



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

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Board of Zoning Adjustment
District of Columbia
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