

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JANUARY 25, 2007**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Lance Holter at approximately 1:31 p.m., Wednesday, January 25, 2007, 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.)

B. PUBLIC HEARING

1. **MIMI HU of BOERINGA, LLC requesting approval of variances from Maui County Code §16.26.100, §16.26.503.2.1 and §16.26, Table 5A, to allow one hour U.L. rated windows less than five feet from the north and west property lines, whereas no opening is allowed within five feet of the property line for the Boeringa Building located at 77 Ho`okele Street, Kahului, Maui, Hawai`i; TMK: (2) 3-8-084:006. (BVAV 20060009) _____**

(Due to failure to comply with noticing requirements, this item will be rescheduled to a later date.)

2. **JAMES B. TAKAYESU, ESQ. representing NENITA CORPUZ requesting a variance from Maui County Code, §19.08.060(A) to allow a portion of a reconstructed two bedroom, bath and family room addition to be 4 feet, 6 inches from the southwestern (*mauka*) boundary line whereas 6 feet is required for property located at 5080 G Hanawai Street, Honokeana, Lahaina, Maui, Hawai`i; TMK: (2) 4-3-014:024. (BVAV 20060011)**

(Rescheduled from the January 10, 2007, agenda.)

Chair Holter: Will the staff please read the notice of public hearing and the purpose of this application?

Ms. Trisha Kapua`ala then read the notice of public hearing into the record.

Chair Holter: Is there a video presentation?

Ms. Kapua`ala: No, sir, not at this time.

Chair Holter: Will the applicant please come forward, and speak into the mic, and state

your name?

Mr. James Takayesu: James Takayesu. I'm appearing on behalf of – representing Nenita Corpuz. She's the owner of the subject parcel.

Chair Holter: And will you waive the reading of the staff report?

Mr. Takayesu: Yes.

Chair Holter: Would you like to make your presentation to the Board?

Mr. Takayesu: Before I do that, we do have someone from the Napili Hau Community Association. She wanted to present some–

Chair Holter: Can she stick around for the moment when we have public testimony?

Mr. Takayesu: No problem. Okay. The staff report basically does incorporate most of the materials that we submitted on behalf of the applicant. I'd like to point out that the owner, Nenita Corpuz, did apply for a building permit in May of 2004. That was prior to any work being done on the property. That was an application that was – the response of the County was that they would not be able to process these types of applications because her residence was within the Napili Hau planned unit development. And since 2001, the department was taking the position that unless the community association came in with a comprehensive revision request, none of these owners within this affordable housing complex would be able to do that.

Again, the request we're making is for a sideyard setback of approximately, 18 inches. The requirement is six feet. However, we felt that on both – the project itself is unique because it is an affordable housing development that has been around for over 25 years in a destination area where affordable housing projects like this are very scarce. Over time, the people who live there, their needs to meet – the needs of their families change. And the whole idea of having a planned unit development was to create flexibility. However, since at least 2001, and this project was initially approved in the mid '70s, '76, at least since 2001, the department's position has become even more rigid so that all of these owners were unable to obtain building permits or SMA minor permits to expand their homes whereas people who had applied prior to that, prior to 2001, were able to obtain permits and modify their homes.

Ms. Corpuz found herself in a situation where she had recently acquired the home. As part of the mortgage requirements, she had to continue to maintain insurance. The home she acquired from her – through her mother was in disrepair, and the insurance carrier was threatening to terminate the insurance which would place her in default.

She had submitted plans. The plans were rejected, but all the problems were pointed out in a letter from the Department of Public Works. So when she did go ahead and reconstruct the addition that was in disrepair, she complied with all those requirements. Now, what was absent from that letter was any reference or problems with the setback. And that was because until April of 2006, the Planning Department, for whatever reason, had taken the position that Ms. Corpuz's residence was in the Napili Bay Civic Improvement District which does not have setback requirements, instead it has lot coverage requirements. And the addition that she made was in compliance with those requirements.

Again, I don't know what the reason was whether there was an improper entry into their computer, but when we went for the SMA assessment, we were originally told – we were told that at that time that it was part of the Napili Civic Improvement District, and they found the error only in April of last year. And then at that time, they said now, you have to go and get a variance for the setback.

Again, we agree with the staff report that there will be no detriment to the adjoining parcels. We do believe that this is not only a unique project, but that – also, the location of the Corpuz property fronting Napilihau and adjacent to this open space, which is the widest open space entry area, that's in the middle of this phase one project.

Attached to our application, the staff did attach additional photographs and also a map. And I'm not sure exactly what this map is, but it does – this is – this would be Nenita Corpuz's property: this line here. Colored it in. That's Napilihau Street which is the main drag between the planned unit development and Napili Plaza. Now, you can see that there are spaces between all of these residences. A lot of these are parking areas. They're not open space. So of all the units along Napilihau Street, only two of these lots are adjacent to the open space area. There is an open space area off of Hanawai Street, but it much narrower, so it looks more like a walkway. This one – and for that reason we felt that not – well, most of the units in this phase one area would not be able to expand like Ms. Corpuz's property without being close – too close to one of the neighboring residences.

Again, the entire requirement for setbacks of this nature is to create minimum space between residential units at six feet. And if there's back-to-back, that would be 12 feet. This one, because you're next to a 44-foot open space, it's going to be over 50 feet. And we feel that the whole purpose of that setback requirement would not be jeopardized in any way because of the unique placement of this particular lot.

If there are any questions–

Chair Holter: Mr. Shefte?

Mr. James Shefte: Yes, the construction that's there now, that's the replacement for the original addition, is that correct?

Mr. Takayesu: That's correct.

Mr. Shefte: And is this exactly the same footprint?

Mr. Takayesu: The exact footprint except it does have that concrete walkways is different. It was to, I guess, deal with some problems that they're having with water.

Mr. Shefte: But the building itself is built on the same location as where the original addition was?

Mr. Takayesu: That's correct.

Mr. Shefte: Did the original addition have a permit?

Mr. Takayesu: It had been given an SMA, I guess, minor permit, but the prior owners did not go – obtain a building permit.

Mr. Shefte: They did not?

Mr. Takayesu: They did not. It was strange that the letter where the SMA approval was granted indicated that you're required to get a building permit, if required. I mean, obviously, it was required, but this was owned by Nenita's parents, and they went ahead and built without a building permit.

Mr. Shefte: Okay. Thank you.

Chair Holter: Any other questions? So what's–

Ms. Kathleen Acks: I do have a question. How many square feet is the current house?

Mr. Takayesu: I'm looking at the building plans that we submitted, and I really can't tell what the dimensions are. I know that the addition was 504 feet.

