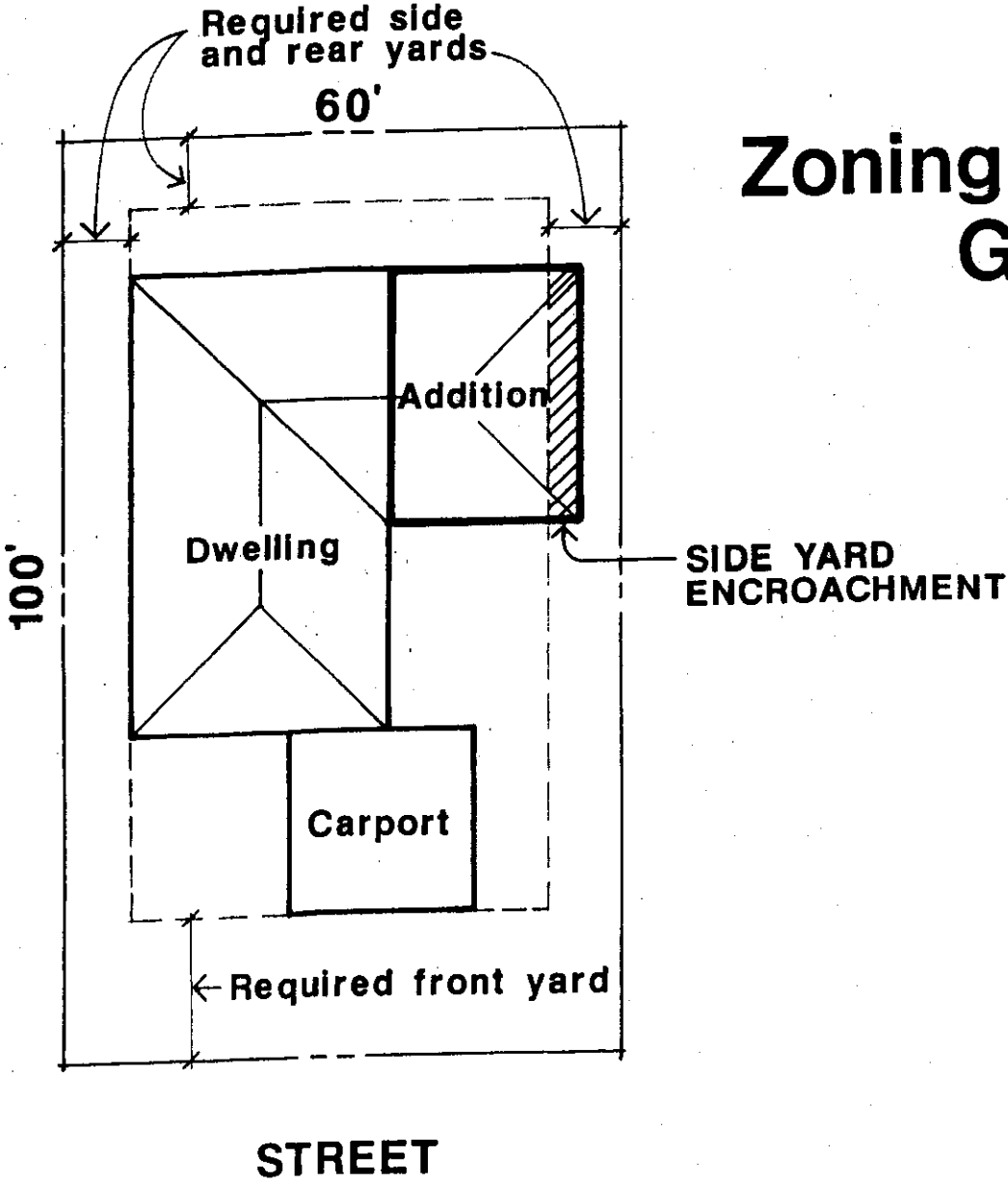


Zoning Variance Guidebook



INTRODUCTION

When you request a zoning variance, you are asking to set aside a standard required by law. This can be done only under exceptional circumstances. A basic planning principle is that variances should be difficult to obtain.

