

BOARD OF APPEALS  
COUNTY OF HAWAI'I

HEARING TRANSCRIPT  
DECEMBER 12, 2008

A regularly advertised hearing on the application of **DAVID OWENS (BOA 08-000072)** was called to order at 10:35 a.m., in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Joel Gimpel presiding.

PRESENT: Joel Gimpel  
David Drury  
Charlene Hart  
Peter Hendricks  
Karen Maedo  
Kim Tavares

Renee Schoen, Counsel to the Board  
Alice Kawaha, Staff to the Board

**PETITIONER: DAVID OWENS (BOA 08-000072)** - Petition for Variance from the Building Code requirements relating to doors, fire wall, and projection and clearance. The subject property is bordered by Keawe Street, Mamo Street and Kilauea Street, adjacent to the Garden Exchange commercial building, Downtown Hilo, South Hilo, Hawai'i, TMK: (3) 2-3-11:16.

GIMPEL: Can we have the parties and their counsel or agents please come to the front. Thank you. Mr. Owens, I presume that's you.

OWENS: Yes.

GIMPEL: All right. Mr. Owens, would you introduce yourself, please.

OWENS: Okay. My name is David Owens. My address is 5 Machida Lane in Hilo.

GIMPEL: Thank you. And Building Department?

KAJIKAWA: Brian Kajikawa, Building Chief, Department of Public Works.

BANCROFT: I'm Deputy Corporation Counsel Brooks Bancroft.

GIMPEL: All right, thank you. Gentlemen, there are a number of preliminary issues, legal issues, that we want to dispense with before we move on to the hearing on this.

The first involves the question of whether the required notice to property owners within 300 feet was provided. Mr. Owens, the rules require that property owners within 300 feet of the property be provided notice of this hearing; and this was indicated in the November 10<sup>th</sup> letter to you that you were so required to do. Have you done that? Have you -?

OWENS: Yes. That's why they all were notified.

GIMPEL: The further requirement is that you provide proof the fact that you so notified them.

OWENS: I got mine. I gave copies to Susan Gagorik, too, right after I mailed it. The post office gives you a receipt kind of thing.

GIMPEL: Okay. But I don't have any record in our files that you notified us or the Board of Appeals at least 20 days prior to the hearing that that mailing had been made; and that is what is required. Would you waive that requirement for the purpose -?

BANCROFT: We'd be willing to waive that.

GIMPEL: You will waive it. Okay, so we will accept that. Thank you. The second issue is, that has been brought to our attention, House Bill No. 2486 was enacted by the State of Hawaii Legislature earlier this year and allowed to become law by the Governor. And that bill requires basically that private and public buildings that are at least 50 years old when remodelings take place that the DLNR be furnished with archival quality black and white photographs. Was that done?

OWENS: That was done two weeks ago. I wasn't notified of it until Brian mentioned it to me.

GIMPEL: Okay. And do you have proof of the filing of that?

OWENS: I don't have proof but I didn't realize it was going to be a, I did it immediately after I found out. They have pictures and then a write-up of what the building was, what it's going to be, and -.

GIMPEL: Okay, so that has also been concluded?

OWENS: That has been done. It was the name Austert Liverman in the DLNR Office in Honolulu who handles those.

GIMPEL: All right. Those are the principal things. Would you waive the necessity of proof on that or would you insist on it?

BANCROFT: Yes, if the Board is satisfied that what Mr. Owens has provided is proof. Because the Statutes is pretty specific that the County agencies cannot issue any development related permits until proof has been provided.

GIMPEL: Okay, then after hearing this matter and we decide that the variances should be permitted, and before those variances would be issued, we would require that proof of the filing of the DLNR be required, filed with us.

OWENS: That's good.

GIMPEL: Is that acceptable?

BANCROFT: That's fine.

GIMPEL: Okay. The next question that I have is have you applied formally to the Department of Public Works for a variance to the Building Code at all?

OWENS: What I did is, they kicked it back to the Building Department.

GIMPEL: Yes, that's what I'm talking about.

OWENS: So they said don't even, I went to, for a variance, and they said that's the Building Department's issue.

GIMPEL: And did you file with the Building Department then?

OWENS: For a variance?

GIMPEL: For a variance.

OWENS: No. Our plans were submitted and rejected with, for these items. And so that's what happened; and that's when we ended up here.

GIMPEL: And, because we don't have any record of the rejection.

OWENS: I think Brian knows. You're familiar?

KAJIKAWA: I have not received anything.

GIMPEL: We have no record of any rejection from the Building Department of the plans.

OWENS: They told us just to leave the awning off because it will not be accepted, and the doors.

GIMPEL: Okay. But I mean -.

OWENS: So I don't know what -. So the architect drew it and then was told to remove it.

GIMPEL: I understand, I understand. But was there a written rejection from the Building Department to you?

OWENS: No, there wasn't.

GIMPEL: No written rejection. Our rules permit us to grant variances if strict application of the provision of the Building, Electrical or Plumbing Codes would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved. And we are, of course, empowered to engage necessary experts to assure that any variance is safe, and so forth, and so on. So with that in mind, I think we'll move forward with the hearing. But, first, Mr. Drury, you have a disclosure to make?

DRURY: Yes, Mr. Chair. I need to disclose that David Owens was my tenant briefly in 2005 for two or three months. I don't think this will affect my discretion or impartiality in the case. But I leave it to you to ask if there are any objections.

