

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
OCTOBER 27, 2011**

(Approved: 11/10/11)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 1:34 p.m., Thursday, October 27, 2011, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chairman Kevin Tanaka: The meeting of the Board of Variances and Appeals will now come to order. It is now 1:34. We have a quorum of five. The first item on the agenda, Trisha?

B. PUBLIC HEARING

- 1. MARK ALEXANDER ROY of MUNEKIYO & HIRAGA, INC. representing WESTIN MAUI RESORT & SPA, HMC MAUI, LLC and CAMPBELL HAWAII INVESTOR, LLC requesting a variance to allow the use of an off-site parking facility located approximately 920 feet away to fulfill a 200 parking stall requirement, whereby Maui County Code, §19.36A.030 requires that all parking stalls be located on the same lot it serves, or within 400 feet from the nearest point of the lot, as approved by the Maui Planning Commission, for the Westin Maui Resort & Spa's 4-year renovation plan, for property located off of Kaanapali Parkway, Kaanapali, Lahaina, Maui, Hawaii; TMK: (2) 4-4-013:004 and 4-4-008:019, (BVAV 20110015).**

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

Ms. Kapua`ala: And I do have a very short presentation for the Board so you can see the parcels that are the subject of this variance. This is actually the National Flood Insurance Programs' map, but the good thing about this map is that you can see parcels along with imagery. And right now what is highlighted is Parcel 4. This is the off-site parking lot. You will see here, Honoapiilani Highway. Right off Kaanapali Parkway is the subject lot. And let me go ahead and highlight the parcels as well. This is the property, Westin Maui, 4-4-008:019. Let me go ahead and give you a better map so that you can see the area. Here's the Westin's property. So again, Kaanapali Parkway. And the property that is the off-site parking lot is here. So I'll be happy to bring up any imagery. A TMK map is also located on our drive. And other than that, we have Ms. Karlynn Fukuda of Munekiyo & Hiraga here representing the applicant. That's it. Thank you.

Ms. Karlynn Fukuda: I do have a short presentation for the Board also. Good afternoon, Chair, and Members of the Board of Variances and Appeals. My name is Karlynn Fukuda and I'm with the firm of Munekiyo & Hiraga, Inc. I'm here today to present the request for a variance from the Maui County Code, Chapter 19.36A, relating to off-street parking for the Westin Maui Resort and Spa.

Joining me today is Christopher Reed, Director of Operations, for the Westin Maui.

The Westin Maui is seeking a variance from the County Code related to off-street parking to permit the use of 200 parking stalls at a parcel located over 400 feet away. Chapter 19.36A.030 includes the limitation of a distance for the location of off-street parking.

The West Maui is currently proposing improvements to the resort, and undergoing a master planning process for the entire resort, which may trigger additional parking requirements. In order to receive building permits for the improvements that the Westin would like to proceed with in the near future, the Westin must demonstrate that it meets parking requirements. Although originally complying with the parking requirements, currently, due to changes in the County Code and the Fire Code, there has been a net loss of stalls at the Westin. For example, the size of ADA compliance stalls and related access aisles have increased over the years. Thus, to meet the new requirements, the hotel has lost stalls in order to accommodate these requirements. Additionally, the fire lane requirements have increased over time resulting in a net loss of parking stalls to provide for the additional width.

This table illustrates the number of parking stalls required, the number of stalls currently available, and the number of stalls anticipated by the improvements planned in the near future. The proposed off-site parking will allow the Westin to meet their parking needs, as well as provide for additional stalls that would be needed when future improvements are made to the resort. Additionally, the off-site parking location would be utilized when improvements are made to the Westin.

To provide the Members with background on the request, the Westin Maui is currently undergoing a master plan development process, which encompasses the entire resort. The Westin has not undergone a major renovation since it opened in 1988 over 20 years ago. Included in this master planning process are renovations to the resort, which may increase the parking requirements, as well as the development of a parking structure to address its parking needs.

Further, during the construction of the proposed parking structure, it is likely that off-street parking would be needed to accommodate displaced parking. To this end, the Westin has secured a lease for the use of 200 parking stalls from the Hyatt. The Hyatt received separate approval for said parcel for off-site parking.

This slide highlights the location of the Westin Maui Resort and Spa, and the approximate 400-foot limits within the parcel boundaries. To orient the Board, again, here is Honoapiilani Highway, Kaanapali Parkway, and the Westin Maui parcel is here, and this is the location of Parcel 4 where the proposed off-site parking is located.

