

## 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 on the subject property. The applicant is required by zoning code to get a variance for a cell tower over 50 feet tall and within 1 radius mile of another wireless communication tower.

- 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 are several other cell towers in the area but they are not over 50 feet tall. Denial of the requested variance would make the applicant unable to provide the service they are trying to achieve in the Billings area.

- 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 will not confer on the applicant a special privilege that is denied other land in the district. Wireless towers are an allowed use in this district but if they are over 50 feet tall and within 1 radius mile of another wireless tower they have to go through a variance process.

- 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 will not conflict with the Yellowstone County and City of Billings 2008 Growth Policy, granting this variance would provide better wireless services in the area.

- 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 conditions of approval as follows:

1. The variance requiring a minimum separation distance of 1 radius mile between wireless towers over 50 feet to allow the location of a new 100-foot wireless tower within 3,500 feet (.66 miles) of another wireless tower. No other variance is intended or implied by this approval.
2. The variance is limited to Unplatted 11.37-acre parcel in Section 26, T1N, R26E, generally located at 527 Klenck Lane.
3. The wireless tower shall be constructed in substantial conformance to the drawings submitted to the planning department with this application.
4. No construction activity will be done before 7 a.m. or after 8 p.m.

5. The owner will submit a building permit application within 3 years of Board of Adjustment approval and complete the construction within 4 years of Board of Adjustment approval.
  6. Failure to begin or complete the approved actions on the variance will void the approved 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**  
Staff recommends the applicant be required to submit a building permit application within 3 years and complete the project within 4 years of the 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.**  
Wireless towers are an allowed uses within this district. Granting of variance will 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