

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 that exist which are peculiar to the land, the lot or something inherent in the land which causes a hardship. The hardship is caused by wanting to build a detached garage into the setback.

- 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 where most homes were built in the early to mid 1900's. Denying the variance would only deprive the applicant the ability to build a detached garage in the location they want to build it.

- 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 would allow the applicant to build into the setback and arterial setback according to the zoning regulations of the City of Billings a special privilege not generally enjoyed in this neighborhood. There have been a few setback variances granted in the surrounding neighborhood, none of them were for arterial setback.

- 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;**

Staff is recommending denial of the variance, however granting the variance does not conflict with the general purpose and intent of the zoning regulations and the 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 denial for this variance; however, should the Board of Adjustment grant the variance, staff is recommending the following conditions for the reduction in setback:

1. The variance is to allow a variance from the requirement of a minimum front setback of 20 feet to allow a front setback of 13 feet and from Section 27-602(a) requiring a minimum 70-foot setback to the centerline of a minor arterial street (Virginia Lane) to allow a 43-foot setback to the centerline. No other variance is intended or implied with this approval.
2. The variance is limited to lot 2 Blackacre Sub. & Lot 7, Blackacre Subdivision, 2nd Filing generally located at 2220 Virginia Lane.
3. The owner will submit a building permit application within 1.5 years of Board of Adjustment approval and complete the construction within 3 years of Board of Adjustment approval.
4. Failure to begin or complete the approved actions on the variance will void the approved variance.

5. 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

Staff is recommending denial of the variance so a time limit to complete the construction is not necessary, however should the Board of Adjustment grant the variance staff recommends the applicant be required to submit a building permit application within 1.5 years and complete the project within 3 years of the variance 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 – single-family dwellings and accessory structures are allowed in the R-96 zone.