

URBANA CITY COUNCIL MEETING

URBANA CITY COUNCIL CHAMBERS

Monday, April 2, 2001

7:30 P.M.

A G E N D A

A. MINUTES OF PREVIOUS MEETING

B. ADDITIONS TO THE AGENDA

C. PETITIONS AND COMMUNICATIONS

D. OLD BUSINESS

E. REPORTS OF STANDING COMMITTEE

1. Committee of the Whole

- a. Ordinance No. 2001-03-026: An Ordinance Approving an Application for Site Approval of a Regional Pollution Control Facility (Siting of the Central Waste Transfer and Recycling Facility)
- b. Ordinance No. 2001-03-027: An Ordinance Approving and Authorizing an Amendment to An Intergovernmental Agreement With the County of Champaign, Illinois (Funding for Construction of Part of North Lincoln Avenue)
- c. Ordinance No. 2001-03-028: An Ordinance Approving and Authorizing an Amendment to An Agreement With University Construction, A Division of MACC of Illinois, Inc.
- d. Ordinance No. 2001-03-029: An Ordinance Authorizing the Mayor to Execute an Agreement for Use of Right-Of-Way (Northwest Corner of Race Street and Windsor Road)
- e. Ordinance No. 2001-03-031: An Ordinance Approving and Authorizing the Execution of An Agreement With Champaign County, Illinois (Champaign County Courthouse Construction)

F. REPORTS OF SPECIAL COMMITTEES

G. REPORTS OF OFFICERS

H. NEW BUSINESS

1. Ordinance No. 2001-04-026: An Ordinance Approving a Major Variance (Reduction of the Required Side Yard Setback in the City's R-2, Single-Family Residential, Zoning District, From Five Feet to Two Feet / 105 W. Florida Avenue – Case No. ZBA-01-MAJ-2)
2. Ordinance No. 2001-04-027: An Ordinance Approving a Major Variance (Reduction of the Required Rear Yard Setback in the City's R-2, Single-Family Residential, Zoning District, From Ten Feet to One Foot / 105 W. Florida Avenue – Case No. ZBA-01-MAJ-3)

I. ADJOURNMENT

APPROVED MINUTES WILL BE AVAILABLE ON THE
CITY'S WEB SITE APPROXIMATELY 7 DAYS FROM THE
DATE OF APPROVAL.



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ENVIRONMENTAL MANAGEMENT DIVISION

MEMORANDUM

TO: Bruce Walden, Chief Administrative Officer
FROM: Bill Gray, Public Works Director
Rod Fletcher, Environmental Manager
DATE: March 29, 2001
RE: Site Location Approval Request of a Transfer/Recycling Facility,
Allied Waste Transportation, Inc. d/b/a Central Waste Services

Action Requested

Adoption of the attached ordinance granting site location approval.

Background

Each Council member has received a certified copy of the record of the public hearing proceedings regarding the site location request. At the Committee of the Whole meeting on March 26, 2001, Council had three questions. The following are those questions and responses.

1. Regarding projected cost savings: Who would realize projected savings ?

A response can be found in Exhibit A, in the Economic Impacts of the Proposed Facility, pages 80 and 81 of the Application.

2. Clarification regarding drainage, two comments found on page 8 of the Berns, Clancy and Associates (BCA) Review: Would recommendations be required of the City and what would be the cost ?

The two comments made, concern minor changes to the preliminary design of drainage channels on the proposed site. The Applicant would be responsible to make these changes during development of the site. Nothing would be required of the City.

3. Clarification regarding maintenance/construction (Lincoln Av.) comments found on page 15 of the BCA Review. What needs to be done by the City ?

The City has previously adopted two Ordinances, one with Champaign County and another with University Construction in regard to Lincoln Av. improvements. Adoption of two Ordinances (#2001-03-027 and #2001-03-028) that would amend those agreements is now before Council and would address these concerns.

Recommendation

Council is required to either approve or disapprove the Applicants request within 180 days of filing or a decision must be made by Monday, April 30. If no decision is made by this date, state law provides that the Applicant may deem the request approved.

ORDINANCE NO. 2001-03-026

**AN ORDINANCE APPROVING AN APPLICATION FOR SITE APPROVAL
OF A REGIONAL POLLUTION CONTROL FACILITY**

(SITING OF THE CENTRAL WASTE TRANSFER AND RECYCLING FACILITY)

WHEREAS, Allied Waste Transportation, Inc. d/b/a Central Waste Services (hereinafter called Central Waste Services) has filed an application on November 1, 2000 for site approval for a waste transfer and recycling facility to be located at 921 W. Saline Court, Urbana, IL; and

WHEREAS, the proposed facility falls within the definition of a “regional pollution control facility” under the Illinois Environmental Protection Act and, as such, requires site location approval by the municipality in which the proposed facility will be located pursuant to 415 ILCS 5/39.2; and

WHEREAS, the City of Urbana is the municipality in which the proposed facility will be located if approved and the City of Urbana has adopted Ordinance No. 2000-02-022 as amended to govern the siting process; and

WHEREAS, notice of the filing of the application and notice of the public hearing held in this matter were given as required pursuant to Statute and Ordinance; and

WHEREAS, a public hearing on Central Waste Services’ application for siting was conducted on February 6, 2001 in accordance with the provisions of Section 39.2 of the Illinois Environmental Protection Act and Ordinance No. 2000-02-022 as amended of the City of Urbana; and

WHEREAS, the record for the siting proceeding has been prepared and which record conforms with Statutory requirements and the requirements of Ordinance No. 2000-02-022 as amended of the City of Urbana; and

WHEREAS, pursuant to the requirements of Ordinance No. 2000-02-022 as amended of the City of Urbana the certified record of the siting proceedings has been available to the Mayor and Urbana City Council since March 26, 2001; and

WHEREAS, the City Council, after having reviewed the record have determined that Central Waste Services has met its burden of proof to establish compliance with the nine statutory criteria set forth in Section 39.2 of the Environmental Protection Act and the additional requirements of Ordinance No. 2000-02-022 as amended of the City of Urbana and that the application for siting approval should be approved; and

WHEREAS, this Ordinance is intended to serve as the written decision of the City Council on the Central Waste Services siting application as required by Section 39.2 of the Environmental Protection Act and Ordinance No. 2000-02-022 as amended of the City of Urbana.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, AS FOLLOWS:

SECTION 1: Site approval is hereby granted for the Central Waste Services Transfer and Recycling Facility (a regional pollution control facility) for the 11.3 acre site commonly known as 921 W. Saline Drive, Urbana, IL. The legal description of the site being:

PART OF THE EAST ½ OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M., CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NE 1/4 OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M., THENCE N. 00°13'21" E., A BEARING BASED ON THE CITY OF URBANA HORIZONTAL CONTROL DATUM, ALONG THE EAST LINE OF THE NE 1/4 OF SAID SECTION 31, 330.51 FEET TO THE NORTH LINE OF THE SOUTH 330.50 FEET OF THE NE 1/4 OF SAID SECTION 31; THENCE S. 89°43'10" W., 366.01 FEET TO THE TRUE POINT OF BEGINNING; THENCE S. 00°13'21" W., 50.00 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG A CURVE TO THE LEFT, CONVEX TO THE WEST WITH A RADIUS OF 283.00 FEET, A DISTANCE OF 141.29 FEET; THENCE S. 61°37'00" W., 388.68 FEET; THENCE N. 49°00'00" W., 50.00 FEET; THENCE N. 69°00'00" W., 375.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL RAILROAD; THENCE N. 17°39'30" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE; 210.00 FEET TO THE AFORESAID NORTH LINE OF THE SOUTH 330.50 FEET OF THE NE 1/4 OF SAID SECTION 31; THENCE S. 89°43'10" W., ALONG SAID LINE AND EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL RAILROAD, 296.36 FEET; THENCE N. 17°39'30" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 370.00 FEET; THENCE S. 89°46'39" E., 817.72 FEET; THENCE S. 00°13'21" W., 344.84 FEET TO THE POINT OF BEGINNING, CONTAINING 11.367 ACRES, MORE OR LESS AND ALL SITUATED WITHIN THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS.

SECTION 2: The City Council make the following findings of fact with respect to the application for siting approval filed by Central Waste Services:

(1) The facility is necessary to accommodate the waste needs of the area it is intended to serve.

There is no landfill capacity in the service area (and the number of landfills outside the service area is declining), and there are no transfer stations available for public use for waste disposal in this area. The proposed facility will enable waste transportation to be accomplished in the most economical and environmentally safe manner. Additionally, the proposed facility will help assure competitive disposal costs, provide an effective means for waste screening before ultimate disposal, recover

recyclables, assist municipalities in meeting their waste diversion goals and is consistent with the City of Urbana's Solid Waste Management Planning Goals and Objectives.

(2) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

The facility is located in an area zoned industrial by the City of Urbana, which is compatible with the proposed operation. The limits of the site are outside the one thousand (1000) foot residential setback, as required under Section 22.14 of the Illinois Environmental Protection Act. The design of the facility meets or exceeds the requirements set forth in all applicable laws and regulations. The design includes, among other features, a stormwater management system, secondary containment system, leachate management and collection system, and site security measures.

There are no jurisdictional wetlands or waters of the United States within the proposed facility limits and there are no records of State listed threatened or endangered species, no dedicated nature preserves at the proposed site and the site is in compliance with the National Wild and Scenic Rivers Act. Additionally, no archaeological sites or artifacts were found during a Phase 1 Archaeological and Historic Survey.

The plan of operations for the facility includes specific procedures, training and equipment so that the public health, safety and welfare will be protected. Specific measures will be implemented by Central Waste Services to control dust, odors, vectors and litter at the site. Strict screening procedures, encompassed in a load checking program, will be in place to ensure that hazardous wastes and other prohibited materials are not processed through the transfer station and a Contingency Plan has been delineated to address any potential issues with fire, hazardous material control, or potential operational accidents. The proposed facility has been designed with numerous control measures to minimize any potential danger to the public and those using the facility.

(3) The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

The area surrounding the site is generally zoned industrial and primarily consists of industrial uses. The adjacent parcel to the south of the proposed facility site is operated by University Asphalt Company as an asphalt plant site. The contiguous property to the south and west of the site is owned by University Asphalt Company, and functions presently as a concrete recycling site. To the north and east of the proposed facility site is agricultural land and the Illinois Central Gulf Railroad tracks provide a boundary on the west of the site, with uses west of the Railroad site being industrial in nature, including Clifford Jacobs Foundry and Apollo Industrial Subdivision. The nearest parcel with a dwelling is located greater than 1000 feet from the site, as required by the Environmental Protection Act, upon ground zoned I-2 Heavy Industrial, and there are only five residences within a 2500 foot radius from this site.

The appreciation of property values in the proposed area will not differ from other areas of Urbana or neighboring communities if the facility is sited. The proposed facility is in keeping with the

industrial character of the surrounding area and the location of this facility will not impact adversely on property values.

(4) The facility is located outside the boundary of the 100-year floodplain or the site is floodproofed. The proposed facility is located outside the boundary of the 100-year floodplain.

(5) The plan of operation for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

The Plan of Operations and Contingency Plan for the proposed facility which will assist facility personnel in managing daily activities and will provide an organized course of action to be taken in responding to contingencies which might arise during the operation of the facility. A waste screening program will be employed to ensure that unacceptable waste is not improperly disposed of. In addition to providing an affidavit stating that the proposed facility will not treat, store or dispose of hazardous waste, the Applicant has a comprehensive load checking program and plan of operations to address the Applicant's plan to exclude acceptance of unauthorized waste.

A Contingency Plan will be implemented in the unlikely event that an emergency situation would develop which could endanger the public health and safety or the environment. Those potential situations, which are specifically addressed in the Contingency Plan, include fire, spills, hazardous materials, equipment malfunction and medical attention. The Contingency Plan also contains an emergency equipment list, plan for evacuation and post emergency follow-up procedures. All facility personnel will be trained in emergency procedures and the facility's operations manager will be responsible for overseeing and implementing the Contingency Plan and training personnel.

(6) The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

Facility peak hours do not conflict with the existing or proposed adjacent street system peak hours. Capacity of Lincoln Avenue (with additional structural improvements north of Somer Drive and structural improvements From Wilbur Road to Somer Drive) and the proposed re-aligned Lincoln Avenue is judged adequate to accommodate the additional facility traffic.

Facility traffic is estimated to be less than or approximately a one percent increase in traffic at the Lincoln Avenue and I-74 interchange, with negligible effect on the frontage road signalized intersections. The facility entrance location on a minor cul-de-sac street is designed in accordance with the required IDOT setback offset distance for major regional arterials. There is more than adequate sight distance at the intersection of the proposed minor street intersection with the adjacent arterial of North Lincoln Avenue.

(7) If the facility will be treating, storing or disposing of hazardous wastes, an emergency response plan for the facility.

The facility will not knowingly treat, store or dispose of hazardous waste. It is, however, perhaps inevitable, that during the course of operation hazardous wastes will be encountered at the facility. A contingency plan to respond to such situations shall be implemented to mitigate the situation.

(8) The facility is consistent with the Champaign County Solid Waste Management Plan.

Confirmed by a letter written by Champaign County stating that the proposed Central Waste Transfer and Recycling Facility is consistent with that plan.

(9) If the facility will be located within a regulated recharge area, proof that any and all applicable requirements specified by the Illinois Pollution Control Board for such area have been met.

The proposed Central Waste Transfer and Recycling Facility is not located in a regulated recharge area.

