



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Planning Division*

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

**TO:** The Urbana Zoning Board of Appeals

**FROM:** Matt Wempe, Planner II

**DATE:** June 15, 2006

**SUBJECT:** ZBA 06-C-02, Request by Terry A. Davis, Jr. for a Conditional Use Permit to establish a “Fast-Food Restaurant”, in the B-1, Neighborhood Business Zoning District.

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### **Introduction**

Terry A. Davis, Jr. has submitted a request to allow a fast-food restaurant at 117 W. Washington at the building that once housed Sunshine Grocery. The business, tentatively named Ben’s Kitchen, will be a small, carry-out only restaurant that will serve the immediate neighborhood and the University campus. The proposed use is classified as a fast-food restaurant because it is the only food service establishment use in the Urbana Zoning Ordinance that permits carry-out service. According to Table V-1 of the Urbana Zoning Ordinance, a fast-food restaurant is permitted in the B-1, Neighborhood Business District pursuant to the approval of a Conditional Use Permit.

### **Background**

The corner of Washington and Race has historically been used as a commercial area serving the West Urbana neighborhood. The 1982 Urbana Comprehensive Plan identified both the zoning and the future land use for the site as commercial. The 2005 Urbana Comprehensive Plan denotes the future land use for the property as “Community Business.” Over the years, a number of businesses have operated in the building, including a pizza restaurant, an audio/video service center, and most recently an Asian grocery store. A conditional use permit was approved for a yoga studio in 1997, but the business never opened. The building has been unoccupied for the past year, and the owners have been aggressively marketing the site for commercial uses. The property is developed as a single building approximately 2,300 square feet in size and divided into two separate commercial spaces. The petitioner intends to occupy the larger space on the northern half of the building. There are nine possible parking spaces available should the parking lot be restriped, and access is provided via Washington Street and Race Street. The property is surrounded by single and multi-family residential uses, and the Urbana Middle and High Schools campus and Carle Park are immediately south of the property.

The Urbana School District reviewed the future land uses of the superblock northwest of the high school as part of the Campus Master Plan. Several uses were considered, including a landscaped student area,

though the subject property was preserved as neighborhood business. The 2005 Urbana Comprehensive Plan also considered the question of commercial uses for the property. The Overall Future Land Use Map identifies the property as “Community Business”, and has a specific annotation to “Preserve Neighborhood Business.”

In 2004, under direction by the City Council, Planning staff revised the development regulations and allowable uses for the B-1 Zoning District. Although there was discussion about permitting smaller food service establishments by right, the final text amendment maintained the conditional use permit requirement.

### **Development Regulations**

The petitioner will be located in the northern half of the existing building on the property, which occupies 1,400 square feet. The building was constructed prior to the adoption of the 1950 Urbana Zoning Ordinance, and the layout and amount of parking is considered legally non-conforming. Per Article X of the current Zoning Ordinance, the petitioner is not required to upgrade the parking area to meet current development regulations. However, the intensity of the use and the extent of the parking area is not permitted to expand in any way that would increase the non-conformity. The legal non-conformity also applies to handicapped parking. Parking is already provided for on the site, and there is access off Washington and Race Streets. According to Table VIII-6 of the Zoning Ordinance, the requirement for a fast-food restaurant is one space per 100 square feet, for a total of 14 required parking spaces. There are nine possible parking spaces available should the parking lot be restriped. Because there are less than 20 parking spaces, there are no requirements for parking lot landscaping, though a large tree and a planting area already exist on the property.

The B-1 District regulations prohibit the proposed use from having a freestanding sign (according to Table IX-1), and a wall sign may only comprise 8 percent of the wall area, not to exceed 300 square feet. The petitioner has indicated his desire to utilize the existing wall sign on the eastern face of the building.

The petitioner is currently negotiating with the adjacent property owner regarding the placement of a garbage dumpster. The adjacent property is a multi-family building with a driveway along the east side of the subject property. A final agreement should be reached prior to the ZBA meeting. If no agreement is approved, Staff will consider alternative locations for a dumpster and present them to the Board.

