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GUIDANCE FOR THE FIVE VARIANCE CRITERIA

An application for a variance from the Zoning Ordinance must answer all questions listed in the application as well as any extra considerations required by the section of the Zoning Ordinance that is the object of the variance request. It is important to include supporting information (e.g. plans, maps, photos, expert opinions, etc.). The burden of proof is upon the applicant; the applicant must convince the Zoning Board of Adjustment (ZBA) all five criteria have been met.

The following guidance addresses the variance review criteria based on "*The Board of Adjustment in New Hampshire*" (NH OEP, November 2014). The ZBA, during its review of an application, is encouraged to pay close attention to the review standards and potential impacts of a proposal upon neighboring properties, City facilities (including roads and emergency services), public utilities, natural resources and easements or conservation areas.

Criterion 1: Public Interest

A way to consider this specific case is whether the proposal will have a detrimental impact on the community including neighboring properties, community facilities, public safety, and welfare.

- Is the proposal contrary to the intent of the Zoning Ordinance?
- Does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

Criterion 2: Spirit of the Ordinance

While the first criterion is specific to the local impacts of the proposed project this criterion, though very similar, may consider the broader implications of the variance application in the context of the overall Zoning Ordinance and Zoning Map. It is important to note the Zoning Ordinance is an attempt to implement the vision for land use and development as outlined in the Master Plan.

- Are the proposed uses outlined in this application appropriate for this zoning district?
- Are there specific statements or provisions of the Zoning Ordinance that prevent these proposed uses or the scale of these uses?

Criterion 3: Substantial Justice

The NH OEP publication provides very short guidance on this: "Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by granting a variance that meets the other four qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance."

Criterion 4: Surrounding Property Values

Inherent in this criterion is a value judgement that will be subjective to the property owner and those objecting to the application. It is also important for each member of the ZBA to use his/her personal experience and local knowledge to decide this point.

Criterion 5: Unnecessary Hardship

This criterion is likely the most challenging to address because of its lack of clarity over time. There are two parts to this criterion that may be addressed. Most commonly an applicant addresses 5(A). Under this part there is an attempt to, "balance the public good resulting from the application of the ordinance against the potential harm to a private land owner," (NH OEP). Criterion 5(B) has been included in state law to address the rare occurrence when enforcement of the Zoning Ordinance fundamentally deprives the owner of any reasonable use of the land - an unconstitutional taking.