

City of Falcon Heights Planning Commission

City Hall
2077 Larpenteur Avenue West

Tuesday, June 25, 2019
7:00 p.m.

A G E N D A

A. CALL TO ORDER: 7:00 p.m.

B. ROLL CALL: John Larkin _____ Tom Williams _____
 Colin Stemper _____ Matthew Kotelnicki _____
 Hawa Samatar _____ Scott Wilson _____
 Joel Gerich _____
 Council Liaison Harris _____ Staff Liaison Markon _____

C. APPROVAL OF MINUTES - May 28, 2019

D. AGENDA

1. Hold a Public Hearing to consider variance request for property at 1800 Albert Street

E. INFORMATION AND ANNOUNCEMENTS

F. ADJOURN

Next meeting: July 23, 2019

If you have a disability and need accommodation in order to attend this meeting, please notify City Hall 48 hours in advance between the hours of 8:00 a.m. and 4:30 p.m. at 651-792-7600. We will be happy to help.

**City of Falcon Heights
City Hall
2077 Larpenteur Avenue West**

**Minutes
Planning Commission Meeting
Tuesday, May 28, 2019
7:00 PM**

A. CALL TO ORDER: The meeting was called to order by John Larkin at 7:00 PM.

B. ROLL CALL:

Present: Larkin, Williams, Gerich, Wilson, Kotelnicki, Samatar

Absent: Stemper

Present Staff and Council Liaisons: Markon, Harris

C. APPROVAL OF MINUTES: March 26, 2019

The minutes were approved as presented by unanimous consent.

D. AGENDA

1. Hold a Public Hearing to consider rezoning the property at 1667 Snelling Ave N from B-3 to PUD

After the sale of the TIES/Sourcewell building at 1667 Snelling Ave N, the new owner, Buhl GTA, LP has requested the rezoning of the property, now called The Amber Union, to a PUD to allow for a mixed-use renovation that includes affordable housing and small retail.

Chairman Larkin invites Staff Markon to introduce the planned project. Markon introduces the topic and the order in which discussions in the meeting will take place. Markon states that all questions from the public and committee will be allowed following his presentation. Markon described the project (see plan).

Chairman Larkin described the public meeting ground rules and introduced the Buhl representative, Mr. Peter Deanovic, and invited him to the podium to describe the project. Mr. Peter Deanovic described the project, and the topics that included:

- Description of the building's history
- Description of the majority of the work to be done on the interior to convert existing offices to apartments and some retail
- Because of the historical nature of the building, some original interiors will be saved such as flooring in the cafeteria, elevators, auditorium, conference room, interior front lobby and other areas
- A coffee shop (or other small business of similar nature) with access to the outdoor patio

Chairman Larkin now opened the discussion to the public in attendance, asking for questions and/or comments.

A public member expressed a concern about increased traffic congestion.

- Peter from Buhl responded by saying that they had no plans to change the traffic circulation and that the conversion to apartments would likely decrease the traffic issues vs the current offices.

A public member expressed concern about the lack of enclosed parking and other issues that may cause higher noise levels.

- Peter from Buhl responded by saying that the project will not include enclosed parking, the new generators on the property will be quieter, and there will be less traffic congestion (and noise) with apartments since vehicles will be coming and going at different times vs all at the same time as with an office environment.

Larkin asked if the traffic can travel between the west and east parking areas.

- Peter from Buhl responded by saying "Yes".

A public member asked if it would be necessary to take away a portion of the front lawn bordering Snelling in order to increase the parking area.

- Peter from Buhl responded by saying "Yes", in order to add the necessary parking spaces, two additional rows of parking must replace an area of the front lawn.

A public member expressed concern about the lack of a greater number of larger 3 and 4 bedroom apartments, since family sizes statistically are growing, and also more parking for at least two cars per apartment would be needed to accommodate the larger apartments.

- Peter from Buhl responded by saying that they followed accepted statistics to come up with the current and appropriate number of all apartments as well as the number of parking spaces per apartment.

A public member expressed concern about the basement windows extending enough above grade, and if screening of the rooftop HVAC would comply with the historical nature of the building.

- Peter from Buhl responded by saying that the foundation extended 3 feet above grade making basement windows feasible, and the screened HVAC on the roof does work with accepted historical building guidelines.

A public member expressed concern about overflow vehicles from the apartment building, parking on Hollywood Court streets.

- Both Chairman Larkin and Peter from Buhl responded by saying that no parking on Hollywood Court would be expected or likely allowed.

A public member asked for the meaning of PUD and why the USDA was not able to buy the building and inquired about any income restrictions in place.

- Staff Markon responded with PUD stands for "Planned Unit Development" and proceeded to describe the zoning concept and Peter from Buhl described the reason the USDA did not purchase the building was due to the fact that Falcon Heights building did not make the cut over those in Madison, WI and Kansas, and because it took them too long to make a decision (9 months). Peter from Buhl says they will follow MHFA income guidelines in the new Amber Union apartments.

A public member asked about the possibility of adding more trees to the fenced border between Hollywood Court and the Amber Union site along the property line.

- Peter from Buhl responded by saying that they will be adding many trees but none along the fence on the property line.

A public member asked about the possibility of adding additional police and fire personnel to handle an apartment complex.

- Peter from Buhl responded by saying that he will talk to the City Council about adding additional services. Larkin, Markon and Harris all commented that the increased tax base provided by the Amber Union would potentially make a better argument for increasing these services.

A public member asked about the possibility of a decrease in property value of the nearby homes due to the conversion to apartments.

- Kotelnicki mentioned that the question would be best answered by a Real Estate Assessor. Peter from Buhl responded by saying that he would expect no change in value of the surrounding properties.

A public member asked if an additional school bus stop would be added.

- Peter from Buhl responded by saying that there are no plans to add a school bus stop now.

A public member asked if there would be any additional cost to the City to convert to apartments vs offices.

- Markon and Harris both commented that there will be no additional cost to the City, in fact, the increased tax base provided by the Amber Union apartments vs tax free offices will potentially lower the cost.

A public member asked about what the benefits to nearby owners (and/or the City) to the conversion to apartments and retail.

- Peter from Buhl responded by saying that benefits may include the fact that the building will potentially be 100% full, there will be many cosmetic improvements, no-tear down necessary, only conversion and mostly interior improvements, providing fewer disruptions to the community.

A public member asked if interior renovations would comply with the historical status of the building, if underground or covered parking can be added, have traffic issues been addressed by other entities, and if Workforce or Section 8 housing have been considered.

- Peter from Buhl responded by saying that some interiors (and the majority of the exterior of the building) will be retained, keeping the historical status, due to the high price, no underground garage or covered garage has been considered, the traffic flow and parking on the site have been evaluated by both MnDOT and Ramsey County, and no Section 8 housing or any other low-income housing applications have been made.

A brief discussion took place between committee members regarding the recently adopted rule that no public hearing proceed past 8:30 pm. The Committee decided to allow three more questions past 8:30 pm.

A public member expressed concerns about security with the building to be apartments instead of offices.

