

BOARD OF APPEALS  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
JULY 14, 2006

A regularly advertised hearing on the petition of **TOM GREEN AND DIANE TADEMA (BOA 06-000025)** was called to order at 10:00 a.m. in the West Hawai'i Mayor's Office, Conference Room, 75-5706 Kuakini Highway, Suite 103, Kailua-Kona, Hawai'i with Chairman Valta A. Cook presiding.

PRESENT: Valta A. Cook  
Anson Chong  
George Curtis  
David Drury  
Diane Gentry  
Joel Gimpel  
Peter Hendricks

Patricia O'Toole, Counsel to the Board  
Alice Kawaha, Staff to the Board

Klaus Conventz representing petitioners  
Chris Domino representing Department of Public Works

And approximately 19 people from the public in attendance

**PETITIONERS: TOM GREEN AND DIANE TADEMA (BOA 06-000025)** - Petition for Variance from provisions related to setback requirements of Hawaii County Code, Chapter 5 (U.B.C.), Sections 504(a) General and (b), Table No. 5-A, Part III, and Section 1711 Eaves. The property consists of 10,450 square feet, located at the intersection of Leilani Street and Ailina Street in Leilani Sunset Subdivision, Holualoa 3<sup>rd</sup>, North Kona, Hawai'i, TMK: (3) 7-7-20:69.

COOK: Okay, we will now move on to Item No. 2 on the agenda, which is the Tom Green and Diane Tadema (BOA 06-25). Would those parties come forward, please. Okay, have a seat. We'll first have the petitioner's representative introduce himself, please.

CONVENTZ: Klaus D. Conventz, representing Green and Tadema, the petitioners.

COOK: Okay. And you are?

DOMINO: Chris Domino of Public Work, representing the County of Hawaii.

COOK: Okay. Well, I think the way we'll proceed here, we have received the appeal with the attachments. So, Mr. Klaus, you want to make a brief statement at the beginning

and then we'll let the Public Works speak; and then maybe we can move forward to the introduction of any proposed exhibits. Pat, you want to?

O'TOOLE: Yeah, I just wanted to say that this is not an appeal. It's a situation where the Board grants the variance or not. So it's not an appeal.

COOK: Oh, okay. Well, Mr. Klaus, why don't you make your opening statement then and we'll let the Building Department respond and we'll go from there.

CONVENTZ: Okay, in May 2005 I applied for setback variance for various setback violations under Chapter 25 Zoning Ordinance which was granted to the predecessor in the property, Elbert F., Y. F. Sunn, with double "n," on May 9, 2006. One of the conditions for approval of this variance is actually the variance or the removal, the variance before the Board of Appeals for an additional short-coming on the property or the removal of the structure; and that is why I am here to represent, I represent the predecessor Sunn as well as the current Mr. Green and Ms. Tadema before the Board.

The property was built, any improvement was built between 1980-1984 which consisted of a two-story dwelling, pergola-gate-trellis and fences, heavy duty fences, to say so, and a swimming pool with deck; and that was finished in the mid-80s. Commonly, a fence, that is Lucky Bennett design. You might be aware that Lucky uses heavy-duty trellis and fencing which actually do not look sometimes like fences, but it appears as additions to a house with heavy duty roofs. And that is why if you look at photos, and I submitted today Photo Nos. 4 and 5 for general overview, which shows the south side of the Ailina Street which is the connector between Leilani and Kilohana and Sunset Terrace, it shows that white house on top all by itself left, and the right-hand house, the dark brown one, the typical Lucky Bennett house, and the other way around on the bottom from the bottom up. It shows for instance that the white house on top that the garage floor is actually higher than the ridge and that is closer than the ridge of the subject property. And if you look from the bottom up from Photo No. 5 from the bottom you'll see in front that black car in front of the subject property and to the left huge concrete white walls, retaining walls, retaining the entire property up to about 24-25 feet height, including the swimming pool and the house by itself, everything on concrete.

