

## **VARIANCE**

### **RSA 674:33, Powers of Zoning Board of Adjustment (effective January 1, 2010):**

I. The zoning board of adjustment shall have the power to:

(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

**"A variance is a relaxation or a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the board of adjustment on appeal. "Variances are included in a zoning ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated." Sprague v. Acworth 120 N.H. 641, (1980).**

The local ordinance cannot limit or increase the powers of the board to grant variances beyond statutory authority, this power must be exercised within specific bounds. In many prior decisions, the Supreme Court has declared that each of the following conditions must be found in order for a variance to be legally granted:

- (a) the variance will not be contrary to the public interest;
- (b) the variance is consistent with the spirit of the ordinance;
- (c) substantial justice is done by granting the variance;
- (d) granting the variance will not diminish the value of surrounding properties; and
- (e) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship."