

## 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 circumstances that exist which are peculiar to the land. The applicant wishes to replace an old garage building with a new one that is larger than currently allowed under zoning. While the proposed height of the new garage will meet the height limitations in this zoning district, the height and mass of the proposed detached garage is significant compared to the homes and garages in the immediate area of the subject property.

- 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. Some properties have obtained variances while others have not. The literal interpretation of the provisions of this Chapter would not deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, denying the applicant a variance for a garage larger than allowed 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 a detached garage foot print of 1,250 square feet and a variance from the wall height restriction of no higher than the wall height of the existing single family dwelling at 10feet, to a height of 15'5" for the proposed garage, and a variance from the setback restrictions for a structure over 18 feet in height from 8 feet side to 5 feet as proposed in a R-96 zone would confer on the applicant a special privilege that others in the district 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 approval is not 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;**

**If the Board chooses to approve Variance #1250;** Staff is recommending the following conditions for the variance request;

1. The variance from 27-310(i) requiring a maximum garage foot print of 1,013 square feet to allow a detached garage foot print of 1,250 square feet; to allow a side wall height greater than 10 feet to allow a sidewall height of 15.5 feet; and from the required 8-foot side setback for a structure over 18 feet in height to allow a 5-foot side setback in a Residential 9,600 (R-96) zone No other variance is intended or implied with this approval.
2. The variance is limited to Lot 1, and the West 1.67 feet of Lot 2, Block 2 of Neidemire Subdivision, a 11,745 square foot parcel of land generally located at 1147

O'Malley Drive. Any future construction will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.

3. The applicant will submit and obtain a building permit for the addition within 6 months of variance approval and have the addition completed within 1 year.
4. The applicant will construct the addition in substantial conformance to the drawings submitted with this variance request.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed garage with the exception of this variance.
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**

*If the variance is approved*; the property owner shall apply for a building permit and construct the garage within 1 year after demolition of the existing structure.

**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 -9600 zoning allows detached accessory structures.