

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
APRIL 25, 2013**

(Approved: 5/9/2013)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Rick Tanner at approximately, 1:34 p.m., Thursday, April 25, 2013, 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 Rick Tanner: The meeting of the Board of Variances and Appeals will now come to order. Let the record show it is 1:34 p.m. and we do have a quorum. I think all of you probably have the agenda. We're gonna change it up a little bit and move up Appeals, No. 1, Rodney Kilborn, to the beginning, unless somebody has any objections to that. Hearing none, we'll go ahead and get started and ask Mr. Kilborn if he'll come up to the podium. And just state your name for the record.

C. APPEALS

- 1. RODNEY KILBORN appealing the Director of the Department of Parks and Recreation's decision to not allow a stand up paddle surfing event at Hookipa Beach Park located off of Hana Highway, Haiku, Maui, Hawaii; TMK: (2) 2-5-004:025 (BVAA 20120010).**
 - a. Stipulation to vacate December 13, 2012 decision of the Board of Variances and Appeals and to dismiss appeal.**

Mr. Rodney Kilborn: Good afternoon. My name's Rodney Kilborn. Hi.

Chairman Tanner: Thank you.

Ms. Mary Blaine Johnston: Good afternoon. Let me . . . (inaudible) . . . Deputy Corporation Counsel, Mary Blaine Johnston, representing the Director of the Department of Public Works.

Chairman Tanner: It's not Public Works here.

Ms. Johnston: I mean, excuse me, Parks. I'm sorry.

Chairman Tanner: OK. We'll let you go ahead get started, Mr. Kilborn.

Mr. Kilborn: I'd just like to say I'm grateful to be here and taking the atmosphere and situation. I am moving forward with the stipulation of what we have on the agenda. I'd also like to say thank you, thank you so much, the Board, for your honesty, for you guys hearing, for your heart to have us guys come back and reopen the appeal. With that said, it was real grateful.

We also had our event. And I must say it was very, very well successful. It was a community event. It was from 14 years and younger. And we also had this thing called "60 to Dead," women and men division. In other words, 60 to dead. You can be half crippled. We won't turn any away. But with that said, our oldest competitor was 66 years old. And never in his life he had ever entered an event, was his first, and many others. And everyone walked away with a smile. The event at Hookipa with this kind of event, I will not put us above all, but we are the kupunas. We are the stewards. And we will help our community. We'd like to build this with our County and move forward to build a better home at Hookipa because they've been having a lot of problems there in the past. But with the event there that we had, it was no smelling pakalolo, no alcohol. All was family having fun and enjoying the beach. And everybody was fed free pizza. We fed everyone at Hookipa, 'cause "Hookipa" means "Hospitality." And with that said, that's who we are. But again, I'd just like to say thank you.

I gave you guys a letter . . . I mean, some letters that came in. I also had received something on my e-mail. I won't take the time to read this, but it was from the manager and the president of Neil Pryde. And he had something to say and I'll say it for him. It was that after the event, they had many phone calls from people on the outside. But the phone calls that we had was a phone call about why we didn't hear about this contest? It was not a complaint about the contest, but why wasn't it being heard. And only because we got the permits at the very . . . you know, a week out, so we couldn't publicize anything. But now that we had built our bridge together with the County of Maui, Parks and Recreation, I'll see . . . our next event is May 18th and 19th; rain date, 25, 26. We running the same age division. And it's gonna happen at Lahaina Harbor. In September, we also have one at Launiupoko. We also had a visitor which is Nelson Togioka. He runs events there on Kauai, also with the ASP on Oahu. So we invited him because we'd like to build a . . . do one series of events not just here on Maui, but also, the other islands to get in touch with the amateurs and the family, and then have a State championship at every different island. So this is where we leaning at and this is where we going with this event. Again, mahalo nui loa and I love you guys. Thank you.

Chairman Tanner: Thank you, Mr. Kilborn, for taking the time to come back and speak to us again. I appreciate that.

Ms. Johnston: Just very briefly, you have the stipulation in front of you. I was . . . there's one issue that Mr. Kilborn brought up, and that has to do with the matter of the fee he paid for the appeal. And I can't really address that issue. That would be something up to the Board. It's my understanding that you're requesting a return of your appeal fee?

Mr. Kilborn: It would be nice for Christmas coming around, but if cannot, I still appreciate the . . .

Chairman Tanner: Thank you. Any comments, questions, or anything from the Board?

Mr. Ray Shimabuku: I have a question. I guess I'm kinda confused that there was a decision not to allow, but then the meet was allowed on the 14th? Is that correct?

Chairman Tanner: Correct, yes.

Mr. Shimabuku: So you had the proper permits and all that taking cared of?

Mr. Kilborn: Yeah, after when it was denied and for the reason it was denied for, I did follow up. And I knew about the law for why it was denied. I mean, I understand what it was. I was part of the person that came up with this 5/10 man rules and A, B, C zone back in the early . . . late '80s or early '80s. With that said, what had happened is, I got an OK from the Coast Guard and also from DLNR that stand-up surfing is surfing. And that seems to be where we were and why was denied. So they gave me the permit and I guess I'm grateful we have it.

Mr. Shimabuku: OK. I never know that they held the event. I would've entered in that dead . . . (Laughter)

Mr. Kilborn: It was supposed to be in February, but what happened was we had to move it to March because it was still in the process of permits to be granted. So next February, that's when we'll be at Hookipa.

Mr. Shimabuku: Maybe be dead by then, but anyway, it's good to know that you got your wishes and your meet to run. And like I said before, I wasn't here when the decision was made, and being a guy who likes the ocean as well, I'm glad to hear that you had that event and went successful.

Mr. Kilborn: Yeah, I think in three years, I'll probably move on and pass this to someone else. Our agenda was to get something going back at Hookipa because of the drug and alcohol problem there. So . . . but thank you, guys. You guys are part of this to make it happen.

