

AGENDA
MEETING OF THE MARSHALL PLANNING COMMISSION
WEDNESDAY – OCTOBER 14, 2020
MERIT CENTER 1001 WEST ERIE ROAD
5:30 P.M.

- 1) *Call to Order*
- 2) *Consider the approval of the minutes of the September 9, 2020, regular meeting of the Marshall Planning Commission.*
- 3) *Conduct Public Hearing on the request of Charles R Aufenthie for a Variance Adjustment Permit to have an accessory building in front of the main building as not allowed by the City Ordinance*
- 4) *Conduct Public Hearing on the request of Vesta LLC., of Marshall, MN for a map amendment (rezone) for 512 Continental Street from A – Agricultural District to R-1 One Family Residential District.*
- 5) *Other Business*
- 6) *Adjourn*

In light of the current coronavirus pandemic situation, the City of Marshall strongly encourages you to NOT personally come to this meeting, and attend a virtual, over the Internet, one instead. Please see instruction to join a virtual meeting below:

Topic: Planning Commission

Time: Oct 14, 2020 05:30 PM Central Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/86440872397?pwd=T0RIaTJpcjZoaTV2M3VTajd5MTJlVQT09>

Meeting ID: 864 4087 2397

Passcode: 863278

One tap mobile

+19292056099,,86440872397#,,,,,0#,,863278#

Dial by your location

+1 312 626 6799

Meeting ID: 864 4087 2397

Passcode: 863278

If you cannot attend the virtual meeting, you are welcome to contact us by phone (507-537-6773) or by email (chris.devos@ci.marshall.mn.us)

--UNAPPROVED --

**MINUTES OF THE
MARSHALL PLANNING COMMISSION MEETING
SEPTEMBER 9, 2020**

MEMBERS PRESENT: Edblom, Carstens, Fox, Schroeder, Knieff and Lee

MEMBERS ABSENT:

OTHERS PRESENT: Glenn Bayerkohler, Jason Anderson, and Ilya Gutman

1. The meeting was called to order by Chairman Edblom. He asked for the approval of the minutes of the August 12, 2020, regular meeting of the Marshall Planning Commission. Schroeder MADE A MOTION, SECOND BY Knieff, to approve the minutes as written. ALL VOTED IN FAVOR OF THE MOTION.
2. Anderson explained the developer approached the City with a request to plat one additional lot onto the end of Continental Street, adjacent to Lot 6, Block 3 of Carr Estates Second Addition. The street and utilities are already installed along the frontage. Staff's only concern is street drainage on Continental Street from the intersection with Cadillac Drive to the east toward the field. The street grade drains east to the field, but drainage is blocked by a small hill. Staff had informed the developer, and the developer, also owner of the adjacent field, indicated that a drainage path will be created to drain surface water runoff from the city street. Staff recommends a motion to recommend approval of the preliminary plat of Carr Estates Fifth Addition to the City Council, subject to utility companies review and recommendations. Tadd Erickson of 510 Continental Street asked what is going to be done for drainage. Anderson explained in short term cutting a path through berm. Janine Erickson said it does not drain at all. Anderson explained that the developer is aware and has a desire to fix the drainage issue. Janine Erickson asked what that means if it is not in writing. Anderson explained that we will discuss the drainage issues with the City Council about any language to be added. Janine Erickson inquired why the developer is doing a split; is it a tax break. Anderson advised that we try not to speculate, and we are not sure why this lot was not already included. Janine Erickson asked if it is common where the developer only plats 1 lot in the prior subdivision at a time. Anderson said in recent memory it has been smaller plats, but it isn't uncommon. Tadd Erickson asked if it fits zoning area. Anderson advised yes. With new development the sidewalk would need to be extended and that is done by the developer. Tadd Erickson asked where sewer and water stops. Anderson explained he does not have the maps with him but believes it is the end of the street. That water and sewer services are stubbed out already. Janine Erickson asked what the timeline is. Anderson informed that there are two more City Council meetings before council makes the final decision. Janine Erickson asked to have it documented that they are taking care of drainage issues. Anderson said it would be noted in the minutes of the Planning Commission meeting and carried forward in the council memo. Tadd Erickson asked if the street will still have a dead end. Anderson said at this time yes. Tadd Erickson asked about the snow removal. Anderson said that would continue as it does now. Schroeder MADE A MOTION, SECOND BY Lee, to recommend approval as recommended by staff. ALL VOTED IN FAVOR OF THE MOTION
3. A MOTION WAS MADE BY Knieff, SECOND BY Lee to adjourn the meeting. ALL VOTED IN FAVOR. Chairman Edblom declared the meeting adjourned.

Respectfully submitted,
Chris DeVos, Recording Secretary



MEMORANDUM

TO: Members of the Marshall Planning Commission
Sharon Hanson, City Administrator
Jason R. Anderson, P.E., City Engineer/Zoning Administrator *ga*

FROM: Ilya Gutman, Assistant Planning & Zoning Administrator *IG*

DATE: October 7, 2020

SUBJECT: REQUEST FOR A VARIANCE ADJUSTMENT PERMIT
1000 Country Club Drive

Action Recommendation

Close public hearing.

Recommend denial to the City Council of the request by Charles R Aufenthie for a Variance Adjustment Permit to build a garage in front of the main building.

Background

The owner desires to build a detached garage next to his house with its front wall located about 20 feet in front of the house front wall. However, the Ordinance prohibits any accessory structures being built closer to the street than the house, except gazebos on larger lots. This provision's goal, in staff's opinion, is to provide uniformity and avoid often unsightly accessory buildings, which may be storage sheds with cheap finishes, being the focus of a property, which may reduce surrounding properties' values.

To grant a variance, City Ordinance and State Statutes require the presence of practical difficulties. The term "practical difficulties," as used in connection with granting a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, the plight of the landowner is due to circumstances unique (usually something related to physical characteristics of the property not allowing to comply with the Ordinance) to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. The Findings of Fact, based on the League of Minnesota Cities template, is attached to this memo and explains each item listed above in details.

The existing lot is large, like all adjacent lots, and the garage can be shifted back 20 feet to meet the Ordinance requirements. No other house in the area has a detached garage or other accessory building located in front of the house, so the area's character will be altered by the garage construction. Based on the above information, staff does not believe that there are any practical difficulties in this case and therefore recommends that the variance be denied.

The variance regulations and procedures are found in Section 86-29. A League of Minnesota Cities informational memo, sketch showing proposed location of the new garage, and a property aerial photo are attached for reference.

Fiscal Impact

None known.

Alternatives / Variations

None recommended.

IG: cld

Findings of Fact
RESOLUTION NO. _____

**A RESOLUTION ADOPTING FINDINGS OF FACT AND REASONS FOR DENIAL
FOR VARIANCE APPLICATION OF CHARLES AUFENTHIE AT 1000 COUNTRY
CLUB DRIVE**

FACTS

1. Mr. Aufenthie is the owner of a parcel of land located at 1000 Country Club Drive; and,
2. The subject property is legally described as found on Exhibit A; and,
3. Mr. Aufenthie has applied to the City for a variance to build a 26' x 40' detached garage that is placed about 20 feet closer to the street than the front wall of the existing attached garage.
4. The proposal would vary from Ordinance Section 86-163 (b) (6) stating that "(i)n the R-1 one-family residence district and the R-2 one- to four-family residence district, an accessory building must not be located a lesser distance to a front property line than the main building..." in that it would build a garage closer to the street than the house.
5. Following a public hearing on the application, the Planning Commission has recommended (approval/denial) of the variance at its regularly scheduled October 14, 2020 meeting.
6. The City Council of the City of Marshall reviewed the requested variance at its regularly scheduled October 27, 2020 City Council meeting.
7. The property is of significant size and there does appear to be sufficient space to construct garage to the side of the main building in a compliant manner by shifting its location 20 feet back.
8. A significant portion of the rear and front yards on the property is located within the regulatory floodway as identified by the most current Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, Map Number 27083C0309D, Panel 0309D, effective 11/26/2010.

