



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

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

**TO:** Laurel Prussing, Mayor

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

**DATE:** May 23, 2007

**SUBJECT:** ZBA 07-MAJ-02, Request filed by Gregory and Denise Reynolds for a Major Variance to permit a 3,500 square foot accessory structure at 1714 E. Airport Road, in the IN, Industrial Zoning District (to be rezoned to R-2, Single-Family Residential Zoning District)

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**Introduction**

The petitioners, Gregory and Denise Reynolds, are requesting a Major Variance to permit an accessory structure in excess of 1,000 square feet at 1714 E. Airport Road, in the IN, Industrial Zoning District. The subject property is comprised of two lots: one in the City of Urbana and one in unincorporated Champaign County. The subject property contains a house and an accessory structure built across the lot line by a previous owner and so these structures are part in the city and part in the county. The subject property is used as a single-family residence.

It should be noted that two related cases are also being considered concurrently: one to rezone that portion of the property currently in the City from IN, Industrial Zoning District to R-2, Single-Family Residential Zoning District, and the other case being an annexation agreement for that portion of the property currently in the County. The City Council previously considered and approved an annexation agreement for this property on July 17, 2006 (Ordinance No. 2006-07-098), however the agreement has been resubmitted for approval based on a corrected legal description. The intent of these three related cases is to bring the property into compliance and under one jurisdiction.

Section V-2.D.7 of the Urbana Zoning Ordinance states that homes larger than 1,500 square feet may have an accessory structure up to 50 percent of the home's floor area, or 1,000 square feet, whichever is less. An accessory structure of approximately 3,500 square feet is currently located behind the principal structure and is used for personal and recreational vehicle storage, as well as personal workspace. The major variance request is to allow that half of the structure which is on the lot in the City to be 1,750 square feet rather than the maximum permitted 1,000 square feet. The variance request is for a 75% increase.

On May 18, 2007 the Urbana Zoning Board of Appeals voted 5-0 to recommend approval of the Major Variance to the City Council.

## **Background**

A brief history of pertinent events leading to this variance case is provided below:

*1991 - GKC Theaters Annexation Agreement:* The former drive-in movie theater property was annexed into the City and zoned IN, Industrial. The property is adjacent to 1714 E. Airport Road.

*1994 - Matthews Annexation Agreement:* An annexation agreement for 1714 E. Airport Road was approved by the Urbana City Council (Ord. No. 9495-09), which stipulated that the current or future property owner would annex into the City of Urbana once the property became contiguous (the property was contiguous at the time the agreement was approved). The agreement also contained a condition that the City would not annex the property until it could be adequately served by all public services. At the time, staff determined that fire protection could not be adequately provided to the property, thus it was not immediately annexed.

*1999 – Accessory Structure Constructed:* The previous owner applied for and received a County building permit for an approximately 3,500 square foot accessory structure. The accessory structure was constructed across property lines and in both Champaign County and the City of Urbana but did not have a City permit.

*2001 – Petitioners Purchase Property:* The petitioners purchased the property from James Matthews and were unaware of the previous annexation agreement.

*Spring 2003 - Petitioners Expand Home:* The petitioners conducted preliminary engineering work to expand their home and discovered that the existing home and accessory structure encroached 65 feet into the eastern neighboring property which was part of the GKC annexation property. The petitioners contacted the adjacent owner and both parties agreed to a purchase of land to mitigate the encroachment. This tract is now the eastern portion of the Reynolds property, is in the City limits, and is the topic of the variance case for that portion of the accessory structure.

*Fall 2003 – Petitioners Construct New Home:* The petitioners purchased a manufactured home for the property to replace the existing home. The new home was placed in approximately the same location as the previous structure, and the accessory structure remained in the same place.

The property issues came to the attention of the Urbana Building Safety Division, which issued a stop work order on the property although the home was already installed. A number of problems were cited including:

- a structure crossing jurisdictional lines
- the need to replat the property as one lot

- a lack of City building permits
- a lack of County building permits
- zoning inconsistent with actual uses
- need for an accessory structure variance

*Summer 2006 - Reynolds Annexation Agreement:* An annexation agreement for the subject property was approved by the Urbana Plan Commission and City Council in 2006 but will be returned to Plan Commission and City Council in May and June 2007 for re-approval due to the previously mentioned error in legal notifications. The facts of the case and the substance of the agreement reached remain unchanged.

The annexation agreement was necessitated by location of the structures crossing the lot line and the petitioners' wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced.

The annexation agreement includes "*Article II: Representations and Obligations of the Corporate Authorities,*" which contains "*Section 5: Accessory Structure Variance.*" In that Section 5 the City specifically grants a Variance to allow the portion of the 3,500 square foot accessory structure located *outside* the corporate limits, to be in excess of the 1,000 square feet permitted by the Zoning Ordinance. The agreement states the Corporate Authorities further agree that the granting of that variance is consistent with the established criteria identified in Section XI-3 of the Urbana Zoning Ordinance.

Also in the annexation agreement Article II is Section 6: "Adjacent Territory Accessory Structure Variance" in which the City specifies implicit support for approval of a Major Variance to allow that portion of the accessory structure located *within* the corporate limits, to be in excess of the 1,000 square feet permitted by the Zoning Ordinance.

The combined variances - one granted by the Annexation Agreement and one by the current ZBA case would allow the owners to maintain the accessory structure at its current size.

The annexation agreement is contingent on approval of the major variance for the portion of the structure within the City limits (this variance case 2007-MAJ-02) as well as the requested rezoning of the property in the City from IN, Industrial to R-2, Single Family Residential (Plan Case 2039-M-07.)

### **Surrounding Properties**

The property is currently surrounded by both industrial (north of Airport Road) and residential (south of Airport Road) land uses. The 2005 Urbana Comprehensive Plan indicates the future land use for the area as Residential, with Regional Business along US Route 45.

<i>Direction</i>	<i>Zoning</i>	<i>Existing Land Use</i>	<i>Comprehensive Plan - Future Land Use</i>
<b>Site</b>	West half - County AG-2, Agriculture East half - City IN, Industrial	Residential	Regional Business
<b>North</b>	IN, Industrial	Vacant	Regional Business
<b>East</b>	IN, Industrial	Agriculture	Residential
<b>South</b>	County AG-2, Agriculture, and County R-5, Mobile Home Park	Residential	Residential
<b>West</b>	County B-3, Highway Business	Mini-Warehouse	Regional Business

## Variance Criteria

Section XI-3.C.2.c of the Urbana Zoning Ordinance requires findings based on variance criteria. The following is a review of the criteria (*in italics*), followed by staff analysis for this case:

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

The special circumstances concerning the accessory structure are that the structure was built prior to the petitioner's ownership of the property. The practical difficulty in strict compliance would require the demolition of the structure. In this case, the petitioners wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced. However the variance would not permit the accessory structure, if rebuilt, to be further expanded without an additional variance.

