

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



Nesar Nusraty
11018 Gainsborough Road
Potomac, Maryland 20854

August 29, 2011

Re: BZA Application No. 18293 (1819 - 10th Street, N.W.) Nesar Nusraty

Dear Mr. Nusraty:

The Office of Zoning (OZ) received the above-cited application on August 17, 2011. A review of your application filing has determined that it is missing the detailed burden of proof statement required by BZA Application Form 120, Instruction 5.E. This statement is required to explain in your words how your application meets the specific three main tests for variance relief cited in 11 DCMR subsection 3103.2. I have attached a copy Form 121 – Applicant's Burden of Proof for Variance and Special Applications as a resource in preparing your statement. Please supplement your filing with the detailed burden of proof statement as soon as possible to facilitate the timely scheduling of a hearing in this matter.

Please call me on (202) 727-6311, if you have any questions relevant to the foregoing.

SINCERELY,

**RICHARD S. NERO, JR.
Acting Director, Office of Zoning**

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18293
EXHIBIT NO. 13

Attachment

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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Board of Zoning Adjustment
District of Columbia
CASE NO. 18293
EXHIBIT NO. 13



APPLICANT'S BURDEN OF PROOF FOR VARIANCE AND SPECIAL EXCEPTION APPLICATIONS



The Board of Zoning Adjustment has jurisdiction over a number of matters including applications for variances from the strict application of the Zoning Regulations, applications for special exceptions to allow certain uses, and appeals from the decisions of government officials involving zoning matters.

Generally, there are two types of variances: **area variances** and **use variances**. An area variance is needed when the owner wishes to make some change to the physical structure or lot itself and the property does not or will not comply with the Zoning Regulations in some respect. A use variance is needed when the owner wishes to use the property in a way that is not permitted in that zone district under the Zoning Regulations. The granting of a variance relates only to the specific piece of property, which is the subject of the application. It will not change the zoning classification of the lot or square. In granting a variance, the Board simply allows the owner to do something with the property without requiring strict compliance with the Zoning Regulations.

A **special exception** is applied for where the owner wishes to institute a use that is pre-deemed compatible with the Zoning Regulations for that particular district, but which needs to be reviewed by the Board to ensure that certain negative impacts will not occur.

Variances and special exceptions are not automatically granted upon application and hearing before the Board. The applicant is responsible for meeting the burden of proof associated with the particular relief requested. It is required that one review the following provisions of the Zoning Regulations as they relate to their request and submit a detailed statement explaining how the application meets the specific tests identified in the Zoning Regulations for a variance (area and/or use), special exception, or other specific relief being sought with their application.

Section 3103.2 - Variances:

With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-41.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code § 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship. Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

This provision has three main tests that must be proved by the applicant.

- ☐ 1). The physical characteristics of the property:
 - a. makes it difficult for the owner to use the property in compliance with the Zoning Regulations (area variance) – ie. shape and size of the property, unusual topography or slope, soil problems, etc.
 - b. creates financial hardship for the owner in using the property consistent with the Zoning Regulations (use variance)
- ☐ 2). Granting the application will not be of substantial detriment to the public good – ie. traffic, noise, lighting, etc.
- ☐ 3). Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete a Request for Reasonable Accommodation form.

District of Columbia Office of Zoning

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APPLICANT'S BURDEN OF PROOF FOR VARIANCE AND SPECIAL EXCEPTION APPLICATIONS



Section 3104.1 – Special Exceptions:

Pursuant to authority contained in the Zoning Act, the Board is authorized to grant special exceptions, as provided in this Title, where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps, subject in each case to the special conditions specified in Title 11 DCMR.

In addressing these standards the applicant must address the following:

- ☐ 1). How the proposed special exception will be consistent with the general intent and purpose of the Zoning Regulations and Map; and
- ☐ 2). How allowing the use will not adversely affect the use of the neighboring property -- ie. traffic, noise, lighting, etc.

In addition, as all special exceptions are of a specific type, each type is represented in a certain section of the Zoning Regulations. Section 3104.1 sets forth the general standards that must be met for all types of special exception relief, while the other provisions cited in the Zoning Administrator's memorandum detail the remaining standards that must be met.

For example, a special exception for a private school in a residential district involves two Sections of the Zoning Regulations – §3104.1 (regulating special exceptions in general) and §206 (regulating private schools). To meet the burden of proof one would provide evidence to address the general standards of §3104.1, as well as the more specific standards of §206. Beware the provisions sometimes overlap, but generally one would prepare their case as follows:

- ☐ 1). **§206.1 - Refers applicant to §3104.1**
Indicate how granting a special exception for the private school will be in harmony with the general purpose and intent of the Zoning Regulations; and present evidence demonstrating that the private school will not tend to adversely affect the use of the neighboring property.
- ☐ 2). **§206.2**
Indicate how the location of the private school will not be objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions;
- ☐ 3). **§206.3**
Indicate the number of parking spaces being provided and whether the required number of spaces will be provided.

If relief is being sought for a special exception and a variance, be sure to address all of the applicable special exception provisions, then address the variance standards for each variance.

NOTE:

For further information on the Board of Zoning Adjustment public hearing process, please visit the Office of Zoning website at www.dcoz.dc.gov. All applications are referred for review and recommendation to the D.C. Office of Planning (OP) and the Advisory Neighborhood Commission within which the affected property is located. Their reports are given "great weight" in the BZA decision-making process. Applicants are strongly recommended, at the time of filing a Form 120 application, to make contact with these agencies to discuss the merits of their application. OP can be reached at (202) 442-7600.