

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
September 14, 2017**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kihune at approximately, 1:30 p.m., Thursday, September 14, 2017, 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 Howard Kihune: The meeting of the Board of Variances and Appeals will now come to order, it is 1:31 p.m. and let the record show that we do have a quorum.

I know that we will have some testifiers that are here but I would like to go ahead and have the staff go ahead and read the purpose of the application and then we can get the applicant to make their presentation.

B. PUBLIC HEARING

SEASHORE PROPERTIES, LLC. Is requesting a variance from the following Maui County Code sections: 1. §19.36A.050.C “Determination of spaces”; to allow two of the six proposed parking spaces to be compact sized (7 ½’ x 16’), whereas the code requires standard sized parking spaces (8 ½’ x 18’) for the existing uses on this lot. 2. §19.36A.060.A.2 “Access and specifications”; to allow six tandem parking spaces to count as approved parking, whereas the code does not allow tandem parking for the existing uses on this lot. 3. §19.36A.060.A.6 “Access and specifications”; to allow the aisle width to be 10’ for the compact sized parking spaces and 6’5” for the standard sized parking spaces, whereas the code requires 22’ for the compact sized parking spaces and 24’ for standard sized parking spaces. For property located at 93 Hana Highway, Paia, Maui, Hawaii, 96779; TMK (2) 2-6-002:027 (BVAV 2017/0001). (P.Critchlow)

- **Public hearing: To ensure that each individual has an equal amount of time to testify, public testimony is limited to three (3) minutes per testifier.**
- **Consideration of Application**

Mr. Paul Critchlow: *Reads item into record.*

I just want to show real quickly the approximate location of this property. We got the Hana Highway, Baldwin Avenue intersection here. I have it on this image because the satellite image is just too hard to see on that screen. The subject property is in red-and I'll zoom in here....Ok, we got the Hana Highway intersection still and Baldwin Avenue and right here in red is the subject property and the back half of it is the parking area that is the subject of this variance. Adjacent to this lot is a narrow roadway lot I believe that provides access to the parking lot here and that lot there in the back- -

Vice-Chairman Raymond Sung: Sorry Paul to interrupt. Could I ask you shift everything either up or down so that bar in the way is not in the way?

Mr. Critchlow: Yes.

Vice-Chairman Sung: Thank you.

Mr. Critchlow: We got subject lot here with the parking area in question in the back portion, it's accessed by this roadway lot that also provides access to this lot back here. I believe all three are owned by the same entities. Approximate view from the street here and looking back towards Kahului, here is the subject property, access comes down the right side here and parking back behind to the left.

The applicants are here and they have a presentation and that's it for me at this point.

Chairman Kihune: Thank you Mr. Critchlow. The applicant please come forward.

Mr. Bill Frampton: Good afternoon Chairperson and BVA Members, my name is Bill Frampton, I'm here for William Frampton Consulting I'm here on behalf to help assist today as a Planning Consultant with the request for the BVA.

Right before we begin, I wanted to ask if it was okay- -we have two letters of support that we are hoping to give to staff for them to hand out or however you'd like to proceed. We can do that as I'm continuing.

Chairman Kihune: Ok. Chalsey if we could have those handed out please. We can submit those.

Mr. Frampton: Great thank you. As introduced earlier by our planner we're here today for the request for BVA docket number 2017/0001 on behalf of Seashore Properties LLC for the property located in Paia.

Here today if there's any need for additional supplemental information or what not, we have our project team that are here with us. The Landowner and Applicant Seashore Properties LLC is here Mr. Baskin. We have Legal Counsel here Terry Revere, Civil

Engineer Michael Silva, Project Manager Ilima Smallwood, Public Relations Wilton Leauanae.

The summary of the request, that was- - we're talking about asking for three specific exemptions, they were described earlier by our planner- I won't go into the detail of it, essentially as a summary though that we're talking about going from three parking stalls of today, current parking stalls and asking for permission to create six, because of the land area, because of the configuration of the property and the lot access way; it is feasible. However, it does require a variance and I will note that the request for the variance was filed in conjunction with working with the Planning Department in regards to a previous settlement agreement that we agreed upon. The owner agreed to file this and go for the BVA approval.

Subject property as you can see and it was located and noted earlier, situated right here somewhat in the heart of Paia Town. This is a closer up blow up of the area showing the small parcel here consistent with the lot configurations of most of Paia, these are smaller lot sizes, these were established and created well before the County Code ever came along with its automobile based zoning code that is very much focused on the automobile and the code came after-the-fact, well after a lot of these uses and towns were in place.

Here along this side I just want to note the separate access lot, it is a separate TMK owned by the applicant. It does have a role in the configuration. Just another look from the Real Property Tax perspective where the parcel sit, the legal descriptions of the boundaries, here is the subject property in green, here is the existing access lot and I highlighted this property here just to note that currently the three stalls that we're talking about the three additional spaces are currently being accommodated on this property via an off-site parking approval, relatively close to the subject property. However as you'll see eventually we'd like have the ability to provide those three stalls on-site?

This is just to give a context of the background property of the old- -that's where it's been forever- - this represents a more current view of what it looks like. The subject matter that we're dealing with- the parking, would be in the rear of the property outside of most of the view of the public, from the public vehicular Hana Highway; and right here-you see these one, two, three sets of windows that those are three of the four office spaces that are the subjects of the permits that triggered the need to have the parking.

This is a view standing along Hana Highway looking Makai towards the ocean and I highlighted here the approximate location of the access lot. Here's the subject property and there again one, two, three you can see those three office windows up above, this is another close up view walking inward towards the back of the property, that yellow arrow would sort of take you into the area that we're going to be talking about. This arrow right here, I added that just to note that -that's the immediately abutting property, that's the immediately contiguous and they have an agreement with the landowner to use this for access way and those are the letters that we just got of support. I thought it was important to note and to show you where they are in proximity to the subject request. They are immediately contiguous and they would be the ones that would be most impacted by this

request if it were to go through. However, they've submitted letters of support, both the owner and the tenant of the shop.

This is a photo standing on the edge - -I'll go back on slide- -it's going to be standing right about here, looking back out towards the direction of the parking area that's in subject. What we have is - -here's the boundary of that separate access lot, here's the subject property and we included this photo because it shows that the six tandem spaces that we're requesting, it works. That good old lamp sign right there is not really helping but behind here you would see number one and two and there you can see there, but here's four, five and six. For number four it's a large size truck, where we have number six and three right here, those are for compact stalls, those were described earlier as part of our request; we're asking that six - -of the six two of them be for compact and we'll show you how that configure looks.

If this lamp shuts off, we're not going to be in good shape, but I'll keep going. Again, here's Hana Highway, here's our access, here's the neighbors up here, here's another property in the back that uses this roadway lot to get there and this area, that dashed green identifies what I've been calling the subject area for the variance. In blue, one, two, three, four, those are the four office spaces and that was the lamp that wasn't quite 45 minutes. . . (*Lamp for smart board goes out*). . .

Mr. Critchlow: It usually takes a while for that to come back around and turn on again.

Mr. Frampton: No problem . . .

Chairman Kihune: With that intermission here Mr. Frampton, I would like to say that would the applicant be agreeable to waiving the reading of the staff report at this point, which I should've mentioned earlier.

Mr. Frampton: I'll go ahead and check with them . . . the only thing would be if everybody received it, everybody read it, absolutely.

Chairman Kihune: Ok.

Mr. Frampton: (*Frampton addresses applicant*) any issues with that?

Mr. Michael Baskin: No.

Mr. Frampton: Ok.

Chairman Kihune: Ok.

Mr. Frampton: I can give us a little more background information if you'd like. Chair, if it's ok, there's an additional power point projector here that we'd like to set up, is that alright?

Chairman Kihune: Not a problem yeah go ahead.

Mr. Frampton: Ok. Thank you.

Chairman Kihune: Why don't we take a five minute recess while we set that up? How's that? We'll be back - -

...Recess @ 1:44 p.m...

...Back in session @ 1:48 p.m....

Chairman Kihune: Mr. Frampton why don't you go ahead and start from the beginning since we had that line stuck in the middle please?

Mr. Frampton: Ok, will do and I appreciate that and I apologize for the duplication here. Are you able to see good now? Ok. I'll just go back - - I don't need to go back too far, I'll just make sure again from the location, the context of where we're situated within lower Paia, where the subject property sits here again, just a more close up view showing the access lot highlighted there and in blue is the subject property. And again the parking area that's of the subject that we're looking for is for back here, this is where we're looking for permission to be able to put the stall.

Earlier I mentioned . . . I showed you the Tax Map Key that highlighted were the current parking spot is, those are right there. That's where they are. Older photo of Paia Town and a more current photo and again showing the relationship to where the building sits, where the access lot is and where the back of the property right here is where the stalls would go.

Again here, this shows the access lot on the left hand side, here's the subject property here, there's the three window for those office spaces, here's the three windows again here, just a closer up view and here's the way the neighbors utilize the access lot and here's how the applicants would get to their area in the back.

This view was the one that was obstructed a little bit earlier, we included this slide to try to give it from a scale and context, it does show right now currently three stalls that are back here that work; however, there is ample space-adequate space to be able to put three more. And it's more beneficial for two of those to become compact stalls; and again in order to have compact stalls, in order to have the tandem parking and the maneuver ability those are- -that's the subject of the variance, we need to have permission to do so. The variance would allow us to create this parking configuration.

Here is that access way again, providing access to neighbors up here mainly on the north side providing access to the makai side, as well as access into here and this is the area that I just showed you of that photo standing back here looking this way. Currently it's a line being set up for three parking stalls, however the idea is to come in and put in six via tandem. Again, this is the highlight of the area that we are here talking about today.

The proposed tandem parking space configuration is showed here on this slide, I've highlighted that area in green. The two stalls on the makai side, which would be number one and number four here on this slide, those you can see they're the smaller size in nature, those are the compact stalls that we're proposing, the other two are full regular standard size stalls, all fit within the boundaries of their property. But because they do own this access lot, it's helpful that the maneuverability that shows here graphically to scale how a vehicle can get out and get in safely.

