

BEFORE THE BOARD OF VARIANCES AND APPEALS

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Request of

**MUNEKIYO HIRAGA for EXISTING CONDITIONS
AT POLYNESIAN SHORES**

For a variance from Maui County Code, §Chapter 16.26B.100 The International Building Code (Sections 504, 903, and 1009). The request is to allow fire sprinklers to be installed in the upper level units only instead of the entire buildings and to allow exceptions to stairway width, headroom, stair treads and risers, dimensional uniformity, profile, and stairway landings to allow existing stairwells to remain in place. §Chapter 16.20B.100 The Uniform Plumbing Code (Section 407). The request is to allow exceptions for required toilet clear space to allow toilets in two (2) units to remain in place as relocation would require significant reconfiguration of walls and plumbing fixtures. For property located at 3975 Lower Honoapiilani Road, Lahaina, HI 96761; TMK (2) 4-3-008:002 & (2) 4-3-008:003.

DOCKET NO.: BVAV 20180003

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER;
CERTIFICATE OF SERVICE**

HEARING DATE:

October 25, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER

On October 25, 2018, the Board of Variance and Appeals ("Board"), pursuant to Chapter 19.520, Maui County Code ("MCC"), and §12-801-10(h), Rules of Practice and Procedure for the Board of Variances and Appeals ("BVA Rules"), held a public hearing ("Hearing") regarding variance application BVAV 2018/0003 ("Application") submitted by P. S. United ("Applicant"), owner/representative of real property located at 3975 Lower Honoapiilani Road, Lahaina, Maui,

Hawaii 96761; and identified for real property tax purposes as TMK: (2) 4-3-008:002 & (2) 4-3-008:003 (“Property”). The Board voted to approve the variance.

The Board makes the following Findings of Fact, Conclusions of Law, and Decision and Order based on the record in this case, including all documents submitted and testimony provided to the Board, as well as all other items of record.

FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. The Property is approximately 1.055 acres with a State Land Use classification of Urban, West Maui Community Plan designation of Multi-Family Residential, and County Zoning designation of A-1 Apartment. The Property has a flood designation of X, and is located within the Special Management Area. (See the Director of Planning’s Report and Recommendation (See “Director’s Report”, pp. 4 & 5)
3. On July 5, 2018, the Applicant submitted to the Department of Planning (“Department”), an Application seeking a variance from MCC §16.26B.100 The International Building Code (Sections 504, 903, and 1009) to allow fire sprinklers to be installed in the upper level units only instead of the entire buildings and to allow exceptions to stairway width, headroom, stair treads and risers, dimensional uniformity, profile, and stairway landings to allow existing stairwells to remain in place, as well as a variance from §16.20B.100 The Uniform Plumbing Code (Section 407) to allow exceptions for required toilet clear space to allow toilets in two (2) units to remain in place as relocation would require significant

reconfiguration of walls and plumbing fixtures. (See Director's Report, p. 2)

4. On September 6, 2018, the Application was determined to be complete by the Planning Department and a public hearing ("Hearing") was scheduled for October 25, 2018, pursuant to §12-801-78, BVA Rules. (See Director's Report, p.4)
5. On September 19, 2018, the Applicant mailed by certified mail, a notice of application to all owners and lessees of record adjacent to and across the street from the Property. (See Director's Report, p. 3)
6. On September 19, 2018, the Applicant mailed, by certified mail, a Hearing notice that included the date, time, place, and subject matter, to all owners and lessees of record adjacent to and across the street from the Property. (See Director's Report, p. 3)
7. On September 19 and 26, and October 3, 2018, the Applicant published in the Maui News, a Hearing notice that included the date, time, place and subject matter of the public hearing. (See Director's Report, p. 3)
8. On September 25, 2018, the Planning Director published in the Maui News, a Hearing notice that included the date, time, place, and subject matter of the public hearing. (See Director's Report, p. 3)
9. On October 25, 2018, at 1:30 p.m., the Board conducted a Hearing regarding the Application, at the Planning Department's Conference Room, located in the Kalana Pakui Building, 250 South High Street, Wailuku, Hawaii. (See minutes of the October 25, 2018, Hearing ("Minutes"), pp. 23-65)
10. Board members present at the Hearing were Chair Raymond Sung, Vice-Chair Juanita Reyher-Colon, Max Kincaid, Jr., Trisha Egge, and Ray Shimabuku. Board members William

Greig, Jeffrey Borge, and William Kamai were excused. (See Summary Minutes, pp. 21-23)

11. On behalf of the Applicant, Mr. Michael Munekiyo provided oral testimony to the Board regarding the Application and the Property. Mr. Munekiyo explained that the Polynesian Shores condominium project has 52 units – 26 are lower level units and 26 upper level units. (See Minutes, p.24)
12. According to Mr. Munekiyo, the condominium was built in the early 1970s. It consists of three buildings and the upper level units contain lofts, with sleeping area – a bedroom and a bathroom – and those are the improvements which triggered the need for a variance. He reported that the condominium project was built with a mezzanine and stairways, which made the third story – the loft area. (See Minutes, p. 26)
13. According to the Mr. Munekiyo, the units have been marketed with the lofts and real property taxes have included the loft. In 2010, the owners of Units 215 and 219 received a Request for Service (RFS), which they tried to resolve, but it was a fairly challenging process. As a result, the owners removed the lofts. (See Minutes, p. 27)
14. According to the Mr. Munekiyo, in 2013, nine additional Requests for Service were filed with the County. The recipients of RFS's decided to work together with the County to see how best these issues could be addressed. That was the genesis of P. S. United. (See Minutes, p. 27)
15. Lastly, Mr. Munekiyo stated that P. S. United applied for after-the-fact building permits. During the review of the permits, additional code requirements were identified, which became the basis of the variance. (See Minutes, p. 27)
16. On behalf of the Applicant, Ms. Tessa Munekiyo-Ng provided oral testimony to the Board regarding the Application and Property. She acknowledged that there are

different building code requirements for two- and three-story buildings. Ms.

Munekiyo-Ng pointed out that the International Building Code Section 504 relates to the increase in building height, by one story, if an automatic fire sprinkler is installed throughout. She explained that the variance request is to allow the automatic sprinkler be installed in the upper level units, only. (See Minutes, p. 28)

17. Ms. Munekiyo-Ng added that the International Building Code, Section 903 is related to automatic sprinkler systems. She reiterated that the request is to allow the automatic sprinkler system be installed in the upper level units, only. (See Minutes, p. 29)
18. Ms. Munekiyo-Ng stated that International Building Code, Section 1009 pertains to stairways. The request is to allow the existing stairways, with minor modifications for headroom, dimensional uniformity, and profile – specifically, to allow existing traditional and spiral stairways to remain. (See Minutes, pp. 29 & 30)
19. Ms. Munekiyo-Ng stated that the Uniform Plumbing Code, Section 407 relates to installation of toilets, and the variance request is to allow minor modifications for side wall clearance and front clear space for Units 209 and 211. (See Minutes, p. 31)
20. Ms. Munekiyo-Ng provided the following justifications for the variance: compliance to the Code would require substantial improvement to structures that had been in place for over 40 years, which would thereby create practical difficulty or unnecessary hardship to remedy. Further, the conditions were not caused by actions of the current owners. (See Minutes, p. 32)
21. Ms. Munekiyo-Ng added that installation of the automatic fire sprinklers in lower level units would create unnecessary hardship for those owners, as those units do not contain lofts and there is no mechanism to require to them to do the same as upper

- level unit owners. (See Minutes, p. 32)
22. Ms. Munekiyo-Ng added that reconfiguration of the stairways would result in a loss of living room area. (See Minutes, p. 32)
 23. Ms. Munekiyo-Ng added, with respect to the toilet fixtures, the code would require significant demolition and reconstruction of walls, reconfiguration of vents, pipes, and electrical equipment, to gain a few more inches of clear space. As a result, there would be significant impact and disruption to the home and sense of place that many owners possess. (See Minutes, pp. 33 & 33)
 24. Ms. Munekiyo-Ng reiterated that the owners have paid property tax according to two- and three-story units. (See Minutes, p. 33)
 25. Ms. Munekiyo-Ng explained that the granting of the variance would not be detrimental to public health, safety, or welfare, as there have been no such issues or concerns reported, over the past 40 years. With respect to the fire sprinkler variance, she added that Applicant has met several times, over the past few years, and discussed mitigating measures. With respect to stairways, the applicant proposes to meet current standards, with few minor exceptions. With respect to toilet fixtures, Ms. Munekiyo-Ng reported there have been no accidents or safety concerns raised, in the past 40 years. (See Minutes, p. 33)
 26. Ms. Munekiyo-Ng explained that the granting of the variance would not be injurious to adjoining lots or buildings, as mitigation measures were previously discussed with the Fire Department and will be implemented. With respect to stairways and toilets, those are limited to components of the upper level units and would not affect adjoining lots or buildings. (See Minutes, p. 34)

27. Ms. Munekiyo-Ng explained that the granting of the variance is not contrary to the purpose of the code or public interest. She reiterated that mitigation measures have been discussed with the Fire Department, as well as no reported safety concerns related to stairs and toilet fixtures. (See Minutes, p. 34)
28. Mr. Randy Piltz, Executive Assistant to Mayor Alan Arakawa, provided oral testimony to the Board regarding the Application and the Property. He opened with stating that he became involved with the project on January 23, 2015 when someone filed a RFS, a complaint. Mr. Piltz stated his job with the Mayor's Office is to help people (P. S. United) with the permits (See Minutes pp. 35 & 36)
29. Chairman Raymond Sung asked Mr. Piltz if the modifications were made by the original or previous owners, and if they were done individually or at the same time. Mr. Piltz said, as far as he can tell, the units were modified by persons unknown and times unknown. He couldn't come up with who built them and when it was done. (See Minutes, p. 36)
30. Ms. Mary Gross provided oral testimony to the Board regarding the Application and the Property. She opened with stating that she is owner of Unit 214 and she also served as one of the lead representatives of P. S. United for the last five years. (See Minutes, p. 37)
31. Ms. Gross stated, five years ago, nine homes were issued RFS' for alleging unpermitted bedrooms and bathrooms in the lofted spaces. (See Minutes, p. 38)
32. Ms. Gross stated that none of the (current) unit owners are responsible for the lofted bedroom and bathroom spaces as they have been in place since the early 1970s and that they inherited this issue. (See Minutes, p. 39)

