

ZBA Variance Hardship

- “Hardship” is the heart of the variance
 - A variance is a waiver or relaxation of particular requirements of an ordinance when strict enforcement would cause undue hardship because of circumstances unique to the property. (NH ZBA Handbook, 2019)
- RSA 674:33 I(a)(2)(E)

For purposes of subparagraph I(a)(2)(E), “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

 - (A) 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
 - (B) The proposed use is a reasonable one.
- Question: Is this 3 criteria (uniqueness, A and B) or 2 criteria (just A and B)??

Old and new understanding

- I used to think showing “unnecessary hardship” was done by:
 1. Defining the unique characteristic of the property.
 2. Showing that there was no reasonable use of the property if denied.

- What I think now
 1. Define the relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
 2. Determine if the proposed use is a reasonable one.
 3. Defining the unique characteristic of the property. (???)
 - The applicant needs to demonstrate the presence of ‘special conditions’ which are applicable to the subject property. The courts have considered that this could involve the size of the property, the zoning regulations of the surrounding properties, and a host of other characteristics.
 - For example, in one case, the court found that the fact that the property was zoned for a residential use was considered to constitute such a ‘special condition’. (More explanation in Dresher’s letter)

Justifying Hardship

- What does this mean?

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.

- It means

The purpose of the ordinance is not violated by applicant's request.

- How is this done

1. Define the purpose of the ordinance.
2. Show this case does not violate the purpose.

Variance Example (Dresher)

- Case:

A tract of land of over 100 acres on which the owner desired to construct one single family home. While the tract had an abundance of frontage on a road, only 173 feet of that frontage involved a Class V or better road while the remainder of the frontage (over 1000 feet) was on a road that was not maintained by the Town.

- Purpose of the ordinance:

1. avoiding multiple driveway intersections on existing traveled roads
2. preventing fire hazards that could occur when properties are developed to a high density
3. for evident aesthetic reasons

- No substantial relationship

There was no 'fair and reasonable relationship between those purposes when applied to this property

1. There were no other driveways or roads in the area as this was a single family home.
2. Not a high density area.
3. No aesthetic issues at the end of the Class V road.