

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MAY 9, 2013**

(Approved: 5/23/2013)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Rick Tanner at approximately, 1:35 p.m., Thursday, May 9, 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 Board of Variances and Appeals will now come to order. Let the record show the time is 1:35 p.m. and we have a quorum. We're going to take the items today out of order, and we're gonna move the Maui Tomorrow Foundation Inc., up into the first position. So I'll ask staff to read that into the record.

C. COMMUNICATIONS

1. **TOM PIERCE, ESQ. representing MAUI TOMORROW FOUNDATION INC., SOUTH MAUI CITIZENS FOR RESPONSIBLE GROWTH and DANIEL KANAHELE appealing the Planning Director's decision to not enforce the conditions of approval established by the State of Hawaii, Land Use Commission, for the Piilani Promenade development located at 376, 451 and 524 Kaonoulu Street, Kihei, Maui, Hawaii; TMK: (2) 3-9-001:016, 117, 171, 172, 173, 174 (BVAA 20120008).**

- a. **Stipulation to Continue Hearing**

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

Chairman Tanner: Do we have anybody from the public here for this or anybody here for this item? Please come to the podium. State your name.

Mr. John Rapacz: Thank you. John Rapacz on behalf of Piilani Promenade.

Chairman Tanner: You have to speak up as much as you can. I think we're having trouble with the audio right now.

Mr. Rapacz: OK. Thank you. John Rapacz on behalf of Piilani Promenade. And we would just ask that the Board grant a continuance on this hearing. I don't know that the appellant will be appearing or that a representative will be, but the County representative is here as

well.

Chairman Tanner: OK. Thank you.

Ms. Richelle Thomson: Hello, Chair and Commissioners. Richelle Thomson appearing on behalf of the Planning Department for the County of Maui, and we're also requesting that you grant the continuance.

Chairman Tanner: OK. All right, so we have a request for a continuation. At this point, James, I'll ask you what we need to do from here.

Mr. James Giroux: OK. The parties filed the stipulation, so the new hearing date is known by all the parties. So we just have to, as far as for our scheduling, make sure that staff is OK with that date. And then if it is, then we can just, on the record, state that that's gonna be the new hearing date for this case.

Mr. Bart Santiago: We need to make a motion to grant the continuance?

Mr. Giroux: We can do it by consensus, if you want, unless there's an objection.

Chairman Tanner: Do we do a continuance to a date or just . . . ?

Mr. Giroux: Yeah.

Chairman Tanner: OK. So we need to have a date.

Mr. Giroux: The date is October . . . Trish, what's the date?

Ms. Kapua`ala: October 24th. Shall we start at 9:00, 10:00 in the morning instead of the regular 1:30?

Mr. Rapacz: Thank you, Trisha. John Rapacz again. The attorneys will be coming over from Honolulu, so a mid or late morning start would probably be good.

Ms. Kapua`ala: How does the Board feel about 10 o'clock?

Mr. Giroux: Trish, because that time isn't in the stipulation, can we make sure that all parties get a written notice of that start date, time?

Ms. Kapua`ala: Yes.

Chairman Tanner: OK. So for discussion, we're talking about 10:00 a.m., Thursday, October 24th.

Mr. Santiago: I'm OK with it.

Mr. Ray Shimabuku: I'm OK so far.

Mr. Santiago: So far, yeah, for now. That's a long ways away.

Chairman Tanner: That's a long ways away. OK. So unless there's any further discussion or disagreement, we'll set that continuance for October 24th at 10:00 a.m. All right. Thank you very much.

Mr. Rapacz: Thank you.

Chairman Tanner: We'll go to the next item on the agenda. Staff, if you'll read that into the record?

B. UNFINISHED BUSINESS

- 1. 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 read the agenda item into the record.

Ms. Kapua`ala: I just wanted to bring to the Board's attention that Lt. Scott English from the Fire Prevention Bureau is here; as well as Lesli Otani, a civil engineer, with the Department of Public Works; and the applicant. Thank you.

Chairman Tanner: Thank you. And, Board, the reason we deferred this was to get more information and see if we could have staff here that we do today. So I think we ought to be able to come to a resolution on this. So if the applicant will state their name for the record?

