

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
December 8, 2023

The County of Hawai‘i Board of Appeals met in regular session at 9:43 a.m. in the West Hawai‘i Civic Center Council Chambers, Building A, 74-5044 Ane Keohokālōle Highway, Kailua-Kona, Hawai‘i 96740 and via the Zoom online platform. The meeting was called to order with Chair Stacey Aguiar presiding. A quorum was established with seven members in attendance. [SEE YOUTUBE TIMESTAMP 3:50]

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=bLJNOExF3EQ>

MEMBERS PRESENT (in person): Stacey Aguiar (Chair), Richard “Ritchie” Henderson (Vice Chair), Cathy Lewis, Scott Martin, Scott Trefethen, and Daina “Noe” Saiki.

MEMBERS PRESENT (on Zoom): Lisa McNamarra

ALSO IN ATTENDANCE: Sherilyn Tavares, Esq. (Deputy Corporation Counsel for the Board); April Surprenant (Staff to the Board); Ashley DeVera (Board Secretary).

There were approximately thirteen members of the public in attendance.

Chair Aguiar reviewed online meeting protocols and procedures. Introductions of board members and staff were made.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:47 a.m., Chair Aguiar called for statements from the public. There were six members of the public in attendance to provide testimony:

Charles Hilkey [SEE YOUTUBE TIMESTAMP 7:30]

Bernadette Sabath [SEE YOUTUBE TIMESTAMP 11:26]

Claudia Rohr [SEE YOUTUBE TIMESTAMP 14:10]

Juan Pablo Mendoza [SEE YOUTUBE TIMESTAMP 20:40]

Lee Parrish [SEE YOUTUBE TIMESTAMP 26:23]

Elizabeth Cook [SEE YOUTUBE TIMESTAMP 1:52:16]

Testimony closed at 9:59 a.m.

OLD BUSINESS

2. ELLIOT FABRI (PL-BOA-2023-000066)

Appeal of Decision by the Planning Director Dated January 23, 2023, Regarding Notice of Violation and Order (PL-PCV-2022-00235) Relating to Unpermitted Events, Retreat Center/Activity, Church Practice and Renting Cabins

Location: Noni Farms Road, Puna, HI

TMK: (3) 1-4-020:007

PARTIES PRESENT: Elliot Fabri (appellant), Jean Campbell (Deputy Corporation Counsel for the Planning Department), and Zendo Kern (Planning Director)

WITNESSES PRESENT: Madeline Whitehill and Steve Peak

This item was called to order at 9:59 a.m. There was approximately one member of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 31:43*] Chair Aguiar requested to dispose the pending motion filed by the Director at the November 17, 2023, hearing. Jean Campbell, Deputy Corporation Counsel for the Planning Department, withdrew the motion since the appellant provided notification to the surrounding property owners.

[*SEE YOUTUBE TIMESTAMP 33:17*] Mr. Fabri, appellant, provided his opening statement.

[*SEE YOUTUBE TIMESTAMP 38:39*] Ms. Campbell provided her opening statement.

[*SEE YOUTUBE TIMESTAMP 41:52*] Mr. Fabri called his first witness, Madeline Whitehill. Ms. Campbell did not have any questions, but Chair Aguiar and Ms. Saiki questioned the witness.

[*SEE YOUTUBE TIMESTAMP 52:38*] Mr. Fabri called his second witness, Steve Peak. Ms. Campbell did not have any questions, but Chair Aguiar, Vice Chair Henderson, and Ms. Saiki questioned the witness.

[*SEE YOUTUBE TIMESTAMP 1:03:37*] Ms. Campbell called her first witness, Mr. Fabri. Vice Chair Henderson questioned the witness.

At 10:55 a.m. the board took a short recess, and the hearing was called back to order at 11:02 a.m.

[*SEE YOUTUBE TIMESTAMP 1:22:33*] Ms. Campbell called her second witness, Mr. Zendo Kern, Planning Director, and then Mr. Fabri cross-examined.

