

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
FEBRUARY 22, 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 1:00 p.m., Thursday, February 22, 2007, in the Lana`i Senior Center, 309 Seventh Street, Lana`i City, Island of Lana`i.

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

B. PUBLIC HEARING

1. **JASON ALLEN requesting variances from the following sections of the Maui County Code: (1) §18.16.050 to delete the requirement to provide a 50 feet right-of-way (ROW) and a 24 feet pavement width for Sixth Street, and a 44 feet ROW and a 28 feet pavement width for Koele and Jacaranda Streets; (2) §18.20.070 to delete the requirement to provide a 6 feet sidewalk on Koele Street; and (3) §18.20.080 to delete the requirement to provide concrete curbs and gutters for the proposed Jacaranda Square located at 632 Jacaranda Square, Lana`i City, Lana`i, Hawai`i; TMK: (2) 4-9-006:049. (BVAV 20070001)**

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

Mr. Francis Cerizo read the notice of public hearing.

Chair Holter: Thank you, Francis. Let it be known that this is a reconvening from the 11 o'clock site visit; that there is no video presentation. So will the applicant please come forward, and state your name, and speak into the mic.?

Mr. Jason Allen: My name is Jason Allen.

Chair Holter: Are you agreeable to waiving the staff report?

Mr. Allen: Actually, I would like to go over the staff report, if I could?

Chair Holter: Okay.

Mr. Allen: Has everybody seen a copy of the staff report? I guess what I wanted to address with the staff report was – if everybody is familiar with the staff report, we can go through most of the statements by the staff under the different conditions that are required for a variance.

I'm going to read their response to no. 1 is, "The applicant's statement appears to satisfy the condition." For no. 2, "The applicant's statement appears to satisfy the condition." For no. 3, "We agree with the applicant's statement. "

For no. 4, this is the one I wanted to address. This seems to be where they do have concerns is:

The applicant's statement could be taken to satisfy the condition. However, please note that the Engineering Division of the Department of Public Works and Environmental Management has made the following comments: "We are basically sticking with our original recommendation regarding right-of-way widths and sidewalk installation. Until a specific substandard roadway section is adopted for this area, we are always going to be implementing County standards. Also, being that the location of this development is next to a post office, we expect heavy pedestrian usage on all exterior perimeters of the parcel. Finally, the sidewalk should be entirely located within the County right-of-way." Right-of-way requirements are indicated in the letter dated April 12, 2005, attached as Exhibit "C."

Under the requirement, under no. 5, the staff's analysis says, "We agree with the applicant's statement." And I guess that's all I wanted to read of the staff report.

Chair Holter: So the staff report is now made part of the record. And is there any objection to that? No. Seeing none, we'll move on. Do you want to make your presentation?

Mr. Allen: Yes, sir. I'd like to now go over the evidence supporting the requirements of Chapter 18.32.010 of Maui County Code, the requirements for a variance. There are five. So let me begin.

No. 1, "That are special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area." My response is, the property is located next to an existing post office that was built in 2000. The post office was exempt from road-widening and the building itself encroaches on the proposed setbacks. Widening the road in this area puts pedestrians at risk by bringing the road approximately, three inches to existing sidewalks that front the post office.

Another condition that is affecting the property is its location in Lana'i City. The small scale of the city is unique to visitors and thus the attraction. Due to geographic location, visitors cannot drive from Honolulu or Kihei. Most visitors are brought by bus from the harbor, hotels, and airport. Hence, a dramatic increase in visitors or tourists have absolutely little or no impact on vehicular traffic. Widening the streets will increase the

scale of the city and destroy its unique character. Widening of the streets and right-of-ways is not consistent with the Lana`i Community Plan of 1998.

No. 2:

That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this title because of special geographical or physical circumstances or conditions affecting the property.

And my response to that is, the variance is required to preserve the character and marketability of Lana`i City. At this time, Lana`i depends almost exclusively on tourism. In 2003, the U.S. Census Bureau estimated that out of 1,452 employees on the Island of Lana`i, over 1,000 fall into Industry Code 72, which is accommodations and food service. Visitor spending is increasing, and thus the businesses adjacent to Dole Park, even though provide employment opportunities for locals, are becoming less local-oriented in what they sell. The proposed project is to address the lack of retail and office spaces that cater to the residents of Lana`i without destroying the beauty and charm of the city.

Requirement no. 3:

That the special geographical or physical circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision.

My response is, the special conditions that affect the property were put into motion in 1923 when James Dole hired engineer, Mr. Root, to plan the town. The grid pattern and streets surrounding Dole Park is what we hold dear. As stated in the Lana`i Community Plan:

The street plan and rural standard of road development are prominent among the character-defining elements of Lana`i City. The Lana`i Community Plan calls for design standards which will maintain the existing scale and street layout pattern.

This is not a result of our actions, but is it our intent to maintain the ambience, character, and attraction of the city.

Condition no. 4:

That the granting of the variance shall not be detrimental to the public's

health, safety, or welfare, or injurious to other property in the vicinity of said property.

My response is, the cross streets of the city between Fraser Ave. and Lana`i Ave. are considered very narrow by modern standards. Koele, Koali, Jacaranda, Kiele, Houston, and Gay Street are about 14 feet wide. Ilima street is the exception at 20 feet wide. Cars that travel down these narrow streets go slowing and cautiously.