Mr. Shimabuku: I don't think you can give up. You still in that category of 60 and dead, yeah, whatever age? (Laughter)

Mr. Kilborn: I gotta say this, you know, that 60 to dead, we had a good number that came out. And they were the guys that inspired mostly everyone. I mean, the beach was just yelling and just screaming for them. And most of these guys stand up paddle at Kahului Harbor. So we been thinking about doing one event there, too, like a holding period just so that it's a softer wave and something for them too. So we'd like to share this with everybody, yeah, and not just the pros. And it's good to have a pro event. I might run . . . thinking about running a pro event at Hookipu SUP, but then again, it would fall back with this amateur contest, and get a rated system, and get the correct guys to be in the event. But the thing is, build something here first. Build our foundation here first. Take care us. Take care the community. Should I run for Mayor? (Laughter) Thank you.

Mr. Bart Santiago: Congratulations.

Chairman Tanner: OK. If there's no other questions or comments, we'll move on. Alii Kula Lavender, Inc., will staff read the notice of public hearing and state the purpose of this application?

B. PUBLIC HEARINGS

- 1. ALII KULA LAVENDER, INC. for KAONOULU RANCH COMPANY, LTD. requesting a variance from Maui County Code, §19.36A.080 to delete the paving requirement for 29 off-site parking stalls whereby asphaltic, concrete, or an equivalent type surface is the standard for parking areas, for property**

located at 1100 Waipoli Road, Kula, Maui, Hawaii; TMK: (2) 2-2-006:009 (BVAV 20130002).

Ms. Trisha Kapua`ala read the agenda item into the record, and presented depictions of the proposed project site and surrounding area.

Ms. Kapua`ala: So with that, I will turn it over to the applicant. Mr. Raymond Cabebe is here on behalf of Chris Hart & Partners and I believe he has a power point presentation. Thank you.

Mr. Raymond Cabebe: Thank you, Trisha. Good afternoon, Members of the Board, and Chairperson Tanner. My name is Raymond Cabebe. I'm with Chris Hart & Partners. And we're representing Alii Kula Lavender Farm today for this request of a variance from the strict applications of the Maui County Code, Chapter 19.36(A), Off-street Parking and Loading.

In this presentation, I'll be introducing our project team stating our purpose of this request, giving you some background information, and an overview of the whole project, and briefly go over the land use information. With maps and photos, I'll give you an idea of what the character of the site is. And I'll go over what the applicant is proposing, also the justification criteria, and then conclude it.

Today we have Mr. Koa Chang here. Lani Waggert couldn't be here. Koa Chang is with Alii Kula Lavender Farm. He's the applicant. Jordan Hart is also here from Chris Hart & Partners.

This variance request again is from Section 8, 080, Paving, of Chapter 19.36(A). And I guess the important part of this part . . . the part that we want the variance from is the underlying part of this where it says, "Shall be paved with asphaltic or concrete surface or equivalent."

On October 25th 2011, Alii Kula Lavender Farm was granted a State Land Use Commission special permit for agricultural tourism uses. The farm actually operates on two parcels. The parcel that they own, Parcel 108, is about a three-acre parcel. And also they lease about ten and a half acres from Kaonoulu Ranch on Parcel 9. The parcel is an 867-acre parcel.

The farms are required to provide 42 parking stalls. Thirty-nine of the stalls are considered off-site because they're on Parcel 9. And ten of the stalls have received an approval to be grass-paved. And this variance is to request to pave the other 29 stalls with gravel instead of asphalt or concrete.

The farm was purchased in 1992 by the late Alii Chang. And the farm cultivates over 45 varieties of lavender. They have about 55,000 plants on site. Lavender is drought-tolerant and pest-resistant. It requires full sun and absorbs water from moist air. All of the culinary and most of the aroma-therapy products are made with Maui-grown lavender. And raw lavender is also sold to restaurants and florists.

There's other plants there are cultivated there: protea, mamaki tea, olive trees, herbs and assorted flowers. There's also a Hawaiian garden there with 14 species. There's an apiary that has three hives right now, and they're proposing to have eight total hives. They conduct walking tours there that are either guided or self-guided. And all of these uses here are all allowable uses on a farm.

The agricultural tourism uses that they got a special permit for: a gift shop, and agricultural-related classes and workshops, wedding ceremonies, catered receptions, special events, and parking. The special permit limits weddings and catered receptions to no more than 26 a year, and no more than 75 guests at a time, and the event has to conclude by 8:00 p.m.

The benefits of agricultural tourism is . . . well, benefits of the farm, period, is that they employ 15 full-time . . . they have 15 full-time jobs and eight part-time jobs. The majority of the employees live in Kula and nearly all of them live Upcountry. This agricultural tourism uses links . . . provides a link between agriculture and the visitor industry. And this use introduces a sustainable, agricultural model that can be emulated and replicated by other farms to keep their agricultural pursuits viable.

As Trisha showed you, it's on Waipoli Road on the south . . . west slope, I'm sorry, of Haleakala. It's right next to where it's circled just when Waipoli Road begins to do the switchback. Some of the landmarks there is . . . Rice Memorial Park is right here with Kula Highway. Kekaulike Avenue runs this way right here. And if you look to the north, there's Kaonoulu Gulch running here, and to the south is Kaipoipoi Gulch running down this side on the south side of it. This tax map shows the relationship of the other parcels in the area. Parcel 108 is the three-acre parcel, and ten and a half acres of the 867-acre parcel, Parcel 9, so there's a total of about 13 and a half acres that the farm uses.

This area map shows you the character of the area. Again, the two gulches that run on the north side and the south side, Kaonoulu, and then Kaipoipoi on the south side. And you can see there's other farms that are on Waipoli Road to the northwest.

Of this site aerial, it shows the layout of the farm. And as you can see, most of the buildings are on Parcel 108, and most of the lavender fields are on Parcel 9. The parcel is State land use agriculture, and it's also community planned for agriculture. And the County zoning's agriculture also.