SECTION 3: The City of Urbana reserves the right to make periodic inspections of the facility to assure operation is being conducted in compliance with the Siting Application documents, Article III, of Chapter 10, and other applicable Sections of the Urbana Municipal Code, and any Illinois Environmental Protection Agency operating permit(s).

SECTION 4: That transfer trailers to be used in the transportation of waste or recyclable materials generated from this facility by Central Waste Services, and its successors and assigns, shall be restricted to use only roadways within Champaign County that have been designed to support the weight of such transfer trailers. Failure to comply with this section will subject Central Waste Services, and its successors and assigns, to penalties as may be provided in Article III, Chapter 10, of the Urbana Municipal Code.

SECTION 5: The City Clerk is hereby authorized to transmit this Ordinance to the Illinois Environmental Protection Agency along with any other forms required by the Agency to certify siting approval.

SECTION 6: This Ordinance shall be in effect from its passage and approval.

PASSED by the Urbana City Council this _____ day of April, 2001

Phyllis D. Clark
City Clerk

AYES: _____

NAYS: _____

ABSTAINS: _____

APPROVED by the Mayor this _____ day of April, 2001.

Tod Satterthwaite, Mayor



CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS

ADMINISTRATION

MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer

FROM: William R. Gray, P. E., Public Works Director

DATE: March 22, 2001

RE: **Revised North Lincoln Avenue Intergovernmental Agreement
(City/County)**

INTRODUCTION

Since the City Council approved the North Lincoln Avenue Agreement last October 16, 2000, there have been two changes to that agreement that the Committee needs to consider. Since October 16, there have been several County Highway and Transportation Committee meetings to discuss the agreement and to receive public input, especially from those residents that live in Somer Township. As a result of those meetings, the County Highway and Transportation Committee is recommending two additions to the agreement language.

The first has to do with resurfacing 1300 feet of existing north Lincoln Avenue between Station 7 + 650 and Station 8 + 100 (*see Exhibit "A"*). This will give the pavement additional strength to perform well with the additional truck traffic that will be occurring if the Central Waste Services Transfer Facility and Recycling Center is opened. Note that the limits of improvement on Exhibit "A" have gone further south to Station 7 + 650, which is just north of Wilbur Road. The northern terminus does not change. This additional roadwork is estimated to cost \$40,000. It is recommended that this cost be shared between the developer (University Construction), Champaign County, and the City (*see Section 1 and 2 in the agreement*).

A second matter that was important to the County Highway and Transportation Committee was including language that states the City and the County both support a new Olympian Drive. There is a new Section 11 that provides language that the County Highway and Transportation Committee supports.

The Champaign County Board, at their meeting on Tuesday, March 20, deferred taking action on the attached agreement until their April meeting.

FISCAL IMPACT

The previous City's financial commitment was \$200,000. With the additional work suggested, the new upper limit is \$215,000.

RECOMMENDATION

It is recommended that the Mayor and Clerk be authorized to sign "AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF CHAMPAIGN, ILLINOIS" for the "Funding for Construction of Part of North Lincoln Avenue."

WRG:klf
Attachments

ORDINANCE NO. 2001-03-027

AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN
INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF CHAMPAIGN,
ILLINOIS

(Funding for Construction of Part of North Lincoln Avenue)

WHEREAS, in Ordinance No. 2000-10-118, passed by the Urbana City Council on October 16, 2000, an agreement providing for certain roadway improvements was approved; and

WHEREAS, subsequently, the County has requested certain revisions to the said agreement, which revisions are acceptable to the City,

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

Section 1. That an Intergovernmental Agreement Between the City of Urbana and the County of Champaign Concerning the Funding for Construction of Part of North Lincoln Avenue, in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

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

**An Intergovernmental Agreement
Between the City of Urbana and the County
of Champaign Concerning the Funding for Construction
of Part of North Lincoln Avenue**

This Agreement is entered into between the City of Urbana, Illinois (“City”) and the County of Champaign, Illinois (“County”), on this _____ day of _____, 2001, in consideration of the following premises and terms.

WHEREAS, Article VII Section 10 of the 1970 Constitution of the State of Illinois authorizes the City and the County to contract to perform and share services in any manner not prohibited by law; and

WHEREAS, 65 ILCS 5/11-91.2-1 and 605 ILCS 5/5-102, 5-105, 5-106, 5-408, 5-410, 5-410.1, 7-101, and 9-101, all provide statutory authority for the City and the County to enter into this cooperative agreement with respect to the construction, jurisdiction, and maintenance of roads and streets; and

WHEREAS, the responsibility to provide for a highway transportation system rests with the City, the County, and the State; and

WHEREAS, the City and County desire to perform this function as efficiently and effectively as possible thereby reducing costs to taxpayers; and

WHEREAS, the City recognizes its responsibility to maintain the infrastructure in the territory which it annexes; and

WHEREAS, University Construction, a division of MACC of Illinois, Inc., (hereinafter, “University Construction”) has entered into a Development Agreement with the City to construct 1000 meters of Lincoln Avenue, including a bridge over the Saline Branch Drainage Ditch; and

WHEREAS, the Development Agreement between University Construction and the City provides that University Construction will pay for seven hundred sixty five thousand dollars (\$765,000) of the estimated one million one hundred forty five thousand dollars (\$1,145,000) total cost of construction; and

WHEREAS, the Development Agreement between University Construction and the City is contingent upon the City and the County entering a separate agreement wherein each agrees to pay for half of the cost of construction exceeding the \$765,000 to be contributed by University Construction; and

WHEREAS, the maximum contribution required of the City and the County is two hundred fifteen thousand dollars (\$215,000) each.

NOW, THEREFORE, the City and the County, in consideration of the mutual promises and covenants contained herein, agree as follows:

Section 1. Definition.

“Project” means design engineering, construction engineering, utility relocation, right-of-way acquisition and construction required to complete a two-lane roadway on North Lincoln Avenue, starting at Station 7+650, and ending at Station 8+650 (1000 meters in length). The portion between station 7+650 and Station 8+100 (450 meters in length) will consist of a three inch asphalt overlay of the existing pavement, construction of three foot wide aggregate shoulders, and construction modifications to the radii of Somer Drive at its intersection with Lincoln Avenue to facilitate truck turning movements. The portion between Station 8+100 and Station 8+650 (550 meters in length) will consist of complete pavement construction including required bridge access across the Saline Branch Drainage Ditch at approximate Station 8+340. The project will be done in accordance with the Development Agreement between University Construction and the City of Urbana governing said construction, dated _____, 2000. (“Development Agreement”)

Section 2. Project Funding.

The estimated total cost of the Project is \$1,145,000. University Construction has agreed to contribute \$765,000 towards that cost as set forth in the Development Agreement. The City and the County agree to split equally the cost of the Project that exceeds the \$765,000. The City and the County will not be required to contribute more than \$215,000 each toward the Project cost.

Section 3. Invoices and Payments.

Per the Development Agreement, University Construction will be responsible for the Project and shall invoice the City for both the City’s and County’s share of the Project costs. The City shall in turn invoice the County in accordance with cost shares and payment limits described in Section 2. The County shall pay invoices within thirty (30) days of receipt. The City shall provide reasonable documentation to the County regarding the actual cost of the work as costs are incurred.

Section 4. Further Actions.

The City and the County hereby agree to take any official action necessary to accomplish their respective obligations as set forth in this Agreement, including the passage of legally sufficient resolutions or ordinances, the appropriation or budgeting of money, and any and all other undertakings set forth in this Agreement. The Chair of the County

Board and the Mayor of the City are hereby authorized by the approval of this Agreement by the respective governing bodies of the County and the City to execute any such documents necessary to carry out the terms of this Agreement.

Section 5. Effective Date of the Agreement.

This Agreement shall be effective on the date of the last of the County Board or City Council to approve this Agreement.

Section 6. Condition Precedent.

This Agreement shall only be effective if the City and University Construction approve and execute the Development Agreement and if the Development Agreement provides that University Construction will pay \$765,000 of the total cost of the Project. If University Construction and the City do not execute such an agreement *prior to* the execution of this Agreement, this Agreement shall be null and void.

Section 7. Termination.

The parties agree that if the Project has not begun by June 30, 2003, this Agreement shall terminate without further action by the parties.

Section 8. Amendment.

No amendment to this Agreement shall be effective unless it is in writing and signed by the parties hereto.

Section 9. Notices.

Notice with respect to any matter contained herein shall be sent first class and mailed to:

CITY:

Mayor
City of Urbana
400 South Vine Street
Urbana, Illinois 61801

Director of Public Works
City of Urbana
706 South Glover Avenue
Urbana, Illinois 61802

COUNTY:

County Board Chair
County of Champaign
1776 East Washington Street
Urbana, Illinois 61802

County Engineer
County of Champaign
1905 East Main Street
Urbana, Illinois 61802

Section 10. Time is of the Essence.

Time is of the essence in this Agreement.

Section 11. Olympian Drive

- (a) The City and County acknowledge that an improved or new road designated as Olympian Drive, which crossed the CN (former ICG) Railroad right-of-way along an approved alignment, would promote economic development of the area and represent good transportation planning.
- (b) There has been progress to date completing a location study of Olympian Drive. Further progress in obtaining funding and proceeding with a design and construction schedule is necessary. Both the County and the City agree to put funding of their portions of the Olympian Drive Project in their Capital Improvement Plans, and to include the railroad crossing section (Market Drive to Lincoln Avenue) of Olympian Drive in the CUUATS priority process. Urbana agrees to proceed in a timely way with improvements to Lincoln Avenue in anticipation of the Olympian Drive Project. The County, in cooperation with the City of Champaign, agrees to proceed in a timely way with planning and construction of the west section of Olympian Drive.
- (c) Irrespective of the timetable for the construction of the rail crossing, both the City and the County shall plan and promote development in the area in accordance with the completed location studies for both Olympian Drive and Lincoln Avenue.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF URBANA, ILLINOIS

COUNTY OF CHAMPAIGN

By: _____
Mayor

By: _____
County Board Chair

ATTEST: _____
City Clerk

ATTEST: _____
County Clerk

APPROVED AS TO FORM:

Date of County Board Approval:

_____ Date: _____
City Attorney

Date of City Council approval:

Date: _____

MEMORANDUM

TO: Bruce Walden, Chief Administrative Officer

FROM: William R. Gray, P. E., Public Works Director

DATE: March 22, 2001

RE: **Revised North Lincoln Avenue Development Agreement
(City/University Construction)**

INTRODUCTION

On October 2, 2000, the City Council approved a Development Agreement with University Construction for the north Lincoln Avenue improvements. Since that time, Champaign County Highway and Transportation Committee has requested additional improvements along north Lincoln Avenue that causes revisions to the current Development Agreement that has been executed by both parties.

The revisions to the Development Agreement primarily involve the addition of 450 meters of additional roadway resurfacing as shown on Exhibit A of the agreement. This additional work is estimated to cost \$40,000. See Section 3.1.1, Section 4.1.1, Section 4.1.2, Section 6.2, and Section 6.16 for language revisions.

A second addition to the Development Agreement that does not have a material impact on the outcome of the agreement is that Central Waste Services may opt to lease rather than purchase the land from University Construction. See Section 4.1.2.b for language revisions.

University Construction is supportive of the proposed changes in the revised Development Agreement.

FISCAL IMPACTS

The City's contribution for the expanded north Lincoln Avenue improvements is now \$215,000. If costs exceed this amount, City Council approval would be necessary.

RECOMMENDATION

It is recommended that the Mayor and Clerk be authorized to sign "AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH UNIVERSITY CONSTRUCTION, A DIVISION OF MACC OF ILLINOIS, INC."

WRG:klf
Attachments

ORDINANCE NO. 2001-03-028

AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH UNIVERSITY CONSTRUCTION, A DIVISION OF MACC OF ILLINOIS, INC.

WHEREAS, in Ordinance No. 2000-09-111, passed by the City Council on October 2, 2000, an agreement providing for certain roadway improvements was approved; and

WHEREAS, subsequently, because the County requested certain revisions to a separate agreement relating to the same roadway improvements, it is necessary that this agreement also be revised, which revisions are acceptable to University Construction and Land Trust #131-1223,

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

Section 1. That an Agreement by and between the City of Urbana and University Construction, a division of MACC of Ill., Inc., and Land Trust No. 131-1223 in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (including attachments and exhibits, and hereinafter referred to as the "Agreement") dated as of the _____ day of _____, 2001, by and between the City of Urbana, an Illinois home-rule municipality, in Champaign County, Illinois (hereinafter referred to as the "City" or "Corporate Authorities"), and MACC of ILL., Inc., (hereinafter referred to as University Construction) and Land Trust No. 131-1223 (hereinafter L/T 1223). The effective date of this agreement is that written above.

RECITALS

WHEREAS, in accordance with and pursuant to the authority granted to units of government in Article VII of the Illinois Constitution of 1970, the City is authorized to enter into agreements which foster economic development;

WHEREAS, to minimize disruption and proceed in an orderly fashion for the benefit of the community, University Construction is prepared to redevelop a large land area in north Urbana; and

WHEREAS, the City of Urbana has conducted a transportation study entitled "The North Lincoln Avenue Location Study" and is proposing the reconstruction and realignment of north Lincoln Avenue to better serve the community and to potentially connect to Olympian Drive; and

WHEREAS, the realignment of north Lincoln Avenue affects property owned by L/ T 1223, whose beneficial owners are affiliated with University Construction and are affected by the development; and

WHEREAS, the City of Urbana, University Construction, and L/T 1223 agree that the extension and realignment of north Lincoln Avenue in conformance with the North Lincoln Avenue Location Study is in the best interests of all parties; and

WHEREAS, it is also in the interests of all parties to define associated costs and responsibilities for the construction of north Lincoln Avenue; and

WHEREAS, after due and proper review, the Urbana City Council has determined that this agreement is in the best interests of the City of Urbana.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the City and University Construction and L/T1223 agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement will have the meaning provided from place to place herein, including as follows:

"City" means the City Council of the City of Urbana, Illinois or its agents, employees and representatives.