33. Board Member Ray Shimabuku asked Ms. Gross how long she had been at the complex and if she had seen any construction work being done during that time. (See Minutes, p. 40)
34. Ms. Gross stated that there has been no construction at the complex, that she's seen, since she and her husband purchased at the very end of 2010. (See Minutes, p. 40)
35. Mr. Don Brattin provided oral testimony to the Board regarding the Application and the Property. He opened with stating that he and his wife, Geraldine, purchased their condo 11 years ago. (See Minutes, p. 41)
36. Mr. Brattin stated that realtors represented these units as two-bedroom and three-bedroom units, and that the taxes were paid as two- and three-bedroom units. (See Minutes, p. 41)
37. Mr. Brattin also testified that Jarvis (Chun) and John (Rapacz) of the Department of Public Works and Planning (respectively) were helpful during the process. He stated that the owners of the Polynesian Shores became better neighbors through the process. (See minutes, p. 42)
38. Mr. Randy Hominda provided oral testimony to the Board regarding the Application and the Property. He opened with stating that he and his wife, Doris, started coming to Maui about six years ago. (See Minutes, p. 43)
39. Mr. Hominda stated he purchased his two-bedroom, lofted unit, four years ago. While doing due diligence, he learned that he could possibly get a Hold Harmless Agreement for the unpermitted work. (See Minutes, p. 43)
40. Mr. Hominda stated he also received a RFS. (See Minutes, p. 44)
41. Mr. Don Clary provided oral testimony to the Board regarding the Application and the

Property. He opened with stating that he represents the Association of Apartment Owners. He is the President of the Board, and also representative of Unit 216, which is commonly owned by all of the owners at Polynesian Shores – not just the upper level, but the lower level unit owners. He has been on the Board for over 5 years. (See Minutes, p. 45)

42. Mr. Clary stated that the community quickly came together, as a whole, and that it was always their interest to work with the County. (See Minutes, p. 45)

43. Member Ray Shimabuku asked Mr. Clary about two units that were previously mentioned, and whether those unit owners complied with removing their lofts. (See Minutes p. 46)

44. Mr. Clary offered a clarification by Ms. Mary Gross. She responded by stating that those residents are not currently on island; one was on the mainland to care for her parents and the other sold their unit. (See Minutes, p. 47)

45. Corporation Counsel then cited a document – a Resolution of the Board of Directors – received just prior to the Public Hearing. It reads:

A. Whereas, the proposed variance will affect all units of the project and not just the upper level units.

B. Whereas, the Board has determined that it is appropriate for the Association to act on behalf of the entire project, with respect to the requested variances.

(See Minutes, p. 47)

46. Mr. Clary confirmed that the AOA has the authority to act on behalf of all of the owners – both upper level and lower level and that P. S. United is an unincorporated association. (See Minutes, p. 48)

47. According to Ms. Tessa Munekiyo-Ng, the variance lists all 26 upper level unit owners, individually, and the variance would apply to each of the 26 upper level units. (See Minutes, p. 49)
48. Chairman Sung requested to hear if the Department of Public Works had any comments to emphasize from the report. Mr. Jarvis Chun, Supervising Plans Examiner, stated he had no comments. (See Minutes, p. 49)
49. Chairman Sung requested to speak to a representative from the Department of Fire and Public Safety, and asked for further comments on their memorandum that was provided to the Board. (See Minutes, p. 50)
50. Oliver Vaas, Firefighter III of the Fire Prevention Bureau of the Maui Fire Department, identified himself and stated that sprinklers would provide protection for the buildings, and optimally, the whole building would have a sprinkler system. (See Minutes, p. 50)
51. According to Mr. Vaas, the Department has had multiple meetings with P. S. United, and they worked together to come up with what might work for them, which is reflected in the comments. (See Minutes, p. 50)
52. Chairman Sung sought clarification as to why 3-story buildings required sprinklers, but 2-story buildings did not. (See Minutes, p. 51)
53. According to Mr. Vaas, the requirements for the sprinkler systems comes from the Building Plans Department. The Fire Department, then, says how those sprinklers are to be implemented. The sprinkler system is referred to as 13R and the design and concept is that people get out. Sprinklers are intended to protect people by allowing them to get out of the building, and that's why the usual requirement is that the whole building contain a sprinkler system. (See Minutes, pp. 51 & 52)

54. Vice-Chair Juanita Reyher-Colon expressed her concern that a variance circumvents the process of protecting people's lives and property, if a fire were to occur at the Property. (See Minutes, p. 53)
55. According to the Ms. Munekiyo-Ng, the upper level units will be installed with a fire sprinkler – the second and third level, which is the loft – will have a fire sprinkler. She added that the lower level units are not affected by the lofts and will not have the fire sprinklers because there is no mechanism to require them to do so. (See Minutes, p. 53)
56. According to Mr. Vaas, protecting two levels is better than protecting no levels. (See Minutes, p. 54)
57. Board Member Trisha Egge asked what would happen if the Board denied the request for a variance. She pointed out that they would have to remove their loft which would make the units 2-stories, which does not require sprinklers, whereas, 3-story units do. (See Minutes, p. 54)
58. According to Jarvis Chun, if the variance were to get denied, then the owners would have to convert or remove all unpermitted work. He added that the Department of Public Works (DPW) had not yet proceeded with violations. In addition, Mr. Chun pointed out that the DPW does not normally make recommendations on variances. (See Minutes, p. 55)
59. Mr. Shimabuku then stated that safety is of the utmost concern, and if a variance was granted, fire sprinklers would be installed which would give occupants more time to exit the building. (See Minutes, p. 56)
60. Chairman Sung asked about the timetable to install a sprinkler system as the Board would be granting the variance with the expectation that a sprinkler system would be

put in place at the Property. (See Minutes, p. 57)

61. According to Ms. Munekiyo-Ng, the upper level units have after-the-fact building permits in process. All building permits will not be approved until mitigation measures have been installed. (See Minutes, p. 57)
62. The Applicant's Civil Mechanical Engineer, Douglas Gomes of Engineering Dynamics, responded that the installation would probably take two to three months. It is one, unified system covering all 26 units with one supply system that will supply water to all the buildings and units. Within individual units, the supply line is custom designed to the layout. He stated there is a standard NEP 13R, that sets that criteria for the design of the system and how to install where the sprinklers will be placed and the type of material that are used. He concluded by saying installation would be all at once. (See Minutes, pp. 58 & 59)
63. A motion was made by Member Shimabuku to approve the variance with the Hold Harmless Agreement and General Liability Insurance, as well as the Fire Department comments to meet the provisions in granting this variance. (See Minutes, p. 61)
64. Corporation Counsel commented that the motion is based on the submission by the AOA. Further, Corporation Counsel recommended adding the following to the motion:
 - A. On behalf of the Applicant, the Hold Harmless Agreement shall be entered into by the Association of Apartment Owners of Polynesian Shores.
 - B. The Association shall procure and maintain the required insurance. (See Minutes, p. 61)
65. The Motion was seconded by Member Egge, with the understanding that the Board also relied of the Applicant's justification for a variance, since the Department of Public

Works did not provide a recommendation. (See Minutes, p. 62)

66. Chairman Sung then clarified that with the granting of the variance, the two units that previously removed their loft would be able to rebuild it, as long as they received a building permit. In addition, the granting of the variance was based on an automatic sprinkler system being installed on the second and third floors of the units, as represented by the Applicants and their representatives throughout the hearing. (See Minutes, p. 63)
67. Pursuant to §12-801-71(1), BVA Rules, the Board found that the strict application, operation, or enforcement of the code provision or provisions appealed from would result in practical difficulty or unnecessary hardship to the applicant. The Board found the justification stated in the Staff Report regarding this standard to be credible.
68. Pursuant to §12-801-71(2), BVA Rules, the Board found that that the granting of the variance shall not be detrimental to the public health, safety, or welfare. The Board found the following circumstances met this standard.
69. Pursuant to §12-801-71(3), BVA Rules, the Board found that the granting of the variance would not be injurious to the adjoining lots and the buildings thereon. The Board found the justification stated in the Staff Report regarding this standard to be credible.
70. After deliberation, the Board voted to approve the variance Application. (See Minutes, p. 65)

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board hereby makes the following Conclusions of Law:

1. To the extent that any conclusion of law is more properly deemed a finding of fact, the Board adopts it as such.
2. Hawaii Revised Statutes §91-10(5) states that in a contested case proceeding, “[e]xcept as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.”
3. Section 8-8.7 of the Revised Charter of the County of Maui (1983), as amended, and §19.520.050(C), MCC, authorize the Board of Variances and Appeals to hear the application for a variance from Title 16, MCC, the building code.
4. Variances from Title 16, MCC, may be granted by the Board when the standards set forth in §12-801-71, BVA Rules, are met. Pursuant to the findings set forth, the Board found that the Application met the standards required for granting a variance.
 - A. That the strict application, operation, or enforcement of the code provision or provisions appealed from would result in practical difficulty or unnecessary hardship to the applicant;
 - B. That the granting of the variance shall not be detrimental to the public health, safety, or welfare;
 - C. That the granting of the variance would not be injurious to the adjoining lots and the buildings thereon.

DECISION AND ORDER

It is hereby the final decision and order of the Board that the Application of P. S. United for a variance from MCC §Chapter 16.26B.100 The International Building Code (Sections 504, 903, and 1009) to allow fire sprinklers to be installed in the upper level units only instead of the entire buildings and to allow exceptions to stairway width, headroom, stair treads and risers, dimensional uniformity, profile, and stairway landings to allow existing stairwells to remain in place, as well as §Chapter 16.20B.100 The Uniform Plumbing Code (Section 407) to allow exceptions for required toilet clear space to allow toilets in two (2) units to remain in place as relocation would require significant reconfiguration of walls and plumbing fixtures is APPROVED, subject to the following conditions:

1. That the variance shall be applicable only to the request(s) as approved by, and as reflected in, the record of the board for the Property located at 3975 Lower Honoapiilani Highway, Lahaina, Maui, Hawaii; TMK: (2) 4-3-008:002 & (2) 4-3-008:003.
2. Hold Harmless Agreement. 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 attorneys' 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. In the case that the Board or the County shall be made a party to any litigation commenced by or against the Applicant, arising out of or in connection with the variance, the Applicant shall pay any judgment, cost, and expense incurred or imposed on the County or the Board, including attorneys' fees. This Agreement shall also pertain to any claims due to the County's negligence arising out of or in connection with the variance. The Applicant further agrees to release any claim that it may now have, or have in the future, against the County relating to the variance or any actions arising from the variance, including claims due to the County's negligence. The hold harmless agreement shall run in perpetuity with the land and shall be recorded with the Bureau of Conveyances, with the cost of recordation borne by the Applicant.

