



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: Paul Lindahl, Planner I

DATE: November 9, 2006

SUBJECT: **ZBA Case # 2006-A-01:** an Appeal of an Interpretation of the Urbana Zoning Ordinance made by the Urbana Zoning Administrator disallowing an off -street parking area located within the required 15-foot front yard setback at 805 W. California Avenue in the R-4, Medium Density Multiple Family Residential Zoning District.

Introduction

This case is an Appeal to the Urbana Zoning Board of Appeals submitted by Rita and David Mennenga who own a duplex located at 805 W. California Street in the R-4 Medium Density Multiple Family Residential zoning district. The petitioners have constructed a concrete paved parking area in front of their duplex within the 15-foot front yard setback required in the R-4 district. The parking area is connected to the driveway on the east side of the property (see attached “before” and “after” photographs). The recently constructed parking area is located between the sidewalk and the front face of the building and is adjacent to but not in line with the existing driveway. The area is entirely within the 15-foot minimum front yard setback.

The Urbana Zoning Administrator has made the determination that the applicable provisions of Urbana Zoning Ordinance contained within Section VIII-4 “Location of Parking Facilities” prohibit the construction of parking areas in the required front yard setback for single and two-family residences in residential zoning districts where the parking surface is not a part of an access drive. The Zoning Administrator has further determined that the constructed parking area is not a part of the petitioners’ access drive and therefore is not allowed within the front yard. Based upon this interpretation, the Zoning Administrator has determined that the area may not be used for off-street parking and must either be returned to lawn or barricaded in such a manner so as to prohibit vehicle parking.

In response to the Zoning Administrator’s interpretation and enforcement effort, the petitioners have filed an appeal in accordance with Section XI-3.D. of the Zoning Ordinance.

Background

Description of the Site

The property is located in the West Urbana Neighborhood which is an established neighborhood developed in the early 20th century. The area is a desirable place to live in part because of its proximity to the University of Illinois campus. The subject property is zoned R-4, Medium Density Multiple Family residential, and is surrounded by a neighborhood consisting mostly of apartment buildings and single-family homes converted for student residences.

Zoning and Land Use Table

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

Location	Zoning	Existing Land Use	2005 Comprehensive Plan Future Land Use
Subject Property	R-4, Medium Density Multiple Family Residential	Duplex Residence	Medium Density Residential
North	R-4, Medium Density Multiple Family Residential	Rooming House	Medium Density Residential
South	R-7, University Residential	Dormitory	Medium Density Residential
East	R-4, Medium Density Multiple Family Residential	Dormitory parking lot	Medium Density Residential
West	R-4, Medium Density Multiple Family Residential	Apartment House	Medium Density Residential

The subject lot is rectangular in shape, as are most in the neighborhood. The lot is 55.7-feet wide by 78-feet long, with an area of 4,345 square feet. Under the current regulations, the subject property does not meet the 60 foot wide minimum standard or the minimum 6,000 square foot lot area for platting new lots.

In the R-4 Medium Density Multiple Family Residential zoning district the maximum allowed Floor Area Ratio (FAR) is 0.50. In the R-4 district the minimum permitted Open Space Ratio (OSR) is 0.35. The petitioner's paved area that is the subject of this appeal is 261 square feet (roughly 14.8-feet deep by 17.6-feet wide). The addition of the paved parking area has not resulted in a violation of the minimum OSR for this property.

Relevant Regulations

Zoning Ordinance regulations relevant to the permitted location of off-street parking in residential areas are contained within Section VIII-4, Location of Parking Facilities. Relevant sections are set forth below:

- A. *The Zoning Administrator or his/her duly authorized agent shall cause parking citations to be issued for violations of this Section.*

- D. *Except as otherwise allowed herein, off-street parking in a required front or side yard, in a required open space area, or on an unapproved parking surface is prohibited.*

- F. *Parking in a Required Yard is Prohibited Except as Follows:*
 - 1. *Access drives clearly serving single-family dwelling units, individual townhouses or duplex dwelling units may contain required parking for licensed passenger vehicles in the required front or side yard except that such area devoted to parking and access thereto shall not exceed 45% of the total lot width. Such spaces may be stacked.*