Ms. Acks: And from what I'm seeing, it's six bedrooms? Is that correct?

Mr. Takayesu: That's correct.

Ms. Acks: How many people are currently living in–?

Mr. Takayesu: There are – let's see. They have Nenita Corpuz, her husband, her 14-

year-old son, her niece, her uncle who's her father's brother, and the uncle's son. So there's seven people. Seven people?

Ms. Acks: Thank you.

Chair Holter: Warren?

Mr. Warren Shibuya: Mr. Takayesu, I just have a question here in terms of the proposed area where you're going – they, the Corpuzs, want to expand. Is that facing another home? On the map it doesn't show that there's a homeowner or the placement of the adjoining neighbor.

Mr. Takayesu: Okay. What we have is attached to the application is a TMK map. Again, this is Napili Hau Street. The yellow portion is the Corpuz property.

Mr. Shibuya: It's a corner lot?

Mr. Takayesu: The corner lot – well, the corner lot adjacent to this open space. Okay? And attached to the application are photographs. This is the portion. This is the addition. And this is the addition with the open space. This is the addition looking back towards Napili Plaza. Behind this hedge is the next closest residence.

Mr. Shibuya: Just looking at this photo here with the railing in front, this one here, it shows the building having the addition already built. Is that true?

Mr. Takayesu: That's correct. They're coming in for an after-the-fact SMA permit which is currently pending the outcome of these proceedings. So it's an after-the-fact building permit. We did have approval of the revised plans, but because the setback issue came out, and – before that it was because of this what we believe was an illegal requirement that prohibited single lot owners in this development from processing and getting – obtaining approvals for building permits.

Attached to the application, I do have additional photographs: the smaller ones. So it gives you an idea the placement of the addition in relationship to the next residence. So this is the corner of the addition looking mauka towards the next residence.

I tried to use certain trees. You can see a tree here. This is a tree looking back towards the Corpuz residence. And then the reverse view is from the Corpuz residence looking back towards the tree.

So again, the minimum required distance between a residential unit would be – of single story residential units is 12 feet. And here you're looking at a spacing of almost 55 feet.

Ms. Acks: Can you tell me if there are other six-bedroom units in this area?

Mr. Takayesu: That I don't know. I think Sue Campos, who's with the Napili Hau Community Association, she's probably more aware of what additional – what additions have been made to these other 174 units. Yeah, she indicates she does know.

Mr. Shibuya: Mr. Takayesu, maybe you can explain the planned unit development. Is that a restricted type of property like a CC&R? Do they have specific restrictions and covenants for this area?

Mr. Takayesu: That is correct. They have – well the planned unit development concept was to again, create more flexibility. So you can have – they utilize this to create affordable housing and provide for additional open space that you normally would not have if you did a standard subdivision. And as part of this, you also have a community association that has bylaws. They also have a design review committee so that the association has the right to approve or to reject any proposed modifications to any of these units. Each unit is individually owned. I think the whole concept was to have people become first time owners of their homes. This is back in the mid '70s.

Mr. Shibuya: And what time of restrictions do they have in terms of setbacks?

Mr. Takayesu: The setbacks were originally established through this three-step process in the '70s. They have three steps. One of the – more a conceptual plan, then a sketch plan, and more like a site plan where for each lot there was a box indicating the location of the structure.

Mr. Shibuya: But they don't have anything specified in terms of six feet, five feet, four feet?

Mr. Takayesu: No, I think because it would depend on each of those units, and you look to the map that was eventually approved.

Mr. Shibuya: See, I'm troubled in a couple of spots here. And one is the entire length of this home is encroaching on that setback by 18 inches. And it's for the entire length. It's not just the corner piece.

Mr. Takayesu: It's encroaching within the setback, but not the open space. It's still four and a half feet from the property line. So you're looking at 18-inch.

Mr. Shibuya: And there's no homes that's going to be built in that open space?

Mr. Takayesu: Right. The requirement was that the association would perpetually maintain that open space along with the recreational center. And I'm not sure exactly

where that is, but this particular area is to be a perpetual open space.

Mr. Shefte: Yeah, I'm familiar with that. That's correct. Another question: was this application submitted to their design review committee, and did they approve or disapprove?

Mr. Takayesu: It was submitted to them sometime ago. And again, Sue Campos is here on behalf of the association. And she can – she's in a better position to tell you about the history of their association and what's actually within that project. We submitted it over a year ago, or a long time ago? Two years ago?

Chair Holter: So on page six, sir, you say because of the Department of Planning's erroneous designation, her revised plans – these were plans that were submitted after the renovation, after there was a citing by the Building Department? And they were originally approved, the after-the-fact building permit?

Mr. Takayesu: Is this page six of—?

Chair Holter: Of your submittal.

Mr. Takayesu: My submittal, okay.

Chair Holter: The second to the last paragraph.

Mr. Takayesu: That is correct.

Chair Holter: So originally, her revised plans for the after-the-fact building permit, they were approved by the Planning Department, Building Department?

Mr. Takayesu: Okay, the original submittal in May of 2004 was not approved. She received the letter from Public Works pointing out various technical problems with the plans that were submitted. In addition, she was notified by a separate letter that these types of building applications could not be processed because it was within the Napilihau planned unit development, and they're awaiting the association submitting a comprehensive revision plan for the 174 units.

What we did once we got involved, we looked at the plans. We advised her that it would be better to go ahead and hire somebody to redo the plans to reflect – to address what the issues were. And we eventually, we did receive a fax from Public Works saying that the revised plans were approved – I mean, were – had been reviewed and were approved by Public Works, but could not be – no building permit could be issued because Planning had this requirement that required this comprehensive 174-unit revision. And then because of that, we met with both Planning and the Department of

the Corp. Counsel to address that issue. Our position was there's nothing in the Maui County Code or any rule and regulation that requires that type of comprehensive review. And a single owner should not be prevented from going ahead and applying for these various permits that apply to their own unit.

Chair Holter: So, then also I want to ask you one – the fifth paragraph on page six from the bottom, it said that the Department of Planning without any change to the County Code or any discussion of the rule adopted an illegal policy that no building permits could be issued until the Napili Hau Community Association gained Planning Commission approval. Do you know how that all came about? And maybe so our – maybe this is a good time for the public to speak on this matter. Is that okay with you? Is that all right, you guys?

