

## **Zoning Relief 101**

If you are reading this document you have been told by the Building Inspector/Zoning Official that you must apply to the Zoning Board of Review for a dimensional variance and/or a Special Use Permit in order to proceed with your improvement project. Per **Article II, Section B** of the Portsmouth Zoning Ordinance, a dimensional variance is defined as:

*“Permission to depart from the dimensional requirements of a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations.....”*

If your lot is considered a Substandard Lot of Record (which means it was created before the Zoning Ordinance was adopted and it is smaller than your Zoning District allows), you have also been told you are required to apply for an abbreviated version of a Special Use Permit per Article VI, Section A of the Zoning Ordinance.

In simplest terms, when the Zoning Board of Review is granting you a dimensional variance per **Article VI, Section D** of the Portsmouth Zoning Ordinance, it is giving you official permission to depart from one or more provisions of the land use regulations for your Zoning District. You are asking for relief from the strict standards of the law. In order for the Board to grant you this relief you must make the case to the Board’s satisfaction that due to some unique characteristic of your property, strict enforcement of the provisions of the ordinance would deny you the use of your property in the same way as others in your Zoning District are using their property. In other words, due to a unique characteristic of your property, you have a **hardship** and there is no other reasonable alternative to you enjoying a legally permitted use of your property (say, a deck) unless the dimensional variance is granted.

**What is your hardship?** In order to determine whether you should be granted relief from the strict provisions of the law, this is the first and most important question the Zoning Board will ask you. Your hardship could be many things. It could be that:

- a.) your lot is oddly or irregularly shaped;
- b.) some unique topographic feature is getting in the way of what you propose to do;
- c.) your lot is undersized for its Zoning District, or;
- d.) your existing structure is set on the lot in a unique and difficult position.

Your **hardship** cannot be based on:

- a.) primarily your desire to realize greater financial gain; or
- b.) the result of any prior action on your part.

In your presentation before the Zoning Board, you must be prepared to describe in detail what your **hardship** is and why you should be given relief from the law. The Zoning Board cannot grant you relief from the provisions of the law without hearing this testimony from you.

In addition to providing a description of your **hardship**, you must demonstrate to the Zoning Board of Review’s satisfaction that:

- a.) the **hardship** suffered by you in the enjoyment of your property if the dimensional variance is not granted **will amount to more than a mere inconvenience**; and,
- b.) the relief to be granted is the **least relief necessary**.

These are important concepts and the Zoning Board cannot grant relief from the law without their consideration. First, it cannot be merely inconvenience for you to remain in compliance with the law with what you propose to do; you must demonstrate there is no other reasonable alternative for what you propose to do without the granting of the relief. The distinction is important.

Second, you must demonstrate that what you are asking for is the least departure from the regulations necessary to do what you propose to do. Simply put, you cannot be asking for an 18' x 24' deck when a 12'x 18' deck is a reasonable alternative. The Zoning Board is looking to keep you in compliance with the Zoning Ordinance as much as possible and likely will not grant more relief than is necessary.

**In summary, for the Zoning Board of Review to grant you a dimensional variance they must consider:**

- a.) **your detailed explanation of what your hardship is;**
- b.) **whether or not granting the variance will be more than a mere inconvenience to you;**
- c.) **whether what you are asking for is the least relief necessary.**

**You must be prepared to give testimony to the Board's satisfaction regarding these three points.**

In addition, if your lot is considered a Substandard Lot of Record, you are also applying for an abbreviated version of a Special Use Permit per **Article VI, Section A(4)** of the Zoning Ordinance. Per this section of the ordinance, in granting this form of Special Use Permit, the Zoning Board of Review, must consider whether granting the dimensional variance will:

- a) allow adequate space for fire protection;
- b) provide adequate light and air between buildings;
- c) alter the character of the neighborhood, or adversely affect neighboring properties;
- d) create lot coverage and setbacks less than the average of adjacent properties; or
- e) impose a substantial detriment to the public or the immediate neighbors.

You should be prepared to address each of these considerations as well as the considerations for the dimensional variance. In order for the Zoning Board to grant this abbreviated form of a Special Use Permit along with the dimensional variance, they must consider each of these in detail. As an example, you should be prepared to make statements to the Board such as, "*my project will allow adequate space for fire protection as shown here in my diagram.....*," or "*my project will not impose a substantial detriment to the public or the immediate neighbors because.....* "

One final tip: Please try to prepare as much of the above described testimony in writing and submit it with your completed application. This will help streamline the process on the evening of the meeting by giving the Board a preview of what you propose to do and what you are going to say in support of your project.