Just some photos of the site. This shows the entrance to the farm from the top side of the Waipoli Road. You go through the gates. And when you come to the gates, there's a fork in the road. If you bear to the right, there's a one-way loop that comes back out. This is looking back up towards Haleakala towards the gazebo. This is looking from Waipoli Road down towards the farm that shows the residences right there. The gift shop is right next to it here. There's a small barn here and this is where the parking occurs. And this is the fields on the north side of the property. Parcel 108 has most of the buildings, as I said. There's a few open . . . oh, there's one open parking deck, another covered parking deck, and office with some storage, garage, gift shop, and there's a residence.

Some photos of the buildings around Parcel 108: the gift shop, the farm office, and the residence.

This parking plan shows where . . . the entrance coming from Waipoli Road here. The parking stalls are numbered, so these: 26, 27, 28, and 29 would be grass-paved. And also, these five here: 35, 36, 37, 38, and 39 are also grass-paved. So there's . . . the tenth one is right here, no. 25. So the variance is proposing to . . . for the rest of the parking, the 29 parking, is to be gravel-paved.

As I said, the applicant wishes to obtain a variance from the paving requirements. And ten of the

parcels are already gonna be grass-paved. Pervious gravel is proposed as an alternative to the paving material for the remaining 29 stalls. Gravel paving will result in the following positive effects: reduce impervious ground surface and reduce water runoff, prevent the increase of the heat-island effect by reducing the use of hardscape materials that absorb and retain thermal energy. And the use of pervious gravel paving for required parking is a more harmonious and environmentally sensitive material in the agricultural/rural setting of the Alii Kula Lavender Farm.

This shows the . . . this oblique aerial kinda shows the relationship between the farm and where the drainage flows from the farm. You can't really see it too well, but the farm is up here. Kula Highway runs up here. Kaonoulu Gulch to the north, and Kaipoi Gulch over here. And after they cross Kula Highway, they kinda merge into one gulch. It flows down here towards Kihei and it outlets just south of Maui Lu right at Kalepolepo Beach Park. And if you're familiar with that area during heavy rains, one of the reasons it floods out is primarily because the culvert here is too small to handle the drainage. And this intersection of Kaonoulu Road and South Kihei Road usually gets flooded. So the . . . I think what we can do to help or to keep from exacerbating the situation is, you know, using gravel paving for a small part will keep some of the drainage off of that gulch.

And the justification: there's an exceptional, or unique, or unusual physical 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 will not alter the essential character of the neighborhood. Like I said before, the applicant has received a State special use permit for agricultural tourism. These uses require parking. And that's . . . there are other . . . these agricultural tourism uses are not common to properties nearby.

The second criteria is strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. This . . . the required paving of parking would result in additional hardened, impervious surfaces. It would be more difficult to return to agricultural uses should the agricultural tourism uses be discontinued. And such an action would be contrary to preserving and enhancing the country atmosphere that is desirable by the Makawao/Pukalani/Kula Community Plan.

And the third criteria is the conditions creating a hardship were not the result of a previous action by the applicant. The farm will provide the required parking stalls, but the amount of hardscape required will be detrimental to the region's agricultural character.

In conclusion, the Alii Kula Lavender Farm is an operational farm with authorized agricultural tourism uses. A variance from the paved parking requirements will not alter the existing agricultural character of the property. The variance, in fact, will preserve the country atmosphere and the agricultural character of the region.

On behalf of the Alii Kula Lavender Farm, we thank the Board for hearing our request, and the Planning Department for their support, and respectfully request your consideration of this variance. Koa, Jordan, and I are available to answer any questions that you have. Thank you.

Chairman Tanner: Thank you. Before we get into Board questions, is there any public testimony? OK, hearing none, we will open it up to questions from Board Members for the applicant.

Mr. Chad Fukunaga: I have some questions.

Chairman Tanner: Chad?

Mr. Fukunaga: Mr. Cabebe, can you point out where the handicapped parking is currently?

Mr. Cabebe: There are no stalls that are designated as such.

Mr. Fukunaga: Is that required? I would think that the handicapped parking would be required and designated.

Mr. Koa Chang: Aloha. I'm Koa Chang, owner of the property as well. Thank you very much for the opportunity to come here. I don't know about the requirements, but we did actually on the physical property, the Parcel 8 that was shown, we have two designated spots, and then we have two other designated spots, the very lowest closest area to the farm. So we do have. And then we basically just placard it off, four different stalls.

Mr. Fukunaga: So there is designated . . . ?

Mr. Chang: They are designated now, yeah.

Mr. Fukunaga: So you have four handicapped stalls?

Mr. Chang: We have four, yes. And I don't know about the requirements. I just wanted to say we do that for our customers, yeah.

Chairman Tanner: Although I don't think as far as our variance goes, that's not something that . . . or is it something that we should consider?

Mr. James Giroux: Well, it's not . . . they're just asking for the parking. So it's Federal law, I think, as far as the handicapped. So they'll have to meet . . . whatever variance we give them, they'll have to meet the . . . whatever's required as far as handicapped.

Chairman Tanner: OK.

Mr. Fukunaga: OK. I have a followup question, then. So help me understand. So you're asking for this variance to comply with the zoning requirements—the off-site parking?

Mr. Cabebe: Yes.

Mr. Fukunaga: So you've been in operation for a while now on Lot 108 and 9, I believe, so you're just trying to get into compliance?

Mr. Cabebe: That's correct.

Mr. Fukunaga: So will you also be seeking to get into compliance with ADA, I guess?

Mr. Cabebe: As far as the access, you're talking about?

Mr. Fukunaga: Yes.

Mr. Cabebe: Maybe Koa can answer this?

Mr. Chang: Yes, absolutely. That's definitely we wanna be entirely compliant. We're taking the . . . (inaudible) . . . we can. And we do have actually . . . I've spoken to two architects about that, and walked through the property, and we have ideas of how we'd like to do that kind of . . . From the other partially being cash, we can't afford to right now, but we wanna do that, absolutely.

Mr. Fukunaga: OK. I got more questions. So as . . . I believe you have some areas, some parking stalls that is currently graveled? Is that correct? On the, I guess, more makai side of the parking area, are those areas . . . I think I saw that on the overhead aerial shot.

Mr. Cabebe: Are you talking about on Parcel 108 or on Parcel 9, you're talking about?