[*SEE YOUTUBE TIMESTAMP 1:41:41*] Chair Aguiar requested for closing arguments beginning with Mr. Fabri, followed by Ms. Campbell.

[*SEE YOUTUBE TIMESTAMP 1:46:30*] Vice Chair Henderson motioned to affirm the Director's decision regarding the notice of violation and order. Board Member Martin seconded. Members provided no discussion on the matter. A roll-call vote was taken, and the motion passed with seven ayes (Henderson, Martin, Lewis, McNamarra, Trefethen, Saiki, Aguiar).

[*SEE YOUTUBE TIMESTAMP 1:48:34*] Chair Aguiar asked Ms. Campbell to prepare the Proposed Findings of Fact, Conclusions of Law, Decision and Order and distribute to all parties within thirty (30) days of this hearing. Upon receipt, the parties will have fifteen (15) days to submit comments for the Board.

This item concluded at 11:29 a.m.

NEW BUSINESS

3. CHRISTINE L. BAILEY (PL-BOA-2023-000076)

Appeal of Decision by the Planning Director Dated August 22, 2023, Approval of Subdivision Variance (PL-SVAR-2023-000036)

Location: 52-4653 Akoni Pule Highway, Waimea, HI 96743

TMK: (3) 5-2-009:035

PARTIES PRESENT: Christine Bailey (appellant), Steven Whittaker (appellant representative), Jean Campbell (Deputy Corporation Counsel for the Planning Department), and Zendo Kern (Planning Director)

WITNESSES PRESENT: Jim Keim

This item was called to order at 11:30 a.m. There was approximately one member of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 1:56:00*] Mr. Whittaker, appellant representative, provided his opening statement.

[*SEE YOUTUBE TIMESTAMP 2:01:36*] Ms. Jean Campbell, Deputy Corporation Counsel for the Planning Department, provided her opening statement.

[*SEE YOUTUBE TIMESTAMP 2:04:16*] Mr. Whittaker called his first witness, Jim Keim. Ms. Campbell and the Board did not have any questions.

[*SEE YOUTUBE TIMESTAMP 2:33:09*] Mr. Whittaker called his second witness, Christine Bailey. Chair Aguiar questioned the witness and then Ms. Campbell cross-examined.

[*SEE YOUTUBE TIMESTAMP 2:54:53*] Ms. Campbell called her first witness, Mr. Zendo Kern, Planning Director. Vice Chair Henderson, Chair Aguiar, and Board Member Trefethen questioned the witness, then Mr. Whittaker cross-examined.

[*SEE YOUTUBE TIMESTAMP 3:10:22*] Chair Aguiar requested for closing arguments beginning with Mr. Whittaker, followed by Ms. Campbell.

[*SEE YOUTUBE TIMESTAMP 3:16:42*] Vice Chair Henderson motioned to affirm the Director's decision regarding the subdivision variance. Board Member Saiki seconded. Members briefly discussed the matter. A roll-call vote was taken, and the motion passed with seven ayes (Henderson, Saiki, Lewis, Martin, McNamarra, Trefethen, Aguiar).

[*SEE YOUTUBE TIMESTAMP 3:28:43*] Chair Aguiar asked Ms. Campbell to prepare the Proposed Findings of Fact, Conclusions of Law, Decision and Order and distribute to all parties within thirty (30) days of this hearing. Upon receipt, the parties will have fifteen (15) days to submit comments for the Board.

This item concluded at 1:09 p.m.

Chair Aguiar moved for a lunch recess and Vice Chair Henderson seconded. The Board recessed at 1:10 p.m. and reconvened at 2:02 p.m.