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

The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included prior and current owner confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The variance requested is necessary due to special circumstances relating to the structure including the fact that strict compliance would require the demolition of the structure.

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

The accessory structure was constructed prior to the petitioners purchasing the subject property. The petitioner is aware of the requirements of the Zoning Ordinance and has asked for the variance to ensure the accessory structure will be legally conforming.

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

The variance will not change existing conditions. Also, the accessory structure is located entirely behind the principal structure, and is approximately 40 feet from the eastern property line. And finally, self-storage warehouses are located directly west of this property which are long, one-story, structures with multiple garage doors. This residential garage will alter the essential character of the neighborhood as established by these warehouses.

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

The western adjacent property is developed as self-storage warehouses, and is significantly separated from the petitioners' property. The eastern adjacent property is undeveloped agricultural land. The structure is behind the house and is only partially visible from the road.

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

The accessory structure has already been constructed half in the city and half in the county. The petitioner is making all necessary efforts to bring the property into compliance under a single jurisdiction.

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

The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The hardship would be that strict compliance would require the demolition of the structure. Because the shed was built in two jurisdictions, there are practical difficulties for compliance with the regulations of both.

## **Summary of Findings**

On May 18, 2007 the Urbana Zoning Board of Appeals voted 5-0 to adopt the following findings and recommended approval of the requested variance to the Urbana City Council:

1. The subject property is comprised of two lots with one located in unincorporated Champaign County and one in the City of Urbana. The property is zoned AG-2, Agriculture in the County and IN, Industrial in the City. *(Note: there is a concurrent rezoning application to rezone that portion already in the City from IN, Industrial Zoning District to R-2, Single-Family Residential Zoning District.)*
2. The western part of the subject property (currently in the County) is subject to a 1994 annexation agreement. The 1994 agreement did not contain any conditions except that the property would be annexed when it could be adequately served by City public services. That agreement does not apply to the eastern half of the subject property which is the subject of this variance case.
3. The western part of the subject property (currently in the County) is the subject of an annexation agreement to be heard concurrently by the Urbana City Council.
4. The purpose of the annexation agreement, this Zoning Board of Appeals Major Variance case, the Plan Commission rezoning case (2039-M-07) and a Minor Subdivision Case (1903-S-04) combining the two lots of the subject property, is to jointly correct all outstanding issues with the subject property.
5. The annexation agreement would grant a Major Variance for the 1,680 square foot portion of the accessory structure currently located in unincorporated Champaign County.
6. The annexation agreement requires that the petitioners submit an application for a Major Variance for that portion of the accessory structure currently in the City. The annexation agreement is contingent upon the City granting the Major Variance.
7. The annexation agreement requires the petitioners' to submit an application for a Zoning Map Amendment from IN, Industrial to R-2, Single-Family Residential for the portion of the property currently in the City. The annexation agreement is contingent upon granting the rezoning.
8. The annexation agreement requires the petitioners to prepare and record a Minor Subdivision Plat to combine the parcel in the County with the tract in the City. The plat must comply with the Urbana Subdivision and Land Development Code.
9. The special circumstances concerning the accessory structure are that the structure was built prior to the petitioner's ownership of the property. The practical difficulty in strict compliance would require the demolition of the structure.
10. The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The hardship would be that strict compliance would require the demolition of the structure. Because the shed was built in two jurisdictions, there are practical difficulties for compliance with the regulations of both.

11. The variance requested is necessary due to special circumstances relating to the structure including that strict compliance would require the demolition of the structure which is not the usual case in variance requests in this or other districts.
12. The petitioners wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced. However the variance would not permit the accessory structure, if rebuilt, to be further expanded without an additional variance.

## Options

The City Council has the following options in this case:

1. Approve the variance; or
2. Approve the variance along with certain terms and conditions. If the City Council approves conditions or the variances on findings other than those articulated herein, they should articulate findings accordingly; or
3. Deny the variance request. If the City Council elects to do so, the Council should articulate findings supporting its denial.

## Recommendation

Based on the criteria outlined herein, the Zoning Board of Appeals voted 5-0 to forward the variance request in Case # ZBA-07-MAJ-02 to the Urbana City Council with a recommendation for **APPROVAL**. Staff concurs with this recommendation.

Prepared by:

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Paul Lindahl, Planner I

cc: Jeff Wampler  
Erwin, Martinkus & Cole  
P.O. Box 1098  
Champaign, IL 61824-1098

Greg Reynolds  
1714 E. Airport Road  
Urbana, IL 61802

Attachments:

Draft Ordinance Approving a Major Variance  
Draft Minutes of April 18 and May 16, 2007 Zoning Board of Appeals Hearing  
Location Map  
2005 Comprehensive Plan Future Land Use Map  
Site Plan

H:\Planning Division\001-ALL CASES(and archive in progress)\03-ZBA Cases\2007\ZBA-2007-MAJ-02, Reynolds Accessory Structure\Stuff - CC - 06-04-07\Reynolds variance CC Memo v1.doc

**ORDINANCE NO. 2007-06-050**

**AN ORDINANCE APPROVING A MAJOR VARIANCE**

(A Major Variance to allow an accessory structure in excess of 1,000 square feet in the IN, Industrial Zoning District)  
1714 E. Airport Road / Case No. ZBA-2007-MAJ-02

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

WHEREAS, the owners of the subject property, Gregory and Denise Reynolds, have submitted a petition requesting a Major Variance to permit an accessory structure in excess of 1,000 square feet at 1714 E. Airport Road, in the IN, Industrial Zoning District; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA-2007-MAJ-02; 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 May 16, 2007 and voted 5 ayes and 0 nays to recommend to the City Council approval of the requested variance without conditions; and

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

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

1. The subject property is comprised of two lots with one located in unincorporated Champaign County and one in the City of Urbana. The property is zoned AG-2, Agriculture in the County and IN, Industrial in the City.



2. The western part of the subject property (currently in the County) is subject to a 1994 annexation agreement. The 1994 agreement did not contain any conditions except that the property would be annexed when it could be adequately served by City public services. That agreement does not apply to the eastern half of the subject property which is the subject of this variance case.
3. The western part of the subject property (currently in the County) will be the subject of an annexation agreement soon to be heard by the Urbana City Council.
4. The purpose of the annexation agreement, this Zoning Board of Appeals Major Variance case, the Plan Commission rezoning case (2039-M-07) and a Minor Subdivision Case (1903-S-04) combining the two lots of the subject property, is to jointly correct all outstanding issues with the subject property.
5. The annexation agreement would grant a Major Variance for the 1,680 square foot portion of the accessory structure currently located in unincorporated Champaign County.
6. The annexation agreement requires that the petitioners submit an application for a Major Variance for that portion of the accessory structure currently in the City. The annexation agreement is contingent upon the City granting the Major Variance.
7. The annexation agreement requires the petitioners' to submit an application for a Zoning Map Amendment from IN, Industrial to R-2, Single-Family Residential for the portion of the property currently in the City. The annexation agreement is contingent upon granting the rezoning.
8. The annexation agreement requires the petitioners to prepare and record a Minor Subdivision Plat to combine the parcel in the County with the tract in the City. The plat must comply with the Urbana Subdivision and Land Development Code.
9. The special circumstances concerning the accessory structure are that the structure was built prior to the petitioner's ownership of the property. The practical difficulty in strict compliance would require the demolition of the structure.
10. The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The hardship would be that strict compliance would require the demolition of the structure. Because the shed was built in two jurisdictions, there are practical difficulties for compliance with the regulations of both.
11. The variance requested is necessary due to special circumstances relating to the structure including that strict compliance would require the demolition of the structure which is not the usual case in variance requests in this or other districts.

12. The petitioners wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced. However the variance would not permit the accessory structure, if rebuilt, to be further expanded without an additional variance.

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

The major variance request by Gregory and Denise Reynolds, in Case #ZBA-2007-MAJ-02, is hereby approved to allow an accessory structure in excess of 1,000 square feet at 1714 E. Airport Road, in the IN, Industrial Zoning District, in the manner proposed in the application.

The major variance described above shall apply only to the area of the Reynolds property within the City limits as depicted on the site plan attached hereto, and more particularly described as:

LEGAL DESCRIPTION:

Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian in Champaign County, Illinois, more particularly described as follows:

Commencing 72 feet East of the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 33, thence North 605 feet; thence East 65 feet; thence South 605 feet and thence West 65 feet to the Point of Beginning, in Champaign County Illinois.

Commonly known as: 1714 E, Airport Road, Urbana, IL 61802

PIN No.: 91-15-33-476-011

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 \_\_\_\_\_, 2007.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

**CERTIFICATE OF PUBLICATION IN PAMPHLET FORM**

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

I certify that on the \_\_\_\_ day of \_\_\_\_\_, 2007, the corporate authorities of the City of Urbana passed and approved Ordinance No. \_\_\_\_\_, entitled:

**ORDINANCE NO.**\_\_\_\_\_

**AN ORDINANCE APPROVING A MAJOR VARIANCE**

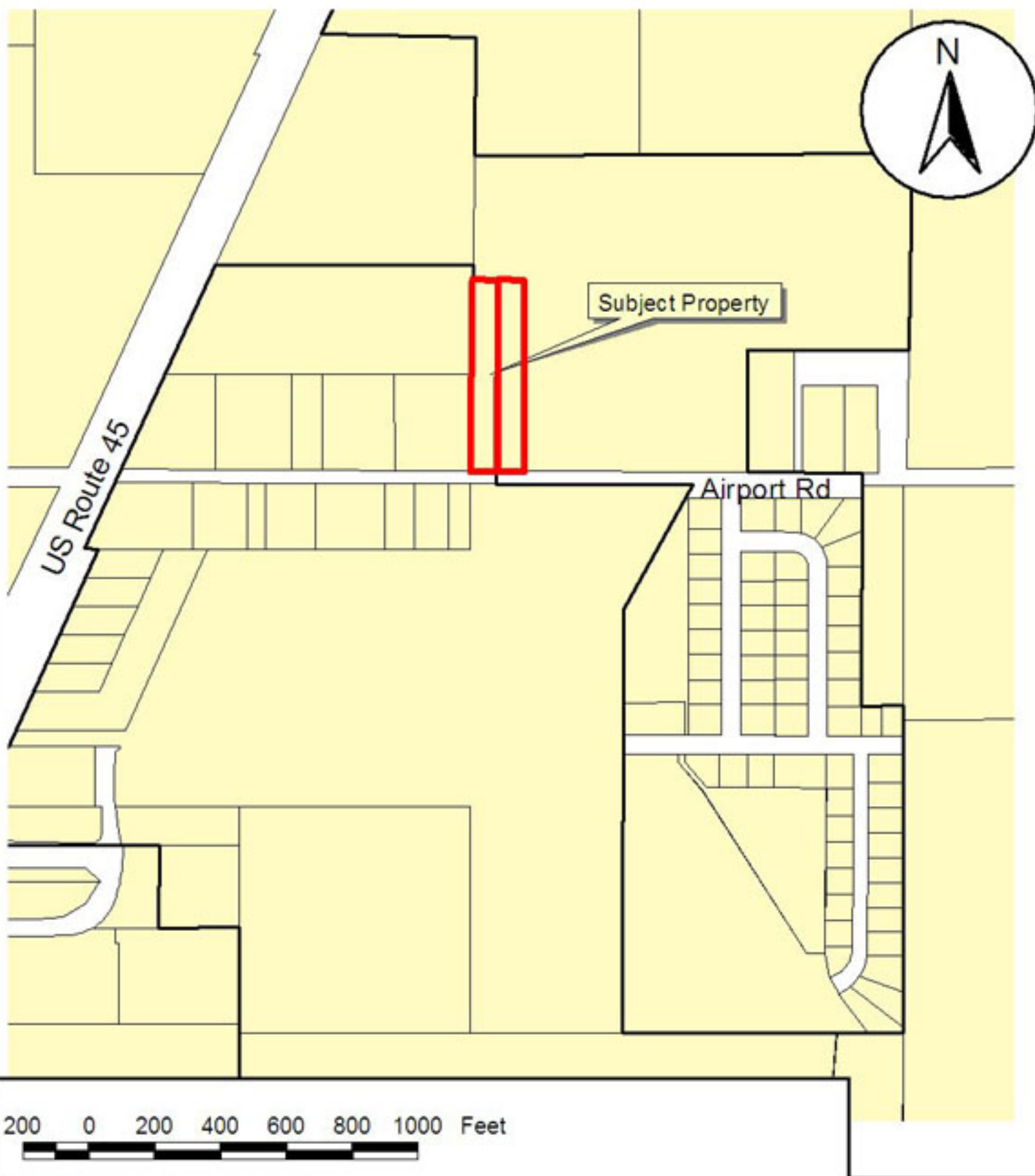
(A Major Variance to allow an accessory structure in excess of 1,000 square feet in the IN, Industrial Zoning District)

1714 E. Airport Road / Case No. ZBA-2007-MAJ-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 \_\_\_\_\_, 2007, 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 \_\_\_\_\_, 2007.

