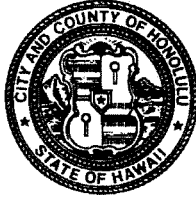


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

April 18, 2016

Memorandum

TO: David W. Rae, Chair
Charter Commission

FROM: 
George I. Atta, FAICP, Director
Department of Planning and Permitting

SUBJECT: Department of Planning and Permitting Statement on Dimensional
Variances for the Honolulu Charter Commission

The proposed charter amendment put forth by the Department of Planning and Permitting (DPP) is based on the fact that in land development regulations there are two kinds of variances: (1) use and (2) dimensional. The first one obviously relates to the permitted uses and activities on the land. The second relates to physical structures permitted on the land. The criteria that are described in the Charter for the City and County of Honolulu (Charter) are criteria that are appropriate for land use. This is evident in the nature of the three criteria identified: (1) hardship due to denial of reasonable use, (2) unique circumstances, and (3) undermining of the legitimacy of the underlying and surrounding land use regulations. Honolulu's zoning code is a Euclidean zoning code based on land use. Use variances are primarily regulated by the zoning code and based on the nuisance doctrine and the police powers of government.

Dimensional variances are based on development standards of structures built on the land; not use or activities. These variances are based on the physical form and the impacts they have. Their rationale is usually based on standards and codes: building, plumbing, electrical, public works and shoreline setback criteria. The focus again is on the physical form and the external impacts they may have. Governmental codes and standards are usually based on health, safety and general welfare considerations. The statutory basis for these kinds of variances lies in the statutes and codes adopted by the State and City. For instance, the variance criteria for shoreline setbacks is found in HRS Chapter 205A and building permit adjustments are found in the building code.

The Charter does not make a distinction between use and dimensional variances. This, in itself, would not be a problem except that it describes only the "use" criteria and has no criteria for dimensional variances. The problem with this situation is that the "hardship/denial of reasonable use" criteria are extremely difficult to meet on the dimensional side. When a corner of a house encroaches beyond the building envelope the homeowner must tear down the encroachment. A variance cannot be justified because when a three bedroom house becomes a two bedroom house, the property owner still has reasonable use of the property remaining. In the case of shoreline setbacks, until the coastal erosion begins to undermine the foundation of a house it would be hard to argue that the person has lost reasonable use of the property.

In dimensional variances we have used terms such as practical difficulties, de minimus impacts, structural integrity and best practicable alternative as reasons for granting variances. None of these reasons is found in the description for variance criteria identified in the current Charter language. Our basis for using these criteria is their existence in some existing ordinances, standards and rules. However, their absence in the Charter gives us pause about their legitimacy. To clear this uncertainty we proposed the subject Charter amendment.

Also enclosed, please find our documents responding to specific comments and requests from various members of the Charter Commission.

Enclosure

cc: Roy K. Amemiya, Jr.
Ray Soon
Megan Muramatsu

Chong, Blanche

From: Ching, Anthony X.
Sent: Wednesday, April 20, 2016 1:30 PM
To: Atta, George I
Cc: Challacombe, Arthur D.; Chong, Blanche; Shoji, Joyce M.; Armitage, Nelson
Subject: RE: Dimensional Variance
Attachments: Dimensional Jurisdictions.doc; 2013 to 2015 variances.doc

George,

Per your request, Nelson and I put together a quick draft response to your questions listed below (see attachments).

There are a number of cities that utilize dimensional variances and we tried to list a few. We also have some print out of various articles from websites in our research of other municipalities. We can forward that to you for your review, if you wish.

In the last three years, there were 77 zoning variances processed (as Art mentioned before). Forty-eight were rejected, withdrawn or closed; seven were denied; and 22 were partially approved or approved.

Nelson put together a comprehensive table listing the number of dimensional variances, applicant (large or small landowner), brief description of the variance requested, and the outcome and date.

Hope that answers your questions below, if not, let us know. Thanks.

Tony

From: Atta, George I
Sent: Friday, April 15, 2016 11:50 AM
To: Ching, Anthony X.; Shoji, Joyce M.
Cc: Challacombe, Arthur D.; Chong, Blanche
Subject: dimensional variance

Tony:

1. Please have a planner investigate asap dimensional variances in other jurisdictions (request from Charter commission).
2. Provide some statistics on the number of variances we have issued in the last 3 years. How many are from large corporations and how many are from small property owners. What were the variance requests for.
3. pick 2-3 typical examples and provide a short summary of the variance.

