

PROPOSED DETERMINATIONS FOR VARIANCE #1279

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, an effort was made to utilize the property. Designing a facility with several stories in order to meet the required setbacks is less desirable for the type of facility they would like to build at this location.

- 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 have been similar variances granted in the area for setbacks as well as others. Therefore, allowing the applicant a variance from the required 10-foot side adjacent to street setback to allow 8 feet and from front setback of 20 feet to allow a 2-foot, does not 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 would not confer a privilege to this applicant that others in the district do not have. There have been similar variances granted in this and the surrounding subdivisions.

- 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. The development of this parcel is encouraged infill development the Growth Policy supports, as well as an asset to the neighborhood.

- 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 is from 27-309 requiring a minimum side adjacent to street setback of 10-feet to allow a setback of 8 feet and the front setback of 20 feet to allow a 2-foot. No other variance is intended or implied with this approval.
2. The variance is limited to the south Lots 4-12 and 17-21 of Block 59 Foster's Addition and Lots 4-11 of Block 269 Billings First Addition, generally located at the SW corner of 7th Ave. W & N 25 St.
3. The applicant will submit and obtain a building permit for the structure within 1 year and have the construction completed within 3 years.
4. The structure shall be built in substantial conformance to the site plan submitted with this application. The applicant must show compliance with the clear vision area requirements, and if needed the site plan modified to meet the code.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.

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6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. The applicant shall meet all other city code requirements for the proposed clinic with the exception of 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**

Staff is recommending the applicant have 1 year to obtain the building permit for the structure and 3 years to complete the construction.

**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.