APPLICABLE LAW

9. Minnesota Statute Section 462.357, subd. 6 provides:
 - a. Variances shall only be permitted (a) when they are in harmony with the general purposes and intent of the ordinance and (b) when the variances are consistent with the comprehensive plan.
 - b. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that (a) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) the plight of the landowner is due to circumstances unique to the property not created by the landowner;

and (c) the variance, if granted, will not alter the essential character of the locality.

10. City Ordinance allows variances if “(t)he applicant shall prove that the literal enforcement of the provisions of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and the granting of the variances will be in keeping with the spirit and intent of this chapter” according to Section 86-29 (e). The practical difficulties are further defined according to the State Statutes as presented in Item 9 above.
11. City Ordinance requires that “(i)n the R-1 one-family residence district and the R-2 one- to four-family residence district, an accessory building must not be located a lesser distance to a front property line than the main building...” according to Section 86-163 (b) (6). In stuff’s view, this provision’s goal is to provide uniformity and avoid often unsightly accessory buildings, which may be storage sheds with cheap finishes, being the focus of a property, which may reduce surrounding properties’ values.

CONCLUSIONS OF LAW

12. The requested variance is not in harmony with the purposes and intent of the ordinance because it will deviate from the purpose of uniformity and maintaining property values.
13. The requested variance is unrelated to the comprehensive plan.
14. The property owner does not propose to use the property in a reasonable manner because there is an alternative which is in compliance with the Ordinance.
15. There are not unique circumstances to the property not created by the landowner because properties next to it are very similar and all include large backyards and wide sideyards.
16. The variance will not maintain the essential character of the locality because no other house next to this one has a detached garage in front and one of the nearby houses has a garage located in the rear yard. All lots, including the golf club, have open spaces in front with a lot of tree cover.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARSHALL, MINNESOTA AS FOLLOWS:

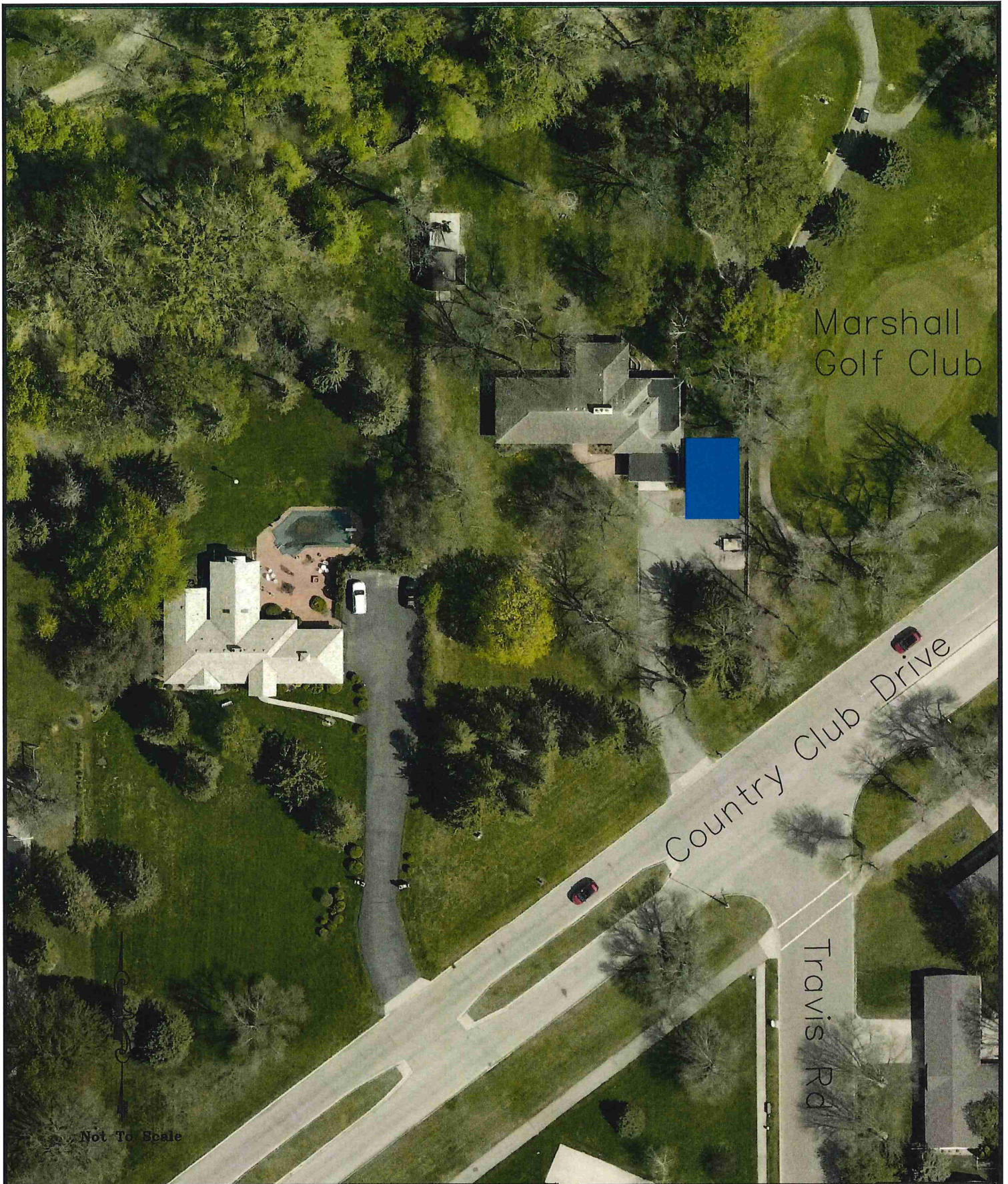
The application to issue a variance to allow Charles Aufenthie to build a garage in front of the house so as to deviate from the requirement to not have accessory buildings located closer to the street than the main house is hereby _____.

Passed by the City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City Clerk



Marshall
Golf Club

Country Club Drive

Travis Rd

Not To Scale



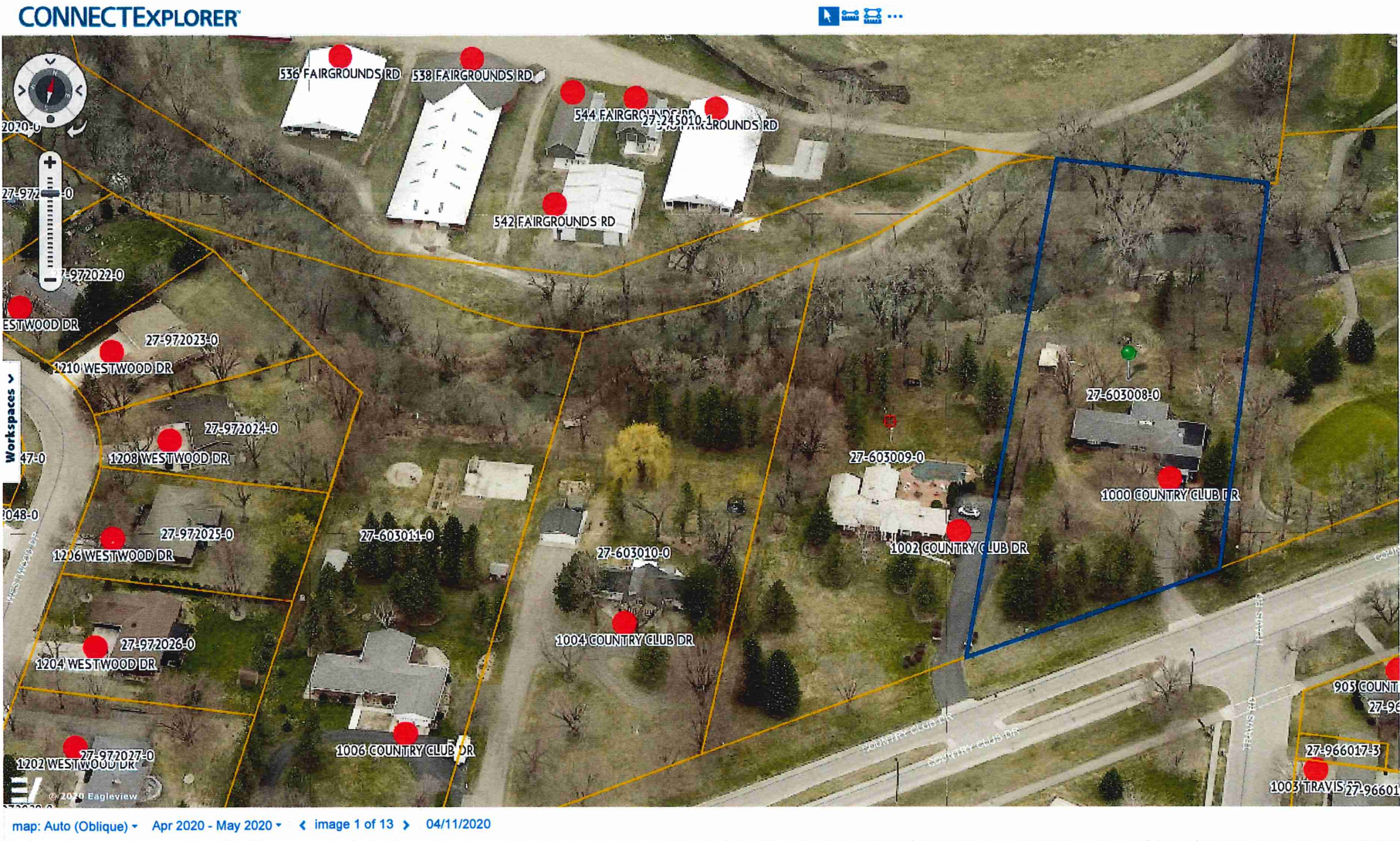
CITY ENGINEERING DEPT
344 WEST MAIN STREET
MARSHALL, MINNESOTA

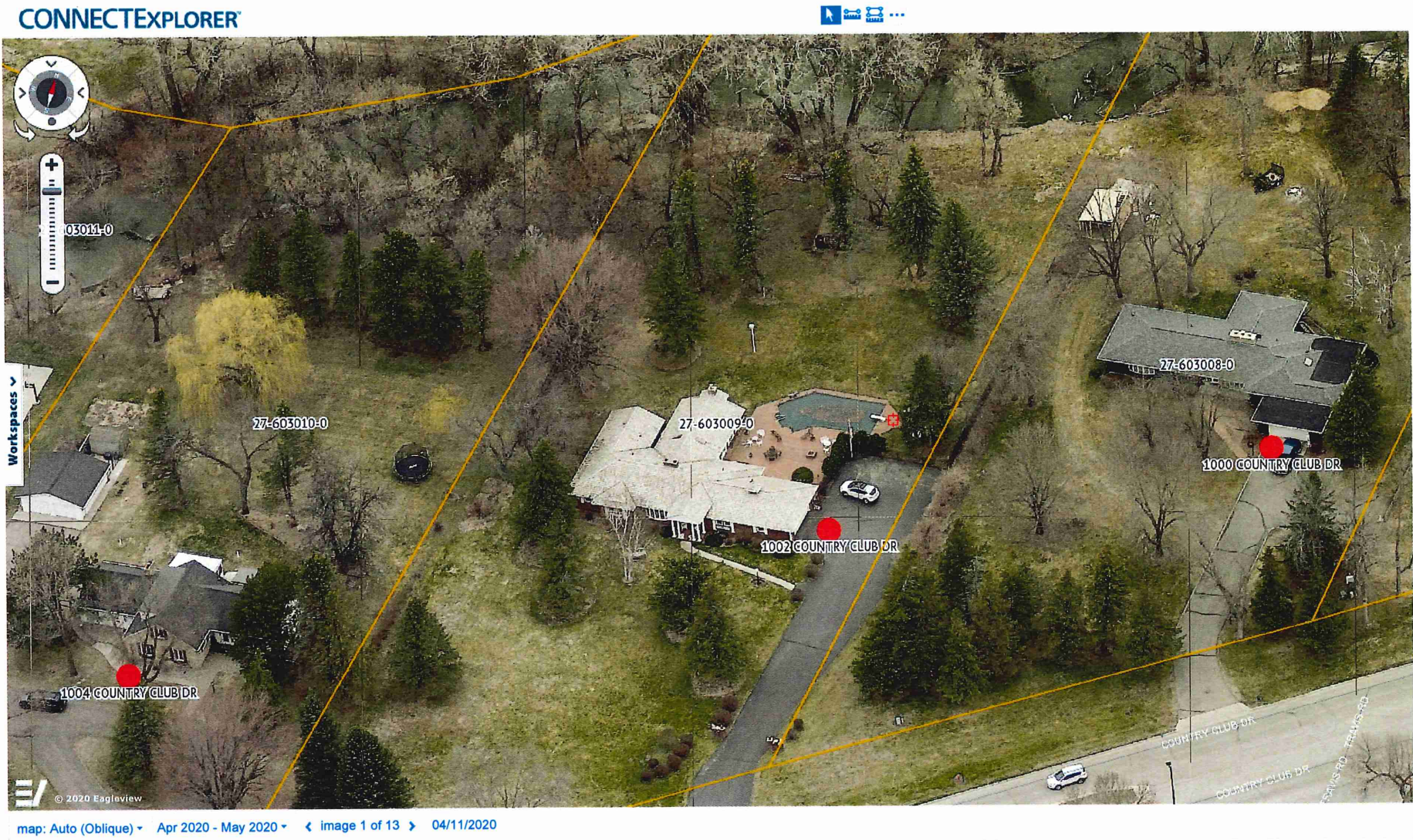
VARIANCE ADJUSTMENT PERMIT

DATE
09/29/20

1000 Country Club Drive
Detached Garage

SHEET NO.
1 OF 1







INFORMATION MEMO

Land Use Variances

Learn about variances as a way that cities may allow an exception to part of their zoning ordinance. Review who may grant a variance and how to follow and document the required legal standard of “practical difficulties” (formerly called “undue hardship”).

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

I. What is a variance

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located.

II. Granting a variance

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan.

RELEVANT LINKS:

III. Legal standards

When considering a variance application, a city exercises so-called “quasi-judicial” authority. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

A. Practical difficulties

“Practical difficulties” is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

RELEVANT LINKS:

2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6.

Krummenacher v. City of Minnetonka, 783 N.W.2d 721 (Minn. June 24, 2010).

Minn. Stat. § 462.357, subd. 6.
Minn. Stat. § 394.27, subd. 7.

See Section I, *What is a variance*.

See Section IV-A, *Harmony with other land use controls*.

3. Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

B. Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law. After a long and contentious session working to restore city variance authority, the final version of HF 52 supported by the League and allies was passed unanimously by the Legislature. On May 5, Gov. Dayton signed the new law. It was effective on May 6, the day following the governor’s approval. Presumably it applies to pending applications, as the general rule is that cities are to apply the law at the time of the decision, rather than at the time of application.

The 2011 law restores municipal variance authority in response to a Minnesota Supreme Court case, *Krummenacher v. City of Minnetonka*. It also provides consistent statutory language between city land use planning statutes and county variance authority, and clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

In *Krummenacher*, the Minnesota Supreme Court narrowly interpreted the statutory definition of “undue hardship” and held that the “reasonable use” prong of the “undue hardship” test is not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance. The new law changes that factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. Also included is a sentence new to city variance authority that was already in the county statutes.

