

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 that would create a hardship. The subdivision where the subject property is located is below the Rims here in Billings. The house to the north of the subject property is at a higher elevation than the subject property. A 6 foot fence on the shared 'backyard' location appears much less than 6 feet on the uphill, north, side than it does on 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;**

There have been other properties in the surrounding neighborhoods that have requested and have obtained a height variance for fences. The basic reason for fences is to provide a bit of privacy in your own back yard. When there are abrupt grade changes that result in one property being higher than one next to it a 6 foot fence does not provide much privacy for either property. The literal interpretation of the code for fence height would not provide the same amount of privacy in this neighborhood as it would in one that there are minimal to no grade changes between lots.

- 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. There have been other fence height variances in the surrounding neighborhoods with one variance for an 8 foot fence height that was granted.

- 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. This would be to allow the subject property a taller fence to provide a greater amount of privacy from a property that is uphill from them.

- 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 increased maximum lot coverage variance request:

1. The variance is to increase the maximum fence height from 6 feet to 7 feet. No other variance is intended or implied with this approval.
2. The variance is limited to Lot 4A, Block 8 of Palisades Park Subdivision 1st Filing and Lot 4B, Block 8 of Palisades Park Subdivision 2nd Filing generally located at 3903 Palisades Park Drive.

3. Construction of the fence will be in substantial conformance with the submitted site plan and shall meet all other required City regulations, with the exception of this variance for fence height.
4. The applicant will receive a fence permit approval within 6 months of the Board of Adjustment approval of the variance. Construction of the fence will be completed within 18 months of Board of Adjustment approval.
5. Construction activity is not to start before 7 am and will end by 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
7. 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 applicant will obtain a fence permit within 6 months of approval of this variance and have the construction completed within 18 months of this variance 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 allowed in the zoning district. Fences are an allowed use in all residentially zoned districts in the city.

ATTACHMENTS

- A: Surrounding Zoning & Aerial View
- B: Site Photographs
- C: Application form
- D: Applicant Supplied Photos