

Iowa Supreme Court Comments on Use and Area Variances

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Does a footnote in a recent Iowa Supreme Court decision signal a change in the way Iowa courts will look at the standard for granting variances? That is the question raised by City of Johnston v. Christenson (case brief included in this issue). In this case, the landowner sought a special exception and a variance from the board of adjustment to build a large accessory structure on his property after a severe storm destroyed several smaller buildings. The case turned on other issues, but the Supreme Court engaged in a discussion of the distinction between “use” and “area” variances. After noting in the text of the opinion that Christenson had applied for “an area variance under the general variance powers of the board of adjustment,” the court, in footnote 4, stated:

“although most zoning ordinances, including those in this case, make no mention of the types of variances, courts have traditionally developed a distinction between ‘use variances’ and ‘area variances.’ A use variance permits a use of land for purposes other than those prescribed by the zoning ordinance, and is based on the standard of unnecessary hardship. An area variance does not involve a use prohibited by an ordinance, but concerns a deviation from specific requirements such as height limitations, setback lines, size regulations and the like. An ‘area variance’ is normally unrelated to a change in use and traditionally justifies a slightly lesser showing than required to justify a ‘use variance.’” (citations omitted).

Iowa caselaw has never recognized a distinction between use and area variances, always applying the unnecessary hardship standard to both types. Most states, either through state statute or court doctrine, have acknowledged that a lower standard should be applied to area variances because such changes generally don’t result in a fundamental change in the character of the neighborhood. Generally, the term “practical difficulties” is used to describe this lower standard. While the precise showing of practical difficulties is not consistently defined from state to state, it generally requires the board of adjustment to evaluate the degree of financial harm to the applicant if the variance is not granted; the degree of change the variance will bring about; whether other, less drastic alternatives exist; whether the hardship is self-imposed; and the potential for harm to the neighbors.

A footnote in a case does not create a new standard, per se, but courts have been known to advance new legal theories and standards in footnotes as a “heads up” that change may be coming (or welcomed if offered by a city in its zoning ordinance). If the court follows through in a later case by recognizing different standards for use and area variances, it would be bringing Iowa in line with the majority of states. In reality, this change would also bring the stated law more in line with the actual practice of boards of adjustment around the state.