

# **HOME RULE CHARTER**

## **AND D.C. CODE**

### **PROVISIONS ON**

## **PLANNING AND ZONING**

*Bill McDonald 21633 Email.com  
Wednesday 11/08  
Bill. Ron*

**Factors considered in residential university determination.** - Grant of an exception to permit a university in a residential district cannot stand where the Board fails to find that it is not likely that noise, traffic, number of students, and other conditions generated by the university's presence will become objectionable to neighboring property owners. *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 365 A.2d 372 (1976).

**Economic feasibility a factor to consider.** - Economic feasibility may be considered in deciding whether area variances should be granted. *Tyler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 606 A.2d 1362 (1992).

**Location and expansion of university.** - The Board of Zoning Adjustment correctly concluded that it lacked the authority to prohibit American University from occupying commercially zoned off-campus property for the purpose of constructing a new law school on that property. *Spring Valley Wesley Heights Citizens Ass'n v. Board of Zoning Adjustment*, App. D.C. 644 A.2d 434 (1994).

**Use of prior positions by Board.** - While the Board is not bound for all time by its prior positions, it should consider any long-standing interpretations of zoning regulations which it has approved in the past. *Smith v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 342 A.2d 356 (1975).

**Refusal to consider greater income not error in rezoning decision.** - Evidence of greater income from certain property if it is rezoned does not establish any abuse in the Commission's action in declining to rezone. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

**Purpose of variance procedure.** - The variance procedure specified in this section is designed to provide relief from the strict letter of zoning regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights, and prevent usable land from remaining idle. *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972).

**A general reliance on the "purpose and intent" of the zoning plan cannot substitute for compliance with the purposely stringent requirements for a variance.** *Myrick v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 577 A.2d 757 (1990).

**Unique circumstances must support variance.** - To support a variance, the difficulties or hardships must be due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood. *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972), (but see *National Black Child Dev. Inst., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687 (D.C. 1984)).

**Property was unique.** - Board's finding of uniqueness based on the existence of particular easements was supported by substantial evidence in the record and was neither arbitrary nor capricious. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 579 A.2d 1164 (1990).

**Property was not unique.** - Neither the property's situation in an historic district nor the evidence justified a finding that the property was unique and intervenor failed to meet the first requirement for a variance. *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 534 A.2d 939 (1987).

Evidence was insufficient to support a finding of uniqueness despite narrowness of the lot and the fact that the structure had been in existence for more than 100 years, as there was nothing in the record to indicate that this was not the case for any other home in the area. *Myrick v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 577 A.2d 757 (1990).

**Hardship must uniquely affect petitioner's property.** - To show that property is unique under subsection (g)(3) means the property owner must present proof that the circumstances which create the hardship uniquely affect the petitioner's property. *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia*

Bd. of Zoning Adjustment, App. D.C. 534 A.2d 939 (1987).

**Where the circumstances which create the hardship or difficulty affect the entire neighborhood rather than merely a specific piece of property,** the problem is properly addressed by seeking amendment of the regulations from the Zoning Commission. Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 534 A.2d 939 (1987).

**Circumstances affecting whole area remedied by zoning amendment.** - If there are circumstances which affect the whole area, the proper remedy is to seek an amendment of the zoning regulation rather than a variance as to a particular parcel. Palmer v. Board of Zoning Adjustment, App. D.C. 287 A.2d 535 (1972).

**Past zoning history of parcel can be taken into account in uniqueness facet of the variance test.**

Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 407 A.2d 1091 (1979).

**Neighborhood detriment is not a criterion for an authorization of a variance.** Salsbery v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 318 A.2d 894 (1974), aff'd, App. D.C., 357 A.2d 402 (1976).

**Added expenses alone do not entitle a property owner to a variance.** Barbour v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 358 A.2d 326 (1976).

**Regulation consistent with section.** - A regulation which by use of the disjunctive "or" sets up separate statutory requisites to the granting of variances is consistent with this section. Wolf v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 397 A.2d 936 (1979).

**Section and zoning regulation establish dual statutory requisites to the granting of variances,** i.e., a showing of "practical difficulties" (for area variances) or "undue hardship" (for use variances). Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 409 A.2d 1067 (1979).

In order to obtain relief from enforcement of the zoning regulations under subsection (g)(3) of this section, an owner must demonstrate that either "practical difficulties" or "undue hardship" exists, which renders enforcement unfair. Lenkin v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 428 A.2d 356 (1981).

**More stringent showing is required for use variance than for area variance.** Palmer v. Board of Zoning Adjustment, App. D.C. 287 A.2d 535 (1972).

**Distinction between criterion for granting variances.** - The criterion of "practical difficulties" for granting a variance applies to area variances, while the criterion of "undue hardship" applies to use variances. Palmer v. Board of Zoning Adjustment, App. D.C. 287 A.2d 535 (1972).

**Landowner must meet 3 requirements for a use variance:** (1) Property with a unique physical aspect or another "extraordinary or exceptional situation or condition"; (2) undue hardship; and (3) no harm to the public or to the zone plan. Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 407 A.2d 1091 (1979).

**Use variance cannot be granted unless reasonable use cannot be made of property in a manner consistent with the zoning regulations.** Palmer v. Board of Zoning Adjustment, App. D.C. 287 A.2d 535 (1972).

