

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
AUGUST 23, 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, 1:35 p.m., Thursday, August 23, 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.)

Chairman Endo: At this time, rather than going in the order of the agenda, I'd like to take a short matter up if there's no objection from the Members. I want to take up the assignment of the Hearings Officer to Item C(1)(a). Is there any objection to doing that? Seeing none, we'll change the order. But before we do that, I'd also like to let anyone in the public who wishes to speak – for anyone who can't stay for the whole hearing and wants to speak early on any matter, you can come up and do so now keeping in mind that you won't be allowed a second chance to speak again when the item comes up. Barbara Long? And the three-minute rule does apply.

Ms. Barbara Long: Thank you very much. Chairman Endo, Members of the Board, my name is Barbara Long. My husband and I are owners. I'm here about the variance request by Munekiyo and Hiraga specifically to delete a loading zone. My husband and I are owners of the building directly across Wahie Lane from the Mariner's Alley structure. And we have had control of that building since 1972. I have many years of seeing delivery vehicles parked illegally in Wahie Lane, parked illegally in front of our building obscuring our tenants. And if the zoning area for Mariner's Alley is deleted, I just predict there will be more chaos. I hope that someone's consulted the Police Department because it is a police problem as well. Lahaina has too few zoning spaces, as some of you know. That's about all. I hope that you will comply with the Department's recommendation to deny the request to delete the loading area. And if you have any questions, I'd be happy to answer them.

Chairman Endo: Members, any questions? Seeing none, thank you, Barbara.

Ms. Long: Thank you very much.

Chairman Endo: Okay. So now could I have the Planning Staff introduce the Item C(1)(a)?

**C. APPEALS**

- 1. To determine a hearings' officer to preside over the following matters:**

- a. **JAMES B. TAKEYASU, ESQ. Representing ANTHONY A. LUM appealing the Director of the Department of Public Works determination as to the requirements of Maui County Code (“M.C.”), Title 18, pertaining to M.C., §§18.04.470, 18.04.220, 19.29.030(A)(1), 19.35.010(c)(5), 19.35.050, 18.20.040(B)(3)(a), 18.20.040(A), 19.16.060(C), 18.04.380, 18.16.060(C), 18.16.050 and 16.26.3304, relative to Building Permit Application No. B T2007/1270 for property located at 180 Alanuilili Place, Kula, Maui, Hawai`i; TMK: (2) 2-3-019:025-0003 (BVAA 20070004)**

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

Chairman Endo: Would the parties please make their appearances?

Ms. Madelyn D`Enbeau: Madelyn D`Enbeau for the County. Good morning – good afternoon, excuse me.

Chairman Endo: Good afternoon.

Mr. James B. Takeyasu: James B. Takeyasu representing Anthony A. Lum, owner of the property.

Ms. D`Enbeau; Mr. Takeyasu and I have had a discussion about – we`d select as Hearings Officers or recommend. And since he put on a tie today, I`ll let him make the–

Mr. Takeyasu: Our first choice was to have the Hearing Officer be a Member of the Board. That`ll be Mr. Endo. We believe that this is just basically a question of law. And both myself and Ms. D`Enbeau will work on a stipulation of facts. And I think basically, it`ll be just hearing arguments and to review our submittals. In addition to yourself as Chair, we`d also submit the names of Mark Honda, Dennis Niles, and Boyd Mossman. Again, we believe that in terms of the time necessary for the Hearing Officer to include this appeal, it`ll be less than four hours.

Chairman Endo: I think I would be interested in serving as a Hearings Officer, but I need to check my schedule and make sure that I have enough time to allocate to doing that work. I do appreciate that it is primarily a question of law, and that you folks will be stipulating to the facts. That would definitely speed up the matter. I think what I`d like to suggest to the Board is that you – somebody make a motion to approve myself as the Hearings Officer as a first choice, but I`m still going to check back and make sure I can do it. And then if I decide I can`t make it, I`ll make a decision in a day or two, then we`ll go down to the next person.

Ms. Kapua`ala: Excuse me, Randy. I believe the appellant and the Deputy Corporation Counsel would like the Board to ask as Chairperson as their first choice, not necessarily you as the Hearings Officer outside of the BVA's regular schedule.

Chairman Endo: Oh, okay. Let me ask them. Maybe I heard them wrong, then.

Mr. Takeyasu: We're suggesting that you act as the Hearing Officer.

Chairman Endo: Me, personally?

Mr. Takeyasu: That's correct.

Chairman Endo: Okay, so, I heard it right, then.

Ms. D'Enbeau: To clarify, that would be under the auspices of the permission that – excuse me, of the rule that the Board or a designated Member of the Board can act as Hearing Officer, not as private Hearing Officer, if you will.

Chairman Endo: Oh, you mean I'm not going to get paid? Just joking.

Ms. D'Enbeau: I guess that's what I was trying to say.

Chairman Endo: No, I understand that. Okay, so, I would welcome a motion to – oh, go ahead.

Ms. Kathleen Acks: I'll move that you be appointed the primary Hearing Officer. And if that doesn't work, Mark Honda, Dennis Niles, or Boyd Mossman are then approached.

Chairman Endo: In that order.

Ms. Acks: In that order, yes.

Mr. Uwe Schulz: I second that.

Chairman Endo: Okay, it's been moved and seconded. Any discussion? No? All in favor, say aye. Opposed?

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

**VOTED: To appoint Chairman Endo as the primary Hearing Officer. If Chairman Endo is not able to serve as Hearing Officer, then the following individuals are to be asked to serve in this**

**respective order:**

- 1. Mark Honda**
- 2. Dennis Niles**
- 3. Boyd Mossman**

Chairman Endo: **Motion is carried.** Thank you. Shall we go to the second item?

**B. PUBLIC HEARINGS**

- 1. MUNEKIYO & HIRAGA, INC., representing LAURENCE F. STEVENS AND ANNE SUI LEUNG-STEVENSONS requesting a variance from the following sections of Maui County Code: (1) §16.08.030(20) to allow the bedrooms, bathrooms, living room, family room and kitchen to be located within four (4) separate structures whereas all rooms are to be accessible from within the dwelling; (2) §16.08.110 to allow open walkways to access living spaces whereas all portions of a building are required to be weather protected so as to provide shelter for occupants against the elements, and to exclude dampness; and (3) §16.08.120 to allow the bathrooms to be separate from the rest of the dwelling whereas every dwelling unit should have within a lavatory, and a bathtub or shower for a property located at 7155 Makena Road, Makena, Maui, Hawaii; TMK: (2) 2-1-006:104. (BVAV 20070007)**

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

Ms. Kapua`ala: And I do have a video for the Board.

Chairman Endo: While you're doing that, why don't we ask the representatives of the applicant to come up and make their appearances?

Mr. Mich Hirano: Good afternoon, Chair Endo and Board Members. My name is Mich Hirano with Munekiyo and Hiraga. And our firm is assisting the applicant with the variance application before you today.

The applicant, Laurence Stevens and Anne Leung-Stevens, are also in attendance this afternoon, as well as the project architect, Jim Niess and Maggie Sutrov from Maui Architectural Group. And Kyle Ginoza from our office will assist me in the power point presentation we have prepared for you today to provide background information on the project. We're just trying to get the—

Chairman Endo: Mr. Hirano, is the applicant agreeable to the waiving of the reading of

the staff report?

Mr. Hirano: Yes, the applicant is.

Chairman Endo: Okay, so let the record reflect we will accept into the record the Department of Public Works' staff report dated August 23, 2007.

Mr. Hirano: Okay. But also, we are going to present a power point. So if the Board will bear with us until we get the technical machinery up to date and working, then we'll present our power point presentation.

Chairman Endo: Sure. Is there – Trisha, is there your video first, and then their power point? Or is it just–?

Ms. Kapua`ala: Yes, but I think for me to present the video, I would need to present it on my laptop, on the County's laptop since it's already set to view video files.

Chairman Endo: Perhaps we should just proceed with their power point, and then perhaps we don't need to see your video depending on how much we can see from their slides.

Ms. Kapua`ala: Okay.

Chairman Endo: Okay, so let's proceed.

Mr. Hirano: Thank you very much, Chair Endo. The variances that are being brought before you today are requested from three sections of the Maui County Code. But before – I'd like to just give you a little background on the project – the project location.

The project is located at 7155 Makena Keoneoio Road in South Maui. This is Makena Keoneoio Road. And the subject property is on the mauka side of the roadway. It's approximately, a two-acre parcel. It's surrounded by single-family residential parcels. The community plan designation in this area of Makena is single-family. The zoning is interim, and the State land use district is agricultural. And as a result of that, many of the properties that are developed in the surrounding area are large single-family residences on two-acre parcels. The variance that is being brought before you today is really on four sections of the Maui County Code: Title 16 related to the Housing Code.

The first variance is from Section 16.08.030, Item no. 20. And it's the definition of a dwelling unit. And the dwelling unit variances require to allow the bedrooms, bathrooms, living room, family room, and kitchen in this particular dwelling to be located in – there are five separate structures, not four. Whereas all rooms, according to the definition of a dwelling unit are to be accessible from within the dwelling.

The second variance that we are seeking is from Section 16.08.110 defining shelter. And this would allow open walkways to access the living spaces whereas according to the code, all portions of the building are required to be weather-protected so as to provide shelter for the occupants against the elements, and to exclude dampness.

The third section of the code that we are seeking a variance for is under Section 16.08.120 regarding sanitation. And this is to allow the bathrooms to be separated from the rest of the dwelling whereas according to the definition, every dwelling unit should have within, a lavatory, or bathtub or shower.

For the record, we are also seeking a variance from Section 16.08.030, Item no. 28, which defines a habitable room as any room or enclosed, partially enclosed floor space used or intended to be used for sleeping, living, cooking, or eating. And this variance is similar to the variance we're seeking for the dwelling unit where all rooms are supposed to be within a single structure.

The floor plan and building plans that have been submitted for building purposes is provided in the screen before you. It's a single-family residential development. The property is approximately, 2. acres. There are five kinds of pods to the structure. This is the kitchen, living room. There's an access hallway to the master bedroom, master bathroom, a covered walkway into the office. And on the other side of the residence, a covered walkway to the family room, and as well, to the two bedrooms. These are two bedrooms.

The applicant proposes to have open walkways instead of these covered walkways to connect to the buildings. And as a result of that design concept, we are seeking the variances of both definitions in the Housing Code.

This is an elevation of the building. And this is the western elevation from Makena Keoneoio Road looking to the east. This is the west side of the building.

These are the covered walkways connecting the master bedroom to the kitchen, living room, and as well, this is a covered walkway as the plans currently exist between the living room, family room. And you can't see the covered walkway but these are the two bedrooms on the right-hand side of the screen.

I'd like to just draw your attention, and this would've come out in the video that Trisha had is that there is a gulch. And the walkway is to span over the gulch. And it does provide a geographical feature which lends to this separate pod design.

This is the proposed site plan that the applicants wish to develop. And it's basically to have open walkways between the various structures of the building. And as you can see in this particular site plan, this is the driveway into the property, a walkway into the

main house, living room, kitchen, and this is the covered or uncovered walkway connecting from the kitchen to the master bedroom. There's as well, an uncovered walkway from the master bedroom to the private office of the residence. On the right-hand side of the screen or the south side of the property, this would be an uncovered walkway which would be between the living room and the family room, and as well, an uncovered walkway between the family room to the two bedrooms. These structures here are lanais, the decks that are patio-tiled, slate flooring that will be the walkway and patios of the building or lanais of the building.

Again, this is the proposed floor plan. And as you can see, the walkways will be all slate covered. And there will be extensive walkways, and patios, lanais fronting the house.

This is the proposed elevation. And again, you can see the master bedroom suite, and the den/office on the north side of the property or the left-hand side of the screen. The kitchen, living room, and the main structure of the building. And to the south side or the right-hand side of the screen, the family room is behind the two bedrooms.

I'd just like to, as well, go over the four criteria for variances that are established in the code, and just discuss those variances for the Board Members. Criteria one is that strict application, operation, or enforcement of the code provisions or provisions appealed from would result in practical difficulty or unnecessary hardship to the applicant. The subject property is located in the Wailea-Makena area of South Maui. It's a very mild tropical climate. And as a result of the climate and the environmental features of the area, the applicants would like to have the open tropical design concept for their home. And as well, these connections will inhibit the air flow, the natural light, and the indoor/outdoor experience which is the essence of the tropical living. The current design that the applicants would like to develop for the property is in line with the architectural concept and the tropical architecture that has been approved for the One Palaua Bay project, which is also located in Makena to the north of the project. And the inability to meet this architectural design is viewed as a hardship to the applicant.

