



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Bruce K. Walden, Chief Administrative Officer

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

DATE: August 15, 2002

SUBJECT: Plan Case No. 1834-M-02: Request by Randy Baker to rezone the 2.45-acre property directly east of 714 North Cunningham Ave from B-3, General Business to AG, Agriculture.

Introduction

The East Lawn Burial Park Association is requesting a Zoning Map Amendment to rezone approximately 2.45 acres of property located directly east of 714 North Cunningham Avenue from B-3, General Business to AG, Agricultural. Randy Baker of Morton Buildings, Inc. has submitted the application on behalf of the Burial Park Association.

Background

The subject property is part of a 22-acre parcel that was previously owned entirely by the Armory. The parcel is zoned B-3 on the portion north of the Saline Ditch, which the cemetery has acquired, and CRE, Conservation-Recreation-Education, on the remaining portion. A subdivision replat is currently underway to properly divide the original Armory parcel and combine the acquired land with one or more of the cemetery's current holdings. The proposed rezoning would allow for accessory cemetery use and construction of a new office/maintenance building on the subject property. The petitioner has also requested a Conditional Use Permit from the Zoning Board of Appeals for the proposed cemetery use, which is contingent upon the rezoning to Agriculture. The 1982 Urbana Comprehensive Plan designates the future land use of this area as Institutional - Cemetery.

In November of 2001, the U-shaped parcel at 714 North Cunningham was rezoned from B-3 to AG. A major variance was also granted by City Council in November 2001 to construct a new 1,350 square foot Morton building at the northeast corner of 714 North Cunningham Avenue. The East Lawn Burial Park Association now proposes to locate the building on the newly

acquired subject property for accessory cemetery use. The proposed new building would replace the blond brick building on the adjacent property, which is in an extreme state of disrepair. Because a cemetery is not an approved use in B-3, the proposed use would not be allowed to be established without a rezoning. The only districts in which cemeteries are allowed are by Conditional Use in CRE, Conservation-Recreation-Education, and AG, Agriculture.

Issues and Discussion

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

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

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

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

The proposed rezoning to AG, Agriculture would make the property consistent with the existing AG zoning designation and cemetery use to the north and west. The property currently exists as a landlocked commercial portion of the property surrounded by AG and CRE zoning. The Burial Park Association had been using the property with permission from the previous owner, and is currently in the process of replatting the property to create bona fide parcels among their contiguous holdings. The land uses along Cunningham Avenue to the west of the zoning lot are a muffler shop and an oil change facility; both are zoned B-3. The Saline Ditch intersects the southern portion of the subject property. The Urbana Comprehensive Plan Future Land Use map indicates the general area for Institutional Use and the subject area is designated Institutional - Cemetery.

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

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

The subject property is located in an area of marginal use between the cemetery and the Saline Branch Drainage Ditch, The property is not viable as a commercial property, and with the approval of the rezoning of 714 N Cunningham Avenue to the west to AG, the viability of the property as a commercial property is further diminished. The only access to the property currently is through an adjacent parcel. The property remained vacant while under ownership by

the Armory and was used by the cemetery with permission for equipment storage. The existence of graves near the southern boundary of the main cemetery parcel promotes the continued access to the south of the cemetery. The proposed new maintenance building, which requires rezoning to AG, will allow the parcel to be better utilized than with its current B-3 zoning. Considering these factors, commercially zoned property at this location would hold less value than property zoned agriculture.

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

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

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

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

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

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

As stated above, this property is located in an area that is suitable for institutional-cemetery development and has been planned for such in the Urbana Comprehensive Plan. Rezoning to Conservation-Recreation-Institution was the other possible option that would permit the proposed use. The petitioner has requested Agricultural use to make the parcel consistent with the zoning of the other cemetery parcels. As mentioned previously, the only access to the property is through an adjacent parcel. The pending subdivision replat for the cemetery properties will improve the disposition of the cemetery's holdings in terms of access and lot configuration, consistent with Subdivision Regulations. A specific feature of this property

making it suitable for the proposed zoning is its adjacency and access to the cemetery. In addition, the sloping topography of the property is a significant limitation on any business use, either for the subject property or for any possible expansion of adjacent commercial uses to the west. Considering the modest development pattern of various uses in the immediate vicinity, the subject property is well suited for the proposed zoning district.

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

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

The East Lawn Cemetery has been in existence for many years. Despite being historically zoned B-3 and in ownership by the Armory, the subject parcel has been vacant or in use by the cemetery for equipment storage for years. The proposed rezoning will allow the property to be brought into zoning conformity with a Conditional Use Permit.

Summary of Findings

On August 8, 2002, the Urbana Plan Commission adopted the following findings and recommended approval of the requested rezoning to the Urbana City Council.

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

Options

The City Council has the following options. In Plan Case 1834-M-02, the City Council may:

- a. Approve a rezoning of the property east of 714 North Cunningham Avenue from B-3, General Business to AG, Agriculture.
- b. Deny a rezoning of the property east of 714 North Cunningham Avenue from B-3, General Business to AG, Agriculture.

Staff Recommendation

Based on the evidence presented in the discussion above, staff concurs with the Plan Commission decision on August 8, 2002 and recommends **approval** of Plan Case No. 1834-M-02.

Prepared by:

Tim Ross, AICP
Senior Planner

c: Randy Baker

Attachments: Proposed Ordinance Approving the Map Amendment
Draft Minutes from the August 8, 2002 Plan Commission Meeting

ORDINANCE NO. 2002-08-095

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF URBANA, ILLINOIS
(for the property east of 714 North Cunningham Avenue - Plan Case 1834-M-02)

WHEREAS, after due publication, a public hearing was held by the Urbana Plan Commission on August 8, 2002 concerning the petition filed by the petitioner in Plan Case No. 1834-M-02; and

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

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

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

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

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

LEGAL DESCRIPTION:

Beginning at the Northwest corner of lot #2, Mrs. E. Barrs Subdivision, at an iron pin located 439.45' Westerly from The Northeast corner of the Southeast ¼ of Section 8, Township 19 North Range 9 East of the Third Principle Meridian; thence Easterly along the north property line approximately 880 ft. to a point where the property line intersects with the centerline of Saline Creek; thence Southwesterly along the centerline of Saline Creek to the West property line; thence North along the West property line approximately 280 ft to the point of beginning. Described property is approximately 2.45 acres and is bordered on the North by East Lawn Cemetery.

PERMANENT PARCEL #: the portion of 91-21-08-428-006 located north of the Saline Branch

LOCATED: directly east of 714 North Cunningham Avenue, Urbana, Illinois

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

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

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

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

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

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

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

I certify that on the ____ day of _____, 2002, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF URBANA, ILLINOIS (for the property east of 714 North Cunningham Avenue - Plan Case 1834-M-02)" 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 _____, 2002, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, 2002.