

## Attachment C

### 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 no special conditions or circumstances with the land that create a hardship. In this situation there is no existing nonconforming structure. The property owner could add two dwelling units by right to the property if the existing single family dwelling were removed.

- 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;**

The subject property is in a subdivision that began developing many years ago and over the years many changes and additions have happened that may or may not meet current code. There have been variances that have been granted in the area for duplexes, three-plexes, four-plexes and five-plexes on smaller lots than what is allowed by current zoning. There are other properties in the neighborhood that have multiple dwelling units on smaller lots. Some properties have obtained variances in this subdivision while others have not.

A literal interpretation of the regulations might deprive the applicant of rights commonly enjoyed by other property in the same district in situations where non-conforming existing development exists. However, variances that have been approved have been focused on existing structures and not variances for situations where a lot is vacant and subject to new construction. In cases of new construction, the hardship for making a variance request is absent.

- 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 this variance would not confer a privilege to this applicant that others in the subdivision do not have. There are many small lots in this subdivision that have multi-family buildings on them. However, variances that have been approved have been focused on existing structures and not variances for situations where a lot is vacant and subject to new construction. In cases of new construction, the hardship for making a variance request is absent.

- 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 the growth policy. However, the zoning regulations general purpose is guiding the future development of land. In this case, the parcel is being completely redeveloped and the zoning guides the new development to conform to lot size restrictions.

- 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, if the Board chooses to approve the variance, Staff is recommending the following conditions for the variance request:

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1. The variance request from 27-308 requiring a minimum lot area of 19,200 square feet for 2 duplex dwellings, in a Residential 7,000 (R-70) zone, to allow a minimum lot area of 13,500 square feet. No other variance is intended or implied with this approval.
2. The variance is limited to on Lot 4, Block 1 of Sunnyside Subdivision, 1st Filing, 2307 11th Avenue North.
3. The site plan submitted is not approved with this variance, the site plan must meet all review criteria and be approved with the Master Site Plan review.
4. Prior to building permit submittal, an application for Master Site Plan Review must be submitted to the City Planning Division.
5. An application for each of the two duplexes must be submitted to the City of Billings Building Division within one year of variance approval.
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**

An application for each of the two duplexes must be submitted to the City of Billings Building Division within one year of 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 already allowed in the zoning district – Residential-7000 (duplexes are allowed in this district if the appropriate lot size is met).