I like the way that–

Chairman Endo: Okay, hang on, everybody. Just to keep order, okay, just for your information, the basic rules of parliamentary procedure, you should always look at the Chair because we don't want you guys to get too heated looking at each other and talking. Not that you guys are arguing or anything, but just trying to keep order. So go ahead, Kathleen.

Ms. Acks: I would like to have it modified to agree with Corp. Counsel. I think that's an appropriate way of stating it without putting a time limit on it, but dependent on the County's actions.

Chairman Endo: Okay, so you're withdrawing your motion and–

Ms. Acks: Modifying?

Chairman Endo: Okay, you want to modify your motion, then we have to see whether or not the second is gonna still be seconded for the modified motion.

Mr. Schulz: Yes.

Chairman Endo: Okay, so it's been moved and seconded as modified to grant the variance. That the variance would then–

Mr. Giroux: You would have a condition.

Chairman Endo: You would have a condition that if and when a program is implemented where businesses are charged, you have to pay an in-lieu fee instead of creating parking. That this business would be subject to that requirement in its full effect as if the 11-lot variance did not exist. Is that correct?

Mr. Cerizo: Eleven stalls.

Chairman Endo: Sorry, 11 stalls. Sorry. Okay, it's been moved and seconded. Discussion? Warren?

Mr. Shibuya: Yeah, just a point of clarification. I believe Kathleen is thinking about one of the two. One is the Lahaina one where the individuals had to be paying for a paid lot where we had phantom parking there. And so this owner was willing to continue making payments, but the payments would be going into a trust fund, and that's where we got a little sidetracked here. On this particular case, there's no parking available that the individual can buy a specific space. So therefore, I think the current motion is good in that respect because we're not – we don't have any charges for the owners to purchase any specific slots or stalls.

The next item that I wanted to bring up was there's a – the Council is thinking of having this business town and country area especially in the historical districts set up some sort of a parking assessment. And they want to apply it evenly throughout Lahaina, as well as Makawao, Paia, Wailuku. And so they're going through and asking us for a survey. And that's where it stands right now. And so that's interesting in that respect. They're gonna try and–

They knew of our letter, by the way, or letters. We have two letters, by the way. So this Board is on notice to them.

Chairman Endo: Discussion, Hari?

Mr. Ajmani: Yeah, I think I also like the idea of Corporate Counsel that we can put this 11-lot – need for 11 parking stalls into the variance, and the owner agreeing to pay for them as and when the County passes the ordinance.

Mr. Giroux: And, Randy, also the motion will include the three standard conditions in–?

Chairman Endo: I believe that was the assumption. Is that correct, Kathleen?

Ms. Acks: Yes.

Chairman Endo: Okay.

Mr. Shibuya: Because I think the assumption is a little differently here. So I'll go and go ahead and say of this. The exceptional and unique features that the Paia Town is a historical area, and it was grandfathered in that the parking stalls were not required. In this particular case, the person is in strict compliance, and is trying to be reasonable and use the property in a very reasonable fashion. So therefore, the next one is the creating a hardship. The hardship was not created by the applicant itself. It's just by the conditions in which he wants to use the property, adjoining property. And so I don't see this – I feel that this is a justification for this variance.

Chairman Endo: Hari?

Mr. Ajmani: And I believe you'll also include our standard clause of holding the County harmless for a million dollars or whatever.

Chairman Endo: Yeah, that was what James was referring to earlier.

Mr. Ajmani: Okay, thank you.

Chairman Endo: Okay, if there's no further discussion, then we'll vote. All those in favor of the motion which grants the variance with the conditions as previously described, please say aye and raise your right hand. Opposed?

It was moved by Ms. Acks, seconded by Mr. Schulz, then

VOTED: To grant the variance with the conditions as previously described.

(Assenting: K. Acks, U. Schulz, R. Ball Phillips, H. Ajmani, J. Schulz, and W. Shibuya.)

(Dissenting: B. Kamai.)

(Excused: S. Castro.)

