



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, AICP, Director, Community Development Services

DATE: March 20, 2008

SUBJECT: ZBA-2008-MAJ-03: Major Variance Request to allow for the construction of a mixed-use retail/office building with front yard setbacks along both University and Lincoln Avenues ranging from zero to ten feet.

ZBA-2008-MAJ-04: Major Variance Request to allow for parking to encroach greater than ten feet into the required fifteen-foot front yard setback.

Introduction

Vermilion Development Corporation, contract purchaser for the subject property, requests two major variances to build a three-story mixed-use retail/office building at the southwest corner of University and Lincoln Avenues. The northern portion of the subject property is zoned B-3, General Business, and the southern portion is zoned B-3U, General Business-University.

Table VI-3 of the Urbana Zoning Ordinance requires a minimum front yard setback of fifteen feet in both the B-3 and B-3U Zoning Districts. Additionally, Section VIII-4.F of the Urbana Zoning Ordinance allows parking to encroach ten feet into a required front yard if a five-foot, landscaped buffer yard is maintained. The first requested variance would allow for construction of a building with front yard setbacks on both University and Lincoln Avenues ranging from zero to ten feet. The second variance request would allow for parking to encroach greater than ten feet into the required fifteen-foot front yard setback along the northern portion of the Lincoln Avenue frontage.

Pursuant to the Urbana Zoning Ordinance, in order for major variances to be approved, the Zoning Board of Appeals must recommend approval by a two-thirds majority and forward to City Council for final review and approval. At their March 12, 2008 meeting, the Zoning Board of Appeals voted unanimously to recommend that the City Council approve major variance cases ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04.

To improve site circulation and safety, and to develop the subject site to its fullest potential, the petitioner is also requesting that a portion of the east/west alley that bisects the property be vacated.

Vacating a portion of the alley will eliminate access to Lincoln Avenue. Approval by City Council is required for alley vacations. The alley vacation is being presented to the City Council as a separate item.

Background

Site Description

The subject property is located southwest of the University Avenue\Lincoln Avenue intersection. The site is comprised of three parcels totaling approximately 34,400 S.F. The parcels are commonly known as 901 W. University Avenue, 902 W. Clark Street and 904 W. Clark Street. The site is divided by an alley that runs east and west. The northeast portion of the subject site was once occupied by Ye Olde Donut Shop. The southern portion of the site was occupied by a multi-family structure. Both of the structures have been demolished in recent years.

The subject property is currently owned by the University of Illinois Foundation. In 2001, the University and the City of Urbana entered into an Agreement Concerning the Vacation of Certain Rights-of-Way, adopting Ordinance No. 2001-08-083, in which the parties agreed to work jointly to market the subject property for development. The intent of the agreement was to create a significant architectural presence at the location that serves as an improvement to the University Avenue corridor's urban character and to create a development that generates tax revenues for the City of Urbana.

The portion of the subject property that lies north of the alley is zoned B-3, General Business. The portion of the subject property that lies to the south of the alley is zoned B-3U, General Business-University.

Future Land Use Map #8 in the 2005 City of Urbana Comprehensive Plan designates the subject property as "Campus Mixed-Use". The plan defines Campus Mixed-Use as:

"The Campus Mixed-Use classification is intended for limited areas that are close to campus. These areas promote urban-style development with a mix of uses that commonly include commercial, office and residential. Design Guidelines shall ensure that developments contain a strong urban design that emphasizes a pedestrian scale with buildings close to the street, wide sidewalks, and parking under and behind structures. The design and density of development should capitalize on existing and future transit routes in the area. Large-scale developments containing only single uses are discouraged within this classification."

Adjacent Land Uses and Zoning Designations

The subject property is located southwest of the University Avenue/Lincoln Avenue intersection. Both University Avenue and Lincoln Avenue are important routes. University Avenue, which is also US 45/150, is the major east-west corridor in central Urbana-Champaign. Lincoln Avenue is a major north-south corridor in Urbana and serves as an important route from I-74 to campus. University Avenue serves as the northern boundary of the University of Illinois campus and the University District. The development of the subject property represents an infill development opportunity along the University Avenue corridor.

The surrounding area north of the alley and to the west, north and east is commercial in nature. The area south of the alley is residential in nature. South of the alley and to the west and south are apartment buildings, while single-family residences are to the east across Lincoln Avenue along Clark Street. The 2005 Urbana Comprehensive Plan indicates the future land use for the area north of University Avenue as “Community Business”, the area to the east of Lincoln Avenue as “Community Business”, and the area to the south of University Avenue and to the west of Lincoln Avenue as “Campus - Mixed Use”. (See Exhibit C)

The following is a summary of surrounding zoning and land uses for the subject site:

Location	Zoning	Existing Land Use	Comprehensive Plan - Future Land Use
Site	B-3, General Business B-3U, General Business - University	Vacant	Campus Mixed-Use
North	B-3, General Business	Used Car Sales (not currently in operation)	Community Business
East	B-3, General Business B-2, Neighborhood Business	Restaurant Single-Family Residential	Community Business
South	B-3U, General Business-University	Apartment Buildings	Community Business
West	B-3, General Business B-3U, General Business - University	Fast-Food Restaurant Apartment Building	Community Business

Discussion

The petitioner is proposing a three-story, approximately 31,950 S.F. mixed-use retail/office building. (See Exhibits D and E) Providing for as much on-site parking as possible is a priority for the project. There are approximately 49 parking spaces provided on-site. The petitioner is also in the process of acquiring 908 W. Clark Street to provide for additional parking. The remaining required parking spaces will be provided on the University of Illinois campus via a Memorandum of Understanding between the petitioner and the University.

Development of the site presents a number of challenges. First, the size of the lot is limiting in that it consists of only 34,400 S.F., and is bisected by an alley that runs parallel to University Avenue. The alley is known as Mulberry Alley. There are a number of utilities located within Mulberry Alley. Relocating the utilities would be cost prohibitive.

The second limiting factor of the site is its geometry. Additional right-of-way has been taken on University and Lincoln Avenues by the Illinois Department of Transportation. The expansion of street right-of-way and the installation of a right turn lane on University Avenue have restricted use of the northwest corner of the lot. Whereas a typical city lot would be rectangular, the northeast corner of the subject lot is curvilinear, thereby limiting the ability to develop the site.

The two requested variances will allow the petitioner to develop the site to its fullest potential. The first requested variance to allow for the encroachment of a building in the front yard setback along University and Lincoln Avenues will result in a development with an urban presence consistent with the goals of the Comprehensive Plan and the terms of the development agreement with the University of Illinois. The second requested variance to allow for parking to encroach more than ten-feet into the required front yard setback along a portion of Lincoln Avenue will allow for the maximum possible provision of on-site parking given the lots limited width of 106.92 feet. The variance is for the encroachment of two parking spaces at the northwest corner of the proposed parking lot.

