

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 creating a hardship that is peculiar to this land. The lot is an odd geometry with 3 street frontages including 2 principal arterial streets with multiple lanes of traffic. The property corner at the signalized intersection is more than 90 degrees of angle creating a hardship to meet the prescribed clear vision area. The applicant could use the property in conformance with the adopted regulations and push the proposed building to the north end of site. This would not be in keeping with the adopted urban form for the East Billings Urban Renewal District and the adopted Gateway Master Plan for this area.

- 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 properties in the area that have received variances from the setback requirements for new buildings or building additions. The subject property received a variance in 1978 to reduce the side adjacent to street setback from 10 feet to 5 feet. Pacific Steel on the corner of 6th Ave N and N 7th Street received an arterial setback variance from 80 feet to 38 feet in 1982. The property at 1123 1st Ave N received two setback variances to reduce the side adjacent to street from 10 feet to 2.5 and the front setback from 20 feet to 0 feet. The majority of structures along 4th Avenue N were built at or near the sidewalk. The EBURD Form-based hybrid code for properties west of the subject property are now required to build within this same setback area to frame the street and maintain the urban form in this area. Denial of the variance would deprive this owner of benefits enjoyed by other property 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;**

The variance will not allow the applicant any special privileges. Other similar variances have been granted for new construction and for building additions.

- 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 including the 2008 Growth Policy and the Gateway Master Plan.

- 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 clear vision variance request:

1. The variance is from Section 27-615(a) – Table 1 and Section 27-618 – Figure 2d to allow the installation of a permanent structure over 30 inches in height for the proposed car wash facility.

2. The variance is limited to Parcel 1 of C/S 2212 generally located at 607 4th Ave N (aka 411 N 7th Street).
3. The Board specifically adopts the AASHTO clear vision analysis prepared by D.J. Clark of Sanderson Stewart.
4. The footing and foundation site plan is the location of the facility the applicant will construct on this site.
5. The applicant shall submit a building permit for the remaining structure and site improvements within 6 months of Board approval. The structure will be completed within 3 years of Board approval.
6. No construction or site work will commence before 7 am or go past 8 pm daily.
7. Failure to begin or complete the approved actions on the variance will void the approved variance.
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

The applicant will obtain a building permit for the proposed structure, facilities and site development within 6 months of Board approval and complete the construction within 3 years of Board 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. Car washes are an allowed use in the CI zone.