# Exhibit A: Location Map



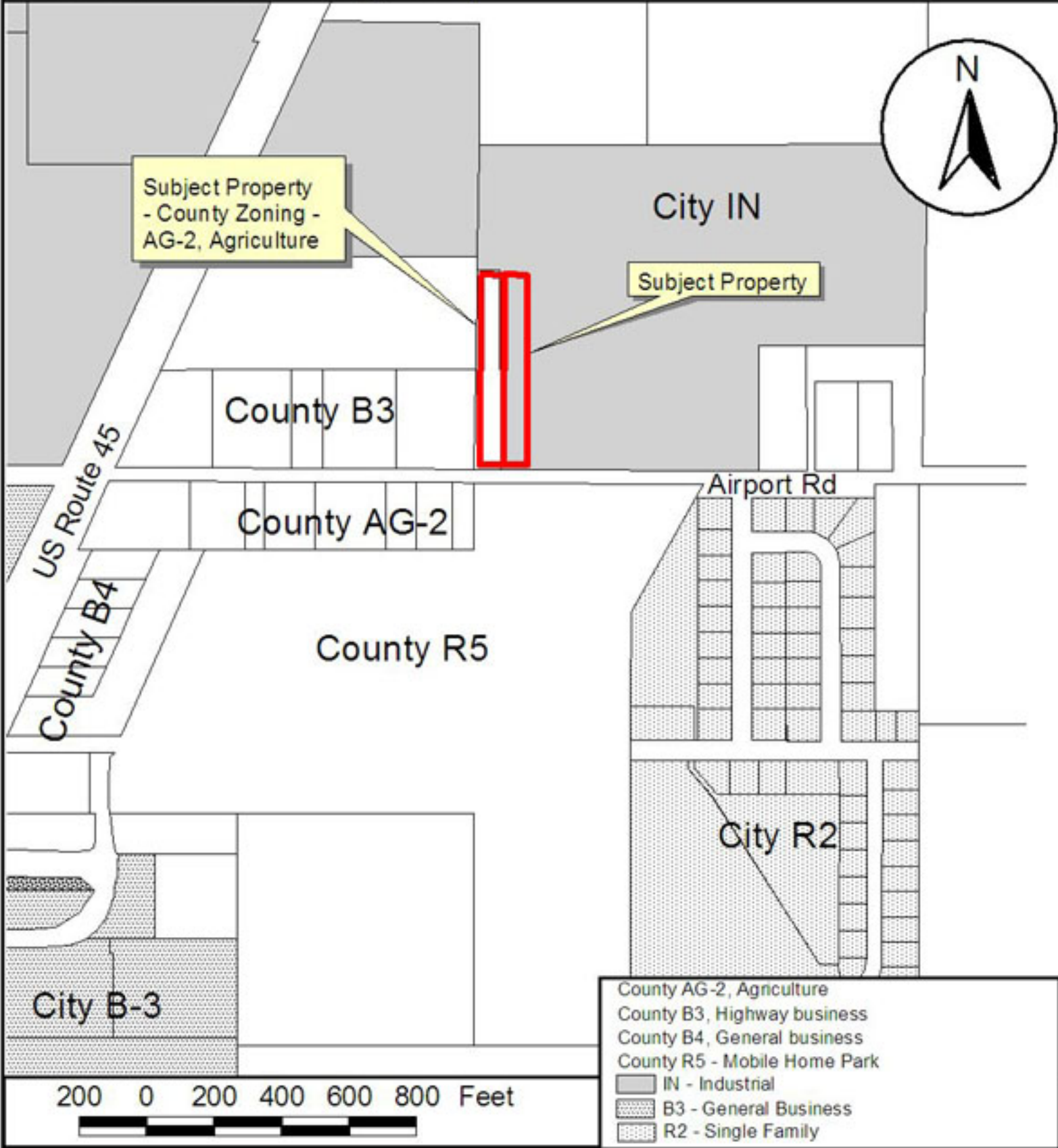
Plan Case: 2039-M-07  
Subject: Rezoning IN, Industrial to R2, Single Family Residential

ZBA Case: 2007-MAJ-2  
Subject: A Major Variance request for a 3,500 square foot accessory structure