Beginning in January 1993, the Maui County Police Department has kept a detailed data base of vehicular accidents in Lana`i City. Since 1993, there have been two accidents where people were injured. The extent of the injuries is not known, but they were vehicle-to-vehicle accidents. There are no recorded pedestrian or bicycle injuries since 1993 in this area. These injurious accidents along with two times its share of accidents occurred on the same street: Ilima, the widest street in town. I agree that widening the streets can increase traffic flow, but I do not believe wider streets make for safer streets. The narrow streets themselves are traffic-calming elements. Widening the streets will increase the speed at which cars are driven and increase the number and severity of accidents.

Under condition no. 5:

That the said property has obtained the appropriate zoning designation provided that for purposes of this chapter, districts with interim zoning shall not be considered an appropriate zoning.

My response is, March 2005, the property was approved as country town business.

Once again, what I think is affecting my property there in the variances that I'm requesting under 18.16.050, my request is that the scale of the street width and right-of-way be maintained and unchanged. The letter that I received from Public Works, April 12, 2005, agrees in a way that as stated in the staff analysis that they want the sidewalks placed in the right-of-way. None of my proposed project encroaches on any increase in right-of-way. However, the County says the normal way to place sidewalks in half-in, half-out on the right-of-way, which wouldn't make much sense on my property for the normal pedestrian walking paths. It would put a sidewalk that just walks you straight into the back of the post office. And as far as widening the streets, it would be inconsistent with what is going on now.

No. 2, I requested that I do not place a sidewalk on Koele Street. I don't think it makes much sense. It's once again, a sidewalk to nowhere.

No. 3, the curbs and gutters should not be constructed at this time. I would like to remind the Board that I am not opposed to signing a deferral agreement that if and

when curbing is put in place that I, as the owner of the property, would be responsible for paying my pro rata share of the cost.

We spent a lot of time on this project. We've had in the past. We've had some community meetings. There was one: April 25th of last year. We had what I think a great turnout. And a lot of great ideas came out of that meeting. One thing that we would wholeheartedly pursue is to try to turn Jacaranda Street into a one-way. The one-way would be going toward town thus greatly decreasing more traffic going into a residential area, no. 1. But it makes a lot of sense. With the narrow streets, we could make the traffic flow one way. And that would be what I would be working on. I think that that's an action of County Council, I believe, that has to make that request.

Does anybody have any questions at this point?

Chair Holter: When you're done with your presentation, then we'll ask for questions from the Board.

Mr. Allen: Okay. I can be done here, but I would still wholeheartedly ask that if anybody has any questions or anything along the way that I may have left out, I would certainly be available to answer those questions. Thank you.

Chair Holter: Okay. We're going to accept his variance request: the Jacaranda Square variance request dated November 2006 by Jason and Gail Allen, Exhibit A, to the record. Are there any questions from the Board? Bill?

Mr. William Kamai: Yeah, Mr. Allen, Bill Kamai. What else was said at your April 24th hearing besides a one-way for Jacaranda?

Mr. Allen: At the community meeting, April 25th, we advertised in *Lana'i Times* to have a meeting on Jacaranda Square. We invited a lot of people. We really wanted a lot of feedback, good and bad, whatever people wanted to say. And we tried to keep a very open forum. Here's the advertisement, if anybody would like to see it.

During that, we talked about some of the snags that we thought we were hitting with trying to get building permits. Of those was the widening of the streets, installing curbs and gutters, underground electric wires, sidewalks. And we tried to just create an open forum where people could say what they wanted to.

Some of the items brought up was the Jacaranda Street and vehicular traffic was no. 1. I think we are in resolution with if it was one way, it would be a much better situation.

No. 2, there was someone that was – brought up was fires. If this building would be in any way a danger because of – for fires. It was approved by the Fire Marshall. I did

later then go down and talked to the local Fire Department and the fellows there. Their request is that they ask that the sprinkler-charging system be located on the northern corner of the property, which would keep it kind of upwind of – if there was ever – if they ever needed to use it. And that was their only request.

And as far as I said, well, the streets are awfully narrow there, they brought me into their fire station, showed me their trucks. And they were going to get a new truck even. They said their trucks are designed to go through these narrow streets. It's not a problem.

There was also a concern about some of the residents in the area: once again, the vehicular traffic that might increase where they live.

Mr. Kamai: And their concerns were positive in terms of the increase in traffic?

Mr. Allen: Well, of course, nobody would want increased traffic in front of their residence. However, Sixth Street is a main street through town. And I think that by making Jacaranda a one-way, you're – at least vehicles aren't exiting the city into the residences. And I think that was received much more positively, once again, if Jacaranda could be one way.

Mr. Kamai: These people who attended these meetings, especially your April 25th meeting, were they longtime Lana`i residents?

Mr. Allen: We had a lot of longtime residents. I can give you the names of the turnout of who came in. However, they did not like write down how long they've been on Lana`i.

Mr. Kamai: Can I see that list, please?

Mr. Allen: Certainly.

Chair Holter: While Bill is reading the list, are there any other questions? Okay. Mr. Shefte?

Mr. James Shefte: It's not clear to me how the traffic coming into your – and exiting your parking lot. Where it's going to enter and where it's going to exit?