Mr. Mikal Torgerson: Yes, my name is Mikal Torgerson.

Chairman Tanner: OK. And go ahead with your presentation.

Mr. Torgerson: Thank you, sir. As Trisha mentioned, the . . . you folks remember seeing this a few weeks ago. I won't bore you with another full presentation, but the concern raised was that one of the things you folks need to find in order to grant the variance is that it not be contrary to the health, safety, welfare, of the public. And so the concern was

raised to whether I would be able to meet the Fire Code requirements if the variance were granted. And Lt. English was good enough to meet with me. And we mapped out the fire lane that he thought would be meeting their code, and that is shown here in yellow. That's a 24 or 20-foot pavement section. And you see that it comes and T's at the end so that they can move trucks around. He also thought that another fire hydrant would be required. There's one in this location and I believe they need to be 250 feet apart. And so somewhere like here is probably where a fire hydrant would be required. But as I understood it, the request from the Board was to explore whether we could meet the Fire Code, and it appears that that is the case. And of course, Lt. English is here to answer questions as well. Thank you.

Chairman Tanner: I'm trying to remember who was here for the first presentation because that was a pretty brief overview there. So everyone here today was for the first . . . ?

Mr. G. Clark Abbott: No.

Chairman Tanner: No, I didn't think so. I mean, you can stop there, or you can give some more details, because again, a couple of these folks didn't hear any of the presentation at all.

Mr. Torgerson: OK. Out of respect for your time, I just wanted to be brief, but in essence, these six residences were built in the 1930s and '40s. And they've been served, since they were constructed, by this road, Nanialii Place, which has a 25-foot right-of-way and a 16-foot pavement width. It appears that at some point in the past, there was an intent to subdivide in 1947. This document was apparently given to the Engineering Department was where we got that. But according to the County engineers, the subdivision was never finalized although all six of these homes are served with their own individual water meters and utilities of every sort. And this home has actually been sold off separate from these other homes. But apparently, according to the County records, it was never finalized as a subdivision. And so, it's our intent to proceed and subdivide the property exactly as it was originally proposed in February 14th of 1947. But in order to do that, we are requesting a variance to allow the historic 25-foot right-of-way and 16-foot pavement width just as it's been for the last 70 years. To meet the code, it would actually require demolition of all these historic homes. The yellow shown in this diagram shows the portion of the homes that would be within that 40-foot right-of-way with the setbacks. And therefore, compliance really doesn't work. And for that reason, we're requesting that in essence, we be allowed to serve these homes that have been served for the last 70 years by a 25-foot right-of-way with a 16-foot pavement width so that they can be subdivided into their individual lots. And I believe that kinda summarizes our . . .

Chairman Tanner: Do you have the street view photo?

Mr. Torgerson: Oh, yes. These are some of the homes along the street. This is looking

makai down Nanialii Place. That's looking mauka. This is from South Kihei Road. And I believe I've got some aerial photos. Yeah, so this the homes as they sit. There was a home in this location. It was demolished at some point in the past. And it is my intent to build a home here. And this is Nanialii Place as it intersects South Kihei Road. And because of how the block is developed out, there's no way for Nanialii Place to continue through to the other side of the block because this home was recently constructed in its path. So there's really not any porosity or group connectivity issues generated by this concern or this request.

Chairman Tanner: Trisha, between the last meeting and today, is there any further letters or anything from the public in support or opposed to?

Ms. Kapua`ala: No, sir.

Mr. Santiago: So the only improvement on Nanialii Road is the T at the end into the top right-hand lot?

Mr. Torgerson: Oh, will be? As a part of this subdivision request, we would be required to create an emergency access, a turnaround, obviously. It looks like we'd have to bring in a fire hydrant as well. But the lots are already served, like I said, with individual water meters. And all the utilities are all individual to each lot, and have been for . . .

Mr. Santiago: There's no expansion to the current roadway? It's gonna be as it exists?

Mr. Torgerson: Actually, it's 16 feet in its current configuration. I believe the Fire Department would need it to be 20 feet. So we would be expanding it to meet their requirements, but the right-of-way would remain the same.

