

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATURAL RESOURCES PROTECTION ACT
Chapter 355: Coastal Sand Dune Rules**

9. Variances

A. Variance from Sections 5(B)(3), 6(B) and 6(C). The department may grant a variance from Sections 5(B)3, 6(B) and 6(C) in whole or in part for the construction of a building on a previously undeveloped lot under single ownership.

(1) An applicant is eligible for a variance pursuant to this section if the applicant meets one of the two qualifying conditions below.

(a) A court has determined that the denial of a permit under this chapter would constitute an unconstitutional taking of property after an appeal, if any, or

(b) The department finds that strict application of the standard(s) from which a variance is sought would result in undue hardship. The department may find that undue hardship exists only when:

(i) The undeveloped lot was a deeded lot of record as of August 1, 1983;

(ii) The property cannot be put to a practical economic use unless a variance is granted. In making this determination, the department shall consider evidence of the value of the property when it was purchased or acquired, the reasonable expectations of the applicant for use of the property when it was purchased or acquired, and the value and possible uses of the property without the requested variance;

(iii) The hardship is not the result of action taken by the applicant or a prior owner; and

(iv) There are no practicable measures or alternatives that would allow the project to proceed in compliance with the standard(s) from which a variance is sought. The applicant shall demonstrate that the applicant has explored all alternatives that would allow the project to proceed in compliance with the standard(s) from which a variance is sought, and shall explain to the satisfaction of the department why each such alternative is unavailable or unreasonable.

(2) After an applicant has demonstrated that the applicant is eligible for a variance under Section 9(A)(1), the applicant shall also demonstrate that the proposed project meets both the applicable standards of Sections 5 and 6 of this chapter, for which a variance is not being granted, and the following standards. The following standards are intended to help minimize impacts on protected natural resources.

(a) The proposed building must be constructed at the location on the lot that is the greatest distance practicable from the beach, as determined by the department given setback requirements and site limitations;

(b) The proposed building must be elevated on posts as described in Section 6(G);

(c) The total area to be covered by the footprint of a building may not exceed 20% of the

total area of the undeveloped lot. Land area within the V-zone may not be included as part of a lot for the purposes of this subsection. Up to 500 square feet of additional development may occur on the undeveloped lot in order to provide parking and access, including handicap access.

(d) As a condition for the issuance of a variance, the department may require sand dune mitigation and enhancement measures. Sand dune mitigation and enhancement measures include activities such as restoration of the dune topography, including the elevation of the crestline to at least one foot above the 100 year flood/wave run up level and provisions to enhance with native vegetation the remaining portions of the lot not covered by buildings or parking areas. Sand dune mitigation and enhancement measures must be completed and adequately maintained if required by the department.

(3) A variance may not be granted under Section 9 when a permit has been granted under this variance provision for the same deeded lot if the previously permitted building on the lot was destroyed by the encroachment of water or wave action from an ocean storm. A variance may not be granted under Section 9 if the building was previously reconstructed as provided for in Sections 6(E) and 6(F).

(4) In addition to the notice requirements in Chapter 2 of the Department's Rules, Rules Concerning the Processing of Applications, any person applying for a variance under Section 9(A) must send a Notice of Intent to file the application by certified mail to any person who owns land located within 150 feet of the boundary of the property to be developed.