

- C. 13.02B2a Unnecessary Hardship for Variance. Replace the existing court made definition of unnecessary hardship with the statutory definition [SB 147 / Chapter 307 Laws of 2009 / RSA 674:33, I(b)] effective January 1, 2010.

draft dated 9-28-09

13.02 Powers and Duties of the ZBA

B. Authorization of Variances

1. Upon appeal, the ZBA may authorize a variance from the terms of this Ordinance for a particular use, a parcel of land, an existing building, or a proposed building.
2. The ZBA may authorize a variance from this Ordinance only where it confirms in writing all of the following:

a. ~~Denial of the variance would impose unnecessary hardship upon the applicant in that:~~ **Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:**

For "use" variances:

- ~~(1) the zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of its property, considering the unique setting of the property in its environment;~~
- ~~(2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and~~
- ~~(3) the variance will not injure the public or private rights of others;~~

For "area" variances:

- ~~(1) special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed; and~~
- ~~(2) the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden.~~

- (1) **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**
- (2) **the proposed use is a reasonable one.**
- (3) **If the criteria in subparagraphs (1) and (2) 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.**

b. Authorization of a variance will not be contrary to the public interest; and

- c. The spirit of this Ordinance shall be observed and substantial justice done in the authorization of a variance; and
 - d. No diminution in the value of surrounding properties would be suffered as a result of the authorization of a variance.
3. The applicant bears the burden of presenting evidence sufficient to allow the ZBA to reach conclusions and make findings to support the authorization of a variance.
 4. In authorizing a variance, the ZBA may impose such conditions and stipulations as it deems necessary and proper in order to fulfill the purposes and intents of this Ordinance.
 5. If the use or construction so authorized by a variance has not commenced within a two (2) year period from the date of the decision, then the variance shall be deemed to have expired and the ZBA's authorization shall be considered null and void.
 6. If after commencement, a variance is abandoned for a period of two (2) years, then the variance shall be deemed to have expired and cannot be re-established without a new application process and affirmative decision of the ZBA.