

Variations and its Challenge to Zoning Regulations

Land use regulation has predominately been implemented this past century by zoning ordinances. The administrative exception to such land use regulation is a variance. There are two basic types of variances; use variances and area variances. Area variances can grant relief from objective physical standards, such as height, area, and setback restrictions.¹ A use variance permits a use other than that permitted in the district.² There is dispute whether a property owner who seeks relief from a density limitation requires a use variance or an area variance. The difference is often a moot point because many zoning boards will not grant a use variance. Courts have struck down use variances more than area variances, for the courts and legislatures too traditionally believe that use variances pose a greater threat to the integrity and fairness of a zoning scheme.³ Also, since a use variance has the potential to lead to land speculation, some states do not allow use variances at all.⁴

Variations provide flexibility in the application of the zoning ordinance and afford the landowner an opportunity to apply for administrative relief from restrictive provisions of the code.⁵ A property owner may seek a use or area variance when an application for a building permit is denied on the grounds that the proposal violates the use or dimensional requirements of

¹ See Jonathan E. Cohen, *A Constitutional Safety Valve: The Variance in Zoning and Land-Use Based Environmental Controls*, 22 B.C. ENVTL. AFF. L. REV. 307, 330 (1995) (stating that area variance usually is the way sought to create an exception from strict compliance requirement of an ordinance. Granting a variance is similar to triggering a permit.).

² See Cohen, note 1 at 330-31 (describing that use variances can unfairly assist one landowner receive a larger return on the property).

³ See Cohen, note 1 at 331 (describing how there is a reluctance to grant use variances because it would hurt the premise of the zoning ordinances that established the segregation of uses). See also *Matthew v. Smith*, 707 S.W.2d 411, 413 (Mo. 1986) (noting that use variances have been recognized as valid in a majority of states).

⁴ *Zoning Bd. of Appeals v. Planning and Zoning Comm'n.*, 605 A.2d 885, 890 (Conn. App. Ct. 1992) (discussing that the zoning ordinance was amended to curtail the board from granting too many use variances).

⁵ Variations, Pace Law School Land Use Law Center, available at <http://www.law.pace.edu/landuse/varia.html> (last visited Mar. 8, 2005).

the zoning ordinance.⁶ Alternatively, the property owner could request the local legislative board to rezone the property, so that the requested use is "as of right."⁷ Variances always involve a single parcel; the relief of one landowners hardship from the local zoning ordinance.⁸ Of course, the burden of proof is on the property owner to demonstrate that he has met all the requirements in requesting a variance and incurred a hardship based on the zoning ordinance.⁹ Zoning ordinances protect the health, safety, and welfare of the community and the granting of variances can be problematic. Variances have the potential to injure the public by undermining the purpose of the zoning ordinance for the benefit of one individual landowner and that they not do so is a typical requirement of the zoning board.

Typical Variance Process:

The granting of a variance is generally considered a final administrative action for "purposes of exhaustion."¹⁰ When a landowner is denied a permit, he may apply to the local board authorized to grant a variance. The zoning board's power to grant a variance, and the circumstances that have to be met, is derived either by charter, ordinance or by statute and are

⁶ *See id.* For example, area variances can be requested if a property owner desires to build a deck that slightly overlaps an ordinance's set back area.

⁷ *Id.* Legislatures usually do not desire to have use restrictions limit property owners to be denied a reasonable return because they cannot be enforced without compensation.

⁸ *See id.* As will be explained later, the hardship must be unique to the owner's property; if common to the whole neighborhood, a change in zoning is more appropriate than a variance.

⁹ *See id.* There is a list of five factors that a board weighs in the variance application process:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?
2. Can the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?
3. Is the requested area variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. *Id.*

¹⁰ Joseph H. Bornong and Bradley R. Peyton, *Rural Land Use in Iowa: An empirical Analysis of Country Board of Adjustment Practices*, 68 Iowa L. Rev. 1083, 1211 (1983). The denial by a board of adjustment of relief opens the door to challenging the zoning ordinance in court.

usually listed in detail.¹¹ Courts and some state and local statutes set out the guidelines for the variance hearing, not only for the finding of facts, but also for the decision making discretion.¹² When considering variance requests, a board must abide by the local zoning ordinance in order to not to violate it's spirit.¹³ If the board's decision is not to the liking of the landowner, the Standard State Zoning Enabling Act (SSZEA) provides for judicial review.¹⁴

