



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

**m e m o r a n d u m**

**TO:** Bruce Walden, Chief Administrative Officer

**FROM:** Elizabeth H. Tyler, AICP, Director/City Planner

**DATE:** July 26, 2004

**SUBJECT:** ZBA 04-MAJ-5, Request to reduce the side yard setback from 5' to 3' at 210 E. Mumford Drive in Urbana's R-3, Single and Two-Family Residential Zoning District.

ZBA 04-MAJ-6, Request to reduce the front yard setback from 25' to 15' at 210 E. Mumford Drive in Urbana's R-3, Single and Two-Family Residential Zoning District.

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**Introduction**

The case is a request for two major variances filed by Allen Marx. The requested variances are to allow side yard and front yard setback reductions. The request is to reduce the required side-yard setback from 5 feet to 3 feet, and to reduce the 25-foot front-yard setback to 15 feet along the Mumford Drive frontage.

The variances will allow for the enclosure of an existing carport and its conversion to interior living space and for a garage addition to be added in front of the carport conversion. The new garage addition will be accessed from Mumford Drive via the existing driveway.

Pursuant to the Urbana Zoning Ordinance, in order to vary the setbacks, the Zoning Board of Appeals and City Council must approve the major variances.

**Description of the Site**

The site is located on the northwest corner of the intersection of Mumford and Vine Street (see attached map). The site is the location of a house of modern design that has been unoccupied and deteriorating for ten years. The lot and house face Mumford Avenue to the south. To the immediate west is a single family home that has been buffered from the house carport and driveway by a fence and concrete wall. The lot contains numerous mature trees and bushes that screen the house from street and neighbors but that constrain potential locations for relocation of the driveway and addition of a garage.

## Discussion

The petitioner has purchased the property and is extensively renovating it to contemporary standards and plans to use it as his personal residence. The renovations include increasing the usable interior space and adding a two car attached garage. The requested variances will facilitate the petitioner's intention to rehabilitate the house, expand it's living space, conserve the modernist character of its original design, all without sacrificing the mature trees and landscaping on the site.

In the R-3, Single and Two- Family Residential district the side yard requirement is 5-feet. The side yard variance request is to allow a 40% encroachment into the side yard. The change is from the maximum requirement of 5 feet down to 3 feet.

The front yard set back requirement is the larger of: 15 feet, or the average setback of the houses on the block face but with a 25-foot maximum required. At present the actual set back of the house is the same as the average set back on the block, which is 29 feet. The front yard variance request is to allow a 40% encroachment into the required front yard. The change is from the maximum requirement of 25 feet down to 15 feet. The petitioner intends only for the new garage to be built out to the 15-foot setback line.

The Urbana Zoning Ordinance classifies the requests as major variances, and both require Zoning Board of Appeals approval before moving on to City Council.

## Variance Criteria

Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals to make findings based on variance criteria. The following is a review of the criteria as they pertain to this case and the criteria outlined in the ordinance:

1. *Are there special circumstances or special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance?*

The practical difficulty is that the lot in question is a corner lot with an unusual acute triangular shape that constrains the usable area of the lot.

2. *The proposed variance will not serve as a special privilege because the variance requested is necessary due to special circumstances relating to the land or structure involved or to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district.*

The variances may each be considered special privileges.

3. *The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner.*

The need for the variances has not yet been created. The petitioner is aware of the requirements of the Zoning Ordinance and has applied for variances prior to construction.

4. *The variance will not alter the essential character of the neighborhood.*

The requested decrease of both the side and front yard setbacks should not detract from the essential character of the neighborhood.

5. *The variance will not cause a nuisance to the adjacent property.*

The variances should not cause a nuisance to adjacent properties. The location of the new wall and garage, with the requested setback reductions, may offer a benefit to the neighbors, as it will enclose the carport and any potentially objectionable sound activity or visible storage within it.

6. *The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.*

The petitioner is only requesting the minimum deviation from the requirements so that he can renovate the home to contemporary standards without sacrificing the mature trees and landscaping on the site.

### **Options for #ZBA-04-MAJ-5 (Side Yard Setback Reduction, 5' to 3')**

The City Council has the following options this case:

- a) The Council may grant the variance as requested based on the findings outlined in this memo; or
- b) The Council may grant the variance subject to certain terms and conditions. If the Council elects to impose conditions or grant the variance on findings other than those presented herein, they should articulate these additional findings in support of the approval and any conditions imposed; or
- c) The Council may deny the variance request. If the Council elects to do so, they should articulate findings supporting this denial.