This is a slide that's not really that easy to see. It's in relation in trying to give a little background context that there was an SMA Assessment Application that was filed for the office buildings and the plans were approved with three stalls as shown on this site plan. This site plan here shows three stalls, it was signed off and approved by the county and the building permit was issued. However, after-the-fact it became - - it came to the attention I believe of the Planning Department that more parking was going to be required. And therefore the project was stopped and they started working on a solution and one proposed solution currently three stalls were provided for off-site, but what we're asking for is to provide all six stalls onsite. So the three that was previously approved here, plus three more via tandem. Again, this is just a copy of the building permit set of plans that was approved originally showing three stalls.

I'll conclude here and I'm sure there will be questions we can get into but just for the sake again for the summary of what we're asking for . . . is to allow that two of the six stalls be proposed for compact, that's the first item 19.36a.050c determining of spaces. The second request 19.36a.060.a.2 access and specifications to allow for tandem parking. It fits geometrically, however because of the zoning, Business Country Town Zoning District does not allow for tandem parking, which is a little disappointing because all throughout - - there's a lot of property zoned with that same zoning in Paia that could possibly - -not all of 'em but in a situation for this type of a use, you can manage it, it's one good option to consider. But it's just function of that zoning. So we need a variance from the zoning itself. Thirdly, 19.36a.060.a.6 access and specification has to do with the isle width, asking for 10 feet for the compact size parking spaces and 6.5 for the standard.

We believe in light of the supporting letters that we've got from the neighbors who would be immediately impacted by this, they support this request and on top of that we're grateful that the Planning Director's Report also recommends approval and I'll conclude with that and we do have members of our team here for any questions or answers you may have. Thank you.

Chairman Kihune: Thank you Mr. Frampton. At this time is there any questions from the Board or comments?

Vice-Chairman Sung: Question Mr. Chair. Mr. Frampton if you could clarify please.

Mr. Frampton: Sure.

Vice-Chairman Sung: Currently there are supposed to be how many parking spaces total to support the property?

Mr. Frampton: Under that plan that was previously approved, there were to be three was the understanding and that was signed off on. After the approvals were granted, it was determined three more stalls were needed. And that is why those three currently exist. So right now, six stalls total, three are on this property today and three are on the one on the off-site side; and the idea is we would like to have all six to be on this property.

Vice-Chairman Sung: And why can't the three that are currently off-site stay in operation for the property?

Mr. Frampton: They might be able to. It's a function of the nature . . . this is something that's not a brand new idea in this small town of Paia or Makawao or Lahaina you name it Wailuku; parking's going to be an issue because we brought in an automobile based zoning code. The automobile dictates everything in these towns and if we're trying to preserve and cherish the small scale nature of these towns, we need to get creative instead of building just giant asphalt areas. So, not being proposed here the way it works now, three are off-site, and three are on-site. It was part of the agreement, of the Supplemental Agreement that was executed by the Mayor and by the Applicant that agreed to come in and seek this configuration. But we're pleased to do so because I think it can efficiently provide three stalls on-site; let's do it, we need . . . if you read those letters that were submitted they know, we need extra stalls.

What happens to the other three is not necessarily on the subject. They may stay as parking, but right now that parking lot needs to be - - has to be reconfigured as well; and there's an application in for approval for the reconfiguration for those parking but it was going to be subject before they went forward with that we needed to know if this was going to go or not.

Vice-Chairman Sung: But, just to be clear . . . those three current off-site spaces . . . there's no claim or assertion that they don't function as they're supposed to and that without - - that basically you don't have effectively six spaces because the three somehow don't work there off-site. Is that correct?

Mr. Frampton: I'm not sure if I follow, sorry.

Vice-Chairman Sung: The question is . . . is moving the three from off-site on to the on-site location and creating a tandem situation, is that a matter of necessity or is that a matter of convenience?

Mr. Frampton: It's a matter of we agree-they agree to do so by way of the legal agreement, the Supplemental Agreement, one- -

Vice-Chairman Sung: I understand that but- -

Mr. Frampton: - -Two, I would say "yes" a necessity to any way that we can creatively and innovatively create additional parking in Paia, I believe we should ...*(in audible)*...

Vice-Chairman Sung: But the question is . . . is the current situation, the current setup with three spaces off-site not working?

Mr. Frampton: Yes, because of the agreement.

Vice-Chairman Sung: No.

Mr. Frampton: Hold on let me check. Alright, it's separate from the Supplemental Agreement. Those three stalls were purposed to be used because of this after-the-fact situation that came up. They were originally approved without it, what happens now is those three stalls are encumbering that property and they sit there and they are to accommodate three stalls on that property that wasn't supposed to be a parking for the property. Yes, so it is definitely a necessity for them, to eliminate that hassle and if you can have it on-site, that's the ideal way to be.

Vice-Chairman Sung: I understand what you're saying but I would have to say I'm still a bit puzzled because that sounds more like convenience rather than necessity. If it was not working because of- - I don't know- - but it seems like it's working. You would like to improve on the existing creative solution of providing three of the six required spaces off-site and move them on-site; but to me it still sounds like it's working as it is but you'd like it to be more convenient for everyone maybe even more efficient and move it to the six- - it doesn't sound like it's a necessity.

Mr. Frampton: I would say the efficiency and the wise use of this land. Land is a premium in Paia, these lots are small and we're trying to work with zoning codes brought from the mainland and overlaid on top of these wonderful communities. That's why we have the variance opportunity is to be able to. . . if there's something that can be fixed by way of a variance that doesn't grant or create horrendous impacts around the surrounding areas or setup up horrible precedence. . . we think it's a reasonable request and it's supported by the Director of Planning and Planning Department.

Again yes, three stalls are there, three stalls are over on the other site however, that was only because of the fact that plans were approved and they had to stop - - everything had to stop and almost rescinded, just everything came to a halt after the miscalculation of the parking. It wasn't the owner or applicant's fault, it just happened. However, we're gladly willing to work with the county to come to try up with a way to provide parking and that's what they're trying to do. And I think in this circumstance given that it's not on the street and out of the view of most of the public it is very nicely landscaped and it will not have an adverse impact on the immediate neighbors, I think it's a reasonable request. But, I do hear what you're saying as far as how it's working. I would respectfully disagree that it's not just for convenience. This is because we need to base on a real legal binding agreement.

Vice-Chairman Sung: Thank you Mr. Frampton.

Chairman Kihune: Anybody have any comments before- -

Planning Director Will Spence: Thank you Mr. Chairman. I'm not sure if you want to take public testimony first or?

Chairman Kihune: I'd like to do that after we get through our comments and the Board then I'd be happy to take that.

Director Spence: Ok. Thank you Mr. Chairman. I think everybody's aware that we've been working with this particular applicant for quite a while on a number of issues. When we were in mediation one of the issues as stated was parking for this property. So we took a hard look at it and we negotiated an agreement on this and we first took a look at the space behind the property, it's long and narrow, if you were to visit it you would see that it really looks like it could accommodate six cars pretty easy; it's a natural location for tandem parking.

As a part of our mediation together, one of the things we thought was very reasonable to settle the parking issue was to support a variance for tandem parking with this Board. I think it's entirely- - thus it was not a difficult decision to reach in the discussion, so it became a part of the settlement agreement with Mr. Baskin.

The Planning Department supports this application, supports the granting of the variance. We believe it's in the County's best interest to go ahead and grant this variance and we do support the BVA voting in favor of this today. Thank you.

Chairman Kihune: Thank you Mr. Spence. Sorry, Member Borge go ahead.

Mr. Jeffrey Borge: I had a quick question on that stalls. How would you be managing that? Is it up to the visitors to park themselves or - - I mean we see tourist, sometimes they don't pack their brain with them . . . so. .

Mr. Frampton: *laughter...* You check into the island right. *...laughter...*

Mr. Borge: Right.

Mr. Frampton: Very good question. What I would note on that is one, if we go back and look at the original request, what triggered this request was the office spaces. That's what these parking stalls were intended to be for, for office spaces. However, I'd note that the parking previous to this you can see that six stalls fits there, the property has been managed quite well. Everybody who works there is aware of the situation and I've been out there just for a couple of meetings recently just myself and I'm bombarded by people showing up telling me, "What are you doing? You can't park there." I just say, "I'm here for a meeting." But it's being managed by the landowner and I think they've done a good job for the past 10 plus years, they've managed to make this whole area back there work.

But I do think appropriate signage will be important. I do think that one thing that this lot has going compared to some of the other properties in the rest of Paia, the width of this access lot is actually quite wide and open and very visible. There's several other access along this Hana Highway and Baldwin Avenue that don't have that benefit. But regardless, that's a good point you got to make sure it's managed and especially from a sense of public health and safety; I think about fire and what not and evacuation. The nice thing is that the comments back from Fire Department was "No comments", they can deal with the given nature of who's going to be parking there. If that helps. But again it needs to be managed, I think signage will be important and I think strict management of it as well.

Vice-Chairman Sung: Follow up Mr. Chair.

Chairman Kihune: Thank you. Go ahead Member Sung.

Vice-Chairman Sung: So, Mr. Frampton.

Mr. Frampton: Yes?

Vice-Chairman Sung: Just to clarify please as to your response to my colleague's question. What I thought his question was leading to was to simply ask you "Are you going to have a professional valet service or similar kind of service to do the parking?" or "Are you going to leave it to the visitors to do their own maneuvering in and out?". And then also, what happens with whoever's parked in the front one who is blocking the one inside, what if they went to the beach for the day? Are they supposed to leave their keys? Who's going to be in control of the keys? Do you just leave it in the door? Do you have a safe place? What are the plans?

Mr. Frampton: I'll back up again. One, the use and intended use for this office space. Secondly, there is staff on-site, if you want to call them valet or concierge or whatever they are. They are out there out front and if a situation like that happens, someone parks there . . . yeah, you would leave your keys up with the front. But this is for office and so the people parking there would need to know that and need to coordinate that. And they will, just like that they do all over the rest of the island where we have tandem parking stalls all over the island, you have to coordinate it, and it has to be done.