And I'd also like to note that the distance is approximately, between the Westin Maui Resort and Spa parcel to the Parcel 4. It's approximately, 920 – I know the staff report had noted maybe a little bit more, so it's between 920 and 950 feet away from the Westin Maui.

This slide provides the Board with an aerial photograph, again, to give you an orientation of the surrounding uses to the Westin Maui parcel. To the north directly of the Westin Maui is the Whaler's Village Shopping Center. Directly to the south is the Kaanapali Alii Condominium. To the east we have Kaanapali Parkway and the Kaanapali North Golf Course. And to the west is the

Pacific Ocean. Again, here is the location of the proposed off-site parking.

There are three criteria that were analyzed in this request for the variance. Criteria 1: there is an exceptional, unique, or unusual physical or geographical condition existing on the subject property which is not generally prevalent in the neighborhood or surrounding area, and the use sought to be authorized by the variance would not alter the essential character of the neighborhood. The Westin meets this criteria as there is no additional space on the resort lot to construct additional parking without impacting existing structures. We also note that Parcel 4 is permitted and currently used for off-street parking, and as such, would not alter the character of the neighborhood. Additionally, to mitigate any potential traffic impacts from this temporary use of off-street parking, and provide alternatives to reduce the need for parking spaces in the interim, the applicant will utilize transportation demand management measures.

These are a few examples of transportation demand management measures that the applicant would use during the off-street parking use, which is encouraging their guests to use the Lahaina Shuttle, provide tickets for Maui Bus to its employees, and encouraging employees to carpool.

The second criteria: strict compliance with the applicable provisions of this title would prevent the reasonable use of the subject property. As previously noted, strict compliance with the code requirements is not possible due to the developed nature of the lands within 400 feet of the Westin, and the Westin's limitation on space within its site. The applicant did research the potential for available lands within 400 feet of the Westin Maui that could be utilized for temporary parking; however, none were found. The Westin is proposing to address the parking on its site with the construction of a parking structure within the next four years, and the off-site parking would be provided – would provide for parking during construction of said parking structure.

Again, in reviewing the aerial photo, as I previously noted, Whaler's Village is directly north of the Westin Maui site and is included within that 400 feet of the Westin Maui parcel. Directly to the south is the Kaanapali Alii Condominium also within that 400 feet of the Westin Maui parcel. And to the east is the Kaanapali North Golf Course.

The last criteria: conditions creating a hardship were not the previous actions of or by the applicant. While the Westin Maui did undergo improvements prior to its opening in 1988, there was an existing hotel building on the site, the Maui Surf, that was renovated as part of the Westin. The Maui Surf Hotel structure and parking locations were designated prior to the Westin acquiring the site. Further, although the parking for the Westin was previously sufficient, as previously noted, there have been changes to the County Code and the Fire Code which has resulted in the net loss of parking stalls. Additionally, I would like to note that the Off-Street Parking Code was recently revised in 2009 to delete the use of compact stalls in many areas including, hotel uses. Thus, the Westin will need to accommodate full-sized parking stalls for any future improvements. To address these parking needs, the Westin intends to construct additional parking within the next four years.

We respectfully request the Board's support for the variance to allow for the use of off-street parking for the Westin Maui. Thank you, and I'm available to answer your questions you might have.

Chairman Tanaka: Thank you. Trish, I read through – there's the Planning staff report and analysis. Could you kind of give us, in general, what the Planning Department recommends?

Ms. Kapua`ala: Well, in general, the Department concurred with the applicant's justification provided in the application, and has agreed that there is an exceptional, unique, physical or geographical condition existing on the properties which are not generally prevalent in the surrounding area. The use would not alter the essential character of the neighborhood. Strict compliance with the provisions would prevent a reasonable use of the property. And the hardship or the conditions creating the hardship were not the result of previous actions by the applicant. So the Director signed the recommendation for approval. So it would be okay for the Board to, if they wish, adopt this and inherently, will adopt the applicant's justification as its final decision and order.

Chairman Tanaka: Okay, thank you, Trish. Board Members, any questions?

Mr. Bart Santiago: I have a few questions. Is Parcel 4 owned by Hyatt?

Ms. Fukuda: Yes, Parcel 4 is owned by Hyatt.

Mr. Santiago: And there are 200 spaces to that lot?

Ms. Fukuda: I'm sorry? There is 200 spaces?