Chairman Endo: **Okay, motion is carried six to one, and your variance is granted subject to the conditions as stated.**

(A recess was then taken at 3:25 p.m. and the meeting reconvened at 3:30 p.m.)

C. UNFINISHED BUSINESS

- 1. PEDRO and LUZ ALONZO requesting variances from Maui County Code, §19.08.060 to allow a two-story dwelling to be located between 9 feet-6 inches to 9 feet-1 inch from the side boundary line, whereas ten (10) feet are required for the second story, for property located at 508 South Kamehameha Avenue, Kahului, Maui, Hawai`i; TMK: (2) 3-8-056:009. (BVAV 20070005)**

Chairman Endo: At this time, let's take public testimony on this item, or actually, let's have the introduction of the applicant's representative again. Please step forward.

Mr. Joel Corpuz: My name is Joel Corpuz. I'm the engineer of record on Mrs. Alonzo's two-story addition.

Chairman Endo: Okay, thank you, Mr. Corpuz.

Ms. Luz Alonzo: I'm Luz Alonzo, and I live at 508 South Kamehameha. Good afternoon, everyone.

Chairman Endo: Good afternoon, Ms. Alonzo. Okay, is there anyone here – I think I'll just get it out of the way: is anyone here from the public who wishes to testify on this matter? We'll take public testimony.

Ms. Donna Kaimi: My name is Donna Kaimi, and I'm a friend of Mrs. Alonzo. And I have, through the course of this extended procedure, helped her so far as being a translator and a helper. And I hope I can continue to do that today.

Chairman Endo: Oh, yes, it's not a problem, but do you wanna give public testimony? No?

Ms. Kaimi: Only that she's tried very, very hard. There's a letter in front of you now that says that she's followed all the suggestions that have been made by this Board. We tried very hard to get her neighbors to sell her 11 inches, to loan her 11 inches, to trade 11 inches with her, and those are the same 11 inches that they really wanna keep. So we're not having had any luck with that. And she has the plans drawn to do the plinth wall that was suggested. And so she's tried very hard to comply in every way possible with the after-the-fact any suggestions that have been made.

Chairman Endo: Thank you. Any questions for Ms. – I'm sorry, I didn't get your name.

Ms. Kaimi: Donna Kaimi. Donna Kaimi.

Chairman Endo: Donna Kaimi.

Ms. Kaimi: I also wrote to you on this matter earlier in the procedure.

Chairman Endo: Okay, thank you. Any questions for Ms. Kaimi? No? Thank you. Planning, did you folks get this letter?

Mr. Cerizo: Yes.

Chairman Endo: Okay. Planning, was there any other new letters in opposition or support of this variance?

Mr. Cerizo: No. No, this letter here is the latest letter that we received. We review it today before the hearing. It's from the adjacent owners, and as noted by the applicants that they have no objections to the granting of the variance.

Chairman Endo: Okay, thank you. Alright, Mr. Corpuz, did you wanna make any initial

remarks? I think most of the people are familiar here, but if you want the opportunity to say a few words you can, or we'll begin discussion.

Mr. Corpuz: I think Ms. Kaimi summarized everything we did from the last meeting.

Chairman Endo: Alright. Okay, members, discussion? Mr. Schulz?

Mr. Schulz: I have a question for Mr. Corpuz. You are the engineer who stamped these drawings, right?

Mr. Corpuz: Correct.

Mr. Schulz: And how often did you inspect the building site?

Mr. Corpuz: I immediately stopped the job, and then after that I was—

Mr. Schulz: No, no, I'm talking about initially. Did you go out there once a week, twice a week, once a month?

Mr. Corpuz: No, I was not informed or contacted in any way that the permit had been issued or the construction had started.

Mr. Schulz: Okay, but you know that you're required by State law to supervise construction of structures if you are the author of the plans.

Mr. Corpuz: I realize that, yes.

Mr. Schulz: But you didn't do that?

Mr. Corpuz: No.

Mr. Schulz: Okay. Did you advise your client in regards to hiring an unlicensed contractor?

Mr. Corpuz: No.

