

## Variance Guidelines

*The following are selected passages from “Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions” by David W. Owens and Adam S. Lovelady. A publication of the UNC School of Government.*

Variances are a Quasi-Judicial proceeding requiring a four fifths (4/5) vote of the Board of Adjustment.

The General Statutes direct boards of adjustment to vary the provisions of the zoning ordinance if its strict application is found to create unnecessary hardship. Before obtaining a variance, though, the application must show that

1. The unnecessary hardship results from the strict application of the ordinance.
2. The unnecessary hardship results from conditions that are peculiar to the applicant's property.
3. The unnecessary hardship is not self-created.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved.

All regulation involves some level of necessary hardship and inconvenience shared by the entire community. To apply for a variance, an applicant must show that the hardship is unnecessary. The hardship must be more than a mere inconvenience to the property owner. So, for example, a simple preference for a lenient height restriction is not enough, nor is it enough for an applicant to claim that complying with the ordinance will cost more. The applicant must show that the nature of the hardship is far greater for the applicant than for others subject to the same restriction.

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or public. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or other natural features on the site. Hardship must be peculiar to the *property*, not the *property owner*. Hardships resulting from personal circumstances may not be the basis for granting a variance. A variance decisions must not be based on the applicant's ability to cover the cost of the hardship.

The hardship must not result from actions taken by the applicant or property owner. So, for example, if a property owner sells part of a lot (moving the setback lines and reducing buildable area), the owner cannot then seek a variance for building into the setback. Similarly, where an owner fails to comply with zoning and building permits and places foundation footings in the setback, the hardship is self-created. No variance is allowed.

In addition to the standards for unnecessary hardship, the General Statutes require an applicant to show that the variance being requested “is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.” Even if an applicant meets the standard for unnecessary hardship, a variance may be denied for public safety concerns.

As an extension of the requirement that any variance be consistent with the purpose of the ordinance, use variances are not permitted. The North Carolina Supreme Court long

ago noted that the board of adjustment “cannot disregard the provisions of the statute or its regulations. It can merely ‘vary’ them to prevent injustice when the strict letter of the provisions would work ‘unnecessary hardship.’” The court found that a board cannot grant variances for use restrictions, and that rule is now written into state law. Note that some uses are distinguished by density and intensity. If only single-family residences are permitted in a district, for example, a variance cannot permit a duplex.