

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
NOVEMBER 27, 2013**

(Approved: 2/13/2014)

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., Wednesday, November 27, 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 have a quorum. I'll ask staff to read the first item of the agenda into the record.

D. VARIANCES

1. **WAYNE I. ARAKAKI representing JYS BROTHERS & SISTER, LLC requesting a variance to use a residential property as Ichiban Okazuya's parking lot, located at 2127 Kaohu Street, Wailuku, Maui, Hawaii; TMK:(2) 3-4-004:083 (BVAV 20130016).**

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

Ms. Kapua`ala: With that I'd like to turn the stand over to Mr. Wayne Arakaki who is here representing Mr. Tony Masa Sasaki, and he has a power point presentation for you.

Mr. Wayne Arakaki: Thank you. Good afternoon, Board Members. My name is Wayne Arakaki. I'm an engineer.

Chairman Tanner: Sir, I apologize. We've got a couple of housekeeping things to do, so if you could hang on for one second.

B. PUBLIC TESTIMONY

Chairman Tanner: First, I would like to open this up for public testimony. If anybody's here and would like to speak on an item on the agenda and cannot wait for that agenda item to come up, you can do that now. If you do, you'll not be given an opportunity to speak again on the agenda item when it comes up. So the option of doing it now or you can wait until that agenda comes up. So is there anyone here that would like to speak on an item now? Yes, sir.

Could you come to the microphone and state your name for the record, please? And you'll have three minutes.

Mr. Carver Wilson: My name's Carver Wilson and I'm here to talk about the variance that Ed Takayesu has put forth. And I just wanna say I've lived in the area for over 30 years. And I've been

familiar with all the properties. I have a landownership interest in all the properties. That's where the . . . And I'm fine with the variance request that's been applied for. The large . . . the lots are all very large and the . . . This is an imperfect world but the line of the surveys have changed and so on. I think it'll be OK.

Chairman Tanner: So you support the variance request?

Mr. Wilson: That's right.

Chairman Tanner: OK.

Mr. Wilson: Thank you very much.

Chairman Tanner: Thank you very much.

Mr. G. Clark Abbott: Which one?

Chairman Tanner: The one that's up. The first one.

Mr. Howard S. K. Kihune: Do you have interest in this property at all?

Mr. Wilson: I do in the Takayesu property.

Mr. Kihune: You own part of it?

Mr. Wilson: Yeah, I have an interest in part of it.

Mr. Kihune: OK. Thank you.

Mr. Wilson: You bet.

Chairman Tanner: If you'd like to, come up, sir. State your name, please.

Mr. Steven Raymond: My name's Steven Raymond and my wife, Puanani Raymond, back here. We are as well speaking about the Edward Takayesu TMK: 2-2-12:34 agenda item. Provided is our testimony and if I can say that the back two sheets have maps on 'em. One is . . . actually came in the variance request. And what I did was note down and highlight some items that I will be speaking about. The second one is basically a larger view of that first sheet showing our TMK. We are adjacent to the property that's gonna be discussed.

So we, Steven and Puanani Raymond, owners of TMK: 2-2-12:66 are opposed to the variance for TMK: 2-2-12:34, and find that there are discrepancies in the Description of Request Section of the application.

For years, we have had property line issues with Mr. Takayesu to include dumping of construction materials, and yard waste of grass and plant cuttings, trimmed tree branches, etc., over the fence onto our property. The property line clearing done in 2010 showed that the dumping had gone on

for many, many years prior. Despite Mr. Takayesu being called on it and told to stop numerous times, his yard men would occasionally continue to throw items on our side. When confronted, they responded, "Eddie said we could." Mr. Takayesu has even gotten verbally combative when discussing the issue. Not until it was reported to the Fire Department in 2013 prompting an inspection and written warning by Kaponu Stupplebeen has it stopped. Ironically, much of the dumping was right at the spot where the variance is being requested and that is indicated on the map.

Other more critical ongoing issues/problems really surfaced in 2002. A few years earlier, the lessee flower farmer on the adjacent mauka property, 2-2-12:49, improperly constructed and then overused a green waste dump site on the lower southwest corner of that property unpermitted. A heavy rainstorm early in 2002 caused pooling of water in the green waste and eventually washed . . . an eventual washout that flooded into the Takayesu/Miguel property and severely damaged the unattached workshop/spray room which is the 512 square foot shed in the variance. I say "Takayesu/Miguel" because at the time, the Takayesu Family was leasing from the Miguels. In Mr. Takayesu's words, "It was destroyed." The shed was taken down, removed, and nothing put back in its place for several years. This is one of the discrepancies with the RFV. The newly built extension/addition was done well into the 2000's. And why wasn't the Ordinance 2749 adhered to at that time?

Then in an effort to resolve flooding into the Takayesu/Miguel property, the lessee farmer, through discussion with Mr. Takayesu, diverted water flow so that it would now go into our property. There were three more large rain events that year. Each one resulted in washouts to our property that severely damaged our gravel driveway rendering it accessible only by 4WD. Mr. James Ino and Mr. Carl Hashimoto of NRCS had to be called in to try and help resolve the issue. As it turns out, April of that year was also when the Takayesu's purchased their property from the Miguel Estate. Their partner in the purchase of 50/50 interest happens to be the lessee farmer, the one that helped divert the water towards our property.

After the partnership was made, tree cutting and trimming was done along the boundary of the Takayesu property and the 2-2-12:49 or the mauka property mentioned above. This cutting added to a berm of green trash that redirects water flow from its natural path. We are greatly concerned that in order to protect the corner of the dwelling sitting just nine feet from the boundary line, methods will be employed to keep sending more runoff water towards our property resulting in continued damage to our property.

A second discrepancy to address is the statement in the description that refers to incorrectly placed survey pins being the reason for a 9.6-foot setback instead of what was thought to be 15 feet.

In 1985, my parents had their property surveyed by Warren Suzuki through Warren Unemori Engineering. At that time, this was one large 16-acre piece.

In 1992, my parents hired Akamai Surveying to create a topo map required for a family subdivision designed by Stacy Otomo Engineering. This job also required Akamai to survey the property in order to plot points for the map.

In 2012, my wife and I hired Akamai to come back and re-plot boundary pins after the property line

clearing of 2010. Ongoing issues with sharing the property line and conflicting information regarding Mr. Takayesu's surveyor prompted me to take action to verify the line and prepare for the future building of a fence line.

In each instance using Government Survey Triangulation Station, Kikalapuu, the three different crews confirmed and matched the position of the survey pin shared by TMK: 66, that's us; 34, the Takayesu's; and 49, the mauka property. That, as well, is indicated on the map. This pin was placed 80-plus years ago. There was no incorrectly placed survey pins as alleged and the math doesn't work out. The sheds were built within a 15-foot distance both then and after 2002.

We sincerely ask that the Board vote against the requested variance for TMK: 2-2-12:34. Thank you very much.

Chairman Tanner: Thank you. Again, if there's anyone else that would like to speak now, if not, you'll have an opportunity when that item comes up, but it's your choice.

Ms. Alyse Takayesu: . . . (inaudible) . . .

Chairman Tanner: No, that's OK. Just state your name for the record.

Ms. Takayesu: My name's Alyse Takayesu. I am the daughter of Mr. Takayesu applying for the variance. I just had not planned on testifying but I just wanted to say that the discrepancy of when the shed was actually built or destroyed seems to me to be consistent because the building has been there. And when it was destroyed in 2002, it was actually flooding. It wasn't any change to the footprint of the building.

Chairman Tanner: Thank you. OK. If there's no one else, we'll close public testimony at this time. And we'll move to approve the minutes from the October 10, 2013 Board of Variances and Appeals' meeting.

C. APPROVAL OF THE OCTOBER 10, 2013 MEETING MINUTES

It was moved by Mr. Abbott, seconded by Mr. Teddy Espeleta, then

VOTED: To approve the minutes of the October 10, 2013 meeting as presented.

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

(Absent: J. Haraguchi.)

Chairman Tanner: **So the October 10, 2013 minutes are approved.** And we'll move back to the variance. Sir, you may proceed.

D. VARIANCES

- 1. WAYNE I. ARAKAKI representing JYS BROTHERS & SISTER, LLC requesting a variance to use a residential property as Ichiban Okazuya's parking lot,**

located at 2127 Kaohu Street, Wailuku, Maui, Hawaii; TMK:(2) 3-4-004:083 (BVAV 20130016).

Mr. Arakaki: Thank you. Good afternoon, Board Members. My name is Wayne Arakaki. I'm an engineer. And Mr. Sasaki hired me to apply for this variance for a parking lot next to his property at Ichiban's building.

The property is located at the very tip of the intersection of Kalua Road and Kaohu Street. You know, this is two properties. There's one in the back about 5,000 square feet. And where the Ichiban Restaurant is, there's another separate lot. It's about 2,600 square feet. So, you know, there's two parcels. Don't get confused that it's just one. It's two different parcels.

Across the street is Napua Street and there's the County baseyard parking area. This is the Ichiban Building. Again, there's a small parcel here which is about 2,600 square feet. And then the proposed parking area is in the back of this building, but it's adjoining.

To the left, this is an office building. I used to work there when I first started in this business. This was Warren Unemori's building and I believe it still is. It was a converted residential that was turned into an office. In the back is a vacant lot. I guess there was a residential building before, but I guess it got demolished, but it's vacant right now, but it is zoned residential, R-2. And across Kalua on the west direction is the HGEA Building, David Trask Building. And there's several residential units along the street.

There are several items the owner wants the Board Members to know why they purchased the property. The property was purchased not to expand their existing building. The existing building will remain the same. And it's 490 square feet. The property that they purchased will not be leased. It will be used by Ichiban. And the main reason is actually for safe parking. They wanna take the parking that's on Kaohu Street right now and provide parking on this recently, purchased property.

And then again, there's no room for parking. It's only . . . even though parking is grand-fathered in, the property where Ichiban lies is only 2,600 square feet. The main dwelling that's on the property has been demolished and that was to allow more parking. As you can see, this is the typical, daily parking where there's four vehicles, but if you notice, it kinda sticks out on Kaohu Street which creates a problem.

The existing parking creates a problem for pedestrians, people walking up and down the street, and also vehicles because it sticks out. The parked vehicles actually limit sight distance. The posted speed limit there is 20 miles per hour. And normally, you need about 150 feet to stop. But what I did was I took measurements. You know, those radar guns, we have one, and the average speed is not 20. It's actually 28 miles an hour. And then in that case, you would need 200 feet of sight distance.

The owners are actually concerned about public safety. That's why they purchased the property. And over the years, like anything else on Maui, traffic has increased. The flow of traffic has increased. Also noted is that pedestrian traffic, there's Iao School and Wailuku Elementary. And then there's children walking up and down the street usually morning and afternoon during school

hours.

This is the sight distance going up to High Street on Kaohu. And this is the sight distance going down. The posted speed limit is right here. It's 20 miles per hour.

What I did was I was coming out of Kalua Road onto Kaohu Street, so this is the sight distance that's shown here. Then when you place a vehicle here, when there's a truck, there's hardly any sight distance at all. So it becomes a problem for people coming out of Kalua Street onto Kaohu Street.

There's parking problems in Wailuku Town. You know, everybody talks about it, but there is a shortage of parking. And there's increase of traffic in Wailuku Town. But, you know, there's no additional parking that was developed in Wailuku Town so it's a constant problem. And one of the things that contributed is government has increased so there's more employees. And the County keeps talking about making a parking structure which is being planned, but it hasn't got started.

And then the other thing about Wailuku Town, in the old days, people used to go with just one car. But now, the neighborhood . . . I mean, it's . . . on an average, usually it's two cars per household. So usually, people park in the garage and there's one on the street. And that's typical in this kinda area here.

The other thing is that Wailuku Town has several multistory buildings. And one of the things is that they base their parking on 500 square feet per stall, which I feel is inadequate. It's more like . . . it should be like 300. And then again, a County parking structure has not been built for whatever reason.

This is the proposed layout of the parking. This is Kaohu Street. This is where Ichiban is located. And these stalls are full-size stalls, 18 by 8-1/2 with a 24 feet reverse. And it's a one-way in and a one-way out on Kalua Road, and then this is just for traffic safety.

Going over the variance requirements, yeah, on the exceptional unique or unusual physical, geographical conditions, this property that Ichiban purchased actually had two accesses: one on Kaohu Street and one on Kalua Road. If the variance is granted, we'll eliminate the parking that's on Kaohu Street that's a . . . that is a traffic hazard right now. Putting the parking on this property will probably relieve congestion and would help in safety, traffic safety.

Also, if the variance is granted, the parking lot will actually create more open space. You know, if you look at Wailuku Town in that area, everything is so congested, but with the parking space, I think that would help. And also, landscaping will also be a plus. So this is how it looks right now with Ichiban here. And then you see a lot of open space, which I think is good for this area.

Strict compliance for the title, this particular is zoned urban. The Wailuku-Kahului Community Plan has business as . . . designate as business and commercial, but the County zone as being R-2. The future development of this property will be commercial. The owners are not requesting at this time or maybe even in the future to construct a new building but actually to use it as a parking lot, parking area, only.

One thing about change in zoning which I believe the owner is not too familiar with is that we do the paperwork for a change in zoning, but then get the requirements/improvements. And that would require road-widening, curbs, gutters and sidewalks. Even to place a water meter because the Water Department usually tells you to upgrade, that alone would cost \$20,000. So it adds up. It's not only the application of zoning but also the infrastructure improvements that you gotta upgrade, not to mention the various setback requirements and also road-widening. Kalua Road is actually 30 feet. I mean, residential should be 44. So I can see where this going where the owner would probably have to dedicate seven feet of his property. And if you add seven feet on that side, and then another seven feet on Kaohu Street, it adds up.

I have some financial information about the property. The owner purchased that property for \$150,000 and it was on an agreement of sale. He demolished the house, and I guess, when you demolish a house, it's more difficult to get a land loan. So I guess he made an agreement with the landowner, previous landowner. The market value from the real property tax office is \$160,000. The owners are currently paying \$3,000 a month. What they wanna do is eliminate the four nonconforming parking spaces and replace this with five County standard parking stalls. I just wanted to do a quick math, but eight dollars per . . . (inaudible) . . . less expenses, 1,500 meals they gotta sell in order to pay for this. So it's quite burdensome. And the thing is, they employ several people. It's not just husband and wife.

OK. Conditions creating a hardship were not the result of previous action by the applicant. The owners first purchased the Ichiban Okazuya Building with a land area of 2,600 square feet and building floor area of 490 square feet many years ago not knowing that parking would be a problem in the future. So as the years went by, there was an increase in traffic. Safety became an issue. They decided that in order to have . . . to provide a more safe parking for the public, they decided to purchase this property. So the hardship is not created by them. It's just that they wanted to provide a more safe condition for their property.

If they were . . . You know, a requirement would be for them to change the zoning. The variance is only a temporary thing. So they would be applying for a change in zoning. Again, Kalua Road is 30 feet. They would have to give seven feet. Part of Kaohu Street is also 30 feet. They would have to give another seven feet. And then they have both frontage, so that would be a substantial amount of property, also curbs, gutters, sidewalks, and whatever upgrade the Water and Fire Department requires.

This property is not in the MRA, Maui Redevelopment Agency. Usually the MRA deals with this kind of property in Wailuku Town, but this is not so. In order for them to modify requirements, they would have to come back to the Board or work something out with the County.

To summarize on the condition of the parking request, the property was purchased because of the lack of parking. It wasn't for future expansion or development. There is no future building plans. The owners will eliminate the four parking stalls along Kaohu Street, and will provide five approved parking stalls on the property. The main concern for them is public safety. The owners will apply for a change in zoning, but we still doing research on how much it's gonna cost. Again, the change in zoning application is substantial, but what is more substantial is the improvements that come with the change in zoning. This parking lot will create open space with landscaping. And I don't see how it will alter the character of the neighborhood except making it less congested. Ichiban has

been part of the community for many years. They are good neighbors and want to improve the business by providing safe parking. Do you have any questions? This ends my presentation.

Chairman Tanner: OK. Any Board Members have questions for applicant?

Mr. Kihune: With the approval of a variance for that parcel for parking, will that mean that the parking in front would be eliminated?

Mr. Arakaki: Yes.

Mr. Kihune: So that would be eliminated. What improvements you planning on making on the front? Putting up a barrier or . . . (inaudible) . . . so cars don't park there?

Mr. Arakaki: Yeah, we can provide some kinda traffic barrier so people won't park in that area. It's just that I wanna be careful because I don't wanna trigger a building permit, then everything kicks in, and then, you know, this is a substandard lot.

Mr. Kihune: Like a planter box or something?

Mr. Arakaki: Yeah.

Mr. Kihune: Thank you.

Mr. Arakaki: Thank you.

Mr. Bart Santiago, Jr.: How long has this business been in place?

Mr. Arakaki: How long have you been . . . ?

Mr. Tony Sasaki: Thirty-two years.

Mr. Arakaki: Thirty-two years.

Mr. Santiago: Thirty-two or twenty-two?

Mr. Arakaki: Thirty-two.

Mr. Santiago: Thirty-two. Thank you.

Chairman Tanner: Any other questions? OK. At this time, I'm gonna open for public testimony for anybody that has not already spoken on this that would like to come up and speak on this item. OK. Seeing none, I'll close public testimony and open for discussion. If there's no discussion, we are open for a motion.

Mr. Espeleta: I'd like to make a motion that we approve the variance.

Mr. Patrick De Ponte: Second.

Chairman Tanner: So we have a motion and a second. Any further discussion? Chad, go ahead.

Mr. Chad Fukunaga: OK. I think considering the smallest size of the lot, and the configuration, and the way it's bounded by commercial or business uses, I think you can argue that you could fit a home on the property. If you were to adhere to today's rules and laws, you could fit a home on there, but could you really have reasonable use of your property? Personally, I would argue no. I mean, considering the uses and size again, I would say that you don't really have the privacy. You can't really use it in a way that you could use in a typical residential type of home. And yes, you could put walls around to block that off, but then you'd start feeling like you're in a prison. So I don't know. It feels like it's out of place and even more so because of the configuration or the property and adjacent uses.

Chairman Tanner: Thank you, Chad. Staff?

Mr. Abbott: Mr. Chairman?

Chairman Tanner: Yes, Clark?

Mr. Abbott: Reading the staff's recommendations and their overall view of what's being discussed here, and what they want, and what they . . . I'm a little at lost as to "Based on the foregoing findings of fact and conclusions of law, the applicant has not met all of the requirements set for the granting of the subject variances." I would like to know what they haven't met.

Mr. John Rapacz: Mr. Chair? John Rapacz. I'm the Administrator of the Zoning Division. Page 12 of the report with the staff analysis states the applicant's position on the Criteria No. 2. And again, it goes to the reasonable use of the property as the Board was just discussing. There's just simply a statement that if the applicant is not allowed the use of the property for a parking area, it would prevent reasonable use. We're not seeing any support for that statement. I don't know that there's no reasonable use left of the property. I understand it is small. Nonetheless, something could be built on it. In addition, when we're looking at if there were no reasonable use of the property, the question would arise why is that? There was a house on the property before. If that house had not been demolished, it would remain in the reasonable use of that house would've continued. One of the criteria is that the applicant or the owner is not the one who created the situation that results in the lack of reasonable use. That's the primary basis for the objection here is that we don't see that that criteria has been overcome.

There is also a question . . . a comment from the Highways Division. And again, I don't know the answer to this question. They raised a concern about whether there's adequate sight distance to have a commercial parking lot with a driveway onto Kaohu Street or coming out of Kalua Street, in either case, whether there is adequate sight distance for vehicles entering or leaving right there . . . I'm sorry, just on the exit. So there . . . I don't . . . I would hate to see this go through, and then have the Highways Division not allow the use because there's not an adequate sight distance from the parking lot or the exit to the parking lot.

If the Board is . . . does vote to approve the variance, then there's been a lot of emphasis on the variance as being essentially, temporary while a change in zoning is being considered. Given that, if the Board does approve the variance, we would recommend that there be a condition, for example, to require an application for a change in zoning within six months after granting the

variance. And likewise that there be an expiration on the variance because if the Board is granting it because the change in zoning is expected and that never happens, then we would expect that the variance should terminate if it becomes clear there will be no change in zoning. One other condition might be that the subject property be used only as a parking lot for the adjoining Ichiban Restaurant parcel.

Chairman Tanner: OK. So based on staff's comments and recommendation, is there anyone that would like to make a friendly amendment to the motion adding the two items, which would be the condition that only parking for this establishment be used, and the requirement that a change in zoning application would have to take place within a certain amount of time?

Mr. Kihune: Just a comment. Wayne, I got a question, sorry. You stated in the map, Kaohu Street, that would be the entrance, correct?

Mr. Arakaki: Kaohu Street, yeah, that would be the entryway.

Mr. Kihune: That would be a one-way entrance only, yeah?

Mr. Arakaki: Yeah, one-way direction.

Mr. Kihune: OK. And then on Kalua Road is the exit?

Mr. Arakaki: That's right.

Mr. Kihune: OK. So from a sight distance, I look at it as a positive because we're eliminating parking coming in front of the actual restaurant itself would give the availability for people coming out of Kalua Road after they visited the restaurant to get back onto Kaohu, correct?

Mr. Arakaki: Yes.

Mr. Kihune: Because the parking's no longer the issue. In front of the restaurant, there's not an issue anymore, right?

Mr. Arakaki: That's right. I want to just add that the driveway on Kalua Road is an existing driveway. And I did measure the sight distance as being adequate, but we'll get it approved with the County upon, you know, construction plans submittal.

Mr. Kihune: OK. So basically, what I'm hearing and what I'm reading is that we're foregoing and giving up the parking stalls at the front of the restaurant to acquire the variance for parking on this lot, basically, correct?

Mr. Arakaki: That's right.

Mr. Kihune: OK. OK. Thank you.

Mr. Santiago: I have a question. Does the current zoning not permit parking on this lot? Is that why there's an application or there will be an application?

Mr. Arakaki: Yes, the current zoning is R-2 which is residential and that's not permitted. But the community plan is commercial business, so that's why we can apply for a change in zoning.

Mr. Santiago: Thank you.

Chairman Tanner: What was the timeframe recommended by staff to have an application for a zoning change in?

Mr. Rapacz: Six months. And, Mr. Chair, if I could add a couple other items that Trisha pointed out? One, just to be sure that there's a standard hold harmless and insurance provision or condition. And the other is, and I'm not sure, if this will be necessary, because I'm not completely clear on the process, but with commercial parking lots, the County does have requirements for those lots in terms of landscaping, parking space size, etc.

Chairman Tanner: So a variance would not absolve them from meeting all the other requirements for parking that the County has.

Mr. Rapacz: That's my understanding is they're not requesting a variance from that type of requirement. My only concern would be that if in the process of constructing a parking lot, a building permit or some type of application does not come through the Zoning Division, we won't have the opportunity to impose and check on all of those parking requirements including, the landscaping.

Mr. Arakaki: The parking lot will . . . We have generated construction plans and this will be submitted to the Planning Department for landscaping and irrigation review. It will also go to the Water Department for backflow prevention, and the DSA for a grading permit for the parking lot.

Chairman Tanner: OK. So to restate, we have a motion and a second to approve the variance based on the applicant's testimony and the responses to the criteria.

Mr. Santiago: Can I pose another question to Wayne?

Chairman Tanner: Yes, Bart.

Mr. Santiago: Wayne, in your estimation, is six months adequate for a rezoning timeline?

Mr. Arakaki: Yeah, I was gonna make a comment. If it's acceptable, I would like to get one year. And the reason why is because this is a difficult property. It's very critical because just one thing that the County requires might make this whole thing not worth it for the owner. So I gotta work with the various departments and to see what kinda requirements, infrastructure, that they're gonna require if a change in zoning is granted.

Mr. Santiago: I would tend to agree. I mean, it appears based on the project and the existing condition that we're eliminating a hazard to the community. And to be able to create this parking lot creates a safe environment for everyone. So I think an extension or a one-year window makes more sense.

Mr. Fukunaga: I thought the suggestion was just for them to apply within six months.

Chairman Tanner: Yeah, you just have to have an application in within six months. You don't have to have the . . .

Mr. Fukunaga: Yeah, it's hard to say how long it'll take.

Mr. Santiago: Then I'm OK with the six months.

Chairman Tanner: Yeah, so it just means you gotta have your application in within six months. OK. So do I have a friendly amendment to add two additions . . . not additions, two conditions, I'm sorry: the requirement that an application be submitted within six months for a zoning change; that the subject property would only be used for the parking for this restaurant; in addition to, a hold harmless and insurance; as well as that the parking lot would meet all the County requirements for parking.

Mr. Fukunaga: Could I ask the question before we . . . any changes?

Chairman Tanner: Yes.

Mr. Fukunaga: For the Planning Department, John Rapacz, why would it be important for them to pursue a change in zoning versus just the variance process?

Mr. Rapacz: Thank you, Mr. Chair. The change in zoning would be the appropriate process. What they're looking for is to have a commercial use which is the parking lot. The appropriate zoning for a parking lot for commercial use would be whatever business is appropriate. A variance is essentially an exception that's allowed because of some unusual circumstance not created by the applicant, and it's for when the criteria can be met. The reason that I mentioned, and the third condition, Mr. Chair, that we had recommended would be an overall time limit on the variance itself is that if the Board is saying in approving the variance, if they're saying we're approving this because we believe there will be a change in zoning, then you should put a tail end on the variance.

Chairman Tanner: So we have a timing restriction of six months for an application. How do we set a time limit for the zoning change because we don't know . . . ?

Mr. Rapacz: I understand. Yeah, you don't control that. I would think something in the three-year range would be reasonable. It's either going to happen or not within three years.

Chairman Tanner: Within three years. Three years sounds reasonable and sufficient.

Mr. Kihune: I got one more question for Wayne. Sorry, Wayne. Again, Bart asked the same question, is six months enough time for you to have the application in for the zoning change based on the amount of work that's gotta be done.

Mr. Arakaki: You know, from my past experience, I wanted actually one year, and the reason being is because say that Public Works wants that road-widening, and from seven feet, they tell me it's 13 feet. Now, how do I get around that? I gotta wait for a change in zoning and I have to accept

what they have. So I need time to work it out with them. And it happened many times that I can say yes to everything, but at the end, can I build it? That is the big problem. I feel one year is more than fair. If you want, I can come in a year and then provide you folks with a work-in-progress so you folks know. I mean, that can be done too.

Mr. Kihune: Yeah, just based on the complexity of the small property and stuff, and the change in zoning is not something that's easy to get done, and you have to have all your ducks in a row as you make this application.

Mr. Arakaki: Yes, thank you.

Mr. Kihune: I appreciate it. Thank you.

Mr. Abbott: Mr. Chair?

Chairman Tanner: Yes, sir.

Mr. Abbott: I'm just not trying to put cold water on this, but are we putting the horse before the cart here? Is the variance . . . should the variance be denied until these other things are in place?

Chairman Tanner: You mean the zoning?

Mr. Abbott: In the zoning because we're just hanging ourselves out in the open.

Chairman Tanner: Well, I agree with Bart's statements and some of the comments that this actually improves public safety by allowing this. That if for whatever reason the County does deny the zoning, then it reverts back and the variance is over at that point. I don't know. You have any comments on granting the variance before the zoning's approved?

Mr. James Giroux: I think Mr. Rapacz kind of gave the nutshell on that. I think that . . . I mean, as a caution having some type of time limit or some type of review in order to make sure that you're not taking on the role of Council as zoning, you're not the Zoning Department, the Council is, but the variances have a limited effect. And that if movement isn't made or progress isn't made, I think it's a good indication that either the variance is the right way to go, because it's impossible to use this property for anything, because of the new standards that it needs to meet, I mean, if it can't meet the standards of a house, a parking lot, or an expansion of a store, at the end of the day, it's gonna need a variance for something. And I think that's gonna be the crux is that if there is a limited ability for the person to use this property in the meantime, I think it's gonna save everybody a lot of grief. But again, what they're asking for is a use variance. And you need to be very cautious when granting those because you don't wanna get into the business of zoning because then that'll stretch everybody's neck, and we don't wanna do that, but as far as putting a limitation on it.

Another caveat that makes a Catch-22 in this situation is that the parking they have now is because of the sub-standardness of the business on that property. And they run the risk, if they don't get the zoning or they get the variance, they could lose all of their parking because a grand-fathered use is only as good as its continued use. And if there's a break in that use, they really run the risk

of losing the whole operation, and that's something we need to be cautious off.

So all I can do is put those parameters, and I think you're getting good advice from the Department that if you are gonna grant it that it be limited, it be reviewed, and that there be a termination point, because you don't wanna do quasi-zoning in this agency. What you wanna do is you wanna see the hardship, and you wanna see the impact, and see whether or not the project can fit into anything that the County has on the books right now. And that's really the struggle of Wailuku Town. I mean, like the applicant's representative said, anything in Wailuku, and if you're not in the MRA, you're gonna have trouble. And even if you are in the MRA, you're gonna have trouble. And even the MRA projects need to get variances from MRA. It's just a continuous struggle of existence. So we just need to be cautious as far as what our jurisdiction is, and to keep it as limited and monitored as we can.

Chairman Tanner: So we have a motion and a second. The friendly amendment would add, if somebody chose to make the friendly amendment, one year for a zoning application, three years for zoning approval, meet County parking requirements, parking only for this restaurant would be the use, a hold harmless agreement, and an additionally insured of Maui County, unless there's something else.

Mr. Espeleta: A motion to the friendly amendment.

Mr. Abbott: So you're reworking your motion?

Mr. Espeleta: Yeah, to the . . . (inaudible) . . .

Chairman Tanner: OK. So that'll be your motion would be to approve with these conditions?

Mr. Espeleta: Yes.

Mr. Fukunaga: So just to clarify, that would give them a total of four years to get the zoning?

Chairman Tanner: My understanding would be one year to get the applicant, three years from now for completion of zoning approval.

Mr. Fukunaga: Could we just simply say that the variance would be good for four years from the date of issuance?

Chairman Tanner: That depends whether you want it . . . if it needs to be that way. I don't know.

Mr. Espeleta: They gotta put in their application for the variance first.

Chairman Tanner: I don't know typically how long zoning approval takes. Trisha?

Ms. Kapua`ala: I have other things, but to that, the way it's written now as you just said, it would be one year to apply. And then say he applies on the 365th day, two years to have the application reviewed by the Planning Commission and County Council, and a decision would be made yay or nay.

Chairman Tanner: Three years from now?

Ms. Kapua`ala: So three years from now. It would be the three years from the date of the approval.

Chairman Tanner: OK. And, Chad, you think it should be four?

Mr. Fukunaga: I think it should just be simply four years. Just say the variance would be good for four years or until the point that they obtain a change in zoning instead of saying you have to apply within so much time, and then so much time to complete your application.

Mr. Santiago: I guess there's an intent there. Maybe you'd wanna frame it that within a year, they have to file. You leave it open-ended . . . (inaudible) . . .

Mr. Espeleta: Open-ended, right. You can just wait till the . . . (inaudible) . . .

Mr. Fukunaga: No, you'd have to complete it within four years.

Mr. Kihune: We can extend it.

Mr. Espeleta: They can come back for extension. They'd have something set in place already. If they need one extension after the three years or the two years that they're asking for, then they're welcome to come back and apply, right?

Mr. Kihune: Give us an update, a status.

Mr. Espeleta: That would . . . I would think on the business's part, it would show a series of continuing on 'em.

Mr. Kihune: Yeah, good faith on their part.

Mr. Espeleta: Yeah, right, good faith.

Chairman Tanner: So would everybody be acceptable for one year to have an application in, and four years from this date to have completed zoning?

Mr. Kihune: So, Teddy, you can restate your motion? (Laughter)

Mr. Espeleta: That's the most you guys heard me talking in here, you know. (Laughter)

Chairman Tanner: So the motion is to approve the variance based on the applicant's testimony and the criteria that was given with a one-year to have the application submitted for a zoning change; four years from this date, have the zoning approved; that they would meet the County parking requirements; that the parking would only be for the restaurant; that a hold harmless agreement would be in place; and Maui County would be added as an additionally insured.

Mr. Giroux: Chair, not to be beleaguer this, but I think under the circumstances, there should be some indication in the conditions that if they wanna come for an extension of that that some

application be applied for 90 days prior to the expiration of that, because I think there's gonna be some type of due process issue, because my experience with zoning is I've seen zoning go through Council as fast as three years, and I've seen it go as slow as 15 years. I mean, we've seen people actually die waiting for a zoning change. And this is in Wailuku. And it's heartbreaking, you know, because people are running businesses, trying to convert residential structures to building, all they need is some type of business zoning, and something is hanging them up. And sometimes it's not even their project. Sometimes it's just that the County is busy doing malls, and hotels, and conditional permits. The agenda, just with the budget cycle, I mean, land use gets about maybe eight or nine hearings a year that you can actually get on the agenda. And like you say, if you don't have all your ducks in the row, you get bumped. Another big project comes in, you get put back in the line. There's still stuff on our land use agenda right now in Kihei that it's been forever. So I think that there needs to be some type of process that the Board allows the applicant to at least come apply, and let you guys know where that status is so that there's some type of either order to show cause, or at least an opportunity to be heard before the variance is terminated.

Chairman Tanner: So?

Mr. Giroux: So I would add that . . .

Chairman Tanner: If an extension is necessary . . .

Mr. Giroux: That an application be filed 90 days prior to the expiration of the date, and then give a date certain.

Chairman Tanner: OK. If an extension is needed, an application will be filed 90 days prior. How do I give a date certain?

Mr. Giroux: Four years from today.

Mr. Rapacz: That would be August 26, 2017, would be the date for filing an application for extension.

Chairman Tanner: August 27th?

Mr. Rapacz: Twenty-six. I'm sorry, 27, 2017.

Mr. Santiago: But you wanted 90 days prior to that correct?

Mr. Giroux: Prior to the expiration date.

Chairman Tanner: That's the expiration date. Ninety days before that. OK. So . . .

Mr. Rapacz: I'm sorry. I was saying that would be the date for applying. The expiration date would be November 27th.

Chairman Tanner: Oh, OK. So that would be . . . he would have to apply by that date which is 90 days prior.

Mr. Rapacz: Correct.

Chairman Tanner: OK. So the motion, all of those things that we stated before, but also . . .

Mr. Espeleta: Also be included into the terms of this variance.

Chairman Tanner: Which is if an extension is necessary . . . I'm sorry, if an extension is necessary, an application would be filed 90 days prior, which would be by August 26, 2017.

Mr. Espeleta: Right.

Chairman Tanner: OK. Do we still have a second to that motion?

Mr. Abbott: Yes.

Chairman Tanner: OK. So we have a motion. We have a second. Any further discussion? Everybody. (Laughter)

Mr. Kihune: Actually, I have one question, Mr. Chair, and that's for Wayne, Mr. Arakaki. Based on the conditions put forth, is this something that the applicant can adhere to?

Mr. Arakaki: Yes. Thank you.

Mr. Kihune: OK. Thank you.

Chairman Tanner: That had occurred to me, then I forgot about it, so thank you. Trisha?

Ms. Kapua`ala: And I would just like it clear on the record that the insurance requirement is for a million dollars. That's the standard, if the applicant is aware of that and it's acceptable.

Chairman Tanner: Very good. Yeah, that the Maui County be an additional insured for one million dollars. Any further discussion?

Mr. Fukunaga: I have a question or maybe clarification. So it's not a condition of this variance that they stop using their street-side parking, the current parking in front of the shop?

Chairman Tanner: Not part of it.

Mr. Fukunaga: OK.

Mr. Abbott: I understand they must continue using their parking that's existing now before they can do anything . . . (inaudible) . . .

Mr. Fukunaga: Yeah, yeah, OK.

Chairman Tanner: Further discussion? I'll call for a vote. All those in favor? All those opposed?

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

VOTED: To approve the subject variance as discussed.

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

(Absent: J. Haraguchi.)

Chairman Tanner: **The variance is granted.** Trish, would you read the next item on the agenda into the record?

Mr. Arakaki: Thank you for your folks' help.

Chairman Tanner: Thank you, sir.

Mr. Kihune: Thank you.

2. **EDWARD TAKAYESU requesting a variance from Maui County Code, §19.30A.030(C), to allow a 12.2 foot setback for a detached 150 square foot storage shed, and a 9.6 foot setback for a 512 square foot storage room, instead of providing the required 15 feet, for property located at 323 Kapa Road, Kula, Maui, Hawaii; TMK:(2) 2-2-012:034 (BVAV 20130008).**

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

Ms. Kapua`ala: So other than that, I'd like to turn it over to the applicant.

Mr. James Takayesu: . . . (inaudible) . . .

Ms. Kapua`ala: Sure, sure, I can do it for you.

Mr. Takayesu: Could we have a five-minute recess to put some . . . ?

Chairman Tanner: Yes, we're gonna take a recess for five minutes. We'll come back in at 20 minutes to 3:00.

(A recess was then taken at 2:36 p.m. and the meeting reconvened at 2:45 p.m.)

Chairman Tanner: Call the meeting of the Board of Variances and Appeals back into order. It is 2:45 p.m. You may proceed, sir.

Mr. Takayesu: Thank you. I'm James Takayesu. I'm appearing for my brother who's the applicant. Before getting into any kind of presentation, I'd like to go through some of the exhibits that are attached to our application so you can understand why we attached them. It would give you a better idea, the history of the property.

The "A" itself is just the application, so I think that's self-explanatory. Item B is tax records indicating that when certain buildings on the property were built and their dimensions. If you look at the bottom of the first page, "B," you see a utility shed. It says "Year built 1980," and the dimensions are 512 square feet. Also in 1980, the records indicate a storage, a utility shed, with . . . (inaudible) . . .

Chairman Tanner: Sir, if I could stop you for just one moment? There's an item that I neglected to go through, and that is, if you, as the applicant, the representative of the applicant, are agreeable to the waiving of the reading of the staff report, which you have a copy of?

Mr. Takayesu: You mean you'd read the whole thing? OK. As long as you assure me you read it recently.

Chairman Tanner: Yes.

Mr. Takayesu: We'll go ahead and do that.

Chairman Tanner: OK. Proceed.

Mr. Takayesu: OK. The next item is just the front page of the warranty deed, and that was included just to show when the applicant acquired the property which was in 2002. That followed the tax records showing that the buildings in question were in the tax records shows as being built in 1980, so 22 years before Mr. Takayesu acquired the property.

Mr. Giroux: Mr. Takayesu, are those exhibits outside of your application? Are they new exhibits or . . . ?

Mr. Takayesu: No, they're attached.

Mr. Giroux: They're attached to the application. I just wanna make it clear for the record. Trish, are they labeled?

Mr. Kapua`ala: They are labeled, but I think you said "B" had building permits, and what I have as "B" is just one building permit for a 1975 bedroom, full bath, half bath structure, and no other permits. OK. For the record, it was accessory information from the 1980s, which has the dimensions of 512 and 150 square feet.

Mr. Takayesu: Those are the two structures in question. That same exhibit also has a . . . talks about contemporary year built 1975. That was the main residential structure. "D" is just the . . . there's a required notice to be sent out to people. After that, it's just the TMK again just to show the location . . . (inaudible) . . . location.

Following that is kind of a blowup kinda showing the portion of the property where the structures are. It also . . . and that's the same map that you have that I placed up on the left-hand side on the cork board. It shows the original survey stakes and also the recent stakes that were, I guess, utilizing GPS technology, which resulted in the property its shape changing, and also it growing by over two and a half acres.

Also included is Item G, which was the drawings of the Takayesu residence. It actually shows on the bottom here, this is a larger shed, 500-plus feet, and also the smaller one, 150, and how it was incorporated into the main residence in this area here.

Item H is again, it's the real property report. It was prepared by Fred Asuncion who was the . . . (inaudible) . . . for many, many years. The report is dated July 11, 1978. And although the computerized record show that those two sheds were built in . . . listed as 1980, in 1978, when Fred went onto the property, you noticed both . . . two of the search has one at 150 feet, and the other, 512. So they were actually built before 1980.

The next item is "I". It deals with a letter from the Estate of John Miguel to Ed Takayesu pointing out that a new survey had been conducted, and that the parcel was in fact, much larger than what was listed in the understanding of the Miguels. They went from 15.13 acres to 17.767 acres.

And then Item J, we have photographs. On your left-hand side, there's a photograph is the 150 square foot sometimes referred to as bathhouse, and also, storage room. It was . . . way back, it was a bathhouse and then it was converted to a storage room. Between the main dwelling, which is right behind the little dog here, this area with the brown screen, that's the second-story area that's in question.

The second photograph is in 2011 . . . Or going back, 2001, the Miguels had a survey conducted where they found out the property boundary lines were different, and also, the property was in fact, two and a half acres larger. When they went ahead and did the staking, they did the corner, but they didn't do all the intermediate staking partly because there were a lot of trees along that line, but they knew it was a straight line. In 2010 when my brother was having an architect work on the design of the expanded house, utilizing that 2001 survey, he saw that the setback for the larger storage area was 9.6 feet as opposed to 15 feet. So in 2011, my brother had Bruce Lee come back and place a pin right in that area so they could see exactly where the boundary line was under the 2001 survey.

This is the one. This is a new pin that was set by Mr. Lee. There's a flag on it. And this was the existing pin that we don't know when it was placed there. I thought that it was probably in the '30s, but because the Raymonds indicated that additional surveys were done by themselves, this might've been a later pin. But we believe that this was the pin that . . . or the area that people thought was the boundary, and it would be basically be 15 feet from the side of the building. If you use the pin that was placed by Mr. Lee, then it comes out to 9.6. In terms of the boundary dispute that Mr. Raymond indicated, I haven't talked to him so I don't know if he agreed that this is the pin or this is the pin.

Mr. Raymond: The pin on the right is a short T-bar that I put in the ground as a . . . Yes, this shorter pin here is a T-bar that I put in the ground. And if you were to stand with your back against this black tarp here on the left and look directly . . . yeah, if you were to look directly up this way, it's just in line with the rest of the pins that were placed, a fencing done, gosh, I was a kid, so 30 something years ago. That's not a surveying pin, but in fact, the . . . you can see at the bottom right here, there's a little stake with a flag on it. That is the stake done by our . . . Akamai Surveying. So indeed, that stake, and that PVC pipe, and Bruce Lee's stakes are within six inches. And that's the one I was referring to was, you know, three times done.

Mr. Takayesu: OK. And just for the record, when you looking at this map here, they do have the fence line . . . (inaudible) . . . The existing fence line and the placement of the stake by both Akamai and Bruce Lee is makai of where the fence is, actual fence is. So if you use their survey, Mr. Raymond's fence is actually on the mauka neighbor's property. It's not in line?

Mr. Raymond: I actually disagree with that.

Mr. Takayesu: So if we . . . OK.

Mr. Raymond: And if I can say why? I recently mentioned that when I was a kid, we put in the line. And at the time there was unfortunately, brotherly discrepancies. And the fence line that's ours is one foot. It had to be because my dad said it's gotta be one foot makai onto our property so that there was no dispute between he and the brother. So if I understand, yeah, right where the Bruce Lee's pin is and our pin, it's again, about this far apart.

Mr. Takayesu: The fence is actually mauka of that, right?

Mr. Raymond: No, the fence is a foot makai of that. And if you . . . but that picture that you have there, it's really hard to tell with that shorter stake. You can kinda see it maybe. Yeah, the ones here and this one is down.

Mr. Takayesu: OK. So they both agreed where that pin was. I mean, they're like right . . . ?

Mr. Raymond: Yeah.

Mr. Takayesu: But he disagrees with the . . . (inaudible) . . . that your fence is mauka of the stake.

Mr. Raymond: Yeah. OK. I see this now. Yes, this being . . . yeah, this dotted line with the squares, that is saying it's the . . . (inaudible) . . . but that's not where it is.

Mr. Takayesu: OK. OK. So I thought by just going through the photographs and the maps you get a better idea why we attached these things. Again, when we reviewed the history of the property, looking at the TMK information, we went back as far as 1938 when the property was 28 acres. A couple of parcels way above were sold off. And then it shrunk it down to what they thought was 15.3 acres, but then again, there was probably no reason to survey the property until 2001 when the Miguels were gonna sell the property after going through a court proceeding. And when they did that, that's when they came up with the new boundaries. As a result of that, well, it looks like the sheds that were built in, I believe, in 1978 were within the setbacks that were established in 1998 for ag and 2009 for the interim zone. Again, in their report until 2009, this property was interim zone and they didn't have a setback until 2009.

Ms. Kapua`ala: No, that's not correct. In 1998, it was interim; however, if the community plan was ag and the State designation was ag, all of that became County ag.

Mr. Takayesu: OK. But you . . . I thought when I read your report, that's where you said interim was . . . you said that was established 2009, and then for ag zone, it was 1998.

Ms. Kapua`ala: Yes, that's correct. I think the interim 2009 date was mentioned just to establish that in 1998, there were no setback standards, and in fact, that didn't change until 2009. However, the facts show that it was actually zoned from interim to ag prior to 2009. It's in 1998. 1998 is when it changed from interim to ag. That's the bottom line.

Mr. Takayesu: That's the bottom line.

Ms. Kapua`ala: Yeah.

Mr. Takayesu: OK. OK. So it was one of those things that I noticed when I worked for the County that there were certain zoning districts that had no setbacks. As the report indicates, they would try to utilize a setback that was contained in the Housing Code, you know, but then the Housing Code does not apply to storage sheds. And so our position is at the time those structures were placed there, there was no zoning setback or requirement.

The report also indicated that the 150 . . . or there were no building permits for either of the sheds. And I've shown the staff a copy of the County's own permit history that shows that the 150 square foot storage shed was permitted in 1985, it's after-the-fact, 1980 Permit No. 850080.

The other storage shed was not permitted. When Mr. Takayesu requested the Building Inspectors come out to the property in 1984, he was told he needed building permits for what's on that map as a garage, the lowest . . . he would need a permit, after-the-fact, for this, what's designated as a garage, and for the 150 square foot storage, because he was going to do some work to modify his buildings. Because he was just gonna use this as a storage shed, and had no plans to do anything, he was told don't need a permit.

OK. In terms of the testimony that was given today that at some point the larger 512 square foot storage shed was somehow demolished by a flood, the applicant has informed me that that building was not demolished. Maybe some modifications were made to strengthen it, but that was about it, but the footprint of the building and the base signature of the building remain the same.

Again, in terms of the staff report, I guess the only area that there might be some disagreement between ourselves and the Department related to the, I guess, first criteria. Our position is that under the County Code, this Body has the discretionary authority to grant variances, and that the three criteria that you utilize, they're there, and they indicate when a variance is required to be granted. If you meet all three, then the variance must be granted.

We feel that the result . . . the variance arises because in 2001, based on surveys, the shape of this particular parcel changed. And it changed as a result of new technology that could more accurately place on the ground pins that describe the property as set forth in the legal description. Now, at this point, that legal description has been filed with the Bureau of Conveyance. I assume that that is a legal description. If you were to go back to the '38, and the surveyor was asked to survey that description, it seems like he placed the pins in the wrong place. But again, we can look at older technology and see how much better things are right now. But based on the legal wording description, the new surveyors agree, using new technology, where the boundaries are, and as a result, we're here to request a variance.

Again, it resulted from the reshaping of that particular parcel. The staff report indicates that there will be no adverse impact to the community. That it was not the fault of anything the applicant did since these things . . . the building of the structures occurred over 20 years before he even acquired it.

And I'd also like to point out in terms of the larger storage shed, which is now part of their residence, the County went ahead and gave final approval for the building. They also signed off on the final construction. And they filed in 2012, a hold harmless agreement where the applicant, in considering for them granting final inspection approval of the building, agreed to indemnify the County based on the wording that was contained in that agreement.

And also, the adjacent landowner of that particular building has not filed an objection to the granting of this variance. That would be Tanya Raymond who owns the property just mauka of Mr. and Mrs. Raymond. Their property is adjacent to the smaller storage shed, which was permitted in 1985, and therefore, is grand-fathered in, and not subject to the later setback.

Chairman Tanner: OK. At this time, do we have any questions from the Board to the applicant?

Mr. Kihune: I do, Mr. Chair. Mr. Takayesu, I have a question. I'm a little bit . . . it's a little bit vague, but when was this property actually purchased by the applicant?

Mr. Takayesu: The actual warranty deed was conveyed on April 4, 2002.

Mr. Kihune: And the survey for this property, based on this letter from the Trustee . . . I guess this went into probate. I'm not sure exactly, but there's a letter here. Excuse me. Sorry. Let me find it. Yeah, Exhibit I, 2000. So at the time of the purchase, Mr. Lee came in and surveyed the property, correct?

Mr. Takayesu: That's correct.

Mr. Kihune: Now, at that time of the purchase, the new . . . the buyer was the applicant, was not aware that this was inside the setback, or he knew based on that survey that it was?

Mr. Takayesu: He did not know. What they did was they staked out the boundaries. They did place pins like here, you know, here. When there's like an irregular jog, they put another pin here. They put one here, but these pins here were subsequently put in because Mr. Takayesu was applying for building permits for this thing here, and he had to know exactly where the boundary was. Because there's trees here, they're gonna go ahead and just do the main features. I think because this area is kinda irregular, they had to keep putting additional pins. But in this area here, it's a straight line. So it wasn't necessary for them to put these intermediate pins in.

Mr. Giroux: Mr. Takayesu, for the record, when you say, "here, here," on the transcript, it's only gonna say "here, here." So can you, I guess, use north, west, or some type of indicator that show where on the map you're pointing?

Mr. Takayesu: I'm sorry. The northern corner of the property adjacent to TMK ending in 037 and 011, these are straight lines going west. And I pointed later on to the boundary line between the

subject parcel and Lot 037 where there seems to be numerous jogs. So they had to place pins to point out that irregular boundary. Versus like here, they just draw straight. Here between the line between 037 and the eastern edge of that boundary, it's just a straight line, so you don't see additional pins being placed.

Mr. Kihune: Well, my question is, as you bought the property, you accepted the property as-is based on the survey that was provided at the time. So you accepted all the conditions is what I'm assuming, right, the buyer? Regardless if you knew the setback or not, correct?

Mr. Takayesu: Yeah, you normally buy as-is, you know.

Mr. Kihune: So at that time, you accepted any conditions on the property when you purchased the property, and regardless if the survey is correct or incorrect. Yeah, you accepting the setback. You accepted assuming that the setback is correct, right, all the conditions that are on that property?

Mr. Takayesu: Yeah, I believe he assumed the setbacks were correct.

Mr. Kihune: Thank you.

Mr. Takayesu: But again . . .

Chairman Tanner: . . . (inaudible) . . . some disclosure at the time, but there was no disclosure by the Realtor, by anybody at the time of anything?

Mr. Takayesu: They informed him that when they did the re-survey that the parcel was in fact, larger than they had thought. For decades, they thought it was 15.25 acres, and then it turned out to be 17.7-something acres. But then under the criteria, the question was whether or not prior action of the applicant caused, I guess, the setback violation?

Mr. Kihune: Yeah, to some degree. That's not really the question. I'm just trying to figure out . . . I mean, you're buying something, any kind of piece of property, you do your due diligence, right? And you accept or not accept. And if you don't accept, you usually have it corrected prior to the sale being concluded. So I just wanted to know if they've accepted everything in the property purchase under the assumption of either it's right or wrong. At the time, you assumed it was right, right?

Mr. Takayesu: He probably didn't even think about it at the time. Again, until he hired the architect who had before him the most recent survey in 2001, and then when he saw the 9.6 or 12.whatever, the distance between the GPS line and the side of the structures, then he became aware of it.

Mr. Kihune: OK. No, no problem. Thank you.

Mr. Takayesu: OK.

Chairman Tanner: At this time, I'm gonna ask if there's . . . I'm gonna open for public testimony for anybody to speak on this item in the agenda that has not spoken to this point, if they would like now, they may come up and speak on it. And if you would, just state your name into the

microphone and . . .

Mr. Ed Takayesu: My name's Ed Takayesu and I'm the applicant. And relative to the . . . that . . . Howard, your . . . that question that came up, well, we've kind of always felt as though . . . the same thing that the Raymonds felt like, you know, in regards to community boundaries and what that existed. And if you look on that, on the Bruce Lee survey, you see that we have a . . . there's an indication of barbed wire fences. And in that . . . in all that yellow area is where just on the left-hand side of the property that I could identify because of the . . . because Bruce marked it with the barbed wire fence that there's some discrepancies, some up to 20 feet. And this is all part of that revelation back in 2001 when the Miguels, in the sale, decided to ask for a much greater fee for their property. And for the time that we were there, and still at this point here, Tanya Raymond and I still use that borderline as the definition of property even though on the TMK, it shows that it's this side. And mainly it's because all of that area there on the left-hand side are big eucalyptus trees. And I guess in the old style way, we have a barbed wire fence going on one side, then it kinda jogs on the inside. And I think what he was saying where that pin is, as you look down, and it's a straight line. It provided a little bit of a different format in this ag community, which we felt was established. It was all old school. And that was something that we all accepted.

Tanya is a neighbor of mine. She's got her koa wood trees growing onto the GPS line. And I mean, I'm not gonna tell her, eh, your tree's on my property, get that tree out, move it back, whatever, you know. Same thing on the top there, we had protea plants coming into that parcel, which a friend of ours recently purchased, and the plants are still there. Everybody's still . . . You know, it's kind of old school, Howard. And so, yeah, maybe my due diligence wasn't as proper or as aggressive as it should be, but it was something that was . . . that we felt was, well, that's, you know, it is what it is. And it wasn't out of negligence on my part that the person that I had bought the property from who built the shed there, which we use as a shed, I really, truly didn't even know where that was until I had our surveyor try to place that intermediate pin to identify mainly for the Building Department. And then when it did come up . . . I'm here at this Variance Board not because I got turned in, but because it was gonna be a process of what we had done. I had gotten my . . . all the drawings. And this was a three-year process, so listening to you guys about the zoning, I totally understand. This was trying to get the property into compliance. And in that process, I've got my hold harmless. I've had the electrical sign off, the plumbing sign off. And then of course, this was gonna come up. It was in the record and was something that I was going to deal with. And I was gonna come in front of you guys probably in a little different format. But we're up in Kula. We got 20 acres here, a 30-acre neighbor, you know, eight acres here. You know, three-acre . . . You know, it's big parcels, and we've been a pretty happy community until I apologize that our trees and leaves created this havoc there. But I do wanna address and thank you guys for at least letting me come in front of you guys to explain the situation that I'm hoping we can get resolved, and have the community remain fairly stable. Thank you very much.

Mr. Kihune: Thank you.

Chairman Tanner: Thank you. At this time, are there any other members of the public that would like to speak on this agenda item? State your name, please.

Ms. Puanani Raymond: Puanani Raymond. My husband's Steven. Sorry. Our family's been up in Kula five generations, the Raymond Family. And we've been very good stewards of the property.

And just recently, because the upper property . . . He brought up a lot of . . . Eddie brought up a lot of issues. Tanya, the resident above, which is family, that's what's causing most of the problems. And we've always had that problem with the corner. So Eddie's very well aware of what's happening with the corner prior to building that extension. That shed he mentioned that's there in the corner was his work house, was a spray house, work house. And when that 2002 big washout came, it actually went down to his house and destroyed that shed, and it was completely taken out. He said it was destroyed and it was moved out. And it was cleared. And nothing was in its place for six-plus years. And that had always been a problem because with the dumping . . . I mean, we would've wanted that apology earlier where trees were cut, rubbish was thrown in our yard, and even building materials in that corner of our property. And that corner has always been a problem. And we've never had problems because that's where the water runs is right down towards that property. By having his house there, where's that water gonna go?

So there's a lot of discrepancies along there with the fence line. The . . . We've always made sure . . . Dad always said, make sure we make our lines. Always make sure it's clear. That's a good neighbor. And make sure things are clear. Take care your neighbors. Well, now I've learned that fences make better neighbors because throwing rubbish and not taking care of other people's corners especially, when that is a problem, when you have properties destroyed especially, ours.

Carver was the one up in the corner grubbing land without a permit, throwing trash. All of his land, all of his business, leaves, trees, plants, his business was all there in the corner. Plus, he dug a really big hole further up when we came up to look at the property. You could see it from our house, all that grubbing that was going on that he claimed had no trees in that area. Well, the trees, he took down and threw it right there in the corner. So it became a big problem. So that's when we got the County to come up, and they said that we shouldn't be doing anything in that corner unless we talk to each other. And he's been communicating with Tanya, allowing to cut trees to further dam any more water runoff. And all of that . . . Now, very little water that we get up there and rains, more rush out, and more damage to our property when we never had that problem before. Because he grubbed it up there illegally, who's his partner now, the water runs faster, much faster, just very little rain. And we never had that problem. None of that rainwater came our way. Now, we have pools of water and big washes through. That corner should not be tampered with.

And that building . . . When we finally got to put in our road, we were surprised that after bringing down all the grub from all that trash being thrown in, get big, massive weeds back there that are invasive that was thrown from one part of the property on Eddie's property onto the top portion of the property. We couldn't see what was happening. When we took it down to finish our road, this building popped up. We were not aware of that. And now, we . . . when I came to the County which is three years ago, we tried to figure out what happened. Did he get a permit? We didn't get this notice. And then they said he did the hold harmless thing and applying for a permit after-the-fact. What's a hold harmless? That if all that water comes through that he accepts all the responsibilities? He's not gonna sue the County for it? But it's not going his way. He's damming all that water and it's all filtering through our area. Where's it gonna go? Because if you stand at the top of Tanya's property and you look down, all of that water, you can see where it goes. It's dead-on on his property. But now it's being all filtered our way, and it's causing damage to our property, and it has been since 2002. That's where we're having problems. That should never have come up.

There's an additional property where he was mentioning 15 acres to 17. That's all mauka area. That's not from us. We've been surveying that property and always been on it because we are on ag, and we constantly meet all the requirements that needs to be done. We don't . . . we had to survey three times because they said we cockroached property. We haven't. The pin is there, and it's been measured, and done three times. It hasn't changed. We . . . because was the same person, Akamai, twice, and then still said we were off, so we brought in someone else just to get outside of that, and surveyed it again, paid for it, and still. I mean, we still keep having problems. And we were very good neighbors. In fact, we got along very well. I watched his kids grow. But I had no idea he was throwing trash in our yard. I mean, professionals, I would drive along, and they would say . . . I'd see them throwing it in our yard, cutting big trees. And when we finally put in our road, we even went as far as saying it's OK to cut one more tree at the bottom. Big trucks came in on a brand-new driveway. We swaled it. Cost big money. All of them up on our driveway. He wasn't there to supervise it. Everyone was on our driveway. Just no thought to what's going on.

That corner is a concern and has always been a concern since 2002. So this is why. I mean, he could've built it further on the other side. He got 17 acres. Why does it have to be right there where the problem is? Tanya should be here. She wouldn't be because her problem is the one that's in question because Carver was on that property. His partner was on that property. And he grubbed it and changed that lay of the land without a permit. That's the problem. And now we're facing bigger problems. Now the water runs fast.

Chairman Tanner: OK. Thank you very much.

Ms. Raymond: Thank you.

Mr. Abbott: Mr. Chair, as this appears to be getting rather personal involving families, I think at this particular point it would be a good idea to see what the Planning Department . . . why they decided that's what their criteria was.

Chairman Tanner: Yeah, if we could have more details from staff? Oh, I'm sorry, before we do that, I haven't closed public testimony. So if there are any of those that would like to speak on this item that had not spoken yet? OK. Seeing none, we'll close public testimony. Staff?

Mr. Rapacz: Thank you, Mr. Chairman. If the Board Members would look at page 8 of the Department of Planning's staff report to the Board? And that's where you'll see our first analysis. That's based on the first criterion that's being applied where we conclude that the applicant has not met the above criteria in that he has not identified an exceptional, unique, or unusual physical or geographical condition that exists on the property.

The second criteria, you'll see our comments on page 9. And just above item no. 3, we've concluded based on the applicant's statements, it would be reasonable to conclude that strict compliance with the code would cause practical difficulty.

So in the first criteria, we said we didn't think that was met. And the second, we believed that it was. But as it says, that's based on the applicant's statements. That's not based on testimony received today.

And then the third criteria on page 10, you'll see where it says "Staff Analysis." And again, according to the applicant, this is based on the applicant's statements, it's reasonable to conclude that the hardship of demolishing or moving the subject structures are not a result of the previous actions by the applicant. And I would emphasize that we generally say in these reports, "Based on the applicant's statements," because we simply don't have the resources to go out and research every possible situation. It does seem that there has been some testimony that would raise questions today about some of the factual statements in the applicant's submittal.

Chairman Tanner: OK. Any further discussion or questions for the applicant?

Mr. Abbott: Just one. This five and a half . . . this 150 square foot building that is supposedly have been destroyed, but isn't destroyed, is it, or was it, has it been rebuilt?

Mr. Ed Takayesu: It has never been destroyed. It has never been destroyed. I don't know where they got this that they are saying that they didn't even see it, and say specifically six years. What years were that? I have no idea where they're coming from. That is not true. You can ask my wife and my daughter.

Mr. Abbott: I'm just trying to find information.

Mr. Ed Takayesu: Sorry.

Chairman Tanner: Any further questions from the Board?

Mr. Kihune: To be fair, I think we should allow Mr. and Mrs. Raymond to rebuttal that, I think, to some degree.

Chairman Tanner: With regard to the 150-foot structure?

Mr. Kihune: When it was destroyed or if it wasn't destroyed.

Mr. James Takayesu: And I'd like to represent to this Board that that thing has always been there since Chris Green rented or was the lessee, and that's back in the '70s.

Chairman Tanner: Right.

Mr. James Takayesu: In terms of the . . . again, also the discussion about change of drainage and the removal of trees, I don't know who removed the trees. I thought they removed the trees when they were doing their driveway. And I don't know about above what Carver was doing.

Mr. Ed Takayesu: The way the topography sits on their property . . .

Ms. Tremaine Balberdi: I'm sorry, sir, you need to speak into the mic.

Mr. Takayesu: The topography of our property, all water that lands on our property comes to our side. Simple as that. I have never dammed anything. I have never gone across that fence onto Tanya's property. I can say that I have never walked on that property. I've never paid anybody to

do anything on that property. And I am . . . I'm very miffed of these accusations.

Chairman Tanner: So your position is the 150-foot, square foot, building has always been there?

Mr. Takayesu: Oh, yeah.

Chairman Tanner: It has not been destroyed, removed, to your knowledge during your time there?

Mr. Takayesu: Yes. Yeah, and the larger one which they're saying was removed and set . . . a blank there for six years, yeah, I'm saying that. I'm not sure where they got that information.

Chairman Tanner: OK. Thank you. So we'll allow the neighbor to discuss their position on that.

Mr. Raymond: Our position is that we . . . after that damage was done, we saw it being . . .

Mr. Abbott: Which damage?

Mr. Raymond: I'm sorry, the flood damage that came through that building that it was taken down. We saw workmen working on it to get . . . remove . . . walls removed, the roof of it. And it's our understanding that if something is damaged in that sense that you . . . although perhaps was grandfathered into setback rules that now those rules are gone, and you have to abide by the new rules.

Chairman Tanner: Do you have any photographs or any other evidence other than your eyewitness testimony?

Mr. Raymond: Not with me.

Chairman Tanner: OK. Because it's difficult for the applicant. They can't prove a negative. They say it was always there. You say no, it was removed. I mean, unless you can prove it, there's no way they can prove a negative. So other than your eyewitness, you don't have any . . . ?

Mr. Raymond: Not . . . no.

Mr. Fukunaga: So you're saying from about 2002 to 2008, that structure was not there?

Mr. Raymond: Yeah, not probably till '06.

Mr. Kihune: And I've got a question. And, excuse me, Mr. Raymond, let me ask Planning just to clarify. So if it was damaged because of a flood or whatever it may be, and the structure was being taken apart for whatever reason, to rebuild, it would have to come back in for a permit, correct, to rebuild that structure?

Mr. Rapacz: Yes, generally, that's true.

Mr. Kihune: OK. Yeah. Thank you.

Mr. Raymond: Can I speak to something else or is it only to what that question was?

Chairman Tanner: I'm afraid not, no. That was it.

Mr. Kihune: Thank you.

Mr. James Takayesu: For the record, there was a . . . they had to redo a portion of the roof. A eucalyptus branch broke and fell in that area. So it went right through the roof and they had to redo the roof. And I think they cut back the trees right near there to avoid any additional damage or danger.

Chairman Tanner: But that's not the 150 square foot building, is it?

Mr. Takayesu: The 150-foot building is the one that the records indicate was permitted in 1985 and basically is the same. The one they're talking about I believe is the larger one that I put the "X" on, not the smaller one at the bottom of the page.

Chairman Tanner: OK. Any further questions or discussion from the Board?

Mr. Fukunaga: I have a question. Can someone point out the overall drainage pattern that goes through there? I believe it originates . . . it starts in Tanya's property and runs through the other properties?

Mr. Raymond: Let me get my bearing. Yeah, actually if you refer to this, the handout I gave, this topography stops here, but it generally, comes this direction. And yes, it heads down. Some of it will go towards us, but it also goes towards the Takayesu residence.

Mr. Fukunaga: And how does it run through the Takayesu's property?

Mr. Ed Takayesu: It kinda comes . . . it follows the topography and it goes down into our driveway. Yeah, so this is the Raymond property. This is the building here. And the water comes this way. You can see how the . . . the hatching here.

Mr. Fukunaga: Well, I can see the one side, but it doesn't . . . (inaudible) . . . all the way through, so I don't know how . . .

Mr. Ed Takayesu: Yeah, it comes . . . it comes in this direction.

Mr. Fukunaga: So is that shed in a pretty defined swale?

Mr. Ed Takayesu: What's that?

Mr. Fukunaga: Is the shed . . . ?

Mr. Ed Takayesu: This here?

Mr. Fukunaga: Yeah, is it built in a swale?

Mr. Ed Takayesu: It actually kinda is in a spot here where the water drops down even steeper right

into here, but then it drains out. It comes out this side here into a flat.

Mr. Fukunaga: But I believe that the water shouldn't . . . through Tanya's property. It looks like it's a pretty sizable watershed, so if it does start flowing, from what I'm understanding, it'll flow to the direction of where the 500 square foot . . .

Mr. Ed Takayesu: My house is?

Mr. Fukunaga: Yeah.

Mr. Ed Takayesu: You know, it happened one time, and that was relative to some kind of a stoppage here during . . . it was like an eight-day storm. And when the, I guess, the levee broke or whatever was holding the water, it did run through here. And it came out at a speed where it wouldn't go out into the driveway all by itself. I mean, it came down a little bit quicker than normal. So . . . but that happened one time in 30 years that I've been there. But typically, what happens is when it rains, they come . . . most of this water here comes this way here, and we have a gulch here that catches all this water, and it actually turns into a waterfall at this point here.

Mr. Fukunaga: And is there still leaves, branches, what have you, at the property line still blocking, impeding, the drainage flow?

Mr. Ed Takayesu: You know, that, I don't know because like I said, I've never been over there to look at the topography.

Mr. Fukunaga: I thought it was right at the property line near your shed. That there's a bunch of leaves and . . .

Mr. Ed Takayesu: Yeah, there's some fallen trees that are here.

Mr. Raymond: Here. This would be our property line, this being 4966 along this line. This is where it's been cleared where dumping was discovered. From here up all the way along this is where there is still overgrowth of trees that had been cut and knocked down along here. And that is our contention that water hitting here can come down around this residence, and end up shooting down into our and through our property along this corridor here.

Mr. Kihune: Question, Mr. Raymond, where's your entrance to your property? Where do you have to come in from?

Mr. Raymond: Kepa Road down here.

Mr. Kihune: You come up?

Mr. Raymond: And you come up. You come up alongside the shared property line that we have.

Mr. Kihune: OK. Thank you.

Chairman Tanner: Any other questions from the Board? OK. We'll entertain a motion at this time.

Mr. James Takayesu: You know, I think maybe . . . I'd like to place one more item on the record, and that is it's a more procedural matter. Again, it's basically . . .

Chairman Tanner: Sir, I'm sorry. One second. We're past the discussion. We're on to a motion, so you're out of order at this point.

Mr. James Takayesu: OK.

Mr. Fukunaga: Sorry, Chair, I have another question for the applicant. So prior to connecting the main dwelling to that 500 square foot shed, was that shed just laying on bricks or was it on a slab?

Mr. Ed Takayesu: It's on a slab.

Mr. Fukunaga: It's on a slab?

Mr. Ed Takayesu: It's on a slab.

Mr. Fukunaga: OK. So it's not something that lends itself to be moved or anything?

Mr. Ed Takayesu: No, it was on a slab, and basically used as storage for . . . (inaudible) . . .

Mr. Fukunaga: And are there any utilities in there?

Mr. Ed Takayesu: What's that?

Mr. Fukunaga: Are there any utilities?

Mr. Ed Takayesu: Yeah, there's a bathroom in there.

Chairman Tanner: Is there electrical as well as plumbing?

Mr. Ed Takayesu: Yes, there is. During the permitting situation, as we tried to minimize the amount of buildings per County request, we ganged the two together instead of having . . . that made it one building. And in that process, we did . . . after we got the permit and the plans set up, we did start doing things, and then requested our hold harmless because some of the place was built earlier. Some of it we didn't move. Some of it we didn't change, but we did join them together.

Mr. Fukunaga: And when did you realize you had a setback issue? Was that prior to it being joined up or after you had completed all of that improvements?

Mr. Ed Takayesu: It was actually when I had our engineer while I was doing all these drawings going, you know what? You gotta . . . It looks as though relative to the agricultural setback at that point was 15 feet. And I went, OK, I'm gonna have to deal with the variance.

Mr. Fukunaga: So that was prior to you actually doing the construction on the . . . ?

Mr. Ed Takayesu: No, it was . . . we were in the process of getting that done.

Mr. Kihune: Question, Mr. Takayesu, so according to what I'm hearing is that you had to pull that building into the adjacent building to make . . . otherwise, you would lose that building? Is that what you're saying?

Mr. Ed Takayesu: Well, you know what I did? When I was at the Building Department, when I was telling them that I was gonna merge that from storage, what I was . . . what is now on the plan is called the entrance from the garden area to that to be called . . . and it shows it on the plans that were approved, changing it from storage to mud room. And then the storage area on the plan, which is registered in the County is now media room/storage. So we kinda changed the . . . there was a change of use of that building during the hold harmless building period that from using it as a tack room/storage thing for wood, and tools, and stuff like that, I kinda combined them two so that I could keep the present structure functional as part of our home.

Mr. Kihune: So prior to this all going on, that building was separate from the actual . . . ?

Mr. Ed Takayesu: Yeah, it's a . . .

Mr. Kihune: OK.

Mr. Ed Takayesu: It is shown on this page here. Sorry. On this page here, which is a part of my documents to the County, A-1.2, this is the prior configuration. And then this is what we did. We connected the two buildings together making this living area part of taking advantage of this slabbed, storage building. Now, the storage building has a slab and it was, you know, a stick frame with T1-11. And pretty much just 2x8 rafters, you know, so many feet on center with a galvanized roof. So when that tree did go down through it, it really, literally, made a hole in the roof, dropped it down during the storm. And we did have guys come and cut it out, and we patched the roof.

Mr. Kihune: So now . . . I just gotta get this clear. You're connecting it. Try flip that page, correct. So you've added on that middle portion?

Mr. Ed Takayesu: Correct.

Mr. Kihune: To bring that building as part of the house?

Mr. Ed Takayesu: Yes, correct. And it changed from . . . and it shows here that it was a shed to a media/storage shed to mud room. And then with some notes from the Building Department, making sure that I connected this building so that we had egress all the way through.

Mr. Kihune: Let me ask you another question. I'm just making sure I got this right. So you have another cottage on the property?

Mr. Ed Takayesu: It's an ag storage building.

Mr. Kihune: Which is?

Mr. Ed Takayesu: Down here on the property right here.

Mr. Kihune: OK. And what . . . that 100 square foot, 112 square foot?

Mr. Ed Takayesu: This one right here, this other yellow one.

Mr. Kihune: That's just what?

Mr. Ed Takayesu: It used to be an old furo house, you know. And so it was a building with kind of a beach rock, cement-type floor, with a furo. You know, this is old style.

Mr. Kihune: OK. So you got . . . you're gonna have with this new configuration or this adopted, so-called new plan, you're gonna have three separate buildings on the property?

Mr. Ed Takayesu: That's correct. Well, this one here, we connected with a walkway.

Mr. Kihune: The 100 square foot one?

Mr. Ed Takayesu: Yeah, this little area here is a walkway that connected the two buildings even though it wasn't enclosed. I'm not sure exactly what the Department said, but they said, hey, look, let's just call that storage. I went to the . . . we had the Inspectors up there to take a look at it. So at this point here, I do have a hold harmless for all of these things. What I had to do, of course, was put in a water system here for fire safety. So I put a 10,000-gallon tank on this upper topography here. And then I ran a line down here on the road for the Fire Department to give me the OK. So right now . . . and even with that, there's a hold harmless.

Mr. Kihune: In the hold harmless agreement . . . I mean, we don't have it front of us.

Mr. Ed Takayesu: I do have 20 copies that I brought. Should I disperse that?

Mr. Kihune: What does it specifically say in that document that's pertinent?

Mr. Ed Takayesu: That I'm gonna be responsible for anything. I won't come back to the County for any liabilities relative to the construction and the . . .

Mr. Kihune: The approval or whatever it may be.

Chairman Tanner: It's just a standard hold harmless?

Mr. Ed Takayesu: I think it's fairly standard. It wasn't anything that was real unique about it.

Mr. Kihune: OK. Thank you. Sorry.

Chairman Tanner: Is there any further discussion?

Mr. Fukunaga: Yeah, sorry, I got one more. So, Mr. Takayesu, I'm struggling a little bit. So as I understand now, the drainage pattern runs to where your shed and house is?

Mr. Ed Takayesu: Well, the drainage on the whole mountain runs from up down. So, you know .

..

Mr. Fukunaga: Yeah, but it seems like it concentrates to where the structure in question is.

Mr. Ed Takayesu: No, really, where it really drains off is into this gulch area and runs into a river here.

Mr. Fukunaga: So it doesn't come in through this area here?

Mr. Ed Takayesu: You know, what Steve had mentioned here, he's saying that the fallen trees along Tanya's and my property is running water onto theirs. Now, from what I know is that all this stuff that's been on here is probably at least over 30 years because I never dropped any trees up here. So that just seems to be the topography. But like I said, that one time in 30 years did something happen, but it wasn't because of the nature of the topography as much as something that was set up artificially by somebody that was leasing the property prior, and he apologized.

Mr. Fukunaga: So if . . . let's say if all that rubbish and fallen trees, branches, what have you, were cleaned up, and the runoff would run as just following the contours of the land, and not be . . . not diverted by any fallen trees or rubbish, would you say that your structure is in the pathway of the runoff?

Mr. Ed Takayesu: I don't think so.

Mr. Fukunaga: Or would you be inclined to . . . would you be concerned to the point where you would be putting diversions around your structure to protect your structure?

Mr. Ed Takayesu: No, no.

Chairman Tanner: Thank you. OK. We'll entertain a motion.

Mr. Kihune: I'd like to make a motion, Mr. Chair. I'd like to make a motion that we defer this issue for reasons that I think that the neighbors . . . the ongoing issue between the neighbors. And I think having a longstanding family in that area for five generations, I think Mr. Takayesu and the neighbors should work this out before they come back to us. And that's my motion.

Mr. Espeleta: I'd like to second that motion.

Chairman Tanner: OK. We have a motion and a second. Discussion? Staff, what's the deadline that we're under for this?

Mr. James Takayesu: You had put down February 6th.

Ms. Kapua`ala: The decision must be made by Thursday, December 12th, 2013, or the variance shall be deemed granted.

Mr. James Takayesu: Excuse me, did you ask for a drainage study of some sort or . . . ?

Mr. Patrick De Ponte: December 12th, the next meeting.

Chairman Tanner: Do you know what's on the agenda for that December 12th meeting?

Ms. Kapua`ala: Actually the hearing item that was scheduled has to be cancelled for procedural issues, so it's wide open at this point.

Chairman Tanner: So at this point there are no items on that agenda?

Ms. Kapua`ala: Correct.

Chairman Tanner: This would be the only one?

Ms. Kapua`ala: Yes.

Chairman Tanner: Potentially. OK. So what we're gonna have to do is clarify for the record on the motion what you would like to see resolved and brought back to the Board.

Mr. Kihune: For the motion, I'd like to have the issue resolved. There were discrepancies on when this building was built, when it supposedly disappeared, I think maybe some issues with drainage, but right now, there's two sides to every story. And right now, I'm a little bit stuck trying to make a decision on this unless we get a little more information on that actual structure. I'm also concerned of the fact that he's pulling the building so he can accomplish one thing is to probably grow the size of his house. Because I'm pretty sure from a Planning standpoint, that building would have to be removed if it wasn't added. And that's a concern for me, Mr. Chair. And, you know, if you're gonna be building or adding, my concern is that it would've been easier to just deduct from that existing building, that shed, and make it . . . accommodate the permit process. And that's my concern.

Chairman Tanner: OK. So the deferral is for additional information with regard to the building, the history of it, issues with regard to drainage and the like. Yes, staff?

Ms. Kapua`ala: Thank you, sir. We looked in . . . at the . . . we recalculated the 60-day timeframe, and it looks like you would have until the January 23rd meeting to make a decision before the variance would be automatically granted.

Chairman Tanner: Yeah, that would be better.

Mr. Giroux: Additionally, according to the rules that the timeframe's not gonna apply if it's deferred based on when the review of the variance application has been delayed or deferred due to inadequate information concerning the nature, scope, or description of the subject matter of the variance application; or due to revisions of the variance application. So if there's issues regarding the building permit, or establishing whether or not the building was built prior to or reconstructed, and if that's what you're asking for, I think it would be fall under that exception, yeah.

Chairman Tanner: OK. So the applicant understands that we're gonna defer this and request that additional information? So we have a motion, we have a second. Any further discussion?

Ms. Kapua`ala: One more thing, I'm sorry. We're scheduling that hearing to be on Lanai, so if you would like to continue . . .

Chairman Tanner: It's a beautiful island if . . . (Laughter)

Mr. Ed Takayesu: . . . (inaudible) . . .

Ms. Kapua`ala: Oh, and it's his anniversary. OK. So the applicant could either or the Board could either set it for the January 9th hearing, or the applicant could come to Lanai with us.

Chairman Tanner: January 9th OK with . . . ? January 9th? OK. So we'll set the deferral for January 9th. Any further discussion? OK. Can I have a vote? All those in favor? Any opposed?

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

VOTED: To defer the variance request to the January 9, 2014 meeting pending additional information with regard to the building, the history of it, issues with regard to drainage and the like, as discussed.

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

(Absent: J. Haraguchi.)

Chairman Tanner: None opposed. **The variance is deferred until January 9th.** Thank you very much. Moving on to the Director's Report.

E. DIRECTOR'S REPORT

1. 2014 BVA Meeting Schedule

Chairman Tanner: Staff, do we have anything before we close the meeting?

Ms. Kapua`ala: No, sir, other than the new BVA schedule for the next 2014 year.

Chairman Tanner: You should all have that in your packet. All right, if there are no objections, we'll close the meeting. Hearing none, we are adjourned.

F. NEXT MEETING DATE: Thursday, December 12, 2013

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:55 p.m.

Respectfully submitted by,



TREMAINE BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

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

Members Excused:

Jacqueline Haraguchi, Vice-Chairman

Others:

John Rapacz, Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel