

**FINDING OF FACTS
VARIANCE AND CONDITIONAL USE PERMITS
FOR 511 HIGHWAY 23 SOUTH
WITHIN THE CITY OF MARSHALL, MINNESOTA**

WHEREAS, an application has been submitted by Tadd and Teresa Inhen, (“Applicant”) to the City Council requesting approval of a conditional use permits for an advertising sign under the Zoning Code, Article 86-VI, Section 86-185, in the City of Marshall for the following location:

LOCATION: 511 Highway 23 South.

LEGAL DESCRIPTION: See Exhibit A

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING: A Conditional Use Permit to install an advertising sign on the property located at 511 Highway 23 South and legally described above, and

WHEREAS, notice required pursuant to Minnesota Statutes Section 462.357 including the time, place and purpose of the hearing was published in the official newspaper at least ten days prior to the day of the hearing; and

WHEREAS, notice required pursuant to Minnesota Statutes Section 462.357 was mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the request relates; and

WHEREAS, the Planning Commission held a public hearing as required by the city Zoning Code on August 9, 2023, and

WHEREAS, Zoning Ordinance Section 86-185 (c) requires that all advertising signs be permitted only by conditional use permit and be placed at least 100 feet from other advertising signs and from any residence district, and

WHEREAS, the proposed advertising sign is located less than 100 feet from the adjacent R-M Manufactured home park district, making this request non-compliant with the ordinance without a variance, and

WHEREAS, Zoning Ordinance provides for considerations for granting a variance as follows: the 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. The term "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, and

WHEREAS, staff believe this proposal meets the practical difficulties test for the following reasons:

- The proposal to install an advertising sign is reasonable;
- The problem is caused by the conditions unique to this property and not created by the

landowner because the sign cannot be moved farther away from the adjacent residential district due to the existing building and an odd shape of the lot;

- Granting the variance will not change the character of the area because there is another billboard not far away, so another one will not alter the “character” of the area; and

WHEREAS, staff suggested adding a condition to a variance to plant and maintain trees between the sign and adjacent residence district to mitigate the negative effect on the neighboring residential area, and

WHEREAS, staff assert that if a variance is approved, application for conditional use permit for advertising sign will meet the ordinance provisions for approval, and

WHEREAS, the Planning Commission has discussed the above findings and, after discussion, held a vote on the request, and

WHEREAS, the Planning Commission, based on the above findings, has recommended to the City Council to approve a request for a variance adjustment permit to allow for reduced distance from advertising sign to the residence with a certain condition, arising out of the motion offered by Muchlinski and seconded by Pieper, and declared carried on the following vote Ayes: 5 Nays: 0, and

WHEREAS, the Planning Commission, based on the above findings, has recommended to the City Council to approve a request for a conditional use permit for an advertising sign with certain conditions, arising out of the motion offered by Muchlinski and seconded by Deutz, and declared carried on the following vote Ayes: 5 Nays: 0, and

WHEREAS, the City Council reviewed the Minutes of the Planning Commission and heard from staff, and

WHEREAS, Staff reiterated its findings to the Council at the August 22, 2023, Council meeting,

NOW THEREFORE, THE COUNCIL HAS RESOLVED, that the City Council accepts and adopts the following findings:

1. Because of the nature of the proposed use and its location, the variance request meets the practical difficulties test:
 - a. 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.
 - c. The variance, if granted, will not alter the essential character of the locality.
2. Because of the nature of the proposed use and its location, the requested conditional use will not:
 - a. Be inconsistent with adjacent properties.
 - b. Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this Code.

FURTHER, THE COUNCIL HAS RESOLVED, that the City Council of the City of Marshall

hereby approves the request for a variance adjustment permit to allow for reduced distance from an advertising sign to the adjacent residence district, subject to on-going compliance with all of the following conditions:

1. Pursuant to Marshall Code Article 86-II, Division 86-II-1, Section 86-29, no application for a condition modification shall be considered by the planning commission or council for at least one-year from the date of a variance adjustment permit approval or from when circumstance sufficiently change to justify a review.
2. The owner shall maintain the property to conform with the Zoning Ordinance, Building Code, and not cause or create negative impacts to existing or future properties adjacent thereto.
3. The trees are planted between the sign and the adjoining residential district to fully block the view of the sign from residential area; such trees shall be 2 inch minimum caliper when planted and at least 30 feet tall when fully grown. Any tree that dies or is damaged must be replaced within a year.
4. The City reserves the right to revoke the variance if the applicant, or if the ownership of the property has changed, then the current owner, has breached the conditions contained in this permit provided first, however, that the City serve the applicant with written notice specifying items of any such default and thereafter allow the applicant a reasonable time in which to cure any such default.

FURTHER, THE COUNCIL HAS RESOLVED, that the City Council of the City of Marshall hereby approves the requested conditional use permit for an advertising sign, subject to on-going compliance with all of the following conditions:

1. If within one (1) year after approving the Conditional Use Permit, the use as allowed by the permit shall not have been initiated, the CUP shall become null and void unless a petition for an extension of time in which to complete the use has been granted by the City Council. Such petition shall be requested in writing and shall be submitted at least 30 days prior to expiration.
2. Pursuant to Marshall Code Article 86-II, Division 86-II-2, Section 86-49, no application for a condition modification shall be considered by the planning commission or council for at least one-year from the date of a conditional use permit approval or from when circumstance sufficiently change to justify a review.
3. The owner shall maintain the property to conform with the Zoning Ordinance, Building Code, and not cause or create negative impacts to existing or future properties adjacent thereto.
4. The owner shall obtain all relevant and required permits, including City's sign permit and State permit, prior to beginning any work.

5. The installed sign shall be as follows:
 - i. The sign must be installed as shown on attached sketch. A survey showing exact sign location by the registered land surveyor shall be filed with the City of Marshall prior to sign installation. The sign or any part thereof shall not encroach into any public right-of-way or adjacent property.
 - ii. This permit is for the sign structure described as follows:
 - a. Two double panels (not-digital) installed at an angle to each other (four sign panels total).
 - b. Each sign panel shall be no greater than 10 feet by 30 feet.
 - c. The overall height of the sign shall be no more than 30 feet.Structural drawings showing sign footing and foundations shall be signed by a registered professional engineer and submitted along the sign permit application.
 - iii. The sign structure shall be maintained in a safe condition and all surfaces maintained without blemish or defects. The current land and sign owner and all future sign and landowners are fully responsible for maintenance, together or separately.

6. The City reserves the right to revoke the Conditional Use Permit if the applicant or if ownership of the property has transferred, then the current owner, has breached the conditions contained in this permit provided first, however, that the City serve the applicant with written notice specifying items of any such default and thereafter allow the applicant a reasonable time in which to cure any such default.

Approval is contingent upon execution and return of this document to the City Planning Office. I have read and agree to the conditions of this resolution as outlined above.

Property Owner / Applicant

Date

EXHIBIT A

Legal description:

: All that part of Lot 2, Block 2 of Wilke-Miller-Buesing First Addition in the City of Marshall, as filed and recorded in the office of the County Recorder in and for Lyon County, Minnesota, lying southwesterly of the following described line. Commencing at the northerly most corner of said Lot 2; thence South 48 degrees 43 minutes 41 seconds West, assumed bearing along the northwesterly line of said Lot 2, a distance of 255.82 feet; thence southwesterly along said northwesterly line, along a tangential curve, concave to the northwest, having a central angle of 00 degrees 11 minutes 39 seconds, a radius of 5830.00 feet, and are length of 19.74 feet and a chord that bears South 48 degrees 49 minutes 29 seconds West, to the point of beginning of said line to be described; thence South 41 degrees 16 minutes 20 seconds East, not tangent to said curve a distance of 276.72 feet, to a point on the south line of said Lot 2, said line there terminating. EXCEPTING THEREFROM the following described tract: All that parts of Lots 1, 2 and 3, Block 2 of Wilke-Miller-Buesing First Addition in the City of Marshall, as filed and recorded in the office of the County Recorder in and for Lyon County, Minnesota, being more particularly described as follows: Commencing at the northerly more corner of said Lot 3; thence South 48 degrees 43 minutes 41 seconds West, assumed bearing, along the northwesterly line of said Lot 3, a distance of 242.87 feet to the point of beginning; thence South 41 degrees 16 minutes 19 seconds East, a distance of 114.35 feet; thence North 89 degrees 06 minutes 44 seconds East a distance of 47.00 feet to a point on the westerly line of Holabird Circle as shown on said plat of Wilke-Miller-Buesing First Addition; thence southerly, along said westerly line, along a nontangential curve, concave in an easterly direction having a central angle of 12 degrees 03 minutes 48 seconds, a radius of 60.00 feet, and arc length of 12.63 feet and a chord that bears South 06 degrees 55 minutes 08 seconds East; thence South 77 degrees 02 minutes 56 seconds East, not tangent to said curve, a distance of 51.04 feet; thence South 48 degrees 43 minutes 41 seconds West a distance of 90.00 feet; thence South 38 degrees 43 minutes 43 seconds West a distance of 149.89 feet to a point on the south line of said Block 2; thence North 89 degrees 20 minutes 35 seconds West along said south line a distance of 235.00 feet; thence North 48 degrees 43 minutes 41 seconds East a distance of 428.69 feet to the point of beginning.