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Zoning Variances – Which Ones Will Courts Uphold?
(from *Maine Townsman*, "Legal Notes," August/September 2004)

The traditional zoning variance requires a showing of "undue hardship," and this in turn requires proof that, among other things, "[t]he land in question can not yield a reasonable return unless the variance is granted" (see 30-A M.R.S.A. § 4353(4)).

The "no reasonable return" test has always been the most difficult one for appeals boards to interpret and for appellants to satisfy. We know from longstanding case law that a reasonable return does not mean the landowner is entitled to a maximum return (see, e.g., *Barnard v. Town of Yarmouth*, 313 A.2d 741 (Me. 1974)) and that undue hardship exists where strict application of the ordinance would result in the practical loss of all beneficial use of the property (see, e.g., *Thornton v. Lothridge*, 447 A.2d 473 (Me. 1982)). But in practical terms, what do these maxims really mean?

We recently reviewed most of the Maine Supreme Court's decisions in this area over the past two decades and identified what we believe are some guiding principles based on *real* cases. Although predicting what courts will do is inherently risky (courts can and sometimes do deviate from precedent, though usually not radically), here are our best guesses on how the courts would rule on certain variance scenarios, together with some of the cases we think confirm our views:

A variance will probably be upheld if the land is unimproved (unbuilt), is not abutted by any other land in the same ownership, is not practically buildable, and no other beneficial uses are permitted.

In *Marchi v. Town of Scarborough*, 511 A.2d 1071 (Me. 1986), the buildable portion of a vacant corner lot was limited by setback requirements to an area measuring 5 feet by 19 feet, and the appellants owned no abutting land. As the lot was strictly confined to residential use and was unbuildable without a variance, the Court found that there would be no other beneficial uses and upheld the variance. An offer from an abutter to purchase the lot at a discount did not, by itself, constitute a reasonable return because the appellants were entitled to *use* their property and were not required to sell it.

Similarly, in *Greenberg v. DiBiase*, 637 A.2d 1177 (Me. 1994), a vacant lot was confined to residential use only and was, by virtue of setback requirements, unbuildable. The Court again found that there would be no reasonable return and upheld the variance. The fact that the owner also owned nearby (but not contiguous or abutting) property was held irrelevant.

A variance will probably be overturned if the land is unimproved but has some value in relation to abutting land in the same ownership.

In *Sibley v. Inhabitants of Town of Wells*, 462 A.2d 27 (Me. 1983), the appellants bought a substandard lot adjacent to the one they occupied and sought a variance on the grounds that the second lot, without a variance, was worth substantially less than they paid for it as a building lot. The Court found no undue hardship and rejected the variance (and a "takings" claim), observing that "[the appellants'] land has substantial use and value in conjunction with the adjacent lot."

Likewise, in *Perrin v. Town of Kittery*, 591 A.2d 861 (Me. 1991), where the appellants divided their land and sought a setback variance in order to build on the second lot, the Court held that they had failed to prove that there would be no reasonable return from their use of the second lot as "an unimproved lot contiguous to [the first lot] on which [they] had constructed their residence."

A variance will probably be overturned if the land, with minor improvements, is suitable for some low-intensity use.

In *Twigg v. Town of Kennebunk*, 662 A.2d 914 (Me. 1995), the Court refused a variance for a new residence to replace an existing boathouse where the record showed that the appellant had used the property for docking his rowboat and storing gear. Noting that there was no proof this recreational use could not continue, the Court wrote, "Such use is relevant to the reasonable return analysis."

Twigg cited, among other precedents, *Hall v. Board of Environmental Protection*, 528 A.2d 453 (Me. 1987). In *Hall*, the Court found a beneficial use (and thus rejected a "takings" claim) where the availability of water, sewer and electrical services made it feasible to park a seasonal camper on a sand dune.

A variance will probably be overturned if the land is improved (built), even if space is limited or the property is losing income or value.

In *Anderson v. Swanson*, 534 A.2d 1286 (Me. 1987), the Court rejected a variance for an addition to a 20-foot by 32-foot house, concluding that the house, though small, "offers adequate living space."

Likewise, in *Forester v. City of Westbrook*, 604 A.2d 31 (Me. 1992), the Court overruled a variance to expand a two-family dwelling, noting that "limitations on living space alone do not constitute an undue hardship."