I'd also like to point out that the geographical feature which really provides a unique condition to the property is the gulch, which by the design solution that was imposed by having open walkways, it provides a solution to the gulch, and as well, designs and congruity to the topography of the site. The typical solution to the gulch would be to fill it and put a culvert in. However, by incorporating the gulch into the project landscape and into the home design, the applicant has incorporated this geographical feature, and allowed this unique condition to become part of the proposed design.

Secondly, also in keeping with the mild, southern climate and tropical climate, the applicant as well is incorporating conservation measures into the building. And they are

going to be providing solar heating for their hot water needs, and as well, photovoltaic systems to be more environmentally sensitive to the surrounding environment, and conserving on the natural resources. So it's an integral design concept not only allowing open air features, but also incorporating energy conservation measures.

The second criteria about granting the variance is that granting of this variance shall not be detrimental to the public health, safety, and welfare. We are saying that we are seeking variances from the Housing Code; however, all aspects of the Building Code will be adhered to in this particular development.

The variance will permit the applicant to build his home or build their home with a design framework intended to provide all functional elements of a single-family dwelling. And the granting of this variance will not be detrimental to the public health, welfare or safety of the residence or the surrounding community.

The third criteria for granting of the variance is that this variance will not be injurious to the adjoining lots and the buildings thereon. The variance requested is for the single-family dwelling. And aside from the variances requested, all other building and zoning codes will be adhered to.

I'd like to just add with respect to the adjoining properties and the benefits that this applicant has provided to the adjoining properties is that they undertook to expand the County waterline to service their property, and it was an existing two-inch surface waterline that ran some distance to their property and to the adjoining properties. The applicant had upgraded that from a two-inch to an eight-inch line, and had put it under ground, and engineered it so that it has a water system that meets the County code. And it also provides fire protection not only to their property, but to the surrounding properties. This came at no small cost to the applicant as well. It was in the order of approximately, \$400,000. And so I think they show their good will, and as well, their ability to provide protection not only for their home, but to provide a benefit to the community through the development of their property.

Finally, the granting of the variance would not be contrary to the purposes of the code and the public interest. The response is that the applicant intends to use the home for a single-family use. And as such, the variance would not be contrary to the purpose of the code. It would still be a single-family residence.

In closing, I would just like to bring the Board to the – attention to the Board that applications of this nature have also come before the Board, and this is not the first time as such an application has been requested. We are aware of five applications that have been approved by the Board which had requested similar variances from the code.



The first was the One Palaeua Bay development that I referred to earlier. This actually had 17 lots which all lots incorporated the open design concept, and it was approved. They were seeking variances from the same sections of the code that this applicant is seeking variances from. That's Section 16.08.030, Item 28; as well as 16.080.030, Item 20; and the 16.08.110, which was the reference to all dwelling units should have a lavatory, bathroom, or shower.

The other variance was for the Reef property in Kapahulu. And again, it was the same three sections of the Building Code or the Housing Code that the applicant is seeking variances from.

The third variance which was in 2004 was Stephen Luczo property which was in Makena. And again, they were seeking variances from habitable room which was the Section 16.08.030, Item no. 28.

The fourth was in 2003: Pat and Nina Mehring. And this was in Lahaina, which is another tropical climate, a very warm climate area. And again, they were seeking variances from the same sections of the code as this particular application.

And finally, Martin Vassey in 2005 which was also in Makena. And they were seeking, again, variances from the same section of the code.

So in closing, I would like to request the Board of Variances' support in this particular application. And thank you for your time and attention. As I mentioned, the members of the project team are here to answer any questions the Board may have of this particular application. Thank you.

Chairman Endo: Thank you.

Mr. Hirano: Oh, I'm sorry. Jim Niess, the project architect, also would like to provide some information on the variances that are being sought this afternoon.

Mr. Jim Niess: Good afternoon, Board Members. I am Jim Niess from Maui Architectural Group and the project's architect. I know this issue has been before the Board many times in the past, and I'm hoping this will be the last time. The Maui Chapter of the American Institute of Architects, our professional society, is requesting the Department to revise its interpretation because – well, we sent a letter earlier in the year, and I'd like to just read a few pieces from that, if I might.

The history, we talk a little bit in here about how this came about, this particular interpretation. In reviewing the Department's interpretation of this issue over the years it seems apparent that in the past, this was used as a means to control a proliferation of unauthorized apartments and hotel units primarily in agricultural, rural zoned laws.

The current laws – fortunately now, the burden of enforcing these zoning issues such as illegal rental living units no longer lies with the Department since it was shifted to the Planning Department several years ago to aide their efforts. The Bed and Breakfast Ordinance was passed. The Rural Zoning Ordinance was implemented. And the Agricultural Zoning Ordinance was put in place. The Zoning and Enforcement Division was created and staffed. All of these deal with the issues of the Department's interpretation. And this issue has struggled to manage all these years. In the past, this effort has enjoyed only limited success in restricting unauthorized use while placing a rather severe constriction on architects and their clients who want to explore creative ways to arrange living spaces and to create home designs that are based more on the opportunities of Maui's favorable climate provides and less on what Mainland code models dictate a home should be.

Other venues – we conducted a survey of the other islands and how they interpret this issue. I personally have experience on Kaua'i and the Big Island, and none of these Counties, including Honolulu, preclude the incorporation of noncontiguous connections between residential spaces. This is also true virtually on every other Pacific Island. Pod solutions for bedrooms and less active spaces are separated from the main active spaces with interconnecting garden pathways provide a delightful exception to Mainland style, fully enclosed, mechanically-conditioned rooms. To use the current jargon, this is a sustainable – it's a green concept that generally promotes natural – greatly promotes natural ventilation, thus reducing dependence on air-conditioning, ceiling fans, and other energy-consuming, mechanical devices.

As a brief aside, I might just mention that last Sunday I was over on Kona, Kailua, Kona, at a house I designed 12 years ago using the same concept. And this is August, the last two weeks of August, the hottest weeks of the year. And this home was – when I approached the home, all the doors and the windows were open. It was being naturally ventilated. The air-conditioning wasn't on. I asked my client how often they use the air-conditioning. They said, oh, maybe two, three times a year just when the winds quit. So this device is an effective one.

Back to the letter. To my knowledge, this is the only Pacific Island that inhibits the use of this important design tool. Mainland codes are set up to struggle against the weather: either too hot or too cold. Here, at lower elevations, we have the most gentle climate certainly in the U.S., if not on the planet. We should be promoting just the opposite. We can actually live in this climate as the Hawaiians did. All right, maybe a little more clothing, but the point is simple: this ain't the Mainland. Many of our clients want to live as close to the outdoors as possible in sharp contrast to what they're used to in less favorable climates.

The current system – while well intentioned, the current system leads to one variance request after another: all approved. There are really no health and safety issues that

the general public needs to be protected from here. The UBC, the Building Code, doesn't require these Mainland style connections, only the somewhat taxed interpretation of the Housing Code.

Now, talking about the Housing Code a little bit, the Housing Code is the old Building Code. That's the code that was in place before the County adopted the Uniformed Building Code in the 1970s and has been updated periodically since that time. The architects have requested that this Housing Code be deleted as the new 2006 International Building Code is adopted sometime next year. And the Department has expressed some support for this request. This is why I'm hopeful that this will be the last time this Board faces this issue.

In conclusion, I'd just like to reiterate what Mich said earlier. These folks have really gone the extra mile in the responsible, sustainable design of their home. They extended the waterline half a mile larger from two to eight inches at great personal expense. We've designed a photovoltaic, electrical system to meet a significant portion of the home's demand. We have solar hot water heating for domestic use. And the swimming pools have their own separate heating system: solar-driven.

Approval of this variance request will add passive cooling and substantially improve natural ventilation for a home without compromise to the local environment, or the public's health, safety, or welfare. So we would appreciate your kokua in this request. Thank you very much.

Chairman Endo: Thank you. At this time, we'd like to open it up for public testimony. Is there anyone wishing to speak on this agenda item? Yeah, I was just giving her time to get ready. So is there anyone who wishes to testify? Seeing none, we'll close public testimony on this agenda item, and move forward with the video presentation.

Ms. Kapua`ala: So this is Makena Road. And I'm standing at the front of the applicant's property. Across the street are oceanfront properties. This wall belongs to the neighboring property. Here's the applicant's proposed driveway. There's a garage here.

Again, here's the garage, the foundation for the proposed tennis court, and then the subject structures. This is a proposed walkway between two of the structures. The footing has been placed.

There's the gulch that the applicant has spoken about. And the applicant has prepared a drainage basin which I've heard they are planning to landscape. It's kind of hard to see the depth perception, but again, the gulch. This is a hundred-year flood where at heavy rains, water will flow from the mountains, from the Kula area.

The proposed walkway which will be enclosed should this variance be denied. The contractor said that there will also be stairs that will come down additional to the proposed walkway and join the two structures. This is another proposed enclosure should the variance be denied. And the last enclosure would be here.

So again, this is Makena Road, the applicant's proposed driveway and the entrance to the property where the proposed driveway will be. The pool that the applicant was speaking about – Mr. Niess was speaking about. And Mr. and Mrs. Stevens visiting the property.

Thank you very much, Board Members. Here representing the Department of Public Works is the Acting Supervising Building Plans Examiner, Mr. Wendel Tavares.

Chairman Endo: Thank you, Trisha. Are there any letters in support or opposition to this application?

Mr. Wendel Tavares: No, we have none.

Chairman Endo: At this time, then, I'd like to open it up to the Board to ask questions of the applicant. Wendel, did you have a presentation?

Mr. Tavares: No, I don't.

Chairman Endo: No? Okay. Any questions? Warren?

Mr. Shibuya: This is actually for the staff. I just looked through it and I was quite concerned about the Building Permit B20052682 that was approved when it did show that they were not in compliance with three items, and – at 16.08.030, and 16.08.110, and 16.08.120. Can you tell us what was the rationale for approving the permit when these conditions were not met?

Mr. Tavares: The original permit that was submitted all rooms was connected by interior connections. So during construction, they decided that the pods would be more efficient as far as the terrain goes of the property. So they're coming in for this variance not to provide the interior connections, to have the pods, but the original permit, all rooms were connected by interior connections.

Mr. Shibuya: But that was only condition – I don't want to be argumentative, but that took care of the second condition was the .110 which allows for the open – they're coming in for walkways, and that's the only condition you're talking about. What about the five separate living quarters which is the .030? And what about allowing for separate bathrooms for dwelling units? Normally you would have a bathroom for each one of those dwelling units, would you not?

Mr. Tavares: Correct. I'm not understanding the question. You're asking about the permit that was approved?

Mr. Shibuya: That's correct.

Mr. Tavares: When the permit was approved, all the rooms were – I think there's a drawing in here.

Mr. Hirano: Yes. Chair Endo?

Chairman Endo: Yes, Mr. Hirano, go ahead.

Mr. Hirano: I'd like to just point out and to clarify Board Member Shibuya's concern. As we presented, this is the existing floor plan that was submitted for the building permit. And in this floor plan, all the rooms are connected through covered walkways. And as a result of that, there are – it's one dwelling unit, and it meets all the code requirements. It's by removing these walkways, these proposed walkways which kicks into the variances from the definition of a dwelling unit, the fact that all dwelling units need to have a lavatory, washroom. But as it was submitted for building permit purposes, the drawing met all the building codes.

Mr. Shibuya: Because it was considered as a one structure because of the connecting, covered areas?

Mr. Hirano: Yes, that's correct.

Mr. Shibuya: Okay. Thank you.

Chairman Endo: Any other questions? Bill?

Mr. William Kamai: Of the five buildings, which building is missing a lavatory, bathtub or shower?

Mr. Hirano: The family – the kitchen and family room does not have – oh, the living room, I'm sorry, the kitchen and the living room, and the office, this structure. Yes, and then there's a lavatory in this section of the family room. Each bedroom has a lavatory, washroom, as well as the master bedroom. Again, by the fact that these interior walkways are being proposed as opposed to connecting halls, then by definition, these need a variance from washroom and lavatory.

Mr. Kamai: So you would eliminate the covered walkway because there is a restroom or lavatory between those rooms?

Mr. Hirano: Yes, that's right.

