

COUNTY OF HAWAII

PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 6. VARIANCES

6-1 Authority.

This rule governs variance procedures before the Director pursuant to section 5-4.2 of the County Charter and chapters 25 (Zoning Code) and 23 (Subdivision Control Code), Hawaii County Code.

6-2 Scope.

Variations from the provisions of chapters 23 and 25 may be granted by the Director; provided that a variance shall not allow the introduction of a use not otherwise permitted within a zoned district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations.

6-3 Petition and Content.

A petition for a variance shall be filed with the Director and shall include:

- (1) A non-refundable filing and processing fee of one hundred dollars.
- (2) Original and five copies of:
 - (a) Application form;
 - (b) A statement of the variance sought;
 - (c) A statement of the reasons for the granting of the variance utilizing the criteria established under section 6-6 of this rule;
 - (d) A description of the property in sufficient detail to determine the precise location of the property involved; and
 - (e) A plot plan, drawn to scale, with all existing and proposed structures or improvements shown thereon.
- (3) Written approval of the landowner if petitioner is not the same.
- (4) A list of the names and addresses of all owners of property interest in property within three hundred feet of the perimeter of the property involved.

6-4 Incomplete Application.

The Director shall neither accept nor process an application which is incomplete as to

form and content.

6-5 Notice.

- (a) Upon receipt and acceptance of a properly filed and completed application, the Director shall fix a date for consideration of the application.
- (b) At least ten calendar days prior to the date of the Director's consideration of the application, the Director shall publish a notice of the application in a newspaper of general circulation in the County which includes the following:
 - (1) Name of the petitioner;
 - (2) The precise location of the property involved;
 - (3) Nature of the use being sought and the proposed accompanying structures, if any;
 - (4) Date on which the Director will consider the application; and
 - (5) That such date is the deadline for the Director's actual receipt of written comments on the application.
- (c) Within three working days after receiving notice of the date that the Director will be considering the application, the petitioner shall serve notice of the application on owners of interests in properties within three hundred feet of the perimeter boundary of the property involved and to owners of interests in other properties which the Director may find to be directly affected by the variance sought. Such notice shall include all of the information as stated under section 6-5(b) of this rule.
- (d) Prior to the deadline for written comment, the petitioner shall submit to the Director proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like.

6-6 Grounds for Variances.

The Director shall not approve a variance unless it is found that:

- (1) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or petitioner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property;
- (2) There are no other reasonable alternatives that would resolve the difficulty; and

- (3) The variance shall be consistent with the general purpose of the district, the intent and purpose of the affected chapters and the General Plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

6-7 Decision.

- (a) Within sixty days after the filing of a proper application or within a longer period as may be agreed to by the petitioner, the Director shall deny the application or approve it subject to conditions. The conditions imposed by the Director shall bear a reasonable relationship to the variance granted.
- (b) All actions shall contain a statement of the factual findings supporting the decision.
- (c) If the Director fails to act within the prescribed period, the application shall be considered as having been denied.

6-8 Amendment of Conditions.

- (a) The petitioner may apply with the Director for an amendment to the condition(s) imposed by a variance permit.
- (b) The petitioner shall set forth in writing:
 - (1) The affected condition;
 - (2) The specific amendment requested; and
 - (3) The reasons for the request.
- (c) Within forty-five from the date of receipt of the request for an amendment, the Director shall either approve or deny the request.
- (d) If the Director fails to act within the prescribed period, the request shall be considered as having been denied.

6-9 Appeal.

The Director's decision is appealable to the Planning Commission.

Cross-reference:

[Article 2, Division 5, Variances., Zoning Code](#)