Chairman Tanner: I'll ask you to stay there, if you would. One of the main reasons we deferred this meeting was to get input from the Maui County Fire Department. And today, we have Lt. English here. So I'll ask at this time, Lt., if you would give kind of your overview of this on behalf of the Fire Department.

Lt. Scott English: OK. Basically, last week I met with the applicant as far as what would be required in the County Fire Department is Fire Department access, the minimum is 20 feet. So basically, from a 16-foot pavement, he's gonna give us a 20-foot fire lane. Also, the Fire Code requires any kinda . . . any road or fire lane that exceeds . . . that are dead-end and more than 150 feet in length will require them to give us a turnaround. So instead of a cul-de-sac, we're doing like a . . . we consider this a hammerhead turnaround, so we have an area at the end to turn the fire trucks around. And then also for a subdivision on a residential scale, fire hydrant spacing maximum is 350 feet apart. So being how this Nanialii Place is designed, we need to have one more hydrant in there to meet the hydrant spacing. I think the only thing that we didn't cross was the fire flow will be a thousand

gallons a minute, so probably an eight-inch line needs to be taken into the hydrant.

Chairman Tanner: OK.

Mr. Abbott: Mr. Chairman, a question, if I may, please?

Chairman Tanner: Yes, sir.

Mr. Abbott: Sir, the other people in the existing dwellings, are they here? Are they in favor of what's going on? Are you representing them all?

Mr. Torgerson: No. I'm representing . . . Ed Melott owns these residences here. This is owned separately. That neighbor has been contacted and didn't express any concerns. Obviously, we notified them as part of this process as well through certified mail and everything, and we didn't get any response from them in that context. But I know that Ed Melott who lives in this house right here did talk to them about it and they didn't have any concerns about it. But I don't formally represent this house. I know that he also spoke, in fact, to this neighbor as well.

Mr. Abbott: I, myself, am very uncomfortable that we have nothing in writing or anything from that owner of that house as to whether this is a good idea or a bad idea. I'm just trying to protect his property rights as well as everybody else's.

Mr. Howard S. K. Kihune: But they were notified.

Mr. Abbott: We don't know if they were notified. He doesn't have proof of . . .

Mr. Torgerson: I do.

Mr. Abbott: You do have proof?

Ms. Kapua`ala: Yes, a part of the application process is that adjacent property owners are notified twice via certified mail, return receipt requested. So before they even get to you, I make sure that everyone has received proper notice: one, that the application is gonna be applied for; and two, when the actual hearing date, time, and place will be. And it gives them the opportunity to put in their concerns, questions, come down to the department, look at the application, put something in writing via e-mail, fax.

Mr. Abbott: OK. So you've covered the bases. OK.

Mr. Santiago: I probably asked this the last time. Just for my information. So the owner lives in one of the homes. The other three, are they long term rentals or . . . ?

Mr. Torgerson: The owner lives in this home right now. This one is in a long term rental. And I believe he's applied for a short term rental on this one and this one, but those applications have not been granted.

Mr. Santiago: So what's the current use of those homes?

Mr. Torgerson: I believe they're currently just rented as long term rentals. And I guess in the interest of full disclosure, I'm looking to purchase this lot and build my own home to live in there.

Mr. Shimabuku: At one point, that road used to go right through?

Mr. Torgerson: I don't . . . to my knowledge, it never has. Perhaps Public Works could speak to that, but I don't believe that it has.

Ms. Lesli Otani: Currently, it's not a separate roadway. It's an easement over the large piece. And I don't believe, practically speaking, it ever went through. On the other side, there was an affordable housing subdivision. And actually, one of the lots in his aerial photo, it was vacant. I believe they found historic sites. So my limited understanding was that that lot wasn't going to be built upon, but the other houses were being built. There, that one with the circle.

Mr. Torgerson: The historic site she's referring to I think is here. I believe in just standing out on the site, it looks like Nanialii is in alignment with this person's carport. So if the road were continued, it would go through their carport.

Mr. Shimabuku: And you also mentioned, as I recall, that house that was demolished, the possibility of that catching on fire or something?

Mr. Torgerson: Yeah, anecdotedly, that's what the current owner had told me sometime ago was that he thought that that house might've burned down, but I don't know that for a fact. That's . . . all I know is that there was a home here. All the records show that there was a home there and it's not there anymore. But the water meter's still there and all the utilities are still there.