Mr. Kamai: But the variance would apply more so to connect the family room to the living room thereby complying with having a lavatory under one roof?

Mr. Hirano: Yes, because this was eliminated. And as well between the office and the master bedroom, there's a master suite bathroom in this particular location. So this room will be disconnected from that lavatory.

Mr. Kamai: Okay. Thank you. I have a question for Mr. Niess. Mr. Niess, you mentioned several times that taking advantage of the weather by removing the walkways and taking advantage of the climate.

Mr. Niess: Exactly.

Mr. Kamai: Under severe weather conditions like that hurricane that just passed by the islands, what would the advantage or disadvantage be of having covered walkways on this design?

Mr. Niess: You're right, if there were severe weather conditions, it would pose a little bit of a challenge to get from one unit to another, but we do have umbrellas. And if there was really a Flossi type – or I guess we didn't really get Flossi, but if we got really big winds, you'd be holed down in one of the pods, so to speak. So I guess the point is the code's kind of set up to – the code is basically, set up to protect public health, welfare, and safety. And when you get into these situations where people want to live in a way that doesn't quite conform to the code, it's more of a private decision on how they want to do this. And that's why we're seeking this variance kind of thing.

Mr. Kamai: The only concern I have is in Section 2, the granting of the variance shall not be detrimental to the public health, and safety. And that the staff did concur that they wouldn't be able to pass from the kitchen to the living room to the bedroom because there's no covered walkway, if this variance is granted. Granted, there's nobody from the public that's going to be using this but the Stevens. I just was wondering if there was an advantage under severe weather conditions.

Mr. Niess: That would be the greatest challenge under severe weather conditions, but it's such a small percentage of time. It doesn't make rational sense to wear a full safety suit when you cross the street. You know what I mean? So basically, we're just trying to make the majority of the time very pleasant at the house.

Chairman Endo: Kathleen?

Ms. Kathleen Acks: I just got a curiosity question. You said that this is going to be

environmentally-wise. Do you mean not to put any air-conditioning or ceiling fans in the house?

Mr. Niess: There will be some air-conditioning and ceiling fans, but the idea is to promote natural ventilation and utilize it 99% of the time, or 98% as long as the winds are blowing. And it is a sustainable concept. It's one of the lynch pins of green building.

Ms. Acks: I guess it doesn't make any sense to me at all why 99% of the time you wouldn't use air-conditioning, and you go through the expense of doing air-conditioning and ceiling fans. That just boggles my mind.

Mr. Niess: That's a good point, but there are days when the winds quit, and it gets really uncomfortable, and the humidity is high. And so for those few days, we'd have the backup.

Chairman Endo: Uwe?

Mr. Uwe Schulz: Jim, if I understand it correctly, your original design concept had enclosed walkways?

Mr. Niess: Correct.

Mr. Schulz: When did you change your mind?

Mr. Niess: Well, you get out into the climate and actually see what the potential is for the landscape, and it was the client's desire too.

Mr. Schulz: No, I understand that, but I find it strange that in the middle of construction, you are asking for such a major change. And we have discussed these types of pod designs quite often in the past, and I'm all for it. However, my biggest fear about these things, your clients probably in the future, maybe 20 years from now, ten years from now, they decide to move somewhere else and sell the property. And this particular layout is just the best B&B layout an architect can design. And that's always my biggest fear that the design lends itself for a conversion in the future, and the County, and especially this Board has no jurisdiction. It has no control. As you know, there's not enough manpower to police these projects and that's my biggest concern about these things. And I feel if you have covered a walkway and you install glass window walls which can be moved, you have the same effect without needing a variance. You just open – you have sliding doors, and multiple sliding doors. You move them all to one side, and it's open for 350 days, then you meet all the code requirements.

Mr. Niess: I guess that's true. I guess I'd go back to my earlier comment about the bed and breakfast issue which is now being handled by Aaron's Department and is being

staffed, and so I think we have enforcement and overview by the Planning Department at this point so that shouldn't be a major concern anymore. And, yes, you're right, things could – we could have the enclosed walkways, and open windows, and whatnot, but it really does inhibit airflow with the roofing structure. And aesthetically, it's undesirable as well. So at this point, we can see the beauty of the potential of the design, and we're here just to ask your kokua like has been granted to others in the local neighborhood.

Chairman Endo: Kathleen?

Ms. Acks: I'd just like a clarification. Covered or enclosed, is the walkway as approved by permit covered, or was it covered and enclosed?

Mr. Niess: The latter, but you bring up an interesting point because in the early '70s when I first started practice here, you could just have a walkway in-between, no enclosure. And then the interpretation morphed into having to have a roofed enclosure. Then it morphed into having to have screened enclosure. And now it's gone to the extreme so that these pod designs end up looking like large Mainland homes that they don't have to. So to answer your question, yeah, it is fully enclosed.

Ms. Acks: Would there be a possibility of compromise connecting the living room and the kitchen area with the two bedroom areas so that particular group would have access to bathrooms and showers? The master bedroom has a bathroom and shower. I would imagine the office spaces, not where you're going to be in case of an emergency. But I would be concerned about somebody being in the kitchen/living room and not having – could there be a possibility of maybe doing one of them connected, but not both?

Mr. Niess: There's always a possibility. I would point out that right here, though, there is a bathroom, so it is in close proximity. In fact, our request doesn't change the distance to the bathroom. It only requests that we don't have to enclose that particular space.

Chairman Endo: Warren?

Mr. Shibuya: I was looking in terms of a compromise too. And it seems like you had four walkways right now uncovered. And if you did two minimal types of coverings: one between the den or office and the bedroom; and then one between the living room and the adjoining bedroom there – you know, these are very short distances, and it would not take away much from the appearance. Why did the owners or why did you not accept that type of a proposal?

Mr. Niess: It's really a matter of aesthetics, I think.



Mr. Shibuya: I'm saying it's so small and it's very short distances.

Mr. Niess: Well, this seems like a short distance here, but it vaults over this pool. And to have to enclose this I think it wouldn't be a desirable feature. We could perhaps connect these two here, but then we'd like to propose – we'd like to put an entry here and here. In order to connect all that, it doesn't – all of a sudden, it's not a small piece anymore.

Mr. Shibuya: No, I'm not saying connect all of them. I'm saying just make those two small connections, and that would be acceptable in terms of the intent of having a bathroom in that one particular unit.

Mr. Niess: Well, we could – I think we could do this enclosure here very easily, if the Board would accept that, but the others, I think, are a little difficult.

Mr. Shibuya: Yes, I can see the master bedroom and the kitchen would be extensive, and I'm not asking for that.

Mr. Niess: Understood.

Mr. Shibuya: Also, I would like some assurances from the owners that this is not becoming a bed and breakfast type of institution, nor are they planning to expand this type of property to include ohanas or other accouterments to this nature. They are entitled to do that.

Mr. Niess: Right. There is a permit request in now for a caretaker cottage. However, there is absolutely no intent for this to become a bed and breakfast. I mean, if you'd like to speak to the owners, I'll have them come up here and tell you that.

Mr. Shibuya: Okay, but you do have an ohana set up, or at least being in the drawing boards now for that?

Mr. Niess: That's correct.

Mr. Shibuya: Yes.

Mr. Hirano: I guess just to address some of the comments that were made about joining the buildings, and as well the potential or the fear of having it as a bed and breakfast, I'd like the owner, Ann Leung-Stevens to just address the Board on those two items. And I think you'll find that there are other compelling reasons for the particular design. Thank you.

Ms. Ann Leung-Stevens: Chairman Endo and the Board Members, my name is Ann

Leung-Stevens. I'm – my husband – we've been working on this project since 1999. And I'm from Asia. I fell in love with the land and the island because it's closest to my home, but still within American soil, which I owe many to this Country. One of the fundamentals, the design, and a lot of the questions asked has really good reasons from an architectural standpoint and from a safety standpoint. I really particularly requested this design. I urged Jim to do this design because partially it's cultural-driven.

Ever since I'm little– Actually, my father is still living. He's 104. I've seen pictures of his ancestral home. And I also study. I'm very – study Asian culture history and architect. And this design is very classic of Asian house where you have a wraparound with buildings and courtyard. As I pointed out to your staff yesterday, if you look at certain way how the ceilings meet, even though they're separate, they look as if they're completely connecting at certain angles.

And one of the key aspects of separation is in our culture is two things. If you notice that the bedroom and master bathroom is separate from the kitchen is we generally would not want – it's our culture that we don't want to eat if we can easily – if it's doable, we don't want to be cooking and eating and sleeping in the same location. That's kind of go back many generations when my father told me where his ancestral home courtyard look like. And also is consider – even our house back in Los Altos, our guest bedroom is also on a different level from the kitchen because it's also polite to not have your guest in the same level as your kitchen because of noise, sound, oil, and grease, and all that things. Of course in my case, there's also a selfish motive because my husband has four brothers and a sister and a big family. So I want to keep my in-laws, when they visit, as far away as possible from the master bedroom. That's probably another good reason. So that's really what culturally-driven.

In terms of using it for a bed and breakfast purpose, for the amount of work we put into it, and I don't know if you've seen the quality and the design of the house, we're using the same interior designer we used for our San Francisco home. And everything is–down to the switches–how we live, how we walk into the room, which lights should go on first is really tailored to how we want to live. It's just no way we would have that kind of energy seven years in the project going through multiple plans and design that we would ever use this for a rental and invite people we don't know into our home for any reason at all, for money, or any reason. It's not something we'd even consider or even think about. And I just hope the Board our – my cultural background and also our sincerity that we love this place. We love the people. We love Makena. And this is just a home that we want to retire to and this is the way we want to live. So thank you very much for hearing me. I guess no questions?

Chairman Endo: I had a quick question. I guess since you just stated that, I guess you would be okay with the condition to the variance that as a condition that there would be no bed and breakfasts or transient vacation rentals as a condition of granting the

variance?

Ms. Leung-Stevens: Yes, definitely no rentals as granting of the variance. Absolutely not.

Chairman Endo: Okay. I think, Warren, you had some questions?

Mr. Shibuya: Yes. I'm reassured that if we do approve it with these conditions that it would be acceptable to the owner. But I am – you did not address the other issue in terms of the covered ways between the living room and a bedroom. And there was one small area that if you can connect them, they would not be part of extending the room from the living room into another bedroom. It's just an external hallway, if you will.

Mr. Hirano: Board Member Shibuya, you're talking about this connection?

Mr. Shibuya: Yes.

Chairman Endo: For the record, Warren, you're talking about connecting the living room to the family room?

Mr. Shibuya: Oh, yes, family room. I'm sorry. I can't see it. I gotta read this paper here.

Mr. Hirano: Chair Endo?

Chairman Endo: Yes?

Mr. Hirano: I think from the cultural perspective from what the owners are requesting is that they would like consideration for the variance as it was presented. I think they feel that there was a cultural reason for having the separated buildings. And for that reason, I think they're requesting the Board's consideration for the variance as presented without alteration, further alteration to the plan.

Mr. Shibuya: Coming up with Mr. Kamai's point here, he was looking in terms of the owner's safety. If the owner is willing to forego some of these safety concerns especially, during rainy or inclement weather times, I'm more willing to allow it, but I just don't want this Board or the County having approved something like this, a deviation from the normal codes be saddled with a suit later on with some personal injury type of suit.

Mr. Hirano: Generally, there is, I guess, an insurance provision, as well, for these variance applications that the County will be named as an additionally insured, and as well, a hold harmless. We'll execute a hold harmless agreement.

Chairman Endo: For the record, you're saying that you're fulling in support of if we apply the conditions in Section 12-801-76.1, Subsections 1, 2, and 3? That'll be the million-dollar insurance, hold harmless agreement, and indemnity?

Mr. Hirano: Yes. And I believe those are standard conditions of variances.

Chairman Endo: Generally, yes.

Mr. Hirano: The applicant will be acceptable – it'll be acceptable to the applicant.

Ms. Acks: I just want to clarify the family room next to this zen garden, that has a bathroom? So there's a bathroom in the family room, there's a bathroom in the master bedroom suite, and there's a bathroom where there's the two – the double bedrooms?

Mr. Hirano: That is correct, yes.

