Form 121-Side 1 Case No. _____

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.

BZA Case No. 16963 Exhibit No. 5

Subsection 3103.2:

As set forth in D.C. Code Ann §5-424(g)(3) (1981), "[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 Ann. §5-413 to 5-432 (1981) 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."

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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)—i.e. 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 Regulation (use variance)
- 2). Granting the application will not be of substantial detriment to the public good—i.e. traffic, noise, lighting, etc.
- 3). Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.

RESPONSE

1(a). **The physical characteristics of the property will not be changed. The property will be utilized as is.**

1(b). **Tenant will utilize the property consistent with the current Zoning Regulation (use variance).**

2. **Granting this application will not be of substantial detriment to the public good. Tenant will have no effect on traffic, noise, and or lighting in the neighborhood.**

3. **Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map. Tenant will not conflict with current zoning. The residential character will not be disturbed. Tenant will perform services for the Community and is not a industrial service. Services to be performed are passive. The facility has been in use for the past four years. The services require no money to change hands and operations will be during normal working hours. The activities will not take away from the general intent.**

Form 121 –Side 2
(Revised 03/15/02)

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 Section 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.

RESPONSE to 206.1-3

Granting a special exception for the Community Empowerment Training Academy (CETA) will be in complete harmony and general purpose and intent of the Zoning Regulations because it is CETA's mission to provide residents with occupational skills training programs and services which will allow them to take the steps necessary to become socially and economically self sufficient.

The Academy's operations will not adversely affect the use of the neighboring property. All school activities will be held inside the building and participants will commute to and from classes via public transportation or personal automobile. Access to the bus line is directly in front of the property. Ample parking spaces are available and adequate security is provided throughout the hospital and hospital grounds.

D. A detailed statement explaining how the application meets the specific tests identified in the Zoning Regulations for variance (area and /or use), special exception or other specific relief being sought. (See Form 121 – Applicant's Burden of Proof for Variance an Special Exception Application).