

**21 GCA REAL PROPERTY
CH. 61 ZONING LAW**

§ 61616. Variances.

Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this Chapter would occur from its strict literal interpretation or enforcement, the Territorial Land Use Commission shall have authority to grant such variances therefrom as may be in harmony with its general purpose and intent, so that the spirit of the law shall be observed, public safety secured, and substantial justice done, including the following:

- (a) Permit the extension of an existing or proposed conforming building or use into an adjoining more restricted zone for a distance not exceeding fifty (50) feet;
- (b) Permit a building or use (including automobile parking) on a lot immediately adjoining or across an alley from a less restricted zone, upon such conditions and safeguards as will tend to cause an effective transition from the less restricted to the more restricted zone;
- (c) Permit the addition, enlargement or moving of a nonconforming building or structure;
- (d) Permit such modification of the height regulations as may be necessary to secure an appropriate building or structure on a lot which has such physical characteristics or is so located with relation to surrounding development that it cannot be properly improved without such modification;
- (e) Permit such modification of the yard, lot width or lot area regulations or requirements as may be necessary to secure an appropriate building or structure on a lot which is of such size, shape or topography, or is so located in relation to adjacent property or improvements that it cannot be appropriately improved without such modification;
- (f) Permit such modifications on the lot area per dwelling unit (density) requirements as may be necessary to secure an appropriate development of a lot in keeping with its size and location;
- (g) Permit the modification or waiver of the automobile parking space or loading space requirements where such modification would not be inconsistent with the purposes of this Chapter;
- (h) Permit temporary buildings or uses for a period not to exceed two (2) years in undeveloped areas;
- (i) Permit the following uses in zones from which they are prohibited by this Chapter: governmental enterprises; public utilities and public service uses or structures; hospitals or institutions; or development of natural resources.
- (j) Permit the construction of buildings in violation of the restrictions of § 61504 of this Chapter;

- (k) Permit the owner of a lot in a rural zone to parcel therefrom one lot not less than ten thousand (10,000) square feet in area to be used for a single family residence, such variance to be conditioned upon a prohibition on any subsequent parcelling of the lot and that the parcelled out lot be served by water and power and a public road.
- (l) Notwithstanding other provisions within this Section, establish guidelines through resolution to permit the Director of the Department of Land Management, with advisement from the Guam Chief Planner, to utilize his discretion in approving minor yard setback variances specifically for single family residential dwellings or any accessory structure of a residential use which, at a minimum, satisfies the following requirements:
1. The variance is for not more than three (3) feet beyond the setback requirement of only one (1) yard (side, front, or rear) to allow the suitable location of a structure where practical difficulties exist due to special circumstances applicable to the building or property, including size, shape, topography, location or surroundings, depriving such property of privileges enjoyed by other property in the vicinity and under identical zoning classification consistent with the general welfare of the adjacent neighbors.
 2. The granting of the variance does not authorize a use or activity which is not authorized by the zone regulations governing the parcel or property.
 3. Water runoff from the roof line of any structure shall not encroach beyond the property line of a parcel.
 4. No encroachment onto an area engrossed by a grant of easement shall occur.
 5. Concurrence from the adjacent property owners located along the property line closest to the setback encroachment shall be obtained.
 6. Real property chattels or any transient residential accommodations including breakfast inns, motels or hotels are not considered as residential dwellings for the purpose of this Subsection.
 7. No other setback variance shall be granted by the Commission on the parcel affected by a grant of variance through this Subsection. The physical removal of any structure or a portion thereof approved through this Subsection shall void the restrictions imposed by this Subsection.

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

SOURCE: GC § 17501. Subsection (k) added by P.L. 10-173 as (j) and renumbered by the Ed., GC (1974 Supp.) Subsection (l) added by P.L. 27-91:2.

§ 61617. Variance Requirements.

No variance shall be granted by the Commission unless it finds:

- (a) That the strict application of the provisions of this Chapter would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the law;
- (b) That there are exceptional circumstances or conditions applicable to the property involved or to the intended use thereof that do not apply generally to other property in the same zone;
- (c) That the grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located; and
- (d) That the grant of such variance will not be contrary to the objectives of any part of the Master Plan adopted by the Commission or Legislature;
- (e) That, as to variances from the restrictions of § 61504 of this Chapter, the proposed building will substantially enhance the recreational, aesthetic or commercial value of the beach area upon which the building is to be constructed, and that such building will not interfere with or adversely affect the surrounding property owners' or the public's right to an untrammelled use of the beach and its natural beauty. The above requirements need not apply to the types of uses specified in § 61616(i), and variances for such uses shall only be granted by the Commission where it finds that they are deemed essential or desirable to the public convenience or welfare, are in harmony with the various elements or objectives of the Master Plan, and will not be materially detrimental or injurious to the property or improvements in the immediate neighborhood.

SOURCE: GC § 17502.

§ 61618. Variance Application-Form and Contents.

An application for variance shall be filed with the Executive Secretary of the Commission upon a form and accompanied by such data and information as the Commission may prescribe.

SOURCE: GC § 17503.

§ 61619. Hearing Date-Notice.

Upon the filing of variance application the Commission shall fix a reasonable time for hearing the same and shall give notice thereof to the applicant and may give notice to any other parties in interest. All hearings shall be conducted in the affected municipality and shall be in accordance with the rules established by the commission, but any party in interest may appear in person, or by designated attorney or agent. At least one such hearing shall be conducted after six o'clock p.m.

SOURCE: GC § 17504 as amended by P.L. 20-217:3.

§ 61620. Decision by Territorial Land Use Commission.

If, from the facts presented with the application at the hearing, or by investigation by or at the instance of the Commission, the Commission makes the findings set forth in § 61617, it may grant the variance in whole or in part, upon such terms and conditions as it deems necessary to conform to the general intent and purpose of this law. If the Commission fails to make said findings, it shall deny the application. Each decision by the Commission authorizing a variance from the regulations herein established must be by resolution adopted by a majority of its membership, setting forth in writing the findings required by § 61617, except that no written findings shall be required in granting minor variances from the height, yard, lot width, lot area or lot area per dwelling unit requirements. The Commission shall make its decision on each variance application within a reasonable time and shall forthwith furnish a copy thereof to the applicant and to other parties in interest who have requested to be notified. Additional copies of the decision shall be filed in the records of the Department of Public Works. If the decision filed involves a variance granted by the Commission, said variance shall be the authority for the Director of Land Management to endorse and to issue any building permit or certificate of occupancy in conformance thereto and for the approval of any application for the approval of a required license.

SOURCE: GC § 17505.

§ 61621. Decision Final-Appeal.

The decision by the Commission on any variance shall be final, except that any party aggrieved by such decision shall be entitled to a judicial review thereof by application to the Superior Court within fifteen (15) days after the filing of the Commission's decision in the Department of Land Management and the Department of Public Works.

SOURCE: GC § 17506.

§ 61622. Jurisdiction.

The Superior Court of Guam shall have jurisdiction over all actions arising from the provisions of this Title.

SOURCE: GC § 17507. *Island* changed to *Superior* Court pursuant to P.L. 12-85.

§ 61623. Review by Municipal Planning Council.

The Municipal Planning Council of each municipal district to be affected by a proposed variance shall review the request and express its opinion thereon by resolution adopted by a majority of its members, and submit such resolution to the Commission within twenty (20) days from the date of its public hearing thereon for the Commission's consideration thereof pursuant to § 61620.

SOURCE: § 61623 added by P.L. 20-217:4.