

D.C. Code § 6-641.07

LEXIS DISTRICT OF COLUMBIA CODE ANNOTATED
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*** CURRENT THROUGH D.C. LAW 16-35, EFFECTIVE OCTOBER 22, 2005 ***
*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 2, 2005 ***

TITLE 6. HOUSING AND BUILDING RESTRICTIONS AND REGULATIONS
CHAPTER 6. ZONING AND HEIGHT OF BUILDINGS
SUBCHAPTER IV. ZONING REGULATIONS; BOARD OF ZONING ADJUSTMENT

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 6-641.07 (2005)

§ 6-641.07. Board of Zoning Adjustment [Formerly § 5-424]

(a) A Board of Zoning Adjustment is hereby created which shall be composed of 1 member of the National Capital Planning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; 1 member of the Zoning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; and 3 other members appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia, each of whom shall have been a resident of the District of Columbia for at least 3 years immediately preceding his appointment and at least 1 of whom shall own his own home.

(b) The representative of the National Capital Planning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The representative of the Zoning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The terms of the 3 members designated by the Mayor of the District of Columbia shall be 3 years each, excepting that, in the case of the initial appointments, 1 shall be for a term of 1 year and 1 for a term of 2 years. In case of any vacancy in the position of any of the 3 members designated by the Mayor of the District of Columbia, the same shall be filled for the remainder of the term.

(c) The Zoning Commission may provide and specify in its zoning regulations general rules to govern the organization and procedure of the Board of Adjustment not inconsistent with the provisions of this subchapter, and the Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in § 6-641.03. The Board of Adjustment shall choose its Chairman and its other officers. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

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Board of Zoning Adjustment
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CASE NO. 17356
EXHIBIT NO. 37

(d) The regulations adopted by the Zoning Commission may provide that the Board of Adjustment may in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. The Commission may also authorize the Board of Adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

(e) The Board of Adjustment shall not have the power to amend any regulation or map.

(f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter. The Mayor of the District of Columbia may require and fix the fee to be charged for an appeal, which fee shall be paid, as directed by said Mayor, with the filing of the appeal; provided, that no citizens' association, or association created for civic purposes and not for profit shall be required to pay said fee. There shall be a public hearing on appeal.

(g) Upon appeals the Board of Adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Mayor of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to this subchapter;

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such Board is required or authorized by the regulations to pass;

(3) Where, 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 this subchapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such 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;

(4) In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of this subchapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.

(h) The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order.

(i) Nothing herein contained shall prohibit the Zoning Commission from providing by regulation for appeals to it from any action of the Board of Zoning Adjustment.

HISTORY: June 20, 1938, 52 Stat. 799, ch. 534, § 8; 1973 Ed., § 5-420; 1981 Ed., § 5-424; Feb. 24, 1987, D.C. Law 6-191, § 2, 33 DCR 7939a.

NOTES:

SECTION REFERENCES. --This section is referenced in § 1-523.01, § 1-1106.02, § 6-641.12, and § 6-641.13.

LEGISLATIVE HISTORY OF LAW 6-191. --Law 6-191, the "Board of Zoning Adjustment Confirmation Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-493. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor of November 25, 1986, it was assigned Act No. 6-242 and transmitted to both Houses of Congress for its review.

EDITOR'S NOTES. --Public Law 109-54, 435, effective Aug. 2, 2005, provided: "Congressional Security Relating to Certain Real Property. (a) In General.-- Except as provided under subsection (b)--

"(1) the District of Columbia Board of Zoning Adjustments and the District of Columbia Zoning Commission may not take any action to grant any variance relating to the property located at 51 Louisiana Avenue NW, Square 631, Lot 17 in the District of Columbia; and

"(2) If any variance described under paragraph (1) is granted before the effective date of this section, such variance shall be set aside and shall have no force or effect.

"(b) Conditions for Variance.-- A variance described under subsection (a) may be granted or shall be given force or effect if--

"(1) the Capitol Police Board makes a determination that any such variance shall not--

"(A) negatively impact congressional security; and

"(B) increase Federal expenditures relating to congressional security;

"(2) the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives approve such determination; and

"(3) the Capitol Police Board certifies the determination in writing to the District of Columbia Board of Zoning Adjustments and the District of Columbia Zoning Commission.