GIMPEL: Are there any objections to Mr. Drury's participation?

OWENS: No objections.

GIMPEL: No objections. And -?

BANCROFT: No objections.

GIMPEL: No objections. All right, you're in. All right, with that, let's have the opening statements. Mr. Owens, you're first.

OWENS: Actually what I was going to do is, this is my outline. I was just going to read it. But I decided to give it to you all this morning.

GIMPEL: Oh, well, you're perfectly free to summarize it.

OWENS: Okay.

GIMPEL: I don't think it's necessary to reread the whole thing.

OWENS: Yeah, basically it was an outline for myself; and I thought it would be more polite to give it to everybody and let them look at it themselves. It's not done for you. It's actually done for myself.

Basically I like these old buildings. This is my second one Downtown. The other one is the Burns Building on the corner of Waianuenue and Keawe Street. There's now a youth hostel upstairs. It was built in 1911 and it has turned out nice. It's a good feature for Downtown now. There are 30 young people that stay there every night.

This building has a similar potential if it's done properly. Cosmetically this building was really bad, ugly. Structurally it's actually very strong. It was built on steel poles. It was built in '48, after the '46 tsunami. And we found sources for the windows to match the 1948 awning windows. A lot of things we're doing, which we submitted to the State, are things that are in keeping with the era that it was built.

The first thing I'd like to talk about is the doors. This was built as a market. It was the first fruit and vegetable market in Hilo, and it didn't have doors. It had these accordion kind of sliders, sideways. You can't buy those anymore. They're, actually they're quite dangerous. But, so we've installed roll doors. Our goal is to have a restaurant downstairs that open, open field like it used to have. Upstairs there will be five apartments. It used to have about eight or ten. So that's kind of the big picture of what I'm trying to do with this place. These old buildings aren't easy though. A lot of things are just different. Even the size of wood we use now days is different. It's not a 2 by 4 anymore. Lots of things like that is why it's difficult to make things conform to the Building Code. The doors were really important though. There's a fire issue. You've got a nice set of double doors in the back of the building but there's a triangular calculation that the Building Department does that makes these incorrect. I called the fire chief and they sent Jack Pacleb out; and he came out. He had some good suggestions on how to make it work. And the Fire Department, they don't want to get involved in this hearing, which is understandable. But they feel a common sense can actually make things work here. One of the suggestions was locking the door up during business hours or putting a signage doors must remain open during business hours. And those are just two ideas that the Fire Department came up with.

The next thing they talked about is the awning. I think we've already discussed it. As far as Downtown is concerned, it's a really good walking town we have here; and this awning is important. The setback is 30 inches. We've got a 5-foot sidewalk on one side so there's just nothing left to put an awning over. Also, if someone is 30 inches on the driveway driving up on a sidewalk you probably shouldn't be driving. The building used to have zero, it was right over the edge. I'm requesting 4 inches back. I took my dump truck and measured it. I can drive up against there and still have 4 inches and not hit the awning. But that's kind of important, too. It keeps people dry, it keeps the sun off of them. It's an intelligent idea. So I'm requesting a 4-inch setback instead of 30 inches on that.

The last thing is this parapet on top of the building. There's a picture, it's not a very good quality picture but it kind of shows it. We've got two concrete walls, one on my building and one on Garden Exchange. The owner of Garden Exchange is comfortable in having me not do this; and that's his property next door, steel building with a concrete wall. I've got a concrete wall and a metal roof also. To put a 30-inch structure on top would be very difficult. So I'm asking some help on that one, too. It would kind of make, its makes it look stupid actually is what -. And whether it's going to work or not that's a different story on that one, too. So that's pretty much why I'm here, those three things.

The other thing which is really important, and I've also included the valuation, and the reason I'm here actually is the 50 percent rule, which I think is being interpreted wrong. If it wasn't for that we wouldn't be here right now. You can see the numbers on this thing, I'm right around \$80,000. I've included little things like nails and bolts and things, but overall we're right around \$80,000. We've got a replacement value well over a million, that's not 50 percent. And I think the reason our Downtown is looking the way it is looking is that no one stood up and said anything about this. And it is time consuming. This isn't easy. And I know you take your time to come here, too, but too many people won't do this and contest this 50 percent thing; and that's what's going on here. These things are all legal. But I'm doing the awning and everything else if you don't change the 50 percent.

And so we really have two arguments. One is, the first, these things are logical and they should be granted. The other one is this 50 percent thing. So that's pretty much what I have to say about it. Any questions?

GIMPEL: Thank you.

BANCROFT: Thank you, Mr. Chair and Board Members. Petitioner has, as Mr. Chair alluded to previously, a very specific burden of proof which is outlined in Section 7-8 of the Board of Appeals Rules. Petitioner must show that strict application of the Code would deprive the petitioner of the reasonable use of the property. And based on the information that was provided in the petition and also on Mr. Owens' statement so far, petitioner just hasn't demonstrated that without the variance petitioner would be denied the reasonable use of the property. The request for variance appears to be primarily for aesthetic reasons, not because there is some physical barrier as to why he can't comply with the Building Code. And basically the Building Division's position is pretty simple, the Building Code must be complied with, it must be enforced. It must be enforced for the safety of the public, must be enforced for the safety of the occupants; and petitioner has not set forth any compelling reasons why the Building Code shouldn't be followed in this instance. Thank you.

GIMPEL: Okay. Do you have any witnesses to call, Mr. Owens?

