

**BOARD OF VARIANCES AND APPEALS  
MEETING  
SEPTEMBER 13, 2007**

**A. CALL TO ORDER**

The meeting of the Board of Variances and Appeals (Board) were called to order by Chairman Randall Endo at approximately, 2:00 p.m., Thursday, September 13, 2007, at the Department of Hawaiian Homelands, 600 Maunaloa Highway, Ste. D-1, Kaunakakai, Moloka`i, Hawai`i.

A quorum of the Board was present. (See Record of Attendance.)

**B. PUBLIC HEARING**

- 1. MUNEKIYO & HIRAGA, INC. representing COUNTY OF MAUI, DEPARTMENT OF FIRE AND PUBLIC SAFETY requesting a variance from Maui County Code, §19.31.020(B)(3) to allow a training tower to exceed the thirty-five (35) feet height limit by nine (9) feet for the proposed Kaunakakai Fire Station located off of Alanui Ka`imi`Ike near its intersection with Kakalahale Street, Kaunakakai, Moloka`i, Hawai`i; TMK: (2) 5-3-003:015 (por.). (BVAV 20070008)**

Chairman Randall Endo: I'd like to ask the Planning Department to read the first agenda item.

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

Chairman Endo: Okay, would the representative for the applicant please come forward and give their name?

Mr. Kyle Ginoza: Kyle Ginoza with Munekiyo & Hiraga on behalf of the County of Maui, Department of Fire and Public Safety.

Chairman Endo: Good afternoon, Mr. Ginoza, is the applicant agreeable to waiving of the reading of the Planning Department's report?

Mr. Ginoza: Yes.

Chairman Endo: Okay. What I'd like to do is allow the applicant to make a short presentation about what the variance is they're requesting, then I'll open it up to the public to testify on the matter on that item. So you may proceed.

Mr. Ginoza: I'm here to present to you today an application for a variance for your consideration from Maui County Code, Section 19.31.020 relating to the public/quasi-public district, and more specifically, to the height regulations of that district for the

proposed Kaunakakai fire Station for which you went to the site visit this morning. Again, the applicant is the County of Maui Department of Fire and Public Safety. And I'm with Munekiyo & Hiraga, and again that's the project location along Alanui Ka `Imi `Ike.

The Fire Department wants to develop a new fire station in Kaunakakai which will provide community-wide emergency protection and related services. As part of that proposed fire station complex, they want a 44-foot tall training tower which will allow them to conduct training activities at various elevations, as well as to practice repel-type activities as part of their fire training. That'll allow their fire personnel to be trained onsite whereas currently, personnel need to go to Maui or find other accommodations to carry out their training activities for this various level scenario.

In preparation for creating the fire station, the land was recently rezoned to the P1, public/quasi-public zoning district which is the appropriate zoning district for this type of use—the fire station use. However, the public/quasi-public district only allows for structures up to 35 feet in height. Therefore, this variance application is to seek allowance of a 44-foot high training tower in this zoning district.

This is the site as you saw this morning. It's located east of Kaunakakai Town along Alanui Ka `Imi `Ike. As was discussed this morning, there are two access points: one coming down Alanui Ka `Imi `Ike down to Kamehameha V Highway, as well as going this other way toward Kaunakakai Town.

This is a closer view of that map showing again the location proximity to other civic uses such as the Moloka`i Education Center here, Mitchell Pauole, as well as Moloka`i General Hospital up to the north.

This is the proposed fire station site plan. As you can see, there are two accessways for the fire station with the fire station at the center part of this diagram. What is circled here, this proposed training tower, is what is of interest today where we're seeking a 44-foot high training tower. So the next couple slides will be looking at an elevation from the south looking north, as well as one from the roadway looking east. So first we'll be looking this way at this elevation looking at the training tower, and the second we'll be looking this way.

So you can see here is the training tower that we're looking at today, as well as this is what the fire station would look like from Alanui Ka `Imi `Ike. And again, this is 44 feet from finished grade to the top of the tower.

Here are some site photos of the site. This is looking north up the road from – the fire station will be located over here on this side.

This is looking straight at the fire station site, so this is the west elevation.

This is kind of where your cars were parked today during the site visit. And again, the fire station site would be along this area. And finally, this is kind of where we met looking at the plans where our car was parked, and then looking at the fire station this way.

As you know there are three criteria that need to be met for the variance. Criteria 1 is:

Exceptional, unique or unusual physical or geographic condition existing 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 will not alter the essential character of the neighborhood.

So a few conditions for your consideration: the proposed fire station was sited in that location to facilitate expeditious, emergency, protection services for the Kaunakakai community. And it was meant to shore up some existing deficiencies with the existing fire station such as with drainage problems and so forth. An undeveloped site was selected to minimize disruptions to the existing community setting. And as I mentioned, this vicinity also includes other civic uses in the area such as the Moloka`i Education Center, and Mitchell Pauole, etc.

So some justifications for your consideration: the uniqueness of the tower functional design to meet the Department's mission objectives forms a foundation for the exceptional, geographic, and physical conditions. Moreover, in light of the nearby civic usages, we don't feel that the essential neighborhood character will be altered.

As far as the second criteria which is, strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property, a few conditions for your consideration: the proposed fire station contains necessary elements to house and train the fire personnel. And this training tower which allows them to, as I mentioned, train at various heights and repel-type activities are necessary as part of this training. By looking at only the 35-foot training tower at the height limitation, it would not be adequate for the training activities. And lastly, having these kinds of complete training activities onsite will minimize disruptions as far as having personnel needing to go to Maui to train or other areas considering the personnel issues that may result.

So some justifications for your consideration: full compliance by restricting to 35 feet would restrict capabilities onsite for fire training at that elevation. And the inability to have onsite training compromises the public safety and welfare objectives of the Fire Department. Such a limitation would prevent reasonable use of the property in terms of the public use intent of the public/quasi-public zoning district.

And finally, the third criteria that must be met that conditions creating a hardship were not the result of previous action by the applicant, a few conditions which support Criteria 3 are as follows: the proposed fire station was sited for the provision of prompt service to all areas of the community. There are no existing facilities to accommodate these training activities at that elevation. And as I mentioned, multi story training is a requirement for fire personnel as part of their fire training program. Therefore, the hardship conditions are pre-existing and were not created by the applicant.

That's all I have as far as the presentation. We have Mike Munekiyo with Munekiyo & Hiraga, Chief Neal Bal, and Greg Jenkins of the Fire Department, and the project architect, Steve Wong, as resources to answer any questions that you may have concerning this application. Thank you.

Chairman Endo: Thank you, Mr. Ginoza. At this time, I'd like to open up for public testimony on this matter. I noticed there are four people who signed up to testify on the three-story house which is the second item on the agenda. If for some reason you have to leave really soon, and can't stay, and you want to testify now, you can come up and testify. Otherwise, what we would let you do is wait until that next matter comes up, and we'll hear a short presentation from that applicant, and then we'll let you testify. So if there's anyone who wishes to testify now because they have to leave on the three-story matter, or anybody who wants to testify on this fire station matter, please come up. Okay, DeGray? After you're done, please sign on the sheet. You have three minutes to testify.

Mr. DeGray Vanderbilt: My name's DeGray Vanderbilt and I'm Chair of the Moloka'i Planning Commission. And we've approved all of the applications that came before the Planning Commission, so I just want to let you know that. And we realized that it was above the 35-foot limit.

Chairman Endo: Okay. Any questions for DeGray? No? Thank you for your testimony. Anybody else from the public who wishes to testify on this matter? Seeing none, we'll close testimony as to this first agenda item. Close public testimony. At this time, I'd like to open up to the Board any questions or discussion on this agenda item. Warren, you have questions?

Mr. Warren Shibuya: Yes, I do. I'd just like to ask the Fire Department if they could explain the nine-foot difference in terms of the training requirements. What is the difference between 44 feet versus 35 feet? What would you do differently if you had this 44-foot tower instead of a 35-foot tower?

Captain Greg Jenkins: Aloha. My name is Greg Jenkins with the Maui County Fire Department. If I'm understanding your question correctly, you're saying what would be the differences of our training if we had to reduce the height of the tower down to the

acceptable 35 feet absolute. Is that correct, sir?

Mr. Shibuya: That's correct.

Captain Jenkins: Currently in the design that we've chosen for this tower, we tried to be as reasonable as we could based upon experience—the existing training that our Department conducted in many areas. And that was based upon the existing training towers in Kahului and the newest one in Wailea.

The training tower in Wailea is a slight bit shorter than the one in Kahului, and we – which has provided us some limitations in its height with regards to – especially with our rope training program. We knew that from past experience that the height of the training tower in Kahului, while we know that if we had a tower that was higher would afford us even more flexibility in training, it was adequate. It was borderline. We knew we could accomplish the training evolutions that were required of our Department off of that tower with regards to its height. We did add additional surfaces, training surfaces, if you will. This tower is a four-dimensioned – more than that, but it has four sides, three of which are all – enable training off of it, whereas the other two towers only allow one side to be trained off of.

So where our shortcomings were with the existing towers, we accomplished it with more surfaces. But with height, we felt this was consistent with what our Department was doing. We really wanted to go in taller. If it was shorter, it would make a similar situation to the Wailea tower where—I can go into more details of the specific programs effected—we would be limited and it would not be practical. Our personnel especially, in rope evolutions would be too close to the ground to accomplish a – complete training evolutions that are required by national standards. And a lot of things that we make up – we follow national standards when we do our ropes program. So it makes it difficult.

To give you a brief example, when— And I do have some photographs if you're interested in those towers. It would help in the explanation because I'm giving you a lot of technical details. But when a person makes an edge transition over the side of that tower, for example, it takes at least ten to 15 feet for them to come to a stop safely, tie themselves off, and do whatever's required of that first phase.

And then the second phase is the working area they have to conduct the rest of their evolution. In that phase, a lot of the times, the operations are dynamic. The person can't always stop. They're sometimes moving and have to accomplish multiple things as they're descending or ascending.

And then the final working zone is they prepare to touch ground or leave ground is at approximately, the last eight to ten feet. So we're kind of smashing all these courses of evolution into that 35-foot wall height.

The other situation here is that our current towers have low directional anchors, and they are limited of the one side. What that means is that imagine this table, and the anchor point is against the wall about the same level as the edge. The ropes pinch off at about a 90-degree angle or thereof off the edge. This creates a problem with entrance/exit transitions on a lot of our training evolutions. So instead, even in the field we do this, whether it be trees, tripods, or other means, we create a high directional situation that allows us to create a rope at a higher direction to facilitate exactly what we're doing.

This training tower encompasses – in the upper portions of where the roof structure is—they're all anchor points—large 6x12 beams that hold our anchors for our rope systems. And they not only allow us to do our training, our rope training, outside, the exterior of the tower, but we have a removable grate that allows us to simulate shaft and confined spaces down the center of it. So without those high directional anchor points, and the roof covering protections from the heat, sun, and other things, including the well-being and . . . (inaudible) . . . of our personnel sitting in the hot sun doing these training exercises, we would be limited. We would be forced at a higher frequency to seek natural locations to accomplish the training, which is what we're forced to do now.

Mr. Shibuya: Some of this certification, is it Federal certification, or is it State certification, or is it Moloka'i firefighters' certification?

Captain Jenkins: The certification— That's a really good question. One of the – we have a lot of things that our Department's proud of, but one of the key things we're proud of is we probably have one of the best rope rescue programs in the State. And that was just based upon national standards and nationally-recognized best practices. Our Department has a combination of standards it meets. One is the National Fire Protection Association standard which has basic principles of how we use our equipment. We also meet Federal Urban Search and Rescue requirements which are set forth by the Federal government—FEMA. And we conduct training evolutions that are standard within that system. All of our firefighters are trained at basic ropes. We're one of the only departments in the State that each engine company has a basic rope rescue capability—all engine companies. And that's typically because our districts are so large, and if rescue is busy, we don't have the support. So these personnel are in need of – all personnel, all firefighters get this training.

And then within that group of firefighters, and the engines, and in conjunction with rescue, we have a tactical level which is a higher level of urban search and rescue, and then the tactical ropes. A lot of times just aside the initial operations that we conduct, initially at the scene, we'll bring rescue companies from Maui over regardless even if Moloka'i has people trained. But in addition to that, we'll even assemble specialists in that area within the Department—teams. They'll come together and support beyond these resources. So this will not only take care of our existing standards of how we

conduct our rope rescue program, which is one of the training that we do, but it will take us into the future of what's required of us.

Mr. Shibuya: It's not only nice to have, but it is in compliance with some Federal as well as State type of requirements for training?

Captain Jenkins: Correct.

Mr. Shibuya: So I'm just satisfied with that, but I was also looking at the alternatives. In the center of this tower, it seems to be focused on ground level. If you wanted something deeper, would you not dig down and make a shaft perhaps 20 feet deeper? And you could cover that shaft because it's an enclosed tower. You can actually have a deeper, a longer drop, if you will. Has that been considered, and if not, why not?

Captain Jenkins: Mr. Chair or Vice-Chair, would you mind if I passed out some documents about it, if I could refer to them? That might help in the explanation.

Mr. Shibuya: No, that's fine. Sure.

Chairman Endo: Maybe I'll ask Warren before the applicant speaks, Warren, are you basically saying – you're asking why they can't dig a hole and then put the tower in the hole?

Mr. Shibuya: No, put the tower – have the hole in the center so that the rope work can go all the way down–

Chairman Endo: The rope work's on the exterior of the building.

Mr. Shibuya: Is it exterior?

Captain Jenkins: It's exterior and interior. So if you look at two pages that'll quickly identify this is – you can see they have kind of – they have the exterior elevation, and that kind of shows you the different surfaces. And I can go into details of what they are. They mostly have to do with edge transition. Multi sides are . . . (inaudible) . . . but on the exterior of it we do – it will simulate a vertical surface. We have a one-sided tower that has a cornice where the edge turns under so that we can simulate a free, falling rope where you'll be extended out, and unable to touch the sides of the building, which in many times in one of our cliff rescues, we had a rescue back here in Moloka'i at Hana Ake where we had a free fall. And our personnel descended down this operation. They were basically just hanging there. So it simulates that and controlled delivery to the surface near the ocean. And we have other just flat walls for flat wall work.

Now, the exterior utilizes the . . . (inaudible) . . . But on the interior, if you refer to page

six, you can see kind of a top view. And if you refer to Elevation D, you'll see that in the center, you'll see that the training tower is basically – the stairwell runs the perimeter. So on two different configurations, one has a little bit of a jog to it to create an obstacle for personnel to go down, and then they have to move over, and then they have to set up another operation down the center of the shaft. They can go and train all the way down to the center of the tower. And then we can review for safety or whatever obstacles that are thrown their way on the way down.

