

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
AUGUST 9, 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, 1:34 p.m., Thursday, August 9, 2007, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

B. PUBLIC HEARINGS

- 1. 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: Would the Planning Department Staff please read the first item on the agenda?

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

Chairman Endo: Thank you. Will the applicant's representative please come to the podium and state their names?

Mr. Joel Corpuz: Good afternoon. My name is Joel Corpuz. I'm the structural engineer of record on the design drawings.

Ms. Luz Alonzo: Good afternoon, everyone. My name is Luz Alonzo. I'm the owner of 508 South Kamehameha, Kahului.

Chairman Endo: Good afternoon. Are the applicants amenable to or agreeable to waiving the reading of the staff report? Usually if you've already had a chance to see the Planning Department's staff report, people are okay without – with letting us dispense with having to read into the record.

Mr. Corpuz: That's acceptable.

Chairman Endo: Okay, thank you. What I'd like to do is ask the Planning Department to let us know whenever they're ready to do the video presentation. In the meantime, we'll just proceed with other parts of the application.

Ms. Kapua`ala: I think we can go ahead now. It's a real quick video.

Chairman Endo: Okay.

Ms. Kapua`ala: That CMU rock wall is the property line. So if you can imagine, it extends out. This is the Alonzo residence. This first floor is not the problem. The second floor setback is encroaching into the ten-foot requirement for both the Housing and the Planning Department's Code. I didn't get to do a 360-degree. This is in Kahului right on Kamehameha Ave. It's a main artery so I think you all are familiar with Kahului. And again, this is the corner of the Alonzo's house. The property line would be around here which is a ten-foot setback, and the neighbor which is about a 12-foot setback from their property line, the same property line. I can replay that. I know it was kind of quick. Would anyone like to see it again? Thank you.

Chairman Endo: Mr. Corpuz, would you like to make a presentation on behalf of the applicant?

Mr. Corpuz: Sure. The original design drawings showed that the upstairs was to be set back from the downstairs, I believe, two to three feet. For reasons unknown, the contractor set the upstairs almost parallel to the existing wall downstairs thereby encroaching within the ten-foot yard setback. And without doing excessive demolition, we're here today applying for a variance.

Chairman Endo: Okay, is there anyone in the public who wishes to testify on this matter? Okay, let the record reflect that nobody has signed up and no one has indicated their desire to speak. At this point, we will ask the Planning Department Staff if there are any letters of support or opposition?

Ms. Kapua`ala: Other than what's noted in the staff report, there are none.

Chairman Endo: Okay, thank you. At this point, may we have the Planning Department's recommendation?

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

1. There is no exceptional, unique, or unusual physical or geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area; and
2. The conditions creating the hardship were the result of previous actions by the Applicant.

Based on the foregoing findings of fact and conclusions of law, the applicant has not

met all of the requirements for the granting of the subject variance. Therefore, the staff recommends DENIAL of the subject variance.

In consideration of the foregoing, the Department recommends that the Board of Variances and Appeals adopt the Department's staff and recommendation reports prepared for this August 9, 2007, meeting, and authorize the Planning Director to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Board of Variances and Appeals.

Chairman Endo: Is there also a Department of Public Works and Environmental Management recommendation?

Ms. Kapua`ala: There is no formal recommendation. Here today is Mr. Wendel Tavares. He's the Acting Supervising Building Permit Plans Examiner, and he's here to represent the Department of Public Works, should you have any questions regarding the recommendation.

Chairman Endo: Because I do note for the record that there is a report, then, from the Department of Public Works.

Ms. Kapua`ala: Yes, Mr. Chairman, there is a report, however, no formal recommendation.

Chairman Endo: Okay. At this time, I'd like to open it up to the Board to ask questions and also to begin deliberation on this item.

Mr. Stephen Castro, Sr.: Mr. Chairman, I have a question.

Chairman Endo: Sure.

Mr. Castro: Who was the contractor and were they aware of the setbacks?

Chairman Endo: Okay, so you want to ask that of the applicant?

Mr. Castro: Yes. Who was the contractor and were they aware of the setbacks? And did they ever inform you that--?

Mr. Corpuz: They did it without consultation. The contractor was not a licensed contractor. His name was Christopher Martinez. Only once I paid a site visit did I find out the plans were not being followed. I did put in a stop work order, and re-permitted the entire addition. And at that point, only then we discovered there was a setback issue. But the roof was on, the walls were built, and to meet the setback requirements, would've resulted in excessive demolition.

Mr. Castro: Thank you.

Chairman Endo: Hari?

Mr. Harjinder Ajmani: Yes. You are the engineer of record?

Mr. Corpuz: That is right.

Mr. Ajmani: So these are not the drawings that you had submitted for a permit?

Mr. Corpuz: Not the first one, no.

Mr. Ajmani: Okay, so there was another set of drawings submitted which the contractor was supposed to build from?

Mr. Corpuz: Correct.

Mr. Ajmani: And he, on his own, decided to build something different?

Mr. Corpuz: Correct.

Mr. Ajmani: And then you were called in to correct the drawings? Or did the Building Department stop it? The inspector?

Mr. Corpuz: I wasn't called in. I did – I was not aware that the building permit had been issued. I just happened to be on Kamehameha Avenue at the time. I noticed the building was being put up. I paid a surprise visit. I found that the contractor was not in compliance. And the inspector and I issued a stop work order.

Mr. Ajmani: What did the owner have to say about that?

Mr. Corpuz: Well, she entrusted the contractor to comply, so they were not aware.

Mr. Ajmani: But under whose instruction the contractor took the liberty to build something different than what showed on the drawings?

Mr. Corpuz: That, I don't know.

Mr. Ajmani: Did somebody advise him to do it?

Mr. Corpuz: No.

Mr. Ajmani: And so, is he already paid? Or is he – what is his status? What is the

recourse or recovery from him, from the owner?

Mr. Corpuz: Beside legal action?

Mr. Ajmani: Yes.

Ms. Alonzo: I don't have a contract with him. He just come and help and do the job.

Mr. Ajmani: Did you give him the drawings to work from? Or did he just come in and started building whatever he felt like?

Ms. Alonzo: I give the drawing to him.

Mr. Ajmani: Okay, thank you.

Mr. Warren Shibuya: Mr. Chairman, I have other questions. If members— Go ahead, Uwe.

Mr. Uwe Schulz: Yeah, I'm a little bit confused here. You prepared this set of drawings. Is that correct, as the structural engineer?

Mr. Corpuz: That is true.

Mr. Schulz: Who prepared the first set of drawings?

Mr. Corpuz: I did.

Mr. Schulz: And why are they different or are they the same?

Mr. Corpuz: They're not the same. The upstairs was supposed to be set back approximately, two to three feet from the existing wall below, but the contractor put the right sideyard setback outside of the – just outside of the existing wall below.

Mr. Schulz: Okay. Do you have a set of drawings with the old—? Because we have only one set of drawings, I guess, how it is existing today. But do you have a set of drawings showing us the solution you had on the first go around, and how you took out the building permit?

Mr. Corpuz: I don't have one with me today.

Mr. Schulz: You don't have that?

Mr. Corpuz: Not today.

Mr. Schulz: Okay. Then I have another question in regards to your general practice when you design a home. How often do you normally go out and make sure the contractor does a proper job? It appears to me with your testimony that construction was started and you didn't visit the job site for quite a long time because the contractor was finished when you saw that. So don't you go out to the job site on a regular basis? Could you have stopped him?

Mr. Corpuz: I usually try to do three to four visits a job depending on whether the contractor contacts me.

Mr. Schulz: But you understand my question, right?

Mr. Corpuz: I do.

Mr. Schulz: If you would've gone out there on the first three weeks of construction start, you would've found out that he was not following the drawings, and at that point, you could've stopped them, and told him, you're in a setback violation if you continue, right?

Mr. Corpuz: No one notified me, but that is true.

Mr. Schulz: Thank you.

Chairman Endo: Warren?

Mr. Shibuya: I just have a question in terms of the residents wanted to expand the house for what reason? You bought the house. It was single floor. And now you want two stories. Why?

Ms. Alonzo: Well, I have a brother and mother to come and live with me, so I would like to have their own place to live.

Mr. Shibuya: And did you know that there was a setback? That the walls should have been on the second floor moved back away from the walls below?

Ms. Alonzo: I don't know exactly what is the procedure for building two stories.

Mr. Shibuya: No, but you would've had a concept or at least an understanding of what you are building and why you're using this building for.

Ms. Alonzo: Well, I trust this person to do it, but—

Mr. Shibuya: No, my question is, you would know why you're using the second floor for because you have your brother and other occupants. You're expanding the house, but

you know the plans were built because you're making payments. You reviewed the drawings. So when you look at the house—

Chairman Endo: Warren?

Mr. Shibuya: Yes?

Chairman Endo: You should limit your questions to asking them questions, not to – if you want to make a point in deliberations to the other Board members, you're totally free to do so, but I don't think we – we're not here to argue and drive whatever point you're trying to make to the testifier. So if you could please just if you have question, ask her the question, and let her try answer to the best of her ability.

