

DETERMINATIONS

The Board of Adjustment, before it grants a variance shall determine:

- 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 that are peculiar to the land that create a hardship that is applicable to the subject property. The applicants would like to build accessory structures that are larger than allowed by code and also without having a principal structure already constructed on site.

- 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;**

Staff is aware of at least 1 similar variance in the surrounding area. That variance was for a smaller building, 2,100 square feet, and there was a principal use structure on the lot. Denial of the requested variance would not deprive these owners of rights commonly enjoyed by other tracts 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 the variance would confer on the applicants a special privilege that is denied other land in the district. Accessory structures are allowed in the district although other accessory structures in the area are generally smaller and have a principal structure, granting a privilege to the applicants not afforded others in the same zoning district.

- 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 granting of this variance would not conflict with the Yellowstone County and City of Billings 2008 Growth Policy. It would conflict with zoning requirements for Residential 9600 zoned land, ie principal structure with or before accessory structure.

- 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 denial of the variance, however should the County Board of Adjustment approve the variance staff would recommend the following conditions of approval:

Staff is recommending conditions of approval as follows:

1. A variance from 27-310(j) requiring a maximum of 1,500 square feet for a detached garage to allow a maximum of 3,200 square feet each for two (2) new detached garages in a Residential 9,600 (R-96). A variance from 27-305 requiring an accessory building to be constructed concurrently or after a residence is constructed on Tract 1A (3.631) to allow the detached garage to be constructed prior to the residences. No other variance is intended or implied by this approval.

2. The variance is limited to Tract 1A (3.631 acres) and Tract 1B (2.502 acres) of C/S 3240, generally located at 1011 Brandywine Lane.
 3. A principal building, residence, must be constructed within 5 years of this variance approval on both Tracts 1A and 1B, C/S 3240.
 4. The owners of Lot 1A, Block 5, generally located at 2821 Saratoga Trail, Jeff Isom and Cindy Taul owners, could as an alternative to Condition 3 aggregate the lot they currently have a house on with the tract of land to make one lot which would give them a principal use on the 'new' lot. Then construct an additional detached structure of 1,400 square feet to give them a maximum of 3,200 square feet as requested in the variance. The aggregation would need to be done within 2 years of approval of the variance.
 5. The use of the new accessory building will be limited to the personal use of the property owners.
 6. No construction will take place before 7 am or after 8 pm.
 7. Failure to begin or complete actions by the time specified will void the variance granted.
 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 has recommended denial of the requested variance however, should the County Board of Adjustment conditionally grant this variance the applicants have 5 years to build a principal use structure, a residence, on their respective tracts. If Jeff Isom and Cindy Taul should choose to follow Condition 4 they have 2 years to aggregate their 2 adjoining parcels.
- 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.**
Accessory structures on residential property are allowed uses. Granting of this variance would not allow a use that is prohibited.

ATTACHMENTS:

- A: Subject Property and Surrounding Zoning
- B: Photos of the Subject Property and Surrounding Area
- C: Site Plan
- D: Applicant Letter and Application