Mr. Fukunaga: Nine.

Mr. Cabebe: Nine. There, it's kind of just dirt parking like right in this area here.

Mr. Fukunaga: So that's not graveled?

Mr. Cabebe: No, not really.

Mr. Fukunaga: So where the cars are right now in that shot, is that area graveled, or is that grass or dirt?

Mr. Chang: Yeah, actually what we do typically is when . . . especially, when you have heavy rains and such, we always go in there, and we actually make sure that we bring up whatever gravel is run through and also all the dirt. So that area, this shot, you can tell that looks like it was graveled and that actually happens pretty often we do that. One of the ideas with the gravel pavement would be like a stabilized gravel so you have a concrete element, and it holds it tighter, so it wouldn't run on the road like it does. Just to mention as well, the asphalt, as a matter of fact, it comes up more than the gravel does, which is pretty wild for us. So that is an element maybe something to think about, but that is gravel.

Mr. Fukunaga: So you do, I guess, maintain it if the gravel runs away, or if it starts to run low, you replenish it?

Mr. Chang: We do, consistently, yeah. All the . . . just last to mention, I mean, we do that as a general practice throughout the farm with the trails, to keep safety for everybody. And we re-gravel trails if we need to dig up gravel, stuff like that.

Mr. Fukunaga: And on an average day, can you point out what . . . I mean, are all the areas . . . are all the parking stalls taken up on an average day? Or what areas is most heavily used?

Mr. Chang: You know, right now, we don't have any designated parking stalls. We kind of have like a common sense designated where you see the flatter areas so people choose to park. What we do now is we also have somebody at the top who recommends certain areas to park in. Sometimes we have people at the parking lot to help people with parking. So where actually in a previous photo where you see the variance application where you want stalls, that's pretty much the most consistent areas. Those would be the safest places. But people don't have that now because they don't have a designated marked stall where that would change obviously, with the variance.

Mr. Fukunaga: So in that picture there where I see the cars, I can imagine there's cars there on a regular basis. How about how far up would it extend on that . . . ?

Mr. Chang: It changes day-to-day. And it also depends on who's driving, who decides where they wanna park. You got people park all kinds of places, but that's one of the ideas that you come up along that hill just like . . . Raymond has a picture. Oh, this is a pointer. Excuse me. So you see in that area right there, it'll come up right around there. We do have also . . . employee parking is usually around this area in the back. And then we can . . . You know, what I mentioned was you have people parking anywhere around here. People will do that however they feel. Some people will get up here, and then they see a view, and then they wanna park there, and hang out, and walk around. Absolutely depends on the person. But I think just to answer your question, if we were to have the stalls here, I think that would be a pretty clear indication of where to park.

Mr. Fukunaga: OK. Thanks. Sorry, I have one more question. So looking at your topographic map, it seems like there might be a swale coming right down the middle of that, I guess, that island or what is it? Can I get up to the board and . . . ? So as I look at the contour, I think there's a swale that comes down right through here. Is that correct?

Mr. Chang: Yeah, there's several natural swales. The point I was showing earlier, this is kind of more or less the crown of the topography. You have something on the north side that actually what happens is the rain comes down out of this picture, and they'll come around this area following the road. And then another area they come down is right where you . . . that area you were showing. Typically, this is all localized rainfall because I don't know if it was Henry Rice, or the landowners, Kaonolulu Ranch, or what, but they did put up somewhat of a berm here. So the water that comes mauka will flow down the street. And that actually causes major erosion which is the State. It's a State road. But this area is all localized rainfall. We don't have a terrible amount of runoff here. This area, though, being that it is at the moment like loose gravel and dirt, mostly dirt, that does run sometimes. So that runs around our property down the road sometimes. But in the last couple years, it's not as bad. One of the things I think is important to mention, this area, the farm, we focus a lot about erosion control. I wasn't able to get funding from NRCS because of the legal things with my father's passing, all that paperwork, but I've done a ton of earth work myself, digging trenches all over the property. We'd like to do the same up here. One of the issues is that we're coming with this . . . we need to have a variance in order to keep the property. If we can keep the property, I'd love to put in some sort of erosion, natural erosion control with NRCS hopefully . . . (inaudible) . . . funding. But this is the crown, to answer your question. It flows to the south of us and also to the north of us. Fortunately, it doesn't come all the way down here except for localized rainfall, but this berm has saved our farm a lot.

Mr. Fukunaga: All right. Thank you. No further questions.

Mr. Howard S. K. Kihune: I got a question, Mr. Chairman. Koa, can I ask you a quick question? Can you point out with that laser where the actual . . . you have your handicapped parking? I just wanna know.

Mr. Chang: Sure, sure, yeah. So on the farm Parcel 108, right . . . this is our gallery, basically. Oh, excuse me, this is our gallery, sorry about that. This area right here, you can't really see it very well, but right around that area, this is actually a flattened area and we have two parking stalls available. As a matter of fact, when people have a real hard difficult handicapped access, we'll have them drive up, and then they can park right in front of the gallery, and then we'll help them to the deck. One of the things that we wanna do, coming back to the early question, is to actually create a ramp. And we did, like I said, I've actually talked to architects about that. That's very important for us. We wanna do that. These right here are the other stalls that we've done. What we did originally was there's two placards here, and we put four placards here, but we never see it fill up with more than one car, if that. And what we did was we kept two placards here. We have two that we just have in the garage, but we have those areas, the closest areas.

Mr. Kihune: OK. Thank you.

Chairman Tanner: I noticed we got a couple of letters looks like from neighbors. And one of the things I wanted to point out is what we're dealing with is a variance regarding paving. And the letters that you notice is more discussion about the road, concerns with the traffic, and so forth. That really doesn't impact, in my view, the variance that we're considering, which is whether the parking lot is . . . does qualify for a variance with the paving requirements. Trisha, do we have anything other than the two letters that you're aware of?

Ms. Kapua`ala: No.

Chairman Tanner: OK.