Mr. Shibuya: Okay. I have other questions in terms of when you review the property, and you bought the materials, would you not have – because you have expanded the house, you would need more material. Did you have to pay for more material?

Chairman Endo: Just to help clarify, what he means is more than what's on the plan because it looks like your house is actually bigger than what the original plans say. So he's saying, wouldn't it have come up when you had to buy materials? You would've had to actually buy more lumber, more whatever, roofing material, whatever it is. That's what the question is.

Mr. Corpuz: I think I can better answer that.

Chairman Endo: Sure.

Mr. Corpuz: The general contract – well, the contractor question, skimmed out on a lot of material. And that was one of the reasons I put a stop work order in. There were beams missing. There were joists that was contrary to the building plans. So, no, she would not have noticed more building material than what was originally required.

Mr. Shibuya: So in your opinion, then that structure today with the stop order is insufficient and not substantial enough to stand today?

Mr. Corpuz: Well, we corrected – I had him put in the beams that were necessary to support the building as it is now.

Mr. Shibuya: But you're perpetuating an error rather than correcting the error.

Mr. Corpuz: I believe the only error was on the right side setback. The framing plans were not being followed.

Mr. Shibuya: So why did you not correct it at that time? Because it was unsubstantial and insufficient, and that would be the time to do the correction rather than go ahead and continue with it.

Mr. Corpuz: I had them put in the beams that was required to safeguard the occupants, but there was nothing I could do about the right side yard setback.

Mr. Shibuya: I'll let other members.

Chairman Endo: Rachel?

Ms. Rachel Ball Phillips: Was the building permit taken out as an owner/builder permit? Or was—? I know that you said that the fella that built it wasn't licensed. Was a licensed contractor involved at all either through the building permit? Or who took out the permit?

Ms. Alonzo: Owner/builder.

Chairman Endo: Is that it, Rachel?

Ms. Phillips: I have a question, I guess, for – I don't know if this is the appropriate time for Public Works.

Chairman Endo: Sure.

Ms. Phillips: When there is an owner/builder permit, who's responsible for seeing that the plans are followed? The owner themselves?

Mr. Wendel Tavares: If the plans were stamped, it's normally the architect or the engineer of record.

Chairman Endo: Uwe?

Mr. Schulz: Wendel, I have a question to you: what's the minimum width of a bedroom?

Mr. Tavares: The minimum width of a bedroom would be seven feet. The minimum square footage would be 70 square feet.

Mr. Schulz: Okay. Thank you.

Chairman Endo: I have a question for Public Works. I noticed that you don't have a recommendation here, but in your staff report, it appears that you stated that the granting, although contrary to the Housing Code, would not adversely impact the public.

Mr. Tavares: Correct.

Chairman Endo: And you've also concurred that the – or you've concurred with the applicant that the addition is not injurious to the adjoining properties?

Mr. Tavares: Correct.

Chairman Endo: Are you aware of any complaints, or is the neighboring property owner aware of what's going on? Have they made any position on this?

Mr. Tavares: We haven't had any complaints come in from the neighbors.

Chairman Endo: Okay. Any other questions? Hari?

Mr. Ajmani: Yeah, actually, I have trouble understanding the timeline of this whole thing. So when was the permit issued, approximately?

Mr. Corpuz: The first permit?

Mr. Ajmani: Yeah, the first permit which had the corrected layout, which had the actual true layout that you had originally designed.

Mr. Corpuz: The one previous to the one that's—?

Mr. Ajmani: Yes.

Mr. Corpuz: '05? 2005?

Mr. Ajmani: Just approximately.

Mr. Corpuz: Midyear 2005?

Mr. Ajmani: So, mid-2005. And since it was an owner/builder permit, was there an inspection that were called out? Isn't the contractor supposed to get the inspection done directly from the Public Works?

Mr. Corpuz: I believe the foundation inspection by the building inspectors was called and approved.

Mr. Ajmani: How about the framing inspection when they built this?

Mr. Corpuz: When I put a stop work order, the framing inspection had not been called

out yet.

Mr. Ajmani: Okay, so this was caught before the framing inspection was done?

Mr. Corpuz: Correct.

Mr. Ajmani: And at that point, you allowed it to just proceed the way it is instead of asking to deframe it and do it correctly? Is that true?

Mr. Corpuz: I asked him to, for the safety of the occupants, I asked him to put in the beams that were originally on the plans. And at that point, we reapplied for a permit because now we're dealing with a larger building of which a portion is un-permitted. And only then we discover the setback.

Mr. Ajmani: Okay, so you didn't make any attempt to correct the dimensions at that time?

Mr. Corpuz: I don't believe I could have without destroying the entire upper story or a large portion of it.

Mr. Ajmani: Okay, and were you involved in the selection of the contractor?

Mr. Corpuz: No.

Mr. Ajmani: Did the owner know that he was an un-licensed contractor?

Ms. Alonzo: Yes.

Mr. Ajmani: Okay, so you purposely chose him because cost was low? Or he was somebody that you had trust in or something? Or was it a bid? Did you bid it to multiple contractors and chose him?

Ms. Alonzo: Yeah, somebody bid, but he get the lower price, so I chose him.

Mr. Ajmani: Okay. Thank you.

Chairman Endo: Uwe?

Mr. Schulz: I have one more question. Am I correct understanding you that there were two building permits issued?

Mr. Corpuz: There was one building permit issued. I do not believe this part has been issued yet until we can come to an agreement on the variance. I believe this is still in

the permit building.

Mr. Schulz: So you have a permit with the old solution, and you're in the process presently to obtain a building permit for the new version? Is that correct?

Mr. Corpuz: We have a permit for the old version, and we're in the process of obtaining a permit for the second version.

Mr. Schulz: Okay. Thank you.

Ms. Phillips: I have one more question. Have you attempted to seek any kind of recourse against the contractor either directly, or through reco. or anything like that?

Mr. Corpuz: Have you tried getting money back from Chris, or consult the counsel of a lawyer to see what you can do?

Ms. Alonzo: No.

Mr. James Shefte: I have a question. If you were to go back to the contractor, and tell him, you know, you're going to have to tear this down and build it correctly based on his original plans, you haven't tried to do that? Is that right?

Ms. Alonzo: Actually, there's no contract about him and us.

Mr. Shefte: Well, he's done the work. So you, in fact, have a contract. Even though there's not one signed, you're still working under an agreement of some sort.

Ms. Alonzo: Yeah, what I mean is we don't have a black and white. We just talk about the price. So—

Mr. Shefte: Okay. Thank you.

Mr. Shibuya: Mr. Chairman, I find this thing very troubling in that you're asking to correct something that is very blatantly wrong. And you have a professional, and I'm not trying to throw stones at you, sir. There's professional ethics and integrity here. And if you knew about this, and you had an opportunity to stop, why did you not have it corrected?

Mr. Corpuz: I did place a stop work order, but like I said, without extensive demolition of the upstairs— The roof was on already. The wall was built.

Mr. Shibuya: I believe Hari asked about the framing inspection. When was that done?

Mr. Corpuz: By the building inspectors or by myself?

Mr. Shibuya: Either or both.

Mr. Corpuz: The building inspectors, they had an opportunity to inspect the building. And I believe I did a framing inspection at the same time I stopped the job.

Mr. Shibuya: But the roof was already on.

Mr. Corpuz: The roof was on.

Mr. Shibuya: See, that's where I'm very, very troubled. Framing means framing, not roof on.

Mr. Corpuz: What I mean by roof is trusses and plywood.

Mr. Shibuya: Explain some more.

Mr. Corpuz: The walls were sheathed, and the dense glass was on. The roof was sheathed. The roof trusses were up and sheathed. And I believe to the best of my knowledge, roofing paper was already on.

Mr. Shibuya: Shingles on?

Mr. Corpuz: I don't believe they was on at that time.

Mr. Shibuya: Windows framed? Doors framed?

Mr. Corpuz: Only rough openings.

Chairman Endo: I have a question for Public Works again. Assuming that we – I noticed that Val Martin at the Fire Department said that they didn't have a real problem with the encroachment to the sideyard setback, I guess, because it's relatively minor, but they did want to see what could be done to try and deter this from happening in the future. So I just had a question in my mind. Assuming we granted the variance, which would mean that they would then get an after-the-fact building permit, I believe, since the house looks like it's substantially done already, at that point, they would still be subject to a certain amount of fine, I believe, because they've actually constructed prior to issuance of the new correct building permit? Is that correct or have I got that backwards?

Mr. Tavares: Because the building violation wasn't issued, it wouldn't come in as after-the-fact. What happened is a stop work was issued. He revised the plans. He's coming for revisions right now to the plans. And we're not going to approve the plans unless the variance is approved. So there wouldn't be a fine assessed to this project.

Chairman Endo: Okay, so they'd be all right as long as they get this variance?

Mr. Tavares: Correct.

