

A developer conveyed a three-acre tract of land to a man by a warranty deed containing a covenant specifying that the land could be used for residential purposes only. The applicable zoning law required that any home in the community be surrounded by at least two acres of vacant land. The man built a home on the land that fully complied with the zoning law and moved into it.

Subsequently, the man was diagnosed with a chronic debilitating disease. He told his daughter that he might have to sell his home, go to a nursing home, and after exhausting his assets paying for nursing home care, go on Medicaid for the rest of his life. His daughter offered to take care of him for the rest of his life if he would build her a small home on the westerly portion of his land. The man agreed, but because there was no way to site a home on the westerly portion of the land so that it was surrounded by two acres of vacant land, he applied to the local zoning board for a variance.

Should the variance be granted?

- A. No, because hardship variances are not granted where the land is used for residential purposes.
- B. No, because the man is not entitled to a hardship variance.
- C. Yes, because hardship variances are normally granted when the proposed use is consistent with a covenant in a warranty deed.
- D. Yes, because otherwise the man would have to go on Medicaid.

Incorrect

Correct answer B

Collecting Statistics

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## Explanation:

A **variance** regarding the use of land or look of a structure is created when a local government (often a zoning board) gives a landowner permission to deviate from a zoning requirement. Variances are often **granted if** the landowner can show that:

enforcement of the **zoning requirement would cause** the landowner **unnecessary hardship** regarding the use of the land that is unique to the land *and*

the variance would **not be contrary to public interest** (eg, public safety, comprehensive planning) and would be in keeping with the overall purpose of the ordinance.

However, a landowner's **claims of unnecessary hardship** will often be **rejected** when the **hardship is self-imposed** or the landowner can **still make use of the property** without a variance.

Here, the man purchased a three-acre tract of land knowing that the applicable zoning law required any home to be surrounded by least two acres of vacant land. The man created the hardship by building the home on his land in a location that left an insufficient amount of land to satisfy the zoning law if he built a second home. And since this hardship was self-imposed, the variance should *not* be granted.

**(Choice A)** A hardship variance may be granted where land is used for any purpose (including residential purposes) that deviates from a zoning requirement. But the variance will not be granted when, as here, the hardship is self-imposed.

**(Choice C)** The fact that the proposed use is consistent with a covenant in a warranty deed—eg, that the land can be used only for residential purposes—is irrelevant. The applicable zoning law allows residential use but limits it by the amount of vacant land surrounding any home.

**(Choice D)** The hardship created by the zoning requirement must impact the land itself (eg, building a second home). The hardship imposed on the owner personally (eg, going on Medicaid) is irrelevant.

## Educational objective:

A variance from a zoning requirement will be rejected if the claimed hardship was self-imposed or the landowner can still make use of the property without a variance.

## References

83 Am. Jur. 2d Zoning & Planning §§ 706–93 (2019) (providing an overview on variances).

E & F Assocs., LLC v. Zoning Bd. of Appeals, 127 A.3d 986, 990 (Conn. 2015) (defining variance and identifying considerations in granting a variance).

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## Analysis for granting variance

