



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

January 29, 1975

Opinion No. 75-32

Mr. Charles Stough
City Attorney of Eudora
Ninth and Kentucky
Lawrence, Kansas 66044

Dear Mr. Stough:

You have requested our office's opinion regarding the powers of the Board of Zoning and the City of Eudora. I understand the facts in the problem to be as follows: The city of Eudora, Kansas, adopted zoning ordinances in 1971. In the Comprehensive Plan the area in question was zoned industrial with residential use permitted. A residential owner in the area wishes to expand his home by adding a "trailer" to his house. The ordinance permits the use of land for "trailers" but restricts such use to Mobile Home Parks. The Building Inspector of the City of Eudora refused the residential owner's request. The owner made an application to the Board of Zoning Appeals for a variance.

The question being asked is whether the Board may grant such a variance.

The law governing such situations is contained in K.S.A. 12-715:

"'Variances.' To authorize in specific cases a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to

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special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning ordinance in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met: (1) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant; (2) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (3) that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; (4) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and (5) that granting the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. K.S.A. 1974 Supp. 12-715 (a)

The situation presented by this inquiry seems to be within the limits prescribed by this statute and therefore is permissible. However, the decision of the particular merits of this application are matter properly considered by the Board itself and not by this office.

The Board has the authority to grant the variance requested if it finds: (1) the situation is unique, (2) adjoining landowners will not be adversely affected, (3) that a denial would work an undue hardship on the family, (4) that the general welfare

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of the community will not be adversely affected, (5) and the spirit and intent of the zoning ordinance will not be adversely affected. Upon making such findings, the Board has the power to grant the Variance requested.

I hope that this satisfactorily answers your question. If our office can be of any assistance to you in the future, please do not hesitate to call on us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:PAH:kj