

VARIANCE 1273
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. In this situation, the structure was built prior to the current zoning requirements. The existing commercial structure is currently in conformance with lot coverage restrictions for CI zoning districts. The property owner could add up to 1,910 square feet to maximize the lot coverage to 75%. The applicant is asking to increase the lot coverage to 77% for an addition of 2,400 square feet of covered area (490 square feet more than allowed).

- 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 have been variances that have been granted in the area for setbacks and clear vision areas. There have been two commercial variances for lot coverage, one similar variance granted for lot coverage on a commercial lot. Therefore, allowing the applicant a variance for 77% lot coverage does not deprive the applicant of rights commonly enjoyed by other properties 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;**

Granting this variance would not confer a privilege to this applicant that others in the subdivision do not have. There has been one similar variance approved in this subdivision on block 64, granted by the BOA in 1990, although staff recommended denial of the variance, with valid determinations.

- 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 for a new structure or addition would *not* be in harmony with the general purpose and intent of this Chapter and with the Growth Policy. Setback and lot coverage standards are established in order to prevent overcrowding of land and to maintain adequate open space.

- 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 formulated the following conditions, **if the Board of Adjustment votes to approve** the variance;

1. The variance from Section 27-309 requiring a maximum lot coverage of 75% to allow a maximum lot coverage of 77% (16,240 sf total) in a Controlled Industrial (CI) zone, a 21,000 sf parcel of land. The purpose of the variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. No other variance is intended or implied with this approval.

2. Construction shall be in substantial conformance to the submitted site plan.
3. A building permit shall be acquired and construction completed within 1 year of approval of this variance.
4. No construction before 8 a.m. or after 9 p.m.
5. The variance is limited to Lots 1 through 6, Block 135 of Billings Original Town.
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;

The requested variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. Upon variance approval, construction shall be completed within one year of approval of the variance.

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 – Controlled Industrial zoning districts allow the existing use and its expansion.