

DETERMINATIONS

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions or circumstances that exist which are peculiar to the land that prevent the applicant from conformance with the zoning requirements. The lot is a corner lot that is ample for the intended use and is bordered on the south by an un-constructed alley.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

Several of the neighboring properties in this subdivision and surrounding subdivisions are bordered by unconstructed alleys that have similar fences or hedges built or planted in the required clear vision area for these alleys. In addition, there are several home in this area that have fences or plantings over 30 inches in height bordering driveways. The 12-foot grass boulevard, part of the adjacent public right of way, exists throughout the subdivision and provides amply clear vision area for most driveways. There have been 2 clear vision variance requests granted in the past 10 years, one of those for a fence of 4 feet in a front yard and clear vision area of a driveway. Denying this variance would deprive the applicant of rights commonly enjoyed by surrounding property owners.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting the variance would not grant a privilege to the applicant that is not already enjoyed by others in the neighborhood. Staff discovered several other properties in the subdivision with fences or hedges within the required clear vision area of the unconstructed alleys and for driveways. The BOA has granted 2 similar variances from the clear vision regulations. The City Engineering Division had no objection to granting the variance and requested 1 condition of approval.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

Granting the variance does not conflict with the general purpose and intent of the zoning regulations and the growth policy.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending the following conditions for the requested variance:

1. The variance is to allow a 6-foot fence in the required clear vision area for an alley and a driveway for the re-construction of an existing 6 foot fence. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 16, Block 6 of Country Club Heights Subdivision generally located at 2244 Fairview Place.

3. The fence shall be re-constructed in substantial conformance to the drawings submitted to the Planning Division with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.
5. If the alley is ever developed, the fence will be brought in to compliance with clear vision regulations in place at that time and at the property owners' expense.
6. The owner will submit a fence permit application within 3 months of Board of Adjustment approval and complete the construction within 6 months of Board of Adjustment approval.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and

Staff recommends the applicant be required to submit a fence permit application within 3 months and complete the project within 6 months of the variance approval.

7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The granting of this variance would not allow a use that is not allowed in the zoning district – fences are allowed in the R-96 zone.