3. General Liability Insurance. The Applicant shall procure, at the Applicant's sole cost and expense, and shall maintain during the entire period of this variance, a policy or policies of comprehensive general liability insurance issued by a company or companies authorized to do business in Hawaii and approved by the County, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), per occurrence, naming the County of Maui as an additional insured, insuring and defending the Applicant and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this variance approval, including but not limited to: (1) claims from any accident in connection with the approved variance, or occasioned by any act or nuisance made or suffered in connection with the approved variance in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this variance approval. The Applicant shall provide the County not less than thirty (30) days' notice prior to any cancellation or material change in coverage. No such material change or reduction may be made without advance written approval from the County. Prior to the expiration of each policy period, the Applicant shall provide the County with a certificate of insurance evidencing the foregoing coverage and provisions. The County reserves the right to request and receive a certified copy of the policy. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of the terms of the variance and the County shall thereafter have the options of pursuing remedies for such breach and/or termination of the variance.
4. Deadline for Submittal of Documents. The original hold harmless agreement and copy of the certificate of the insurance policy naming the County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of mailing of the decision and order.
5. Effective Date. The variance is not effective until the date of recordation in the Bureau of Conveyances of the original hold harmless agreement and receipt of the certificate of insurance by the Planning Department, whichever is later. Failure to timely submit these documents, absent the Public Works Department's approval of an extension in writing, shall result in automatic revocation of the Board's decision granting of the variance and thereafter, the Applicant must reapply.

Pursuant to HRS §91-14, should any aggrieved party wish to appeal this final decision and order, it must be filed with the Circuit Court of the Second Judicial Circuit within thirty (30) days from the date of the mailing by certified mail.

Dated at Wailuku, Maui, Hawaii, this ____ day of _____, 2019.

Chairperson

BOARD OF VARIANCES AND APPEALS
COUNTY OF MAUI

CERTIFICATION

I HEREBY CERTIFY that this is a full, true and correct copy of the Original.

MICHELE CHOUREAU MCLEAN, AICP

Planning Director

Department of Planning

BEFORE THE BOARD OF VARIANCES AND APPEALS

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Request of

**MUNEKIYO HIRAGA for EXISTING CONDITIONS
AT POLYNESIAN SHORES**

For a variance from Maui County Code, §Chapter 16.26B.100 The International Building Code (Sections 504, 903, and 1009). The request is to allow fire sprinklers to be installed in the upper level units only instead of the entire buildings and to allow exceptions to stairway width, headroom, stair treads and risers, dimensional uniformity, profile, and stairway landings to allow existing stairwells to remain in place. §Chapter 16.20B.100 The Uniform Plumbing Code (Section 407). The request is to allow exceptions for required toilet clear space to allow toilets in two (2) units to remain in place as relocation would require significant reconfiguration of walls and plumbing fixtures. For property located at 3975 Lower Honoapiilani Road, Lahaina, HI 96761; TMK (2) 4-3-008:002 & (2) 4-3-008:003.

DOCKET NO.: BVAV 20180003

CERTIFICATE OF SERVICE

HEARING DATE: OCTOBER 25, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Findings of Fact, Conclusions of Law and Decision and Order was duly served upon the party listed below by the means stated:

U.S Mail

Personal Delivery

Facsimile

(X)

Certified Mail No:

P. S. United (Applicant)
c/o Mary Y. Gross
4849 Glenhollow Circle
Oceanside, CA 92057
Phone: (760) 630-1317

DATED at Wailuku, Maui, Hawaii, this ____ day of _____, 2019.

MICHELE CHOUTEAU MCLEAN, AICP
Planning Director
Department of Planning

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
October 25, 2018**

[\(HYPERLINK TO AUDIO RECORDING OF THE MEETING\)](#)

A. CALL TO ORDER

(Item A begins at 00:00:03 of the Audio Recording)

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Raymond Sung at approximately, 1:38 p.m., Thursday, October 25, 2018, 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).

(Items B begins at 00:00:17 of the Audio Recording)

B. COMMUNICATION

1. **CALVERT G. CHIPCHASE AND CHRISTOPHER T. GOODIN OF CADES SCHUTTE LLLP representing D AND S VENTURES, LLC Appeal of the Planning Director's Notice of Violation (NOV 2014/0013) for the zipline activity within the County's Agricultural District without a Special Use permit pursuant to MCC §19.30A.060 (H) for property located at 2065 Kauhikoa Road, Haiku, Maui, Hawaii; TMK (2) 2-7-012:086 (BVAA 2015/0002), (J. Rapacz/D. Dias)**
 - a. **As requested by the Board, Appellant's counsel and Corporation Counsel will provide an update on the status of this appeal**
 - b. **Board will receive an update on the status of the Maui Planning Commission Special Use Permit application for the D&S Ventures zipline.**
 - c. **Discussion and possible action regarding the Hearing Officer and contested case hearing, including but not limited to: status and schedule of the hearing; status of the hearing officer contract and billing; whether the board or designated members of the board wish to serve as hearing officer.**

No public testimony will be received.

(Items B finishes at 00:16:40 of the Audio Recording)

(Item C.1 begins at 00:16:58 of the Audio Recording)

C. PUBLIC HEARING

1. **P. S. UNITED is requesting an after-the-fact variance from the following Maui County Code sections: 1. §Chapter 16.26B.100 to allow fire sprinklers to be installed in the upper level units only, instead of the entire building and to allow exceptions to stairway width, headroom, stair treads and risers, dimensional uniformity, profile, and stairway landings to allow existing stairwells to remain in place (2006 IBC Sections 504, 903, and 1009). 2. §Chapter 16.20B.100 to allow exceptions for required toilet clear space to allow toilets in two (2) units to remain in place as relocation would require significant reconfiguration of walls and plumbing fixtures (2006 UPC Section 407). For property located at 3975 Lower Honoapiilani Road, Lahaina, HI 96761; TMK (2) 4-3-008:002 & (2) 4-3-008:003 (BVAV 20180003). (C. Keliikoa)**

(Motion made by Member Ray Shimabuku at 01:25:34 of the Audio Recording to approve variance with Hold Harmless Agreement, General Liability Insurance and to include Fire Department's comments as noted in the Staff Report)

(Seconded by Member Trisha Egge at 01:28:17 of the Audio Recording)

(At 01:33:16 of the Audio Recording a vote was taken)

VOTED: Motion passes, Variance granted to approve variance for P.S. United, BVAV 2018/0003;

*(Assenting: R. Sung, J. Reyher-Colon, M. Kincaid, T. Egge, R. Shimabuku)
(Excused: W. Greig, J. Borge, B. Kamai).*

(Item C.1 finishes at 01:33:45 of the Audio Recording)

(Item D.a begins at 01:33:47 of the Audio Recording)

D. DISCUSSION (Deferred/Continued from June 28, 2018)

- a. **Board discussion of Board procedures, including without limitation: Preparation of written minutes; Procedures for setting agendas; Procedures for canceling Board meetings.**

No public testimony will be received.

(At 01:58:56 of the Audio Recording quorum is lost. Member Max Kincaid leaves meeting. Chair Sung continues with discussion for Item D.)

(Item D.a finishes at 02:01:21 of the Audio Recording)

(Item E begins at 02:01:23 of the Audio Recording)

E. NEXT MEETING DATE: November 8, 2018

(Item E finishes at 02:02:41 of the Audio Recording)

F. ADJOURNMENT

(Item F. meeting adjourned at 02:02:45 of the Audio Recording)

There being no further discussion brought forward to the Board, the meeting was adjourned.

Respectfully submitted by,

CHALSEY KWON
Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

Raymond Sung, Chairman
Juanita Reyher-Colon, Vice Chairman
Max Kincaid Jr.
Trisha Egge
Ray Shimabuku

Excused:

William Greig
Jeffrey Borge
William Kamai

Others:

John Rapacz; Planning Program Administrator
Danny Dias; Supervising Planner
Ana Lilis; Staff Planner
Christi Keliikoa; Staff Planner
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

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- [16:58] Chair Sung: Staff, will you please read into record, the next item on the agenda?
- [17:04] Staff: Thank you, Chair. (inaudible noises)
- [17:24] Thank you. Christi Keliikoa for the Department. Uh, the variance request involves the Polynesian Shores located at 3975 Lower Honoapiilani Road in Lahaina. The Applicant is P. S. United. They are requesting an After-the-Fact variance, actually two variances, from Chapter 16 of the Maui County Code with regards to the International Building Code and Uniform Plumbing Code.
- [17:57] Chair Sung: Thank you.
- [17:58] Staff: Thank you.
- [18:00] Chair Sung: Is there a representative on behalf of the Applicant, present? Uh, and, if so, would you please state your name for the record?
- [18:08] Applicant's Rep: Thank you, Mr. Chair ... Members of the Board. My name is Michael Munekiyo. I'm with Munekiyo Hiraga. We are the planning firm assisting P. S. United. And, uh, we do have a, uh, brief overview, PowerPoint for the Board Members. But before I get into the Power Point, I did, uh, want to explain, or provide some additional background.
- P. S. United is a, uh, group of owners from the Polynesian Shores condominium in West Maui, and they were formed to, uh, better coordinate the processing, uh, of this variance. Uh, Polynesian Shores, I'm not sure if you're familiar with it, but that condominium project has 52 units ... 26 are lower level units and 26 upper level units. And, P. S. United, uh, is comprised of the 26 upper level units, unit owners, because it is their units that, uh, are the subject of the variance.
- As, uh, Staff reported, the variance is for, uh, fire sprinkler and, uh, stairways ... umm, and to the Plumbing Code.

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But, again, what, uh, P. S. United is ... is seeking to do is making sure that the process that they are engaged in with the County moves as smoothly as possible. Uh, so, rather than having 26 individual unit owners apply for variance, uh, they agreed, along with the County, that a ... a single application would be best just in terms of, uh, making the process a much, uh, more, uh, efficient process.

And, so, over the past 5 years, representatives of P. S. United has been working with the County – the Office of the Mayor, the Planning Department, the Fire Department, the Department of Public Works – uh, just to make sure that the variance, uh, request that is being sought, or requests are being sought, uh, are correct and that they ... they can agree to actions that will ensure compliance to the extent that will be allowed by variance, uh, if granted.

Uh, just, uh ... for information, Chair and Members, uh ... many of those in the Gallery today are owner-members of P. S. United. Uh, but they do have two representatives that have been, uh, serving as the lead, uh, for this effort, over the past 5 years. And, I'd like to introduce them ... they'll be up, uh, later on to testify ... but, just ... just for your information, there are, uh, many owners, here, but two representatives are Mr. Don Brattin and Ms. Mary Gross. And, so, Don and Mary ... they ... they've ... they've really been the ... the ... the front folks, in terms of coordinating with the County agencies.

