

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 conditions or circumstances with the land that create a hardship. The applicant is requesting this variance in order to reconstruct the existing structure on a non-conforming lot.

- 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;**

The subject property is in a subdivision that began developing many years ago. There have been variances that have been granted in the area for existing properties that do not meet the current required setback distance from property lines. There are other properties in the neighborhood that have single family and duplex dwelling units on smaller lots. Some properties have obtained variances while others have not. The literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, allowing the applicant a variance for one (1) two-family dwelling on a 2,125 square foot lot would not deprive the applicant rights commonly enjoyed by other properties in the 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. The request will be in harmony with the higher density in the area. Granting this variance will not confer a privilege to this applicant that others in the subdivision do not have. There are small lots in this subdivision that have existing duplex buildings on them.

- 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 approval is in harmony with the general purpose and intent of the zoning regulations and the 2016 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 variance request;

1. The variance from 27-308 requiring a minimum lot area of 7,000 square feet to allow a minimum lot area of 2,125 square feet for a 2-family dwelling; from 27-308 requiring a minimum front setback of 15 feet to allow a minimum setback of 13 feet; from 27-308 requiring a minimum side adjacent to street setback of 10 feet to allow 4 feet; and from 27-308 requiring a minimum side setback of 5 feet to allow 3 feet for an existing 2-family dwelling in a Residential Multi-family-Restricted (RMF-R) zone. No other variance is intended or implied with this approval.
2. The variance is limited to the west 85 feet of Lot 13, Block 165, Billings Original Town, a 2,125 square foot parcel of land.
3. 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.

4. The owner will apply for a building permit for the renovations on the property within 6 months of Board approval. Construction shall be completed within 1 year.
5. Failure to begin or complete the actions required by this variance approval will void the variance.
6. Any future construction or re-construction of the existing structure will require compliance with all other zoning regulations and city ordinances that apply at the time of construction or re-construction.
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 property owner shall apply for a building permit to renovate the structure and must comply with all Building codes included in remodeling and shall be completed within one year. Upon completion receive a "Certificate of Final Inspection" for verification of work completed in compliance with the Building Code.

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 already allowed in the zoning district – Residential –Multi-Family Restricted zoning allows two-family dwellings (duplexes).