Mr. Santiago: There are?

Ms. Fukuda: Actually, they received approval for 600 spaces.

Mr. Santiago: Six hundred spaces.

Ms. Fukuda: Yes.

Mr. Santiago: But you will be leasing 200 spaces?

Ms. Fukuda: That's correct, yeah.

Mr. Rick Tanner: I have a question. Well, before that, I'd like to state for the record that I manage the property just north of the Westin, the Whaler Kaanapali Beach, which Whaler's Village sits in between us, but I don't have any conflict with this or any concerns. Is the parking gonna be primarily utilized for guests, staff, or contractors?

Ms. Fukuda: It will be a combination of uses. Initially, it will be for employee parking, but once the parking structure – and that hasn't been determined yet as far as the actual location of the parking structure where it would be constructed, but it would likely be on one of the existing parking lots that exist at the Westin. So when that parking structure was actually constructed, they will need to accommodate guest parking likely in this temporary off-site parking during that construction period.

Mr. Tanner: And will the motorists then walk or will they be shuttled to the property from the lot?

Ms. Fukuda: What will likely happen is that it would be – for the guests, it would be–thank you–valet. I couldn't think of the word. It will be valet parking. And for the employees, there is the potential for a shuttle, but it is within walking distance of the Westin right now.

Mr. Santiago: I just have one more question. When the parking structure will be constructed, will the 200 spaces in this Parcel 4, will it be sufficient to accommodate employees and also guests?

Ms. Fukuda: What the Westin is looking at right now is probably a phased approach as far as the construction. And should it not become feasible, the 200 stalls are sufficient, the Westin understands that they will need to look for additional parking whether it be requesting the lease of additional stalls from the Hyatt for this site, or looking for another site. And that would be taken care of at the time that that was determined.

Mr. Santiago: Because my concern is that employees, there are no spaces, they'll be left to look for space in the surrounding area. If 200 is not adequate, at what point do you make that determination? For a phased project standpoint, there should be – it should already be determined, I would think, if the project is phased in. So you would know what the requirement is at a certain point in time.

Ms. Fukuda: Right. And so – the Westin understands that those parking requirements are something that they would need to take care of. And as I said, unfortunately, at this point, the master plan process is not completed, and so the phasing has not been determined. What they're preliminarily looking at is a phased process for construction. So they understand that if they need additional parking that they would need to find that parking. And that may mean coming back to this Board for another variance for another parcel.

Mr. Tanner: Is this request a temporary variance or – because – is your lease, for example, is your lease with the Hyatt for four years?

Ms. Fukuda: Yes. It's not – it's temporary in nature because the Westin, it's in their best interest to address their parking needs onsite and basically be in control of their own destiny as far as their parking requirements are concerned, but the parking structure itself will require an SMA major application, and we don't have control over how long the permitting process will take. So the Westin understands that if they need to seek an extension on the lease from the Hyatt that that's possible, but again, it is in their best interest to move ahead with the parking structure.

Mr. Tanner: So you're asking for a permanent variance, but you don't anticipate needing it for more than four years?

Ms. Fukuda: That's correct.

Mr. Tanner: And if you do need it for more than four years, then you've got to go back and do another lease with the Hyatt, but you wouldn't need to come back before us unless you were looking at changing location because this variance is for this location only, correct?

Ms. Fukuda: Correct.

Chairman Tanaka: Okay, as I was discussing the timing of your – well, we were discussing it, so I guess I'll pose that question to you now regarding the four-year time period.

Ms. Richelle Thomson: The Board has the opportunity to condition a variance, and you can

condition it in a number of ways. Because the application references a temporary use, and it's also concerning a leased property from the Hyatt, there are a couple of factors that would affect the timing of the availability of this parcel. So the Board, if they wanted to, can condition the variance to expire on the earlier of completion of the parking structure at the Westin, cancellation of the license by the Hyatt to use their property for parking for a term of years. And that's something that the Board may want to consider.

Chairman Tanaka: Now, if we did not add that as a condition of, and following what was just presented to us, when their lease ends on that parcel, the variance ends as well?

Ms. Thomson: I think that that's – it could potentially be a problem.

Chairman Tanaka: Okay, so we wanna add that verbiage into–

Ms. Thomson: Right, it would be better.

Chairman Tanaka: Board Members, any other questions? With that, I would entertain a motion.

Mr. Santiago: Actually, I have another question. On that one additional language where we would extend this variance to coincide with the completion of the parking structure, wouldn't that – would Hyatt have a say in – oh, I guess the lease would be the four years, but if it goes beyond that–

Ms. Thomson: Right. I think I read the lease extension and it looks like, at this point, the Hyatt has a couple of options: either extend or not extend. But if the variance was conditioned on the earlier of those events, then it makes the variance more certain.

Mr. Santiago: Thank you.

Ms. Thomson: Sure.

Chairman Tanaka: Okay, sorry, let me step back. Is there anybody in the public who wishes to testify on this matter? Seeing none, the portion of public testimony is now closed.

Mr. Tanner: I have one question, Kevin. Were there any – you got essentially three neighbors within the 400 feet, not including the Pacific, but were there any concerns from those neighbors?

Ms. Fukuda: For the granting of this variance?

Mr. Tanner: Yes.

Ms. Fukuda: Not to our knowledge.

Mr. Tanner: Okay. And–

Ms. Kapua`ala: We received no testimony, written or e-mail, in support or opposition to this variance.

Chairman Tanaka: Any other questions? With regards to what was discussed as far as additional verbiage to the variance on the assumption we go ahead and approve this would be that if we leave – sorry, call it out as according to their four-year plan, and if necessary, if an extension was needed that they would need to just come back to us to ask for an extension rather than going through a whole new process. Does that make sense?

Ms. Thomson: Yeah, I don't see why that couldn't be– I don't know that you'd necessarily have to put that in the variance. It wouldn't be a condition. But if they did come back before the Board in five years or something like that, then the Board would need to decide whether the condition still exists that the variance should be extended or not.

Mr. Ray Shimabuku: So, Mr. Chair, just to clarify, so the granting of the variance, the verbiage in there would probably best to say that as long as the lease is active with the Hyatt, this variance would be enforced?

Ms. Thomson: It could be. And this is up to this Body, obviously, but if you did it as the earlier of a certain date, you know, the five years or six years from now, the expiration of the license to use the Hyatt's property, you know, say that the Hyatt declines to continue the license for whatever reason, it's not dangling out there. This is not a burden on the Hyatt's property because this variance does affect the Hyatt's property as well.

Chairman Tanaka: So actually, it wouldn't be a five or six-year. It would have to be that four-year lease term because when that ends, if the Hyatt agrees to another – an extension on their lease or continuation, then this variance would – it would just need to be request–

Mr. Shimabuku: Carry over or they would have to come and apply again?

Chairman Tanaka: Well, just request an extension.

Ms. Thomson: Well, if you make it the earlier of those commissions, it could be that if the Westin and the Hyatt, if they're able to agree to a lease extension, then that extends that term further out.

Mr. Santiago: Automatically.

Ms. Thomson: Automatically. But to accommodate the permitting process, and construction, and all of that stuff, you wouldn't want to set it to be such a short date. So you may want to give them a little more than four years.

Mr. Santiago: Could we just set the termination of this variance to coincide with the completion of the parking structure?

Ms. Thomson: You could do that. I mean, that could be one of, you know, if you're doing the earlier of completion of the parking structure, which I believe alleviates the need for this variance, or the expiration of the lease, they'd have to come back here anyway, right? So if that's – if the applicant doesn't have a problem with it, I'm sure they may have an opinion on this as well.

Ms. Fukuda: So to get clarification, and I guess I'm not sure as far as what the Board is considering

for the condition right now, but it appears that what may be under consideration for a condition is that the variance will be active until such time that either the lease is cancelled with the Hyatt, or the completion of the parking structure. Is that a correct understanding?

Ms. Thomson: Right. And just to make it a little more certain, perhaps a date, you know, an expiration date.

Chairman Tanaka: And, to, or for?

Ms. Thomson: I'd say the earlier of.

Ms. Fukuda: So it would be the cancellation of the lease or the completion of the parking structure whichever is sooner?

Ms. Thomson: Exactly.

Ms. Fukuda: Okay, I see.

Chairman Tanaka: Is that agreeable to the applicant?

Ms. Fukuda: Okay.

Ms. Thomson: Do you have a suggested date, you know, four or five years?

Mr. Santiago: It might be fluid based on the permitting process.

Ms. Thomson: Exactly. Yeah. I mean, they may have to come back depending on far they get in the next few years.

Ms. Fukuda: So – and I guess I just want to get clarification maybe from the Department on in terms of what I understand, what the Chair had suggested was that if we do put a date certain, five years or the completion of the parking structure. So let's say it's five years, and the Westin has been able to secure a time extension from the Hyatt, and the parking structure is not yet completed, what would be the process to seek a time extension on the variance, because I'm not familiar with the – or is it a new variance application?

Chairman Tanaka: Would it be simple as just a written request to the Department or–?

Ms. Kapua`ala: I have to discuss this with Aaron, but I think the Department would support having the condition where the variance would remain in effect until the parking structure is complete, or the termination of the lease with the Hyatt's property, whichever is sooner. And we would not necessarily need a date certain, but should the Board want to do that, what we are doing now is we're in the process of amending the Board's rules. We need to publish and have a hearing on this. But what we're doing is hopefully, gonna be adopting some procedures for modification of conditions where you would have to – the applicant would have to prove – you know, the burden would be on you on how that modification would look like for the Board's final approval. So there would be a process in place by the time that you complete this project, or if you put a time extension

– I mean, a time limit on this variance, then I'm sure there'll be a process in place for a modification of the conditions which would essentially extend the variance. Does that make sense?

Mr. Tanner: I think to simplify would not to put a date certain on it. Use the other two conditions only.

Ms. Kapua`ala: Yes, I would definitely think that the Department supports that. Aaron?

Mr. Shimabuku: Mr. Chair, I have a comment or question. What happens if after the parking structure is completed, and yet they still find that there is not sufficient parking, and that they still would want to use the property?

Chairman Tanaka: Then they'd have to come back for – I mean, a whole new variance.

Ms. Kapua`ala: Yes.

Mr. Shimabuku: Wouldn't it be better if as long as they have a lease agreement? Whenever the lease agreement would end?

Mr. Santiago: Wouldn't an SMA approval require the necessary space for approval?

Mr. Tanner: It does. There are certain – based on the size of the property and so forth, you've got "X" number of stalls you have to have available. And generally, they're more than adequate of what you're gonna see in even high season.

Ms. Thomson: What I was thinking of when I took a look at this is that if the variance was granted as a permit variance without any conditions on it, then that does implicate, you know, expansion of the property, and the required number of spaces. And in essence, the Board would be granting them a variance, you know, like you said, if in the future more stalls are needed, they're not available on site, the variance would already be in place. So if the Board doesn't want to go quite that far, you can condition the variance.

Chairman Tanaka: Which would be covered in what we had discussed regarding the parking structure and timeframe. Okay.

Mr. Tanner: I have another question for the applicant. Does this four-year project, renovations and so forth, does it include increasing the number of rooms?

Ms. Fukuda: I think that that's still under discussion at this point. And again, the Westin is hoping to complete the review of that master plan by the end of this year. So it's pretty fluid basically, at this point. I think there are various options that the Westin is looking at, and I think it would be premature for us to say yes or no at this point.

Mr. Tanner: But you would agree that if the number of rooms increased, then also the requirement for the number of additional parking, and the new garage would increase as well.

Ms. Fukuda: Right. Exactly. Whatever comes out of the master plan for the Westin Maui, they'll

have to accommodate for the additional parking in the parking structure as well as what they need for right now. So it doesn't – it wouldn't make – well.

Chairman Tanaka: Okay, Board, any other questions? And with that I would entertain a motion.

Ms. Rachel Ball Phillips: I'd like to make a motion that we approve the variance with the condition that it expires upon the earlier of the termination of the lease with the Hyatt, or the completion of the parking structure. And as support, I'd like to submit the Department's staff report and recommendation.

Chairman Tanaka: That motion with just those conditions? Or would you add—?

Ms. Phillips: And the standard hold harmless agreement and insurance.

Chairman Tanaka: And insurance as well?

Ms. Phillips: I mean, the insurance doesn't matter that much to me . . . (inaudible) . . .

Chairman Tanaka: It has been moved. Any second?

Mr. Shimabuku: I'll second.

Chairman Tanaka: It has been moved and seconded. Any discussion? All those in favor of granting the – approving the variance as so stated, please say aye. Chair votes aye. Any opposed?

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

VOTED: To approve the variance as stated.

(Assenting: R. Phillips, R. Shimabuku, R. Tanner, B. Santiago, K. Tanaka.)

(Excused: S. Castro, P. De Ponte, B. Vadla, J. Haraguchi.)

Chairman Tanaka: **Motion carries.**

Ms. Fukuda: Thank you very much.

