

DETERMINATIONS

The Board of Adjustment, before it grants a variance shall determine:

- 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 and circumstances that are peculiar to the land that create a hardship. The property to the west of the subject property is currently land locked and has no access to a public right of way. The reduction in lot size for the subject property will allow ample space to provide an access to the adjacent properties to the west as well as maintain access for this property.

- 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;**

Approving this variance would not give the applicant any privilege that is denied others in the area. There have been 7 variance requests in the Agricultural-Open Space zoning district since 2004, with 5 being approved and 2 denied. Staff is aware of at least 3 similar variance requests approved in the Agricultural-Open Space zoning since 2004: One for property at 4733 Georgina Dr. that was a request for a variance from 10 acres to one 1 acre (approved); one at 2046 Mary Street from 10 acres to 1 acre (approved); and one at 1900 43rd St. W., from 10 acres to 1 acre (approved). Denial of the requested variance would deprive these owners of rights commonly enjoyed by others in the same zoning district.

- 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 confer on the applicants a special privilege that is denied other land in the district. Land-locked parcels are rare but create special circumstances that need to be addressed to provide access as applicable and possible.

- 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 this variance will be in harmony with the general purposes and intent of the zoning regulations. Section 27-102 of the zoning code indicates that the purposes of the regulations are “to conserve the value of buildings, stabilize property values, ... to promote the interest of health, safety and general welfare, ... and to provide adequate open space for light and air ... by governing the height and size of buildings, the percentage of lots that may be occupied, the size of yards and open spaces, ... and the locations and use of buildings...”. This variance is requested to provide access to property currently unusable due to inadequate legal and physical access.

- 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 conditions of approval as follows:

1. The variance is to reduce the required lot area from 10 acres to allow a minimum lot area of 7.62 acres in an Agriculture-Open Space zoning district on the West ½ of the West ½ of Lot 1 in Section 2, Township 1 North, Range 26 East, a 10.13 acre parcel of land and no other variance is intended or implied by this approval.
 2. The applicant will submit a certificate of survey amendment/lot line relocation within 60 days of Board of Adjustment approval.
 3. 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 is recommending conditions to require a certificate of survey amendment submittal within 60 days.
- 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.**
Granting of variance will not allow a use that is prohibited.