The City Charter allows the granting of a variance only on a finding that:

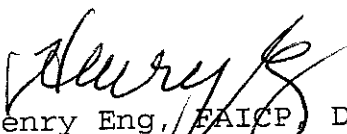
1. The applicant is deprived of reasonable use of the land without the variance. This means that compliance with the zoning code would preclude the applicant from making reasonable use of the property, or prevent him from making an essential improvement. Variances cannot be given to relieve the applicant's financial problems, or temporary personal difficulties, or to allow the applicant to save money or make more money on a proposed project.
2. The request is due to unique circumstances pertaining to the specific site or proposed project. Steep topography, small lot size, narrow lot width or unusual lot configuration are examples of unique physical conditions which could justify a variance.
3. The request would not alter the character of the neighborhood and/or challenge the reasonableness of the zoning code. An applicant must show that the variance proposal would not adversely impact the surrounding area, nor be contrary to the intent of the zoning code. For example, an applicant must show that the proposal would not be out of character with the neighborhood, nor would it significantly reduce light, air, or open space.

A variance must meet all three of these criteria, known as the "tests of hardship". The actual text of the three tests of hardship is in Section 6-1517 of the City Charter. There are two general types of variance requests:

A use variance is required to allow a use which is not otherwise permitted in the zoning district. For example, a proposal to build a retail store in a residential zone would require a use variance. A proposal to expand a nonconforming use is also a type of "use variance". A use variance can very rarely be supported. In many cases, it would be more appropriate to request a zone change, which is reviewed by the City Council.

An area variance is required to exceed dimensional standards of the zoning code, such as height limits, yard or height setbacks, or off-street parking requirements. To get this type of variance, the applicant must show a unique practical difficulty. If the applicant's circumstances are common to other sites and/or owners, the variance request usually cannot be supported.

Please consider the following sample cases to see how the "tests of hardship" are applied. Remember, these cases are illustrative only. Actual cases will vary, depending on specific facts or circumstances; thus, the outcome of a particular case may be different. If you think your situation qualifies for a variance, review the answers to questions which are frequently asked about variance applications.


Henry Eng, FAICP, Director
Department of Planning
and Permitting

SAMPLE VARIANCE CASES

CASE #1: The applicant has a small and/or substandard residential lot with an unusual shape which precludes the construction of a reasonable-sized dwelling without a minor encroachment into a required yard. (See Fig. 1) This is the only lot in the neighborhood with such constraints. A variance is supportable because the applicant is:

- . deprived of reasonable use
- . there are unique circumstances
- . the request would not significantly alter the character of the neighborhood or challenge the reasonableness of the zoning code

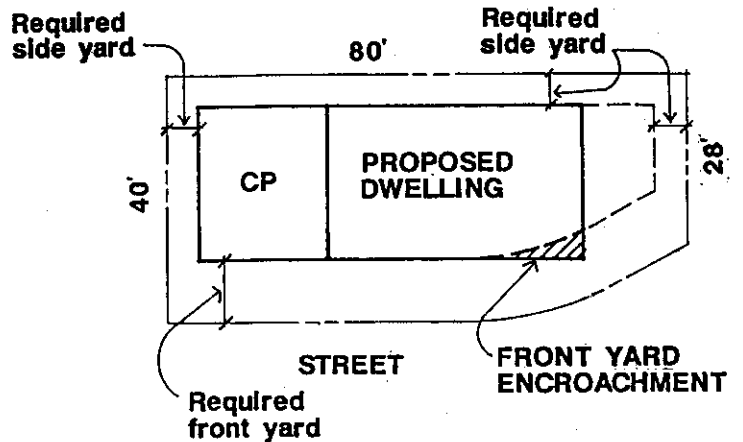


Figure 1

CASE #2: The applicant has a residential lot with an existing dwelling. He proposes to construct an addition on the right side of an existing house. (See Fig. 2) The addition does not meet the side yard requirement. The applicant argues that the encroachment is necessary because it is the most practical, cost-effective solution. The size and shape of the lot is similar to other lots in the neighborhood.

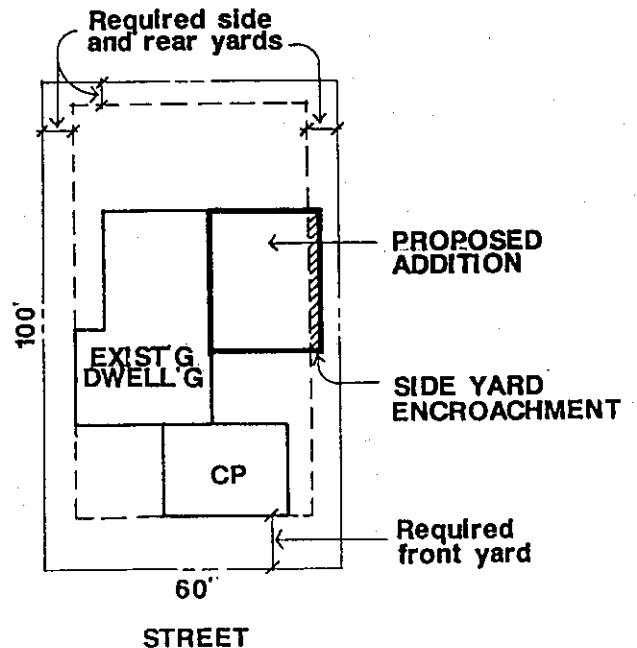


Figure 2

The variance cannot be supported because:

- . the applicant is not deprived of reasonable use, since alternatives are available. (See Fig. 3).
- . there are no unique conditions of the site which prevent the applicant from building an addition which meets zoning requirements.
- . the request would probably not significantly affect the character of the neighborhood, but it is contrary to the purpose of the zoning code yard requirements.

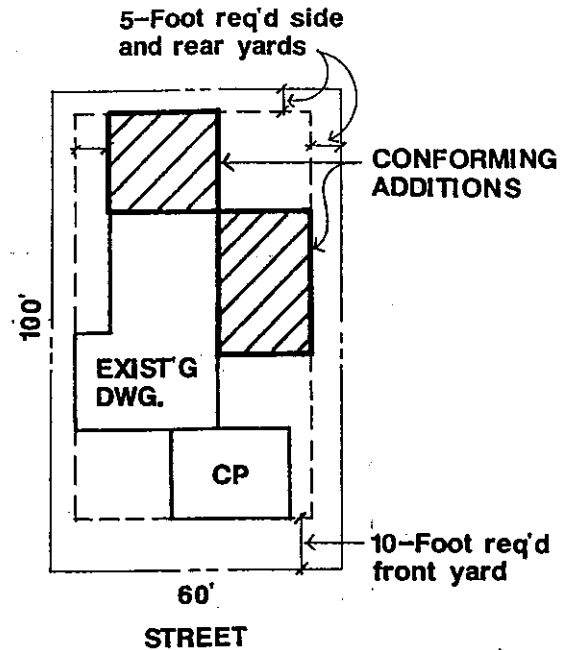


Figure 3

CASE #3: The applicant has a small, narrow lot, only 35 feet in width. Other lots in the area are generally 50 feet wide, which is the standard for the zoning district. The applicant cannot raise the existing dwelling and add a new ground floor without a variance because the second story would encroach slightly into the required height setback along one side. (See Fig. 4.)

The variance can be supported, with a condition that landscaping be provided, because:

- . the applicant would be deprived of reasonable use if not allowed to raise and/or expand the dwelling - something which is normally allowed - because of a very small height setback encroachment. The structural conditions and dimensions of the existing dwelling do not afford a reasonable alternative.

- . this is the only such narrow lot in the neighborhood, which is a unique circumstance.
- . the proposal would not significantly alter the character of the neighborhood because there are already many two-story dwellings in the vicinity. However, because of the potential impact on abutting lots, the applicant may be required to plant additional landscaping in the side yard to minimize the visual impact and to protect the privacy of neighbors. (See Fig. 4, bottom.)