### **Recommendation**

Based on the findings outlined herein, the Zoning Board of Appeals voted 4-0 to forward the variance request to the Urbana City Council with a **recommendation for approval to allow the petitioner to reduce the side yard setback from 5 feet to 3 feet, with the condition that the development on the site must generally conform to the site plan submitted with the application.** Staff concurs with the ZBA and recommends that City Council **GRANT** the variance with the condition set forth by the ZBA.

### **Options for #ZBA-04-MAJ-6 (Front Yard Setback Reduction, 25' to 15')**

The City Council has the following options this case:

- a) The Council may grant the variance as requested based on the findings outlined in this memo; or

- b) The Council may grant the variance subject to certain terms and conditions. If the Council elects to impose conditions or grant the variance on findings other than those presented herein, they should articulate these additional findings in support of the approval and any conditions imposed; or
- c) The Council may deny the variance request. If the Council elects to do so, they should articulate findings supporting this denial.

**Recommendation**

Based on the findings outlined herein, the Zoning Board of Appeals voted 4-0 to forward the variance request to the Urbana City Council with **a recommendation for approval to allow the petitioner to reduce the front yard setback from 25 feet to 15 feet, with the condition that the development on the site must generally conform to the site plan submitted with the application.** Staff concurs with the ZBA and recommends that City Council **GRANT** the variance with the condition set forth by the ZBA.

Attachments:      Proposed Ordinances  
                         Draft July 21, 2004 ZBA Minutes  
                         Exhibit A: Location Map  
                         Exhibit F: Site Photos  
                         Petitioners' Application w/ Site Plan

Prepared by:

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Paul Lindahl, Planner

Cc:                  Allen Marx, Petitioner  
                         303 E. Sherman St  
                         St. Joseph, IL 61873

**ORDINANCE NO.2004-08-097**

**AN ORDINANCE APPROVING A MAJOR VARIANCE**

(Allow a side yard setback reduction, from 5' to 3' in the R-3, Single and Two-Family Residential Zoning District- 210 E. Mumford Drive/ Case No. ZBA-04-MAJ-5)

WHEREAS, the Zoning Ordinance provides for a major variance procedure to permit the Zoning Board of Appeals and the City Council to consider criteria for major variances where there are special circumstances or conditions with the parcel of land or the structure; and

WHEREAS, the owner of the subject property, Allen Marx, has submitted a petition requesting a major variance to allow a two-foot encroachment into the required 5-foot side yard setback at 210 E. Mumford Drive in Urbana's R-3, Single and Two-Family Residential Zoning District; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA-04-MAJ-5; and

WHEREAS, after due publication in accordance with Section XI-10 of the Urbana Zoning Ordinance and with Chapter 65, Section 5/11-13-14 of the Illinois Compiled Statutes (65 ILCS 5/11-13-14), the Urbana Zoning Board of Appeals (ZBA) held a public hearing on the proposed major variance on July 21, 2004 and the ZBA voted 4 ayes and 0 nays to recommend to the City Council approval of the requested variance with the condition listed below; and

WHEREAS, after due and proper consideration, the City Council of the City of Urbana has determined that the major variance referenced herein conforms with the major variance procedures in accordance with Article XI, Section XI-3.C.3.d of the Urbana Zoning Ordinance; and

WHEREAS, the City Council has considered the variance criteria established in the Urbana Zoning Ordinance and has determined the following findings:

1. There are special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance. The practical difficulty is that the lot in question is a corner lot with an unusual acute triangular shape that constrains the usable area of the lot.

2. The variance could be considered a special privilege.

3. The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner because the need for the variance has not yet been created. The petitioner is aware of the requirements of the Zoning Ordinance and has applied for a variance prior to construction.

4. The requested decrease of the side setback should not detract from the essential character of the neighborhood.

5. The variance should not cause a nuisance to adjacent properties. The location of the new wall and garage, with the requested setback reductions, may offer a benefit to the neighbors, as it will enclose the carport and any potentially objectionable sound activity or visible storage within it.

6. The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request. The petitioner is only requesting the minimum deviation from the requirements so that he can renovate the home to contemporary standards without sacrificing the mature trees and landscaping on the site.

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

The major variance request by Allen Marx, in Case #ZBA-04-MAJ-5, is hereby approved to allow a two-foot encroachment into the required 5-foot side yard setback at 210 E. Mumford Drive in Urbana's R-3, Single and Two-Family Residential Zoning District, in the manner proposed in the application, with the condition that the construction must generally conform to the site plan submitted with the application.

The major variance described above shall only apply to the property located at 210 E. Mumford Drive, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION: Lot 128 in University downs Fourth Addition.