Um, of course, today, we also have our Architect, Nick Wagner, and a Mechanical Engineer, Doug Gomes, so should there be any questions relating to the specifics of the requests, itself.

So, let me go through, real briefly, uh ... what we're, uh, discussing here.

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[21: 15]

So, the Polynesian Shores, uh, that condominium project was built in the early 1970s. It consists of three buildings, and, as I mentioned earlier, uh, 52 units total ... 26 lower units, lower level units and 26 upper level units. And, the upper level units contain lofts with, uh, sleeping area – bedroom and a bathroom. And, these are the, uh, improvements for which ... which has triggered the need for a variance.

This is an aerial photograph of the Polynesian Shores ... you can see Lower Honoapiilani ... oops, sorry ... Lower Honoapiilani Highway, uh, fronting the project site, here. Uh, Pacific Ocean to the, uh, left-hand of the slide.

Again, the three buildings, uh, up here, uh, on this, uh, on this, uh, figure. These are just street level, uh, or ground level photos of, uh, the Polynesian Shores. Again, first level and second level, and it is the second level units that are, uh, subject of the, uh, variance request, before you, today.

So, just ... just a little bit more background ... uh, as I mentioned, Polynesian Shores was constructed in the early 1970s, and it was, actually, built with a mezzanine. The second floor ... the second level units were actually built with a mezzanine. And, shortly, uh, after completion, again in the early 70s, the mezzanine, uh, which actually was accessed by a ladder, at that time, and it served as a storage area, uh, was extended with stairs installed. And, so, the mezzanine extension with the installed stairways actually, uh, technically made that, uh, third, uh, loft area, a third story. So, by being a third story, as opposed to a two-story building, it triggered, uh, code requirements that, uh, were basically not, uh, addressed.

And, you know, there was a ... I think a real good effort on the part of the owners to find the building permit documentation. But, that, uh, could not be done. So,

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there was agreement between the owners and the County, that these units would be considered unpermitted, uh, lofts.

Uh, over the course of these past 40 some-odd years, the units have been marketed. So, numerous times, and, uh, property tax records for ... uh, property tax purposes, have included, uh, the lofted bedroom and bathroom area.

So, just a bit of history, Members. Again, P. S. United includes all of the 26 upper level units. I might add that there are two, uh, unit owners, 215 and 219, who had removed their lofts, uh, because back in 2010 they were recipients of a Request for Service. In other words, there was a Request for Service filed with the County, and, uh, they, in earnest, sought out to resolve the issues, but it was a fairly challenging process for them. And, so, at the end of the day, they decided to, uh, remove the loft. Again, um, what happened in 2013, however, nine additional Requests for Service, uh, Services were filed with the County. And, again, at that time, the, uh, those who were recipients of the RFS' determined that it's probably best to work together with the County to see how best these issues could be addressed.

And, so, um, that is really the genesis of P. S. United, and so, they did, uh, file after-the-fact building permits. Again, the whole intent of P. S. in coordinating with County was to make sure they did things the correct way. And, uh, during the review of the after-the-fact building permits, additional code requirements were identified, and these, in fact, were the basis of the variance that we, uh, have before you today. So, uh, it was agreed that the variance process would be initiated.

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So, just to summarize, um, over the past 5 years there's been a quite a bit of coordination with the County and P. S. United. It was the loft conversion from mezzanine ... over 40 years ago that created the issue. Many of the, I would say, all of the owners were not aware of the situation. Uh, because, again, the units have changed hand ... hands many times over the course of time. And, so, the current owners, uh, uh, historically were not aware of the, uh, uh, unpermitted status. But, they are, nonetheless, very interested in working with County in getting this matter resolved. And, so, uh, at this point, uh, Mr. Chair, I'll Tessa Ng to just go through the specific requests.

[00:26:22] Chair Sung: Please state your name for the record, again.

[26:25] Good Afternoon. My name is Tessa Munekiyo-Ng, from Munekiyo Hiraga. And, um, at this time, I'd like to go over the variance request. Um, the variance, again, is triggered because there are different building code requirements for three-story buildings versus two-story buildings, and the presence of the loft is considered a third-story. And, so, there are different building code requirements that then come into play. And, so, we have a few specific requests related to the International Building Code and Uniform Plumbing Code. I'm going to through those, now.

The first is IBC Section 504, which relates to height, and this allows buildings to be, uh, the maximum height of buildings to be increased by one story, if an automatic fire sprinkler is installed throughout. So, in this case, it would allow Polynesian Shores to be increased from two-stories to three-stories, if there were an automatic fire sprinkler. And, the variance request is to allow the automatic sprinkler to be installed in the upper level units, only, which would be the second and third stories, instead

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of the entire building, to allow this maximum height increase from two to three stories.

[00:27:32]

A related request is for IBC Section 903, also related to automatic sprinkler systems. And, again, the request is to allow that the automatic sprinkler system be installed in the second- and third- stories, or upper level units, only.

[00:27:50]

Chair Sung: Question, please.

Tessa: Yes.

Chair Sung: Um, when you say this second and third story, only ... are you talking about only the individual units? Or ... I assume that there is a second and third story with common areas, as well ... is that the case? And, would there be sprinklers in the common areas?

[00:28:06]

Tessa: Um, for the question, I think I would refer to Doug, perhaps, or Nick? (inaudible) Oh, ok. No ... no common areas. (inaudible) No ... no common areas.

Chair Sung: No common areas?

Tessa Munekiyo-Ng: Yes. So, all 26 units of the upper level ... um ... all 26 upper level units would install fire sprinklers.

Chair Sung: OK.

Tessa Munekiyo-Ng: Thank you.

Chair Sung: Thank you.

[00:28:23]

Tessa: So, the next ... uh, variance request is pertaining to the stairways, IBC Section 1009. And, this establishes various standards for width, headroom, treads and risers, uniformity, profile, and landings. And, the variance

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request is to allow the existing stairways to remain and meet the requirements for spiral stairways, which are permitted in residential units, with minor modifications for headroom, dimensional uniformity, and profile. So, in other words, the request is apply allowable standards for spiral stairways to the existing traditional stairs at Polynesian Shores, and transferring the standards of spiral stairs is considered reasonable and would allow the existing stairways to remain.

This is a section that shows the various request as it pertains to the stairway standard, stairway standards. So, if you can see a minimum headroom of 74" inches was requested, a riser maximum of 9-1/2" and the tread 7-1/2" minimum. And, this table here shows you a comparison of the code requirement per IBC Section 1009, that's in the first column. The second column shows, for reference, the spiral stairway requirement. And, the final column shows a variance request in yellow. And, so for example, the riser, um, the IBC requires a 7 and 3/4" maximum; spiral stairways are allowed to have maximum of 9 and 1/2". So, the variance request is for 9 and 1/2". And, I would just note that spiral stairways typically lead to smaller spaces, and for that reason, standards differ to reflect the more limited foot traffic that, um, occurs with spiral stairways. And, the loft areas at Polynesian Shores have a capacity of about 1 to 2 people, so the spiral stairway standards are appropriate, here, because it's not a heavily traffic stairway.

Um, I won't go through all of the different standards listed here on the table, but I did want to note that a few of the standards do ... differ from the spiral requirement. For example, the headroom a minimum of 74" is requested, and that's because there are sloped ceilings at Polynesian

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Shores, and lower headroom is allowed for sloped ceilings. Uh, there ... the specific dimensions of the different stairways vary across the units; however, there are three main configurations, and we have some photos, here, for you. So, this is the first configuration ... which is referred to as Configuration E. This is the second configuration ... which is Configuration L. This is the third configuration of stairways ... so, of the 26 units, um, pretty much all of the stairs would like one of those three photos that I shared.

And, the final variance request is related to the Uniform Plumbing Code, Section 407, as it relates to installation of toilets. And, that requires that toilets be installed with a 15" clearance from the side wall ... from the center to the side wall ... and a 24" front clear space. And the variance request is to allow minor modifications for side wall clearance and front clear space for two specific units.

For Unit 209, um, a 1/2" variance from the side wall clearance requirement is requested. As you can see here the left side has a 14-1/2" clearance, rather than the 15" requirement. And, in addition, there's a small portion of this wall, here, that encroaches into the 24" front clear space. So, the majority of the, um, toilet does meet that front clear space, but it's just this small portion, here, um, in the photo corresponds to here that there is an encroachment into the front clear space. So, that's what the variance request is for Unit 209. For Unit 211, the side clearance is met ... um ... again, the front clearance, however, has a small encroachment ... it's here ... it's just about 3-1/2", um, corresponds to this wall here that encroaches into the front clear space. So, again, the majority of the toilet does have required front clear space, it's just this small area here. And, so, that provides you,

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um, and overview of the specific variance request, um, as it pertains to the Code.

And, at this time, I'd like to just briefly go over the justification for the variance. The first criteria is that compliance with the Code would create practical difficulty or unnecessary hardship. Um, in this case, compliance to the Code would require substantial improvement to the lofts, which had been in place for over 40 years. And, this would create practical difficulty or unnecessary hardship to remedy conditions that were not caused by previous actions of the current owners.

With respect to the sprinklers, it would require installation of automatic fire sprinklers, throughout the entire building, including the lower level units. Um, this, in particular, would create unnecessary hardship for the lower level units, who have no loft in their units. And, um ... there's no mechanism to force the lower level units to make changes to their units. All of the upper level owners are willing to install fire sprinklers in their units, but there's, uh, no mechanism to require their lower level neighbors to do the same.

With respect to the stairways, uh ... the current code would require significant reconfiguration of the stairways and this would result in a loss of living room area -- in some instances, up to 35 square feet, or 19 percent, of the living room would be lost due to reconfiguration of the stairway.

And, finally, with respect to the toilet fixtures, the code would require significant demolition and reconstruction of walls to gain a few more inches of clear space. And, this would require reconfiguration of vents, pipes, and electrical equipment. If the units cannot be brought into

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compliance, the owners would need to remove their loft. And, as you can imagine, this, too, would cause practical difficulty and unnecessary hardship.

There would be a significant impact and disruption to the home and sense of place that many of these owners have built, over the years. The owners purchased the units under the assumption that they were of a certain size, and the property record ... property tax records ... reflected this lofted space and the bedroom and bathrooms. This ... the removal of the lofts would result in direct loss of usable space and real property. Two bedroom units would be downsized to one bedroom units, and three bedroom units would be downsized to two bedroom units. So, for these owners, that would be a significant impact. Um, particularly, as many of them purchased the units based on the size needs for their families.

