

A woman owned a house on a lot abutting a public street. Six months ago, the city validly revised its zoning ordinances and placed the woman's lot and the surrounding lots abutting the public street from the north in a zone limited to residential use; the lots abutting the public street on the south side were zoned for both residential and light business use.

The woman asked the city's zoning appeals board to approve her proposal to operate a court-reporting service from her house. This type of use would be permitted on the south side of the public street and, in fact, one such business has existed there for several years.

The board approved the woman's proposal. Why?

- A. A variance was granted.
- B. The doctrine of amortization applied.
- C. The doctrine of change of circumstances applied.
- D. The woman's use of her house was a nonconforming use.

## Explanation:

A **variance** is created when a local government (often a zoning board) gives a landowner **permission to deviate** from a **zoning requirement**. There are **two types** of variances:

**use** variances – allow land to be **used differently** than the currently zoned use (eg, commercial use in residential area) *and*

**area** variances – allow structures on the land to **look different** than structures on the rest of the zoned area (eg, height, lot size, building placement).

Variances are often **granted if** the landowner can show that (1) enforcement of a zoning requirement would cause the landowner **unnecessary hardship**\* regarding the use of the land and (2) the variance would **not** be **contrary to public interest** (eg, public safety, comprehensive planning).

Here, the revised ordinance placed the woman's house in a zone limited to residential use. The enforcement of this ordinance would cause hardship to the woman's use of the land by preventing the operation of a court-reporting service from her house. This hardship would be unnecessary, and a variance would have little impact on public interest, because light business use is permitted across the street. As a result, the board likely approved the woman's proposal by granting a variance.

\*Courts often reject landowners' claims of unnecessary hardship when the hardship is self-imposed or the landowner can still make use of the property without a variance.

**(Choices B & D)** The doctrine of amortization applies to a nonconforming use—ie, one that lawfully existed before but is now prohibited by a zoning law. Since the woman's court-reporting service does not yet exist, this doctrine does not apply. But even if it did, it would allow the government to *terminate* (not approve) a nonconforming use after a reasonable time that allows a landowner to gradually phase out or recoup an investment in that use.

**(Choice C)** The doctrine of changed circumstances (ie, changed conditions) terminates or prevents the enforcement of a **real covenant or equitable servitude** that no longer provides its intended benefit—but it does not apply to zoning ordinances.

## Educational objective:

Variances are often granted if (1) enforcement of a zoning requirement would cause the landowner unnecessary hardship regarding the use of the land and (2) a variance would not be contrary to a public interest.

## 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).

## Analysis for granting variance