Vice-Chairman Sung: And you said this is currently for office. Are there any plans to convert that into some other use besides office?

Ms. Ilima Smallwood: May I say something please to clarify?

Mr. Frampton: We'll answer that she wants to say something- -

Ms. Smallwood: Hi, my name is Ilima Smallwood, I'm a project manager and also an architect that's been involved with this property for many years. So, I think I may be able to answer that question a little more clearly. We do have an on-site front desk and you

folks are probably all aware of the Paia Inn that's also in this building, so we do have on staff. We have a bellman and valet person, he's there 8:00 a.m. to 10:00 p.m. we also have a 24 hour site manager. So if cars were going to be left for long periods of time, the keys would be left with them and they would be maneuvered by the staff.

Vice-Chairman Sung: Ok. Next question would be, so are there plans for the property to be used other than for office?

Ms. Smallwood: There are a number of uses in the building. On the first floor of the building there are two retail stores in the front. There is a Paia Inn Cafe on the first floor in the rear, there's also a lobby and then in the upstairs is the historic lodging house, the Paia Inn and the four office spaces.

Vice-Chairman Sung: Thank you. And are there plans for those current office spaces to be converted into a non-office space?

Ms. Smallwood: At this time they're being used as offices. We don't have any plans at this time.

Vice-Chairman Sung: You have no plans to use them as - -

Ms. Smallwood: We had come before another Board, we were trying to convert them to use as rooms but at the moment we are using them as offices and we don't have any plans going forward.

Vice-Chairman Sung: You have zero plans to use them in the future as - -

Ms. Smallwood: Of other than as offices.

Vice-Chairman Sung: Thank you.

Mr. Frampton: Ok, good.

Chairman Kihune: Any other comments from the Board? Member Fukunaga.

Mr. Chad Fukunaga: Bill, can you clarify for me where are all the other quests and staff parking currently?

Mr. Frampton: For the Paia? The uses that are not part of the application?

Mr. Fukunaga: Correct.

Mr. Frampton: There's parking all throughout Paia. There's the municipal parking lot. There's another parking just down the street, the lot that we were telling you about now that has three stalls there. And beyond there there's one more property to the south . . . is that correct?

...in audible response from public seating area...

Mr. Frampton: But most of it has no parking because there are no uses there yet so they're not really able to use it. But just like- - I did a lot of the management for the Paia Town Center and when the parking lot came in for Paia Town Center, something that was really really big, was where was all the employees going to be parking for the Paia Town Center, for Charley's, Rock and Brews? All that whole area. There's a lot of people that park up on the north side of the church, shuttle down, farther up the road now there's parking as well. I don't have an exact location of where the 'in folks' might or may not park. But those again- - these stalls right here, I know it's easy to get pulled and thinking about those other uses but these uses are what here to look at; the office space uses and that's what bound to look at.

Mr. Fukunaga: Ok. We have a number of letters of support and we have one letter objecting to this to this variance.

Mr. Frampton: Ok.

Mr. Fukunaga: Can you point out the locations of some of the people or companies that -if you can go to maybe an aerial map. I just want to understand which of these are neighbors and if they're supportive or not.

Mr. Frampton: Ok. So if you see right here- -

Chairman Kihune: Mr. Frampton, sorry. Can you go to the next map? I think it's better . . . no go back one more, that makes a lot more sense for us.

Mr. Frampton: Ok.

Chairman Kihune: Thank you.

Mr. Frampton: The only reason I went there is it will show you what's physically on the properties. But yes, we'll go right here and I can identify that. This property here is owned by the applicant- - the same ownership of the applicant. This is owned by the letter that was submitted by Mr. McBarnet, Terry McBarnet as well as the Cycling Company, they're located right there. Those are the people who are immediately contiguous by this and would be affected by this and we felt it was nice to have their support. These people, same thing, same owner, they could coordinate it and make it work.

As far as the - - I haven't seen the letter of opposition to be honest. If the person- - I imagine someone could explain where they live- -

Vice-Chairman Sung: It's 87 Hana Highway. Can you show us where that is.

...In audible comments from public seating area...

Mr. Frampton: This is 75 and you're saying that from 87- - I don't know the street addresses off of the tax map key.

Vice-Chairman Sung: His letter says "I am an owner of the westerly adjoining property 87 Hana Highway."

Mr. Frampton: 87 right here?

...In audible comments from public seating area...

Mr. Frampton: Oh ok, that's immediately- - yeah, immediately next door, but no access to or through or beyond. But yes - - thank you for clarifying that, that's right here, that's Flatbread.

Mr. Fukunaga: Where is Paia Market Square?

Mr. Frampton: Paia Market Square is owned by Terry McBarnet that's right here. It's the most recent development that went up that used to be where the Chevron was.

Mr. Fukunaga: And that Cycling Business in that lot also?

Mr. Frampton: Yes, same here right here. They all come in and share that access, they would have to be concerned with what's happening right here, you would think.

Mr. Fukunaga: And Nagata Store?

Mr. Frampton: Mauka side Hana Highway.

Mr. Fukunaga: Flatbread Company?

Mr. Frampton: Flatbread?

Mr. Fukunaga: Yes.

Mr. Frampton: Flatbread, that's his company right here, immediately butting on the other side that's had complaints for quite a while.

Mr. Fukunaga: That's odd because we have one letter in support - -

...In audible comments from public seating area...

Mr. Fukunaga: Oh, that's interesting. Ok.

...In audible comments from public seating area...

Mr. Frampton: But like I said I haven't seen the letter, I don't know the rationale as to why. . . compared to our rationale that we gave how it would impact it other than bringing up more parking. Does that help Chad?

Mr. Fukunaga: Yeah that helps. Thank you Bill.

Mr. Frampton: No problem. Could we get any copy of those letters would be great?

Vice-Chairman Sung: Bill would toggle real quick to that previous one that you wanted to show and show us again which one is 87 and which on the opposite side where the supporters are?

Mr. Frampton: Flatbread's right here and I believe if that's 87, yep that's right here and which has no parking on that subject property at all- -

Vice-Chairman Sung: And then the other side as well.

Mr. Frampton: - - The property of support that we got were from the Cycle guys right here and the new market place owned by Terry McBarnet long time as well.

Vice-Chairman Sung: Ok, thank you.

Chairman Kihune: Any other comments from the Board?

B. 1-PUBLIC TESTIMONY

Chairman Kihune: At this time I would like to open Public Testimony please. So those who would like to testify, if you could come forward and state your name and give us your testimony would be great.

Ms. Tiare Lawrence: Hi, my name is Tiare Lawrence. I am here to share Martin Bass' testimony, he's the neighbor, and he owns Flatbread Pizza.

Ms. Lawrence reads Mr. Martin Brass' opposition letter into the record: My name is Martin Brass. I am writing to you in vigorous protest of Seashore Properties' request for a parking variance. I am an owner of the westerly adjoining property 87 Hana Highway.

Seashore Properties and its principal Michael Baskin have consistently disregarded the Maui County Code in the courses of operating the Paia Inn. In Mr. Baskin's recent application for a Special Use Permit in December 2016, the Planning Commission unanimously denied his application for hotel use.

Mr. Baskin's current variance request is to benefit the Paia Inn operations which are per the Planning Commission ruling illegal. Mr. Baskin is pursuing an appeal and may argue a business as usual point of view at this point in time with this Board. However, without

clarity on the use and future of the Paia Inn and 93 Hana Highway improvements and until all legal measures have been taken, any action by this Board or the County to further the Paia Inn hotel and restaurant operations must be delayed if not denied.

In addition, tandem parking is not a substitute for parallel or in-line parking. Mr. Baskin has already created congestion to the easterly commercial areas with his extended building structure and the ingress/egress of his unauthorized hotel guests. Parking is parking. Either spaces are available or not. Tandem parking is not a true parking solution.

I respectfully request that each of you vote "NO" to Seashore Properties parking variance request for 93 Hana Highway.

Ms. Lawrence continues own testimony: And then I just wanted to share some points. I just called neighbors that are adjacent to the off-site parking. They claim today that there's only three parking stalls but the neighbor just counted nine stalls today, that's the off-site parking. My concern with tandem parking in a tsunami zone is if Paia . . . the sirens go off and these people are trying to get up make and trying to get out, this could be a major safety issue when people are trying to evacuate this critical area. So I just kind of wanted to bring that up and just to be mindful of the community plans that they were adamantly opposed to hotel accommodations in that area.

Thank you.

Chairman Kihune: Ms. Lawrence real quick . . . you were basically testifying on behalf of Mr. Brass and then also commenting on yourself?

Ms. Lawrence: Yes myself. Mahalo.

Chairman Kihune: Ok. Thank you.

Mrs. Francine Aarona: Mahalo, I asked Tiare to speak on Martin Brass' behalf, I was going to speak but she showed up.

Chairman Kihune: Oh, no problem. You pulled a fast one on me. *...laughter...*

Mrs. Aarona: *...laughter...* Yeah, I pulled a fast one on you. My name is Francine Aarona. I'm known as Aunty Mopsie from Paia. I want to say mahalo for allowing me to testify this morning.

In December 2016, Mr. Baskin on behalf of Seashore Properties filed an application for a Maui County Special Use Permit based upon the requirements of a Supplemental Settlement Agreement between the County of Maui and Seashore Properties LLC. According to a county email regarding the legality of the Paia Inn operations located at 93 Hana Highway, it is stated in a settlement agreement the owner of Paia Inn, Mr. Baskin, the County and the Owner have agreed not to decide the question of whether the existing

Paia Inn operation is lawful or not until after the Inn seeks a permit for its use. December 13, 2016 the Planning Commission denied his Special Use Permit twice- eight to zero.

In the settlement it was agreed that the County would support an application for a variance for the tandem parking provide the Special Use Permit was granted. The Paia-Haiku Plan prohibits hotel resort development which have not been amended to this date.