"Corporate Authorities" mean the City Council of the City of Urbana, Illinois.

"Development Area" means, collectively, the real estate owned by L/T 1223 on north Lincoln Avenue as illustrated in Exhibit "A; and

"Parties" mean, collectively, the City, University Construction, and L/T 1223.

Section 1.2 Construction. This Agreement, except where the context by clear implication will otherwise require, will be construed and applied as follows:

- (a) definitions include both singular and plural;
- (b) pronouns include both singular and plural and cover all genders;

and

(c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and will not affect the meaning, construction or effect hereof.

(d) all exhibits attached to this Agreement will be and are operative provisions of this Agreement and will be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City hereby makes certain representations and warranties to University Construction and L/T 1223, as follows:

Section 2.1.1 Organization and Standing. The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

Section 2.1.2 Power and Authority. The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

Section 2.1.3 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, yet such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 2.1.4. No Violation. Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any terms, conditions, or provisions of any agreement, rule, regulations, statute, ordinance, judgment, decree, or other law by which the City may be bound.

Section 2.1.5. Governmental Consents and Approvals. No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

Section 2.2 Representations and Warranties of University Construction. University Construction makes the following representations and warranties to the City:

Section 2.2.1 Organization. University Construction is a division of MACC of ILL., Inc., which is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois.

Section 2.2.2 Power and Authority. University Construction has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings.

Section 2.2.3 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of University Construction. This Agreement is a legal, valid and binding agreement, obligation and undertaking of University Construction, enforceable against University Construction in accordance with its terms, except to the extent that such enforceability may be limited by law, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 2.2.4 No Violation. Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which University Construction is a party, or by which University Construction or any of its assets may be bound.

Section 2.2.5 Consents. No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by University Construction of this Agreement or the performance thereof by University Construction with the exception of the Illinois Department of Transportation; the U.S. Army Corps of Engineers; the Illinois Department of Natural Resources (Division of Water Resources), and the Illinois Environmental Protection Agency where applicable.

Section 2.2.6 No Proceedings or Judgments. There is no claim, action or proceeding now pending or to the best of its knowledge, threatened before any court, administrative or regulatory body, or governmental agency (a) to which University Construction is a party and (b) which will, or could, prevent University Construction's performance of its obligations under this Agreement.

Section 2.3 Representations and Warranties of Land Trust No. 1223.

L/T1223 makes the following representations and warranties to the City:

Section 2.3.1 Organization. L /T1223 is a Land Trust duly organized, validly existing and in good standing under the laws of the State of Illinois. It was established on December 30, 1983 under the name "First of America Bank Trust No. 1223" and the present Successor Trustee is Chicago Title Land Trust Company located at 171 North Clark Street, Chicago, IL 60601-3294, as Trustee of Land Trust No. 131-1223 (formerly L/T 1223).

Section 2.3.2 Power and Authority. Upon authorization by the trust beneficiaries, Chicago Title Land Trust Company, as such Trustee, will be authorized to execute and deliver this Agreement, but solely in its capacity as Land Trustee and subject to the disclaimer contained on the signature page of this Agreement.

Section 2.3.3 Consents. No consent or approval by any governmental authority is required in connection with the execution and delivery by the Trustee of this Agreement, except the required consent of the beneficiaries of the Land Trust, which consents will have been received by the time this Agreement is executed by such Trustee.

Section 2.3.4 No Proceedings or Judgments. So far as the Trustee knows there is no claim, action or proceeding now pending or to the best of its knowledge threatened before any court, administrative or regulatory body or governmental agency which will or could prevent the Trustee from performance of its obligations under this Agreement.

Section 2.4 Disclaimer of Warranties. The City, L/T 1223, and University Construction acknowledge that neither has made any warranties to the other, except as set forth in this Agreement.

ARTICLE III

UNIVERSITY CONSTRUCTION'S AND L/T 1223'S COVENANTS AND AGREEMENTS

Section 3.1. University Construction's Obligations. University Construction hereby covenants and agrees with the Corporate Authorities as follows:

Section 3.1.1 Agreement to Construct the north Lincoln Avenue Improvements. University Construction covenants and agrees to install and construct, or cause to be installed and constructed, the portion of north

Lincoln Avenue alignment from Station 7 + 650 to Station 8 + 650 (1,000 meters in length) as recommended in the North Lincoln Avenue Location Study and shown on Exhibit A), including the required bridge access across the Saline Branch Drainage Ditch and the new and reconstructed public street improvements at the times, in the manner and with the effect set forth in this Agreement, substantially in accordance with such site or construction plans as may be subsequently approved by the City's Director of Public Works and the Champaign County Highway Engineer in writing and as provided for in **Article III** of this Agreement. The parties mutually agree that University Construction shall not be obliged to spend more than seven hundred sixty five thousand dollars (\$765,000.00) for said improvements, including the acquisition of land for right-of-way including related incidental costs such as reasonable legal expenses and title costs, and permits. University Construction and L/T 1223 agree to dedicate right-of-way along the proposed north Lincoln Avenue alignment as shown on Exhibit A, that University Construction and/or L/T 1223 owns at no cost to the City. Costs above and beyond seven hundred sixty five thousand dollars (\$765,000.00) shall be shared between the City of Urbana and Champaign County as is provided in a contract between the City of Urbana and Champaign County.

It is understood that the proposed north Lincoln Avenue improvement, between Station 8 + 100 to Station 8 + 650, consists of complete pavement construction including a bridge across the Saline Branch Drainage Ditch and a two-lane width 24 feet edge to edge with curbs and gutters, storm sewers, inlets and grates, and sidewalks. The improvements between Station 7 + 650 and Station 8 + 100 shall be a three-inch asphalt overlay with three-foot wide stone shoulders and construction modifications to the radii of Somer Drive at its intersection with Lincoln Avenue to facilitate truck turning movements. All pavement is to be constructed in accordance with IDOT Standard Specifications for Road and Bridge Construction dated July 1, 1997 from the present paved northerly terminus Station 7 + 650 in the general direction as indicated on the attached Exhibit A hereby incorporated by reference for a total of 1,000 meters.

Section 3.1.2 Acquisition and Dedication of Right-of-Way. University Construction shall use its best efforts to acquire the required right-of-way outside of its ownership as described in the North Lincoln Avenue Location Study. University Construction shall provide legal descriptions and right-

of-way plats for the proposed north Lincoln Avenue improvements. All street construction described herein will be done in substantial conformance with the requirements of Chapter 21 of the Urbana Code of Ordinances entitled "Subdivision and Land Development Code" and in conformance with properly engineered construction plans. Nothing in this Agreement will excuse University Construction from providing construction and maintenance bonds for said street constructions, per the requirements of Chapter 21 of the Urbana Code of Ordinances entitled "Subdivision and Land Development Code." The Corporate Authorities agree to accept the dedication of said streets or right-of-way upon the City's Director of Public Works approval and acceptance of the quality of work, upon receipt of maintenance bonds, and upon receipt of University Construction's registered Illinois professional engineer's certification that construction was completed in compliance with previously approved construction plans. The City shall insure that its contract with Champaign County includes the obligation on Champaign County to acquire any right-of-way that is needed to implement this project which is not acquired by University Construction.

Section 3.1.3 Timing of Improvements. University Construction agrees that said design of improvements will commence upon the execution of a sales contract or other agreement that unconditionally commits Allied Waste Transportation, Inc., d/b/a Central Waste Services. to the relocation of Central Waste's facilities to the L/T 1223 site as shown on Exhibit B attached. Provided the additional required right-of-way has been acquired, University Construction agrees that, the construction of said improvements will commence after all appeals of the siting for the Central Waste Transfer and Recycling facility have been exhausted, and within thirty (30) working days of the City's Director of Public Works approval of said plans. The improvements shall be completed within one hundred eighty (180) working days as defined by the Illinois Department of Transportation Standard Specifications.

Section 3.2 Invoices and Change Orders. University Construction shall make all payments to the construction contractor, engineer, and their respective subcontractors and subconsultants, material suppliers, etc. Said payments may also be made to property owners for any land acquisition made by University Construction and payments may also be made to third parties for incidental costs related to the land acquisition. University Construction

shall invoice the City in accordance with the cost shares and payment limits described in Section 3.1.1 and Section 4.1.1. Upon commencement of the work, a payment equal to five percent of the construction contract amount, shall be paid to University Construction by the City. Additional payments shall be made to University Construction within thirty (30) days after the invoices are received by the City for its share of the cost. University Construction shall provide reasonable documentation to the City regarding the actual cost of the work as costs are incurred and submit invoices based upon percentage of completion, less a five percent retainage pending final completion. Any change orders for work other than that approved per Section 3.1.1 shall first be approved by the City's Director of Public Works. Failure to do so may result in no compensation by the City for work performed.

Section 3.3 Indemnity. University Construction agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts or omissions in connection with this Agreement, including the construction of the private development, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents or contractors. Additionally, University Construction shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents or contractors.

Section 3.4 Disconnection from Champaign School District Unit #4. L/T 1223 agrees to petition for the disconnection of L/T 1223 property from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute. The parties agree that the City of Urbana will reimburse the beneficiaries of L/T 1223 for the costs related to such effort in an amount not to exceed two thousand dollars (\$2,000.00).

Section 3.5 Support of Tax Increment Financing District. University Construction agrees to support the City of Urbana's efforts in establishing a Tax Increment Financing (TIF) district in north Urbana that would include University Construction and L/T 1223 property. Such support shall include letters or information needed from such parties to defend said TIF.

Section 3.6 Access Drive Locations. Access drives shall be restricted to a local industrial street in general conformance with the North Lincoln Avenue Location Study recommendations and subject to the City's Director of Public Works approval.

ARTICLE IV

THE CORPORATE AUTHORITIES' OBLIGATIONS

Section 4.1 City's Obligations. The Corporate Authorities of the City hereby covenant and agree with University Construction as follows:

Section 4.1.1 Participation in North Lincoln Avenue Improvements. The City of Urbana agrees, subject to the conditions precedent in Section 4.1.2 and the payment schedule in Section 3.2, to pay University Construction for all costs in excess of \$765,000 which are estimated to be four-hundred thirty thousand dollars (\$430,000) for expenses incurred by University Construction in constructing the improvements of north Lincoln Avenue in compliance with this agreement.

Section 4.1.2 Conditions Precedent. This agreement shall only be effective if the following occurs:

a. The City and Champaign County approve and execute an intergovernmental agreement confirming their joint participation in the cost of construction of the north Lincoln Avenue improvement such that the Champaign County will pay an amount not to exceed two hundred fifteen thousand dollars (\$215,000) to the City. Said intergovernmental agreement must be approved and executed within sixty (60) days of the execution and approval of this Agreement; and

b. L/T 1223 enters into a non-cancelable land sale or other agreement with Central Waste for the sale or lease of approximately 11.5 acres as shown on Exhibit B by January 1, 2002; and the closing of the sale or lease takes place by March 1, 2002, and

c. Central Waste enters into a non-cancelable development agreement with University Construction by January 1, 2002, wherein Central Waste agrees to pay University Construction \$765,000 for the cost for improving Lincoln Avenue as shown on Exhibit A attached, which payment does not include the construction cost for the public access street (Saline Court) shown on Exhibit A.

If any of the above conditions precedent fail to occur within the time frames noted herein, this agreement shall be null and void.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.1 Defaults - Rights to Cure. Failure or delay by either party to timely perform any term or provision of this Agreement will constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default will give written notice of the alleged default to the party alleged to be in default specifying the default complained of. Except as required to protect against immediate, irreparable harm, the party asserting a default may not institute proceedings against the other party until thirty (30) days after having given such notice. If the defaulting party commences to cure said default, such thirty (30) day period will be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default will be deemed not to constitute a breach of this Agreement. However, a default not cured as provided above will constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach will not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

Section 5.2 Remedies. The sole remedy of either party in the event of a default by the other party under any of the terms and provisions of this Agreement will be to institute legal action against the other party for specific performance or other appropriate equitable relief.

Section 5.3 Legal Expense. In the event a default occurs, the non-defaulting party shall be entitled to reasonable attorney's fees and court costs against the defaulting party.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Entire Contract and Amendments. This Agreement (together with the Exhibits A and B, inclusive, attached hereto) is the entire contract between the City, University Construction, and L/T 1223 relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and University Construction, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 6.2 Construction Design and Estimates. University Construction agrees to prepare final design documents and construction drawings for the project. The City will pay University Construction per Section 3.2 for said design documents and construction drawings costs incurred for a sum not to exceed \$87,000 which is included as part of the estimated \$430,000 limit for City out of pocket expenses. When the design work is complete and approved by the City, University Construction will submit a final price to build the north Lincoln Avenue improvement along the proposed alignment as shown in Exhibit A. If University Construction's final price is \$1,190,000 or less, including the design fee, the City is required to complete the project and to pay to University Construction the cost in excess of \$765,000. If the final bid price, including the design fee, is greater than \$1,190,000, the City of Urbana, at its option can either agree to pay the final price and additionally pay University Construction the cost in excess of \$1,190,000 or allow University Construction to access the L/T 1223 site along the alignment approved in the north Lincoln Avenue Preliminary Plat as shown on Exhibit B attached. The Lincoln Avenue pavement improvements shown on Exhibit B shall be in accordance with the pavement and roadway cross section on Lincoln Avenue from Somer Drive south to the Saline Branch bridge and all said work shall be solely at the expense of University Construction.