 - 2. *Accessory off-street parking may locate in the required side yard and rear yard, provided that the parking is located behind the rear face of the principal structure. In the case of a lot with no principal structure on which a principal use parking lot is to be located, parking may [encroach into] the rear [and] side yard.*

- J. *In order to provide single and two family residential uses an opportunity to establish an accessory parking area, two accessory, off-street parking spaces may be constructed for single and two family residences for passenger vehicles, recreational vehicles, watercraft and off-road vehicles. Said accessory parking must be in addition to and on other than the access drive. The surface for such a storage area shall consist of either pavement, bricks, concrete blocks, CA-10 gravel with curb or border of railroad ties or cement, or another surface acceptable to the Zoning Administrator. Said accessory parking area shall have approved access thereto. Dirt, woodchip, or sod surfaces are prohibited.*

Restrictions regarding Yards are contained within Section VI-5. Relevant sections include the following:

Section VI-5. Yards

D. Except as otherwise provided, required yards shall be kept unobstructed and open to the sky for their entire depth and area. No building, structure, or portion thereof, or mechanical equipment shall be erected in, occupy, or obstruct a required yard, except as follows (see Section VIII-4 for regulations regarding parking in required yards):

- 7. *Driveways, walks, fences, and underground structures, provided that any fences or other landscape improvements comply with “An Ordinance to Provide for a Visibility Triangle,” as adopted by the Urbana City Council on November 15, 1976, and as may be subsequently amended, and with all provisions of the Urbana City Code regarding fencing, and also provided that all parking and access thereto comply with Section VIII-4 of this Ordinance.*

- 8. *Concrete, asphaltic concrete, or other all-weather surfaces; However parking is allowed only in accordance with provisions of Article VIII of this Ordinance.*

- 12. *See Section VIII-4 for allowable parking uses in required yards.*

Relevant definitions contained within Section II-3 include the following:

Access Drive: An access for vehicles from a public right-of-way to a parking space, garage, dwelling, parking lot, or other structure. An access drive as regulated by this Article is located entirely in the zoning lot and no portion is within the right-of-way.

Driveway: A private roadway to a parking space, garage, dwelling, or other structure or to individual lots and located entirely within the right-of-way.

Yard, Front: A yard extending across the full width of a lot, and measured between the lot line abutting a street and the nearest line of a structure located on a lot

Basis for Appeal

The petitioners' basis for appeal is contained within the attached application. In summary, the petitioners believe that the parking area is allowed by Sections VIII-4.F.1; VIII-4.H.3; VIII-4.I and VIII-4.J. In addition, the petitioners' believe that they were given verbal approval by the City building inspector for the parking area. Other factors mentioned in discussion with the petitioners is a desire to provide off-street parking for their tenants, lack of sufficient parking for tenants, convenience for tenants to not have to move their cars when stacked in the driveway, and safety of tenants should they have to park on-street at a distance from the unit.

The petitioners believe that their parking area is explicitly allowed by Section VIII-4.F.1, which states:

“Access drives clearly serving single-family dwelling units, individual townhouses or duplex dwelling units may contain required parking for licensed passenger vehicles in the required front or side yard except that such area devoted to parking and access thereto shall not exceed 45% of the total lot width. Such spaces may be stacked.”

The petitioners believe that the access drive and adjacent car pad are consistent with this regulation. They have stated that the building inspector stated that the proposed car pad would be allowable as long as it complied with this section and did not result in more than the permitted 45%. They do not believe that the width of the driveway and car pad exceed 45% of the total lot width.

Zoning Administrator's Determination

In making the determination that the constructed “car pad” is not an allowable parking area, the Zoning Administrator also makes reference to Section VIII-4.F.1, which reads:

“Access drives clearly serving single-family dwelling units, individual townhouses or duplex dwelling units may contain required parking for licensed passenger vehicles in the required front or side yard except that such area devoted to parking and access thereto shall not exceed 45% of the total lot width. Such spaces may be stacked.”
(emphasis added)

The Zoning Administrator believes that the “car pad” is not a part of the access drive and therefore it may not be used for parking under Section VIII-4.F.1. An “access drive” is defined by the Urbana Zoning Ordinance as follows:

*“Access Drive: An access for vehicles **from** a public right-of-way **to** a parking space, garage, dwelling, parking lot, or other structure....” (emphasis added)*

The “car pad” area is constructed perpendicular to the access drive and does not function as a logical extension or continuation of the drive. The “car pad” can not be driven across and does not lead to a garage or other parking area. It is simply a paved area that is placed entirely within the front yard of the structure.