Mr. Schulz: So how did that come about that you were not supervising an unlicensed contractor?

Mr. Corpuz: I had no knowledge of the contractor which they chose to do the job.

Mr. Schulz: But you're involved. I mean, you must know who the contractor as the author of the drawings and the structural engineering.

Mr. Corpuz: As I said, I was not contacted.

Mr. Schulz: Yeah, but it is your obligation by State law. I mean, regardless if somebody contacts you or not, you're the author of the drawings, and you're the author of the structural calculations, and you're required by State law to see this project through. It's not a choice. It's the State law. Are you aware of that?

Mr. Corpuz: Yes, I am.

Mr. Schulz: And that you also need to be involved with the contractor.

Mr. Corpuz: This contractor has in the past – this is his standard procedure of operation to quickly go through the building without contacting anyone.

Mr. Schulz: Well, you could've – you probably should've stopped him.

Mr. Corpuz: I did.

Mr. Schulz: No, at the beginning prior to the foundation. The structural engineer or architect has a preconstruction meeting with the contractor. That's standard procedure. You get to know the fellow, and you give him direction. You give him your phone number. You don't go and look at the jobsite nine months later, and say, oh, my God, you built it in the wrong place. Now, stop work.

Mr. Corpuz: The foundations were clearly inspected by the County and approved by the County.

Mr. Schulz: The County really doesn't inspect setbacks and so on. They come out and look at it very briefly, and then they say it looks okay to me, and that's it. And also, the County has absolutely no obligations. Only because they inspect it, they are not liable. You are liable as the author of the drawings. The County has absolutely no liability whatsoever.

Mr. Corpuz: Well, if the contractor chooses to play slight-of-hand tricks–

Mr. Schulz: That is exactly my point. You know, the State law obligates you to supervise a building under construction. No way out. It's mandatory.

Chairman Endo: Okay, the Chair's gonna try and refocus the discussion here. Member Schulz, we wanna give you the opportunity to make any statements you like as part of the discussion, and state your reasons for voting and everything, but to the extent that you're no longer really asking for information from the representative, but rather trying to make your point and statement, I'd prefer – I'd like to guide you to try and limit your

discussion to asking him questions.

Mr. Schulz: Mr. Chair, my reason for this argument – it's not an argument, but I was trying to figure out how often the engineer was visiting the jobsite. That was the reason for my questioning.

Chairman Endo: Alright. Okay, further discussion? Hari?

Mr. Ajmani: Yeah, I want to follow up with what Mr. Schulz said. Once the discrepancy was found, how often did you go there to correct the situation or what was reported to the County? And how did this – such a wide change from the drawing, the first drawing, to eventually the thing got built? How did the whole thing . . . (inaudible) . . . with the County's approval and your approval and so on? Am I making–? Once the discrepancy was found six or nine months later when you said you stopped the job, a different house was built. It currently exists. During that time, what was yours and the County's involvement to fix the problem?

Mr. Corpuz: It couldn't be fixed. The foundations had been poured, the columns in place, the floor had been framed, and the walls were up, the second story walls, and the roof was on.

Mr. Ajmani: Okay, so you basically sought the County's approval on this revised footings, and revised plans, and revised walls, and everything?

Mr. Corpuz: I resubmitted new plans to the County to permit.

Mr. Ajmani: And have they all been approved again with the improper setback?

Mr. Corpuz: No.

Mr. Ajmani: So the house was built on a non-approved plan?

Mr. Corpuz: Correct.

Mr. Ajmani: And I think the last meeting you were saying the County still went ahead and did all the inspections: electrical, and framing, and other inspections? Is that true?

Mr. Corpuz: I believe that was the case, but Mrs. Alonzo can clarify.

Mr. Ajmani: Okay, so just to clarify, there has been some time, so where does this stand right now? The County is not giving you an occupancy for the house, or has it been occupied? What is this variance basically about? The house is already built there, and the County is not giving a permit to occupy it?

Mr. Corpuz: I believe that's the case.

