

VARIANCE FACTORS

New York State Town Law Section 267-b sets forth the factors the Zoning Board of Appeals (ZBA) must consider in granting or denying an application for a variance. The applicant should submit evidence demonstrating that the application satisfies every one of the factors applicable to the application.

The factors for a **USE VARIANCE** include:

1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
3. that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. that the alleged hardship has not been self-created.

The factors for an **AREA VARIANCE** include:

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. whether the requested area variance is substantial;
4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.