Mr. Takayesu: Well, let me just make a few statements. When I met with Planning, they said they had problems with Puamana out in Lahaina, I guess, as a residential planned unit development that has been transformed and operated as a quasi resort hotel. And because of that, they wanted to be sure things didn't get out of hand. And so because of the problems with Puamana, which to me is like a resort, totally different from the Napili Hau, they were taking the position that if somebody wanted to do something, you had to come in with these revised plans. They did say that there was a particular issue where a lot of the owners in Puamana wanted to modify their units by adding these dormers to their units. And so they're getting all these applications separate, and it felt like if Puamana came in and just made one request for that particular type of dormer, then anytime somebody else came in, they wouldn't have to go through that whole process. Okay?

We did eventually get a letter from Planning where they backed off the requirement, and we've attached it to – I believe we attached it our application. Well, actually, I know they recite it in the staff report, page seven. It's the April 13, 2006 Department of Planning letter issued to the applicant. And this is where they acknowledge that the unique aspect of Napili Hau PD is that it was developed as an affordable housing project, and still houses many working class families. And because of that, they were going to treat us separate – differently than Puamana, which has always been a very problematic project for the County of Maui.

Chair Holter: Are there any questions? Let's just take a break from your testimony and let's have the public speak to this matter. If you'll please state your name and speak into the mic.

Ms. Sue Campos: My name is Sue Campos. I'm here on behalf of the board of directors of Napili Hau and also as a resident of Napili Hau. I have been in Napili Hau from day one. I put down my first fifty dollars in 1972. And my ex-husband and I moved in in '75. I've been on the board for at least 20-some odd years. I've been the president for

at least 15 of those years. I know the history of Napilihau. I know the history of the County. And I've also served on this Board for four years so I know the workings of the Variances and Appeals.

First of all, I don't know if you – I know some of you are aware of Napilihau. It was built by Maui Land and Pine when they developed Kapalua. They were building it to house their employees because they were now tearing down their houses along the Office Road at Kapalua. They built 174 houses. And they fast tracked it through the State and the County by building a PUD. These are prefab houses. It was built very fast and very cheaply, but it also was open to the public. And fortunately, my ex and I were able to purchase a house through a Farmers Home Administration. We're very appreciative of owning a home, but Maui Land and Pine left us with a big can of worms.

For 25 years, the residences of Napilihau, myself included, have come to the County to apply for building permits. And we were given legal building permits by following the setbacks and the County codes. Back in about 1999, we had some problems with some carports that were falling down. And we had a president at that time that came to the County and started rocking some boats, and stirred up a lot of questions. After 25 years of giving building permits to our residences, the County came in and said, uh-oh, we made a mistake. You are a PUD. We are not allowed to give you individual building permits. You are, as a community, to submit a whole revised community plan in order to have us give you any building permits.

So at that point, unfortunately, we have had, over the years, people building illegal additions. They're not turned in by their neighbors because we have a loyalty and a very wonderful family in Napilihau.

My concern and a lot of the lot of the other homeowners are that these additions want to be safe and legal, and something that's going to fireproof. And we're very concerned with people building illegally. We, as a board, have supported this variance. We voted on it a couple of years ago. We did not realize that the original owner did not get building permits, but it's a sound structure, and we, as a board, have approved this.

We have a lot of common areas, and that's what James was talking about. This particular house is right next to a big common area. So her addition is well far away from the next house. If there's ever a fire, she's probably better off than most people. We have houses in Napilihau that are duplexes, houses that are attached. So at the time Napilihau was built, there were special variances made for setbacks. We have multi family people living up there because we cannot afford to buy other houses. So people have added on. I, myself, added on a little structure for my mom when she was alive, but I did it legally. I came through the building codes and the building department.

So I just want you to know that it's been a real thorn in our sides in Napilihau. We are

low income people. We are a low income community. For us to change our community plan would mean getting architects, getting lawyers. We do not have that kind of money. We barely meet our budget every month with our water needs, our sewer needs, our trash needs. We are trying to keep our maintenance fees within mind for the low income. We still have people like myself that are original owners. And a lot of the retirees from Maui Land and Pine still live in Napilihau. So we are trying to keep things within line, but we are concerned with people that need to add on to their homes for their families. They're growing. Or that mother-in-law that needs to move in.

The board is very concerned with what's being built. We do not want to see a two-story going in. We have come to the County. I have come to the County many times. I came to John Min years ago and discussed this matter about giving building permits for 25 years and all of a sudden having it come to a halt. That's a little ridiculous. If you had been giving building permits for a year, and said, uh-oh, we made a mistake – but 25 years. So I think this variance is something that she's been going through for – this whole process for almost three years. And I hope that you folks will see that this is a step that needs to be taken. And I think she has met all the criteria of the variance. Other than that, if anybody has any questions?

Chair Holter: Are you familiar with the zero lot line in affordable housing projects?

Ms. Campos: Not really, no.

Chair Holter: It's where they actually have no setback, and the affordable housing units are actually built with no setback. So that's kind of a similar situation.

Ms. Campos: They're almost similar because we do have, like I said, we have houses that are duplexes that have a common wall. So there is no setback on those two houses. And there's a lot of them up there like that.

Chair Holter: There is a special ordinance in the County Code for zero lot line. So what would it take to be able to get your project into a position where people wouldn't be building illegal additions?

Ms. Campos: Well, we have stated as a board and to the community that we want the people to come to the board of directors first with their building. And then we tell them to go to the County. And if the County approves them by all their regulations, and then they can get a building permit. That's the steps that we would like, as a community, in Napilihau.

Chair Holter: Thank you.

Ms. Campos: Thank you.

Chair Holter: Hari?

Mr. Harjinder Ajmani: Since you are familiar with the history of the project, I thought I'll ask you some questions. I'm having some trouble understanding the various dates here. So this is a replacement, addition, I take it?

Ms. Campos: Yes.

Mr. Ajmani: This was originally built in 1994?

Ms. Campos: I believe so, yes.

Mr. Ajmani: And there was no permit taken at that time, to your knowledge?

Ms. Campos: No building permit. I don't know if the board of directors at that time might've approved it. Her mother might've come to the board and approved it. I'm not sure. I have no record of that, but she did not get a legal building permit.

Mr. Ajmani: Yeah, at that time, the County was issuing legal building permits?

Ms. Campos: I believe so, yes.

Mr. Ajmani: So the permit was never taken at that time?

Ms. Campos: That's what I understand, yes.

Mr. Ajmani: And the board of directors knew about this illegal construction, or they did not?

Ms. Campos: I don't know if I recall that if I was on the board at that time.

Mr. Ajmani: I see.

Ms. Campos: But the current board has looked at her plans and they are willing to accept it as it stands even with the variance.

Mr. Ajmani: So the current board has written a letter, or is in a position to write a letter to say we agree with this?

Ms. Campos: Yes.

Mr. Ajmani: Okay. Thank you.