In *Brooks v. Cumberland Farms, Inc.*, 703 A.2d 844 (Me. 1997), the Court overturned a variance needed to modernize a convenience store's gasoline sales area, even though, without it, the business would be unprofitable, where the evidence showed that there were numerous other lawful uses available without the need for a variance.

And in *Goldstein v. City of South Portland*, 728 A.2d 164 (Me. 1999), the Court refused a variance to enlarge a two-bedroom rental, even though it would continue to decrease in value in comparison to other rentals, where the property was in fact rented and generating income.

A variance will probably be overturned if the cost of compliance, even if substantial, is due not to the ordinance but to the owner's mistake.

In *Rowe v. City of South Portland*, 730 A.2d 673 (Me. 1999), a large oceanfront home was nearly completed when minor setback violations were discovered and the owner applied for and was granted an after-the-fact variance. Although the cost to correct the violations was tens of thousands of dollars, the Court overturned the variance because "[the owner] could still enjoy a beneficial use as a residence if she moves the house or rebuilds [it]." The cost of doing so was caused not by restrictions in the ordinance but by human error, so the expense involved was not relevant to reasonable return.

We should note that the traditional undue hardship variance also requires proof of three other elements in addition to no reasonable return and that variances are occasionally overturned for these or other reasons as well.

For more on zoning variances, see our "Information Packet" on variances, available free of charge to members on MMA's web site at www.memun.org. (By R.P.F.)

The opinions printed above are written with the intent to provide general guidance as to the treatment of issues or problems similar to those stated in the opinion. The reader is cautioned not to rely on the information contained therein as the sole basis for handling individual affairs but he/she should obtain further counsel and information in solving his/her own specific problems.

Chapter 5

Board of Appeals Variances and Waivers

Chapter 5

[excerpt from the *Board of Appeals Manual* online version]
Supplement #2, January 2004 is included.

Variances and Waivers**Variance/Waiver vs. Special Exception/Conditional Use**

There often is confusion between variances/waivers and special exceptions/conditional uses. When the board of appeals grants a zoning variance, or other authorized waiver, it is essentially waiving or reducing some requirement of the ordinance which would otherwise prevent a proposed structure or project from being built. Depending on the wording of the local ordinance, variances are sometimes authorized for dimensional requirements (such as lot size, setback, and frontage) as well as to allow uses which are otherwise prohibited by the ordinance. The exact language of the ordinance governs what variances or waivers may be granted in a particular municipality.

Special exception and conditional use provisions in a zoning ordinance deal with uses which the legislative body generally has decided to permit in a particular area of town. The purpose of the special exception or conditional use review procedure is to allow the board to determine whether conditions should be imposed on the way the use is conducted or constructed, in order to ensure that the use is consistent with and has no adverse impact upon the surrounding neighborhood. (See the discussion of procedure and required ordinance language in Chapter 3 of this manual.)

Zoning Variances in General; Statutory "Undue Hardship" Test

There are four different tests for granting a zoning variance outlined in 30-A M.R.S.A. § 4353. Two of these tests apply to all municipal zoning ordinances whether or not the municipality has adopted the statutory provisions: the "undue hardship" test in § 4353(4), governing dimensional and use variances generally, and the disability variance test in section 4353(4-A), governing variances to permit construction or alterations needed to accommodate a person with a disability who lives in the subject dwelling or who is a regular user. The other two tests are outlined in § 4353(4-B) and § 4353(4-C) and apply to certain dimensional variances, but only in municipalities which have adopted them by ordinance. (See Appendix 4 for a detailed discussion.)

The most common variance test is the "undue hardship" test and is outlined in 30-A M.R.S.A. § 4353(4). It authorizes the board of appeals to grant zoning variances (including shoreland zoning variances) 'only when strict application of the ordinance to (the person seeking the variance and his or her) property would cause undue hardship.' The "undue hardship" test applies to use variances and dimensional variances to the extent each type is allowed in a particular zoning ordinance. The statutory four part "undue hardship" test appears below. **Each** of these statutory standards must be met as well as any additional requirements imposed locally. The board of appeals may not grant a zoning variance which is governed by the "undue hardship" test unless it finds that:

- a. The land in question cannot yield a reasonable return unless a variance is granted;
- b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. The granting of a variance will not alter the essential character of the locality; **AND**
- d. The hardship is not the result of action taken by the applicant or a prior owner.