Unfortunately the law allows you to appeal a motion that has been directed to you by the court to shut down. It takes a lot of money to do this process but the Seashore Properties makes it back two to three times a day while the appeal goes on and on and on through its process.

Now, it was mentioned by you-you asked questions about- - "where is this parking?", "where is the three stalls?" in this settlement agreement those stalls were designated for some of the short-term rentals which is located on 40 Ae and 95B, they are all together- 23 Nalu. So, 40 Ae was one that designated one parking stall which is the three that you are talking about.

Per the denial of the Special Use Permit by the Planning Commission for Paia Inn, along with the cafe which has a Certificate of Occupancy for a takeout deli not a full on cafe but if you go there, they're a full on cafe; located at 93 Hana Highway. I urge you to deny Seashore Properties the request for a parking variance.

Mahalo.

Chairman Kihune: Excuse me. Would it be possible for you to point out those subject properties that you had mentioned with regards to the parking?

Mrs. Aarona: Sure.

Chairman Kihune: Bill, could you- - I'm just curious. Could you clip back to the other- - Thank you.

Mrs. Aarona: Yeah I live at 37 Ae, I'm behind- -

Chairman Kihune: Ok. Please use the mic, sorry you need to use the mic.

Mrs. Aarona: You can hear me.

Chairman Kihune: I know, but they need to have it on the record.

Mrs. Aarona: Ok. Where are we? Ok. This is me Kekahuna, I'm Kekahuna. I live on the shore. 40 Ae is right in front of me, this is 40 Ae. There are supposed to be two parking stalls. One is designated for 75 Hana Highway, his parking lot that says "no parking, Paia Inn".

Then we have Old Chong Kee which is 95 and then we have 23 Nalu; 23 Nalu has its own because he boarded it up already, he has a gate running. But anyway, this is where one of the off-site parking is supposed to be at 75 Hana which is in the settlement. So that's where and this is where I am.

Chairman Kihune: Ok.

Mrs. Aaron: So I am surrounded by him. This is Ae Lane. He's here, he's adjacent to me and Nalu is on the side of me. All of these properties are used through Paia Inn, they check in, they check out.

Chairman Kihune: Ok. Thank you very much. This gives us a good idea of what you were mentioning. Thank you again. Any other testifiers? Ok. I guess at this point we'll close public testimony.

B. PUBLIC HEARING (...continued..)

Chairman Kihune: Alright, can we get the staff's recommendation please?

Mr. Spence: Mr. Chairman, if I could I'd like to just clarify exactly what's in the Settlement Agreement and then comment on- - -

I understand Mopsie's point of view. In the Settlement Agreement, there's no mention of the- - I mean they were supposed to apply for a Special Use Permit for the Paia Inn. But as far as this application goes . . . there's no contiguously that they get that Special Use Permit. So I would consider this separate, it just says verbatim out of the Agreement. . . "Owner may submit a complete application for a variance, which the Planning Department will support and recommend to allow tandem parking and the three off-street parking places at 93 Hana Highway for a total of six off-street parking spaces all of which the owner agrees to use exclusively to satisfy the parking requirements on that property."

Again as I previously said, we look at the space and it seems very well configured for tandem parking so it was not a reach at all for us to come to this conclusion and agree to this.

There are two off-street parking approvals right now, one is for the 40 Ae- - I mean he's supposed to- - for the short-term rental home at 40 Ae, he's supposed to provide two parking spaces . . . we allowed for one of those to park at the parking lot at 75 Hana Highway, he has an approved off-street parking permit for that and then also for the Paia Inn, he has an approved off-street parking permit for those three other stalls. So, those things are - - both parties have performed on that.

Chairman Kihune: Ok, great. Thank you Director Spence. Mr. Frampton.

Mr. Frampton: Thank you for that clarification, that's helpful. This is a complicated area. Again, given the lot sizes and the configurations, what's going on I just wanted to clarify that the three stalls that we've been talking about are not on the 40 Ae Place, even though it may have appeared like that. If you've read through files . . . they are were I've showed previously on Hana Highway. Thank you.

Chairman Kihune: Any other comments? Go ahead Mr. Critchlow.

Mr. Critchlow: Based on the foregoing Findings of Facts and Conclusion of Law, Director recommends approval of the subject variance, subject to the five conditions. Do you want me to read those conditions?

Vice Chairman Sung: Please.

Chairman Kihune: Please.

Mr. Critchlow: Condition No. 1-that the variance should be applicable only to the request as approved by, and as reflected in the record as to the Property located at 93 Hana Highway, Paia, Maui, Hawaii; TMK (2) 2-6-002:027.

Condition No. 2. The Applicant, and the Applicant's assigns, and successors in interest, shall defend, indemnify, and hold harmless the Board and its members, elected, and appointed officials, employees, volunteers, and agents, also in their individual and official capacities, and the County from and all liability, loss, damage, cost and expense, including all attorney's fees and costs, and all claims, suits, and demands therefore, arising out of or in connection with the variance and/or any approvals, permits, or permissions of any kind granted by the County pursuant to said variance.

Ok, I guess I can summarize them as well.

Chairman Kihune: Ok great.

Mr. Critchlow: The third one is the general liability insurance asking for one million dollars. The fourth condition is not one of the normal ones. . .it says deadline for submittal documents, the original hold harmless agreement and copy of the certificate of the insurance policy naming County of Maui as a named additional insured shall be subject to the Department of Planning within 90 calendar days of the date of mailing- - actually I think this is now a standard one. And number five, effective date. The variance is not effective until the date of recording of the Bureau of Conveyances of the original hold harmless agreement and receipt of the certificate of insurance by the Planning Department, whichever is later.

Chairman Kihune: Ok, thank you Mr. Critchlow. At this time I'd like to call for an executive session. There's a couple legal questions we have for our legal counsel here and I would like if possible for Mr. Spence to sit in on that, is that possible?

Ms. Thomson: Yes, as the Department's representative.

Chairman Kihune: Ok. It will take us about five minutes, just want to make sure we know where we're at.

Ms. Thomson: You need to call for a vote.

Chairman Kihune: Oh yes, I need to call for a vote. All those in favor?

Members: "Aye."

It was moved to vote for executive session then,

VOTED: Motion to move into Executive Session.

(Assenting: R. Sung, C. Fukunaga, W. Greig, J. Borge,)

(Absent: J. Reyher-Colon, M. Kincaid Jr., R. Masuda, W. Kamai)

Chairman Kihune: Ok. Thank you.

...Executive Session from: 2:32 p.m to 2:45 p.m...

Chairman Kihune: Board of Variances and Appeals are now back in session. It's 2:45 p.m. I appreciate you giving us some time, we had some questions that we needed to get answered. I'd like to open up again to Board comments or discussion prior to any motion being made? Any members have any questions, comments or discussion? Questions for the applicant or questions for the testifiers?

Vice Chairman Sung: Mr. Chair, I have a question but I'm not sure who it would be directed to so I'll just hope that there's someone who's in a position to be able to answer it. I refer specifically to a page that in the Director's Planning Report and Recommendation, there's no page number but it is near the July 25, 2005 communications from Aaron Shinmoto, the Department of Planning to Mr. Michael Baskin. And at least in our copy behind that July 25, 2005 communication there is an approved plan on the next page and the page after that it seems connected or a part of it - at the top says "Transmitted to you are the following..." and it's a communication by Erin Wade, Staff Planner and then below that there's a comment recommendation box with seven comments or recommendations. And I do have some questions about the interpretations of some of that but I don't know if everyone has a copy of that too so we're all looking at the same thing.

This specifically refers to the earlier reference to somehow that there was a misunderstanding or not of the requirement by the county that there only be three parking

stalls and then at some point later on there was an additional communication that said "Oh wait, we need more parking stalls."

I believe that this document that I'm referring to is the document that is the basis for the position that the county first only required three parking stalls and that's what I'm going to ask for clarification. In the seven comments and recommendations, item number two specifically says and I believe these originate from Erin Wade, the Staff Planner. Item two specifically says "Proposed new addition of office shall provide 3 parking stalls." there it is in black and white.

However, item number three, the one under that says "One room at the lodging hotel area does not have any designation and it has a bathroom. The lodging shall not be increased without providing additional parking and getting a building permit. The county record conditioned the approval and states that the lodging use is limited to 5 persons only."

So, one of my questions is as to that item number three, operationally as the property exists today will that comment or recommendation number three require something over and above three parking stalls? And maybe the relevant date is not today but as of some earlier date.

Then item number four says, "The proposed deck shall be identified to where it is accessory or indicate what type of use. If the use is for the lodging unit or retail then they need to provide parking (business ratio). To combine with the office (business) ratio. I'd also like some clarification on what that means and operationally does that impose on the applicant - -sum number of parking stalls above and beyond the three that are referenced in comment or recommendation number two.

I don't know who is in a position to answer that question if at all but that to me seems relevant as of now and I was hoping I could get some clarification please.

Mr. Critchlow: Ok, I can try and answer some of that. Generally the parking requirements over time have changed and I don't the exact date but pre a certain date there was not any parking requirements and some of the uses on this property may have existed before that date so the code wouldn't have any specific parking requirements. Once the code changed to where parking is required, then the business uses and activities that are going on a property essentially would be frozen in time as far as parking is concerned in the sense of if they expand a use then parking will be required for the portion of the expansion of the parking use or if they change use from one type of use to another use then parking would be required for that change. I'm not super familiar of the details for the history of this particular property.

Chairman Kihune: Let me see if I can tackle this a little bit. What you're saying Paul Critchlow is based on the age of this building there's possibility that there was no parking requirement, correct?

Mr. Critchlow: Correct.

Chairman Kihune: And we can't determine when that was at this point but at some point the parking requirements had come into place and the ordinance was put into place with regards to the county and Paia and other areas. So, that part of hotel itself, the rooms itself is basically separate- to some degree separate. They've been in establishment for a very long time, correct?

Mr. Critchlow: Correct.

Chairman Kihune: Ok, so take that out of play. What we're dealing with is basically the four office spaces and the variance to allow to have the parking for those four office spaces to be on-site. Absolutely correct?

