

Variance Conditions

Question: Can a variance be approved with conditions?

Answer: Yes. While variances do run with the land, as opposed to being attached to the property owner, municipalities can impose time limits on the initial exercise of rights under a grant of variance.

[Wentworth Hotel, Inc. v. New Castle](#), 112 NH 21 (1972)

"Plaintiff finally contends that certain restrictions and limitations imposed by the board with respect to the variance granted are invalid.

While RSA 31:72 (IV) contains no express provision permitting conditions to be attached to a variance it gives the board of adjustment broad powers. We have held that these include the authority to attach reasonable conditions where they are necessary to observe the spirit of the ordinance. [Vlahos Realty Co. v. Little Boar's Head District](#), 101 NH 460, 146 A.2d 257 (1958); 101 C.J.S. Zoning s. 310 (1958). These conditions, however, must relate to the use of the land and not to the person by whom such use is to be exercised. *Olevson v. Narragansett Zoning Bd.*, 71 RI 303, 44 A.2d 720 (1945); *State v. Konopka*, 119 Ohio App. 513, 200 N.E.2d 695 (1963); *Montgomery Co. v. Mossburg*, 228 Md. 555, 180 A.2d 851 (1961).

Condition C provides that the variance shall expire three years from October 1, 1970 unless construction of the condominium is completed. This appeal has rendered that time limitation obsolete. However, if the board should consider imposing a similar updated condition we deem it opportune to bring the following to its attention. If plaintiff under a permit issued under this variance has made substantial construction on the property or incurred substantial liabilities related directly thereto it would thus obtain a vested right to proceed with the construction and the time limit for completion would become inoperative and the permit could not be revoked. 101 C.J.S. Zoning ss. 243, 244 (1958); see *Piper v. Meredith*, 110 NH 291, 299, 266 A.2d 103, 109 (1970)."