The common criteria considered for the granting of a variance is whether the landowner can demonstrate "unnecessary hardship."¹⁵ For the Board making its determination, the SSZEA also requires that the board consider other requirements before granting a variance, such as the health, safety, and welfare of the community, as well as the specific concern of the local public interest.¹⁶ One item that zoning boards and courts always consider in granting a variance is the underlying purpose of the zoning ordinances. In fulfilling this consideration, the courts adopted a balancing test; weighing the hardship of the landowner in desiring the variances against the impact that the variance could have on the character of a neighborhood. As will be demonstrated, courts give more deference to overall zoning plans than to individuals seeking a variance, since upholding zoning enactments preserves "neighborhood character" and stabilizes the expectations of landowners.¹⁷

¹¹ See *Zoning Law and Practice*, Matthew Bender & Company, § 20-13 Limitations on the Right to Grant Variances (2005).

¹² See Cohen, note 1 at 332 (facilitating analysis and constraining discretion by board members when making their decision). See generally, *Topanga Ass'n. for a Scenic Community v. County of Los Angeles*, 522 P.2d 12, 15-16 (Cal. 1974) (ruling that the variance amounted to a prohibited special privilege and the court reversed); 65 ILL. ANN. STAT. ch. 65, paras. 5/11-13-11 (Smith-Hurd 1993).

¹³ See *Zoning Law and Practice*, note 11,

¹⁴ Standard State Zoning Enabling Act § 7 (1926) [hereinafter SSZEA]. The SSZEA was itself based on the New York City general enabling act and today all of the 50 states have zoning enabling legislation for the local municipalities.

¹⁵ See SSZEA, note 14. See generally *Matthew v. Smith*, 707 S.W.2d 411, 416-17 (Mo. 1986) (discussing the history of variance legislation).

¹⁶ See SSZEA, note 14 (requiring that zoning ordinances be in "accordance with a comprehensive plan").

¹⁷ See Cohen, note 1 at 342 (making the point that other landowners rely on the zoning restriction for the maintenance of their property's value).

Statutory Authority and Case Law:

The statutory authority for variances originally came from the individual states' zoning enabling legislation and was later included in the 1926 Standard State Zoning Enabling Act, which was incorporated by states into their own statutes.¹⁸ While many states have similar statutory language on zoning variances, each state and its courts have varied in their interpretation.¹⁹ A leading case on variances is *Otto v. Steinhilber*, a New York State Court of Appeals case.²⁰ This case helps to define the unnecessary hardship requirement which the courts and zoning boards apply, in deciding whether to grant a landowner a variance. The three parts of the test that a landowner must satisfy include:

(1) that the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality.²¹

The test from *Otto* has not only been applied in New York, but also in many other states that have a similar test and requirements for granting a variance.²²

¹⁸ See David W. Owens, *The Zoning Variance: Reappraisal and Recommendations for Reform of a Much-Maligned Tool*, 29 *Colum. J. Envtl. L.* 279, 284 (2004). The SSZEA was later promulgated by the U.S. Department of Commerce in 1926 and was followed by the Standard City Planning Enabling Act in 1928. See also SSZEA, note 14.

¹⁹ See Owens, note 18 at 284 (listing California, Washington, and Oregon as the initial exceptions and in these states, governing board amendments to the zoning ordinance handled variances). See generally Edward H. Ziegler, Jr., Rathkopf's *The Law of Zoning and Planning* 58:1 (2001).

²⁰ *Otto v. Steinhilber*, 24 N.E.2d 851, 853 (N.Y. 1939). This case involved an irregular shaped piece of property in Nassau County, New York and the decision by the board of appeals to grant a variance was based on the grounds of unnecessary hardship.

²¹ *Otto*, 24 N.E.2d at 853.

²² See e.g., *MacLean v. Zoning Bd. Of Adjustment*, 185 A.2d 533 (PA. 1962) (using the test of "1) the variance will not be contrary to the public interest; and 2) unnecessary hardship will result if it is not granted"), *Matthew*, 707 S.W.2d at 415 (listing the requirements of "(a) That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located; (b) That the plight of the owner is due to unique circumstances; and (c) That the variance, if granted, will not alter the essential character of the locality,"). See generally *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 734 A.2d 227, 239, (Md. Aug 02, 1999), *Bacon v. Town of Enfield*, 840 A.2d 788, 794 (N.H. Jan 30, 2004), *Wawa, Inc. v. New Castle County Bd. of Adjustments*, 2005 WL 399324, 5 (Del.Super. Jan 10, 2005).