Section 6.3 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City, University Construction, and L/T 1223 and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge

the obligation or liability of any third persons to either the City or University Construction, nor will any provision give any third parties any rights of subrogation or action over or against either the City, University Construction, and L/T 1223. This Agreement is not intended to, and does not create any third party beneficiary rights whatsoever.

Section 6.4 Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each will be considered an original and together they will constitute one agreement.

Section 6.5 Special and Limited Obligation. This Agreement will constitute special and limited obligation of the City according to the terms hereof.

Section 6.6 Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither University Construction nor the City nor L/T 1223 will be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute "unavoidable delays"): any strike, lockout or other labor disturbance (whether legal or illegal, with respect to which University Construction, the City and others will have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God or third parties, or any other cause beyond the reasonable control of University Construction or the City, or for any other reasons not within University Construction's or the City's control.

Section 6.7 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver will be deemed to exist unless such waivers are in writing. No such waiver will obligate the waiver of any other right or remedy hereunder, or will be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 6.8 Cooperation and Further Assurances. The City, University Construction, and L/T 1223 each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered,

such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or University Construction or other appropriate persons all singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 6.9 Notices. All notices, demands, request, consents, approvals or other communications or instruments required or otherwise given under this Agreement will be in writing and will be executed by the party or an officer, agent or attorney of the party, and will be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To University Construction:
PO Box 848
Urbana, Illinois 61803
TEL: (217) 355-9115, FAX: (217) 355-8974

with a copy to:
J. Michael O'Byrne or Stephen M. O'Byrne
Rawles, O'Byrne, Stanko & Kepley, P.C.
PO Box 800
Champaign, IL 61824-0800
TEL: (217) 352-7661
FAX: (217) 352-2169

To Chicago Title Land Trust Company,
as Trustee of Land Trust No. 131-1223
Attn.: Carrie Cullinan Barth, Office Counsel
171 North Clark Street
Chicago, IL 60601-3294
TEL: (312) 223-3037

To the City:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attention: Chief Administrative Officer
TEL: (217) 384-2454
FAX: (217) 384-2363

with a copy to:
Legal Division
400 South Vine Street
Urbana, IL 61801
TEL: (217) 384-2464
FAX: (217) 384-2363

Section 6.10. No Joint Venture, Agency, or Partnership Created.

Nothing in this Agreement or any actions of the parties to this Agreement will be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

Section 6.11. Illinois Law. This Agreement will be construed and interpreted under the laws of the State of Illinois.

Section 6.12. No Personal Liability of Officials of City. No covenant or agreement contained in this Agreement will be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City will be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

Section 6.13. Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement will be controlling.

Section 6.14. Term. This Agreement will remain in full force and effect until said Agreement is mutually amended or rescinded however, the provisions requiring dedication of right-of-way or easements will survive the termination of this Agreement in perpetuity.

Section 6.15. Option to Terminate. If the conditions precedent described in Section 4.1.2 have not been satisfied by January 1, 2002, University Construction and L/T 1223 shall each have the option, exercised jointly, to terminate this Agreement by written notice to the City.

Section 6.16. Price Escalation. If the agreement referenced in Section 4.1.2(c) is not signed by July 1, 2001, then the University Construction cost participation in Section 3.1.1 may be raised three percent (3%) to \$787,950 and, correspondingly, the City cost participation may

increase three percent (3%) to \$442,900 for a total project cost of \$1,230,850.

IN WITNESS WHEREOF, the City, University Construction, and L/T 1223 have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

CITY OF URBANA, ILLINOIS

By: _____
Mayor

Date: _____

ATTEST:

City Clerk
Date: _____

of

**University Construction, a division
MACC of ILL. INC.**

By: _____
Hugh W Gallivan,
Its: President

Date: _____

ATTEST:

Scott Stromberg, Its Secretary
Date: _____

**CHICAGO TITLE LAND TRUST
COMPANY, as Trustee of
LAND TRUST NO. 131-1223
A/K/A Land Trust No. 1223**

By: _____
Its: _____
Date: _____

ATTEST:



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ADMINISTRATION

MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer

FROM: William R. Gray, P.E., Public Works Director

DATE: March 22, 2001

RE: **University of Illinois Request to Install a Gateway
Northwest Corner of Race Street and Windsor Road**

INTRODUCTION

Late last year, representatives from the University of Illinois contacted the City requesting a license agreement to install a gateway at the northwest corner of Race Street and Windsor Road (see attached photo). The location of the gateway proposed is in the right-of-way of Race Street, north of Windsor Road. The City and University deemed this location acceptable for visibility purposes. This gateway is one of seven that the University of Illinois is installing to help visitors find their way to the campus. The other gateways that are installed or planned in Urbana are located at Green and Lincoln, Springfield and Goodwin, and University and Harvey.

In order for the gateway to be installed in the city right-of-way, a license agreement is necessary. Attached please find an agreement for use of right-of-way, which outlines the conditions for permitting the University to occupy the public right-of-way with a gateway.

Meanwhile, the University has already begun the installation of the gateway with the lettering, lighting, electrical service, and landscaping remaining before the gateway is completed.

Failure to approve the attached ordinance and agreement may result in forcing the University to remove the gateway at its current location. The University, late last year, proceeded with construction of the gateway at their risk, based on the availability of staff, funding, and a desire to have these gateways installed soon.

FISCAL IMPACTS

There would be no financial impacts to the City since the installation and maintenance for the gateway is solely at the University's expense. Additionally the University is indemnifying the City against any losses, claims, etc., that may occur as a result of the gateway at this location.

RECOMMENDATION

It is recommended that the attached ordinance recommending the Mayor and Clerk execute "AN AGREEMENT FOR USE OF RIGHT-OF-WAY" be approved.

WRG:klf

Attachments: Photos
 Agreement for Use of Right -of-Way
 Exhibit A (Layout Plan and Elevation)
 Ordinance

ORDINANCE NO. 2001-03-029

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
FOR USE OF RIGHT-OF-WAY

(Northwest Corner of Race Street and Windsor Road)

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

Section 1. That the Agreement for Use of Right-of-Way (Northwest Corner of Race Street and Windsor Road) between the City of Urbana and the Board of Trustees of the University of Illinois, in the form of a copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

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

AGREEMENT FOR USE OF RIGHT-OF-WAY
[Northwest Corner of Race Street and Windsor Road]

THIS AGREEMENT, made and entered into this _____ day of _____, 2001~~0~~, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City") and the ~~Board of Trustees~~**BOARD OF TRUSTEES OF THE** UNIVERSITY OF ILLINOIS at Urbana-Champaign campus (hereinafter "University").⁵

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the University do mutually covenant and agree as follows:

A. Race Street is an 80-foot dedicated right-of-way north of the north right-of-way of Windsor Road.

B. The University is herein granted by the City a limited right to construct a gateway to be built in part upon such right-of-way. This limited right is wholly dependent upon the University, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The University expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the University, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. The City agrees that it will provide reasonable notice to the University upon such failure or non-compliance and will give the University a reasonable time to cure such a breach. Further, it is expressly understood that, regardless of the existence or not of any breach, the use by the University of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way.

C. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the construction and maintenance of a gateway, of which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director") in consultation with the University, this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

D. When so instructed by the Director, the University will cause the gateway or any portion thereof to be removed, as nearly as possible in conformance with the Director's request, within ten (10) days after receipt of written Notice from the Director. The University is solely and entirely responsible for any and all costs directly or indirectly related to such gateway removal.

E. In the event of an emergency, defined as imminent peril to person or property, or when the University has inadequately complied with an order of the Director pursuant to Paragraph (D) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (D) impracticable under the circumstances present, the University consents and agrees that the City or its duly authorized agent may remove the gateway, or any portion thereof, and charge all costs and expenses incurred in such removal and disposal to the University. ~~Should the University agree to make such a payment in a timely way fail in any way to make timely payment in accordance with the Illinois Prompt Payment Act, to the City for such costs and expenses, the University agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.~~

~~F. The University agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts or omissions in connection with this Agreement, including the construction of the gateway, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents or contractors. Additionally, the University shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents or contractors.~~

F. To the extent permitted by law, the University agrees to protect, indemnify, hold and save harmless and defend the City against any and all losses, claims, demands, costs, causes, expenses and fees, including reasonable attorney's fees and the reasonable value of any suit or any other claim or demand for injury or damages in connection with this Agreement, including the construction of the gateway, unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents or contractors.

G. The University represents that it may lawfully provide insurance coverage to the City in connection with the obligations as set forth in Paragraph F without such obligations being subject to the availability of funds, which may be lawfully applied thereto. Such insurance shall be kept in force at all times while the structure referred to in Paragraph B above continues to exist at the location described. The University accordingly agrees to provide to the City upon execution of this Agreement, a certificate of insurance evidencing the commercial general liability policy of the University insuring the City as an additional insured for purposes of this Agreement with coverage having a maximum limitation of \$1,000,000. In lieu of annual renewal of such certificate, the University agrees to notify the City if for any reason the coverage described in the certificate provides a lesser coverage.

H. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois, and the fee for such recording to be at the sole expense of the University.

* * *

CITY OF URBANA, ILLINOIS
THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS

By: _____
Tod Satterthwaite, Mayor By: [Craig S. Bazzani, Vice President and Comptroller](#)

ATTEST:

Phyllis D. Clark, City Clerk

ATTEST:

Secretary, [Michele M. Thompson](#)

Approved as to legal form:

Office of University Counsel

Approved:

[Charles Colbert, Vice Chancellor for Administration and Human Resources](#)

Prepared by and please return recorded copy to:

*Jack Waaler, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801*

ORDINANCE NO. 2001-03-031

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
CHAMPAIGN COUNTY, ILLINOIS

(Champaign County Courthouse Construction)

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

Section 1. That An Agreement Between the City of Urbana and Champaign
County Respecting Champaign County Courthouse Construction, in the form of
the copy of said Agreement attached hereto and hereby incorporated by
reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the
same is hereby authorized to execute and deliver and the City Clerk of the
City of Urbana, Illinois, be and the same is authorized to attest to said
execution of said Agreement as so authorized and approved for and on behalf
of the City of Urbana, Illinois.

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



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning and Economic Development Division

m e m o r a n d u m

TO: Bruce K. Walden, CAO

FROM: April D. Getchius, AICP, Director

DATE: March 29, 2001

SUBJECT: ZBA 01-MAJ-2 & ZBA 01-MAJ-3, Request for two major variances filed by Susan Pryde of 105 West Florida Avenue. The petitioner proposes a reduction in the required side yard setback from five feet to two feet and a reduction in the required rear yard setback from ten feet to one foot.

Introduction

Susan Pryde has submitted a petition for two major variances for setbacks at 105 West Florida Avenue. The petitioner intends to construct a dwelling unit above an existing detached garage on the site. On March 15, 2001, the Zoning Board of Appeals granted a conditional use permit to allow the establishment of the dwelling unit. However, in order to build it, variances are needed for setbacks. Although the existing garage is not proposed to be encroach any closer to the property lines than it currently sits, the addition of the dwelling unit changes the nature of the garage from an “accessory” use to a “principal” use. While accessory uses can be located 18 inches from the property line, principal structures are required to meet the setbacks specified for the zoning district in which it is located. In this case, the setback requirements would be five feet for the side yard and ten feet for the rear yard.



Description of the Site

The subject property is located on the southeast corner of Florida Avenue and Florida Drive. Florida Drive is one block east of Race Street. The lot contains approximately 8,700 square feet and has 112.25 feet of frontage along Florida Avenue and 77.5 feet of frontage along Florida Drive. The primary access to the lot is from a driveway on Florida Avenue. The house and detached garage are situated in the far southeast corner of the lot, while the remainder of the lot contains significant vegetation. The existing house is two-story with approximately 1,000 square feet in area. The existing detached garage is a one-story concrete block structure with approximately 440 square feet in building footprint.

Surrounding Zoning and Land Use

The lot is currently zoned R-2, Single Family Residential. It is located in an area that is predominantly zoned R-1 and R-2. There is R-5, Medium High Density Multiple Family zoning one block to the north of the site to accommodate a multi-family development. There is also an abundance of CRE zoning in the area with Blair Park to the east and University of Illinois property at Race Street and Florida Avenue.

The requested variances will most impact the properties to the east and south. On the east is a single-family residence which fronts onto Florida Avenue. This property has the detached garage and driveway closest to the southeast corner of the petitioner's lot. Closest to the proposal on the south is also a detached garage for a single family home which fronts onto Florida Drive. On the north and west sides of the site are public roadways.

Findings

In order to review potential variances, Section XI-3 of the Urbana Zoning Ordinance requires the ZBA and City Council to make findings based on variance criteria. At the March 15, 2001 meeting, the ZBA cited the following findings for their recommendation for approval of the requested variances:

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

In this case, the special practical difficulty relates to the location of the house and garage on the lot. The lot contains ample square footage (8,700 square feet) but the house and garage were built in the far southeast corner of the lot making any expansion to the house or conversion of the garage to a principal use impossible without a variance for setbacks. In new construction, the house and garage would typically be built in the middle of the lot allowing space for expansion or conversion without the need for variances.

2. *The proposed variances will not serve as a special privilege because the variances requested are 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.*

There is a special circumstance relating to the structure involved because the structure was located at the far corner of the lot making expansion and conversion difficult without a variance. This is generally not the case with most development in the R-2, Single Family Residential zoning district which will typically have the main structure and garage located in the center of the lot.