Now under, if you look at the Photos 1, 3 and, 1, 2, and 3, you'll see in more detail the addition I am talking about connecting almost to the neighbor of the white house on the left; and that is indeed, although it appears that way not an addition really to the house, it is really heavy duty gate with false walls and with projecting beams and roof. But, unfortunately, Section 504 of the Uniform Building Code, Chapter 5, and for eaves, Section 7-11, require that you maintain a 3-foot setback for the walls, which it does have as the plot plan shows; however, then the roof eave projects to 1.66 feet to the boundary in the north and in the south to barely over 2 feet, while in fact 2 feet from eave is the minimum, and that 1 foot projecting into the 3 feet got to be fire rated. And that is not the case here. It is not fire proof. And if you look at the photos you could now do with some fire rated sheet hawk (phonetic), certainly comply with the Building Code. But that would certainly discard the appearance of the entire situation of the entire house. You also could calibrate, that is correct, to three feet, but then you cripple on that side. You have a two-story house while the rest of the perimeter of the house has this system of heavy duty fences, gates and

trellises. So that would really look awful. I submit to the Board that we have an unusual situation and certainly the Building Division cannot approve that because the Building Division is held by the straight rule that says 3 feet of the wall and no more than 12 inches projection into the setback of 3 feet and then fire rated. And the only solution was is either cut it off, or receive a variance from the Code provisions through the Board of Appeals. And that is where I submit that the house, the adjoining house, since closeness could actually cause a health and fire hazard to any boundary, a special and unusual circumstance here, is that we abut to or adjoin to over 20-foot high succession of no wood at all but only concrete walls on the neighbor lot. Hypothetically, that could be all taken away and the neighbor could cut down, and then we would have a fire hazard; but for all practical purposes that is just about impossible, unless somebody's house is property away.

COOK: Mr. Klaus, I think we'll go -. Are you offering the exhibit?

CONVENTZ: Yes.

COOK: The map we'll call that Exhibit 1 and then, or maybe we'll call it Exhibit A. Is that okay?

CONVENTZ: Okay.

COOK: We'll call that Exhibit A and then your photographs we'll call Exhibit B, 1-5.

CONVENTZ: That came later to have to -.

COOK: Yeah, but we'll still call it Exhibits B, 1-5. Does the Building Department have any objections to those Exhibits being allowed?

DOMINO: Yes, we do. According to the Uniform Building Code, he must meet the minimum requirements and setbacks.

COOK: Yeah. You know, I realize you're objecting to the variance. But as far as the Exhibits, this is what he's presenting to show what the situation is. Do you have any objections to those?

DOMINO: No.

COOK: Okay, then we will accept those. Okay, you want to go ahead and give us now the position of the Building Department on this request for a variance.

DOMINO: The Building Department as Klaus has stated is going to hold to the Section 504 and Chapter 17 to setbacks and projections within the setbacks from the vertical walls. Klaus is aware of the setbacks and what the corrections must be for us to go ahead and allow this type of a construction here.

COOK: Does any Members of the Board have questions of either -?

CHONG: Yeah, short question.

COOK: Yes.

CHONG: Would one of the two witnesses tell me who, was this inspection generated by any neighbors, protest from the neighbors? Was anybody objecting in the neighborhood to this or was this is a -?

CONVENT: No. I have actually had three mass mailings and twice through the newspapers; and there was no reaction, none whatsoever. It was only because pending an escrow in 2005 an as-built survey was done and the shortcomings found; and they hired me to get Chapter 25 setback; and I told them, guys, you need a second variance or cut it back.

CHONG: So to follow-up then maybe Chris should explain why, how were they able to build to, in effect, follow the existing Codes and get that thing built in the first place? You have any idea back in 1984, whenever it was?

COOK: I'm sorry, your question was why were they able to build -?

CHONG: Yeah, how could they have done it in the first place if it was illegal?

COOK: Yeah, I guess you're asking the Building Department's representative.

CHONG: Yes.

DOMINO: At that time, I cannot answer for that.

CHONG: Chris -.

CONVENTZ: May I -?

COOK: Wait, wait. Let's see if he can respond to it. Go ahead, Mr. Conventz.

CONVENTZ: I'll try to clarify. At the time, I'm here since 1980 and at the time, and actually still today, usually a fence or a gate abutting to a house to the boundary is never an issue. The issue comes only because if look at it the first time you don't even consider it, you just, you think there is a closet behind that door or a single garage when in fact it is just the heavy duty typical Lucky Bennett fence, gate situation; and there was actually never an issue. It was not really an issue. I don't even blame any building inspector for it, it was just how it was done. They would have had the chance to move it a little bit towards the Leilani, but then it would have possibly connected even more to keep that fence and that gate to the neighbor, you know. Only it's usually a chainlink fence or a board fence, not such a fancy thing, you know.

