

§963. Variance from performance standards

1. Variance. A relaxation of the performance standards enacted by this chapter or adopted pursuant thereto may be granted by the commission, after notice and public hearing, upon a finding by the commission that the following provisions are met:

A. Application of the performance standard to the land or water area in question will result in undue hardship to the applicant, except that hardship may not be construed to include hardship:

(1) Attributable to any act, course of conduct or failure to act of the applicant or the applicant's predecessor in interest beginning with the owner of record on the effective date of this chapter or of a performance standard adopted pursuant to this chapter from which a variance is sought; or

(2) That is not unique to the petitioner's land; [PL 2023, c. 405, Pt. A, §140 (AMD).]

B. The variance, if granted, will not subvert the intent of this chapter as stated in section 951 or as manifested in the standards from which a variance is sought; and [PL 1979, c. 459, §1 (NEW).]

C. The proposed use, if a variance is granted, will not unreasonably interfere with the use and enjoyment of their lands by adjacent landowners, or result in any unreasonable:

(1) Degradation of air and water quality;

(2) Harmful alteration of wetlands;

(3) Increase in erosion or sedimentation;

(4) Danger of increased flood damage;

(5) Obstruction of flood flow;

(6) Damage to fish and wildlife habitat;

(7) Despoliation of the scenic, rural and open space character of the corridor;

(8) Overcrowding;

(9) Excessive noise;

(10) Obstructions to navigation; or

(11) Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District. [PL 1979, c. 459, §1 (NEW).]

No variance shall be granted because of other nonconforming uses within a district or because of similar uses in an adjoining district. The burden of proof shall be on the applicant to show entitlement to a variance under this section. The owner of a building lot of record which is wholly within the corridor on March 19, 1974, shall be entitled to a variance for a single family residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For the purposes of enforcement, variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

[PL 2023, c. 405, Pt. A, §140 (AMD).]

SECTION HISTORY

PL 1979, c. 459, §1 (NEW). RR 2021, c. 2, Pt. B, §259 (COR). PL 2023, c. 405, Pt. A, §140 (AMD).

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