With regards to your depth issue, if you do look on page 1, you'll see that the ground elevation is slightly higher than the elevation of the floor of the tower, and that is also for our pumping operations, and due to the water that we're going to be putting in this tower. There will be live hose lines extended and operated in this tower simulating a fire attack of a structure fire. But also, we can put a block over the drain and use some of our suction devices to simulate pumping drills without having to go and do it out on the ocean which contaminates our pumps or–

Mr. Shibuya: I understand.

Captain Jenkins: But this tower also, in the future we're hoping to have fire apparatus that has an aerial capability. So this tower can also be used for external aerial ladders as well as ground ladders. So a smooth surface runs the perimeter. It's like a grinder all around it. It's a safe surface to operate ladders, too, because this tower isn't just for ropes, it's also for fire attacks. We can simulate fire attacks on buildings on that tower.

Mr. Shibuya: What kind of equipment do you have? Do you have a hook and ladder? And if so, how high up do you go?

Captain Jenkins: Currently, Moloka'i does not have an aerial ladder apparatus even though it is proposed sometime in the future to have on one of our new engines is to have a small aerial capability. The height of those would most likely be between 55 and 75 feet extension boom. And that's typical of most aerial ladders. The ground ladders that we do have on our apparatus now are 24-foot extension ladders which pretty much reach a maximum of about a second-story roofline, or about 18 to 20 feet. So we do have the capability to do ladder evolutions on the outside of the building as well as the separate tower we have in the back. It's dedicated more towards ladders as well as the– If you know the plans, this whole station is a great, big training center. There's a mezzanine that runs through it. It ties into the towers and then the rear. So we can accomplish quite a bit. Basically, every possible inch of space, we converted into a training capability.

Mr. Shibuya: Okay. I'm satisfied, Mr. Chair.

Chairman Endo: Okay, any other questions from the Board? Okay, at this time, would



anyone want to make a motion? Hari?

Mr. Harjinder Ajmani: I'll make a motion that we concur with the Department of – the Planning Department and approve this variance.

Mr. Uwe Schulz: I second.

Chairman Endo: It's been moved and seconded. Hari, I'm assuming you mean you want to adopt the Department's staff report and recommendation report for today as our findings of fact?

Mr. Ajmani: Yes.

Chairman Endo: It's been moved and seconded as such? Any discussion?

Mr. James Giroux: Mr. Chair, I just wanted to make a clarification: the conclusion of law, it looks like there's a typographical error. So if you could just correct that on the first paragraph, third word. It should be deleted and the word "an" included. It reads under the conclusion of law, first paragraph.

Chairman Endo: Okay. So the word "no" to be struck, and replaced with the word "an." Okay. Hari, is that--?

Mr. Ajmani: Yes, I agree.

Chairman Endo: Okay. So the – if there's no objections, that motion would be so amended. So if I see no objections, then that'll be a motion.

Ms. Kapua`ala: A second amendment into the record, Chair: Conclusion of Law No. 3, "The conditions creating the hardship were 'not' the result of previous actions by the applicant."

Chairman Endo: Okay, so the word "not" would be added between the words "were" and "the." Another typo error, typographical error. Hari, I assume it's okay with you?

Mr. Ajmani: That's okay.

Chairman Endo: If there are no objections from the Members, we'll just consider that part of the revised motion. Okay, any other revisions? No typos? Okay. Discussion on the motion? No? Ready to vote? Okay, in that case, all those in favor of the motion to grant the variance as described by Hari, please raise your hand and say aye. Opposed?

It was moved by Mr. Ajmani, seconded by Mr. Schulz, then unanimously

**VOTED: To grant the variance as amended.**

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

**(Excused: K. Acks, J. Shefte, and S. Castro, Sr.)**

Chairman Endo: **The motion is carried unanimously.** Okay, can the Department read the next item?

2. **ARTHUR H. PARR, AIA of PARR & ASSOCIATES representing RICHARD and ELENA POLLACK requesting a variance from Maui County Code, §16.08.060(c) to allow a three-story, single-family dwelling to exceed the two story height limit for property located at 3250 Kalua Koi Road, Kaluakoi, Moloka`i, Hawai`i; TMK: (2) 5-1-006:062. (BVAV 20070011)**

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

Ms. Kapua`ala: And Board Members, today representing the Department of Public Works is Colleen Okazaki. She is a Building Plans Examiner.

Chairman Endo: Okay, thank you. Mr. Parr, are you present?

Mr. Arthur Parr: Yes.

Chairman Endo: Mr. Parr, are you agreeable to the waiving of the reading of the Department of Public Works' staff report?

Mr. Parr: Yes.

Chairman Endo: Okay. Do you have a presentation you'd like to make?

Mr. Parr: Yes, I do.

Chairman Endo: Okay, please proceed. After that we will take public testimony on this matter.

Mr. Parr: My name's Arthur Parr. I'm the architect of record for this project, and I'm representing Richard and Elena Pollack who regrettably cannot be here this afternoon.

What we're looking for here is relief from basically, from the definition of a story. Unfortunately, all the material that's going out – gone out on this variance, this is called a three-story building when in fact it's two stories above an open space below. This is the very same project that was approved or received an SMA exemption I think was back in May.

What we have on this side, we have an existing residence located right here. And this is being moved to this location. So this portion of the building is one story. And that is it's got a one level of living space above this open space below. And that's the way one story is defined here. This portion of the building is two stories. And what that means is there are two levels of living space above this open space located below the building.

This drawing is a section. It's cut pretty much right through the middle of the site. And here's the ocean. Here is the top of the dune. It's at an Elevation 30.5. Here's the property line. And there's the building. And then as you go in this direction, the BFE, the base flood elevation, starts here at an elevation of 28. Here's the top of the dune at 30.5 with BFE or base flood elevation on this side of the dune is 26. It drops to 25. And then as it approaches the building, it's 24. And then as it goes through the building, it's 22 to 19 before it gets through . . . (inaudible) . . .

The original finished grade is at 14. Base flood elevation at the building is 24—a difference of ten feet. So we're required by code to have all of our floor structure above the base flood elevation which is 24. So this distance is ten feet. And then we have about a foot for floor thickness so that the finished floor at the lowest living level is 11 feet above the existing finished grade.

This portion of the building is a single story. And it's got one level of living space above the open area below. And of course, this is our two-story portion over here. It's got two floors of living space above this open space underneath.

All of the walls around this part of the building is either lattice or breakaways so that water as it comes in can flow under the building and back out, which is in the event of a tsunami.

Now, a definition of a story in the Maui County Housing Code says that the distance from finished floor to the grade – this is the situation that we thought we could bring in some fill. The definition is that if the distance from finished floor to grade is six feet or more, or 50% of the perimeter of the building, then this becomes a story. So we checked with the Building Department. And they said, yes, we can bring fill in so that this distance is six feet and that would've gotten us over the hump. FEMA and the Planning Department said no fill. So this – so we had to take this out.

Sometime next year, I don't know when it's going to happen, the Maui County Housing Code is going to go away. The Housing Code is where they talk about a maximum of two stories. The Zoning Code just has the maximum height for a building of 35 feet in a flood area which we meet that requirement. When the Housing Code is revised or goes away next year, then that two-story limit would go away also. So at that time, this building will be in compliance.