The proposed hours of operation would be 11am to 11pm each day. The petitioner has agreed to operate as “delivery only” from 9pm to 11pm, Sunday through Wednesday. This will allow the petitioner to provide late-night service, while minimizing the impact on the neighborhood.

The restaurant will be carry-out only, and no tables will be available for dine-in business. Limited seating will be available to provide a place for patrons to sit while their food is prepared. Since the building has no dine-in seating, the building code does not require that the petitioner provide bathrooms for patrons. A bathroom already exists in the building for employees.

### **Surrounding Properties**

The property is surrounded by single-family and multi-family residential uses. South of the property is the Urbana Middle and High School campus, as well as Carle Park. The 2005 Urbana Comprehensive Plan specifically recommends the preservation of this neighborhood business hub.

The Urbana School District has raised a number of concerns with the proposed use. A formal letter outlining these concerns is attached as part of Exhibit G.

The following chart, along with the attached exhibits, offers a more detailed summary of the surrounding zoning and land uses.

<b>Direction</b>	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use</b>
Site	B-1, Neighborhood Business	Vacant	Community Business
North	R-5, Medium High Density Multiple Family Residential; R-2, Single-Family Residential	Residential	Residential
East	R-5, Medium High Density Multiple Family Residential	Multi-Family Residential	Residential
South	R-2, Single-Family Residential; CRE, Conservation-Recreation-Education	Residential/Institutional	Residential/Institutional
West	R-2, Single-Family Residential; CRE, Conservation-Recreation-Education	Residential/Parks	Residential/Parks

## **Discussion**

### **Requirements for a Conditional Use Permit**

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 business has the ability to serve both the surrounding neighborhood and the campus area. Several other similar restaurants have survived in this area, including Domino’s (on Vine Street) and Skully’s Chicken and Fish (on Washington Street), Café Paradiso, and Jimmy Johns (both on Lincoln Avenue). Both stores have benefited from the large number of people in the immediate area, as well as their relative proximity to campus. The property has been successfully used as a carry-out restaurant in the past.

Due to the proximity to residential areas, a number of concerns have been raised, including litter and loitering. The petitioner has indicated his desire to “to do whatever it takes to make this business a success and maintain a positive reputation in Urbana with regard to the development of this campus community” and has stipulated that he “understands that the community is residential and loitering will not be tolerated.” “No trespassing” signs are already posted on the property, and the Urbana Police routinely patrol the area surrounding the Urbana Middle and High School campus. There are no seating areas either inside or outside of the building. In addition, the school district has started restricting their open campus lunch policy to juniors and seniors only.

With regard to litter, staff has recommended as a condition of approval that the petitioner be required to submit a Site Management Plan that will address litter concerns. In addition, the petitioner has indicated his understanding that litter can be an issue, and will do all he can to minimize litter on both his and neighboring properties. The City has property maintenance and nuisance regulations that require the property is kept free of larger piles of trash. A garbage dumpster and grease container will be located in the driveway serving the multi-family building immediately east of the property pending a separate agreement.

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 petitioner has indicated that the business will be carry-out only. No tables will be provided to discourage dining-in. Hours of operation will be limited Sunday through Wednesday (i.e. delivery only from 9pm to 11pm), and the business will close no later than 11pm on all days. The petitioner intends to use the existing wall sign on the eastern face of the building. Since the parking lot is legally non-conforming, the petitioner is not required to provide additional parking spaces.

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 intent of the B-1 District is to “provide commercial areas of limited size, for basic trade and personal services for the convenience of adjacent residential areas, for needs recurring regularly or frequently”. As evidenced by other businesses in the area zoned B-1, food service establishments have the ability to successfully serve the neighborhood. In this case, specific issues have been raised due to the location of the property. The development regulations in the Urbana Zoning Ordinance, along with conditions proposed by staff, should ensure that the business is not a detriment to the district or surrounding areas.

