

Variations

A variance is a means of solving the problems created by attempting to apply the general terms of the ordinance to fit the land that is regulated. It is necessary because a zoning requirement could possibly prevent any use of a property if strictly applied. A variance procedure prevents problems in applying general legislation to specific situations. All zoning ordinances contain many detailed pre-set regulations designed to be self-executing. Various setbacks and height limitations are examples of these provisions, which omit administrative discretion. Variations act as a relief valve for the rigid ordinance.

Variations Compared with Special Exceptions and Conditional Uses

An application for a variance seeks permission to do something which is not in conformance with or violates the zoning ordinance. A variance is an overriding of the legislative judgment, justified by the existence of unnecessary hardship. In contrast, an applicant for a special exception does not seek to vary the ordinance. The permission the applicant seeks is one envisioned by the ordinance. Accordingly, an applicant for a variance must show both (a) unnecessary hardship and (b) consistency with the public interest. A special exception or conditional use case generally involves only the latter.

Requirements for a Variance

The zoning hearing board hears requests for variations where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may, by rule, prescribe the form of application and may require preliminary application to the zoning officer. Pursuant to MPC Section 910.2, the board may grant a variance provided that all of the following findings are made where relevant in a given case:

- 1.** That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
- 2.** That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- 3.** That such unnecessary hardship has not been created by the appellant;
- 4.** That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare and
- 5.** That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.