

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 smaller than currently required and has only 35 feet in width. The location of utility service lines will make compliance with current side setbacks at the time of re-building a hardship.

- 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. In addition, there are number of dwellings on the same block and in the same neighborhood that do not meet current side setbacks but do not have variances of record. 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 existing and 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.

- 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 27-308 requiring side setback of 5 feet to allow a side setback of ½-foot for the existing dwelling and from Section 27-310(i) requiring a minimum 3-foot side setback to allow a minimum ½-foot side setback for the existing detached garage.
2. The variance is limited to the South 10 feet on Lot 20 and all of Lot 21, Block 167, Billings Original Town, a 4,900 square foot parcel of land, generally located at 317 S 30th ST.
3. The dwelling and detached garage may be reconstructed in the future at the existing ½-foot side setback. All other zoning requirements except the side setback must be met at the time of re-construction.
4. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of re-construction.

5. 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 owner is not planning any construction at this time so no time limits are recommended or necessary.

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. Dwellings and detached garages are an allowed use in the RMF-R zone.