



**Michigan Association of Planning  
A Chapter of the American Planning Association**

*Excerpted from the presentation "Practical Difficulty and Unnecessary Hardship," Academy 202 Workshop, Zoning Board of Appeals and Zoning Officials, MSPO/MAPA Annual Conference, Gerald L. Abrams, Langworthy LeBlanc, Inc. Community Planning Consultants*

**Practical Difficulty and Unnecessary Hardship**

Variances: Definition and Proof

- Nonuse (Dimensional)
  - o Vary from the requirements of the Ordinance.
  - o Proof of Practical Difficulty
- Use
  - o Allow use not otherwise listed in District.
  - o Proof of Unnecessary Hardship.

Use Variance- A variance authorizing a land use that is otherwise not permitted in the underlying zone district.

- Allow use not permitted in district.
- Proof of *Unnecessary Hardship*
  - o Property cannot be reasonably used as zoned.
- Variance must not alter the essential character of the area.

Unnecessary Hardship

- Results when the character of a lot or parcel prevents the use (or reasonable use) of said lot or parcel as currently zoned. Unnecessary hardship is demonstrated through a series of applied standards.
- Zoning is expected to support a reasonable rate of return on one's investment, but not necessarily the highest.

Unnecessary Hardship Standards

- 1- The property cannot be used for the (range of) purposes permitted in the underlying zone district.
- 2- The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
- 3- The use will not alter the essential character of the area.

- 4- The problem has not been self created.
  - a. It is the responsibility of the property owner to know (discover) local zoning restrictions (opportunities).
  - b. Making a financial commitment before obtaining zoning approval.
  - c. Constructing without necessary permits.
  - d. Creating a unique situation.
  - e. Overbuilding or not building to market conditions.
  - f. Falsifying information on the original site plan application.

#### Unnecessary Hardship

1. The property cannot be reasonably used as zoned.
2. There are unique circumstances related to the property.
3. Proposed use would not alter the essential character of the area.
4. Not a self created hardship.
5. Not impair the intent and purpose of the Ordinance or the Master Plan.

#### The Paragon Rule

- Rezoning denied by the legislative body cannot be litigated until all administrative remedies are exhausted.
- The administrative remedy for a rezoning denial is an application for a USE VARIANCE through the Zoning Board of Appeals.

#### Non-Use Variance (Dimensional Variance)

- Modification of the literal provisions of the ordinance when strict enforcement of the ordinance would cause *practical difficulties* for the property owner due to circumstances unique to the property.
- "Relaxation of underlying zone district standards."
- ...reduce yard setbacks- permit greater building height- allow larger sign- reduce required parking spaces- permit private road to be gravel instead of asphalt- reduce required berm height- modify screening requirements0 increase maximum density- give away the farm...

#### Non-Use Variance- Practical Difficulty

1. Would enforcement of the Ordinance unreasonably prevent the owner from using the property for a permitted use? Would conforming to the Ordinance be unnecessarily burdensome?
  - a. Key Words: "Unreasonably prevent" "Unnecessarily burdensome"
2. Does the variance do substantial justice to the applicant and other property owners in the district? Would a lesser relaxation be more appropriate?
  - a. Key Words: "Substantial justice" "Lesser relaxation"
3. Is the situation causing the need for the variance due to unique circumstances related to the property?
  - a. Key Words: "Unique circumstances" "Related to the property"

4. Is this situation self created? Is the need for the variance created by an action of the applicant?
  - a. Key Words: "Self created"