

**USE VARIANCE STANDARDS OF TOWN LAW**  
(Pertains to Non-Permitted Uses)

Town Law Amended rules effective July 1, 1992; further modified July 1, 1993 (Sec. 267b):

USE VARIANCE is authorization by the ZBA for the use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. (Section 267(1) of Town Law)

The applicant must demonstrate to the ZBA that:

1. For each and every permitted use under the zoning regulations for the particular district where the property is located:

- (a) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (b) the alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;  
<Otto v. Steinhilber 282 NY 71 and Douglaston Civic Assn. Case tests>
- (c) the request will not alter the essential character of the neighborhood;  
<Rochester Transit v. Crowley 205 Misc. 933; variance denied>
- (d) the alleged hardship has not been self-created.  
<Holy Sepulchre Cemetery v. ZBA Town of Greece 271 App Div. 33 - neighborhood was undeveloped; lot was acquired as a prohibited use; variance denied.>

2. ZBA must grant minimum variance necessary while at the same time preserve and protect the character of the neighborhood, and the health, safety and welfare of the community; Sec. 267-b(3-c).

3. ZBA must insure that spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.