Petitioner: Greg Reynolds  
Location: North of Airport, East of US Route 45

Prepared 03/29/2007 by Community Development Services - mhw

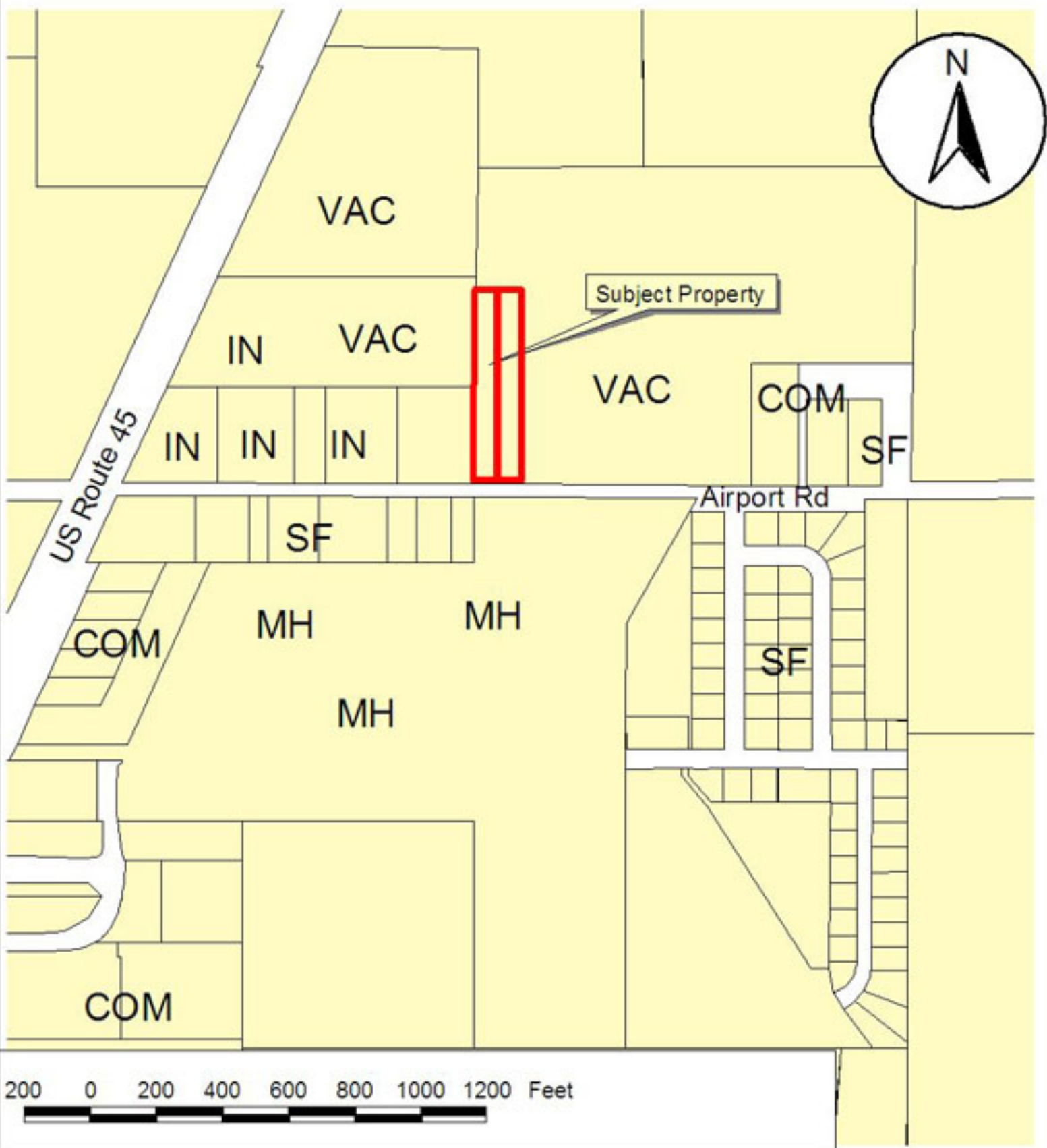
# Exhibit B: Zoning Map



- County AG-2, Agriculture
- County B3, Highway business
- County B4, General business
- County R5 - Mobile Home Park
- IN - Industrial
- B3 - General Business
- R2 - Single Family



# Exhibit C: Existing Land Use Map



Plan Case: 2039-M-07  
Subject: Rezoning IN, Industrial to R2, Single Family Residential

ZBA Case: 2007-MAJ-2  
Subject: A Major Variance request for a 3,500 square foot accessory structure  
Petitioner: Greg Reynolds  
Location: North of Airport, East of US Route 45  
Prepared 03/29/2007 by Community Development Services - mhw

SF - Single Family  
IN - Industrial  
COM - Commercial  
MH - Mobile Homes  
VAC - Vacant