Chair Holter: Mr. Shefte?

Mr. Shefte: Hi, Sue.

Ms. Campos: Hi.

Mr. Shefte: I appreciate what you're talking about because I lived nearby for many years. And I understand the frustration that you're going through and the frustration of the people who live there as you say are not wealthy people, and therefore, not so able to come up with the funds necessary to do all these things that are being requested. So I sympathize with what you're saying. Is there any--? One question I would have is, if we were to approve this, it would be somewhat precedent-setting.

Ms. Campos: Yes.

Mr. Shefte: And you say that other people have built additions not legally?

Ms. Campos: I believe so.

Mr. Shefte: You think that then they would -- some of them would come forward and try and legalize it?

Ms. Campos: I believe so, yes.

Mr. Shefte: You do? Thank you.

Ms. Campos: Thank you.

Chair Holter: And they'll come in for after-the-fact permits?

Ms. Campos: We already have had a few people. I think there's about three right in the process right now.

Chair Holter: And are they being granted?

Ms. Campos: I don't know at this point.

Chair Holter: Are they coming with the same problem with that? It's a PUD?

Ms. Campos: Yes.

Chair Holter: Warren?

Mr. Shibuya: I'm disturbed by the fact that the community association, if I heard you correctly, Sue, that you're not willing to make the change in your ordinances or – I mean, your covenants and restrictions. Are you willing – or is the board willing to do this? If you are, then it would be consistent with everyone in the community. And it would be easier for us to allow for this variance. Having a variance just for one lot owner is not my kind of cup of tea here.

Ms. Campos: I understand that. I don't know if you understand the whole complex of Napilihau. There's 174 houses. Each lot is a different size. It's a different shape. And for us to go and change the whole community plan – it's not that we don't want to. We don't have the funds to do it. It would take a lot of money to go through the process of redesigning. We'd have to get an architect. We'd have to get lawyers. It's not that we don't want to. We do not have the money to do it.

Mr. Shibuya: It's an element of fairness that I'm after.

Ms. Campos: No, that's true. That's why we are saying this is setting a precedent, and we'd like to see something open up with this whole position. And if people have to come individually for variances, then that's what they have to do. That's why your commission is here.

Mr. Shibuya: I'd rather address the entire situation for the entire PUD.

Ms. Campos: So we would, if we could afford to do it.

Mr. Shibuya: So you're pushing me into a very difficult position of probably even denying it, and saying, well, you guys fix your own situation here. Then come back to see me.

Mr. Takayesu: Can I respond to that? Say you have 174 single family owners, okay? They all own their own homes. Let's say ten people were interested in getting permits to modify their homes. That means 164 people who aren't interested in doing that would be required to pay their share for the ten people who wanted to do this. Okay? Now say somehow you get everybody to agree. Well, us 164 people, we're not really interested, but we'll pay all this high cost for the development, consultants, lawyers, engineers, whatever it takes. And so you come to the Planning Department. They approve it. Oh, now, next year two other guys want to go ahead and modify their homes. Now, you have to come through this whole process again? That's why we said this illegal requirement. And they pull it out of– I'll say they erred, to be nice. There's nothing in the Code that requires this. If you look at the project districts, the Kihei Tech Park, they have Code provisions that spell out procedures, standards. It tells you who will make the decision, what you have to submit. There's absolutely nothing in the Code that deals with it. All you're dealing with is the original approval of a PUD for someone

who owns more than, I think, three acres. Nenita's lot is like 3,000 – under 4,000 square feet. And we're saying it doesn't apply to her.

And look at all the other Code sections. It's similar to what you had with the co-ops. It's a form of common ownership that – before the condominium. But they created so many problems that they created a new form of ownership like the condominium, horizontal regime. So I think what you have in the Maui County is, all of a sudden you have this project district ordinance which seems to have all of those things spelled out. It makes it very clear to the public what's required.

The thing is, administrative agencies cannot just make up their own policies. If it affects the rights of the public, they have to go through the Hawai'i Administrative Procedures Act. And in this case, they have not. There's no rules and regulations, and there was never any change in the ordinance. It was something that someone came up with this idea, and it just brought everything to a halt forcing people to go ahead and build without the required permits.

I think what happened was finally we got them to say at least we'll process these things individually. And Nenita, if you want to do it, you go get your attorney. You get Jeff to draft up the plans, and you have them walk it through. But it's not going to cost the other members of the association anything, although they have the say. If they say we're not going to approve your building request and that's it. Because then even if they were to get the building permit from the County, they would be in violation of the bylaws and covenants. And the association would have the right to put a stop to it.

Again, now that it's at least feasible, it's more important – it seems possible for people to come in for after-the-fact permits. Because a lot of times if you have illegally built additions to your home, I don't know how you're going to even sell it, if somebody really does their due diligence. And you might have a hard time making it marketable unless you go ahead and do the after-the-facts.

Again, affordable housing in West Maui is very scarce. You have people who have to take care of their families. Nenita is living there. She also has a niece who lives with her, her father's brother, and the son. You know, where they're going to live? The uncle works for Maui Land and Pine. Amazing how strong they are. They can still be in the fields at that age. The rest of the family are working either as groundskeepers at Kapalua, at the golf course, or doing housekeeping. It's just – if she – if her parents had not purchased the house, I don't think this family would have ever been able to own a home in this market. And so they're just trying to go ahead, doing everything legal, and hopefully, show everybody else that you can go ahead and comply with the rules, and also take care of your family. And that's why I think the association is here today to support our variance request.

Chair Holter: Mr. Takayesu or Ms. Campos, so in order to get these building permits through, would each and every application have to get a variance from this comprehensive amendment? Is that what we're trying to do here is get a variance from the amendment? Is that a possible avenue that could occur?

Mr. Takayesu: It's not so much a variance. It's a to go ahead and modify the portion of the plan that's within your lot. So if the setback – again, the setbacks are all different. The housing configurations are different. So as to your particular lot, you're saying I want the outline of the house to be here, and this is going to be this close to this line. You don't have to do the whole thing—not the 174 units. You'll have to come in to the Planning Department to get that modification approved.

Chair Holter: But what I'm saying is, could we circumvent this comprehensive amendment by actually asking for a variance from that amendment? Is that another possible avenue? I'm just wondering because it seems like an impossible situation.

Mr. Takayesu: Yeah, but I know at least there seems to be a light at the end of the tunnel for these people whereas last year it was like hitting a wall.

Chair Holter: Is Mr. Kosaka still your attorney or—?

Mr. Takayesu: I work with him.

Chair Holter: Okay. I wonder if this is something you could look into: getting individual variances from the amendment for these individual situations.

