

SHORELINE SETBACK VARIANCE APPLICATION

**COUNTY OF HAWAI'I
PLANNING COMMISSION**
(Type or legibly print the requested information)

APPLICANT(S): _____

APPLICANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

LIST APPLICANT'S INTEREST (if not owner): _____

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

REQUEST: _____

TAXMAP KEY(S): _____ ZONING: _____

SIZE OF PROPERTY / AREA OF REQUESTED USE: _____ / _____

LANDOWNER(S): _____

FEE SIMPLE LANDOWNER(S) WRITTEN AUTHORIZATION

(may be provided by letter with the below statement included):

_____ DATE: _____

_____ DATE: _____

AGENT: _____

AGENT ADDRESS: _____

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

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

ORIGINAL: _____ COPIES: _____

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

1. A filing fee of five hundred dollars (\$500) to be paid via EPIC.
2. An original (signed) copy of the completed application.
3. A written narrative, including 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 Planning Commission 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 (Note: The General Plan and Community Development Plans are available on the Planning Department website at <https://www.planning.hawaiicounty.gov>).
 - 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 and Historic Resources: Describe and show on the plot plan any known historic and archaeological resources on the property. Examples include human skeletal remains, structural remains, sand deposits, midden deposits, and lava tubes. The application may be provided to the State Department of Land and Natural Resources Historic Preservation Division (SHPD) for a determination of whether the project will affect archaeological/historic resources. Please be aware that a hearing before the Planning Commission may not be held until SHPD and the Planning Department determines resources on the property are adequately identified, recorded, mitigated and/or preserved.
 - I. 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. Examples include areas of traditional collection of terrestrial resources (kī leaf, aho chord, thatch, medicinal plants, and ferns) or marine or riparian resources (limu, 'ōpae, 'o'opu, hīhīwai) used for subsistence, cultural and religious purposes. Traditional and customary rights may also include rights of access to the archaeological and historical resources of the property.
 - J. Floral and Faunal Resources.
 - 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 legal 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 State Department of Transportation during the review process).
 - N. Availability of Utilities: Water, telephone, electricity, solid waste and sewage disposal.
- 4. A written narrative providing a detailed justification of the proposed project, which addresses the criteria and conditions set forth in Planning Commission Rule 8-10 (see attached).
 - 5. A scale-drawn plot plan of the property showing 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. A shoreline survey of the subject property, as certified by the Chairman of the Board of Land and Natural Resources, when the subject property abuts the shoreline. The certified shoreline survey shall be prepared in accordance with the Department of Land and Natural Resources Rules of Practice and Procedure.
 - 7. 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.
 - 8. Any other plans or additional information relevant to this application may be requested by the Planning Director to facilitate processing of this request.

EXCERPTS FROM PLANNING COMMISSION RULE 8 - SHORELINE SETBACK
(Effective December 2017)

8-11 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, Hawai'i 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 setback area.
 - (D) Hardship shall not be determined as a result of a zoning amendments, planned unit development (PUD) permits, cluster plan development (CPD) 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 Hawai‘i 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.

Note: A copy of the entire Planning Commission RULE 8, SHORELINE SETBACK can be found within the Planning Commission Rules on the Planning Department Website (<https://www.planning.hawaiicounty.gov/resources/resources-references>).