PERMANENT PARCEL #: 93-21-20-251-037

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).

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said Council on the \_\_\_\_ day of \_\_\_\_\_, 2004.

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 \_\_\_\_\_, 2004, the corporate authorities of the City of Urbana passed and approved Ordinance No.

\_\_\_\_\_, entitled:

AN ORDINANCE APPROVING A MAJOR VARIANCE

(Allow a side yard setback reduction, from 5' to 3' in the R-3, Single and Two-Family Residential Zoning District- 210 E. Mumford Drive/ Case No. ZBA-04-MAJ-5)

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 \_\_\_\_\_, 2004, 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.

**MINUTES OF A REGULAR MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** July 21, 2004

**DRAFT**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
400 S. Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Paul Armstrong, Herb Corten, Charles Warmbrunn, Harvey Welch

**MEMBERS ABSENT** Anna Merritt, Joe Schoonover

**STAFF PRESENT:** Michaela Oktay, Senior Planner; Paul Lindahl, Planner; Teri Andel, Secretary

**OTHERS PRESENT:** Brandon Bowersox, David Dastur, Ed DeWan, Merle Ingersoll, Jr., Phyllis Johnston, Fred Kallmayer, Karl Koenke, Al Marx, Patrick McGonigle, Alice McLaughlin, Ronald Moline, Jim North, Jenny Park, Pastor Bob Rasmus

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**5. NEW PUBLIC HEARINGS**

**ZBA-04-MAJ-05: Request to reduce the side yard setback from 5' to 3' at 210 East Mumford Drive in Urbana's R-3, Single and Two-Family Residential Zoning District.**

**ZBA-04-MAJ-06: Request to reduce the front yard setback from 25' to 15' at 210 East Mumford Drive in Urbana's R-3, Single and Two-Family Residential Zoning District.**

Mr. Lindahl began his staff presentation for these cases with an explanation of the purpose for the two variance requests. He described the proposed site and the surrounding properties, noting the future land use designation was low-density residential. He talked about the side-yard requirements and front-yard requirements. He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance that pertained to these cases. He read the options of the Zoning Board of Appeals and stated staff's recommendation for each case, which were as follows:

*ZBA-04-MAJ-05: Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Urbana Zoning Board of Appeals*

*recommend approval of the variance to the Urbana City Council with the following condition:*

*The development on the site must generally conform to the site plan submitted with the application.*

*ZBA-04-MAJ-06: Based on the finding outlined in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Urbana Zoning Board of Appeals recommend approval of the variance to the Urbana City Council with the following condition:*

*The development on the site must generally conform to the site plan submitted with the application.*

Mr. Warmbrunn asked for clarification regarding the purpose for the side-yard setback variance. Did it solely have to do with the carport being turned into an existing room? Mr. Lindahl replied that was correct. Mr. Warmbrunn asked if the front-yard setback variance had solely to do with the garage? It met the side-yard setback requirements, correct? So, in essence the Zoning Board of Appeals could defeat the side-yard variance request and still allow the petitioner to have a garage? Mr. Lindahl stated that was correct.

Mr. Warmbrunn questioned if the existing carport was already only three feet away from the property line? And, the petitioner could fix it up without needing approval of a variance? The variance request was for walling in the carport to turn it into an enclosed room? Mr. Lindahl replied that was correct.

Mr. Warmbrunn inquired as to what the distance was from the house on the east side to Vine Street? Mr. Lindahl replied that he did not know. The setback on the east side would be considered a second front-yard setback, because it was a corner lot.

Mr. Corten pointed out that in one of the letters of opposition, one of the concerns mentioned was that the proposed garage would create a block the visibility at the intersection of Vine Street and Mumford. Another concern was that the reduction in the side-yard setback would create a fire hazard. He asked if staff had looked into the validity of these concerns? Mr. Lindahl responded by saying that the City's Building Inspector, along with other members of the Building Safety Division, had reviewed these plans and did not find the concerns to be accurate. He mentioned that he had received two phone calls in opposition in addition to the letter. Both callers were concerned about the approval of these variances setting a precedent in the neighborhood. They felt that the neighbors would be too close together.

Mr. Welch pointed out that the carport roof was already three feet away from the property line. Mr. Lindahl explained that this house had extremely wide eaves. The new western wall for the carport would be dropped down almost from the very edge of those eaves. Under the Zoning Ordinance, eaves could encroach much farther into the side-yard setback by right than a building

wall could. So, by constructing the wall, the petitioner would gain two feet of usable interior space.

