



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Bruce Walden, Chief Administrative Officer

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

DATE: April 28, 2004

SUBJECT: ZBA 04-MAJ-1, Request to reduce the rear yard setback from 10' to 5' at 1701 S. Philo Road, in Urbana's B-3, General Business Zoning District.

ZBA 04-MAJ-2, Request to reduce the side yard setback from 10' to 5' at 1701 S. Philo Road, in Urbana's B-3, General Business Zoning District.

Introduction

The requested variances are side and rear yard setback reductions to allow for a new convenience store development on the subject property. The requests are to reduce the required 10-foot side and rear yard setbacks to five feet to allow a new building to be located in the southwest corner of the property.

Description of the Site

The site is located on the southwest corner of the intersection of Florida Avenue and South Philo Road (see attached maps). The site is the former Marathon gas station which has recently closed. The lot is 22,500 square feet in area and contains a one-story building and one gas canopy with gas pumps. There is an existing monument sign at the northeast corner of the property. There is a mature tree towards the southwest corner of the lot. The rear and side yard property lines buffer the adjacent properties with the existing shrubs and trees.

Variance Criteria

In order to review a potential variance, Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals and City Council to make findings based on variance criteria. At the April 28, 2004 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?*

There is no special circumstance with reference to the side and rear yard variance requests. The property is located in a commercial corridor and the request to reduce the required yards for the proposed construction may improve the vehicle circulation on the subject property for the convenience store use.

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

The variances may each be considered a special privilege.

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

The need for the variances has not yet been created. The petitioners are aware of the requirements of the Zoning Ordinance and have applied for a variance prior to construction.

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

The requested decrease of both the side and rear yard setbacks should not detract from the essential character of the neighborhood. The subject property is a corner lot appropriate for the proposed convenience store use. The proposal to build a new building with decreased setbacks should not significantly disrupt the neighborhood, as the area is a significant commercial corridor in Urbana.

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

The variances should not cause a nuisance to adjacent properties. The location of the new building, with the requested setback reductions, may offer a benefit to the residential uses to the north of the property as it will be facing Philo and would be a greater distance from those residents. The subject property is a corner property that lies directly adjacent to other businesses.

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

The petitioners are only requesting the minimum deviation from the requirements so that they can redevelop the site as a new convenience store/gas station as the owner desires.

Options

The City Council has the following options this case ZBA 04-MAJ-1:

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

Recommendation

Based on the findings outlined herein, the Zoning Board of Appeals voted 6-0 to forward the variance request to the Urbana City Council with a **recommendation for approval to allow the petitioners to reduce the rear yard setback from 10 feet to five feet, with the condition that the improvements conform to the general site plan as submitted**. Staff concurs with the ZBA and recommends that City Council **GRANT** the variance with the condition set forth by the ZBA.

Options

The City Council has the following options this case ZBA 04-MAJ-2:

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

Recommendation

Based on the findings outlined herein, the Zoning Board of Appeals voted 6-0 to forward the variance request to the Urbana City Council with a **recommendation for approval to allow the petitioners to reduce the side yard setback 10 feet to five feet, with the condition that the improvements conform to the general site plan as submitted.** Staff concurs with the ZBA and recommends that City Council **GRANT** the variance with the condition set forth by the ZBA.

Attachments: April 28, 2004 ZBA Minutes
 Proposed Ordinances
 Exhibit A: Location Map
 Petitioners' application
 Mailing Notice & Labels

Prepared by:

Michaela B. Oktay, Senior Planner

c: Pride Oil LLC., Attn: Randy Meyer 1505 W. Main Street, Teutopolis, IL 62467
 AKRA Builders, Attn: Paul Grunloh, P.O. Box 1225, Effingham, IL 62401

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ORDINANCE NO.2004-05-049

AN ORDINANCE APPROVING A MAJOR VARIANCE

(Reduction of the Required Rear Yard Setback in the City's B-3, General Business Zoning District, From 10 ft. to 5 ft. / 1701 S. Philo Road, Case No. ZBA-04-MAJ-1)

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 related to the parcel of land or the structure; and

WHEREAS, the petitioners, Pride Oil L.L.C., have submitted a petition requesting a major variance to allow a five-foot reduction of the rear-yard setback at 1701 S. Philo Road, in Urbana's B-3, General Business Zoning District; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA 04-MAJ-1; 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 April 28, 2004 and the ZBA by a unanimous vote (6-0) of its members recommended approval of the requested variance with a condition that the petitioners conform to the general site plan submitted, to the City Council; 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 as requested:

1. The variance may be considered a special privilege.
2. The need for the variance has not yet been created. The petitioners are aware of the requirements of the Zoning Ordinance and have applied for a variance prior to construction.
3. The requested decrease of setback should not detract from the essential character of the neighborhood. The subject property is a corner lot appropriate for the proposed convenience store use. The proposal to build a new building with decreased setbacks should not significantly disrupt the neighborhood, as the area is a significant commercial corridor in Urbana.
4. The variance should not cause a nuisance to adjacent properties. The location of the new building, with the requested setback reduction, may offer a benefit to the residential uses to the north of the property as it will be facing Philo and would be a greater distance from those residents. The subject property is a corner property that lies directly adjacent to other businesses.