Mr. Allen: If you were to go to the Jacaranda Square Project as it is designed right now, you would have to come off Sixth Street, turn onto Jacaranda Street, and then pull onto the property. It's a one-way parking lot. And then you would have to exit Koele Street.

Mr. Shefte: Okay. Thank you.

Chair Holter: Warren?

Mr. Warren Shibuya: As a follow up to Jim Shefte's question, it appears that the parking lot exits onto Koele. However, when you take that left turn off of Koele – onto Koele, there is a large Cook Pine tree there. So it makes that left turn very difficult or possibly endangering the passenger who is actually exiting that parking lot. Are there any conditions for this tree that is currently existing now? Any plans for it?

Mr. Allen: I'm not aware of any specific plans for the tree whether it's to be taken down. I know right now Castle & Cooke and the County are working together with the tree service to remove the dangerous trees. Of course, these trees are getting close to if not have reached maturity. That's something that needs to be addressed: whether that tree goes out. Our plan is, as property owners of this property, would be to replace, if we could, with a younger tree.

Mr. Shibuya: I'd be more amenable to something like that because the landscaping right now on the exit is a traffic hazard for the exiting vehicle and passengers.

I have another question that's related with the number of occupants or the types of occupants that will be occupying this building. I understand you have a retail store there on the bottom, but yet on the top you have what planned?

Mr. Allen: On the top are four small office spaces. I think the largest one is 300 square feet. And we have – already have some people that are very much into wanting to rent them such as a real estate agent who is also talking about combining offices to suit her special needs.

Mr. Shibuya: Any other uses of the offices? That's just one office, right?

Mr. Allen: We haven't committed to anybody due to it's hard to give somebody a timeframe. Other interests have included a counselor. She does counseling for families and children. She would like to have another location to hold her meetings with families to do counseling. When I say "families," I mean that as a single family counselor. And there was other people that were wanting space up there for just different professions. I get a lot of phone calls that say when you guys know, hopefully, we can talk then.

Mr. Shibuya: What were some of the uses? Can you elaborate more on the inquiries into how they were going to use the offices? Because you listed one real estate and a counselor, anything else? There's two more rooms.

Mr. Allen: This has been a while ago. I've stopped taking these – when people ask me about that project, my statement now is, at this time, it's a long ways out. We started this 2002. If I can, I could think of a couple more. One thing that wasn't going to

happen that – we had some – a lot of people interested in opening up restaurants and stuff. That's one thing we are not designed to do.

Mr. Shibuya: I'm still fishing around and trying to get some uses, Board members, because it does dictate the number of parking stalls. And in some cases, if it is a medical service that you're providing, then of course, there's a lot of patient use. If you're using real estate, there are occasions in which the parking stalls would probably take maybe two per office. You're looking for a counselor. It would possibly be one or two. Are there government buildings or services that may be occupying any of these rooms?

Mr. Allen: At this time, not to my knowledge. There was a time when the County was pursuing it. To my knowledge, the County Code requires for office or retail space, one parking stall for every 500 square feet.

Mr. Shibuya: I also want to find out whether you have childcare or daycare-type services being considered?

Mr. Allen: The businesses that we are going to be doing are strictly professional type that do not deal with childcare although we have been entertaining the idea of having one of them a counselor that could see people in that office.

Mr. Shibuya: These would be just individuals who have a problem or need some services in a clinical way and not so much as babysitting, correct?

Mr. Allen: That's absolutely correct. It won't be any kind of a–

Mr. Shibuya: Long term, all day, or half a day type of care-taking. Will there be long term care kind of activities in there?

Mr. Allen: The businesses that we are trying to promote occur in a businesslike manner, you know, opening from regular hours of operation. There's no overnight staying. There's no – this is not to have any kind of someone's partial residence or anything like that. It should operate in a businesslike manner that we'd all understand.

Mr. Shibuya: Members of the Board, I just want to let you know that as a counselor – I'm not a counselor, but if you do have counseling services, it's probably done in after duty hours or after work hours. Would it not be in the evening and things of this nature? Early evening hours?

Mr. Allen: I would think it would. Yes, sir.

Mr. Shibuya: Yeah. That's my– I'm not too concerned with the amount of parking stalls

because if you're going to have that kind of services outside of the regular duty hours of let's say, eight o'clock in the morning and four o'clock in the afternoon, then it would accommodate for some differences in the amounts of parking that is available.

I may have some other questions following, but I'll let other members.

Chair Holter: Any other members?

Mr. Harjinder Ajmani: My question relates to that you are not putting any curbs and gutters around the street. I want to make sure that none of the storm runoff from your property, which is now going to be essentially all paved, goes onto the streets and creates flooding hazards downstream or something like that.

Mr. Allen: We are not designing any curbs or gutters on the existing streets. However, inside of our property, there are curbs to help divert water into our dry well. And if I could, I'd like to share that drawing. This is a type of dry well. That all occurs underneath the grass block area we have here. You can see a pipe. It'll be diverted into a grated drain that will then go into this.

Mr. Ajmani: These are perforated drain pipes? The plastic – the corrugated drain pipes?

Mr. Allen: Yes. It's my understanding that lies over crushed rock as well to help percolate it into the ground.

Mr. Ajmani: This has all been engineered and approved by the engineers?

Mr. Allen: At this time, so far, yes. That's been designed by engineers. As far as approval, we haven't had a disapproval.

Mr. Ajmani: Thank you.

Chair Holter: Can you give me the page on that?

Mr. Ajmani: Drawing C-1.

Chair Holter: Sheet?

Mr. Ajmani: Sheet C-1.

Chair Holter: This is the—?

Mr. Ajmani: Civil drawing.

Chair Holter: All right.

Mr. Ajmani: And it says "Storm Detention Basin for--?"

Chair Holter: C-1, Detention Basin?

Mr. Ajmani: Yeah.

Chair Holter: Okay.

Mr. Ajmani: January 27, 2005.

Mr. Shibuya: I have a question using that map. Looking at the cross section, it looks like the drainage pipes are 12 inches in diameter. I'm just wondering what the weight-loading capabilities are. Would you be allowed to park over this?

Mr. Allen: This was designed that it could take a vehicle parking there.

Mr. Shibuya: So it would be like your loading zone or it could be a regular parking area?

Mr. Allen: Yes, sir.

Mr. Shibuya: Okay. Thank you.

Mr. Uwe Schulz: Mr. Chair?

Chair Holter: Yes, Uwe?

Mr. Schulz: I just would like to make a comment. The parking ordinance Warren is concerned about, that was basically written for Kahului, and Wailuku, and so on. And since I'm partially residing on Lana'i building a house, the fact is that people don't use their cars as often as they do in Kahului because there's no reason to do that. Everything is in walking distance. I don't climb into my truck. If I want to go to the coffee store, I walk for a few minutes. And even from my house to the main square is a five-minute walk. So there's a little bit different picture in Lana'i City than we are encountering in Maui, for example. Everything in Lana'i City is accessible by foot. And people, as you see, even kids after school, everybody's walking. They don't drive. So I'm not really concerned about the adequacy of parking.

Mr. Shibuya: Okay. Thank you, Uwe. I was more concerned not so much as the number of parking stalls, but in this particular case, it looked like an open area that parking could be done. And that if we did park there, then it would have enough load capability of having or accommodating safely, a parking.

Chair Holter: Any further questions? Seeing none, are there any letters for or against the project? Staff?

Mr. Francis Cerizo: There are none noted.

Chair Holter: Noting that, now we'll open up the hearing for the public. If you wish to speak, please state your name, and use this mic. right here.

Mr. Ron McOmbler: My name is Ron McOmbler. I'm about a 36-year-long resident, not a 36-year-old, by any means.

Interesting conversation. First of all, I'd like to, while it's still fresh in everybody's mind, talk about this dry well. Castle & Cooke has done – had to go through great ends to maintain all water that's being taken off property, stays on the property. They're doing it on that project on Lana'i Avenue, that 48-unit. Ninety percent or more of that water will be taken cared of on property. It goes into huge wells. They're not wells. They're actually, subterranean-dug, backfilled. They have culverts inside, and they're backfilled with rock to hold that water on that property so it doesn't leave the property. And because the slope of this property is all going to run to the lower streets, and it's going to run right down and create another situation, we need to have that taken cared of. I don't know. A well isn't going to do it. A dry well isn't going to do it.

The same thing on – the item on the golf course: Site C for Castle & Cooke, their new subdivision or their new luxury condos at Manele is doing the same thing. It's a mandate from the County that that water has to be kept on the property. Of course, this property is not as big as those two situations are, but it's still going to create water situations coming down on that lower street.

To answer your question about driving out of that parking lot, the one-way, the reason we did the post office the way we did it was we were afraid of people coming up a grade, and then entering on into Koele, and getting hit. That's why we did two things: made it one-way, and also made the parking go out – driving – go out the other way downhill where you've got a good, clear shot of that lower street. Coming out of that piece of property where we stood there today, it looks like they have to do the same thing. They're going to have to come out of the property, and whether go around that tree, or take that tree out, it still is going to have to enter onto Koele in an upward position. And people that are short, and can't see over the steering wheel, and over the dashboard might have a hard time, might get into an accident coming out of there. That needs to be addressed one way or the other.

My biggest concern here is shortly after you folks turned this down the first time, Castle & Cooke came to the Planning Commission and submitted plans to go forward with a Wailuku-type district or a Lahaina-type district to get away from parking regulations, and

getting away from country town designs, and this type of thing. We haven't heard it but one time. They haven't been back in front of the Planning Commission, but it's in their minds. I don't know if it's because what Jason ran into about widening the streets, and doing the curbs and gutters. Maybe Castle & Cooke is thinking about that down the road. But it concerns me that we haven't heard from Castle & Cooke again. And I'm really concerned about that because this town can be turned upside down if we do that. There's some things that need to be addressed. It shouldn't be taken out of the County Code.

And I don't know what to say about widening the streets. I know we're going to have a tremendous amount of traffic. We've got traffic there already with the post office. Adding a business there, we're going to have items that we're going to have to cover. I'm not real comfortable about it. I think that the County has to step up and do that street one way. It has to be. We can't have an increase in traffic. What's going to happen with the traffic that is now allowed to park in that parking lot and go into the post office? That's going to be taken away. As soon as he opens his property, he's not going to allow people to come in there. I wouldn't. If I owned it, I wouldn't let people come in and park either just to protect my own parking spaces.

As far as the gentleman down there saying that everybody walks in Lana'i, I've seen people when they get off work here, they're all driving. They may go home and change, but lots of cars on Lana'i. I have sat – at the end of the day, I've never sat for so long at a corner in Lana'i City as I have in the last year. Lots of cars. Lots of traffic. Maybe a lot of people are walking, but there's also an awful lot of people driving.

So I don't know – because I wasn't at the other meeting. I was off-island when they had this other hearing last year. But what has changed in the application that you turned down the first time? I think that's a question I need to find out. And I haven't heard anything different. What's there to compare to? What is different now than when you folks turned it down the first time? But we need to think about Lana'i.

And remember folks, we're now going into the GPAC, and we're going into community plan. A lot of this could be addressed at the community plan level. It needs to be brought out to the public, and let the public have more input into it.

And I think that – and I think the question of William down there asking who was on that list, that public hearing here, we were holding a meeting just prior to that. And the way the thing was set up, when we walked out of here before that meeting, it was a lot of people I've never seen before on this island. Very few local people and a lot of other people that I've never seen before. So that was a legitimate question from Bill: who was at that meeting? Because when I walked out, I went, "oh-oh." There's nobody I knew in the crowd. And I think that was one of the questions from one of the local guys that came in here: who are you people? It was almost like a divisive thing. It shouldn't be

that way. Bring it to the local people, and let the local people that live here and reside here all full-time, and let them understand what's going on.

Thank you for letting me make my comments.

Chair Holter: Any questions for the testifier?

Mr. Shibuya: I have some questions here, Ron, if you wouldn't mind. If we do not have this dry well as proposed by Mr. Allen, Mr. and Mrs. Allen, where would you suggest that we put the drainage? The drainage would probably be downhill and along Jacaranda Street, right?

Mr. McOmber: What size does the well say it is?

Mr. Shibuya: It is on Jacaranda right next to the—

Mr. McOmber: What size is it?

Mr. Shibuya: Twelve inches.

Mr. McOmber: Not big enough.

Mr. Shibuya: Understand.

Mr. McOmber: Not big enough. If they're going to do a dry well, if you're going to do that, then you need to go and get an engineer that understands this soil here, and how much it can hold, and how much water will be generated by that roof area and that driveway area. No longer is that going to be a grassed area. It's going to be a paved area. All water is going to run off of it. A 12-inch dry well is not going to handle it, folks.

Mr. Shibuya: Understand.

Mr. McOmber: Okay.

Mr. Shibuya: And that's why I'm asking the question. I look at the slope of the parking lot, too, not only the roof size, but the parking lot size. And then you have this water flowing down. Would you suggest something like a curb to divert the water or control the water from flowing into the neighboring property?

Mr. McOmber: It's going off of the property. They're not going to stop it. Even if you put a curb, it's going to run down the curb and still enter into that lower street. What you should do is get an engineer that can handle that water. And there's formulas that they set up on roof area, driveway area, that can maintain that. And Castle & Cooke had to

go through some terrible expenses to catch all that water. Even on that 48-unit that's down here on Lana`i Avenue that you guys passed when you came in, that is all – that water is consumed under the property. It sits there – under. I don't know if that's going to work, but it was huge. You could drive a D-8 tractor in there.

Mr. Shibuya: Okay. Now, along the Dole Park, I noticed there were some storm drains. And the grates there – and it seems like there's about 18-inch piping there. Could I have staff comment on them in terms of where the storm drain goes?

Mr. McOmbler: I'll tell you where it goes. It goes straight up to the city and ends up down here below the city. That's where it goes.

Mr. Cerizo: Pretty much. The drain system goes down to Fraser Avenue. And then there's an outlet that's below Fraser Avenue that goes makai.

Mr. McOmbler: If you look right out here at the school, there's a row of Ironwood trees right here. Just look on that side of the Ironwood trees. There's a big culvert or big ditch. Most of this water collects there, goes right by the school, and right straight out and out into the field.

Mr. Shibuya: Does that endanger any other homes downstream?

Mr. McOmbler: No.

Mr. Shibuya: Any parks?

Mr. McOmbler: No.

Mr. Shibuya: Any municipal buildings or churches?

Mr. McOmbler: No.

Mr. Shibuya: Thank you.

Mr. McOmbler: See, it's kind of an open corridor. When we designed this community plan, this Dole Park and open space area goes right on through to almost infinity. So if anything was to be developed would not be developed in this corridor down through here.

Mr. Shibuya: I'm inclined to have the curbs placed there so we can control parking and control water, too, as well as a drainage system.

Mr. McOmbler: No, I understand that, but if – there's no way you're going to stop the

amount of water that's going to be generated from that on a three-inch downpour.

Mr. Shibuya: Understand.

Mr. McOmber: It'll go over the curb, and it'll still end up on that street, and still may end up impacting those businesses below that.

Mr. Shibuya: Right. I'm saying he can continue to have his dry well, but in case it overflows, then this curb and the drainage system, storm drainage system, can empty into this system and exit or extract some of the water.

Mr. McOmber: And I understand that. But we have seen time and time again that dry wells in this type of soil do not work over a sustained period of time. And we have – sometimes, it rains here for four hours straight. I'm not – it's adding cost to him, but if he's going to – if you're going to maintain water on the property– And I'm not sure that that meets that criteria. There may be a size limit of the property that you have to do this. But two incidents since we had those rains that destroyed the condos at Manele, and they changed engineers, R. M. Towill had redesigned catch basins both for that project and the one down at Manele to stop that particular thing. So, I don't know. Again, I may be speaking out of tune, but – and it may not pertain to him. It may be too small a property that the County doesn't have a regulation for that. But a 12-inch sump or a dry hole is not going to work. I tell you it's going to fill up in a heartbeat.

Mr. Cerizo: Mr. Shibuya and Board members, the storm drain systems on any commercial lot are reviewed by the Department of Public Works. They review it. It has to be engineered. They take into account what Mr. McOmber indicated: the area that's grassed, the roof area. These are all taken into consideration. The design is based, I believe, on a 50-year storm. You will have storms. You may have a hundred-year storm. You may have bigger storms. But the storm interval that they designed to, I believe, it's either a ten or a fifty, but it's all written down. So that's not something that's not considered. It is considered. There are drainage improvements that's being improved – I mean, installed. And it wouldn't be approved if it wasn't in compliance. We have written standards on how to design drainage systems in commercial areas.

Keep in mind that the lot is not a large lot. It's 10,000 square feet. That's like a house lot, you know, R-3 zoning, 10,000 square feet. You can have a huge house on a property. And a lot of times, residential lots don't have any improvements. But in this case here, commercially, they're required to put in drainage improvements to accommodate not all of it, but at least the increase in the runoff.

So it's something that Public Works does automatically. And it's not something that really needs to be considered. Maybe since you didn't know about it that you might want to consider it, but I believe that it's adequately handled by Public Works

Department.

Mr. McOmbler: One more comment about that. We're now looking at – R. M. Towill is now producing a master drain plan for Lana`i City. We have all kinds of problems: the drain from mauka to makai on cross streets that cross Lana`i Avenue and Fraser both. So we still haven't seen a final draft yet. And it may – that needs to be incorporated into that. And that'll be one of the things they'll have to take into consideration, which at the time they did the master plan, or started doing the draft copy, they didn't know about this project. So that may have to be looked at also with R. M. Towill.

Mr. Ajmani: Okay. I looked at the drawing, and there is a civil engineer designing the dry well system. And it's not a 12-inch pipe. It's actually four 18-inch round, big pipes. And hopefully, they have taken into account the percolation rate for the drainage and so on. So I think like the staff said, the Public Works Department will check that, and will check for adequacy and whether it's designed properly.

Mr. McOmbler: Any more questions for me?

Mr. Kamai: Mr. McOmbler, you sit on the Lana`i Citizens Advisory Committee, correct?

Mr. McOmbler: I sit on – well, that was a long time ago. We don't have that any more because we now have a Lana`i Planning Commission. But I sit on several different boards and commissions, yes, on Lana`i. Plus, I'm a Liquor Commissioner in the County.

Mr. Kamai: The reason why I asked is because I saw your name on this Lana`i Advisory Committee in this book.

Mr. McOmbler: Oh, yes, I was co-chair of the last community plan, yes, right.

Mr. Kamai: But you no longer serve on that committee?

Mr. McOmbler: I'm on the GPAC, which is going to be – it starts out with the community plan. We have 120 days. And then we have 180 days for the community plan. And I'm going to be on also on that community plan also.

Mr. Kamai: Okay. That's all.

Chair Holter: Any other questions from the Board? Is there any other public testimony? Seeing none, I'll close the— Do you want to take the mic. and state your name?

Ms. Gail Allen: I'm Gail Allen. I'm a co-owner of the property. And I just wanted to address the use of premise that I'll be using the building for is for my retail space. And

I've been in retail for approximately, 35 years in Hawai'i.

And about ten years ago, Mr. Murdock contacted me on Maui to open a store for his local people here, the service community – the service people of Lana'i are about 2,500 people at that time that had to go to Maui to shop, and bring back goods on the ferry. And my speciality is– I have a lot of stores, and I can go into a major buying office in Los Angeles, or New York, or in Honolulu. I have a staff. And we can buy clothing at a very, very reasonable price. And almost as – well, as cheap as Costco or Wal-Mart. And what that provides for the locals here– Speaking of how many local were at the last meeting, I had a lot of my local friends here at the meeting, a lot of Filipino people, a lot of the other store owners in town who are also friends that I've helped open their businesses. The idea is that there is nothing reasonable to buy on this island. Everyone must leave the island to go shop. We don't have a place to buy clothing that's reasonable because the rents here on the circle are very expensive. And when I was able to secure this land from Mr. Murdock, which was the first commercial piece of property he'd ever sold, I was amazed that he sold to me so cheap that I could go ahead and afford the locals cheap price rates. Like these are board shorts at nine dollars, ten dollars. T-shirts. There's no shoe store here. You can't buy a pair of slippers. If you're elderly, you cannot buy a sandal that you can wear through town. And people do walk in this town. And so my goal was – I don't have to open the store, but my goal was to open it for the people of Lana'i.

I've been coming here for 35 years. I've lived in Lahaina or Maui practically all my life. And I feel that there's a real need. And this is the main use of the premise. We have no other tenants lined up. We have no childcare. And we have a very minimal parking situation where most locals do walk in town, and they will shop.

This is a girlfriend of mine that owns a shop in town. And she was thinking about partnering up with me in the clothing business here at the store. This is Kim DuPree from Gifts with Aloha. And her rent is very high on the circle now. She can't afford to sell things reasonably-priced. And that's my goal. My goal is to service the local people. And that's the mission of the building.