- Peter from Buhl responded by saying that the site, by the way it has been designed, will become a buffer to Hollywood Court, potentially reducing security concerns.

A public member expressed concerns about the traffic issues caused by the retail (food service) businesses proposed for the property.

- Peter from Buhl responded by saying that the planned Coffee Shop is one of the best uses for the site. Other retail (food service) businesses to be added at a later date will maximize space at the old garage.

Chairman Larkin closed the public meeting and opened the discussion to the Planning Commission members, asking for questions and/or comments.

Wilson expressed concerns about there being no exterior windows (for egress) in the Annex portion of the building. He mentioned that he would also like to see more trees around the east side parking area (along Snelling Ave.)

- Peter from Buhl responded by saying that there will be some windows added to the Annex portion of the building.

Kotelnicki asked if Buhl would be seeking a historical designation for the building and also asked if there was any kind of a security system or plan for the property.

- Peter from Buhl responded by saying that, yes, they will be filing for historical designation, and their security system will include security fobs used for entering the building.

Samatar commented that she was glad to see these apartments in Falcon Heights and asked if Buhl would consider adding more 4 bedroom apartments. Also, Samatar asked if there would be security cameras present on the property.

- Peter from Buhl responded by saying that expense has been the biggest reason for being unable to add more 4 bedroom units. Peter also stated that there would be cameras, with fisheye lenses, located throughout the property for security. He also stated that security and security systems have been a top priority for them in the designing of this building.

Larkin commented that the PUD is requested for only Parcel 1, and not Parcel 2 and 3 at this time, in a phasing process. Larkin asked about how the residents would know who is allowed to park and if violators could be identified? Also, will there be EV charging stations located in the parking areas?

- Peter from Buhl responded by saying that the residents will require proof of parking authorization in order to park in the lots. Also, infrastructure for five EV parking outlets will be provided in the new parking areas on the east side.

Councilmember Harris commented that Buhl has owned other buildings in other areas for long periods of time and will likely be long-term owners in Falcon Heights.

Chairman Larkin announced that he would need a recommendation from the Committee, at some point, in order to move forward with the current plans. Kotelnicki asked about the 5% allowance for changes that is mentioned in the "Control of PUD During Work" section of the Request For Planning Commission Action, is 5% of what?.

- Peter from Buhl responded by saying that the Park Service has not yet reviewed the property for any changes, so additional expense could occur.

Council Harris said that the City Council will next review the plan. Staff Markon added that the Commission's purpose is to make recommendations and suggestions to the Council to assist in their decision making process.

Wilson suggested that there be security present during the State Fair time, in the east parking lot (Snelling Avenue side), to prevent parking by non-residents.

Commissioner Wilson motioned: **To proceed with the development of a PUD for 1667 Snelling Ave N, Falcon Heights, MN. For a detailed security plan to be added to the development documentation, and consideration given to not expanding the parking on the East side and instead expand the parking on the West side into Parcel 2 or 3.**

Commissioner Kotelnicki seconded.

The motion was approved by unanimous consent.

E. INFORMATION AND ANNOUNCEMENTS

Markon announced that the yearly Ice Cream Social will be held on Thursday, July 18th this year. At least one Planning Commission member will be in attendance. Also, John Labalestra, will continue to have discussions with the committee regarding his proposed townhome development project located in a vacant lot in Labalestra Park on Tatum Street.

F. ADJOURN

Adjourned at 8:40 PM.

G. WORKSHOP

1. Public member, Jesse Nickols, described his proposal to pave an area on his property on Larpenteur Avenue for the purpose of providing paid parking during the State Fair and other times. A discussion followed.

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| Meeting Date | June 25, 2019 |
| Agenda Item | D1 |
| Attachment(s) | See below |
| Submitted By | Justin Markon, Community Development Coordinator |

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| Item | Consider variance request for property at 1800 Albert Street |
| Description | <p>Mr. Todd Thun and Ms. Marsha Keppel have completed an application for a variance request at their property, located at 1800 Albert Street. They are planning to tear down and rebuild the existing detached garage. They are requesting a variance from the required corner side yard setback. The property is located at the corner of Albert Street and Garden Avenue, and the garage faces and is accessed off Garden Avenue, the corner side yard. The lot is approximately 69' by 296'.</p> <p>The City Code states the follows (highlights for emphasis):</p> <p>Section 113-240 – Accessory buildings and structures</p> <p>(e) <i>Yard setbacks; building locations.</i> The corner side yard setback for accessory buildings, including garages, shall adhere to the setback requirement for principal buildings as described in section 113-174(e)(2) (20 percent of the lot width). The rear yard and interior side yard setbacks shall be those required for garages and accessory buildings on interior lots. Lots smaller than 75 feet wide shall have a minimum corner side yard setback requirement of not less than fifteen feet. Garages on these lots may be located closer than 15 feet from the corner side lot line if the vehicular access door does not face the side street. In no case shall a garage or other accessory building be located within the corner side yard.</p> <p>The current garage is legally nonconforming, having been built before the current zoning regulations. It is currently 5 feet from the corner side yard property line. The City Code allows existing nonconformities to be replaced, as long as the nonconformity is not increased. The property owners would like to build a three-stall garage near the existing footprint, at an 8 foot corner side yard setback, which would expand the nonconformity. Thus, they have requested a variance from the required corner side yard setback. During conversation with staff, Mr. Thun has acknowledged that building a two-stall garage on the existing footprint would be the backup plan if the variance is denied.</p> <p>At 1803 Hamline Ave, a five-stall garage was built with a 28 foot setback. This garage complies with the zoning code, and the lot is 16 feet narrower than 1800 Albert St.</p> |

Staff offer the following information as it relates to the considerations for a variance request:

Section 113-62 - Variances

(e) *Review criteria.* The city council shall not approve any variance request unless they find that failure to grant the variance will result in practical difficulties on the applicant, and, as may be applicable, all of the following criteria have been met:

(1) The variance would be in harmony with the general purposes and intent of this chapter.

Staff believe that building a three-stall garage to serve a single family home in the R-1 zoning district is in harmony with the general purposes and intent of the zoning chapter of the city code.

(2) The variance would be consistent with the comprehensive plan.

Staff believe replacing the garage is consistent with the comprehensive plan.

(3) That, there are practical difficulties in complying with this chapter.

The League of Minnesota Cities provides the following information related to this criteria:

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.

The three standards for practical difficulties are as follows: reasonableness, uniqueness, and essential character.

Reasonableness

Staff believe replacing the garage at an 8 foot setback is not reasonable. Mr. Thun has pointed out that with the existing garage, a 5 foot setback from the property line results in his vehicles projecting nearly into the street. The City's right of way extends ten feet to the south of Garden Ave. This right of way exists to allow the City and contractors to place utilities in or near the street and to allow enough space for a future sidewalk if the City feels that is appropriate. By placing the garage 8 feet from the property line, staff believe the potential hazard of vehicles projecting into the right of way would not be eliminated. Staff believe the 15 foot corner yard setback was created for this purpose so that the right of way may remain clear, should the City need to access this area.