Chairman Endo: Okay.

Mr. Castro: Just one more question: now that the roof is on, has all the electrical and the plumbing been installed as well?

Ms. Alonzo: Yes.

Mr. Castro: Okay. Thank you.

Chairman Endo: Hari?

Mr. Ajmani: I think looking at this picture here, it looks like the house is pretty much all complete. So it means that while the stop work order was issued, the contractor was allowed to keep on working, and doing what he was doing before, and continuing with his illegal construction. And you didn't stop him or anybody didn't stop him?

Mr. Corpuz: I don't believe so.

Mr. Ajmani: Why? Can you answer why?

Mr. Corpuz: Well, the stop work order was issued by myself and the building inspector. But once corrective measurements as far as the stability of the building was acceptable, we let him continue as far as trying to fix the structure, but he was supposed to stop at that point, but he kept on going. And only then did I discover the roof was added and the windows installed.

Mr. Ajmani: Yeah, but I think it should've also had electrical inspection, the plumbing inspection. You mean all of that happened while the house was red-tagged?

Mr. Corpuz: Yes.

Mr. Ajmani: So is there any record of these inspections that plumbing and the electrical inspection had been done?

Mr. Tavares: I can't speak for plumbers or the electrical. For Public Works, the building inspectors, the homeowner would call in for a framing inspection. When a building inspector does a framing inspection, the walls, the windows, the roof everything is complete. The rough framing is there. The electrical and plumbing should be in. That's the point where we come in to do the framing inspection with the assumption that

they're following the approved plans.

Mr. Ajmani: Okay, so, I had my house built, and I was told that I can't do anything until the inspection is done. And so how was this allowed to go on with all these violations? Obviously, it had not passed. It shouldn't have passed plumbing inspection or other inspections.

Mr. Corpuz: There was an electrical and plumbing inspection that it was approved even in the face of this stop work order.

Mr. Schulz: I don't know if this is relevant or if I'm out of order. Could I ask the homeowner to tell us who her advisor is? This lady who is sitting there? So I can get a clear picture because I don't know who she is. Is that out of order?

Chairman Endo: Sure. No, that's fine.

Ms. Alonzo: Oh, I'm sorry. I didn't introduce my very, very best friend: Donna Kaimi.

Ms. Donna Kaimi: I'm a friend of hers, and—

Chairman Endo: Please speak into the mic.

Ms. Kaimi: I'm a friend of Luz's and I have some experience in interior design. So we talked about colors for her house and different things. And I was involved in that respect, not in the construction of it. But I do remember her telling me that the electrical inspector was coming, and that's what I was reminding her that I remember her mentioning to me there was an electrical inspection – inspector coming. And that was only in my casual experience with the house.

Mr. Schulz: Okay. Thank you so much for letting us know who you are.

Chairman Endo: Sure. Jim?

Mr. Shefte: Yes, I have one more question. Has the interior of the house been completed? Are the bedrooms – is there paint on the walls, the floors are in, and carpets, and all that sort of stuff?

Ms. Alonzo: Yes.

Mr. Shefte: So it's all done?

Ms. Alonzo: It's all done.

Mr. Shefte: I see. Thanks.

Mr. Castro: I just have one more question. And, I guess, you mentioned earlier the minimal requirement was seven feet for a bedroom?

Mr. Tavares: The width.

Mr. Castro: The width. I'm looking at the plan. You're talking about six feet.

Mr. Schulz: What sheet is that on?

Mr. Castro: Okay, I'm sorry. I'm looking at the wrong – that's the windows. Sorry.

Chairman Endo: I have one question for Public Works again. We have read your report, but do you have anything else you'd like to add about this matter that you could help us think about the issue?

Mr. Tavares: I don't have anything to add, but we did concur with the decision and order from the Planning Department.

Chairman Endo: With the recommendation of the Planning Department?

Mr. Tavares: Yeah.

Chairman Endo: Okay.

Mr. Schulz: I have a little unusual question, Wendel. Is there a limit on bedrooms in homes? Or can you have 20 bedrooms? Ten bedrooms? I mean—

Mr. Tavares; Unfortunately, the Building Code doesn't regulate the number of bedrooms or bathrooms.

Mr. Schulz: Okay.

Mr. Tavares: I think the only requirement that would regulate the amount of bathrooms and bedrooms would be from the Health Department.

Mr. Schulz: Okay. Thank you.

Mr. Shibuya: There was some mention in terms of the amount of window space available, and it seemed like there was an inadequate amount. Has that been fixed or rectified?

Mr. Corpuz: To the best of my knowledge, yes.

Chairman Endo: Hari?

Mr. Ajmani: I have one question for the Building Department. So other than this setback requirement, is the house the way it is shown right now, totally legal in terms of square footage, and bathrooms, and bedrooms, and—?

Mr. Tavares: Yes, it is.

Mr. Ajmani: Thank you.

Chairman Endo: I have a quick question. I guess I'd like to ask Francis Cerizo from the Department of Planning if he has any comments he'd like to add on the matter.

Mr. Francis Cerizo: Well, I'm just looking at what the variance request is. And we're looking at a variance request that deviates from the standard of ten feet. And what the building is built at is 9'1". And the other side is 9'6". So you're looking at an error in the construction of six inches on one side, and 11 inches on the other side.

So in order to – when we look at – this is considered an area variance. And area variances differ greatly from use variances. When you look at an area variance, the criteria says, do you have an effect on the adjacent property? Is it going to affect the house on the adjacent property? There's all of these criterias is the one that you look at. And without looking at uniqueness like we do in use variances, we're looking at the impact of the construction. Sometimes you might have a variance that's just for one inch. Now, does it have an impact? So this is something that you're going to have decide if it's going to have an impact. Does it meet the criteria? And if you feel that it meets the criteria or not. The impact of it, if it's being denied is that they're going to have to tear out the wall. Probably have to put in – well, you can ask the architect as to – or the engineer, what would be necessary to – if it's denied, what kind of reconstruction is required? I mean, I would ask that question.

Chairman Endo: Thank you, Francis. Would the applicant be able to speak to that: the amount of demolition that would be necessary, etc.?

Mr. Corpuz: Retrofit of the trusses, demolition of the wall upstairs and windows, demolition of the column and footings downstairs, new columns and new footings that are ten feet from the yard setback, new beams, new walls above that, and probably chopping off a small portion of the roof above.

Chairman Endo: Have you ever had this situation occur before?

Mr. Corpuz: This is the first.

Chairman Endo: So it's not like your plan or your strategy on how to get a bigger house approved for your client is it?

Mr. Corpuz: No, it is not.

Mr. Shibuya: I was just wondering why you did not provide the original drawings when this second drawing was not approved, but yet you show us the second drawing.

Mr. Corpuz: There was a form work that prepared by the Building Department, and I provided each item as was required. I was not aware that the original would be required.

Mr. Shibuya: But you, as a professional, would know that the original plan was approved. And of course, that would be the basis of demonstrating or showing as an evidence to us, or exhibit to us. Why was it withheld?

Mr. Corpuz: I did not withhold it on purpose. I don't have any devious reasons for hiding it from you.

Mr. Tavares: I don't think the plans was withheld. I think it was an oversight on our part not asking him for the original plans. I apologize for that.

Chairman Endo: Hari?

Mr. Ajmani: A couple of questions about your statement about what needs to be done. So on the first floor of this drawing that you have shown us now, there are rock wall footing showing?

Mr. Corpuz: Yes. I believe Sheet S-1.1 would be much clearer.

Chairman Endo: Excuse me, what sheet was that?

Mr. Corpuz: Sheet S-1.1.

Mr. Ajmani: Okay. This one suffices for my purpose, what I want to ask. On this footing that you've drawn right now, is this the way it was built by the contractor when he put the second story up?

Mr. Corpuz: Originally, yes, those blocks were there—the square ones, those hatched square ones.

Mr. Ajmani: Okay, these new blocks were the one shown on your drawings? The first drawings?

Mr. Corpuz: The square portion, yes.

Mr. Ajmani: Okay, so if you look at these dimensions, overall dimensions, it says it's 46 feet, 8 inches from out to out of this block, the new blocks.

Mr. Corpuz: Correct.

Mr. Ajmani: And you look at the second floor plan, and they are projecting out so that it becomes 47-foot, 3 and a half inches. So they are basically projecting about four inches beyond?

Mr. Corpuz: A little bit, yeah. Once I issued a stop work order, I had to hand-measure what was built. So those measurements could've been off by a quarter of an inch.

Mr. Ajmani: So the outside wall is projecting four inches out on both sides? Is that true?

Mr. Corpuz: A little bit, yes.

Mr. Ajmani: Okay, so if the wall were to be brought in to match this column, there should be no foundation work involved. Why would there be any new CMU wall?

Mr. Corpuz: Well, the beam right now lines up with the hatched area shown on Sheet A-2. For the beam to move in six to 11 inches, the columns and the footings would have to move with it.