If you have any thoughts on the difference between use variances and dimensional variances I would appreciate getting your thoughts on the issues.

George

Brief List of Other Jurisdictions with Dimensional Variances

The following is a brief list of other jurisdictions that have dimensional variances. They are not listed in any particular order. They were copied straight from the Google search listing. Some of the states with dimensional variances include municipalities in Minnesota, Wisconsin, Michigan, Pennsylvania, Kentucky, New York, Mississippi, Massachusetts, North Dakota, and Illinois. There are many other municipalities too numerous to list.

Winona, Minnesota
Milwaukee, Wisconsin
East Providence, Rhode Island
Grand Rapids, Michigan
Pittsburgh, Pennsylvania
Vine Grove, Kentucky
Murray, Kentucky
Yonkers, New York
Muskego, Wisconsin
Ferndale, Michigan
Ridgeland, Mississippi
Midland, Michigan
Mount Sterling, Kentucky
Stoughton, Michigan
Muskegon, Michigan
Webster, Michigan
Cambridge, Massachusetts
Fargo, North Dakota
Batavia, Illinois

Number of Zoning Variances 2013-15

The following list the number of zoning variances DPP processed between 2013-2015. There were a total of 77 variances, of which 48 were rejected, withdrawn or closed; 7 were denied; and 22 were partially approved or approved.

Year	Rejected	Denied	Approved	Totals
2013	16	4	9	29
2014	12	3	9	24
2015	20	0	4	24
Subtotals	48	7	22	77

**Zoning Variances Granted by the
Department of Planning and Permitting:
2013 -2015**

Year: 2015			
DPP File No.	Applicant	Request	Status
2015/VAR-22 Dimensional Variance	James Pierce (Small Landowner)	To allow (retain) a deck and pavilion that encroach five feet into the five-foot rear yard and into the height setback.	Partial Approval, December 28, 2015
2015/VAR-21 Dimensional Variance	Haokalei Country Club (Large Landowner)	To allow two golf course driving range safety nets to exceed the maximum height limit of 25 feet in the P-2 General Preservation District. Two 40-foot-high golf course safety nets will be erected on opposite sides of the Hoakalei Golf Course driving range and will exceed the height limit by 15 feet.	Partial Approval, December 15, 2015
2015/VAR-8 Dimensional Variance	Lambert K.Y. and Christiana L.L.L. Kwai (Small Landowner)	To allow an access easement over three nonconforming lots (substandard area) which reduces the net lot area of each lot and increases nonconformity.	Approval, July 21, 2015
2015/VAR-4 Dimensional Variance	Darren Doi (Small Landowner)	To allow (retain) an existing two-story, single-family dwelling which encroaches into the required yard and height setbacks.	Partial Approval, July 10, 2015
Year: 2014			
2014/VAR-24 Dimensional	Takemoto-Gentile Clinic, Curtis	To allow provision of less than the	Approval, August 31, 2015

Variance	Takemoto-Gentile (Small Landowner)	required amount of off-street parking spaces on a substandard lot in the BMX-3 Community Business Mixed Use District and/or to allow the provision of an off-site parking facility that is more than 400 feet from the nearest principal entrance to a medical clinic; to allow required parking spaces to encroach into a front yard in a Business Mixed Use District; to allow maneuvering of vehicles into and from a private street to enter and exit a parking lot of four or more spaces; and to allow less than the required amount of landscaping for a parking lot of five or more spaces.	
2014/VAR-18 Use Variance	John C. Carson (Small Landowner)	To allow the expansion of permissible uses in an existing medical office building in the R-7.5 Residential District. The Applicant sought approval to allow small-scale office uses on the site, such as an attorney, real estate, or accountant office.	Approval, January 5, 2015
2014/VAR-17 Dimensional Variance	Clarence T. Miyamoto (Small Landowner)	To allow a two-story single-family dwelling which exceeds the maximum permitted	Approval, November 25, 2014

		density (floor area), encroaches into the required front yards and/or height setbacks, does not provide landscaping in required yards, and where the off-street parking spaces encroach into required front and side yards.	
2014/VAR-13 Dimensional Variance	Niti D. Villinger (Small Landowner)	To allow (retain) an existing, two-story single-family dwelling which encroaches a maximum of 3.1 feet into the required 5-foot side yard, and projects a maximum of 4.4 feet into the height setback.	Partial Approval, December 8, 2014
2014/VAR-10 Dimensional Variance	Scott M. Larson (Small Landowner)	To allow a single-family dwelling which exceeds the building height limit, encroaches into the required 10-foot front yard, and projects beyond height setbacks.	Approval, January 16, 2015
2014/VAR-9 Dimensional Variance	Gentry Investment Properties (Large Landowner)	To allow an eight-foot-high wall within the required rear yard along the south property line.	Approval, September 23, 2014
2014/VAR-5 Dimensional Variance	Karl L. Sinclair (Small Landowner)	To allow (retain) and expand an existing farm dwelling and accessory structures, including swimming pool, deck, and detached garage/recreation room within a 15,548-square-foot farm dwelling area (FDA) polygon,	<u>Denial</u> of the request to expand (by 502 square feet) the existing farm dwelling, and <u>Approval</u> of the request to allow (retain) all existing structures on the property which have already been authorized by building permits,

		which exceeds the maximum 5,000-square-foot FDA polygon in the AG-2 General Agricultural District.	November 24, 2014.
2014/VAR-3 Dimensional Variance	Samson and Diana Nguyen (Small Landowner)	To allow (retain) the following, which increase nonconformity: (1) The reconstruction and reconfiguration of an exterior stairway for a multifamily dwelling in the required left side yard; (2) two stairways in the required right side yard; (3) the encroachment of an existing stairway and a laundry room into the required rear yard; (4) the enclosure of an existing carport, which also encroaches into the required right side yard; and (5) floor area that exceeds current zoning district requirements.	Partial Approval, November 13, 2015
2014/VAR-2 Dimensional Variance	Jennifer Carias (Small Landowner)	To allow (retain) a single-family dwelling which encroaches a maximum of two feet into the required side yard.	Approval, June 12, 2014
Year: 2013			
2013/VAR-29 Dimensional Variance	Atkinson Towers Association of Unit Owners (Large Landowner)	To allow: (1) The expansion of a nonconforming multi-family dwelling which exceeds the maximum permitted	Approval, August 22, 2014

		building area and floor area ratio (FAR) in the A-2 Medium Density Apartment District, and increases nonconformity; (2) Parking spaces to encroach into the required side and rear yards; (3) The reconfiguration of a nonconforming parking lot that does not comply with current requirements; and (4) A loading space with substandard dimensions.	
2013/VAR-23 Dimensional Variance	Glenn McKemy (Small Landowner)	To allow a new two-story single-family dwelling to encroach 2.00 feet into the required side and rear height setbacks.	Approval, February 24, 2014
2013/VAR-16 Dimensional Variance	Sandpiper Acquisition LLC (Large Landowner: Polynesian Plaza Hotel)	To enclose the entire lanai of Unit 214, renumber to Unit 210, and Units 215 and 216, renumber to Unit 212, and reduce the lanai enclosures for the hotel units accordingly.	Approval, May 7, 2014
2013/VAR-12 Dimensional Variance	Allen Woo (Small Landowner)	To construct a new 2,442-square-foot two-foot single-family dwelling, which encroaches into the required (front) yard and exceeds the maximum density (floor area) on a 2,776-square-foot substandard lot in the A-1 Low Density Apartment District.	Approval, November 12, 2013

<p>2013/VAR-11 Dimensional Variance</p>	<p>Barry Kemp (Small Landowner)</p>	<p>To allow a two-car cantilevered metal carport to encroach a maximum of 8.83 feet into the required 10-foot front yard of a nonconforming lot in the R-5 Residential District.</p>	<p>Approval, October 9, 2013</p>
<p>2013/VAR-9 Dimensional Variance</p>	<p>YMCA of Honolulu (Large Landowner)</p>	<p>To allow the construction of a second, new level of 94 parking spaces at the Nuuanu Young Men's Christian Association that exceeds the maximum building area (lot coverage).</p>	<p>Approval, October 28, 2013</p>
<p>2013/VAR-7 Use Variance</p>	<p>Peter Vincent Architects for Hawaii Buddhist Cultural Society (HBCS) (Small Landowner)</p>	<p>To allow a change in use for the entire existing two-story Tardus Financial Plaza Building, from office and eating establishments to a meeting facility for the HBCS, with less than the required loading spaces.</p>	<p>Approval, June 28, 2013</p>
<p>2013/VAR-3 Dimensional Variance</p>	<p>Scott M. Larson (Small Landowner)</p>	<p>To allow a single-family dwelling which exceeds the building height envelope and encroaches into the required front yard.</p>	<p>Approval, August 1, 2013</p>