

**TOWN OF ALSTEAD, N.H.
ZONING BOARD OF ADJUSTMENT**

INSTRUCTIONS TO APPLICANTS ENCLOSURE

HARDSHIP INFORMATION

The definition of the term ‘hardship’, as used in zoning, is one of the most difficult to understand. RSA 674:33, which defines the powers of the Zoning Board of Adjustment, provides authority for the ZBA to approve a variance when a “*literal enforcement of the provisions of the ordinance will result in unnecessary hardship,....*”.

The following definition and discussion of the term ‘hardship’ is offered because of the many problems caused by the use of this one word. Hardship can be defined as a **needless or unnecessary restriction** of a person’s right to enjoy **the lawful use of his/her property** because **peculiar characteristics** of the land make it impossible to comply with the exact terms of the ordinance.

Needless or unnecessary restriction means that nothing would be gained by enforcing the exact terms of the ordinance and that the situation can be remedied by granting a lawful variance.

Lawful use of his/her property means the use as permitted under the zoning ordinance. The basic idea of a variance is to allow a person the same rights and privileges of land ownership as his/her neighbors, not to grant him/her special privileges that are denied to his/her neighbors.

Peculiar characteristics means a special condition of the land such as size, shape, topography, subsurface conditions, or an obstruction which prevents the owner from complying with the zoning ordinance. This condition must be unique to the land in question and not shared by other parcels of land in the district. If it is a prevailing condition, one owner cannot claim that the law discriminates against him/her. Under these circumstances, relief must come through a change of the ordinance itself.

Scores of cases dealing with variances have been decided by the New Hampshire Supreme Court. With each new case, the Court has refined and increased the specificity of the criteria Zoning Boards must use in granting variances. While all five conditions **must** be met to grant a variance, the concept of unnecessary hardship has occupied the majority of the Court’s efforts on variances.

In very general terms, the right of the group to impose restrictions on the individual has two requirements which need to be satisfied before the rights of the individual can be diminished. There must be some **demonstrable good** that will be **gained by the group**. If some restriction has no valid benefit to the group, then imposing it is unnecessary. If the **restriction** is not **fairly shared** by other members of the group, then it becomes a hardship on the individual. These principles are the foundation of all zoning decisions and are specifically used by the Court in this issue.

A few statements of both fact and law, coupled with some definitions, may help in understanding this difficult subject.

“The concept of unnecessary hardship...is a narrow one. A hardship exists when an ordinance unduly restricts the use to which land may be put. ‘The hardship must arise from a special condition of the land which distinguishes it from other land in the same area with respect to (its) suitability for the use for which it is zoned’. It is not enough that the application of the ordinance may cause the landowner to suffer from financial loss.”

(1983 NH Supreme Court)

“For hardship to exist under our test, the deprivation resulting from application of the ordinance must be so great as to effectively prevent the owner from making any reasonable use of the land. If the land is reasonably suitable for a permitted use, then there is no hardship and no ground for a variance, even if the other four parts of the five-part test have been met.”

(1983 NH Supreme Court)

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On January 29, 2001, the NH Supreme Court issued an opinion on Simplex Technologies, Inc. v. Town of Newington, which dramatically changed the standard for granting zoning variances. The court refined the long-held standard for unnecessary hardship and established 3 conditions, which must be used by boards of adjustment when determining if a hardship exists. A landowner can now establish unnecessary hardship by satisfying the following three conditions:

- 1) The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the 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 restrictions on the property.
- 3) The variance would not injure the public or private rights of others.

This explanatory information is in no way exhaustive or complete. If you desire more complete information, you should do more research and/or seek legal advice.