Uniqueness

Staff believe there are no unique characteristics that would prohibit the garage to be built at the required 15 foot setback. The lot is very deep, and staff believe the garage may be placed in a different location at the appropriate setback. The uniqueness of the property is related to the physical characteristics of the lot, not personal characteristics. Mr. Thun has shared that the required setback would obstruct the view of his backyard from the rear patio. Staff do not believe this fits the uniqueness criteria.

Essential Character

Staff believe building a three-stall garage at an 8 foot setback would not dramatically alter the essential character of the neighborhood.

Staff believe that all of the practical difficulties criteria are not met.

(4) That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.

Staff believe that granting the variance would not impair the above-mentioned criteria.

(5) That the requested variance is the minimum action required to eliminate the practical difficulties.

Staff believe the practical difficulties criteria are not met and that the garage may be placed elsewhere on the lot to satisfy the 15 foot corner side yard setback requirement.

(6) Variances shall be granted for earth sheltered construction as defined in Minn. Stats. § 216C.06, subd. 14, when in harmony with this chapter. Variances may be approved for the temporary use of a one-family dwelling as a two-family dwelling.

This criteria is not applicable to the request.

In conclusion, staff believe the proposed garage and its location do not meet all criteria for granting a variance. Staff are concerned that if the garage is built closer than allowed there could be hazards related to right of way access. Finally, staff believe there are other locations on the property that would meet all zoning requirements for replacing the garage.

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| Budget Impact | No impact |
| Attachment(s) | <ul style="list-style-type: none"> • Planning Application with additional information • Public Hearing Notice • Proposed Findings of Fact • City Code Section 113-62 – Variances • League of Minnesota Cities Information Memo • View of garage at 1803 Hamline Ave |
| Action(s) Requested | City Staff recommend denying the variance request for a corner side yard setback for the property at 1800 Albert Street. |



City of Falcon Heights Planning Application

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| FOR INTERNAL USE: Date received: _____ Receipt: _____ |
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Action Requested By:

Name of Property Owner Todd Thun and Marsha Keppel
 Phone (h) 651-646-6125 (w) 651-783-5300
 Address of Property Owner 1800 Albert St. N., Falcon Heights, MN 55113
 Name of Applicant (if different) _____
 Address _____ Phone _____

Property Involved:

Address 1800 Albert St. N., Falcon Heights, MN 55113
 Legal Description Lot 1 of LARPENTEUR VILLAS N 68 58/100 FT OF THE W 1/2 OF LOT 1

Property Identification Number (PIN) 152923340044

Present Use of Property (check one):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Single Family Dwelling | <input type="checkbox"/> Business/Commercial |
| <input type="checkbox"/> Duplex/Two Family Dwelling | <input type="checkbox"/> Government/Institutional |
| <input type="checkbox"/> Multi Family Complex | <input type="checkbox"/> Vacant Land |

Action Requested (NON-REFUNDABLE):

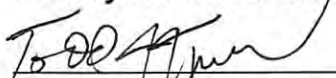
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| <input checked="" type="checkbox"/> Variance (\$500.00) | <input type="checkbox"/> Lot Split (\$250.00) |
| <input type="checkbox"/> Conditional Use Permit (\$500.00) | <input type="checkbox"/> Site Plan Review (\$100.00) |
| <input type="checkbox"/> Rezoning, Zoning Amendment (\$500.00) | <input type="checkbox"/> Subdivision (Fee on request) |
| <input type="checkbox"/> Comprehensive Plan Amendment (\$550.00) | <input type="checkbox"/> Other (Please Specify) _____ |

The above Application Fees do not include any additional fees that might be required, including legal, engineering, consulting and additional City services. Applicants should meet with City Staff prior to submitting application to discuss applicable ordinances, required attachments, timelines and fees.
Credit card charges will incur a 3.1% + \$0.30 convenience fee.

Brief Summary of Request (applicant may submit letter to Planning Commission with details of request):

This request seeks a variance from the corner lot setback requirements for a replacement garage. Please see the attached letter of explanation for details of request.

I certify that all statements on this application are true and correct:


Signature of Property Owner (required)

Signature of Applicant (if applicable)

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| Planning Commission meeting: _____ | City Council meeting: _____ | Approved ___ Denied ___ |
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List of Properties Owners for Properties Abutting 1800 Albert St. N.

1. John and Olga Dale, 1803 Hamline Ave. N., Falcon Heights, MN 55113-6221;
2. Dan and Ann Burt, 1794 Albert St. N., Falcon Heights, MN 55113-6221;
3. Chabha and Akli Mansouri, 1797 Hamline Ave. N., Falcon Heights, MN 55113-6221.

May 31, 2019

Planning Commission
City of Falcon Heights

Dear Planning Commission Members,

This letter is in explanation and support of my family's request for a variance in connection with a garage replacement at our home located at 1800 Albert St. N., in Falcon Heights (see accompanying Planning Application).

The existing garage is on its last legs. (See Attachment A) It is nonconforming because it is too close to the street (in violation of the corner lot setback requirement for garages), and it is also located too close to our house. City officials have confirmed we are able to replace the existing garage with an identically sized garage in its present location because this is a "grandfathered" pre-existing nonconforming structure. In other words, because it was built before the ordinances were enacted, it can be replaced as a nonconforming structure as long as it is not expanded, and it is built on the same footprint.

However, replacing the existing garage with a new, same-sized garage on the same footprint leaves us (and the city) with the problems associated with the present garage—it is too close to the street, too close to the house and too small for us to comfortably enter and exit.

We would like to expand our garage from its existing size of 22' x 22' to 22' x 40', move it in three feet further off of Garden Street, and move it a foot further from the house. However, unless a variance from the setback requirement is granted, we will be unable to carry out this plan.

Without a variance, we will replace the existing garage with an identical structure on its existing footprint. For reasons discussed below, that is less than desirable for us and the city as a whole.

Details of Property

Our home at 1800 Albert St. N. (including the garage), like most homes in the neighborhood, was built in the 1950's long before the present set back requirements were enacted. We purchased our home in 1991 and have lived there since. The property is shaped like a long, narrow shoebox, and measures 68' x 295' which the short side facing west on Albert Street, and the long side facing north along Garden Street. (See Attachment B) The front door of the home faces Albert Street while the garage entrance faces Garden Street. The 295' property line running east/west is located 10' off of the curb which runs along Garden Street and the 10' span from the curb to the lot line is a city-owned boulevard.

The size and configuration of this lot is very unique to the City of Falcon Heights. To my knowledge only our property and the lot directly behind us to the East have the double length lots located on the corner of an intersection. This is significant because the length of these lots makes it impractical to relocate the garage to the back end of the lots—it is simply too great a distance from garage to house.

The side street setback which applies to our garage, according to city officials, requires that the garage be set back 15' from the side property line running east/west along Garden Street. When coupled with the 10' city easement which begins at the curb along Garden Street, a garage must be located 25' off of Garden Street in order to comply with the setback ordinance. Presently, our existing garage is located

15' off of Garden Street, or five feet off of the east/west property line. So, in order to comply with the set back requirement, the garage would have to be moved 10 feet deeper into our yard. We are proposing to move it three feet deeper rather than the required 10 feet for reasons discussed below.