"(c) Effective Date.-- This section shall take effect on the date of enactment of this Act and apply to the remaining portion of the fiscal year in which enacted and each fiscal year thereafter."

ANALYSIS



Construction



Certificates of occupancy.



Eligibility for variance



Evidence sufficient



Findings



--Insufficient



--Sufficient



Jurisdiction



Nonconformity



Open meetings.



Powers of Board.



Remodeling



Requirements



Self-imposed hardship



Uniqueness



--Granted



--Grounds



--Not granted



--Not required



CONSTRUCTION.

Where applicant, sought a variance eliminating its off street parking spaces because there were a large number of spaces in the immediate vicinity that if the parking spaces were required they would be inordinately expensive, the application was for an area variance, rather than a use variance, and applicant had the burden of showing that compliance with the applicable zoning regulation would cause "peculiar and exceptional practical difficulties." *Association for Preservation of 1700 Block of N St., Etc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 384 A.2d 674 (Mar. 29, 1978).

Improvident large financial expenditure in purchasing property zoned for single family use thinking it could be used as a two-family flat and the large size of the house on the property that made it impractical for single family use by the buyers did not constitute a hardship entitling buyers to a use variance, as defined in former D.C. Code § 5-420(3) [now see this section], where a reasonable use could be made of the property in a manner consistent with the zoning regulations as a single family residence. *Silverstone v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 396 A.2d 992 (Jan. 12, 1979).

Under former D.C. Code § 5-420 [now see this section], where only the failure of the subject property to conform to the minimum lot requirement of 2,700 square feet prevented property owner's securing conversion of his two-family flat into a three-unit apartment facility as a matter of right, the Board of Zoning Appeals found that the sole relief requested by property owner related to the area of his lot, and so properly employed the "practical difficulties" test appropriate to consideration of an area variance. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 397 A.2d 936 (Jan. 23, 1979).

Under former D.C. Code § 5-420 [now see this section] an application for a variance should have been denied where the application revealed no unique circumstances of the property which would support a variance; the personal misfortune of the property owner and the history of the property may have had some bearing on "practical difficulties" or "exceptional and undue hardship" determinations of the second statutory requirement, but was inapplicable to the first condition that the property itself be unique. *Capitol Hill Restoration Soc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 398 A.2d 13 (Feb. 8, 1979).



CERTIFICATES OF OCCUPANCY.

Certificates of occupancy enjoy a presumption of validity, and attacks on such certificates belong not before the courts, but before the administrator and then the D.C. Board of Zoning Adjustment. *Burka v. Aetna Life Ins. Co.*, 945 F. Supp. 313 (D.D.C. 1996).

ELIGIBILITY FOR VARIANCE.

One with actual or constructive knowledge that under the zoning code and regulations a particular use would be nonconforming, is ordinarily not entitled to receive a use variance. *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 338 A.2d 428 (May 30, 1975).



EVIDENCE SUFFICIENT.

Where applicant, a private club, sought a variance eliminating its off street parking spaces, applicant met its burden of showing that compliance with the applicable zoning regulation would cause "peculiar and exceptional practical difficulties" where the irregularly shaped site and the design problems stemming from the proposed indoor pool rendered construction of the required off street parking impractical and inordinately expensive. *Association for Preservation of 1700 Block of N St., Etc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 384 A.2d 674 (Mar. 29, 1978).

Court on appeal confirmed grant of zoning variance for building extension where historical factors, relationship with Congress, and past actions of the Board of Zoning Adjustment (BZA) and Zoning Commission created an extraordinary or exceptional situation or condition; there was ample evidence that the variance would not harm the public interest and undue hardship would have been caused where plaintiffs had relied in good faith on previous assurances of the zoning authorities. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (Nov. 5, 1979).

Court affirmed Board of Zoning Adjustment (Board) denial of an application for an area variance where the Board found that the affirmative action of the applicant in making his property non-conforming warranted the application of the hardship doctrine, and granting a variance for an undersized lot in the area would have impaired the zoning plan. *Carliner v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 412 A.2d 52 (Mar. 7, 1980).

Evidence was sufficient to support a Board of Zoning Adjustment decision denying petitioner a 24.68% below minimum total area and 68% below minimum backyard zoning variance to build a home on an undersized lot on the ground that the proposed residence would violate former D.C. Code § 5-420(b) [now see this section] by causing substantial public detriment and impairment of the zoning plan where the proposed residence would be sandwiched between two houses with only an eight foot buffer between the rear of the adjoining property and would be only thirteen feet off the side of another home. *Roumel v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 417 A.2d 405 (June 16, 1980).



FINDINGS.

-- INSUFFICIENT.

No administrative body fulfills its quasi-judicial responsibility by merely repeating the applicable statutory language in making its conclusions; nor does a summary of the testimony and contentions constitute findings of fact in the absence of a statement revealing which factual contentions the board of zoning adjustment accepts. *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 338 A.2d 428 (May 30, 1975).



-- SUFFICIENT.

Under former D.C. Code § 5-420 [now see this section], where the Board of Zoning Appeals (BZA) found that the two-family character of the subject property made the marketability of its approximately 3,000 square feet as a single unit unfeasible, the structure of the property worked against its effectively functioning as a two-unit apartment house, renting the basement to roomers accessory to the first floor apartment was a use generally restricted to

single-family dwellings, and conversion of the subject property to a three unit configuration would generate a return for the owner as opposed to the loss he would incur from a two unit configuration, the finding made by the BZA of "practical difficulties" was neither arbitrary nor capricious. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 397 A.2d 936 (Jan. 23, 1979).

JURISDICTION.

The Board of Zoning Adjustment did not have jurisdiction to consider the Embassy of Benin's application to construct a radio tower and antenna at the site of its chancery because such application was subject to the procedures established by the Foreign Missions Act (FMA), 22 U.S.C.S. § 4301 et seq.; Congress intended the FMA to govern issues relating to chanceries in the District, which included Benin's application. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning*, App. D.C., 534 A.2d 310 (1987).

NONCONFORMITY.

A variance was properly granted by the Board of Zoning Administration to George Washington University (GWU) to extend the nonconforming floor area ratio of a campus building used for health care services, where GWU demonstrated that it could not expand and consolidate its inadequate outpatient facilities except by building an addition, and that requiring GWU to build elsewhere would result in a huge expense to GWU, whereas the addition was not detrimental to the public good and did not impair the intent and purpose of the zoning plan. *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 582 A.2d 949 (1990).

OPEN MEETINGS.

Although D.C. Code § 6-641.07 provides that all meetings shall be open to the public, deliberations of the District of Columbia Board of Zoning Adjustment after the meeting may be in private. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 364 A.2d 610 (1976).

POWERS OF BOARD.

Board of Zoning Adjustment's construction of its own authority was not clearly wrong, and it reasonably concluded that it lacked jurisdiction to prohibit university from acquiring property for purpose of using it as a law school, where such acquisition was a matter-of-right use of property located off-campus. *Spring Valley Wesley Heights Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 644 A.2d 434 (1994).

Authority to invoke Residential Housing Anti-Conversion Act (§ 45-2561) resides in Mayor and the Mayor's delegate, not the Board of Zoning Adjustment, whose powers are limited to those set forth in subsection (g) of this section. *Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 640 A.2d 179 (1994).

The Board of Zoning Adjustment (BZA) erred when it ruled the proposed addition to a George Washington University medical building did not require a variance from the zoning regulation barring additions that extend a nonconforming aspect of a structure devoted to a conforming use, and the special exception granted by BZA for the university construction in a residential district did not correctly deal with the issues of traffic congestion and diminished light and air. *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 527 A.2d 1242 (1987).

Order of District of Columbia Board of Zoning Adjustment (BZA), which granted the application of the Historic D.C. Property Group (intervenor) for an area variance on the subject property, was reversed, where the intervenor failed to meet its burden of showing some extraordinary or exceptional situation related to the property; the BZA did not grant the variance order on the basis of factors to the specific property, but rather, granted it on the

basis of similarities to other properties in the area. *Capitol Hill Restoration Soc'y v. District of Columbia Bd. of Zoning Adjustment Bd.*, App. D.C., 534 A.2d 939 (1987).

Where the Board of Zoning Adjustment (BZA), in granting a nonprofit corporation which benefitted African American children and their families a use variance to allow property located in a residential zone to be used as office space, imposed restrictive conditions, remand for rehearing was required; because no valid public policy was served by confining a variance to an individual entity, and any personal condition imposed by the BZA to restrict a use variance was unlawful. *National Black Child Dev. Inst., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 483 A.2d 687 (1984).

REMODELING.

The Court of Appeals reversed a District of Columbia Board of Zoning Adjustment decision granting the application of property owners for an area variance for the construction of a 175-foot addition to their home in the Georgetown Historic District because the court found no substantial evidence of record to support the Board's findings that the applicants had met their burden of demonstrating the property's uniqueness that is necessary before the Board may approve such a variance; the court rejected the applicants' argument that the uniquely narrow lot size caused them undue hardship, as defined in subdivision (g)(3), in remodeling to comply with the applicable zoning regulations. *Myrick v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 577 A.2d 757 (1990).

REQUIREMENTS.

The other extraordinary or exceptional situation or condition of a specific piece of property as stated in D.C. Code § 6-641.07(g)(3) need not have preceded the promulgation of the zoning regulation. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 579 A.2d 1164 (1990).

SELF-IMPOSED HARDSHIP.

Where church filed application for a variance from existing use to convert building to condominium units because church was 50 years old, had undergone many additions, had outgrown its location and was inefficient, appellate court found that most of the church's problems with the existing structure stemmed from its own design decisions over the years, and therefore, the Board of Zoning Adjustment's conclusion that the hardship was not "self-imposed" did not rationally follow from the facts. *Foxhall Community Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 524 A.2d 759 (1987).

UNIQUENESS.

Challenges to a District of Columbia Board of Zoning Adjustment (BZA) order concerning disputed variances, on issues of uniqueness and lack of harm to the public good, were upheld because the BZA's finding of uniqueness based on the existence of the easements across the rear yard was supported by substantial evidence in the record, which supported the finding that no public harm would result from granting the variances, but the BZA's findings were insufficient to support its conclusion that the applicants would suffer practical difficulties if made to comply with the zoning regulations pertaining to parking for single-family dwellings, and the case was remanded for further consideration as the BZA had failed to make findings on all material contested issues of fact. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 579 A.2d 1164 (1990).

-- GRANTED.

Where the District of Columbia Board of Zoning Adjustment (Board) granted intervenors a variance from the District's minimum lot-width requirement upon a finding of peculiar and

exceptional practical difficulties concerning intervenors property under former D.C. Code § 5-420(3) [now see this section], and permitted them to construct a single-family residence on the lot in question, and the difficulties were largely due to the error of zoning officials and the doctrine of self-created hardship was inapplicable on the facts, the decision of the Board was proper. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 388 A.2d 1233 (July 14, 1978).

-- GROUNDS.

A Board of Zoning Adjustment decision was vacated as it granted floor area ratio and height variances, and the case was remanded for further consideration because the reviewing court was unable to determine from the board's decision what noneconomic factors formed the basis of the decision and the board's disavowal of reliance on economic considerations may have reflected a misunderstanding of precedents; the board was required to explain the noneconomic reasons that justified the disputed variances or to expressly consider the evidence of economic feasibility offered in support of the application. *Tyler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 606 A.2d 1362 (1992).

-- NOT GRANTED.

Board of Zoning Adjustment properly rejected landlord's request for a variance where the landlord did not have a certificate of occupancy before the current tenant's use began; the use of the property, was an illegal use, rather than a nonconforming use within former D.C. Code § 5-419 [now see § 6-641.06a], and the landlord could not show hardship if the request were denied. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 376 A.2d 816 (July 13, 1977).

Board of Zoning Adjustment properly denied petitioner's request for a zoning variance to change the use of the premises from a grocery store to a commercial photography studio, both of which were non-conforming uses of the property, because there was no deprivation of all beneficial use of petitioner's property and there was no undue hardship, as required by D.C. Code § 6-641.07(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 357 A.2d 402 (May 19, 1976).

-- NOT REQUIRED.

Electrical cogeneration facility was an accessory use to intervenor's operation as a university, and no variance was required. *Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment Bd.*, App. D.C., 619 A.2d 940 (1993).

APPLIED in *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 291 (May 31, 1979); *Murray v. District of Columbia, Bd. of Zoning Adjustment*, App. D.C., 572 A.2d 1055 (1990).

CITED in *District of Columbia v. L.G. Indus.*, App. D.C., 758 A.2d 950 (2000); *Waste Mgt. of Md., Inc. v. State Bd. of Zoning Adjustment*, App. D.C., 775 A.2d 1117 (2001).

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