Mr. Ajmani: I don't understand. I think your columns are – see, you haven't shown any drawings here for your – structural drawings of any kind. So, is your beams sitting on the CMU wall?

Mr. Corpuz: The hatched portion. It is not sitting on the existing portion of the wall.

Mr. Cerizo: You might refer Sheet A-5. It shows a section of the building. There's a beam there that's hanging, and perhaps that's where the columns are on the right side of the picture, right side of the plans.

Mr. Ajmani: Okay.

Mr. Cerizo: The beam that's under the wall, I believe, sits on the foundation.

Mr. Ajmani: Hatched?

Mr. Cerizo: Yeah.

Mr. Ajmani: And this was all done by the contractor without your knowledge and without any direction from you?

Mr. Corpuz: Correct.

Mr. Ajmani: Okay. Thank you.

Chairman Endo: Uwe?

Mr. Schulz: Francis, I have a question. I might've missed it in my package altogether. It might've been an oversight on my part, but as far as I know, setbacks were established to – for various reasons: your privacy, and so on and so on, but it also relates to fire protection. And I was wondering if there was any comment made by the Fire Marshall because they don't like houses close together. The closer the houses are together, the more likely is when a fire breaks out on one house, the fire jumps onto the next house. So I think that was one of the criteria why setbacks are in place in planning. Am I correct?

Mr. Cerizo: Well, perhaps you should ask Public Works. I know that from the Zoning's perspective, the setbacks are for light and ventilation.

Chairman Endo: Just for the record also, there is a June 21, '07 letter from the Fire Department. It's part of the Department of Planning's report where Val Martin says that the 11-inch and 6-inch encroachments do not appear to have a significant difference regarding firefighting applications. But they did also say, like I said before, they would want to discourage this from happening in the future.

Mr. Schulz: Thank you. I suspected I missed it.

Mr. Shibuya: I'm trying to be fair to the neighbors too. When you say you're just about 11 inches encroaching times the height, times the length of the entire structure on that one side that is encroaching, we're talking approximately, 700 square feet that is now moving closer to the neighbors. To me, that's a significant encroachment. And it's not just looking at 11 inches versus ten feet. I'm not going by that. If it's just the corner that's encroaching, that's okay. I think we can address that. But we got 700 feet here at least closer to the neighbor. And now the neighbor is, I guess, maybe restricted in terms of what they can build. You've got what you want, but they will not have what they would like to have. So there's a lost opportunity here for them, too, even though they don't say anything now.

Chairman Endo: Well, let's ask Public Works about that. Is this going to impact the

ability of the neighbor to build any structures?

Mr. Tavares: No, it's not. And to elaborate on Uwe Schulz's question earlier as far as fire protection, fire rating, the 1997 Uniformed Building Code is a national-based code. It's recognized nationally. Just for your information, a setback for a single-family dwelling can be three feet from the property line. And that is the Building Code or the fire-based code. Now, we go with the most restrictive which is the Housing Code which allows six feet for a single story and ten feet for a two-story. So as far as your question as far as fire, the Building Code allows you to go three feet to the property line.

Mr. Ajmani: I guess the setback can include the eave of the house? That is not counted? Is that right?

Mr. Tavares: Not in the Building Code, but in the Housing Code it does. In the Housing Code, you're allowed to encroach – if the setback is six feet, you're allowed to go three feet within the setback area.

Mr. Ajmani: Okay, so if the fire code says you can build a house three feet from the property line—

Mr. Tavares: That's the Building Code.

Mr. Ajmani: Building Code. So then you cannot have an eave because otherwise the eaves will be touching on both sides of the property.

Mr. Tavares: Correct. The three feet is the Housing Code. Now, with the Building Code, you can go halfway into the three feet.

Mr. Ajmani: That's we call a condo.

Chairman Endo: Okay. Does anyone wish to make a—? Francis, would you like to make a comment?

Mr. Cerizo: Yeah, I just wanted to – I'm not sure what Warren – as far as the 700 square feet, what we do have in our staff report, it indicates the square footage that's additionally within the setback area. And on Item No. 9 in our background, it states that approximately 233 square feet of the subject dwelling is located in the ten-foot sideyard. So just for your information.

Chairman Endo: Thank you, Francis.

Mr. Ajmani: I think Warren was multiplying 70 feet length of the house times 11 inches which is about 700 square feet on each side.

Mr. Shibuya: That's correct.

Chairman Endo: Right, but it varies from 11 down to four. So it's actually a triangle more than a rectangle. But anyway, I think, not to push you folks too much, but I would like to move on to the next agenda item before I have to leave. So seeing as we've talked about it quite a lot, the Chair would urge somebody to make a motion at this time. Hari?

Mr. Ajmani: Yeah, I think I find the whole circumstances of this house, and construction, and design bizarre. And I am of the opinion that we should go with the Planning Department recommendation and deny the variance.

Chairman Endo: Okay, so that's a motion to deny and to adopt the Planning Department's report and recommendation.

Mr. Shibuya: I'll second it.

Chairman Endo: Okay, and seconded by Warren. Okay. Discussion? Uwe?

Mr. Schulz: I just want to make one comment. I think that we discussed the reasons for the errors and so on, but my personal opinion is that it is a tremendous hardship on any family to take an entire floor off and redo an entire floor. So financially, I feel it's a tremendous hardship. And, yes, it was a mistake, and, yes, it wasn't supervised correctly. That's all correct, but I think to move these walls with windows installed and drywall installed, to me, it creates a tremendous hardship. And I would not recommend denial of the variance only because of the tremendous financial hardship.

Chairman Endo: Rachel?

Ms. Phillips: I do agree that it's going to be a financial hardship, but I feel that it was self-imposed by your selection of an unlicensed contractor. And it's a really hard lesson to learn this way, but that's why contractors have to go through a process to learn the laws, be insured, and everything to prevent this kind of situation from burdening a homeowner. And by failing to work with a licensed professional for a large project like this, I think that that's unfortunate, but the outcome is what it may be.

Chairman Endo: Hari?

Mr. Ajmani: I think, Uwe, I understand where you're coming from, and I think maybe at this stage it will be a substantial expense, but I think they have purposely made it worse by not stopping the work when they found out the mistakes. And so it's totally self-inflicted. And I would even go that it might be even deliberate.

Chairman Endo: For the record, I have to state that I am in pretty much agreement with Uwe on this matter that definitely, we, as a Board, do not want to encourage people to flaunt the regulations and ordinances, and then to come here thinking it's easy to just get a variance. So that's definitely, a balancing factor. But on the other hand, to impose when the neighbor's not complaining, there's no problem, it's only a relatively small amount, it doesn't hamper the neighbor's ability to build, and it'll probably be \$50,000 to \$100,000-worth of work to – or more to remedy the situation, I kind of empathize for the owner, and feel that we should grant the variance, personally.

Mr. Castro: I, too, would tend to agree with Randal and Uwe, the hardship. Granted that there was procedures that weren't followed, but this is going to be a very expensive lesson for them, but I don't think this is something that would set a precedence. Now it's going to be prevention.

Chairman Endo: Jim?

Mr. Shefte: I will be voting for the recommendation or the motion. I think this – if we were to allow this to go through, it does set a precedent. I mean, you've got a home here with ten bedrooms in it. And Lord only knows what the final use it will be. And for them to come to us asking for a variance for something that should've been caught and corrected, procedures followed correctly is wrong, and I'll be voting against it.

Chairman Endo: For the record, you'll be voting for the motion to deny the variance. Okay, if there are no further discussion, all those in favor of the motion to deny the variance, please signify by raising your right hand and saying aye. All oppose, please say nay.

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

VOTED: To deny the variance.

**(Assenting: H. Ajmani, W. Shibuya, R. Ball Phillips, and
J. Shefte.)**

(Dissenting: U. Schulz, S. Castro, and R. Endo.)

(Excused: K. Acks and W. Kamai.)

Chairman Endo: **Okay, the motion fails, four to two, and the Chair votes no, so four to three.** We could entertain another motion, but it looks quite clear to me that it's going to be deadlocked at this point. Probably, unless Corp. Counsel has another idea, probably somebody would have to move to defer to the next meeting or so, and then the matter would be– Yes, Uwe?

Mr. Schulz: I would like to move to defer it until our next meeting. And I would strongly urge the structural engineer who prepared the set of drawings to provide us with a set of drawings to each of us showing the first design solution so that we can understand why it was changed, because I do not believe that a builder would build something totally different from on his drawings, and what the building permit dictates to him. I feel that somewhere along the line that something went on that the builder built something totally different not according to the building permit plans. So I would like to request or respectfully request that you provide us with your first rendition of the remodel.

Mr. Corpuz: I will provide eight sets.

Chairman Endo: Okay, so that's a motion to defer. Is there a second?

Mr. Castro: Second.

