

## THE THREE REQUIREMENTS FOR A VARIANCE

### Pursuant to

### MGL Chapter 40A, Section 10

In order to grant a VARIANCE the ZBA must specifically find that all of the following three factors (A,B & C below) are present: (APPLICANT MUST PROVE A., B., AND C.)

- A. Owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which such land or structures are located;
  1. A lot is considered as having an unusual or unique shape if it substantially differs from other lots in the immediate neighborhood and within the zoning district.
  2. Shape in justifying a variance is generally considered to be an odd shape such as a "pork chop" lot.
  3. Odd, unusual or unique shape does NOT include deficiencies in the depth, width, area and especially frontage so as to justify grant of a variance. Thus, a regular rectangular lot which is undersized in area, front yard, side yard, rear yard or frontage does not have circumstances relating to shape so as to qualify it for a variance.
  4. Similarly, soil conditions and topography must also be unusual, odd, or unique as to the lot in question in order to qualify for a variance
  
- B. And a literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner;
  1. Hardship entitling a landowner to a variance is usually present when the land owner cannot reasonably make use of the property for the purposes of or in the manner allowed by the zoning by law.
  2. Hardship generally means that due to soil conditions, shape or topography development of the property consistent with the zoning by law is prohibited.
  3. Hardship must be based on circumstances directly affecting the property, not on circumstances creating a personal hardship for the land owner.
  4. Hardship cannot be self-created by the land owner. For example, the owner of a conforming lot cannot sub-divide it so as to create a conforming lot and one or more non-conforming lots and then obtain a variance for the non-conforming lot(s)
  
- C. And that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such by-law.
  1. Unduly narrow lot interfered with ability of fire apparatus to access any building on the lot and therefore constituted a public safety hazard and a substantial detriment to the public good so as to warrant denial of a variance. Bettencourt v EB Board of Appeals.