Chairman Endo: Just for clarification, I believe they're – aren't you submitting a new building permit for the as-built plans, but they won't – the building permit for the existing structure won't be granted unless they get this variance. I think that's where they're at. Maybe you can ask Planning to–

Mr. Ajmani: I think you're right. I've forgotten–

Chairman Endo: I know. It's been a while.

Mr. Ajmani: It's been a while, yes.

Chairman Endo: Is that correct, Francis?

Mr. Cerizo: That's true.

Chairman Endo: Okay. Further discussion? Further questions?

Mr. Ajmani: The only other thing I'll add is being a licensed engineer in the State of Hawai'i myself, I concur with what Mr. Schulz said that you have a responsibility to make sure that things happen correctly. And that's part of the license and the laws of the State requirement that you need to follow in case – I mean, for further projects, you should keep that in mind.

Mr. Corpuz: I did try to make amends by being forthright and honest by stopping the job, reporting the violation, and appearing before you now today.

Chairman Endo: Member Shibuya?

Mr. Shibuya: Thank you. I have no other questions, but I just wanna thank Mr. Corpuz for your information. And Mrs. Alonzo, do you have other things that you'd like to say before I make a motion?

Chairman Endo: No, I don't think she has.

Mr. Shibuya: None?

Chairman Endo: Go ahead.

Mr. Shibuya: Okay. Members, I'm just gonna make a motion that this request to have a variance on the current construction of the two-story dwelling located between nine feet and six inches to nine feet and one inch from the side boundary line whereas ten feet is

actually required for the second story be denied. I feel that this denial is predicated on two very troubling aspects and facts. One, the engineer in charge was not providing proper oversight. And secondly, the owner hired an unlicensed contractor who changed and did not comply with the engineer's drawings. And therefore, now we have a problem here and a setback. And I feel that this was not – it was actually owner-caused in this respect. And so therefore, I'm asking for denial – I'm voting for – I mean, I'm making a motion for denial.

Mr. Schulz: I second it.

Chairman Endo: Okay, it's been moved and seconded to deny the variance request. Discussion? Member Kamai?

Mr. Kamai: Yeah, I would be in favor of granting them their variance because of the undue hardship and for the forthrightness of Mr. Corpuz acknowledging his mistake, and that this be a lesson learned for Mr. Corpuz and the Alonzo Family. Also, citing that there is no problem with their neighbors in regards to this letter from the Salcedo Family who realized the mistake that was made, and with this letter saying that it does not impact their ability to occupy. And so with that, I would grant them this variance.

Chairman Endo: Jim?

Mr. Shefte: I would agree with Mr. Kamai. I think that these people have done everything they can short of tearing the house down and starting over to try and meet the wishes of this Board. And I think that their motivation is genuine. And I feel that we owe it to them to grant the variance.

Ms. Ball Phillips: I'll be supporting the motion because I also agree that the situation was caused by the owners first in the hiring of an unlicensed contractor. Second, in failing to inform Mr. Corpuz that the work had started so that he could supervise. I feel that was a tremendous oversight because if you had notified him when the contractor had started, he would've had more ample opportunity to supervise the work. And second, when he did actually give a stop work order, instead of complying with his order to stop, work continued, and that further created this situation as it is.

Chairman Endo: Hari?

Mr. Ajmani: Yeah, I would – I feel somewhat similar to what Ms. Phillips said. I think if the parties would've stopped when you first discovered it, there was a time to fix it regarding to the old plan and by redoing the framing and everything at that point. But by continuing the project, by putting the roof, and walls, and plumbing, and electrical, everything, the problem was aggravated by you by not doing – taking timely actions. So I think there is definitely some responsibility that falls on the engineer of record and the

owner for allowing the added cost to be unto the house which has now become more of a detriment. So I think that the owner needs to take some responsibility for this mishap and not the County.