RELEVANT LINKS:

[Issuance of Variances](#), LMC Model Ordinance.
[Variance Application](#), LMC Model Form.
[Adopting Findings of Fact](#), LMC Model Resolution.

[Minn. Stat. § 462.357, subd. 6.](#)

See LMC information memo, [Taking the Mystery out of Findings of Fact](#).

[Minn. Stat. § 462.357, subd. 6.](#)

C. City ordinances

Some cities may have ordinance provisions that codified the old statutory language, or that have their own set of standards. For those cities, the question may be whether you have to first amend your zoning code before processing variances under the new standard. A credible argument can be made that the statutory language pre-empts inconsistent local ordinance provisions. Under a pre-emption theory, cities could apply the new law immediately without necessarily amending their ordinance first. In any regard, it would be best practice for cities to revisit their ordinance provisions and consider adopting language that mirrors the new statute.

The models linked at the left reflect the 2011 variance legislation. While they may contain provisions that could serve as models in drafting your own documents, your city attorney would need to review prior to council action to tailor to your city’s needs. Your city may have different ordinance requirements that need to be accommodated.

IV. Other considerations

A. Harmony with other land use controls

The 2011 law also provides that: “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.” This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings as to:

- Is the variance in *harmony with* the purposes and intent of the ordinance?
- Is the variance *consistent with* the *comprehensive plan*?
- Does the proposal put property to use in a *reasonable manner*?
- Are there *unique circumstances* to the property not created by the landowner?
- Will the variance, if granted, alter the *essential character* of the locality?

B. Economic factors

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the three statutory factors are met.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

C. Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

D. Conditions

A city may impose a condition when it grants a variance so long as the condition is directly related and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

V. Variance procedural issues

A. Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

B. Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

RELEVANT LINKS:

[Minn. Stat. § 15.99.](#)

[Minn. Stat. § 15.99, subd. 2.](#)

See LMC information memo,
*Taking the Mystery out of
Findings of Fact.*

[Minn. Stat. § 15.99, subd. 2.](#)

Jed Burkett
LMCIT Land Use Attorney
jburkett@lmc.org
651.281.1247

C. Time limit

A written request for a variance is subject to Minnesota’s 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval.

D. Documentation

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

VI. Variances once granted

A variance once issued is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.

VII. Further assistance

If you have questions about how your city should approach variances under this statute, you should discuss it with your city attorney. You may also contact League staff.



MEMORANDUM

TO: Members of the Marshall Planning Commission
Sharon Hanson, City Administrator
Jason R. Anderson, P.E., City Engineer/Zoning Administrator *ga*

FROM: Ilya Gutman, Assistant Planning & Zoning Administrator *IG*

DATE: October 7, 2020

SUBJECT: REQUEST FOR MAP AMENDMENT (REZONE)
Vesta LLC
512 Continental Street

Action Recommendation

Motion to close public hearing.

Recommend approval to the City Council of the request to rezone property at 512 Continental Street from A Agricultural District to R-1 One Family Resident District.

Background

This is a request by Vesta, LLC, Marshall, MN to rezone 512 Continental Street from A Agricultural District to R-1 One Family Resident District. This lot is adjacent to residential area and will be used for a single family house.

Rezoning procedures are described in Section 86-30 Amendments. Rezoning map is attached.

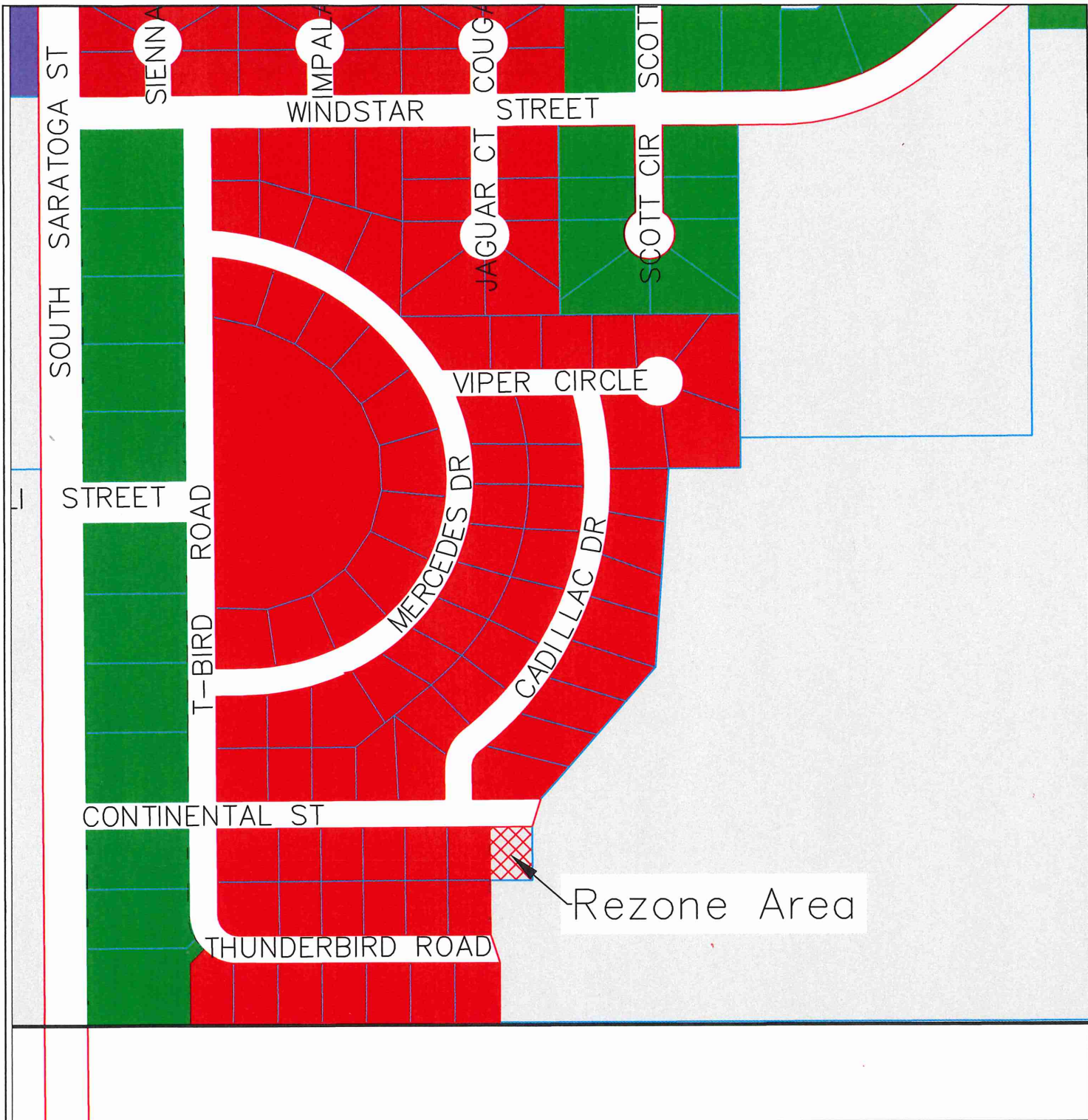
Fiscal Impact









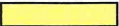



Costs are to be billed to applicant.

Alternatives / Variations

None recommended.

IG: cld



A		AGRICULTURAL	R-4		HIGHER DENSITY - MULTIPLE FAMILY RESIDENCE	B-3		GENERAL BUSINESS
R-1		ONE FAMILY RESIDENCE	R-5		MANUFACTURED HOME PARK	B-4		SHOPPING CENTER BUSINESS
R-2		ONE TO FOUR FAMILY RESIDENCE	B-1		LIMITED BUSINESS	I-1		LIMITED INDUSTRIAL
R-3		LOW TO MEDIUM DENSITY - MULTIPLE FAMILY RESIDENCE	B-2		CENTRAL BUSINESS	I-2		GENERAL INDUSTRIAL