The petitioner will improve site circulation and safety by vacating the portion of Mulberry Alley that bisects the property. This will have a positive impact by eliminating alley access that currently exists on Lincoln Avenue. Instead of traffic exiting on Lincoln Avenue, the petitioner will provide for an “easement in gross” to allow for circulation of public traffic through the subject site with ingress/egress via Clark Street. (See Exhibit F) In addition, easements will be provided for the utilities that are within the existing Mulberry Alley.

Comprehensive Plan Land Use Map #8 notes that the property surrounding the intersection of University Avenue and Lincoln Avenue should be “promoted as a ‘gateway’ to the University District through architecture and urban design of mixed-use redevelopment”. The proposed development is consistent with this vision and the vision for the area to be “Campus Mixed-Use” as designated by the Comprehensive Plan. The proposed development is also consistent with the intent of the agreement between the City and the University for development of the subject property. Development expectations intended by the Comprehensive Plan’s vision and the agreement between the City and the University are limited by the practical difficulties of the site size, geometry and location of an alley on the property.

The Zoning Board of Appeals held a public hearing on March 12, 2008 concerning the proposed major variances. The following is a summary of the items raised and discussed at the Public Hearing (See attached ZBA Minutes):

1) *What is the proposed use of each floor in the building?*

The first floor will be used partially for retail space with the balance being used for commercial/office space. The second and third floors will be used for office space.

2) *How will the proposed development affect the existing sidewalks?*

Since it is anticipated that the sidewalks will be damaged during construction, the sidewalks will be reconstructed. Funds have been allocated in the project budget for sidewalk replacement.

3) *Will the trees along Lincoln Avenue remain?*

Because of site construction and grading, the existing street trees will most likely be unable to be saved. The requested variance to allow for parking encroachment will not affect whether the street trees can be saved. The City has a policy for trees located within the street right-of-way that will be impacted by a proposed project. It is the City’s policy, through review and coordination with the City Arborist, to work with the developer to save trees in the City right-of-way. If it is determined that trees cannot be saved due a conflict with the

site layout of a proposed development, the developer must either provide the replacement value of the trees to the City to purchase and install trees elsewhere in the City right-of-way, or provide for comparable trees on the development site.

- 4) Concern for the vacation of the alley was also noted. Since the alley vacation is being presented to the City Council as a separate item, the discussion is outlined in the memo pertaining to the alley vacation.

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 outlined in the ordinance, followed by staff analysis for this case:

1. *Based on evidence presented, determine whether there are special circumstances or special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance.*

There are three practical difficulties in developing the subject site. First is site geometry. The northeast portion of the lot cannot be developed because it has been dedicated for use as right-of-way for University and Lincoln Avenues. The dedicated area includes the existing sidewalk and grass area between the sidewalk and the roadway. Even though the building will be built near the property line, the apparent setback from University and Lincoln Avenue will still remain. Second, the lot is limiting in its size. The subject property is a combination of three separate parcels. Securing the three parcels allows for a viable development at this site; however, this is hindered by an alley. The location of the alley in the middle of the site is the third practical difficulty. There are integral utilities located within the alley, which limits the location of the building to either the north or south half of the subject site.

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 proposed variances will not serve as a special privilege because of the size, site geometry and location of an alley in the middle of the subject property. As discussed in the previous criteria, these three items pose practical difficulties with developing the site. The site is also unique in that it is located at the intersection of two primary thoroughfares in the City. The Comprehensive Plan designates the University Avenue/Lincoln Avenue intersection as a “key gateway intersection”.

Due

to the location and the traffic volumes, the demand for use of the site is high, leading to a need to use the site more intensively and efficiently. Scaling back the building size in this case does not appear to be a viable solution. Location of the building on the northern portion of the site will provide for a fitting gateway to the University of Illinois.

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 is a direct result of site constraints, including its size, geometry and presence of a bisecting alley. Since there are integral utilities located within the alley, a building cannot be constructed that crosses the alley. The building footprint must therefore be limited to either the northern or southern portion of the site. The site size, geometry, and the fact that there is an alley that bisects the lots, are not the result of a situation or condition that was knowingly created by the petitioner.

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

The surrounding area is commercial in character. The development of the subject site as a mixed-use retail/office building is consistent with commercial uses. There are instances where buildings in the vicinity of the subject site encroach into the required setbacks. These encroachments are a result of the dedication of additional right-of-way and historical zoning of the area. The area was previously zoned as industrial. Historically, industrial zones had minimal setbacks.

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

The subject property is bounded by roadways on three sides. Where the subject site is immediately adjacent to other development to the west, every effort has been made to maintain the required setbacks. The required side yard setback along the west property line will be maintained. A fence is also proposed to screen the proposed parking area from the adjacent apartment building. The proposed mixed-use retail/office building is consistent with the commercial character of the surrounding University Avenue Corridor.

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

The petitioner states the variances are the minimum necessary to accommodate the request. The side yard setback is maintained at the west property line. The building steps in response to the unusual site geometry and also to maintain a pedestrian scale.

7. *The variance requested is the result of practical difficulties or particular hardship in the way of carrying out the strict letter of the Zoning Ordinance relating to the use, construction, or alteration of buildings or structures or the use of land.*

The practical difficulty is the size, site geometry and location of an alley in the middle of the subject property. As discussed in the previous criteria, these three items pose practical difficulties with developing the site.

Summary of Findings – ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04

1. The variances requested will not serve as a special privilege because there are major impediments related to the site that would otherwise make the property unusable for meaningful development.
2. The variances requested are necessary due to special circumstances relating to the property because of its size, site geometry and location of an alley in the middle of the subject property.
3. The reduced front yard setbacks and encroachment of parking in a required buffer yard will not cause a nuisance to adjacent properties. Where the subject site is immediately adjacent to other development to the west, every effort has been made to maintain the required setbacks.
4. The proposed project conforms to and will advance the goals of the 2005 Comprehensive Plan.
5. The proposed project will fulfill the agreement between the City and the University for development of the subject property.
6. The Zoning Board of Appeals voted unanimously to recommend that City Council approve major variance cases ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04 at their March 12, 2008 meeting.

Options – ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04

City Council has the following options in major variance cases ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04:

- a. Approve one or both of the variances as requested and as presented herein; or
- b. Approve one or both of the variances as requested, along with certain terms and conditions. If City Council elects to add conditions they should articulate findings accordingly; or
- c. Deny one or both of the variance requests. If City Council elects to do so, Council should articulate findings supporting its recommendation of denial.

Recommendation – ZBA-2008-MAJ-03

Based on the analysis and findings presented herein, the Zoning Board of Appeals and staff recommend that City Council **APPROVE** major variance case ZBA-2008-MAJ-03, to allow for encroachment of a building in the required front yard setback along University and Lincoln Avenues, with the following conditions:

1. The development shall be constructed in general conformance to the site plan layout submitted as part of the application and attached hereto.
2. The area between the proposed building face and the curb shall be improved to include landscaping and improvement of the existing walkway. The improvements shall be reviewed and approved by the Zoning Administrator and the City Arborist.

