Form 121 — Side 1
(Revised 03/15/02)

Case No. 17244

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.

Jerrily R. Kress, FAIA – Director
District of Columbia Office of Zoning

441 4th Street, N.W. Ste. 210-S, Washington, D.C. 20001
(202) 727-6311 * (202) 727-6072 fax * www.dcoz.dc.gov

Reviewed and complied with (See attached Amended Burden of Proof Statement) - SIGNED, SEP 25, 04

BZA
Case No. 17244
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO. 17244
EXHIBIT NO. 22

Form 121 — Side 2
(Revised 03/15/02)

Case No. 17244

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

Subsection 3104.1:

Pursuant to authority contained in the Zoning Act, the Board is authorized to grant special exceptions, as provided inthis 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 ADS - Already reviewed and Approved by Historical Preservation Board

☑ 2.) How allowing the use will not adversely affect the use of the neighboring property – ie. traffic, noise, lighting, etc. ADS - Complying, as proven at Public Hearing - Historic Preservation Board

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 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.

NOTE:

For further information on the Board of Zoning Adjustment public hearing process, please visit the Office of Zoning website at http://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) 442-7602.

Reviewed and complied with (see attached Amended Burden of Proof Statement) - SIGNED SEP 25, 04 ADS

AMENDED BURDEN OF PROOF – Attachment to Form 121

Ref.: 1555 9th Street, NW - BZA Application 17244

D.C. OFFICE OF ZONING
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2004 SEP 29 PM 1:47

Washington DC, September 17th, 2004

Government of the District of Columbia - Office of Zoning
441 4th Street, N.W. Ste. 210
Washington, DC 20001

I, Alejandro Soriano, single fee owner of the property known as 1555 9th Street, NW, Square 397, Lot 819, hereby declare the following to be true, in relation to the specific tests required for special exception relief under sections 3104.1 and 223, of the zoning regulations.

As specified in Section 3104 of the DCMR, Additions to one-family dwellings or flats are to abide by the conditions specified in Section 223, Additions to One-Family Dwellings or Flats. Proof of compliance with the aforementioned regulations has been submitted with the application and highlighted in the following paragraphs:

- Section 223.1: As per attached review by the Office of Zoning, all requirements for an R-4 zone are met, except for the unavoidable fact the building was originally built in 1890 occupying more that 60% of the lot (66%)
- Section 223.2: The addition does not have any adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular light; air and privacy of neighboring properties are not affected. The proposed addition has been consulted with the neighbors both through a Public Hearing of the Historic Preservation Board held on March 4th, 2004 in which all neighbors were fully supportive of the project and there was no opposition whatsoever and through the consulting mechanisms of the ANC2C01, which has expressed support in writing on August 19th, 2004. The addition, together with the original building, as viewed from the street, alley, and other public way, does not visually intrude upon the character, scale and pattern of houses along the subject street frontage, in fact it has been designed along with the Historic Preservation Planner in order to enhance the value of the whole block of houses, while ensuring that the small third floor addition applied for (only 480 sq.ft.) is fully withdrawn from the street frontage. Plans, photographs and elevation and section drawings accompany the application and prove the proposed addition is shorter and lower than adjacent buildings and does not negatively affect views from public ways.
- Section 223.3: The lot occupancy together with the addition does not exceed seventy percent (70%) in this R-4 District. Moreover, the proposed addition will be constructed entirely on top of an existing two-story building that has been there since 1890. The proposed addition does not expand a single inch on what was originally built in 1890.
- Section 223.4: Special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent



and nearby properties has already been factored into the proposed addition project as a result of close work with the City's Historic Preservation Planners.

- Section 223.5: The proposed addition does not entail the introduction or expansion of a nonconforming use as a special exception, as the relief sought relates only to an area variance exception. Unless relief is granted by the BZA, an undue burden would be imposed on us and other owners of historical properties, that besides abiding by historical preservation requirements, will see their rights limited by area variances originated as far as in 1890, even though the spirit of the zoning codes and even the immediate neighbors are enjoying up to a 100% usage of their lots because somebody built on them some years ago.

We are applying for a partial third floor addition totaling 480 square feet, in order to build a master bedroom and a bathroom for ourselves on what is now an existing roof deck. The above-mentioned house was originally built in 1890 and was built to occupy 66% of the lot. The lot is now zoned R-4, thus there is a limitation of 60% on lot occupancy (Section 403). Apart from that *one and only code non-compliance* that originated in 1890 and is now hard to resolve in a Historical Preservation Area, I hereby declare that the proposed addition meets all other requirements for an R4 zone, including number of stories (3), maximum height (less than 40 feet), total building floor area ratio (none prescribed in an R-4 zone), rear yard, side yard and removal from lot lines.

In summary, in light of the evidence presented and the support of the ANC2C01 and our neighbors, I hereby declare that the special exception sought is 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 Zoning Maps



Alejandro Soriano
Owner of 1555 9th St. NW, Washington DC
Mailing Address: 1300 New York Ave., NW, B708, Washington DC 20577
Phone: 202 744 22 71 (m) or 202 623 1684 (w)