Ms. Acks: I have to say I'm really concerned. I've watched Al Gore's movie. I think we're going to have more bad weather situations than – I mean, I think global warming is real. I think the reality is we're going to be seeing more hurricanes. We're going to be seeing more severe weather. I would personally feel more comfortable if the master bedroom and the den were somehow or another connected. And the kitchen and the family room were somehow or another connected. That seems to me that still respects the separation of the kitchen and the living room from the sleeping areas. So culturally, that's in that agreement. But I think there are realities sometimes that you have to be concerned about. I live in Maui Meadows and I've seen some fairly severe weather the day after the earthquake. And the rains came down, and the kids boogie boarded down the street. So we get some pretty heavy rains at times. And I would probably lean towards that option.

Chairman Endo: Okay. Anybody want to make a motion or other questions, of course? Bill?

Mr. Kamai: It seems to me that almost your intention was not to put in a covered walkway anyway. That it's almost an after-the-fact appeal, if you will, that you come before this Board under the guise of being culturally acceptable that you eliminate these covered walkways. I, myself– It's on you folks. If anything happens, it's you folks' problem. And I have no problem with it not being covered. Okay? I just wanted to say that your asking – your variance as it is, I'm fine with that, but it's–

Mr. Hirano: I understand. And I think as the discussion has unfolded this afternoon, the applicants are fully aware of the, I guess, disadvantages this design may pose to them at certain times of the year as well. And I think they're willing to have that inconvenience and absolve the County of any liability. And they are fully aware of the

concerns that have been expressed, but they're prepared to live in the home as they're proposing to have – with the variance before you.

Mr. Kamai: And that would be in line with the staff recommendations on all the four conditions. The only one I have a problem with would be no. 2, the granting of the variance shall not be detrimental to the public safety. And again, it's on the owners.

Mr. Hirano: Yes.

Chairman Endo: Warren?

Mr. Shibuya: No, no, Uwe.

Chairman Endo: Uwe?

Mr. Schulz: I have a question. How successful do you think the County Planning Department will be in controlling B&Bs in the future and the near future? We have had this problem now for so many years, and we have been talking about it, and talking about. And the B&Bs just keep on multiplying regardless of how much the County is talking about it and trying to curtail these things. And again, I'm very concerned that this layout – I mean, you couldn't design it any better to provide for a B&B. And as everybody knows, it doesn't need to be – The owner moves from the property next year or ten years from now. And I know that the County is not able to control B&Bs at the present time. So maybe you can give me an idea especially, in the light that there's going to be another structure, a caretaker, then this pod design would be ideal. The living room becomes a gathering place, and the kitchen, and everybody has their own building, their own privacy. I mean, you couldn't do it any better.

Mr. Aaron Shinmoto: I think like as Mr. Niess has said that they've always brought this issue up before the County. I think exactly what you've expressed is why I think the County was not looking upon it favorably. My understanding now, however, is that the Public Works Department is in the process of rescinding the Housing Code, and this should happen, I believe, sometime late this year. If that happens, then of course, this provision is no longer there.

As to enforcement, again it's a staffing issue that we have. However, we have been giving additional staffing with this past budget. We are developing an enforcement strategy for vacation rentals, and bed and breakfasts. So hopefully it works out, but again, that's a wait and see thing. We haven't really finalized our plans yet, our enforcement actions.

But again to answer your initial question, this is the problem that's come up before. And probably the reason why we have not – the County has not really acted favorably

on going to the pod system is again, the enforcement issue. The less chances we have to have people do this, the easier for us to enforce.

Mr. Schulz: Thank you.

Chairman Endo: I have a quick question for Planning. Did you say that it's possible that the Housing Code is going to be abolished later this year?

Mr. Shinmoto: The latest, I guess, revisions that are being proposed or will be proposed to Council is the Housing Code will be abolished.

Chairman Endo: And if that were to take place, then there'll be no need for this variance at all?

Mr. Shinmoto: Well, I'm not familiar with what has been put into the Building Code itself from the Housing Code. That is handled through a different Department. But if it's completely taken out and no additional amendments are made to the Building Code, then, yes, there's no variances required for these things.

Chairman Endo: Okay.

Mr. Tavares: To add on to Aaron's comment, portions of the Housing Code will be absorbed into the Building Code. However, pods will be allowed in the new Building Code that'll be adopted next year.

Chairman Endo: Okay. Is that already in a bill format? Is that already up—?

Mr. Tavares: The amendments have been sent up to Corp. Counsel. So it's in for review in Corp. Counsel. Once it's done being reviewed by Corp. Counsel, we go to County Council for their approval.

Chairman Endo: Okay. Warren?

Mr. Shibuya: I have a question in terms of related with your statement there. On the pods, from your recollection, can you tell me whether they were connected or not connected as enclosures or covered walkways?

Mr. Tavares: In reference to this project?

Mr. Shibuya: The ordinance that is being drafted now or proposals that are being drafted.

Mr. Tavares: The proposal that is being drafted now, the way the Building Code is

written, the plans that the Stevens are proposing right now?

Mr. Shibuya: Well, from what you know of the pods that are going to be—?

Mr. Tavares: You wouldn't have to have any covered walkways enclosed or otherwise.

Mr. Shibuya: Nothing?

Mr. Tavares: Nothing.

Mr. Shibuya: Okay. Now, let's say that ordinance is passed, we've granted this variance, let's say, just for the sake, what happens to this variance now? Does it get overruled or does it continue with the—?

Chairman Endo: They could just request to have the variance cancelled at that point, if they didn't need it.

Mr. Tavares: I think we need a legal opinion on this one.

Mr. James Giroux: Yeah, Warren, I think – you know, I haven't seen the code, but if it basically, renders the variance moot, it would just basically, die. And probably if – they could do a motion to have it rescinded, or they could just leave it, and it would just be an appendage of the law, and it wouldn't really matter depending if there was any type of overlap. If the code only dealt with maybe small aspects of the variance, the variance would have to carry on with those aspects that were moot, and those appendages would just die.

Mr. Shibuya: Okay. I'm just concerned with the applicant and their welfare too.

Mr. Giroux: I mean if the code completely takes care of every variance it was given, I guess the issue would be that they would stop paying the insurance and then the Department would look and see. Then if they decided to cancel the variance based on nonpayment of the insurance, then it would just go away.

Mr. Shibuya: Right. I just have another question related to the eight-inch line, waterline. That is normally done for homes without water hydrants, fire hydrants, is it not? The hydrant was actually required, so therefore, you had to put an eight-inch line there?

Mr. Tavares: Yeah, I have no knowledge that so I wouldn't be able to comment.

Mr. Shibuya: Okay. Because I've seen that in other subdivisions where before you can even submit, you need to have that water hydrant installed so that you can have what is called a grading plan and/or the project plan approved.

Mr. Tavares: Yeah, I have no knowledge in the requirements for the waterline.

Mr. Shibuya: Okay. So they do have a fire hydrant available because of that eight-inch line.

Mr. Laurence Stevens: It's a beautiful fire hydrant.

Mr. Shibuya: Expensive fire hydrant. Yes. And thank you very much for installing it because I know it's a considerable amount of effort there and investment there too. You not only supported yourself in this project but others too. Thank you.

Chairman Endo: Okay. Well, if the Members have no objection, I'd like to just state my personal position on the matter especially where the – even though they say technically, they recommend that some of the items haven't been met on the variance, but at the same if they're proposing a bill to actually make it fully legal, to me, that speaks volumes that it's really not a big deal. They're going to be allowing it, in all likelihood in the future. They do it everywhere else. And so I would be in support of granting the variance, but I see there are a lot of other concerns. It's just my personal position. So in order for us to move along, though, I would encourage somebody to make a motion one way or the other. Bill?

Mr. Shibuya: I can do it.

Chairman Endo: Warren?

Mr. Shibuya: I move that we accept and approve this variance. The strict application of this enforcement of the code is actually providing a hardship for the owners specifically, Section 16.08.030(18) as well as (20), which is the definition of the dwelling units. Also, Section 16.08.120, which is sanitation, which allows for – we're allowing for these separate pods to have – not having a separate water closet and bathroom. The other 16.08.112, I mean, 110 is a shelter is granting this variance would not be detrimental to the public health, or safety, or welfare. However, at this point, I would like to insure that with this variance comes on with a hold harmless agreement to insure that the County of Maui and the people of Maui are not held liable for this variation from the ordinance, and that it be to the amount of one million dollars.

Chairman Endo: Just for clarification, Warren, so basically, the indemnity, hold harmless, and insurance provisions as set forth in the typical provisions in Section 12-801-76.1?

Mr. Shibuya: That's correct.

Chairman Endo: And then am I also – would your motion also include a condition that



they have no TVRs or B&Bs?

Mr. Shibuya: Yes, that this property shall not have any bed and breakfast or temporary vacation rental type of operation while the owner is occupying this property. That this variance continues on with the sale of the property too.

Chairman Endo: Just to clarify, the condition would attach itself to the variance.

Mr. Shibuya: That's correct.

Chairman Endo: Okay. Correct. Okay, is there a second?

Mr. Kamai: Second.

Chairman Endo: Okay, it's been moved and seconded to grant the variance as requested with the findings as described by Warren and the conditions described by Warren. Discussion? Uwe?

Mr. Schulz: Yeah, I have a question. Warren, this condition you had about the B&B, is that my understanding that it's going to run with the land?

Mr. Shibuya: Yes.

Chairman Endo: No, it wouldn't run with the land. It would run with the variance.

Mr. Shibuya: Run with the variance.

Mr. Schulz: Yeah, but it will be continuous even if there's a sale?

Chairman Endo: Correct, the variance would continue to run from owner to owner.

Mr. Shibuya: It's on the deed.

Chairman Endo: Well, it wouldn't be on the deed, but it would be on the variance.

Mr. Giroux: It runs with the land. The variance runs with the land.

Chairman Endo: The variance runs with the land, but—

Mr. Giroux: So the conditions would also.

Chairman Endo: Right. Okay. Further discussion? No? All those in favor, please say aye. Opposed?

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

**VOTED: To grant the variance as requested with the findings and the conditions described by Member Warren Shibuya.**

**(Assenting: W. Shibuya, W. Kamai, U. Schulz, K. Acks, and R. Ball Phillips.)**

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

Chairman Endo: **Motion is carried and your variance is granted.**

Mr. Hirano: Thank you very much, Chair and Board Members.

Chairman Endo: Okay, anybody need a recess or shall we move on? Okay, let's take a five-minute recess, and we'll reconvene shortly.

(A recess was then taken at 3:00 p.m. and the meeting reconvened at 3:12 p.m.)

Chairman Endo: Meeting of the Board of Variances is reconvened. At this point, if there's no objections from the Members, I'd like to take a quick matter up out of order: the Unfinished Business, D(1), Pedro and Luz Alonzo requesting a variance from 16.08.060(A) and 19.08.060. Is there any objection? Okay, seeing none, we'll take this out of order.

#### **D, UNFINISHED BUSINESS**

- 1. PEDRO and LUZ ALONZO requesting variances from Maui County Code, §16.08.060(A) and §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, Hawaii; TMK: (2) 3-8-056:009. (BVAV 20070005)**

Chairman Endo: Basically, I think they had to leave already, the applicants, because they believed that this matter was going to be deferred. And I think someone was going to make a motion to defer.

Mr. Schulz: I make a motion to defer because we received the drawings only today, and we didn't have time to review them at all.

Mr. Shibuya: Second.

Chairman Endo: Okay. It's been moved and seconded to defer this matter to the next available meeting which I believe would be September 20. And the basis is on the fact that they just submitted some building plans that were requested at the prior meeting, and we have not had sufficient time to review them. And for the record, we believe that we – this Board is exempt from the 60-day rule pursuant to Section 12-801-22(D)(3), because the review of the variance has been delayed or deferred due to inadequate information concerning the nature, scope, or description of the subject matter of the variance application. So on that basis, we will take up that matter on September 20. So that's the motion. All those in – oh, sorry, discussion. Go ahead.

Ms. Acks: Can I just find out if there's some way of confirming that because I don't want us to get backed into a corner again? Is there any way of saying if that is not an appropriate interpretation that we deny, and then they can resubmit, because we've had a situation before when we assumed that delaying was not going to cause us problems? So do we need to do that, James, or–?

Mr. Giroux: Well, I think in this situation, you're following clearly under an exception of requesting additional material. And at this point, the applicant is not present. So–

Ms. Acks: Can we confirm that they agree to extending the deadline?

Chairman Endo: Well, they don't have to agree because we're using an exemption that just applies to the situation. So you're right, if they were here, we would ask them to agree and waive it, waive the restriction. That'll be an additional basis.