Mr. Shimabuku: Lt. English, any concerns in that area from the past with that road being too small, maybe?

Lt. English: Our Fire Code just has a minimum of 20-foot wide, and the wider the better, but like I said, our minimum is 20 feet.

Mr. Shimabuku: No, I was just thinking if the thing caught fire before, if you guys had any problem with access to that area as it is now.

Lt. English: I would have to ask probably the Kihei Captains. I cannot really answer that question. They're the ones out there driving the roads.

Mr. Shimabuku: OK.

Chairman Tanner: Trisha, do we have a staff recommendation on this?

Ms. Kapua`ala: It is the practice of Public Works to not give a recommendation. But by looking at their staff report, which is supposedly supposed to provide an analysis, it's more comments, yeah, Lesli? Let me defer to Lesli Otani. Thank you.

Ms. Otani: Several years ago, I guess due to legalities, we don't provide an actual formal staff report. But I can say that the Director's Office was concerned with the request. The idea that there's potentially a substandard road if the variance is granted to serve six lots, potentially 12 living units, on such a small road was a concern.

Ms. Kapua`ala: Mr. Chair, would you mind if I ask the applicant a question?

Chairman Tanner: Sure.

Ms. Kapua`ala: I'm wondering how big these lots are, the proposed lots.

Mr. Torgerson: I believe they're in the 8,000 square foot range.

Ms. Kapua`ala: I was just saying that to . . . asking that to confirm Lesli's statement. And that is true, the minimum lot size for an ohana dwelling or a second accessory building is 7,500 square feet. So potentially they could have . . . you know, say all these homes are demolished because they're to the point of you can't repair it, you could have a main house and an ohana of 500 square feet.

Mr. Santiago: I have a question for Lesli. Would the improved proposed improvement roadway be . . . at the end, would that satisfy Public Works' concerns?

Ms. Otani: No, if it's going to serve more than three lots, then we would require a full urban road. So it would have to be a 40-foot right-of-way in this instance, the curb, gutter, wider pavement than the 20 feet. It would be inadequate for more than three. You know, if they did an easement, a roadway serving three lots, then the requirements would be a 24-foot easement and 16 feet of pavement. So it becomes when you get to be so many lots, the requirements increase.

Mr. Santiago: So there are contradictory rules for Public Works and the Fire Department as far as what the requirements are?

Ms. Otani: Yes, and that's actually . . .

Mr. Santiago: It's common?

Ms. Otani: Yeah, it's common. So even for cul-de-sac radiuses, sometimes their code exceeds ours, but in other instances like the pavement width, our code will exceed theirs. So usually the stricter applies.

Mr. Shimabuku: Mr. Chair, I'm kinda lost at this point because usually when you create a subdivision, that's when all the stuff comes through, but there's no plans in the near future for doing such a thing, from what I understand. So I kinda lost right now on whether to grant or deny the variance. It's kinda confusing to me at this point.

Mr. Santiago: Isn't it the variance is being requested prior to the subdivision? I think that's where we were . . . like the cart was in front of the horse was the comment last time.

Mr. Hokama: Mr. Chairman, I have a question. What is the intention of the owner? Is he planning on trying to get individual TMKs and sell these lots off? Is that what his intention is?

Mr. Torgerson: His intent is to sell the vacant lot to me. And I intend to build my own personal residence on that lot. And I know he has a son that he wanted to be able to gift, or sell, or whatever, transfer in some fashion one of the homes to. And then he wanted to hold onto the other ones. But I know his . . . part of his reasoning was that in getting them on their own TMKs, they can be financed more conventionally, and just provide him the flexibility to be able to sell me a lot, for example, and to be able to transfer to his son, and that sort of thing. And also, just to address one of the earlier comments, the intent is not to demo any of the houses and do anything other than what's been there for 70 years. It's literally to maintain those houses with the exception of building one more house back here where there was a house.

Mr. Hokama: The second part to that question: have you looked at CPRing the property?

Mr. Torgerson: I know that he's explored that, but having them on individual TMKs just allowed the better flexibility. For example, I don't believe a home could even be constructed back here at this point on a single parcel with the way that it currently exists. I can't speak too deeply about that. I just know that he has talked about it and rejected that.