Mr. Shimabuku: Mr. Chair, I'd like to note something about the owners of the Kaonoulu Ranch who had mentioned that they wouldn't wanna see any more asphalt on their property. I believe it was from Mr. Henry Rice.

Ms. Kapua`ala: For the Board's reference, it's Exhibit E of the staff report. So it's doubled-sided. It's the last page of the staff report, Exhibit E. And for the record, Mr. Chair, I'd just like to state that the two e-mails that we received, that you received today, are in opposition. However, you might wanna read the contents of those concerns as they might not necessarily apply to the scope of the Board's authority, the variance.

Chairman Tanner: Board, any further questions for the applicant?

Mr. Shimabuku: I believe I have one question. I guess this is for Koa. So you had discussed with Mr. Rice on his disapproval of any more asphalt paving, but he was OK with gravel?

Mr. Chang: Yes, sir, yes. That's a pretty important part of this. I think Henry and I had spoken several times. And he definitely is in support of what we do. What he said he absolutely is not supportive of any further paving on his land. And he said that's a big problem for him. But he is

open to the other alternatives. I explained to him that this is a big part of the variance process, and he said he's supportive of those.

Mr. Shimabuku: OK. Thank you.

Mr. Chang: Thank you.

Mr. Santiago: Aside from gravel, is there other alternatives that you could consider like pavers in the ground? Gravels runs off and then you have to replenish it. Pavers that are in the ground?

Mr. Cabebe: We looked at pavers. We looked at stabilizing structures that would keep the gravel. We looked at grass paving too. And those are all good alternatives. Economy-wise, though, the gravel, the stabilized gravel, was the best choice.

Mr. Fukunaga: I have another question for Koa. So I see you have a lease for the . . . or a license to use the property. And your agreement is . . . the expiration of that agreement is coming up this year?

Mr. Chang: This year, yeah.

Mr. Fukunaga: So I imagine you are negotiating a longer . . . an extension. And that adding the need or the requirement to possibly add more pavement to his property, I guess he's objectionable to that, and that would come into play as to how . . .

Mr. Chang: Absolutely.

Mr. Fukunaga: OK. Thank you.

Mr. Chang: Thank you.

Chairman Tanner: OK. If there are no more questions, we're hoping to hear a motion keeping in mind, Trisha is listening. (Laughter)

Ms. Jacqueline Haraguchi: I make a motion to grant the variance to the applicant based on the criteria that there is an exceptional unique or unusual condition in paving the parking lot to alter the existing character of the neighborhood, and potentially, cause environmental harm in the area. However, the applicant is still required to gravel the parking lots instead of pavement.

Mr. Kihune: I second the motion.

Chairman Tanner: OK. We have a motion and a second. Discussion?

Mr. Santiago: Do we add the insurance clause also?

Ms. Haraguchi: Yeah.

Mr. Santiago: Yeah.

Ms. Haraguchi: Yeah, if we could please add the hold harmless clause.

Chairman Tanner: OK. So included in the granting of the variance would be the hold harmless.

Ms. Haraguchi: Yes.

Chairman Tanner: And the inclusion of Maui County as an additionally insured. So a motion and second. Any further discussion?

Mr. Shimabuku: I have something to say. I would be OK with the granting of the approval based on the recommendations of the staff as well.

Chairman Tanner: OK. At this time, we'll call for a vote. All those in favor . . . one second. Trisha, you're saying you're in favor?

Ms. Kapua`ala: Oh, no. (Laughter) Excuse me, Chair.

Chairman Tanner: Trisha wants clarification.

Ms. Kapua`ala: I'd like it to be on the record that the applicant is aware that this recommendation of the Department is that the hold harmless agreement has an insurance attached to it in the amount of one million dollars.

Chairman Tanner: I'm sorry. I should've made that clear. Thank you, Trisha. OK. All those in favor? Any opposed?

It was moved by Ms. Haraguchi, seconded by Mr. Kihune, then

VOTED: To grant the variance as discussed.

**(Assenting: J. Haraguchi, H. Kihune, R. Shimabuku, T. Espeleta,
C. Fukunaga, B. Santiago.)**

(Excused: P. De Ponte, G. Clark Abbott.)

Chairman Tanner: **Seeing none opposed, this variance is granted unanimously.** Thank you, gentlemen. I appreciate your time. At this time, we'll move on to the next item on the agenda. Trisha, if you would read that into the record?

- 2. MIKAL TORGERSON representing EDWARD STANLEY MELOTT requesting a variance from Maui County Code, §18.16.050 to allow: (1) A 25-foot right-of-way whereas 40-feet is required; and (2) A 16-foot wide pavement whereas 28 feet is required, for a road serving more than three lots (Nanialii Place Subdivision) located at 265 South Kihei Road, Kihei, Maui, Hawaii; TMK: (2) 3-9-006:004 (BVAV 20130003).**

Ms. Kapua`ala then read the agenda item into the record, and presented depictions of the proposed project site and surrounding area.

Ms. Kapua`ala: With that, can I introduce the applicant, Mikal Torgerson? And also, Lesli Otani, a civil engineer, with the Department of Public Works is here on behalf of the Development Services Administration. Thank you.

Mr. Mikal Torgerson: Should I go ahead?

Chairman Tanner: Yes.

Mr. Torgerson: OK. Thank you, Chair Tanner and Board Members for the opportunity to present this before you today. Trish, would it be possible to queue the power point that I had?

Ms. Kapua`ala: Yes, sir, I apologize.

Mr. Torgerson: That's fine. I'll be brief and . . . in hopes that if there's questions, I can go through things in more detail. The site, as she indicated, is on South Kihei Road in this location. It's within a fully developed block, for the most part, on South Kihei Road. And this is a closer look at Nanialii Place. There was a new subdivision recently approved and built out, mostly built out in this location. I think they have one remaining lot that's gonna build out there.

A particularly relevant point that I wanted to make here is when this development was approved, it precluded the expansion of Nanialii Place because it would actually have to go through this house that's recently been constructed. And so, the notion of any future connectivity of the street network has probably been precluded at least for the life of this residence.

