

## **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 circumstances existing on this property creating a hardship that is peculiar to this land. The request is being made to create a development that is similar to what is around it. There is high density housing in the area in Riverfront Pointe and also in Josephine Crossing. These two development have higher density than most developments in Billings and the requested variance would continue that design philosophy.

- 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 two developments in the area that have a higher density than many developments in Billings. Riverfront Pointe has a higher density especially along Mallowney Lane and the north side of the subdivision where there are apartments. There are also many multi-plexes throughout Riverfront Pointe. Josephine Crossing is a development that has very high density and has been well received by people looking for more housing options without large yards to maintain. This proposed development would fit in with the surrounding development in the 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;**

The variance will not allow the applicant any special privileges. The request will be in harmony with the higher density in the area.

- 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 lot size variance request:

1. The variance is from 27-308 requiring a minimum lot area of 55,000 square feet for two 4-unit apartments and five duplexes to allow 43,310 square feet; from 27-309 requiring a minimum front setback of 20 feet from the front property line to allow 8 feet; from 27-309 requiring a minimum side adjacent to street setback of 10 feet to allow 5 feet; and from 27-308 requiring a minimum front setback of 15 feet to allow 8 feet in a Highway Commercial (HC) zone.
2. The variance is limited to Lot 26A, Block 10, Riverfront Pointe Subdivision. No other variance is granted or implied.
3. The owner will apply for a building permit for the 1<sup>st</sup> new structure on the property within 12 months of Board approval.

4. The owner will have construction of this project underway within 24 months of Building Permit issuance.
5. The owner will meet all required building codes, engineering codes and other city codes applicable at the time of Building Permit application for the dwelling units.
6. Failure to begin or complete the actions required by this variance approval will void the variance.
7. 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 a building permit application for the first building be submitted within 12 months of Board approval and the construction on this project be underway within 24 months of building permit issuance.

**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. Multi-Family dwellings and businesses are an allowed use in the HC zone.