And we will be in total compliance with the County of Maui in everything that we do. Charlie Palumbo is an architect from Lana'i City. And the engineers that he hired were engineers that he uses on O'ahu that are professionals. And they will definitely comply with anything that the Maui County wants them to comply with.

And this was the people – the names of the people that came to the meeting that we had. And there was a good amount of different – all different walks of life that came to the meeting. Kim was at the meeting. She's local. Born and raised on Lana'i. Several other Filipino families came because they're very excited about the store, about not having to take the ferry, rent a car, go into Kahului, drag it back with their kids, take off

work, and come back. It's a hundred to two hundred dollars to do this every time they go shopping. So I think there's really – this is more than just a building. This is a need for the local people. And thank you very much.

Chair Holter: Thank you. Is there any other public testimony? Please state your name.

Ms. Kimberly DuPree: My name is Kimberly DuPree. I own the Gifts with Aloha down the street here. And it is true: my rent is going up. The reality of it is, is just that there is need here, period, for more economic opportunities for us to strengthen the base here of Lana`i. There are many, many local people here who are very interested in opening various businesses that will meet the needs of the people that we – that live here.

Daily in my shop, I get requests for things. And I already know. I used to work with Economic – the community-based Economic Development here on Lana`i. I was the executive director for LCDC. And there are lists of possibilities that people who want to open businesses. And there are people who are ready to go. If you notice in the square of Lana`i – in fact, in Lana`i, except for the gas station, every business is owned by people who do live here, and do benefit the community by keeping the dollars here on the island for a longer period of time. It also enables us to capture dollars that we do not normally have here on the island. To capture the outside dollars, the dollars from the outside islands as well as the other states, which again factors into the economic base to our island besides the two large hotels. The need is great. I think the biggest problem that Gail will have will be determining who gets the space because there are a lot of people who want – there are everything from sporting goods, to cyber places, you know, for them to do just simple faxes, to get copies. I mean, it's just things that when I lived on Maui I just took for granted. And now I'm here.

As far as the street-widening goes, I don't understand why we have two streets that are going two ways. We should just make that a one-way street in compliance with all the rest of the streets that are here. The only two-way streets are basically, Ilima, Fraser, and Lana`i Avenue. Koele was turned into a one-way to accommodate some of the traffic for the post office. And there will probably be no problem with it being a one-way on Koele as well. It will actually be a lot safer for pedestrians knowing that the traffic is only going one way. And thank you. I would hate to see that street widened.

Chair Holter: Any questions for the testifier? Seeing none, is there any further public comment? Seeing none, I now close the public hearing. Staff, do we have a recommendation? I'd like to also note that we have two letters here from Okamoto Realty, Linda Kay Okamoto who states that she supports the application by Jason Allen for the variance. And I have a second letter from Kimberly DuPree also in support of the— Let those be made part of the record.

Mr. Cerizo: Staff has no recommendation.

Chair Holter: Any discussion by the Board members regarding the staff's recommendation? Warren?

Mr. Shibuya: I'd like to go ahead if there's no other comments here. I'll start off. And every other member can go ahead and take pot shots at this idea.

I'm willing to go ahead and approving this variance with the understanding that the parking as Mr. McOmer has said, it's in the opposite direction. Rather than going into the parking lot from Jacaranda, it would be entering from Koele from the top down. That would be one change.

The large tree up at Koele, I would recommend that it be removed. Even though I want to have the tree, I will take the owner's willingness to go ahead and plant other smaller Cook Pine trees along the border and landscaping for this area.

In terms of the dry well situation, they can continue with it. I think that's admirable that they did that. Another route would be to add grating at the exit fronting the Jacaranda Street that it can capture some of the runway water that is coming from the parking lot.

There was also the tree, the large tree, at Jacaranda and Sixth Street corner. That was proposed to be removed. And I so am inclined to do that.

In terms of the sidewalk going around and the curb, I am very much in favor in terms of having those improvements for the community. And in terms of the sidewalk, I would be very supportive of it. I feel that especially up in Koele, I would like to continue it and see if they can somehow get the sidewalk at least in the area where the entrance to the building is at the top there sort of like a landing area, or a drop-off area, or somewhere where cars can unload passengers. It is not a parking area, but it is a place where they can pull off on the side and unload passengers.

In terms of down below, Jacaranda, I would recommend that it go one way. And the one-way would go towards the Dole Park. And I would like to have on the opposite side of Jacaranda, I'd like curbing improvements added to it, too, to insure that the water does not get into the adjoining properties.

But these are just my thoughts. And I'll just rest and listen to the rest of you.

Mr. Shefte: Mr. Chairman, I'd like to make a motion. That we approve the variance in that the Planning Department or the staff is in agreement with the first three exceptions. And on the fourth that granting this variance, rather than being detrimental, would actually enhance the welfare of the local community in that it would keep the ambience of the community intact.

Mr. Schulz: I second.

Chair Holter: It's been first and seconded. First by Mr. Shefte, seconded by Uwe Schulz. Do we have a discussion? Is there any discussion from the Board membership?

Mr. Schulz: Yeah, Mr. Chair, I feel that the requirement for curbs, and gutters, and underground utilities for Lana`i City is totally ludicrous because this city, even in many, many years to come, was never laid out to be . . . (inaudible) . . . with sidewalks, and gutters, and underground utilities. And I really oppose these types of improvements for Lana`i City.