This is an even closer view of the lot. This residence was part of the original six homes that were built in this area in the 1930s and '40s. And at some point, the County records appear to indicate that in 1959, this was sold to another individual whose family, or trust, or successor still owns it. And the applicant or my client owns the remaining area here, which we wish to divide into its constituent lots.

This is Nanialii Place. Again, it's a . . . this is 275 South Kihei Road on the one side, and 265 South Kihei Road on the other side. Continuing down Nanialii Place, there's the multiple residences. This is the one that's owned by a third party and 16 Nanialii Place. This is looking back makai at South Kihei Road and . . . (inaudible) . . .

There may have been an inaccurate representation in my written presentation in that it was my understanding that this had been subdivided in the past, and then reconsolidated. It appears, based on staff's . . . in their staff report and then my discussions with staff that perhaps a subdivision was proposed, and we don't quite know how far along it went. But according to their records, it wasn't fully completed. And what you see here is a drawing that we actually got from the County from Valentine's Day of 1947. And it shows the six homes and Nanialii Place. Everything is in the same configuration at this time with the exception of this home, which apparently burned down and it's a vacant lot at this point. Everything else is exactly in the same configuration.

This is an architectural drawing showing the individual homes. The site . . . This is a drawing that I put together to show what compliance with this section of code would do to the site. And what we're seeing here is the 40-foot right-of-way and the 28-foot street width. And this line and this line

would indicate the 40-foot right-of-way. These lines would indicate the 15—the required front yard setback. And you can see what happens is these yellow areas are areas of the existing historic homes that would be within those setbacks and therefore, need to be demolished. And so unfortunately, compliance with the standard isn't a realistic option for my client because it would require the demolition of not only his homes, but also this home that's owned by this third party. And so that's the primary reason that we're seeking the variance—to keep the street right-of-way width at its current 25 feet.

The requirements are that we show that there are no special geographic . . . or that there are special geographical physical circumstances affecting the property that aren't common to the area. And it's our belief that these six houses that were built in the '30s and '40s were when there was no subdivision codes or building codes. At the time it was a territory of the United States. Those were standard in the industry. And though the codes have changed, this is sort of a unique situation where these homes were built out. Whether it was fully properly subdivided or not, the fact remains that it's built as though it were a subdivision, and so that's relatively unique that other properties have developed out under more modern subdivision criteria. So we believe that that's the special consideration that occurs on this site.

We're also required to prove to your Board that the variance is necessary for the preservation and enjoyment of a substantial property right. And what . . . the motivating factor for my client is that he, for various reasons, wishes to legally subdivide these into their constituent lots so that he can pass a house on to this son. He wishes to sell this lot actually, in the interest of full disclosure to me, and be able to finance the homes individually as opposed to . . . as a sort of a commercial development type property. So this is really intended to allow him to pass the property onto his heirs, and keep the homes as they're built, and that sort of thing.

The circumstances or conditions affecting this property are not the result of actions pertaining to the subdivision. The circumstances were really created in the '30s and '40s when the standard of the industry at the time was to have a 25-foot road, but certainly weren't something that was created as a part of what we were going to propose as a subdivision in the future.

We believe that the granting of this variance is not detrimental to the public health, safety, or welfare, or injurious to the public . . . the property in the vicinity of us. What we're asking in a nutshell is to maintain the status quo. We'd like to keep the right-of-way exactly as it's been for the last 70 years. We'd like to keep the houses exactly as they've been for the last 70 years. And so, it's a quirk of the code, essentially, that we would need to get a variance in order to really do what was done in, I guess, 70 years ago. But we believe that the fact that it stood for 70 years, and has been occupied throughout that time hasn't created any particular issues of health, safety, or welfare sort of speaks for itself. I think it's anecdotally evident that there's no particular public outcry. We notified all the surrounding neighbors, and have spoken to several of them individually, and haven't really heard any concern about that.

And lastly, the property needs to have obtained the appropriate zoning. And the State land use district is urban. The community plan is single family. And the County is residential district.

So as I said, I'll try to keep things short and be available for questions, but in essence, we're just asking to keep the status quo that's existed since this was constructed back when Hawaii was a

territory. And . . . so that we can divide the individual houses into their own constituent lots without having to demolish some of the historic stone structures, the landscaping, and the territorial historic homes that exist on the site. And with that, I'd make myself available for any questions that you might have. Thank you.

Chairman Tanner: OK. If you'll stand by one second? Before we open it up to the Board for questions, if I could ask staff for some clarification on a number of things? I'm not real clear on a couple of things in here with regard to the analysis. Before we go there, is there any public testimony? No? OK. Staff?

Ms. Lesli Otani: This is a . . . I'm Lesli Otani. I'm with the Development Services Administration of Public Works. So what types of questions did you have?

Chairman Tanner: Specifically, under Staff Analysis, down at the bottom of page 5, "The Department recommends that the argument of past subdivision or consolidation should not be used as a variance justification." So there's no approval found to subdivide in the first place? Is that correct?

Ms. Otani: The map that was shown earlier, that was based upon, I believe, Subdivision File No. 3.115. And there's no record of that subdivision being granted final subdivision approval. So the statement that it was subdivided and consolidated is inaccurate because I couldn't find the record of the property being subdivided into that configuration, nor could I find any consolidation of lots either.

Chairman Tanner: Now, for this Board, with regard to the variance, how do we . . . is that something that we don't need to be concerned with or . . . ?

Ms. Otani: Well, when I reviewed the applicant's submittal, if I see an inaccuracy, I want to correct it. And that's why I brought that it wasn't . . . this wasn't caused by a previous subdivision action. It didn't receive final subdivision approval. So if that's . . . in my mind, if that is not true, that shouldn't be a reason for a variance, if it's inaccurate.

Chairman Tanner: And that is the inaccuracy that you had mentioned in your testimony, correct?

Mr. Torgerson: That's correct, Chair Tanner. And I apologize for misrepresenting that. It was something that I got from my client he thought was accurate. And we ultimately have to agree with the authority, which is the County.

Chairman Tanner: OK.

