



COUNTY OF MAUI
DEPARTMENT OF PLANNING
2200 MAIN STREET, SUITE 335
WAILUKU, HAWAII 96793
Telephone: (808) 270-7253
Facsimile: (808) 270-7634
E-mail: planning@mauicounty.gov

VARIANCE APPLICATION
STANDARDS, PROCEDURES & REQUIREMENTS
TITLE 12—STREETS, SIDEWALKS & PUBLIC PLACES
TITLE 16—BUILDINGS & CONSTRUCTION
TITLE 18—SUBDIVISIONS
TITLE 19—COMPREHENSIVE ZONING PROVISIONS
TITLE 19—INTERIM ZONING PROVISIONS

SOURCE OF LEGAL AUTHORITY

- Revised Charter of the County of Maui (1983), as amended
- Rules of Practice and Procedure of the Board of Variances and Appeals
- Maui County Code (MCC)

VARIANCE STANDARDS (MCC, TITLES 12, 16, 18 & 19)

Variances from the provisions of **MCC, Title 12 (Streets, Sidewalks & Public Places)** shall be granted if the Board of Variances and Appeals (Board) finds the following:

1. The exception or variance desired arises from peculiar physical conditions not ordinarily found in most districts or because of the peculiarity of a business;
2. The exception or variance desired is not against the interest, safety, convenience, and general welfare of the public;
3. The granting of the permit for the exception or variance will not adversely affect the rights of adjacent property owners or tenants;
4. The strict application of the terms of this chapter will work unnecessary hardship and practical difficulty on the property owner or tenant.

Variances from the provisions of **MCC, Title 16 (Buildings and Construction)** shall be granted if the Board finds the following:

1. That the strict application, operation, or enforcement of the code provision or provisions appealed from would result in practical difficulty or unnecessary hardship to the applicant;
2. That the granting of the variance shall not be detrimental to the public health, safety, or welfare;
3. That the granting of the variance would not be injurious to the adjoining lots and the buildings thereon;
4. That the granting of the variance would not be contrary to the purposes of this code and the public interest.

Variances from the provisions of **MCC, Title 18 (Subdivisions)** shall be granted if the Board finds the following:

1. That there are special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area;
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this title because of the special geographical or physical circumstances or conditions affecting the property;



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VARIANCE STANDARDS (MCC, TITLES 12, 16, 18 & 19) (Continued)

3. That the special geographical or physical circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision;
4. That the granting of the variance shall not be detrimental to the public's health safety, or welfare or injurious to other property in the vicinity of said property;
5. That the said property has obtained an appropriate zoning designation, provided that for purposes of this chapter, districts with interim zoning shall not be considered an appropriate zoning.

Variances from the provisions of **MCC, Title 19 (Interim Zoning Provision)** shall be granted if the Board finds the following:

1. Strict enforcement of any provisions of this article would involve practical difficulty or unnecessary hardship;
2. Desirable relief may be granted without being detrimental to the public interest, convenience and welfare.

If a variance is sought to change one nonconforming use to another nonconforming use, where the structure and/or lot area are not structurally altered or enlarged, the provisions as to notice and hearing may be waived at the Board's discretion.

Variances from the provisions of **MCC, Title 19 (Comprehensive Zoning Provisions)** may be granted by Board, should the Board find that due to the particular physical surroundings, shape or topographical condition of the subject property, compliance to the provisions of Title 19 would result in hardship to the owner which is not mere inconvenience or economic hardship on the applicant. The Board shall grant a variance if the Board finds the following:

1. There is an exceptional, unique or unusual physical or geographical condition existing on the subject property which is not generally prevalent in the neighborhood or surrounding area and the use sought to be authorized by the variance will not alter the essential character of the neighborhood;
2. Strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property;
3. The conditions creating a hardship were not the result of previous action by the applicant.



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VARIANCE CONDITIONS

In approving an application for a variance, the Board may impose conditions necessary to prevent any detriment to the public interest, health, safety, convenience, or welfare, and to ensure substantial compliance with representations made by the applicant. Conditions imposed may include, but shall not be limited to the following:

1. That the variance shall be applicable only to the request(s) as approved by, and as reflected in the record of, the Board;
2. That the owner, its successors and permitted assigns, shall indemnify and hold the County harmless from and against any loss, liability, claim or demand arising out of the variance, and shall procure, the owner's own cost and expense, and shall maintain during the entire period of the variance, a policy or policies of comprehensive liability insurance naming the County as an additional insured, insuring and defending the applicant and County of Maui against any and all actions, suits, damages and claims, for property damage, personal injury and/or death arising out of the variance or occasioned by any act or nuisance made or suffered in connection with the variance, and insuring and defending against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or nonperformance of any of the terms and conditions of the variance. The insurance policy shall provide coverage in the minimum amount of \$1,000,000; provided that the board may reduce the required coverage amount for good cause shown.
3. That copies of a hold harmless agreement and the policy naming County of Maui as an additional insured shall be submitted to the planning department within (90) ninety calendar days from the date of transmittal of the decision and order.

PUBLIC HEARING REQUIREMENTS

1. Within ten (10) calendar days after the receipt of the variance application, the Planning Director will schedule a public hearing date with the Board, provided that the application is determined to be complete. If the application is deemed incomplete, the application may be returned, with a statement identifying the reasons for which the application was deemed to be incomplete.
2. Prior to the Planning Director deeming the application complete, the applicant shall give notice by certified mail, return receipt requested, using the Notice of Application for a Variance (Form 2) (reviewed and approved by the Planning Director), to all adjacent owners and lessees and those directly across the street from the subject property. The applicant shall submit a Notarized Affidavit of Mailing of Notice of Application (Form 3), with Exhibits "A" and "B" attached, to certify that Form 2 was mailed to all adjacent owners and lessees and those directly across the street from the subject property, and shall submit any updated names and addresses of these owners and lessees derived from the return receipts received on the notices of application previously mailed to these owners and lessees.



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PUBLIC HEARING REQUIREMENTS (Continued)

3. Not less than thirty (30) calendar days prior to the public hearing date, the applicant shall give notice by certified mail, return receipt requested, of the date, time, place, and subject matter of the public hearing, using the Notice of Public Hearing (Form 4), as prescribed by the Planning Director, to all adjacent owners and lessees and those directly across the street from the subject property. The applicant shall submit a Notarized Affidavit of Mailing of Notice of Public Hearing (Form 5), with Exhibits "A" and "B" attached, to certify that Form 4 was mailed to all adjacent owners and lessees and those directly across the street from the subject property and shall submit any updated names and addresses of these owners and lessees derived from the return receipts received on the notices of application previously mailed to these owners and lessees.
4. The applicant shall publish a copy of the Notice of Public Hearing (Form 4), once per week for three consecutive weeks prior to the public hearing date in the Maui News. The intervals between the public hearing notices shall be not less than six (6) days. The applicant shall submit written verification of the three (3) dates of consecutive publishing.
5. Not less than thirty (30) calendar days prior to the public hearing date, the Planning Director will publish the Notice of Public Hearing (Form 4) of the date, time, place and subject matter of said public hearing in the Maui News.
6. Not more than forty-five (45) calendar days after the date upon which the application has been determined to be complete, the Planning Director shall prepare and transmit a written staff report to the Board, which includes, but which is not limited to, the filed application, an analysis of the application as it relates to the provisions of the MCC, and a recommendation to the Board to either grant, grant subject to conditions, or deny the application for a variance.
7. Not less than ten (10) business days prior to the date of the public hearing, the applicant shall submit all certified mail receipts received for the certified mailing of the Notice of Application (Form 2) and Notice of Public Hearing (Form 4) (mounted on 8½"x11" sheets of paper).
8. Not less than six (6) business days prior to the date of the public hearing, the Planning Director shall transmit the staff and recommendation reports to the applicant, interested persons, and other appropriate county or state agencies.



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APPLICATION PROCEDURES

Upon the review and approval of one (1) copy of the required documents, the Department of Planning will request in writing, one (1) original plus 25 copies of the approved application. One (1) electronic copy, formatted on a CD-R disc, may be filed in lieu of five (5) paper copies.

APPLICATION REQUIREMENTS

- Completed and signed application. (Form 1)

Application shall be signed by ALL of the subject property owners, if applicable. Additional signature pages may be added if needed.

Fillable PDF versions of this application are available online at the Department's website (www.mauicounty.gov) (Home > Departments > Planning Department > Development Permits, Applications & Reviews > Variances & Appeals > Board of Variances & Appeals).

- Documents which identify the owner(s) of the subject property.

The applicant shall be the owner or lessee, who holds a recorded lease with an unexpired term of not less than five (5) years from the date of the filing of the application.

If the applicant is not the owner, provide a signed and notarized letter from the owner, authorizing the variance request.

If the applicant/owner wishes to designate a representative, provide a signed and notarized letter authorizing said representation.

- List by Tax Map Key (TMK) of all adjacent owners and lessees, including those located directly across the street from the subject property, formatted on an 8½"x11" sheet of paper.

The TMK list shall be compiled from the latest records of the Department of Finance, Real Property Tax Division (RPT), located at the Maui Mall, 70 East Kaahumanu Avenue, Kahului, Maui, Hawaii, or using RPT's website (www.mauipropertytax.com).

- Completed Notice of Application for a Variance (Form 2) with a location map attached, depicting the subject property and the adjacent parcels.

Form 2 shall be reviewed and approved by the Department BEFORE the certified mailing to all adjacent owners and lessees and those directly across the street from the subject property.

- Notarized Affidavit of Mailing of Notice of Application (Form 3), with Exhibits "A" and "B" attached.

All notices (Form 2) shall be mailed by certified mail, return receipt requested.

- Dated photographs, formatted/mounted on 8½"x11" sheets of paper, depicting the site/structure which relates to the variance request.

- Copies of all previously approved building permits and notices of warning and/or violation for the subject property, if applicable.



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APPLICATION REQUIREMENTS (Continued)

- Drawings pertaining to the subject of the variance request, stamped, prepared by, or under the supervision of a licensed engineer, surveyor, or architect, if applicable, reduced to 8½"x11", 8½"x14" or 11"x17" sheets of paper.
- A site plan drawn to scale which shows, if applicable:
 - The property lines and easements, with dimensions and area calculations, of the subject property;
 - Location, size, spacing, setbacks, and dimensions of all existing and proposed buildings, structures and improvements;
 - The building elevations, sections, and floor plan and site sections which clearly define the character of the development;
 - The existing and proposed landscaping plans which show open spaces, plantings, and trees;
 - The existing streets which access the property and all proposed roads and parking areas, with dimensions; and
 - The shoreline, shoreline setback lines, stream and other setback lines.
- Description of the existing and proposed floor area, parking and loading calculations and areas of the subject property, if appropriate.
- All topographic information which shows existing features and conditions and any proposed grading, if applicable.
- Filing fee in accordance with the below Fee Schedule, Table A, made payable to *County of Maui, Director of Finance*.

FEE SCHEDULE

| TABLE A—FEE SCHEDULE (Public Hearing Required) | |
|---|--|
| TOTAL VALUATION | FEE PER APPLICATION (Unless otherwise stated and subject to exceptions below) |
| \$0 to \$125,000 | \$550 |
| \$125,001 to \$500,000 | \$550 for the first \$125,001, plus \$11 for each additional \$5,000 or fraction thereof, to and including \$500,000 |
| Additional review required by changes, additions, revisions, time extensions or renewals: | \$165 |
| \$500,001 to \$1,000,000 | \$1,370 for the first \$500,000, plus \$11 for each additional \$5,000 or fraction thereof, to and including \$1,000,000 |
| Additional review required by changes, additions, revisions, time extensions or renewals: | \$275 |
| \$1,000,001 and up | \$2,475 for the first \$1,000,001, plus \$11 for each additional \$5,000 or fraction thereof, to a maximum of \$4,950 |
| Additional review required by changes, additions, revisions, time extensions or renewals: | \$550 |

VARIANCE JUSTIFICATION

Variations from the provisions of MCC, Title 12 (Streets, Sidewalks and Public Places), shall be granted if the Board finds the following:

1. That the exception or variance desired arises from peculiar physical conditions not ordinarily found in most districts or because of the peculiarity of a business.

2. That the exception or variance desired is not against the interest, safety, convenience and general welfare of the public.

Information relative to this application is available for review at the Department of Planning's Zoning Administration and Enforcement Division (ZAED), located at One Main Plaza, 2200 Main Street, Suite 335, Wailuku, Maui, Hawaii. Inquiries may be made in person, at ZAED, by e-mail at planning@mauicounty.gov, or by phone at (808) 270-7253.

You will be notified of the date, time and place of the public hearing via certified mail, and the date, time and place of the hearing will be published at least thirty (30) days, as well as three (3) consecutive weeks, prior to the date of the hearing.

All testimony pertaining to this request should be submitted in writing to the Department of Planning, 2200 Main Street, Suite 315, Wailuku, Maui, Hawaii 96793, or presented in person at the time of the public hearing.

(Applicant's Signature)

(Applicant's Name—Print)

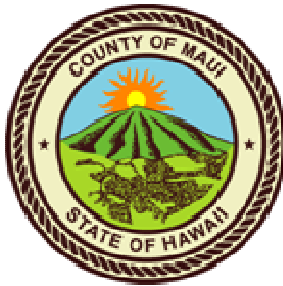
(Applicant's Mailing Address)

(Applicant's Phone No.)