Mr. Critchlow: I believe so.

Chairman Kihune: Ok. Alright. So there is no issue with the hotel from what I understand. And if I'm wrong, somebody correct me.

Mr. Critchlow: Not as far as this variance application is concerned.

Chairman Kihune: Correct. So we're dealing specifically with four office spaces that are requiring six spaces for those office spaces, correct?

Director Spence: The three existing spaces and then there's three new ones required for the offices.

Chairman Kihune: Correct but there were three on another site. So originally we had six anyway correct? There's the three on-site and three off-site correct?

Director Spence: Correct.

Chairman Kihune: Ok. So we're moving three from one place to the other?

Director Spence: Correct.

Chairman Kihune: Ok. So basically they're in compliance now with six for the office space as it is correct? And that's their requirement, the total requirement correct?

Director Spence: Correct. But it's- -ok, yeah.

Chairman Kihune: Ok. I'm just trying to make it simple because I'm kind of a simple guy. I just wanted to make sure that what we're doing is we're moving parking from one location to another to maintain a compliance that they already have? Correct? Right or wrong? I'm just trying to make it simple sorry.

Vice Chairman Sung: I think to clarify a little more- -

Chairman Kihune: I mean we're moving three spaces that are already off-site, we're just moving them to this location so we have all six on-site, and that is the requirement for those four office spaces?

Director Spence: Right.

Vice Chairman Sung: Or a different way to think of it is not that we're moving the three from off-site to on-site but taking the existing three on-site and essentially splitting it in a different creative way to become six but it would require variances in order to allow those six to be configured on-site and then whatever happens to those three off-site that's something else. Right?

Chairman Kihune: That is correct. It's just said in a different way but yeah absolutely, you made it simpler for me so that's good. I just wanted to clarify so we all understand. That's good.

Alright so right now, as we sit here today, this particular property is in compliance because they have six stalls right now, correct?

Director Spence: For the office spaces.

Chairman Kihune: For the office spaces, correct. Ok. I just wanted to make sure we're all on the same page. Any other questions for our applicant? Any other discussions? Seeing none- -

Vice Chairman Sung: One second.

Chairman Kihune: Ok.

Vice Chairman Sung: I think this is going to be a question for the applicant or someone on behalf of the applicant. There's a June 25, 2014 communication from the Department of Planning to Michelle Cockett from Mr. Spence, that's regarding the Building Permit #2012/0028 for Seashore Properties.

That June 25, 2014 communication, the third paragraph says "By letter dated April 7, 2009, the Department issued after-the-fact (ATF) Country Town Business (CTB) approval for exterior renovations and construction of privacy fencing. Condition 4 of CTB 2008/0006 requires "that full compliance with all other governmental requirements shall be rendered." By installing the privacy fencing, however, the owner eliminated three of the six above-referenced required/grandfathered parking spaces, and converted them to a courtyard area, without permits and without addressing the loss of parking. In addition, it appears that the owner installed (without permits) a concrete floor over the three previously asphalt parking spaces.

I'm hoping for some better understanding of this reference in Mr. Spence's 2014 communication. Was there in fact at some point previously six full spaces but three of them were eliminated by some action on behalf or by the applicant so that now there's only three? I think it's probably for the applicant but it's whoever can provide clarity.

Mr. Frampton: Thank you. Regarding the June 25, 2014 letter, correct?

Vice Chairman Sung: Correct.

Mr. Frampton: That's not our understanding that there were six stalls in place and somehow actions took place and now all of a sudden they were left with just three. That was not understanding. I have a feeling this letter was dated before the Supplemental Agreement before when there was a lot of mediation needed to happen to clarify. But that's not the case and the case again is were asking for those three stalls to be on the property.

Vice Chairman Sung: So are you disagreeing with the characterization of the circumstances that set forth in the June 25, 2014 communication?

Mr. Frampton: Having not been on that party to that and that letter was written to somebody else but I can tell you that in reviewing all the files and everything I've done up until now and talking with the applicant and with their legal counsel, yes that is correct we don't agree that -that happened.

Vice Chairman Sung: May I ask the applicant or legal counsel what is the applicant's characterization of the circumstances?

Mr. Frampton: I don't understand the words where they're going Mr. Sung. The idea - - again the amount of space that exists today is clearly identified in all these slides that I've shown. Whatever has happened in the rest of those areas, they're dealing with a separate areas, separate bodies or Boards, Commissions or what not. I'm not following which one you're looking for.

Vice Chairman Sung: All that I will say is that I have a question regarding how to interpret this information that is included in the Director of Planning's Report and Recommendation and if I'm to fully understand this Report and Recommendation, it would be helpful if someone were to clarify for me whether the paragraph-the third paragraph in the June 25, 2014 communication to Mr. Spence is in fact accurate or not accurate or is it subject to dispute. So, it was my hope that your client could shed some light on what the situation was at the time.

Mr. Frampton: We again disputed it . . . therefore we had winded up in the litigation.

Vice Chairman Sung: Are you saying it is not relevant anymore as to what your client's position was at the time as part of the dispute?

Mr. Frampton: All I'm saying is it's a letter that you're referring to from 2009?

Vice Chairman Sung: No, it's the June 25, 2014.

Mr. Frampton: Yeah, but it's referring to something that took place in 2009. So that's however many- - that's a long time ago. This goes into the nature as to what occurred and with this property and with the County and the problems we had and which is why the litigation went where it went. However as explained earlier by Mr. Spence, I think he did a great job explaining the situation. And we are happy to be here and asking for this and we're hopeful that what we're trying to do here is to efficiently use that space to the high sufficiency as possible as long as we're not putting anybody into serious public health, threat of health, safety welfare or what not of the public. I can't talk to the April 2009 letter.

Ms. Thomson: Excuse me. Can I just clear up a bit? I think what the line of questioning is getting at is whether the variance application meets criteria number three, whether the hardship was a result of actions created by the applicant or whether the hardship was a result of an applicant's actions. Given changes in the past to the property that resulted to the current number of available stalls.

But what I wanted to redirect the questioning and since that was a Planning Department letter maybe those questions should be addressed to the Planning Department.

Vice Chairman Sung: It could be to either. I would just like to know was there in fact a change to the number of parking spaces at that time reference and who did it?

Chairman Kihune: Excuse me. I think that - that's a question that cannot be answered at this point. I think that Mr. Spence can probably answer that question to some degree but again, we're here . . . and I want to make sure that we are here specifically for the variance where it's at. What has transpired is not on the table. But you're asking a question that you want to know why. I think we need to keep focused on what we're doing and where we're going with regards to the application in front of us.

Director Spence: Thank you Mr. Chairman. Again, the parties went into mediation because we had a dispute and we disagreed on things and one of them was parking. We thought the best way to resolve this matter was to propose a variance and it would restore a full six stalls on this particular property. We looked at it that way and that would resolve this particular part in this matter. So we're supporting this today, as a practical matter as part of the Supplemental Agreement . . . of course. But just as a practical . . . looking at this space and I've said it a couple of times, this space that is arraigned and situated that for tandem parking would be a very good use of this place.

We also thought about the other places where tandem parking is allowed with short-term rental homes, B&B's, apartments and we don't think the use for this property is that big of a stretch. It's a reasonable use of this.

Vice Chairman Sung: Thank you and for the record I would say that Corporate Counsel Ms. Thomson was correct. Where I was headed with my question was to essentially to try to help me figure out whether condition number three for the granting of the variance was in fact satisfied and part of that that's relevant is a requirement that the applicant not have done anything that put themselves in this position that it is seeking a relief from by the variance being applied for.

So it would be of great help if your client could in fact say that he did not do what this third paragraph alleges that he did and explain what in fact he did so that we can make a good assessment of whether the third requirement for a variance is satisfied or not.

Ms. Thomson: I think one of the things that I would probably direct your attention to is one of the applicant's statement on that number three on creating a hardship and also in the staff report pulls out part of the applicant's response and that the department has concurred that there was no hardship created by the applicant.

Vice Chairman Sung: Yes, I did not that too.

Mr. Frampton: Just to respond Vice Chair. I appreciate the depth you are taking into looking into these matters and that these aren't just fly by night whatever or any form of rubber stamp things. It needs to make sense, it needs to work and I agree. I know the criteria that corp counsel was just referring to. I believe all three of them met and the Planning Director's report agrees with that - -uses our language.

I was just going to show you on this one slide again. The area highlighted is the area we're dealing with. Anywhere else . . . we're disputing that there could've been parking somewhere else in that area. So yes, we are disputing. But as Will said it led to litigation, it led to where we are today. Therefore, I agree as what Director Spence has said. I think it's a reasonable request, given the circumstances, looking at just the offices, not anything else. Not to assume that this would need this kind of a vote- - it impacts anything else.

This is very clear from a County Code perspective there's three specific sections of the code we're asking for a variance from. That's it nothing else, nothing else is hidden in there.

Chairman Kihune: Any other comments or discussion? Seeing none. Is there a motion to be made?

Mr. Fukunaga: Chair, I'd like to make a motion to approve the variance and adopting the Department's analysis and the Director's analysis and the five recommendations noted by the Department.

Chairman Kihune: Any seconds?

Mr. Willy Grieg: Second.

Mr. Fukunaga: I guess to requirement number three on whether or not - - I guess more specifically that the conditions creating the hardship were not the result of the previous action by the applicant. In the applicant's analysis it claims that there was a misunderstanding and it's hard for us to say whether there was a misunderstanding or not. But being that both parties can agree or in the Director's analysis the Department supports the application so it leads me to believe that both parties agree that there was a misunderstanding. Thus telling me that it wasn't all the applicant's fault that created this hardship.

Chairman Kihune: Thank you Member Fukunaga. Any other comments? Member Borge?

Mr. Borge: I would like to add or it could be added, something about managing the parking. So there is no traffic congestion. Something in writing or something that we could hold someone accountable to.

Chairman Kihune: Any other comments or discussion?

Mr. Critchlow: Quick question. So that would be a condition that they have maybe 24 hour person there to assist with parking? Is that what you're referring to?

