

§4353. Zoning adjustment

Any municipality which adopts a zoning ordinance shall establish a board of appeals subject to this section. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

1. Jurisdiction; procedure. The board of appeals shall hear appeals from any action or failure to act of the official or board responsible for enforcing the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. The board of appeals is governed by section 2691, except that section 2691, subsection 2, does not apply to boards existing on September 23, 1971.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

2. Powers. In deciding any appeal, the board may:

A. Interpret the provisions of an ordinance called into question; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance except that, if the municipality has authorized the planning board, agency or department to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and [PL 2011, c. 655, Pt. JJ, §24 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

C. Grant a variance in strict compliance with subsection 4. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

[PL 2011, c. 655, Pt. JJ, §24 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

3. Parties. The board shall reasonably notify the petitioner, the planning board, agency or department and the municipal officers of any hearing. These persons must be made parties to the action. All interested persons must be given a reasonable opportunity to have their views expressed at any hearing.

[PL 2011, c. 655, Pt. JJ, §25 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

4. Variance. Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question can not yield a reasonable return unless a variance is granted; [PL 1991, c. 47, §1 (AMD).]

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. The granting of a variance will not alter the essential character of the locality; and [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. The hardship is not the result of action taken by the applicant or a prior owner. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

[PL 2013, c. 186, §1 (AMD).]

4-A. Disability variance; vehicle storage. A disability variance may be granted pursuant to this subsection.

A. The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.

The board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure. [PL 2009, c. 342, §1 (NEW).]

B. If authorized by the zoning ordinance establishing the board, the board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.

The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability. [PL 2009, c. 342, §1 (NEW).]

The board may impose conditions on the variance granted pursuant to this subsection.

All medical records submitted to the board and any other documents submitted for the purpose of describing or verifying a person's disability are confidential.

For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

[PL 2015, c. 152, §1 (AMD).]

4-B. Set-back variance for single-family dwellings. A municipality may adopt an ordinance that permits the board to grant a set-back variance for a single-family dwelling. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; [PL 1991, c. 659, §3 (NEW).]

B. The granting of a variance will not alter the essential character of the locality; [PL 1991, c. 659, §3 (NEW).]

C. The hardship is not the result of action taken by the applicant or a prior owner; [PL 1991, c. 659, §3 (NEW).]

D. The granting of the variance will not substantially reduce or impair the use of abutting property; and [PL 1991, c. 659, §3 (NEW).]

E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available. [PL 1991, c. 659, §3 (NEW).]

An ordinance adopted under this subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A

variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. An ordinance may allow for a variance under this subsection to exceed 20% of a set-back requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner.

[PL 1993, c. 627, §1 (AMD).]

4-C. Variance from dimensional standards. A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; [PL 1997, c. 148, §2 (NEW).]

B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; [PL 1997, c. 148, §2 (NEW).]

C. The practical difficulty is not the result of action taken by the petitioner or a prior owner; [PL 1997, c. 148, §2 (NEW).]

D. No other feasible alternative to a variance is available to the petitioner; [PL 1997, c. 148, §2 (NEW).]

E. The granting of a variance will not unreasonably adversely affect the natural environment; and [PL 1997, c. 148, §2 (NEW).]

F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435. [PL 1997, c. 148, §2 (NEW).]

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.

[PL 2005, c. 244, §2 (AMD).]

5. Variance recorded. If the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local registry of deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection.

For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

[PL 1989, c. 642 (AMD).]

SECTION HISTORY

PL 1989, c. 104, §§A45,C10 (NEW). PL 1989, c. 642 (AMD). PL 1991, c. 47, §§1,2 (AMD). PL 1991, c. 659, §§1-3 (AMD). PL 1993, c. 627, §1 (AMD). PL 1995, c. 212, §1 (AMD). PL 1997, c. 148, §§1,2 (AMD). PL 2005, c. 244, §2 (AMD). PL 2009, c. 342, §1 (AMD). PL 2011, c. 655, Pt. JJ, §§24, 25 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2013, c. 186, §1 (AMD). PL 2015, c. 152, §1 (AMD).

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