Chairman Tanaka: Thank you. Next item would be Item C, Appeals. Trisha?

C. APPEALS

- 1. CHRISTINE A. GALE appealing the Director of the Department of Public Works' Notice of Violation (V 20010069) for the construction of a mezzanine without first obtaining the proper building permit, for property located at 3975/3985 Lower Honoapiilani Road, #215, Lahaina, Maui, Hawaii; TMK: (2) 4-3-008:002:0041 (BVAA 20110003).**

- a. **Appellee, Director, Department of Public Works, County of Maui's motion to stay appeal pending Appellant Gale's complete abatement of violation;**
- b. **County of Maui's preliminary exhibit list;**
- c. **County of Maui's witness list; and**
- d. **County of Maui's certificate of service.**

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

Ms. Kapua`ala: And the applicant is here present in the audience, as well as Deputy Corporation Counsel, Mary Blaine Johnston, representing the Department of Public Works.

Ms. Mary Blaine Johnston: Deputy Corporation Counsel, Mary Blaine Johnston, appearing on behalf of the Director.

Ms. Christine Gale: Christine Gale on our 215 Polynesian Shores.

Ms. Johnston: Okay, the matter was set for an appeal hearing today, but in reviewing the file, I found this to be a very unusual appeal. And as a result, I filed a motion to continue the hearing on the appeal for approximately, six months, to allow Ms. Gale time to complete the – addressing the violation. It's unusual because she's not appealing. Most people come in here and say, oh, I didn't do it. There's no violation. She has acknowledged there's a violation. She's made clear that she bought the unit with a loft, a bed and a bathroom. It's already in place. It was not disclosed to her at the time that she purchased it that it was done without a building permit. But she was cited for that improvement prior to getting a building permit, which she is in the process of doing right now. So she's not challenging the Director's decision on the issue that there is a violation. What she's actually asking the Board to do is to stay the fine schedule that runs. The Board doesn't have the power to do that. The fine schedule is set by the Maui County Code. It is not a decision of the Director that you guys are charged with deciding the fine. There's been no fine amount assessed by the Director, so there's no figure for her to say is an improper figure—is it too much or too little. So it's my belief to continue this until she's been able to complete the abatement of the violation at which time then if a fine amount can be determined by the Director. And she may not be aware of this, but the Department of Public Works has a guideline for imposing fines. They have, within those guidelines, negotiation in adjusting the fines depending on certain factors. Additionally, the Board's rules encourage settlements. And most cases do settle far less than the fines that – if you could just add them up, it would be very frightening. I think she referred to it as Draconian, and it is. But the fine schedule is there to encourage people to take the problem by the hand and correct it. If there's no fine running, then there's no incentive for anybody to do anything. So for the reasons I believe – so I believe it's without – outside of the Board's power to stay the fine provision imposed by the code. I think it's within the Board's power to continue the hearing, and see what she can get done. I know I've talked to the Inspector who is working with her, and she is taking steps, so that's the motion before the Board. If you'd like to respond.

Ms. Gale: That's huge. Thank you very much. First, I'd like to say aloha and thank you for hearing this. This has been a very confusing case for me. I'm a speech and language pathologist. I didn't understand the terms, the mail that I was getting, who was coming to my door. I have to tell you that all the Inspectors that did come to my door have been very, very helpful, and very, very kind.

I can't say the same for the Heads of the Departments. In particular, I was hung up on one and swore by one, and a couple of people have not returned calls, and not shown up to appointments. And it's very sad.

But my apartment was advertised in 1989 and '90 as a two-bedroom and two-bath. And that's what I thought I was buying. I never had any idea that any of these Departments ever even existed. Every Department has given me a different answer on what exactly I should do. And so I've tried to educate myself to the extent possible, study the binder that I've put together, studied it again, and all it does is confuse me more. So I'm getting a new attorney and a new architect. And I appreciate that – you've blown me away, because I was looking at adding up all those numbers, and I thought for sure I would be going into foreclosure, and doing jail time because that's what it says you would do. So, thank you very much.

Chairman Tanaka: Ms. Johnston, even though it's not within our power, you know, you talked about a stay that by the letter of the law, a fine amount might be levied during this continuance. Has there been discussion with the Director or from what you believe that you could assure the appellee that no additional fines would be accruing while she's attempting to—?