Mr. Lindahl went on to say that the Zoning Board of Appeals should really consider that in essence, the eaves were already that close to the neighbor's yard. In fact, beyond the eaves was already a privacy fence. So, the actual affect on the neighbors would be nothing. Mr. Corten inquired as to whom the fence belonged to? Mr. Lindahl stated that the petitioner owned the fence. Mr. Corten commented that the fence appeared to be ready to fall over. Mr. Lindahl reminded the Zoning Board of Appeals that this house was essentially abandoned for ten years.

Mr. Welch remarked that his concern was not with the falling down fence, but that the fence belonged to the petitioner, who wants to drop a wall to the right of the fence. The phone calls received in opposition were not from the neighbors, but from other people. It would get crowded in the side-yard setback, but it was already crowded. Mr. Lindahl understood that the petitioner would remove the fence once the wall was constructed, so there would be three feet from that edge of the proposed enclosed room to the neighbor's property line.

Al Marx, petitioner, of 210 East Mumford Drive, stated that it was his intention to take the perimeters with the condition of the existing structures and construct a wall. Although removing the fence was not a high priority, he did plan to remove it as soon as the wall was built. By taking the fence down, the neighbor would gain that much usable space. It was not his intent to use the side yard for anything, because it would be unusable for him. He talked to the neighbor in question and found that they do not have any objections to his plans at all.

Mr. Marx explained that the reason for moving the wall into the side-yard setback was to respect the neighbor by only putting one small window facing their direction. The reason for extending the roof an extra two feet was to provide a north view and an access into the side yard. In essence, the neighbor would benefit for a less crowded area than exists now.

He explained that the second variance request was to construct a garage to project to the south to conceal two automobiles and any storage from the view of the road. There were existing Blue Spruce trees that would not be damaged or removed in the plans. The garage would not project beyond the existing natural barriers that were there. He noted that there was an existing brick screen wall that projected almost to the sidewalk. It would be modified by pruning the foliage on top. It would be less of a visual barrier.

Mr. Marx mentioned that he had looked at placing the garage somewhere else on the property, but he found that he would have to put another curb cut on Vine Street. There was more traffic on Vine Street and he did not wish to do that, because it would make traffic conditions less safe than they are now.

Mr. Warmbrunn inquired as to what the distance was from the east side of the house to Vine Street? Mr. Marx did not know exactly. He guessed it would be about 29 feet. Mr. Warmbrunn clarified that the reason he was asking was to show people who wrote letters in opposition that were concerned about the visibility from the intersection that there was plenty of room from Vine Street to the petitioner's proposed garage for visibility.

Mr. Marx commented that he respected the opinions of the people who were opposed; however, he had not had the opportunity to express his detailed development that he had planned. He was not impacting the neighborhood anymore than what the existing barriers already did. It was not his goal or intent to detract the views to or from his property. He did not know if this would set a precedent, because this structure was somewhat unusual.

Alice McLaughlin, of 202 East Mumford, was glad to see something being done with the house. It had been such an eyesore. She walked down to 210 East Mumford and studied the house and existing carport. She agreed with Mr. Marx that when the fence was gone, it would be more beautiful than it is now. The proposed changes would not ruin the neighborhood. It would add to the neighborhood if anything. The garage would not distract the visibility from the corner either.

Mr. Armstrong asked for clarification regarding the relative narrowness of the proposed reduced side-yard setback. Presumably they might compare this proposal to the current side-yard setbacks in the Savannah Green Subdivision. Mr. Lindahl stated that he had visited that subdivision a number of times and would say that the side-yards were quite narrow. However, he could not guess as to how wide they were. Some of the lots have fences and some do not. Mr. Armstrong stated that one of the concerns of the people in opposition was that if there were a fire, the Fire Department would not have access to the back yard. He had similar concerns with access and fire separation. Ms. Oktay replied that in building safety codes, it would impact what type of materials are needed depending on the distance between the building structures. She noted that the Fire Department received the variance requests in advance to look at them and consult with the Planning Division if there are any concerns.

Mr. Corten moved that the Zoning Board of Appeals forward ZBA-04-MAJ-05 to the City Council with a recommendation for approval along with the condition as recommended by staff.

Mr. Warmbrunn seconded the motion. The roll call was as follows:

Mr. Corten	-	Yes	Mr. Armstrong	-	Yes
Mr. Welch	-	Yes	Mr. Warmbrunn	-	Yes

The motion was approved by unanimous vote.

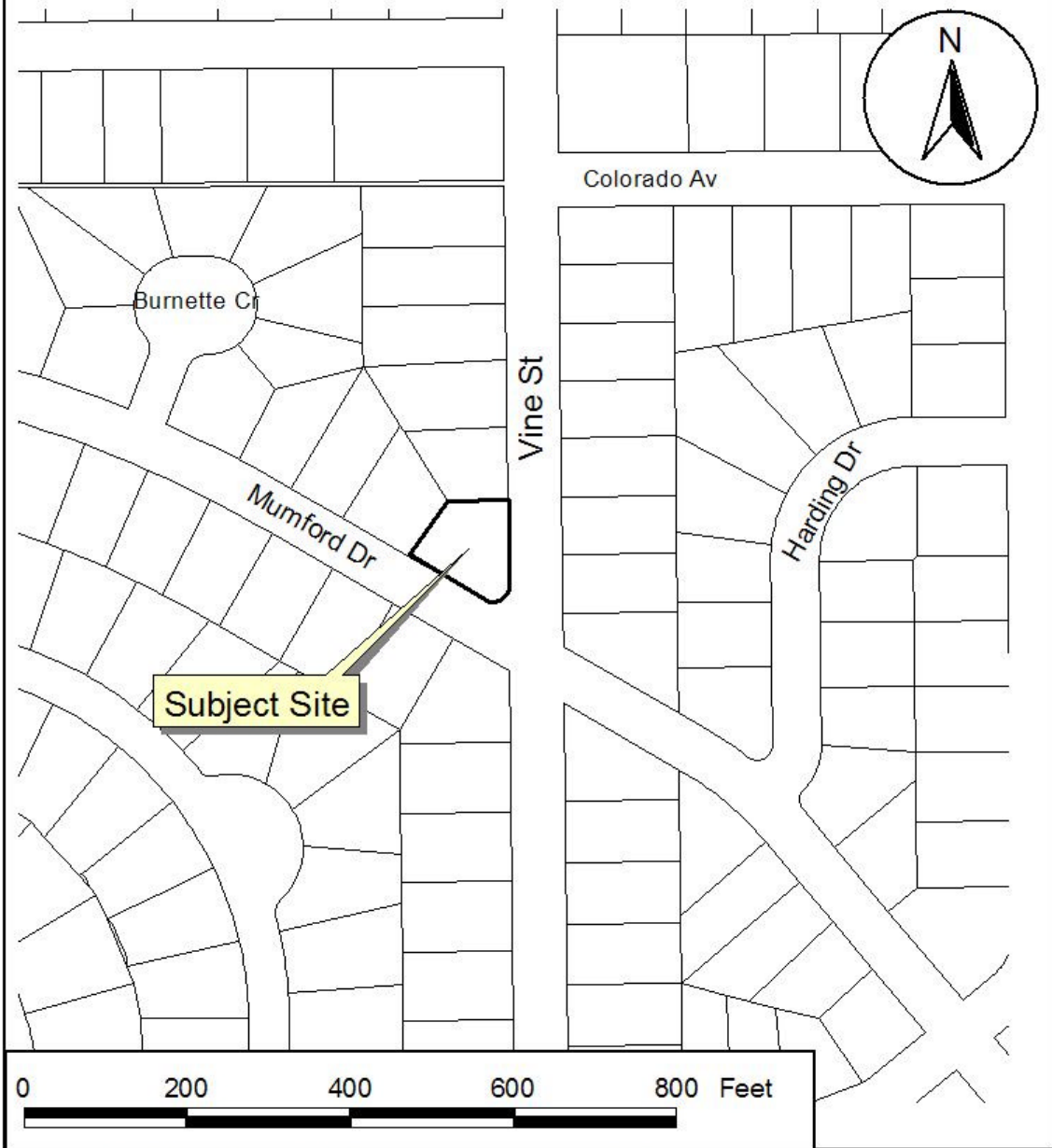
Mr. Warmbrunn moved that the Zoning Board of Appeals forward ZBA-04-MAJ-06 to the City Council with a recommendation for approval along with the condition as recommended by staff.

Mr. Welch seconded the motion. The roll call was as follows:

Mr. Armstrong	-	Yes	Mr. Welch	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Corten	-	Yes

The motion was passed by unanimous vote.

# Exhibit "A": Location Map



ZBA Case: 04-MAJ-5, Reduce Sideyard Setback  
ZBA Case: 04-MAJ-6 Reduce Front Yard Setback  
Petitioner: Allen Marx  
210 E. Mumford Dr.  
R-3, Single and Two-Family Residential  
Prepared 7/15/04 by Community Development Services - pal



Facing north west – traffic view –Vine St. at right



Facing north west to car port and retaining wall



North toward carport



Facing north east – traffic view – neighbors garage left



From Neighbors Driveway



Down property line – wall goes just inside roof eaves



Into carport at fence and neighbor garage