

## **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 with the land that create a hardship. In this situation, the structure was built prior to the current zoning requirements. The existing 4-plex structure is currently in conformance with lot size restrictions for RMF-R zoning districts. The property owner could add up to 2 additional units attached to the existing four-plex without a variance or lot split. However, remodeling the existing four-plex to add two new units would trigger extensive upgrades to the existing structure to meet building code as well as current site development requirements. There also have been variances that have been granted in the area for three-plexes and five-plexes on smaller lots than what is allowed by current zoning.

- 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 subject property is in a subdivision that began developing many years ago and over the years many changes and additions have happened that may or may not meet current code. There have been variances that have been granted in the area for three-plexes and five-plexes on smaller lots than what is allowed by current zoning. There are other properties in the neighborhood that have multiple dwelling units on smaller lots. Some properties have obtained variances in this subdivision while others have not. Therefore, allowing the applicant a variance for an existing four-plex on a 7,000 square foot lot does not deprive the applicant of rights commonly enjoyed by other properties in the same 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 this variance for the existing four-plex on a 7,000 square foot lot would not confer a privilege to this applicant that others in the subdivision do not have. There are many small lots in this subdivision that have existing multi-family buildings on them. But granting a variance for a newly created 7,000 square foot parcel that has not existing building on it, would confer on the applicant a special privilege.

- 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 for the existing four-plex 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 variance request for the existing four-plex:

1. The variance from 27-308 requiring a minimum lot area of 10,000 square feet for 4 dwelling units to allow 7,000 square feet. No other variance is intended or implied with this approval.

2. The variance is limited to the proposed lot 1B, Block 8, Sunnyside Subdivision, 2<sup>nd</sup> Filing generally located at 1048 North 23<sup>rd</sup> Street.
3. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.
4. 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 requested variance is to ensure the future opportunity to rebuild one 4-plex on a 7,000 square foot lot. There is no proposal to rebuild at this time; therefore it is not appropriate to place a time limit on this 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 already allowed in the zoning district – RMF-R zoning allows four-plexes.