Ms. Acks: Is there some way they can be contacted and notified that they in fact have forfeited that particular–?

Mr. Giroux: I guess Trish can send them a letter notifying that it was deferred based upon their request, and that we are using the exception of this section as Randy noted on the record.

Ms. Acks: Okay. No, I'm fine with it. I just don't want us to get backed into a corner again.

Ms. Kapua`ala: Sure.

Chairman Endo: Okay. So any further discussion? All those in favor, please say aye. Opposed?

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

**VOTED: To defer this item until the September 20, 2007 meeting as**

**discussed.**

**(Assenting: U. Schulz, W. Shibuya, W. Kamai, K. Acks, and  
R. Ball Phillips.)**

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

Chairman Endo: **Motion is carried. The matter is deferred to September 20.** Okay. Now going back to the order of the agenda to Item B(2), if the Planning Department could read the agenda?

- 2. MUNEKIYO & HIRAGA, INC., representing FRIEDMAN INVESTMENT GROUP-MARINERS, LLC, requesting a variance from Maui County Code, §19.36.010: (1) to reduce the number of designated parking stalls required from 62 to 45 stalls; and (2) to delete the one (1) loading space required for the Mariner's Alley located at 844 Front Street, Lahaina, Maui, Hawaii; TMK: (2) 4-5-001:016. (BVAV 20070009)**

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

Ms. Kapua`ala: And I have prepared a video for the Board. So this is across the street from the property on Front Street. That is the Mariner's Alley Building which extends all the way to the end. The neighboring property is the historic Chinese Hong.

Chairman Endo: Is that the pizza place?

Ms. Kapua`ala: No, Moose McGillycuddy's. This is Wahie Place what Barbara Long lives – I'm sorry, owns across of. Again, it's Front Street. Those are the loading spaces and parking spaces she referred to in front of her building.

So I am on the sidewalk directly in front of the subject property. There are no parking spaces in front of the Mariner's Alley Building, but there are across the street.

This is from Wahie Place. Again, the blue building is the Mariner's Alley Building. And this is the parking lot that's located in the back of the building which contains 12 parking stalls. They all have signs reserved for tenant spaces as well as the property manager.

Wahie Place is majority parking lots owned by the various public parking companies. So there are no businesses other than what you see across here across the street. It's like an activities booth and the business that's across on the alley.

Now, this is from Lahainaluna Road. That's a zoom into Front Street. Lahainaluna Road, as you can see from the application, is less than a block away towards Kahului,

Wailuku. These are again, many public parking lots. And I believe this is the subject parking lot—another public parking lot owned by the applicant as well. Oh, I'm sorry. It's this one. It's this one that's in the picture right now. They're lined up all in a row.  
Thank you.

Chairman Endo: Thank you, Trisha. Would the applicant please come forward and state their names?

Mr. Mike Munekiyo: Good afternoon, Mr. Chairman, Board Members. My name is Mike Munekiyo and I'm here on behalf of the applicant.

Chairman Endo: Good afternoon, Mike.

Mr. Munekiyo: Good afternoon.

Chairman Endo: Is the applicant agreeable to waiving of the reading of the staff report?

Mr. Munekiyo: We agree to the waiving of the reading, sir.

Chairman Endo: Okay. So let's accept the staff report into the record. At this point, Mike, do you have a presentation you'd like to make?

Mr. Munekiyo: Yes. If we may, we do have a power point presentation which hopefully will give the Board sufficient background for discussion and decision-making. So may I have the lights?

The purpose of the application before you today, Board Members, is for a request for a variance from Chapter 19.36.010 relating to off-street parking and loading spaces. The applicant is the Freedman Investment Group Mariners, LLC. And the property, as Trisha had noted, is located on Front Street.

Just as background, just a few key points, the applicant – one of the lessees in the Mariner's Alley space is seeking to convert an existing restaurant space to art gallery space. And the change in use triggers a current parking requirement of 62 off-street parking stalls and one loading space for the entire complex. So what's triggering this request is really a change in use. The Mariner's Alley property itself is able to accommodate 12 off-street parking spaces as Trisha had shown, and we'll get into that in a minute.

The parking requirements for the complex were previously addressed through off-street parking approvals. And these off-street parking approvals are no longer valid. Just as an example, previously, there were separate off-street parking approvals granted to the Avalon Restaurant and the Aloha Cantina Restaurant. Both restaurants are no longer

in the restaurant. So we are effectively needing to start from scratch here given the change in use.

Again, the parking requirements proposed to be met will be really a – hopefully a three-prong approach. We would seek an offsite parking approval from the Maui Planning Commission, and I'll speak to that in a minute. We're requesting that the Board of Variances and Appeals reduce the number of parking stalls required from 62 to 45. And I guess the – well, let's move to the next slide and I can–

So this is just a regional location map. As Trisha had shown, this is the Mariner's Alley parking stall right here. This is Wahie Lane. Front Street right here. Wahie Lane as you may have noticed in the video is fairly narrow, and it leads back to the parking lot to the rear. Just a photo that kind of depicts what you've already seen.

Again, this is just looking towards Wailuku side. This is the shared loading zone area that I believe Mrs. Long had referred to. There is a sign posted. This sign posted basically says that the – Monday through Saturday from 8:00 to 5:00 or 5:00 to 5:00, the area – this area should be reserved for loading zone, 15 minutes.

This is a photo of the rear parking lot. We've seen that, previously. Again, 12 stalls.

This is looking out towards Front Street. Front Street along here. This is Wahie Lane. And I think just to kind of show you the somewhat alley condition that we're dealing with along Wahie to get back to the parking lot to the rear.

This really doesn't show up very well, but you can faintly see the yellow, shaded area here. This yellow, shaded area represents Historic District No. 2. And so, this is the property right here. And roughly, if you were to strike a line right across here, I mean, you can't see it all that well, but roughly, two-thirds of the property is within Historic District No. 2. The parking lot area, however, is outside of the historic district. I'd say probably 95 to 100% of the building is within the historic district. So I think that's an important consideration that we are dealing with: historic district guidelines and constraints.

This is just an illustration of what has triggered the variance. On the first floor, we have a tenant, Lassen Gallery. They are in for building permit right now. This was the, I believe, the former Avalon. There were subsequent restaurants in this location on the first floor, previously. That restaurant space has been vacated. And Lassen is seeking to expand into the space. And so by virtue of expanding this into this former restaurant space, there is a change in use into an art gallery, and that change in use then requires that we come back and meet the full parking code requirement. And so that is the reason that we are before the Board today.

I might add that the – just as a point of information, the gallery parking requirement is one per 300 square feet, whereas a former restaurant space is three for employees, plus one per 100 of serving area. So the art gallery space really requires less parking than a restaurant space.

This is just a summary, and I'll go through it in a minute in a little bit more detail. But the total number of stalls required by code is 62. We are seeking an offsite parking approval from the Planning Commission. We do have an application in to the Planning Department for offsite parking for 33 stalls. We have onsite 12 stalls as we've discussed previously. And so our deficit is 17.

And so what we are asking that no. 1, for a variance to reduce the number of stalls from 62 to 45, then 33 offsite, 12 onsite, and that would provide us compliance with Chapter 19.36.

Again, just a summary of the variance request before you to reduce the number of parking required from 62 to 45.

With respect to the loading zone, one loading zone is required. We have no loading zones within the back parking lot right now. And so we have a deficit of one.

And again, the request that we do have before you is to delete the loading zone requirement so that we can then be in compliance.

Just a summary then: loading zone deletion from one to zero.

I just wanted to talk about the different components, how it is that we are providing parking. As I summarized, we do have 12 on the site. We do have off-street. And this is the offsite – the onsite parking location. Again, the building in the front. To the rear, as you've seen in the photos and in the video, we do have parking for 12.

This is just a blow up of the parking area showing how it is that we can accommodate the 12 stalls in the back. It's a very small area, as you have seen, but we were able to stripe it for 12.

As I mentioned, separately, we do have an application in process right now with the Planning Department for offsite parking approval which would be considered by the Maui Planning Commission. The offsite parking location is at 175 Lahainaluna Road. And that location provides for 33 paved parking stalls. And that parcel is owned by the applicant.

The Chapter 19.36 provides that offsite parking may be approved by the Planning Commission provided that it meets the code requirements in terms of the underlying

zoning and the pavement requirements. And it is within 400 feet of the subject property.

This is the Mariner's Alley. This is the 175 Lahainaluna Road which is owned by the applicant as well. And it's a distance of about 350 feet. So in terms of meeting the requirements for offsite parking, the offsite parking location does meet that requirement.

This is the photo of the offsite parking location, 175 Lahainaluna Road. There are 33 paved stalls here. And we are looking at hopefully, with the Board's favorable consideration today, the Planning Department would then move forward with processing the off-street, offsite parking application that's currently in the Department.

So what we'd like to do very briefly for the Board is just go through the rationale that we included in our application. I know there are some variations in terms of how the staff has interpreted our rationale, but we thought we'd just go through that so that at least it forms a basis for discussion that – and hopefully, a basis for a favorable consideration for the request.

Now, the first criteria as you all are aware of is that exceptional, unique, or unusual physical or geographical condition exists on the subject property which is not generally prevalent in the neighborhood or surrounding area, and the use sought to be authorized by the variance would not alter the essential character of the neighborhood.

We just have listed very briefly, some of the conditions which support Criteria No. 1. First of all, Lahaina Town is unique, spatially developed, and designed to be a pedestrian-oriented town. That's the evolutionary history of the town.

The majority of the building—second point—falls within County's Historic District No. 2. And the building and site design is consistent with historic district standards. So basically what we're saying is the unique geographic condition is the fact that we are in the midst of a historic district, and there are certain guidelines which we need to respect in order to maintain that historic integrity.

We've just summarized what might be considered justification for Board consideration in terms of Criteria No.1, and this is for the off-street parking variance. The unique geographic condition exists on the property by virtue of its historic evolution and geographic location in historic Lahaina Town. That is Lahaina Historic District No. 2.

Secondly, the building development building standards on the property as well as the historic Lahaina Town are not prevalent in the surrounding Lahaina Town area. And as I showed you, this property actually lies at the border of Historic District No. 2. So areas just outside of it do not necessarily need to conform to the same standards as imposed on the property itself. And finally, the parking reduction will not alter the neighborhood character.



So let's move to Criteria No. 2 which the Board would need to consider. And that is, strict compliance with the applicable provisions of this title would prevent reasonable use of the property. And the conditions which support this criteria, we are, of course, requesting a reduction of 62 parking spaces to 45, which is a 27% decrease. I think the staff report had noted 38%, but we recalculated and confirmed that 27% number. The request is consistent with other neighboring businesses. And the maximum retail floor space cannot be utilized if we were to strictly comply with the code. In other words, that space that Lassen Gallery seeks to occupy would probably need to be vacant.

And this just summarizes what the Board might consider as justification that full compliance would restrict the floor area utilization of the building. The 27% decrease is reasonable based on consistency with neighboring business uses. And the parking reduction, again, would not alter the character of the neighborhood.

And finally, Criteria No. 3, which the Board needs to consider is that the conditions creating hardship were not the results of previous actions by the applicant. And again, the next slide would show the conditions which support Condition No. 3, Criteria No. 3. Unique conditions exist on the property by being geographically located in historic Lahaina Town. The building development standards on the property, as well as historic Lahaina Town are not prevalent in the surrounding West Maui Region. And the unique and exceptional geographic conditions are not a result of previous actions by the applicant.

So those are the things that we hope that the Board can consider when reviewing or discussing the parking reduction. And if I could very briefly go through the offsite loading because the rationale very much . . . (inaudible) . . . the parking reduction. That was the exceptional unique condition criteria.

With respect to the loading space variance, Lahaina Town is unique, spatially developed, and designed to be pedestrian-oriented. Again, the majority of the building does fall within the County's Historic District No. 2. Building and site design is consistent with historic district standards.

Access to onsite parking by large vehicles is difficult. And this is a point more – if you recall the Wahie Lane which borders the property to the north is a fairly, narrow lane. It has very sharp turning radiuses. And I think there might be some difficulty right here. This is Wahie Lane and Front Street up here. Some difficulty in getting some of these larger Fedex or UPS vans in and out of those locations. So that's more of a design issue that I call to the Board's attention.

Again, still relating to the Loading Space Criteria No. 1, this is what we hope the Board can consider as justification that the unique geographic condition exists on the property by virtue of its historic revolution, and being geographically located in historic Lahaina

Town. The building development standards of the property as well as the historic Lahaina Town are not prevalent in the surrounding area. And the loading space deletion will not alter the neighborhood character.

