



## Building an addition onto your house? Know about 'variances'

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Let's say you want to put an addition on your house and the local zoning bylaw requires your lot to have at least 10 feet between any structure and your side property line.

Unfortunately, that granite ledge in your back yard makes it impossible to build the addition without encroaching into the setback area. Just when you think all hope is lost, your architect suggests that you might have a good case for a "variance."

What's a variance? It's more or less a way around the local bylaw.

Massachusetts has a three-part test for variance applications. You have to meet each of the three requirements in order to prevail, and it won't necessarily be easy. Judges have described the variance as a "disfavored form of relief" that should be granted "sparingly."

That said, here's what you will have to show:

**Unique conditions:** You have to prove that the lot is affected by unique conditions. If your lot is irregularly shaped or has a lot of slopes, that may work. If you have a copy of the plot plan or photographs, that will suffice for evidence. But your lot really does have to be unusual. If every other property in the neighborhood has a slope, for example, yours is not unique.

**Substantial hardship:** If your conditions make it extremely difficult — or impossible — to build an addition in conformance with the law, you may have satisfied this part of the rule. It doesn't work if hardship is self-created. For example, a hardship cannot be established if a property owner creates the legal problem by subdividing a larger, developable parcel into two lots. Also, financial hardship is not a valid basis for variance relief; the hardship must be based on the unique circumstances directly affecting the property.

**The public good:** Consider this requirement met if your addition would be good news for others. If you are able to build something on your property that brings it in harmony with other yards in the neighborhood, the variance can be granted without substantial detriment to the public good.

There is never a guarantee that a requested variance will be approved. And this introduction is not a comprehensive examination of the variance law. To increase your chances of success, you should consult with an attorney whose practice includes zoning issues.

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## Quick Answers: Real Estate

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**Q. If my basement leaks and the problem was never mentioned when I bought the house, can I sue the former owner?**

**A.** In Massachusetts, there is no requirement for a seller to disclose known defects. However, if a potential buyer inquires about a specific condition, then the seller has a duty to fully disclose the extent of his knowledge.

Moreover, courts may side with the buyer in cases in which the buyer enters into a transaction because of a seller's false statements, misrepresentation or bad faith.

Many real-estate brokers ask the seller to complete a seller's disclosure form, which asks whether the basement ever leaked or flooded or whether there are any known defects in the basement or other structural elements of the home. The disclosure form is then given to the buyer prior to the home inspection.

**Q. This may sound silly, but my neighbor's dog is always pooping on my lawn. Do I have any recourse?**

**A.** If you have raised this issue with your neighbor and it continues to be a problem, then you should contact your local animal-control officer. Most cities and towns have regulations that prohibit pet owners from allowing their animals to be at large, to the injury or nuisance of others.

Many communities also require dog owners to maintain their pets under complete and effective control (usually by means of a leash) whenever they are not within the boundaries of their owners' property. In many cases, violations are subject to fine on a per-offense basis.

**Q. My neighbor's yard is in such bad shape that it is an eyesore. Is there anything I can do?**

**A.** Short of living in a planned community with rules that require yards be landscaped and maintained in a certain way, you may be out of luck — unless the yard constitutes a public-health or safety issue.

However, if your neighbor's "eyesore" also includes junked cars, appliances, machinery or similar debris, you should contact your local building inspector or code enforcement officer to determine whether your town has a junk bylaw.

**Q. The house I wanted to buy failed a radon test. Should I insist that the seller fix this?**

**A.** Radon is a naturally occurring radioactive gas that is suspected as a contributing cause of lung cancer. Radon typically enters a home through cracks in a foundation, sump hole or dirt basement floor.

There is no legal requirement that the seller remediate radon in a particular property, just as there is no requirement that a buyer purchase a property that fails a radon test.

In the residential marketplace, sellers are usually motivated to

particularly common problem with beach access.

Even if you want to be a friendly neighbor, it would be prudent to take steps to bar such access from time to time (perhaps once a year) and to inform those people who use your property as a short cut that they are doing so with your permission.

*SOURCE: attorneys Timothy C. Twardowski and E. Christopher Kehoe*