Mr. Hokama: Thank you.

Chairman Tanner: Clark?

Mr. Abbott: Isn't there a possibility, again hypothetically, that the existing homes that are there now, according to what Trisha says, the lots are sizable enough that a 500-foot ohana could be added to those existing or that size lots?

Ms. Kapua`ala: Correct, that size lots. I mean, just looking at it now, it doesn't look like the configuration is conducive for that. But as your staff, I'd like to remind you that this is . . . this variance will run with the land no matter who the owner is. These houses will be demolished at some point and the variance will still stay. So granting the variance, as your Planner, I would feel more comfortable with conditions having to do with maybe possibly limiting the ability to put ohana dwellings, or the amount of ohana dwellings, or possibly make this variance terminate upon these dwellings being demolished. I think that's, I think, from a zoning enforcement standpoint, and maybe Public Works and Fire can help me with this, that's something that I think we'd be more comfortable with.

Mr. Abbott: That's one of the reasons I asked the question is because if you increase, hypothetically, added an ohana, you're increasing more use of the property. The roadway, you're increasing more people using the roadway. And I'm just . . . I'm very hesitant about this whole thing myself. It just . . .

Chairman Tanner: Trish, when you're talking about it has the ability to add an ohana, if the house was demolished, could you not put two houses, if this was granted?

Ms. Kapua`ala: Correct.

Chairman Tanner: Which . . . because you had mentioned 12. So theoretically, all the homes existing could be demolished and 12 could be put in?

Ms. Kapua`ala: Correct, and not necessarily demolished, destroyed by fire.

Chairman Tanner: Right.

Ms. Kapua`ala: Damaged in any way. Maybe we should check if it's in the flood zone. Possibly. It's off of South Kihei Road.

Ms. Otani: I respect what Trisha's saying about putting the conditions on, but just as my experience dealing with some of the agreements that we process with subdivisions, you know, I think she probably would agree with me, sometimes they're difficult to enforce. And I have a lot of people who come in, potential buyers of properties, and sometimes that becomes an issue when you have special conditions on a property that not everyone is aware of. So while it can be done, just sometimes it is difficult to enforce.

Chairman Tanner: Now, right now without this variance, the one lot cannot be built on. Is that right? The lot where the house used to be but is not now.

Ms. Kapua`ala: I'm not sure why you said that. When you did say that, Les and I kind of conferred here. And this is not Planning or Public Works' requirement, but there is requirements from other departments to do a subdivision once you build past the fourth dwelling for dedication of land purposes.

Ms. Otani: Yeah, usually, right now, we would view it as one lot which is just that one square taken out. So if they came in for a building permit, it would be based on the tax key, you know, that one lot. And so that triggers. Once you have more than three dwellings, it triggers roadway and infrastructure requirements. And I can't speak for Water, what their requirements are, but for our office, we do what we call a fourth dwelling subdivision, and they would have to give up road-widening and things like that. I'm not sure if it triggers a commercial status with the building review. But we process a lot of those fourth dwellings, a lot of condos, or multi family living units. So, you know, it's possible, but I don't know what all the requirements to comply would be.

Mr. Torgerson: I guess the reason . . . I'm sorry.

Chairman Tanner: The fact that a house was there before is not enough to say to say he can build a house there now?

Ms. Otani: No, I don't believe that would . . . well, that wouldn't affect my criteria. We look at what's existing.

Chairman Tanner: And as you look at this right now, you would agree that you . . . he would not be issued a building permit to build a house there?

Ms. Otani: Well, he may be, if he complies with all the requirements, you know, based on the zoning, and the utilities, and the roadways. They might have to give up their walls in the front if there's a road-widening requirement, but things like that would be reviewed.

Mr. Torgerson: If we were to dedicate the requisite road width, it would require the demolition of the facades of all of the houses.

Chairman Tanner: Right.

Mr. Hokama: So as is, cannot, right now? As it is right now?

Ms. Kapua`ala: OK. That's what you meant by you cannot put a house there.

Mr. Torgerson: Also, it's an R zoning. I don't think you can do more than two units on an R zoning lot, can you?

Ms. Kapua`ala: I see. Your zoning is R . . . ?