It should be noted that the proposed garage satisfies applicable lot coverage limitations. In other words, this is not a request to allow a structure which is too large for the existing lot. City officials have confirmed that existing lot size and present structures would allow a replacement garage of this size.

The rear part of the first story of our home is comprised of a one room dining/family room area, with only a 68-inch-wide patio door providing a view of the back yard. (See Attachments C-F) The rear wall of the garage extends about to within four feet of the patio door. (See Attachment G)

Moving the garage location 10 feet deeper into the yard to meet the 15' set back requirement would result in the garage blocking all but the last few inches of the patio door, thereby almost completely obstructing any view of our backyard from the first story of our house. (See Attachments H & I). Note: the hanging blanket shows how far in the rear wall of the garage would extend in front of the patio door in order to comply with the setback requirement.

In addition, this patio door exits directly to our patio, which we use extensively during warm weather (and outdoor cooking during cold weather). (See Attachments J & K) Moving the garage location to 10 feet deeper into the yard would eliminate most of the useful patio area (as well as the view of our back yard).

Reasons for Garage Expansion and Relocation

Our desire is to replace our present garage with wider garage, move the garage three feet further off of Garden Street, and move the garage a foot further from our house for the following reasons:

1. Widening the garage will allow us to install more widely spaced garage door openings to allow for easier and safer ingress/egress to the garage. At the present time, the size of the entrance to the garage is very narrow and requires very careful maneuvering to park and remove our cars from the garage, and requires considerable contortion getting into and out of the vehicles when they are parked in the garage together; (See Attachment L)
2. A larger garage will allow us to get all three of our vehicles off the street (and into shelter if necessary, during snow storms and other inclement weather). This will free up additional street parking for teachers and visitors to the elementary school directly across the street from our house. More importantly, it will allow us to get all vehicles completely off the street for snow plowing activities. At this time, plows must swerve away from the curb to get around any vehicles parked in our driveway. Also, a third stall can also be used for additional purposes, such as a woodworking shop, freeing up the work shop space in our basement for other purposes. I enjoy woodworking, and examples of my projects are pictured in attachments A, K & T (flag gate, outdoor shed, Adirondack chairs).
3. Moving the garage three additional feet off of Garden Street will allow vehicles in our driveway to be entirely off of Garden Street; at present time the back ends of both of our vehicles hang out on Garden Street when parked in the driveway. (See Attachments M & N) This forces street sweepers and snow plows to swerve around these vehicles if they are parked in the driveway.

4. Moving the garage a foot further away from the house will lessen the hazard to the house if there is a fire in the garage.

State and Local Criteria for Granting this Type of Variances

Applicable state law provides that 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 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 to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Minn. Stat. 462.357, subd. 1e (2019). This standard is mirrored in Sec. 113-62 of the Falcon Heights city code.

In addition, the Falcon Heights city code provides that the city Council shall not approve any variance request unless they find that failure to grant the variance will result in practical difficulties on the applicant, and, as may be applicable, all of the following criteria have been met:

- The variance would be in harmony with the general purposes and intent of this chapter.
- The variance would be consistent with the comprehensive plan.
- That, there are practical difficulties in complying with this chapter.
- That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.
- That the requested variance is the minimum action required to eliminate the practical difficulties.

Analysis

1. Constructing a garage which complies with the set-back requirement will result in "practical difficulties" in the use of our property

- a. Reasonable use of property in manner not allowed by set-back ordinance

Moving our garage ten feet deeper into our yard will impair the reasonable use of our property in two respects.

First, keeping the garage close to our house but moving ten feet deeper into the yard will result in our patio being largely eliminated because the garage would sit on top of the patio, leaving only a small, oddly shaped area which would be impractical for reasonable use or entertainment.

Second, moving the garage 10 feet deeper will almost completely obstruct our view out of our house of almost all of the back yard. The view out the patio door will be of almost entirely of a garage wall a few feet away with the view of the backyard almost totally blocked. (See Attachments H & I) A central feature of this lot and its appeal is the deep picturesque backyard with its large mature legacy trees. (See Attachment O) That feature will be lost if the location of the garage is moved deeper into the yard

to comply with the setback. Moreover, such a configuration would make our home dramatically less attractive to any potential buyer.

Clearly, preserving the use of our patio and preserving the view of our backyard from the first level of our house is a reasonable use of our property.

- b. Plight of the landowner is due to circumstances unique to the property not created by the landowner

Our practical difficulty in complying with the setback requirements results from: 1) the long and narrow shape of our lot; 2) the location of our patio door in the center of a very narrow lot; 3) the fact that the door is the only view of the backyard from the main level of our home; 4) and the long stretch of back yard beyond the to the rear of the lot (which makes putting the garage on the rear portion of the lot an impracticality). None of these factors are of our creation. All of these factors are associated with the property as it existed when we bought it. This combination of factors is very unique to the typical residential lot in Falcon Heights, and these unique features are of the type that an easement is intended to address.

- c. Variance, if granted, will not alter the essential character of the locality

Our proposal is to move the location of the garage three feet deeper into the yard and away from the street, rather than the ten feet required under the setback ordinance. Would moving the garage three feet instead of 10 feet alter the essential character of the locality? Obviously, no.

Along Garden Street between Snelling Avenue and Hamline Avenue there are 19 garages (including ours) and all are located on corner lots. At least half of them do not comply with the setback requirement because they are not 25' from the curb (10' easement plus 15' set back). Most of these houses and garages were likely built before the setback was enacted. Moreover, our proposal results in the garage being farther off Garden Street by three feet than the present existing garage or a replacement garage built on the same footprint.

Moreover, having the garage three feet further off of Garden Street is in the interests of the community and the city. Vehicles will fit within the driveway and be off the street, thereby facilitating street cleaning and plowing activities, and reduce the chances of accidents.

2. Other Review Criteria Favor Granting of Variance

Falcon Heights City Code Sec. 113.62 provides that the city council shall not approve any variance request unless they find that the failure to grant the variance will result in practical difficulties on the applicant, and as may be applicable, all of the following criteria have been met: a) The variance would be in harmony with the general purposes and intent of this chapter; 2) The variance would be consistent with the comprehensive plan; 3) That there are practical difficulties in complying with this chapter; 4) That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety; and 5) That the requested variance is the minimum action required to eliminate the practical difficulties.

These criteria are met in this instance.

Our property is a residential property located on a street with numerous other detached garages which do not comply with the present set back. Moreover, granting the variance will result in more set back than will be the case if the garage is simply rebuilt on its present footprint.

The practical difficulties resulting from strict application of the setback are discussed above and will not be repeated here.

Granting the variance will not adversely impact an adequate supply of light and air to adjacent property. The only property theoretically impacted would be the lot directly behind our house on the SE corner of Garden and Hamline. However, our garage and the house on that property are separated by over 250 feet of yard and privacy shrubs which separate the rear ends of the two lots. (See Attachments P & R)

Move over, granting the variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety; indeed, the opposite is true. Granting of the variance will result in the garage being moved three additional feet off of Garden, resulting in a longer driveway for our vehicles. A refusal of the variance will result in us replacing the existing garage on the existing footprint, which results in the garage remaining two feet closer to Garden.