OLD BUSINESS

- 1. BOA-21-000299 – COMPREHENSIVE REVIEW OF BOA RULES OF PRACTICE AND PROCEDURES AND PROPOSED AMENDMENTS** (This item was previously posted on November 8, 2023, in accordance with Hawai'i Revised Statutes 92 for rule making.) The Board of Appeals passed a motion to initiate rule amendment proceedings at its hearing on April 9, 2021, in accordance with Hawai'i County Board of Appeals Rules of Practice and Procedure, Rule 5 Rulemaking Procedures. The proposed amendments include a comprehensive review and update to provide more consistency and adherence to related statutes and codes. In accordance with Hawai'i Revised Statutes 92-2.5, the Board created a Permitted Interaction Group at its May 12, 2023, hearing to review the rules and make recommendations to the Board. The Permitted Interaction Group provided a summary report of its findings at the September 14, 2023, hearing. The Board reviewed and discussed the draft rule amendments at its October 13, 2023, hearing. The Board will review and deliberate the draft rule amendments for adoption.

This item was called to order at 2:02 p.m. There were no members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 4:24:21*] Vice Chair Henderson requested to reopen discussion on the proposed rule amendments.

[*SEE YOUTUBE TIMESTAMP 4:31:40*] Vice Chair Henderson motioned to amend Rule 1-5 Meetings, section (e)(1) to read "To consult with the Board's attorney pursuant to Section 92-5(a)(4), Hawaii Revised Statutes", seconded by Board Member Lewis. No discussion by the Board and a roll-call vote was taken, and the motion passed with seven ayes (Henderson, Lewis, Martin, McNamarra, Trefethen, Saiki, Aguiar).

[*SEE YOUTUBE TIMESTAMP 4:32:51*] Vice Chair Henderson motioned to amend Rule 3-14 Briefs, to clarify a twenty (20) page document “A brief shall not be more than twenty (20) single-sided pages with one-inch margins, double spaced, and 12-point font as provided in Rules of the Circuit Court, Rule 3(a)”, seconded by Board Member Lewis. No discussion by the Board and a roll-call vote was taken, and the motion passed with seven ayes (Henderson, Lewis, Martin, McNamarra, Trefethen, Saiki, Aguiar).

[*SEE YOUTUBE TIMESTAMP 4:35:19*] Vice Chair Henderson motioned to close discussion and Board Member Trefethen seconded. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 4:36:37*] Board Member Saiki motioned to adopt the proposed amendments to the Board of Appeals Rules of Practice and Procedure as presented by the permitted interaction group with the incorporated changes and additions that have been agreed upon by the Board and Vice Chair Henderson seconded. A roll-call vote was taken, and the motion passed with seven ayes (Saiki, Henderson, Lewis, Martin, McNamarra, Trefethen, Aguiar).

[*SEE YOUTUBE TIMESTAMP 4:37:47*] Chair Aguiar announced the rules will be forwarded to County Council. Ms. Surprenant clarified that the rules will be finalized and formatted, then reviewed by Corporation Counsel, receive Chair’s signature, transmitted to the Mayor’s Office, and then Clerk’s Office.

This item concluded at 2:18 p.m.

MINUTES

A motion was made by Board Member Lewis to approve the hearing minutes of November 17, 2023, as circulated. The motion was seconded by Vice Chair Henderson. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

ADMINISTRATIVE MATTERS

Status of appeals filed on Board of Appeals decisions – Corporation Counsel

Ms. Tavares reported in the past week numerous cases that were pending from Department of Public Works (DPW) were withdrawn due to council passing a new ordinance (Bill 84), which provided the discretion to the DPW Director to grant homeowners or property owners a time extension to complete the building process.

Status of outstanding petitions – Staff

Ms. Surprenant reported two cases, Dierenfield and Rohr, on the January agenda.

ADJOURNMENT

Board Member Trefethen motioned to adjourn the hearing. Vice Chair Henderson seconded the motion. An all-in-favor voice vote carried the motion unanimously. [*SEE YOUTUBE TIMESTAMP 4:41:38*]

The hearing was adjourned at 2:22 p.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals