



VARIANCE AND HARDSHIP HANDOUT

What is a variance?

A variance is permission granted by the Zoning Board of Adjustment to waive or alter a requirement of the zoning ordinance. The Zoning Board of Adjustment can adjust the standards of the zoning ordinance where exceptional and extraordinary circumstances apply to a property. This exceptional and extraordinary circumstance is known as a hardship. The Board can vary the strict application of height, area, setback, yard, parking, or density requirements of the zoning ordinance.

When could a variance be granted?

A variance is granted when a hardship associated with a property is preventing the property from meeting the requirements of the zoning ordinance.

Zoning regulations are intended to preserve and protect property uses and values, and to promote health and general welfare. Therefore, provisions of the zoning ordinance should be universally applied. However, sometimes there are extraordinary conditions at a particular property. Due to this peculiar circumstance, carrying out the strict letter of the zoning ordinance would render the property useless. A variance can be granted after an analysis focused on particular conditions and circumstances of a specific property.

What is a hardship?

There are special conditions attached to the property that do not generally apply to other properties in the area. Special conditions can involve the size, shape, topography or general location. There is a physical constraint which is unique to a property. Special circumstances are not interpreted to be something intangible, such as lack of knowledge of the code or misinformation at the time of purchase or construction. A hardship is a characteristic of the property, not the person.

A literal enforcement of the provisions of the zoning ordinance will result in an unnecessary hardship. For example, it must be demonstrated that a strict enforcement of the ordinance would prohibit the development of the property or no reasonable use of the property can be made. It is not sufficient that the requirement would make the property less profitable or marketable.

The variance request is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same zoning district. For example, it must

be demonstrated to the Board that you are seeking a property right that is generally enjoyed by other property owners in the same zoning district, not some additional privilege not generally enjoyed by others in the area.

The spirit of the zoning ordinance is observed and substantial justice is done. For example, variances cannot be granted which would be contrary to the public interest or that would pose a threat to the public health and safety such as fire safety, structural stability, clearance, preservation of air, light or open space, and visual or aesthetic concerns.

What is not a hardship?

1. Economic hardships. For example, adding more units to a building than allowed can generate more income and make the project more economically feasible.
2. Conditions that are created as a result of action by the applicant or owner and not as a result of the land.

Can the Board attach any special conditions or stipulations to a variance?

In granting a variance, the Board may prescribe reasonable and appropriate conditions or stipulations which will assure that the use of the property will be compatible with surrounding properties and will not alter the essential character of the neighborhood.

What information will the Board consider in reviewing a variance request?

Applicants should present the Board with evidence sufficient for the Board to establish findings of fact on which a decision can be based. Evidence should relate only to the property, structure, or use proposed. Evidence concerning a person's health, age, family conditions, desires, or other personal needs are not sufficient on their own merits to justify granting of a variance.