Chairman Endo: Okay, if the members don't mind, I would like to – the Chair would like to also state his position on this matter. I see no objection. I think that this letter, which is a new letter that we've never gotten before from the neighbor is very critical. I mean, we're only talking about what some people feel is a very minor intrusion into the setback. And the fact that the neighbor that would be impacted the most who lives right next to them supports the granting of the variance to me is highly persuasive of the matter. And I think to a certain extent, some of the people who are – some of the members who are feeling like they did a lot of wrong things, the contractor was unlicensed, and for various professional consultants might've made errors of judgement, and done a lot of incorrect things, those all may be true, but to me, we shouldn't necessarily hold it against the owner, Ms. Alonzo, just because of these errors by the contractor and by the consultants, perhaps. We need to try – she's gone through a lot of trouble to do all of this. It's not like she intended to intentionally to sneak by and get a bigger house, and go to this BVA and profit. I think it's clear that it was a mistake. And from her part, it's just an honest mistake. And I think that this granting of the variance which really is no burden on the County, there's no burden on the neighbor, nobody is complaining, everyone is copasetic, I think this a most clear case of where we should be granting the variance. We granted the variance to the Fire Department to invade the setback, a 15-foot setback, to invade it by 12 feet, you know. And we said, oh, well, that's okay. We don't – we didn't care about the neighbors. We didn't even ask. We didn't say anything. We just said, oh, well, if the Fire Department wants it, let's give it to them. And now the Alonzos are coming here to explain their very heartfelt situation, and we have no reason to doubt her sincerity. And it's only a few inches into the setback, and we can't give her that. I can't see how – I just can't imagine why we wouldn't want to just give her the variance under these circumstances. Okay, that's just my – the Chair's personal position.

Mr. Schulz: Mr. Chairman?

Chairman Endo: Yes?

Mr. Schulz: I really feel extremely bad and it hurts me that this whole thing has happened. However, setbacks were invented, right or wrong, for fire protection. So if you have a house that your neighbor separated for a certain distance, you know, 12 feet for a one story building or 20 feet for a two-story building, that's strictly because of fire protection. And the other thing is that it also impacts the light and ventilation. That's the other reason for setbacks. And even though I feel extremely bad about this, I don't think that because as – if setback violations occur, then there is public safety involved in terms of fire separation, and light, and ventilation. Thank you.

Chairman Endo: Kathleen?

Ms. Acks: I was under the impression that the distance between the two homes is in fact more than 20 feet? Is that—?

Chairman Endo: Planning, could—?

Ms. Acks: I mean, it seemed like when we were saying that if we move the line so that there would still be ten feet and ten feet, then that means that there's 20 feet physically between the two houses. So that—

Chairman Endo: There probably is, but I think what Uwe is saying is that potentially, the other neighbor could get a building permit, and expand his house up to the exact setback in which case he'd get slightly less than 20 feet by whatever—6 inches or a foot. I think that's what would be the point. But you're right, right now, there is more than 20 feet. Francis?

Mr. Cerizo: The setback right now on the subject property side is off by — on one side is off by four inches — I'm sorry, six inches and as much as 11 inches. So we're looking at an encroachment to the setback which is a minimal amount. It's supposed to be ten feet, but we have 9'6" and 9'1". On the other side of the property, according to the photos, it looks like the existing building that's there now is—and perhaps the consultant can verify—it looks like it's more than ten feet away. In fact, the setbacks seem considerably more from the side yard than ten feet. So in the event the adjacent property comes in — the building comes in at — if they put in a two-story building, there'll be a setback, their ten feet. And you'll have separation between the two. You'll have basically, 19 feet or so, 19½, or 19 and one inch between the two buildings. So as far as light and ventilation, the setbacks on the building code — not the building code, but the zoning code is one, it's based on light and ventilation. But the building code has the minimal light and ventilation. If there was no zoning code, the building code would come in, and they have even a less setback area than ten feet and six feet. When you get closer to the property line, they actually — you can actually — you can put lighting in and have A.C. But if you wanna have full ventilation and light, then I believe it's closer than 20 feet, though. Maybe Mr. Corpuz—

Mr. Corpuz: I believe the existing downstairs is just about that—a little over ten feet. I can't testify as to how far the neighbor is from the setback line.

Chairman Endo: James?

Mr. Shefte: Yes, I have a question for staff. If this variance is denied, what happens to the house?

