



The applicant for a variance must prove:

- (1) relief is necessary because of the unique character of the property rather than for personal considerations; and
- (2) applying the strict letter of the ordinance would result an unnecessary hardship; and
- (3) the imposition of such a hardship is not necessary for the preservation of the plan; and
- (4) granting the variance will result in substantial justice to all.

There are basically two types of variances which can be sought by an applicant. A “use” variance or an “area” variance. A “use” variance permits uses other than those permitted by the zoning ordinance while an “area” variance permits deviations from restrictions that relate to a permitted use, such as height and size of buildings, lot size, and yard requirements. A greater showing of hardship is required for a use variance. The “practical difficulties” standard is applied in area variance cases, and the “unnecessary hardship” standard is applied in use variances. In the eleven years that I have been either an alternate or a member of the Board I have never seen an application for a “use” variance so the balance of this article deals with “area” variances.

At the public hearing for a variance, Board members will likely ask the applicant several times to state the applicant’s “hardship”. It is important to understand that “hardship” is a legal term and not common usage term. Typically, with a “area” variance it relates to the property itself. For example, assume that an applicant has a parcel of property in this shape with a house located in the center. The applicant wants to add an addition on to the back of the house. However, in order for the applicant to do so the addition would encroach upon the side yard setbacks since the lot is somewhat pie shaped. Thus the applicant would need a variance from the strict application of the side yard setbacks. The applicants “hardship” in this case is the property shape. I have seen several cases like this over the years. It is also important to note what is not a “hardship”. For example, financial consideration is not a “hardship”. My Board encountered this a few years back when an applicant asked for a height variance and stated that he would not get his financing for a new home unless we approved the variance. This was not considered a legal “hardship”. Another applicant several years ago when asked to state his “hardship” for a variance told the Board, that anyone “who is living in Town & Country really has no hardship”. He didn’t get his variance.

One other consideration that an applicant should take into account is the approval of neighbors and the subdivision. In my experience the Board is more likely to grant the variance when there is support from neighbors and the subdivision. Finally, the old adage that it is “better to seek forgiveness than permission” does not, in my experience, work well when seeking a variance from the Board. Although a retroactive variance can be granted, the three applications I have seen in the past were all rejected and in one case the applicant had to remove a large concrete circle that had been installed without a variance in violation of the green space requirement.

Should you have any questions about seeking a variance in any city other than Town & Country, Missouri please feel free to contact me.