OWENS: No.

GIMPEL: Or we can take your opening statement as basically your testimony and so forth?

OWENS: Yes.

GIMPEL: Are there any questions of Mr. Owens from the Board? Ms. Tavares.

TAVARES: I just wanted to get a little clarification on the 50 percent thing. If you could explain what that is.

OWENS: I'm learning that as I go, too. It says, that's why you were included a copy of that thing there. It says replacement value. So that's what I did. I asked for replacement value; and then I put in what I had spent, as per year. That's why the dates are on it, from October to October. So that's, yeah, I'm learning about it, too.

TAVARES: Okay, but what you said is, the 50 percent means what? If you spent it 50 percent of the value of the structure, or what is -?

OWENS: I think it's the value of the structure excluding the land.

TAVARES: Okay.

OWENS: I think that's the way it's probably interpreted.

TAVARES: And you mentioned that if you had spent 50 percent that all of the other variance things wouldn't be an issue?

OWENS: I don't think we'd be here right now if -. I wouldn't have exceeded 50 percent, which I didn't. These things, especially the -. Yeah, how does that work, Brian?

KAJIKAWA: The Building Code has provisions for existing structures. An existing structure is we go by replacing the value, valuation or replacement cost. The first is 25 percent. If your cost is up, does not exceed 25 percent of the appraised value then you can use the Code of the time, the Building Code of time your building was built, 25 percent work. If you exceed the 25 percent and go up to 50 percent then that new construction needs to conform to the new Code. If he exceeds the 50 percent the entire structure needs to conform to the Building Code, of the present Building Code. That's how the percentage rule works. But there's also another percentage rule that's governed by engineering, which is in the flood zone, and that's out of my jurisdiction and is entirely different again.

GIMPEL: So as I understand it then, aside from the flood zone anomalies, if the reconstruction costs do not exceed 25 percent of the appraised value then the Building Code to be applied is the Building Code that applied to the structure when it was originally constructed. Is that correct?

KAJIKAWA: Correct, correct. Between 25 and 50 percent, that work needs to conform.

GIMPEL: At, over 25 percent to 50 percent then you have to use the current Building Code?

KAJIKAWA: Right, correct.

GIMPEL: All right. Okay, we haven't taken your testimony in yet and we have to swear you in. So that's, we can take judicial notice of that provision in the Building Code. All right, do you have any cross-examination of Mr. Owens?

BANCROFT: Just a few brief questions.

GIMPEL: Sure.

BANCROFT: Could you just describe in a little more detail what the purpose of the building is? I know you said it's for a restaurant.

OWENS: My goal is to have a restaurant downstairs, an open air -. It seems to be the best use and so far the tenant is coming forward with that. And the upstairs is to be five apartments.

BANCROFT: And you've already commenced construction on the property obviously.

OWENS: I haven't made the apartments upstairs, no.

BANCROFT: Okay.

OWENS: Actually the pictures show it's empty downstairs and empty upstairs.

BANCROFT: So how far are you in the construction process currently?

OWENS: Downstairs is actually finished as far as the landlord. The tenant will take over from there and then build to suit whatever their business is going to be. The upstairs I haven't quite figured out the configuration yet.

BANCROFT: So could the construction or the building plans be modified to conform with the Building Code if necessary?

OWENS: The doors downstairs are difficult. We can't figure out a way to solve it. Structurally it just doesn't work. We've got good fire doors in the back. But there's this triangulation formula that we're a few feet away from, so we've got to put another fire door at the front of the building. But if the roll doors are open, the common sense and logically it seems to work quite well, there's no door. So -.

BANCROFT: So if the variances weren't issued would it be safe to say that you could still use the property for its intended purpose though, such as a restaurant? It just wouldn't look the same or it -?

OWENS: No, it wouldn't work right.

BANCROFT: How so?

OWENS: Cause it's an open air restaurant. That's who we are looking at as tenants. Yeah, economically it wouldn't work. Structurally it would work. You'd have to do something that make it work. So, they'd cut a hole in the roll door probably.

GIMPEL: Any other questions of Mr. Owens at this point? I have -. You have one?

DRURY: I'll go after you.

GIMPEL: We talked about, Mr. Owens, we talked about the doors, and I do have a question about that. But also I would like to talk about the parapet. What is your understanding of the use or the purpose of constructing a parapet?

OWENS: The way I read it, you're suppose to have 30 inches above your roofline when you build a building next to another building. So the Garden Exchange did the 30 inches on theirs. When my building was built there was nothing next door though, so they didn't do it; and that wasn't part of the 1948 Building Code I assumed. So they just built the building the way they built it. When Garden Exchange built next door then I have to build the 30 inch-parapet on top as part of the Code. But if we work with the 1948 Code I don't.

GIMPEL: So you're suggesting that because the 50 percent rule or 25 to 50 percent rule is misapplied, if it does apply to your property that you wouldn't have to build a parapet because the old Building Code would apply?

OWENS: Correct.

GIMPEL: Would you describe a parapet? I'm -.

OWENS: It's just a firewall basically on top of my roof.

GIMPEL: Okay. So it's not a three-dimensional structure?

OWENS: No, it's just 12 inches wide by 30 inches high and it runs the whole length of the building. So -.

GIMPEL: Thank you, okay. That's what I wanted to get straight. Mr. Drury, you had a question?

DRURY: Mr. Owens, are there any design guidelines beyond what was promulgated by the Redevelopment Agency in the 1980's?

