# CITY OF CONCORD

*New Hampshire's Main Street™*

*Zoning Board of Adjustment*

## Proposed Findings of Fact – Variance

**For all variance applicatons to the Zoning Board, provide all proposed findings of fact upon which you would like the Board to base the decision. Findings of fact can be brief points, but proposed findings must be submitted for <u>each</u> of the 5 items below.**

**Variance Requested:**_____
**Property Address:**_____

1. Granting the variance would not be contrary to the public interest because:

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*Note – Condition Explained: This condition requires the Board to find that the granting of the variance will cause no harm (such as altering the essential character of the locality and/or threatening the health, safety, or general welfare of the public). To be contrary to the public interest, the variance "must unduly and to a marked degree" violate the basic zoning objective of the zoning ordinance.*

*By way of example, the proposed factual findings could include statements to show that the variance will cause no harm, and to the extent applicable, the applicant may provide facts to explain why the requested variance: (1) is consistent with the character of the existing neighborhood; (2) will not create traffic congestion or interfere with traffic safety; (3) will not create public safety concerns; and/or (4) provides a type of development that is needed or desired by the community, such as housing or redevelopment of an underperforming site.*

2. If the variance were granted, the spirit of the ordinance would be observed because:

*Note – Condition Explained: The New Hampshire Supreme Court has said that a variance should not be granted when it is contrary to the purpose of the ordinance (for example, protecting against congestion, overcrowding, adequate buffers between incompatible uses). It is also appropriate for the Board to consider the cumulative impacts of a variance if it was granted to everyone in a similar situation.*

*By way of example, the proposed factual findings could include statements to show that the variance will not undermine the goals of the zoning ordinance, and to the extent applicable, the applicant may provide facts to explain why the requested variance: (1) fits within the essential character of the neighborhood; (2) will not negatively impact abutters or the public; (3) the proposal will provide a public benefit and will not create any harm; and/or (4) the proposal will be an improvement to current conditions.*

**3.** Granting the variance would do substantial justice because:

*Note – Condition Explained: This condition is to balance the rights of the lot owner with the rights of the public. The granting of a variance is justified when it provides relief to a reasonable request by an applicant that outweighs the impact to the general public.*

*There are no rules that specifically measure justice, and the Board must determine each case individually. However, by way of example, the proposed factual findings could include statements to show that the variance would do substantial justice, and to the extent applicable, the applicant may provide facts to explain why the requested variance: (1) is consistent with the area's present use; and (2) would be beneficial for the applicant, and how that benefit will outweigh the impact to the general public.*

**4.** If the variance were granted, the values of the surrounding properties would not be diminished because:

*Note – Condition Explained: This condition is to ensure that the project does not decrease values to surrounding properties. In considering whether an application will diminish surrounding property values, it is appropriate for the Board to consider not only expert testimony from realtors and/or appraisers, but also from residents of the affected neighborhood and/or their own experience and knowledge of the area. It will be the Board's role to weigh competing evidence.*

*By way of example, the proposed factual findings could include statements to show that the variance would not decrease the value and/or have an impact on surrounding properties, and to the extent applicable, the applicant may provide facts to explain that: (1) there are adequate buffers between the applicant's lot and abutters; (2) the use will be consistent with abutting uses; (3) the proposal will be an improvement to site; and/or (4) the proposal will not interfere with the use of surrounding properties.*

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The proposed use is reasonable.

**OR ALTERNATIVELY**

B. Explain how, if the criteria in subparagraph (A) above are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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*Note – Conditions Explained:*

***A.*** *In the first instance, the proposed factual findings need to show that there are special conditions of the property that make it distinguishable from other properties in the area, and to the extent applicable, the applicant may provide facts to explain why the property is special such as its unique lot size, shape, topography, location/layout of existing buildings, or previous uses.*

*The proposed factual findings also need to show that the proposed variance will not impact the general purposes of the ordinance and it is also reasonable, and, to the extent applicable the applicant may provide facts to explain why the proposal would not affect the neighboring properties and municipality's zoning goals, would be beneficial over the current conditions on the site, will provide needed housing, and/or will not overburden the property and/or cause other negative impacts that are sought to be prevented by the ordinance.*

***B.*** *In the alternative, if the criteria in paragraph A cannot be established, an unnecessary hardship will be deemed to exist if and only if, owing to special conditions that distinguish it from other properties in the area, the property cannot be used in strict conformance of the ordinance, and a variance is therefore necessary to enable a reasonable use of it.* ***If there is any reasonable use (including an existing use) of the property that is permitted under the ordinance, this alternative is not available.***