Mr. Torgerson: Two.

Ms. Kapua`ala: Two? And the total lot size is . . . ?

Mr. Torgerson: I think it's one acre or roughly.

Ms. Kapua`ala: So one home per 7,500 square feet. And about an acre, 43,700-something square feet total. One home per 7,500 square feet. So one acre.

Ms. Otani: So, yeah, they would have that . . . (inaudible) . . .

Ms. Kapua`ala: So those are all main houses? And can put in . . .

Ms. Otani: . . . (inaudible) . . .

Mr. Torgerson: Yeah, there would be more than that acreage to that square footage. The more fundamental question is, could we meet the required street width? And the answer is no. That's why I'm asking for this variance in the first place.

Ms. Otani: But this variance wasn't for the road-widening lot, though.

Mr. Torgerson: Yes, it is.

Ms. Otani: It is?

Mr. Torgerson: I'm asking for a reduction in the right-of-way width and the paving width. And that's the variance I'm asking for.

Ms. Otani: No, I think your variance request is 18.16.050 which are the design guidelines for internal roads. And 18.16.060 is the adjacent road-widening. So you still would have to do the road-widening lot along South Kihei Road, if it's required.

Mr. Shimabuku: So we're looking at South Kihei Road and Nanialii, then?

Mr. Torgerson: The request for the variance is not . . .

Ms. Otani: I don't think the variance request applies to South Kihei Road improvements.

Mr. Shimabuku: Only Nanialii, then?

Ms. Otani: Only the easement inside, yeah.

Ms. Kapua`ala: So my understanding correctly is that say the Board grants your variance

today, you process your subdivision, and then apply for a building permit to have your dwelling on that vacant lot, that the fourth dwelling requirement would kick in, and you would process another subdivision to do a road-widening lot on South Kihei Road?

Ms. Otani: If they don't subdivide, the fourth dwelling kicks in. If they subdivide, each lot is its own entity.

Ms. Kapua`ala: Got it.

Mr. Shimabuku: So more than likely, he wouldn't just be able to build a home without any kind of variance into that Nanialii, right? Would the permitting process allow it that he would be able to put a dwelling on that lot right now?

Ms. Otani: If they come in for a fourth dwelling permit, we don't look at inside the property. We look at access to. So our requirements would be limited to South Kihei Road. For the road-widening, adjacent roadway improvements, if it's not already to standards, which it may be, I don't know, but if he comes in for a subdivision, now we're looking at the adjacent access and access within. And that's where it would trigger improvements on the easement inside.

Ms. Kapua`ala: So, Lesli, if he applies for a fourth dwelling now, fifth dwelling now, the improvement would be required on South Kihei Road, the dedication of land. But if he applies after he subdivides, say he gets this variance, and applies for a building permit after the subdivision is complete, the improvement would be required on Nanialii Place?

Ms. Otani: Well, if they subdivide and there's that one lot in the corner that he wants to build on, we would review just that one lot, and it'll be one dwelling or two dwellings with the ohana, which should be under the four-dwelling trigger, because it's four or more dwellings on a property. Once you go over three dwelling units on a property, that triggers requirements.

Mr. Torgerson: But so does subdivision, right?

Ms. Otani: Well, any subdivision has a lot of requirements.

Mr. Torgerson: But you have the Kihei Road's requirement in either scenario.

Lt. English: I guess my concern is 20 feet wide, like I said, if they start doing house and ohana, house and ohana, then we got parking situations. You end up parking on the road. There goes our access. . . . (inaudible) . . . more development in the area, then at least we keep that only way in clear.

Chairman Tanner: To clarify, when conditions are placed on a variance, you stated that

sometimes those are difficult to enforce. They're difficult to enforce because more often once the property is sold, the new buyers aren't maybe necessarily aware of these conditions that are placed on, and they may move forward without realizing it, and then that causes . . . ?

Ms. Otani: Yeah, and it's not necessarily just variance agreements. But you know, even we have things like family subdivision agreements or defer agreements. And a lot of times, they're recorded on the property, but when the tax keys change, or it changes hands, sometimes people aren't aware maybe if they don't do their due diligence. Maybe it's something's missed in the computer system. Maybe someone looks at the property, and they say it's R-2, you can do this being the initial person to review not knowing there's all these, you know, I guess, baggage that's kind of in the back.

Mr. Shimabuku: I think we've kind of seen that in the past where people buy stuff, and then next thing you know, it's like, oh, it was there prior to buying the place.

Ms. Kapua`ala: Mr. Chair, we will record this with the land, with the conditions, and we will attach it to KIVA. We'll put a flag. We'll do our best. That's the tools we have now. KIVA is our central permitting system, which will one day turn into some other permitting system, and may or may not transfer over.

Mr. Santiago: Maybe a condition that there's no parking, street parking, possibly to alleviate . . . (inaudible) . . . ?

Ms. Otani: If the road is substandard, also, they wouldn't . . . under our current code, they are not able to dedicate it to the County. So things like parking and such are . . . especially, it's hard to enforce on private property.

Ms. Kapua`ala: Parking on the street is the Police Code. Actually, you're not supposed to park on the street after a certain hour. So obviously, we don't see it being enforced in some areas, a lot of areas.

Chairman Tanner: OK. Any further questions for the applicant or for staff? OK. Hearing none at this time, I'm open for a motion.

Mr. Kihune: Mr. Chair, I make a motion to deny the variance.

Chairman Tanner: OK. We have a motion to deny the variance. Is there a second?

Mr. Abbott: Yes.

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

Mr. Shimabuku: Well, to me, it's kinda confusing in deciding. I cannot see the whole play into this process of getting a variance before the subdivision or whatever is coming down the line. But I think it might be a good thing to deny at this point.

Chairman Tanner: Further discussion?

Mr. Kihune: I think I stated last time, this just seems that the applicant has the carriage in front of the horse. And I think he should be going through a subdivision, and then coming in, or coming through the process in the normal way to subdivide, and get separate TMKs for this property, and meet all the requirements that are required by the County code.

Mr. Santiago: I agree. I think it makes it a very difficult decision to approve something that should be on the back end of a subdivision. At that point, that's when that road improvement should be determined whether or not it's allowable, or they can seek a variance based on the subdivision request. So it seems like it's a little backwards as far as the process is concerned. So I think that's where the confusion starts.

Mr. Shimabuku: Well, I was kinda chuckling earlier about the fact that the person who kinda made a motion for the Fire Department to be present, not here today. But, you know, maybe he had some kinda insight of this process. So him not being here today, maybe makes it a little bit different, but I kinda agree with what Howard had said and the reason for the denial.

Chairman Tanner: OK. If there's no further discussion, we have a motion to deny and a second. So we'll take a vote at this time. All those in favor of denying the motion? Any opposed?

It was moved by Mr. Kihune, seconded by Mr. Abbott, then

VOTED: To deny the variance request.

(Assenting: H. Kihune, G. Abbott, R. Shimabuku, P. De Ponte, B. Santiago.)

(Excused: T. Espeleta, J. Haraguchi, C. Fukunaga.)

Chairman Tanner: **The motion to deny is passed unanimously.** And that ends that item. Now we'll go on to the next item, which is the approval of the minutes of the April 25th 2013 meeting.

D. APPROVAL OF THE APRIL 25, 2013 MEETING MINUTES

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

VOTED: To approve the April 25, 2013 meeting minutes as presented.

**(Assenting: B. Santiago, R. Shimabuku H. Kihune, G. Abbott,
P. De Ponte.)**

(Excused: T. Espeleta, J. Haraguchi, C. Fukunaga.)_____

Chairman Tanner: **The minutes are passed.** And if there is no other business before the Board, our next meeting will be May 23, 2013. I will not be able to make it. Jacqueline will be Chairing that meeting. And the Board of Variances and Appeals is adjourned.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

F. NEXT MEETING DATE: Thursday, May 23, 2013

There being no further business to come before the Board, the meeting adjourned at 2:18 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Rick Tanner, Chairman
Bart Santiago, Jr.
Ray Shimabuku
Patrick De Ponte
G. Clark Abbott
Howard S. K. Kihune

Members Excused:

Jacqueline Haraguchi, Vice-Chairman
Teddy Espeleta
Chad Fukunaga

Others:

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

Scott English, Lieutenant, Fire Prevention Bureau