

DETERMINATIONS

Variance #1267

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 that exist which are peculiar to the land. The applicant wishes to complete a non-conforming structure partially completed without benefit of a building permit. The placement of the structure appears to be partially in a dedicated alley owned by the City of Billings.

- 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 and lot size. There have not been any variances approved, nor did staff find any non-conforming properties for an equipment shed that contained electrical and/or plumbing. The literal interpretation of the provisions of this Chapter would not deprive the applicant of rights commonly enjoyed by other tracts in the same district; therefore, denying the applicant a variance setback for less than allowed (zero feet at side) 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;**

Granting this variance would confer a privilege to this applicant that others in the subdivision do not have. There are no variance requests granted in this subdivision for setbacks on an equipment shed.

- 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 not in harmony with the general purpose and intent of the zoning regulations and the growth policy. Approval of this variance would not promote the health, safety and general welfare of the neighborhood residents.

- 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 has no conditions for a variance that cannot be granted for building partially on property that is not owned by the applicant.

- 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;**

Time limit can be set for removal of the structure to make it compliant on the subject property and not in the platted alley.

- 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 -9600 zoning allows detached accessory structures, so long as they are constructed on property owned by the applicant.