Mr. Takayesu: Okay, because we still have to go back to the Planning Department. And so when we do our submittal, we could also—

Chair Holter: That's why we're here for: Board of Appeals and Variances. If they have a ruling that says you can't do this, maybe you can appeal that ruling, and then therefore, you can get a variance.

Mr. Takayesu: Or ask when we go in for Nenita's amendment to the PUD plan, also have some provisions that would make it easier for everybody to process their applications.

Chair Holter: Because I know this Board is very compassionate about these sorts of issues. So I just wanted to let you know that we're all here to make things work on the island. Yeah?

Ms. Acks: How often do the Board meet—the homeowners association?

Ms. Campos: Once a month.

Ms. Acks: Once a month. Would it be possible—? I mean, because you said some of the alterations have been things that would be approved, some would not. Without doing a major revision of the plan, could the CC&Rs be looked at, and maybe revised? So that for example, the six-foot setback could be amended to be six-foot next to a property that has – that is buildable so that this property that it's next to a property that cannot be built on, that six-foot setback might be restricted to four and a half feet? So it might be four and a half feet adjoining a— I'm not sure how it would be. I'm just trying to take a look at could some of the CC&Rs be revised so that – I mean, I think what I'd like to see is your organization let us know. If you see some things that should not be approved and some things that should be approved, I certainly think your CC&Rs should be significant without doing a major revision of the entire plan. Are there some of the specifications maybe that could be modified that you would have buy-in from the association whether people are supportive – or planning on making those modifications or not?

Ms. Campos: Our CC&Rs do not address issues like that because we are a planned unit development. I know – I don't have the papers with me. I know we had certain setbacks that were variances when the place was built. But our CC&Rs and our bylaws, they really have nothing to do with setbacks or anything else because we're considered just one big property like a condominium. So the board doesn't have that capacity to do that. It would have to go through the County to change that.

Mr. Ajmani: I think the issue here before the Board is that these PUDs, whenever they're approved, they're approved as a whole package. And everybody who buys into that is made to understand that this is a whole package that you're buying, and there are special prices for it. You pay minimum market prices for it and so on. So there are – the County puts some restrictions on that. And actually, that's the reason – the reason why you cannot individually modify it or make a little change in one place which might affect the others. The County doesn't want to go through and look at a little change that might affect the whole project. So I think what Board members are saying is that maybe the time has come. And the community association should tell all the owners that, look, you need two permits here: one from us to make sure that we can go to the County and say we agree with this, and they're willing to live with this as a community, and then the building permit will be issued with all the County rules and so on.

Ms. Campos: That's what we want to do and that's what we have explained to our homeowners that – to come to the board first. That's what's in our CC&Rs. We have an architectural control committee. So the board has the ultimate say of yes, we want that, or, yes, we don't. But we want them to go to the County and get a legal building permit. We want to see sound structures and the legality held up. So we have told our

homeowners that. Come to us first, and then go the County. Get your building permit, come back to us, show us you have a building permit, and go from there.

Mr. Ajmani: But obviously, if so many people are building illegally means the process hasn't gone through the way it should be.

Ms. Campos: Yes, it's been going on for 30 years. And for many years, people could walk in and get a building permit without the board's approval also. I mean, this has been 30 years that this community's been up there.

Mr. Ajmani: But this particular instance, neither thing was taken. It was neither approved by the board—

Ms. Campos: I really don't — I don't know if the board approved it. They might have. I don't have any record of it. The board might've said yes to her, but I don't know if she ever did that or not.

Mr. Ajmani: Okay, then what will it take the board to formalize this process of approval because you don't have any—?

Ms. Campos: The board has already approved it.

Mr. Ajmani: Is there documentation here?

Ms. Campos: I don't have anything in writing, but I could supply that to the Variances Committee if they'd like. And also, when she applies for her building permit, we're hoping that the Planning Department will see a letter accompanying their request from the board of directors saying the board has approved it. We're trying to work with the Planning Department on that aspect.

Mr. Ajmani: Okay. I think one of the issues that the County will have is right now, you're claiming that the variance or setback should be allowed because of the open space. How does the County know that it's not going — this will remain as an open space?

Ms. Campos: Because it's in the PUD. In our planned unit development, we cannot build on the common area.

Mr. Ajmani: But so many things in PUDs there which have been violated already.

Ms. Campos: Well, over the 30 years, there has — our open space has remained the same in 30 years.

Mr. Ajmani: Okay. So I think that will be one of the things that the County may want to

get in writing that this open space will stay open space.

Ms. Campos: I think the County is usually aware of that in a PUD.

Mr. Ajmani: Okay.

Ms. Campos: Hopefully.

Mr. Takayesu: I'd like to point out that again, the April 13, 2006-letter on page seven of the staff report, the requirement of dealing with the PUD approval was really simplified. Steps two and three, just by having a set of building plans with a site plan, those will be sufficient to comply with the step two and three in terms of specificity. And they say the application will go before the Commission as simply a communication item. No public notification other than through the Commission agenda is required. This is very simple. This is – people who live in this project would be able to get before the Planning Commission to get their approval without having to pay an exorbitant amount of money. And so, the Planning Department can deal with this, but it'll still have to be on a case-by-case basis. It's just like the homeowners' association. It's probably in their best interest also to require every owner when they want to do something to come through them instead of just having a blanket, oh, we're just going to ask for the setback to be reduced across the board. If you look at these – the way the layout is, there are a lot of different configurations. So probably having a blanket change might not be good. And I think in the long run, it's good for the association to be able to review and either approve or disapprove any change by any of these owners. That's part of belonging to a multi family-type project. But again, what the Planning Department was – finally came up with is something that is very doable. It provides flexibility and makes it very easy for people to obtain their approvals.

Ms. Acks: Is everybody living there an owner? Are any of them rentals?

Ms. Campos: Yes, we do have rentals up there.

Ms. Acks: You do have rentals?

Ms. Campos: Yeah.

Ms. Acks: What percent of when you have your monthly homeowners' meetings, what percent of the owners come to those meetings? What kind of participation do you have?

Ms. Campos: We get about a 30% which is pretty good. I'm guessing at least 50% are owner-occupied.

Chair Holter: Warren?

Mr. Shibuya: Mr. Chair, I'm torn between this trying to simplify it and allowing for this group or at least this variance. However, it seems that the community association which has the power to equalize it, and come up with some guidelines in which everyone could possibly fit in or comply with, they're not willing to come to some kind of a resolution. It seems like we are the only agency to get some approval or variance. I'm not too keen on that kind of arrangement especially, when you already have infractions, violations there of people building on their own. I think the community needs to step up and designate specifically which lots they want to identify with the specific setbacks. Because of the unique type of structure and arrangements of the lots, these have to be done by the community, not by this Board of Variance. It is best that – you know, I'm all in favor of remanding this issue back to the committee for settlement. And after the community has come up with their setback standards or property layout standards, then we can address any deviance or deviations that's being needed. And that's my thought on this so far.

