

“D” OR “USE” VARIANCES

Form 6

N.J.S.A. 40:55d-70(d) authorizes zoning boards to grant use variances *in particular cases for special reasons*. This is known as “positive criteria”.

The term “special reasons” has been interpreted by the New Jersey courts to mean that granting the proposed variance must promote one or more of the purposes of zoning as set forth at *N.J.S.A. 40:55D-2 (a) through (o)*.

The notable exception to this interpretation is that when a zoning board concludes that a variance will “promote the public health, safety, morals, and general welfare” pursuant to subpart (a) of that statute (and when the use in question has not been confirmed as “inherently beneficial”), the zoning board must also confirm that:

- (a) granting the variance will promote the public good ***because the proposed use is particularly well suited to the proposed location***; and
- (b) granting the variance ***is not inconsistent with the intent and purpose of the master plan and zoning ordinance***. (According to case law, the purpose of this “enhanced quality of proof” is to “satisfactorily reconcile the grant of a use variance with the ordinance’s continued omission of the proposed use from those permitted in the zone”.)

In all use variance applications the applicant must also satisfy the “negative criteria” by proving, usually through a site plan review, that the requested variance can be granted:

- (c) ***without substantial detriment*** to the public good, and
- (d) ***without substantially impairing*** the intent and the purpose of the zone plan and the zoning ordinance.