Mr. Cerizo: Well, they would have to tear out six inches of the wall. That includes the outside sheeting, the 2x4s, and then reconstruct the wall, and whatever it takes to support that upper wall. So we'll be moving that whole wall four inches in one place and 11 inches in another. Maybe Mr. Corpuz can actually give you more detail since – he could give you actually more what may need to be done as far as the roofing and so forth.

Mr. Corpuz: The trusses would have to be removed from the top first. The entire length of the wall would have to come out. New footings within the existing residence would have to be installed to support columns and beams which would support the moot wall. Then the trusses would have to be cut back 11 inches. Right now I believe the trusses form a perfect ridge down the middle of the building. Should the wall be moved, the wall would have an appearance of being up higher on one side because this wall has now moved in.

Chairman Endo: Kathleen?

Ms. Acks: I'd like to ask a question. There have been some new developments that have been fast-tracked and some of those have two-story homes. Have – are they all in compliance with this 20-foot between the two houses, or are some of those being waived? It seems like when I'm driving along, some of those houses look like they are–

Chairman Endo: Well, a single story is only six-foot.

Ms. Acks: No, I know, but still when–

Chairman Endo: You mean two-story homes?

Ms. Acks: Yeah, yeah. Some of those homes – and I haven't gotten out and measured them, but some of them look–

Chairman Endo: Are you talking about zero lot lines or something? I don't know. Maybe Francis could–

Mr. Cerizo: Well, zero lot line, the houses are built right next to each other.

Ms. Acks: No, no, no. I'm just talking about some of the new fast-tracked developments. Are all of those two-story houses kept at a ten-foot setback for a property, or is that often waived for, for example, for affordable housing?

Mr. Schulz: Mr. Chair, while Francis is looking at that thing, I have one more question for Mr. Corpuz.

Chairman Endo: Sure, go ahead.

Mr. Schulz: Do you carry liability insurance? Errors and admissions?

Mr. Corpuz: Yes, I do.

Mr. Schulz: So actually, this disaster would be paid for by your errors and admission insurance. Is that correct?

Mr. Corpuz: Should I wish to admit any wrongdoing, sure.

Mr. Schulz: Okay, thank you.

Chairman Endo: I have a question for staff. I kind of forget exactly how the setbacks work in a zero lot line residential subdivision. I think I do, but I don't know exactly. Maybe – could one of you briefly explain how the setbacks work on a zero lot line?

Mr. Cerizo: Okay, I'm just reviewing the – I'm just looking at – there's several different types of codes that we have. And I'm looking at the Maui Lani building code, zoning code. And they have several subdistricts, and it varies from 3,000 to 8,000. And 3,000 is where you have your higher density. So this would be under – if you have your codes, it would be under 19.78.020. And it says here for SF-3, we have a front yard of ten feet per houses. Then side yards, five feet for any exterior walls with openings for light or access and air. The sum of both side yards of any lot must total ten feet. Common walls built on a property line must be constructed of masonry or equal for fire retardant. So also, on a rear yard, ten feet for second stories. On SF-5 also, the side yards are six feet for a single story, and ten feet for a second story. So on zero lot lines, let me just pull that out.

Chairman Endo: Francis, if you look at 19.09.080, "Setback lines and yard requirements for zero lot line it says that except for the front setback line, access yard, setback line, zero lot lines, and setback for alternating zero lot lines:

There shall be setbacks from all other lot lines of not less than six feet for a lot upon a one story dwelling unit is built, and not less than ten feet for a lot upon which a two-story dwelling unit is built.

And I'm not positive, but I'm wondering—on a zero lot line, one house gets to put his house real close to the boundary, right up to the boundary line, and then the next guy can't do the same thing, obviously. So he has to do that setback. And then the next neighbor – you know, it's sort of like it goes in a checkerboard fashion where each house would have only one yard, right, and then you sort of – you abut your house against one line.

Mr. Cerizo: Right.

