

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JUNE 14, 2007**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Vice-Chairman Warren Shibuya at approximately, 1:30 p.m., Thursday, June 14, 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.)

Mr. Warren Shibuya: The first thing on the agenda would be – our Chairperson is not available so now you have the Vice-Chair.

The first order here is the Appeals: Azalea Communication appealing the Planning Director's notice of violation. Staff, would you read that, please?

B. APPEALS

- 1. AZALEA COMMUNICATION LLC, appealing the Planning Director's Notice of Violation (NOV 20060021) for a chain link fence adjacent to public open space, readily visible to the public, whereby it is prohibited by the Wailuku Redevelopment Area Design Guidelines for property located at 2086 Main Street, Wailuku, Maui, Hawai'i; TMK: (2) 3-4-013:098. (BVAA 20070002)**
 - a. Review and Approval of the Proposed Findings of Fact, Conclusions of Law, and Decision and Order**

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

Vice-Chair Shibuya: Thank you. We're going to open this session here for a public hearing. Any public testimony? Anyone out in the public would like to say a few words? You're welcome. Three minutes. None? Then, we'll proceed. Let the record show that we do have six members present. And we'll continue on with our review and the approval of the proposed findings of fact, conclusions of law, and decision and order. James, would you like to make any opening remarks or comments for the Board members, and then we can proceed?

Mr. James Giroux: At the last meeting, we heard testimony and arguments, and deliberated, and made a decision. So basically, all we're doing now is the official document that needs to be produced because within it contains findings of facts and conclusions of law that are basically, an interpretation of what the attorney believes was your – based on your deliberation and your transcript. So basically, what we're looking

at is having the Board review this. If it does conform to your thoughts and decisions, then you can adopt it, and the Chair will sign it, and then it'll be served upon the other party, thus triggering an appeal – not an appeal, but an appeal period that the other parties will have to then follow the rules of the Circuit Court.

So as far as what we need to do is review the document, and see if it conforms to your thoughts as far as your deliberation, and the order, also, as far as making sure that that is what you want ordered from this – your findings.

Vice-Chair Shibuya: Any comments from the Board members? But before we go into – give you some time to think about it, we do have, I guess, communications from the Wailuku Community Association. That was in my packet. I don't know if it was with everybody else's. Would you mind reading it into the record?

Ms. Kapua`ala: Sure.

Vice-Chair Shibuya: Okay. Thank you.

Ms. Kapua`ala: From the Wailuku Community Association to the members of the Board of Variances and Appeals, this is regarding the agenda for the last May 24, 2007, meeting. It says:

Dear Members of the Board:

The Wailuku Community Association is a nonprofit group composed of residents, and merchants, and friends of Wailuku. Like many Maui community associations, ours is focused on the immediate neighborhood, and has an interest in maintaining the appearance and upholding the varied land use regulations in our area. Our Cleanup Wailuku Subcommittee was recently formed to deal with questions and concerns such as unsightly fences, nonconforming use, disposal of trash, and making it easier for residents and merchants to keep the town looking clean and neat. On behalf of our members, we request that you deny the variance for this fence, and uphold the neighborhood requirement as outlined in the plan for the Wailuku redevelopment zone. Thank you for the opportunity to present this testimony, and we hope that you will take our point of view into consideration in making your decision.

Sincerely,

Terry Edmonds and Susan Halas

Vice-Chair Shibuya: Thank you, staff. Members, are there any comments or questions?

Yes, Kathleen?

Ms. Kathleen Acks: I think throughout this document, it says "March 24th," and I think that should be "May 24th."

Ms. Kapua`ala: It's been noted. I'll make that change. Thank you.

Vice-Chair Shibuya: Okay. Thank you. Good catch.

Ms. Acks: I looked at it, and I was trying to figure out – March 24th, that's old. I thought that wasn't what we were looking at.

Vice-Chair Shibuya: No. I didn't even look at the date. I just looked at the subject matter and kept on going. Thank you. Good observation. Anybody else or comments? If there's no comments or questions, I would like to entertain a motion from anybody to accept whatever is presented in the findings of fact, conclusions of law, and decision and order. Jim?

Mr. James Shefte: I move that we accept the findings of fact in this document as presented.

Mr. William Kamai: Second.

Vice-Chair Shibuya: Second by Bill. Members, are there any discussions on this before we take a vote? No? If none, shall we just take a voice vote? You don't have to raise your hand. All those in favor of the motion, say aye. Those opposed?

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

VOTED: To accept the Findings of Fact, Conclusions of Law, and Decision and Order as presented.

(Assenting: J. Shefte, W. Kamai, S. Castro, R. Phillips, and K. Acks.)

(Excused: H. Ajmani, U. Schulz, and R. Endo.)

Vice-Chair Shibuya: **Let the record show that we do have a unanimous decision here of accepting the findings of fact, conclusions of law, and the decision and order.** And let it be known that, the staff, please continue with finalizing this draft, and insure that the date, of course, is the current date. Thank you.

Ms. Kapua`ala: Thank you.

Vice-Chair Shibuya: Thank you. Next on the agenda would be the approval of the May 10th and May 24th meeting minutes.

C. APPROVAL OF THE MAY 10, AND MAY 24, 2007, MEETING MINUTES

Vice-Chair Shibuya: Are there any motions for denial or acceptance of these minutes? Let's go with the May 10th one first.

Mr. Shefte: I'll move that we accept them.

Vice-Chair Shibuya: Okay. You want to accept the May 10th one first? Okay.

Ms. Acks: I'll second.

Vice-Chair Shibuya: Second by Kathleen. All those in favor, say aye. Any opposed?

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

VOTED: To accept the May 10, 2007, meeting minutes as presented.

**(Assenting: J. Shefte, K. Acks, W. Kamai, S. Castro,
and R. Phillips.)**

(Excused: H. Ajmani, U. Schulz, and R. Endo.)

Vice-Chair Shibuya: **Let the record reflect that we have a unanimous acceptance of the May 10th minutes.** The May 24th minutes, any motion or discussions on that? On the 24th?

Ms. Rachel Ball Phillips: I'll move to accept the meeting minutes.

Vice-Chair Shibuya: Thank you.

Mr. Stephen Castro, Sr.: Second.

Vice-Chair Shibuya: Second. Thank you, Stephen. Let the – all those in favor for this accepting of the meeting minutes of May 24th say aye. Those opposed?

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

VOTED: To accept the May 24, 2007, meeting minutes as presented.

(Assenting: R. Phillips, W. Kamai, J. Shefte, K. Acks,

and S. Castro.)
(Excused: H. Ajmani, U. Schulz, and R. Endo.)

Vice-Chair Shibuya: **Let the record reflect that we have a unanimous acceptance of the May 24th meeting minutes.** Thank you.

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Vice-Chair Shibuya: Staff, would you mind giving us a status update of the BVA's contested cases, please?

Ms. Kapua`ala: Yes, sir. Before you, you have a letter of withdrawal from one of our 2005 contested cases. They just settled.

And other than that, we had a status conference for the Maui's Best Gift and Craft Fair appeal. That's regarding the swap meeting in Lahaina, Lahainaluna Road, and Honoapiilani Highway. The landowner, who has since sold the property has indicated that he would like to settle. So there's a settlement offer on the table. He would like to settle himself out of it leaving Ms. Goo the responsible to continue the contested case. She has still not admitted guilt and has retained a new attorney. So I think she intends to go on with the case. And her new attorney is also planning to sue the County on another – same issue, but nothing to do with the Board of Variances and Appeals.

Vice-Chair Shibuya: Okay.

Ms. Kapua`ala: That's it.

Vice-Chair Shibuya: Thank you. The document that we have here on – is related with the BVA contested case. I believe this is the one that you're talking about that they settled out of – this is the notice of appeal of Planning Director's June 2, 2005 attempted revocation of a special management area use permit for Ka Ono Ulu Estates, TMK: 3-9-001:015, 148, and 149, Kihei, Maui. Is that the case?

Ms. Kapua`ala: That was settled? Yes.

Vice-Chair Shibuya: Yes, that was settled. Okay. Thank you very much. I'm glad that they settled.

Mr. Giroux: Trisha, in this one, do you know if they settled the – because didn't they concurrently file in front of the Planning Commission also?

Ms. Kapua`ala: Yes. And because they didn't want to lose their right to appeal, they filed for both. And rather than withdrawing from the BVA because this wasn't the proper venue, the MPC was, the Maui Planning Commission, rather than withdrawing and losing the right to appeal, they filed both and wanted to retain the right to appeal. So they kept appeals in-house and subsequently withdrew from both.

Vice-Chair Shibuya: That's good. Well, I'm glad they came up with some kind of an agreement in which we can settle amicably. I hope it was amicably.

Ms. Kapua`ala: A year and half worth of negotiations.

Vice-Chair Shibuya: Any other comments or issues that you would like to share with the Board members, if any? If not, then we have the next meeting would be June 28th, and we will adjourn this meeting. Thank you for coming.

E. NEXT MEETING DATE: June 28, 2007

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 1:43 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Warren Shibuya, Vice-Chairperson
Kathleen Acks
William Kamai
Rachel Ball Phillips
James Shefte
Stephen Castro, Sr.

Members Excused:

Randall Endo, Chairperson
Uwe Schulz
Harjinder Ajmani

Others:

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