

ZONE VARIANCE – MINOR SETBACK

(Pursuant to Public Law 27-91, Section No. 2)

To: Director, Department of Land Management, Government of Guåhan
P.O. Box 2950, Hagatna, Guåhan 96932

The undersigned owner(s)/Lessee(s) hereby request approval of Minor Setback Variance for the following described property. Incomplete application will be returned without action.

1. INFORMATION ON APPLICANT(S):

Name of Applicant(s): _____

Mailing Address: _____

Telephone No. Business: _____ Home: _____ Other: _____

2. LOCATION, DESCRIPTION AND OWNERSHIP:

Subdivision Name (if applicable): _____

Lot(s): _____ Block: _____ Tract: _____

Lot Area: Square Feet: _____ Square Meters: _____ Acres: _____

Village: _____ Municipality: _____ Zoning: _____

(Provide copies of the most current document(s) shown with an * Asterisk, if available.)

Registered Owner(s): _____

*Certificate of Title No.: _____ Document No.: _____

Other types of document showing proof of ownership, such as Deed of Gift, Warranty Deed, etc.) Document No.: _____

3(a). Required Setback	3(b). Existing Setback	3(c). Requested Variance
Front Yard 15 Feet	Front Yard ___ Feet	Front Yard ___ Feet
Rear Yard 10 Feet	Rear Yard ___ Feet	Rear Yard ___ Feet
Left Side Yard 8 Feet	Left Side Yard ___ Feet	Left Side Yard ___ Feet
Right Side Yard 8 Feet	Right Side Yard ___ Feet	Right Side Yard ___ Feet

4. Supporting Information: (The following supporting information shall be attached to this application)

- a. Site Plan required (plans, drawn to scale, showing dimensions and shape of lot, lot size; size and location of existing buildings and setback distances.
- b. The most recent survey map certified and recorded in the Department of Land Management, showing the subject property.

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4. Supporting Information: Continuation

- c. Provide, if applicable, any covenants, conditions, or restrictions on the property.
- d. Written concurrence from adjacent property owners.
- e. Any additional data, documents, or information as specified by the Guåhan Chief Planner.
- f. The Agencies Listed below require the following:

GUÅHAN POWER AUTHORITY

1. Include Ownership and Encumbrance Title Report.
2. Provide Proposed Power Demand in Kilovolt Amps (KVA).

GUÅHAN ENVIRONMENTAL PROTECTION AGENCY

1. Copy of Site Layout showing the existing building structures and the outline of the septic tank and leaching field system, if not connected to public sewer.
2. Copy of building Permits for any extensions (additional structures) to the existing dwelling unit.

5. **Required Signatures:** All Legal Owner(s)/Lessee(s), Attorney-in-Fact, etc., of the designated parcel(s) of property shall sign the form with name(s) typed or legibly handwritten, signed and dated.

“I hereby certify that all information contained in this application request and its supplements, if any, is/are true and correct. I also understand that any misrepresentation shall render this application request null and void.”

(Owner(s)/Lessee(s) – Print & Sign)

Date

(Representative – Attorney-In-Fact, etc. – Print & Sign)

Date

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FOR DEPARTMENTAL USE ONLY

Date Application Received: _____

Date of Notification to Adjacent Property Owners: _____

Date Assigned to Planner: _____

30-Day Suspense Date: _____

Assigned Planner: _____

PLANNING STAFF ACTIONS

TYPE OF STRUCTURE

- | | | |
|----|---|--|
| 1. | <input type="checkbox"/> Single-Family Residential (main)
(Indicate height & storey) | <input type="checkbox"/> Single-Family Residential Accessory
Structure (Specify type) |
| | _____ | _____ |
| | _____ | _____ |

- | | | |
|----|---|-----------------------------|
| 2. | Enter the structures' current setbacks:
For the Single-Family Residential (Main) | For the Accessory Structure |
| | Front Yard _____ Feet | Front Yard _____ Feet |
| | Left Side _____ Feet | Left Side _____ Feet |
| | Right Side _____ Feet | Right Side _____ Feet |
| | Rear Yard _____ Feet | Rear Yard _____ Feet |

3. Type of document used to review and analyze the existing conditions of the structures (e.g., site plan, as-built survey map, photographs, etc.):

4. Date of Site Inspection and Findings: _____
- _____
- _____

5. Analysis: _____
- _____
- _____

6. Conclusions: _____
- _____
- _____

By: _____ Date: _____

Print Name and Sign

GUAHAN CHIEF PLANNER'S RECOMMENDATION TO DIRECTOR, DEPARTMENT OF LAND MANGEMENT

Based on the above findings, analysis and conclusion(s), I hereby recommend the Application be:

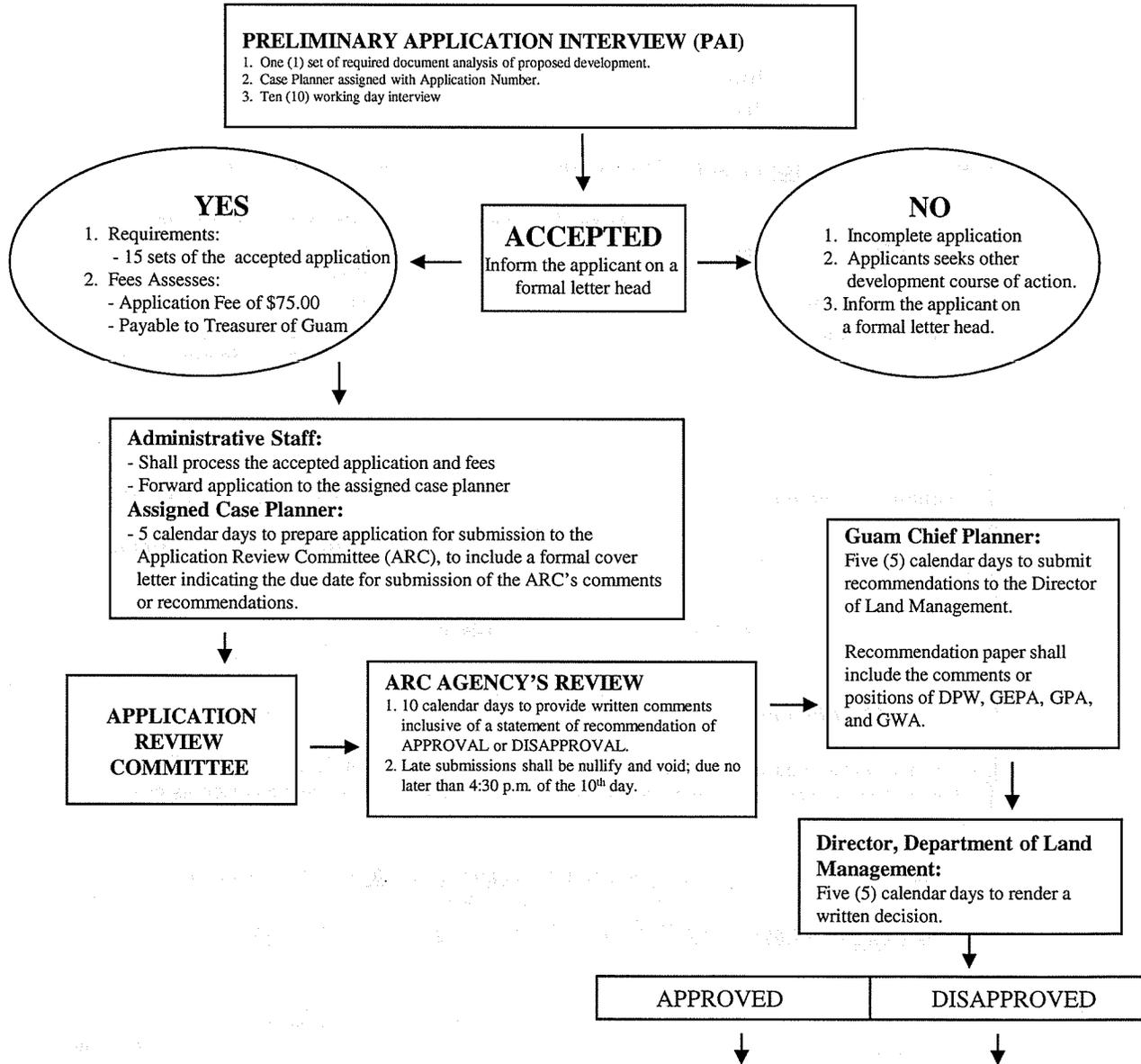
APPROVED DISAPPROVED

MARVIN Q. AGUILAR
Guam Chief Planner

_____ Date

MINOR SETBACK VARIANCE APPLICATION PROCESS

Pursuant to Public Law 27-91, the Guam Land Use Commission passed Resolution 2007-001 to resolve that the "Minor Setback Variance" shall only be applicable for structures construct on or before December 2005; and adopted the rules to apply the mandate of Sections 1 & 2 of Public Law 27-91.



Remarks: The Director shall not grant a variance for a yard setback under the following circumstances:

1. After three attempts the applicant(s) fails to provide necessary or additional information.
2. Falsification of information as submitted by the applicant(s).
3. Granting the variance will not be consistent with "Guam Master Plan", if one exists.
4. Present or proposed use is not consistent or is in violation of other elements of the zoning
5. When a variance from the yard setback for the subject parcel has been previously granted by the Director or the Guam Land Use Commission, pursuant to P.L. 27-91 and Section 61616, Chapter 61, 21 GCA, respectively.



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Office of the People's Speaker
vicente (ben) c. pangelinan

MAY 11 2004

TIME: 5:07 () AM () PM
RECEIVED BY: *[Signature]*

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

11 MAY 2004

The Honorable Vicente C. Pangelinan
Speaker
I Mina' Bente Siete Na Liheslaturan Guåhan
Twenty-Seventh Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Pangelinan:

Transmitted herewith is Bill No. 183 (COR), "AN ACT TO ADD SUBSECTION 61616(1) AND SECTION 61526 TO CHAPTER 61 OF TITLE 21 OF THE GUAM CODE ANNOTATED, TO ESTABLISH GUIDELINES ALLOWING THE DIRECTOR OF THE DEPARTMENT OF LAND MANAGEMENT LIMITED DISCRETIONARY AUTHORITY IN APPROVING MINOR SETBACK VARIANCES FOR RESIDENTIAL USES AND TO PROVIDE AN EXCEPTION FOR NONCONFORMING BUILDINGS AND NONCONFORMING USE OF LAND; AND TO REPEAL AND REENACT PART 5 OF CHAPTER 61 OF TITLE 21 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A FEE SCHEDULE," which I signed into law on May 6, 2004 as **Public Law 27-91**.

Sinseru yan Magåhet,

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

cc: The Honorable Tina Rose Muña-Barnes
Senator and Legislative Secretary

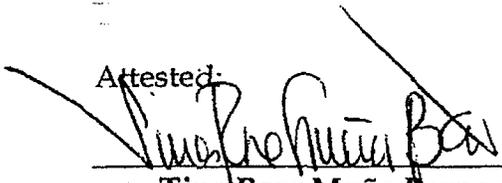
790

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

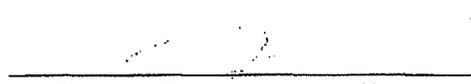
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 183 (COR), "AN ACT TO ADD SUBSECTION 61616(I) AND SECTION 61526 TO CHAPTER 61 OF TITLE 21 OF THE GUAM CODE ANNOTATED, TO ESTABLISH GUIDELINES ALLOWING THE DIRECTOR OF THE DEPARTMENT OF LAND MANAGEMENT LIMITED DISCRETIONARY AUTHORITY IN APPROVING MINOR SETBACK VARIANCES FOR RESIDENTIAL USES AND TO PROVIDE AN EXCEPTION FOR NONCONFORMING BUILDINGS AND NONCONFORMING USE OF LAND; AND TO REPEAL AND REENACT PART 5 OF CHAPTER 61 OF TITLE 21 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A FEE SCHEDULE,"** was on the 23rd day of April, 2004, duly and regularly passed.

Attested:

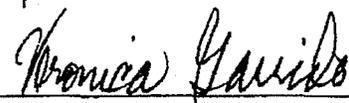


Tina Rose Muña Barnes
Senator and Legislative Secretary



vicente (ben) c. pangelinan
Speaker

This Act was received by *I Maga'lahaen Guåhan* this 27 day of April, 2004,
at 11:45 o'clock A. M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: May 6, 2004

Public Law No. 27-91

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 183 (COR)

As amended by the Committee on
Utilities and Land, and further substituted
and amended on the Floor.

Introduced by:

J. M. Quinata
v. c. pangelinan
R. J. Respicio
F. B. Aguon, Jr.
J. M.S. Brown
F. R. Cunliffe
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
J. A. Lujan
T. R. Muña Barnes
Toni Sanford
Ray Tenorio

AN ACT TO *ADD* SUBSECTION 61616(I) AND SECTION 61526 TO CHAPTER 61 OF TITLE 21 OF THE GUAM CODE ANNOTATED, TO ESTABLISH GUIDELINES ALLOWING THE DIRECTOR OF THE DEPARTMENT OF LAND MANAGEMENT LIMITED DISCRETIONARY AUTHORITY IN APPROVING MINOR SETBACK VARIANCES FOR RESIDENTIAL USES AND TO PROVIDE AN EXCEPTION FOR NONCONFORMING BUILDINGS AND NONCONFORMING USE OF LAND; AND TO *REPEAL* AND *REENACT* PART 5 OF CHAPTER 61 OF TITLE 21 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A FEE SCHEDULE.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds and recognizes that Guam's Zoning Law includes various standards
4 regarding building setbacks from the property line and other physical
5 characteristics of development. There are occasions when the strict
6 application of certain standards may be inappropriate because of special
7 circumstances regarding the property.

8 The variance procedure is intended to permit variations from the
9 normal zoning regulation in cases where special or extraordinary
10 circumstances occur at the property which prevent practical
11 accommodation of the basic land use intended for the zone.

12 A minor setback variance as construed within this Act, is a variance
13 in connection with the location of a residential structure within a zone. In
14 the case of minor variances, the Guam Chief Planner along with the
15 Agency Review Committee hears and reviews an application
16 recommending to the Guam Land Use Commission their findings. This
17 procedure was implemented to streamline and simplify applications before
18 the Guam Land Use Commission. However, the application process may
19 consume ninety (90) to one hundred eighty (180) days for a decision to be
20 rendered from the Guam Land Use Commission. This time requirement
21 imposes undue hardship to a simple residential homeowner who may
22 spend, at a minimum, Five Hundred Dollars (\$500.00) to several thousand
23 dollars to administratively process an application, meeting all statutory
24 requirements not knowing whether the application will receive favorable
25 consideration from the Guam Land Use Commission.

1 This Act enables the Director of the Department of Land
2 Management to have discretionary authority in the approval of minor
3 setback variances involving residential uses. A specialized technical level
4 of review involving land use planning techniques is applied which thus
5 streamlines the variance process.

6 Residential uses have synonymous setback requirements that are
7 common throughout the various zones. Hence, the granting of a minor
8 variance to allow the suitable location of a structure where practical
9 difficulties exist due to special circumstances applicable to the property,
10 including size, shape, topography, location or surroundings, in most
11 circumstances, may only affect a neighbor closest to the property line
12 where the variance is applied. This Act is sensitive to this matter and
13 requires an applicant to obtain consent from such neighbors prior to an
14 action.

15 The granting of a minor variance does not permit a different land use
16 than normally permitted in the applicable zoning district. Rather, the
17 intent is to provide for discretion and flexibility where the strict
18 interpretation of the Guam Zoning Law may result in the practical
19 difficulty or an unnecessary hardship to carry out the spirit and purpose of
20 Guam's Zoning Law.

21 *I Liheslaturan Guåhan* further finds that after Typhoons *Chata'an* and
22 *Pongsona*, close to fifty (50) residential setback variances were submitted
23 and are awaiting action by the Guam Land Use Commission. Most of the
24 residential setback variance requests could be ascertained upon the passage
25 of this Act. The multitude of variance applications was stimulated by

1 appraisal reports determining that the setbacks were inconsistent with the
2 intent of the Guam Zoning Law. Most of the inconsistencies resulted from
3 boundary realignments, structural placement errors by contractors, an
4 extension encroaching onto the setbacks, or through building inspection
5 oversights resulting in an encroachment. A nonconforming use
6 determination from an appraiser's report, resulting in a setback
7 encroachment, will prevent a lending institution, including the Small
8 Business Administration, from issuing a loan. Many residential owners
9 who are seeking Federal Emergency Management Agency assistance for
10 damages sustained from Typhoons *Chata'an* and *Pongsona* and referred to
11 the Small Business Administration are hindered from further assistance
12 resulting by a nonconforming use determination appearing within an
13 appraiser's report.

14 It is the intent of *I Liheslaturan Guåhan* to allow for the streamlining of
15 minor residential setback variances which imposes undue hardship to a
16 residential owner.

17 *I Liheslaturan Guåhan* also finds that the Guam Land Use Commission
18 has been assessing fees for the filing of land use applications adopted since
19 the Tenth Guam Legislature. *I Liheslaturan Guåhan* further finds that the
20 fees are antiquated and is not an accurate representation of the correct cost
21 outlay. This Act repeals and reenacts that provision and authorizes the
22 Guam Land Use Commission to establish a new fee schedule following the
23 Administrative Adjudication Act.

24 **Section 2.** A new Subsection (l) is *added* to §61616 of Chapter 61 of
25 Title 21 of the Guam Code Annotated, to read:

1 “(1) Notwithstanding other provisions within this Section, establish
2 guidelines through resolution to permit the Director of the
3 Department of Land Management, with advisement from the Guam
4 Chief Planner, to utilize his discretion in approving minor yard
5 setback variances specifically for single family residential dwellings
6 or any assessorly structure of a residential use which, at a minimum,
7 satisfies the following requirements:

8 (1) The variance is for not more than three (3) feet
9 beyond the setback requirement of only one (1) yard (side,
10 front, or rear) to allow the suitable location of a structure where
11 practical difficulties exist due to special circumstances
12 applicable to the building or property, including size, shape,
13 topography, location or surroundings, depriving such property
14 of privileges enjoyed by other property in the vicinity and
15 under identical zoning classification consistent with the general
16 welfare of the adjacent neighbors.

17 (2) The granting of the variance does not authorize a
18 use or activity which is not authorized by the zone regulations
19 governing the parcel or property.

20 (3) Water runoff from the roof line of any structure
21 shall not encroach beyond the property line of a parcel.

22 (4) No encroachment onto an area engrossed by a grant
23 of easement shall occur.

24 (5) Concurrence from the adjacent property owners
25 located along the property line closest to the setback

1 encroachment shall be obtained.

2 (6) Real property chattels or any transient residential
3 accommodations including breakfast inns, motels or hotels are
4 not considered as residential dwellings for the purpose of this
5 Subsection.

6 (7) No other setback variance shall be granted by the
7 Commission on the parcel affected by a grant of variance
8 through this Subsection. The physical removal of any structure
9 or a portion thereof approved through this Subsection shall
10 void the restrictions imposed by this Subsection.

11 (8) The Department shall notify all contiguous
12 property owners of the proposed minor yard setback variance.
13 Upon notification by the Department, the property owners
14 shall have thirty (30) days to submit written objections to the
15 Director."

16 **Section 3. Exception for Restoration of Minimum Yard and Lot**
17 **Area Table.** A new §61526 is hereby *added* to Part 3 of Chapter 61 of Title
18 21 of the Guam Code Annotated, to read:

19 "§61526. **Exception for Nonconforming Buildings and the**
20 **Nonconforming Use of Land.** (a) Any building or structure
21 constructed on a Single Family (R-1) Zone during the period of
22 November 1991 through June 1997 and not meeting the Yard and Lot
23 Area Table set forth in §61501 of this Chapter shall be deemed as a
24 legal nonconforming building and continue as a legal nonconforming
25 use of the land under its designated zone.

1 (b) The property owners or authorized representative shall bear
2 the burden of proof that the building or structure was constructed
3 sometime during the period of November 1991 through June 1997.
4 The Guam Chief Planner shall verify and ascertain the eligibility of
5 the building or structure as a legal nonconforming building and
6 submit his findings to the Director for action. The Director, within
7 five (5) working days, shall record a Notice of Action document of his
8 determination.

9 (c) The interpretation and application of §61526(a) shall be held
10 to be the minimum requirement subject to all other provisions within
11 this Chapter prior to the enactment of Public Law 24-51."

12 **Section 4.** Part 5 of Chapter 61 of Title 21 of the Guam Code
13 Annotated, is hereby *repealed* and *reenacted* to read as follows:

14 **"Part 5**

15 **Fees**

16 **§61660. Filing Fees.** The Commission shall establish a
17 schedule of fees required for the filing of any application or for any
18 services provided to carry out the requirements of this Chapter
19 following the requirements of Chapter 9 of Title 5 of the Guam Code
20 Annotated, the Administrative Adjudication Law."

21 **Section 5. Severability.** *If any of the provisions of this Act or the*
22 *application thereof to any person or circumstance is held invalid, such*
23 *invalidity shall not affect any other provision or application of this Act*
24 *which can be given effect without the invalid provision or application, and*
25 *to this end the provisions of this Act are severable.*