Mr. Takayesu: Excuse me. Because this was after-the-fact, the County's taking the position where there's a hundred-dollar a day fine running. And it'll be nice to remand it and try to resolve it globally, but this person – my client has been trying for the last – almost three years to go through this process. Whatever happens, you have to go through Public Works so that they can look at your building plans. You're going to have to go to the Planning Commission to get the PUD. In this case because of the setback, we also have to come to the Board of Variances and Appeals. In many instances, when they're coming for the after-the-fact, they might not have a setback issue. They only have to go the Planning Department. And of course, also go through Public Works to be sure that all the building requirements are met so that the structure is sound. Again, it's not something where you can just come up with a rule because again, you're looking at – when you at this map here, the passages to the open space, some are like – look like three or four times wider than others. This one looks just like a little pathway. This is – the one next to Nenita happens to be the widest by far. So what might be acceptable here might not be acceptable to this little pathway because then it'll be too claustrophobic. So again, what is before the Board is the request by someone who's basically trying to pioneer the way for other people to comply with the law. Other people, I guess, have just thrown up their hands and just had to try to do the best they could to meet the needs of their families.

Chair Holter: So not everybody is going to require a variance.

Mr. Takayesu: That's correct.

Chair Holter: And this may be the only variance request that we know of. There might be ten other projects that are just applying for an after-the-fact permit.

Mr. Takayesu: That's correct.

Chair Holter: But in this case, this requires a variance.

Mr. Takayesu: That is correct.

Chair Holter: Any other discussion? With that, I'll close the public hearing. And do we have a motion or more discussion with the Board?

Well, I'd like to say something. After being here 25 years, and being a contractor, and trying to get things done, I now find myself continually helping people get building permits from 25 years ago having projects that now require building permits because as more and more people get neighbors— And I even have the Building Department calling me. They say, "Call Lance. He'll help you get a building permit." And it's – and I find this over and over and over of what people were doing 25 years ago completely different now because all of a sudden all the little empty lots are filling up with houses and we're having neighbors in the way of other neighbors. And everybody's having to come to get building permits, after-the-fact permits. For instance, down Kulike Road and Haumana Road, there's a whole bunch of houses down there that didn't even build with permits in those days. And now they're coming back asking for after-the-fact permits. And this is the case here that we have: the same situation.

And we have a small amount of people here. We have five people. So whatever we do and we vote in this situation, it's going to – either we're going to pass this variance or we're going to have to wait 'til the next hearing when we have some more people. But in this case, it's been very plain to me that it's not a situation where every applicant is going to require a variance. It's going to be one – perhaps, this one party right now who needs a variance from us so that they can proceed and find a way for the rest of the people. Once they see her get her variance or get her building permits, and then using this criteria on page seven to get their after-the-fact permits, then I think we have a way that we can resolve this for the rest of the community. So I'm just one of you five, but I think we've got to be real careful about how we vote here. And let's try and give the people some relief because I think that's what we can best do here. So that's my two cents. Yes, James?

Mr. Shefte: Lance, I'm very familiar with Napili Hau because I lived adjacent to it for 25 years. And I know the problems that they have just trying to collect their dues much less tackle a project which would require them to – each individual homeowner to come up with a substantial sum of money to pay for legal fees and so on to accomplish what we're talking about. And there are a lot of people there. They're working people. They have their needs.

In this particular case, I'm very familiar with this house and where it's located. It's not

going to bother anybody in any way, shape, or form because the distance between the two houses is as Sue Campos said, very, very distant. So therefore, I would be in – voting in favor of the variance.

Chair Holter: Would you be willing to make a motion here?

Mr. Shefte: Yes, I would.

Chair Holter: So when you make your motion, you need to add that the exceptional unique conditions and if there's a hardship involved.

Mr. Shefte: Okay. That's why I don't like to make motions.

Chair Holter: I know. It's very complicated. But also in your motion, I think this is probably a good situation where we can talk about the insurance because personally, I don't see any reason why insurance would be required. So we could either reduce the amount or whatever, but there's no building next to the side lot.

Mr. Shefte: Okay. I move that we approve the variance in that there is a substantial hardship present. And without it, it would be an extreme hardship on the owners.

Chair Holter: Oh, wait. Hold a second. I'm pushing us ahead here. Before we do this motion, we should hear the staff's recommendation. I'm sorry.

Ms. Kapua`ala: Thank you, Mr. Chair. Based on its analysis, the Department of Planning finds that there is no exceptional, unique, or unusual physical or geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area. And also, that the condition creating the hardship was the result of previous actions by the Applicant.

So based on the foregoing findings of fact and conclusions of law, the Applicant has not met all of the requirements for the granting of the subject variance. Therefore, the staff recommends DENIAL of the subject variance.

In consideration of the foregoing, the Department recommends that the Board of Variances and Appeals adopt the Department of Planning's Staff and Recommendation Reports prepared for this January 25, 2007, meeting, and authorize the Planning Director to transmit said Findings of Fact, Conclusions of Law, and Decision and Order on behalf of the Board of Variances and Appeals.

Chair Holter: Thank you, staff. Applicant, would you like to discuss the staff's report – I mean, recommendation?

Mr. Takayesu: Okay. I'd like to point out that when you look at the Charter, it says the variance may be granted by the Board of Variances and Appeals if the appeal – if the Board finds that due to the particular physical surrounding, shape, or topographic conditions of the subject property, compliance of the provisions of this chapter would result in hardship to the owner which is not mere inconvenience or economic hardship on the applicant.

I note in the report, the report's drafted in the manner that says in order for the Board to grant the variance, the applicant must present evidence that the following three requirements have been met. But when you read the Code, if you have these three requirements, then the granting of the variance becomes mandatory. It's not that if you don't meet these requirements then you're not entitled to a variance. There is a provision that is mandatory for the – for refusing to grant an application because then the Code – it says the Board shall not grant an application for a variance which requests a use which does not conform with applicable community plan designation for the subject property. So when you look at the Code, what's in the report, they're taking the criteria that's used to mandate the granting of the variance, and turning it around saying, ay, if you don't meet any of these three, you're denied. And that is not in compliance with the Code which is the law. And if you want to pass a rule and regulation that is inconsistent with the enabling ordinance, then that rule is not really valid. So I'm requesting that based on the submittals that this Board find that Ms. Corpuz is entitled to the granting of her variance request in accordance with this Provision C dealing with that there is a particular physical – due to the particular physical surroundings that there are – that it has resulted in hardship to the owner. Again, looking more at the Charter language instead of the – to me, the staff report that has turned around what's in the Code.