Other Limitations by Ordinance

The municipality also may adopt ordinance language which imposes additional limits on the granting of a variance, such as prohibiting variances to allow a use which is otherwise prohibited. Typical zoning provisions limit the granting of a variance to dimensional requirements, such as lot size, frontage or setbacks. Shoreland zoning ordinances generally impose standards which an applicant must meet in addition to the four statutory criteria cited above relating to things such as preservation of vegetation, erosion control, protection of fish and wildlife habitat and effect on water quality. The board of appeals must look carefully at the ordinance provisions relating to variances and the definition of 'variance' in the ordinance to know for sure what type of variances it may grant and what requirements the applicant must satisfy. The board also should review the definitions of "variance" and "undue hardship" in the local zoning ordinance to see if the definitions contain any additional restrictions on the granting of a variance.

Strictly Construed

The Maine Supreme Court has stated in numerous cases that a board of appeals must grant zoning variances sparingly—they are the exception rather than the rule. The test for "undue hardship" outlined above is a very strict one and very difficult to meet. No matter how harmless the variance request may seem and regardless of whether there is no opposition from neighbors, the board must remember that its decision is governed by the legal requirements for 'undue hardship' in § 4353 for zoning variances and any other requirements imposed by the applicable local ordinance and **only** those requirements. If the board is presented with repeated requests for the same type of variance, particularly in the same neighborhood, this may indicate that the ordinance requirements are too restrictive or unrealistic for that area of town and that the legislative body needs to consider amending the ordinance. The appeals board should refer this problem to the planning board or comprehensive planning committee for further study and a recommendation to the municipal officers. Generally, the landowner also will have the option of petitioning for an ordinance amendment, especially in towns which still have town meeting and operate under the general laws of the State. **For a summary of Maine court cases analyzing the undue hardship test for zoning variances, see Appendix 4.**

Personal Hardship

Historically, the court in Maine has made it clear that "undue hardship" relates to a problem created by some feature of the property itself (e.g., *Lippoth v. ZBA of City of South Portland*, 331 A.2d 552 (Me. 1973).) The fact that the landowner has a personal problem which prompted the request for the variance, is not legally relevant to the standard "undue hardship" test, no matter how sympathetic the board may be. It is relevant where the need for the variance stems from a physical or mental disability and the landowner is seeking a disability variance under 30-A M.R.S.A. § 4353(4-A). (See discussion later in this chapter).

The "Reasonable Return" Standard

Most court cases in Maine pertaining to zoning variances have focused on whether the applicant can realize a "reasonable economic return" on his or her investment in the property without the variance. The court has made it clear that "reasonable return" does not equal "maximum return." *Barnard v. Town of Yarmouth*, 313 A.2d 741 (Me. 1974); *Grand Beach Assoc., Inc. v. Town of Old Orchard Beach*, 516 A.2d 551 (Me. 1986). It is extremely difficult for an applicant to prove that he or she cannot realize a reasonable return and that no other permitted use could be conducted to realize such a return (e.g., *Leadbetter v. Ferris*, 485 A.2d 225 (Me. 1984); *Curtis v. Main*, 482 A.2d 1253 (Me. 1984); *Anderson v. Swanson*, 534 A.2d 1286 (Me. 1987); *Marchi v. Town of Scarborough*, 511 A.2d 1071 (Me. 1986); *Goldstein v. City of South Portland*, 728 A.2d 164 (Me. 1999); *Rowe v. City of South Portland*, 730 A.2d 673 (Me. 1999); *Brooks v. Cumberland Farms, Inc.*, 703 A.2d 844 (Me. 1997). A landowner

cannot be forced to sell his land to an abutter as a way to realize a "reasonable return." *Marchi, supra*. However, where an applicant for a variance owns adjoining land which he or she could use to avoid the need for a variance, the court has held that a variance should not be granted." *Sibley, supra*. But see, *Bailey v. City of South Portland*, 1998 ME 54, 707 A.2d 391. The typical request for a setback variance to allow a deck, porch, garage, storage building or addition to an existing structure will have to be denied on the basis of the "reasonable return" standard, absent proof that the person has tried to sell that property 'as is' and no one will buy it unless the proposed construction can occur or that the property cannot be used for any other legal purpose under the zoning ordinance without a variance. *Brooks v. Cumberland Farms, supra*. (See Appendix 4 for a summary of Maine Supreme Court cases involving variances, most of which discuss the "reasonable return" standard.)

The "Unique Circumstances" Standard

The court has also addressed "undue hardship" as it relates to the unique circumstances of the property and general conditions in the neighborhood. A landowner seeking a variance from a required lot size in a case where other lots in the neighborhood are all of a similar substandard size generally cannot meet the 'uniqueness' test. The same is true where all the lots in the neighborhood are subject to deed restrictions limiting the size of the structure which can be built on the lot. Compare *Sibley v. Town of Wells*, 462 A.2d 27 (Me. 1983) with *Driscoll v. Gheewalla*, 441 A.2d 1023 (Me. 1982). Likewise, if all of the lots in the area are swampy or steeply sloped, or if they all have rock outcropping, or if they all have utility easements running through them, an application for a variance related to any of these problems probably would have to be denied. Such common neighborhood problems must be addressed through the town's comprehensive plan and appropriate ordinance provisions, not case by case through the granting of a variance.

The "Essential Character of the Locality" Standard

The third "undue hardship" criterion focuses on the "essential character of the locality" and generally appears to be almost the flip side of the coin from criterion number two (discussed above). For example, if a landowner requests a setback variance to build an addition bringing his home closer than the required road setback, but no closer than all of the neighboring homes, the requested variance would not alter the "character of the locality." *Driscoll v. Gheewalla, supra*. However, it probably would not meet the "uniqueness" test in the second criterion. This criterion may have been intended to relate to use variances when originally drafted, but it applies to both use and dimensional variances.

The "Self-Created Hardship" Standard

The question of whether the applicant for a variance or a prior owner of the land created the hardship which justifies a variance is not as simple to answer as it may appear. If a person seeking a variance was the owner of the lot when the ordinance requirement in question took effect, that person generally would not have a "self-created" hardship and could satisfy criterion number four. Until recently, Maine court cases held that a board must deny a variance application from someone who bought the lot after the ordinance took effect, since he or she would be presumed to have had knowledge of the restrictions on the use of the lot which the ordinance imposed, and therefore had a self-created hardship. *Bishop v. Town of Eliot*, 529 A.2d 798 (Me. 1987). However, the Maine Supreme Court in *Twigg v. Town of Kennebunk*, 662 A.2d 914 (Me. 1995) and in *Rocheleau v. Town of Greene*, 708 A.2d 660 (Me. 1998) held that knowledge of zoning restrictions by a purchaser of a nonconforming lot, without more, will hardly ever constitute a self-created hardship.

Request for Variance "After the Fact"

If a person commits a violation of an ordinance requirement, such as a zoning setback, and seeks a variance after-the-fact, such a person has a self-created hardship. An ordinance violation should be resolved through normal code enforcement channels, not by the board of appeals. There may be circumstances, however, where the resolution of a code violation is to enter a consent agreement in which the landowner agrees to file an application and diligently seek a variance and to remove an illegal structure if the variance is not granted. The board should review such a request for a variance without taking into account that the structure was already built; the board should determine whether the applicant would have been entitled to a variance if he had come to the board before the fact. *Rowe v. City of South Portland*, 730 A.2d 673 (Me. 1999). (See Legal Note in Appendix 4.)

(from Supplement #2, January 2004)

Authority to Grant Variances

Zoning Variances. A zoning ordinance provision which attempts to give the planning board, code enforcement officer, or municipal officers the authority to grant variances violates 30-A M.R.S.A. § 4353, since the statute gives the board of appeals the sole authority to grant a zoning variance. *Perkins v. Town of Ogunquit*, 709 A.2d 106 (Me. 1998). A municipality's home rule authority under 30-A M.R.S.A. § 3001 has been preempted by 30-A M.R.S.A. § 4353 regarding delegation of authority to grant zoning variances. Nor may a planning board vote to waive a zoning ordinance requirement when exercising its waiver authority under a subdivision ordinance or regulation." *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172. (from Supplement #2, January 2004)

Non-Zoning Variances. Often subdivision or site plan review ordinance or other non-zoning ordinance gives the planning board the authority to "waive" certain requirements of the ordinance if they would cause "hardship" to the applicant. The definition of "hardship" in that context is not necessarily the same as the definition of "undue hardship" in § 4353, unless the ordinance expressly refers to the statutory definition. Although the municipality may give the authority to grant these waivers to the board of appeals, there is no conflict with § 4353 if the ordinance empowers the planning board to grant waivers. In any case, a non-zoning ordinance which authorizes the planning board or municipal officers to waive certain requirements should set out standards for the board to use in determining whether an applicant will suffer a hardship without a waiver. However, if the waiver authority granted to the planning board or municipal officers under a non-zoning ordinance attempts to authorize the board to waive dimensional requirements established under a zoning ordinance, such a waiver provision, is beyond the municipality's home rule authority and is illegal. *Perkins v. Town of Ogunquit*, 709 A.2d 106 (Me. 1998).

