



## Legislation Details (With Text)

**File #:** ID 21-0308    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Other Business  
**File created:** 6/10/2021    **In control:** Board of Adjustment  
**On agenda:** 7/1/2021    **Final action:** 7/1/2021  
**Title:** Brookings Investment Company Variance Request - 811 9th Avenue  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. Notice, 2. Aerial Map, 3. Application, 4. Pictures

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Brookings Investment Company Variance Request - 811 9th Avenue

### Summary:

Brookings Investment Company is requesting a variance on the north 1/2 of Lots 6 & 7, Block 8, Morehouse Addition, also known as 811 9<sup>th</sup> Avenue. The request is for the continuation of a nonconforming use through the replacement or restoration of foundations or structural elements.

**This request was heard at the June 21<sup>st</sup> Board of Adjustment meeting and was tabled.**

### Background:

811 9<sup>th</sup> Avenue is a seven-unit boardinghouse located in the Residence R-2 two-family district. Boardinghouses have been eliminated as permitted uses, special permitted uses or conditional uses in all zoning districts. Before being eliminated entirely, boardinghouses were limited to six unrelated persons and a boardinghouse with five or six persons required a minimum lot area of 9,900 sq. ft.

While no longer allowed as a use, some grandfathered boardinghouses remain as legal nonconforming uses allowed under 94-41, which allows these uses to continue including through certain repairs, maintenance, and expansion.

A section of foundation has failed in the southwest corner of the building which needs to be restored. Section 94-41 states that the replacement or restoration of foundations are not included as allowable repairs for the continuance of a nonconforming use.

### Findings of Fact:

(1) Due to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and the variance shall not violate the spirit of the ordinance and substantial justice may be achieved as a result of variance.

**Finding:** Sec. 94-41 establishes limitations for the continuance of nonconforming uses. This section of the zoning code states that the replacement or restoration of foundations or structural elements will

result in the elimination of said property's status as a legal nonconforming use, building or structure. If granted, the variance would allow the property to retain its legal nonconforming status by granting a variance for a boardinghouse.

(2) Unique circumstances apply to the property which do not apply to other properties in the same vicinity or district.

**Finding:** There are no unique circumstances that apply to this property.

(3) The variance is necessary for the preservation of a property right that is substantially the same as that possessed by owners of other property in the same district.

**Finding:** The variance would preserve the use of the property as a boardinghouse. Boardinghouses are not allowed in the R-2 zoning district or any other zoning district in the City of Brookings. In this case, the use is allowed through the nonconforming and nonstandard uses clause but would need to be granted a variance to retain the legal nonconformity through the replacement of a foundation.

(4) The variance requested is the minimum variance which would alleviate the hardship.

**Finding:** The variance would be the minimum needed.

(5) Reasonable use of the property is not permitted under the terms of this chapter.

**Finding:** Without the variance, the property would only be permitted for a single-family use due to the size of the lot.

**Recommendation:**

Staff recommends approval with the condition that no expansion of the nonconforming use will be allowed.

**Attachments:**

Notice

Aerial Map

Application

Pictures