Chair Holter: Is there any discussion from the Board? Mr. Shefte?

Mr. Shefte: Is there any comment from our legal counsel?

Mr. James Giroux: I'm just reading the Code and it says – I guess the language is, "The Board shall grant a variance if the Board finds the following . . ." and then it lists the criteria. So as long as you look at those criterias, and then you have to see that all the criterias are met prior to granting the variance.

Mr. Shibuya: Mr. Chair, can we have a ten-minute break?

Chair Holter: Can we take a break? We'll take a break.

(A recess was then taken at 2:40 p.m. and the meeting reconvened at 2:48 p.m.)

Chair Holter: The Board of Variances is back in session. Mr. Shefte, do you have a

motion?

Mr. Shefte: Yes, but I think there needs to be some more discussion before the motion. I think Hari has a unique thing he'd like to bring up.

Mr. Ajmani: Yes, Mr. Chair. Actually, I'm sympathetic to this variance, but at the same time, I'm a little bit concerned about that we need to do it procedurally, right. And since we'll be setting a precedent, we need to do it properly. So my suggestion is that the community association has to provide a letter to the County which says that they have looked at this setback, and they do not have any objection to this setback which may or may not meet the County requirement. And until that is done, or unless that is done, I will not be able to support this variance.

Chair Holter: Would you be content if the variance was granted conditionally, upon this letter? So we go ahead and grant the variance, if it does happen that way, but it's not completed as a variance until this letter is provided?

Mr. Ajmani: In order to save everybody's time, I would be willing to accept it conditionally, upon that.

Mr. Shibuya: I think that's a great compromise.

Chair Holter: Okay.

Ms. Acks: I'll second.

Chair Holter: Well, let's hear a motion for the variance.

Mr. Shefte: I move that we approve the variance in that they meet the exception for unusual, physical, and geographical conditions in that the location of the house is far distant from any other dwelling. And therefore, there is a unique physical condition existing. And strict compliance would prevent them from use of the property in that the addition already exists. And there is definitely a hardship present in that the situation of the association prevents them from applying for a building permit because of the existing rules.

Chair Holter: And in the matter of the insurance?

Mr. Shefte: In the matter of the insurance, I would think that a policy in the amount of \$50,000 would be adequate.

Chair Holter: Do I hear a second? And then discussion.

Mr. Ajmani: Second.

Chair Holter: I have a second from Hari. And now discussion?

Ms. Acks: I'm a little bothered by the statement in part two that says because the house – the addition has already been done, it would create a hardship. I think that's sending a poor precedent when we're trying to avoid after-the-fact permits, if it all possible. I much prefer seeing a before – before the building occurs. So I don't mind having that statement in there, but I don't like the reason being since it's already built, it would cause a hardship. I'm just a little bit concerned about that verbiage.

Mr. Shefte: Do you have a suggestion then how it might change?

Mr. Shibuya: Due to the shape and the sizes of the lots that it places a limitation. That is a hardship. Strict compliance with it would be a hardship on the occupants.

Mr. Shefte: Thank you, Warren. I amend my motion to reflect those comments.

Chair Holter: All right. It's been first and seconded to grant the motion, and to grant the variance. Is there any further discussion? Hari?

Ms. Acks: Based on the condition.

Mr. Ajmani: Yeah, I think there should be a statement of the condition that the community association will be bringing the letter acknowledging the setback and approving it from their perspective so that we are protected from the community ever coming back to the County and saying why did you grant something which was illegal.

Chair Holter: Okay. Thanks, Hari. I guess we got all that down? Okay. So it's been first and seconded with a condition that this letter be provided. So all those in favor of granting the variance, signify by saying aye. Aye. All those opposed?

It was moved by Mr. Shefte, seconded by Mr. Ajmani, then unanimously

VOTED: To grant the variance as discussed.

(Assenting: J. Shefte, H. Ajmani, K. Acks, W. Shibuya, and L. Holter.)

(Excused: R. Endo, U. Schulz, S. Alapa, and W. Kamai.)

Chair Holter: Let it be known that it's unanimous. The variance is **granted**. So now we're going to move to Item C on the agenda: the Joslin Group.

C. MOTIONS

1. **JOSLIN GROUP, representing KOA AINA VENTURES, INC., requesting approval of variances from the following sections of the Maui County Code: Section 19.36.010 to reduce the number of required parking stalls from 26 stalls to 16 stalls; and to delete the requirement of one loading stall; and Section 19.36.030 to allow the 16 designated parking stalls to be located in an off-site location within 300 feet away from the subject property, for the proposed Diamond Head Gallery at the Old Kishi Building, located at 736 Front Street, Lahaina, Maui, Hawaii; TMK: 4-6-009:057. (BVA 2005004)**
 - a. **Applicant's Motion for an Amendment to Docket No. 20050004 to Withdraw the Existing Variance for the Reduction of Parking**

Chair Holter: Is the representative of the Joslin Group here? Now, I think we have received two motions here. Is that true? And so which one is the one that we--? So we toss out the 12th?

Mr. Don Freeman: We wish to withdraw our November 30th 2006 and January 10th 2007 motion.

Chair Holter: Okay. So that one's out. So you have a new motion here: January 25th.

Mr. Freeman: That's correct.

Chair Holter: And the staff has seen this?

Mr. Francis Cerizo: Yes.

Chair Holter: All right. Go ahead.

Mr. Freeman: What we have is we have a motion to amend--

Chair Holter: Oh, what's your name? I'm sorry.

Mr. Freeman: I'm Don Freeman with the Joslin Group. So, ladies, members of the Board, and the Planning Commission, and Counsel, what we'd like to do is we have a motion basically, to amend the existing motion from a total of what was originally a reduction from 26 to 16 stalls, to 17 to 16 stalls, which is the remaining, the reduction of basically, of one stall.

Chair Holter: Maybe Francis could explain this?

Mr. Cerizo: Basically, the request is from a reduction of the area of the site of the Diamond Head Gallery. If you look on Attachment A, Figure 3, we have the existing floor plan for both the first level and the second level. The top picture indicates the first floor. And the original development included the hatched areas that would've increased the park – that was included in their first parking analysis. What they have done currently, is to remove the second floor from the whole picture. And instead of converting the existing storage on the first floor, they are retaining the storage on the first floor.