Section VIII-4.F.2 states the following:

“Accessory off-street parking may locate in the required side yard and rear yard, provided that the parking is located behind the rear face of the principal structure. In the case of a lot with no principal structure on which a principal use parking lot is to be located, parking may [encroach into] the rear [and] side yard.”

The Zoning Administrator asserts that Section VIII-4.F.1 allows parking in the required front yard **only when contained in the access drive**. And that because Section VIII-4.F.2, does not mention the front yard, it implicitly **excludes** accessory off-street parking within the front yard. Furthermore the phrase “...**behind the rear face of the principal structure**...” displays a clear intent to prevent parking in any part of a front yard (i.e., the area between the front of the building and the street) that is not in a driveway.

While the nearby neighborhood does contain examples of widened driveways containing accessory parking spaces, these are generally located behind the front face of the principal structure, as allowed under Section VIII-4.F.2. Parking within the front yard of corner lots, but behind the front face of the principal structure, are also found. It is supposed that these parking areas pre-date the current zoning regulations that require front yards along both frontages of a corner lot. City staff have not identified any parking areas that appear similar to that proposed by the Petitioner. It is possible that such parking areas exist within the City, however. It is further possible that any such areas may have been permitted under previous zoning regulations or were not subject to review and approval. The City of Urbana does not currently require a building permit for the construction of paved areas such as the one constructed. Even though a building permit is not required property owners should still seek City guidance with projects to ensure that they conform to applicable Zoning Ordinance regulations. The Urbana Building Official is considering requiring permits for the construction of all paved areas to avoid cases such as the current one.

The petitioners’ have stated that they believe that the parking area was permitted due to the reference to the 45% width restriction. They have stated that they believe that the combined width of their access drive and car pad does not exceed 45% of the lot width.

The Zoning Administrator interprets Section VIII-4.F.1 such that compliance with the 45% limitation does not remove the primary regulatory import of this section that said parking be contained within the access drive. Furthermore, even if the Zoning Administrator were to allow the use of the parking area, the measured dimension does slightly exceed the 45% limit, as

shown on the attached exhibit. The combined width of the access drive and car pad is 26 feet, 7 inches wide. This is 48% of the 55.7-foot width of the lot.

The petitioners' also make reference to the language contained within Section VIII-4.J which encourages the creation of additional off-street parking spaces where such "...*accessory parking must be in addition to and on other than the access drive.*" However, the Zoning Administrator believes that this provision does not remove or have precedence over the more specific requirements contained in other sections that parking within the front yard must be contained within the access drive.

Finally, the petitioners believe that they were granted verbal permission to construct the parking area based upon their discussions with the building inspector. The Zoning Administrator has no power to waive or vary zoning regulations based upon informal communications that may take place between the public and responding staff. The building inspector was correct in advising the petitioner that their proposal would be accepted if it complied with Section VIII-4.F.1. However, in the absence of a drawn site plan it is impossible for City staff to accurately analyze such a proposal for its compliance. The building inspector did refer the petitioner to planning staff for further guidance. Planning staff clearly conveyed the need to submit a site plan before a determination as to compliance could be made. The petitioner failed to submit such a site plan or to obtain official approval from the City prior to constructing the car pad.

From discussions with the petitioner, the Zoning Administrator believes that the petitioner did not knowingly create a non-compliant situation and that sufficient confusion existed in the communications between the various parties and in the ordinance language itself to cause the situation to have occurred without any intent on the petitioners' part to circumvent regulations.

