

HARDSHIP - WHAT IS LEGALLY REQUIRED?

Defined

“To determine and vary the application of the zoning regulations, but only in harmony with the general purpose and intent of the regulations *and* only with respect to a parcel of land having unusual conditions, not generally encountered within the zoning district, which would make development in full accordance with the regulations extremely difficult. In legal terms, the conditions must be such as to cause “exceptional difficulty or unusual hardship.”

Variations of the zoning regulations may be granted only “in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions *especially affecting such parcel but not affecting generally the district* in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in *exceptional difficulty or unusual hardship* so that substantial justice will be done and the public safety and welfare secured.”

Explained

The courts have strictly interpreted the variance requirements set forth in C.G.S. Section 8-6, and they have sustained several appeals from decisions in which variances were improperly granted. Financial considerations are rarely a valid reason for issuing a variance; **the possible economic advantage or financial hardship to the landowner is *not sufficient***. In addition, the fact that the proposed use will not be detrimental, and may even be beneficial, to the neighborhood is not sufficient. The hardship must arise from the operation of the regulations on the *land, not* on the landowner, and the land must be “peculiarly disadvantaged” by the regulation for which a variance is sought.

Practical examples of what may be considered a hardship affecting the land include an irregular shaped lot, topographic conditions that limit developable area, an existing nonconforming condition such as the location of an existing structure in a required setback, or other physical features such as the presence of wetlands or a septic system.

It is the applicant’s responsibility to clearly articulate the hardship to the Board during the public hearing as that is the basis for the Board’s decision.