

HOUSE BILL NO. 2723

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KORMAN.

6452H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 89.090, RSMo, and to enact in lieu thereof one new section relating to boards of adjustment.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 89.090, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 89.090, to read as follows:

89.090. 1. The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 89.010 to 89.140 or of any ordinance adopted pursuant to such sections;

(2) To hear and decide all matters referred to it or upon which it is required to pass under such ordinance;

(3) In passing upon appeals ~~[where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance,]~~ to vary or modify the application of any of the regulations or provisions of such ordinance relating to the construction or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, **and** public safety and welfare secured ~~[and substantial justice done,]~~ **when:**

(a) Relief is necessary because of the unique character of the property rather than for personal considerations of an applicant; and

(b) Applying the strict letter of the ordinance would result in unnecessary hardship;
and

(c) Imposition of such a hardship is not necessary for the preservation of the plan;
and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18 **(d) Granting the variance will result in substantial justice to all; or**
- 19 **(e) The request of the applicant is reasonable and all adjacent property owners**
- 20 **agree in writing;**

21

22 provided that, in any city with a population of three hundred fifty thousand or more inhabitants
23 which is located in more than one county, the board of adjustment shall not have the power to
24 vary or modify any ordinance relating to the use of land. **As used in this section, "unnecessary**
25 **hardship" shall include a situation where, if property is used only for the purpose allowed**
26 **in a zoning ordinance, the return on the property to the owner would be less than fifty**
27 **percent of the return if the property is used as requested in the variance.**

28 2. In exercising the above-mentioned powers such board may, in conformity with the
29 provisions of sections 89.010 to 89.140, reverse or affirm wholly or partly, or may modify the
30 order, requirement, decision or determination appealed from and may make such order,
31 requirement, decision or determination as ought to be made and to that end shall have all the
32 powers of the officer from whom the appeal is taken. The concurring vote of four members of
33 the board shall be necessary to reverse any order, requirement, decision, or determination of any
34 such administrative official, or to decide in favor of the applicant on any matter upon which it
35 is required to pass under any such ordinance or to effect any variation in such ordinance except
36 as provided in section 305.410.

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