Chairman Endo: Okay, it's been moved and seconded. Is there any discussion? Before we take the vote, I would like to make one – throw out one comment or a possibility. And this is just food for thought, not that we have to act on it today, but one possibility that just came to my mind was that if we did grant this variance, but wanted to make sure that – it's not like the homeowner is trying to profit off of getting the variance that we could perhaps make a condition where we grant the variance so they don't have to redo walls and structural stuff, but have them put up a plenum wall over the area where the encroachment is so they don't actually get the use of the interior space. So like they would get no bigger house because we grant them a variance than what he should by code. So there would be like a gap in the interior where they put an extra wall of one foot or so. We'd call it a plenum wall, an additional wall. That way we'd know that, hey, they got – they don't have to go back in and tear down walls, but they don't get any extra interior space as a way to profit off of getting a variance. That was just some thought that came to my mind at this point. Otherwise, is there any other discussion on the motion to defer? Okay, all those in favor, please say aye. Opposed? Nay?

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

VOTED: To deny the variance.

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

(Excused: K. Acks and W. Kamai.)

Chairman Endo: **Okay, the motion is carried.** The matter is deferred until the next meeting. And staff will let you know when that is.

Ms. Kapua`ala: Mr. Corpuz, could you submit to the Department, 15 plans instead of eight? Thank you.

Chairman Endo: Okay, let's go to the next item.

2. CARL KAUPALOLO, CHIEF OF THE DEPARTMENT OF FIRE AND PUBLIC SAFETY requesting a variance for a 2-foot, 4-inch setback from the western property line for a storage and cascade system building, whereby 10 feet is required for the Pa`ia Fire Station located at 179 Hana Highway, Pa`ia, Maui, Hawai`i; TMK: (2) 2-6-004:003. (BVAV 20070004)

Chairman Endo: Trisha, do you need a short recess? No? Okay, so let's call the next matter: the application by Carl Kaupalolo, Chief of the Department of Fire and Public Safety.

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

Ms. Kapua`ala: And I do have a video for the Board. I guess the video card on this laptop needs to be upgraded. Forgive the glitchiness.

This is Hana Highway, and the Pa`ia Fire Station, which used to be the old Makawao Courthouse. Again, this is a view from on the property. The cemetery next door with a thin – an easement between the property and the cemetery. So the fence here is – that's the property line, the trash enclosure. And the existing metal shed which houses lawn equipment, that would be removed should the variance request be granted. A closer view.

Again, there's Emi Place which is a 24-foot – no, I'm sorry. It's a ten feet wide access easement and a flag stem in-between this single-family dwelling right here. And this is on the County's record as a single-family dwelling. It's zoned business country town. Just to give you a perspective of the existing setback. So down here is that ten-foot wide Emi Place, and the dwelling almost to the zero lot line.

This is the opposite end. So this is the metal shed. We were previously at the other end of the trash enclosure. This is from Hana Highway. This is a shop that sells beads and the like, a garage or a carport, and in the back would be that single-family dwelling with that bamboo fence, Emi Place, the property. This shot is of Emi Place alone. So two properties have access to their homes through Emi Place, legal access. And this is just to kind of show the perspective between the single-family dwellings and how far the proposed structure will be.

The second single-family dwelling, it's actually another property. Here's the neighbor. He's building a house right now. I think there's one more shot after this.

This is where the cascade system is currently located and weight room/laundry room. And they would like to move the cascade system out into the storage shed, the proposed structure.

And finally, this is the other end of the property. And the purpose was to show the alternative that the Planning Department purposed.

This is the last shot. This is the access easement that's next to the cemetery. And again, you'll see the property. I'll order a new video card tomorrow. Thank you very kindly.

Chairman Endo: Will the applicant please come forward, speak into the mic., and state your name?

Captain Dan Cretton: Dan Cretton. I'm a Captain with the Maui County Fire Department.

Chairman Endo: Good afternoon. Captain Cretton, are you amenable to waiving the reading of the staff report?

Captain Cretton: Yes.

Chairman Endo: Thank you. Would you like to make a presentation for this Board?

Captain Cretton: Yes. I have – I'm unfamiliar with this process. What I did was I went through the staff report point-by-point, and I made copies. I don't know if I should distribute them to you or–

Chairman Endo: Sure.

Captain Cretton: So, yeah, maybe I'll just try and read it. The staff report recommends denial of the variance under the analysis that the Fire Department as the petitioner has failed to produce evidence that the second of three requirements for approval. They're in agreement with the first and the third. The basis for denial is on requirement two: that strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. In the analysis they state that area variances are typically considered less serious deviations from the zoning scheme, and that practical difficulty is the standard usually applied. And finally, practical difficulty is a relative concept. So what I wanted to – no. 1, this is an area variance so it's less serious. And no. 2, what is relative?

So, no. A, and I was a little disconcerted when, you know, you guys were talking about six inches to 11 inches, and we're talking about— But I hope that — well, no. A, they say how substantial a variance is in relation to the requirement? And I can see that it's true that it is a 77% deviation whereas ten feet is required, we got two feet, 4 inches. But I propose that relatively, which is a term they use, in considering the existing land use parameters, this is not substantial. The building will still be a minimum of 12 feet, 4 inches from the existing buildings. It will be a solid, concrete wall adjacent to a ten-foot access road. In residential zoning, you have multi million-dollar homes with six-foot setbacks. Homeowners can look out a window, listen to a conversation or the stereo over their neighbor with only 12 feet distance between them. So I hope I made a point there that there is 12 feet, 4 inches even though, I guess, because of the zoning, it's ten feet even in a single story. The zoning is country town business or something. So rather than the six feet, we have ten feet on our side, and then ten feet on their side. But if it was residential, you would have six feet on our side, and six feet on theirs. And this one story, storage shed would be within those parameters. And it actually is residential on the other side. So relatively speaking, I'm hoping that you folks would consider that 12 feet, 4 inches is actually plenty distance. And again, there's not going to be a window. There's not going to be people in this building. It'll be a solid, concrete wall.

And then B — well, the staff report mentioned three things that they considered: A, B, and C. So I addressed each one individually. B, whether a substantial—oh, I guess I left a word out there—change will be produced in the neighborhood, or a substantial detriment to adjoining properties created. The staff report states that the structure's size and the amount of noise produced by the cascade system will increase significantly. The structure will be located behind the existing hollow tile, trash bin enclosure, and the roof line will only be slightly higher. When the system is in use, it does not preclude the enjoyment of the areas on the other side of the wall in the same building. I was a Captain at this station for three years and can personally attest to this fact. Maybe that wasn't clear. In other words, Trisha showed where the cascade system is now. And presently where it's located is — presently, it's located right in this area right here. This is where the fire trucks park. And these bay doors are pretty much always open. And the room where the cascade system is has two double doors and it's pretty much always open. So the sound now can come straight out. There's nothing, no walls, or anything blocking that sound from going out into the neighborhood. And no one has ever complained. Although it is going to be closer now, the cascade system, there's going to be a solid, concrete wall between it and these doors. And we can make sure the doors are always closed, but any sound, even if you left the doors open would be aimed toward the fire station. Right now, what I meant was that cascade system is in this building. And it is kind of loud when you're out on the apparatus floor. But if you go inside the building, the kitchen is right here, there's a T.V. room right here, you don't even notice it. You don't have to turn the T.V. up. So when there is a wall buffering that system as there will be here, it might even produce less noise than it does right now

with no wall between it going out into the neighborhood.

Chairman Endo: Captain, what is a cascade system?

Captain Cretton: It's a compressed air system that fills the SCB—self-contained breathing apparatus, the bottles that we carry on our backs when we go into a structure fire.

And this new location, going back to Point B toward the end, this new location will place a hollow, tile wall between the machines and the neighbors. In their report, the neighbor that is the closest, that 12 feet, 4 inches, 12 feet, 4-inch distance to an existing house is on Parcel 9. And I have a signed statement from the owner, Richard Marcum, of Parcel 9. It states:

I'm aware of the Department of Planning's staff report recommending denial of the Maui Fire Department's variance request. I am the owner of Parcel 9 that is cited in this report and I have no objections to the granting of this proposed variance.

So I don't know. For the record, I give that to who or—?

Chairman Endo: Yes, could you—? I think Planning would like to have a copy of that for the file.

Captain Cretton: And then going on to Point C, whether the difficulty can be obviated by some other method feasible for the applicant to pursue other than the variance. The report suggests that it may be possible to relocate the proposed storage buildings to the opposite eastern side of the property. This would not be possible. There's only a three-foot wide grass area on the side of the building. And the remainder of the property is paved and needed for ingress of the fire truck. And actually, that's slightly incorrect and I really noticed it when Trisha showed the video. There is a little place right in the front on Hana Highway that maybe you could get that building. It's a little bigger grassy area. But I don't think — I'm almost certain that wouldn't be allowed because when I was trying to solve this problem, one of the things that everyone told me was that because of the historic significance of the building, anything that we do — no. 1, anything we do to the physical building would be next to impossible to get approved. We gotta touch the actual building that's there. And no. 2, anything that we do outside would have to be kind of like not very obvious. So if we built this shed right there on Hana Highway, the only place that we could that Trisha mentions on the east side, it would be — I mean, as you're driving down Hana Highway, you'd turn to look at the fire station, you'd look at the shed first. It'd be right there in front of you and this fire station behind it. Where we are going to locate it now, if you remember the video, when you look at the fire station, you'll barely notice it. Right now, you're looking at that hollow tile, trash enclosure wall

that's about six feet high. It'll be on the other side of that and you'll just see a slight – the roof line might protrude maybe two feet above that trash enclosure. So it'll be – I mean, almost invisible. It won't change the – when you look, you're still going to see the fire station and just a little roof line above that trash enclosure of this shed. It won't be very obvious at all, the change to the–

And actually, I don't – I guess I didn't really even state why we're asking, why we need to do this. Well, that was in my – in the original request, yeah?

