

## **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 circumstances existing on this property creating a hardship that is peculiar to this land. The lot is narrow and the existing building is not oriented to the street front property line. The only available area not devoted to parking and drive aisles is on the east end of the building. There are no other areas on the property for an outdoor patio. The applicant could use the property in conformance with the adopted regulations and keep the outdoor patio in its current semi-useful state using umbrellas.

- 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 properties in the area that have received variances from the setback requirements for new buildings or building additions. The A+ RV and mini-storage complex at 3209/3213 Grand Avenue received a variance to reduce a setback from a residential zone from 15 feet to 0 feet for new construction of mini-storage warehouses. The patio and fencing existing on the site will not increase. The proposed pergola will be not be an enclosure but a more permanent solution than umbrellas. Denial of the variance would deprive this owner of benefits enjoyed by other property 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;**

The variance will not allow the applicant any special privileges. Other similar variances have been granted for new construction and for building additions.

- 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 is from Section 27-309 requiring a 20-foot front setback to allow a 5-foot front setback for the proposed un-enclosed 464 square-foot pergola cover for the existing patio.
2. The variance is limited to Lot 3, Block 1 Circle Fifty Subdivision generally located at 1430 Country Manor Boulevard.
3. The pergola will remain an unenclosed cover for the patio area.

4. The applicant shall submit a building permit for the pergola structure within 6 months of Board approval. The structure will be completed within 18 months of Board approval.
5. No construction or site work will commence before 7 am or go past 8 pm daily.
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**

The applicant will obtain a building permit for the pergola within 6 months of Board approval and complete the construction within 18 months of Board 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. Pergolas and patio covers are an allowed use in all commercial zoned districts in the city.