

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 to the west at 438 and 438 ½ Terry Avenue appears to have built a dwelling in 1920 that was too close to the east property line. The subject property at 434 Terry deeded the west 5 feet of its property to resolve the setback issue. The result was the reduction of the lot area for 434 Terry from 7,000 square feet to 6,300 square feet. The remaining lots on this block of Terry Avenue are “whole” lots and do not have portions of lots deeded to adjacent lots.

- 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 to allow existing dwellings to be re-built or to add dwelling units to lots that are less than the required lot area. Eleven variances for lot area have been accepted and 10 of those were approved. One variance for 727 Terry was denied. This variance requested a variance to allow a proposed new 8-plex dwelling on a 14,000 square foot property. The BOA found the variance would have granted a use that was not common in the area and would be a special privilege to the applicant. There are several properties in the immediate area developed beyond the current zoning allowances for lot area including 2 multi-family apartments on the corner of Terry Avenue and 5th St West, and six units on a lot directly north of subject property. 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 existing and new construction in the neighborhood.

- 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 including the 2016 Growth Policy and the City’s Infill 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 lot size variance request:

1. The variance is from Section 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 6,300 square feet for the demolition of an existing single family residence and construction of 2 new single family structures in a Residential Multi-family-Restricted (RMF-R) zone.

2. The variance is limited to the east 20 feet of Lot 29 and Lot 30, Block 9, Yellowstone Addition Subdivision, a 6,300 square foot parcel of land, generally located at 434 Terry Avenue.
3. The owner will apply for a demolition permit for the existing structures within 6 months of Board approval.
4. The owner will remove any and all tree stumps from the grass boulevard between the sidewalk and the curb. The owner will plant at least 1 street tree in the boulevard to replace the dead trees that are to be removed. Applications for a tree planting permit must be obtained from the City Parks Department prior to planting.
5. The owner will apply for a building permit for the 1st new structure on the property within 8 months of Board approval.
6. The owner will complete the construction of the first new dwelling within 18 months of Building Permit issuance.
7. The owner will apply for a building permit for the 2nd new dwelling within 24 months of Board approval.
8. The owner will complete the construction of the second dwelling within 18 months of the Building Permit issuance.
9. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application for the dwelling units.
10. Failure to begin or complete the actions required by this variance approval will void the variance.
11. 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 Planning staff recommends a demolition permit be submitted for the existing structures within 6 months of the Board approval. Also, staff recommends a building permit application for the first dwelling be submitted within 8 months of Board approval and the construction on this dwelling be completed within 18 months of building permit issuance. Finally, staff recommends the building permit application for the 2nd dwelling be submitted within 24 months and completed within 18 months of 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 allowed in the zoning district. Single family dwellings are allowed uses in the RMF-R zone.