[00:35:09]

The next criteria is that granting of the variance would not be detrimental to public health, safety, or welfare. There have been no safety issues or concerns reported related to the lofts in over 40 years.

With respect to the fire sprinkler variance, the Applicant has met with The Department of Fire and Safety a number of times, over the past year ... over the past few years, and the Department has been supportive of the proposed mitigation, which includes installing fire sprinklers, hard-wired smoke detectors, and fire extinguishers in the upper level units. Installation of egress windows in loft areas, if required. And, there's an existing fire alarm manual in all buildings. And, um ... the owners are willing to invest \$50-60,000 each for this fire mitigation in the upper level units. And, with these mitigation measures, the safety needs will be met and the variance will not be anticipated to have adverse impact to health, safety, and welfare.

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With respect to the stairways, the current standard ... the proposal is to meet the current standards for spiral staircases, with minor exceptions. And, because spiral stairways are permitted in residential dwellings, meeting these standards would mean that stairs that are consistent with standards deemed appropriate for residential dwellings.

And, finally, with respect to the toilet fixtures ... there have been no accidents or safety concerns raised, in over 40 years.

[00:36:32]

The next criteria is that granting of the variance would not be injurious to adjoining lots or buildings. As I mentioned, mitigation measures have been discussed with the Fire Department and will be implemented to meet fire safety needs. With respect to stairways and toilets, these are limited to components of the upper level units and would not affect any adjoining lots or buildings.

[00:37:00]

The final criteria is that the variance is not contrary to the purpose of the code or public interest. And, as I mentioned, mitigation measures have been discussed with the Fire Department to ensure that safety needs are met, and the stairs and toilet fixtures have been, um, safely navigated for over 40 years.

[00:37:23]

So, just to summarize our request ... the variance, uh, relating to the International Building Code is to allow fire sprinklers be installed in the upper level units, only, instead of the entire buildings and to allow exceptions to stairway width, headroom, stair treads and risers, dimensional uniformity, and landings to allow the existing stairways to remain. With respect to the Uniform Plumbing Code, the request is to allow exceptions to the

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required clear space for toilets, to allow toilets in two exist ... two units, to remain in place.

If the variance is granted, that after-the-fact building permit applications that the owners filed to bring their units into compliance can continue to be processed.

The owners are grateful for the many County officials who've provided guidance and support over these past years, and they look forward to making their community whole again. Thank you very much!

[00:38:13] Chair Sung: Thank you. At this time, before we proceed to questions regarding the presentation ... um, as well as, uh, other questions for ... for staff and the applicant ... I think we'd like to open up for Public Testimony.

So, um ... I will ask that each public testifier, who wishes to testify, uh, limit his or her comments to 3 minutes, only. And, to please identify for the record before you begin. So, with that ... (inaudible)

It looks like we have five members. Am I supposed in order of the numbers or in order of ... of ... in order of the numbers?

[00:39:11] Corporation Counsel: Yeah.

[00:39:11] Chair Sung: Uh, so, we have five testifiers. The first one is Mr. Randy Piltz.

[00:39:50] Testifier #1: Aloha. My name is Randy Piltz, and I'm an Executive Assistant to the Mayor. And, I've been on the Planning Commission for two terms and the Land Use Commission two terms.

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Um, I got involved in this particular project on January 23rd, 2015. What happened was that someone filed a report ... a RFS, a complaint. And, they weren't identified. We tried to find out who it was that was filing this complaint. And, as I checked on more of this, I found out that there was a problem with the building and the building codes ... and what extended to everything I could see, was that units were gonna be lost for people that had bought units that were two units, instead of one. So, I tried to help them, and here's some of my records that I went through. And I find that the people that formed this particular group trying to save the units they purchased. What happened ... they bought it many years ago, and those units were modified without the building permit.

My job with the Mayor's Office is to help people with the permits. Well, here we are, since 2014, they're still working to get their permits approved. And, I beg that you listen to this and see that they have everything they can to possibly keep their units, as built. Are there any questions for me?

[00:41:51] Chair Sung: Mr. Piltz ... were ... were the modifications made by the original owner or by previous owners? And, were they modified at the same or were they done on an individual basis?

[00:42:05] Randy Piltz: As ... as far as I can tell, the people that own the units today bought units, as they are today. They were modified by persons unknown and times unknown. I couldn't come up with who built them and when it was done.

[00:42:25] Chair Sung: OK. Thank you ... Members, any questions?

[00:42:31] Randy Piltz: Any other questions?

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- [00:42:32] Chair Sung: Thank you very much.
- [00:42:33] Randy Piltz: Thank you.
- [00:42:34] Chair Sung: Next testifier is ... Ms. Mary Gross.
- [00:42:42] Testifier #2
- Good afternoon, everyone. And, I am the owner of Unit 214 at Polynesian Shores, and I've also served as one of two lead representatives of P. S. United for the last five years. And, on behalf of all the owners here today, as well those who could not be here in person, I would, first, like to thank you Board for taking the time to hear our testimony today. As well as for all the other members of the county that I see, that I have gotten to know, quite well, over the past five years. And, they have worked alongside us to get us to this point, where we can be before you today to request this variance.
- In preparation for today's hearing, a lot of our owners wrote written testimony for you to review. And, as I was reading the testimonies, myself, I was astruck by the themes that seem to come through, in everything that they wrote. While each of us has a unique story of how we came to own our particular unit, the one thing that's coming through with all of the testimonies, is that we saw something special in Polynesian Shores, and that's why we purchased here.
- This was a place that was different than many other communities that many of us have frequented over the years. We're not an exclusive high-rise resort ... we're, instead, just a humble community that breathes aloha and that is truly family-oriented. We're a small community of owners, who are friends. And, many of us consider each other family. And, we love to come together to enjoy this piece of paradise we get to call our home.

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We're good, hard-working people and we want to share our love of the island of Maui with others, including our family and ... and friends. And, that is why we purchased two and three bedroom homes, so that we would have the space to be able to share that with our loved ones.

On any given day, if you come to Polynesian Shores, you're sure to see some very family-focused activity. You might see our neighbors' grandchildren splashing in the pool ... you might see a family of three-generations sitting around a picnic table enjoying a meal together. And, if you happen to come around sunset time, you will see ... almost ... everyone in the entire community congregating at the edge of our property to watch sunset ... and share stories of their day.

I can remember, like it was yesterday, the first time after we bought ... that I brought my most special guest to our home. And, that was my Mom and Dad. And ... when they stepped onto the property, they felt the family. They were embraced by everybody there. And this became a yearly return ... a ... along with many other members of my family and friends. And, these memories, now, have really a precious place in my heart because two years ago, my Dad died unexpectedly, while I happened to be here on Maui, coming to a meeting regarding this variance request.

[00:45:47]

So, now ... the work that I do ... for P. S. United, I am doing this in his honor and to ensure that maintain and keep the home that we can have this for my family and future generation and keep his memories alive.

Five years ago, nine of our homes were issued RFS' for alleging unpermitted bedrooms and bathrooms in our lofted spaces. When we received that information we

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were heartbroken, but also frightened because we didn't know what the future held for that, or what it meant. Not a day has gone by, since then, that this hasn't been the focus of my daily thinking or action, to try to help resolve.

And, it isn't just my unit that I'm here representing today. Um, Don Brattin and I have taken on, sort of the (inaudible) on our shoulders ... the hopes ... and ... and also the fears of 25 other unit owners, that are also concerned that if we are not successful with this variance request, that our homes, could, in fact, be in ... in great jeopardy.

[00:46:57]

This issue could've really torn our community apart. But, instead, we decided to all join together ... and, in fact, over these past few years, it has made us stronger and closer. And, our focus has been to continue to work with the County to try to find resolution, and come up with a solution that will be acceptable to all.

In closing, please know that none of these unit owners are responsible for the lofted bedroom and bathroom spaces that are in question, uh, today. And, as they have explained ... these have been, in fact, in place since the early 1970s. And, we do know that the lofted spaces were also built out in very early in the 1970s, having some information ... at ... eh ... rentals and pictures of these particular units. So, know that we inherited this issue ... that it's later, now ... we are trying to find a resolution for. And, our variance request, comes to you ... really, as the vehicle, which, if it's granted, could allow us to move forward and to keep our homes complete ... and move forward ... and have our after-the-fact permits issued.

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So, I thank you very much for your time and attention today. And, if you have any questions, I'm happy to ... to answer.

[00:48:21] Chair Sung: Members, any questions?

[00:48:22] Ray Shimabuku: I have a question, Mr. Chair.

[00:48:23] Chair Sung: Please, Mr. Shimabuku.

[00:48:26] Ray Shimabuku: Um, how long have you been at the complex?

[00:48:28] Mary Gross: Uh, my husband and I purchased at the very end of 2010 ... so, since 2011 ...

[00:48:36] Ray Shimabuku: So, from the time you moved in... you never saw anybody, construction wise?

Mary Gross: Oh, absolutely not.

Ray Shimabuku: Any of the (inaudible)?

Mary Gross: No, sir.

Ray Shimabuku: OK. Thank you.

[00:48:46] Mary Gross: Any other questions?

[00:48:52] Chair Sung: Thank you, Ms. Gross.

Mary Gross: Thank you.

[00:48:55] Chair Sung: Next testifier is Mr. Don Brattin.

[00:49:01] Testifier #3: Thank you, very much. I appreciate you all being here ... I know it's a thankless job that you have, but it's a very important one. And, uh, this last five years has been really difficult and we've been counting down the days to stand

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here in front of you. My wife, here, Geraldine and I purchased this particular condo 11 years ago. And, we purchased it as a two-bedroom unit ... we used to live here on Maui ... and we had to move back to the mainland. One would question why I would be so dumb, as to move back to the mainland, but we had health issues with family. So, we take care of them, along with the other part of the family. But, our intention is to come back to Maui and live here. We want to bring the family over, we want to bring friends over, we want to have fun with them and show them the island, but it's going to be difficult if we're reduced to a one-bedroom condo.

To give you a perspective of time, I'm 65 years old ... I was 20 years old when these lofts were put in. My hair has changed, too (laugh). The, uh ... the thing is that Geraldine and I were married 45 years ago, as well, when these lofts were put in. That's a perspective of the time element.

For years, as was mentioned before, realtors represented these units as two-bedroom units and three-bedroom units. Uh, Title companies represented them ... or thought of them as two- and three-bedroom units, and ... even the, uh ... the taxes were paid as two- and three-bedroom units. So, you know, it's always been considered as two- and three-bedroom units. And, we all bought what we thought were two- and three-bedroom units, but that appears to be in question.