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

The variances requested are not the situation of a condition that has already been created. The petitioner recognized the need for the variances and submitted an application before any site improvements were made.

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

The variances are needed for an existing garage that would be converted from an accessory structure to a principal structure. As noted earlier, an accessory structure is only required to be setback 18 inches from the property line while a principal structure must meet the setback requirements of the zoning district in which it is located. The existing garage is already located two feet from the east side yard property line and one foot from the south rear yard property line and fully complies with the ordinance. The conversion of the garage to a principal structure makes it non-conforming for setbacks. The footprint of the existing garage is not proposed to change by adding a dwelling unit on top. Since the petitioner is not proposing the construction of a new structure in the required yard setback, the requested variances will not alter the essential character of the neighborhood.

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

The variances should not cause a nuisance to the neighboring property because the structure will not be located any closer than the existing garage is currently located.

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 amount of variance needed to accommodate the development proposal.

The Zoning Board of Appeals further found that:

1. There are special circumstances related to the layout of the site. Although the lot is approximately 8,700 square feet, the house was built in the far southeast corner of the lot making any expansion or improvements nearly impossible without a variance for setbacks.
2. The proposed variances will not serve as a special privilege because the structure involved was originally built in an area on the lot which makes it difficult for conversion or expansion without variances.
3. The proposed variance would not cause a negative impact to the immediate area because an existing garage is already built in this location. By converting the garage from an accessory structure to a principal use, the setback requirements change and the variances are needed although the petitioner is not proposing any expansion to the existing footprint of the garage structure.
4. The proposal will not cause a negative impact to the neighboring properties because the adjacent properties will not realize any greater setback than is currently evident with the existing garage.
5. The proposal meets all other requirements established by the Urbana Zoning Ordinance including the requirement for the granting of a conditional use permit to have two principal uses on one lot. On March 15, 2001, the Zoning Board of Appeals granted the conditional use permitting the establishment of a dwelling unit above the existing detached garage.

Options

The City Council has the following options this case:

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

Recommendation

Based on the findings outlined herein, the Zoning Board of Appeals voted 4-0 to forward the variance requests to the City Council with a recommendation for approval. Therefore, staff concurs with the ZBA and recommends that City Council **GRANT** the variances as requested.

| | | |
|--------------|------------|---|
| Attachments: | Exhibit 1: | Proposed Ordinances |
| | Exhibit 2: | Location Map |
| | Exhibit 3: | Zoning Map |
| | Exhibit 4: | Site Plan |
| | Exhibit 5: | Aerial photo |
| | Exhibit 6: | Additional Photos |
| | Exhibit 7: | March 15, 2001 ZBA Staff Report & Minutes |
| | Exhibit 8: | Correspondence |

c: Susan Pryde, Applicant

Prepared by:

Rob Kowalski, AICP
Senior Planner

AN ORDINANCE APPROVING A MAJOR VARIANCE

(Reduction Of The Required Side Yard Setback In The City's R-2, Single Family Residential Zoning District, From Five Feet to Two Feet / 105 W. Florida Avenue -- Case No. ZBA-01-MAJ-2)

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, Susan Pryde, has submitted a petition requesting a major variance to allow the reduction of the required side yard setback on the east side of the subject property; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA-01-MAJ-2; 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 March 15,

2001, and the ZBA by a unanimous vote of its members recommend to the City Council approval of the requested variance; 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 agrees with the following findings of fact adopted by the ZBA in support of its recommendation to approve the application for a major variance:

1. There are special circumstances related to the layout of the site. Although the lot is approximately 8,700 square feet, the house was built in the far southeast corner of the lot making any expansion or improvements nearly impossible without a variance for setback.
2. The proposed variance will not serve as a special privilege because the structure involved was originally built in an area on the lot which makes it difficult for conversion or expansion without a variance.
3. The proposed variance would not cause a negative impact to the immediate area because an existing garage is already built in this location. By converting the garage from an

accessory use to a principal use, the setback requirement changes and the variance is needed although the petitioner is not proposing any expansion to the existing footprint of the garage structure.

4. The proposal will not cause a negative impact to the neighboring properties because the adjacent properties will not realize any greater setback than is currently evident with the existing garage.

5. The proposal meets all other requirements established by the Urbana Zoning Ordinance including the requirement for the granting of a conditional use permit (Case #ZBA 01-C-2) to have two principal uses on one lot. On March 15, 2001, the Zoning Board of Appeals granted the conditional use permitting the establishment of a dwelling unit above the existing detached garage.

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

The major variance request by Susan Pryde, in Case #ZBA-01-MAJ-2 is hereby approved to allow the reduction of the required side yard setback along the east side of the property in the R-2, Single Family Residential Zoning District from five feet to two feet, in the manner proposed in the application for the major variance in that case.

The major variance described above shall only apply to the property located at 105 W. Florida Avenue, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION:

Lot 2 of the Raymond Subdivision as recorded at the Champaign County Recorders Office, situated in the City of Urbana, in Champaign County, Illinois.

PERMANENT PARCEL #: 93-21-20-201-009

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 _____, 2001.

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 APPROVING A MAJOR VARIANCE "(Reduction Of The Required Side Yard Setback In The City's R-2, Single Family Residential Zoning District, From Five Feet to Two Feet / 105 W. Florida Avenue -- Case No. ZBA-01-MAJ-2)" 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.

Exhibit 2: Location Map



ZBA-01-MAJ-2; ZBA-01-MAJ-3
105 W. Florida Ave
Susan Pryde

 Subject Property

Exhibit 3: Zoning Map

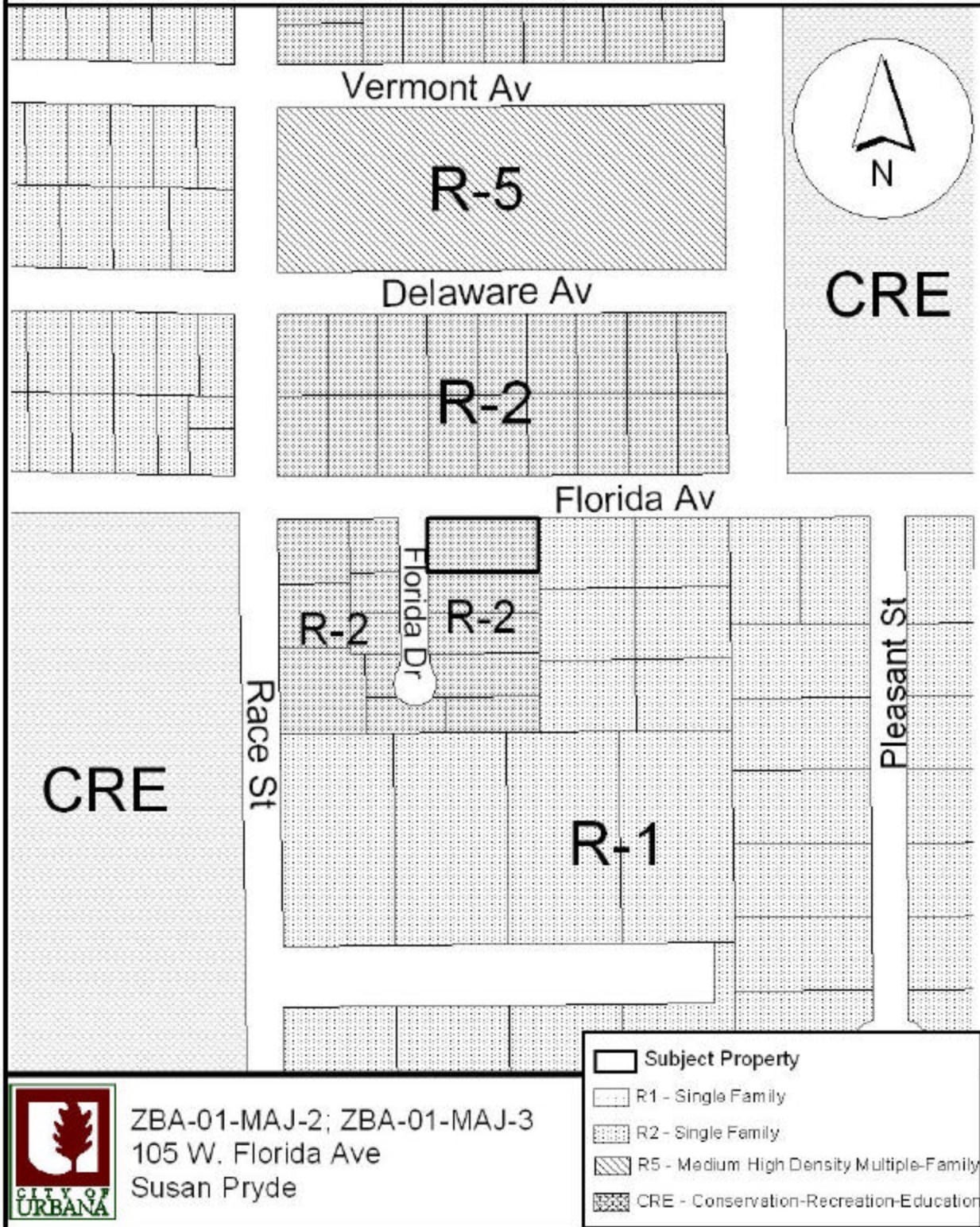
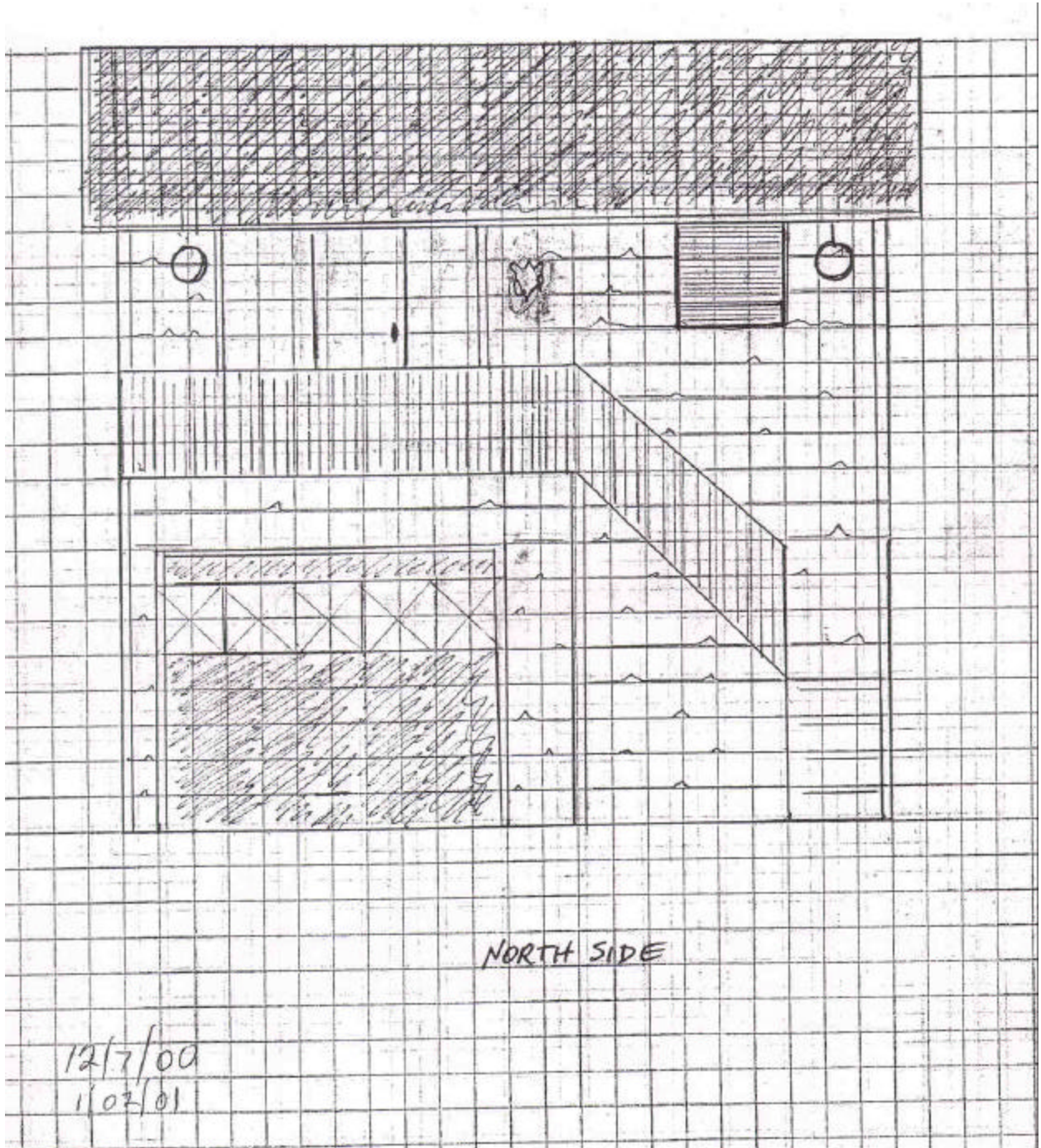
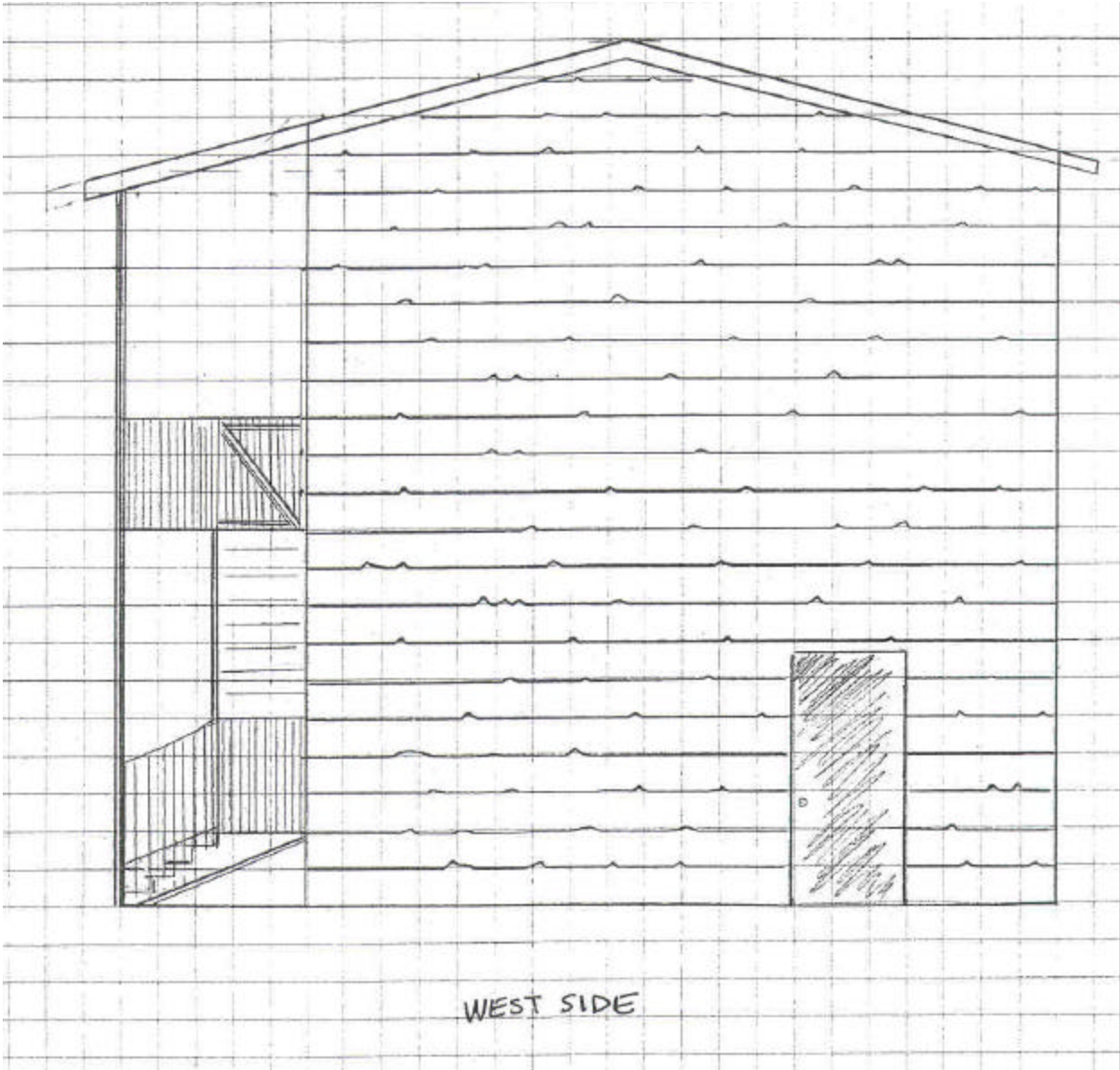