Chairman Endo: So I think what happens is, and based on reading on that, you might get as narrow as ten feet from house-to-house in a zero lot line, a two-story situation. Is that – am I reading that correctly?

Mr. Cerizo: That's correct. Yeah.

Chairman Endo: Okay. So that might be what you're seeing, Kathleen, is zero lot lines. I know there are zero lot lines in some areas of Kehalani in Wailuku.

Ms. Acks: I am gonna have to agree with you on your reasoning.

Chairman Endo: Warren?

Mr. Shibuya: Unfortunately, this area is not zoned for zero lot line. We're now trying to change the ordinance and the code for Kahului. And this will start the precedence for it. Thanks.

Chairman Endo: Hari?

Mr. Ajmani: I want to have a little comment here. One is that I agree with what the Chair said. It will be a waste to have to tear down the house and go through all the trouble that the owner will have to go through for this. On the other hand, I also see a pretty callous disregard of the County requirement, and setback requirement, and so on. So I just want to inquire one thing from the Corporate Counsel: is there a sort of in-between action we can take? Or is this just voting one way or the other?

Mr. Corpuz: Mr. Endo, I believe there's still the question of the plinth wall that's still out there.

Chairman Endo: Right, that'll be a possible condition.

Mr. Giroux: I think you, in fashioning a condition, it's hard to find a halfway when – I mean, because if you're saying that you want the wall to be moved back, you're not granting the variance. You're saying you're upholding the variance. It's just the remedy after the variance is either granted or not granted.

Mr. Ajmani: No, I think maybe I didn't make myself clear. I think my thinking in this is that I do not want something like that happen again and again kind of thing. And all this same engineer or same owner do the same thing again and again. Is there some way to prevent this from happening from here on? Or can we make a condition like that? Or is it possible? I'm just thinking out loud.

Mr. Giroux: Yeah, I don't – what you have to understand about the variance is that it's a case-by-case basis. So you have to look at the hardship and the topographical and all of that. And that's why we have findings of facts and conclusions of law because every case is based on the case at hand. It's a contested case just for that. I know people try to use the prior cases as a precedent, but that's a very loosely used word. I mean, you can have a similar case, but it's not the exact same case as far as what facts are presented, because it is supposed to be based on the strict or the narrow reading of the conditions that would lead somebody to grant the variance.

Mr. Ajmani: Okay. And one other thing I would like to add is that can we–? I want the County officials to know that when they had red-tagged the job, why was the County allowing to have any more inspectors go on the site? The County should have – you put a red-tagged job, there should've had no more inspections done. And then the owner and the engineer would've been forced to come to us or come to the County and resolve the matter at that point. So I sort of feel bad for the owner and engineer's sake that the County took such a lax attitude also when they could've been – they could've bitten the bullet at that point, and just make sure the right thing happened at the time.

Mr. Cerizo: Mr. Chair, I'm not sure if the Board remembers that one of the – I just wanna bring back as the consultant just indicated that there is a – there was some considerations being taken for a plenum wall which is a – I believe that's what he's indicated. That's where you have a false wall. Build a wall where it should've been, and there would be a gap between the correct setback and the portion that's not supposed to be there. So you actually block out that portion. Basically what you do is he doesn't benefit from the additional area that he built it at. It would eliminate all of that area by putting in a false wall. And there was some consideration also that the windows could stay in, and the plumbing, and the bathroom, but everything else would be – you would have a false wall that would actually reduce the area, the interior area, of each of the rooms that's adjacent to that setback line. So I wondered if you folks wanna – that's something that was being considered before, so if you folks wanna just bring that out again.

Chairman Endo: Thank you. Kathleen, you wanted to–?

Ms. Acks: To me, I would just assume either go with the variance or not go with the variance. I think having the phony wall doesn't—I'm just gonna call it a phone wall—doesn't make any difference at all from— I mean, I agree with the idea that – I mean, I asked whether or not the neighbor had a problem with it because to me, that was the real critical point. If the neighbor had issues, I really probably would've totally gone the other way. I think if the next door neighbor has a signed piece of paper, they're taking some responsibility when the house – when their house goes up for sale, and so on and so forth. All of that's gonna be in place. That's gonna be pre-existing. I think as far as putting up a wall that maybe is gonna breed mice or whatever kinds of

things crawl behind the walls, to me that doesn't prevent fires because you've got that extra wall in there. So I'm not at all interested in that particular part of it.

