

## 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 constructed illegally.

- 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. Therefore, allowing the applicant a variance does not deprive the applicant of rights commonly enjoyed by other properties in the same district. However, the intent of the codes in place is to move neighborhoods and zoning districts toward compliance over time and try and address legally-non conforming structure and not have new structures built illegally that then must have variances from the codes.

- 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 would not confer a privilege to this applicant that is denied to other land in the same district. However, other variances have been granted for setbacks of existing structures that were constructed prior to zoning. In this case, the structure was constructed with full knowledge it was not in compliance with current zoning and building codes.

- 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 growth policy in so far that residential development is expected in residential zoning districts and infill projects on vacant lots in neighborhoods supports efficient delivery of services and neighborhood stability. However, granting this variance does not necessarily meet the general purpose and intent of the zoning regulations in that the intent of the codes in place is to try and move neighborhoods and zoning districts toward compliance over time and not have new structures built illegally that then must have variances from the codes.

- 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;**

The Planning Division is recommending denial of this variance request. **However, if the Board of Adjustment chooses to approve the variance; staff would recommend the following conditions for the variance:**

1. The variance request is from 27-308 requiring a minimum side setback of 8 feet for a 2-story structure to allow a minimum side setback of 5 feet and from 27-308 requiring a minimum rear setback of 15 feet to allow a minimum rear setback of 10 feet. No other variance is intended or implied with this approval.

2. The variance is limited to on Lots 39 & 40, Block 12, Suburban Subdivision.
3. This variance is limited to the existing structure. If the existing structure were destroyed by any means, it must be reconstructed to the current setbacks and site development requirements in place at the time it is reconstructed.
4. There will be no construction between 8 p.m. and 7 a.m. daily.
5. The applicant must submit and obtain a building permit to complete the renovations within 6 months of this variance approval.
6. In addition to an approved building permit issuance, the applicant must receive the required building inspections and obtain a certificate of occupancy to verify compliance within 18 months of the building permit issuance.
7. Failure to begin or complete actions required by this approval within the time limits set forth shall void this 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 requested variance is for the structure that has been partially constructed without the required permits. The applicant must submit and obtain an approved building permit to complete the construction within 6 months of this variance approval and obtain a certificate of occupancy to verify compliance within 18 months of the building permit issuance.

**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.