Chairman Endo: I think we've all read that section.

Captain Cretton: You've read that, yeah.

Chairman Endo: Basically, you need the space in the interior of the building.

Captain Cretton: Right, for a wellness fitness room. That – where the compressor is now is going to be the weight room. There's no room there, yeah. That's it.

Chairman Endo: Okay. Thank you, Captain Cretton. Any questions from the members? At this time, I want to open it up for public testimony on this matter. Anyone want to speak? Seeing no one, we will close public testimony. Members, do you have any questions for the Fire Department applicant? Yes, Uwe?

Mr. Schulz: Yeah, I would like to ask something to the Fire Department. Are these compressors very similar to a dive shop where they fill their tanks?

Captain Cretton: Probably, yeah. I've actually never been in a dive shop, but, yeah, it's the same thing. A scuba tank is a self-contained underwater breathing, so, yeah, they're the same thing.

Mr. Schulz: So how many compressors are you running there?

Captain Cretton: Just one. It can fill three bottles at a time.

Mr. Schulz: Okay.

Captain Cretton: And the only time we run it is in the daytime unless there's a major incident. If there's a major fire where we're working all night which happens, I don't know, maybe once a year, if that.

Mr. Schulz: Yeah, sure, but I was wondering why the structure is so substantial because a dive shop has a tiny, little cubicle, and they're filling 50 tanks or 100 tanks a day. And my question is, why is the structure so large if you have only one compressor?

Captain Cretton: Well, the compressor is about three feet – ours, anyway. I'm not sure what – I've never seen a dive shop one. Ours is about three feet wide and about six feet, six or seven feet long. And also in that room where the compressor is right now is our racks where we have stored hoses, and we have stored SCBA bottles, storage. I want to get all of that out of that room.

Mr. Schulz: Okay, so it's not just a compressor. It's not just a filling station.

Captain Cretton: No, it's storage also.

Mr. Schulz: So it's a multi purpose structure.

Captain Cretton: Well, that's the two purposes. Everything that's in that room right now, which is the SCBA, the compressor, and the storage racks, we want to get out of there into this outside building.

Mr. Schulz: Okay, thank you.

Chairman Endo: Okay. Hari?

Mr. Ajmani: Captain, you said that there's a solid wall in the – solid wall so the sound from the compressor would not go to the applicants in the back side.

Captain Cretton: Correct.

Mr. Ajmani: But I noticed that in the elevation that each of these sections has a pretty substantial vent on the back side.

Captain Cretton: We can eliminate that. I didn't even notice that.

Mr. Ajmani: This is the kind of thing I used to work with so that's why I can immediately see them. I think the other issue is about the lightness of the kind of roof you're proposing. That will allow all the sound to go through. And I was wondering if something can be done about it at least for some distance on the back side. It could be like a concrete roof or something that will keep the sound in. And also, it will be helpful in the fire safety.

Captain Cretton: I'm not really very familiar with the engineering parts of it. I'm glad you pointed out the vents because that's not needed. We just put one of these cascade systems in at the Wailea Fire Station into an existing room. It's enclosed. There's no openings at all in it. They have to have one opening on one side of it to allow some ventilation, but those vents you mentioned can be eliminated.

As far as the ceiling, I see it has a half-inch gypsum board now. Maybe if we double that up, it should absorb a lot of the sound. As far as putting a concrete roof on it, I can talk to the – if we had to, I guess, but that seems like that might be a lot more involved in putting a concrete roof on it than– I think an extra layer of gypsum board, although I'm not an engineer, or maybe two layers, make it instead of one 5/8ths, put two or three to absorb the sound.

Mr. Ajmani: I think where I'm coming from is that in – where I did most of my practice in San Francisco, they used to allow a four-hour construction wall, which is actually your CMU wall will be a four-hour wall. And if you're going to extend that four-hour to another five feet away from the property line, that would – and you would do those kinds of things to make it legal in San Francisco. I don't know what the local codes here are, so that will be something to think about.

Chairman Endo: Warren?

Mr. Shibuya: I just wanted to reassure you, Captain, that there's a difference between the previous issue and the case. That was residential and yours is zoned into a P-1, public/quasi-public district, and so it's very different. And the standard of care is a little different. And the opportunity to be more gracious here, I think, is present more so than in a residential area. You have less residents. And on one side, you do have very quiet citizens. And on the other side, of course, you have neighbors like any other residence.

Captain Cretton: Oh, yeah, the cemetery you're talking about, yeah.

Mr. Shibuya: Yes. My concern, too, is like Hari is saying. I realize that whenever you compress energy, there is energy, this explosive possibility because of metal fatigue. You do go through testing, and you do have procedures in which you insure the safety there. And so therefore, the walls must be strong enough to withstand that inadvertent accident, if you will. It's the same thing like filling up truck tires because they are in excess of 60 pounds per square inch type of pressure. And so you do have to use extra care in how you fill them or store the energy, if you will.

In terms of – Hari's given you some very good points there. And of course, I like photovoltaic, so I'm just going to do – I don't see why you can't even put that thing on the roof because it's facing the south. So why not use that south energy there? But that's the County's call. I have no objections on this. Thank you.

Chairman Endo: Any other questions for Captain? No? Okay, the Chair would encourage a motion from someone. Warren?

Mr. Shibuya: Mr. Chair, I'd like to move that we accept this request for a variance in the placement of the cascade and storage facility as requested by the Fire Department.

And then the Fire Department, I'd like to ask them to consider some of the suggestions of my colleague here: Mr. Ajmani.

Mr. Schulz: I second it.

Chairman Endo: Okay, it's been moved and seconded to approve the variance as requested. And I assume that'll be to also – you need to specify the findings of fact that you would adopt, Warren.

Mr. Shibuya: The conditions, the variance is unique in the sense that it is a fire station. And it's using a historical area, historical building, which cannot be reconstructed or redesigned. And it is being – the storage area is outside of that building, and it's very less conspicuous. And so therefore, it is unique. And it does allow for – and it does not really alter the neighborhood character.

Strict compliance with the applicable provisions of this title would prevent this reasonable use of the property. And I think because of the nature of the function of the Fire Department, they do need to provide for this – they need the space to provide for these tanks, the filling of the tanks, as well as storing of the tanks, as well as storing of the fire equipment. And so I don't see this as a detriment. I see this as a positive, as a means in which we are using the property in a very reasonable way. Much of the storage is indoor and not exposed outside. So those are the alternatives, and I see that this is very worthwhile.

That the conditions creating a hardship were not the result of a previous action by the applicant–no. It's just that you inherited this historical structure and the property. So therefore, you're doing the best you can, and I applaud your resourcefulness in using this property as well as you can. Thank you.

Chairman Endo: Okay, any discussion? Uwe?

Mr. Schulz: Warren, I was wondering if you might want to entertain the idea to include some kind of language in your motion that the design of the building, the roof design, and the fascia, and so on that there should be an attempt made to follow the Pa`ia historic design guidelines.

Mr. Shibuya: I am very amenable to that, and we can include that, Uwe.

Mr. Schulz: Thank you.

Chairman Endo: Hari?

Mr. Ajmani: I think we should also include some of the suggestions about removing

those vents from the rear yard and trying to make the roof a little more sturdy and fireproof compared to what they have. And maybe this all can be incorporated into what you were saying, Uwe, that they can build the structural roof, and then do something historic on top of it.

Mr. Uwe: I agree.

Chairman Endo: Are there any objections to amending the motion in that manner? Seeing none, the motion is so amended.

Ms. Kapua`ala: Could I add something, Board? That the roof – the condition where the roof is to be more sturdy and fireproof, if that could be reviewed and approved by the Department of Public Works?

Mr. Schulz: Yes.

Mr. Ajmani: Yes.

Ms. Kapua`ala: And also of the vents, removing of the vents.

Mr. Ajmani: Yes.

Ms. Kapua`ala: Thank you.

Chairman Endo: Okay, no objection to that? Seeing none, so amended. Any further discussion? No? All those in favor of the motion to grant the variance with the conditions and suggestions as noted, please signify by raising your hand and saying aye. Opposed?

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

VOTED: To grant the variance with the conditions and suggestions as noted,

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

(Excused: K. Acks and W. Kamai.