This condition relates to the strict compliance. No. 1, few parcels along Front Street can physically provide a loading space onsite. There's limited space on the property to provide a loading zone. A shared on-street loading space exists in front of the adjacent parcel as was pointed out, previously. And again, the variance will not change the character of the area.

And so with respect to justification which the Board might consider, the adjacent shared loading space is sufficient for delivery use. Few, if any, parcels – approximate parcels contain off-street loading spaces. Again, that's by virtue of the historic character of Lahaina Town. Nearby Front Street businesses rely on shared on-street loading spaces. And full compliance would eliminate onsite parking spaces which are already limited. In other words, by virtue of having to put a loading zone in the existing 12-stall parking area in the back, we'd be taking out – further removing onsite stalls.

And finally, the hardship criteria, there is a unique condition with respect to the historic Lahaina Town character. The building development standards on the property are not prevalent in the surrounding West Maui area. And the request is not a result of a previous action of the applicant. And so, therefore, the hardship conditions are pre-existing and were not created by the applicant.

That concludes the presentation, Mr. Chair, but effectively, what we wanted to do was to give the background sufficient enough so that the Board does have an understanding of why it is that we're here before you today, and what some of the mitigating circumstances or actions that the applicant is seeking to take to help remedy the situation. So we'll be happy to answer any questions that the Board might have this afternoon.

Chairman Endo: Thank you, Mr. Munekiyo. I'd like to now open the hearing up for public testimony. Is anyone here wishing to speak on this matter? Seeing none, we will close public testimony. And before we open up for questions, does the staff have any letters in support or opposition?

Ms. Kapua`ala: None.

Chairman Endo: None? Okay. Thank you, Trisha. Okay. So now let's go to questions from the Board. Uwe?

Mr. Schulz: Well, everybody knows that I live in Lahaina, and I frequent Lahaina in that area very regularly because Mariner's Alley is right across the street from the Lahaina

Yacht Club. And I just wanted to clarify a few things. Wahie Lane, for some reason, is a two-way street with a one-lane width. So you have – and it really should be made one-way going in or out. It doesn't matter which direction.

The other thing that I need to point out to the Board Members is that the Wahie Lane ends up in four, separate, parking places on Lahainaluna. So you have several hundred cars, and they come in and out, in and out. And I don't mind the parking reduction because of the Lahaina Historic District. Nobody can meet the parking requirements in Lahaina. It's physically, not possible.

However, what is happening on a daily basis, and what Barbara Long was saying is that there's a very large restaurant in that building. And there are deliveries every day. And what they do– They don't have any problems of turning in and out. That's not a problem. They have large trucks, small trucks, and they can get in and out Wahie Lane. They have no problems at all. They come in from Lahainaluna, and then they enter or exit on Front Street. But what all these trucks do, because there's no loading zone, they just stop in the middle of the road and they start unloading. It doesn't matter to them that they're blocking the lane because there's no other way of unloading all of that stuff for the restaurant. And the restaurant is very, very large; very, very popular. And they have to get their beer, and their food, and so on up into Moose McGillycuddy's Restaurant. And for years it has really bothered me that the manager and the staff, which have reserved parking right behind Mariner's Alley that they're not willing to walk a couple of hundred yards, and park somewhere else, and convert those stalls which are only reserved for management. And the owners of Mariner's Alley really should put their employees somewhere else, and utilize that parking lot as a loading zone, because any truck can pull in there. It's very, very easy. They can stay there as long as they want. They don't block the lane. Rather than reserve parking for management– They just stop in the middle of Wahie Lane, a one-lane road. Tourists starts turning left into Wahie Lane, and then there's a truck in front of them, and they're blocking the traffic on Front Street.

So my recommendation or my opinion is that because you cannot meet parking requirements for passenger cars in Lahaina, any count of parking is fine with me. However, I think it's essential that they provide a loading dock onsite since they own that property. Kick the managers out. Make them walk 200 yards, and make it a loading dock.

Chairman Endo: Kathleen?

Ms. Acks: We've gone through this before, and I can't remember exactly how we handled the Tony Roma's one. But I'd like to consider – I think what we did is – I don't want to reduce the number of stalls, because I think at some point in time, there's going to be something that goes on that determine – we come up with a policy. I think it's

important to keep the number of stalls, the appropriate number of stalls. I think we did something, though, as far as waiving it for three years.

Mr. Shibuya: Contribute to a fund.

Ms. Acks: No, we set it up so that the number of stalls stayed fixed. I agree with Uwe about having the loading zone, but I think we had some means of maybe of saying that we expect to have the 33 stalls as stated. We'll waive the balance for three years until – to give them time to get a Lahaina policy in place and a parking structure going through the County Council to kind of maybe get the businesses to push that something happens. So I think if we reduce the number of stalls, that's not going to happen. So I like the idea of keeping the number of stalls, the appropriate number of stalls. And if we take a look at accepting the 33, having the loading zone, and working something where we waive the additional – the 17 – waive the 17 parking stalls for three years until – to give the County Council and the owners in Lahaina time to work out some kind of a parking policy, but I can't remember how we did that officially before.

Mr. Shibuya: No, we did something very – as Kathleen mentioned, we did maintain the total requirements for Tony Roma's. And whatever remaining amount that was a shortfall that the owner would be willing to do two things. One would be submitting monies to provide or purchase parking stalls for that remaining amount, and/or pursuing the County providing for some spaces at another location. And they would be funding that initiative. So we could do something very similar to that, too.

Let's say the total amount that they would need her is one loading stall. Is that one loading? Is it two loading? One loading? One loading, plus the 62 that is required. And that we will allow – or as I stand corrected, to 45. No. Wait a minute.

Ms. Acks: No, 62 is required. They're supporting 45.

Mr. Shibuya: Forty-five, okay. One loading, plus 62, then. And their obligation, therefore, would be to fund for the additional 17 stalls for parking, as well as being as an incentive for them to go ahead and try and get the County to work with them to get these additional 17 stalls some place else.

Ms. Acks: I would think it might have to be 19 stalls. I'm going to assume those parking stalls, the 12 parking stalls, looked really small to me. And I would find it very difficult for any kind of delivery truck to fit into that stall. So maybe two of those stalls would become a loading zone? Would that be—?

Mr. Schulz: Six of those.

Ms. Acks: Six of those would become one loading?

Mr. Schulz: Because a loading zone is 20 feet by 40. That's a loading zone. So you are going to eliminate, four, or five, or six stalls. But again, I think in the interest of the public, a loading zone for that building and its use mainly, a very large restaurant, dairy – little dairy stand on Front Street, the loading zone is very, very essential, and you cannot use the argument, in my opinion, well, on Front Street there is a loading zone. But that loading zone is always full, and it parks only two cars, two trucks, the one fronting Front Street. So I think there should be a loading zone onsite because there is room. It's being utilized right now for the convenience of management. And it's inconveniencing the public and endangering public. Because if you don't enforce the code in regards to a loading zone, the trucks will block Wahie Lane. And tourists, they turn into that, and suddenly they are stuck because of the truck in front of them. They back out onto Front Street. And so I think the amount of parking is not as important to me as it is to create a loading zone, a functional loading zone, immediately adjacent to the building.

Chairman Endo: Mike, do you want to add something?

Mr. Munekiyo: Thank you, Mr. Chair. As I recall – first of all, if I might address the funding in lieu cash condition. As I recall, the previous discussion as it relates to Tony Roma's, that condition arose out of the need to address the phantom parking, so-called phantom parking condition, where really people were paying into a lot where there were no real parking stalls. And so in this instance, the landowner or the applicant has a separate parking lot which they would be using for offsite parking.

And just to maybe take that a step further, so the question is, whether or not the applicant is willing to dedicate all of those 33 stalls for Mariner's Alley. And if not, do we then run into a phantom parking stall situation here as well. And I just want to be kind of up-front with you.

I think what's happening with the parking lot on Lahainaluna Road is that like Tony Roma's or many of the other businesses on Front Street, it's not a place – Mariner's Alley is not a place where people actually decide to go to specifically. They encounter it as part of the visitor experience along Front Street. And so a lot of them would not necessarily be aware of that the parking stall, the parking lot, the 33-stall parking lot. And so I think it would be perhaps detrimental if we were to dedicate fully those 33 stalls to Mariner's Alley.

And in a sense, yes, we're asking for offsite parking, but it's something that we believe we can have both. Because I think in general, you would have people parking in that 33-stall parking stall, and legitimately, they would be ending up at Mariner's Alley because that's right in the heart of town. And so, I guess that's the point, Mr. Chair and Members, that we do have a situation somewhat different I think from Tony Roma's in that we have a parking space that is owned by the applicant. And it does provide stalls

without any overlap with any other entity that might be seeking parking at the same location.

I think with respect to the offsite loading zone condition, the applicant is willing to look at placing a loading zone on the back lot. The question is, would the Board be willing, then, to consider—and I'm not sure if this is possible—to increase the reduction? And if I might, can we pull up Slide 20, Kyle? This is the layout. And this layout was, by the way, laid out to code by a civil engineer. So these meet all of the backout width, depth requirements for parking. As an example, this crosshatched area is basically, a concrete or a paved area, but it can be accessed as a parking stall because you've got to park in here. So if we were to delete all of these stalls here, as an example, and convert that to loading, we would be losing 1, 2, 3, 4, 5 stalls. And therefore, the request for parking reduction would be 22, from 17 to 22. And if the Board is willing to consider that or if that's procedurally, okay. I think the applicant is looking at ways that they can provide a loading stall in the back given the comments that we've heard today. But again, it does come at the expense of the vehicle parking stalls.

Mr. Schulz: Mike, I just want to correct you in one thing. Moose McGillicuddy's is a very, very established business. And they don't live on walk-ins. There's a huge amount of people who live in Lahaina who just go there—some of them on a daily basis.

And the other thing that I'd like to point out to the Board is that the parking lot, these property owners own, is also open to the public. It's a paid parking lot. It's not a designated parking lot. And so we find ourselves in the same position like the Tony Roma's that the owners of these parking lots, they are double-dipping. You say, well, the parking is for the restaurant. And then it might be open to the public. It cost five bucks to park there. And I have a friend of mine who owns one of those parking lots. And he's a very wealthy man. He goes by with a paper bag every afternoon and cashes in. And all of his stalls have been sold like ten times for a lump sum. And then it's open to the public, and five bucks for two hours. So the designation of a parking lot owned by this property owner doesn't mean it's for that building or for that property. It's really open to the public. It's a paid parking lot. It's not designated for the building. It doesn't say parking for patrons of Mariner's Alley only. There's nobody – there's no guard saying, are you going into that building? It's just an automated money machine. And so I think to say that this parking lot they own outside the property is a little bit misleading. That's what I call double-dipping: you rent it out, and you also utilize it to get a permit for your building.

Mr. Munekiyo: And I think if I may, Mr. Chair, that's exactly what I tried to explain to the Board that this is a situation where the parking lot is open to the public. We did not want to hide anything. And the fact is that it is a public parking lot. We're hoping that some of the patrons or some of the parking lot users would eventually end up at the Mariner's Alley complex. So, yes, certainly, Board Member Schulz is correct.

Chairman Endo: I guess the difference between this and the other one is it hasn't been leased out to multiple tenants to satisfy multiple parking requirements.

Mr. Munekiyo: Right.

Chairman Endo: So—

Mr. Shibuya: When you say, public parking, that means the public can park there free? Or the public can park there with a cost?

Mr. Munekiyo: A cost. There's a parking lot manager that operates the parking lot.

Mr. Shibuya: And if you do park there, then will this agent allow for the customers to have a discount or free parking?

Mr. Munekiyo: I don't believe so. As Mr. Schulz had mentioned, this is a public parking lot. We did discuss the possibility of perhaps designating a handful of stalls exclusively for Mariner's Alley and blocking those off by signage. But again, as is the situation in Lahaina, it is a very tight parking situation. And it's a premium, unfortunately. And again, that's the circumstances that the applicant faces, and I guess the whole community faces, as a matter of fact. And so I think it's a very difficult situation that we're in right now.

But again, on the loading zone matter, we are willing to put a loading zone along here. Again, the implication is that it changes the parking reduction requirement.