Under the first prong, with regards to a ‘reasonable return,’ most courts will invalidate grants of variances unless the landowner has demonstrated that the land will be otherwise unusable for any permitted purpose.²³ As with many other land use regulations, the court will not uphold the grant of a variance simply because there is diminished value of the land; the court require the landowner to show that there is no profitable use of the land. Sometimes, a landowner can meet this burden if there are sustained unsuccessful efforts to sell the property.²⁴ Additionally, the New York Court of Appeals has identified several factors regarding a reasonable return.²⁵ These factors are: (1) the amount the applicant paid for the entire parcel; (2) the present value of the parcel or part of it; (3) maintenance expenses; (4) taxes on the land; (5) mortgages and encumbrances; (6) income; and (7) other relevant factors, including the applicant's estimate of what constitutes a reasonable return.²⁶

The second prong of the *Otto* test, the unique burden requirement, necessitates that the variance applicant establish that the hardship is uniquely characteristic to his or her property.²⁷ If the hardship is not unique to the property individually and is instead, part of a hardship for the area as a whole, an amendment to the zoning regulation may be more appropriate than a variance. The case law regarding unique burden has not been settled and the courts have upheld

²³ *Otto*, 24 N.E.2d at 853. See also *Puritan-Greenfield Improvement Ass’n v. Leo*, 153 N.W.2d 162 (1967) (noting that a asking price that is substantial higher than other asking prices for land in the same community, despite an effort to sell the property, does not demonstrate the lack of a reasonable return and the variance application can be denied); *State v. Winnebago County*, 540 N.W. 2d 6 (Wis. App. 1995) (holding that a variance cannot be granted just to maximize the value of an individual’s property).

²⁴ See generally *Puritan-Greenfield Improv. Assn. v. Leo*, 153 N.W.2d 162 (Mich. App. 1967) (ruling that not selling a piece of property for a price much higher than comparable lots around the same area does not demonstrate that the land cannot yield a reasonable return).

²⁵ See Cohen, note 1 at 336, (referring to some courts that have used up to nine factors).

²⁶ See *Crossroads Recreation, Inc. v. Broz*, 149 N.E.2d 65, 67 (N.Y. 1958) (upholding the decision not to grant the variance because the petitioner did not demonstrate that the property could not yield a reasonable return).

²⁷ See Cohen, note 1 at 336 (requiring the property owner to demonstrate that the burden is unique to the subject property).

certain conditions as a unique burden and others where they have not.²⁸ As with the first prong, while the burden is on the landowner to show the unique burden, the board will also look to the effect such a variance may have, if granted, on other similarly situated landowners.²⁹

The third requirement of the *Otto* test, not altering the character of the locality, essentially looks at the potential impact of the variance, reflecting the court's desire not to injure the other landowners or to undermine the purpose of the zoning ordinance.³⁰ Thus, this prong focuses on the purpose of zoning ordinances already in place, while reflecting on the SSZEA's requirement that the board consider the health, safety, and welfare of the community before granting a variance. This also encompasses the concern for the preservation of the character and values of a neighborhood.³¹ Here, the court gives more weight to the ordinances if they are directly related to tangible health, safety, and welfare. This then has the effect of putting a greater burden on the individual landowner to show how his variance would not undermine the regulation that is in place.³² Furthermore, it has been held that "a board's denial of a variance is entitled to greater deference than a decision to grant the variance."³³ The purpose of a zoning ordinance is to help those covered by it enjoy its advantages; even a single variance can prevent a zoning ordinance from achieving its goal.

²⁸ See, e.g., *Wright v. Zoning Bd. Of Appeals*, 391 A.2d 146 (C.T. 1978 (variance denied to build a garage), contrast with *St. Onge v. Donovan*, 522 N.E.2d 1019 (N.Y. 1988) (conditional variance limiting the number of vehicles at a property was upheld).

²⁹ See *Otto*, 24 N.E.2d at 852-53 (discussing that if all the property owners in an area have the same burden, maybe an amendment to the ordinance might be more appropriate).

³⁰ See *Otto*, 24 N.E.2d at 853 (arguing that the zoning restriction can possibly be inapplicable in a certain locality).

³¹ See *Cohen*, note 1 at 337-38 (stating that "all property owners under the ordinance are believed to benefit from the advantages that flow from the zoning ordinance).

³² See *Medici v. BPR Co.*, 526 A.2d 109, 121-22 (N.J. 1987) (concluding that the best result can be achieved "by requiring, in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.").