Mr. Shimabuku: I have a question. Did the Fire Department have an input on this roadway condition as far as accessibility into that driveway?

Ms. Kapua`ala: Hi. This is Trisha. We did not solicit the Fire Department's comments for this application. If the Board requests, we can do that and reconvene at a different time.

Mr. Shimabuku: Maybe not necessary.

Ms. Otani: If I could clarify? Fire Department has a separate code from Title 18 which Public Works administers. And sometimes their requirements can be stricter than ours. I've seen instances in the past where an applicant will seek a variance from the Subdivision Code and the Fire Code at the same time. And I think we had one in Kipahulu like last year or something it came before the Board. In this case, even if hypothetically, the Board were to grant the variance, and the applicant came in for a subdivision, this variance wouldn't alleviate the fire requirements. If Fire required a turnaround or additional access, you know, this would be just for the Title 18 requirement referred to in the variance.

Chairman Tanner: What is staff's recommendation on this variance?

Ms. Otani: We don't have a recommendation, per se, that we provide, but the comments that we have and the feeling that I had when I spoke with our Deputy Director was that the property is as it is. And if they're coming in for a new development, then they should be complying with the code because our concern is that you may have multiple users on these properties with a substandard road. And if the subdivision goes forward, and they are allowed to have maybe one house and one cottage, you could potentially have 12 units. And I understand that the way the houses are structured now with setbacks, it may be limited, but we're here to think long term in our Department. And it could be that down the road, some of these older homes are demolished, and a new structure on 7,500-plus square feet, you can fit a lot. So you could potentially have 12 units off of this substandard road.

Chairman Tanner: James, you have . . . ?

Mr. James Giroux: Oh, no, I was just wondering how did we get to the six lots. I mean, in your research, was there a subdivision for the six lots?

Ms. Otani: Well, this didn't receive final subdivision approval, but based on the variance request, it seems as though they were hoping for this configuration, which would be ultimately serving six lots.

Mr. Giroux: But one of those lots were sold, so how does that work?

Ms. Otani: Well, this is complicated, but just to be general, we have a thing in our office called a separate lot determination process, and that's where we review where sometimes a tax key doesn't always equate to a separate lot because the first subdivision code was in 1951. And previous to that, if I deeded a portion of my property to James, that would be a legal lot. Or sometimes the judges, through probate, they would partition that. And then there's different types of partitions. The code was very general in 1951. It started to get stricter over the years. So based on the tax records I viewed, it looked like in 1959 that other portion of the land was deeded out and received a new tax key. So it's likely that it didn't go through the subdivision process. That's common in the '50s. Once you get into the '60s and '70s, then it becomes sort of an illegal subdivision.

Mr. Giroux: So it's preexisting nonconforming?

Ms. Otani: I would say that is what it is right now. And that for the purpose of the variance, I don't think the separate lot issue is as important as just how many potential users are being served. And

so, for me, if they're going to subdivide, that's another lot that has to be serviced by this road. That's another potential user.

Mr. Santiago: I have a question. Does the owner live in one of these homes?

Mr. Torgerson: Yes. Yeah, he lives at 275 South Kihei Road.

Mr. Santiago: And how long has the owner owned the property?

Mr. Torgerson: I don't know the answer exactly. I know it's been quite a number of years because he's shown me a lot of the improvements that he's made over what seems to be at least a decade, but I don't know the exact answer to that. I apologize. I do have a screen shot of the tax record that might show us.

Mr. Fukunaga: Chair, I'd like to read a comment from the Fire Department on a separate subdivision, but I believe their comments to be kind of typical. And it might shed some light on what the Fire Department might be looking for:

Service roads to propose properties shall have a clear width of 20 feet. Any dead-end roads or cul-de-sacs shall have a clear width of 32 feet. And if greater than 150 feet in length, shall be provided with an approved fire apparatus turnaround. All turns and required turnarounds shall have an outside turning radius of 40 and a half feet. The maximum grade for the service road shall not be greater than 14 percent.

So they have some requirements for clear width and for a turnaround if it's deemed a cul-de-sac.

Chairman Tanner: One more question for staff: if the variance was granted, at that point, does the applicant then have to go to the Fire Department? Or how do they get into the equation?

Ms. Otani: If they apply for a subdivision application, if the variance is granted and we process it, we would route it to the Fire Department. So it would go to Maui Electric, Water Department, Planning, Fire, all the typical agencies. And we would require their recommendation for final subdivision approval before Public Works grants final subdivision approval.

Chairman Tanner: And at this point, there is no application for subdivision?

Ms. Otani: None.

Chairman Tanner: So if I could ask the applicant, what are the plans for that?

Mr. Torgerson: About a year ago, I actually spoke to Lesli about this. And that's when the idea of seeking a variance came to us. And it came to light that we could seek a standalone variance prior to the investment of all the engineering and significant money towards a subdivision. So we sought this as a standalone. If we're approved, we intend to proceed with a subdivision. And it is our intent to make it look exactly like the drawing you saw of what historically appear to be lot lines whether they were or not. But that's the course we intend to take. And we are familiar with the Fire Code that you mentioned, and have had some preliminary discussion with them and what might be

required, but that's something that we would have to deal with if this were approved down the road.

Mr. Kihune: I got a question, Chair. Where is the closest fire hydrant at this point to this property?

Mr. Torgerson: I'm sorry, I don't think I know the answer to that. I assume it would be along Kihei Road. I don't believe there's any fire hydrants down Nanialii. Oh, there it is right on the corner of 265 South Kihei Road, which is one of the homes.

Ms. Kapua`ala: So, Mr. Chair, Mr. Kihune, for the record, this is South Kihei Road and this is Nanialii Place. And it seems like this is the closest fire hydrant on South Kihei. If we go the other side, oh, it's at the next block . . . (inaudible) . . . Road and South Kihei Road.

Mr. Fukunaga: So if they do choose to go through the subdivision process, it would be likely that the subdivision improvements would require a hydrant on that roadway, I believe so.

