

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 not any special circumstances existing on this property that would create a hardship that is peculiar to this land. The applicant could use the property in conformance with the adopted regulations.

- 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;**

There are several subdivisions and properties within the area that have either received variances from the clear vision requirements or have perimeter fences with similar setbacks for clear vision. Construction of a perimeter fence in conformance with the adopted regulations (10 feet by 55 feet) would deprive this property owner of rights commonly enjoyed by other property in the same district. There are several fences constructed in adjacent subdivision that appear to be out of compliance with the clear vision requirements, but no record of a variance is on file.

- 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;**

The variance will not allow the applicant any special privileges. Other properties in the area appear to have fences within the established clear vision areas for driveways or street intersections. The applicant has prepared and submitted a site specific engineering study for the proposed clear vision areas. The study has been accepted by the City Traffic Engineer.

- 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;**

The variance is in harmony 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 increased maximum lot coverage variance request:

1. The variance approved is from 27-615(b) to allow a clear vision of 25 feet by 25 feet as measured at the property lines and as shown on the site plan and a variance from 27-604(c) to allow a fence over 4 feet in height in the front yard setback as shown on the site plan.
2. The variance is limited to Lots 1 & 36, Block 1; Lots 1 & 20, Block 2; and Lots 1 & 27, Block 5 of Silver Creek Estates Subdivision.
3. Construction of the fence at the corner lots will be done with site specific fence permits for each lot. Such permit shall be accompanied by an individual site plan and elevation drawing of the proposed fence.

4. Fence permits for the corner lots on 46th St West will be submitted within 30 days of Board approval and the construction completed within 3 months.
5. Fence permits for the corner lots on 50th St West will be submitted within 3 years of Board approval and the construction completed with 3.5 years of Board approval.
6. No construction on any fence will occur between 8 pm and 7 am daily.
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

The applicant will obtain a fence permit for the 4 corner lots on 46th St West within 30 days of approval and complete these fence sections within 3 months. The lots on 50th Street West are due in a later phase of the subdivision. Staff is proposing a 3 year time limit for fence permits and a 3.5 year time limit for completion for these 2 lots.

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 an allowed use in all residentially zoned districts in the city.