



NORTH END/WATERFRONT RESIDENTS' ASSOCIATION

ZONING VARIANCES

Q. WHAT IS A ZONING VARIANCE?

A. A zoning variance is an order issued by the Board of Appeal of Boston (sometimes called the Zoning Board of Appeal or ZBA) varying one or more provisions of the Boston Zoning Code as they apply to a particular piece of land.

Q. WHAT ARE THE GROUNDS FOR THE GRANTING OF A ZONING VARIANCE?

A. The grounds are very specific. The law requires that the applicant must be able to show, and the Board of Appeal must find, that:

- (a) There are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) **which circumstances or conditions are peculiar to such land or structure but not the neighborhood**, and that said circumstances or conditions are such that the application of the provisions of the code would deprive the appellant of the reasonable use of such land or structure;
- (b) For reasons of practical difficulty and demonstrable and **substantial hardship** fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure, and the variance as granted by the Board is the **minimum variance** that will accomplish this purpose; and
- (c) The granting of the variance will be in harmony with the general purpose and intent of the code, and **will not be injurious to the neighborhood** or otherwise detrimental to the public welfare.

An applicant must meet **all three** of these requirements to qualify for a variance.

Q. WHY IS FINANCIAL HARDSHIP NOT MENTIONED AS A GROUND FOR ZONING VARIANCE?

A. Financial hardship alone is not a basis for a variance under the Boston Zoning Code. Similarly, an inability to maximize the potential of a parcel of land is not a hardship.

Q. DOES AN OWNER OF LAND HAVE A LEGAL RIGHT TO A VARIANCE?

A. No. No person has a legal right to a variance.

Q. SHOULD VARIANCES BE FREELY GRANTED BY THE BOARD OF APPEAL?

A. No. Variances are supposed to be granted "sparingly". This is because the liberal granting of variances can make the City's zoning regulations "a matter of administrative whim".

Primary sources: *The 39 Joy Street Condominium Association v. Board of Appeal of Boston*, 426 Mass. 485 (1998); *Damaskos v. Board of Appeal of Boston*, 359 Mass. 55 (1971); *McNeely v. Board of Appeal of Boston*, 358 Mass. 94 (1970).