

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 physical special circumstances existing on this property creating a hardship that is peculiar to this land or lot. The lot is level and has a regular shape. Adjacent lots are similar in nature.

- 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 been allowed to build taller than the zoning regulations allowed by a provision allowing taller structures for certain types of uses (Section 27-310(f) Height exceptions). These exceptions apply to the MSUB buildings to the east, Faith Chapel to the north and Morning Star assisted living to the south west. Morning Star and Faith Chapel are in residential zones. MSUB campus is in a Public zone and there are no height limits in this zoning district. While each of these adjoining land uses did not require a zoning variance to build these taller structures, they do establish an expectation of building massing and height in the area. A recent zone change for Billings Clinic property to the north west, will allow up to 10-story buildings in the interior of this 80-acre parcel. Buildings within 150 feet of the north, south and west boundaries are limited to 45 feet in height. Building heights within 500 feet of Shiloh Road will be limited to 45 feet as well. Several building height variances have been granted in similar situations for new commercial or mixed use developments including 2 in Miller Crossing and 1 in Southgate Subdivision both near the S. Billings Boulevard interchange. A variance for the Radisson Hotel at Midland Road near the King Ave West interchange was granted in May 1984. This variance allowed the hotel a building height of 84 feet. A variance was granted to the new hotel (La Quinta) on South Frontage Road in May 2013 and allowed a building height of 49 feet for this new construction. A literal interpretation of the zoning regulations for this zone would deprive this owner of similar rights enjoyed by others 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. Similar buildings are in the immediate vicinity and similar variances have been granted for new construction in similar situations.

- 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 2016 Growth Policy and the City's Infill 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 building height variance request:

1. The variance is from Section 27-309 requiring a maximum building height of 45 feet to allow a maximum building height of 50 feet, excluding parapets, stair towers, elevator shafts, and similar un-occupied roof top structures. The variance is limited to C/S 2277 Tract 1B1, a 9.38 acre parcel of land, generally located at 3933 Central Avenue.
2. The owner will apply for the first building permit within 12 months of Board approval.
3. The owner will complete the exterior of the first new building within 18 months of Building Permit issuance.
4. There will be no construction activity before 7 am or after 8 pm daily.
5. Completion of all structures will occur within 6 years of Board approval.
6. The site plan will be modified to show pedestrian connections from the public sidewalk to the interior sidewalks at not more than 300 feet between connection points.
7. Pedestrian crossings of any drive aisle will have pavement markings and signage to alert drivers.
8. Off-street parking spaces provided will not exceed the minimum required by city codes. This maximum will be calculated based on all uses on the subject property as a whole.
9. The site plan will be modified to show tree plantings at a maximum spacing of 40 feet on center along both sides of any sidewalk – public or private – except sidewalks and public spaces directly adjacent to buildings.
10. Signage on the property or buildings will not exceed 30 feet above grade.
11. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application.
12. Failure to begin or complete the actions required by this variance approval will void the variance.
13. 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 Planning staff recommends the first building permit be submitted for the first structure be submitted within 12 months of Board approval and the exterior completed on this building within 18 months of building permit issuance. Finally, staff recommends all construction be completed within 6 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. Retail uses and residential uses are allowed in the Community Commercial zone.