Recommendation – ZBA-2008-MAJ-04

Based on the analysis and findings presented herein, the Zoning Board of Appeals and staff recommend that City Council **APPROVE** major variance case ZBA-2008-MAJ-04, to allow parking to encroach greater than ten feet into the required fifteen-foot front yard setback along Lincoln Avenue, with the following conditions:

1. The development shall be constructed in general conformance to the site plan layout submitted as part of the application and attached hereto.
2. A landscape buffer shall be provided along the east and south side of the proposed parking area. The landscape buffer shall be reviewed and approved by the Zoning Administrator and the City Arborist.

Prepared by:

Lisa Karcher, Planner II

Attachments: Draft Ordinance Approving Major Variance ZBA-2008-MAJ-03
Draft Ordinance Approving Major Variance ZBA-2008-MAJ-04

Exhibit A: Location and Existing Land Use Map
Exhibit B: Zoning Map
Exhibit C: Future Land Use Map
Exhibit D: Site Plan
Exhibit E: Sketch Elevations
Exhibit F: Easement in Gross
Exhibit G: Application

Draft Minutes of the March 12, 2008 Zoning Board of Appeals Hearing

cc: Vermilion Development Corporation
Attn: Christopher Dillion
3295 E. Main Street
Danville, IL 61834

Real Estate Planning & Services, UIUC
109 Coble Hall – Mail Code 335
801 S. Wright Street
Champaign, IL 61820

University of Illinois Foundation
1305 W. Green Street
Urbana, IL 61801

ORDINANCE NO. 2008-03-019

AN ORDINANCE APPROVING A MAJOR VARIANCE

(To allow for the construction of a mixed-use retail/office building with front yard setbacks along University and Lincoln Avenues ranging from zero to ten feet in the B-3, General Business and B-3U, General Business - University Zoning Districts for property located at 901 W. University Avenue, 902 W. Clark Street and 904 W. Clark Street - Case No. ZBA-2008-MAJ-03)

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

WHEREAS, Vermilion Development Corporation has submitted a petition for a major variance to allow for the construction of a mixed-use retail/office building with front yard setbacks along University and Lincoln Avenues ranging from zero to ten feet for property located at 901 W. University Avenue, 902 W. Clark Street and 904 W. Clark Street in the B-3, General Business and the B-3U, General Business - University Zoning Districts; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case No. ZBA-2008-MAJ-03; 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 held a public hearing on the proposed major variance on March 12, 2008 and voted 6 ayes and 0 nays to recommend to the Corporate Authorities approval of the requested variance; and

WHEREAS, after due and proper consideration, the Corporate Authorities of the City of Urbana have determined that the major variance referenced herein conforms with the major variance procedures in accordance with Article XI, Section XI-3.C.2.d of the Urbana Zoning Ordinance; and

WHEREAS, the Corporate Authorities have considered the variance criteria established in the Urbana Zoning Ordinance and have determined the following findings:

1. The variance requested will not serve as a special privilege because there are major impediments related to the site that would otherwise make the property unusable for meaningful development.
2. The variance requested is necessary due to special circumstances relating to the property because of its size, site geometry and location of an alley in the middle of the subject property.
3. The reduced front yard setbacks will not cause a nuisance to adjacent properties. Where the subject site is immediately adjacent to other development to the west, every effort has been made to maintain the required setbacks.
4. The proposed project conforms to and will advance the goals of the 2005 Comprehensive Plan.
5. The proposed project will fulfill the agreement between the City and the University for development of the subject property.

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

Section 1. The major variance request by Vermilion Development Corporation, in Case No. ZBA-2008-MAJ-03, is hereby approved to allow for the construction of a mixed-use retail/office building with front yard setbacks along University and Lincoln Avenues ranging from zero to ten feet for property located at 901 W. University Avenue, 902 W. Clark Street and 904 W. Clark Street in the B-3, General Business and the B-3U, General Business - University Zoning Districts, in the manner proposed in the application.

The major variance described above shall only apply to the property located at 901 W. University Avenue, 902 W. Clark Street and 904 W. Clark Street, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION:

Tract 1 - the East ½ of Lot 23 of M. W. Busey's Heirs' Addition to Urbana, as per plat recorded in Deed record 8 at Page 444, situated in Champaign County, Illinois, EXCEPT a tract of land described as follows: Beginning at the Southeast corner of said Lot 23; thence North along the East line of said Lot 23 a distance of 132.0 feet to the Northeast corner; thence West along the North line of said Lot 23 a distance of 153.36 feet; thence Southeasterly to a point which is 19.07 feet South of the North line of said Lot 23 and 43.60 feet West of the East line of said Lot 23; thence Southeasterly to a point which is 43.07 feet South of the North line of said Lot 23 and 17.0 feet West of the East line of said Lot 23; thence Southeasterly to the Southeast corner of said Lot 23, to the point of beginning, all situated in the City of Urbana, County of Champaign and State of Illinois; and commonly known as 901 W. University, Urbana, Illinois.

Permanent Index No. 91-21-07-484-003

AND

Tract 2 - the East 106.92 feet of Block 22 in Colonel M. W. Busey's Heirs' Addition to the City of Urbana, as per plat recorded in Deed Record 8 at Page 444, situated in Champaign County, Illinois; and commonly known as 902 and 904 W. Clark Street, Urbana, Illinois.

Permanent Index Nos. 91-21-07-484-008 and 91-21-07-484-007

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).

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the Corporate Authorities of the City of Urbana, Illinois, at a regular meeting of said Authorities on the ____ day of _____, 2008.

PASSED by the Corporate Authorities this ____ day of _____, 2008.

AYES:
NAYS:
ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2008.