My partner in this project is Carine DeKock who is an architect in Vancouver. I'm the architect of record. That means I'll sign the drawings. She's the architect, the plan architect, and she has an agreement, a contract, with the owner. This is what Carine says:

Under the flood zoning requirements, the owners have no choice but to elevate the main floor above the base flood elevation which is 11 feet above grade. We are not allowed to fill under the building to meet the two-story building code requirement, nor can they use the resulting basement space for any living use, nor develop it into a finished space at any time in the future. This ten-foot space under the two levels of living cannot be used for any habitable use.

As a result of the conflicting zoning and building code requirements, the owners would have in fact only a one-story building, not a two-story home. So therefore, they ask the Board to grant them the variance, not to count the unusable area under the base flood elevation as a story so they can build a home with of two stories of livable area. I hope this is still possible to add to the report, to the hardship endured by defining by complying with . . . (inaudible) . . . To the Members of the Board.

The crux of the problem is that due to base flood elevation, we had to elevate the lowest living level. So we ended up with a ten-foot space down below which we cannot use. It cannot be used for anything habitable, but it's still called a story, so that puts us into one, two, three stories.

Now, I have a letter from the owner, if I can figure out what I did with it.

Mr. Ginoza: Sorry, I took his stuff when I took my stuff.

Mr. Parr: Anyway, there's a letter that came from Richard Pollack, the owner. And this is what he says:

We would like to thank the Board of Variance for considering our application for a variance today. As you know, we are proposing to build a two-story home for use by our seven-person family initially as a vacation

residence, and eventually as our permanent home.

Under the flood zoning requirements, we're required to elevate the main floor of our home above the base flood elevation of 11 feet. In addition, the flood ordinances contain the limitations on the use of fill that effectively make it impossible to construct a two-story home without a variance. We are not permitted to use fill, and the flood zoning prevents us from using the basement space as a living space, or develop it into a finished space. Compliance with both the Housing Code and the Zoning Code effectively limits us to the construction of a home with one-story of livable space, not the two stories we feel is desirable to accommodate our entire family comfortably.

We have now exhausted all the possibilities to comply with the two-story bylaw. In consultation with Francis Cerizo, the County of Maui Planning, we spent considerable time and money investigating the possibility of complying with the two-story requirement by bringing the grade up to six feet under the main floor as a solution, which was shot down when were told no fill.

We engaged a coastal engineering company approved by the County of Maui Planning Department to perform a flood study and design the required shape of the fill so the flow of the flood water would not increase flood damage in case a tsunami occurs. Although the engineer was fully satisfied with the design, the County of Maui Planning Department ultimately rejected with this approach after consultation with FEMA and the State of Hawai'i.

We very much want to proceed with the project as designed although our home would technically be considered three stories under the Housing Code—hence the request for a variance—in reality, it would still only be a two-story home that we were seeking all along. Our house will not exceed the maximum allowable height, and complies with all other bylaws. Again, we'd like to thank the Board of Variance for considering our request.

When we met this morning at the site, I was asked to bring this drawing along which is the plan drawing of the space at ground level. This is the drawing that we talked about, the storage space, and these ground devices are piles. This is the swimming pool. And all of these walls around the perimeter are all breakaway walls or lattice walls so that if a tsunami comes in from this side, it flows right through the building and back out. I guess that about covers it for me.

Chairman Endo: Okay, thank you. At this time, we'll like to open it up for public

testimony. I have several people who signed up. And if you haven't signed up yet, you can still sign up at the end. Everyone who wants to speak, if you could please come up to this table when it's your turn. And speak loudly so that the recorder can take down your voice. And under our rules, you're limited to three minutes of public testimony. First of all we have Walter Ritte.

Mr. Walter Ritte: Not too many people know about you guys on Moloka'i. So only when there's something that comes up that strikes a cord on Moloka'i do we get to know who you are. So in this case, this issue really strikes a cord. And it's hard to talk to you guys 'cause most of us are at work. But we got out today. 1:30 is not a good time for us to have meetings on Moloka'i, but that's how it goes.

So this is an important issue. And I don't know how important it is to the Pollacks because they never even show up, but for us, it's very important.

Whether it's a two-story building or a three-story building is a big deal on this island. It's a big deal. The only way I found out about this meeting is because of the grass roots. Everybody started talking around. I had one call last night. I said, who the hell calling at this hour? And it was because he couldn't make it. He wanted to make sure I made it and all that kind of stuff. So this is an issue that's going all over on Moloka'i.

At the bare minimum, if you guys not going decide on this by downing it, then we should have some kind of a way where this community can talk to you guys—a meeting, another meeting, where we have people who can – who are working can come, and you can let people know who are concerned about these kinds of things that they could come.

I have – my understanding of many of the details – the only thing I can understand about this is the problem they have was caused by them because they went go put their house in this hole over here. They go make this big fence around the house so nobody could see their house. So they wanted privacy and they got privacy. So what they went do is they went cause one problem, and the problem was the hardship that they caused themselves which is they don't have a good view now. So when I read their little application, it says their hardship was the view. They no more one view. So for us on Moloka'i, the importance of whether you have a three-story or a two-story far outweighs the hardship that you don't have a view that you caused because you wanted to have privacy.

So I really want to talk against this idea of giving somebody a three-story house when the law says you can only have a two-story house especially, on the Island of Moloka'i. It doesn't matter whether your bottom floor is livable or not livable. This guy get about 12 rooms. They no tell you how big their family. Oh, we get one large family. How large? Twelve rooms. You get chimneys. You get sitting rooms, kitchens, five

bedrooms. I mean, it's not like they no more enough rooms. They just no more one good view. So I don't see a hardship. When I was coming here, I said, wow, this guy must really have a hardship with trying to change his two to three-story thing. Must be something real critical. I couldn't see anything critical. This is just – I mean, not even enough for them to show up. So I really want to talk against.

And this idea about, oh, might as well give us this now because down the line coming one new law anyway. How long you live Hawai'i? Nothing political is guarans. So until that law comes, they stuck with what they stuck with, and I don't see them getting a variance because something is coming down the line. I'm hoping that you guys not take this lightly. And I cannot see any good reason why you should give them a variance. Thank you.

Chairman Endo: Any questions for Mr. Ritte? No? Thank you. The next testifier is Hano Naehu.

Mr. Hano Naehu: Aloha, everyone. I think today was one good way for see what Moloka'i going accept and not going accept. The fire station for train our boys for make sure we safe, that's a need. This is a rich person's wants. And you hold responsibility in where this island going go. And I don't know if you guys have been checking the temperature, checking our environment, and seeing what we've been doing. Like Uncle Walt said, we don't know you guys. It's like we never know who really was the OHA Board of Trustees, who was the E.C., but these past five years from cruise ships to McAfee, you know, we've been training and learning how for defend our aina, and stop that domino that going lead to that effect that going change Moloka'i forever. And I don't know where you guys from, but wherever you guys from, you guys have seen Hawai'i change like this. One uncle told me that, you know, there gotta be one balance line. And all you guys know that the balance is way off. We don't have enough Moloka'i. We don't have enough places where nature – where this Hawaiian culture is truly the host and what is representative of the place. This, I cannot see how you guys going let this pass because it is not a necessity.

And Moloka'i and the people that live here we all no like this. We don't want this. And you guys get one opportunity for do what's right, right now, or else you guys going turn into everybody else that we went face because we going defend this aina 'til the day we die. And if you look, all of us is getting younger. We getting younger. And we getting more prepared every time we come into one office for one meeting for express ourselves in one manner where you guys hopefully can understand because this is serious, serious, serious stuff. But it matters to me. It matters to us. It matters to my generation that you guys realize that these kinds of stuff and compromising just for their behalf, for their benefit, pau those days already. 'Nough already. Just compromise for the guys who get money. So my mana'o is no to this project. Please weigh all of us versus this one family, and make the right decision. Mahalo.

