Zoning in the District of Columbia

Burden of Proof

Special Exception
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.
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.
Special Exception

As all special exceptions are of a specific type, each type is represented in a different section of the Zoning Regulations. Subsection 3104.1 of the Zoning Regulations (11 DCMR) 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.
Examples of Special Exceptions

§ 223 – A special exception for an addition to a one-family dwelling or flat in a residential district.

§ 206 - a special exception for a private school in a residential district.

§202.10 – A special exception for an accessory dwelling in a residential district.

§205 – A special exception for a child development center in a residential district.
Burden of Proof

The Board is authorized to grant special exceptions, 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, subject in each case to the special conditions specified in the Zoning Regulations.
Burden of Proof

In addressing these standards the applicant **must** address the following:

- How the proposed special exception will be consistent with the general intent and purpose of the Zoning Regulations and Map;

- How allowing the use will not adversely affect the use of the neighboring property – i.e. traffic, noise, lighting, etc.; and

- Any other specific standard cited in the Zoning Regulations for that section.
Burden of Proof

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 §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:
§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;

§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; and

§206.3
Indicate the number of parking spaces being provided and whether the required number of spaces will be provided.
Burden of Proof with a Variance

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.
Granting of a Special Exception

The granting of a special exception relates only to the specific piece of property which is the subject of the application. It will not change the zoning classification of the square or lot. In granting a special exception, the Board simply allows the owner to do something that has been pre-deemed compatible with the Zoning Regulations provided conditions are met to avoid any adverse impacts of the approval.

Thus, a special exception is a conditioned approval and often, the approval order may contain specific conditions that must be met in order to be in compliance with the order and to obtain building permits and certificates of occupancy.
PLEASE NOTE:

All applications are referred for review and recommendation to the Office of Planning (OP) and the Advisory Neighborhood Commission (ANC) within which the affected property is located. Their reports are given “great weight” in the BZA decision-making process. Applicants are strongly encouraged to contact these agencies to discuss the merits of their application. Not doing so can delay a decision on the application. OP can be reached at (202) 442-7600. ANC information can be obtained by contacting the Office of Advisory Neighborhood Commissions at (202) 727-9945.
For more information

www.dcoz.dc.gov

dcoz@dc.gov

(202) 727-6311

441 4th Street, NW, Suite 200-S, WDC, 20001

Judiciary Square Metro

Find us on Facebook!