Ms. Johnston: No, because we've had no opportunity to discuss that. And I'm saying at this point in time, the policy is that until the violations are corrected that usually there won't be a decision made about a fine amount. Now, we could, with the continuation, we could go ahead and – as I say your rules encourage informal settlements. We could sit down and talk, and have that discussion, and work out some – I think the Department would probably be willing to work out some kind of plan on that. But just a blanket – what she's asking for is a blanket stay from here on in, well, there's no incentive here on in for her to really do anything. I believe in good faith she is taking steps to do that, but just the next person coming along and asked you guys to do that may not be quite as honest about the situation.

Chairman Tanaka: True. So the requested deferral time is 90 days?

Ms. Johnston: I think I put it – I requested six months because it does take time to work your way through the County. And we could come back and maybe settle. If she's done earlier than that, we could settle, or we can be back on the calendar, or we could expedite it, or if there's more time needed, we can continue it. And I know the Department's willing to work with her in this situation.

Chairman Tanaka: Okay, thank you. So if there's no objection from the Board we'll defer this item giving them an additional six-month—? Or do I need to—?

Ms. Thomson: I think the probably proper way would be to consider the County's motion to stay the appeal.

Chairman Tanaka: Oh, okay. So we would adopt that.

Ms. Thomson: You could grant or deny that motion.

Chairman Tanaka: Okay. So we need to move, second, and vote on the continuance.

Mr. Santiago: Can I just ask a question? How did this citation come into existence? How did it happen? Somebody knocked on your door from the County Inspector Office?

Ms. Gale: Good question. You know the coconut wireless. Someone – I believe it was someone from the property that reported two of us. There has been a lot of dissension on the Board of Director's there and the residents that come in, the short – that own – they come in twice a year. And there's been three people that have sold because of the resident manager that we had at the time that is now the site manager because I've gone to executive sessions about him on a few occasions. And I believe it was a board member that turned us in. And at the board member meeting on Saturday, I stood up in front of the whole organization and asked her if she would admit to doing that. And she said no. And I asked her if she would sign a piece of paper so I could come to the County and request information so I could show everyone else that she's creating a lot of havoc for our property. And she said that's a legal matter. So in that statement it said to me that, yes, she had done that. And then her daughter stood up and asked if everyone else would be willing to sign something. And I said, I would be the first one down here to sign saying that I did not turn anyone in. But this gentleman that is now the site manager, because of what I went to executive session about, I'm sure he's behind it, but he probably isn't the name that's on the documents.

Mr. Santiago: Isn't that public information as far as--?

Ms. Gale: I don't know. I don't know either.

Mr. Aaron Shinmoto: The County's policy, and this is countywide, for the Planning Department, of course, is that we do disclose the complainant's name upon request. All you need to do is ask.

Ms. Gale: I asked.

Mr. Shinmoto: And you'll be given the name of the complainant. You will not be given personal information: phone number, address, this kind of thing.

Ms. Gale: Oh, I've got that because as part of, you know, being– It's very, very sad that this gentleman, this site manager, has created– I mean, I started the year after he started. He's very intimidating. I've gone to the police about him, and they told me I couldn't get a restraining order without pictures of what he was doing to me. And it's not just me. Like I say, three owners have sold. Another person has been turned in and is dealing with the same things that I'm dealing with.

Mr. Santiago: So you've requested the information from the Department, and they told you?

Ms. Gale: For the name?

Mr. Santiago: Yes.

Ms. Gale: No, I didn't know that I could. As a matter of fact, when the first Inspector came out, he said, "I'm really sorry. I can't. I would lose my job if I disclosed the name." And I understand that because being a speech pathologist, and dealing with autistic kids, and all kinds of confidential information, you know, I can't discuss with you her child that I'm servicing unless you're part of that

team. Confidentiality is—

Mr. Santiago: And the request was submitted and—

Mr. Shinmoto: Let me clarify a little bit more. As of July, I believe, we were told to disclose the names. Prior to that, it's dependent on the agency.

Mr. Santiago: Can the response be provided in writing?

Mr. Shinmoto: Yeah.

Ms. Gale: I'm sorry? I missed that.

Mr. Santiago: The request for information, he's indicated that the response can be provided in writing.

Ms. Gale: Okay, but I was turned in before the new administration.

Mr. Shinmoto: Then it'll be dependent upon the agency you ask. It's on a case-by-case basis. But prior to the July date. After that July, we do release without question.

Ms. Gale: So I could request from the Electrical Department, the Plumbing Department, and the Building Department?

Mr. Shinmoto: Yes.

Ms. Gale: Okay.

Mr. Shinmoto: But whether they'll give it to you, if it's prior to July, it's their call.

Ms. Gale: Okay, okay.

Mr. Shinmoto: And also if I can add, there has to be only certain reasons why we cannot disclose government records within HRS, I guess. Corp. Counsel— Unless we meet that criteria, we're supposed to disclose.

Ms. Gale: Well, after going to many of the County classes to try to educate myself on this, and the condo association classes, and such, that was one of the things that I hit them with on Saturday was it's the board's fiduciary responsibility to represent all of us. And a board member turning me in is not representing me. So if I could get that, if someone would give me that name, I would request that they release her from the board.

Mr. Shinmoto: Well, you can make that request with the Department of Public Works, request for government records, but again, there's criteria under State law that they may not release. After July, we'll release.

Ms. Gale: At this point, the politics of it, I don't even really care about. I just want to get it legal.

You know, I want to get back to work. My psychologist is taking me out of school already, so I want to get it taken care of as quickly as possible so I can get back to work.

Chairman Tanaka: Thank you very much. Where did we leave off? We need to approve the continuance.

Ms. Thomson: Or grant the County's motion to stay the appeal for six months.

Chairman Tanaka: Board Members?

Mr. Shimabuku: Mr. Chair, I'd like to make a motion to grant the stay for the current appeal for six months allowing them time to go ahead and take care of this matter.

Mr. Santiago: I'll second.

Chairman Tanaka: It has been moved and seconded. All those in favor, please say aye. The Chair votes aye. Any opposed?

It was moved by Mr. Shimabuku, seconded by Mr. Santiago, then

VOTED: To stay the current appeal for six months.

**(Assenting: R. Shimabuku, B. Santiago, R. Phillips, R. Tanner,
K. Tanaka.)**

(Excused: S. Castro, P. De Ponte, B. Vadla, J. Haraguchi.)

Chairman Tanaka: **The motion is carried.** Thank you.

Ms. Johnston: Could we—? One of the things I'm dealing with are appeals that sort of seem to disappear and they're gone for a couple of years. Could we get a date certain for this to be continued so at least we can be sure to get some kind of closure? If we resolve it before, then we can pull it off. If not, we have to come back and ask for more time. Can we have a date? I believe that's April sometime.

Ms. Kapua`ala: April, April 12.

Chairman Tanaka: April 12th is scheduled hearing date?

Ms. Kapua`ala: For six months out, yes. Or I'm sorry, should we do April 26th?

Chairman Tanaka: Okay. So if not, by then—

Ms. Johnston: Yeah, so we don't lose it. Thank you very much.

Chairman Tanaka: Thank you. Next item on our agenda: approval of October 13, 2011, meeting minutes.

D. APPROVAL OF THE OCTOBER 13, 2011 MEETING MINUTES

Mr. Shimabuku: I'd like to make a motion to approve the minutes as submitted.

Mr. Tanner: I'll second that.

Chairman Tanaka: It has been moved and seconded. All those in favor of approving, please say aye. The Chair votes aye. Any opposed?

It was moved by Mr. Shimabuku, seconded by Mr. Tanner, then

VOTED: To approve the October 13, 2011, meeting minutes as submitted.

**(Assenting: R. Shimabuku, R. Tanner, B. Santiago, R. Phillips,
K. Tanaka.)**

(Excused: S. Castro, P. De Ponte, B. Vadla, J. Haraguchi.)

Chairman Tanaka: **The minutes have been approved.** Next item: Director's Report, status on contested cases.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: There is no movement, whatsoever. We have no appeals coming in.

Chairman Tanaka: Next meeting date: November 10th.

F. NEXT MEETING DATE: November 10, 2011, Thursday

Chairman Tanaka: What do we have? Do we have anything scheduled?

Ms. Kapua`ala: Yes, actually, two variances, both for subdivisions are already scheduled.

Chairman Tanaka: Okay. That's our next meeting. Any other discussion by the Board? None? Meeting is adjourned.

There being no further business to come before the Board, the meeting adjourned at 2:25 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Board of Variances and Appeals
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Kevin Tanaka, Chairman
Rick Tanner, Vice-Chairman
Rachel Ball Phillips
Ray Shimabuku
Bart Santiago

Members Excused:

Stephen Castro, Sr.
Bernice Vadla
Jacqueline Haraguchi
Patrick De Ponte

Others:

Aaron Shinmoto, Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel