

**URBAN DESIGN REVIEW BOARD
REGULAR MEETING
JULY 7, 2015**

APPROVED 09-01-2015

A. CALL TO ORDER

The regular meeting of the Urban Design Review Board (Board) was called to order by Mr. Hunton Conrad, Chair, at approximately 10:02 a.m., Tuesday, July 7, 2015, in the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Mr. Hunton Conrad: I'm going to call to order the regular meeting of the Urban Design Review Board. I'm Hunton Conrad, Chair, of the Commission, and it's now 10, and we shall begin. A quorum is present so I think we can proceed.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda items are discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Mr. Conrad: And at this time...I guess I need to do this for the record...at this time if there's anyone from the public who wishes to testify on the agenda item and will not be here when the regular agenda item is up may do so at this time. Just be aware that you may not be able to testify later when the agenda comes up. Is there anyone in the audience who wishes to testify at this time? Seeing none, we will move forward.

C. ADMINISTRATIVE APPROVAL OF THE MAY 5, 2015 MEETING MINUTES

Mr. Conrad: So first is communications, and I think basically we are ready to approve the minutes from the last meeting. I reviewed them. I can't tell you I read every word, but they're quite thick. It was a long meeting. This isn't the last meeting. This is the meeting from May. So anyone have any -- anyone from the Board have any comments? Okay.

Mr. Callinicos: On page 2, second paragraph or that paragraph with my name, third sentence, "Previous to that in South King in South Africa," it just should read "Previous to that in South Africa." That's all.

Mr. Conrad: Okay. David? Nothing? Okay. So, with that, with that one comment, one change, can we administratively accept the minutes? Okay.

**The May 5, 2015 UDRB meeting minutes were administratively approved
with one correction.**

D. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. MR. KERRY RINGROSE of PACIFIC SIGN & DESIGN requesting WENDY'S (lessee) and W-ADP, VIII, LLC (land owner) requesting a variance from Section 16.13.070, Maui County Code, (MCC), to allow a second business identification sign when MCC allows only one sign per business frontage for property located at Maui Mall Shopping Center, 70 East Kamehameha Avenue, Kahului, Maui, Hawaii. TMK (2) 3-7-009:004 (SPV 2014/0001) (Malia Balberdi)**

Mr. Conrad: Alright. Moving on. The --. So we'll move on to the one agenda item today (*Mr. Hunton Conrad, Chair, read the above project description into the record.*) So you're welcome to start your presentation.

Ms. Malia Balberdi: Hi. My name is Malia Balberdi. I'm with the Zoning Administration and Enforcement Division. To familiarize you with the subject property, I will be giving you a brief overview. So this an aerial view of the Maui Mall Shopping Center which is 25.37 acres. This blue arrow is where Wendy's is located. Maui Mall is also surrounded by other commercial zoned properties, and Wendy's also fronts East Kamehameha Avenue.

So this site map here shows the distance of the business ID sign is from the property line, and the location of the Wendy's ground sign. Attached as Exhibit 2 of the staff report is the Comprehensive Signage Plan (CSP) that was recently updated to include TJ Maxx. If you look at the back of Exhibit 2, labeled as G-16.9, it shows the dimensions of the ground sign, which is 35.82 square feet.

This picture is taken from East Kamehameha Avenue. Again, if you look at the back of Exhibit 2 labeled as G-16.6 shows the dimensions of the first business ID sign, which says Wendy's and Old Fashioned Hamburgers. This is a second business sign and the subject of the variance. It is located on the west side of the building, facing the Maui Mall parking lot, towards TJ Maxx. So if you have any other questions -- no questions, then I would like to introduce you to Kerry Ringrose from Pacific Sign and Design who will finish the presentation.

Mr. Conrad: Thank you.

Mr. Kerry Ringrose: Good morning ladies and gentlemen of the Urban Design Review Board. Kerry Ringrose appearing on behalf of Wendy's Kahului. As Malia has pointed out, this is the sign. This sign is in existence. It's on the building. I'll provide a little history. This is a franchise. It's recently -- not recently -- but a year and a half ago, sold, and with the existing signage as it is as you see. This sign has been here since...19...just a moment. 1993. If I can just continue. Malia, could you just go to the next picture? These are, these are photos that speak more to the...to the site distancing issue. This sign is located on one side of the building. In other words, if you're directly in front of the building you can't see. You can only see it actually if you're driving down Kam Avenue, heading east. And it is only visible, as you can kind

of tell from the bottom photo there, it's only visible fleetingly I would say, in between those trees and various foliage and what have you. There is also a palm tree, some palm trees located in the farther area, next to the premises itself, and they also partially block the sign.

Again, I want to point out that there is -- this sign has been in place there for 22 years. It occupies approximately 4% of the surface area of this elevation, facing east. One other thing I'd like to kind of point out, it says on the Wendy's site map that we just looked at, that this is a proposed second business ID sign. In fact, this is an existing sign; we are asking to be allowed to remain. I just want to clarify that classification.

Now the process of applying for this variance, we have the description. The purpose of this second business ID sign is to identify and locate the drive-thru window location which is directly below the sign itself. The idea on the part of the, of the tenant is that the, the location of that drive up window, and the fact they have a drive up window, is there and that sign is to draw attention to that. Primarily they're seeking to get that exposure from the parking lot in Maui Mall, not from the, not necessarily from the highway.

Just to address the unique circumstances or special conditions as part of the variance. Unique circumstances or special conditions exist which are peculiar to the land, structure or activity involved. The subject parcel is unique for the following reasons. It was originally a separate parcel of a cluster . . . (inaudible) . . . lots that's adjacent to Maui Mall. It's fronted by one County street, Kamehameha Avenue, on the south side; and Maui Mall parking lot on the west side and the north side. East elevation is towards Ale House. Actually -- yeah, Ale House. Opened in early 1993, the nationally known Wendy's franchise, the first in Maui County, obtained permits for the front marque sign and the ground sign on Kamehameha Avenue. The current County of Maui sign code does not allow more than one sign per business frontage. But at the time of construction, the second sign, subject to this variance, was added since it did not technically face the public right-of-way, and the County did not actively interpret this as an enforcement issue.

The other sign has been on the building for almost 22 years. And considering that trees and other obstructions partly obscure viewing from Kamehameha Avenue, and the absence of evidence of public nuisance or health hazard, that the existing sign, we pose, does not pose a health and safety issue.

Moving on to the granting of the variance, and our argument that the granting of the variance would not be contrary to the purposes of this chapter. The applicant believes that this proposal is in alignment with the objectives of MCC Chapter 16.13. The overall comprehensive sign plan, CSP, for Maui Mall, including the signage, that is the subject of this variance, is designed to protect the health, safety and morals of Maui County by balancing the needs for traffic safety; the potential harm that an indiscriminate amount of signage could cause as not to distract motorists attention from driving; and the need for the subject business to have reasonable methods to advertize; and the existing signage will aide in business brand identification and marketing of the drive-thru aspect of the business, ultimately providing for a positive social and economic impact on 45 Maui residents employed currently at Wendy's, in addition to Maui's

economy and its residents well being. And, the proposed variation -- I'm sorry. The proposed variance seeks to confirm Maui's natural beauty by providing an understated business identification that is aesthetically pleasing and scaled at 4% of the surface area, to proportion to the architect and its environment.

Moving on to the proposal as the most practical alternative. In the current iteration of the Maui County Sign Code, a business cannot have two signs visible from the public right-of-way. But given the history of the site, scale of the sign to the building elevation, the function of the sign to draw attention to the drive-thru window, the obscurity from Kamehameha Avenue and parking lot buffer zone in the Maui Mall, the granting the existing signage being requested to remain, it's thought to be a reasonable and measured proposal. And, from a business standpoint, the restaurant relies on patronage either from word of mouth or effective marketing. Signs are part of the marketing strategy, and in this context, they're considered critical for restaurant drive-thru and viability at this location.

We are requesting...this variance on the aforementioned criteria, but also on the following. You know, 22 years in place with no sanction or enforcement. A sign sanction is only applied when zoning rules were changed to include this property and the adjoining property, the Ale House, into the greater Maui Mall CPS, which is now going to include, I am informed, the entire city block including businesses facing out Puunene Avenue. Under a previous administration's interpretation, signs that did not directly face the street were not regulated to signs. Since the glance angle which is, which is defined by industry experts as being 1.5 seconds, which is the amount of time that you can reasonably look off to one side or the other, from your driving, and take in a message, or take in something, and then return very quickly back to your primary function which is driving the vehicle. 1.5 seconds that's referred to as the glance angle, and that's the glance time. So in other words, in that time . . . (inaudible) . . . you had time to glance, look, get the message, and return to driving the vehicle. Since the glance angle was compromised to the point that potential viewing angle from Kamehameha Avenue would have been narrowed to less than 10% of the potential exposure, this sign can only be potentially viewed from Kam Avenue heading east, exposure to Kam Avenue is compromised as you can see by multiple landscaping elements -- trees, foliage, poles, etcetera.

The conditions. The conditions which we seek a variance under are multifaceted as outlined. But the core of our request is that this sign has been there, undisturbed for 22 years. It's not over regulation size. If this elevation is treated under normal . . . (inaudible) . . . analysis, and that there was no . . . (inaudible) . . . harm to the community, either historically or as outlined in the County Code's preamble; and which speaks to the need for a balance between excessive signage and reasonable and effective signage. In the process of filing for this variance we've sent out public notices, and we also notified all the adjacent properties. And as the Chair noted, there is nobody that -- nobody has appeared to oppose this application. Are there any questions?

Mr. Conrad: I guess not at the moment.

Mr. Ringrose: You've got one.

Mr. David Green: I'd just like to clarify. Does the County, from what I understand -- I got from the write up that was sent out that the sign was never permitted. But you indicated that...at some point in time it, it was a legal sign. Is that what you indicated?

Mr. Ringrose: That, that's --

Mr. Green: Is that what you indicated?

Mr. Ringrose: Yes.

Mr. Green: And I wonder if the County agrees that at one time it was a legal sign, or a permitted sign. And you're saying that the thing that's changed is the regulation.

Mr. Ringrose: The thing that's changed actually is the interpretation.

Mr. Green: The interpretation. Can somebody from the County explain...that?

Ms. Balberdi: Hello? Okay, talking with my administrator, John Rapacz, there was no building permit, or there was no permit for this second business ID sign. So his determination now, or interpretation is that a sign is visible from the public right-of-way or adjacent property, and the proposed sign is visible from both.

Mr. Green: Okay, but if from what I understood from Mr. Ringrose while it wasn't permitted, it wasn't required to be permitted. Is that, is that accurate?

Ms. Carolyn Cortez: Hi. I'm Carolyn Cortez with the Zoning Administration and Enforcement Division. I was not present here working for the County at the, at the time. But I believe that a sign permit would be required for the sign, and there was never a permit granted so --

Mr. Green: Or applied for.

Ms. Cortez: Or applied for. But then back in 1993 our records weren't computerized, I believe, but there was no sign permit for that sign.

Mr. Conrad: Yes, Mr. Callinicos?

Mr. Demetrios Callinicos: I'm a little confused about a certain letter that is included in our handout. It's dated July the 30th, 1999, and to a Mr. Talbot Shibley of A&B Properties. Now, from this . . . (inaudible) . . . -- I'm not sure if it's correct -- that at that point in time the property belonged to A&B Properties and not the applicant who's currently. Is that correct?

Ms. Balberdi: That is correct.

Mr. Callinicos: Thank you. Well this letter says...and this is signed by Clayton...that the "Maui Planning Department has reviewed the final signage package for the Maui Mall and finds that

it incorporates the four conditions of the UDRB, and as such, is hereby approved.” . . . (inaudible) . . . When I had looked at the package itself there’s only one sign for Wendy’s, and that’s on page 39 of 51 or G16.6. Why was the other sign not shown at that time, in this package? It appears to me that an investigation was done of all the signage at the mall because you’ve got all the signs listed here. But you don’t have a second sign for Wendy’s. Was there a reason for that?

Ms. Balberdi: Sorry, what’s your question again? If there is no permit?

Mr. Callinicos: I said that there is one sign for Wendy’s shown in this package, and that’s the one that’s apparently applied for and approved. But whereas all the other signs at that property or shown in this package, there is nothing here about the second sign.

Ms. Balberdi: Yes, that is correct.

Mr. Callinicos: So that second sign, if it was noted, was not approved by this letter.

Ms. Balberdi: Yes.

Mr. Callinicos: Okay. Thank you.

Mr. Ringrose: Mr. Chair, if I could add something?

Mr. Conrad: Yes.

Mr. Ringrose: We’re looking somewhat here at the issue at precedent, and I would use an example on the west side at the Lahaina Gateway Plaza where there’s an annex building, and where one facade of that building faces, I believe it’s Kiawe Street, and runs up the hill, kind of a bypass. And I’ve actually pulled permits and installed signage on that, on that side. I’ve also pulled permits and installed signs on the other side as an alternative to having signs on the other side. Now the other side means facing back in the parking lot, facing back into...to the parking lot of the complex. It does not face directly to the street. It does not face directly Honoapiilani Highway.

I have in my possession a letter from the previous Zoning Administrator when I went in for a permit for another, for a second sign on the other side, where this letter clearly states that no permit will be required because such a sign would not be legible from the highway. And I’m just -- I’m not trying to put someone in an awkward spot here. I’m just pointing out that the interpretations are what has changed. And what was considered to be a sign at one point because it could not be, is not legible, the interpretation is now changed to is it a sign? Does it look it could be a sign? And that’s apparently what the Zoning is now using as a criteria to judge what should be regulated and should not be regulated.

Mr. Conrad: Thank you.

Mr. Ringrose: But in any event, I mean, again, we're here for a variance. I'm asking for a variance...based on these criteria, based on the site distancing, the size of the sign, etcetera; and if granted we would seek and obtain a sign permit. This sign is not oversized by sign code regulations. There's also been some discussions at Planning regarding the possibility -- now I don't know if this actually become, become the rule now -- but there's been some discussion, I have been told, that a public right-of-ways like the one that runs between Wendy's and Maui Mall could be treated as, as like a County street. If that's the case, then, then, then this would be a frontage and would be legally allowed to have a sign allowance on that side. And it would be bigger than what this is based on the setback and the frontage of the building. So that's another factor again. But again the idea is to bring this sign into compliance, obtain a variance for its existence, number one. Number two, pull the appropriate permit and...straighten out the rest.

Mr. Conrad: Thank you. Any other questions or comments?

Ms. Frances Feeter: I'd like to give you a little personal history regarding Wendy's. When I got this, I thought, okay, Wendy's, where is Wendy's? I couldn't even remember where Wendy's was. I live in Molokai. Okay, I looked, it says Maui Mall. Okay, Maui Mall. I go to Long's, I go to Whole Foods. I could not still remember where Wendy's was. And then I looked at the map. Okay, that's where Wendy's was. And then I realized almost every time I come over to the meetings, I rent a car, I come down Hana Highway, I turn left on Kamehameha, I take the immediate right by the stop light to go to Whole Foods and get a cup of coffee, but I did not even notice Wendy's. Now that's got to show the sign must not be terribly offensive. I went by this morning, on the same route, just to check, and it was almost hard to see the sign in front. I mean the Ale House sign is pretty big. But the Wendy's sign is not that big. When I turned the corner, I had to turn my head and look to see the sign on the side. So, in my opinion, just a personal opinion, it's a matter of common sense to approve the sign. I see no problem with the sign being there. It was not offensive. Obviously it doesn't glare out or I would have known where Wendy's was all this time. So that's my opinion.

Mr. Conrad: Thank you. Anyone else have comments?

Mr. David Sereda: I have one comment.

Mr. Conrad: Yes.

Mr. Sereda: I agree that the road that connects Whole Foods that goes past Wendy's to the parking lot, it kind of does function as a street in a way even though this a private road and it's part of the parking lot. Essentially it's a drive aisle, I think. So I think it could almost be considered a second street which would then -- like you -- the point was made by Mr. Ringrose that it would then be allowed as two frontages, two signs. Or two streets, two signs. So as long as it doesn't violate any County Codes in terms of signs and permits, and it's not a health and safety concern, as a distraction, and in my opinion it would also be if it's not a hazard.

Mr. Conrad: Thank you. That actually brings up a question for me for Malia Balberdi. What

brought up this issue up? Is the County going, methodically going through and looking at buildings all over Maui for noncompliance? Or what brought this particular issue up?

Ms. Balberdi: Mr. Chair, what happened was our inspector had to go out to do a field inspection for a spa, and when he does that he looks at the whole property and he makes sure the entire property is in compliance, and he noticed this sign.

Mr. Conrad: So the spa was in Maui Mall?

Ms. Balberdi: Yes.

Mr. Conrad: And, and now that this property is owned by Maui Mall, it became apparent it was in --

Ms. Balberdi: Noncompliance.

Mr. Conrad: Doesn't meet the current law.

Ms. Balberdi: Yes.

Mr. Conrad: Okay, and then a second question I have for you is that the interpretation -- is it an accurate statement that Mr. Ringrose is saying that the interpretation of the same law has actually changed, or is that the County's position or is that just Mr. Ringrose's opinion?

Ms. Cortez: Hi, Mr. Chair, Carolyn Cortez again. Mr. Ringrose is correct. He does have, I believe, a letter from our previous administrator, Aaron Shinmoto, that made that determination for that particular property, that particular lease space. And our administrator, John Rapacz, who replaced Aaron, is going by what the Code says for the definition of sign. So his interpretation per the Code, how he reads it is that a sign is anything that meets that definition that is in Title 16 which is, I believe I -- I don't know it off hand but it, that it's --

Mr. Conrad: That's okay.

Ms. Cortez: -- visible from a public street or right-of-way.

Mr. Conrad: Thank you. I appreciate it. Phil?

Mr. Raymond Phillips: Might the applicant stipulate to no further changes, alterations, whatever to the signage on the building in perpetuity?

Mr. Ringrose: Yes. We have no reason. Yes.

Mr. Phillips: It is what it is.

Mr. Ringrose: Yeah, my client would not object to that. Yeah. If I could add one more, one

more point too. What we're trying to fight here a little bit is the time span because some of the staff were not here at that time. And initially Wendy's was cited for having the ground sign up. And I got together with another staff person up there that I've known for a number of years, and a search, an additional search actually turned up somewhere, I believe -- and you can correct me if I'm wrong -- somewhere in a box of records some where, an actual, physical copy. It wasn't digitized. A physical copy of a permit for that sign. And that notice of violation has then been withdrawn for the ground sign, the Wendy's ground sign. So I'm just kind of framing this within the parameter of a long time span -- 23 years -- and record keeping and obviously staff changes. A lot can happen in that time.

Mr. Conrad: Thank you. Yes, Demetrios?

Mr. Callinicos: I'm, I'm a little confused. I'm always confused, but I'm more confused right now. The statement made by David about this entrance onsite road could be considered as a, as a road, per se, in terms of how we define a road. And therefore you can have a sign on that, that face of the building. Now if that is case, we're really opening up Pandora's box because in every shopping center on Maui, internal roads in the parking lot would be considered as possibly roads. And therefore any building facing anyone of these access roads on here are entitled to have two signs up. I think that defeats the purpose of our signage...and technically, the law. So I'm not happy about us thinking in terms of the internal road as being roads. They're not. They are ways to get around the shopping center. They're not public roads. And for that reason we shouldn't think of them as so.

The fact that this sign was here and has been up for 23 years, and has never been cited, it's probably due to lack of enforcement. The inspector just never caught it. I don't think that's an excuse for us to accept the fact any sign that happens to get through the . . . (inaudible) . . . and the rules, and hasn't been caught. Actually that's what it is. You put an illegal sign, you didn't have a permit for it, and now suddenly it's come out, you want us to approve it. I don't think we can do that. I really don't because that again opens Pandora's box. There's many signs on Maui that shouldn't be there. I see them every day when I drive around. Some of them are -- somebody used the word -- innocuous, those offend you. Sure, many of those signs don't offend, but they are not legal signs. They shouldn't be there. That's why we, that's why we've got these rules, and if enforcement catches up on them, so be it. So my view is that this sign, I don't see how we can make it legal.

Mr. Conrad: Thanks Demetrios. Do you want to respond Mr. Ringrose?

Mr. Ringrose: I do want to make a point, yeah, that if -- imagine, for example, that this, I think someone else referred it to an access road. Myself I drive down almost everyday and go to Whole Foods and other place because my office is on the other side of it, down off Alamaha. In the event, as clearly spelled out in the Code, if you have two street frontages, you can have two signs. So the fact that you can have two signs that are again determined on a formula based on the setback and the linear frontage. In this case it would be 24 square feet. Actually, no, it would be a little more than that. It would be probably closer 36 square feet. We're not asking for that. We're just asking that an existing sign which has been there admittedly for a

long time be permitted, and we go in and we get paperwork on it, and make it legal. This variance application only covers this particular situation. As far as opening Pandora's box, I mean, somebody else in the same circumstance would still have to come before you and argue the case. They still have to present a convincing argument that that should prevail in that individual circumstance.

Mr. Conrad: Yes?

Ms. Jennifer Oana: I just wanted to point out to everybody the definition of a street which is found in Maui County Code 18.04.380:

“Street means the entire width between the property lines, bounding every way of whatever nature when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, expressway, road, avenue, boulevard, lane, drive, place, or however otherwise designated.”

So I think in the beginning of that definition, it says the street means the entire width between property lines. I also want to point to the criteria when a variance may be granted. So I'd just like to just refocus the Board to 16.13.170, Variances, Section C2:

“A variance may be granted for a sign if the following criteria are met: (a) unique circumstances or special conditions exist which are peculiar to the land, structure or activity involved; (b) the proposal is the most practical alternative; and (c) the granting of the variance would not be contrary to the purposes of this chapter.”

Which purposes, I'm not sure if you guys have, but it's in the very beginning of the commercial sign ordinance. So just in case -- if the, if the Board does grant this variance, the Board should state the basis on which it finds that each criteria, the three criteria, are met. So if you could focus on that. I didn't make copies of the purpose and intent, but if anybody wants to review it, you can see my copy.

Mr. Callinicos: Pardon me, can I ask a question? To sum it up, I mean there's a lot in that statement. A street by definition is between two property lines. In other words, it's a public throughway. The access roads on the shopping sites are not streets.

Ms. Oana: I would say --

Mr. Callinicos: They cannot be construed.

Ms. Oana: Yeah, I would say that definition, where it says between the property lines means that is not a street.

Mr. Callinicos: But, you know, I don't know if you're familiar with it, but there is an obscure law that says that once a year you should close off shopping centers and banks and anything that

has an access that could become public domain. They have to close it off once a year for one day. In other words, the shopping center can close off all these access roads. Now you can't do that for the public street unless that's for...emergency procedures or construction. So you cannot call this a street. Thank you.

Mr. Conrad: Yes Mr. Ringrose.

Mr. Ringrose: Yeah, I'm readily conceding that this does not meet the definition of a road. That was never, never the issue. All I'm raising is that conversations I've had Mr. Rapacz and Mr. Mikolay and the inspector, Mr. Wright, have had clearly the idea. This came up during the, the variance issue with Kehalani Shopping Center up the road here which has an access that goes right through, an access road that runs right through. They're just part of the complex. And the issue came up regarding signage for the gas station that's there, and a couple of other businesses, and they have discussed the possibility of allowing that. I'm only alluding to that conversation. I'm not contesting the idea of whether, what legally constitutes as a street. But I'm adding weight to my argument, if you will. That's all.

Mr. Conrad: Thank you. Do you have something Ray?

Mr. Phillips: Yeah. Effectively it's an interesting thing, Deme and David, because when we go over to this particular shopping area to catch a movie, this particular right-of-way is, has actually, empties into a turn signal, a traffic signal. So people regard it as a, as far as I'm concern, it's a street. So if you look at the rest of the parking facility, parking lot, you'll see that it does have cross streets that goes in between it, and main, you know, main access and egress ways. But this is unique in that it actually dumps into a particular traffic signal with turn lights, to take to the right, straight ahead or to the left. So it's, it may not be a roadway, but it certainly imitates something that approaches a roadway.

Mr. Callinicos: But it's still between two complex.

Mr. Phillips: I understand that. I understand that. But people do use it as a roadway, though.

Mr. Callinicos: Well, they use it. But that doesn't, you know, make . . . (inaudible) . . .

Mr. Phillips: Is it a duck because it quacks? I'm not so sure. Thanks Deme.

Mr. Ringrose: Yeah, you are correct, sir. I mean, this is used as an access road. People think -- most people that I know think it's a road, think it's a street. . . (inaudible) . . . an actual street name. It empties out on to Kamehameha Avenue at the other end. Goes straight through. You can drive straight through. You don't have to deviate in to the mall or Wendy's or any where else. You can drive through there, connect directly with Kaahumanu Avenue and go to the airport or up to the County.

Mr. Conrad: Yes?

Ms. Feeter: Now as I understand it originally this is not part of Maui Mall.

Mr. Ringrose: Correct. It was not.

Ms. Feeter: Okay. Now this is what bothers me. At that time, . . . (inaudible) . . . signs, everything was okay.

Mr. Ringrose: Correct.

Ms. Feeter: Now it's part of Maui Mall, it's not okay.

Mr. Ringrose: Correct.

Ms. Feeter: How is that fair? How is that fair?

Mr. Ringrose: A part of a larger question I ask.

Mr. Callinicos: I don't think there's anything in this, in this handout that says it's okay, ever. I read through this thing. I made sure I read through it two or three times to understand it. I couldn't find anywhere where it says there was any way that they had been looked at or that it was applied for or that it was okay. Now I'm not, I'm not against Wendy's, I'm not against Mr. Ringrose in any way. I've been in practice for many years, and there are rules. And rules, they're usually, sometimes they might sound idiotic, but they're there for a reason.

Ms. Feeter: Sometimes I think the rules should subside to common sense.

Mr. Callinicos: Well, that's a question of an opinion. That's your opinion and --

Mr. Conrad: Well, that's why we have a Board.

Mr. Callinicos: We, you know, as a professional architect, I respect the rules. I shouldn't say, well, they aren't idiotic, sometimes they are. And if you can convince your peers which we're trying to do here that the rule is idiotic, the County is going to have to change the definition of street. They're going to have to say that's permissible for any building in the shopping center that have two signs, internal access ways, is going to have signs now. So there's a number of things that have to change, not just this one sign with repercussions.

Mr. Conrad: David, do you have anything you'd like to say?

Mr. Green: I don't think one variance would cause necessarily a change to the law. That's all.

Mr. Conrad: I mean, that's the purpose of the variance. And I think the reason for this Board is that interpretation can be made, and variances can be given. Secondly, that's the whole point of a variance is that there are particular reasons. I think what our attorney has pointed out justifiably so is that if we are going to grant this variance, that we need to specifically state what

the criteria that we are, the three criteria that we are saying we feel is met. Whether that's to the letter of the law or not, it's again, a matter of opinion. So, but I do think that we need, if we are going to grant this variance, we do need to state very clearly. And I personally don't feel I'm in a position to state that. Not that I'm against this variance. I don't have an opinion yet. But I feel that, I think that's one of our -- I don't want to call it a stumbling block -- but it's one of issues that we would need to make. And, you know, Demetrios's opinion is that, that we should just follow the letter of the law, and that's also the Planning Department's recommendation.

And I understand the need for a variance at time. So I'm -- but I do feel that our, our particular issue, should we decide to grant this variance, is that we have to state very clearly what the three reasons are that we are giving it so. Right, we have to, we have to -- the Board needs to state the basis in which we find each criteria has been met. And it is -- and I don't feel, and I think that's something we should have a discussion about it among us right now because I think that's going to determine whether we can give a variance or not. Does anyone have anything they'd like to say about that?

Mr. Phillips: It seems to be kind of like a legal thing so what might be advised from our legal person?

Ms. Oana: Okay, well the variance can only be granted if you find that the three criteria are met. So maybe, I suggest you guys look at the criteria which is on page three of Ms. Balberdi's and Mr. Spence's report. Maybe have a discussion on that. And looking through Ms. Balberdi's report, you know, the third criteria, granting the of the variance would not be contrary to the purposes of this chapter, I did notice that she included the purposes of this chapter on page 4, so you can reference that.

Mr. Green: Somewhere in there, there's a long list of the purposes.

Ms. Oana: Yeah.

Mr. Green: I read it, but I didn't see where exactly it was again.

Ms. Oana: It's on page 4 of the department's recommendation.

Mr. Green: Yeah, they're all listed. Well, it takes five votes -- getting practical -- it takes five votes to pass. I'm assuming there's one nay here. Before we invest all the time in this, are there five votes, or, or is -- do we need to look for justification if there aren't five votes in the first place?

Mr. Conrad: I'm willing to proceed. David, you're still holding your position? You're okay with granting this variance?

Mr. Sereda: Yes.

Mr. Conrad: And Ray, where do you stand?

Mr. Phillips: I'm okay with it.

Mr. Conrad: You're okay with it. And you're okay with it. So that's -- that is --. And then there's Demetrios, so I'm the deciding the vote. I don't like to be in this position.

Mr. Green: I'll tell you why I'm okay with it. I'm okay with it because...you, you really can't see one sign easily from Kamehameha Highway. Is it Kamehameha or is it Kaahumanu? Okay, Kamehameha. The other reason is because I've been there and I know that that road or that access way opens up onto a street light as it has been stated. I wonder if when the property, when the sign was put up, and the property was not part of the mall, there must have been a boundary there. If the access road was there, maybe it was closer to the definition of a road, but I don't necessarily want to get into -- I don't necessarily want to get into that level. But that's -- I don't think it causes a safety hazard. I think there's extenuating circumstances from my perspective.

Mr. Callinicos: Before we can take a vote, we should have a proposal.

Mr. Conrad: Oh, yeah. Yeah, I think what we should do is ask for a proposal that someone propose that we accept this variance. And then if they would be kind enough in their proposal to state something about how the granting of this variance would not be contrary to the purposes of this chapter, that would be helpful. I think that's a difficult thing to do, but I still think we're allowed our opinion. So, if someone would like to make a proposal I'd appreciate it.

Ms. Oana: May I have . . . (inaudible) . . .? Because you have to address all three criteria, if we could just go down the line. Start with (a), unique circumstances or special conditions exist which are peculiar to the land, structure or activity involved; and then maybe everybody can make comments on that. And then we just go down.

Mr. Conrad: Okay. Alright, we'll do all three.

Ms. Oana: That way Planning can jot down all of your reasons why.

Mr. Conrad: So maybe we could just go around, and whether you agree or not, like, Demetrios, just make your, make your case for (a), and that way --. Yeah, each one.

Mr. Callinicos: I think that's a good idea.

Mr. Conrad: Yeah, I like that.

Mr. Callinicos: Okay, we have the first one, Mr. Chairman.

Mr. Conrad: Pardon?

Mr. Callinicos: The first one, right, right before us right now?

Mr. Conrad: Yeah, the first one is before us right now, (a), the unique circumstances.

Mr. Clayton Yoshida: Excuse me, Mr. Chair?

Mr. Conrad: Yes?

Mr. Yoshida: I guess this matter has been advertised as a public hearing, and although you had called for public testimony at the beginning of the meeting, and there's nobody here right now, I think we're establishing a record. This is a decision that is appealable to the courts, so you want the record to be clear. So if you allow for public hearing, then, I guess, you know, you can call for anybody who wants to testify. If nobody, then, and I guess, the department does have a recommendation on this matter, so after you call for the public hearing, if the department can summarize its recommendation, and then you folks can go from there.

Mr. Conrad: Okay. Thank you Clayton. So we will, for public record, we will call for anyone who, from the public, who wishes to make comments on this, this variance application. Seeing none, that is close. The public testimony is closed, and then if the Planning Department would please summarize their propose denial of this variance application.

Ms. Balberdi: Based on its analysis, the Department has concluded that the applicant did not meet any of the requirements. The Department finds that there is no unique circumstances or special conditions that exists which is peculiar to the land, structure or activity involved. Number two, the proposal is not the most practical alternative. And number three, the granting of the variance is contrary to the purposes of Section 16.13.070, of the Maui County Code, where only one business identification sign is allowed.

Mr. Conrad: Thank you. So now we, if we'd like, we can proceed with going through all three conditions and stating what are personal opinions are about. Demetrios, would you be willing to begin?

Mr. Callinicos: Well, can I read it out?

Mr. Conrad: Yeah.

Mr. Callinicos: That the variance shall be applicable only to the request as approved by, and as reflected in the record as to the property located at 70 East Kamehameha Avenue, Kahului, Hawaii, and it's got the TMK. That's a condition.

Ms. Oana: Excuse me Chair, may I focus your Board to page 3 of the Department's paperwork, and that's where the criteria are.

Mr. Conrad: On page 3, item number 2 of the applicable regulations, point (a).

Mr. Callinicos: Oh, that's right. Unique circumstances or special conditions exist which are peculiar to the land, structure or activity involved. I don't see any.

Mr. Conrad: Okay. Thank you. David?

Mr. Green: What page is it on?

Mr. Conrad: We are on page 3 of the summary by Mr. Rapacz. Point 2, number (a).

Mr. Green: Okay. To me the unique circumstances are, one, the fact that there's a strong possibility that the interpretation of the rules have changed since the sign was originally installed. The second unique circumstance is based on the fact that the access road along what is it -- I don't know how refer to that...

Ms. Oana: The right-of-way.

Mr. Green: The right-of-way, yeah, thank you. The right-of-way that goes next to Wendy's that is not legally a road at this point in time, but empties onto the highway at a traffic signal, etcetera. Thirdly, you can't see the Wendy's sign from anywhere but the mall. You can't really see it from the highway when you're going through by it. To me those were --

Mr. Conrad: Those meet the criteria.

Mr. Green: Right.

Mr. Conrad: Thank you David. David Sereda, do you want to comment?

Mr. Sereda: Sure. Yeah, I agree with David's comments that the unique circumstances are that it's...it's been there for 23 years. It wasn't part of the mall before, and then now it is part of the mall, and so the comprehensive sign plan, maybe it's why it wasn't included to begin with. I'm not sure about that. And the interpretation may have changed since it was originally constructed. And also that the unique circumstance is that drive aisle does function as a street, and the intent of the Code is to allow two signs if it is on the corner and has two frontages. So it's not really violating the intent of the Code because of the way that, that particular access functions. And I think that's probably could be unique to a lot of shopping malls on the, on the island. I don't, I can't think of many others that have through roads like that, that are connecting two major, major roads, like Kaahumanu and Kamehameha.

Mr. Conrad: Technically that access road does not go straight through it and spill out on to --. It was designed to originally because when you look at it, you can see what it originally was designed to do so. It doesn't do so, and now you have to make a slight right and then curve to get out. So again, I agree that it's, that it is -- it just doesn't have that straight through access.

Mr. Sereda: No, yeah. To clarify, yeah, it doesn't go straight through, but it does -- I mean, when I drive through there, I often turn right at Whole Foods off of Kaahumanu and then cut

through and drive right pass Wendy's, and go straight up to Dairy Road that way. So my point is that's a unique condition perhaps particular to this mall, on Maui. And the proposal is the most practicable alternative.

Mr. Conrad: We're just doing (a).

Mr. Sereda: You're just doing (a). Okay.

Mr. Conrad: We're going to go through. I'll do (a), and then go through. So, Ray?

Mr. Phillips: I'm in agreement with both Davids so . . . (inaudible) . . .

Ms. Feeter: I agree too. You know I agree with both of them, and I think it's been there for 22 years and I see . . . (inaudible) . . .

Mr. Conrad: And I've been unsure from the beginning on this, but I think as I, as I look at this, if I were to follow the letter of the law exactly the interpretation would be with the...the County's interpretation has been which is that this is it doesn't meet any of the three criteria. I tend to agree with the group here, the majority of the group here, that it does appear, in my opinion, for three reasons to be a unique circumstance. Number one, it's been there from the beginning. It was once on a separate TMK before it was absorbed into the mall. That doesn't rely the fact that it's probably that access road was always owned by the mall, but it still does show a reason why there might have been a sign allowed. It's been there for 22 to 23 years, and it has not come up as an issue in the past. And there must have been other signs, other inspections at Maui Mall in the last 22 years, and it didn't come up. Understandably there are stricter applications, in my opinion, going on today, than used to be, on Maui, of the law. But I am agreeing that I think there are unique circumstances in this case, and those are two of the three. And I don't believe that the access road with --. It functions as a street. There are many shopping centers that, that go out onto street lights where the shopping center's main entrance is directly onto a street light. So that one doesn't hold it for me, but the other two do, so I'm in favor of point (a) as a unique circumstance being met.

Secondly, we should move on to point (b), and David, just to go around the other way, would you begin?

Mr. Sereda: Sure. So the proposal to leave the sign up is the most practicable alternative. Is that the correct reading of that? Well, that would seem to make sense wouldn't it?

Mr. Conrad: Yes, we're getting nods from the people behind you.

Mr. Sereda: Okay, yeah. So it would meet that condition wouldn't it? To leave the sign up would be the most practicable alternative?

Mr. Phillips: I'm in agreement.

Ms. Feeter: I agree.

Ms. Cortez: Mr. Chair? Yes, the proposal is the most practicable alternative. So to leave the sign up is the most practicable alternative, but why is that the most practicable alternative?

Mr. Conrad: So --

Ms. Cortez: As opposed to removal or --?

Mr. Conrad: David, would you like to make a subtle clarification?

Mr. Sereda: Okay, again, because this is an existing sign, it's not to let people off the hook who are trying to get away with something, who, because... it's existing now. So to have them take it down and disconnect all the electrical, and patch the wall, and remove the sign completely...as compared to leaving it up would be less practicable.

Mr. Conrad: Thank you. Ray? You know, we're making a legal decision here so you have to be, you know --

Mr. Phillips: I think the most practical, practicable alternative is to basically leave, leave it as is, as it has been there for quite a period of time. There's certainly nothing mentioned about grandfathering as there's confusion on whether it was or ever was or not. However, I don't see it as a negatively impacting the health and welfare of the County of Maui. And basically I see really no reason why it should be taken down. So, that's about it.

Mr. Conrad: Thank you Ray.

Ms. Feeter: I agree with Ray and David. I don't think I can add much to that.

Ms. Oana: I just wanted to maybe point out that other -- maybe you guys can think about other alternatives and say why this is better. You know, other advertising or whatever, and that way this sign, leaving it up, will be better than any alternative to whatever their . . . (inaudible) . . .

Mr. Phillips: Well, signage is signage, you know. So if you're going to alter it or anything, I think, one of the things I asked this gentleman was would the applicant stipulate to no further alterations or changes or anything in the future. Why would we compound . . . (inaudible) . . . ? Why would compound the situation? Leave it as is or take it out. That's my humble, legal opinion.

Ms. Oana: I mean, an alternative, of course, is taking it out. But, you know, if you want to think about is there anything alternative that he could do, under the law, that would serve their purpose, and then you can disregard that and say this is the best alternative.