OWENS: Actually the guidelines, Envision Hilo, has a lot of guidelines about the awnings and things like that especially. We'll try to keep it the way it was and that's why we've had such good support from the Downtown Improvement. They're not rules, but I'm not sure how you interpret them really. They're guidelines that the Planning Department has. But there's no enforcement of it, so they rely upon the Building Department. So in a way it's almost like dualing departments.

DRURY: Okay, a follow-up question about the 50 percent rule. I have seen your math about replacement costs and building costs. The math doesn't come anywhere near 25 percent to me, but I don't know the details of this. When you brought this up with the Building Department what was the response?

OWENS: I'm over 50 percent, that was our response.

DRURY: Okay. Then clarify if you can for me, 88,000 divided by 1.2 million doesn't look like 25 percent to me.

OWENS: No, it's -.

DRURY: Am I missing something?

OWENS: I am too. That's why I'm here. I don't quite -. See, a lot of the stuff we do, if we went and hired a company, a big company, to come in and do this, we're probably looking at a ½ million dollars to do this renovation. And I think that's what's happening with the Building Department. They're looking at a large corporation, bidding it, coming in, and doing it. It doesn't make economic sense if you do that. You'll actually lose money. I do a lot of the work myself. As you see by my wages I've got a couple of guys that help out; and overall -. If you look at the pictures, there's nothing in there though. There are no bathrooms, there are no kitchens, there are no air conditioners. Basically we have a hollow shell downstairs that we prepared for the restaurant.

DRURY: Okay. But the point is were you given an explanation of how the 50 percent rules applies, of why, or were you simply told?

OWENS: They have a formula. But maybe Brian can help on that. There's a formula that they work that they can come up with that number. I guess it goes by square footage times a square footage price to build. See, a new structure is different than an old structure, too. And I'm lucky I can do this stuff myself. We've recycled all the metal, the glass. We used the wood from below to go above, so -.

DRURY: So am I right in saying that the 50 percent applied because they were applying generic rules about the square footage times built-out cost as opposed to the actual cost that you will incur in doing the building?

OWENS: I think that's what they have to do, really -. Cause unless you take each one individually, but I think it's a general formula.

HART: I have a question.

HENDRICKS: Question down there, Mr. Chairman.

GIMPEL: Oh, I'm sorry, sorry.

HART: Mr. Owens, what you do anticipate your final renovation cost will be? I'm interested in this 25 percent rule.

OWENS: I think it's going to be another 80,000.

HART: So you'll come in at 160,000, which is -?

OWENS: My goal is to keep it under 150,000. It's going to hit 160 to 180; but it's per year, too.

HART: So, I mean -.

OWENS: My first permit was this 10<sup>th</sup> of October 2007. So I guess I'm in my second year now. I'm not sure how, the legalities of it. I kind of work on the fact that I'm so far above replacement value that I'm still good at 160.

HART: Right. So I mean the reality is that your costs are going to be considerably below 25 percent or roughly a quarter million.

OWENS: Yes. Yes, we will.

HART: And yet you're saying they're applying the 50 percent rule to you?

OWENS: Yes.

HART: Okay, thank you.

GIMPEL: Are there any other questions? All right, let's hear from the Department of Public Works. You have a witness?

BANCROFT: Yes, Mr. Kajikawa.

GIMPEL: All right. Could we have your name and office, please.

KAJIKAWA: Brian Kajikawa, Building Division Chief, Department of Public Works.

GIMPEL: Thank you. Do you swear to tell the truth, the whole truth, and nothing but the truth?

KAJIKAWA: Yes.

GIMPEL: Thank you.

BANCROFT: Mr. Kajikawa, we submitted to the Board Exhibit 3. I believe the Board Members all have copies of that, which is, essentially it's a summary of the Code requirements pertaining to the three sections the petitioner is requesting a variance from. Could you just please go through a little bit on -.

KAJIKAWA: Sure.

BANCROFT: Exhibit 3 and explain the requirements, and also some of the safety issues that could be presented.

**KAJIKAWA:** First he's requesting, I guess, a variance for a means of egress. Basically when he came in for a building permit he had B-2 occupancy, which is now spaced for retail space. And that has a limit, ultimate limit, of not less than 50 persons. Once he exceeds the 50 persons within that square footage the occupancy already changes to a different type of occupancy. And based on what Mr. Owens said, he wants to use it as a restaurant, square foot per person for a restaurant is based at 15 square foot per person. He has a total of 2,654 square feet within that floor, footprint of the ground floor. If I divide, assume half of that would be for restaurant space, it would be 1327 divided by 15 persons, 50 square foot per person is roughly 88 persons. So at that point already he has exceeded the 50, 50 persons allowed by Code minimum. So he is in a different occupancy category. Once that comes into play, the door is all required to be swing-type doors; and in this case he needs a minimum of 2 exits. Looking at his plans that were submitted for the demolition work and for the awning, I guess the awning work, what not, it shows only one pair of doors swinging out. So basically he needs to provide another door; and the distance between those two doors is not less than 1/2 the diagonal distance of the entire building. So he needs to have the doors that far apart in order to qualify to have two exits. And because it's an A occupancy the door needs to swing out, and it also needs to be provided with panic hardwares. Those are the requirements by Code.