## **Summary of Findings**

1. The proposed use will be a small, carry-out only restaurant that will serve the immediate neighborhood and the University campus.
2. The property has historically been used as commercial, and both the 1892 and 2005 Urbana Comprehensive Plans state that this neighborhood business hub should be preserved.
3. The proposal would be conducive to the public convenience at this location based upon the expected

management practices of the business and the reduced number of students that may leave the high school for lunch.

4. The proposal would not pose a detriment to the B-1, Neighborhood Business Zoning District in which it is proposed to be located.
5. The proposed use will meet all the applicable requirements of the Urbana Zoning Ordinance. The building is considered legally non-conforming with regard to parking layout and number of spaces provided since it was constructed prior to adoption of the 1950 Urbana Zoning Ordinance.
6. The proposed development is generally consistent with the 2005 Urbana Comprehensive Plan.

## **Options**

The Zoning Board of Appeals has the following options in Case No. ZBA-06-C-02:

1. Grant the requested conditional use without any special conditions; or
2. Deny the requested conditional use; or
3. 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.

## **Staff Recommendation**

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Zoning Board of Appeals **APPROVE** the proposed conditional use in case ZBA 06-C-02 for the reasons articulated above, and with the following condition:

1. That the proposed use shall operate as “delivery only” from 9pm to 11pm, Sunday through Wednesday.
2. That dine-in business shall not be permitted.
3. That the petitioner shall submit a copy of the agreement with Barr Real Estate to locate the garbage dumpster and grease container in the adjacent driveway east of the building.
5. That the petitioner shall submit a Site Management Plan to the Urbana Community Development Services Department detailing measures that the petitioner will use to address potential problems such as loitering, litter, and other public safety or nuisance issues.

Prepared by:

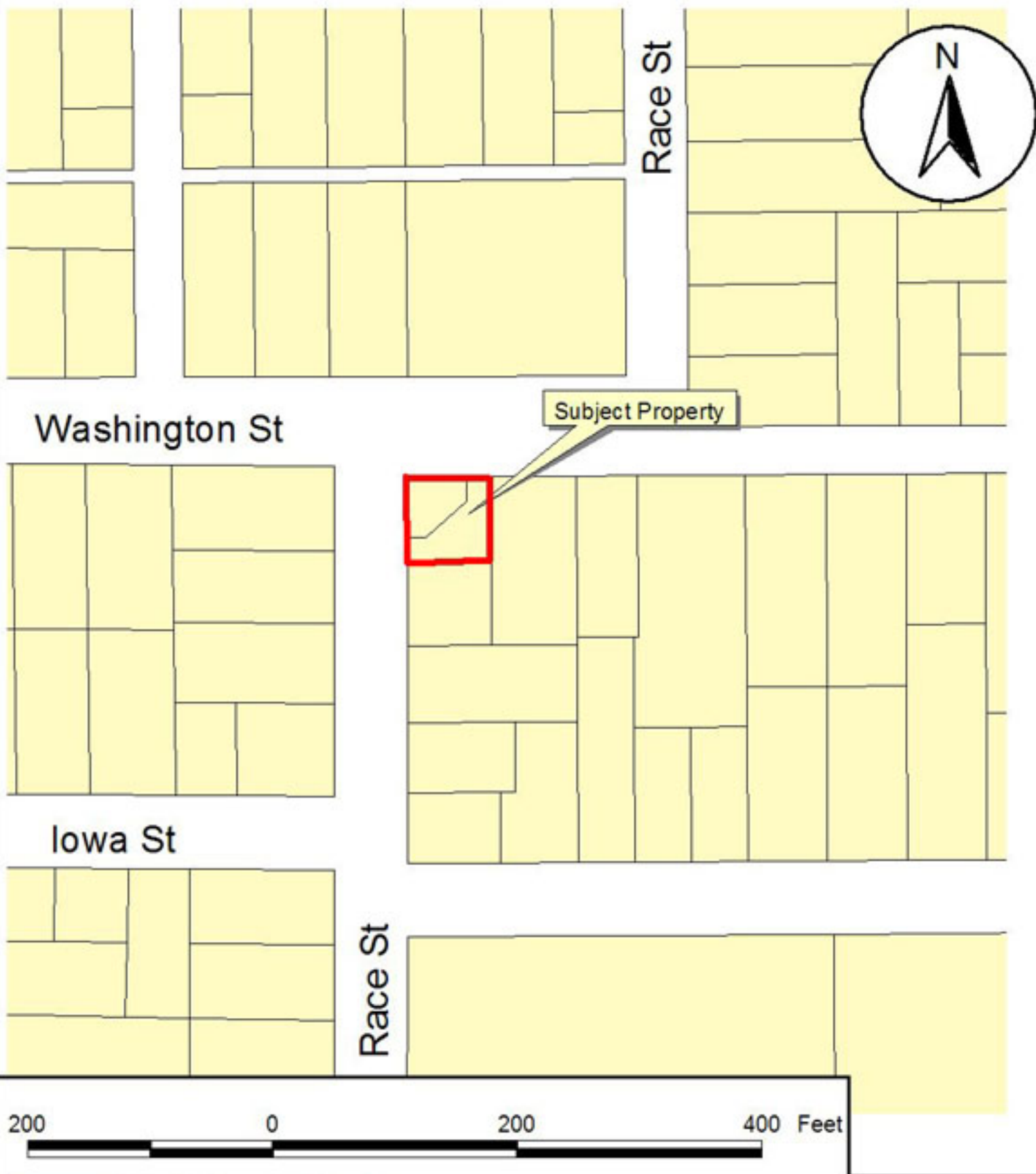
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Matt Wempe  
Planner II