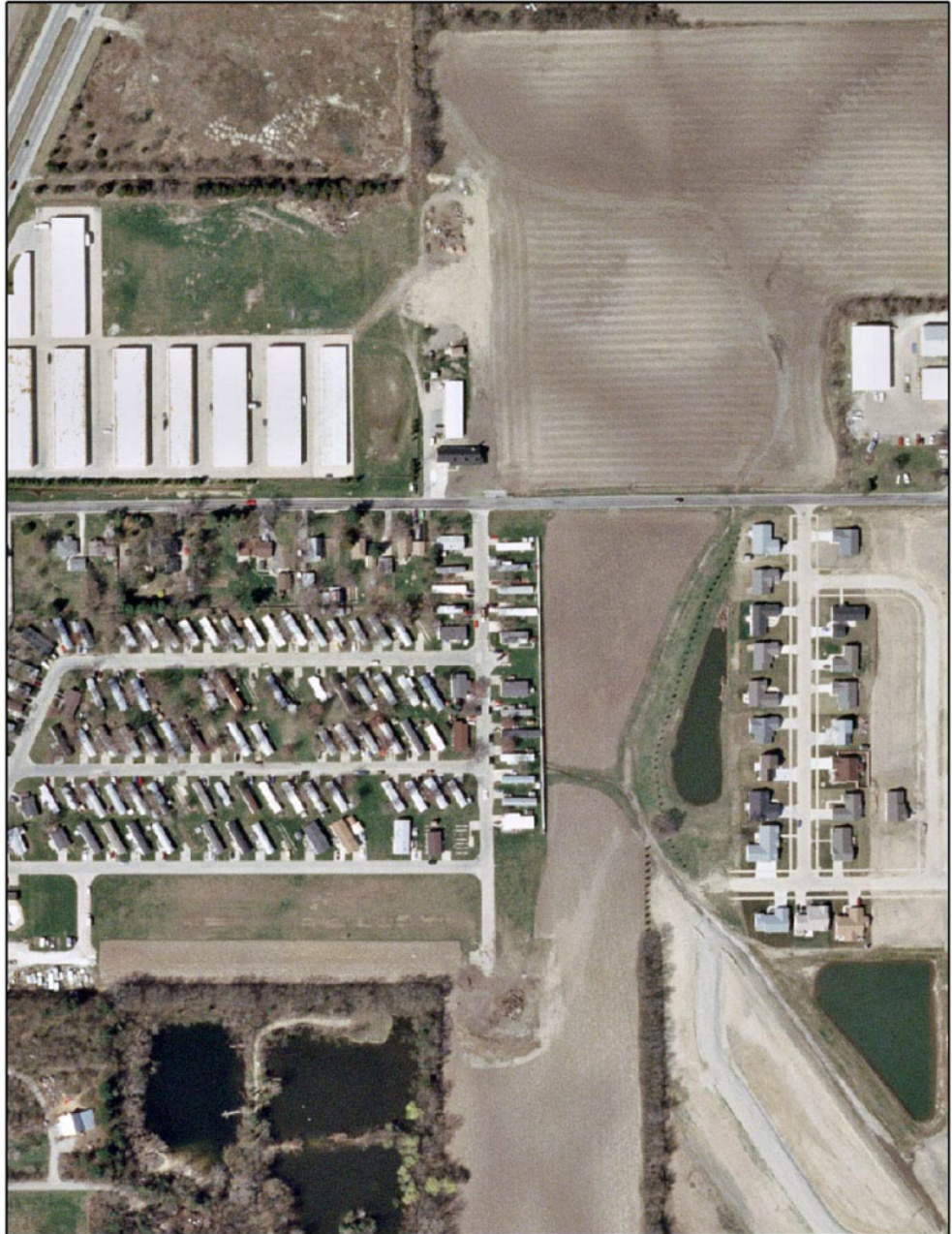
# Exhibit D: Future Land Use Map



ZBA Case: ZBA-07-MAJ-02  
Petitioner: Gregory Reynolds  
Location: North of Airport, East of US Route 45  
Description: A major variance to allow a 3,500 accessory structure



# Exhibit E: Aerial Map



ZBA Case: ZBA-07-MAJ-02  
Petitioner: Gregory Reynolds  
Location: North of Airport, East of US Route 45  
Description: A major variance to allow a 3,500 accessory structure

# **Annexation Agreement**

(1714 East Airport Road / Gregory and Denise Reynolds)

THIS Agreement is made and entered into by and between the **City of Urbana**, Illinois, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and **Gregory and Denise Reynolds** (hereinafter referred to as the "Owners"). The effective date of this Agreement shall be as provided in Article III, Section 6.

## **WITNESSETH:**

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, Gregory and Denise Reynolds are the Owners of record of a certain parcel of real estate located at 1714 East Airport Road totaling approximately 1.80 acres, the legal description of which real estate is set forth in Exhibit "A" attached hereto and referenced herein as "the tract"; and

WHEREAS, the attached map, labeled Exhibit B, is a true and accurate representation of the tract to be annexed to the City of Urbana under the provisions of this agreement; and

WHEREAS, the tract is located within the Champaign County AG-2, Agricultural Zoning District; and

WHEREAS, the Corporate Authorities and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-2, Single-Family Residential, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, the Owners desire to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNERS**

The Owners agree to the following provisions:

**Section 1. Ownership and Annexation:**

- (a) The Owners represent that the Owners are the sole record Owners of the tract described in Exhibit A and that the Owners shall, within thirty (30) days of the approval of this agreement cause the tract to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tract occurs, the Owners shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such. The Owners shall not file a petition for the disconnection of the tract from the City.
- (b) The Owners further agree that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owners agree that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) The Owners agree that if the Owners fail to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owner(s) as a result, the Owners shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owners agree for themselves, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

**Section 2. Zoning:** The Owners acknowledge that upon annexation, the tract will be rezoned from County AG-2, Agricultural to City R-2, Single-Family Residential. The Owners agree that, unless changed upon the initiative of the Owners, the said City zoning classification for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such amendment affects the tract. Furthermore, the Owners agree to abide by all applicable development regulations existing at the time of annexation.

**Section 3. Adjacent Territory Rezoning:** The Owners agree to submit an application to rezone the portion of the Owners' property currently located within the corporate limits (see Exhibit C) from City IN, Industrial to City R-2, Single-Family Residential within 90 days of the approval of this agreement.

**Section 4. Subdivision:** The Owners agree to prepare and record a minor subdivision plat per the Urbana Subdivision and Land Development Code within 90 days of the approval of this Agreement. The minor subdivision plat shall combine the portion of the Owners' land in unincorporated Champaign County (west half) with the portion within the corporate limits (east half) to create a single lot (see Exhibit C). The Owners further agree to dedicate 40 feet of right-of-way along Airport Road as part of the minor subdivision plat and include a deferral for sidewalk construction on the minor subdivision plat.

**Section 5. Accessory Structure Variance:** The Owners agree to submit an application for a Major Variance to permit an increase in the maximum size of an accessory structure up to 3,500 square feet per the Urbana Zoning Ordinance within 90 days of the approval of this Agreement. The Major Variance application shall pertain to the portion of the accessory structure located within the corporate limits (see Exhibit C).

## **ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES**

The Corporate Authorities agree to the following provisions:

**Section 1. Agreement to Annex:** The Corporate Authorities agree to annex said tract subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owners, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

**Section 2. Zoning:** The Corporate Authorities agree that the tract will be zoned City R-2, Single-Family Residential upon annexation and as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of the tract. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owners requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. The

Corporate Authorities further agree that the granting of the Zoning Map Amendment would be consistent with the LaSalle Criteria established by the Illinois Supreme Court in *LaSalle National Bank v. The County of Cook*:

- a. The existing land uses and zoning of the nearby property.
- b. The extent to which property values are diminished by the restrictions of the ordinance.
- c. The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.
- d. The relative gain to the public as compared to the hardship imposed on the individual property owner.
- e. The suitability of the subject property for the zoned purposes.
- f. 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.

**Section 3. Adjacent Territory Rezoning:** The Corporate Authorities agree to consider approval of a Zoning Map Amendment for the portion of the Owners' property in the corporate limits from IN, Industrial to R-2, Single-Family Residential, as shown in Exhibit C, in order to provide for consistent zoning of the Owners' property.

**Section 4. Subdivision:** The Corporate Authorities agree to approve a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine the portion of the Owners' land in unincorporated Champaign County (west half) with the portion within the corporate limits (east half) to create a single lot (see Exhibit C), including a deferral for sidewalk construction along the north side of Airport Road adjacent to the Owners' property. The City Engineer shall not require sidewalk construction until such time as a sidewalk exists on adjacent properties on either side of the tract.

**Section 5. Accessory Structure Variance:** The Corporate Authorities hereby grant a Variance to allow the portion of the 3,500 square foot accessory structure located outside the corporate limits, in excess of the 1,000 square feet permitted by the Zoning Ordinance, as illustrated in Exhibit B. This additional size will permit the Owners to maintain the accessory structure, which was constructed prior to any of the Owners' land incorporating into the City of Urbana. Until the Major Variance is approved, the accessory structure shall be considered legally non-conforming. The Corporate Authorities further agree that the granting of this variance is consistent with the established criteria identified in Section XI-3 of the Urbana Zoning Ordinance, in that the variance:

- a. will not serve as a special privilege because the variance requested is due to special conditions and 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;

- b. was not the result of a situation or condition having been knowingly or deliberately created by the Owner or Developer;
- c. will not alter the essential character of the neighborhood;
- d. will not cause a nuisance to adjacent property;
- e. represents, generally, the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.
- f. is the result of practical difficulties or particular hardship in the way of carrying out the strict letter of the Zoning Ordinance relating to the use, construction, or alteration of buildings or structures or the use of land.

