



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning and Economic Development Division

m e m o r a n d u m

TO: Bruce Walden, CAO

FROM: Elizabeth Tyler, AICP, Planning Manager

DATE: October 31, 2001

SUBJECT: Plan Case No. 1798-M-01: Request by the East Lawn Burial Park Association to rezone 714 North Cunningham Ave from B-3, General Business to AG, Agriculture.

Introduction

Randy Baker of Morton Buildings, Inc. has submitted a petition on behalf of the East Lawn Burial Park Association for a Zoning Map Amendment to rezone approximately 0.64 acres of property at 714 North Cunningham Avenue from B-3, General Business to AG, Agricultural. The proposed rezoning would allow for the replacement of an existing cemetery maintenance building with a new office/maintenance building at the same location.

Background

The only districts in which cemeteries are allowed are by Conditional Use in CRE, Conservation-Recreation-Education, and AG, Agriculture. Because the existing brick building is an accessory use to the cemetery at 802 North Cunningham Avenue, the building is nonconforming in B-3 and requires a rezoning for the cemetery use to be re-established on the parcel. The 1982 Urbana Comprehensive Plan designates the future land use of this area as Institutional - Cemetery. The petitioner has concurrently requested and was granted a conditional use permit for the cemetery use and has also requested a rear yard setback variance for the proposed building. Both of these cases were heard by the Urbana Zoning Board of Appeals on October 25, 2001 and are contingent upon approval of the rezoning request to AG, Agriculture.

On October 18, 2001 the Urbana Plan Commission recommended 6 to 0 that the City Council approve the requested rezoning. Additional background information on this request was provided in the Plan Commission Memorandum, dated October 12, 2001.

Issues and Discussion

As previously mentioned, the rezoning is requested in order to bring the current nonconforming use into zoning compliance for the new office/maintenance building construction proposed on the site. The parcel has historically been a cemetery use and is proposed to continue being used in this manner.

In considering the zoning map amendment for the subject property, the City must consider effects upon the public health, safety, comfort, morals and general welfare of the community. The City's Comprehensive Plan and zoning law decisions in the Illinois Courts provide a framework for this consideration. Relevant Comprehensive Plan goals, objectives, and policies are identified in the Plan Commission Memorandum.

The Plan Commission Memorandum also addresses the factors for evaluating the legal validity of a zoning classification, as identified in the case of *La Salle National Bank v. County of Cook*. These are summarized as follows:

1. *The existing land uses and zoning of the nearby property.*

This factor relates to the degree to which the existing and proposed zoning districts are compatible with existing land uses and land use regulations in the immediate area.

The proposed rezoning to AG, Agriculture would be consistent with existing AG zoning designation and cemetery use to the north. While the parcel to the east is zoned B-3, it is only a portion of the Armory property divided by the Saline Ditch, and would be a landlocked commercial portion of the property surrounded by AG and CRE zoning. The Burial Park Association uses portions of this property with permission from the adjacent owner. The land uses along Cunningham Avenue to the west are a muffler shop and an oil change facility; both are zoned B-3. The Saline Ditch intersects the southern portion of the subject U-shaped parcel. The Urbana Comprehensive Plan Future Land Use map indicates the general area for Institutional Use and the subject area is designated Institutional - Cemetery.

2. *The extent to which property values are diminished by the restrictions of the ordinance.*

This is the difference in the value of the property as zoned for commercial and the value it would have if it were rezoned to agriculture to permit the proposed use.

The subject property is located in a transitional area between cemetery use and commercial development. While it is zoned B-3, the subject parcel currently serves as access to the cemetery. The existence of graves near the southern boundary of the main cemetery parcel promotes the continued access to the south of the cemetery. The proposed new maintenance building, which requires rezoning to AG, will allow the parcel to be better utilized than with its current B-3 zoning. Considering these

factors, commercially zoned property at this location would hold less value than property zoned agriculture.

It should be noted that City Planning and Economic Development Division staff are not qualified as professional appraisers and that a professional appraiser has not been consulted regarding the impact on the value of the property. Therefore, any discussion pertaining to property values must be considered speculative and inconclusive.

3. *The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.*
4. *The relative gain to the public as compared to the hardship imposed on the individual property owner.*

The question here applies to the current zoning restrictions: do the restrictions promote the public welfare in some significant way so as to offset any hardship imposed on the property owner by the restrictions?

The current business zoning does not present any recognizable benefits to the public welfare of the community, and limits the improvement of the cemetery use on the zoning lot. The site contains a building in an extreme state of disrepair, which cannot adequately hold equipment currently stored outside. The proposed agricultural zoning will contribute to the welfare of the community by allowing the construction of a modern building on the property, which will better serve the public cemetery and will be compatible with other uses within the general area. Overall, the proposed agricultural zoning serves the community better than vacant property zoned commercial.