Exhibit #4; Site Plan





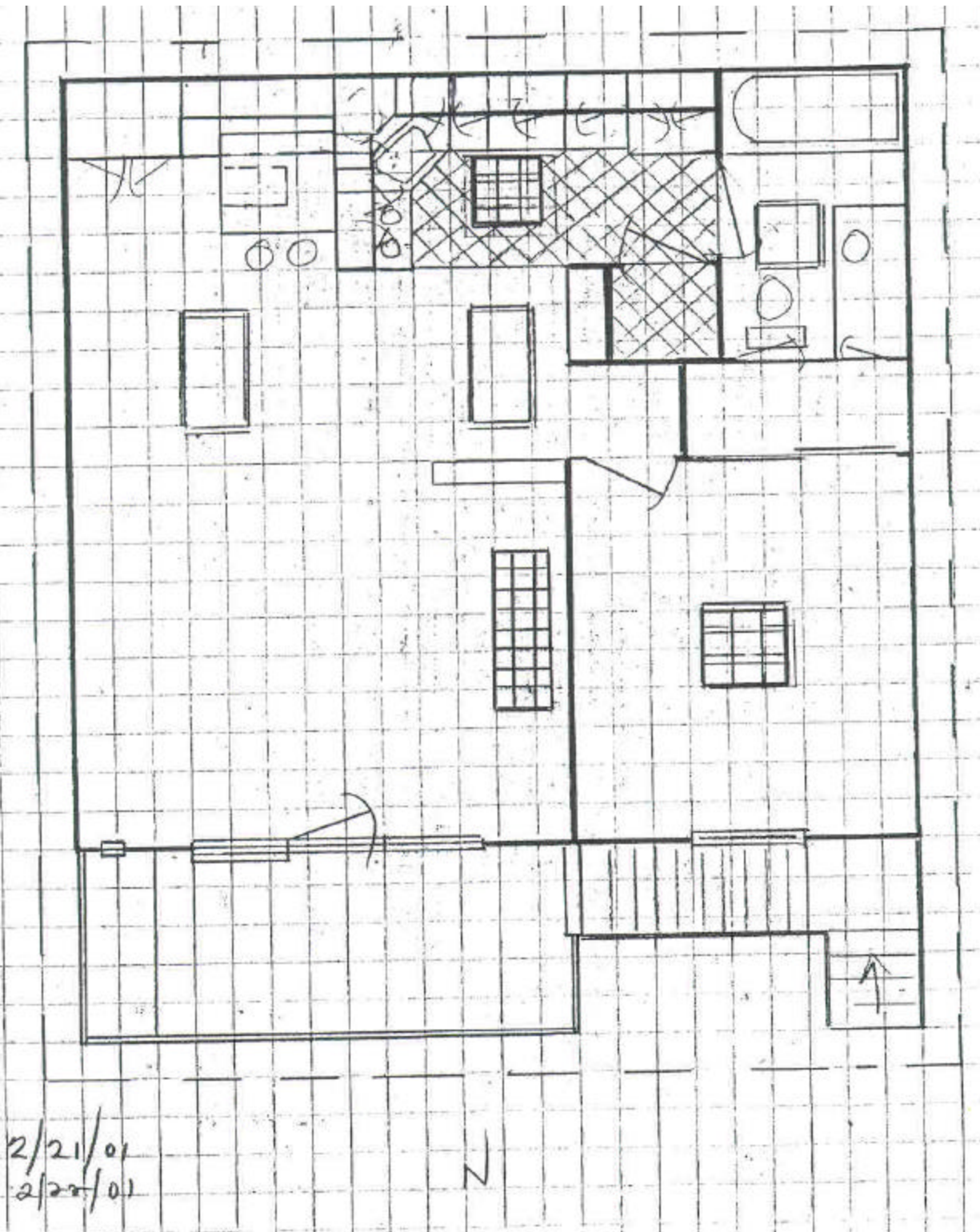


Exhibit 5; Aerial Photo



Exhibit #6 Additional Photos



707 S. Anderson (Garage Apt is 707.5)



Carriage House 312 W. Green



Neighbor's detached garage to the south



Neighbor to the east on Florida Avenue



Across Florida Avenue looking south



West side of lot – Florida Ave & Florida Dr.

Exhibit #7; ZBA Staff Report & Minutes from March 15, 2001 Meeting



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES
Planning and Economic Development Division

memorandum

TO: The Urbana Zoning Board of Appeals

FROM: Rob Kowalski, AICP, Senior Planner

DATE: March 9, 2001

SUBJECT: ZBA 01-MAJ-1; ZBA 01-MAJ-2; & ZBA 01-C-2
Request for two major variances and a conditional use permit filed by Susan Pryde. The petitioner proposes a second primary use (dwelling unit above the garage) and a reduction in the required side yard setback from five feet to two feet and a reduction in the required rear yard setback from ten feet to one foot at 105 W. Florida Avenue.

Introduction

Susan Pryde has submitted an application for a conditional use permit and two separate major variances in order to permit the construction of an ancillary apartment unit above an existing detached garage at 105 W. Florida Avenue. The garage is currently considered an accessory structure to the house which is considered the principal use of the lot. By adding a dwelling unit above the garage, the garage would no longer be an accessory use and would be considered a principal use along with the main house.



The Urbana Zoning Ordinance allows only one principal use per lot, although a conditional use permit can be requested to permit multiple principal use on one lot. In this case, the addition of the dwelling unit above the garage does not make the house a “duplex,” because the two dwelling units would not be attached. As a side note, duplexes are permitted in the R-2 zoning district with a conditional use permit as well. As an accessory structure, the garage only needs to meet the setback requirements of 18 inches for the side and rear yards. Once the accessory structure becomes a principal use, it must meet the setback requirements for the zoning district in which it is located. In the case of the R-2 zoning district, the setback requirements are five feet for the side yard and ten feet for the rear yard. The existing garage currently contains a 2-foot side yard setback and a 1-foot rear yard setback. As an accessory structure, the garage is currently in compliance for setbacks. When it is converted to a principal use, it becomes non-compliant and would need variances for both the side and rear yard setbacks.

In the application for the conditional use permit, the petitioner indicates that the purpose of the ancillary unit is to allow an elderly relative to live nearby yet independantly. The petitioner has no intent to rent the unit although there would be no restriction for the unit to be rented in the future.

Background

Description of the Site

The subject property is located on the southeast corner of Florida Avenue and Florida Drive. Florida Drive is one block east of Race Street. The lot contains approximately 8,700 square feet and has 112.25 feet of frontage along Florida Avenue and 77.5 feet of frontage along Florida Drive. The primary access to the lot is from a driveway on Florida Avenue. The house and detached garage are situated in the far southeast corner of the lot, while the remainder of the lot contains significant vegetation. The existing house is two-story with approximately 1,000 square feet in area. The existing detached garage is a one-story concrete block structure with approximately 440 square feet in building footprint.

The lot is zoned R-2, Single Family Residential, which only allows one principal use on the lot by right. Multiple principal uses on one lot are allowed only with the granting of a conditional use permit. The R-2, Single-Family Residential zoning district also requires a 5-foot side yard setback and a 10-foot rear yard setback for principal structures. The immediate area is predominantly zoned R-1 or R-2, Single Family Residential, and contains primarily single-family residential homes. The lot is immediately adjacent to roadway right-of-way to the north and west. To the east is a single-family home on a large lot which fronts onto Florida Avenue. The proposal would impact the southwest corner of the adjacent lot most where the garage and driveway are located. To the south of the site is also a single-family home which fronts onto Florida Drive and is slightly smaller than the subject site. A detached garage for the lot to the south is immediately adjacent to the proposal. There is a large scale multi-family apartment complex one block north of the site between Vermont and Delaware Streets (see Exhibit 3).

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

Zoning and Land Use Table *

| Location | Zoning | Land Use |
|------------------|--------------------------------|---------------------------|
| Subject Property | R-2, Single Family Residential | Single Family Residential |
| North | R-2, Single Family Residential | Single Family Residential |
| South | R-2, Single Family Residential | Single Family Residential |
| East | R-1, Single Family Residential | Single Family Residential |
| West | R-2, Single Family Residential | Single Family Residential |

* Please refer to the attached Comprehensive Plan, Zoning and Land Use maps for more information.

Discussion

Construction and Building Code

The petitioner has conducted a fair amount of research to determine the structural feasibility of the project prior to submittal of this application for approval of the conditional use permit and variances. The petitioner has met with a representative of the City of Urbana Building Safety Division who outlined the building code requirements for the proposal. The most important requirement is the structural integrity of the existing garage and the ability to build a dwelling unit on top of it. The existing garage is constructed on concrete block and apparently has the appropriate foundation depth to support the construction. According to the building code, there are also a number of requirements to be met when a dwelling unit is involved. The most significant requirement relates to the fire rating of the walls in relation to the location of the structure to the property lines. This requirement is to help prevent the spread of fire from one property to the next. Considering the close proximity to the property lines, the building code in this case requires a solid fire rated wall on the east and south sides and will not permit windows because they can contribute to the spread of fire much quicker than a solid wall. The petitioner proposes a design which would accommodate windows on the west and north side of the structure as well as numerous skylights to allow for adequate sunlight into the unit. Exhibit 6 offers an elevation rendering and floor plan of the proposed structure. As with any construction project, building plans must be reviewed and approved by the City of Urbana Building Safety Division prior to a Certificate of Occupancy being issued.

Access and Parking

Access to the ancillary unit would be from the driveway off of Florida Avenue. The current driveway is wide enough to provide sufficient area for occupants of both units to park without conflict. Both dwelling units would require a total of four parking spaces. These four spaces can adequately be

provided for in the garage and on the driveway.

Previous Cases

Over the past 15 years, the Zoning Board of Appeals has considered over 20 cases involving the request for conditional use permits for multiple principal structures on one lot. Most of these requests, however, were for multi-family, commercial or industrial developments where the petitioner had proposed an expansion to an existing business or housing development. Two recent cases were approved to allow for multiple multi-family structures on a single lot zoned Mixed Office Residential (MOR) on Elm Street and Green Street. In 1997, Canaan Baptist Church also received approval to construct multiple principal structures on their lot at 402 W. Main Street which is zoned R-4. The current proposal is unique because the petitioner is requesting the conditional use permit to allow the addition of a separate dwelling unit on a lot zoned R-2, Single-Family Residential. However, the Zoning Board of Appeals has granted approvals in the past for requests to establish duplexes in the R-2, Single Family Residential zoning district. The only reason this proposal is not considered a duplex is because the units are not attached and do not share a common wall. Nevertheless, the function of this site will be no different than a duplex where two separate dwelling units are available on one lot for habitation.