³³ *Nextel of N.Y., Inc. v. Borough of Englewood Cliffs Bd. of Adjustment*, 824 A.2d 198, 208 (N.J. Super. Ct. App. Div. 2003).

Since *Otto*, other courts have applied different requirements in granting variances.³⁴ One element seemingly common to all of the various variance requirements is that most statutes and ordinances fail to delineate the specific elements of unnecessary hardship, hence forcing various state zoning boards and courts to setup their own standards.³⁵ A common issue that arises when considering variances is the self-created hardship doctrine; for instance, when land is purchased with the knowledge of the zoning restrictions or when a property is subdivided to create a non-complying parcel. In these types of cases, either the state court or the actual zoning statutes do not allow a variance to be granted, though there are rare exceptions.³⁶ While viewing the unique hardship requirement, some courts look at the physical features of the land, but not the circumstances of the landowner, in determining if the land is unusable under the zoning ordinance.³⁷ It is important to note that a variance does run with the land and is not personal to the applicant.³⁸

In some states, the variance granting boards apply a lower standard when granting area variances than compared to the issuing of a use variance. Use variances usually require rigorous enforcement, which is simply not as crucial to area variances.³⁹ From the opposite perspective, some courts do not lower the standard for area variances, for it is argued that an area variance

³⁴ See Cohen, note 1 at 338 (noting there is a pervasive exception for utilities to receive variances and whatever negative effect the utility might have on its immediate neighbors is out-weighed by the overall benefit to the community).

³⁵ See Bornong and Peyton, note 10, at 1185 (describing variances in generally, but then later on distinguishing between local zoning boards and county zoning boards).

³⁶ See Cohen, note 1 at 338. See also *Chirichello v. Zoning Bd. of Adj.*, 397 A.2d 646, 651 (N.J. 1979) (holding that the subdivision was unlawful and that was a factor in denying the variance), *Commons v. Westwood Zoning Board of Adjustment*, 410 A.2d 1138, 1143 (NJ 1980) (detailing that if the owner or the previous owner created the non-conforming condition, “the hardship may be deemed to be self-imposed.”), *Nextel of N.Y.*, 824 A.2d at 208 (agreeing that the expansion of nonconforming uses is disfavored and if a substantial change is requested for a property with a nonconforming use, this requires a use variance).

³⁷ See Cohen, note 1 at 339. See also *Larsen v. Zoning Bd. Of Adjustment*, 543, Pa. 415 (Pa. 1966) (requesting a variance to provide play area for children).

³⁸ See *Stop & Shop Supermarket Co. V. Board of Adjustment of Springfield*, 744 A.2d 1169 (NJ 2000) (requesting a variance for parking in residential zone).

³⁹ See generally *Ivancovich v. City of Tucson Bd. of Adj.*, 529 P.2d 242, 250 (Ariz. Ct. App. 1975) (stating more stringent requirements are necessary to the more drastic relief inherent in a use variance).

can be more harmful to the overall zoning plan than certain use variances.⁴⁰ In essence, every court and legislature reflects upon their own underlying policies and purposes. This is then expressed in the granting or denying of use and area variances, creating flexibility around the prongs of the *Otto* test. Overall, a landowner's personal inconvenience or self created hardship is generally insufficient to warrant a variance, however, where the undue hardships of the landowner meet the requirements of *Otto*, a variance is often allowed.

Criticism of Variances:

Variances, while providing flexibility to zoning laws, have it's critics. One such criticism of variances is the increasing approval rate of applications. While a variance is supposed to be given with special permission for an undue hardship, some statistics have shown that before the *Otto* decision, only about half of all variance requests were approved in urban areas. Since 1940, the variance approval percentage has increased to about the 70%-80% range, not only in cities, but also in suburbs and rural areas.⁴¹ There were a number of critics in the middle of the twentieth century, many in the academic community across the country, who noted that the increase in variance approval was inhibiting local zoning ordinances from being effective.⁴² Critics argued that since the very existence of a variance was not easily discovered, many future land purchasers would be misled if they relied on local zoning ordinances as an indication of the

⁴⁰ See Cohen, note 1 at 340. See also *Snyder v. Waukesha County Zoning Bd. of Adj.*, 247 N.W.2d 98, 101-102, (Wis. 1976) (arguing that area variances are not more easily obtained than use variances, for area variances have more practical difficulties than just fulfilling the unnecessary hardship requirement).

⁴¹ See Owens, note 18 at 296. This percentage came from the compilation of various studies during the same relative time period from places such as North Carolina, Iowa, New York, Alameda County, California, Vermont, Connecticut, New Hampshire, Boston, Marion County, Indiana, Chicago, Cincinnati, Eugene, Oregon, Cleveland, Denver, Des Moines, Louisville, and Philadelphia.

⁴² See Owens, note 18, at 297 (listing planners and land use lawyers such as Richard Babcock, Professor Robert Anderson, Professor Jesse Dukeminier, Clyde Stapelton, and Ronald Shapiro).

land use and development standards in that area.⁴³ Some felt that there was a "shocking disparity between the theory of the variance power and its practical application" and as a result, the zoning ordinances could not protect local communities from being harmed.⁴⁴ Another significant concern was that the rising amount of variances being granted was increasing the flexibility of zoning too much.⁴⁵ A zoning board that disagrees with a local zoning standard in place can undermine it by granting variances.

In addition, there are a number of ethical issues that are raised with zoning boards. While zoning ordinances are written and defined by legislatures and courts, the ordinances are administered at the grassroots level with most board members being volunteers. With volunteer community board members, many of whom are not lawyers or professional city planners, the concern is that these people have strong ties to the area and often vote for what is politically correct.⁴⁶ Sometimes zoning boards can develop into a "good old boy" network, filled with ad hoc decision-making on variance applications.⁴⁷ It is argued that these local volunteers have too much power and that they exclude certain kinds of development, such as rental apartments and inexpensive housing.⁴⁸ Further concern with the makeup of a zoning board is the potential for a conflict of interest. In most cases, the official will recuse himself, but if he does not, the whole variance proceeding might be invalidated under a later judicial review.⁴⁹ Some boards can be

⁴³ See Owens, note 18, at 282 (citing John W. Reys, *Discretionary Powers of the Board of Zoning Appeals*, 20 Law & Contemp. Probs. 280, 282 (1955) discussing that many local boards in cities are more harmful than beneficial).

⁴⁴ Owens, note 18, at 298 citing Ronald M. Shapiro, *The Zoning Variance - Constructive in Theory, Destructive in Practice*, 29 Md. L. Rev. 3, 4 (1969).

⁴⁵ See Richard T. Frost, *The Trouble with Zoning*, 47 Nat'l Mun. Rev. 275, 277 (June 1958) (noting variance experience has resulted in "the wholesale violation of acceptable limit on administrative discretion").

⁴⁶ See Platt, *infra* note 48, at 273. He went on to state that land use regulations "often reflect personal instincts or loyalties rather than abstract planning theory."

⁴⁷ Salsich and Tryniecki, *infra* note 49, at 215 (describing how the political process may vary in each jurisdiction).

⁴⁸ See Rutherford H. Platt, *Land Use and Society: Geography, Law, and Public Policy*, at 274 (2004) (continuing on by stating that such exclusion of certain development can also exclude groups of people such as ethnic minorities and low-income households).

⁴⁹ See Peter W. Salsich, Jr. and Timothy J. Tryniecki, *Land Use Regional: a Legal Analysis & Practical Application of Land Use Law*, at 213 (1998). Conflicts of interest possibility put an additional burden on the lawyer presenting

swayed by the local political, economic, or ideological interest of the community, and each interest could undermine the zoning policy that was legislated into place.⁵⁰

As in tandem with the criticism, there were many suggestions put forth on improving the variance procedure. The most frequent reform that has been proposed is to create minimum boards such as lawyers, structural engineers, regional planners, and art historians, all whom can represent the political, social, and economic culture of a local area. Finally, much of the criticism focuses on the need for more predictability when it comes to variances allocations. In addition, it is argued that variances should be granted less frequently, especially if the zoning problem can be resolved in another matter.⁵³

Conclusion:

Variances and zoning boards have evolved politically, administratively, and legally since the *Otto* decision. A large percentage of variance applications have been granted in the last 65 years, demonstrating that the current zoning ordinances have less permanence.⁵⁴ In addition, today's zoning ordinances are concerned with a lot more aspects of land use including,

the variance to the board. At a minimum, the lawyer has to attempt to learn the occupation of each member of the board and ask the client if he has any knowledge or relationship with any member.

⁵⁰ See Owens, note 18 at 299.

⁵¹ See Richard L. Wexler, *A Zoning Ordinance Is No Better Than Its Administration - A Platitude Proved*, 1 John Marshall J. Prac. & Proc. 74, 75 n.7 (1967). See also Owens, note 59 at 301.

⁵² See Owens, note 18 at 300 (suggesting using a board of experts or creating a minimum set of qualifications for board membership).

⁵³ See Owens, note 18 at 301 (implicating that legislature need more detailed definitions of standards such as unnecessary hardship).

⁵⁴ See Owens, note 18 at 296. This percentage came from the compilation of various studies during the same relative time period from places such as North Carolina, Iowa, New York, Alameda County, California, Vermont, Connecticut, New Hampshire, Boston, Marion County, Indiana, Chicago, Cincinnati, Eugene, Oregon, Cleveland, Denver, Des Moines, Louisville, and Philadelphia.

landscaping, storm water management, and building design.⁵⁵ Along with the evolution and frequency of the variance application, other means of circumventing zoning ordinances are being implemented, such as challenging the zoning ordinances, special and condition use permits, and performance zoning.⁵⁶ As the importance of the zoning board has changed, so has the nature of the zoning board itself. Boards are now being administered more by professionals who are familiar with the zoning process and bring with them their increased educational and professional experiences. Even still, zoning boards are still comprised of people, who can be persuaded by politics, compassion, as well as common sense.

Despite the presence of other means for non-compliance with zoning ordinances, such as a special use and condition permit, variances are still needed. Variances provide a scheme that can help assist in the continuing adjustment of zoning ordinances, for when zoning is enacted by the legislature, the full affects are not known. The ordinances itself can in the end harm the local community that it was designed to protect, and a variance can provide the flexibility that is needed.⁵⁷ There are also occasions where a variance can protect against an unconstitutional taking by the government through zoning.⁵⁸ The variance process still has its flaws, most frequently cited is the lack of a unified standard for the unnecessary hardship requirement. With more variances being granted, there is an increasing problem of notifying the public that a variance is running with the land and should be noted to future purchasers of the property's land

⁵⁵ See Owens, note 18 at 302 (listing examples of detailed regulation of topics not specified in the early part of the 20th century).

⁵⁶ See, e.g., Luther L. McDougal, III, *Performance Standards: A Viable Alternative to Euclidean Zoning?* 47 Tul. L. Rev. 255 (1973); Michael B. Brough, *Flexibility Without Arbitrariness in the Zoning System: Observations on North Carolina Special Exception and Zoning Amendment Cases*, 53 N.C. L. Rev. 925 (1975).

⁵⁷ See Owens, note 18 at 317 (describing how variances are a more cost effective means of providing relief when a zoning ordinance imposes significant burdens on an individual without the need for litigation in the courts or amending the ordinance).

⁵⁸ See Owens, note 18 at 316. A variance can challenge the zoning ordinance to see if the legislature had a rational basis for its implementation.

use potential.⁵⁹ Some areas do not even allow certain variances, such as a use variance, for it is argued that it is more threatening than an area variance with regards to the dislocation and well being of neighboring landowners.⁶⁰ The selfish nature of property owners have caused the increase in the amount of variances granted and that has often hindered the overall community interest. However, many of the 70-80% of variances that are being granted are requests for minor zoning permits, such as requesting an extra foot in the height of a house or the length of the deck, and these variances rarely affect the broader community interest.⁶¹ There is a concern that the value of a piece of land should not dramatically change due to a governmental action such as granting a variance. If so, instead of people purchasing land with the idea of working within the zoning ordinances, there will be increased land speculation. It has been suggested that a possible way to increase the heightened awareness of the community interest is to promote full communication between the board considering the variance petition and the legislative body that adopted the ordinance originally. This increased communication can help ensure that the community intent sought to be protected with the ordinance remains intact if the variance is granted.⁶² Overall, variances can be the most effective and fair means of addressing a local zoning issue for the individual landowner and the community. However, in order to stabilize land use laws, specifically the granting of variances, more standardization and oversight is needed to ensure that a zoning board granting a variance is not disrupting the land use for the overall area.

⁵⁹ See Owens, note 18 at 318 (implicating that a buyer should have knowledge, actual or implied, about the variance, and the value of the land should reflect the presence of the variance).

⁶⁰ See Cohen note 1, at 331 (argued by courts of threatening integrity and fairness).

⁶¹ See Owens, note 18 at 319 (stating that in many communities, the request for area variances are minor and not as objectionable to the community and does not severely impact the neighborhood). See also Roderick M. Bryden, *Zoning: Rigid, Flexible, or Fluid*, 44 J. Urb. Law 287, 299 (1966).

⁶² See Owens, note 18 at 320 (arguing that if the board is going to administer the legislative policies, then the goal for the public should be similar).