

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 a minor arterial street.

- 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;**

The Planning Division discovered 26 residences built within the required arterial setback of Poly Drive between Zimmerman Trail and 38th Street West. This represents the majority of homes along this section of Poly Drive. Most of those structures are between 50 feet and 60 feet of the centerline of Poly Drive. This section of Poly Drive remains a minor arterial although traffic volume is low west of Zimmerman Trail. The BOA has granted 3 arterial setback variances in the area. 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 numerous properties in the area within the required setback for Poly Drive. The BOA has granted 3 similar variances from the arterial setback in this area. The City Engineering Division had no objection to granting the variance.

- 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 decrease in setback from 70 feet to 65 feet:

1. The variance is to allow a 65-foot setback to the centerline of Poly Drive for the construction of a garage space. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 41, Block 3 of Poly Vista Estates Subdivision generally located at 3759 Poly Drive.
3. The additional garage space shall be 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. The owner will submit a building permit application within 3 months of Board of Adjustment approval and complete the construction within 18 months of Board of Adjustment approval.

6. Failure to begin or complete the approved actions on the variance will void the approved variance.

7. 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 building permit application within 3 months and complete the project within 18 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 – garages are allowed in the R-96 zone.