**Section 6. Adjacent Territory Accessory Structure Variance:** The Corporate Authorities agree to consider approval of a Major Variance to allow the portion of the 3,500 square foot accessory structure located within the corporate limits, in excess of the 1,000 square feet permitted by the Zoning Ordinance, as illustrated in Exhibit C. This additional size will permit the Owners to maintain the accessory structure, which was constructed prior to any of the Owners' land incorporating into the City of Urbana.

### **ARTICLE III: GENERAL PROVISIONS**

**Section 1. Term of this Agreement:** This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, their successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

**Section 2. Covenant running with the land:** The terms of this Agreement constitute a covenant running with the land for the term of this Agreement unless specific terms are expressly made binding beyond the term of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessee, executors, assigns and successors in interest of the Owners as to all or any part of the tract, and are further

expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

**Section 3. Binding Agreement upon parties:** The Corporate Authorities and Owners agree that neither party will take no action or omit to take action during the term of this Agreement which act or omission as applied to the tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owners and the City.

**Section 4. Enforcement:** The Owners and Corporate Authorities agree and hereby stipulate that either party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void in addition to other remedies available. Upon breach by the Owners, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

**Section 5. Severability:** If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

**Section 6. Contingent Agreement.** This Agreement shall be contingent upon the successful execution (a.) of the obligations set forth in Articles I and II, and (b.) of all necessary Agreements and approvals. If any of these contingencies are not fulfilled, then this Annexation Agreement shall be null and void. In all cases requiring the approval of the Corporate Authorities, such Corporate Authorities shall not unreasonably withhold such approval.

**Section 7. Effective Date:** The Corporate Authorities and Owners intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

**IN WITNESS WHEREOF**, the Corporate Authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

**Corporate Authorities**  
**City of Urbana:**

**Owner:**

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

\_\_\_\_\_  
Gregory Reynolds

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Denise Reynolds

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Phyllis D. Clark  
City Clerk

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

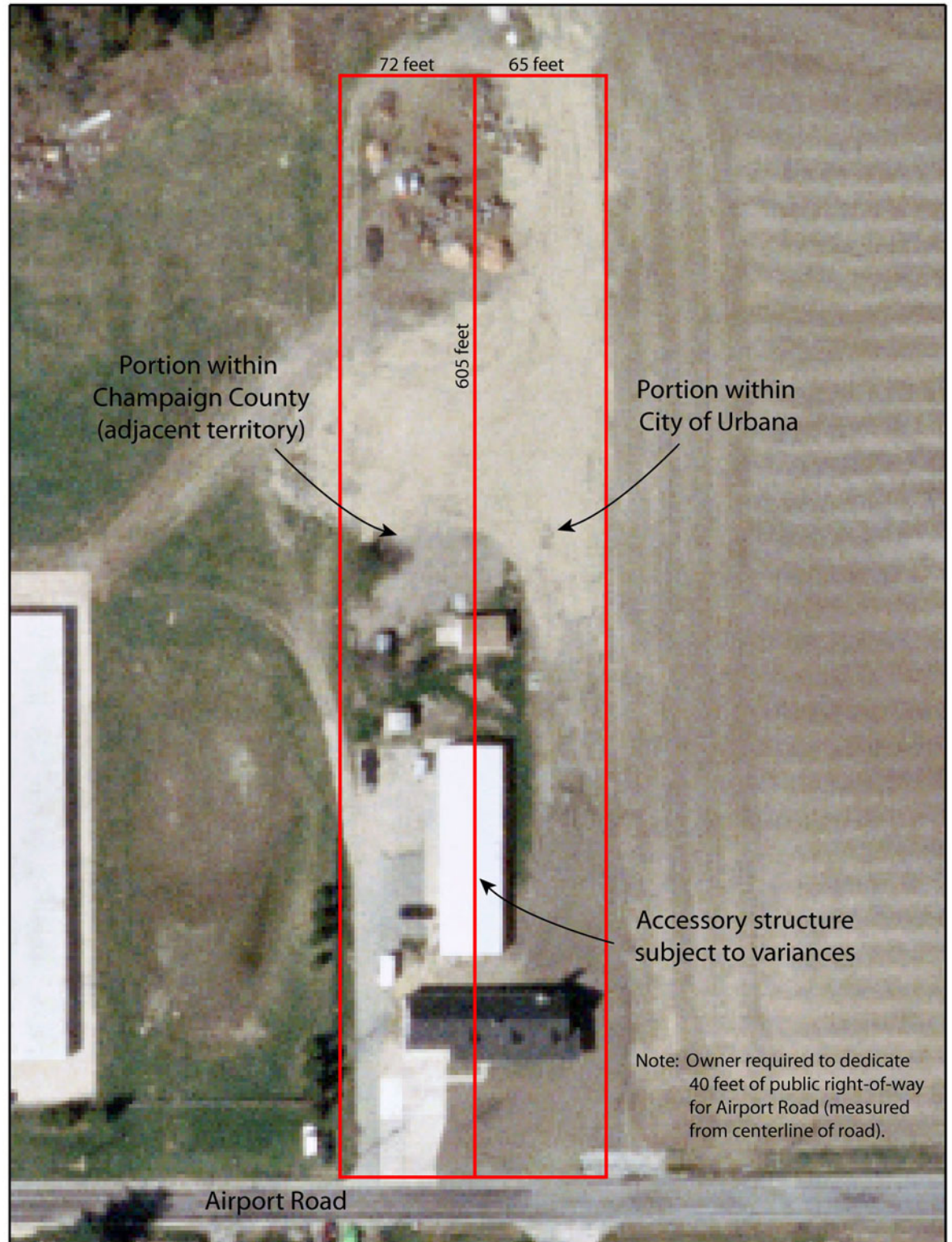
\_\_\_\_\_  
Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map
- Exhibit C: Site Requirements Map



