

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
OCTOBER 11, 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, 1:43 p.m., Thursday, October 11, 2007, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

B. 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, Hawai'i; TMK: (2) 3-8-056:009. (BVAV 20070005)**

Chairman Randall Endo: Trisha, would you like to read the staff report or the agenda?

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

Ms. Kapua`ala: And here representing the Department of Public Works is Mr. Wendel Tavares and Ms. Colleen Okazaki.

Chairman Endo: Thank you, Ms. Kapua`ala. At this time, would the applicant come up and state their name – the applicant or the applicant's representative?

Mr. Joel Corpuz: My name is Joel Corpuz. I'm the engineer of record on this project.

Chairman Endo: Good afternoon.

Ms. Luz Alonzo: Good afternoon, everyone. I'm Luz Alonzo, and I'm the owner of 508 South Kamehameha.

Chairman Endo: Good afternoon. At this time, why don't we open it up for public testimony? Is there anyone in the public who wishes to speak on this matter? Seeing none, we will now close public testimony and move to deliberations. Mr. Corpuz, would you like to make a– I think most of us have seen your original presentation, but not all of us. And we also now have, I think, about three different sets of building plans. And I was wondering if maybe you'd want to make a short presentation explaining where we're at, and perhaps summarize the situation briefly for our members who did not see your original presentation.

Mr. Corpuz: The first set of plans that were submitted to this Board represented what was built. The second set of plans which was one sheet would be a cost-effective solution to this variance, which is a plinth. That was the solution that was presented to us a few months ago. The second and – the third and fourth set represent the original permitted set as it was supposed to have been built – the fourth set being the stamped County set.

Mr. Wendel Tavares: (Inaudible)

Mr. Corpuz: We were able to locate one in the permitting section.

Mr. Tavares: (Inaudible)

Mr. Corpuz: According to the technician I grabbed the plans from, it does not have the signatures, but it was considered to be an extra set, and that's the only one that could be located.

Chairman Endo: And so you believe the one that says "Extra set, revised plan 11/3/05" is the building plans that were approved?

Mr. Corpuz: Yes, I believe so.

Mr. Tavares: Representing Public Works, that was not the approved set of plans. An approved set of plans would have an approved stamp with the plans examiner's signature on the set. This was an extra set of plans submitted at the time of the application. Public Works require that the applicant supply seven sets of plans. We sign off of three sets: one goes to the inspector, a job site copy goes to the homeowner, and one goes to Real Property. So this was not an approved set of plans.

Chairman Endo: So I guess the question is, how come we can't find one with a stamp?

Mr. Corpuz: Currently, I believe the first set of approved stamped drawings are in the storage which not everyone has access to.

Mr. Tavares: There was a job site copy that the homeowner should keep onsite during construction. The inspector's copy was placed in the post office. The post office has been condemned. We are unable to enter the post office to get the records.

Chairman Endo: Okay. Well, Mr. Corpuz, you believe that this set that says "Extra set" is identical to the one that was approved?

Mr. Corpuz: That is the one I have on file, yes.

Chairman Endo: Okay. And what was the difference between the other two sets—the fat sets? What is the difference between the one you gave us at the first meeting and this one that was rolled up and submitted later?

Mr. Corpuz: I believe the very first represents what was actually built.

Chairman Endo: Okay. So that's the folded one? That's this one, right?

Mr. Corpuz: May I approach?

Chairman Endo: Sure. I'm pretty sure this is the one that you submitted at the first meeting.

Mr. Corpuz: (Inaudible)

Chairman Endo: Okay. So the folded one that we got at the first meeting represents what's currently built and you're trying to get approval for now. Okay. And so what is this?

Mr. Corpuz: It's identical to the fourth set that I passed out.

Chairman Endo: Okay. So we should just sort of put this one on the side, then?

Mr. Corpuz: You should.

Chairman Endo: Okay. If you could give us a brief summary of where we're at especially, for the people who weren't here at the first meeting.

Mr. Corpuz: We tried to obtain variance approval with the way it was built now, but at the end of our last meeting, a plinth was suggested so that the owners could not benefit from this variance. So what I proposed to do was on the inside face of the wall, install a 2x12 stud wall along the whole side that is in violation so that the owners would not be able to benefit from this extra space.

Chairman Endo: So, Mr. Corpuz, that's the one sheet?

Mr. Corpuz: That's the one sheet, correct.

Chairman Endo: Is that one titled "Plenum wall?"

Mr. Corpuz: Right.

Chairman Endo: So you're proposing to put a plenum wall from floor to ceiling in all areas where it's invading into the ten-foot setback, but except for areas that have to be open for like the windows and things like that?

Mr. Corpuz: Correct. We would box around the window to provide lighting and ventilation.

Chairman Endo: Okay.

Mr. Warren Shibuya: I have a question, Mr. Chair.

Chairman Endo: Warren, go ahead.

Mr. Shibuya: I'm looking at the drawing where you indicated "new plenum wall," but the line actually does not go completely across. So that means when it comes by the window, it seems like there is an open area all the way from the floor to the ceiling whereas I believe the intent of the new plenum wall is to be completely across the floor, come up to the window, and not include the window. And then above the window, it would have this plenum wall too.

Mr. Corpuz: Correct. There would be a window well around the existing windows.

Mr. Shibuya: But the way it's drawn, if you could approach and I can show it to you.

Mr. Corpuz: My intent was to just provide a window well.

Mr. Shibuya: It seems like the ground level below the window does not have this plenum wall.

Mr. Corpuz: It was my intent to provide a plenum wall up to the window sill and then continue above the window.

Mr. Shibuya: So this drawing is in error?

Mr. Francis Cerizo: Well, if you look at the elevation, it shows the wall goes from floor to ceiling on the top section. Maybe the plan review doesn't show it accurately, but—

Mr. Shibuya: My question is in terms of how is the plenum wall treated around the window.

Mr. Cerizo: It gets boxed around.

Mr. Shibuya: It looks like from the drawing, it's excluded.

Mr. Cerizo: Well, maybe he can revise the drawing to reflect that.

Mr. Shibuya: Well, that's why my question is, is it the drawing that's incorrect in terms of representing that? It's not consistent with what you're saying.

Mr. Corpuz: I will be more than happy to revise the drawings to indicate that a window well would exist around the plenum wall.

Mr. James Shefte: Mr. Chairman, might I suggest that we put this drawing up on the board so everybody can understand what the people are talking about?

Chairman Endo: Sure, it's a good idea.

Mr. Corpuz: So if I provide a hidden line above each existing window hopefully, that'll clarify things.

Mr. Shibuya: Yes, it gives me a greater confidence with the drawing now.

Mr. Shefte: I have a question, Mr. Chairman. It shows here that like in the bathroom, it looks like a bathtub there which is right now abuts right up to the wall. That bathtub is already installed, isn't it?

Mr. Corpuz: It is.

Mr. Shefte: So everything that's along this line that's installed is going to have to move?

Mr. Corpuz: It's going to have to move in towards the bottom.

Mr. Shefte: Okay. Thank you.

Mr. Cerizo: Mr. Corpuz, can you initial and date that drawing? And we'll use that as part of the record.

Mr. Corpuz: Sure. Is that adequate?

Mr. Cerizo: That's just for our record. If you adopt that plan there, we'll use that as a record for our files.

Mr. Tavares: For the record, Public Works still have revised plans pending, so this will be an addendum sheet to those revised plans.

Mr. Corpuz: I would submit this as part of the permit plans.

Mr. Tavares: The revised plans that are in?

Mr. Corpuz: Correct, but prior to that, I would want some kind of approval from someone saying that this is an adequate solution.

Mr. Tavares: Okay.

Chairman Endo: Members, any more questions?

Mr. Shibuya: Mr. Chair, I do have a question, but it's on a different map – oh, I mean, floor plan. It's the second floor plan listed as Sheet A-1. If you look on the right side, the overall dimension of the house or the floor, it's 46'11" on the right side. On the left side, you have it noted here as 47'3½". Which one is correct?

Mr. Corpuz: This represents what was built. I had measured these partitions as best I could. There might be some roundoff areas because these are all field measured, because this was as it was built, and I actually had to field measure each window. There might be some roundoff error based on that—4½".

Mr. Shibuya: So you're saying 47'3½"? Forty-seven feet, 3½" is correct?

Mr. Corpuz: It would be the worst case, yes.

Mr. Shibuya: That same dimension on the original approved plan is 44'8", is it not?

Mr. Corpuz: I believe so, but because of the increased width, that now is how much – a little larger.

Mr. Shibuya: Much larger. It's like 2'7½", or is it 3'? It's 3'7½", if my math is right. This is 44'8" and this is 47'3½".

Chairman Endo: Mr. Corpuz, I think he's saying that it's about two and a half feet difference between the old set and the new set.

Mr. Corpuz: Right.

Chairman Endo: He's wondering why is that.

Mr. Corpuz: Because the building grew larger towards the setback area, and that's why we're here.

Chairman Endo: So it was inside the setback, originally, then? And then now it's invading by about whatever—six or 11 inches, or whatever the variance request is.

Mr. Corpuz: Correct.

Chairman Endo: I guess the bottom line is, though, we're certain as to the amount of the encroachment into the setback?

Mr. Corpuz: I went from pin-to-pin. I drew a string, and I measured off of the existing house. I don't think the existing house is square on the lot.

Chairman Endo: Maybe we should ask building permits if – regardless of how much the house expanded, we're pretty certain as to the amount of the encroachment into the setback?

Mr. Tavares: Yes, that's why we're here. Basically, when the house was originally built, the builder seemed like he wasn't following the approved plans. So that's when the encroachment infraction occurred. So he came in for revised plans to approve. And that's when the encroachment was noted. So that's why Mr. Corpuz and his client are here for the variance.

Chairman Endo: Well, I think what Warren – and Warren can correct me, I think what Warren is asking is, do we have a question of whether the encroachment is two and a half feet or the six inches to 11 inches that you stated in the variance request.

Mr. Tavares: No, the encroachment is just as stated in the variance.

Chairman Endo: Okay.

Mr. Cerizo: Warren, if you notice on the original site plan, the setback is a little different. The original setback was ten feet and 12 feet on the side yards. So the side that's in question, the original setback is at 12 feet, and actually, they built it up closer than 12. They were inside the setback area, so now they're right on the setback.

Mr. Shibuya: Mr. Corpuz, for my funny kind of logic here, as a professional, when did you discover this setback problem for the construction not being in accordance with the original plans?

Mr. Corpuz: When the framing was done.

Mr. Shibuya: And what – was the framing all completed then at that time?

Mr. Corpuz: The roofing material was on.

Mr. Shibuya: And the side was not on? Just the roofing and the sides?

Mr. Corpuz: Correct.

Mr. Shibuya: I mean, the framing sides, but not the siding.

Mr. Corpuz: I believe the plywood and the dense glass was on.

Mr. Shibuya: In your estimation, how did you approach this? Did you advise the owner or did you ignore the issue?

Mr. Corpuz: I made – put in a stop work order.

Mr. Shibuya: And is there anything in writing that indicated that you put in a stop work order?

Mr. Corpuz: I notified a building inspector, and we immediately went in for re-permitting.

Mr. Shibuya: And did the work stop at that point?

Mr. Corpuz: No, it did not.

Mr. Shibuya: Why not?

Mr. Corpuz: We felt that the only area that was to be permitted was the area that was in violation, but the whole thing – it was just continued.

Mr. Shibuya: So now you put in a stop work order, and yet the work continues. That's very troubling with me.

Mr. Corpuz: I can't explain it.

Mr. Shibuya: And I can't either. See, it could've been fixed at that point, could it not?

Mr. Corpuz: Not without major structural renovation.

Mr. Shibuya: At this point, it's even more larger renovations.

Mr. Corpuz: At this point, it would be primarily, architectural renovations.

Mr. Shibuya: Mr. Chair, I'll just let others speak and ask questions.

Chairman Endo: Just to clarify on that last exchange, Warren, I think when Mr. Corpuz said it's primarily architectural, he means – you were referring to the plenum wall, correct?

Mr. Corpuz: Right.

Chairman Endo: Okay. Whereas I think Mr. Shibuya was referring to if you had to completely move the house outside of the setback, what would it mean?

Mr. Corpuz: Extensive demolition.

Mr. Shefte: Question for staff. Staff, does this proposal meet with your approval?

Chairman Endo: Which department are you asking, James?

Mr. Shefte: I'm not sure.

Chairman Endo: We'll ask either department to speak on the matter or both.

Mr. Cerizo: The variance is for an area that's less than a foot. So it's – our department, we're looking at – we give you the facts that – the amount that they're asking for a variance. Sometimes the variance is for five feet, ten feet. They're looking for a variance that's inches. So you need to take a look as how the impact – is there going to be an impact on adjacent properties? Sometimes if it's like right on the property line, it can infringe on the neighbor's light and air, light and ventilation. It can affect their fire access in case there's a fire there. But when you look at the amount that they're asking for – This is an area variance. And on area variances, you need to weigh the effects of what they're asking for. And we're giving you the facts that it appears to be a minor deviation and – five to ten percent. And sometimes we've seen a hundred percent. So we're looking at a small deviation. We feel that this may be one of those that may not have – as far as one of the criteria, it doesn't appear to have a major impact on adjacent properties. Also, the fact that the adjacent owner hasn't come in and said, well, I feel otherwise, but there's no response from the adjacent property. Keep in mind that there's other issues on our side that needs to be addressed. And one and three are those that need to be addressed also. So in your review, I think we feel that number two has been – the second criteria has been adequately met, and one and three needs to be addressed.

Ms. Kathleen Acks: Were the adjacent property owners consulted, talked with?

Mr. Cerizo: Well, the adjacent owners were – submitted a – notified by the applicant themselves more than once.

Ms. Acks: Has anybody from your office had any communication with those people?

Mr. Cerizo: No.

Mr. Shibuya: Mr. Chair, if there's no more questions, can I use up my time for a few more questions?

Chairman Endo: Sure.

Mr. Shibuya: As the owner, I counted a number of bedrooms here. And it has eight bedrooms. Maybe this is for Luz. What are they being used for? It seems like it's a hotel.

Ms. Alonzo: Mr. Chair, I have three kids, and I'm doing a home-care. I've been doing home-care for eight years, so they need their own bedroom. And my mother live with me same time with my father-in-law live in my home, so they need their own bedroom. That's why I need it.

Mr. Shibuya: Okay, now when you say "home-care," can you tell me what it is and how many people are you talking about in home-care?

Ms. Alonzo: This is under Hale Makua Foster Family Program, and I have two home-care right now.

Mr. Shibuya: Two people?

Ms. Alonzo: Two people.

Mr. Shibuya: And they are taking one room each or they stay in one room?

Ms. Alonzo: Yeah, it's required to have their own bedroom.

Mr. Shibuya: And will these people be in the up – second floor?

Ms. Alonzo: Oh, no, they're downstairs – living, yeah.

Chairman Endo: Just for the record, Warren, you might want to look at this letter from Donna Kaimi dated August 20, 2007, that discusses a little bit about the home-care thing just for information.

Mr. Shibuya: Thank you.

Chairman Endo: I'll ask a question, then, if there's time. Mr. Corpuz, if you're going to do this plenum wall as a compromise gesture as a condition of the variance, and I think it would be an allowable condition, although I haven't checked with Corp. Counsel yet, do you know the approximate expense to do all of that framing and boxing around the windows, and the moving of the bathtub? Is it going to be—?

Mr. Corpuz: It's going to be substantial. I'm looking at probably \$15,000 to \$25,000 because there's ceramic tile in that bathroom that needs to be removed. There's re-plumbing in that bathroom. The tub has to be physically disconnected and moved 12 inches. And there's new drywall that's going to have to be installed.

Mr. Shibuya: Luz, are you living on this second floor?

Ms. Alonzo: Actually, we still sleeping downstairs. And sometimes if somebody using the bedroom downstairs, then we go upstairs and use the bedroom. And we do some – you know.

Mr. Shibuya: So today, it is in use, then. The second floor is in use by your family members. And how many family members would be using the second floor?

Ms. Alonzo: My children, my mom.

Mr. Shibuya: So it is in use a hundred percent, actually. Thank you.

Mr. Shefte: Mr. Chair, could we review the concerns: the number one and number three that staff is talking about? Unfortunately, I didn't bring my materials with me today and I don't recall what they are.

Chairman Endo: Okay. I have a copy if anybody wants to borrow it. Would you want to read – do you want me to read it aloud?

Mr. Shefte: Yeah, if you would. I think that would be helpful.

Chairman Endo: Okay, I'll read the analysis portion first. So as you know we have the three primary considerations or criteria that we use to determine whether to grant a variance. The first point is whether the strict application, operation, or enforcement of the code provision or provisions appealed from would result in practical difficulty or unnecessary hardship to the applicant. The applicant – I'm sort of paraphrasing, if that's okay. I'm not going to read every word. The applicant stated that strict application of the code provision would result in significant demolition and reconstruction of the existing property thus imposing an economic hardship on the owners. Staff analysis – and by the way, I'm reading from the Department of Public Works' staff report dated August 9. It states the proclaimed additional cost is self-imposed and the unnecessary hardship was also self-imposed when the contractor failed to follow the approved plans. So that was Item 1. You wanted to go to Item 3 also?

Mr. Shefte: They mentioned that number three had to be addressed also.

Chairman Endo: Am I reading the wrong ones? I'm sorry.

Ms. Kapua`ala: No, no. So we have two staff reports. And only the Planning Department actually made a recommendation. The recommendation for the Planning Department was that the variance should be denied based on two criteria which are actually number one and three.

So one, there is no exceptional, unique, or unusual physical or geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area. And then the second condition, which is number three would be the conditions creating the hardship were the result of previous actions by the applicant. That's for Title 19.

For Title 16, the applicant would have to meet just one criteria as Public Works concurred with their analysis. The criteria that they didn't concur with which you would have to find as a fact is that the strict application, operation, or enforcement of the code provisions appealed from would result in practical difficulty or unnecessary hardship to the applicant.

What Public Works said in response to— Well, let me back up. I'll read what the applicant stated. They said that "Strict application of the code provision would result in significant demolition and reconstruction of the existing property thus imposing an economic hardship on the owner." Staff analyzed this as "The proclaimed additional cost is self-imposed, and the unnecessary hardship was also self-imposed when the contractor failed to follow the approved plans."

Chairman Endo: And just by luck, that's the one read. Okay. And I can share this with any of the members who want to read it. Just also just to round it out, it's not – the ones that they concurred with as far as Public Works, they concurred that the granting of the variance would not be detrimental to the public health, safety or welfare. They concurred that the variance would not be injurious to adjoining lots or buildings. And they agreed that the granting of the variance would not be contrary to the purposes of this code and the public interest. So the other three, they're okay with. It's just that first one. Anybody wants to read this, I've got it here.

And I guess just by way of background especially, for Kathleen since she wasn't here, we deadlocked – not deadlocked, we couldn't pass a motion at the very first meeting either to deny or to grant the variance. And it was the Chair that tossed out as a thought that one compromise would be to create a plenum wall or just this fake, nonstructural wall so that the applicant could not use the area that encroaches into the setback. And the idea behind that was just that they wouldn't profit off of invading into the setback. So they wouldn't be able to use that extra space.

Ms. Acks: I do have a problem with the idea that two and a half feet is a big difference. And I understand that the setback is just less than a foot. But it's still the idea that when

you're constructing, two and a half feet is a big chunk. And the idea that you don't notice two and a half feet out of approximately, ten feet, I mean, that's 25%. That's a significant almost eyeball kind of thing for somebody who does that kind of stuff as a living. So it kind of boggles my mind that accidents such as this happens.

I think the – I'm going to just call it a phony wall. I don't know. It doesn't seem to me that it does a whole lot of good. It's like, well, the damage has been done. I don't know. I can see why you ran into conflict because I'm personally conflicted. This is a tough call. I hate to – I really hate to have a precedent where this kind of thing can happen more than once. It's really unfortunate.

Mr. Cerizo: Mr. Chair, just to remind us, the Board, that there's an application in now for that extra two feet. The variance is for six inches on one side. They encroached six inches into the setback area, and 11 inches on the other side. So you're looking at a triangular piece. If you took the whole square footage of that, it would be less than 70 square feet, maybe one half – maybe like 40 square feet. So we're not looking at – it's not two and a half feet that – they could've built it up let's say two feet more if they wanted to. It's just that – well, that's what they did, but you know–

Ms. Acks: I understand that. I'm just saying from a standpoint of plans that have been approved, the approved plans have that difference. So it's just the idea – it would've been easier for me to understand if the plans were right at ten feet, and then there was a six-inch difference. That's harder to eyeball–six inches–than it is to eyeball two and a half feet. So that's where I'm having a hard time. Can you show on perhaps that diagram where you're talking about the six inches and the 12 inches? Where is that triangle?

Mr. Corpuz: I believe that would be on the first set of plans that I submitted.

Ms. Acks: This whole wall goes from – so this is 11 inches here down to six inches over here?

Mr. Cerizo: There is supposed to be nine inches more here and this is supposed to be six inches here. So you're looking at something like that: six inches this side and 11 inches.

Ms. Rachel Ball Phillips: I just have a quick question. If this plenum wall was approved, who would be doing the work because it seems like most of the problem was with this unlicensed contractor that kind of did his own thing and didn't follow the plans? Do you have somebody that could follow the plans properly and do what was intended?

Ms. Alonzo: We'd find somebody else to fix this problem and make sure that they know the rules.

Ms. Ball Phillips: Has anything further been done with the fellow that built the house for you as far as has he – is he going to participate in any of the cost involved? Or has he just left town?

Ms. Alonzo: I tried to call, but he never even respond.

Ms. Ball Phillips: And he's been paid in full?

Ms. Alonzo: Yeah, we give all the money already.

Mr. Shibuya: Mr. Corpuz, can you – I was wondering if you could take a look at the plan. It's just the movement of that one wall. I'd like to move it, if possible, rather than put in that fake wall because from the outside appearance, this is what we had to deal with in a committee – the Dream City Committee. It was never designed for a smaller setback. And it's the standard County setback that we're actually encroaching. And because that community's so close, just putting that fake wall on the inside really doesn't address the appearance from the outside. And that's what's troubling me. If you can go ahead and make it right, tear down that one wall, and move the studs and everything that one foot.

Mr. Corpuz: I think there's an economic consideration that we need to take into account based on the homeowners. With the plenum wall, they're already going to be hit with a fairly significant financial burden. By demolishing the existing walls, it's going to be even greater.

Mr. Shibuya: You see I'm more concerned about later on if we consider the variance with this plenum wall. Then along comes with it is insurance, the hold harmless insurance. So there's a cost there too. If we deny this, and you fix it, then that cost is actually put in to fixing that wall in the proper fashion, and it provides the community with the correct way of doing things in that neighborhood. This could be the start of some encroachment issues that this Board is not willing to address again. We've seen these actions and we don't want this to set the wrong precedence.

Ms. Acks: Could you explain or tell me what the other side of the fence of – the adjacent property looks like? How close is the adjacent property towards – is their setback? In other words, is their setback 20 feet so that there's for all practical purposes 30 feet between the two houses?

Ms. Kapua`ala: Ms. Acks, the staff report from Planning says that "There is an existing single story, single-family dwelling on the eastern property located approximately 12 feet from the property line. However, additions to the single-family dwelling may be constructed with setbacks up to six feet for the first story and ten feet for the second story." You see where that concrete masonry wall is?

Ms. Acks: Right here?

Ms. Kapua`ala: Yes, that's the property line.

Ms. Acks: This is 12 feet?

Ms. Kapua`ala: That's 12 feet.

Ms. Acks: And this is ten feet?

Ms. Kapua`ala: Yes, I measured.

Ms. Acks: That's an optical illusion.

Ms. Kapua`ala: It's hard to tell.

Ms. Acks: Yes, this looks like this is significantly more than this.

Ms. Kapua`ala: Well, there's a setback – a rear yard setback there. So if that house was to extend all the way back to the wall, it would indeed be 12 feet. What you've got to do is draw a line with your eyes from the wall towards you, and that would be 12 feet from what you see as the house. Measuring from the wall to the house is not – is definitely an optical illusion because the house is not flushed to the wall.

Ms. Acks: Looking at this picture, there is a significant overhang between the first floor and the second floor. Is that correct? Is that what I'm seeing?

Chairman Endo: You mean the eave?

Ms. Acks: The eave.

Mr. Shefte: The first floor eave.

Ms. Acks: The first floor eave. What is the situation as far as that eave?

Chairman Endo: Eaves are allowed to encroach into the setback.

Ms. Acks: Eaves are allowed to encroach on the setback?

Chairman Endo: After a certain amount.

Ms. Acks: After a certain amount. Could that eave be part of the deck or is that—?

Ms. Kapua`ala: No, no decks in the setback.

Ms. Acks: But the house next door theoretically, could go up two stories as well?

Ms. Kapua`ala: Yes. And the second story must be a ten-foot setback. The first story can be a six-foot setback.

Ms. Acks: It would've helped me a lot if I had heard that neighbor come in and make an observation. I just – because it ultimately has really a very significant impact on them probably more than anybody else as far as the future sale of their property, and so on and so forth. So I'd like to have them be real clear that before giving approval, I'd want to hear that they understand the ramifications on any decision we would make. And it's difficult for me to make that decision without having that clearly stated.

Mr. Shibuya: The other alternative would be to purchase one foot of property from your neighbor. Has that been addressed? Because now you're saying it's too expensive to move the wall, but we need to make it correct. And to make it correct, the property line is the issue. So if you move the property line, even though it doesn't address it completely, it does fix much of it. And you can still have it without a plenum wall.

Ms. Acks: And they could still go up.

Mr. Shibuya: That's right.

Ms. Acks: Because they're 12 feet.

Mr. Shibuya: That is correct.

Ms. Kapua`ala: Excuse me, Mr. Shibuya. The minimum lot width for an R-2 residential district property is 65 feet. Both properties are 66.02 or so. So they would only be able to purchase a foot.

Mr. Shibuya: That's all you need: a foot.

Mr. Cerizo: Actually, it's six inches. You want them buy six inches to nine inches from the adjacent lot to make it legal.

Mr. Shibuya: I would pursue something like that to make it correct. It was a mistake to continue or having that work continue. Even though you say you had a stop work order, the work continued. So there's some liability here. So I'm not sure that I can favor this fake wall inside because the outside still is the appearance that I need to address in my mind. It sets the wrong precedence for the community. A setback is a setback and it's clearly stated in the code.

Ms. Acks: I like Warren's suggestion. I mean, with Warren's suggestion, you don't have to put up the additional wall. So financially, it might even be a push – I don't know what that cost would be involved in purchasing that land, but at least then you wouldn't have to do all of the – undo the housing construction. The people next door theoretically, if they've got currently a 12-foot setback, even with an 11-foot setback theoretically, they could still go up if that was their preference. So I'd like to see a discussion with them about purchasing that land. I would be much – I mean, that takes the variance away from us, but I think that's a much better solution than putting up a wall that really doesn't impact the outside dimension at all.

Mr. Shibuya: That's right.

Ms. Ball Phillips: I have a question for Planning. How would the logistics of that work as far as somebody trying to adjust their property line? Is it a subdivision process?

Mr. Cerizo: Yeah, it would go through a consolidation, resubdivision of the two lots. Both owners have to agree. And they'd have to still meet the minimum requirements for the lot area and lot width. Being that the lot is 66 feet, it has to be pretty much square. The back side has to be not less than 65 feet. I don't have the dimension shown here, but the minimum dimension that they have across both lots would have to be 65 feet. So they could have an exchange where their side would increase, and then maybe they can give on the other side where there's no building, a compensating area so the lot areas would be the same. So it's a – I'm not sure what the cost would be. They'd have to get a surveyor. They have to go through the whole process of consolidating, resubdivision for review. It would take up to a year sometimes on these subdivision matters. Public Works is the department that would process the subdivision: Development Services Administration.

Mr. Shefte: Mr. Chair, could we ask the applicant how they feel about this just to get an idea of what their thoughts are?

Chairman Endo: Sure.

Ms. Alonzo: I don't understand. What did you say?

Chairman Endo: Maybe Mr. Corpuz could speak.

Ms. Alonzo: If they're willing to sell, then we are.

Ms. Donna Kaimi: (Inaudible)

Chairman Endo: Sure. Could you state your name?

Ms. Kaimi: I'm Donna Kaimi and I wrote to you about this situation. I think in answer – she's willing to pursue anything that would result in her being able to fully utilize her house. This was a huge mistake, granted, made by her and her builder who was a crook, but she's willing to pursue anything. This is a pig in a poke because we have absolutely no idea what it would cost to subdivide or if the neighbor is willing to do it. It could result in costing much if not more than the demolition. But so far as whether or not she's willing to pursue it, she's willing to listen to and pursue anything that can get some resolution for her and this home.

Mr. Shibuya: Mr. Chair, I just want to summarize what Francis had just mentioned in terms of the property line. I'm not too sure that I understand it, so I just want to have you draw it on here, Francis, if you could. Just sort of sketch the property line that you're proposing.

Members of the Board, Francis drew– And I understand what he was saying, but I didn't know whether everybody understood. It's not a straight line, property line. It's a jagged line where this part, the owner gives up, as well as this portion, the owner gives up. And the other neighbor gains – I mean, has to lose that portion, but then, everybody is in compliance.

Chairman Endo: But, Francis, you don't even need to do that. I mean, the neighbor could just sell it, assuming he was willing to sell it, because it's not going to go below a minimum sized area for that lot or anything.

Mr. Cerizo: Yeah, it looks like if they do it like that, the area – area-wise, your lot should be – shouldn't change. So your lot area would maintain – would have to be above 7,500 square feet. And then the lot width is what's of concern, but it looks like we're just looking at a foot or so. It looks like they can lose a foot and still stay below 65 or stay above 65.

Mr. Shibuya: Luz, do you understand what is being proposed here? Maybe, Mr. Corpuz, you can show her.

Mr. Corpuz: Perhaps if we brought that plan up here?

Mr. Shibuya: Yeah, please. Mind you, this is just a sketch. It's a conceptual description of the action that we're possibly proposing.

Mr. Corpuz: Starting from the front of the property, you would concede a one-foot portion of your property to your neighbor. Starting at the right corner of your house, your neighbor would concede a one-foot strip until the back right corner of your house. And from the back right corner of your house to the rear property line, you would concede one foot to your neighbor.

Mr. Shibuya: As long as the two x's equal to the y.

Chairman Endo: Just so we're clear on what we're doing here, Mr. Shibuya is outlining what could be a way to resolve the issue. It's not anything that we can impose upon you or the neighbor. So it's just something that could be done in the alternative assuming we deny the variance is I believe what he's talking about.

Mr. Shibuya: That's correct.

Mr. Hopper: Can I ask Francis a question?

Chairman Endo: Sure.

Mr. Hopper: Francis, this is something that if it was done, they presumably would not need any type of variance?

Mr. Cerizo: That's correct.

Mr. Hopper: So this process would not – they wouldn't have to go through with this process. Of course it's a big if, if they could even do this. We haven't heard anything from Public Works if they could do this, or even if – I mean, the neighboring property owner is apparently not even contacted – has not even said anything about this at all. So this is all very speculative and something that is not at this point being proposed to the County at any point, right? This is something that may be a creative solution in the end, but their proposal right now is on a variance. So you would need to somehow have a consensual waiver of any time requirements for you to decide on a waiver until they could update you on any sort of alternative proposal that they could manage to think up and resolve the issue, which I guess they would perhaps appreciate the creativity with which you would deal with this issue, but it really is outside of the purview of the Board at this time as far as action on the variance. So I mean – I guess for purposes of this decision today, there would, I suppose, possibly be a consensual deferral until something could be done. And I'm not even sure how practical it is that something like this could be done, but it's something that if it was done in the first place or proposed that potentially, you wouldn't even have had to have heard this in the first place. So I'm not sure if this is practical at all or if it's something that can be done or possible.

Mr. Tavares: For Public Works, this theory of bringing in the neighbor and purchasing his property, it's good in theory. We're dragging an innocent homeowner into this mess. If the variance is not approved, the violation still exists. Public Works is going to cite the homeowner for encroachment. What he has to do is come in for a variance again or correct the infraction. It's simple: either the infraction is corrected, or he has to apply for a variance and come to you again.

Mr. Cerizo: Well, the rules as far as the 60-day rule where the Board is required to hand a decision, we can defer it, but only on the applicant's request. Rule 12-801-22(D)(4), when review of the variance application has been deferred at the request of the applicant or delayed as a result of a nonappearance of the applicant, these are one of the conditions where the 60 days doesn't apply.

Mr. Hopper: And in addition, if there's incomplete information, which I think did happen in this case where there were new plans submitted, or it took time for them to review the plans, which is why that period hasn't ended at this point, in addition to the fact there was a voluntary deferral. But as far as how Public Works would proceed with or how Planning would proceed with enforcement while the variance is pending, that's something you might want to bring up with them as far as time limits for initiating this process, or things like that, because it really does take this out of your hand, and it is – frankly, doesn't have much to do with the decision on the variance itself. So I'm not sure how you would separate that from your decision. I wouldn't see it as a condition of a variance, for example, because it would take away any need for the variance whatsoever if done. So it's a bit odd in the way that it would function.

Mr. Tavares: I need clarification. Why would it take away the need of the variance? The homeowner is in violation now with the setback. That's why he came in for the variance. So what would take away the need of the variance?

Mr. Hopper: I was basing that on what Francis had just said about if this transaction was completed and there was a consolidation or resubdivision. And again, this is all very speculative because no one's outlined what this is at all, if there would be a way to actually have the setback be in conformance.

Mr. Shibuya: Mr. Chair, I was thinking in terms of the plenum wall is not agreeable with me because the outside appearance of the structure actually is the problem. It encroaches on the property line. To fix that, I gave one alternative: the owner could possibly move the entire wall a foot and thereby be in compliance, or the person could work on property line adjustments. I could propose that we deny this variance and hold a two-year time limit on this so that the inspectors will allow this to set back for two years while the owner is pursuing other avenues to be in compliance.

Ms. Kapua`ala: Mr. Shibuya, there's no conditions of approval for a denied variance. A denial is a denial. The only option would be a deferral at the request of the applicant. Planning will not enforce on the setback issue, but like Wendel said, the Department of Public Works may.

Mr. Hopper: Yeah, there wouldn't be any way to direct either department whether or not to issue a notice of violation. That's with the sole discretion of the Planning Director and the Public Works Director, respectively. So if the variance was denied, they would be

subject to immediate enforcement. That's absolutely correct.

Mr. Cerizo: Well, one thing if the applicant – well, the applicant has indicated that they may be conducive to the variance if the adjacent owner is agreeable. So perhaps they could request a deferral to explore that decision. And then if it's denied on the owner's part, the adjacent owner's part, and they have explored that position, and I'm not sure if that would change your minds to approving or disapproving the application, but to allow a deferral for them to explore that. That might make somebody's – change someone else's decision. So if that's what the owner wants to do, then it's up to the Board to accept that or not.

Mr. Shefte: I would like to see us put this to bed, because I think what we're talking about here is just something that could go on for a long, long time. I think that the Chairman's solution with this phony wall is acceptable to me, and I'd like to see us pass the resolution.

Mr. Shibuya: Like I mentioned before, I don't see this phony wall as being a solution because the encroachment is from the exterior, not from the interior. So I'll be voting against it.

Mr. Shefte: Warren, you're talking – I mean, it's impractical to expect these people to tear down the house. It just doesn't make any sense. That's like asking them to recreate. It just doesn't make any sense. They have to come up with a solution.

Mr. Shibuya: Understand, they had the option to – the stop work order and they did not.

Chairman Endo: Okay, members, when you speak, please direct your discussion to me as the Chair rather than to each other. Thanks. And go ahead, Warren, if you want to say something.

Mr. Shibuya: No, I gave alternatives, and I think I'm just trying to mitigate some of the hardship here. I've stated my position.

Mr. Corpuz: Mr. Endo, I really think since this alternative was brought up, you should ask the homeowner if she's even willing to pursue this avenue.

Chairman Endo: Sure.

Ms. Alonzo: We are willing to do if the neighbor's willing to sell.

Chairman Endo: Okay. Well, I think, if you guys don't mind, I'll make a suggestion. I think that given the bare quorum that we have today, it doesn't look like we'd be able to pass any motion out. So I think we should defer at this point. And I know Kathleen had

a lot of concerns about the neighbor. And perhaps you could ask the neighbor if they're interested in selling a little strip of their land along the property, or you might also ask them for a letter, or to come – I mean, coming down during a workday might be difficult, but maybe a letter stating their position on whether they support your request for a variance, or if they think that the incursion into the setback affects them in any way, negatively, because I think Kathleen would feel – or other members might also feel that they're the party that would be the most effected by this encroachment into the setback. So something from them could be important in our minds.

Ms. Acks: I think if we do that, then the deferral needs to come from the applicant, though, not from us. So we need to be real, real clear from the timeframe standpoint that this deferral is being requested by the applicant and not this Board.

Chairman Endo: That's true. I mean, we could ask Corporation Counsel or Planning staff to advise on this. I think it's a technical procedural issue. It's impossible if we take no action today that the matter might be automatically granted if there's no waiver of the 60-day time limit. So it's possible that by taking no action, it might be approved, but it depends on the exact scenario on the legal rules. So Corporation Counsel?

Mr. Hopper: If I may, Mr. Chair? There's a couple of things here. One is that the way the 60-day period is phrased, it actually states, "The Board shall render a decision on a variance within 60 days from the close of the public hearing on such variance otherwise the variance shall be deemed granted. However, the foregoing shall not apply," and then they have a few exceptions. And one of them is, "When review of the variance application has been delayed or deferred due to inadequate information concerning the nature, scope, or description of the subject matter of the variance application, or due to revision of the variance application." Now, you did have several different sets of plans given to you, which I believe could constitute inadequate information, which would make the 60-day period inapplicable by reading – which is a reading of this rule. And in addition, "When review of the variance has been deferred at the request of the applicant or delayed as a result of a nonappearance of the applicant." And I believe that earlier you did have a deferral at either the request, or at the very least, the consent of the applicant to provide further information. And that was on the record before. At this point, I believe that the review has been delayed or deferred because of inadequate information provided. And that the date that you received that adequate information, if you do believe that you have received adequate information at this time is today because apparently, you had new plans today. Is that correct?

Chairman Endo: Some of them, yeah.

Mr. Hopper: Some – there was not full information until today. So I would be willing to say that an interpretation of this rule would be that this 60-day period would begin to run from the date that you have your information. In this case, it does say "The date from

the close of the public hearing on such variance,” but then it says “The foregoing shall not apply.” And basically that if it’s been delayed or deferred due to the inadequate information, you’ve just got adequate information today.

Ms. Acks: I would still think it would be cleaner if there was agreement from the applicant that she’s willing to defer. If she says that she’s willing to defer, then we’re not going to run into the problems that we would run into if she doesn’t want to defer. I learned a lesson once.

Mr. Hopper: If particularly, you need that information regarding any other proposals, which I suppose could end up being conditions, but as far as the neighbor, your issue is with wanting to know what the neighbor – his opinion is and things like that. So that could be a deferral in order to get that information to you. And so, yeah, that could be an option.

Ms. Acks: And I think just even talking about the additional wall, and then all of a sudden taking a look at an option of land purchase, if we agree to a variance with the wall, and then they decide to purchase the land, it just seems like we’re putting a couple of things on the table that really needs a little bit of time to take a look and see which is a viable option.

Chairman Endo: Okay. So anybody want to say–? Warren, go ahead.

Mr. Shibuya: Go ahead, Jim. Jim first.

Mr. Shefte: I would like to move that we defer in that I think that we’re indecisive amongst the membership. I think the more information and the other possibility should be explored.

Mr. Shibuya: I’ll second the motion, but I’d like to ask Luz if she’s willing to provide this information to us. We’re deferring because we would like to have information from you as you discuss it with your neighbor in terms of doing a property line swap or purchase.

Ms. Acks: I also want on the record that she agrees to the deferment. That’s real crucial to me that we’re not making a decision to defer and it’s something that she is opposed to. So I would like to have as part of that discussion that she agrees and is supportive of that deferral, whatever that terminology is.

Chairman Endo: But that’s not part of the motion, though. That’s just a separate request you have of the homeowner.

Mr. Shibuya: We could make it a part of it. We can amend a – make a friendly amendment here.

Ms. Acks: Can we find out how she feels about that?

Chairman Endo: Yeah, I mean, we can't mandate that she waive her thing. That's something we have to ask them and see what they want to do. So let's ask the applicant whether or not they are agreeable to waiving the 60-day rule as far as our time limit for a decision-making on this matter. Mr. Corpuz or--? Keeping in mind that even without your granting of a waiver of the 60-day time limit, we already have the opinion of Corporation Counsel that in his opinion, the deadline is extended anyway based on the need for additional information and things like that.

Ms. Kaimi: The 60 days would begin today?

Mr. Hopper: In my opinion because it was deferred in the past because there was inadequate information, it would. However, the Board members feel, and I don't disagree with them that it would be prudent to get -- to have the applicant request a deferral if she's looking at other options besides the -- possibly talking to the landowner which as it appears at least for some members would be relevant to their decision-making.

Ms. Kaimi: But you have a motion on the floor right now?

Chairman Endo: We do have a motion on the floor. And we are in discussion on the motion, but we are asking this question of you as part of our discussion for that motion.

Ms. Kaimi: So you're asking if she would request a deferral?

Chairman Endo: No, no. Well, she could request a deferral too. That would be an alternative. If she wants to request a deferral, then we'll probably change our motion.

Mr. Hopper: You'd still have to move to defer.

Chairman Endo: We'll still have to move to defer, yes.

Ms. Kaimi: Okay. So you have to do that first?

Chairman Endo: No, but they want to -- as part of our discussion to decide how to vote on the motion, they've asked this question of the applicant.

Ms. Kaimi: She's not opposed to a deferral.

Chairman Endo: She's not opposed to a deferral.

Mr. Shibuya: Is she agreeable to that deferral so that you have time to talk with your

neighbor and look at alternatives including redoing the wall?

Ms. Alonzo: I agree, Mr. Chair.

Chairman Endo: Okay. Okay.

Mr. Shibuya: So the applicant agrees.

Chairman Endo: Right. So any further discussion on the motion to defer? No? Since I think this is about to end the matter, and this might be slightly off topic, I just would want to make my final remarks on the matter before we vote on the motion, if that's okay.

When we come back for this matter after a deferral, and hopefully we hear from the neighbors, if they're willing to do the boundary line amendment through a consolidation resubdivision, that'll be great. If they're not, but they support the variance because they don't mind the encroachment visually or for any other reason, if they support the variance, I would take that as being very important to me. And I would probably from my side I'd want to support a motion where we do the plenum wall, but perhaps take it out for the bathroom so that they don't have to move the tub and everything, because we can try and have them do some of the – in other words, I don't want my plenum wall idea to be so onerous as to be unreasonable. That's just my personal position on that. Anybody else have any discussion? Okay. All those in favor of – I assume it'll be deferred to the next meeting? Maybe we should ask staff first.

Mr. Shibuya: No, until she– Give a time limit.

Mr. Shefte: It can't be more than 60 days.

Ms. Kaimi: I'd like to ask that it be at least not the next meeting but the following meeting because she has to investigate the cost involved, and discussions with her neighbor, and all these kinds of stuff, and it may not be possible to do that in two weeks.

Chairman Endo: Let's ask – well, two things: we need to know the maker of the motion's feelings, but also staff's suggestion as far as the next date.

Mr. Cerizo: It would be in November, the first meeting in November. Our next meeting is October 25th. So if they want to – if they can't do it next meeting, it would be November 8th.

Chairman Endo: Okay. With that in mind–

Ms. Acks: I'm clarifying that the applicant is requesting that we defer until November 8th. And at November 8th, is that when the 60 days begin?