Finally, our proposal is the minimum action required to eliminate the practical difficulties. We are consciously proposing a garage which is only 22' deep (instead of a desired 24') so that we can move it three feet further off the street.

3. Impracticality of Other Possible Locations for Replacement Garage

It has been suggested in the past by city officials that a variance is not needed because the garage can be located to the rear end of our lot—either all the way back or partially back.

Indeed, many of the properties along Garden Avenue do have their garages located on the rear end of the lot, which eliminates the blocking of view and use of the back yard. However, it is critical to note that none of those properties are of the double length lot size, which we are dealing with. Those properties have a manageable distance from the house to the garage because all of those lots are much shallower. This is why this case presents special circumstances unique to our property, which are not present with almost any other lot in Falcon Heights.

Unlike most residential lots in Falcon Heights, placing our garage on the rear end of our property would result in having to walk 100-150 feet from the house to the garage. Carrying groceries half the length of a football field and installing/maintaining a sidewalk/walkway that entire distance (including snow removal in the winter) simply is not feasible.

In addition, the back part of our yard has two rows of large, legacy trees, including an evergreen tree, which is over 100 feet tall. Moving the garage to the rear of the property could result in the removal of one or more large legacy trees, considering the span of each tree's root system and the possible damage which could result from installing the new garage foundation. (See Attachments Q & R; Note: Two photos had to be taken to show the length of our lot because I could not fit it into just one photo)

Thun/Keppel Variance Request
May 31, 2019

Finally, the present location of the garage provides a privacy barrier for the use of our patio, serving the function of a tall privacy fence. With our patio so close to Garden and the constant foot/vehicle/bicycle traffic on Garden Street, a privacy barrier is a necessity. Moving the garage to the rear of the property would force us to build a large, tall fence to allow for private use of our patio. Once the decision to build such a fence is made, then the next decision is how far to extend it--the full length of the property to the relocated garage?

Moving our garage to the rear portion of our lot is simply is not feasible. Moving the garage to the mid-rear portion of the yard also is not desirable for the same reasons.

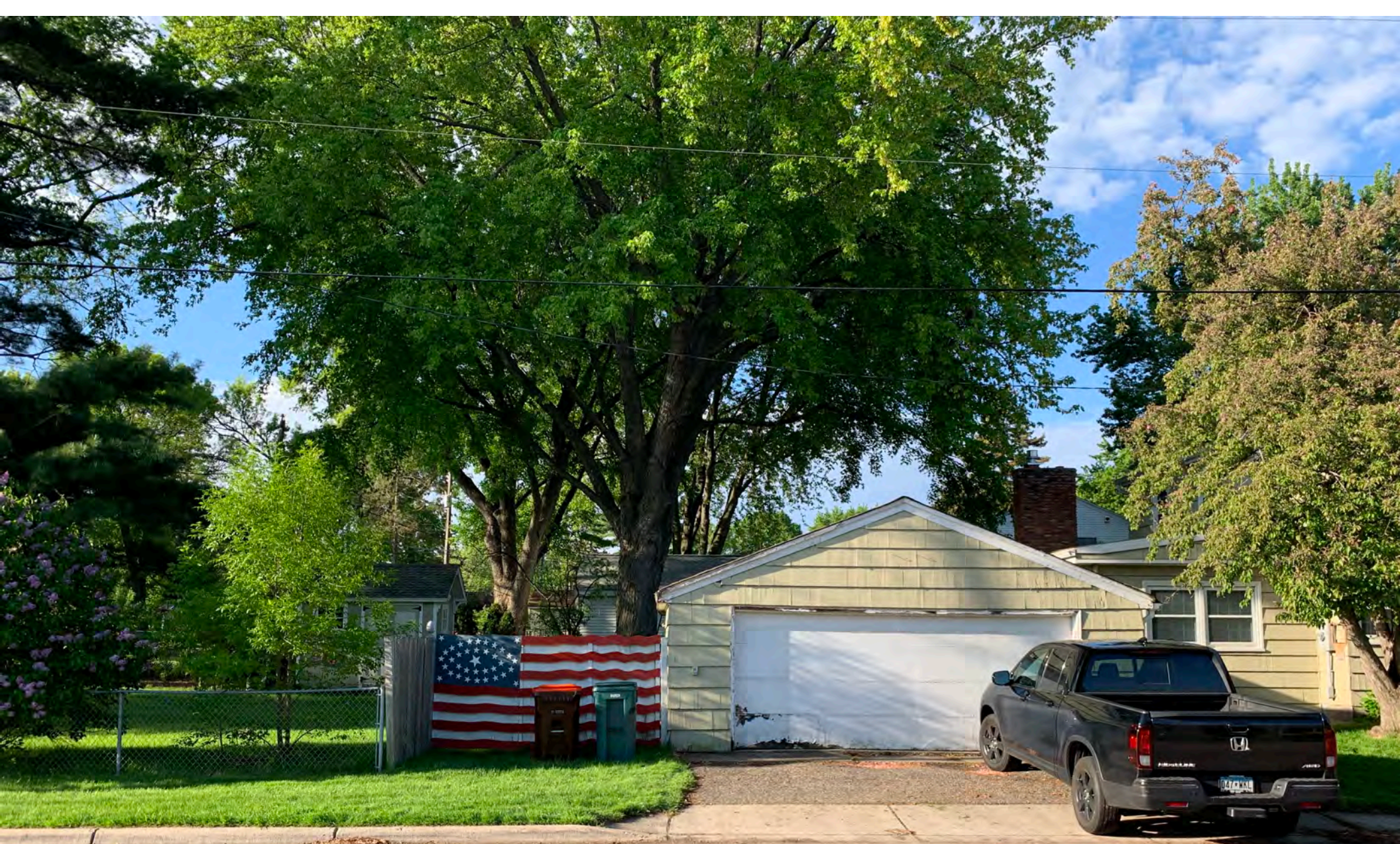
Conclusion

Granting the requested variance results in a win-win for us and the community. We will have a larger, more usable garage resulting in badly needed storage space in our house. Also, we will have a larger garage door, making it easier to park in the garage, exit the garage, and get in and out of our cars. We intend to construct a garage which is as visually appealing as possible. The city wins because the garage is moved three feet further off of the street, thereby improving street cleaning and snow plowing, and improving a possible traffic impediment.

If a variance is not granted and that denial is ultimately upheld, we will replace the existing garage with an identically-sized garage on the exact same footprint. This will leave us with a less than optimal garage, which will be disappointing for us, and leaves the city with the new garage in the present location--three feet closer to the street than what would be the result from our requested variance. Any chance to at least partially remedy the proximity of the garage to Garden Street will be gone. This would be a lose-lose for the city and us.

