

HARDSHIP VARIANCE INFORMATION SHEET

In order to be considered for a hardship variance, the applicant or the agent must present testimony, during a scheduled public hearing, which addresses the issue of undue hardship. The Act states that the burden of proof is upon the applicant to demonstrate "undue hardship" which is defined in Title 30-A M.R.S.A. Section 4353 as the following:

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

The Saco River Corridor Act (Title 38 M.R.S.A. Section 951 et. seq.) further states that the applicant must meet the following tests in addition to establishing undue hardship:

- ∇ The hardship variance, if granted, will not subvert the intent of the Saco River Corridor Act; and
- ∇ The proposed use will not unreasonably interfere with the use and enjoyment of their lands by adjacent landowners, or result in any unreasonable a) degradation of air and water quality; b) harmful alteration of wetlands; c) increasing erosion or sedimentation; d) danger of increased flood damage; e) obstruction of flood flow; f) damage to fish and wildlife habitat; g) despoliation of the scenic, rural, and open space character of the Corridor; h) overcrowding; i) excessive noise; j) obstructions to navigation; or k) interference with the educational, scenic, scientific, historic, or archeological values of those areas designated and approved for inclusion within the Resource Protection District.

When preparing your argument to the Commission, please review the points and examples listed below.

NO REASONABLE RETURN

- Reasonable return, not maximum return
- Practical loss of all beneficial use ("TAKING")
- Hardship must relate to land, not personal circumstances

Examples:

- *Land unsuitable for any permitted use*
- *Conformance possible only at great cost*
- *Ordinance limited to non-productive uses*

DUE TO UNIQUE CIRCUMSTANCES

- Of property, not person
- Uncommon condition, not shared by neighborhood

Examples:

- *Substandard lot where most/all others conform*
- *Unusual location/topographical features*

WILL NOT ALTER NEIGHBORHOOD CHARACTER

- "Essential" character:
residential/commercial/industrial/etc.

Examples:

- *Accessory apartment in mixed single family/multi-family zone*
- *Setback reduction in densely developed neighborhood*

NOT SELF-CREATED

- Action contributing to hardship
- By applicant or prior owner

Examples:

- *Ordinance adopted/amended after purchase*
- *No hardship where applicant acquired property with actual/constructive knowledge of restrictions*