

SHORELINE SETBACK VARIANCE APPLICATION

**COUNTY OF HAWAII
PLANNING DEPARTMENT**

(Type or legibly print the requested information)

APPLICANT: _____

APPLICANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

LIST APPLICANT'S INTEREST IF NOT OWNER: _____

LIST PRINCIPAL(S) INCLUDING NAMES OF MAIN OFFICERS: _____

PHONE:(Bus.) _____ (Res.) _____ (Fax) _____

LANDOWNER(S): _____

LANDOWNER SIGNATURE(S): _____ DATE: _____

(May be by letter)

LANDOWNER(S) ADDRESS: _____

REQUEST: _____

TAX MAP KEY: _____ ZONING _____

AREA OF PROPERTY _____

AGENT: _____

ADDRESS: _____

TELEPHONE:(Bus.) _____ (Res.) _____ (Fax) _____

Please indicate to whom original correspondence and copies should be sent.

ORIGINAL: _____ COPIES: _____

THIS SHORELINE SETBACK VARIANCE APPLICATION SHALL BE ACCOMPANIED BY THE FOLLOWING:

1. A filing fee of two hundred dollars (\$200) with check shall be made payable to the County Director of Finance.
2. The Original (signed) and twenty (20) copies of the completed application.
3. The Original and twenty (20) copies of the following background information on the subject request:
 - A. A Final Environmental Assessment consistent with the requirements of Chapter 343, HRS. Note: Prior to processing the Shoreline Setback Variance Application, a Final Environmental Assessment (EA) and Determination of Impact shall be prepared and published in the OEQC Bulletin, in accordance with the requirements of Chapter 343, HRS, Environmental Impact Statements.
 - B. Detailed written description of the proposed project and a statement of objectives and reasons for the request, including a statement as to how the request complies with the criteria within Rule 8-10 (attached).
 - C. Description of the subject property in sufficient detail to precisely locate the property. Describe existing uses, structures and topography.
 - D. State/County Plans affecting the subject request: General Plan designation and Community Development Plans.
 - E. A written statement discussing the proposed development in relationship to the objectives and policies as provided by Chapter 205A, HRS, and the Special Management Area guidelines as contained herein.
 - F. Surrounding zoning and land uses.
 - G. Flood Insurance Rate Map (FIRM) designation (contact Department of Public Works - Engineering Division).
 - H. Archaeological Resources (one of the following):
 1. An archaeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to State Department of Land and Natural Resources Historic Preservation Division (DLNR-SHPD) rules.
 2. A "no effect" letter from the State DLNR Historic Preservation Division.
 3. A copy of a letter written by the applicant to the State DLNR Historic Preservation Division requesting a "no effect" letter, including supporting documentation, to which SHPD has not responded after 30 days (SHPD's time limit under their rules).
 - I. Floral and Faunal Resources.
 - J. Valued Cultural Resources: Identify any traditional and customary native Hawaiian rights that are exercised in the area; the extent in which the proposed development will affect these rights; and feasible action to be taken to protect native Hawaiian rights if they exist.

- K. Public Access: Existing public access to and along the shoreline or to mountain areas and knowledge of whether public access is being used.
 - L. Description of access(es) to the area (e.g. width, type of surface and condition of roadway). If a private roadway, submit evidence of access rights.
 - M. Traffic impacts - assessment of existing traffic conditions, anticipated increase in traffic and traffic impacts from proposed use (a formal study may be requested by Department of Public Works or Department of Transportation during the review process).
 - N. Availability of Utilities: Water, telephone, electricity, sewage disposal.
4. An Original and twenty (20) copies providing a detailed justification of the proposed project, which addresses the criteria and conditions set forth in Rule 8-10 of these rules (see attached).
 5. An Original and twenty (20) copies of a site plan drawn to scale showing property lines and measurements and the following:
 - A. All existing and proposed structures with elevations, uses and improvements; and reference points such as roadways, shoreline, etc.
 - B. Existing natural and man-made features and conditions within the shoreline setback area;
 - C. Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - D. The certified shoreline;
 - E. The shoreline setback line;
 - F. Contours at a minimum interval of five feet unless waived by the Department;
 - G. Proposed development and improvements reflecting new conditions.
 6. One copy of a full-size (2' x 3') scale-drawn plot plan of Item 5 for presentation purposes.
 7. A certified shoreline survey map.
 8. A list of names, addresses and tax map keys of all owners and lessees of record of surrounding properties who are required to receive notice. Two notices are required to be sent. Firstly, upon submittal of application and secondly, promptly after being notified that a hearing date has been set, but not less than twenty (20) calendar days prior to the date of the hearing, mail a notice of the hearing to all property owners within 300 feet of the affected property and any other person or agency who has made a written request to the Department. Prior to the date of the hearing, file with the Planning Commission, proof of service or good faith efforts to serve notices of the application.
 10. Any other plans or additional information relevant to this application may be requested by the Planning Director to facilitate processing of this request.

A COPY OF RULE 8, SHORELINE SETBACK CAN BE OBTAINED FROM THE COUNTY OF HAWAII PLANNING DEPARTMENT FOR REFERENCE TO THE ABOVE SUBMITTAL REQUIREMENTS.

EXCERPTS FROM PLANNING COMMISSION

RULE 8 - SHORELINE SETBACK

(Effective February 17, 1997)

8-10 Criteria for Approval of a Variance

(a) A variance may be granted for a structure or activity otherwise prohibited by these rules if the Planning Commission finds in writing, based on the record, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture; or
- (3) Landscaping.

(b) A variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards of this subsection:

(1) Shoreline-dependent Facility Standard.

A variance may be granted for an activity or structure that is necessary for or ancillary to a shoreline-dependent facility or improvement, including drainage facilities and boating, maritime or ocean sports recreational facilities; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.

(2) Public Interest Standard.

A variance may be granted for an activity or structure which is undertaken by a public agency or by a public utility regulated under Chapter 269, Hawaii Revised Statutes, or a private facility or improvement which is undertaken by a private entity and is clearly in the public interest; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.

(3) Hardship Standard.

(A) A structure or activity may be granted a variance upon grounds of hardship only if:

- (i) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule; and
- (ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and
- (iii) The request is the practicable alternative which best conforms to the purpose of this rule.

(B) Before granting a hardship variance, the Commission must determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

- (C) If a structure is proposed to artificially fix the shoreline, the Commission must also determine that shoreline erosion is likely to cause hardship if the structure is not allowed within the shoreline area.
 - (D) Hardship shall not be determined as a result of a zoning amendments, planned unit development (PUD) permits, cluster plan development (CDP) permits, or subdivision approvals after June 16, 1989.
- (c) No variance shall be granted unless appropriate conditions are imposed as applicable:
- (1) To comply with Chapters 10 and 27 of the Hawaii County Code relating to Erosion and Sedimentation Control and Flood Control, respectively;
 - (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;
 - (3) To minimize risk of adverse impacts on beach processes;
 - (4) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
 - (5) To minimize adverse impacts on public views to, from, and along the shoreline.

**COUNTY OF HAWAII
PLANNING DEPARTMENT**

**Requirement to Inform Surrounding Property Owners and Lessees
of Contested Case Procedure**

These requirements are prepared in accordance with the Planning Commission's Rules of Practice and Procedure, Rule 4. Contested Case Procedure, effective February 17, 1997. Rule 4. Contested Case Procedure affects "all cases where the action of the Commission is the final action of a County official or agency, prior to the opportunity for appeal to Circuit Court, whenever it is required. It shall therefore be followed in all cases where statutes provide for direct appeal from the Commission to Circuit Court." Applications affected by Rule 4 include Special Permits, Shoreline Setback Variances and Special Management Area (SMA) Use Permits.

First Notice

Within (10) days after filing an application with the Planning Department or Planning Commission, you are required to serve notice of your application on surrounding property owners and lessees of record, in accordance with the Hawaii County Zoning Code, Section 25-2-4.

Second Notice

Special Permit Applications: You are required to serve a second notice to surrounding owners and lessees of record within ten (10) days after receiving notice from the director of the date of the scheduled hearing but not less than ten (10) days prior to the date of the scheduled hearing.

Shoreline Setback Variance Applications: You are required to serve a second notice within ten (10) days after receiving notice from the director of the date of the scheduled hearing but not less than fourteen (14) days prior to the date of the scheduled hearing.

SMA Use Permit Applications: You are required to serve a second notice within ten (10) days after receiving notice from the director of the date of the scheduled hearing but not less than twenty (20) days prior to the date of the scheduled hearing.

Use Permit Applications: You are required to serve a second notice within ten (10) days after receiving notice from the director of the date of the scheduled hearing but not less than ten (10) days prior to the date of the scheduled hearing.

Both notices shall include the following information:

1. Name of the applicant;
2. Precise location of the property involved, including tax map key identification, location map and site plan;
3. Nature of the application and the proposed use of the property;

4. Date on which the application was filed with the director or the commission;
5. Inform the landowner and lessee that they have a right to submit a written request for a contested case procedure. Should they seek to intervene as a party, they shall file a written request on the attached form, "Petition for Standing in Contested Case Hearing." You should include this form in both notices to the landowners and lessees. The request shall be filed with the Planning Commission at Aupuni Center, 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720; and accompanied by a filing fee of \$100 payable to the Director of Finance. The required information shall be submitted no later than seven (7) calendar days, prior to the Commission's first scheduled public hearing to consider the application;
6. Inform the landowner and lessee that should they choose not to submit a written request for a contested case procedure, they may express their support/opposition in writing or by oral testimony at the Planning Commission public hearing to be scheduled; and
7. Contact name and phone number should there be any questions.

In addition, the second notice shall include the date, time and place that the scheduled public hearing will be held to consider the application.

Who Should Be Notified?

When the building site is located within the State Land Use Urban or Rural District, notice shall be served to owners and lessees of record within three hundred feet (300') of the perimeter boundary of the building site.

When the building site is located within the State Land Use Agricultural District, notice shall be served to owners and lessees of record within five hundred feet (500') of the perimeter boundary of the building site. Except that if the surrounding properties are located within either the State Land Use Urban or Rural District, notice shall be served to owners and lessees of record within three hundred feet (300') of the perimeter boundary of the building site.

Data available from the real property tax office shall be utilized in determining the names and addresses of the affected owners and lessees of record. The applicant shall also provide notice to such other owners and lessees of record when the applicant has actual knowledge of such names or as informed by the Planning Director or Planning Commission.

Proof of service for the first notice on owners and lessees of record may be submitted concurrently with or shortly after filing the subject application. Proof of service for the second notice shall be submitted to the Planning Commission prior to the date of public hearing. Proof may consist of certified mail receipts, affidavits, declarations or the like. The list of names, addresses and tax map keys of those individuals notified shall also be submitted.

Should you have any questions, please contact the Planning Department at 961-8288.

Attachment - Appendix A

PETITION FOR STANDING IN A CONTESTED CASE HEARING

(Page 1 of 2)

NAME: _____

ADDRESS: _____

PHONE NO.: _____
APPLICANT/
DOCKET NO.: _____

A. Is your interest in this matter clearly distinguishable from that of the general public?
Yes _____ No _____

If the answer is "yes", please explain:

If the answer is "no", please explain how the proposed action will nevertheless cause you actual or threatened injury:

B. Are you a government agency whose jurisdiction includes the land involved in the subject request?
Yes _____ No _____

If the answer is "yes", please explain the nature of the agency's jurisdiction:

C. Do you lawfully reside on or have some property interest in the land involved in the subject request?
Yes _____ No _____

If the answer is "yes", please explain:

PETITION FOR STANDING IN A CONTESTED CASE HEARING

(Page 2 of 2)

D. Are you a person or persons descended from native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practiced those rights which were customarily and traditionally exercised for subsistence, cultural, or religious purposes?

Yes _____ No _____

If the answer is "yes", please submit any genealogical evidence and historical evidence showing the exercise of those rights to support your statement:

Petitioner's Signature

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 20____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

POSTING OF SIGNS FOR PUBLIC NOTIFICATION

In accordance with Chapter 25 (Zoning Code), Article 2, Division 1, Section 25-2-12, Hawaii County Code 1983 (2005 Edition) and/or Planning Commission Rules of Practice and Procedure, within ten (10) days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:

1. The nature of the application;
2. The proposed use of the property;
3. The size of the property;
4. The tax map key(s) of the property;
5. That the public may contact the Planning Department for additional information;
and
6. The address and telephone number of the Planning Department.

The sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign.

The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road.

The sign shall, in all other respects, be in compliance with Chapter 3 (Signs), Hawaii County Code 1983 (2005 edition).

The applicant shall file an affidavit with the Planning Department not more than five (5) days after posting the sign stating that a sign has been posted, and that the applicant will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.