

## Variance Worksheet – Finding of Facts

*Variances.* Except as provided herein to hear and decide applications for variance from the terms of this chapter, because of exceptional narrowness, shallowness or shape of a specific piece of property which on June 16, 1981, was a lot of record or where, **because of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a piece of property**, the strict application of this chapter would result in peculiar and exceptional practical difficulties to exception or undue hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance the board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purposes of this chapter. Before any variance is granted, the board must find all of the following, which shall be recorded, along with any imposed conditions or restrictions, in minutes and records and issued in written form to the applicant to constitute proof of the variance:

a. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

The shape of the property is irregular. The portion of the property in which the variance is being requested narrows down significantly (approximately 70') to the remaining property located within the B-3 zoning.

The current use of the land has asphalt pavement all the way to the property line of the adjacent R-1B zoned property. This project will be removing some of the existing asphalt paving and thus creating more of a buffer than currently exists.

b. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

By following the strict application of this chapter, the project would require the loss of nearly ¼ of the Display Parking lot for new automobiles. This loss of use, would likely make the property undesirable for the new use as proposed.

c. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.

This project is proposing to reduce the encroachment of asphalt paving from the current B-3 zoned property toward the currently zoned R-1B property.



d. Reasons that the variance will preserve, not harm, the public safety and welfare and will not alter the essential character of the neighborhood.

All existing vegetation will remain in place along the property line. The project will install an 8' high wooden, opaque fence along the Southern boundary where the variance is being requested. The project is also proposing to remove a portion of the existing asphalt paving from abutting the adjacent property line and pulling it back to 2' off the property line at the narrowest point and increasing as heading West to a distance of 20.7' off the property line. The project will also install the necessary deciduous trees and shrubs along this newly installed buffer.

This project proposes to demolish the existing building of nearly 30' in height and replacing with a new automobile display lot. The proposed opaque fence will completely block the site of the new construction area versus the current view of the existing structure.

Further, a variance may be granted only if the Board finds that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and this chapter. Variances shall not be granted permitting an increase in floor area or density above the maximum permitted by the zoning district; allowing a use other than those specifically authorized by this chapter in the applicable zoning district; or from the denial of a zoning permit when such denial is due to the fact that such lot has no frontage on a public street unless such lot was a lot of record on June 16, 1981.

Hardship - There is no definition of a "hardship". Some guidelines, based on legal precedent, for applying the concept of unnecessary hardship are:

1. The premises of cannot be used in a manner permitted by the Zoning Ordinance unless the variance is granted.
2. A strict application of the terms of the Zoning Ordinance precludes its use for any purpose to which the land is reasonably adopted.
3. Inability to put the property to its most profitable use DOES NOT constitute a "hardship".
4. Mere inconvenience to the applicant is not sufficient grounds for determining a "hardship". In granting a variance the BZA may not make any decision that is contrary to the purpose and intent of the Zoning Ordinance.