# Exhibit G: Site Requirements Map



**MINUTES OF A REGULAR MEETING**

**URBANA ZONING BOARD OF APPEALS**

**DATE:** May 16, 2007

**DRAFT**

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

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

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**MEMBERS PRESENT:** Paul Armstrong, Anna Merritt, Joe Schoonover, Nancy Uchtmann, Harvey Welch

**MEMBERS EXCUSED:** Herb Corten, Charles Warmbrunn

**STAFF PRESENT:** Robert Myers, Planning Manager; Paul Lindahl, Planner I; Teri Andel, Planning Secretary

**OTHERS PRESENT:** Ben Hoerr, Jim North

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**NEW PUBLIC HEARINGS**

**ZBA-07-MAJ-02 – Request filed by Gregory Reynolds for a Major Variance to permit a 3,500 square foot accessory structure at 1714 East Airport Road in the IN, Industrial Zoning District.**

Paul Lindahl, Planner I, presented the staff report to the Zoning Board of Appeals. He stated that the case is a repeat of the case heard at the previous meeting on April 18, 2007. City staff found an error in the legal description for the case and believes it to be important to hold the public hearing again.

Mr. Lindahl gave a brief introduction and background on the history of the proposed property. He reviewed the variance criteria from Section XIK-3.C.2 of the Urbana Zoning Ordinance. He summarized staff findings and read the options of the Zoning Board of Appeals. He presented staff's recommendation, which is as follows:

*Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals forward Case ZBA-07-MAJ-02 to the Urbana City Council with a recommendation for approval.*

Chair Merritt asked if this case is essentially part of an effort to straighten out some things that have happened and are happening at various government levels. Mr. Lindahl said yes. There were a number of different problems with the proposed property. The accessory building was built on the property line. The owners purchased part of the neighboring property because the accessory building was constructed over the property line without preparing a subdivision plat. There was a single-family home built in an Industrial Zoning District. So, we need to clean up the zoning, prepare a subdivision, and obtain a variance for the accessory structure. The final issue is with the legal noticing.

He mentioned that this has been a long standing effort, and staff has been working on resolving these issues for an extended time period. Hopefully, it will all be taken care of in the next month or so.

Chair Merritt wondered if staff foresaw any problems with any of the other steps that need to be taken up with any of the other entities involved. Mr. Lindahl said no. Essentially everything is ready to go. The annexation agreement had already been approved by the Plan Commission and by the City Council. This included the rezoning and the variance for the part of the property that is outside City limits. The Zoning Board of Appeals had already approved the variance for that portion inside City limits, and the Plan Commission had already approved the rezoning of the portion within City limits as well. Once City Council made a final determination on the variance and rezoning of the portion inside City limits, City staff was planning to proceed with annexing the portion outside of the City limits. City staff found an error in the legal description, and this set the case back to the place we were last summer regarding the property.

Ms. Uchtmann inquired as to how the accessory building is used.

Mr. Lindahl replied that it is essentially a pole barn/garage, and the owners use it to store vehicles and other items. They also have a workshop in it, but it is only used for personal purposes and not for business purposes.

Robert Myers, Planning Manager, added that staff has talked to the owners and their attorney several times about the use of the accessory building. The owners maintain that they plan to use it for storage only. He pointed out that next door there is a self-storage warehouse business along with other industrial-looking buildings to the west. Therefore, he did not believe the accessory building is not out of character with the surrounding uses.

Mr. Schoonover moved that the Zoning Board of Appeals forward Case No. ZBA-07-MAJ-02 to the City Council with a recommendation for approval of the requested major variance. Mr. Armstrong seconded the motion. Roll call was as follows:

Mr. Welch	-	Yes	Ms. Uchtmann	-	Yes
Mr. Schoonover	-	Yes	Ms. Merritt	-	Yes
Mr. Armstrong	-	Yes			

The motion was approved by unanimous vote. Mr. Lindahl noted that this case would go before City Council on June 4<sup>th</sup>.

**MINUTES OF A REGULAR MEETING**

**URBANA ZONING BOARD OF APPEALS**

**DATE:** April 18, 2007

**APPROVED**

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

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

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

**MEMBERS EXCUSED:** Anna Merritt, Joe Schoonover, Nancy Uchtmann

**STAFF PRESENT:** Robert Myers, Planning Manager; Paul Lindahl, Planner I; Teri Andel, Planning Secretary

**OTHERS PRESENT:** Eileen Gebbie, Brigitte Pieke, Danielle Quivey, Clifford Singer, Paul Zindars

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**NEW PUBLIC HEARINGS**

**ZBA-07-MAJ-02 – Request filed by Gregory Reynolds for a Major Variance to permit a 3,500 square foot accessory structure at 1714 East Airport Road in the IN, Industrial Zoning District.**

Paul Lindahl, Planner I, presented the staff report to the Zoning Board of Appeals. He stated that the petitioner and his attorney were unable to attend the meeting. If the Zoning Board of Appeals found it necessary to question the petitioner, then they could continue the case to the next scheduled meeting, but if the Board felt comfortable with making a decision based on the evidence provided then he recommended doing so. He continued his presentation by giving a brief background on the history of the pertinent facts leading to the proposed variance request. He noted the zoning and land uses of the proposed property and of the surrounding properties. He summarized staff findings, read the options of the Zoning Board of Appeals and presented staff's recommendation, which is as follows:

*Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals*

*forward ZBA-07-MAJ-02 to the Urbana City Council with a recommendation for approval.*

Acting Chair Armstrong asked if the area is rezoned, would the rezoning have any implications on the Zoning Board's recommendation to the City Council for the proposed variance request. Mr. Lindahl said no, it would not. The property is a very large lot, and all of the structures on the lot are far enough from the property that they would not require any setback variances. Also, the Floor Area Ratio (FAR) and Open Space Ratio (OSR) are met as well. So, a rezoning of the property would not affect the Zoning Board's recommendation in any way.

Robert Myers, Planning Manager, pointed out that the City's Comprehensive Plan designates the future land use of this property as "Residential". Properties to the west of the site are shown in the Comprehensive Plan to be "Future Regional Business".

Acting Chair Armstrong opened the hearing to take public input from audience members. With no comments or questions from the audience members, Acting Chair Armstrong closed the public input portion of the hearing and opened it for discussion of the Zoning Board of Appeals.

Mr. Corten moved that the Zoning Board of Appeals forward case ZBA-07-MAJ-02 to the City Council with a recommendation for approval. Mr. Welch seconded the motion. Roll call was as follows:

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

The motion was approved by unanimous vote.