

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. The applicant is requesting this variance in order to reconstruct the existing structure on a non-conforming lot.

- 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. There have been variances that have been granted in the area for existing properties that do not meet the current required setback distance from property lines. There are other properties in the neighborhood that have single family and duplex dwelling units on smaller lots. Some properties have obtained variances while others have not. The literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, allowing the applicant a variance for one (1) two-family dwelling on a 5,166 square foot lot would not deprive the applicant rights commonly enjoyed by other properties in the 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 two single family dwellings on a 5,166 square foot parcel would give the applicant a special privilege; however, granting the variance for one two-family dwelling (duplex) on a 5,166 square foot lot for the existing duplex would not confer a privilege to this applicant that others in the subdivision do not have. There are small lots in this subdivision that have existing duplex buildings on them.

- 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 approval (as recommended by Staff) 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 20 foot front yard setback to allow a minimum 15 foot front yard setback, and allow one two-family dwelling on a 5,166 square foot parcel, in a Residential 7,000 (R-70) zone. No other variance is intended or implied with this approval.
2. The variance is limited to the south 65 feet of Lot 12 and Lot 13 and the south 65 feet of the west 20 feet of Lot 14, Block 6, Kober Subdivision, 3rd Filing, a 5,166 square foot parcel of land.
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 property owner shall apply for a building permit to reconstruct the existing duplex within 1 year after demolition of the existing structure. If the intention is to remodel the structure the property owner must comply with all Building codes included in remodeling and shall be completed within one year.

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 – Residential -7000 zoning allows two-family dwellings (duplexes).