

WHY YOUR VARIANCE MIGHT BE DENIED

You have been told that something which you want to do on your land is prohibited. You have also learned that the ZBA has the power to authorize you to proceed despite the Zoning Law prohibition. Hopefully, you have also learned from the materials you received from the Planning & Zoning Office that we may only approve your variance if you can show some practical difficulty in your particular situation. We seek, wherever possible, to help resolve your individual conflict with the zoning law in a manner which addresses your needs as well as the needs of the Town as a whole. Unfortunately, because these needs are sometimes in conflict, we often find such an ideal solution impossible.

In our experience variances are most frequently denied for one of three reasons:

First, practical difficulty was not shown, even though it was shown, there is some means other than a variance available to the applicant to address the problem. These variances are denied because they are not considered to be necessary.

Second, even though practical difficulty was shown, a variance will be denied if the impact of the requested variance upon the neighborhood or surrounding properties would be too great. This board is required to take into account the good of the Town as a whole and not grant individual relief if the common good would be too severely impacted.

Finally, variances are generally denied if the practical difficulty shown was not unique. We are required to determine whether the difficulty is unique to a given property or to circumstances peculiar to that property. State law prohibits us from approving a variance if an applicant establishes a difficulty which is not unique. The rationale for this limitation is that the granting of variances to address difficulties which are common to a given region or type of use amounts to actually changing the zoning law, one variance at a time. The proper legal procedure in such a case is not a variance, but a request to change the law. This board cannot act on such a request as the Town Board, which enacts all the laws of the town, is the only board which can make such a change. Regrettably, the Zoning Board of Appeals sometimes finds an applicant to have a legitimate concern but is nonetheless compelled to deny the requested variance because the described difficulty is not sufficiently unique. In that instance the board will advise the Town Board of its findings both to assist the applicant and in the hope that the Town Board will take appropriate action to improve the zoning law itself.