

ZONING VARIANCE HARDSHIP CRITERIA

A variance requires an applicant to show an “unusual hardship” generally defined as a peculiar or unique condition of the subject property that is not generally found on other lots in the same Zoning District or the surrounding neighborhood, and which would make development in accord with the Zoning Regulations extremely and unusually difficult or prevents a landowner from making a reasonable use of their property in conformance with the Zoning Regulations as written.

UNUSUAL HARDSHIP – DEFINED

- “Hardship” must be unique and different in kind from those generally affecting properties in the same zoning district.
- Economic hardship, such as financial loss, is NOT a proper basis for granting a variance.
- Variances should be limited to where application of the Zoning Regulations greatly decreases or practically destroys property value.
- Citing that since a house already exists and this is not an application to build on a vacant non-conforming lot where the hardship argument might have been the inability to use the land for any purpose, is not alone sufficient.
- Variances should only be granted where the general purpose of the zoning plan will not be undermined.
- Variances should be based on the condition of the land NOT the owner.
- Claiming that a variance is “de-minimis” is not a basis for a hardship.

WHAT IS NOT A HARDSHIP

- Personal preferences, emotions, health conditions and needs related to circumstances of an applicant and their family.
- Conditions that are self-created or a result of an action taken by a present or past owner.
- Financial considerations or due to economic benefit or loss to the property owner.
- Absent a situation amounting to confiscation, financial loss or the potential for financial advantage is not the proper basis for a variance, nor is the loss of competitive advantage.
- The fact an owner might be able to make more profitable use of their land if it were not for the Zoning Regulations, does not equate to hardship; nor does a claim of increased tax revenues for the Town.

VARIANCES – Granting of a Variance should be limited to extraordinary situations:

- MUST be in harmony with the general purpose and intent of the zoning regulations.
- MUST consider the public health, safety, convenience, welfare and property values.
- MUST give only for parcels with unusual conditions of “exceptional difficulty or unusual hardship.”
- NOT allowed if Regulations provide that certain prohibited uses are not permitted by Variance.

CRITERIA and FACTS the ZBA must consider when deciding whether to issue a variance:

- Does the applicant have reasonable use of the property without the variance – is the property unusable or unbuildable without the granting of a variance?
- Do extraordinary physical conditions peculiar to and inherent in the specific subject property amount to more than a mere inconvenience to the owner, and do those conditions arise out of the lot rather than the personal situation of the current owner of the lot?
- Is the alleged hardship self-created or the result of or caused by action of the owner (present or past)?
- Will adherence to the Zoning Regulations deprive the applicant of substantial rights commonly enjoyed by owners of other lots subject to the same provision?
- Will granting a variance result in a use or development of the subject property that would not be in harmony with the general and specific purposes of the applicable Zoning Regulations, Zoning District or surrounding neighborhood?
- Will granting a variance alter the essential character of the locality?
- Will the results of the variance be in harmony with the Zoning Regulations' "general purpose and intent and with due consideration of conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated"?