New Urbanism

In recent years, the planning profession has been actively promoting development techniques which discourage suburban style low-density development, often referred to as “sprawl”, in favor of a more traditional pattern of development common to communities built in the early 20th century. These neighborhoods successfully mixed single-family and multi-family residential development and designed them in a way that made them compatible with each other. By offering a variety of housing opportunities, neighborhoods were able to achieve a stronger mix of residents. The trend to develop new communities with the style and spirit of this pattern of development is referred to as “New Urbanism” or “Neotraditional” development.

New Urbanism recognizes that as the Baby Boomer population ages, they will seek alternative styles of housing much different than the automobile oriented pattern of development applied over the past 50 years. Ancillary units or “granny flats” are an effective way to offer this alternative style of housing within the developed portions of the city where individuals can walk to places to serve their daily needs.

While towns and cities across the country move towards the new urbanism approach of development, their existing zoning ordinances often prevent these techniques from being applied. Urbana is no exception to this phenomenon. The most sought after older neighborhoods of Urbana, in most cases, cannot be replicated in new development due to the evolution of the zoning and subdivision ordinances which often require large lots, deep setbacks, excessive parking and restrictions on a mixture of uses. This pattern of development can result in new neighborhoods being segregated from other residential and commercial developments. When the zoning and subdivision ordinances promote a more suburban

style of development, it becomes difficult for the inner city to redevelop in a pattern that captures its original design and intent.

Similar Examples

Urbana has a few examples of single-family homes with ancillary units. These examples are legally non-conforming which means they are no longer permitted under the zoning ordinance but they have been “grandfathered” since they have been in operation prior to the relevant zoning ordinance regulations being adopted. One example is at 707 South Anderson Street where there is a second unit evident within the existing detached garage. In this case, the residents of the house and ancillary unit share the driveway. Another example is the Lindley House at 312 West Green Street. Although the Lindley House is used as a commercial Bed and Breakfast, the old carriage house has been renovated and used for lodging accommodations. See Exhibit #8 for photos of these two examples.

**Conditional Use Permit Criteria
Case #ZBA-01-C-2**

According to Section VII-2 of the Urbana Zoning Ordinance, an application for a Conditional Use Permit shall demonstrate the following:

- 1. *That the proposed use is conducive to the public convenience at that location.*

The proposed ancillary unit will be conducive to the public convenience at this location because it will provide a residential dwelling unit for an individual in an area that is convenient to shopping, church and other services needed to accommodate daily needs. The proposal is also consistent with new urbanism techniques which promote infill development over new development on the fringe of the city limits.

- 2. *That the proposed use is designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious to the public welfare.*

The proposed apartment is designed to be operated as an ancillary unit to the main structure on the lot. The petitioner explains that the unit is for her mother to live in so they can live close together and yet still maintain independent living conditions. The relatively small size of the unit (440 square feet) will discourage it from being rented in the future to more than one individual. For this reason, the proposal will not be unreasonably injurious or detrimental to the R-2 Single Family Residential district.

- 3. *That the proposed use conforms to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located, except where such regulations and standards are modified by Section VII-3.*

The proposal would conform to the general purpose and intent of the R-2, Single Family Residential zoning district which is described in the zoning ordinance as follows:

The R-2 Single-Family Residential District is intended to provide areas for single-family detached dwellings at a low density, on lots smaller than the minimum for the R-1 District. The R-2 District is also intended to provide for a limited proportion of two-family dwellings.

The R-2, Single Family Residential zoning district allows duplex units with a conditional use permit. This proposal is not technically a duplex because the two units will not share a common wall. Nevertheless, the site will function no different than a duplex and in many respects will be less intense than a typical duplex because the ancillary unit above the garage will be only 440 square feet in size and would have only one small bedroom. With the exception of the two requested variances for the side and rear yard setbacks, the proposal meets all other requirements of the Urbana Zoning Ordinance for the R-2, Single Family Residential zoning district.

According to Section XII-2, the Board of Zoning Appeals shall determine whether the reasons set forth in the application, and the evidence adduced during the public hearing, justify the granting of the conditional use permit, and whether the proposed use will be in harmony with the general purpose and intent of the Zoning Ordinance, and will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious or detrimental to the public welfare.

In addition, the Zoning Board of Appeals may also impose such additional conditions and requirements on the operation of the proposed use as are appropriate or necessary for the public health, safety, and welfare, and to carry out the purposes of this Ordinance, including but not limited to the following:

1. Regulate the location, extent, and intensity of such use;
2. Require the screening of such use by means of fences walls or vegetation;
3. Stipulate a required minimum lot size;
4. Regulate vehicular access and volume;
5. Require conformance to health, safety, and sanitation requirements as necessary;
6. Increase the required yards;
7. Any other conditions deemed necessary to effect the purposes of this Ordinance.

Variance Criteria
Case #ZBA-01-MAJ-2 & #ZBA-01-MAJ-3

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 these criteria as they pertain to this case:

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

In this case, the special practical difficulty relates to the location of the house and garage on the lot. The lot contains ample square footage (8,700 square feet) but the house and garage were built in the far southeast corner of the lot making any expansion to the house or conversion of the garage to a principal use impossible without a variance for setbacks. In new construction, the house and garage would typically be built in the middle of the lot allowing space for expansion or conversion without the need for variances.

8. *The proposed variances will not serve as a special privilege because the variances requested are 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.*

There is a special circumstance relating to the structure involved because the structure was located at the far corner of the lot making expansion and conversion difficult without a variance. This is generally not the case with most development in the R-2, Single Family Residential zoning district which will typically have the main structure and garage located in the center of the lot.

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

The variances requested are not the situation of a condition that has already been created. The petitioner recognized the need for the variances and submitted an application before any site improvements were made.

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

The variances are needed for an existing garage that would be converted from an accessory structure to a principal structure. As noted earlier, an accessory structure is only required to be setback 18 inches from the property line while a principal structure must meet the setback requirements of the zoning district in which it is located. The existing garage is already located two feet from the east side yard property line and one foot from the south rear yard property line and fully complies with the ordinance. The conversion of the garage to a principal structure makes it non-conforming for setbacks. The footprint of the existing garage is not proposed to change by adding a dwelling unit on top. Since the petitioner is not proposing the construction of a new structure in the required yard setback, the requested variances will not alter the essential character of the neighborhood.

11. *The variances will not cause a nuisance to the adjacent property.*

The variances should not cause a nuisance to the neighboring property because the structure will not be located any closer than the existing garage is currently located.

12. *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 amount of variance needed to accommodate the development proposal.

Summary of Findings For #ZBA-01-C-2

1. The proposed ancillary dwelling unit will be conducive to the public convenience at that location because it will offer a small dwelling unit close to services for daily needs.
2. The development is designed, located and proposed to be operated in a manner that will not be unreasonably injurious to the district in which it is located in because the R-2, Single Family Residential zoning district encourages a limited proportion of two-family dwellings.
3. The proposal preserves the essential character of the district because it will add a dwelling unit onto an existing accessory structure and the dwelling unit will be small in scale and will not disrupt the single-family nature of the neighborhood.
4. The proposal will allow for adequate access from Florida Avenue and ample parking in the existing garage and driveway.
5. The proposal will not invade the privacy of the immediate neighbors because the building code does not allow windows on the east or south side of the structure. Adequate sunlight and ventilation will be accommodated with windows on the west and north sides and skylights in the ceiling.

Summary of Findings For #ZBA-01-MAJ-2 & ZBA-01-MAJ-3

6. There are special circumstances related to the layout of the site. Although the lot is approximately 8,700 square feet, the house was built in the far southeast corner of the lot making any expansion or improvements nearly impossible without a variance for setbacks.
7. The proposed variances will not serve as a special privilege because the structure involved was originally built in an area on the lot which makes it difficult for conversion or expansion without

variances.

8. The proposed variance would not cause a negative impact to the immediate area because an existing garage is already built in this location. By converting the garage from an accessory structure to a principal use, the setback requirements change and the variances are needed although the petitioner is not proposing any expansion to the existing footprint of the garage structure.
9. The proposal will not cause a negative impact to the neighboring properties because the adjacent properties will not realize any greater setback than is currently evident with the existing garage.
10. The proposal meets all other requirements established by the Urbana Zoning Ordinance with the exception of a pending conditional use permit request to allow two principal uses on one lot.

Options for #ZBA-01-C-2

The Zoning Board of Appeals has the following options in Case No. ZBA-01-C-2:

1. Grant the requested conditional use without any special conditions; or
2. Grant the requested conditional use along with any additional conditions and requirements as are appropriate or necessary for the public health, safety, and welfare, and to carry out the purposes of the Zoning Ordinance; or
3. Deny the requested conditional use.

Options for #ZBA-01-MAJ-2 & #ZBA-01-MAJ-3

The Zoning Board of Appeals has the following options in this case:

- d. The Urbana Zoning Board of Appeals may recommend approval of the variances as requested to the Urbana City Council based on the findings outlined in this memo; or
- e. The Urbana Zoning Board of Appeals may recommend approval of the variances to the Urbana City Council along with certain terms and conditions. If the Urbana Zoning Board of Appeals elects to recommend conditions or recommend approval of the variances on findings other than those articulated herein, they should articulate its findings accordingly; or
- f. The Urbana Zoning Board of Appeals may recommend denial of the variance requests to the Urbana City Council. If the Zoning Board of Appeals elects to do so, the Board should articulate findings supporting its denial.

Staff Recommendations

Based on the findings outlined herein, and without the benefit of considering additional evidence that may be presented at the public hearing, **staff recommends that the Urbana Zoning Board of Appeals approve ZBA-01-C-2 and;**

Based on the findings outlined herein, and without the benefit of considering additional evidence that may be presented at the public hearing, **staff recommends that the Urbana Zoning Board of Appeals recommend approval of cases #ZBA-01-MAJ-2 and #ZBA-01-MAJ-3 as requested to the Urbana City Council.**

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: March 15, 2001

D R A F T

TIME: 7:30 p.m.

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

-

MEMBERS PRESENT: Anna Merritt, Herb Corten, Charles Warmbrunn,
Darwin Fields

MEMBERS ABSENT Jim Fitzsimmons, Paul Armstrong, Harvey Welch

STAFF PRESENT: Elizabeth Tyler, Assistant City Planner
Rob Kowalski, Senior Planner

OTHERS PRESENT: Susan Pryde, Joan Zagorski, Kevin Fahy

1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

The meeting was called to order at 7:30 p.m. A quorum was declared present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

The minutes from the November 16, 2000 meeting were accepted as corrected by unanimous voice vote.

4. COMMUNICATIONS

There were none.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

There was none.

8. NEW BUSINESS

Case # ZBA-01-C-2, request by Susan Pryde for a conditional use permit to allow two principal uses on one lot (addition of a dwelling unit above a detached garage) at 105 West Florida Avenue.

Case # ZBA-01-MAJ-2, request by Susan Pryde for a major variance to allow the reduction of the required side yard setback from five-feet to two-feet at 105 West Florida Avenue.

Case # ZBA-01-MAJ-3, request for a major variance to allow the reduction of the required rear yard setback from ten-feet to one-foot at 105 West Florida Avenue.

Mr. Kowalski presented an overview of the cases stating that the three cases would be combined in to one since they were all regarding the same property. Although all three cases will be presented as one, they each will require separate action by the board. Mr. Kowalski stated there the building code would not allow for windows on the east and south sides of the building because of its close proximity to the property lines. Mr. Kowalski also stated that there would be ample parking for the addition to the property. Mr. Kowalski concluded his presentation with a staff recommendation for approval of the Conditional Use Permit and the two Major Variances.

Susan Pryde, the petitioner, submitted a new revised plan. Mr. Warmbrunn asked how many people could live in the apartment. Mr. Kowalski stated that four unrelated adults could live in the apartment and four unrelated adults could reside in the house per the zoning ordinance. Mr. Kowalski stated that although the code allows four unrelated adults to live in the unit, the size of it will most likely prevent that many individuals to rent it.

Joan Zagorski, 1605 S. Race, spoke in favor of the addition to Ms. Pryde’s property, but was concerned that the building code would not allow any additional windows on the east and south walls. Mr. Kowalski stated that with the building so close to the property line, building codes state that there cannot be windows.

Mr. Fahy asked if the setback would apply to any future improvements on the lot. Mr. Kowalski stated that it would only apply to the requested proposal.

For Case # ZBA-01-C-2, Mr. Warmbrunn moved to accept staff recommendation of approval of the Conditional Use Permit based on staff findings and testimony. Mr. Corten seconded.

Ms. Merritt called for a roll call. The vote follows:

Ms. Merritt, aye *Mr. Corten, aye* *Mr. Warmbrunn, aye*

Mr. Fields, aye

The motion passed 4-0.

For Case # ZBA-01-MAJ-2, Mr. Warmbrunn moved to accept staff recommendation of approval of the Major Variance based on staff findings. Mr. Fields seconded.

Ms. Merritt called for a roll call. The vote follows:

Ms. Merritt, aye *Mr. Corten, aye* *Mr. Warmbrunn, aye*

Mr. Fields, aye

The motion passed 4-0.

For Case # ZBA-01-MAJ-3, Mr. Warmbrunn moved to accept staff recommendation of approval of the Major Variance based on staff findings. Mr. Corten seconded.

Ms. Merritt called for a roll call. The vote follows:

Ms. Merritt, aye *Mr. Corten, aye* *Mr. Warmbrunn, aye*

Mr. Fields, aye

The motion passed 4-0.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

11. STUDY SESSION

There was none

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

April D. Getchius, Secretary
Urbana Plan Commission

Exhibit #8 Correspondence

EXHIBIT 8

114 W. Florida Avenue
Urbana, IL 61801
March 6, 2001

Community Development Services
City of Urbana
400 South Vine Street
Urbana, IL 61801

Dear Sir/Madam,

My husband, Phil Miller, and I do not support in any way the conditional use permit requested by Susan Pryde or her requests for two major variances in regard to lot setbacks. Maintaining this area against the encroachment of additional rental property of any sort is critical as a means of maintaining its integrity as a stable, single occupancy, single family neighborhood. As we have indicated before, this small area lies on the eastern edge of the historic University of Illinois faculty neighborhood adjacent the campus, and as such, is under pressure, as it is, from university student housing demands.

In order to keep eastern Urbana neighborhoods as suitable for single family, single occupancy housing in the future and to nurture their valuable accompanying sense of community, it is essential to support the current housing pattern as it is without the addition of rental property of any sort and to maintain lot line setbacks as they are whenever possible.

My husband and I both are eager to see only single family dwellings without the addition of apartment space of any sort, attached or otherwise, and the maintenance of appropriate setbacks in the West Florida area.

Sincerely,

Julia Kellman
Julia Kellman and Phil Miller



9 March 2001

Mr. Rob Kowalski, AICP
Department of Community Development Services
City of Urbana
400 S. Vine
Urbana, IL 61801



About Cases # ZBA-01-MAJ-2 ; ZBA-01-MAJ-3; ZBA-01-C-1

Dear Mr. Kowalski :

We would like to comment on the proposal before the Zoning Board of Appeals concerning the property at **105 W. Florida Avenue.**

You explained by phone that the proposal is to build a dwelling on top of the existing garage, and that building code would not permit windows in the dwelling on the east and south sides. Those two sides of the addition would be visible to us from our windows and from our back yard, and indeed we would lose some privacy if there were windows on those two sides. If there are not to be windows, this is less of a concern, but our view will still be changed and be less attractive, we feel. The second story would alter the perspective we now enjoy.

Another concern is that the tall trees on the property be preserved. These are a major enhancement to our view from the entire back side of our property, and they also serve well to reduce the noise of traffic from Florida Avenue. The tall trees near our house give pleasing views and very much determine the character of the neighborhood. It would be very regrettable if any of the trees had to be removed.

Our major objection is that this change to the conditional use permit would allow two dwellings on one lot. We believe this can lead to a high density development in an area of single unit dwellings, which we consider detrimental to the area in which we live.

We oppose this request. Unfortunately, we will be out of town on the day of the hearing, March 15, and so cannot attend. We hope you will take our comments into consideration. Thank you.

Sincerely,

Armine Mortimer
Rudolf G. Mortimer

Mortimer \triangle Three Florida Court \square Urbana \circ Illinois 61801 ∇ Phone/FAX 217/367-4705

March 14, 2001

Rob Kowalski
Senior Planner
City of Urbana
400 S. Vine
Urbana, Illinois 61801

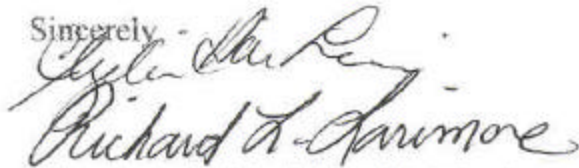
Dear Rob,

We are property owners of and live at #4 Florida Court in Urbana and have received notice regarding Thursday March 15th's hearing for a proposed conditional use permit and two major variances at 105 E. Florida Avenue, Urbana.

We oppose this special use permit and the variances. We wish to maintain the single residential status and integrity of the neighborhood.

Thank you for your consideration of this important issue.

Sincerely,

Handwritten signatures of Cloydia and Rick Larimore. The signature of Cloydia is written above the signature of Rick. Both signatures are in cursive.

Cloydia and Rick (Richard L.) Larimore
4 Florida Court
Urbana, Illinois 61801
217-337-7006

MEMO

To: Rob Kowalski, AICP, Senior Planner
From: Mr. and Mrs. R. W. Larimore, 5 Florida Court, Urbana, Il
Re: The conditional use permit along with two major variances
filed by Susan Pryde. The property is located at
105 W. Florida Avenue, Urbana, Il.

To allow this request would be a serious change in our
residential zoning law and a serious precedent to set.
We strongly oppose the permits for 105 W. Florida Avenue,
Urbana, Il.

R. W. Larimore
Glenn E. Larimore
April 14, 2001

RECEIVED

MAR 14 2001

**COMMUNITY
DEVELOPMENT**



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning and Economic Development Division

m e m o r a n d u m

TO: Bruce K. Walden, CAO

FROM: April D. Getchius, AICP, Director

DATE: March 29, 2001

SUBJECT: ZBA 01-MAJ-2 & ZBA 01-MAJ-3, Request for two major variances filed by Susan Pryde of 105 West Florida Avenue. The petitioner proposes a reduction in the required side yard setback from five feet to two feet and a reduction in the required rear yard setback from ten feet to one foot.

Introduction

Susan Pryde has submitted a petition for two major variances for setbacks at 105 West Florida Avenue. The petitioner intends to construct a dwelling unit above an existing detached garage on the site. On March 15, 2001, the Zoning Board of Appeals granted a conditional use permit to allow the establishment of the dwelling unit. However, in order to build it, variances are needed for setbacks. Although the existing garage is not proposed to be encroach any closer to the property lines than it currently sits, the addition of the dwelling unit changes the nature of the garage from an “accessory” use to a “principal” use. While accessory uses can be located 18 inches from the property line, principal structures are required to meet the setbacks specified for the zoning district in which it is located. In this case, the setback requirements would be five feet for the side yard and ten feet for the rear yard.



Description of the Site

The subject property is located on the southeast corner of Florida Avenue and Florida Drive. Florida Drive is one block east of Race Street. The lot contains approximately 8,700 square feet and has 112.25 feet of frontage along Florida Avenue and 77.5 feet of frontage along Florida Drive. The primary access to the lot is from a driveway on Florida Avenue. The house and detached garage are situated in the far southeast corner of the lot, while the remainder of the lot contains significant vegetation. The existing house is two-story with approximately 1,000 square feet in area. The existing detached garage is a one-story concrete block structure with approximately 440 square feet in building footprint.

Surrounding Zoning and Land Use

The lot is currently zoned R-2, Single Family Residential. It is located in an area that is predominantly zoned R-1 and R-2. There is R-5, Medium High Density Multiple Family zoning one block to the north of the site to accommodate a multi-family development. There is also an abundance of CRE zoning in the area with Blair Park to the east and University of Illinois property at Race Street and Florida Avenue.

The requested variances will most impact the properties to the east and south. On the east is a single-family residence which fronts onto Florida Avenue. This property has the detached garage and driveway closest to the southeast corner of the petitioner's lot. Closest to the proposal on the south is also a detached garage for a single family home which fronts onto Florida Drive. On the north and west sides of the site are public roadways.

Findings

In order to review potential variances, Section XI-3 of the Urbana Zoning Ordinance requires the ZBA and City Council to make findings based on variance criteria. At the March 15, 2001 meeting, the ZBA cited the following findings for their recommendation for approval of the requested variances:

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

In this case, the special practical difficulty relates to the location of the house and garage on the lot. The lot contains ample square footage (8,700 square feet) but the house and garage were built in the far southeast corner of the lot making any expansion to the house or conversion of the garage to a principal use impossible without a variance for setbacks. In new construction, the house and garage would typically be built in the middle of the lot allowing space for expansion or conversion without the need for variances.

2. *The proposed variances will not serve as a special privilege because the variances requested are 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.*

There is a special circumstance relating to the structure involved because the structure was located at the far corner of the lot making expansion and conversion difficult without a variance. This is generally not the case with most development in the R-2, Single Family Residential zoning district which will typically have the main structure and garage located in the center of the lot.

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

The variances requested are not the situation of a condition that has already been created. The petitioner recognized the need for the variances and submitted an application before any site improvements were made.

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

The variances are needed for an existing garage that would be converted from an accessory structure to a principal structure. As noted earlier, an accessory structure is only required to be setback 18 inches from the property line while a principal structure must meet the setback requirements of the zoning district in which it is located. The existing garage is already located two feet from the east side yard property line and one foot from the south rear yard property line and fully complies with the ordinance. The conversion of the garage to a principal structure makes it non-conforming for setbacks. The footprint of the existing garage is not proposed to change by adding a dwelling unit on top. Since the petitioner is not proposing the construction of a new structure in the required yard setback, the requested variances will not alter the essential character of the neighborhood.

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

The variances should not cause a nuisance to the neighboring property because the structure will not be located any closer than the existing garage is currently located.

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 amount of variance needed to accommodate the development proposal.

The Zoning Board of Appeals further found that:

1. There are special circumstances related to the layout of the site. Although the lot is approximately 8,700 square feet, the house was built in the far southeast corner of the lot making any expansion or improvements nearly impossible without a variance for setbacks.
2. The proposed variances will not serve as a special privilege because the structure involved was originally built in an area on the lot which makes it difficult for conversion or expansion without variances.
3. The proposed variance would not cause a negative impact to the immediate area because an existing garage is already built in this location. By converting the garage from an accessory structure to a principal use, the setback requirements change and the variances are needed although the petitioner is not proposing any expansion to the existing footprint of the garage structure.
4. The proposal will not cause a negative impact to the neighboring properties because the adjacent properties will not realize any greater setback than is currently evident with the existing garage.
5. The proposal meets all other requirements established by the Urbana Zoning Ordinance including the requirement for the granting of a conditional use permit to have two principal uses on one lot. On March 15, 2001, the Zoning Board of Appeals granted the conditional use permitting the establishment of a dwelling unit above the existing detached garage.

Options

The City Council has the following options this case:

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

Recommendation

Based on the findings outlined herein, the Zoning Board of Appeals voted 4-0 to forward the variance requests to the City Council with a recommendation for approval. Therefore, staff concurs with the ZBA and recommends that City Council **GRANT** the variances as requested.

| | | |
|--------------|------------|---|
| Attachments: | Exhibit 1: | Proposed Ordinances |
| | Exhibit 2: | Location Map |
| | Exhibit 3: | Zoning Map |
| | Exhibit 4: | Site Plan |
| | Exhibit 5: | Aerial photo |
| | Exhibit 6: | Additional Photos |
| | Exhibit 7: | March 15, 2001 ZBA Staff Report & Minutes |
| | Exhibit 8: | Correspondence |

c: Susan Pryde, Applicant

Prepared by:

Rob Kowalski, AICP
Senior Planner

AN ORDINANCE APPROVING A MAJOR VARIANCE

(Reduction Of The Required Rear Yard Setback In The City's R-2, Single Family Residential Zoning District, From Ten Feet to One Foot / 105 W. Florida Avenue -- Case No. ZBA-01-MAJ-3)

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, Susan Pryde, has submitted a petition requesting a major variance to allow the reduction of the required rear yard setback on the south side of the subject property; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA-01-MAJ-3; 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 March 15,

2001, and the ZBA by a unanimous vote of its members recommend to the City Council approval of the requested variance; 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 agrees with the following findings of fact adopted by the ZBA in support of its recommendation to approve the application for a major variance:

6. There are special circumstances related to the layout of the site. Although the lot is approximately 8,700 square feet, the house was built in the far southeast corner of the lot making any expansion or improvements nearly impossible without a variance for setback.
7. The proposed variance will not serve as a special privilege because the structure involved was originally built in an area on the lot which makes it difficult for conversion or expansion without a variance.
8. The proposed variance would not cause a negative impact to

the immediate area because an existing garage is already built in this location. By converting the garage from an accessory use to a principal use, the setback requirement changes and the variance is needed although the petitioner is not proposing any expansion to the existing footprint of the garage structure.

9. The proposal will not cause a negative impact to the neighboring properties because the adjacent properties will not realize any greater setback than is currently evident with the existing garage.

10. The proposal meets all other requirements established by the Urbana Zoning Ordinance including the requirement for the granting of a conditional use permit (Case #ZBA 01-C-2) to have two principal uses on one lot. On March 15, 2001, the Zoning Board of Appeals granted the conditional use permitting the establishment of a dwelling unit above the existing detached garage.

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

The major variance request by Susan Pryde, in Case #ZBA-01-MAJ-3 is hereby approved to allow the reduction of the required rear yard setback along the south side of the property in the R-2, Single Family Residential Zoning District from ten feet to one foot, in the manner

proposed in the application for the major variance in that case.

The major variance described above shall only apply to the property located at 105 W. Florida Avenue, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION:

Lot 2 of the Raymond Subdivision as recorded at the Champaign County Recorders Office, situated in the City of Urbana, in Champaign County, Illinois.

PERMANENT PARCEL #: 93-21-20-201-009

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

_____, 2001.

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 APPROVING A MAJOR VARIANCE

"(Reduction Of The Required Rear Yard Setback In The City's R-2, Single Family Residential Zoning District, From Ten Feet to One Foot / 105 W. Florida Avenue -- Case No. ZBA-01-MAJ-3)"

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.

SEE PREVIOUS AGENDA ITEM FOR MAPS AND OTHER SUPPORTING
DOCUMENTAION.