Next is a variance on the request for a firewall. Basically he came as a Type V-N which is the lowest restriction type of construction, which basically wood construction is allowed. Once you have combustible members within the roofing area, then a firewall is required to extend 30 inches above that, the highest point. If he has a structure that's noncombustible, then he can terminate at the roofline. So by Code he needs to extend the wall 30 inches above.

The awning over the public walkway, as he said there is a requirement 2 feet 6 inches from face of curb; and this is a Code requirement. So if you ask me what I'm going to do, because I'm because I'm a Building Code official I need to uphold, enforce what the Code requires; and these are the requirements.

**BANCROFT:** And can you explain just briefly some of the safety hazards, the safety issues that could occur if the variance as requested by the petitioner was awarded?

**KAJIKAWA:** I guess a means of ingress is the most critical to me at this point because should there be a fire within the facility or if anything else happened the occupants of the space need to have a direct exit to travel; and they need to have a very clear means of exit path. And a minimum of two exits in a place like this is a must; and without that I can see catastrophe happening. A good example is the night club fire they had in the East Coast not too long ago where the doors were blocked and people panicked; and when people panic they trample over each other and they -. You know, some people could get killed. And so for me means of ingress is one of the more critical portion of it, of all the three. As far as the rationale, it's by Code, yes, so I need to enforce it.

**BANCROFT:** And is there anything else you'd like to add as to any of the testimony or questions by the Board?

**KAJIKAWA:** No. But if you folks have any questions I can answer your questions at this time.

**GIMPEL:** Mr. Owens, you can cross-examine if you'd like.

**OWENS:** On the doors, the door is a door if it's down. If the door is open it's a large 16-foot -, I've got almost 60 feet of open space.

KAJIKAWA: Yes. But the Code requires the doors to be on a hinge and open in the direction of travel with a panic hardware.

OWENS: Would it be acceptable to have the doors unlocked during business hours?

KAJIKAWA: No. Your occupancy does not allow that.

OWENS: Okay.

MAEDO: May I ask a question?

GIMPEL: Yes.

MAEDO: You've installed two, where are those two 3-foot glass doors that you've installed? I mean -.

OWENS: Those are the swinging glass doors at the -.

MAEDO: Where are they?

OWENS: They're at the, on the Kilauea side of the building. Those are actually the fire doors that we're discussing here. There's the triangulation that Brian was talking about, the problem, the distance between those two doors.

KAJIKAWA: I think you have to distinguish it's not a fire door, it's an exit door.

OWENS: The back ones?

KAJIKAWA: I don't know what doors are we talking about. But exit doors are not considered fire doors. A fire door is when the door is within the, either separate or firewall. That's not considered a fire -.

OWENS: Oh, okay, these are exit doors. If there's a fire that's what you'd use. We're looking at a set of double doors for ingress and egress; also, the other side for the building has five 14-foot roll doors, which are to remain open. That's the reason the restaurant is, it's an open air restaurant. So the doors would remain open during business hours. And like the Fire Department mentioned, the signage, that fact, you keep the doors open or lock them open during business hours too, which is quite an easy solution.

KAJIKAWA: Well, the thing is the drawings, you know, the doors should also have handrails or guard rails on it, too. So that could be a hindrance when you're getting out of there.

OWENS: No, the 14-foot door has no rails. That's the, that would be the entrance to the restaurant. And the roll doors up is just open, 14 feet wide; and that is to remain locked in the up position during business hours.

SCHOEN: Mr. Owens, did you submit any documentation that would illustrate for the Board what you folks are talking about in terms of where the doors are positioned and everything? Is that they -?

GIMPEL: While we're at it, Mr. Owens has submitted with his complaint a number of exhibits and as well today we received some more. Are there any objections to admitting all of these submitted materials into evidence?

BANCROFT: No objections, Chair.

GIMPEL: Mr. Owens, any objections by you?

OWENS: That's fine.

GIMPEL: All right, they'll be so admitted. I believe we're talking about Drawing No. A-1, the First Floor Plan, that you submitted with your application for a variance. Is that right?

OWENS: Yes. Yes, that's what we were discussing on the doors.

GIMPEL: And that shows as I see, 1, 2, 3, 4, 5, 6 roll-up doors. Is that correct?

OWENS: Yes.

GIMPEL: Okay. Does that answer your question?

HART: Yes.

GIMPEL: Thank you. Any other questions from Members of the Board?

DRURY: Actually I'd like to follow-up on that.

GIMPEL: Go ahead.

DRURY: Mr. Kajikawa, when you were talking about two exits I was confused because I had also looked at this plan and I counted four doors. So I'm not understanding something. The Code requires two exit doors and I see several here.

KAJIKAWA: On this Sheet A-1, is that the one you're looking at?

DRURY: Yes, yes.

KAJIKAWA: Where are the four doors?

DRURY: Roll up door, roll up door, roll up door, roll up door, extending -.

KAJIKAWA: Roll up door is not considered an exit door. Roll up doors are not considered an exit door.

DRURY: Simply because they don't go outward?

KAJIKAWA: Right, right.

DRURY: Okay. Functionally speaking do they function as exits?

KAJIKAWA: No, they don't because the exit required by Code is a door that swings outward in the direction of travel. These doors do not swing out in the direction of travel.

DRURY: No, that's the Code and I appreciate that. But do they function as exits?

KAJIKAWA: If it is a B occupancy, it would probably be okay. However, if it is an assembly, which is he's going to come in for later on, it will not qualify as a means of exit.

DRURY: So just to clarify, the issue then is not the number of, it's not the space for exit. You want two actual doors in different places? That's what you're calling for?

KAJIKAWA: Right, right.

DRURY: Okay. So when you say two doors, that's what you mean?

KAJIKAWA: Right, by Code.

DRURY: All right.

OWENS: What I have is a set of those doors at the Kilauea side and the five roll doors.

GIMPEL: Are there any other questions of either parties? I have a couple.

HENDRICKS: I have.

GIMPEL: I'm sorry, is there another question?

HENDRICKS: Yes.

GIMPEL: Pete, go ahead.

HENDRICKS: Sorry, Mr. Owens. Is it Kilauea side, I'm assuming it's Kinoole side for those doors, right?

OWENS: It's a weird triangle right there.

HENDRICKS: On that mauka wall?

OWENS: It's the back side where the Garden Exchange and the two Thai restaurants are. That's the Kilauea.

HART: But it's not in the picture.

OWENS: The back, yeah. The back road is called -?

HENDRICKS: Sorry, the exit doors don't show in the picture, in the graphic.

OWENS: No. We put those in since those were drawn.

HENDRICKS: If I'm looking at the graphic, A-1, with Keawe on the top and Kinoole on the bottom -?

OWENS: Right.

HENDRICKS: Where are those doors?

OWENS: We've installed those about three weeks ago.

HART: No.

MAEDO: Where?

HART: Where on the picture, describe it.

HENDRICKS: Yeah. But where are they located?

OWENS: Oh.

HENDRICKS: Sorry, cause they don't show with the graphic.

OWENS: Okay. The doors are about where the "e" on "existing sidewalk" is at the bottom of the page. There are sort of double doors there.

HENDRICKS: Oh, okay. Would it be possible to install an additional door system or couple of door systems along that same wall and come within the formula?

OWENS: This triangulation thing doesn't work.

HENDRICKS: Okay, okay,

OWENS: The architect tried to fit those doors in and we just -.

HENDRICKS: That was explained but I didn't understand it.

OWENS: Yeah, well, we tried to put two there but it doesn't alleviate the problem because the far right corner is too far from that corner. It's just the way it's set up. The building is not square. It's kind of -.

HENDRICKS: Just looking at practical solutions.

GIMPEL: Does that answer your question?

HENDRICKS: That answers my question. Thank you.

GIMPEL: Okay. I have a couple of questions of Mr. Kajikawa. And I understand the Code requirement is that the doors swing out. What I'm having difficulty understanding is the practicality of having swing out doors required when in essence it's open space. When you have restaurant customers sitting there and heaven forbid there's a fire, and the roll up doors are up, they have no trouble exiting, leaving the premises, isn't that correct?

KAJIKAWA: Correct.

GIMPEL: Okay. So the purpose of the swing out doors is fulfilled, am I not right, by having no walls in effect?

KAJIKAWA: By Code no.

GIMPEL: By Code no, but practically speaking -.

KAJIKAWA: Okay. Supposedly, now, we would have to have a private party.

GIMPEL: Have a what?

KAJIKAWA: We're having a party within that space and all the doors, all the overhead doors, are closed for privacy.

GIMPEL: Wait a minute. I'm posing the proposition that whenever the space is being used by customers or patrons that the doors, the roll up doors, be up. If that is the case then people will have, whether it's a private party or the public is there for business purposes, they can leave, isn't that correct, in the case of danger?

KAJIKAWA: Correct.

GIMPEL: Okay. So that's one thing. The second thing I think is all this is begging the question if the Building Code, that was in effect in 1948 when this building was constructed, did it require two exit doors to swing out?

KAJIKAWA: We have to go check, he has to check to see if it was required at that point.

GIMPEL: It was not required?

KAJIKAWA: I have no idea.

GIMPEL: You don't know. So, in other words, if that Building Code did not require that the doors be out -. As a matter of fact, there are pictures in the file that show that there were no swing out doors at that time, because it shows roll up curtains in the front. Isn't that correct? So assuming that the building was constructed according to the then existing Building Code, your requirement that there be two swing out doors depends upon whether the 25 percent rule applies. Isn't that correct?

KAJIKAWA: Correct.

GIMPEL: Okay. Can you then explain to me why the 25 percent rule applies in this case given the figures that we have? I think the rule states that if it's less than 50 percent for one year of the appraised value of the property it's okay.

KAJIKAWA: First of all, we don't have a table that he's contesting there that we based our opinions on. All of our judgment is based upon who the design professional is and the calculations that they submit to us.

GIMPEL: Okay. And where does your evidence -?

KAJIKAWA: And none of these calculations were submitted to us earlier.

GIMPEL: None of these calculations were submitted, what?

KAJIKAWA: It wasn't submitted to us earlier. There are exactly four building permits right now by Mr. Owens.

GIMPEL: Okay, so -.

KAJIKAWA: Let me explain.

GIMPEL: Yes.

KAJIKAWA: First building permit is the removal of exterior walls and beams, interior demolition, replace exterior wood beams and steel columns, that's one. Remove all awnings,

that's No. 2. Alteration to interior and exterior of existing building, that's three. And gut interior, except restrooms, remove жалousies and board over. Those are the four permits that Mr. Owens came in for.

GIMPEL: And what was the estimate of cost for those four pieces of work?