Chair Holter: Thank you. I would also like to put on the record here that we have a petition from 34 – it looks like residents of Lana`i by the looks of their phone numbers that wish to retain the character of Lana`i City: the narrow pavement widths, and lack of curbs, and so forth. They also support changing the existing roads – well, no, actually, I'm sorry, maintaining the existing road widths. And then there's a couple comments here about one-ways on Jacaranda. Let's just put that into the record.

So is there any further discussion on the variance at hand? I have one issue and that would be the issue of insurance. Would you like to amend your motion?

Mr. Shefte: Yes, I'm sorry. I amend my motion to include the standard insurance requirement which I think is one million dollars.

Chair Holter: Okay. Is there any discussion on that amendment? All right. Warren?

Mr. Shibuya: I'd like to have a discussion in terms of the sidewalk. I will allow for the less than minimum-type of sidewalk size. As proposed it's five feet. The standard is six feet. I would like to have that sidewalk connected to the post office. And the post office sidewalk be structured in the same five-foot sidewalk width at least through the property of the post office. And maybe perhaps the post office or Federal government can be instructed that this has been passed, and that the – have this continuity for safety as well as people's convenience. If you park, you can go to both the post office, as well as do your retail shopping, or visit some of the offices. Thank you.

Chair Holter: I'd like to–

Mr. Cerizo: Mr. Chair?

Chair Holter: Yeah?

Mr. Cerizo: Excuse me. I'd just like to – on the motion, I'd just like to clarify that the motion for amendment is to amend the motion to include–

Chair Holter: The one million-dollar insurance policy.

Mr. Cerizo: Okay. Does it include the standard conditions of approval like the hold harmless agreement and the—?

Chair Holter: Yes.

Mr. Cerizo: The standard conditions including the one million-dollar insurance?

Chair Holter: Yes.

Mr. Cerizo: Thank you.

Chair Holter: Now, I also note that on our plot plan here in the applicant's variance request, right here by the post office, it says "The proposed sidewalk plan for Jacaranda Square, 14th of May 2006," says "It will tie into post office sidewalk as required." Is that right? Okay. So I think we're prepared here to vote. All those in favor of Mr. Shefte's motion, indicate by saying aye. I see one, two, three, four. All those— Are you five? We have five for it. All right.

It was moved by Mr. Shefte, seconded by Mr. Schulz, then

VOTED: To approve the variance request as discussed.

**(Assenting: J. Shefte, U. Schulz, W. Kamai, H. Ajmani, and
W. Shibuya.)**

(Excused: K. Acks and R. Endo.)

Chair Holter: The motion is **passed**. We have a variance.

Mr. James Giroux: (Inaudible)

Chair Holter: No, the motion included the amendment. Yes?

Ms. Tremaine Balberdi: Who seconded that motion?

Chair Holter: Who seconded that motion? Uwe did. Okay, the variance is **passed**.

C. APPROVAL OF THE JANUARY 25, 2007, MEETING MINUTES

Chair Holter: We need a motion to approve the minutes.

Mr. Shefte: So moved.

Chair Holter: And we need a second.

Mr. Schulz: Second.

Chair Holter: Seconded. All in favor?

It was moved by Mr. Shefte, seconded by Mr. Schulz, then

VOTED: To approve the January 25, 2007, meeting minutes as presented.

(Assenting: J. Shefte, U. Schulz, W. Kamai, H. Ajmani, and W. Shibuya.)

(Excused: K. Acks and R. Endo.)

Chair Holter: It's **unanimous**. Now, we have the Director's Report.

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chair Holter: So, staff, is there any information here that's—?

Mr. Cerizo: Well, the — we have here a list of five variance applications or appeals' applications that we have in contested case. And we have given you the status on each one of these. Are there any questions?

Chair Holter: No, I have one here that's highlighted: the Ka`Ono`Ulu Estates Appeal. Is that highlighted for any reason?

Mr. Cerizo: No.

Chair Holter: Okay. Warren?

Mr. Shibuya: What's the issue on the Maui's Best Gift and Craft Fair? They sold that property so. . . . (inaudible) . . . ?

Mr. Cerizo: Well, they're still — that's what their next meeting is going to be about because right now, the violation has actually ceased. And there's a new owner, and the new owner is going to do another project. However, the County has issued the violation,

and the violation is still there. So there's a question on how it's going to be resolved. So our next meeting is to see where we're going to go next.

Mr. Shibuya: Because I'm interested in terms of what's going to happen with the fines if the violations are maintained. Does it go to the original owner?

Mr. Cerizo: Well, whatever the action that comes about, the final action is on the – will be presented to the Board for review and approval.

Mr. Shibuya: Okay. Thank you. Because I'm quite interested in it because it was a cited violation not once, but twice. And there was a continuation of action until it was sold. So that's why I'm very much watching this action.

Chair Holter: All right. Any other discussion? All right, hearing is now closed.

E. NEXT MEETING DATE: March 8, 2007

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:12 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
Harjinder Ajmani
Uwe Schulz
William Kamai
James Shefte

Members Excused:

Randall Endo
Kathleen Acks

Others:

Francis Cerizo, Planning Department Staff
James Giroux, Deputy Corporation Counsel
Lance Nakamura, Development Services Administration, Department of Public Works
and Waste Management