Ms. Acks: I think the parking lot – the loading zone is a requirement. I don't think that's a willingness to do something. I think that's clear from what Uwe said, and so on and so forth. There's a need. I still believe that somehow or another, we have to keep the 62 parking stalls on paper in there. What we do with those 62 parking stalls, that's a different issue. But I really don't want to give up that 62 designated spaces in the event that in the future, we've reduced the number, and that reduces the requirement for that particular building. It seems to me that these are two totally different things. Somebody's got a parking lot and he's charging for the parking lot. It's not at all connected with this building.

Mr. Shibuya: On this remote parking lot, how is it accessed. Is there a walkway from this building here, Mariner's Alley, all the way to that? Or how do you walk to that? If you measure that walking space, then the distance is not 350 feet. It probably could be 400 feet.

Mr. Munekiyo: That's correct. The access is via Lahainaluna Road.

Mr. Shibuya: So you have to go down Front Street and then go up Lahainaluna Road.

Mr. Schulz: No, Mike, that's not totally correct. You can also access that parking lot from Wahie Lane.

Mr. Munekiyo: Oh, yeah.

Mr. Schulz: You just walk – you don't have to go to Lahainaluna Road. You just walk on Wahie Lane to get to the–

Mr. Munekiyo: Right.

Mr. Shibuya: Oh, so you go up Wahie Lane and then cut across?

Mr. Schulz: Then you're right there at the parking lot. So it is a very short distance. And that's why I urge the manager to get some exercise and walk to their cars.

Mr. Shibuya: Okay. Also, I noticed in the picture was a trash disposal can. There were two of them.

Mr. Munekiyo: Right, there were two. We need to get rid of one.

Mr. Shibuya: That's what I was wondering. Because normally you have parking stalls, and then they put the trash can in there. And so it negates that aspect. Okay. So you will keep that– And where is the handicapped? Oh, there's no handicapped?

Mr. Munekiyo: Right here. Accessible stall right here. This is an open lane, but this is the designated accessible stall right here.

Mr. Shibuya: Okay. So you do have a handicapped there?

Mr. Munekiyo: Right.

Mr. Shibuya: I'm like Kathleen: I'd like to stay with the 62, plus the loading zone.

Chairman Endo: Bill?

Mr. Kamai: Personally, I don't think you need a loading zone. I used to deliver liquor on Front Street for Better Brands. I used to ride shotgun with a friend of mine. And when we go, we park on Front Street. We in, we out, ten minutes tops. And that's the norm now.

And the usage of this place, when you're going from one restaurant which get far more



deliveries than one art gallery, that alone going reduce the number of deliveries. The only reason you're required for this 62 is you're trying to follow today's standards. Heaven forbid you change your mind in the future and you gotta go 300 per person, or three for every employee. That's just my opinion. I've been there. Done that. I know what it's like over there. And you're reducing the number of deliveries by the usage of this place by turning it into an art gallery instead of one restaurant.

I'd like for you to try and consider maybe re-striping that paved parking lot. That would mean a few extra stalls. I don't know if it's to code right now, but maybe that's something you could look at. Or moving it around, or modifying it in some way. That way you could increase that number from 33.

Mr. Munekiyo: Sure.

Mr. Kamai: It's just what I'm thinking.

Chairman Endo: Okay, does anybody wish to ask any more questions, or make a motion, or go to the bathroom? Take a five-minute recess? Let's take a five-minute recess, very short recess.

(A recess was taken at 4:02 p.m., and the meeting reconvened at 4:12 p.m.)

(Mr. Schulz excused himself from the meeting at 4:02 p.m.)

Chairman Endo: Let's reconvene our meeting. Let the record reflect that Uwe Schulz had to leave, so we are now down to five Members present and still have a quorum. At this point, does anybody have further discussion? Kathleen?

Ms. Acks: Yeah, I would like to maybe have a little discussion, and make a proposal. We had the Tony Roma's one, and I think we gave them a three-year waiver. I'd like to maybe consider instead of – in lieu of doing the three-year waiver, and I don't know if we can modify the Tony Roma's, but pick a date. I'm thinking December 31<sup>st</sup>, 2010. That's basically three and three quarters – three-plus time from now. And say that if we're doing these parking lot issues in Lahaina, hopefully, the County Council is aware that we put that deadline as a date in which there's going to be a whole lot of things going on. I'm not going to be on the Board then. But maybe as a Board, have a discussion. Are you more comfortable with making it three years, or coming up with a timeframe, or having a specific date that's – for Lahaina parking? And I'm not wed to either one. I'm willing to listen to either. Do you have recommendations, James?

Mr. Giroux: My memory's not too sharp on exactly what you guys did with Tony Roma's, but I think one option that's available in the light of the concern about what's going to happen if the County does come up with some kind of parking plan, which will require

people who need parking to pay either their fair share, or to actually purchase parking stalls within a County-created facility, or something like that, I think the safest thing you can do is to – you know, if you are leaning to grant the variance, to grant the variance for the amount of–

Chairman Endo: The request.

Mr. Giroux: Yeah, the request, but within the condition to have a condition that states that if the County does come up with some type of fair share program or ordinance that the applicant will participate to the full amount of required stalls, which would be the 62. And so that way, they have a variance. It'll run with the land for as long as the variance is there. And in the future when there's some future ordinance, then the Planning Department will be able to look back at everybody's–

Ms. Acks: Did we do the variance for a three-year period of time? Is that what we did is accepted the variance for three years with the proviso that if the County came up with a parking structure that they would fully participate in that with the number of stalls as stated?

Mr. Giroux: I'm not sure what the time – maybe staff can clarify that.

Ms. Kapua`ala: Honestly, I don't remember that condition being attached. I know the discussion took place, but I'll have to check the records. The decision and order was produced for that. I could easily go upstairs and take a look.

Ms. Rachel Ball Phillips: I sort of remember that it was three years with that condition that if the County came up with some sort of County-sponsored parking lot that the applicant would pay their full share based on the total requirement, not on the reduced requirement.

Chairman Endo: For me, I kind of like James' recollection of that option. It seems to be a little bit more realistic because I don't think anything's going to happen in three years, to tell you the truth. So I kind of – just a personal position, I think it's a pretty good idea.

Ms. Ball Phillips: Yeah, I agree, too, that the three-year time limit is sort of arbitrary and might be hard to meet where if we leave it open-ended, then they're bound by whenever it happens, when and if it happens.

Ms. Acks: I guess my only concern about not having some kind of a timeline is then it takes the pressure off the businesses to push the County to do something. If they've got an investment in that particular decision, they might suggest to their Council people, to the Council, in general, that they do something. And I guess it would be kind of hard for us because we did do the three years for Tony Roma's. And to be fairly consistent,

that might be arbitrary if for one we said there was a three-year time limit, and for another one, there's not going to be a time limit.

Chairman Endo: Well, I think there are differences between this and Tony Roma's, to be truthful. Tony Roma's was a situation where they weren't providing any real parking. All their parking were true phantom parking. They were buying into a multiple parking lot that was just reselling constantly. These people, although they are selling their parking, too, actually have stalls that they've created and added to the pool of available parking in Lahaina that's there and available. So they've created these parking lots on their own property that they own, and added it to the pool. Even though – people are going to float around, but that's how people are on Front Street anyway, right? They park and they cruise through all the different shops. So they created generic parking that they've added to this system, real parking, not phantom parking. So, to me, they've actually helped address the parking issue a lot more than the Tony Roma's situation, but – as far as I know. There's all kinds of complications.

Mr. Shibuya: Mike, can you help us? Tell us how many parking stalls are there in the offsite location.

Mr. Munekiyo: There are 33.

Mr. Shibuya: That's the maximum amount that they can have, not so much as the maximum that they will allow to have. It is the total amount that they have.

Mr. Munekiyo: That's the total amount that's striped right now.

Mr. Shibuya: So then we would have 33 plus whatever you're going to have after the loading zone?

Mr. Munekiyo: That's correct.

Mr. Kamai: On this first page, they show this map. Right neighboring the property, you see on Front Street, get that striped loading zones. Try turn to Pictures 7 and 8 in the back, Photographs 7 and 8. This is a designated loading zone already existing on Front Street.

Ms. Acks: When it's a designated loading zone, is it designated for anybody?

Mr. Kamai: Anybody.

Ms. Acks: Anybody.

Mr. Kamai: Also, to put one in the back, and take away from those 12 stalls when you

already have one right there on Front Street, and what Ms. Long said, it's anybody's. It's first-come, first-served. You gotta drive around the block to unload your stuff, you just gotta drive around the block. And it's already there: Front Street, neighboring the property.

Chairman Endo: Bill, do you know if Barbara Long has her own dedicated loading zone for her building?

Mr. Kamai: No.

Chairman Endo: Okay.

Mr. Kamai: So it's just my opinion if you were to throw one in the back, you just taking away six stalls that—

Ms. Acks: So, James, you propose that we give the variance until the — or suggest— that you tossed as an option that we accept the variance until the time that the County comes up with an ordinance, or a proposal, or legislation, or a building, or whatever, and at that point in time, the number of stalls still is 62? Is that correct?

Mr. Giroux: Right. In light of — if you want to — if you get to the point where you're looking at granting the variance for the parking stalls — and that's maybe two things that need to be separated out in your discussion is the loading zone and the parking stalls, because if you take care of one, it might affect the other. But if you get to the point if you're thinking of accepting the variance as requested for the parking, and you grant the variance within the condition where your condition could be worded such that when the County calculates their fair share or pro rata share of participation, it'll be calculated on the full amount that's required for the use of the building.

Ms. Acks: William, is the loading typically, certain times of the day? Especially, for example, like with Moose McGillycuddy's, would that delivery be more apt to be prior to 12:00?

Mr. Kamai: Yes.

Ms. Acks: So do they ever do a loading zone until 12 o'clock, and then it becomes parking? No?

Mr. Giroux: I guess we have to ask Public Works maybe or staff. I'm not too familiar with how they stripe or designate.

Mr. Shinmoto: They have been, from my recollection in my Public Works' days, there have been — for on-street type loading zones, they will at times put time limits on them,

but not because they want to let the public park in it. It's because of the traffic. In other words, they want to have people unloading during peak hours, for example. I'm not aware of anything where they'll say no loading zone and now regular cars can park in there. But Trisha did some research. She went upstairs to get information for you on the last variance.

Ms. Kapua`ala: And the condition was indeed a three-year time limit for the variance where the applicant would have to come in and amend that condition should the ordinance, by Council, be not passed at that time in three years.

Chairman Endo: Mike?

Mr. Munekiyo: Mr. Chair and Members, I know this is a very difficult variance to deal with. And I'm wondering – we were looking at the possibility of, of course, providing a loading zone onsite. I can't say that on-street loading zone is signed for a certain specific period of time, Monday through Saturday only, but our attempt is not to skirt any requirement. We do, indeed, face some legitimate physical constraints here. And I think it's best from the applicant's standpoint that more parking is provided in Lahaina Town. That's certainly their interest as it is everyone else's. And so we're not here to get around anything, not at all. To the extent that we can help, that's what we want to do. If – and one of the things that we're thinking about, if we can, and I'm not sure procedurally, how this would work whether it requires an amendment to our application or even a new application which we hope it doesn't, but one of the things we'd like to do to increase parking is to perhaps consider tandem parking for the employees. Have that count as code required parking although that's not permitted right now, but through a variance, you probably could have that implemented. I think that could be looked at both onsite as well as at the offsite parking.

I think the concern with respect to the parking fund condition is that there is some uncertainty as to what that amount might be at some unknown future time, although I think for the Tony Roma's, it was three years. The – if it is on a fair share basis, which I presume it will be, and it's a reasonable amount from tenants or landowners' standpoint, then I think that's certainly not going to be a problem. I think the issue is we really don't know what any kind of proposed ordinance might look like at this point. So there's some degree of uncertainty. I think that it places the landowner or any landowner in some – with some discomfort because there's an unknown payment due at some future point in time. And I think that's really I think difficult for this applicant to consider. And the alternative is they can look at providing as many more parking stalls as possible via a further variance to the tandem stall requirement. I think, again, it's in – their interest is not to get around any requirement. It's just that they're faced with some very legitimate constraints. And so if the Board feels it appropriate, and again, the in lieu funding condition is – if the Board so chooses, it's the Board's decision. It's not something that the applicant would feel comfortable with, but in lieu of, they're willing to

look at how it is that they can provide more parking. And I'm not sure if it is something that can be done via amendment by seeking a variance to the tandem parking requirement. That's something that we'd like to look at as well. But we'll try to provide as many stalls as we can physically, legitimately, without inconveniencing anyone. That's the objective here. I don't know, staff, or Corp. Counsel, what that might entail. If it requires a deferral of this action today for us to take a look at it, and give us time to look at how it is that we might be able to provide more parking, but that's the preferred way for us to deal with it, really.