Attachments: Exhibit A: Location Map  
Exhibit B: Zoning Map  
Exhibit C: Existing Land Use Map  
Exhibit D: Future Land Use Map  
Exhibit E: Aerial Map  
Exhibit F: Conditional Use Application  
Exhibit G: Petitioner's Personal Statement  
Exhibit H: Site Photos  
Exhibit G: Correspondence

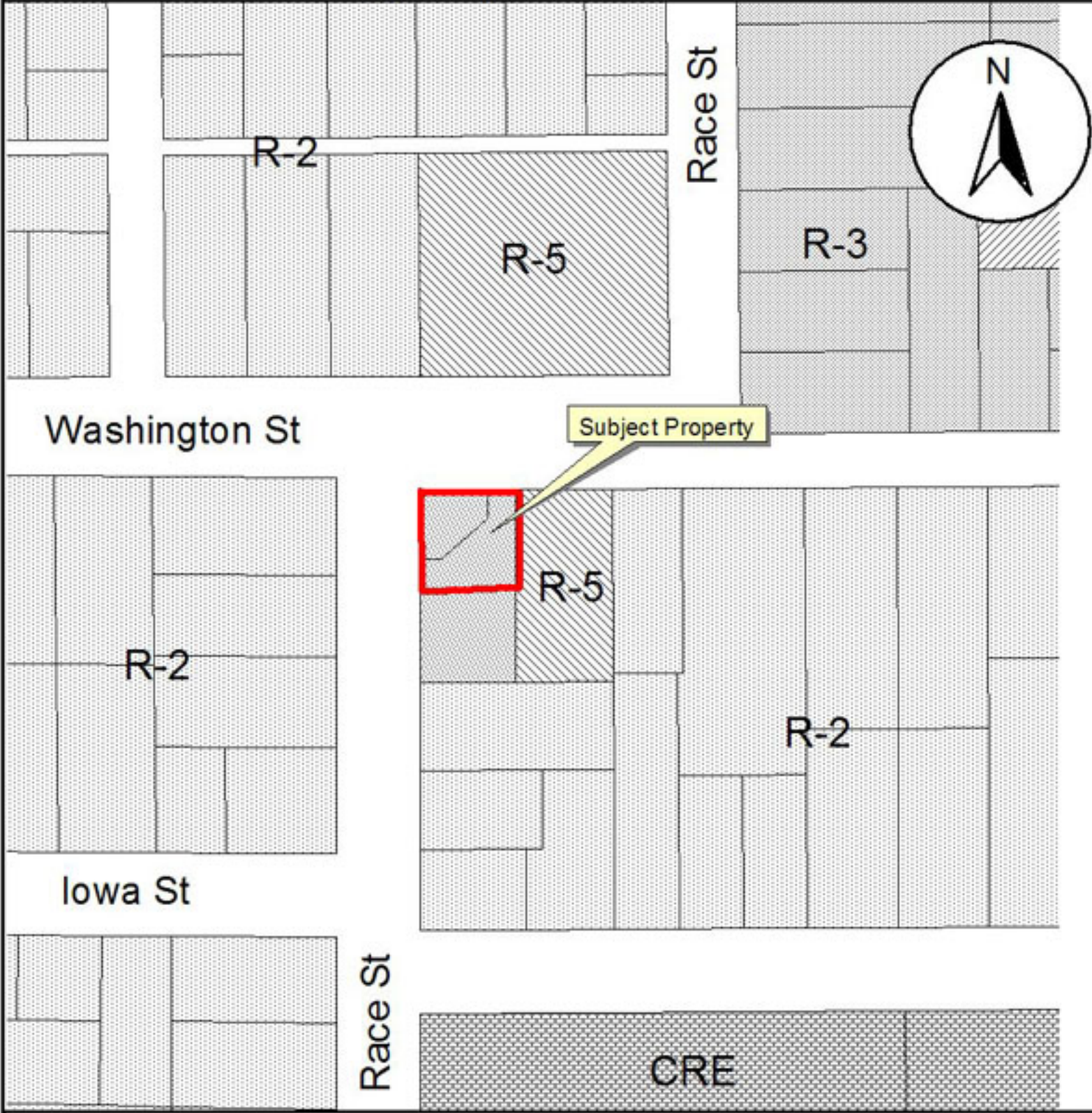
Cc: Terry A. Davis                      Brandon Bowersox                      Charlie Smyth  
106 E. Stoughton                      115 W. Main, 2<sup>nd</sup> Floor                      805 S. Coler  
Champaign, IL 61820                      Urbana, IL 61801                      Urbana, IL 61801

# Exhibit A: Location Map



ZBA Case: ZBA-06-C-02  
Petitioner: Terry Davis Jr.  
Location: 117 W. Washington  
Zoning: B-1, Neighborhood Business  
Description: Allow a fast food restaurant in the B-1, Neighborhood Business Zoning District