Respectfully submitted,

Todd Thun/Marsha Keppel



Attachment A



Albert Street North



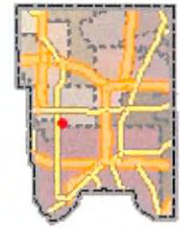
NAD_1983_HARN_Adj_MN_Ramsey_Feet
© Ramsey County Enterprise GIS Division

Attachment B

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Legend



- City Halls
- Schools
- Hospitals
- Fire Stations
- Police Stations
- Recreational Centers
- Parcel Points
- Parcel Boundaries

Notes:

1. Garage to be moved east so it is 5' away from house. (presently 44")
 2. Present distance from garage front to curb is 16'. New garage will be at least 19' from curb (i.e. 36" farther from street)
 3. Impermeable Surfaces:
 - a. House = 1,280
 - b. New garage = 880
 - c. patio = 650
 - d. shed = 96
 - e. BB court = 1,040
 - f. driveway = 144
- Total: 4,090

Notes

Enter Map Description





Attachment D



Attachment E



Attachment F



Attachment G



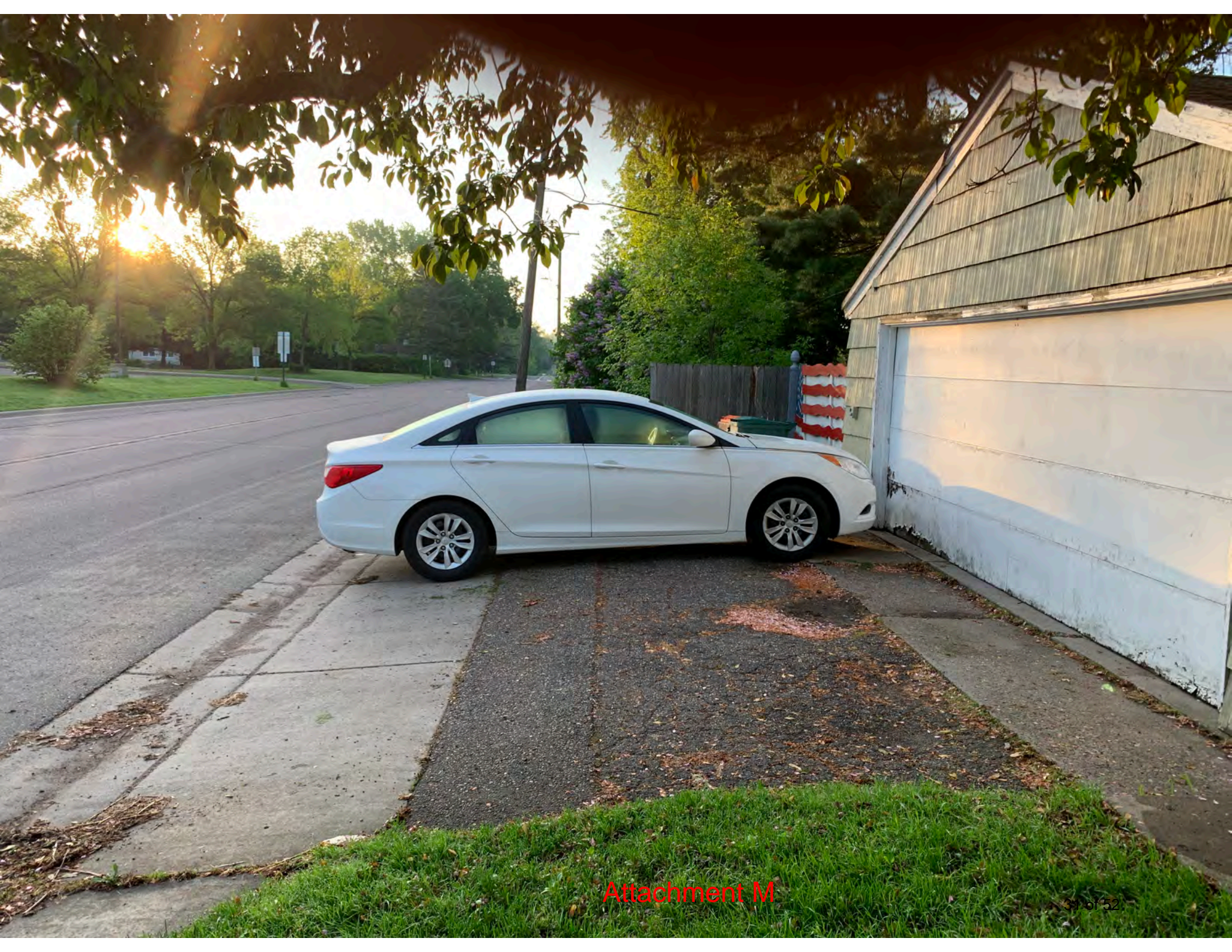
Attachment H



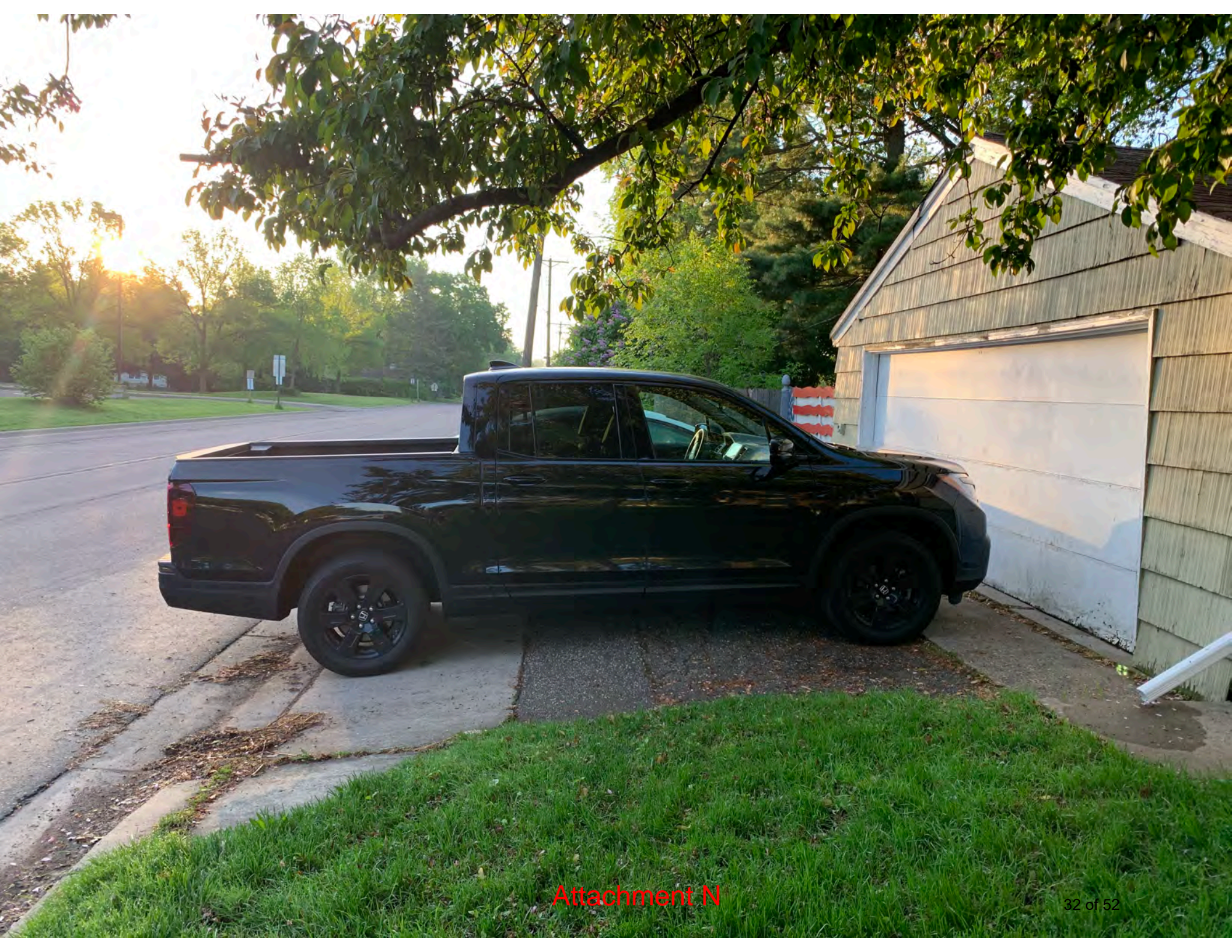


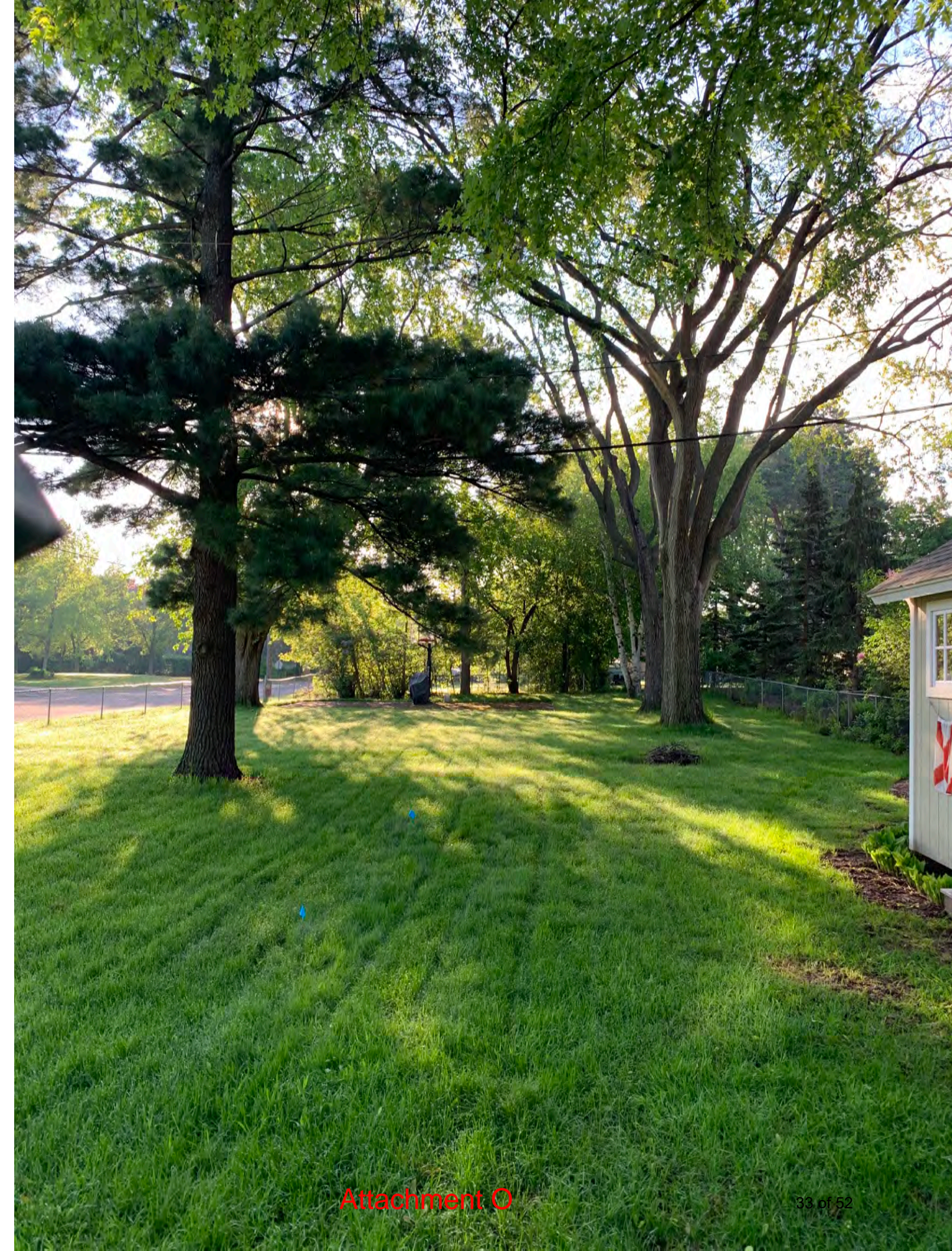






Attachment M







Attachment P



Attachment Q







Attachment T

CITY OF FALCON HEIGHTS, MINNESOTA

PUBLIC HEARING NOTICE

Notice is hereby given that the Falcon Heights Planning Commission, at its regular meeting on Tuesday, June 25, 2019 at 7:00 p.m. in the City Hall Council Chambers, 2077 Larparenteur Avenue West, will hold a public hearing to discuss and consider an application for a variance for the property located at 1800 Albert Street, Parcel