Chairman Endo: **Okay, the motion is carried–unanimous. Congratulations, variance granted.**

Captain Cretton: Thanks.

C. APPEAL

1. **To determine a hearings officer to preside over the following matter:**
 - A. **BERNADINE SILA appealing the Planning Director's notice of violation (NOV 20070001) for a second floor setback of six (6) feet whereas ten (10) feet is required, for property located at 52 Ohukai Street, Kihei, Maui, Hawai'i; TMK: (2) 3-9-041:010. (BVAA 20070003**

Chairman Endo: Okay, moving on quickly since some of us have to leave, the next item, the appeal, that has been deferred again. Correct, Francis?

Mr. Cerizo: That's correct.

Chairman Endo: Okay, so we'll skip that item.

D. COMMUNICATION

1. **Discussion of the Proposed Amendments to Chapter 801 Rules of Practice and Procedure for the Board of Variances and Appeals. The proposed amendments are anticipated to streamline the processing of appeals from notices of violations of Titles 12, 14, 16, 18, 19, and 20 of the Maui County Code.**

Chairman Endo: The next item is Item D-1, proposed new rules. Would James like to discuss that one?

Mr. James Giroux: Yeah, I've got the rule – these proposed rules, and I have a memo attached to them. Basically, this is coming out of our Department. We wanted to be a little proactive and help out Planning in looking at the issue that we've been having to deal with, with the resources within our Department as far as handling contested type cases.

We really wanted to focus on what we call the notice of violation type of cases. And this is basically, anything within the County where a Department can give a private citizen a fine. You already have dealt with some of these in your – I believe a high percentage is in your Title 19. And that's where you have zoning violations. People who are being cited such as you saw the variance today, if that person didn't come in for a variance, they very might have been cited for a notice of violation for violation of the Building Code, or for violation of the Housing Code.

What we're trying to do is give you – give this Body a very short and sweet method of dealing with these, because the method that you have now can be very cumbersome in the sense that it's – the rules that you have now are so cumbersome that we, as your attorneys, have actually been advising you to hire a hearings officer because of the cumbersome way that they can deal with their violations meaning that they go out and hire an attorney, they do just extensive discovery, they paper war each other, and then you have just extensive evidentiary problems that occur. What we're trying to do with these rules is really give it a slender feel. Somebody who is given a notice of violation, they can appeal. They come to your Board. Within the first hearing, they already are having their case heard and disposed of. And what we're thinking of is that this will happen in a day. Somebody comes. They produce their evidence. The Department produces their evidence. And then you guys make a discussion and ruling. And then hopefully, the only other procedure would be adopting the order coming out of that ruling.

What we've been seeing is that systemically, the problem in the County is that – what happens is that because there isn't "swift justice," both the County and the citizens are not well served. Because what happens is that these violations actually end up languishing anywhere between the Department, Corporation Counsel, or in a contested case arena that can drag on for years.

What we're trying to do is encourage the Departments to look at these violations and feel free to—if they feel that it's a violation—cite the person. And if that person isn't amenable to paying that fine, then they come to this Body, and we'll review it, and we'll give them an answer asap with as much due process as they're allowed.

So that's what we're looking at as far as these rules, and we just encourage you to give the staff – today, what we're looking for is to give the staff the thumbs up in starting this process so that it'll go out for review and – I mean, out for notice, and that is very extensive, too, because they have to publish it. They're going to, I believe, word-for-word publish these to the public so that the public can make comment on them. And then bring – they're going to bring back their input on these rules, and then at that point, we can – you guys can discuss and see if these rules are acceptable to you or not.

Mr. Schulz: I have a question: how can this be, "swift justice?" It's contradictory to each other.

Mr. Giroux: Well, the thing is in common law, justice delayed is justice denied. And we have – like this person who came in with a variance, let's say that they had gotten actually cited. Three or four years down the road, they finally – you know, it's resolved. But for four years should somebody who is dealing with something that there's an obvious resolution, that resolution should come quickly. It should come quickly from us and it should come quickly from them. If the fine is not enough to get them to follow the

code, then the next step is we have to then do an injunction. And then we have to get collections. Just getting to the point where they actually even know what the dollar amount is disturbing for the person who's in the situation, the public, and for the County because all of the resources that we could be using to do everything else that we have to do is then being used to litigate. And I don't think that benefits the public. It doesn't benefit the County. And it doesn't benefit the Board either because what happens is, is that people start wondering, well, is it worth just breaking the law because nobody seems to know how much money they're going to charge me because they'll never even get to the point where there's going to be a finding of fact that I even broke the law. And what we're trying to do is say, well, if the Department says you broke the law, then let's have a hearing. And let's have it quickly. And let's have it – put it on the record. And let's have a Body such as this review it, and give everybody an answer.

Mr. Shefte: Question, James, I haven't read this yet, but is there anything in here when we vote, instead of needing a majority of five—? Sometimes we don't have – we may only have five people. Could we change the rules to say it's a simple majority of those present?

Mr. Giroux: Well, what we're trying to do is keep this to be an action of the Board. And because it's an action of the Board, we have to follow Chapter 91 and the Charter meaning that both of those dictate that you have to have a majority – an affirmative vote of the majority of those who are allowed on the Board. So we couldn't do that. If we did, what would happen is, we would have to set it up that one – like one person would be the hearings officer. And that one person would then do a report to the Body. And then the Body would still have to vote in the majority to adopt that. And that's how we're doing it now with the hearings officer. And you can see that it's very hard to adopt the report of a hearings officer when you didn't listen to all of the facts. You get a transcript. You get to look at the record. You get to look at the exhibits, the documents. And it's very hard because we've been running into situations where the Board really doesn't see eye-to-eye with the hearings officer. And then if you deny the recommendation of the hearings officer, to go on and make your own findings of facts after they've already spent all of those hours and hours and hours of wrangling over what exhibits they were going to put in, and when they were going to meet, and all of those types of things.

Where we're trying to get this at – and I think we've seen some examples of it where people came in, and they didn't have any attorneys, and we were able to dispose of the matter within a day. That's what we're trying to get to in all of the violations. We want the people to come in, know that when they come in that they can present their side of the story, the Department presents their side of the story, and then we make a decision.

Mr. Shibuya: Jim, I read this and I took – got an impression that you have a lot of faith in this group. It's a quasi judicial, as well as a quasi type of organizational group that will send judgement and express themselves. And I think you're saying that we have been

performing very well by saying, well, since they perform so well, we're going to add on Chapter No. 14, which is wastewater, water conservation, and things of this nature. And also, oh, by the way, we're going to add Chapter No. 20 to you, and that's on the environmental issues. And so, that's interesting because each of these have, like the water, they have a Water Board, would they not? And if they are – have the judicial responsibilities, then maybe the kuleana needs to be clearly distinguished there or delineated. As well as environmental, how do we stand in terms of the chain of command or the feeding chain here?

Mr. Giroux: Well, what we tried to do is we tried to throw out the widest net we could. And what we did was we went through the code, and we tried to look at every department, or every section that a private citizen would be given a civil fine. Now, by doing that, we are also assuming that that section points to the Board of Variances as being the arbiter of that fine. And so, we can look into that again, and to go through that, and to make sure that we're not giving you responsibilities that don't belong to you. But what we are saying is that if they did go to you, this is the method you would handle it.

Mr. Shibuya: That's correct. I am not objecting to it. It's just that we need to be sure that this Board, because they are willing to serve and do this does not mean that we fall on our sword, too, at the same time.

Mr. Giroux: Right. Right now the Board of Water Supply is adopting rules so that they can be an appellate, appellate jurisdiction. And so, jurisdictions are always a matter of – jurisdiction is always something that somebody can bring up. And we've had cases where people tried to bring things in front of us, and we told them, no, we're not the arbiter. It says that the Planning Commission is, or it says that– So, jurisdiction is always important. And where you get your jurisdiction from is the Charter. And that's usually the enforcement of the Zoning Code and the Subdivision Code. But within the County Code, within the Charter, it says "or by any other law." So we've looked into the County Code, and we say, well, does the County Code impose a civil penalty for infraction of this type? And does it delineate the Board of Variances and Appeals as being the arbiter of an appeal? And that's what we're trying to do.

Mr. Shibuya: And I applaud your efforts here. And I like it. Thank you.

Chairman Endo: Hari?

Mr. Ajmani: Yeah, I think in principle, I am in full support of your trying to expedite things. And if we can keep the lawyers out of this then–

Mr. Giroux: Well, this is not guaranteed that the lawyers will not show up, but they will have to deal with a system which will be more amenable to a finding of fact in an

expedient fashion.

Mr. Ajmani: In minimizing it, at least, because I, so far, whatever cases I have seen going to hearings officer, by the time they come back, I have almost forgotten about them, and you have to start all over.

Mr. Giroux: Right. What we're seeing is we're seeing bankers' boxes of pleadings, and letters, and notices, and extensions, and— I swear, I get cc'd with all of this. And I see what our litigators have to do to handle one of these cases, and it's just incredible—the paperwork.