Chairman Endo: Any questions for Mr. Naehu? No? Thank you. Next testifier: Kalaniuua.

Mr. Kalaniuua Ritte: Aloha. My name is Kalaniuua Ritte. Born and raised on Moloka`i and I going keep this short. I just here for say that I against this variance. And always going get one guy with some excuse. He going get some good story for tell you guys on why he should be bigger and higher than the next house. And if you guys let this one go, going get one another guy come in, he going give you his sad story, and before you know it, we lost Moloka`i. Moloka`i is not Moloka`i anymore. So that's all I wanted for share. Mahalo.

Chairman Endo: Any questions? No? Thank you. Next: Loretta Ritte.

Ms. Loretta Ritte: Aloha. My name is Loretta Ritte. I guess, I don't know how deep or serious this is to you as you make a decision. I look at Mr. and Mrs. Pollack. They're not from Hawai'i. They come here only to vacation. So – and there's a lot of people who do that. And I'm just really concerned about the one decision to allow this first – he says two-story, he says three-story about the 35 feet – how it can affect like Hano said, a domino effect, because you're gonna allow one, the next one going come in.

I really think that people who come here to live need to understand what they're coming into. You know, and that they not gonna get everything that they want. And I think there's disregard for the people who live here on this island, or the way that we have our lifestyle 'cause I hear the stories from Maui. People call me up and say, you know, people bought land down here. They moved in. They're doing vacation rentals and this is not a vacation rental place. Nobody's monitoring or keeping on top of it. Okay? So that's one thing.

Another thing is they move here and they change the lifestyle of the people because we're doing something that they're not used to. If I kill a pig, or I do a barbecue, or do huli huli pig, oh, too much smoke. You cannot do that. So that's my concern.

So I really think that for us, this is really, really important. Please don't take it lightly. You do not live here so, you know, that's really different from you because you not going live with the effects that we're going to have.

And so I say to this, it's like, they came here. They looked at their land. They knew the law. And now they're going to decide, well, oh, we want to go higher because we cannot see the ocean. Well, it's like, you should've thought of it before you built the house. Maybe look for another parcel that did have a better view. So I say no to it. I really wish that you feel the concerns that we have that you going let one in, there's gonna be somebody else who comes in with the money, and ask the same. So I just add that. Mahalo.



Chairman Endo: Any questions for Ms. Ritte? No? Thank you. DeGray Vanderbilt, do you wish to testify again on this matter?

Mr. Vanderbilt: Thank you. My name's DeGray Vanderbilt. Again, I'm the Chair of the Moloka'i Planning Commission. And this came before our Planning Commission. I just heard about this ourselves. And just in the future, it would sure be helpful that any issue that has come before our Planning Commission that your Board would send a copy to our Planning Commission. It should be part of our planning file because it is a planning issue, so— But I did find out about it. I haven't had the benefit of reading the staff report, but it came before us with an SMA assessment because it's in the shoreline management area. We made a decision. On Maui, the Director of Planning, he sort of administratively approves every SMA assessment. On Moloka'i, we have to approve what he approved. We changed our rules to make us approve what he approved.

So it came before us. And we asked a lot of questions about what the intentions were. We learned that it was going to be a vacation home. And they hoped to move here. We were concerned about it turning into a vacation rental. They said they weren't going to do a vacation rental. We're concerned because of the water issues, about a pool, and the size of the pool, but we were told that that was a choice they made because the Fire Department gives them an option. They can either put in sprinklers, or they can put in a water tank, or they can put in a swimming pool. Well, everybody with money is going to put in a swimming pool because it's really a good investment as far as your overall property, and the aesthetics are there. But then we were told by Corp. Counsel we couldn't put any conditions on the assessment. Now, I don't know if you guys can put any conditions.

But we did not have any of this data that you're talking about. There's some interesting things that I've heard today. We didn't have as detailed a drawing as this.

And I guess we're always getting these after-the-fact permits. Everybody's just doing what they want on Moloka'i right now. I'm sure that's happening on Moloka'i, plus it's happening on Maui, because there's just no enforcement. And it's really discouraging. And people are coming to our Planning Commission meetings and everything's an after-the-fact situation. And at some point, the applicant has to be held accountable especially when they hire professionals that are supposed to have the expertise to really ferret out what the law is and who's on first base before they go spending a lot of money. And then something happens, then they have to come in for a variance and — under a hardship situation.

Chairman Endo: Three minutes.

Mr. Vanderbilt: Thank you.

Chairman Endo: Any questions for Mr. Vanderbilt? No? The Chair's going to call a short five-minute recess for a bathroom break. We'll be back in five minutes.

Mr. Mark Haskins: You know, I sent in a fax two days ago. Did you receive that? My name is Mark Haskins.

Chairman Endo: You can check with the staff during the break.

Mr. Haskins: Okay.

Chairman Endo: Call a recess. Five minutes.

(A recess was taken at 2:55 p.m., and the meeting reconvened at 3:00 p.m.)

Chairman Endo: Okay, the meeting is back in session. The next testifier is Julie Lopez.

Ms. Julie Lopez: Hello, my name is Julie Lopez. I moved here in 1982 from O`ahu, so I know what impacts are of large homes, large developments, and plenty outsiders moving to the islands. I'd just like to say that I believe that this is a no. I say it's a no.

I don't appreciate someone saying that because the law may change in 2008 that they should be exempt. And the Mayor was here last week with Danny, our Council person. And she made it very clear on vacation rentals. By law, vacation rentals are illegal. So unless the law is changed, you have to follow the law. So I would hope this Board would follow the law that right now, the limit is two stories.

And the other thing is, these people bought this place. They knew they were kind of in a hole, and the mound was there because we all know that on the beachfront, a lot of them are like that. And they just want, in my opinion, a view. And they say they need a big home like this to accommodate their family. Well, you know, Moloka`i, they got plenty people in their family, and the house is spread out so they can see the view or whatever.

So I'm just saying I hope you would really consider and say no to this. It starts a cancer of other people building homes that are higher than the limit that it's supposed to be by law. And he knew what he bought when he bought it. And I think if I'm not mistaken, you know, he lives in New York. So he's building a home here. I don't think it's that much of a hardship if he's building that big of a home on our island.

The one thing that really irks me about outsiders when they move to our island, they always want to change it to meet their needs. And they should research it before they move here of who we are, how we live on this island, and what's important to us.  
Thank you.

Chairman Endo: Any questions for Ms. Lopez? Seeing none, thank you. Next testifier: Lori Buchanan.

Ms. Lori Buchanan: Talking about the coconut wireless. Excuse the way I dress. I was at the pier when I heard people murmuring about one meeting today at two o'clock about one three-story house, and of course, that went catch my attention.

So I hate to testify and not know all the facts of the situation. So sorry for the murmuring in the back with our Planner—McPherson in the back, but I kind of wanted to know what was the gist of everything.

And while I feel some compassion for the position the homeowner is in, I guess if I bought one lot behind the sand dune, I would want to backfill'em too for see the ocean especially, if I bought on Papohaku Beach. I would want to see the ocean. But at the same time, regardless of whether they change the Housing rules or not in another year— He mentioned a large family. They need the space. They gotta go up two stories. A large family is eight kids, two adults, one bathroom, and one 1,100 square foot farmer loan house on 6,200 feet of space. Okay? But we manage to make it work.

I understand this man has about six acres of land. So the reason to go up for space is not justified. Okay? The basic reason why this person has to go up higher is for view planes. If it was me, maybe I would be in here asking for the same variance. There's about maybe 50 other homes surrounded by this home that probably all have the same or nearly same problem.

Whether that person is using the bottom floor for a vacation rental or not, I don't care, because even if the client on a condition agreed that they wouldn't do it, there's nothing to stop them from selling that home, and the next person moving in and doing whatever the hell they want to.

I am going to testify against the variance even though I know that the Planning Department has worked really hard, and maybe the Pollacks, or whatever their name is, they're really nice people and everything, but my justification is that they got six acres. Okay? They don't need to go up. They can go out. Yeah? They can – on their floor space, they can make the house larger. And they should've thought of that before they decided to buy the lot at Papohaku which is under one – in the back of one big dune. But I do give them credit for trying to mitigate possible future flooding from tsunamis and whatever. And I applaud them for that. And I don't know what else to say except we going see a lot of these. And we already have homes that are in violation – many in the Papohaku Dune Restoration Plan, if you guys are not familiar with that. Many violations have been pointed out. Whether anything going be done about them or not, we don't know.

Chairman Endo: Excuse me, you're over your three minutes. Can you conclude your remarks?

Ms. Buchanan: Yeah. I against the variance.

Chairman Endo: Thank you. Any questions for Ms. Buchanan? No? Thank you. Next we have Dan Maryhew.

Mr. Dan Maryhew: Hi. My name's Dan Maryhew. I'm not a regular at these. I was at the first meeting for the SMA. I own a lot out there also. And I have a letter from the adjacent neighbor to the south—the next door neighbor. Should I submit that or leave it out?

Chairman Endo: You can submit that.

Mr. Maryhew: My question on the one thing they're – when they filed, it says "When the Housing Code is revised and amended in year 2008, the height limitation, two stories, will be deleted." I question that. You know, it should say "if and when."

And my other concern would be there is a Papohaku Ranch Land Homeowners Association which has a full pamphlet of CC&Rs for everything built out there. Everything has to go through a design review committee. And as far as my knowledge, I couldn't say positive, but I don't think this fits in. It's in violation of the CC&Rs. So how it got through them to this level, I'm not sure. But as like a lot of other people have said, I'm opposed to it. It just sets a precedent that, you know, they get theirs, and the domino effect. Thank you.

Chairman Endo: Any questions for Mr. Maryhew? No? Thank you. Next testifier is Mark Haskins.

Mr. Mark Haskins: Hi. I'm Mark Haskins. I'm also a homeowner at the Papohaku Ranch Lands. And I just want to make everyone aware that they have a design committee which Art Parr is the architect on the design committee. And several of the homeowners that have asked for variances have actually met the County Code, but did not meet the design committee code. And they were actually denied by Art Parr and his committee. So anyway, I just wanted to let everyone aware of what's going on here. So it's borderline conflict of interest on Art Parr's part to ask for a County variance when he is on actually, the West Moloka'i Design Committee. Okay? That's all I have to say.

Chairman Endo: Any questions for Mr. Haskins? No? Thank you.

Mr. Harjinder Ajmani: Could I ask him?

Chairman Endo: Sure.

Mr. Ajmani: So are you for or against?

Mr. Haskins: Oh, I'm against that.

Chairman Endo: Okay, that's the last person who signed up. Is there anyone else who wishes to testify?

Ms. Nancy McPherson: Hi. My name's Nancy McPherson. I'm the County of Maui Planner for Moloka'i. I worked on the SMA exemption for this project. There were a lot of challenges with the design of this project. There are also challenges with adjusting to having a planner on Moloka'i and having everybody else on Maui. So we struggle with coordination and communication. We have DSA requirements. We have SMA requirements. We have flood zone requirements. And they don't always mesh neatly. So there's been a lot of back and forth on this project.

The applicants have, for the most part, been – and the architects on the project have been extremely accommodating. They have spent a lot of money on designing and redesigning. But the point that I want to make is that I also, as a grad student at U.H. in urban regional planning, worked on the Papohaku Dune Protection Plan. And some of the recommendations that the Moloka'i Planning Commission has recently adopted that are in that plan include no – minimal or no fill in the dune area, no grading, and there's many, many recommendations.

I used that plan to review this project. You know, an archaeological study was done. All these other studies were done. Unfortunately, the DSA requirements were saying, you know, that fill was needed. I learned a lot on this project. If I had it to do over again – I mean, now I know fill is not needed. Fill is not desirable. We also want to minimize excavation.

So I feel that at the stage that this project is in right now, it does comply with the recommendations of the Papohaku Dune Plan. And because the County height limit is 35 feet, you know, it does comply with the height limit.

Stories can be open to interpretation. I think that's why that component is being looked at critically to be taken out of the Housing Code. But I also – I don't agree that a person should be allowed to build higher than they should just to get a better view of the dune. The problem is we've had people put fill in. We've had people grade the dune illegally, so that they could get a better view so they could get their house higher up. So, you know, there's a lot of challenges with getting good projects in this area.

One of the recommendations in the Papohaku Plan was to relax the height

requirements so that the first floor of the house could be elevated above base flood elevation. You know, the bottom line is, if people on Moloka`i aren't comfortable with, you know, something that appears to be a three-story house, then I understand that. And I understand that the community plan has a lot of design features in it--so does the West Moloka`i Design Committee. They're pretty strict.

So, you know, again, it's a challenge. We did the best we could. So that's where we're are. Thank you.

Chairman Endo: Thank you. Any questions?

Mr. Shibuya: Yeah, I have a question. Ms. McPherson, you mentioned something about minimize excavation. How minimal is an excavation acceptable or unacceptable? Is there a borderline that you can help us determine what is acceptable?

Ms. McPherson: Well, there are different -- each lot has to be looked at individually. In the Papohaku Plan, we did it in sections. We have about five sections from the north to the south. There are recommendations that go for each of those sections.

In this area, a lot of the sand was already removed. But what Zoe Norcross-Nu`u, our geologist with the -- that works for the County recommends is that we want to allow that sand to move back in. A secondary dune was removed, but what we don't want to do is create any structures that are going to prevent that sand from moving back in, or impound anything that's already there. So we want to minimize the amount of impact on the site that we create.

If you're putting cement into the ground, you could be limiting, you know, natural geological processes. But because this particular site already actually was graded a long time ago, you know, the way I look at it is, we just don't want to create a situation where the natural movement of sand coming back in there won't be allowed to happen. And if there's fill, and armoring, and all these other things, then that will be preventing natural processes from occurring, because we want to replenish the secondary dune because that is what feeds the primary dune. If you excavate the secondary dune, you start impacting the primary dune. So the idea is to allow the sand to gradually come back in. It took a million years to get there in the first place. It's probably going to be a while before we get it all back.

Mr. Shibuya: On the Papohaku Park area, we noticed that there is a gouge in the dune. Is that from excavation or is that a natural gap that was created in the sand?

Ms. McPherson: Well, my understanding is that a long, long, time ago, sand was removed from that area. Sand was removed down where the -- up where the golf course is where the greens are. And then there was also a waterway. Now, there's

people here who know a lot more about that area that's been here all their lives or a very long time, and they know the history. But water was coming down a natural waterway through that area. There's several parcels along there where that water was moving to. And it was coming out at the beach park. What has happened now is that that water's being retained up the hill. So that gap is what's created due to several things: lack of sand, the removal of the dune system, and then following that, that allows a place for the water to come down and break, and continue to break through.

What we want to do eventually is recover the integrity of the entire dune system. The State DLNR is also working on this—Office of Conservation of Coastal Lands. And an idea is to have dune walkovers. So eventually the idea is to get the sand back over there, get a dune walkover, and – so all those properties along there need to do the same thing so that people aren't even like cutting over the dune on foot. Because if enough people do that, as those parcels develop, and those houses go in, people are going to walk over the dunes to get to the beach. It's going to gradually erode, erode, erode. Not to mention the fact that there were a lot of burials in that sand. So it's really a sacred area also.

Mr. Shibuya: And the other aspect here that I have is public access to that beach, the Papohaku Beach. Is there areas designated for public access?

Ms. McPherson: Yes, there are. The beach park is one, and then I believe there's five or six others going down Kalua Koi Road and off the road. It kind of branched out. And those were, I believe, required by the County when the subdivision was created.

Mr. Shibuya: Is there a public right-of-way over this property that is now being discussed?

Ms. McPherson: No.

Mr. Shibuya: Thank you.

Chairman Endo: Any further questions for Ms. McPherson? No? Thank you. But yourself will be available as a resource person as part of the Planning Staff?

Ms. McPherson: Yes.

Chairman Endo: Okay. Is there anybody else in the public who wishes to testify who hasn't already done so? No? Okay. We will now close public testimony on this matter, and open it up to the Board to ask questions of any of the resource people or the applicant. Uwe?

Mr. Uwe Schulz: I have a question to the applicant – actually, two questions. One item

I'm concerned about and has nothing to do with the two stories or the three stories, but in the aboveground pool anchored into the earth, if a tsunami hits, it will create a tremendous turbulence, you know, backwash and so on. And I think a pool is appropriate for that area. It's desirable to have one, but it should not be above ground. I know that engineering-wise, that problem can be handled, but I don't think – first of all, it's unsightly to have a pool stick out six or seven feet out of the ground with a deck around it. That's just an aesthetic thing.

And my other concern, of course, is the definition of three stories. For some reason, the argument that's being made is it's in a flood zone, and in my opinion, it has nothing to do with a flood zone. If you would design a house in a regular subdivision on flat land way up above the flood zone, and you would put an open carport on the ground, and you put two stories on top, that is a three-story house. There's no argument about it. And only because it's in a flood zone, you know, I'm a hundred percent convinced that the three stories are view-driven. There's no other reason. There are five acres. You don't have to go three stories. You can go one story above the flood plane. And you have enough space to accommodate a 10,000 square foot house, if you want, but the third story, in my opinion, is totally view-driven by your client.

Mr. Parr: Well, there are certain economies in going up. You have one roof over two stories of floor area. It's expensive to build out there. It's up on piles. We have fewer piles. If we spread it out, you have twice as many piles. I think we have 26 now. And we'd be looking at 52 or more piles which would impact the environment somewhat to drill and pour that many more piles.

If you look at this closely, the floor level and the upper level, the floor level of the lower level, you know, you have no view. All you see is the back of the dune. If you're up on this level, the elevation is 35 feet, 8 inches. If you're standing here looking out, you barely see over the top of the dune. So, you know, it's a benefit, of course, to have a view, but it's not going to be a great view from up there. So I don't think it's necessarily view-driven. I think it's more cost-driven than view-driven. I just want to—

Mr. Schulz: No, I totally disagree with you. And the other problem I see if this Board grants the variance, and if the house were to be built, I'm convinced that the next thing was to happen is that the trees will be thinned out because even from the third floor, you cannot see the ocean. So somebody's going to come in there and trim or cut the trees off because I don't believe after visiting the site that you have an unobstructed view from the third floor. And that cannot be controlled. The owner will come in there with a chainsaw on a Sunday and enhance his view. The cost, you know, that's – don't buy the lot.

Mr. Parr: I can't argue with you. I don't know that those things are going to happen.



Mr. Schulz: I don't either, but I'm just--

Chairman Endo: Well, I think, Uwe, some of your remarks are more for just discussion amongst ourselves, actually. But questions, if you want information from him, if you could try and--

Mr. Parr: I have -- you know, we talked about the pool walls and the buoyancy of the pool. And this is the outline of the pool. And we have these pilasters spaced around the pool to stabilize the walls.

Mr. Schulz: No, I know how to do that. I'm just saying, you know, an aboveground pool is very, very difficult to handle architecturally. And the other thing I saw in your drawings this morning is that you're actually indicating view planes. You have lines on your drawings saying those are the view lines.

Mr. Parr: That's a requirement of the West Moloka'i Association.

Mr. Schulz: So that indicates very strongly to me that the third floor was driven by nothing else but the view.

Chairman Endo: Hari?

Mr. Ajmani: Mr. Parr, I have some questions related to what Uwe has said. The deck around the pool, that's a concrete deck?

Mr. Parr: No, it's wood.

Mr. Ajmani: It's wood. And the pool house that is being built on the same level as the deck, if I read your drawing correctly, it's at 20-foot elevation.

Mr. Parr: Yes.

Mr. Ajmani: So that constitutes a building below the flood zone level.

Mr. Parr: Yes. All of the walls up to an elevation of 24, which is base flood elevation, all of those walls will be breakaway walls. The columns would stay in place. In other words, the roof will stay up, but the walls will go in the event of a tsunami. The floor will go in the event of a tsunami. And all we'll have left would be the columns and the roof which, of course, the roof is above base flood elevation.

Mr. Ajmani: So I fail to see how something like that can be done when the floor can go with the flood and the columns will stay.

Mr. Parr: We have a structural engineer that's putting all that material together for us.

Mr. Ajmani: But you have toilets and bathrooms on that level there.

Mr. Parr: That plan has been revised. The only thing – I think we have a toilet in there and an equipment room. And I think that's all at this point.

Mr. Ajmani: And then the sauna and—?

Mr. Parr: No, it's gone.

Mr. Ajmani: At least the drawings that you submitted show a sauna, and a powder room, and showers, and dressing rooms.

Mr. Parr: Those are gone. I think the shower may be in. Just the toilet, and the shower, and the equipment room is the only thing that's left in there.

Mr. Ajmani: So all of this roof is wooden-backed? Not concrete-backed?

Mr. Parr: Yeah, the deck is wood and is designed to . . . (inaudible) . . .

Mr. Ajmani: Okay. I understand it now. The second question was, you were on the West Moloka'i Design Committee?

Mr. Parr: Right.

Mr. Ajmani: Does this, whatever you have shown here, complies with all the requirements of the design committee?

Mr. Parr: Yeah, it's been approved.

Mr. Ajmani: Okay, that's all of my questions. Thank you.

Chairman Endo: Bill?

Mr. William Kamai: Mr. Parr, I got a question. How old are the Pollacks?

Mr. Parr: Middle 50s, 55, that area. Just a guess on my part.

Mr. Kamai: And the reason why I asked is that you've used these words that they're here – or they wanted to build their house as a vacation initially, and then eventually to retire.

Mr. Parr: Right.

Mr. Kamai: And that you told us onsite and here, too, in your presentation that it's your understanding that the building code will be revised or amended in favor of – or would allow a three-story house eventually. So if your variance today would be denied, the Pollacks who eventually want to retire over here is in no rush. That they would be apt to wait for the variance to be amended or revised to allow a three-story house. Is that correct?

