

USE VARIANCE

STANDARDS FOR APPROVAL

The ZBA may grant a use variance only upon a finding that an unnecessary hardship exists. A use variance is a variance that permits a use that is otherwise prohibited in a zoning district. An applicant must present the board of appeals with proof of "unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance" (statutory). Courts have held that this requires meeting all four (4) of the following standards:

1. The property cannot be reasonably used for any purpose permitted in the zoning district without the use variance. There must be financial proof of the applicant's inability to realize any return, speculation, or a qualitative assessment is inadequate.
2. The need for the use variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the Zoning chapter, not a variance.
3. The problem and resulting need for the use variance has not been self created by the applicant and/or the applicant's predecessors.
4. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.