Ms. Kaimi: Well, you have a motion on the floor that – all she said is she doesn't oppose the motion, but you haven't decided whether you have a deferral or not of your own yet.

Ms. Acks: I'm just trying to clarify. Based on some past history, I would have a tendency to, for the lack of being diplomatic, I would probably vote down the applicant if I had to choose today. So I'm giving – what I would like to encourage the applicant to do is to become much more proactive and request the delay. And I think that would make it smoother so that we don't get into a situation where something is decided in a way that we don't want it to be decided.

Ms. Kaimi: My question is that since you have a motion on the floor, that has to be resolved before she can actually– So you have to either vote down your motion for a deferral so that she can then apply for a deferral, because if you vote up your motion for a deferral, you already have a deferral.

Chairman Endo: Okay. Let's just look back at the rules. In terms of the 60-day time limit, if we grant a deferral at the request of the applicant, then that is one of the basis for suspending the 60-day rule. So by their acknowledging that they're in concurrence with the deferral, we could possibly interpret it from a legal standpoint that they have requested it.

Ms. Kaimi: If you'd like to vote down your deferral, she will then apply for and ask for a deferral, then it will all be on her, which would make Mrs. Acks or Ms. Acks happy.

Mr. Shibuya: Okay, go ahead. I'll do that, then.

Chairman Endo: Well, you can just withdraw your motion, if you want to do that.

Mr. Shefte: Now, I'm confused. Now you're talking about suspending the 60-day rule. I don't want to do that. The 60-day rule, I think, needs to stay in place, because that gives the applicant some incentive to get on the horse and solve this problem. So let's not do anything that's going to suspend the 60-day rule.

Chairman Endo: Oh, no, the 60-day rule was putting us in a corner because after 60 days, it's automatically granted. So we wanted to at least temporarily suspend it. But you're right, as far as how long it should be suspended, that's another question. So, Corp. Counsel, do you want to say anything on that procedure?

Mr. Hopper: Well, the way the rule basically is phrased is that there can be constant deferrals as long as it's the applicant requesting or you have incomplete information. And there's a couple other exceptions which I don't think apply here. The rule is not incredibly clear about when there is a suspension of that rule or the rule does not apply,

whether or not it's 60 days from the date where you take the application up, 60 days from the date where you have the information before you, or if the 60-day rule doesn't apply at all at any point because you've been given inadequate information. And I would be willing to state in the case of inadequate information, it would be logical that the 60-day period would begin to run from the date that you had your adequate information. That would be one reasonable interpretation of the rule in my opinion. If the applicant's requesting a deferral of the item, I would not necessarily have that type of interpretation in that if at the next meeting that they request a deferral to, if they do not request another deferral, and you're beyond the 60-day period from when you had adequate information to make the decision, then I would recommend that you take action at that meeting and make a decision if there's no deferral requested by the applicant in that case.

Mr. Shefte: Okay, could I amend my motion, then?

Chairman Endo: Sure.

Mr. Shefte: I'd like to amend my motion to say that in that we do not have adequate information—the neighbor's feelings on the situation which we'd like to know—then we defer based on that.

Chairman Endo: Okay. Is there a second?

Mr. Shibuya: I'll second again.

Chairman Endo: Okay. Discussion? Okay, good. Oh, Kathleen?

Ms. Acks: I just would like to have on the record as well that the applicant has agreed that the deferral is not going to be an issue and used against us.

Chairman Endo: Okay. All right. All those in favor of the motion which is to defer until the first November meeting—

Mr. Shibuya: We're waiting for information.

Chairman Endo: While we're waiting for further information—

Mr. Shefte: Defer until such time that we feel we have adequate information.

Chairman Endo: Oh. So you don't want to defer to a certain meeting?

Ms. Shibuya: No, they may not have that data.

Mr. Shefte: I'm trying to give them a little leeway, but not too much.

Chairman Endo: Okay. That's fine. Okay, so—

Mr. Shibuya: It's a friendly amendment.

Chairman Endo: No objections, so as amended. All those in favor say aye. The Chair votes aye.

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

VOTED: To defer until such time that the Board feels it has adequate information.

(Assenting: J. Shefte, W. Shibuya, R. Ball Phillips, K. Acks, and R. Endo.)

(Excused: H. Ajmani, U. Schulz, W. Kamai, and S. Castro.)

Chairman Endo: **The motion is carried. The matter is deferred pending the obtaining of the further information as stated in the motion.**

C. APPROVAL OF THE FOLLOWING MEETING MINUTES:

1. AUGUST 23, 2007 MEETING

After due discussion, it was moved by Ms. Acks, seconded by Mr. Shibuya, then

VOTED: To approve the August 23, 2007 meeting minutes as presented.

(Assenting: K. Acks, W. Shibuya, J. Shefte, R. Ball Phillips, and R. Endo.)

(Excused: H. Ajmani, U. Schulz, W. Kamai, and S. Castro.)

2. SEPTEMBER 13, 2007, SITE INSPECTIONS AND MEETING

Mr. Shibuya asked for the following corrections to the September 13, 2007 site inspection minutes:

Page 4, "Four solid concrete walls."

Page 8, "How about an above ground pool?"

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

VOTED: To approve the September 13, 2007, site inspections and meeting minutes with the two corrections as noted by Mr. Shibuya.

(Assenting: K. Acks, W. Shibuya, J. Shefte, R. Ball Phillips. and R. Endo.)

(Excused: H. Ajmani, U. Schulz, W. Kamai, and S. Castro.)

3. SEPTEMBER 20, 2007 MEETING

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

VOTED: To approve the September 20, 2007, meeting minutes as presented.

(Assenting: W. Shibuya, J. Shefte, K. Acks, R. Ball Phillips. and R. Endo.)

(Excused: H. Ajmani, U. Schulz, W. Kamai, and S. Castro.)

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chairman Endo: Moving onto the Director's Report.

Mr. Cerizo: No change.

E. NEXT MEETING DATE: October 25, 2007

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:12 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
James Shefte

Members Excused:

Stephen Castro, Sr.
William Kamai
Harjinder Ajmani
Uwe Schulz

Others:

Francis Cerizo, Staff Planner
Trisha Kapua`ala, Staff Planner
Michael Hopper, Deputy Corporation Counsel
Wendel Tavares, Development Services Administration, Department of Public Works
Colleen Okazaki, Development Services Administration, Department of Public Works