Mr. Kihune: Mr. Chair, I have a comment. It sounds like we're doing this reverse. We should be going the opposite way. We should be going through subdivision approval first. I mean, that's the way I look at it.

Chairman Tanner: Technically speaking, I think the applicant . . . the comment you made was accurate in that you can go forward with a variance prior to the investment of the subdivision application and so forth. But you're right, that's not normally how we see them come to us. But I think he's within . . . the applicant's within their right to do it the way they are. Trisha, I got a question. Is the only letter we received with regard to this variance from David Henderson Brown of Public Access Trails Hawaii?

Ms. Kapua`ala: Yes, that is correct.

Chairman Tanner: And applicant, you mentioned that you spoke to some of the neighbors, but you didn't . . . do you have any letters from them or other than just their comments that you received?

Mr. Torgerson: No. And I wasn't aware of . . . that any letter had been received actually, but the large property owner to the north is the Edo Family. And he commented that he didn't have concerns about the application, but rather had concerns about the development that had been approved immediately to the east. And his only comment was that he thought that they had proceeded without the proper notice, but didn't really have any particular concerns about this.

Chairman Tanner: Has everyone seen the letter?

Ms. Kapua`ala: I apologize, Mr. Torgerson. I'll read it into the record:

Dear Planning Department:

Public Access Trails or PATHMaui.org believes all access for the public should be as good as legally possible. In reference to Nanialii Place Subdivision by Edward Stanley Melott represented by Mikal Torgerson, the required 40-foot right-of-way must be maintained. The pavement must be 28 feet and not 16. Maui has long

been recognized in the State of Hawaii as having the worst County roads and accesses. Please be a part of the solution and not part of the problem. Happy trails.

David Henderson Brown, executive director of Public Access Trails Hawaii.

Chairman Tanner: I think that last statement could certainly be considered an opinion. I've not heard that. Maybe others know more than I know about our reputation . . . (inaudible) . . . as far as County roads go.

Mr. Fukunaga: I guess that would be ideal, but that's why we have this process where a variance is . . . where you have specific conditions where you can't meet those requirements. That's what we're here to decide.

Chairman Tanner: Further questions for the applicant? OK. At this time, I'm open to hear any motions.

Mr. Fukunaga: Chair, I recommend that we postpone our decision until we can get feedback from the Fire Department.

Chairman Tanner: OK. So we have a request to table the variance pending input from the Fire Department. OK. Do we have a second?

Mr. Santiago: I'll second that.

Chairman Tanner: OK. So we have a motion to table and a second. Discussion?

Mr. Fukunaga: Mr. Chair, so looking at the analysis, I feel that the applicant does meet a lot of these requirements. However, the number four, the granting of the variance shall not be detrimental to the public's health, safety, or welfare, or injurious to other property in the vicinity or said, and I can't really agree with that point until the Fire Department gives their opinion or approval.

Mr. Shimabuku: I don't think the Fire Department will give the approval, but they'll come back and recommend what their recommendation is, and we'll be back at the same place again, which doesn't really make sense. I mean, it doesn't matter if we move forward or not, but bring to light about that one house that was demolished or it did burn down. I mean, is that a case where if the road was wider maybe the trucks would've got in and saved their house? I don't know.

Chairman Tanner: OK. If there is no further discussion, we have a motion and a second. Trisha?

Ms. Kapua`ala: Would you like the Fire Department to be present at the next meeting, or would you simply like comments in the form of a written response?

Chairman Tanner: Chad?

Mr. Fukunaga: Either one.

Ms. Kapua`ala: I guess would you like to have a dialogue with them?

Mr. Fukunaga: I think we would be able to get the sentiment of the Fire Department in either form whether they're here or it's a letter response.

Chairman Tanner: I mean, it's my opinion that there may be a number of things brought to light that it would be beneficial for them to be here and be able to respond to those as they come up. So I would say, yes, a representative in person.

Ms. Kapua`ala: And if that's the case, then we'll just wanna schedule the next hearing with you either before or after the motion if the sentiment of the Board is to continue the hearing.

Mr. Torgerson: Certainly.

Chairman Tanner: OK. So if there is no further discussion, all those in favor of the motion to table, aye? All those opposed?

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

VOTED: To table the motion pending input from the Fire Department.

**(Assenting: C. Fukunaga, B. Santiago, J. Haraguchi, H. Kihune,
R. Shimabuku, T. Espeleta.)**

(Excused: P. De Ponte, G. Clark Abbott.)

Chairman Tanner: **And the motion carries unanimously.**

Mr. Torgerson: Thank you.

Chairman Tanner: Thank you.

Ms. Kapua`ala: Excuse me, Mr. Torgerson, could we ask you to come back on Thursday, May 9th?

Mr. Torgerson: I believe that'll work, yes. Yes.

Ms. Kapua`ala: Thank you. We'll serve you notice shortly.

Mr. Torgerson: Thank you.

C. APPROVAL OF THE MARCH 28, 2013 AND APRIL 11, 2013 MEETING MINUTES

Chairman Tanner: OK. Moving on to the next item on the agenda—approval of the minutes for March 18th 2013 and April 11th 2013 meeting minutes.

It was moved by Mr. Espeleta, seconded by Ms. Haraguchi, then

VOTED: To approve the March 29, 2013 and April 11, 2013 meeting minutes as

presented.

**(Assenting: T. Espeleta, J. Haraguchi, C. Fukunaga, B. Santiago,
H. Kihune, R. Shimabuku.)**
(Excused: P. De Ponte, G. Clark Abbott.)

Chairman Tanner: **The minutes are approved.**

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

E. NEXT MEETING DATE: Thursday, May 9, 2013

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:52 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Rick Tanner, Chairman
Jacqueline Haraguchi, Vice-Chairman (1:48 p.m. - 2:52 p.m.)
Teddy Espeleta
Chad Fukunaga
Howard S. K. Kihune
Bart Santiago, Jr.
Ray Shimabuku

Members Excused:

Patrick De Ponte
G. Clark Abbott

Others:

Joseph Alueta, Acting Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Lesli Otani, Civil Engineer, Development Services Administrative, Department of Public Works