5. The petitioners are only requesting the minimum deviation from the requirements so that they can redevelop the site as a new convenience store/gas station as the owner desires. The variance should not cause a nuisance to adjacent properties.

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

The major variance request by Pride Oil L.L.C., in Case #ZBA 04-MAJ-1 is hereby approved to allow a reduction of the rear-yard setback from 10' to 5' at 1701 S. Philo Road in Urbana's B-3, General Business Zoning District, with the condition that the improvements conform to the submitted general site plan submitted as Exhibit A, as approved by the Zoning Board of Appeals.

The major variance described above shall only apply to the property located at 1701 S. Philo Road, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION: The north 190 feet of the east 190 of the northeast quarter of the northwest quarter of section 21, Township 19 north, Range 9 east of the third principal meridian, except that portion of said tract described as follows: Beginning at the north quarter corner of Section 21, Township 19 north Range 9 east of the third principal meridian, thence westerly along the north line of said section 21, 190 feet; thence southerly parallel with the east line of the northwest quarter of said section 21, 40 feet to a point on the existing south right-of-way line of Florida Avenue; thence easterly along the said south right-of-way line and parallel with the north line of said Section 21, 110 feet; thence southeasterly to a point

which is 65 feet south and 40 feet west of the north quarter corner of said section 21; thence southerly along the existing west right-of-way line of Philo Road and parallel with the east line of the northwest quarter of said section 21, 125 feet; thence easterly 40 feet to the point of beginning, all situated in the City of Urbana, in Champaign, County Illinois, and being more particularly described as follows:

A tract of land located in the NE quarter of the NW Quarter of Sect. 21, Township 19 N, Range 9 East of the third Principal meridian, in Urbana, Commencing at the NE corner of said NE quarter; thence N 85 31'42" W, on the north line of said Quarter section a distance of 189.85 feet, thence S 03 Degree 55' 25" W, a distance of 40.08 feet to a point on the south right-of-way line of Philo Road; thence S03 degree 54' 58" W, on said west right-of-way line a distance of 125 feet; thence N 85degree 33' 44" W, a distance of 150.02 feet; thence N 03 degree 55' 25" E, a distance of 150.09 feet to the point of beginning. Contains 22,007 Square feet of .51 acres, more or less. Subject to easements, restrictions and reservation now of record.

PERMANENT PARCEL #: 93-21-21-126-004

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

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the City Council of the

City of Urbana, Illinois, at a regular meeting of said Council on the _____
day of _____, 2004.

PASSED by the City Council this _____ day of _____,
2004.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
2004.

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

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

I certify that on the ____ day of _____, 2004, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "AN ORDINANCE APPROVING A MAJOR VARIANCE (Reduction of the Required Rear Yard Setback in the City's B-3, General Business Zoning District, From 10 ft. to 5 ft. / 1701 S. Philo Road, Case No. ZBA-04-MAJ-1) which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, 2004, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

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

DATE: April 28, 2004
TIME: 7:30 p.m.
PLACE: Urbana City Building
400 S. Vine Street
Urbana, IL 61801

DRAFT

MEMBERS PRESENT: Paul Armstrong, Herb Corten, Anna Merritt, Joe Schoonover, Charles Warmbrunn, Harvey Welch

MEMBERS ABSENT None

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

OTHERS PRESENT: Jim Burch, Mark Dixon, Randy Meyer, Jack and Terri Smart, Kenji Wada

5. NEW PUBLIC HEARINGS

ZBA-04-MAJ-01: Request to reduce the rear yard setback from 10' to 5' at 1701 South Philo Road, in Urbana's B-3, General Business Zoning District.

ZBA-04-MAJ-02: Request to reduce the side yard setback from 10' to 5' at 1701 South Philo Road, in Urbana's B-3, General Business Zoning District.