Attachment (Location map)

**ATTACHMENT
(LOCATION MAP)**

(FORM 2)



**NOTARIZED AFFIDAVIT OF MAILING
OF NOTICE OF APPLICATION**

_____, being first duly sworn on oath,

Deposes and says that:

1. Affiant is the Applicant for a _____ variance for land situated at _____ ; and identified for real property tax purposes as TMK: _____ .
2. Affiant did on _____ , 20 ____ , deposit in the United States mail, by certified mail, return receipt requested, post paid, a copy of a **NOTICE OF APPLICATION FOR A VARIANCE** (Form 2), which is identified as **“EXHIBIT A”** attached hereto and made a part hereof, addressed to each of the persons identified in the **LISTING OF RECORDED OWNERS AND LESSEES** identified as **“EXHIBIT B”** attached hereto and made a part hereof.

Further Affiant sayeth naught:

Signature

(FORM 3)

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20 _____, before me personally
Appeared _____ to me personally known, who, being by me
duly sworn or affirmed did say that such person executed the foregoing instrument
and acknowledged that they executed the same as their free act and deed.

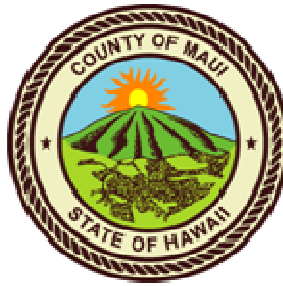
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii
Print Name: _____
My commission expires: _____

EXHIBIT "A"
(COPY OF NOTICE OF APPLICATION FOR A VARIANCE
WITH THE LOCATION MAP ATTACHED—FORM 2)

(FORM 3)

EXHIBIT "B"
(COPY OF LISTING OF RECORDED OWNERS AND LESSEES)



**NOTICE OF PUBLIC HEARING
BOARD OF VARIANCES AND APPEALS**

NOTICE IS HEREBY GIVEN of a public hearing to be held by the Maui County Board of Variances and Appeals at the Kalana Pakui Conference Room, First Floor, 250 South High Street, Wailuku, Maui, Hawaii, on (date to be determined), at 1:30 p.m., or as soon thereafter as those interested may be heard to consider the following request pursuant to §12-801-10(h) of the RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF VARIANCES AND APPEALS:

**(FORM TO BE PROVIDED BY THE PLANNING DIRECTOR
UPON DEEMING THE APPLICATION COMPLETE)**

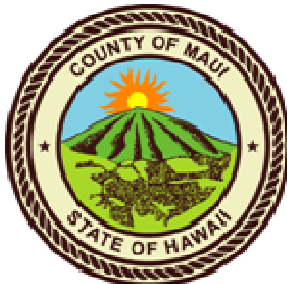
Information relative to the above application is available for review at the Department of Planning's office located at One Main Plaza, 2200 Main Street, Suite 335, Wailuku, Maui, Hawaii.

Those persons requesting special accommodations, due to disabilities, please call the Department of Planning at 270-7253 (from Maui) or (800) 272-0117 (from Molokai) or (800) 272-0125 (from Lanai) or notify the Department of Planning in writing at 2200 Main Street, Suite 315, Wailuku, Maui, Hawaii 96793 or by facsimile at (808) 270-7634, at least ten (10) business days before the scheduled meeting.

All testimony regarding the above request may be filed in writing or faxed to the Department of Planning by 4:30 p.m. at least two (2) days prior to the public hearing date, or may be presented by providing fifteen (15) copies of said written testimony at the time of the hearing.

BOARD OF VARIANCES AND APPEALS

By: Planning Director



**NOTARIZED AFFIDAVIT OF MAILING
OF NOTICE OF PUBLIC HEARING**

_____, being first duly sworn on oath,

Deposes and says that:

1. Affiant is the Applicant for a _____ variance for land situated at _____ ; and identified for real property tax purposes as TMK: _____ .
2. Affiant did on _____ , 20 _____ , deposit in the United States mail, by certified mail, return receipt requested, post paid, a copy of a **NOTICE OF PUBLIC HEARING** (FORM 4), which is identified as “**EXHIBIT A**” attached hereto and made a part hereof, addressed to each of the persons identified in the **LISTING OF RECORDED OWNERS AND LESSEES** identified as “**EXHIBIT B**” attached hereto and made a part hereof.

Further Affiant sayeth naught:

Signature

EXHIBIT "A"
(COPY OF NOTICE OF PUBLIC HEARING
WITH THE LOCATION MAP ATTACHED)

EXHIBIT "B"
(COPY OF LISTING OF RECORDED OWNERS AND LESSEES)

(FORM 5)