

The following instructions and additional information can be found in The Board of Adjustment in New Hampshire: A Handbook for Local Officials, January 2005, Office of Energy and Planning

I believe this is available at the NHOEP website; it is a good starting point

INSTRUCTIONS TO APPLICANTS APPEALING TO

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

THE BOARD OF ADJUSTMENT

The board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering planning and zoning.

VARIANCE: A **variance** is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance. For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. The proposed use would not diminish surrounding **property values**.
2. Granting the variance must not be contrary to the **public interest**.
3. Denial of the variance would result in **unnecessary hardship** to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. The NH Supreme Court has established a new test for unnecessary hardship for a use variance consisting of 3 elements:
 - a. that the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;
 - b. that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and
 - c. that the variance would not injure the public or private rights of others.¹For an area variance, an applicant can demonstrate unnecessary hardship by establishing that:
 - a. special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed; and
 - b. the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden.
4. Granting the variance would do **substantial justice**.
5. The proposed use is not contrary to the **spirit of the ordinance**.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often, this determination is a denial of a building permit. A copy of the determination must be attached to your application.

¹ - A2001 Land Use Law Update@, Atty. Tim Bates, NH OSP Annual Planning and Zoning Conference, May 12, 2001, pg. 1