9/16/09
N/H Local Govt center

Requirements for Granting a Variance: A Suggested Approach

THE APPLICANT MUST ESTABLISH *ALL* OF THE FOLLOWING.

Requirement	Explanation
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights."
2. The spirit of the ordinance is observed.	
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public or to other individuals.
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means: ***Because of*** special conditions of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship 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. *Alternatively*, unnecessary hardship means that, 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.	The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated property. (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction as applied to the property does not serve that purpose in a "fair and substantial" way. (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. As an alternative to (a) and (b) above, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.