ID: 152923340044. The property owner is requesting a variance for the corner side yard setback related to replacing a detached garage. Information regarding the proposed changes will be available at City Hall and online at www.falconheights.org.

Signed:



**Sack Thongvanh
City Administrator**

Date:

6-5-19



CITY OF
FALCON HEIGHTS

2077 W. Larpenteur Avenue
Falcon Heights, MN 55113-5594

email: mail@falconheights.org
website: www.falconheights.org

The City That Soars!

Phone - (651) 792-7600
Fax - (651) 792-7610

June 6, 2019

Dear Property Owner:

You are cordially invited to a public hearing before the Falcon Heights Planning Commission for the purpose of taking public comment regarding a request for a variance for the property located at 1800 Albert Street, parcel ID 152923340044.

**Tuesday, June 25, 2019
7:00 p.m.
Falcon Heights City Hall**

The applicant is requesting a variance from the corner side yard setback requirement related to replacing a detached garage.

During the meeting on Tuesday, June 25, city staff and the property owner will present information regarding the proposed variance. The Planning Commission will also hear public comment and discuss the overall findings before voting on the proposed variance.

The application and other planning documents will be available upon request. If you have questions or comments before the hearing, you may contact city hall at 651-792-7600 or myself directly at justin.markon@falconheights.org.