Chairman Endo: Well, I think, yeah, maybe we should defer. It's getting late already. But I think the thought that – or the idea that we first started with James was not that you had to pre-agree to an unspecified in lieu amount, but rather, if there is a new ordinance that would require you to participate that the basis for how much you'd have to pay would be based on your full 62 stalls rather than 45. So it's not forcing you now to volunteer to participate in say some pilot project that you're not required by law to participate in – only if you – where you had to participate, anyway.

Mr. Munekiyo: And I suppose if that ordinance were to be implemented, then it applies to everyone in Lahaina.

Chairman Endo: Right.

Ms. Acks: I think, Mike, I think we're extremely empathetic to the whole situation which is why we did end up waiving for Tony Roma's. We'd just like the people in Lahaina to put a fire where it belongs, and try to get some things moving along there because we're very aware that the parking situation in Lahaina is a problem. And it negatively impacts every business that's up there. So we're supportive of you, and we hope that you guys call a County Council meeting and say we've gotta talk about this, and we've gotta get something going on here because it's negatively impacting us as a tourist industry.

So on that note, I think I will move that we accept the variance for three years as requested.

Chairman Endo: Okay. I have a motion.

Ms. Ball Phillips: I'll second.

Chairman Endo: And seconded to grant the variance application, but with a time limit of three years from the date of this variance.

Ms. Kapua`ala: Mr. Chair?

Chairman Endo: Yes?

Ms. Kapua`ala: Should I read the recommendation into the minutes?

Chairman Endo: Oh, sure.

Ms. Acks: I want to make sure that we're keeping the 62. At the end of the time period, the 62 stalls is still there. So we're just accepting the variance for three years or until the County Council comes up with something different.

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

1. There is no exceptional, unique, or unusual physical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area; and
2. The conditions creating the 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 Department recommends DENIAL of the subject variance.

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 August 23, 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.

So, no. 1 and 2 would have to be justified on record.

Chairman Endo: Okay. Kathleen, to make this faster, I guess you could use your justification, the proposed justification stated in the applicant's—

Ms. Acks: Yeah, to me, I think part of it is, what we are calling the neighborhood? If we talk about the Lahaina area, per se, there is something uniquely distinct about Lahaina and its parking, if we talk about that whole area of Lahaina. So, to me, that, in and of itself is something that they don't have any control of. It's been a pre-existing condition kind of thing.

Chairman Endo: Okay. Discussion?

Mr. Kamai: Quick question for staff.

Chairman Endo: Sure.

Mr. Kamai: Mr. Munekiyo is very adamant that the conditions creating the hardship were not the result of the previous actions by the applicant, yet you guys insist that it is?

Ms. Kapua`ala: The reason being that mostly because they didn't – in the application, could not identify a unique characteristic to that property in relation to the Front Street area. So because they couldn't identify a unique situation that causes a hardship, the hardship then does not exist. It's a self-imposed hardship by the virtue of requesting a variance or doing the action of converting the uses. So it's the way that the Department has always interpreted.

Mr. Kamai: Okay. Thank you.

Chairman Endo: I have an out-of-the-box thought before we vote. I wonder if – because the whole idea is to let them proceed with their business but also to find a long term solution for the parking problem. And rather than waiting – I mean, your time limit sort of creates an incentive for them to solve the problem, but just thinking typically, business owners, they don't actually do much in the big scheme. They don't want to take up a cause. It might help everybody in the neighborhood, but it's kind of hard when you're busy doing your own business on your own property. So what if they – grant the variance, and then they agree to voluntarily contribute \$10,000 to a planning firm, or lobbying firm, to come up with legislation to solve the problem. And whatever amount of dollars that can go towards that – I mean, they would pay to get something started, put on paper, and submit it for our review.

Ms. Acks: Did we ever get any response back from – you know, Lance sent that letter to the County Council?

Mr. Shibuya: Not that I know of. No response.

Ms. Acks: If we kind of come up with a dollar amount, I'd almost like to think on it. If that's what we're going to do today, and that might be a good plan of attack, do we want to think about what the appropriate dollar amount would be because this is going to keep on coming up? I'd like to put some thought into it so that we're fairly consistent in how–

Chairman Endo: James wants to comment. Maybe . . . (inaudible) . . . can do it.

Mr. Giroux: I'd just like to caution the Board as far as – you know, because what we're looking at now is that if you start to impose a money fee or exaction without an ordinance in existence, it becomes kind of labeled as what's called an "ad hoc exaction." And that exposes lawsuits and things like that because it gets in the



exactions, and takings, and that types of— You see it a lot with the Planning Commission where housing – affordable housing, and roads, and those types of things. And usually we'd like to have the County come up with a policy first, and then let the administrative or the judiciary body just kind of make sure that that policy is followed through at our level. To create the policy itself, I don't want to encourage this Board to take on that liability because I really don't see that as being the function of a variance board at this stage. We really want to look at the use, see if the request falls within the criteria of a variance, and then whether or not the conditions that are fashioned are within the purview of making sure that the health, welfare, and safety factors are met under that code.

Ms. Acks: As a Board Member or as a Board, is it appropriate or inappropriate for us to consider writing a viewpoint for the *Maui News* addressing this particular issue?

Chairman Endo: You can do anything you want as a person, as a private citizen. You can do whatever you want. Just because you're on this Board, it doesn't prohibit you from speaking your mind, and freedom of speech, and all that.

Mr. Giroux: The only caveat is that if – I don't know what your view is going to be, so I can't comment on that, but it's just that when you do, you have to be aware that if it's controversial, and if you say, well, we want to – you don't want to commit yourself to how you're going to vote on projects that you have not seen yet, because you really want to look at every case as a case-by-case basis, and look at all of the representations from the applicants prior to making a decision. So that's the only caveat that you do – as a citizen, you do have the right, your First Amendment right to state your point of view on the record, but it's just that you have to be cautious about how is that going to affect your ability to vote on similar projects.

Chairman Endo: So it might disqualify you, yeah, in certain votes.

Ms. Acks: Okay.

Chairman Endo: Well, okay, we still have a motion. It's to grant the variance for a three-year period. Anybody want to move to amend, or any more discussion? Anybody want to say anything?

Mr. Shibuya: So the total amount is 62 slots, right?

Ms. Acks: No, the variance is granted for three years.

Mr. Shibuya: Right.

Ms. Acks: And then at the end of three years, or if the County makes a decision, the 62

is still on the books.

Mr. Shibuya: That's correct, or the use—

Ms. Acks: So we're accepting the variance of the reduced numbers for three years.

Mr. Shibuya: Right, or the use of the building may change in those three years. And it could be a use that is less than, then it would be in compliance.

Mr. Giroux: Any change in use will have to require a new variance.

Mr. Shibuya: That's correct.

Chairman Endo: Go ahead, Mike.

Mr. Munekiyo: Mr. Chairman, Board Members, thank you for – I think the language is workable. I just wanted to clarify that the variance encompasses both – the term limitation on the variance applies to both the parking and the loading zone? Thank you.

Chairman Endo: Yeah, that is the intent. That is part of the motion. I just don't like to see stuff come back and create more work for us. So I'm thinking – why don't we do like a little bit longer maybe like four years or five years? Because otherwise, we're going to just keep all our workload. I mean, three years goes by so fast.

Ms. Acks: Five years is fine. If I do five years, that's fine with me. Is there any way we can extend Tony Roma's, then, as well? I just would like to be consistent.

Chairman Endo: They could always come back knowing that – yeah.

Mr. Kamai: I would rather have the thing remain at three. And the reason for that is, when next week somebody else comes with the same variance, the week after, the month after, we're going to go, you four, you five, you six, you seven, and we face them all at different times, or three years is the limit. Three years is all we're going to deal with further down the line no matter who comes after that. That's the bridge we gotta cross in three years for anybody that comes in after this. No variation. No difference. No favoritism.

Ms. Acks: It seems like before with Tony Roma's, we started with one year. And we went from one year to three years. So we did budge. I like three years.

Mr. Shibuya: I like three years, too.

Chairman Endo: Okay. So we'll consider the motion as originally stated: three years.

Any further discussion? No? Okay. All those in favor, please say aye. The Chair votes aye.

It was moved by Ms. Acks, seconded by Ms. Ball Phillips, then

**VOTED: To grant the variance as discussed for a period of three years.**

**(Assenting: K. Acks, R. Ball Phillips, W. Shibuya, W. Kamai,  
and R. Endo.)**

**(Excused: S. Castro Sr., H. Ajmani, J. Shefte, and U. Schulz.)**

Chairman Endo: **So the variance is granted for a period of three years.**

Mr. Munekiyo: Thank you very much.

Chairman Endo: Thanks. Trisha?

Ms. Kapua`ala: Yes.

Chairman Endo: You have a status on BVA contested cases?

## **F. DIRECTOR'S REPORT**

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

Ms. Kapua`ala: The only update is – do all of the Board Members remember the Lahaina International Open Marketplace? Evelyn Goo was the appellant. And she recently – the property has been sold, and Barry Brown is trying to settle out as the landowner as he no longer is the landowner of the property. Evelyn Goo still would like to contest the case. Her attorney used to be William Crockett of Crockett and Nakamura. However, her new attorney is David Fosbinder. They – we came together for a status conference, and set a new conference date. And this is only a pre-hearing conference for last week, which Mr. Fosbinder did not show up. So the Hearings Officer, which you appointed, Judge McConnell, he's going to – he's drafting an order to dismiss the case, and give it back to the Board. It's been a while. He wants to get the applicants and the Board's attention that this is just going in circles. So it'll be coming back to you by way of an order from the Judge that he'd like to dismiss this case. And then you can deliberate at that time. That's the only update I have.

Chairman Endo: Okay. I forgot. Going back to Item E– I mean, thank you, Trisha. We need to approve the August 9, 2007, meeting minutes.

**E. APPROVAL OF THE AUGUST 9, 2007, MEETING MINUTES**

Chairman Endo: Does anybody have any changes or comments? Otherwise, would somebody move to approve the minutes?

Mr. Shibuya: So move to accept.

Chairman Endo: Okay.

Ms. Ball Phillips: Second.

Chairman Endo: It's been moved and seconded to approve the August 9, 2007, minutes. Any discussion? No? All those favor, please say aye. The Chair votes aye.

It was moved by Ms. Acks, seconded by Ms. Ball Phillips, then

**VOTED: To accept the meeting minutes of August 9, 2007, as presented.**

**(Assenting: W. Shibuya, R. Ball Phillips, K. Acks, W. Kamai, and R. Endo.)**

**(Excused: S. Castro Sr., H. Ajmani, J. Shefte, and U. Schulz.)**

Chairman Endo: The minutes are approved.

**G. NEXT MEETING DATE: September 13, 2007 – Island of Moloka`i**

Chairman Endo: And the next meeting is September 13 on Moloka`i. And everybody should have their reservations all set. Is there any other business of the Board? Any announcements?

Ms. Acks: I have a question. Did I hear the meeting after – the September – the next meeting is going to be on the 20<sup>th</sup> and not the 27<sup>th</sup>, right?

Chairman Endo: That's correct.

Ms. Acks: Okay.

Chairman Endo: Because of the County Fair, and other reasons, and HCPO, too.

Mr. Shibuya: They have another conference at that time.

Ms. Acks: Just have to make sure that I remember it.

Mr. Shibuya: That's correct.

#### **H. ADJOURNMENT**

Chairman Endo: All right. Seeing as there's no further business, the meeting is adjourned.

The meeting adjourned at approximately, 4:45 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

#### **RECORD OF ATTENDANCE**

##### **Members Present:**

Randall Endo, Chairperson  
Warren Shibuya, Vice-Chairperson  
Rachel Ball Phillips  
Kathleen Acks  
William Kamai  
Uwe Schulz (1:30 p.m. to 4:02 p.m.)

##### **Members Excused:**

Stephen Castro, Sr.  
James Shefte  
Harjinder Ajmani

##### **Others:**

Aaron Shinmoto, Planning Program Administrator  
Francis Cerizo, Staff Planner  
Trisha Kapua`ala, Staff Planner  
James Giroux, Deputy Corporation Counsel