Summary of Findings

- 1) The Petitioners have constructed an accessory parking within the front yard of their building at 805 W. California in order to provide additional parking for the tenants residing at this location.
- 2) The Petitioners believe that their constructed parking area is compliant with the provisions of the Zoning Ordinance.
- 3) The Petitioners believe that they were granted approval by the City to construct the parking area.
- 4) The Zoning Administrator has determined that the Zoning Ordinance states off-street parking for one and two family residences is only allowed in the required front yard when contained within the access drive.
- 5) The Zoning Administrator has determined that Zoning Ordinance limitations on the width of access drives and parking contained within it, and any encouragement to provide additional accessory parking do not remove or have precedence over the more specific restriction noted in item 4 above.
- 6) The Zoning Administrator believes that the petitioners' paved area does not fit the common sense definition or function of an access drive.

- 7) The Zoning Administrator believes that owing to confusion in communication and lack of clarity in the Zoning Ordinance, the situation appears to have resulted without any intent on the part of the petitioner to circumvent regulations or to knowingly create a non-conformity.

Options

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

- a. The Zoning Board of Appeals may uphold the decision of the Zoning Administrator;
or
- b. The Zoning Board of Appeals may overturn the decision of the Zoning Administrator.

Should the Zoning Board uphold the Zoning Administrator's decision, then the paved parking area shall either be removed or barricaded so that it is not accessible for parking.

Should the Zoning Board overturn the Zoning Administrator's decision, modification to the parking area or granting of a variance would be necessary to ensure compliance with the 45% restriction on the combined width of the access drive and parking area.

Recommendation

Staff recommends that the Zoning Board of Appeals conduct a public hearing upon this case and make a determination based upon the evidence presented at the hearing, in the case materials presented herein, and in the appeals application.

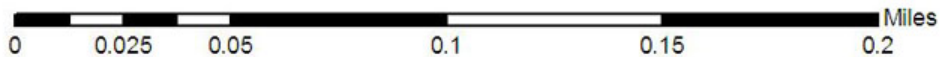
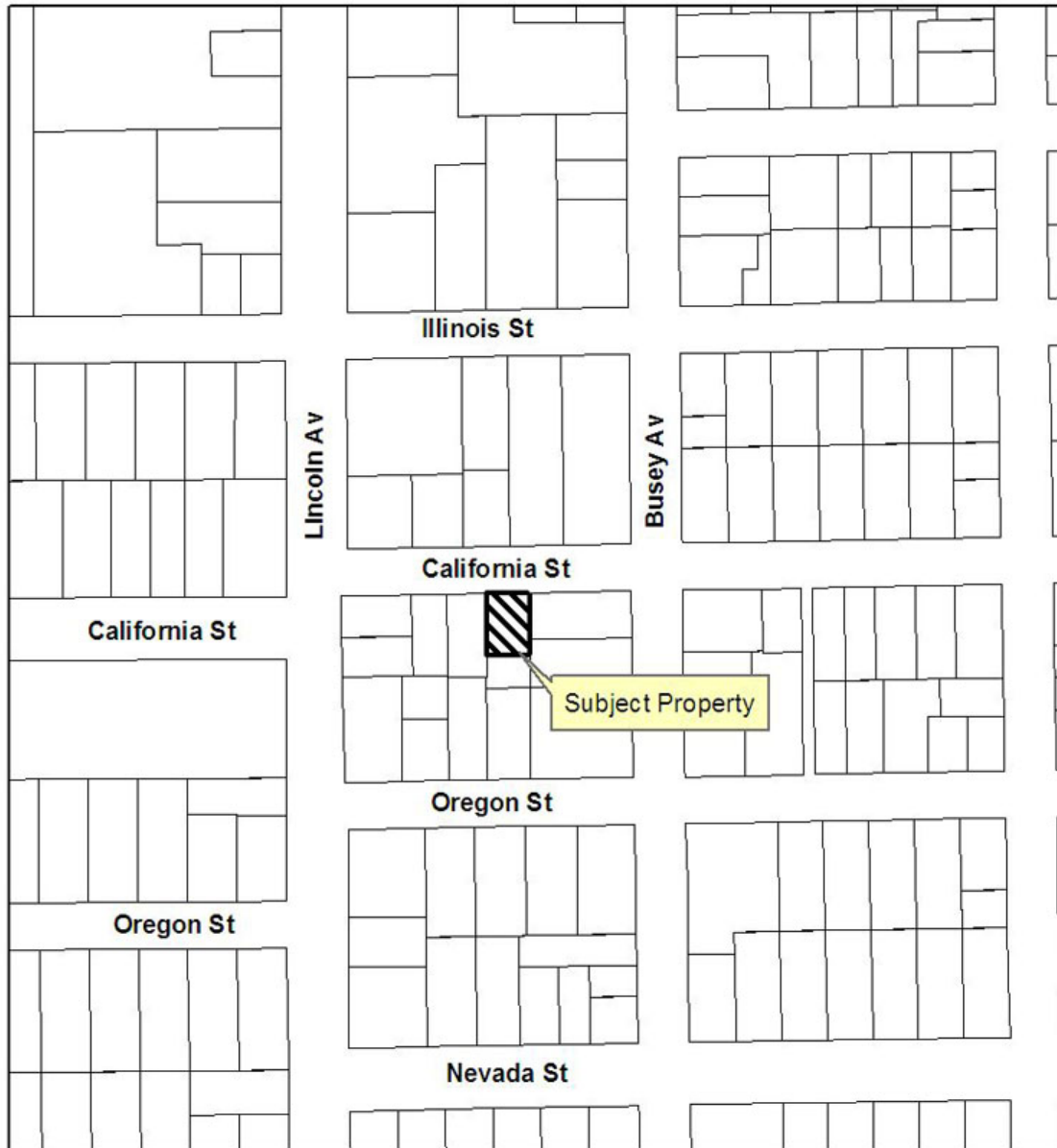
In reviewing the case The Zoning Board of Appeals may recommend specific clarifications or amendments to the Zoning Ordinance for further consideration by the City.