KAJIKAWA: Well, performance valuation is \$2,000 for remove, I mean, gut interior, remove жалousies and board over, alteration of interior and exterior existing buildings \$47,000, remove awning is \$2,000 and as-built remove exterior walls and beams, interior demolition, replace exterior wood beams and steel columns is \$10,000.

GIMPEL: All right. That's less than \$100,000, isn't that correct, the total?

KAJIKAWA: Correct.

GIMPEL: Okay. Have you received or investigated the appraised value of the building?

KAJIKAWA: We haven't gotten that. It is to be provided by the owner.

GIMPEL: All right. The answer then is no -. You haven't done that.

KAJIKAWA: Right.

GIMPEL: You haven't done that. Okay. So you're basing your requirements, application of the current Code on a total of less than \$100,000 in construction, or deconstruction, or remodeling costs without any information as to what the appraised value of the building is. Correct?

KAJIKAWA: Right.

GIMPEL: If the appraised value of the building is \$1,000,000 and let's say under the hypothetical that is the case, then do you agree that your application of the current Building Code is incorrect?

KAJIKAWA: Well, it's kind of hard to see it cause I haven't seen any drawings come in for the proposed renovation he's proposing.

GIMPEL: Let's, I'm giving you a hypothetical.

KAJIKAWA: Sure.

GIMPEL: Hypothetically, I mean, you've agreed that it's \$80,000 to \$100,000 in total cost so far this year.

KAJIKAWA: Correct.

GIMPEL: And if I say hypothetically it's provable that the building, appraised value of the building is a million dollars, then your application of the current Building Code is incorrect, correct?

KAJIKAWA: What do you mean incorrect?

GIMPEL: If it's less than 25 percent or if it's less than 50 percent, then you don't apply the current Building Code.

KAJIKAWA: Correct.

GIMPEL: All right. That's all I wanted to get. But you don't know because you apparently haven't been furnished information as to what the appraised value of the building is, is that correct?

KAJIKAWA: Right.

GIMPEL: If you are furnished information as to the appraised value of the building and that information indicates that the value of the building is a million dollars, then what would your decision be?

KAJIKAWA: It all depends on what his appraised value, I mean, construction cost is coming in.

GIMPEL: That's what I'm saying, a million dollars.

KAJIKAWA: No, his construction cost is coming in complete, then we determine.

GIMPEL: Within the past year.

KAJIKAWA: No, it doesn't matter on the past year.

GIMPEL: Yes, it does according to the rule.

KAJIKAWA: No. Well, he hasn't come in for a permit for all these things that he's asking for at this point. How can I assume a cost for that, construction cost for that? There is no building permit application for an awning, no building permit application for the doors. How can I assume anything at this point? The only building permits he came in for was for the ones that I stated earlier.

GIMPEL: I understand. Let's say hypothetically he comes in and he brings you a total application cost.

KAJIKAWA: Okay.

GIMPEL: Construction cost of less than \$180,000.

KAJIKAWA: Fine.

GIMPEL: And also if there is assumed proof that the building's appraised value is a million dollars, then what would your decision be?

KAJIKAWA: It would be under the percentage rule that we talked about earlier, 25 percent, 50 percent.

GIMPEL: Correct. And then you will apply that Building Code that was in effect -?

KAJIKAWA: Correct.

GIMPEL: In 1948?

KAJIKAWA: Correct.

GIMPEL: Okay. That's all I wanted to establish. Thank you. Oh, one other thing, what is the concern for public safety regarding the marquee, you know, the awning?

KAJIKAWA: Well, that was just part of the Code, that 2-foot 6 from the curve. I have no idea who determined that.

GIMPEL: Okay. So you don't know if there is a safety issue involved with that, or just aesthetic, or what have you?

KAJIKAWA: Well, somebody came up with that dimension so that's why we're following it.

GIMPEL: Okay, all right. So -.

DRURY: To your knowledge has there been incidence over the last 50 years of any damage or safety issues arising from the awnings along those streets? Because there are several -

KAJIKAWA: Well, I see some awnings in Downtown being banged by trucks, you know.

DRURY: Okay. So that's all?

KAJIKAWA: That's all.

GIMPEL: And by the same token, well, the requirement of the parapet or fire wall extending 30 inches would depend upon the application of the current Building Code versus the 1948 Building Code perhaps?

KAJIKAWA: Correct.

GIMPEL: Thank you. Okay, are there any other questions by members of the Board?

HENDRICKS: I have one, Mr. Chairman.

GIMPEL: Good.

HENDRICKS: Mr. Owens, I'm not asking for any numbers, but do you have an appraisal for valuation of the property in the last 1,2, 3 years or something like that? Just a yes or no. You don't have to disclose anything.

OWENS: About three weeks ago. It's in there.

HENDRICKS: Oh, okay. I'm very sorry I glossed over it.

GIMPEL: Any other questions? Would you like to make a closing statement at this point, Mr. Owens, first?

OWENS: I think the Chairman's approach, some of these things have to be interpreted with common sense. The Code is a code, too, but -. And if it was a new building for

sure; but these things aren't normal. These buildings are, just look at the shape of this thing. To do the calculations for the door and everything, the parapet on top, even the awnings, they're just different. And that's what we're requesting, is look at it in a common sense approach on this thing and see what we came up with. Thank you.

GIMPEL: Counsel?