**Preexisting conditions may justify variance.** - The express wording of this section does not limit the circumstances or conditions that can provide a basis for a variance to those that came about subsequent to adoption of the zoning regulations. Gilmartin v. District of Columbia Bd. of Zoning Adjustment, App. D.C. 579 A.2d 1164 (1990).

branch of the variance test. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 407 A.2d 1091 (1979).

Good faith, detrimental reliance on the zoning authorities' informal assurances may be taken into account in assessing an intervenor's undue hardship under the variance law. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 407 A.2d 1091 (1979).

**Board lacks authority to grant variance in order to assure landowner a profit.** *Taylor v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 308 A.2d 230 (1973).

Inability to put property to more profitable use, or a loss of economic advantage, is not sufficient to constitute "hardship," such as will warrant granting a use variance. *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972).

**Variance denied where remodeling and renting difficulties constitute hardship.** - A denial of a variance to permit an office use is not an error where the only hardship the petitioners are able to point to that peculiarly affects their interest is the cost of remodeling for residential purposes and the anticipated, but unproven, difficulty in renting. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 376 A.2d 816 (1977).

**And where property usable for permissible development.** - Where the property for which a variance is sought can reasonably be used for a development which is permissible in the District, the exceptional and undue hardship necessary for a grant of a variance does not exist. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 357 A.2d 402 (1976).

**And where premises adaptable or rentable.** - The inability of the tenant or the owner to use the building as a public hall under existing parking conditions does not constitute a sufficient enough "hardship" to warrant granting a use variance where there is no evidence that the owner cannot reasonably adapt the premises or find a tenant to produce a reasonable income. *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972).

**Burden of showing hardship not met.** - Where structure in question, though originally constructed as a flat, was changed in 1950 into a single family dwelling and was utilized as such when the 1958 zoning regulations were adopted, which prohibited flats, and can continue to be used as a single family residence, and is capable of being used in a manner consistent with the zoning regulations, the owners have not met the requisite burden of showing such an extraordinary or exceptional situation or condition that the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owners. *Silverstone v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 396 A.2d 992 (1979).

**Location and expansion of foreign missions.** - Foreign Missions Act provides the exclusive procedure available for consideration of location and expansion of foreign missions and Board of Zoning Adjustment was without jurisdiction to review foreign embassy's application solely under District of Columbia law. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 534 A.2d 310 (1987).

**Communications facilities for chancery.** - Issue of such primary importance as the furnishing of adequate communications facilities to a chancery is subject only to the provisions of the Foreign Missions Act. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 534 A.2d 310 (1987).

**After applicant has demonstrated uniqueness and undue hardship, he must show 3rd element** of the variance test, namely, that the variance will not harm the public or undermine the zone plan. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 407 A.2d 1091 (1979).

**But Board should not consider 3rd element where hardship not found.** - Where the Board rules

against authorizing a variance for lack of hardship, it should not consider whether the intended use would have an adverse effect upon the character and development of the neighborhood and would substantially impair the purpose, intent, or integrity of the zoning regulations and maps. *Salsbury v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 318 A.2d 894 (1974), aff'd, App. D.C., 357 A.2d 402 (1976).

**Variance properly granted.** - Where owners acted in good faith reliance on the implicit findings of zoning office personnel that their irregular lot conformed to lot width requirements though in fact the lot was not in conformance, the Board properly granted a variance since the lot was unusable for any other purpose, the variance would not substantially harm the public and the hardship to the owners was not the result of any affirmative act on their part. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 388 A.2d 1233 (1978).

**Board to grant an area variance where it finds 3 conditions:** (1) The property is unique because, *inter alia*, of its size, shape, or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan. *Roumel v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 417 A.2d 405 (1980).

The grant of an area variance is only appropriate where the Board concludes, based on the particular facts of the case, that 3 conditions exist: (1) The property is unique because of size, shape, topography or another extraordinary or exceptional situation or condition; (2) the owner is encountering exceptional practical difficulties as a result of the strict application of the zoning regulation to his particular property; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan. *Carliner v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 412 A.2d 52 (1980); *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 527 A.2d 1242 (1987).

**Burdensome restrictions must be shown.** - Generally, to warrant granting an area variance, it must be shown that compliance with area restrictions would be unnecessarily burdensome. *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972).

**Nature and extent of burden is best left to facts and circumstances of case.** *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972).

**For substandard lot, "peculiar and exceptional difficulties" proved.** - Where a substandard lot is the subject of an application for an area variance, proof of "peculiar and exceptional difficulties" is involved. *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 338 A.2d 428 (1975).

**But property owner is not required to make stringent showing of an undue hardship with respect to an area variance.** *Palmer v. Board of Zoning Adjustment*, App. D.C. 287 A.2d 535 (1972).

**Conditions for grant of area variance to public service organization.** - Where a public service organization applies for an area variance, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 527 A.2d 1242 (1987); *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 582 A.2d 949 (1990).

**Self-created hardship is not considered in an application for an area variance**, as that factor only militates against a use variance. *Association for Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 384 A.2d 674 (1978).

Where asserted hardship - the configuration of the existing church structure - was created by the owner itself, it therefore, could not serve as the basis for a variance under this section according to the "self-created hardship rule". *Foxhall Community Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C. 524 A.2d 759 (1987).