

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 with the benefit of an approved permit. Staff mistakenly approved the garage with living space assuming it had an internal connection to the existing house and did not classify as a duplex under the zoning code definition. Staff made an error in approving the permit, however the applicant did obtain a permit. Although there is an approved permit the building is still considered a non-conforming structure, and could not be reconstructed if it were destroyed by any means.

- 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 other properties in the surrounding neighborhoods that have multiple dwelling units on smaller lots. Therefore, allowing the applicant a variance for a duplex on a 7,500 square foot lot would 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 duplex on a 7,500 square foot lot would not confer a privilege to this applicant that others in the area do not have.

- 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 duplex 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 :

1. The variance from 27-308 requiring a minimum lot area of 9,600 square feet for a two-family dwelling on a 7,500 square foot lot. No other variance is intended or implied with this approval.
2. The variance is limited to the proposed Lot 10, Block 7, Rosedale Subdivision, 2nd Filing.
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 an existing duplex on a 7,500 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 – R-70 zoning allows duplexes.

ATTACHMENTS

- A: Zoning Map and Site Photos
- B. Applicant Letter and Site Plan
- C: Determinations