

## Variances

The second most common zoning operation is the consideration of applications for variances. A variance allows the applicant to depart from the standard rules. Variances were included in the model act to alleviate “unnecessary hardship” which typically refers to hardship inherent in the physical characteristics of the land. For example, a preexisting lot of 9,500 square feet in a zone requiring a 10,000 square foot minimum lot size would be a good candidate for a variance. A strangely shaped lot on which the enforcement of normal setback requirements might preclude building a rectangular house would also justify a variance.

There are two common misconceptions about variances: the first is that financial hardship justifies a variance. As noted above, the variance is supposed to alleviate a hardship that is inherent in the piece of land, not a hardship created by the owner’s error in paying too much for the parcel. Financial hardship should rarely be a consideration in variance review unless it relates to the physical characteristics of the land. For example, let us say that a landowner applies for a setback variance because the applicable 25 foot setback would force the rear 5 feet of a normal-sized house for the district into a flood fringe area; by varying the setback to 20 feet, the zoning board can alleviate the topographic problem without requiring the landowner to build dikes or otherwise re-engineer the flood plain. In such a case, the variance may save the landowner money, but the variance is granted basically because of a topographic problem.

The second misconception, a corollary of the first, is that financial hardship justifies use variances. The physical characteristics of a piece of land may dictate one building type rather than another. Outside of the few jurisdictions with special provisions for them, use variances should not be granted.

Many requests for variances are for minor bulk variances in existing neighborhoods: for example, expansions of patios or carports one or two feet into designated side-yard setbacks. On such matters the zoning board becomes a sort of neighborhood arbitration board, dealing with physical hardships. Although these hardships are rarely great, this should be weighed against the extent of the public sector’s stake in the somewhat arbitrary determination that a ten foot side yard is superior to a 9-foot zone.

\*\* Source: International City Management Association, The Practice of Local Government Planning, 1988