Effect of Variance Decision

When the board of appeals grants a zoning variance, the effect is to waive or modify some requirement (s) of the ordinance, which the applicant was unable to meet. Without the variance from the board of appeals waiving or modifying the ordinance requirement, the planning board or CEO would have had no legal authority under the ordinance to approve the application. The variance itself does not constitute a "permit," however. The granting of the variance removes an obstacle to the issuance of the sought-after permit by the planning board or the code enforcement officer.

Once granted, a variance "runs with the land," meaning that the variance is transferred automatically to a new owner if the property subsequently changes hands. It has an indefinite life unless the municipality has set a time limit by ordinance after which the variance will expire if not used. Young, *Anderson's American Law of Zoning*, § 20.02, pages 412-416; *Inland Golf Properties v. Inhabitants of Town of Wells*, AP-98-040 (Me. Super. Ct., York Cty., May 11, 2000).

After a variance is granted and a building is constructed or activity conducted based on that variance, the building or activity thereafter should be treated as a legally conforming structure or use for the purposes of deciding which ordinance provisions govern it in the future. *Sawyer Environmental Recovery Facilities Inc. v. Town of Hampden*, 2000 ME 179, 760 A.2d 257. This is probably true even if the variance is granted illegally, if it is not appealed. *Wescott Medical Center v. City of South Portland*, CV-94-198 (Me. Super. Ct., Cum. Cty., July 15, 1994). (See also the discussion about the need to record variances appearing later in this chapter.) (from Supplement #2, January 2004)

Procedure for Obtaining a Variance

Some ordinances allow an applicant to seek a variance from the appeals board before applying to the code enforcement officer or planning board for a permit or approval. Others require that the applicant apply for the permit or approval first and then seek a variance as an appeal from the denial of the original application. Study the ordinance governing the project to determine the appropriate sequence in your municipality.

Appeal of Board of Appeals Decision by Other Municipal Officials

If the municipal officers or the planning board believe that the board of appeals has wrongfully granted a zoning variance where the applicant has not met all of the criteria for “undue hardship” set out in § 4353 (a copy of which is included in Appendix 4), as a board they have ‘standing’ to challenge the board of appeals’ decision in Superior Court pursuant to 30-A M.R.S.A. § 4353(4). *Crosby v. Town of Belgrade*, 562 A.2d 1228 (Me. 1989). However, in the case of an appeal by the planning board, the municipal officers may not necessarily vote to pay for such an appeal, so the planning board should consult with the municipal officers before retaining a lawyer to avoid having to pay from their own pockets. (See additional discussion of “standing” in Chapter 4.) (from Supplement #2, January 2004)

Recording Variances; Abandonment of an Approved Variance

Recording Requirement. State law (30-A M.R.S.A. § 4353 and 4406) requires the board of appeals and the planning board to prepare a certificate which can be recorded in the Registry of Deeds and provide it to the applicant for recording whenever they grant a zoning variance or a subdivision variance or waiver. Sample forms and copies of the laws are included in Appendix 4. To be valid, zoning variance certificates must be recorded within 90 days of the decision. Subdivision variances or waivers must be recorded within 90 days of final approval of the plan. If these certificates are not recorded within the stated deadlines, they become void. The only way to “reactivate” the variance or waiver in that case is for the person wishing to rely on the variance to submit a new application on which the board may act. The board’s review would be governed by the ordinance in effect at the time of the new application. The board is not obligated to grant the variance automatically the second time around; if it determines that it made a mistake the first time, it should deny this new request. *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930. If the board’s jurisdiction to hear a variance request is triggered by the denial of a permit application (or similar application) and an appeal from that decision, then the person whose variance has become void would need to reapply for the permit/approval and be denied again in order for the board of appeals to have jurisdiction over the new variance request, absent language in the ordinance to the contrary.