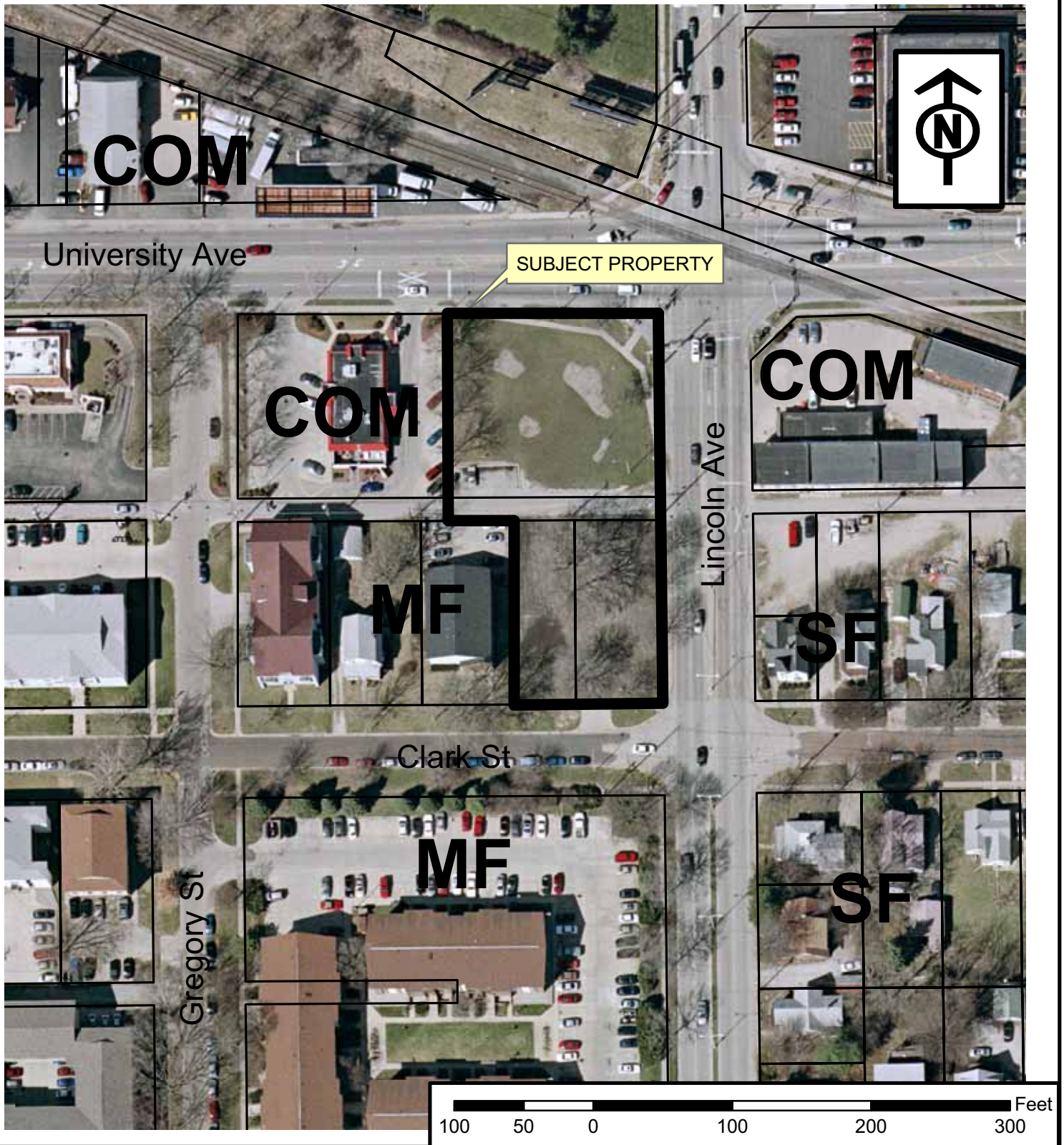
Laurel Lunt Prussing, Mayor

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 _____, 2008, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "AN ORDINANCE APPROVING A MAJOR VARIANCE (To allow for the construction of a mixed-use retail/office building with front yard setbacks along University and Lincoln Avenues ranging from zero to ten feet in the B-3, General Business and B-3U, General Business- University - Zoning Districts for property located at 901 W. University Avenue, 902 W. Clark Street and 904 W. Clark Street - Case No. ZBA-2008-MAJ-03)" 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 _____, 2008, 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 _____, 2008

Exhibit A: Location and Existing Land Use Map



ZBA Case: ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04

Description: Two Major Variances to allow a building and parking to encroach in the required front yard setback.

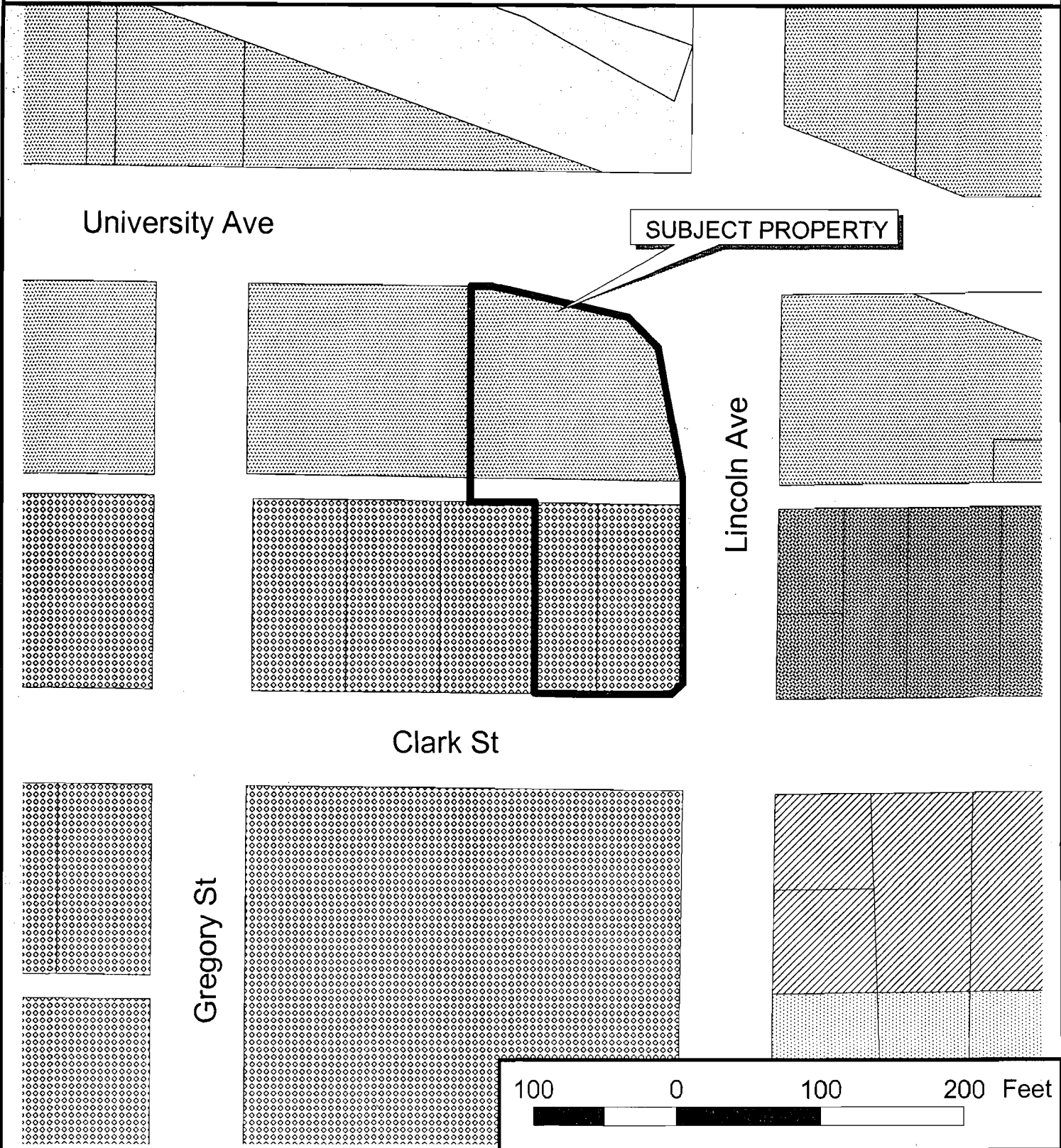
Petitioner: Vermilion Development, Inc.

Location: 901 W. University Ave. and 902/904 W. Clark St.

Zoning: B-3: General Business and B-3U: General Business-University

Prepared 3/08 by Community Development Services - lkk

Exhibit B: Existing Zoning Map



ZBA Case: ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04
Description: Two Major Variances to allow a building and parking to encroach in the required front yard setback.
Petitioner: Vermilion Development, Inc.
Location: 901 W. University Ave. and 902/904 W. Clark St.
Zoning: B-3: General Business and B-3U: General Business-University

Prepared 03/08 by Community Development Services - Ikk







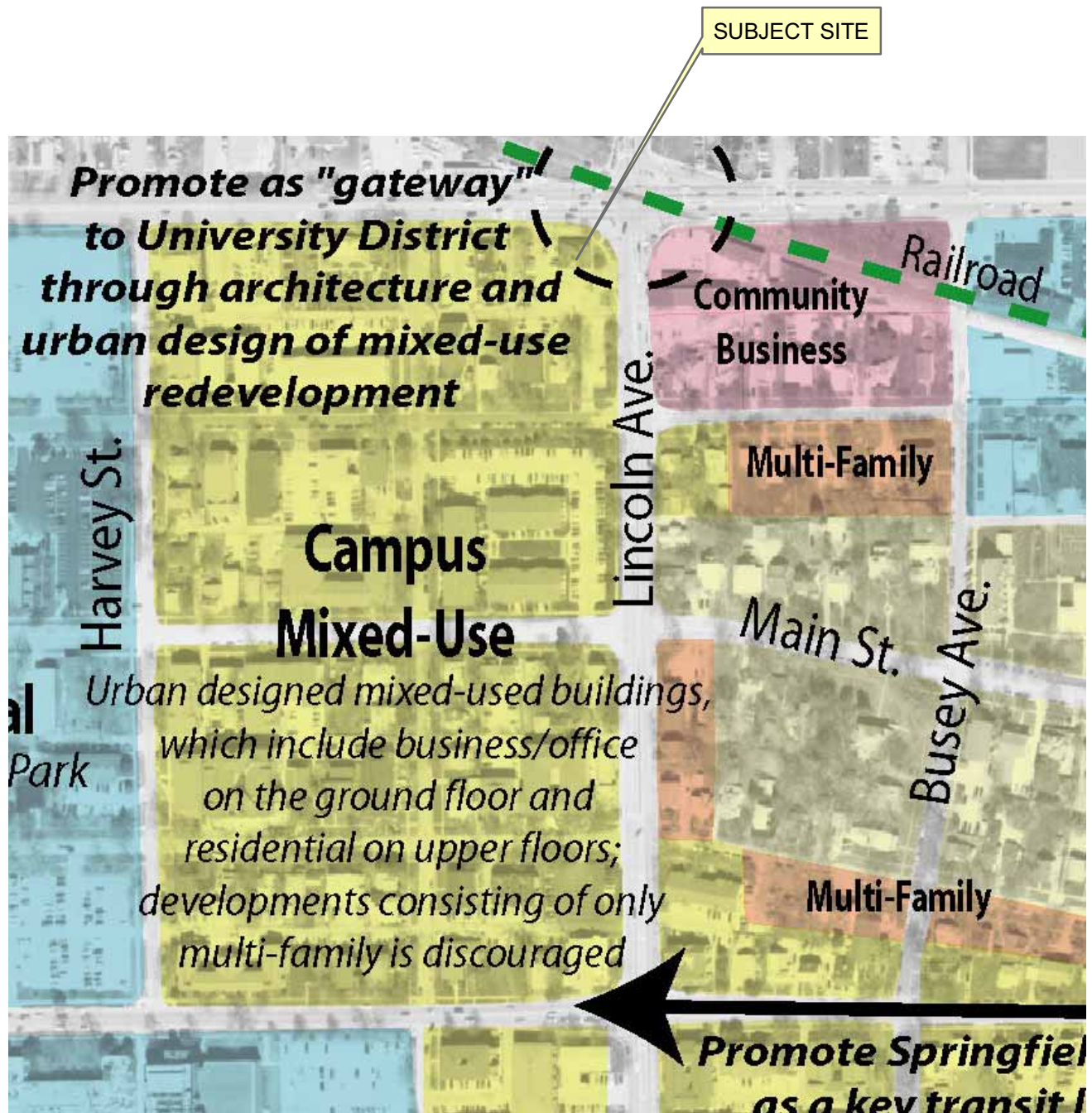
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Exhibit C: Future Land Use Map



ZBA Case: ZBA-2008-MAJ-03 and ZBA-2008-MAJ-04

Description: Two Major Variances to allow a building and parking to encroach in the required front yard setback.

Petitioner: Vermillion Development, Inc.

Location: 901 W. University Ave. and 902/904 W. Clark St.

Zoning: B-3: General Business and B-3U: General Business-University

Prepared 3/08 by Community Development Services - lkk

EASEMENT IN GROSS

THIS EASEMENT AGREEMENT is made and entered into this ____ day of _____, 2008, by and between Vermilion Development, Inc., an Illinois corporation (the "Grantor") or its assigns, and the City of Urbana, an Illinois municipal corporation located within the County of Champaign, State of Illinois ("the "City").

WHEREAS:

A. Grantor is the owner of that certain parcel of land located at 902 and 904 West Clark Street, Urbana, Illinois, P.I.N. 91-21-07-484-008 and 91-21-07-484-007, respectively, more particularly described in Exhibit A attached hereto and made a part hereof (the "Grantor's Parcel").

B. Grantor has agreed with the City to grant to the public, a perpetual nonexclusive easement in gross over and across Grantor's parcel for pedestrian and vehicular traffic as public right-of-way.

NOW, THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. *Recitals.* The foregoing recitals are true and correct and are incorporated herein by this reference.

2. *Grant.* Grantor hereby grants to the public, a perpetual nonexclusive easement in gross over and across Grantor's Parcel for the sole purpose of pedestrian and vehicular traffic as public right-of-way.

3. *Maintenance and Use of Easement.* Use of Grantor's Parcel shall not unreasonably interfere with: (i) the normal and customary use of Grantor's Parcel by Grantor as a parking lot or pedestrian way, and (ii) pedestrian and vehicular access to and from other property owned by Grantor adjacent to Grantor's Parcel. Grantor or its assigns, at Grantor or its assign's expense, shall maintain Grantor's Parcel in a clean, orderly and reasonably attractive manner. Furthermore, vehicles shall not be parked on the easement premises except as long as may be reasonably necessary to load and unload.

4. *Reservation by Grantor.* Grantor reserves all rights of ownership in and to Grantor's Parcel which are not inconsistent with the Easement, including, without limitation, the right to grant further easements on, over or across Grantor's Parcel. Grantor further reserves the right to use Grantor's Parcel for all uses not interfering with the use permitted hereunder.

5. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. *Notices.* All notices and other communications given pursuant to this Easement shall be in writing and shall be delivered in person or deposited in the U.S. mail, postage prepaid, by United States registered or certified mail, return receipt requested, addressed as follows:

For notices to the Grantor: Vermilion Development, Inc.

For notices to the City of Urbana: City of Urbana, Illinois

Attn: _____

Addresses may be changed by written notice served as hereinabove provided.

7. *Relocation of Easement.* Grantor reserves the right to relocate the easement premises as follows:

(A) Grantor shall first notify the City of the proposed relocation by mailing, postage prepaid, at least 30 days prior to commencement of relocation, to the City, notice showing the proposed relocation and probable commencement and completion dates.

(B) Grantor shall improve the new easement premises such that it is reasonably similar to the one replaced and reasonably convenient for the uses then existing.

(C) At the completion of the work, Grantor shall record an easement granting the new easement to the public with substantially the same conditions and terms as set forth in this easement, and shall cause the same to be delivered to the City, and shall furnish the City with evidence of title satisfactory to the City showing an unencumbered easement, whereupon the change in location of the easement premises shall become effective and appropriate releases of the prior location shall be executed in recordable form and exchanged between the parties thereto and their successors or assigns.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the day and year first above written.

GRANTOR:

VERMILION DEVELOPMENT, INC.

By: _____

David Cocagne, President

STATE OF ILLINOIS)

) ss.

COUNTY OF CHAMPAIGN)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT DAVID COCAGNE personally known to me to be the President of the Corporation who is the grantor, and personally known to be to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President he signed and delivered the said instrument as President of said corporation, and caused the corporate seal of said corporation to be affixed hereto, pursuant to authority, given by the Board of Directors of said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2008.

Notary Public

ACCEPTED: The City of Urbana, Illinois

Date: _____, 2008

By: _____

ATTEST: _____

Prepared By and Return To:

Jason A. Barickman
BARTELL & BARICKMAN, LLP
2919 Crossing Ct., Suite 10
Champaign, IL 61822

EXHIBIT A

(Grantor's Parcel)

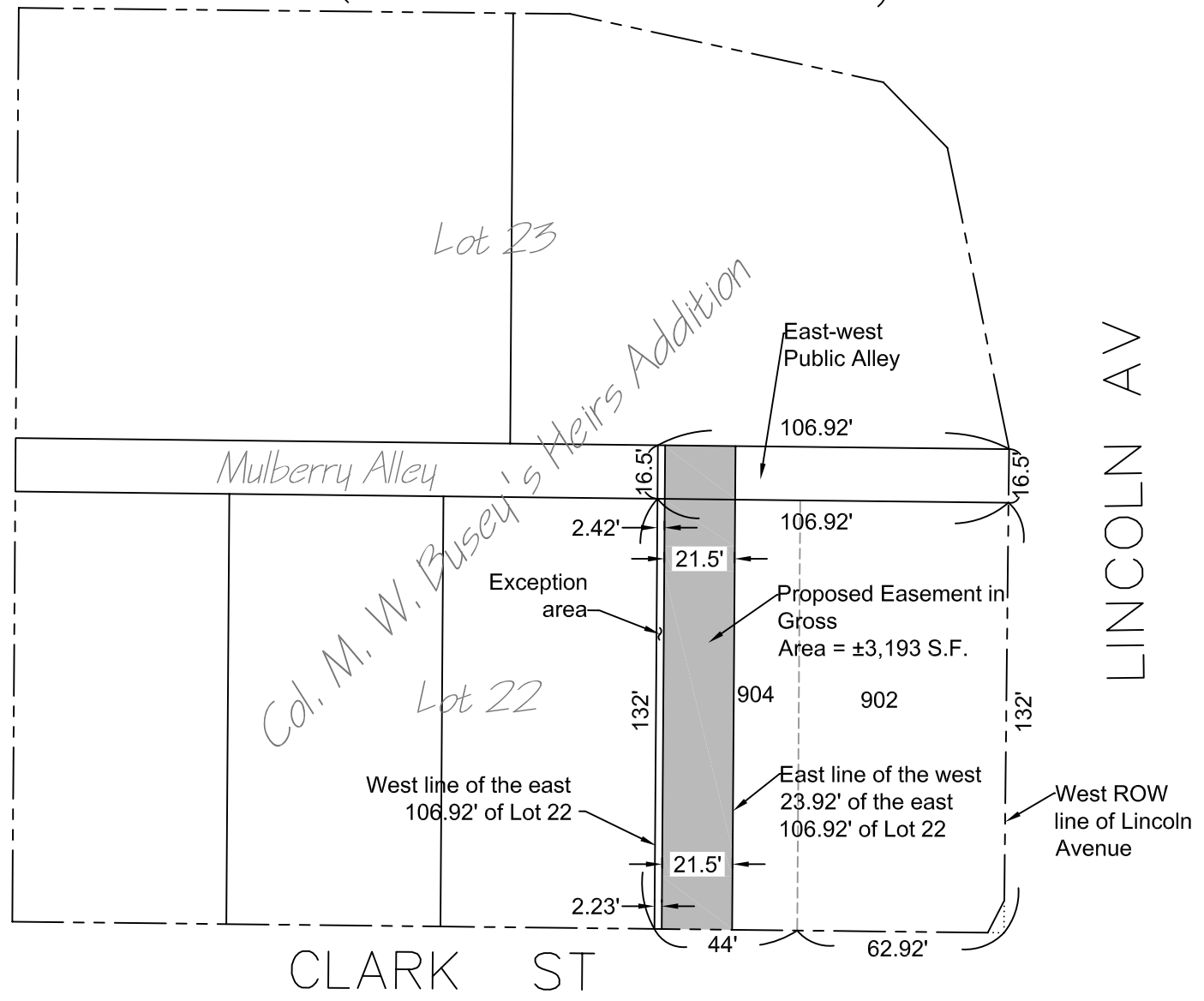
THE WEST 23.92 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 106.92 FEET OF LOT 22 IN COLONEL M. W. BUSEY'S HEIRS ADDITION TO THE CITY OF URBANA, AS PER PLAT RECORDED IN DEED RECORD 8 AT PAGE 444 IN THE OFFICE OF THE RECORDER OF CHAMPAIGN COUNTY, ILLINOIS, EXCEPT THE WEST 2.23 FEET MORE OR LESS THEREOF, AND THE EAST 106.92 FEET OF AN EAST-WEST ALLEY LOCATED BETWEEN GREGORY STREET AND LINCOLN AVENUE IN THE CITY OF URBANA, ILLINOIS, AND BETWEEN LOTS 22 AND 23 AS SHOWN ON SAID ADDITION, LOCATED IN THE CITY OF URBANA, ILLINOIS

UNIVERSITY AV (US RTE 150 & 45)

GREGORY ST

LINCOLN AV



Lot 23
Lot 22
Col. M. W. Busey's Heirs Addition

EXHIBIT "B"
SKETCH SHOWING PROPOSED
EASEMENT IN GROSS

City of Urbana
Public Works Dept.
Engineering Division

Drawn by: BWF

Date: 3/10/2008



MINUTES OF A RESCHEDULED MEETING

URBANA ZONING BOARD OF APPEALS

DATE: March 12, 2008

DRAFT

TIME: 7:30 p.m.

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

MEMBERS PRESENT: Paul Armstrong, Herb Corten, Anna Merritt, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

MEMBERS EXCUSED: Joe Schoonover

STAFF PRESENT: Elizabeth Tyler, Director of Community Development Services Department; Robert Myers, Planning Manager; Paul Lindahl, Planner II; Lisa Karcher, Planner II; Connie Eldridge, Grants Management Secretary

OTHERS PRESENT: Dave Cocagne, Chris Dillion, John Kunzie, Jenny Park, Bob Patel, Tim Pellegrini, Jane Solon, Jason Wisniewski

NEW PUBLIC HEARINGS

ZBA Case No. 2008-MAJ-01: A major variance request by the Atkins Group to allow an Electronic Message Board (LED) Sign to increase the frequency of message changes from once per three minutes to once per ten seconds at the southeast corner of Windsor and Philo Roads in the City's B-3, General Business Zoning District.

ZBA Case No. 2008-MAJ-02: A major variance request by the Atkins Group to allow an Electronic Message Board (LED) Sign to be multi-colored at the southeast corner of Windsor and Philo Roads in the City's B-3, General Business Zoning District.

Paul Lindahl, Planner II, presented these two cases to the Zoning Board of Appeals together. He discussed the proposed use of the site and what signage is allowed according to the current standards in the Urbana Zoning Ordinance. He stated that the proposed two major variances would reduce the amount of freestanding signage overall.

He referred to Exhibit F to show what the proposed sign would look like. He discussed the administrative code of the Illinois Department of Transportation (IDOT) and explained that they updated their code so messages on digital signs within 600 feet of highways could change no more than every ten seconds.

Mr. Lindahl read the options of the Zoning Board of Appeals and presented staff's recommendation for approval of each case with the standard conditions, which are as follows:

ZBA-2008-MAJ-01:

1. *That the monument sign with LED Electronic Message Board be constructed in substantial conformity with the submitted site plan illustrating the design and location.*
2. *That the variance for message frequency is approved for the proposed monument sign with LED Electronic Message Board located in the application site diagram at the corner of Philo and Windsor Roads and does not extend to any other signs located at The Pines at Stone Creek Commons property.*
3. *That the sign will conform to the other requirements of Urbana Zoning Ordinance Section IX.4.D.3 that prohibit Electronic Message Board (LED) signs from being animated, flashing, or scrolling.*
4. *That the variance is granted contingent on no other tenant directory or shopping center signs being permitted on the Pines property.*

ZBA-2008-MAJ-02:

1. *That the monument sign with LED Electronic Message Board be constructed in substantial conformity with the submitted site plan illustrating the design and location.*
2. *That the variance for message frequency is approved for the proposed monument sign with LED Electronic Message Board located in the application site diagram at the corner of Philo and Windsor Roads and does not extend to any other signs located at The Pines at Stone Creek Commons property.*
3. *That the sign will conform to the other requirements of Urbana Zoning Ordinance Section IX.4.D.3 that prohibit Electronic Message Board (LED) signs from being animated, flashing, or scrolling.*
4. *That the variance is granted contingent on no other tenant directory or shopping center signs being permitted on the Pines property.*

He mentioned that there were representatives present from the Atkins Group (petitioner) and from the manufacturers of the proposed sign.

Ms. Uchtmann noticed that there is already a sign for Monical's Pizza and for Busey Bank. Would each tenant be able to put a sign on their building? Mr. Lindahl replied yes. One of the major points behind this is that in the central lot, which is about five acres, there are eight to

twelve tenants that do not have any signs along the streets. They have signs and logos on the buildings themselves, but they are much further away from the road and much less visible than the corner outlots. In order to give the retail customers the visibility that they need, the petitioner is requesting the proposed variances for a shopping center sign which would in essence provide visibility.

Ms. Uchtmann asked if the proposed sign would be reserved for the tenants who would not have a sign facing Philo or Windsor Roads. Mr. Lindahl said yes. The tenants located on the outlots will have their own signs.

Chair Merritt inquired if the tenants in the outlots would be included in the scroll. Mr. Lindahl said that they would need to ask the petitioner that question.

Mr. Warmbrunn wondered why these are considered major variances rather than minor variances. Mr. Lindahl answered that these two cases are considered major because in the Urbana Zoning Ordinance, multi-colored LED signs were excluded. As for frequency, under the current Zoning Ordinance, a message is allowed to change once every three minutes. The proposed variance request, if approved, would allow the messages to change once every ten seconds. This percentage of a difference from the standard constitutes a major variance.

Mr. Warmbrunn asked how frequently the Walgreen's sign, located at the Five Points corner, is allowed to change. Robert Myers, Planning Manager, said that the Walgreen's sign changes once every three minutes. Mr. Warmbrunn questioned if this would be the first sign allowed in the City of Urbana to change quicker than once every three minutes. Mr. Myers replied yes. Elizabeth Tyler, Director of Community Development Services Department, added that Walgreen's requested three minutes as part of a variance for their sign two or three years ago. The City modeled the language in the Zoning Ordinance after the Walgreen's sign was approved. We are seeing more and more of the LED signs for message boards rather than the manual signs, so the City included the LED signs in a text amendment to allow them by right. The size limits and the time limit were based on the Walgreen's sign.

Mr. Warmbrunn stated that they are now talking about ten seconds per message change. He inquired as to what "flashing" means. Mr. Lindahl said that the original technology for message boards was something that people would think of as "the old time Time Square" kind of thing, where they used incandescent lights to create letters, used scrolling and could flash on and off. This was the kind of proliferation of busy startling signs that no one wanted. So, when we talk about animated or flashing signs in the Zoning Ordinance, this is more like what they mean. Simply changing once every ten seconds without a visible transition is not considered flashing.

Mr. Warmbrunn mentioned that the digital billboards that IDOT allows to change every ten seconds are not much larger than the proposed sign. They are larger, because they are located further away. People can see them for about a half a mile. In this case, someone heading east will not be able to pick up this sign until they get about 100 yards from the intersection due to the fence where the University of Illinois (U of I) has the trees, etc. Mr. Lindahl was not sure exactly how visible the sign would be.

Mr. Corten arrived at 7:50 p.m.

Mr. Welch wondered if the Zoning Ordinance should be amended to reflect these technological changes so the Zoning Board of Appeals does not have to deal with these types of variance requests over and over again. It seems to him that this is “a sign of things to come”, especially if IDOT has changed their code to allow messages to change once every ten seconds. Laws that don’t continue to change with the times are not necessarily good laws or codes. Mr. Lindahl replied that in some ways we could agree with that. City staff has thought that a text amendment might be in order. Chair Merritt added that it is appropriate for the Zoning Board of Appeals to make such suggestion to City staff, correct? Mr. Lindahl said that is correct.

Mr. Myers noted that City staff will take this suggestion under advisement. They will carefully consider how this would impact other sign provisions for the City of Urbana before proposing an amendment to the code. In this case, the applicants are making the case in the application that they have special circumstances because of the layout of the shopping center and are reducing other signage on the property to mitigate increased message frequency.

Mr. Myers continued that there are two issues with changes in Federal and state laws. First, in 2006, IDOT changed the law for routes controlled by IDOT. Changeable message signs, whether they are billboards or other changeable message sign, are allowed to change no more than every ten seconds. He believes this has an affect on how Illinois communities will look at their own sign codes. Second, in the fall of 2007, the Federal Highway Administration came out with the results of a long study that they did on whether changeable message signs are considered “flashing” or “intermittent” signs. The State of Illinois, in receiving Federal highway funds, is prohibited from having flashing or intermittent signs along Federally-funded routes. So the Federal government wanted to determine if the signs that states allow to change every ten seconds or so should be considered flashing or intermittent. Their study determined that these signs should not be considered flashing or intermittent. The study found that states have different standards for the minimum number of seconds, ranging from four to ten seconds. The Federal Highway Administration has recommended to states a minimum of eight to ten second message changes for multiple message signs not to be considered “intermittent” or “flashing”.

With no further questions for City staff, Chair Merritt opened the public hearing up to take testimony and/or gather input from the petitioner and other members of the audience.

Jenny Park, of Meyer Capel Law Firm and representative of the Atkins Group, approached the Zoning Board of Appeals to speak. She mentioned that Jane Solon from the Atkins Group is present to answer any questions as well as John Kunzie, a representative from Watchfire. Mr. Kunzie brought a display of what the sign would be so the Zoning Board of Appeals could actually see what it would look like. She invited them up to join her in presenting their case.

Ms. Solon stated that she brought a site plan to give the Zoning Board of Appeals an idea of where the message board would be placed and where the retail stores are located that do not have much frontage on Philo or Windsor Roads. Signage is very important to retailers so pedestrians and vehicular traffic can see where the stores are located.

She pointed out that they created the shopping center using this specific design so that it is a neighborhood center that has a community feel. There are plazas out front with benches and green space. People can ride their bicycles or skate down the boardwalk. They want it to be a place where people can meet. This is the reason why many of the stores are set back from the roads.

She answered a previous question by saying that the tenants having frontage on either roads, such as Monical's Pizza or Busey Bank, will be allowed to have their names on the proposed sign as well. Mr. Corten inquired as to how many names would be displayed on the sign. Ms. Solon replied by saying that there would be as many names as there are tenants.

Ms. Solon gave a PowerPoint simulation of what the proposed sign would display. The proposed sign would display the names of the shops as well as advertising for the shops and community events and spirit. The presentation represented the ten second delay in message changes.

Mr. Corten asked if this would not be considered a safety hazard or dangerous for vehicular drivers being distracted. Ms. Solon clarified that it is not considered dangerous.

Ms. Park noted that the proposed sign would be placed where there will be traffic signals. So, it will essentially be drivers sitting at red lights that will be watching the sign rather than drivers going by.

Mr. Myers added that the variances requested would not allow scrolling, animation, and flashing messages, only increased frequency and color.

Mr. Armstrong agreed with Mr. Welch's earlier point that this appears to be technology that will become more ubiquitous as time goes on. He expressed his appreciation for Ms. Solon bringing the actual video of the sign's display, because it is more difficult to make these types of decisions when the members are looking at static images than to consider how much and how long the messages would be displayed and the impact of that it may have. Quite frankly, it does not seem to have any significantly more impact than the time and temperature that could be read on a bank sign. There are certainly more distractions on the roadway than the proposed sign. It seems to him to be relatively low impact visually. He feels it would be a different issue if they were considering animated billboards or something of that nature.

Chair Merritt reminded everyone that the alternative would be that they could put four large signs. Mr. Lindahl noted that is true. They could have two shopping center signs per frontage, and they could have shopping center directory signs listing all of the tenants such as at Lincoln Square Mall. The signs could be up to 30 feet tall.

Mr. Corten wondered when the sign would be installed. Ms. Solon replied that they just need the approval to do so.

With no further questions or comments from the audience, Chair Merritt closed the public input portion of the hearing and opened it up for the Zoning Board of Appeals discussion and/or motions.

Mr. Armstrong moved that the Zoning Board of Appeals forward ZBA Case No. 2008-MAJ-01 to the City Council with a recommendation for approval and that it conform to the conditions provided in the written staff report. Mr. Corten seconded the motion. Roll call on the motion was as follows:

Paul Armstrong	-	Yes	Herb Corten	-	Yes
Anna Merritt	-	Yes	Nancy Uchtmann	-	Yes
Charles Warmbrunn	-	Yes	Harvey Welch	-	Yes

The motion was passed unanimously.

Mr. Armstrong moved that the Zoning Board of Appeals forward ZBA Case No. 2008-MAJ-02 to the City Council with a recommendation for approval and that is conform to the conditions provided in the written staff report. Mr. Corten seconded the motion. Roll call on the motion was as follows:

Paul Armstrong	-	Yes	Herb Corten	-	Yes
Anna Merritt	-	Yes	Nancy Uchtmann	-	Yes
Charles Warmbrunn	-	Yes	Harvey Welch	-	Yes

The motion was passed by unanimous vote.

Mr. Myers explained that because both these cases are major variance requests, they will go before the City Council on March 24, 2008. The City Council will be holding a special Council meeting that night.

Mr. Warmbrunn remarked that City staff should review the Zoning Ordinance regarding LED signs and the frequency of message changes. Mr. Myers stated that if this is the consensus of the Zoning Board of Appeals, then City staff will take this into consideration. Chair Merritt commented that there is definitely a consensus. Mr. Welch agreed.