

## 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 property that is less than 9,600 square feet. A previous variance (Variance 1248) granted the applicant the ability to re-construct a two-family dwelling on a lot of 5,166 square feet. During this review process planning staff discovered 238 square feet of land area (the north 3 feet of the alley) was deeded to the property in 1954 but never added to the lot area by the Department of Revenue. This brings the lot area to 5406 square feet.

- 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. The former duplex on the property, recently demolished in preparation for re-construction, was constructed in 1946, and according to the owner was an agricultural building that was converted to this use. There have been variances that have been granted in the area for additional lot coverage. 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 to increase the lot coverage to 40% on a 5,406 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 40% lot coverage on this property would not be granting a special privilege to this owner. Other lot coverage variances have been granted and other property in the neighborhood are over the 30% maximum without the benefit of a variance.

- 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 maximum lot coverage of 30% to allow a maximum lot coverage of 40% based on the lot area of 5,406 square feet. 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, 3<sup>rd</sup> Filing, and the north 3 feet of the alley, a 5,406 square foot parcel of land.

3. The applicant will submit a building permit application within 4 months of Board approval.
4. The applicant will complete the construction of the approved two-family dwelling within 18 months of building permit approval.
5. There will be no construction activity before 7 am or after 8 pm.
6. The applicant will remove the existing storage building on the north east corner of the property once the duplex construction is completed.
7. Failure to start or complete actions required in this approval will void the variance.
8. 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.
9. 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 6 months of Board approval and complete the construction within 18 months of building permit 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 two-family dwellings (duplexes).