So the result is what's shown on the parking analysis. We have a total gallery use on the first floor of – if you look at the ZAED Check, Plan Check matrix, on the bottom it shows that the art gallery will have 4,431 square feet at one per 300, and that would be for 14.7 stalls rounding up to 15. And then on the bottom floor, the storage which is being retained instead of changing, that storage remains at one per 700, the total stalls being two. And on the second floor, that's been taken out of the whole equation; therefore, there's no parking requirements on the second floor. So the total required stalls instead of 26 is now being reduced to 17 stalls. Hence the request – they're changing their request from – originally, 26 to 16. Now it's 17 stalls to 16 stalls; therefore, the request is for a one-stall variance.

We reviewed the motion and the staff or the Planning Department recommends approval. What's also in the original motion – I'm sorry, the original Variance 20050004 was the variance for the loading zone. And they'd like to retain that variance as approved.

Chair Holter: So what's the action that we need here? To approve this motion as a Board?

Mr. Cerizo: Well, our recommendation is that we approve – that the motion is approved. And that the department will revise the decision and order, the findings of fact, decision and order to reflect the changes in the . . . (inaudible) . . . basically, the areas of reduction and that that be prepared for the Chair's signature.

Chair Holter: Do you need a motion from the Board?

Mr. Cerizo: I believe so.

Chair Holter: Is there a motion from a Board member?

Ms. Acks: I'll move that we agree with – we support the motion by the staff report.

Chair Holter: Is there a second?

Mr. Shefte: Second.

Chair Holter: Second by Jim. So all those in favor, signify by saying aye. All those oppose? None.

It was moved by Ms. Acks, seconded by Mr. Shefte, then unanimously

VOTED: To approve the motion as recommended by the Planning Department staff.

(Assenting: K. Acks, J. Shefte, H. Ajmani, W. Shibuya, and L. Holter.)

(Excused: R. Endo, U. Schulz, S. Alapa, and W. Kamai.)

Chair Holter: See it be **unanimous**.

Ms. Acks: Now that we've voted, can I ask a question? So anything upstairs needs to come before us?

Mr. Cerizo: Yes, the – currently, there is a permit application to renovate the entire second floor for Tony Roma's. They also are– We have an application. Besides the building permit, we also have a variance application to reduce the parking requirements for the required parking for that restaurant. So that's going to be handled at a different application.

Mr. Freeman: Thank you.

D. APPROVAL OF THE JANUARY 10, 2007, MEETING MINUTES

Chair Holter: So now we can – have you all had a chance to look at the minutes? Is there a motion to approve the minutes?

Mr. Shefte: So moved.

Chair Holter: Is there a second?

Mr. Shibuya: Second.

Chair Holter: All those in favor? Aye. Nays? None.

It was moved by Mr. Shefte, seconded by Mr. Shibuya, then unanimously

VOTED: To approve the meeting minutes of January 10, 2007 as presented.

(Assenting: J. Shefte, K. Acks, H. Ajmani, W. Shibuya, and L. Holter.)

(Excused: R. Endo, U. Schulz, S. Alapa, and W. Kamai.)

Chair Holter: Let it be unanimous. Minutes **accepted**. Director's Report.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chair Holter: Do we have a Director's report on BVA cases?

Ms. Kapua`ala: There has been no action taken since the last meeting.

Mr. Shibuya: The Kihei action, is that still in the courts?

Ms. Kapua`ala: The Kihei action?

Mr. Shibuya: Yes.

Ms. Kapua`ala: Which one are you referring to?

Mr. Shibuya: The Parks has gone against us. And I guess we need to identify some kind of lawyer?

Ms. Kapua`ala: Oh, yes. We have not – there has been no lawyer assigned yet. There's no litigator assigned to the Board yet.

Mr. Shibuya: Okay. Is it possible that this Board identify a lawyer? Can we do that?

Ms. Kapua`ala: Oh, yes, you will be assigned an attorney to represent you in circuit court.

Mr. Shibuya: It'll be assigned rather than we choose? I choose – I would like to have Jim Giroux represent us because he has heard all of the issues and he knows what we have gone through. And I don't want to start from ground zero and reinvent the wheel with a brand-new attorney.

Mr. Aaron Shinmoto: Well, typically what we'll do is – Jim's boss, the Corporation Counsel, will look at his staff, look at workloads, look at familiarity with the work, and pick an attorney to represent you. We assume it will be Mr. Giroux since he represents the Board now.

Mr. Shibuya: Okay. I would like to make it a motion that we identify Mr. Jim Giroux as our choice to represent the Board of Variance on this issue. And–

Mr. Giroux: Warren, I'm honored. However, I think just because the way our assignments are assigned where I've got a heavy administrative load, I think Brian will be looking at possibly hiring outside counsel to be representing us. But I can help that person get up to speed and be a support staff for that person.

Mr. Shibuya: Okay. Well, if we lose, don't come up, don't come back.

Chair Holter: Has everybody got this letter about going to Lana`i on the ferry? So on February 22nd, we're going to take the ferry boat over. Is everybody going to get to come?

Mr. Ajmani: I'll come.

Chair Holter: Hari, you're coming? Okay. Are you going to be able to come to Lana`i on the ferry?

Ms. Acks: No.

Mr. Shefte: Yeah.

Mr. Shibuya: Yeah.

Ms. Acks: I responded. I teach in the mornings on Tuesdays and Thursdays. So I had told her that if we couldn't go then, I could go on March 29th. That's Spring Break.

Chair Holter: All right.

F. NEXT MEETING DATE: February 8, 2007

Chair Holter: Next hearing date: February 8th.

Mr. Shefte: Can I ask a question? I'm wondering what the status is of that Lahaina one where the – the flea market, Maui's Best Flea Market.

Chair Holter: Well, the flea market got sold. The land got sold and they had to move.

Mr. Shefte: So are they still in—?

Chair Holter: It's been abandoned, I guess.

Mr. Shibuya: Is it? It's still in use.

Mr. Shefte: Well, it's not in the same location, though. It's in the location of the Old Mill.

Mr. Shibuya: Oh, they moved it up.

Mr. Shefte: They moved it right where the mill was.

Mr. Shibuya: So the action is moot, then. Okay.

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:05 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Lance Holter, Chairman
Warren Shibuya, Vice-Chairman
James Shefte
Kathleen Acks
Harjinder Ajmani

Members Excused:

Randall Endo
Uwe Schulz
Shirley Alapa
William Kamai

Others:

Aaron Shinmoto, Planning Program Administrator
Francis Cerizo, Planning Department Staff
Trisha Kapua`ala, Planning Department Staff
James Giroux, Deputy Corporation Counsel