Zoning in the District of Columbia

Burden of Proof

Variance
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.
Area Variance / Use Variance

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.
Examples of Area Variances

Examples of area variances are requests to deviate from:

Requirements that affect the size, location, and placement of buildings and other structures such as height, floor area ratio, lot occupancy, yard width and depth, and minimum court size.

For instance:
Variance from the number of stories requirements of §400.1 to allow the construction of a two-story addition on an existing detached dwelling.
Example of an Area Variance

Examples of area variances are requests to deviate from:

Minimum parking or loading requirements to an extent greater than what may be permitted by special exception or by matter-of-right.

For instance:

Variance from the parking space location requirements of §2116.12 to allow for a grocery store and apartment house development.
Examples of Use Variances

Examples of a **use variances** are requests to deviate from:

A use that is not permitted by right or special exception in the zone district where the property is located.

**For instance:**

Variance from the use provisions of §320.3 to convert a single-family dwelling into a flat (two-family dwelling).
Example of a Use Variance

Examples of a use variances are requests to deviate from:

A use that is expressly prohibited in the zone district where the property is located.

For instance:

Variance from the use prohibited uses in § 602 to allow the establishment of a gasoline station in the CR zone.
Burden of Proof

Variances 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 the applicant review the following provisions as they relate to the request and submit a detailed statement explaining how the application meets the specific tests identified in the Zoning Regulations for an area and/or use variance.
Burden of Proof – Area Variance

The physical characteristics of the property makes it difficult for the owner to build or 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.

Granting the application will not be of substantial detriment to the public good – ie. traffic, noise, lighting, etc.

Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.
Burden of Proof – Use Variance

The physical characteristics of the property creates exceptional and undue hardship for the owner in using the property consistent with the Zoning Regulations (use variance).

Granting the application will not be of substantial detriment to the public good – ie. traffic, noise, lighting, etc.

Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.
Granting of a Variance

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 square or lot. In granting a variance, the Board simply allows the owner to do something with the property without requiring strict compliance with the Zoning Regulations.

Note: 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. OP can be reached at (202) 442-7600. ANC information can be ascertained by contacting the Office of Advisory Neighborhood Commissions at (202) 727-9945.
For more information

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