

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 and create a hardship that is applicable to the subject property. The only potential hardship is the underlying zoning of Agriculture Open-Space (A-1). This is a court ordered division of land. In order to abide by the court order, they must have a variance approval to adhere to the zoning requirements for that division of land.

- 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;**

Staff is aware of 1 approved lot size variance in the neighborhood. However, 5 surrounding properties have been divided into lots that are 1 ½ acres or less, and 1 that has 5 acres. Denial of the requested variance would deprive this owner of rights commonly enjoyed by others in the same district and 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.

- 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 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 conditions of approval as follows:

1. The variance to decrease the required lot area from ten acres to five acres to accommodate a court ordered division of land; Montana Twenty-Second Judicial District Court, Bighorn County, MT No. DR-10-42. No other variance is intended or implied by this approval.
2. The variance is limited to Tract 2A2 of C/S 2007.
3. The applicant must submit the plat for review within 60 days of Board of Adjustment approval.

4. 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 is recommending a condition to require the final plat be submitted for approval within 60 days of Yellowstone County Board of adjustment 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.** Granting of variance will not allow a use that is prohibited. Residential and Agricultural uses are allowed in the Agricultural Open Space zoning district.