Mr. Ajmani: So you're in the right track, is what I'm saying. Thank you.

Mr. Cerizo: James, can you explain the evidence and the rebuttable presumption causes?

Mr. Giroux: Okay. There's some things in here that – what we've tried to really pinpoint is really trying to limit the broad discovery that's allowed by your other procedure. And under 12-801-98, what we're doing is in law, certain facts can be presumed because of evidence that's presented. And what we're looking at in 12-801-98 is the rebuttable presumption. And that basically means that if the Department brings forth a certain type of evidence, you can use that evidence as a starting point. You can say, well, if you did this, then we can assume that this is true. And in this, it's advertised a TVR, I believe. And so if the Department finds somebody advertising their property as a TVR, they can bring that evidence to you and say, this is what we found. This is why we believe this person's running a TVR on this property and they don't have permit. But it's rebuttable. That person can then bring evidence and say, well, I did, but I stopped before they cited me or— They can bring evidence to show that they weren't. Oh, my friend of mine advertised for me and I didn't – you know, I never ran one. You know, I mean, you're going to hear every story under the sun, but that just means that it's a starting point. And basically somebody will have to produce some type of evidence to refute the fact that if they were advertising it as such that it wasn't such. So that's one of those.

The other one is discovery is that what we're trying to do, 12-801-100 is look at the broad scope of discovery tools that are used in civil actions that may not be appropriate in these types of notice of violations.

Mr. Shefte: What is the procedure that you have to go through to get this adopted?

Mr. Giroux: It's got to be advertised. What is it? Sixty days? And then 30 days. And then we need to have a public hearing. Then you will discuss it. You'll listen to testimony from the public—anybody who likes or doesn't like it. And then you'll deliberate on it. If you want to adopt it, then it will go to the – if you do adopt it, it will go

to the Mayor for signature, then to the Clerk. And then ten days after it goes to the Clerk, it'll be adopted as basically, your rules which will be treated as law.

Mr. Cerizo: What was those days again? Tentatively, we're having it scheduled for a public hearing on the 20th of September. Is that something that--? Is that too rushed? I heard that there is 60 days notice? Is there a 60-day--?

Mr. Giroux: Well, we've got to look at the rules and make sure that-- All we're asking for is permission to start the process. And then we need to make sure that with the Department that they follow the Code to make sure that when you guys act on it that there's no procedural flaws.

Mr. Cerizo: One last question on this rebuttable evidence: is that just an example of a -- rebuttable presumption, is that -- the operation of a TVR rental, is that just an example of a use? Or is it specifically for TVRs?

Mr. Giroux: Well, it says "TVR or other business." In zoning, there's a lot of residential units which could be used for small manufacturing, but they need to get a conditional permit, or they need to get a special use permit. If they're found to be operating without those, but advertising that they are a legitimate business, then this section would also be used for that. So it's not just TVRs. Again, we're trying to have the broadest scope in all of the notice of violations that could be possibly occurring within the County that are a reviewable appeal by this Body.

Mr. Shibuya; I'm not a lawyer, but I like that provision there because this is not a criminal case where you have to provide everything, all the evidence beyond a shadow of a doubt. If it moves, and walks, and looks like an elephant, it must be an elephant. That sort of thing. That's good enough for me. And I think that's the standard of care that we probably could work with. Criminal court, I guess you have two lawyers here that can probably discuss that, but the type of evidence and how we handle the evidence I think is adequate as you have described.

Chairman Endo: James?

Mr. Shefte: Does this require a motion from us?

Mr. Giroux: Yeah, I would like a motion just to -- so we have a record that the Board did approve this to go forward for notice and advertising.

Mr. Shefte: In that case, could I make that motion?

Chairman Endo: Okay.

Mr. Shefte: I move that we adopt.

Chairman Endo: All right.

Mr. Schulz: I second.

Chairman Endo: It's been moved by Jim and seconded by Uwe. Any discussion? No? All those in favor, please say aye. Opposed?

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

VOTED: To approve this to go forward for notice and advertising.

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

(Excused: K. Acks and W. Kamai.)

Chairman Endo: **Motion carried.**

Mr. Giroux: Staff will proceed to publish this for notice purposes.

Chairman Endo: So if anybody has comments, should they email them to you in advance of the actual meeting?

Mr. Giroux: Yeah, you can do that.

Ms. Kapua`ala: The public hearing notice requests that they submit it no later than Tuesday of that week of the hearing. So the week of the 20th, September 20th is what we're going to shoot for.

Chairman Endo: Okay. So I gotta go, so let's move on.

E. APPROVAL OF THE JULY 12, 2007, MEETING MINUTES

Chairman Endo: Has everybody seen the July 12, 2007 meeting minutes? Okay, can someone move to approve.

Ms. Phillips: I'll move to approve.

Mr. Castro: Second.

Chairman Endo: Okay, it's been moved and seconded. Any discussion? No? All those

in favor, please say aye. Opposed?

It was moved by Ms. Phillips, seconded by Mr. Castro, then

VOTED: To approve this to go forward for notice and advertising.

**(Assenting: R. Ball Phillips, J. Shefte, S. Castro,
W. Shibuya, and R. Endo.)**

(Abstention: H. Ajmani and U. Schulz.)

(Excused: K. Acks and W. Kamai.)

Chairman Endo: **Okay, motion carried.**

Mr. Ajmani: I noted my abstention. I wasn't here for the meeting.

Chairman Endo: Oh, okay.

Mr. Schulz: Yeah, mine, too.

Chairman Endo: Okay. **Well, the Chair votes aye, so we still have five votes to approve the minutes.**

F. DIRECTOR'S REPORT

Chairman Endo: Okay, Item F, Director's Report. And actually, I'm going to hand the gavel over to Vice-Chair because I have to leave.

2. Moloka`i Meeting on September 13, 2007

Mr. Cerizo: Before you leave, are you coming to Moloka`i with us on the 13th?

Chairman Endo: Yes, I'm going.

Mr. Cerizo: We're leaving at 7:45 and returning at 4:40. That's the agenda of the day, just for your information.

Mr. Shefte: Are we going on a boat?

Chairman Endo: Airplane, right?

Mr. Cerizo: Airplane.

Chairman Endo: 7:45 to 4:40.

Ms. Kapua`ala: Charter?

Mr. Cerizo: No, it's a scheduled flight. That's the direct flight so we don't have to go through Honolulu. Otherwise, it would be via Honolulu if you took the next flight.

Mr. Shibuya: So this is Moloka`i Air?

Mr. Cerizo: This will be Island Air. I need a head count so that we can make arrangements. A lot of times these flights are really booked up.

Chairman Endo: Okay, everybody else? Who's going to Moloka`i?

Mr. Shefte: September 13th?

Mr. Cerizo: September 13th.

Mr. Schulz: What airport? Kapalua?

Mr. Cerizo: Kahului. It looks like six.

Ms. Tremaine Balberdi: Stephen, can you go?

Mr. Castro: No. Right now, I'm tied up with the bargaining, with the closure of Renaissance.

Mr. Cerizo: Thank you, Randy.

Chairman Endo: Okay.

(Chairman Endo and Mr. Schulz then left the meeting at approximately, 3:28 p.m.)

1. Status Update on BVA's Contested Cases

Mr. Cerizo: And so Trisha's going to give us a status of the update.

Ms. Kapua`ala: On August 1st, we held the Hiolani Ranch contested case hearing. That was a separate lot determination that was done by the Department of Public Works, Engineering Division. They failed to recognize several lots in Waihe`e, which is part of the Waihe`e School Subdivision. Those lots were owned by— Forgive me. His name is— He's a very prominent landowner. It was owned by Mr. — Wailuku Agribusiness. And it was sold. I'm sorry. I don't have that name in my memory right now. No, it

wasn't Stanford Carr.

Anyway, the contested case hearing was held and it was virtually all day. And there were some issues regarding land ownership that may throw this case out. However, they did proceed with the contested case. And the proposed findings of fact will be submitted to the Department in October. So now we're just waiting for the court reporter's minutes, and then the attorneys will have a chance to submit proposed findings to the hearings officer. From then, they have a certain amount of days to do their support or objections. And then the hearings officer does his final findings, and then the Board receives them. So hopefully by the end of the year, we'll get to see the closure of this case, and you can see this on your agenda again. And that's it.

Mr. Shibuya: Okay. Thank you, Trisha. Anything else? New items that you want to bring up? No? Nothing? If not, that's it. Thank you for coming. Meeting adjourned.

F. NEXT MEETING DATE: August 23, 2007

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 3:30 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Randall Endo, Chairperson (1:34 p.m. to 3:28 p.m.)
Warren Shibuya, Vice-Chairperson
Rachel Ball Phillips
Stephen Castro, Sr.
James Shefte
Harjinder Ajmani
Uwe Schulz (1:34 p.m. to 3:28 p.m.)

Members Excused:

Kathleen Acks
William Kamai

Others:

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