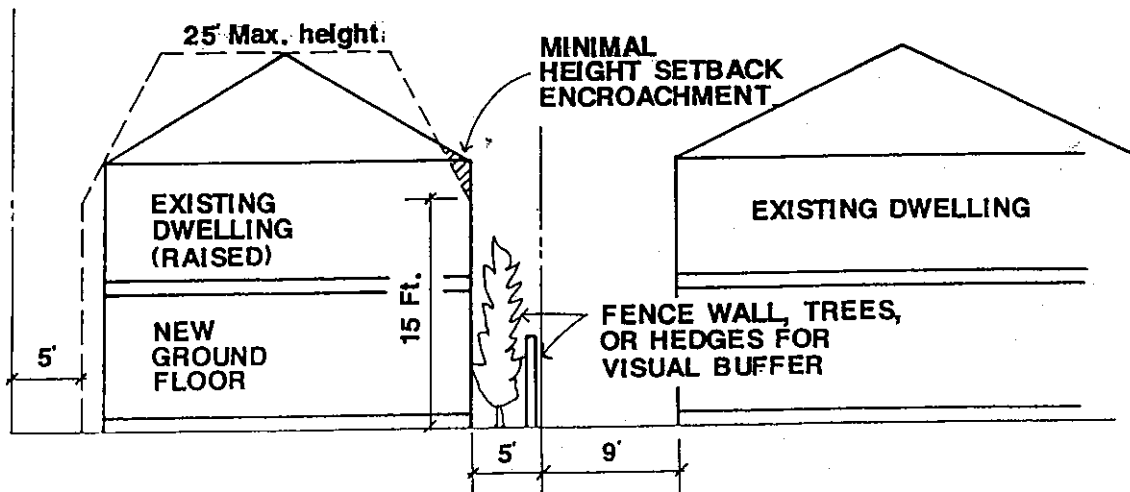
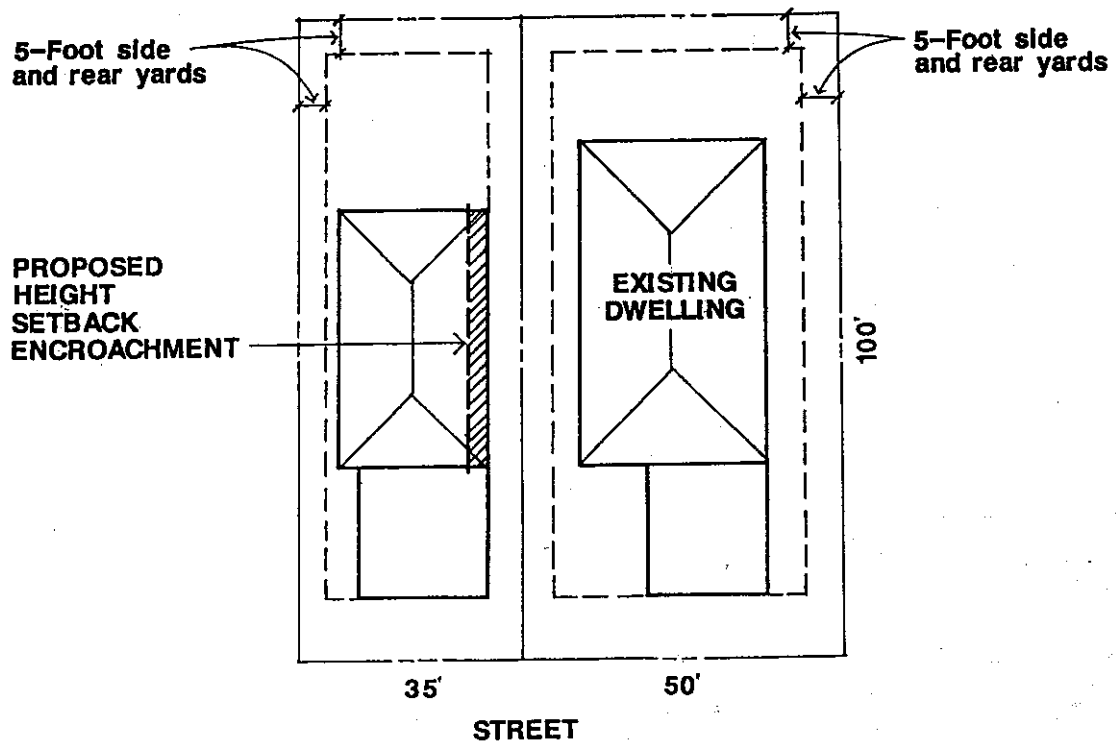


Figure 4

ANSWERS TO FREQUENTLY ASKED QUESTIONS

Where Can I Get the Land Use Ordinance?

The Land Use Ordinance (LUO) is available for a fee at the City and County Municipal Bookstore. Please call 523-4780 for further information. You may also visit the DPP web site at www.co.honolulu.hi.us/refs/roh (Revised Ordinances of Honolulu, Chapter 21, LUO) for quick reference.

Where Do I Apply For a Variance?

Department of Planning and Permitting
Honolulu Municipal Office Building
650 South King Street
Honolulu, Hawaii 96813

Whom Do I Call If I Need Help?

Department of Planning and Permitting
527-5025

Is There a Filing Fee?

. \$600.

. The fee is doubled if you apply after you have been cited or issued a notice of violation.

Are Fees Refundable?

No.

To Whom Are Fees Payable?

City and County of Honolulu

What if I Have Already Constructed Something?

The fee is DOUBLED when you are cited for proceeding with building and/or construction work without first obtaining a building (or sign) permit. Payment of this penalty fee does not relieve you from compliance with all other code requirements.

How Long Does a Variance Take to Process?

Processing time varies according to the complexity of the case and whether you submit a complete application, including accurate plans and information. Generally, processing time is 3 to 5 months. Check with our Department before you have plans prepared.

Is There a Public Hearing?

A public hearing is required by law. They are normally held twice a month.

What Do I Have to Submit?

- . Filing Fee

- . Master Permit Application Form
 - . The fee landowner must sign the application or you must submit a letter from the fee landowner authorizing you to apply.
 - . If the agent and applicant are different from the fee landowner, they must also sign.

- . Drawings/Plans

All drawings submitted with the application must be black line prints, and certified (stamped, signed, and dated) by a LICENSED ARCHITECT, LAND SURVEYOR, OR CIVIL ENGINEER, depending on the type of request. The plans should include:

 - a. A location map showing the site and the surrounding area and/or uses.

 - b. A site plan which is drawn to accurate scale and shows:
 - (1) All property lines and dimensions, easements, and lot area.

(2) Location, size (dimensions) and setbacks of all existing and proposed buildings, structures, or other improvements.

(3) Topographic conditions, including existing and finish grades, unusual physical features or other conditions.

(4) Existing streets or access to the site, and the existing or proposed parking layout, including dimensions.

(5) The certified shoreline and shoreline setback line, and stream or other setback lines.

- c. Building elevation drawings, section drawings, and floor plans which clearly define the proposal.
- d. A landscape plan which shows existing and proposed landscaping, including open spaces, plant material, and trees.
- e. Floor area, and off-street parking and loading calculations, if relevant to the variance request.

It is very important that your plans accurately reflect what actually exists on the site and what you propose to do. If you don't submit accurate information and drawings, it will delay the processing of your application and may even result in denial of your request. Usually, after-the-fact area variances for encroachments require a survey plan certified by a **licensed land surveyor** or **civil engineer**.

. Written Statements

It is important that you provide written justification for your request. Generally, the hardship must relate to the physical characteristics of the site, such as, but not limited to, topography, size, or shape.

. Copies of pertinent previously approved building permit and violation notices.

. Any other information which you feel will support your case for variance, such as dated photographs of the site or structure as it relates to the variance request.

What Happens After I Apply?

The Department of Planning and Permitting (DPP), Land Use Permits Division, reviews your application for completeness, and determines if the application can be accepted for processing or not. If the application is accepted, the DPP will schedule a field check and do other necessary research.

The Neighborhood Board and adjoining property owners will be sent a copy of the public hearing notice. The direct notice to adjoining property owners is not required by law; however, it is done as a courtesy to neighbors, to the extent reasonably possible. For example, on an extremely large lot, notice would only be sent to neighbors who are within a reasonable distance.

At the public hearing, you (the applicant), your neighbors, and the neighborhood board and other community associations will have an opportunity to testify on the variance proposal.

Director's Action

Generally, the Director renders a decision between 30 and 60 days from the date of the public hearing. You will be notified in writing of the Director's action.

There will be written Findings of Fact, Conclusions of Law and Decision and Order.

- . The Director may require modifications to your proposal or attach conditions to reduce the impacts of your proposal on your neighbors and/or the community. Conditions may require an applicant to:
 - . provide landscaping or a solid wall along a boundary line
 - . record a restrictive covenant
 - . obtain additional permits within a certain period of time
- . Upon receipt of the Decision and Order, you should carefully check for time limits and the need for other approvals.
- . If you do not comply with the conditions of approval within the time limit, the variance may lapse. If the variance lapses for that reason, you would not be able to reapply for the same variance for 1 year.
- . The Decision and Order is important. Read it carefully.