Uh, building codes have changed so much over the years, and I don't have to tell you that. At this time, it would be impossible to retrofit the ... the units to, uh, meet all the codes ... it's just impossible.

I'd like to, uh, deviate just a second ... Mary touched on this briefly ... Over the past five years we've made

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numerous trips over and tons of phone calls, and emails back-and-forth ... I've heard, over the years, that the County can't be really tough to work with. That wasn't the case, for us. And, I gotta be honest ... they ... when we sat down with John and Jarvis ... and different ones ... they understood the situation, and it appeared they wanted to help. And, so, we want to thank everybody that we met with, and worked with, because that was very important to us.

Um, I also want to praise these people back here ... these are the owners of Polynesian Shores. I remember crazy things like we would argue over the color of a flower we were going to plant ... or where we were going to plant it ... all kinds of things that create little, petty arguments. But, when this happened, the RFS, in one sense, was good -- because it brought us together. We're a lot friendlier folks with each other ... we're better neighbors, now, than ... than we were before.

Um ... but Mary and I have ... we've worked so hard to try to make this happen. And, we really do, um, ask that you help us. It just comes down to this ... you have the power to help us, and we really do ask for you to exercise that power and ... and please help us. And, thank you, again! Any questions?

[00:52:44] Chair Sung: Members, any questions? (silence) No ... Thank you, Mr. Brattin.

Don Brattin: You bet.

[00:52:53] Chair Sung: Next testifier is Mr. Randy Hominda.

[00:53:00] Testifier #4: Thank you, for all giving me the opportunity to speak today. Uh, my name is Randy Hominda ... my wife,

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Doris. Uh ... her and I started coming to Maui about six years ago. Uh, we had a honeymoon (inaudible) nine years ago in Honolulu. So, Hawaii's been in our memories for a long time.

About six years ago, we started looking to purchase a place in Paradise. As we looked around the West side of Maui, we looked at a lot of places ... we had, uh, come across Polynesian Shores ... and we revisited it, quite a few times, because there was something special about it. We really enjoyed coming there and seeing the activities that was going on ...

We got three grown children, five grandkids ... they've all come to Maui, they enjoy the place ... it's just a Wonderland for them ... they look forward ... they talk to friends that they've met over the years and correspond throughout the year to make sure that we vacation at the same time, so they can see their friends, again ... uh, it's just pleasing to know they enjoy it so much.

Four years ago, we purchased our two-bedroom, lofted unit. Before we did, I started doing a little research because I became aware that there could be some issues. I researched the history of Polynesian Shores, only to find issues and concerns of the ... the lofted units. We did our due diligence. We called the Zoning Department for the details. I spoke with Mr. Nakamura, who was extremely helpful. He explained that we could possibly get a Hold Harmless Agreement for the unpermitted work. So, that was a bright light. We thought, well, the County is willing to work with us. So, he referred me to the Fire and the Plumbing Department to inquire on how I could correct any of the non-compliance issues, and everybody was very helpful ... gave me all sorts of information and it helped make our decision to purchase Polynesian Shores

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... 'cause in our heart, we felt we could overcome any of the issues that were, you know, and the stumbling blocks. Having faith in resolution, my wife and I bought the condo.

[00:55:19]

Unfortunately, within two weeks of closing, we hadn't even been here yet ... we've got a RFS. You can imagine taking the wind out of our sails and just a gut ... a punch to the gut. It was just overwhelming. We thought we had a little more time to get our resources together. We had a, we just, we were at a loss of what we're going to do.

Fortunately, I received the call from Don Brattin, and, uh, he explained that he, along with a group of others have the same issues going on, the RFS that we received. It is a great relief to know that it wasn't just us, it was a group of people and it almost seemed like it ... at ... at first, we thought someone was just pointing the finger out to get us, but we soon found out that it was more than just us. So, it was relief to know that there were people who it's targeted group Polynesian Shores or P. S. United, and they were working to resolve this issue with the County. And, uh, it was, it was a great relief.

00:56:37

So, Polynesian Shores had become a second home to us, along with our children and our grandchildren. Um, I felt compelled to run for the Board, for whatever reason. Then, I thought it would be in my best interest to help any way I could. And, uh, I've learned a lot, and, uh, it's been a great experience. And, my sole intention was to, uh, any way could help to maintain the integrity and the 'ohana feeling of this ... of our property.

I thank you for allowing us to work with you ... you to work with us. It's very important, and, uh, the partnership is very much appreciated. Thank you. Any questions?

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Chair Sung: Members? Any questions for Mr. Hominda? (silence) No.

Mr. Hominda: Thank you.

[00:57:28] Chair Sung: Thank you. Our last speaker ... or testifier ... will be Mr. Don Clary.

[00:57:41] Testifier #5: Good afternoon, Mr. Chair and Board Members. I appreciate the opportunity to speak before you, and I appreciate your time in considering our variance application.

I represent the Association of Apartment Owners – I’m the President of the Board at Polynesian Shores and also representative of Unit 216, which is commonly owned by all of the owners at Polynesian Shores – not just the upper level, but the lower level unit owners. And, that residence currently serves as the home for our site manager on property.

So, umm ... I wanted to express to you that I’ve been on the Board at Polynesian Shores for over 5 years, and during this whole process ... and, when this situation arose ... and we received these RFSs, umm ... many unit owners, lower level, were not affected ... umm ... 9 upper level unit owners were affected, immediately, the others were not.

However, I wanted to express to you ... that the community came together, as a whole ... quickly. We wanted to work the County to resolve this issue. And, with the exception of maybe one unit owner who is responsible for the RFSs, which is a sad commentary ... when you have ... it’s not the Aloha Spirit that I’ve come to know, since I’ve owned a condo here in Hawaii ... my wife and I actually own two units at Polynesian Shores – a one bedroom and a two bedroom.

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So, we are affected by the lofted issue, but, umm ... also by what impacts future construction or requirements might entail to meet code requirements. And, so ... with that being said ... umm, we're just asking for your careful consideration of our variance application ... and understanding of the impacts, should it not be approved ... and realize that we're working with the County ... and it's always been in our interest to work with the County, not against the County.

And, I've seen the work that Don and Mary have done with P. S. United and all of the meetings they've had with various officials with various departments ... and everything I've seen has been positive ... and I hope that trend continues ... we'd like to get this issue behind us ... it's been 5 years ... we're ready to move forward and get our units legally permitted with after-the-fact permits ... and we hope you will help us on that journey.

Chair Sung: Thank you.

Don Clary: Are there any questions for me?

[1:00:05] Chair Sung: Members ... any questions?

Ray Shimabuku: One question.

Chair Sung: Please, Mr. Shimabuku.

Ray Shimabuku: (inaudible) It was mentioned that there were two units that complied and removed their loft.

Don Clary: Yes.

Ray Shimabuku: Is any of the two here today?

Mary Gross: Can I speak to that? Can I speak to that?

Don Clary: Yes. I'll let Mary speak.

Mary Gross: Thank you. I can answer that question because I actually have been in communication with both of them and hold their proxies for them.

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Uh ... they, uh ... one is not on island ... both of them are actually not on island. One is a permanent resident, but she had to go back to the mainland to care for both of her parents who are being put into Hospice care. She did submit a testimony ... that you received. Her unit is number 215, if you would like to review that. Her name is Christine Gale.

The other unit owner ... uh, that was affected earlier, unit number 219, he sold his unit several years ago. And, the new owners that purchased that unit ... umm, they, again, were not aware of the issue ... with the ... sort of the lofted space and the resolution of that.

And, so, they have been sort of waiting. They are both part of P. S. United, and we are hopeful that whatever variances is extended to the group, that they would enjoy those, uh, as well, so that they can also make their homes whole again.

Chair Sung: Thank you.

Don Clary: Are there any other questions?

[1:01:43] Chair Sung: Members ... any other questions? ... One question from Corporation Counsel.

[1:01:48] Corporation Counsel: Thank you. I'm referring to a document that we received today. It's a Resolution of the Board of Directors.

Don Clary: Yes.

Richelle Thompson: And, just ... for the record, I wanted to just read a couple of portions. Whereas, the proposed variance will affect all units of the project and not just the upper level units. And the second ... Whereas, ... um ... that I wanted to read into the record ... Whereas, the Board has determined that it is appropriate for the Association to act on behalf of the entire project, with respect to the requested variances.

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So, I just wanted to confirm that the AOA does have authority to act on behalf of all of the owners – both upper level and lower level.

Don Clary: I believe we do. That resolution was crafted in conjunction, or in cooperation, with our legal counsel, Phil Lonn.

[01:02:38] Richelle Thompson: OK. Great. And, have you received? ... so, I guess ... I guess the RFS was made by a lower level unit owner ...

Don Clary: Umm ... that's been determined. It wasn't his name that was on the application. But, it has been determined that, uh ... that ... that is the individual ...

Richelle Thompson: OK. Has that owner, or any other owner, submitted an objection to the Board, as far as granting this variance?

Don Clary: No. No objections. There's been occasional questions ... progress ... as to where we're at in this process ... but no objections, that I'm aware of.

Richelle Thompson: Thank you.

Chair Sung: Just a follow up question and a clarification. So, to be clear ... you are the President of the Board of the entire Association of Owners ... of Apartment Owners, umm ... but P. S. United, itself, is merely a collective of the upper level unit owners. Is that correct?

Don Clary: Yes

Chair Sung: And, is this P. S. United a legal entity, in its own right, or is it just a ... an unincorporated association of some sort?

Don Clary: Right now, it's an unincorporated association.

Chair Sung: OK. Thank you. Umm, I guess I have a question ... I'll ask it now. Is the variance, itself, crafted in a way that is essentially ... a super-variance of 26 individual unit variances that each one applies to each separate upper level unit? Or, is it a sort of more broad strokes, single variance that applies to all 26, equally?