5. *The suitability of the subject property for the zoned purposes.*

The issue here is whether there are certain features of the property which favor the type and intensity of uses permitted in either the current or the proposed zoning district.

As stated above, this property is located in an area that is suitable for institutional-cemetery development and has been planned for such in the Urbana Comprehensive Plan. Rezoning to Conservation-Recreation-Institution was the other possible option that would permit the proposed use. Upon staff recommendation, the petitioner has requested Agricultural use to make the parcel consistent with the principal cemetery parcel. A specific feature of this property making it suitable for the proposed zoning is its adjacency and access to the cemetery. In addition, the sloping topography along the southern portion of the property is a significant limitation on any business use, either for the subject property or for any possible expansion of adjacent commercial uses to the west. Considering the modest development pattern of various uses in the immediate vicinity, the subject property is well suited for the proposed zoning district.

6. *The length of time the property has been vacant as zoned, considered in the context of land development, in the area, in the vicinity of the subject property.*

Another test of the validity of the current zoning district is whether it can be shown that the property has remained vacant for a significant period of time because of restrictions in that zoning district.

The East Lawn Cemetery has been in existence for many years. Despite being historically zoned B-3, the subject parcel has presumably been accessory to the cemetery for access and equipment storage since the cemetery was established. Aerial photography from 1973 confirms the use of the property in this manner on that date.

Summary of Staff Findings

1. The proposed AG, Agricultural zoning district for the subject site would be compatible with the Comprehensive Plan institutional-cemetery designation for the property.
2. The proposed AG, Agricultural zoning district for the subject site would be consistent with the current B-3 zoning to the north, and compatible with portions of the property to the east.
3. The petitioner's request would help accommodate proposed construction that would be generally compatible with the variety of uses in the immediate vicinity.
4. The proposed rezoning to the AG, Agricultural would serve the public interest by allowing the property to be used more effectively than it is presently used.
5. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

The City Council has the following options in Plan Case No. 1798-M-01:

- a. approve the requested rezoning of 714 North Cunningham Avenue from B-3, General Business to AG, Agriculture.
- b. deny the requested rezoning of 714 North Cunningham Avenue from B-3, General Business to AG, Agriculture.

Recommendation

At their October 12, 2001 meeting, the Urbana Plan Commission recommended unanimously (6 to 0) that the City Council approve the requested rezoning to AG, Agriculture. Staff concurs with this recommendation.

Prepared by:

Tim Ross, Planner

c: Randy Baker

Attachments: Location & Zoning Maps
 Draft Ordinance Amending the Zoning Map
 Excerpt Draft Minutes from October 12, 2001 Plan Commission meeting

ORDINANCE NO. 2001-11-138

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF URBANA, ILLINOIS

(for a parcel located at 714 North Cunningham Avenue - Plan Case 1798-M-01)

WHEREAS, after due publication, a public hearing was held by the Urbana Plan Commission on October 18, 2001 concerning the petition filed by the petitioner in Plan Case No. 1798-M-01; and

WHEREAS, the requested rezoning is consistent with the City of Urbana's Official Comprehensive Plan Map and with the goals and objectives of the City of Urbana Comprehensive Plan, as amended; and

WHEREAS, the Urbana Plan Commission voted 6 ayes and 0 nays to forward the case to the Urbana City Council with a recommendation to approve the rezoning request of the property herein described below and commonly known as 714 North Cunningham Avenue from B-3, General Business to AG, Agriculture; and

WHEREAS, the findings of the Plan Commission indicate that approval of the rezoning request would promote the general health, safety, morals, and general welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The Zoning Ordinance and Zoning Map of the City of Urbana, Illinois, are herewith and hereby amended to change the zoning classification of the following described areas commonly known as 714 North Cunningham Avenue from B-3, General Business to AG, Agriculture.

LEGAL DESCRIPTION:

A Part of the East Half of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian in Urbana, Champaign County, Illinois.

PERMANENT PARCEL #: 91-21-08-281-001

LOCATED AT: 714 North Cunningham Avenue, Urbana, Illinois

The said area above described being represented on the map attached hereto and incorporated herein by reference.

Section 2. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities. This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Chapter 65, Section 1-2-4 of the Illinois Compiled Statutes (65 ILCS 5/1-2-4).

PASSED by the City Council this _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the ____ day of _____, 2001, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF URBANA, ILLINOIS (for a parcel located at 714 North Cunningham Avenue - Plan Case 1798-M-01)" which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, 2001, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, 2001.