Chairman Endo: Okay. Hari?

Mr. Ajmani: I think I agree with Kathleen. I think that phony wall doesn't make any sense on something like this. And like I say, I feel bad for the owner, and everybody, and the way it happened. So I don't know where I'm gonna go right now, but I'm debating in my mind.

Chairman Endo: Okay, for the sake of Uwe, though, everybody think quickly. I know Uwe has to leave soon.

Mr. Kamai: I agree with what Kathleen said. Just the fact that the people most impacted, their neighbors, wrote a letter in support goes to show what good neighbors the Alonzos are or what relationship they have with their neighbors.

Chairman Endo: Okay, everyone has been given many opportunities to speak on this matter. I don't want to cut off discussion, but if everyone feels comfortable, I'd like to take the vote. The motion on the floor is to deny the variance in its entirety. All those in favor, please raise your right hand and say aye. Okay, motion – opposed?

It was moved by Mr. Shibuya, seconded by Mr. Schulz, then

VOTED To deny the variance in its entirety.

**(Assenting: W. Shibuya, U. Schulz, and R. Ball Phillips.)
(Dissenting: H. Ajmani, J. Shefte, K. Acks, and W. Kamai.)
(Excused: S. Castro.)**

Chairman Endo: **The motion fails three to four.** Okay.

Ms. Acks: I will move that we grant the variance.

Mr. Shefte: Second.

Chairman Endo: Okay, it's been moved and seconded to grant the variance with – subject to the typical variance conditions as set forth in the rules, meaning insurance, hold harmless, and all that. Okay, discussion? Okay, seeing none, all those in favor of the motion to grant the variance as stated, please raise your right hand and say aye. Okay, the Chair votes aye. Opposed?

It was moved by Ms. Acks, seconded by Mr. Shefte, then

VOTED: To grant the variance subject to the typical variance conditions as set forth in the rules.

(Assenting: K. Acks, J. Shefte, W. Kamai, H. Ajmani and R. Endo.)

(Dissenting: W. Shibuya, U. Schulz, and R. Ball Phillips.)

(Excused: S. Castro.)

Chairman Endo: **Okay, the motion is carried, and the variance will be granted at a vote of five to three.** Thank you. So, okay. Okay, you want to say something, Mrs. Alonzo?

Ms. Alonzo: Yeah, how the meeting – thankful for what you did today with the variance. And I'm very, very happy. Thank you very much to all of you.

Chairman Endo: Okay. Alright. Thanks, Uwe.

(Mr. Schulz left the meeting at 4:12 p.m.)

Chairman Endo: Were there other items on the agenda, Francis?

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Mr. Cerizo: The status on the contested cases are there's no change, and we will update on the next meeting.

Chairman Endo: Okay, so no minutes to approve then, right?

Mr. Cerizo: No.

Chairman Endo: Okay.

E. NEXT MEETING DATE: January 10, 2008

Chairman Endo: Okay, the next meeting date is January 10, 2008. Does anybody have any announcements or—?

Ms. Acks: Happy new year.

Chairman Endo: Happy new year. Happy holidays. Alright. Thank you, everyone. I know you're working hard. Thank you, Ms. Alonzo. Okay, meeting is adjourned.

F. Adjournment

There being no further business to come before the Board, the meeting adjourned at 4:13 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
Uwe Schulz (1:38 p.m. to 4:12 p.m.)
William Kamai
Rachel Ball Phillips
Kathleen Acks
Harjinder Ajmani
James Shefte

Members Excused:

Stephen Castro, Sr.

Others:

Francis Cerizo, Planning Department Staff
Trisha Kapua`ala, Planning Department Staff
James Giroux, Deputy Corporation Counsel
Lesli Otani, Development Services Administration Staff, Department of Public Works