BANCROFT: Let me address a few points that were raised. On the issue of the doors, you know, if a condition were to be imposed if the doors will remain open at all times, the only problem that I could see with that would be, you know, short the condition, but there's not going to be anybody there to enforce the condition 24 hours a day or whenever the restaurant is open. There's always the possibility that, and there's no reason to think that Mr. Owens wouldn't comply with the conditions but, you know, one day he forgets and it's raining and the doors are down, and that would be the one day that a fire could break out. There's always the possibility that there could be safety issues even if a condition like that were to be imposed. And, secondly, also, there, you know, as of right now the current Building Code does apply. There has been no evidence submitted, nothing with a petition, which indicates that we should be following the previous Building Code or the older Building Code. So I would just bring those points up. And just as a technical matter also, we move to have Exhibit 3 admitted into evidence just to preserve the record. Thank you.

GIMPEL: Motion is granted. Thank you. Any final questions?

DRURY: Mr. Owens, do you think all the rest of the construction on this can be done for, say, less than \$200,000? Are you very clear about this?

OWENS: I think I can be. I've got about another \$80,000 to go. I'd like to go to \$150,000 but I think it's going to \$180,000. Another \$80,000 on top.

DRURY: And, Mr. Kajikawa, are there procedures that Mr. Owens could follow to reassure you that the 50 percent rule will not apply?

KAJIKAWA: Basically the drawing is going to have to be stamped by an architect and approved by him to verify all of the costs. With that in mind, we have no problem.

GIMPEL: Somebody has a motion?

DRURY: Mr. Chairman, since this is the kind of motion that may involve conditions and if we are going to add any conditions we should think about them, would it be possible to have a recess for five or ten minutes to come up with a thoughtful motion as opposed to an off-the-cuff motion?

GIMPEL: Any objection? All right, we'll recess for a few minutes. Thank you.

RECESSED The meeting recessed at 10:27 a.m.

RECONVENED The meeting reconvened at 10:33 a.m.

GIMPEL: Okay, when we adjourned for a few minutes, we did not go into executive session so we couldn't confirm amongst each other. So now I'm going to ask for a motion to go into executive session so we can confirm with counsel to talk about that. It will be another five or 10 minutes at most. Can I have such a motion, please.

DRURY: I move.

GIMPEL: All right. Second?

HENDRICKS: Second.

GIMPEL: All right? Aye?

MEMBERS: Aye.

GIMPEL: All right, we're now in executive session.

SCHOEN: Wait, hold -. Sharon, I just want to put on the record and make it clear that the motion was made requesting that the Board be able to consult with its attorney regarding its rights, liabilities, powers, and duties pursuant to HRS 92, I think it's dash 5. That's supposed to be on the record.

GIMPEL: Okay. Thanks. Now we'll go into executive session.

EXECUTIVE  
SESSION

The Board went into executive session at 11:34 a.m. The Board came out of executive session at 12 noon by a motion made by Mr. Hendricks, seconded by Ms. Maedo, and unanimously carried by a voice vote.

GIMPEL: We are now back in session. As Chair I have been appointed to explain some of the things we've been talking about. In a nutshell we've decided not to decide right now; and the reason for that is because nobody here knows what the provisions of the 1948 Building Code are. If we knew and they allowed all this stuff that you want to do, we wouldn't need a variance. Correct? So we wouldn't have to act at all. But we don't know what those provisions require. We suspect, however, that the '48 Building Code does apply, but that hasn't been satisfactorily proven to us yet. So we're going to consider a motion to continue this case for two months until our next meeting in Hilo which should allow you, Mr. Owens, time to go to the Building Department with evidence indicating what your costs are for the past year and, two, what the appraised value of the property is, to demonstrate that the '48 Building Code does apply. And then I would suspect that the Building Department would look at the 1948 Building Code and determine whether what you want to do is permitted by that Code. If it is, you don't have to come back to us, then the case is done. If it isn't, and you still want a variation from that Code or whatever, then you can come back in two months and say, hey, we think these things make sense regardless of what the '48 Building Code says. Is that understood? Is that fair?

OWENS: Sounds good.

GIMPEL: Okay. We have to make a determination that the variance will, of course, be based upon considerations of public safety, as well as all of the aesthetic considerations that we are concerned with with respect to Downtown Hilo, we wanted to preserve the nice tourist friendly and consumer friendly atmosphere that makes this island so great. So are there are questions or comments by Members of the Board or any of the people here? With that, can I have a motion, Mr. Drury.

DRURY: Mr. Chair, I move that the Board continue the case for two months to allow the applicants to present evidence to the Building Department that the project will satisfy the requirements of Section 5-1.0.2.a of the Hawaii County Code, the so-called 25 percent rule. We hope that the matter will be settled with the satisfaction of both parties.

GIMPEL: Thank you. Do we have a second? Mr. Hendricks?

HENDRICKS: Second.

GIMPEL: We have a second. Any discussion on the motion? Will you call the roll, please.

KAWAHA: Mr. Drury?

DRURY: Yes.

KAWAHA: Mr. Hendricks?

HENDRICKS: Aye.

KAWAHA: Ms. Maedo?

MAEDO: Aye.

KAWAHA: Ms. Tavares?

TAVARES: Aye.

KAWAHA: Ms. Hart?

HART: Aye

KAWAHA: Chair Gimpel?

GIMPEL: Aye.

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

GIMPEL: Thank you very much.

And thank you all for your fine consideration of this matter and we hope that this matter can be resolved satisfactorily.

The discussion ended at 12:04 p.m.

Respectfully submitted,

Sharon M. Nomura, East Hawai'i Secretary