Mr. Conrad: So coming up with a -- so if I'm understanding you correctly, coming up with an alternative that isn't keeping it and if we do remove it, then an alternative that supplants that

removal is some way. Like a sign somewhere else. I mean, it's, it's difficult for me to even understand how that could --. I mean, I understand from a legalese point of view why you're saying what you're saying. But from a citizen's it's difficult for us to actually directly address that.

Ms. Oana: Yeah. And I'm not sure but are there any other signs that they could do, that they could add? And I'm not sure. I'm haven't done the analysis, but is there like a ground sign that they're not using? Is there something else that they're not using? Just alternatives to what their purpose is. I mean, they can maybe suggest what they thought of and they can say --

Mr. Ringrose: Yes, I could answer that. One point I'd just like to add, if I could too, and I admitted just from my early testimony, primarily we're here because a permit cannot be found for the sign. That's not to say it does not exist. Remember now the ground sign at the front, initially. . . (inaudible) . . . because no permit could be found. Only because somebody in the, in the, in Zoning, in Planning, on my behalf went and did a deeper search in the physical records that they found this particular permit, the permit for the ground sign. So there's a possibility that there was a permit. I've seen the paperwork from the general contractor where this went before Urban Design Review Board, the whole complex, and I think somebody else alluded to it, that all signs were approved. There's just no drawing or elevation of that particular side of the building that actually shows that. But as far as an alternative, there could not be, under the current code, another ground sign. You're allowed to have one ground sign per frontage, and I will be back in front of you folks before too long regarding the main ground signs for the Maui Mall because now that these folks have been integrated into the Maui Mall, this is now considered to be one complex. Maui Mall has a mall, Maui Mall ground sign further down towards TJ Maxx. Okay, one ground sign per frontage on Kamehameha Avenue. That's it. At the moment, Wendy's and Ale House both have ground signs that were legally permitted at the time of install. So I just want to kind of make everybody here clear that is an enlarging situation. But again, we're only asking that an existing sign be on the basis of precedent and its long time existence, be permitted, and that we will go and obtain the proper permits.

As far as opening the flood gates for other situations, as I addressed Mr. Callinicos's point before, literally someone has to go through all this trouble and appear before you again. And you have, you have this discretion that you're exercising right now.

Ms. Oana: So maybe an alternative -- maybe with regard to this, there is no alternative. This is the only.

Mr. Ringrose: Correct.

Mr. Conrad: So, David, do you have any comments?

Mr. Green: Well, I, I agree with Counsel. I think the alternative to leaving the sign there is not having a sign. So, therefore, the practicable alternative is allowing the sign.

Mr. Conrad: Thank you. Very concisely put.

Mr. Green: I just try to keep it simple.

Mr. Callinicos: Well, I'll complicate it if you'll allow me.

Mr. Conrad: Of course I will.

Mr. Callinicos: There's a letter on file here dated July 21st, 2014, addressed to William Spence, Director; subject, Wendy's Restaurant at the Maui Mall. It's in our packet. It says, "I, Bryan McFarland, authorize representative, authorize representative of -- this is the name of the company -- the owner of Maui Mall, hereby authorize Wendy's and its sign contractor, Pacific Sign & Design, to prepare, file, process, and obtain all necessary sign variances and permits and approvals for the Wendy's Restaurant." What happened to . . . (inaudible) . . .

Mr. Green: That's why it's here.

Mr. Callinicos: Is that why this is here?

Mr. Ringrose: Yeah. Yeah. That's just, that's the landlord giving permission for us to apply for the variance.

Mr. Callinicos: Thank you. You've answered my question. I agree that there is only one alternative. There's no alternative. I don't agree there is an alternative. You either leave the sign there or you remove it. There is no other ways to play around with this. It's either it's okay to leave an illegal sign there, or it's not okay.

Mr. Conrad: Okay. Thank you. So, why don't we move on to point (c), and...maybe this time Demetrios, you would go first, if you don't mind.

Mr. Callinicos: Okay, the granting of the variance would not be contrary to the purposes of this chapter. I think it's pretty much self-evident, evidentiary that if we come, if we approve a variance it has to be contrary to the purposes of this chapter. It's certainly not in compliance with the chapter.

Mr. Conrad: Right.

Mr. Callinicos: So by approving this, this would be...contrary.

Mr. Conrad: Okay, thank you. David?

Mr. Green: The reasons I would say that, that it's not contrary is because point (b) there's a marked increase in the number and size of signs. Well, this isn't an increase. The sign's already there. You can say that, that point (c) is coupled with the increase use of motor vehicles, to keep free from signs. Again, this one is really visible front he highway. It's primarily visible from the, from the parking lot. While I don't think it constitutes a danger to pedestrian traffic below such signs, which is point (e). I don't think that point (f) which is if uncontrolled,

constitute an obstacle to effective fire fighting techniques. I don't think it harms, in (g), the natural beauty of Maui. It's not found on the side of the building. I'll let somebody else go through that.

Mr. Conrad: Alright.

Ms. Feeter: Well, I would have to agree. I don't see that it's contrary to the purposes. I can't see that it defeats any of these purposes here. I has not been offensive in all these years.

Mr. Conrad: Thank you. Ray?

Mr. Phillips: I'm in accord with that.

Mr. Conrad: Okay. David?

Mr. Sereda: I agree. It doesn't, I don't think it...is in contrary to the purposes of the chapter which is to control unsightly, large signs that are put up and create a hazard or detract from the beauty of our island. Certainly not. I don't think it's a distraction, a danger or an obstacle, and, so, yeah, for those reasons.

Mr. Conrad: Okay. Thank you. When I read all these (A) through (I) of the purposes of this chapter, and why this project to it, I also cannot --. I understand the reason for law, and I respect that. But I also in this particular case find it to be...not contrary to the purposes of this chapter. So at this point should we make a proposal to accept or deny this variance? So could someone make a motion?

Ms. Feeter: I would move that we accept the variance . . . (inaudible) . . . Is that adequate?

Ms. Oana: I'm sorry, what did you say?

Ms. Feeter: That we accept the variance application for the sign on Wendy's at Maui Mall.

Ms. Oana: How about do a motion to approve this variance with conditions?

Ms. Feeter: Okay. Motion to approve the variance, Wendy's.

Mr. Conrad: With, with conditions.

Ms. Oana: And then, I'm sorry, would you like to approve the variance with the Planning Department's recommended conditions and Mr. Phillips's condition?

Mr. Phillips: Would be the stipulation?

Ms. Oana: Yeah.

Mr. Phillips: No further alterations.

Ms. Oana: So on page 11, the Planning Department recommends three conditions, and then Mr. Phillips' condition of no further alterations. So Ms. Feeter, your motion want to be motion -- move to grant variance with the conditions including the Planning Department's recommended conditions on page 11.

Ms. Feeter: I move that the Board, that the Planning Department grant the variance with the conditions that the Planning Department outlined -- one, two, three -- and including Ray Phillips's recommendations that no future changes in signage be allowed.

Mr. Green: Isn't the Urban Design Review Board grants the variance?

Mr. Conrad: In this case we're the ultimate.

Ms. Feeter: Okay.

Mr. Green: I second.

Mr. Conrad: Okay, having a second. Can I see people in favor? And opposed? So I see five in favor, and one opposed. And the only reason I'm voting, to make it clear, is because there would not be five if I did not vote. Okay, so the variance is granted.

It was moved by Ms. Frances Feeter, seconded by Mr. David Green, then

VOTED: to grant the variance with the Planning Department's recommended conditions as outlined in the Department's report; and the additional condition that no further changes or alternations be made to the signage.

(Assenting: H. Conrad, F. Feeter, D. Green, R. Phillips, D. Sereda

Dissenting: D. Callinicos

Excused: R. Bowlus, F. van Ammers)

Mr. Ringrose: Thank you very much. Mr. Chair, could I have one little clarification?

Mr. Conrad: Yes.

Mr. Ringrose: On the conditions, can the conditions stipulate the size of the sign? And I even sound like it's counterintuitive, but if we could submit and apply for a permit, a sign permit, for this sign, then in future this would be documented and there would be no further confusion about signs around the building. If I could just suggest that.

Mr. Conrad: So how would we add that to something we just passed? Do we do so?

Ms. Oana: I'm sorry, I wasn't --

Mr. Ringrose: Well if you're approving for the sign based on the variance that's greatly appreciated. But if you could make part of the conditions that we apply for a permit, an actual sign permit, and then that would be recorded. And then after this, any, any future review or issue coming up to do with this particular location, it would be recorded that these signs are all legal and are all permitted.

Ms. Oana: Okay, so --

Mr. Conrad: I don't think we need to. You tell me because my feeling is we covered it, and that's a particular, but we're saying that this, that no signs -- the signs that are there now are the signs that are accepted and no variance of that sign size or otherwise is applicable. Is that not too implied by our proposal? Alright, so, I don't think we need to do that.

Ms. Oana: And then, I think he can actually do what he wants independently.

Mr. Ringrose: Okay. Okay. The only other issue would be in the -- probably an unlikely event -- that Wendy's went out of business and some other business took over this place, would that, would these conditions prevail for the next client? That's why the issue of size and location and number.

Ms. Oana: I'm not sure.

Ms. Cortez: Hi, Mr. Chair. If you read the conditions that the Planning Department recommended: number one, is that the variance shall be applicable only to the request as approved by and as reflected in the record as to the property located at 70 East Kamehameha Avenue.

Mr. Ringrose: Okay.

Ms. Cortez: So this will be specific only to the Wendy's sign, this second business ID sign that you have discussed.

Mr. Conrad: And that, I believe, that is clear to all of us.

Mr. Ringrose: Thank you. It is. Yes. Thank you for the clarity.

Mr. Conrad: Thank you. I appreciate the clarification. So if, you know, Wendy's goes out, and somebody else comes in, then they're going to have to comply to the rules.

Mr. Ringrose: Good. That's good. As long as we have that clarified. A lot of assumptions can get in the way.

Mr. Conrad: Because that would start to fall into the play of opening up Pandora's box.

Ms. Feeter: Yeah.

Mr. Callinicos: No, I don't think so. I think anybody else now, with this as a precedent -- this is off the record please -- anybody else --

Ms. Oana: We're still on.

Mr. Conrad: It's okay. You're still allowed your opinion Demetreos.

Mr. Callinicos: Yeah, I disagree with that statement because it is Pandora's box being opened. Because anybody else now, Mr. Ringrose comes back in three months time, another property on that, some shopping center somewhere with similar sort of situation will say, well, look, you did it for this one, you can't really turn us down on this one.

Ms. Feeter: But you make an individual decision at that time.

Mr. Callinicos: No. No, there's a precedent. There's a precedent that can be looked at in law. Am I right?

Ms. Oana: Well, you know, it's an argument that they can make, but you are subject to the criteria.

Mr. Green: I think it's highly unlikely you're going to get a situation where the sign may have been approved 23 years ago, been there all this time, etcetera. But anyway, it would come here, and we wouldn't fall for that would we?

Mr. Conrad: To me, the purpose for this Board is to, is to humanize the rules that were written, for a lack of a better term. And, and so I understand that someone else could come use us, you know, this particular granting of a variance as a precedent, but I don't think that necessarily means that legally we as a Board have to give the next applicant with similar situations the same result. I personally don't feel that way.

Mr. Callinicos: Just wait and see.

E. DIRECTOR'S REPORT

1. Status of the board vacancy

Mr. Conrad: Okay, I think, Clarence, you have some administration issues?

Mr. Green: Clayton.

Mr. Conrad: Thank you very much Mr. Ringrose.

Mr. Green: Clayton.

Mr. Conrad: Clayton, I'm sorry.

2. Agenda items for the August 4, 2015 meeting.

Mr. Yoshida: Mr. Chair, members of the Board, we have no change in status regarding the Board vacancy. We did make the Director and Deputy aware that we've had a vacancy on this Board since April 2014, and they've made that known to the Mayor's Office. But we haven't heard anything since the Council came out of the budget in mid-June. So, hopefully the Mayor will find someone to fill the vacancy.

Your next meeting is scheduled for August 4th. We have another sign variance, Target. The Target store in Puunene. And, review of the plans for the Nani Loa Condo Hotel in Kihei, located next to the Kihei Kai Nani Project by the Kamaole II Park. So those will be the two items for August 4th.

Mr. Conrad: Great.

Mr. Phillips: Could you repeat that again please, Clayton, about the hotel?

Mr. Yoshida: Nani Loa. The Planning Commission reviewed the Draft EA at the -- about a month ago. And because they're going through a Community Plan Amendment, they have to go through the Environmental Assessment process. But they also need a Special Management Area permit, so you'll be reviewing those plans.

F. NEXT MEETING DATE: August 4, 2015

G. ADJOURNMENT

Mr. Conrad: Thank you. With that I think we can close this session of the Urban Design Review Board.

There being no further business brought forward to the Board, the UDRB meeting was adjourned at approximately 11:20 a.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE:

PRESENT:

Demetrios Callinicos
Hunton Conrad, Chair
Frances Feeter, Vice-Chair
David Green
Raymond Phillips
David Sereda

EXCUSED:

Robert Bowlus
Fiona van Ammers

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
Carolyn Cortez, Staff Planner
Malia Balberdi, Staff Planner
Jennifer Oana, Deputy Corporation Counsel