

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 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 only 40 feet in width while the majority of lots in this subdivision are at least 50 feet in width.

- 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 several residences built between 3 and 5 feet of property lines in this subdivision. The BOA has granted 9 similar side 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 residences. The BOA has granted 9 similar variances from the side setback in this area.

- 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 8 feet to 1 foot 9 inches:

1. The variance is to allow a 1 foot 9 inches to the side property line for the construction of a 2nd story on an existing dwelling. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 41, 42 and the East 12.3 feet of Lot 40, Block 5, Yellowstone Addition Subdivision, a 5,600 square foot parcel of land generally located at 724 Custer Avenue.
3. The 2nd story 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 for the 2nd story addition 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 – 2-story dwellings are allowed in the R-60 zone.