COOK: Okay, George, you had a question?

CURTIS: Chris, the projection, doesn't that count as heavy timber?

DOMINO: Some of the construction in the photos do count as heavy timber.

CURTIS: And that would be legal, wouldn't it, as far as fire resistance is concerned?

DOMINO: Certain members, certain structural members of this construction is classified as a heavy timber.

CURTIS: Is there any public hazard in this action that we're looking at?

DOMINO: Just setback, setback clearances, for safety and for access to the rear yard, for life and fire and safety.

CURTIS: Is there alternate access to the rear yards?

DOMINO: Judging from the photos given, I can't answer that. Is it -?

CONVENTZ: Yes, yes, from Leilani.

CURTIS: Okay, thank you.

COOK: Anyone else here? On my right here? Joel, you have -?

GIMPEL: Yes. Which house was there first?

CONVENTZ: The subject property.

GIMPEL: That was the first house?

CONVENTZ: Yes, sir.

GIMPEL: And have the owners of the white house evidenced any complaint?

CONVENTZ: No.

GIMPEL: Thank you.

DRURY: Another small question?

COOK: Yes, David.

DRURY: When the house was built, was the property, the building duly signed off in terms of all the permits?

CONVENTZ: Yes, sir.

DRURY: Okay, so at the time the building was built, it was signed off by the -?

CONVENTZ: That is correct.

DRURY: All right.

COOK: Just one question, Chris. Do you consider this, as I understand it what we're really talking about is that little, that part that looks like the roof that extends over. That's basically what we're talking about here, isn't it?

DOMINO: We're talking about whatever projects from the vertical wall, which would be the eave and also the decorative structural beams.

COOK: Okay. Do you -?

CONVENTZ: But the beams are heavy duty, sorry.

COOK: Do you consider that extension over there, do you consider that a fire hazard in this particular case?

DOMINO: If that particular structure was to catch fire, it could present safety matters onto the existing property or onto the next door property, adjoining property.

COOK: But as I understand it, that's, you know, this huge wall over there, that's made of concrete. So there's not much danger of a fire to this particular structure injuring that adjoining property, is there?

DOMINO: Well, if the brush were to catch fire or any vegetation along that wall. I do understand that the wall is tiered back so there are planters where vegetation is growing.

COOK: Mr. Klaus, you wanted to respond to that?

CONVENTZ: Yes. I agree that if subject property blocks down then the wide walls will be black with or without that smoking, gate. And, yes, there are a few palm trees. If you look at Exhibit B-2 for instance and also B-1, you'll see that it's staggered, but every single trellis, firstly, no matter how densely you planned it not a fire hazard because the next 5-foot high wall is again concrete, and the next one is, and the next one is; and then there is a big swimming pool on top. And that is, yes, there could be some bushes being wilted or actually burned, but I still don't see how that could carry over to the neighbor house. And I talked to him and he said, no, I would have to repaint. That is exactly what we discussed if that house burns down. But then it is not from the gate. It is from, since there is no fire source it would have to come from the house.

COOK: Okay. I think at this time I'm going to call for a motion either to approve or reject this variance.

CURTIS: I move that the variance be granted.

CHONG: Second.

COOK: We have a motion and a second that the variance be granted. Okay, is there any discussion from the Board? Okay, I'll call for the question. Would the clerk read the, call the roll, please.

KAWAHA: Mr. Curtis?

CURTIS: Aye.

KAWAHA: Mr. Chong?

CHONG: Aye.

KAWAHA: Mr. Drury?

DRURY: Yes.

KAWAHA: Ms. Gentry?

GENTRY: Aye.

KAWAHA: Mr. Gimpel?

GIMPEL: Aye.

KAWAHA: Mr. Hendricks?

HENDRICKS: Aye.

KAWAHA: Chairman Cook?

COOK: Yes.

KAWAHA: Chair, there are seven ayes. Motion is carried.

COOK: Okay, then the variance is approved.

CONVENTZ: Thank you very much.

COOK: Okay, thank you. Thank you, Chris, for coming.

The discussion ended at 10:29 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary