

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 special conditions and circumstances that are peculiar to the land that create a hardship. About 15 acres of this site are in the 100 year floodplain, putting limitations on development. With Cluster Development standards under the Yellowstone County Subdivision Regulations (YCSR), the developers are able to develop the land and provide open space at the same time. This variance request is a requirement of the 'Cluster Development' subdivision in the YCSR.

- 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;**

Approving this variance would not give the applicant any privilege that is denied others in the area. Denial of the requested variance would deprive these owners of the right to develop their land using an option given to them by the Yellowstone County Subdivision Regulations.

- 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 not confer on the applicants a special privilege that is denied other land in the district. Others in the area may also be allowed to develop using 'Cluster Development' if they meet the requirements set out in the Yellowstone County Subdivision Regulations.

- 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 is a good alternate in developing land that will ensure the future of open space in neighborhoods for people to be able to have access to open, green space.

- 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. A variance from 27-308 requiring a minimum lot area of 1 acre for each new lot to allow a minimum lot area of 27,116 square feet (.662 acre) up to 54,325 square feet (1.24 acres) for 25 new residential lots in a new cluster subdivision in an Agriculture Suburban (A-S) zone. No other variance is intended or implied by this approval.
2. The variance is limited to Tracts, 1-4 of C/S 3191, a 37.1986 acre parcel of land, generally located at 1839 South 56th Street West.

3. Lot sizes in the subdivision will stay within the proposed minimum lot area of 27,116 square feet (.662 acre) up to 54,325 square feet (1.24 acres).
 4. There is not time frame for completion because this is a subdivision and completion will be dictated by the market.
 5. No construction will take place before 7 am or after 8 pm.
 6. 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**
Since this variance is for smaller lots in a subdivision, a time limit would be inappropriate for completion of the variance. The developers have completed the needed infrastructure and will be moving forward with final plat if this variance request is approved.
- 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.**
This is an allowed and encouraged use as outlined in the Yellowstone County Subdivision Regulations to provide open space for future generations to enjoy.

ATTACHMENTS:

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