Sincerely,

Justin Markon
City of Falcon Heights
Community Development Coordinator

CITY OF FALCON HEIGHTS
RAMSEY COUNTY, MINNESOTA

IN RE:

Application of Todd Thun and Marsha Keppel,
1800 Albert Street, for a variance
from corner side yard setback requirements.

**FINDINGS OF FACT
AND
RECOMMENDATION**

On June 25, 2019, the Falcon Heights Planning Commission met at its regularly scheduled meeting to consider the application of Todd Thun and Marsha Keppel, 1800 Albert Street, for a variance from the corner side yard setback requirements for a detached garage in the R-1 Zoning District. The Planning Commission conducted a public hearing on the proposed variance preceded by published and mailed notice. The applicant was present, and the Planning Commission heard testimony from all interested persons wishing to speak and now makes the following:

FINDINGS OF FACT:

1. The subject property is zoned R-1, One Family Residential District.
2. The subject property is legally described as:

The North 68.58 feet of the West ½ of Lot 1, Block 1, Larpenteur Villas
3. The applicant seeks a variance from Section 113-240, Subd. (e) (corner side yard requirements) of the Falcon Heights City Code, which requires structures or buildings to be located no closer than fifteen (15) feet from the corner side yard line.
4. The subject property is 20,425.28 square feet. The existing garage is set back five (5) feet from the north property line, and it is legally nonconforming. The variance proposal requests a setback of eight (8) feet for a replacement garage.

5. Section 113-62 Subd. (e) of the Falcon Height City Code directs that the City to make the following findings when considering a request for a variance:

- (1) The variance would be in harmony with the general purposes and intent of this chapter.

The Planning Commission finds that the granting of this variance would be in harmony with the general purposes and intent of Chapter 113.

- (2) The variance would be consistent with the comprehensive plan.

The Planning Commission finds that the granting of this variance is consistent with the comprehensive plan.

- (3) That, there are practical difficulties in complying with this chapter.

The Planning Commission finds that the granting of this variance does not meet all three criteria for practical difficulties as described in Minnesota Statutes § 462.357, subd. 6(2). The proposed replacement garage location of eight feet from the property line is not reasonable due to the unknown future use of the Garden Avenue right of way. The property does not present physical uniqueness that would prohibit building the garage at the required setback. The essential character of the neighborhood would not change with this garage.

- (4) That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.

The Planning Commission finds that the variance would not impair an adequate supply of light and air to the adjacent properties, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger public safety.

- (5) That the requested variance is the minimum action required to eliminate the practical difficulties.

The Planning Commission finds that the variance does not meet the criteria for practical difficulties and the garage may be located elsewhere on the property.

- (6) Variances shall be granted for earth sheltered construction as defined in Minn. Stats. § 216C.06, subd. 14, when in harmony with this chapter. Variances may be approved for the temporary use of a one-family dwelling as a two-family dwelling.

The Planning Commission finds that criteria (6) does not apply to this variance application.

RECOMMENDATION

The Planning Commission recommends that the City Council deny the application by Todd Thun and Marsha Keppel for a variance from Section 113-240, Subd. (e) of the Falcon Heights City Code for 1800 Albert Street.

ADOPTED by the Falcon Heights Planning Commission on this 25th day of June, 2019.

FALCON HEIGHTS PLANNING COMMISSION

By: _____

Its Chairperson

ATTEST:

By: _____

Its: _____

Sec. 113-62. - Variances.

(a) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Practical difficulties means the same as that term defined in Minn. Stats. § 462.357, as may be amended, meaning that the property owner proposes to use the property in a reasonable manner not permitted by this chapter, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and a variance, if granted, shall not alter the character of the locality. Economic considerations alone shall not constitute practical difficulties. Practical difficulties include but are not limited to inadequate access to direct sunlight for solar energy systems.

Variance means a modification of or variation from the provisions of this chapter consistent with the state enabling statute for municipalities, as applied to a specific property and granted pursuant to the standards and procedures of this chapter.

(b) *Purpose.* The purpose of this division is to provide the procedure and criteria for variances.

(c) *Application.*

(1) Any owner of property or a person holding a contract to purchase property, or an optionee holding an option conditioned solely on the grant of a variance, or the duly authorized agent of such appellant, may make application for a variance. The application shall be made on forms prepared by the zoning administrator.

(2) The application shall contain the legal description of the property, the zoning district in which it is located, a brief statement of the reasons the variance is requested, a statement of the ownership interest therein of the applicant and the names and addresses of the owners of all abutting property as listed on the current real estate tax rolls. The application shall be verified.

(d) *Use variances prohibited.* Variances may not be approved for a use that is not allowed in the zoning district where the property is located.

(e) *Review criteria.* The city council shall not approve any variance request unless they find that failure to grant the variance will result in practical difficulties on the applicant, and, as may be applicable, all of the following criteria have been met:

(1) The variance would be in harmony with the general purposes and intent of this chapter.

(2) The variance would be consistent with the comprehensive plan.

(3) That, there are practical difficulties in complying with this chapter.

(4) That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.

- (5) That the requested variance is the minimum action required to eliminate the practical difficulties.
- (6) Variances shall be granted for earth sheltered construction as defined in Minn. Stats. § 216C.06, subd. 14, when in harmony with this chapter. Variances may be approved for the temporary use of a one-family dwelling as a two-family dwelling.
- (f) *Conditions.* The city may attach conditions to the grant of the variance. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- (g) *Procedure.*
- (1) All applications for variances shall be referred to the planning commission for study and recommendation to the city council.
 - (2) Within 60 days, the planning commission shall forward its recommendations to the city council; if no recommendation is transmitted within 60 days after referral of the application for variance to the planning commission, the city council may take action without further awaiting such recommendation.
 - (3) Variances are granted or denied by motion of the city council.
- (h) *Termination.* The violation of any condition of the variance shall be the basis for the city council, following a hearing, to terminate the variance. If the property is not used or improvements substantially begun within a period of one year after the decision granting the variance, unless the variance decision provides otherwise, the variance shall be terminated. Unless the city council specifically approves a different time when action is officially taken on the request, approvals which have been issued under the provisions of this section shall expire without further action by the planning commission or the city council, unless the applicant commences the authorized use or improvement within one year of the date the variance is issued; or, unless before the expiration of the one-year period, the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by city council. The request for extension shall state facts showing a good faith attempt to complete or utilize the approval permitted in the variance. A request for an extension not exceeding one year shall be subject to the review and approval of the zoning administrator. Should a second extension of time, or any extension of time longer than one year, be requested by the applicant, it shall be presented to the planning commission for a recommendation and to the city council for a decision.

(Code 1993, § 9-15.03; Ord. No. 11-01, § 1, 7-13-2011)

State Law reference— Variances, Minn. Stats. § 462.357, subd. 6(2).

INFORMATION MEMO

Land Use Variances

Learn about variances as a way 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” (before 2011 called “undue hardship”). Links to a model ordinance and forms for use with this law.

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.

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.

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.

[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.

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.

Minn. Stat. § 15.99.

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.

Minn. Stat. § 15.99, subd. 2.

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

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.

Minn. Stat. § 15.99, subd. 2.

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.

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

Garage at 1803 Hamline Avenue