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- Mary Gross: Don ... Tessa ... (inaudible)
- Don Clary: I think I'll pass it over to our (inaudible) professionals.
- Applicant's Rep: Tessa-Munekiyō Ng. Umm, the variance lists all 26 upper level unit owners, individually, as owners. Umm, so, the idea is that the variance would apply to each of the 26 upper level units.
- Chair Sung: OK. Thank you. Umm, at this time, we're going to close the testimony portion of this proceeding. Thank you very much for the testifiers. Oh, I forgot to ask ... my apologies ... umm, is the Applicant agreeable to waiving the reading of the staff report?
- Mary Gross: Yes.
- Chair Sung: Thank you very much. Is a member of the Planning Department ... here? Is a member of the Planning Department here? Or ... or ... no ... not Planning ... Department of Public Works ...
- [01:05:29] Public Works Rep: Yes.
- Chair Sung: OK. Do you have any comments ... umm ... regarding the Staff report that you wish to emphasize to the Board?
- Jarvis Chun. Umm ... Jarvis Chun. Umm ... Building Planning ... umm ... Supervising Building Plans Supervisor with DSA. Uh, no. No comment, right now.
- Chair Sung: OK. Members ... do you have any questions for the Department of Public Works ... at this point?
- (unknown): No.
- Chair Sung: OK. And, do we have a representative of the Fire Department here?
- Fire Dept Rep: Yes.
- [01:06:02] Chair Sung: Could you please identify yourself? Thank you.
- Fire Dept Rep: Oliver Vaas, Plans Reviewer, with the Fire Department.

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Chair Sung: Thank you. So, we are in receipt of a short memorandum regarding the analysis and recommendations of the Fire Department. Do you have any ... further comments or additional items that you wish to emphasize to the Board regarding the memorandum?

Oliver Vaas: I think what we have here that was presented to you as our comments from the Fire Prevention Bureau ... is ... it's still how we stand on this variance. And ... would you like to read it out or do ... ?

Chair Sung: If you want ... please read it, umm, for the record ... any particularly salient points. Umm ... uh ... I would encourage you to do so.

Oliver Vaas: Well, I'd just like to summarize the view of this that says that ... you know, umm ... sprinklers are definitely, uh, something that would provide protection for these buildings. Optimally, the whole building sprinklered. Umm, our department has had multiple meetings with P. S. United and they've worked together to come up with what might work for them, and that's reflected in in these comments. And, we still stand by those comments reflected in here.

Chair Sung: OK. Thank you. Members ... do we have any questions for ... for Oliver?

[01:07:34] Max Kincaid: I have.

Chair Sung: Please. Mr. Kincaid.

Max Kincaid: Planning Commission ... is that this gentleman here on the end?

Chair Sung: The Public Works Department.

[01:07:40] Max Kincaid: Public Works Department. Have they submitted, uh, any kind of letter as to where they stand on this?

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- Chair Sung: They provided the staff report. Although, it does not contain a recommendation, one way or the other. But, it's merely an analysis.
- Max Kincaid: No recommendation?
- [01:07:57] Chair Sung: No recommendation by them ... that I'm aware of ... (pause)
- Chair Sung: Ok. Umm ... for Mr. Vaas of the Fire Department. I, actually, do have a question . . and this is more just to help give me, as a lay person ... a better understanding of the sprinkler requirements. So, my understanding, is that ... based on the presentation and the application ... if this were a traditional 2-story building, the Fire Code and Building Code and other codes that we're talking about wouldn't even require a sprinkler system ... an automated sprinkler system, in the first place? It's only because the lofts of the upper level units are considered a third-story, that that somehow triggers a different requirement, um, for automated sprinklers for the entire building? Is that correct?
- [01:18:49] Oliver Vaas: The requirements for the sprinkler systems does come from the Building Plans Department.
- Chair Sung: K
- Oliver Vaas: And, the Fire Department then says how those sprinklers are to be implemented.
- Chair Sung: K
- Oliver Vaas: In this case, it is my understanding, as well, that if it was 2-stories that it would not require sprinklers.
- Chair Sung: K. Umm, to help me understand ... what would ... what would you think would be the logic for exempting simple 2-story buildings from the requirement? Is it that it's low enough that presumably everyone can get out ... fast enough? Or ... or ... what's so different about a 2-story

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building versus a 3-story building, that a 2-story building wouldn't even have to have automated sprinklers, in the first place?

[01:09:33] Oliver Vaas: I think you touched on the right point. The point is that we want to protect everybody in the building, to get out safely. In these type of sprinkler systems, which is referred to as 13-R, the design and the concept is people get out ... So, should the first story catch on fire ... hopefully, those sprinklers put that out, but at least keep it from spreading to the second story, and those people have an opportunity to get out. So, it is the first story that protects the second story ... Now, the people that are on the third story, they have a much greater distance to travel. And what are they travelling through to get out? Well, in this case, it's interior. They're going from the third story, or loft, to the second story, and then out of the building. So, there could be a compromise there, in the middle. So, what sprinklers are intended to do is ... is to protect people from getting out, and that's why the usual requirement is that the whole building is sprinklered. And, in some cases, there's division of where it's sprinklered or not, but that would mean a complete separation of the building.

Chair Sung: K. Thank you.

[01:10:39] Vice-Chair Reyher-Colon: Chair, I have a question.

Chair Sung: Please, Ms. Vice-Chair.

Juanita Reyher-Colon: Umm ... if there are no sprinkler systems in the units ... umm ... why . .

Chair Sung: The lower level units?

Juanita Reyher-Colon: In any unit ... umm, whether it's lower level or upper level ... umm, why would there not be, umm, a fire suppression ... or separation, umm, installed ... in those units? So, to separate the upper and lower units ... from any type of fire damage.

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Oliver Vaas: Again, that would come from your Building Code, and under current code there is required separation between units, if you were to build today. And there probably is ... I don't know the building, myself. But I'm sure there is a level of separation between those units. And, I'm also not familiar with how they exit out of those buildings completely. And if we're going to compromise any kind of safety, we would want to make sure that all other aspects are 100% -- stairways, exits, everything ...

Juanita Reyher-Colon: Yeah. Yeah. My concern is that ... umm ... with ... with fire instances, umm ... that we're not really protecting the folks that actually live there. Umm, we're just kind of circumventing the process, so that they can get their, umm ... permits, umm ... go through. But, for me, I would want to protect the people that live there and the people that actually go and visit you folks. Umm ... you know, we don't want another occurrence that happened in Oahu, at the Marco Polo. I mean, that was very tragic. Umm, so for my comments, is that I would like to see some type of fire suppression installed. Umm ... whether it's for the whole ... whole complex or just the upper units ... at least something be put in place, and not circumvent the process of protecting people's life and property ...

Mary Gross: Can I respond? (inaudible) OK.

Tessa Muneikyo-Ng: So, just for clarification ... I would like to, uh, confirm that the upper level units will be installed with a fire sprinkler. Uh, so, the second and third level, which is the loft, will have a fire sprinkler in those. So, um, as discussed with the Department of Fire and Public Safety, there will be sprinklers in the building – it's just that the lower level units, which are not affected by the lofts, will not have the fire sprinklers because there is no mechanism to require them to do so.

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- [01:13:26] Chair Sung: Thank you. But ... but, we did hear from Fire Department that there is a risk that a fire on the first level without a automated sprinkler system, in place ... umm ... may result in a fire, that then somehow spreads to the second floor or loft, and it, umm ... the danger, or the risk, does exist because there wouldn't be a ... a sprinkler in the first floor, if this variance were granted ... is that correct?
- Oliver Vaas: Well, if this fire were to spread ... you do have sprinklers, then, in the second and loft area.
- Chair Sung: Right
- Oliver Vaas: So, that will provide some level of protection.
- Chair Sung: K
- Oliver Vaas: And, and ... what we're talking about here is that ... protecting ... at this point, protecting two levels is better than protecting no levels.
- [01:14:23] Chair Sung: Right
- Oliver Vaas: But, ideally ...
- Chair Sung: All three
- Oliver Vaas: That's where the variance would be coming in ...
- Chair Sung: Right. Thank you.
- Trisha Egge: So, my comment would be ... umm ... if it gets denied ...
- Chair Sung: Ms. Egge (tap on mic)
- Trisha Egge: Oh ... oh, do I ... I ask ... may I make a comment?
- Chair Sung: Please ...
- Trisha Egge: So, umm ... if we deny that ... the variance regarding the fire ... then they have to rip out their loft and it goes to a two-story, and they have no fire protection. But, if we allow them to have the loft, then the second and third stories get fire protection, and the property gets improved? Right? Is that ...

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Chair Sung: I ... I don't know if that's you're question ...

Member Egge: Is that correct?

Corporation Counsel: Umm, that may be a good question for, umm, Jarvis Chun. Umm ... if the variance is denied ... umm ... what would they have to do to those ... umm ... those second floor units to be code compliant? Would they have to take it back to the Mezzanine and put in a ladder? Would that still be allowed?

Public Works: Jarvis Chun, again. Yes, umm ... they would have to convert it or remove all the unpermitted work. So, as stated in the staff report, they provided a monetary number, also. And, as of today, we have not proceeded with Violations ... we ... we kind of held it back, until this Hearing. So, I'm not sure what's going to happen, if the variance is denied.

Vice-Chair: Chair ... comment ...

Chair: (inaudible)

Vice-Chair: So, this question is for Public Works. So, is your recommendation for the Board, here, to approve the variance request?

Public Works: Well, our department does not make recommendations. I only can state what, whatever, is in the Director's Report – that the proposal does not comply to our Code, right now. I think testifiers has mentioned that, you know, over the years, the Code gets more and more strict. So, it's very difficult for them to comply to today's Code, you know, when they built it, or were permitted, in the early 70s.

[01:16:50] Chair Sung: Mr. Chun, do you have a ... would ... would your department have any objection if, in fact, the variance were granted?

Jarvis Chun: Again, we don't provide any recommendations.

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Chair Sung: Not as a recommendation ... I'm just asking, would you be for or against? Any objections ... would you be disappointed or not disappointed?

Jarvis Chun: As previous testifiers mentioned, you know ... they have, umm ... P. S. United and Polynesian Shores have tried to comply, as best they could, you know. It's just that I don't want to say our Codes are overly restrictive. But, maybe in the future we need to take a look at our Building Codes and Fire Codes, to maybe help address these older ... to come up with ... I don't know what that compromise. That's something that Fire and Public Works would have to work on, and try to resolve that in the future.

Ray Shimabuku: I would like to make a comment and entertain a motion, as well.

Chair Sung:

[01:18:02] Ray Shimabuku: Yeah. Um, so the two people that moved out or did their duty as far as removing their stuff, I would imagine that they ... they followed what the law of life. So, and, that's why I was asking you for your question. I wanted to hear what they're comments was

But, of course, safety is of the utmost concern. And, you know, looking at this building, it just basically a two story building with a loft. So, my mind it's just a two story building.

So, access from the first floor, I would imagine would be front and back ... went out, which would be a problem, as far as escaping a fire.

Now, with the variance, if approved, the fire sprinklers would be installed ... that's your coverage for the upper floors, which I think get more time to exit the building.

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Listening to the testimonies, there is no common area. So, it's not like there's a major corridor where they would have to get out ... all individual units that they would be able to, uh, exit safely. So, that was part of my comments.