Mr. Frampton: If I may, it was based on that line of question you had earlier. Which was very good, good sense, common sense. One of the testifiers earlier talked about the flood zone area that we know Paia, there may be a need to evacuate. I think having a written parking plan of some sort that helps explain what the applicant will do to mitigate against those concerns that you had we would gladly- -

If you have language now, we would be willing to accept it. Or if the Department would like, we could come up with language that make sure meets their satisfaction that addresses your concerns and we'll have the records and the minutes of your concerns, we could try and do that. We just wanted to let you know that we think it's a good idea.

Chairman Kihune: Thank you.

Ms. Thomson: If you wanted to do it this way you could offer a motion to amend and add a condition requiring a written parking plan and appropriate signage; you know something that allows some interpretation is also a requirement.

Chairman Kihune: Ok, so make a motion to amend to add a condition with regards to a parking management plan for the subject property.

Mr. Borge: I make a motion to add a condition with regards to a parking management plan for the subject property, as satisfactory to the Department.

Chairman Kihune: Ok with that being said as the motion on the table to amend, I would need a second to amend that current motion.

Mr. Fukunaga: I second.

Chairman Kihune: Ok. Any discussion to that? Any adding? Ok so motion on the table is to amend the current motion, adding a condition with regards to having a parking management plan in place that is reviewed by and accepted by the Planning Department. With that being said- -

Ms. Thomson: Just to clarify. Not 'approved' by the Planning Department but 'reviewed' by the Planning Department.

Chairman Kihune: Ok, 'reviewed by'.

Vice Chairman Sung: I thought it was going to be approved by the Department. If you're saying that they can submit anything and as long as the Department has looked at it whether or not they object to it or not and if it satisfies the position then- -

Ms. Thomson: Before we vote on it. I think we should get the Department to weigh in and argue if you have any comment on the language of that condition and also how versed are you in reviewing and approving parking plans.

Director Spence: I don't review parking plans, I'll leave that for Paul and Danny. But the way I heard the motion was to the satisfaction of the Department.

Vice Chairman Sung: Which implies an approval as opposed to a review.

Ms. Thomson: But no enforcement authority necessary, the Department's not going to be involved in having to go out there and have a spot checker.

Vice Chairman Sung: Since this originated from Member Borge's question, I would like everyone *...in audible...* as proposed right now, the applicant would only need to submit a plan to be reviewed and or even approved but without any enforcement authority so if they were to abandon that plan or to implement it this condition technically would be satisfied but there after there may not be the mechanics in place that address your concerns of in case of an emergency or even if there weren't an emergency . . . do people know where they're supposed to go . . .is that right?

Chairman Kihune: Go ahead Mr. Frampton.

Mr. Frampton: Just to reiterate we agree and support with where you were going with that motion Mr. Borge. We think it's practical and like Will said earlier, reasonable. We want to work with the Department to get this right and it needs to get right and once it's part of the approval my understanding is that runs with the land. Once this parking management plan - it will get attached as part of this approval based upon our representations given

today and everyone's discussion, it should cover from here on out. And if not then they gotta come back and remove the policy and remove the variance.

But whether you've reviewed, accepted or approved by, whatever you would like we would like to show the good faith measure. They've been very reasonable up until now; we feel this would be reasonable thus going forward.

Vice Chairman Sung: Thank you Mr. Frampton. My personal preference would be that the word approved is a stronger and more accurate description as to what is being discussed here today verses approved.

Chairman Kihune: Correction in language . . . parking management plan that is approved by the Planning Department as far as the motion is concerned. Correct?

Mr. Borge: Correct.

Mr. Fukunaga: But not enforced.

Chairman Kihune: That I would leave up to the neighbors.

Mr. Fukunaga: Yes.

Director Spence: Excuse me Mr. Chairman.

Chairman Kihune: Go ahead Director Spence.

Director Spence: I'm conferring with staff, they're the ones that's going to have to deal with the conditions so Paul, you want to weigh in on the - -

Mr. Critchlow: If it's said to the satisfaction of the department or if it said approved by the department, either or we will be fine; with either option we'll be able to enforce the same.

Chairman Kihune: Ok, so with that being said, we're going to use language that says it needs to be approved by the Planning Department prior. Ok? And again like I said the neighbors will be the police and I appreciate that, I think that's a good idea.

Alright, the motion again was seconded the language will change to say "approved" . . . correct? Ok. With that being said, let's take a vote . . . all those in favor say "Aye."

Members (select): "Aye."

Chairman Kihune: All those not in favor? Any "Nays?"

Vice Chairman Sung: For the amendment or the - - ?

Chairman Kihune: This is for the amendment. Nay? Or Pass? I didn't hear? Nothing? Ok. Seeing that there's four yays and one abstain motion will pass.

It was moved by Mr. Borge and seconded by Mr. Fukunaga to vote as follows,

VOTED: Motion to amend the current motion which is to approve variance and adopting the Department's analysis and the Director's analysis and the five recommendations noted by the Department. Motion to amend and add the following condition/language: Parking Management Plan will be submitted, reviewed and approved by the Planning Department prior.

(Assenting: H. Kihune, C. Fukunaga, W. Greig, J. Borge,)

(Abstain: R. Sung)

(Absent: J. Reyher-Colon, M. Kincaid Jr., R. Masuda, W. Kamai)

Chairman Kihune: Now we get into the original motion- - as amended. We have a second, I'd like to get a vote. All those in favor say "Aye."

Members (select): "Aye."

Chairman Kihune: All those not in favor say "Nay."

Vice Chairman Sung: "Nay."

Chairman Kihune: Ok, seeing that we have four "Yays" and one "Nay" we have a quorum but we do not have a unanimous vote for or against, this item will be deferred to a later date and we will need another quorum at that point.

So we will be asking the applicant to return back to our committee or our Board at a later date and I'm not sure what that later date will be and I don't think Chalsey can give us a date at this point, probably not or maybe you can.

Ms. Chalsey Kwon: October 12th or 26th is current available.

Vice Chairman Sung: Will the minutes be available so the other members can have it reviewed?

Chairman Kihune: Yes, that is correct and the minutes will need to be documented so that our additional Board members can review and get up to speed as to where we're at with this particular application prior to that meeting? Is that going to be available to them by the 12th?

Ms. Kwon: It can.

Chairman Kihune: Or prior? So that they can be reviewed? I'm going to let you ask a question, go ahead Mr. Frampton.

Mr. Frampton: Yeah, just looking for the clarification. There were the "ayes" and the "no's" but is there any way to get clarification as to why for the no so that we can be prepared? Or was there a rationale or basis? And when we come back to the next meeting, do we need to present again?

Chairman Kihune: Sure. Board Member Sung can go ahead and explain that or describe that to you.

Vice Chairman Sung: I'd be happy to but need to check with Corporate Counsel on one thing first.

Mr. Frampton and the applicant, I'd like to explain for the record the reason why I voted no. It may not be the entire reason but the substantial part of the reason why I voted no today was because I had questions regarding certain elements that were in the presentation materials and specifically the Director of Planning's Report and Recommendation. I understand that there's a Settlement Agreement in place, I understand that the official position of this apartment and that it is supporting the applicant's application.

Never less as I view my responsibilities as a member of this Board to vote yes or no on any given variance application; I understand that I have to determine based on the information presented whether or not all three conditions have been met. The third condition that needs to be met is that the applicant did not do anything that essentially put himself into this position in the first place that it is seeking relief from. I understand what is in the applicant's application for the variance and I understand in the Director's Report that it merely says after the applicant's statement for condition number three that the Department supports the application.

In my mind that is neither an affirmation or a rebuttal or anything else, it's basically a no comment on the applicant's statement. I wish that there were more to it, but I think I understand that generally the Department as of right now in the Report and Recommendation is just giving a very general broad based indication of support as it may be required to under the Settlement Agreement.

That does not answer in my mind the question that was raised in the materials that are attached or/and incorporated as part of the Report and Recommendation that alleges that the owner in fact according to this June 25, 2014 memo did take certain actions that properly reviewed may reasonably lead to the conclusion that the applicant did in fact take actions that put itself directly or indirectly into this current position and if that's the case then I can't in my own mind check the box for the applicant that says that condition

number three has been satisfied. And according to the procedures and rules as I understand it, I'm not in a position to say yes to the granting of the variance because of that situation.

Chairman Kihune: Ok.

Mr. Frampton: Would we at any moment be given that time to address that?

Vice Chairman Sung: Mr. Frampton, I actually was hoping that you or your client would have addressed it sooner but - -

Mr. Frampton: Terry will you please- -

Mr. Terry Revere: Excuse me. Hi, Mr. Chairman. I'm Terry Revere, I'm the attorney for the applicant and as Bill mentioned before they did not do anything. We understand that there's a dispute which lead to this litigation. But there is no for example map that I've seen or that Bill has seen or anything showing that there used to be more stalls over here. Theoretically whether a lawn or anything you could basically just Defector Park or where ever you can jam your car in. But there wasn't three stalls and we just eliminated them. So that just never happened from our perspective.

So we don't believe that we did anything to - -Gee, there's these existing stalls and we wiped them out and now we're asking to double them up the tandem. I don't know if that answers or addresses your concerns or not but I think Bill has something else to add.

Mr. Frampton: Thank you Terry. Again that was from a 2009 letter. The litigation that has lead- - I do not think that we would be here today with that Recommendation Report if it was otherwise. If it was proven otherwise, the County couldn't have approved it and they wouldn't have been able to come to an agreement. But right now . . . and I thought we had answered it earlier and I appreciate you taking the time to explain it. I didn't know if there was a motion, I just wanted to make sure I understand it because I'm not sure how to address that other than say that we oppose that and therefore to go to litigation. That's a big step and it has costed a tremendous amount of time and money for them to have to sit on both sides, everyone's side.

That's why we thought the reasonable way to resolve this as well as stated is to come up and make the request as requested it seemed very reasonable and seemed very fair given you look all around the guys that complain, they don't have a single stall on-site you know? And they made their complaint opposed. Well, I'm opposed they don't have to provide a stall and at least we're trying. That's all I wanted to say and I thought it was a fair shot on what these guys are trying to do.