Mr. Parr: No, they want to get started. They've been working at this for a while, and they'd really like to get started. But if we don't get the variance, then obviously, they can't start until the Maui Housing Code goes away.

Mr. Kamai: And it's your understanding that it's in the works or it'll be amended in 2008?

Mr. Francis Cerizo: Well, I can speak to that. The Housing Code and the Building Code are being revised as we speak. The Uniformed Building Code which is going to adopt the latest International Building Code is being drafted. As part of the adoption of the new Building Code, the Housing Code is going to be phased out.

The Housing Code, when it was adopted back in the '60s or the '70s basically mirrored the Zoning Code in many respects to residential housing. They have setbacks of six feet and ten feet. They have heights of 30 feet. And it was a redundant code. So that's one of the main reasons why the code is being phased out because the Zoning will be the Code that would regulate the height, the number of stories.

And the Housing Code, that kind of – was more of a default code for all districts. You could use it in any district that was – that didn't have a standard. Like the Interim Zoning has no standards, so the Housing Code was used. There's some rural areas that was deemed to be unzoned, so they used the Housing Code to regulate that. But as we speak now also our other codes that may be left out in the dark, those codes are being changed also so that when the Housing Code is deleted, we will have standards in the other codes to fill in the gaps as far as height, as far as area, and so forth.

One of the other items in the Housing Code is light and ventilation, and I believe that's going to be carried over to a different code, but right now, tentatively, they wanted to have the Uniformed Building Code adopted by the end of the year, and that looks kind of – maybe extended further along, but in any case, once they adopt the Uniformed Building Code, when they change that to the International Building Code, the Housing Code is going to be changed. And also, many of the Zoning Codes will be changed all at the same time. And that's – all of these codes, as far as Zoning Codes, these will be – as far as the Zoning Code, will be brought up at each respective Planning Commission. Therefore, the Moloka'i Planning Commission will also be reviewing

those code changes.

So I guess a short sentence is that the Uniformed Building – the Housing Code is being considered to be amended – actually deleted within – as early as December of what could be into the next year sometime.

Ms. Lopez: By who? Who approves it?

Mr. Cerizo: Okay, the code is being – the Commissions review the Zoning Codes. As far as the Building Codes, it's adopted by Council.

Ms. Lopez: Maui Council?

Mr. Cerizo: Maui County Council, yeah. It goes to a hearing.

Chairman Endo: Any other questions?

Mr. Shibuya: I have a question. Sir, I was looking at the statement that was made by Ms. McPherson about minimizing excavation in a flood zone. And this house is being proposed with several excavation examples. One of them is a pool. I was wondering, what's the possibility, and I'm sure you've considered this and discussed it with the owner, what's the possibility of moving that house, proposed house, away or outside of the flood zone? That would be more workable. Then you don't have this activity going on. And you don't have this pilikea with the community. The problem here is FEMA established the flood zone. It's not the people who established the flood zone. And so therefore, to insure the safe use of this home and build a home, then if you stay outside just at the border or outside of this, I think it would be very acceptable.

Now, in terms of the Maui County definition, one of the stories would be if anything is more than six feet high, then it becomes a story whether you inhabit it or you don't inhabit it. So I'm saying if you move it back away from the flood zone area, then you can lower that ten feet to perhaps four feet to accommodate some of the water. Or you can even put it down on the ground because you're outside the flood zone area.

Mr. Parr: The flood zone covers the whole site.

Mr. Shibuya: Okay.

Mr. Parr: However, you're right, the building could be moved back because when you get back to the location where we have placed the existing guest house, there the base flood elevation is 22 feet. Oh, no, excuse me, it's 18 feet. So it would lower the house substantially.

Mr. Shibuya: Right. So therefore, when you move everything closer to that street, I think Kalua Koi, if you move it closer to the street, then you have this buffer area. And it's a safety feature, too, because if you do have a tsunami, the further away makes sense. It's common sense that you would move further away from the danger. And I think it's a win-win situation here for both the owner, and the County, and the people who are expressing their pilikea here. And I'm just trying to meet a halfway point.

The other part, too, is the height limitation. If you do move it back and you lower the so-called first level, then I think you are in compliance with the 35 feet height limitation. Would you not be?

Mr. Parr: I think we'd be close, anyway. Well, we're in compliance with the 35-foot height limitation now. And, of course, it would be – you know, if we move it back, it would just be that much lower. But as it is right now, we're in compliance with the 35 feet.

Mr. Shibuya: Right. And so that's a very doable alternative, I'm saying. And if that was not considered, perhaps maybe that can be considered. I'm just, like I said, I'm trying to reach a workable solution. Okay, that's all I have, Mr. Chair.

Chairman Endo: Thank you, Warren. I was about to interrupt you only because we're running out of time because we have a plane to catch. So I think at this point, we need to have a motion up or down on this, or a motion to defer, but otherwise, we need some kind of motion because we're running out of time.

Mr. Schulz: I make a motion to deny the variance request.

Mr. Ajmani: Second.

Chairman Endo: It's been moved and seconded to deny, and to adopt the – I assume it's to adopt the Planning's–

Mr. Ajmani: No, I think Planning – they've taken no position on this.

Chairman Endo: Sorry, the Department of Public Works' staff report as your finding. Is that correct?

Mr. Schulz: Yes.

Chairman Endo: Okay.

Mr. Cerizo: There's no recommendation.

Chairman Endo: Oh, there's no recommendation?

Ms. Kapua`ala: It's okay to adopt the staff report findings since they do not meet all of the criteria for the granting of the variance.

Chairman Endo: Okay. Correct. All right. Discussion?

Mr. Shibuya: I think I will be supporting this motion because I feel that it would provide an opportunity for the owner to reconsider. And I think this is the best way to do it. Thank you.

Mr. Ajmani: I think with so much of the public opposition and people seeing this as a precedent for future buildings and so on, I would very strongly recommend to the owners and you, Mr. Parr, that whatever you bring to the approval of somebody, you have a prior approval, or shown to the community, and see if they have incorporated their opinions. It would be very helpful.

Chairman Endo: All right. Any further discussion? If not, we're going to vote on the motion to deny the variance request and to adopt the Public Works' staff report as your findings. All those in favor, please say aye and raise your right hand. Opposed?

It was moved by Mr. Schulz, seconded by Mr. Ajmani, then unanimously

**VOTED: To deny the variance request and adopt the Public Works' staff report as its findings.**

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

**(Excused: K. Acks, J. Shefte, and S. Castro, Sr.)**

Chairman Endo: **Motion is carried and the variance is denied.** Should we defer--? We'll defer all the rest. If there's no objection from any Members, we'll defer all the rest of the items on the agenda to the next meeting. Seeing no objections, it's deferred.

**C. APPROVAL OF THE AUGUST 23, 2007, MEETING MINUTES**

**D. DIRECTOR'S REPORT**

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

**E. NEXT MEETING DATE: September 20, 2007**

**F. ADJOURNMENT**

The meeting adjourned at approximately, 3:41 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Randall Endo, Chairman  
Warren Shibuya, Vice-Chairman  
Rachel Ball Phillips  
William Kamai  
Uwe Schulz  
Harjinder Ajmani

**Members Excused:**

Stephen Castro, Sr.  
James Shefte  
Kathleen Acks

**Others:**

Francis Cerizo, Staff Planner  
Trisha Kapua`ala, Staff Planner  
James Giroux, Deputy Corporation Counsel