# Exhibit B: Zoning Map



Subject Property

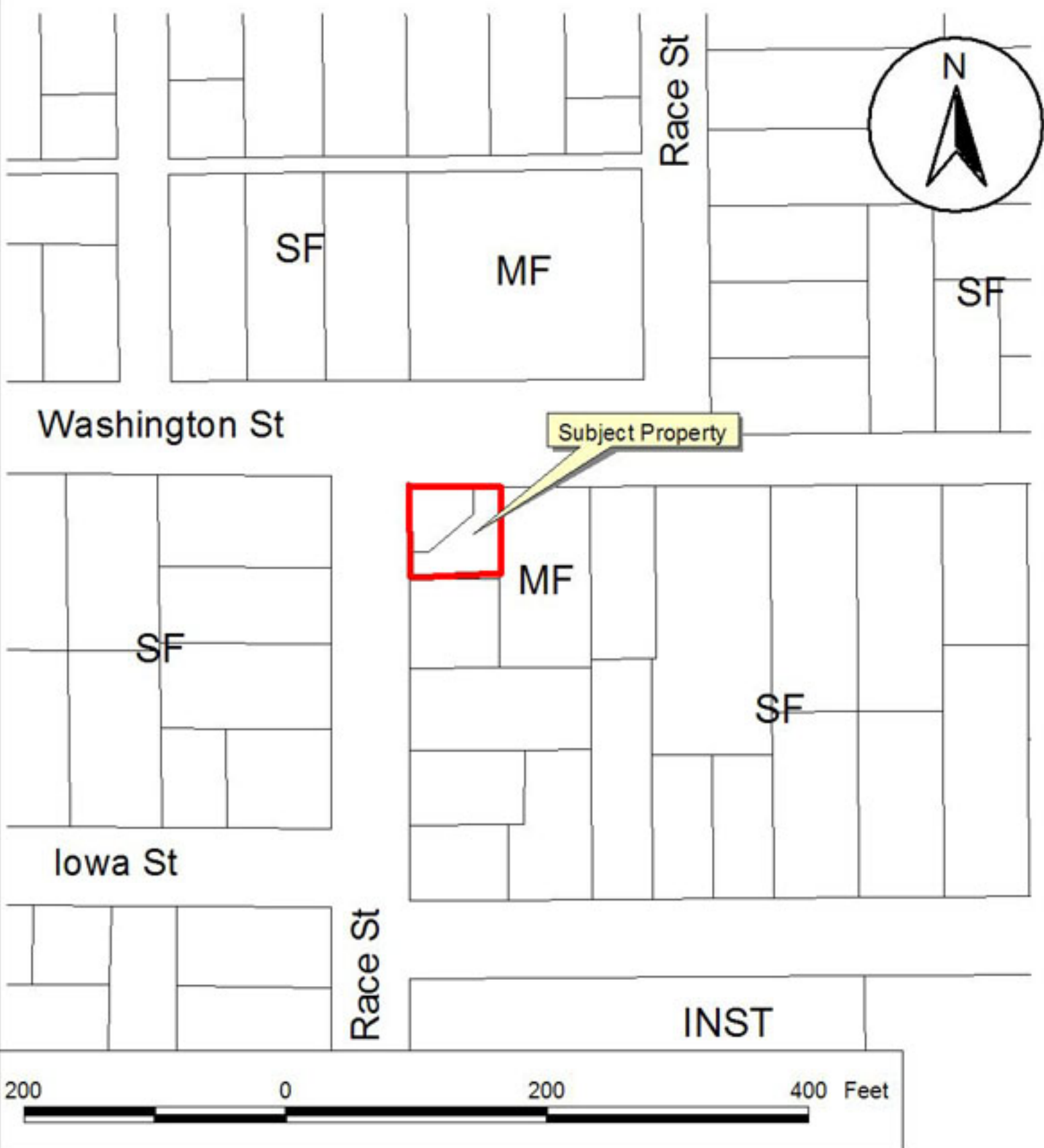


ZBA Case: ZBA-06-C-02  
Petitioner: Terry Davis Jr.  
Location: 117 W. Washington  
Zoning: B-1, Neighborhood Business  
Description: Allow a fast food restaurant in the B-1, Neighborhood Business Zoning District

- R2 - Single Family
- R3 - Single and Two-Family
- R5 - Medium High Density MFR
- B1 - Neighborhood Business
- CRE - Conservation-Recreation-Education



# Exhibit C: Existing Land Use Map



ZBA Case: ZBA-06-C-02  
Petitioner: Terry Davis Jr.  
Location: 117 W. Washington  
Zoning: B-1, Neighborhood Business  
Description: Allow a fast food restaurant in the B-1, Neighborhood Business Zoning District

SF - Single Family  
MF - Multi Family  
INST - Institutional

# Exhibit D: Future Land Use Map



ZBA Case: ZBA-06-C-02  
Petitioner: Terry Davis Jr.  
Location: 117 W. Washington  
Zoning: B-1, Neighborhood Business  
Description: Allow a fast food restaurant in the B-1, Neighborhood Business Zoning District

Prepared 06/02/2006 by Community Development Services - mhw

# Exhibit E: Aerial Map



ZBA Case: ZBA-06-C-02  
Petitioner: Terry Davis Jr.  
Location: 117 W. Washington  
Zoning: B-1, Neighborhood Business  
Description: Allow a fast food restaurant in the B-1,  
Neighborhood Business Zoning District

Prepared 06/02/2006 by Community Development Services - mhw