Abandonment. If a person has recorded a variance certificate but later decides that he wants to abandon the variance and give up his legal rights in relation to it, he probably may do so, but there is no process spelled out in State law. Absent a procedure provided by ordinance, the person should make a written request to the board of appeals. The board should take a formal vote acknowledging that the owner wants to abandon the variance and issue a “certificate of abandonment” which can be recorded at the

Registry. Such a written request and certificate could be patterned after similar documents developed by Portland attorney William Dale for abandonment of subdivision approval, which appear in Appendix 3 of Maine Municipal Association's *Manual for Local Planning Boards*. Before approving and issuing a certificate, the board of appeals should require proof that neither the applicant, the landowner (if a different person), nor any third party had taken action in reliance on the original granting of the variance which might be jeopardized by its abandonment. (from Supplement #2, January 2004)

Second Request for Same Variance

This issue was previously discussed in Chapter 4.

Shoreland Zoning Variances

Previously, 38 M.R.S.A. § 438-A(6) required the board of appeals to send copies of all shoreland zoning variance applications (and any supporting material) to the Department of Environmental Protection for review and comment at least 20 days prior to action on the application by the board. This is no longer a requirement. However, shoreland-zoning ordinances do require that variance decisions be filed with the DEP within a certain number of days from the date of the decision. If DEP staff believe that the board has incorrectly interpreted the undue hardship test or otherwise erred in granting a variance, they may ask the board to voluntarily reconsider its decision. However, unless the DEP actually participated in the board of appeals proceedings on the variance application, either by having a staff person attend or by sending written comments for the record, the court has held that DEP cannot appeal the granting of the variance in court. *Department of Environmental Protection v. Town of Otis*, 716 A.2d 1023 (Me. 1998). The State does have the authority under 38 M.R.S.A. § 443-A to take enforcement action against a municipality which is not administering and enforcing its shoreland zoning ordinance as required by State law, however.

The Maine Supreme Court has interpreted 30-A M.R.S.A. § 4353 and 38 M.R.S.A. § 439-A(4) as allowing a municipal board of appeals to grant a dimensional variance to permit an expansion within the shoreland zone as long as the applicant proves undue hardship and the dimensional variance and expansion are not otherwise prohibited by the ordinance. *Peterson v. Town of Rangeley*, 715 A.2d 930 (Me. 1998).

Disability Variances

Most zoning variances may not be granted unless the applicant has satisfied all elements of the "undue hardship" test in Title 30-A § 4353(4) of the Maine statutes. State law (30-A M.R.S.A. § 4353(4-A)) provides a separate variance for applicants who want to construct or alter a structure needed for access to or egress from a dwelling by a person with a disability who resides there or who regularly uses the dwelling. As was noted earlier in this chapter, this variance test applies to all municipalities with zoning ordinances, whether or not this test has been adopted as part of the ordinance by the municipality. Typical requests include a variance for the construction of a wheelchair ramp which would otherwise violate a setback requirement or a variance for an expansion of a portion of the dwelling which would otherwise violate a setback requirement where the expansion is necessary to allow adequate turning area inside the dwelling for a wheelchair. An applicant for a disability variance does not need to satisfy the "undue hardship" test applicable to other zoning variances in order to be entitled to approval. If the applicant can prove that he or she or someone regularly using the dwelling has a disability as defined in the statute, that the variance is really necessary to enable the disabled individual to enter or leave the dwelling or some interior portion of the dwelling, and that the variance requested is the minimum necessary to meet this need, the board should grant the variance. The board may condition its approval

on the removal of the structural component which was the subject of the variance either when the disability ceases or when the person with the disability no longer resides there or regularly uses the dwelling. Although the law does not expressly state that medical information submitted to document the disability is confidential, it would be wise for the board to err on the side of protecting the applicant's privacy rights and treat this information as confidential; it should be discussed in a properly called executive session and should be treated as a confidential record until a court finds otherwise. (See Appendix 4 for a copy of this law and Appendix 3 for a Legal Note discussing the relationship between the Americans With Disabilities Act and local ordinances). Even though disability variances are not usually sought in order to comply with the Americans with Disabilities Act, the board may use ADA guidelines to help it decide how much of a reduction to grant. *(from Supplement #2, January 2004)*

Sample Forms and Decisions

For sample forms which the board may give to an applicant seeking a variance and which the board may use in preparing a written decision, see Appendix 3. *(from Supplement #2, January 2004)*