GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



January 15, 2003

BY TELECOPIER

Pablo Martinez
1207 Clifton Street, N.W.
Washington, D.C. 20009-5208

Re: BZA Application No. 16987 (Rear Deck Addition) Burden of Proof for a Variance Application

Dear Mr. Martinez:

The Office of Zoning has reviewed your application filed on January 3, 2003, for compliance with the BZA Application Form 120 filing requirements. As Rick Nero discussed today by telephone with you, your file is incomplete with regards to how you meet the burden of proof for the variances being requested. Please be advised that you must supplement your filing by January 31, 2003, with a written explanation of how you meet the three main tests necessary to support variance relief. Attached to this letter is a copy of BZA Form 121 (Applicant's Burden of Proof for Variance and Special Exception Applications) for your use in preparing your response. In your conversation with Rick Nero you mentioned that the subject deck was already built when you purchased the property. Please include in your burden of proof statement the chronology of events that culminated in the filing of this application.

Please call Rick Nero, Chief, Zoning Services and Quality Control on (202) 727-2806, if we can be of further assistance in this matter.

BZA
Case No. 16987
Exhibit No. 17

SINCERELY,

JERRILY R. KRESS, FAIA
DIRECTOR

Attachment
rsn

Board of Zoning Adjustment
District of Columbia
CASE NO. 16987
EXHIBIT NO. 17

Form 121 – Side 1
(Revised 03/15/02)

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.

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."

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.

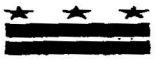
Confirmation Report – Memory Send

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Date & Time: 15-Jan-2003 04:28pm
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Government of the District of Columbia
OFFICE OF ZONING



FACSIMILE TRANSMISSION COVER SHEET

To:	Pablo Martinez	**From:**	Rick Nero
Location:		**Fax:**	(202) 727-6072
Fax:	(202) 776-9572	**Phone:**	(202) 727-6311
Phone:		**Date/Time:**	1-15-03 @ 3:18
Re:	Ltr. dated 1-15-03	**Number of Pages Including Cover:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

Comments:

If you do not receive all of this transmission, please contact sender immediately.

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