

<i>Date</i>	<i>Case Name</i>	<i>Subject</i>	<i>Page</i>
1962	Gelinas v Portsmouth 97/248	5 th part of 5 part test	3
1979	Ouimette v Somersworth 119/292	5 th part of 5 part test & no recognition of use/area variance distinction because it is the legislature's role	3
1973	Carter v Nashua 113/407	no limits in ordinance on scope of variance	3
1948	Fortuna v Manchester 95/211	any interference with ability to use is hardship and without corresponding benefit is unnecessary	5
1971	Vannah v Bedford 111/105	zba denial overturned by super ct because of Fortuna but upheld by supre ct presumption of rectitude - beginning of new stricter standard (more like US generally)	6
1972	Simoneau v Nashua 112/18	zba denial overturned by super ct because of Fortuna but upheld by supre ct presumption of rectitude - beginning of new stricter standard (more like US generally)	8
1979	Carbonneau v Exeter 119/259	funeral parlor/beauty parlor apt house - personal financial hardship is not hardship; must run with land, more profit is not hardship	8
1976	Beaudoin v Rye Beach 116/768	dissent by Grimes - 4 units - useless as single family - says Vannah/Simoneau/Hanson rule too strict 'impossible burden'	8
1983	Governor's Island v Gifford 124/126	hardship to exist must effectively prevent owner from making any reasonable use of land	10
1987	Saturley v Hollis 129/757	same - wetlands restriction	10
1987	Margate Motel v Gilford 130/91	same - expand hotel business	11
1992	Grey Rocks v Hebron 136/239	same - expand business - dissent by Horton	11
		SIMPLEX	13
2001	Simplex v Newington 145/727	new 3 part test for hardship - restrict interferes w reasonable; no b/s relationship bet -general purposes of ord and <u>specific</u> restr on property; not injure priv rights (cites Metzger/Chesterfield)	13
		SELF CREATED HARDSHIP	15
1976	Hermer v Dover	Self created hardship bars variance	17
1977	Trottier v Lebanon 117/148	Self created hardship bars variance - bought property cheap - constructive knowledge of road classification - (in keeping with US majority rule)	16
2001	Hill v Chester 146/291	Reliance on tax records for 'buildable' status of lot is unjustified but self created hardship is no longer an automatic bar to finding of hardship	17
		POST SIMPLEX DECISIONS <i>Rancourt, Bacon, Boccia</i>	18

<i>Date</i>	<i>Case Name</i>	<i>Subject</i>	<i>Page</i>
2003	Rancourt v Manchester 149/51	Horses in backyard - new regulation - distinguish based on 3 part simplex test - variance allowed when test applied	18
2003	Robinson v Hudson 149/255	Lack of sufficient frontage because anticipated town road never built - zba denial was not upheld because record was insufficient case was remanded to apply Simplex standards	20
2004	Bacon v Enfield 150/468	Application of Simplex hardship standard - variance for installation of boiler within side setback - denial upheld - was possible to install the desired boiler in compliant location - requested location was desired but not required - concurring opinion suggests that less restrictive test should be used in this case because it was an area variance (sideyard dimensional restriction) - case has majority, concurring and dissenting opinions	21
2004	Boccia v Portsmouth 151/85	Hotel - 100 units vs 40 units - establishes distinction between 'use' and 'area' variance - since neither zba nor superior court had known of this new test, matter remanded - same, (Simplex) test for use but new test for area (disavowing Ouimette) - 2 parts - is variance needed to enable proposed use given special conditions?; benefit cannot be achieved by some other means (p,35)	28
		<i>POST BOCCIA</i>	35
2004	Shopland v Enfield 151/219	Variance to construct addition to lakefront property - intrusion into shoreline 50' setback - but would not intrude any further than the existing building to which the addition was being added - zba denied citing claimed topographical difficulty common to other lots as well - superior court reversed zba - town appeals - remanded by supreme court because Boecia standard not applied - time of decision rule - but supreme court said this was an 'area' variance	36
2005	Vigeant v Hudson 151/747	Variance to construct a permitted use in an appropriate district - variance needed because irregular shaped building envelope would intrude into wetland buffer - wetland created by state's failure to maintain a culvert - zba denied - superior court reversed - supreme court affirmed superior court reversal - reasonableness of use is presumed in area variance request because use is permitted - availability of alternative uses is not relevant - only issue was if the requested result could be reasonably achieved without the variance - if not, the test was met	37

<i>Date</i>	<i>Case Name</i>	<i>Subject</i>	<i>Page</i>
2005	Harrington v Warner 152/74	Variance to expand existing mobile home park, (mhp) - wants to add 25 more units while ordinance limited mhp's to no more than 25 - zba granted the variance - abutters appealed - superior court upheld zba - supreme court affirmed superior court - analysis calls this a use restriction because it's purpose is to 'preserve the character of the area' - supreme court upheld findings referring to financial hardship evidence as well as self created hardship argument based on purchase with knowledge and still upheld.	40
2005	Chester Rod & Gun v Chester 152/577	Variance request to allow a cell tower on land - by the time zba heard case, town had a 'competing' contract or cell tower - zba denied variance on basis that it was contrary to public interest holding that 'public interest' defined by town's corresponding agreement and ordinance expressed intention to limit number of towers - superior court reversed zba. Supreme Court agreed with the superior court's finding that reversed zba holding regarding public interest - However, it pointed out that other 4 parts of test not addressed by superior court and remanded to superior court -	43
		<i>MOTION FOR REHEARING - SET FORTH EVERY GROUND</i>	44
2006	Colla v Hanover 153/206	Variance to construct a porch in violation of sideyard setback - zba denied because other alternatives available such as building in front - m/dismiss denied but remanded for further hearing	44
		<i>USE VARIANCE - FINDINGS BY ZBA - SUFFICIENCY OF RECORD</i>	45
2006	Thomas v Hooksett	Standing to Appeal	45
2006	Garrison v Henniker	Green Mountain Explosive Company - Standard of Review - Reasonable Use Requirement - Economic Hardship	48
2006	Robinson v Hudson	Area Variance - Conditions - to contribute to cost to construct road in future	53
2007	Community Resources ... vs. Manchester	Use Variance - Correctional Facility - Uniqueness of property's predicament (Why no Region 10)	56
		<i>AREA VARIANCE - FINDINGS BY ZBA - 'CONTRARY TO PUBLIC INTEREST' - 'SUBSTANTIAL JUSTICE'</i>	59
2007	Malachy Glen Associates v Chichester	Dimensional Variance - Setback in 100 foot wetland buffer - ZBA denied - Trial Court overturned - Supr Court affirmed trial court - 'Substantial Justice' & 'Public Interest' - cf with Chester Gun	59

<i>Date</i>	<i>Case Name</i>	<i>Subject</i>	<i>Page</i>
		<i>EQUITABLE WAIVER</i>	63

azbg-9
a:\nrpczboem007caselist.tbl.wpd
May 21, 2007