

265—18.4(17A,16) Criteria for waiver or variance. In response to a petition completed pursuant to rule 18.6(17A,16), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

In determining whether a waiver or variance should be granted, the authority shall consider the public interest, policies and legislative intent of the statute on which the rule is based.