Chairman Kihune: Go ahead.

Mr. Revere: Thank you Mr. Chair. Mr. Sung, I don't know if that addresses your concerns but I would just say- - not that this is a court room but there was an accusation hearsay

there's no evidence that I've seen of stalls that were eliminated, I think that the County would've pointed that out. "That look here on the tax map key or whatever or these old building plans there were stalls and they eliminated them." That didn't happen, my client is denying that it didn't happen and the parties did reach a Settlement Agreement. There's all sorts of disputes involving these properties but parking ain't one of them with the County.

With any event and I'm not just- - if that addresses your concern then I'd just request if someone could make a motion for reconsideration if your satisfied if you're not I think Bill just wants to know what he needs to do so he can cross his T's and dot any I's that you still have.

Vice Chairman Sung: Thank you Mr. Revere. Are you or your client saying in fact that in 2009 there were not exterior renovations and construction of privacy and fencing that had the effect of eliminating three of the six stalls?

Mr. Revere: Correct. That there is was- - I've seen no plans or no nothing.

Vice Chairman Sung: So there's no privacy fencing and no exterior renovations that occurred in 2009 that lead to this?

Mr. Revere: We're not saying this. We're saying that there weren't any stalls. There wasn't any parking stalls that were eliminated by doing that. And again, the reason why just to bring some context to the Settlement Agreement - - Bill, if you can pull it up - -Our client applied for a building permit for the four office spaces that we're talking about.

Vice Chairman Sung: After-the-fact?

Mr. Revere: Well no, I think he got the permit before and issued and stamped. And if you look the exhibit that Bill's going to show you is there's about five to eight stamps of approval with three stall there. After he gets that approval my client then spends tons of money in the middle of construction and then Planning says "Oh wait, I know we approved it with three stalls but now we need six stalls" and that's the context of we're saying "Wait a minute, when we have this thing with all the approvals all over it and there's three stalls very clearly depicted and it's approved, we spent a ton of money." And then at the end of the construction project from our perspective they then say "You know what, that's an error and now we want six." Well, in the meantime my client is out a lot of money and I'm sorry is there something else you wanted me to say?

Vice Chairman Sung: Thank you. That is helpful but I wonder whether you understand where I'm struggling with the characterization because before that happens there were at least alleged six spaces but then you client's action to put in exterior renovation and construct a privacy fencing, at least its alleged that it had the effect of removing three of the six that were already there and then the action that was subject to the subsequent subject approvals to take place.

Again, I'm trying to get to the point to conclude that your client did not take any action that has led to its current situation but I can't get over that hump right now if you're not saying that in fact that there wasn't the exterior renovation of the privacy fencing that lead to the elimination of the excess spaces.

Ms. Thomson: Can I just jump in Mr. Chairman for a second.

Chairman Kihune: Sure.

Ms. Thomson: One of the things that we probably need to keep in mind when looking at this is that Planning Department sent them a letter back in 2015. Other things happened pending litigation that ended up settling there was a lot of *...in audible...* and I wasn't involved in that so I don't know the particulars but there were obviously quite a bit of disputed facts that some of them were resolved by way of the Settlement Agreement. One of the things that was resolved to the satisfaction of both parties was that the parking requirements related to that particular property that we're looking at right now is that there is three existing parking stalls located in that particular area.

We fast forward to today, what we're being asked of the Board of Variances and Appeals is to consider those three parking stalls, the tandem usage and then apply the variance criteria. When you get to the criteria relating to hardship and whether or not it was self-created, what I'm hearing right now is that there's a dispute there. The applicant is saying "No, they did not create that." There's an older letter from the Planning Department alleging different facts that was subsequent to that letter they entered a Settlement Agreement.

There's a lot going on here. But the reality of the physical configuration of the property I don't think to have disputed or has changed.

Vice Chairman Sung: Ok. Since we're on the subject of the criteria for the variance. The second criteria essentially says and if I mistake this, someone please correct me. But as I understand the second criteria says, "Without the granting of this variance the applicant would be denied the reasonable use of the property." Does anyone disagree with that? Characterization of condition number two?

Chairman Kihune: What was your point there?

Vice Chairman Sung: The point is that as far as I know the applicant is operating whatever its operating currently even without this variance. So, how do we get over the hurdle of saying that without this variance they would be denied the reasonable use of this property because in fact it's using the property and it seems to be pretty reasonable if it's already using the property?

Mr. Revere: Thank you for raising that. One of the - - basically the deal in that Settlement Agreement is *...in audible...* the applicant owns that lot 75. The problem is that lot 75 can be sold tomorrow, they can build stuff on it and then we have this use . . . that's sort of

like the interim gap thing of "Well, what do we do? Let's put parking on 75 for now." All in contemplation on getting this thing done. It's basically tying up the use and I think Bill has more of esthetic/parking issues like do you really want a parking lot sitting there on the highway.

So it's tying up the value of lot 75 and lot 75 is there by the grace of this kind of interim agreement. But if he sells it tomorrow then we're going to be back either into litigation with the County or coming back here and saying, "Well, now lot 75 is sold, or they're building something on it, we can't use it anymore." So it's just a happen stance of what's happening but if it goes away then we're going to be right back in here and I think that's why the County and the applicant made this deal.

Vice Chairman Sung: But Mr. Revere, your client is entirely in control of the decision of whether that lot 75 gets sold or transferred or not, is that correct?

Mr. Revere: Absolutely. But, when we're looking at a parking for this lot you would say, "Well, theoretically your guy could go lease some spaces from somebody else at a shopping mall or something." We're talking about what's the parking requirement for this lot I believe.

Vice Chairman Sung: Right and so again, I understand what you're saying but in my mind that only supports the conclusion that the applicant has already afforded the reasonable use of the property and to deny this variance, doesn't change it one way or the other because it would just be the status quo - -

Mr. Frampton: But that's not technically correct. The building permit was issued, remember it was issued and it showed three stalls. The fact that he happened to own land four parcels away and they could agree to come up with an interim gap measure while we process this variance is great; and yes he does control on whether or not he can sell it. But if you go back to planning principles and what makes sense and what's reasonable . . . if you want to see that parking lot on that parcel a couple stalls or lots away remain as asphalt on the makai side of the ocean as you drive through Paia Town, that has nothing to do with the character and the beauty that we're looking at and it shouldn't be.

The proper place for parking in these small towns are behind buildings. We should never be trying to encourage and force people to put parking right there on the street if we want to encourage a beautiful Paia. And the problem is all of Paia is like that, Makawao is like that, Lanai City, and what we're trying to do is come up with a reasonable solution and we think it's very reasonable and the great thing is the director did too and that's based on professional planning experience. Showing the hardship it prevents a reasonable use for that 75 but also prevents a reasonable use here because we have to have six stalls. And the only reason we have it again is understanding that Supplemental Agreement. That provided an interim measure where two sides that were historically battling were at least able to come together and there's something that should be said for that, that they're trying to come forward on a good step forward, both sides and that should be encouraged not discouraged, because this is going to lead to the opposite.

I would hope that you do have a right and responsibility to vote as you see fit. But I would hope that you take this entire context, the amount of battling and lawsuits that there is a way to find a solution that we agreed to do. When we were asked to come and ask for six stalls, we did so and that was a good faith measure and there's more cool things to come. But we've gotta be able to move forward in a positive direction. I hope and then there's gotta be trust and there's gotta - -that's why this routes in place.

We think we've met all the criteria, the professional Planning Department believes we did. I think we have.

Chairman Kihune: Thank you.

Mr. Revere: Thank you. Mr. Sung, if there's anything- - I think it's kind of up to you if you think you can reconsider right now or not. Again, I think just to help Bill out, what do I have to do for the next time. But bear in mind, it was my clients position leading up to the arbitration and if we had to go to court we'd say, "Hey judge, you see that thing that's got all those stamps all over it and there's three stalls there?" "Well, they approved it, we spent a ton of money then they say, and no sorry we want six." "So we're here now saying, ok you folks want six, we'll give you six." - -and that's where we things would go. Thank you very much.

Vice Chairman Sung: Sure and just one more thing since we're on this. Maybe you'll need to convince me still in the next go around or maybe you're able to convince five other people on this Board so won't need to convince me. But at least in my own mind I would hope to receive some clarification regarding what I referenced as the seven comments and recommendations in the Erin Wade communication that seems to be attached to this approval.

Again, as I understand the applicant's position, they say they were clearly told they only needed to provide three stalls and then later on they were told they need more and by the grace of god they were able to provide three additional off-site stalls. I would just like to have some kind of explanation or clarification as to whether Erin Wade communication in fact clearly says, "Three and only three is all you will ever need." Or whether there is additional language in this document that either expressly states or suggests that in fact that there might be more than three that you are required to provide and specifically item three says, "That the lodging shall not increase without providing additional parking." There's a reference there to additional parking. And then item number four says "There's a proposed deck. It has to be identified as to where it's accessory or indicate what type of use and if it's used for lodging or retail than they need to provide parking according to some business ratio and then to combine it with an office ratio."

I'd like to have clarification as to what that means an operationally whether that means that as of the date of this communication the Department and/or the applicant properly understood was it required to provide three stalls or x number of stalls above three because of the additional comments and recommendations said in this communication.

Thank you.

Chairman Kihune: Wait, I have a comment and I need to address this. We're not looking at the hotel, we're looking at the office space and that's just four spaces, they're requiring six . . . that's it. It doesn't matter what the hotel or where they're at - - it's important that we all understand that we're dealing with the office space. They were at the point that the permits were approved. They only needed three then they found out by way of the Planning Department they needed six. So they took three from another piece of property and said, "Ok, we're going to stick them there in the interim until we're going to figure out what we're going to do."

And that's where we're at and now the Planning Department is working with them to come up with a solution and some tandem parking that will address that issue so they can get back the property that the parking is currently sitting on so they can figure out what they're going to do with that. That's really what this is all about, nothing else. Regardless of a Settlement or anything else, this is where we're at.

Yeah, they have six stalls, but they want to move them all to the same property so they can utilize the best use that they want to in the future. Otherwise they'll be back here doing the same thing again.

Regardless we're at a position with no action being taken, and that's fine. If we end deferring this, then we'll be back here with nine or eight members trying to figure it out. But that's the bottom line. I think getting into some of this report, and don't get me wrong. . . .Nothing personal. We're not dealing with the hotel, we're dealing with four office spaces and I think we're dragging all this other stuff into it and Cond eluding what's going on. This is black and white, do we or do we not? They have six stalls, we're just moving the six stalls to one location instead of having it separated so they can use the other property to the best use that they can. Otherwise they'll be back here in front of us again.

With that being said, I know Director Spence has a comment and I want to make sure he gets to say what he needs to- -

Director Spence: Mr. Chairman I was just going to say. . . I really don't see a reconsideration coming so perhaps this discussion is better kept for the future meeting.

Chairman Kihune: Is there any reconsideration at all on your part?

Vice Chairman Sung: Not at this point no based on the information that has been requested but not yet provided.

Chairman Kihune: Ok, with that being said and knowing that we're at a four to one vote there is no action taken. So with that no action the motion has to be deferred to a later date.

Chairman Kihune: I would ask the applicant and members here to some degree, we've got an October 12th or October 26th meeting date. Take your time I don't know what works and what doesn't but I want to make sure we're able to accommodate everybody.

Mr. Fukunaga: Mr. Chair, I'd just like to point out that I will not be available for the October 12th meeting.

Chairman Kihune: Ok thank you Member Fukunaga.

Ms. Smallwood: Chair, my name is Ilima Smallwood, I was up earlier today. I just wanted to offer that I can address those questions if that would help move things along today.

Chairman Kihune: Those questions in regards to?

Ms. Smallwood: The questions on this letter between Erin Wade and Avelina.

Chairman Kihune: Go ahead, no problem.

Ms. Smallwood: Ok. Yes, it I our understanding that only three parking stalls are required for this addition. As for question number three, the additional parking would be needed if we increased the rooms, we haven't increase the room at this time. We've added four offices but there's been no added accommodations to the lodge. So there was no parking needed for that.

At the time that this design was permitted we were proposing a rooftop deck. That rooftop deck as not approved for other reasons and that's what the comment has to do with is the rooftop deck that was not approved by the building department for other reasons.

Vice Chairman Sung: Thank you.

Ms. Smallwood: Was there anything else on there that you had questions on?

Vice Chairman Sung: The question I would ask is hypothetical because you've already stated previously in this session that your client has no intention to convert the existing office use into a different kind of use that may necessitate a revisiting of the *...in audible...* and if that's the *....in audible....* I won't bother with asking a hypothetical question.

Ms. Smallwood: I can expand on that if that's helpful. Those rooms were designed with the intention of going to get a Special Use Permit to have them be TVR rooms. We were not granted that and it's our understanding that-that probably won't be able to move forward until the community plan is approved so at this time we're planning on using it for offices.

To further that the parking requirements for accommodations is less than the parking required for offices. It's the same space, we wouldn't be adding any square footage to the building or those four office spaces. If we were to ever change them it would be the same

identical space that we would be converting to accommodations if the rest of the code allows it.

Then the parking requirement for those four spaces would actually be less than the offices. At least that's the understanding . . . I think the Planning Department could probably comment on that if I'm incorrect.

Ms. Thomson: Just to clarify too . . . what you're looking at is the variance application as its submitted and they're asking for tandem parking and it's related to these designated office uses. If the use were to change in the future, that might or it might not depending of what the *...in audible...* coming back for modification of the variance, they couldn't really - -like you said, it's hypothetical at this point so we can only go on what's in the application.

Vice Chairman Sung: Thank you.

Chairman Kihune: Any other comments or discussion?

Mr. Frampton: My client would like me to ask if that additional information helped the situation with Vice Chair Sung.

Vice Chairman Sung: It helped to clarify some of what I asked for earlier but at that point there wasn't an answer provided and it may or it may not have been helpful at the time. But based on everything I heard now, I don't believe I'll be reconsidering my previous vote.

Thank you.

Chairman Kihune: Ok, so where we're at, we're looking at a date of October 12th or the 26th. If we could get a confirmation on a date, then we can go ahead and make a motion or we can pass the motion.

Mr. Frampton: We will take the 26th.

Chairman: Ok the 26th. With that being said and no action taken this application - - this meeting will be deferred and which time we hope to have a quorum and we will address the issues with those members that are not here to make sure that they have the proper information from this hearing today.

Mr. Frampton: Ok will that involve a very brief presentation?

Chairman Kihune: Yes we probably will allow that because for the benefit of the members who are not here. Even though they will have it in written form and everything that we have today and the testimony from the public as well in those minutes.

Mr. Frampton: Ok and is public testimony closed going forward?

Chairman Kihune: Public testimony has been closed as of this afternoon.

Mr. Frampton: Ok, just wanted to confirm.

Director Spence: Mr. Chairman, I would say that the very same presentation that was presented today should be presented on the 26th.

Chairman Kihune: Ok.

Director Spence: So the new members that will be here will have the full benefit of that full presentation.

Chairman Kihune: Will you be able to have that prepared for us again?

Mr. Frampton: Of course, that's great. Just keep in mind that we appreciate time and we didn't want to have to but I have no problem talking, you know me.

Chairman Kihune: Again, **no action has been taken this motion, this application has been deferred to October 26th, 2017 at 1:30 p.m.** in this same room.

It was moved by Mr. Fukunaga and seconded by Mr. Greig to approve original motion as follows then, **Four to one vote-no action taken. Therefore, meeting deferred to October 26, 2017**

VOTED: Motion to approve variance and adopting the Department's analysis and the Director's analysis and the five recommendations noted by the Department. Motion to amend and add the following condition/language: Parking Management Plan will be submitted, reviewed and approved by the Planning Department prior.

(Assenting: H. Kihune, C. Fukunaga, W. Greig, J. Borge,)

(Dissenting: R. Sung)

(Absent: J. Reyher-Colon, M. Kincaid Jr., R. Masuda, W. Kamai)

Chairman Kihune: We appreciate your time and thank you very much. Those testifiers, I appreciate your time too if they're still here.

C. ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER (D&O)

1. **Having voted on August 28, 2014, to deny the variance for Hoolawa-Iki Subdivision-Kenneth W. Redstone (BVAV 2013/0015), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order. (J. Burkett)**

Chairman Kihune: We're still in session. At this point we'll move on to Adoption of Findings of Fact, Conclusions of Law, Decision and Order having voted on August 28, 2014 to deny the variance.

Has everyone had a chance to read over that Findings of Facts, Conclusions of Law, and D&O? I need a motion on that to approve.

Vice Chairman Sung: Mr. Chair, I make a motion to adopt the Findings of Facts, Conclusion of Law, Decision and Order denying the variance for Hoolawa-Iki Subdivision-Kenneth W. Redstone, BVAV 2013/0015.

Chairman Kihune: Ok. Any second?

Mr. Fukunaga: I second.

Chairman Kihune: Ok. Any discussion? Seeing none, all those in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nays?" **Motion pass. Approved.**

It was moved by Vice Chairman Sung, seconded by Mr. Fukunaga then,

VOTED: Motion to accept the Findings of Fact, Conclusion of Law, Decision and Order (BVAV 2013/0015)

(Assenting: H. Kihune, R. Sung, C. Fukunaga, W. Greig, J. Borge,)

(Absent: J. Reyher-Colon, M. Kincaid Jr., R. Masuda, W. Kamai)

D. APPROVAL OF THE AUGUST 10, 2017 BVA MEETING MINUTES

Chairman Kihune: Item D, approval of the August 10, 2017 BVA meeting minutes. Everyone had a chance to take a look at that?

Mr. Fukunaga: Chair I have a comment or correction in paragraph A, in the first paragraph - - A regular meeting of the Board of Variances and Appeals was called to order by Chairman Abbott, it should be Chairman Kihune.

Chairman Kihune: So noted, if we can make that correction. Based on that correction any other comments? Motion to approve?

Mr. Fukunaga: I make a motion to approve.

Mr. Greig: Second.

Chairman Kihune: Any discussion? All those in favor say "Aye."

Members: "Aye."

Chairman Kihune: Any "Nays?" None seeing, approved minutes for August 10, 2017 BVA meeting.

E. NEXT MEETING DATE: SEPTEMBER 28, 2017

Chairman Kihune: Our next meeting is September 28, 2017? Is that correct?

Mr. Danny Dias: That is correct and if you may recall at the last meeting we had there was a Merriman's Parking Variance and the applicants requested a deferral to the September 28th meeting because they needed to have a five year lease recorded by the Bureau. From what we understand they haven't done that yet so they're sort of implying that they made need to ask for another deferral. Right now it is still scheduled for September 28th, but it looks like there's a good change that they're going to ask to defer.

Chairman Kihune: Ok so there's a chance they'll defer. Are there any other applications for that day?

Mr. Dias: No. So if they do ask for a deferral the next item will be this, Paia Inn Tandem Parking application on October 26th.

F. ADJOURNMENT

Chairman Kihune: If there is nothing else. Alright, have a great week. Meeting adjourned. It is now 3:53 p.m. Thank you Board members.

There being no further to come before the Board, the meeting adjourned at 3:53 p.m.

Respectfully submitted by,

CHALSEY R. K. KWON
Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

Howard S. K. Kihune, Chairman

Board of Variances and Appeals
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Raymond Sung, Vice Chairman
Chad Fukunaga
William Greig
Jeffrey Borge

Excused:

Juanita Reyher-Colon
Max Kincaid Jr.
Ralph Masuda
William Kamai

Others:

William Spence; Director of Planning, Department of Planning
Danny Dias; Supervising Planner
Jared Burkett, Staff Planner
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning
Summer Enfield-Carlos, Secretary to Zoning Division
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation
Counsel