Chair Sung: Thank you.

Ray Shimabuku: And, if I may, I'd like to entertain a motion.

[01:19:19] Chair Sung: Yeah. After we finish the discussion, I ... I ... I do have a question. I'm not sure who I'm directing this to, so I'll just sort of asking them to open it and then whoever feels competent or, or otherwise willing to ... to answer it please, please do so.

Um, this is really more a question of ... of timing and what exactly happens in the process. Let's say that this board were to grant the variance ... k ... variance granted ... but the sprinkler system on the second floor and the lofted areas have not yet been installed ... What is the ... what is the timetable for getting those installed? What is the guarantee that, in fact, they will be installed? Is there any sign off by Fire Department, by Building Department ... uh, that, in fact everything has been done as contemplated?

Because, essentially, if this board were to grant the variance it is with the expectation that the sprinkler systems will, at a minimum, be put in place on the second floor and the lofted areas, no exceptions.

Because we're only talking about essentially exempting the first floor. So, what is the timetable? And, what is the guarantee that this, in fact, will be done?

[01:20:37] Tessa Munekiyo-Ng: Chair ... Tessa Munekiyo-Ng. Um, the upper level units have after-the-fact building permits in process. So, the, in terms

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of the guarantee, my understanding is that those building permits will not be approved until the fire ... all of these mitigation measures, um, have been installed. Uh, with the respect to timeframe, I could ask the applicant if they have a comment on that ...

[01:21:04] Mary Gross: I'm wondering if maybe Doug Gomes. He's our mechanical engineer that we have been working with regarding the fire, uh, suppression system. Uh, he has provided us with, uh, the information that we would have to do to install the fires ... a systems in our unit, which would include first applying for a permit for the major infrastructure that would be required, bringing a waterline in, et cetera, going to the buildings. And, then we would also need to attach individual plans, uh, that, that the Fire Department would up ... would approve the plans of that particular system and then they would be attached to the, um, the bill ... to our app ... to our, um, permits. Uh, and that that is when we would be able to just keep moving forward and have the, the permits issued. But, all of this that we're talking about would, would also require some permits. And, Doug, would you want to add anything to that?

[01:22:07] Engineer: Um, Douglas Gomes with Engineering Dynamics, a Civil Mechanical Engineer. Uh, we actually have, I believe, have a contract already signed some years back to design the system. And, what's involved is ... once, once we proceed with the design, we prepare plans to, um, connect the proposed water system to the Water Department's, water supply ... get plans approved by them to allow the connection, as well as prepare plans for the fire sprinklers because of the all the individual units, um, the permit from water department will probably take two or three months, you know, going through another number of iterations for review, get it approved. During that same time, we will do

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the design for the individual units. And, after getting all those approvals, would probably bid it out to three or four or five different contractors. And, then, the association would decide which contractor would ... would install the system. Generally, it's going to be the lowest contractor.

[01:23:08]

They're all, all the contractors has a license (inaudible) contractors. And, I would think, um, the installation would probably take a couple, two, three months ... um, depends on the availability of the rooms and when they, when they could be made available for the contractors to go in.

[01:23:24] Chair Sung:

Okay. Mr Gomes, we're talking about one unified system covering all 26 units. Or, are we talking about a collection of 26 separate unit systems? And, they may even be different systems unit by unit, by unit.

[01:23:41] Doug Gomes:

It's one supply system that will supply water to all the buildings into all the units. And, then, as you get to each unit, individual unit, there's a supply line going into the unit and custom designed to the layout. So, it is ... it is one supply system tapped to the County system ... one supplier system across the whole front of the building and an individual lines, um, into each individual space.

[01:24:09] Chair Sung:

Okay. Um, that's more as to placement and things like that, right? But, it's still the same basic system for each unit to unit to unit?

[01:24:18] Doug Gomes:

That's correct.

[01:24:19] Chair Sung:

Okay. So it's not the case that, um, I'm not saying there would be ... but, hypothetically if one of the upper level units decided to go cheap and you know, skimp here or there either as to material or as to product or as to placement or as to quantity, um,

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Doug Gomes: No.

Chair Sung: ... that they could do it, differently than everybody else.

Doug Gomes: There is a standard, NEP 13R, that fully, um, sets the criteria for the design of the system and how to install where the sprinklers will be placed and the type of material that are used.

Chair Sung: Okay. And timing wise ... when they do get installed, if this were to proceed, there would be all essentially installed, at the same time? We're not talking about, you know, one unit might be 12 months later, in the timeframe ... then then all the others? They would all be, there won't be any stragglers.

Yeah. Yeah. All, at once.

[01:25:10] Chair Sung: Okay. Thank you. Members ... uh, any other questions for Fire Department? For public works or for staff or for the applicant and its representatives?

Okay. Um, Mr. Shimabuku, is there a motion that you'd like to ...

[01:25:32] Ray Shimabuku: Yes.

Chair Sung: Um ... make?

Ray Shimabuku: First of all, I'd like to thank Mike and Tessa for an excellent report, on this, on this matter. Um, one positive note that I, uh ... you see all these people in the audience today ... they agreed or they came to become, um, happy family now and not fighting over stupid (inaudible) like flowers. (laughter) So, congratulations on being one big positive family.

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Um, looking over the comments from the staff report, uh, I would like to approve the variance with the whole harmless agreement and also the general liability insurance in place.

Also, the Maui Fire Department comments to meet the provisions, uh, in ... in granting this variance.

Chair Sung: Okay. Before we ask for a second, I'd like, uh, Ms. Thompson, Corporation Council, to ... to make any additional comments or ... or modifications of the motion as made by Mr Shimabuku.

[01:26:33] Richelle Thompson: Thanks. So, just a couple of suggestions regarding your motion. Um, and, this is based on the submission by the AOA. So number two, the hold harmless agreement ... um, what I'd recommend adding is: on behalf of the applicant, the hold harmless agreement shall be entered into by the Association of Apartment Owners of Polynesian Shores.

And, then, on the paragraph, uh, requiring insurance I'm adding to that, um, condition ... The Association shall procure and maintain the required insurance. Um, the other comment I have is, um ...

Because Public Works, a staff report doesn't include recommendations for or a lot of analysis, um, I just wanted to check that, um, you're relying on the Applicant's justifications, um, supporting the, uh, the variance.

[01:27:25] Chair Sung: Right. Correct. And ... and I would add, um, given that the Department of Public Works has not really weighed in ... one way or the other, we would also note that there has not been any opposition to the analysis ... um, in its own report, as well as to the Applicants, um, application. Um, and so, you know, just speaking for myself, if I break this down,

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[01:27:54] Ms. Thompson: Probably ... um, I don't know that you want to include that all in a Motion ... um, because that's not really part of that Motion ... it might be part of the discussion.

[01:28:03] Chair Sung: Yeah. Okay. I understand ... I understand what you're saying. So, um, do we have a second for the Motion as made by Mr. Shimabuku and clarified by Ms. Thompson?

[01:28:13] Trisha Egge: I second ... Oh! ... (chuckle)

[01:28:16] Chair Sung: Okay. So we'll, we'll open now for discussion. Um ... and Thank you. I would also comment that, um ... you know, breaking, breaking the variance down into three parts, the sprinkler system, the, the stair risers and the, um, the, the toilets in the two units.

Um, let's go backwards from, from that, in that order ...

Regarding toilets, just in my own, um ... in my own analysis, I would note that it's only two of the 26 units ... the, the encroachment into the areas by, uh, mentioned in code to me seemed rather manini. So, so I'm persuaded by, by the, um, presentation today and the application, um, to, to, to view it as such.

Um, regarding the stair risers ... um, I understand, um, that what's being requested is not that the units are going to put in spiral staircases, but rather, and for whatever staircases is they have in place to apply the requirements that are applicable to a ... a spiral staircase ... instead, to the existing staircases.

And, um, I find, um, I find, uh, not necessarily dispositive or convincing, but I ... I ... I ... I find helpful, um, the, the statement that there have not been, um, accidents, um, in the 40 plus years.

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Um, a note regarding ... regarding the, the stairs as they currently exist. Um, one question I would have ...

[01:30:07] Corporation Council: (inaudible) So, I wanted to just clarify whether, um ... whether you're recommending the stairways to remain as is? Or, if any modifications need to be done, they need to meet the spiral staircase, um, code? Might be a question for the appli ...

[01:30:23] Chair Sung: Right. And, I was getting there too ...

I ... I think that ... two of the upper level units are in a different place than the other 24 ... namely those two that basically removed the loft. So, I think there was a reference somewhere in the presentation or the application that those two owners of those two specific units who previously removed the loft might wish to rebuild a loft, at some point. And, if they did ... what requirements would they be held to?

A-a-and, that's really something for us to discuss ... which is, you know, um ... (inaudible) ...

And, for those two are, are we basically giving ... as part of this variance ... license to those two specific unit owners on the upper level to essentially build a, a new spiral staircase or any old case ... as long as it complies with, with the spiral case requirements?

[01:31:20] Trisha Egge: They'd have to do a building permit, though.

Juanita Reyher-Colon: Yeah.

Chair Sung: And, I think our variance would apply to their building permit that they would then get ...

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[01:31:26] Tessa Munekiyo-Ng: Um, uh ... Tessa Munekiyo-Ng. So, the request ... yes, the two units that did remove their lofts, they would like to reestablish their lofts. Um, and they would comply with the standards that are shown here.

Um, and uh, to Corporation Counsel's comments ... Um, there are a few units that do not meet these standards that are shown in yellow, and those units are willing to make improvements so that they can, at least, that they meet these, um, variance request requirements.

So, in the variance, we do have a table that shows the dimensions for each of the different units. It's Table One of the application. And, um, the numbers indicated in red in that Table are areas ... are units which do not meet the standards that are shown here, and those units are willing to make adjustments to meet this, the standards presented in the variance request.

[01:32:24] Chair Sung: Okay. Thank you. And, the, the third part of the variance request would be, um, essentially the requirement of the automated sprinkler systems for the second floor and the loft that's considered the third floor, but not for the first floor.

Um, and, uh, for the record, I ... I am, um, I'm persuaded by the presentation and ... and application and the testimony and particularly helpful are the comments of ... of Mr. Vaas of the Fire Department. So, thank you very much.

Um, Members ... any other comments for the record regarding the motion as made and seconded? (silence)
Okay. Let's, uh, let's have a vote. All in favor of the motion, please say Aye.

Aye. Aye. Aye.

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Chair Sung: Any opposed? Hearing none, seeing none. Motion passes.
Variance is granted.