Michaela Oktay, Senior Planner, presented these cases to the Zoning Board of Appeals. She began with an explanation for the proposed variance requests. She gave a brief description and history of the site. She reviewed the variance criteria according to Section XI-3 of the Urbana Zoning Ordinance as it pertained to these cases. She read the options of the Zoning Board of Appeals regarding ZBA-04-MAJ-01 and stated that staff's recommendation was as follows:

Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Urbana Zoning Board of Appeals recommend approval of the variance to the Urbana City Council for Case #ZBA-04-MAJ-01 with the following condition:

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

Ms. Oktay read the options of the Zoning Board of Appeals regarding ZBA-04-MAJ-02 and stated that staff's recommendation was as follows:

Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Urbana Zoning Board of Appeals recommend approval of the variance to the Urbana City Council for Case #ZBA-04-MAJ-02 with the following condition:

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

Mr. Corten inquired if the petitioner would be removing the existing underground gas tanks and replace them? Randy Meyer, of Pride Oil LLC, answered by saying that although there was not anything wrong with the existing tanks, they would be removing them and replacing them with new ones, because the existing tanks were in the wrong location for what they have planned to do on this site.

Mr. Schoonover asked if the petitioner was planning on changing something in construction, so that they would not be generally conforming to the Site Plan? Mr. Meyer commented that the Site Plan was the general configuration of the site that they would end up with. They like a rear lot building and a dive-in type gasoline configuration as shown on the Site Plan.

Ms. Merritt questioned if the Zoning Board of Appeals were to approve both variance requests with the conditions recommended by staff that the development on the site generally conform to the Site Plan submitted with the application, then it would not affect the construction. Mr. Meyer stated that he could not say if the building size would remain the same as proposed or that the distance between the dispensers would be as proposed. However, their final product would look like the Site Plan. Ms. Oktay added that the petitioner would still have to comply with all of the zoning regulations.

Mr. Welch inquired if the gas station would be part of a franchise store? Mr. Meyer replied that they owned about 17 other gas stations, and they are branded BP Gasoline and Marathon Gasoline. They call it Mac 1.

Mr. Welch asked if the petitioner would have to conform to certain corporate standards regarding the size of the store, etc.? Mr. Meyer replied absolutely. This site would likely be branded "Marathon". Marathon had some very rigid rules that they would have to follow.

Mr. Welch questioned if the gas station would be open 24 hours a day? Mr. Meyer responded by saying that most of their gas station stores are open 24 hours a day. The proposed store would

start out being opened for 24 hours a day, and he suspected that it would remain open 24 hours a day in the future.

Mr. Welch inquired if there were any landscape plans included in the proposal? Mr. Meyer noted that they were planning to landscape the site. They did not include the landscaping detail on the Site Plan. However, when they submit the final Site Plan to the City for the permitting process, it would include all of the landscaping. Mr. Welch expressed concern for the neighbors to the north with the gas store being opened 24 hours a day. Mr. Meyer pointed out that they were aware of being located in a residential area, and they take their responsibility seriously. Their neighbors are also their customers. They plan to point the lights toward the site and not towards the residences to the north.

Ms. Merritt asked if signage would be discussed at a later point? Mr. Meyer noted that they were not asking for any variance on the signage.

Mr. Armstrong noticed that the petitioner would be allowing 46 feet from the access point to the north to the edge of the parking. There was really only about five feet difference between the existing setback line and the proposed setback. Since the site was adjoining to other commercial sites, he did not see a big impact to the neighbors in regards to the setbacks. How much space was required for the access from the north onto the site? Mr. Meyer mentioned that the extra five-foot setback would give the customers a better opportunity to get off the street and onto their property easier. It would be easier for them to slow their vehicle down and control where they were going.

Mr. Warmbrunn asked if it was safe to assume that the only entrance to the building would be on the east side of the building? Mr. Meyer explained that there would be a customer entrance on the east side and an emergency exit only on the west side.

Mr. Warmbrunn inquired if there would be a spot for the garbage dumpster? Mr. s said that although there was not one shown on the Site Plan, they would locate a spot for the garbage/trash dumpster, and it would be concealed.

Mr. Corten inquired if the petitioner would need to come back to the City with a detailed Site Plan? Mr. s commented that they would do whatever they needed to do in order to obtain building permits for the project.

Mr. Corten moved that the Zoning Board of Appeals recommend approval of Case #ZBA-04-MAJ-01 along with the condition recommended by staff to the Urbana City Council. Mr. Armstrong seconded the motion. Roll call was as follows:

Mr. Corten	-	Yes	Ms. Merritt	-	Yes
Mr. Schoonover	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes	Mr. Armstrong	-	Yes

The motion was passed by unanimous vote.

Mr. Armstrong moved that the Zoning Board of Appeals recommend approval of Case #ZBA-04-MAJ-02 along with the condition recommended by staff to the Urbana City Council. Mr. Welch seconded the motion. Roll call was as follows:

Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes
Mr. Armstrong	-	Yes	Mr. Corten	-	Yes

The motion was passed by unanimous vote.