Attachments: Exhibit A: Location Map
 Exhibit B: Zoning Map
 Exhibit C: Aerial Photo with Existing Land Use
 Exhibit D: Future Land Use Map
 Exhibit E: Petition for Appeal
 Exhibit F: Site Plan `
 Exhibit G: Site Photos
 Exhibit H: Neighbor Correspondence

cc: Rita and David Mennenga
 2370 County Road 1800 East
 Urbana, IL 61802-9754

Location Map

EXHIBIT "A"



Case: ZBA - 2006-A-01

Subject: Appeal of an Interpretation of the Urbana Zoning Ordinance made by the Urbana Zoning Administrator

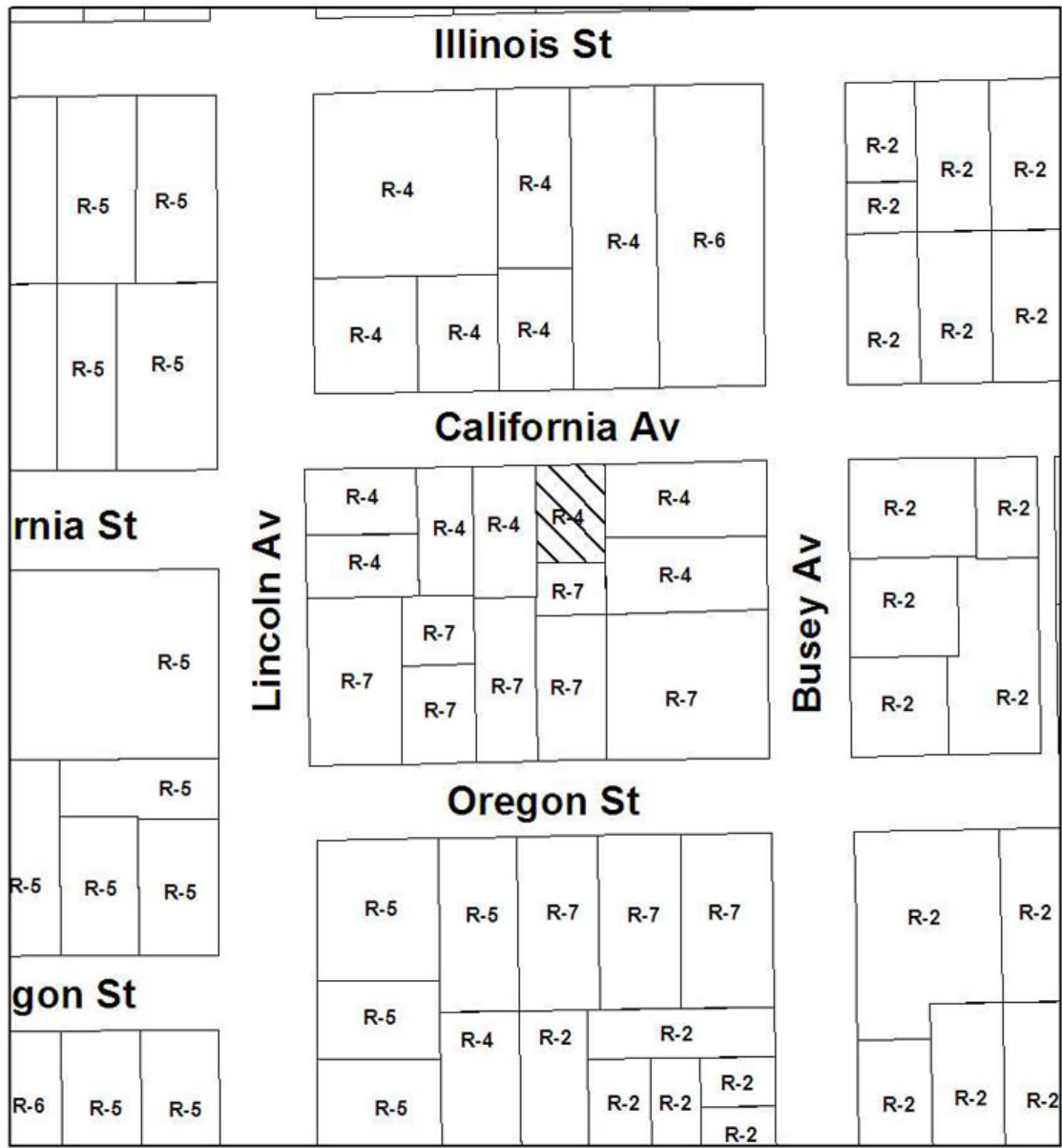
Petitioners: Rita and David Mennenga

Location: 805 W. California Ave

Prepared 10/30/06 by Community Development Services - pal

Zoning Map

EXHIBIT "B"



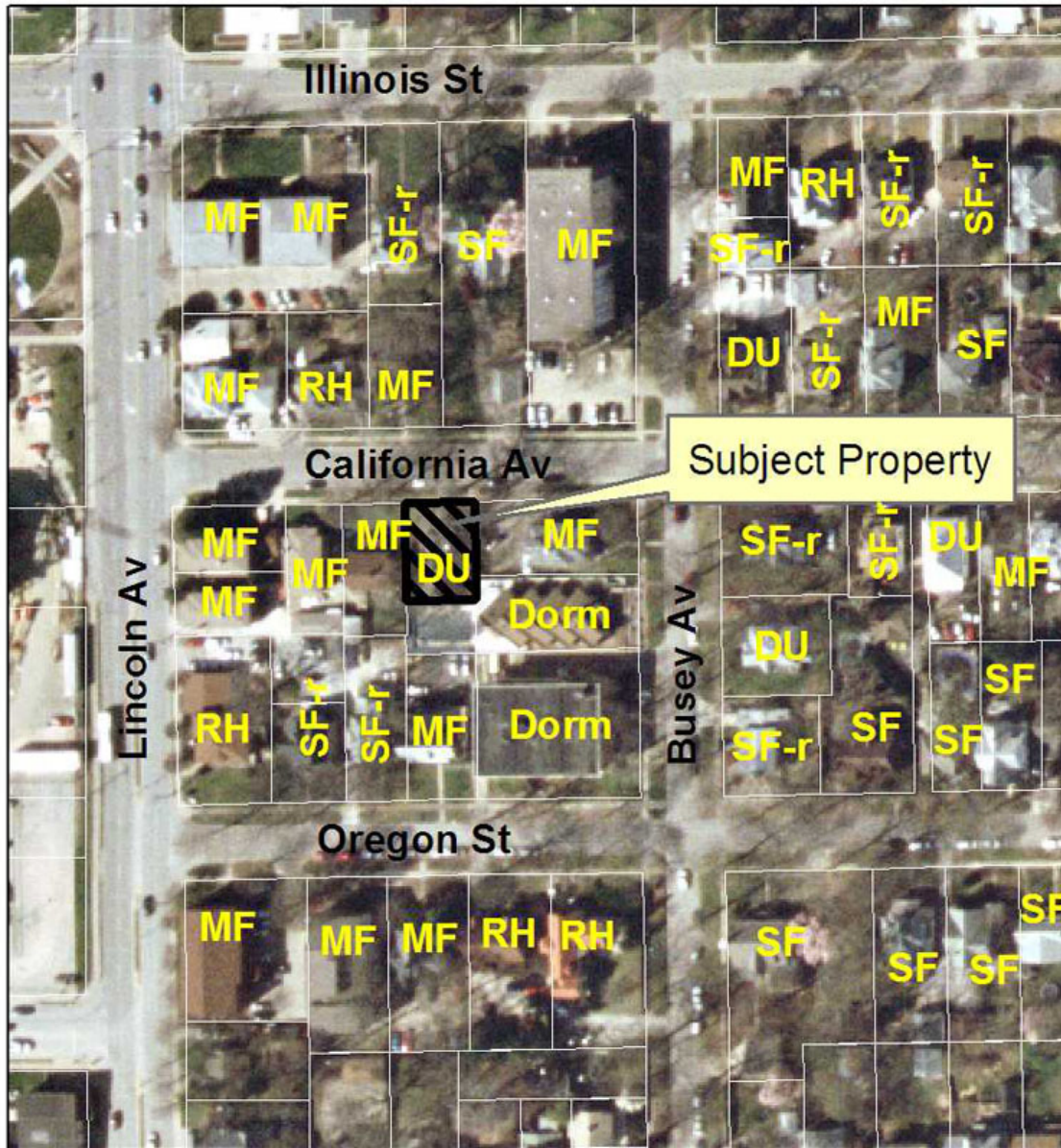
Case: ZBA - 2006-A-01
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Petitioners: Rita and David Mennenga
Location: 805 W. California Ave.

- R-2, Single and Two-Family Residential
- R-4, Medium Density Multiple Family Residential
- R-5, Medium High Density Multiple Family Residential
- R-6, High Density Multiple Family Residential

Subject Property

Existing Land Use w Aerial Photo

EXHIBIT "C"



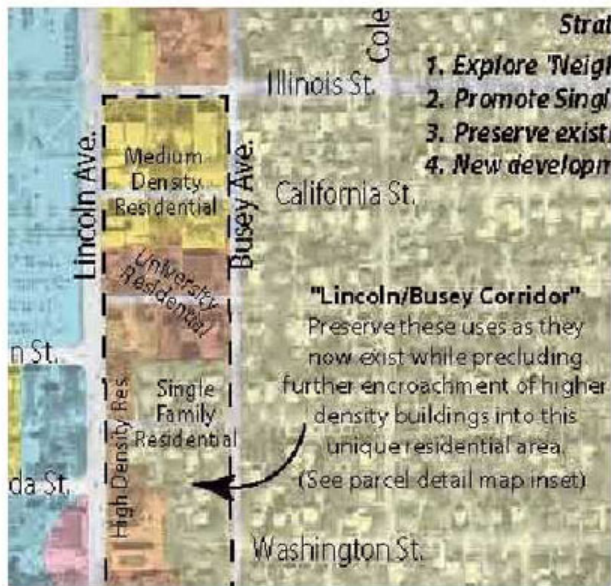
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Location: 805 W. California Ave

- SF - Single Family - owner occupied
- SF-r - Single Family - rental
- DU - Duplex
- MF - Multi Family
- RH - Rooming House
- Dom - Certified Housing

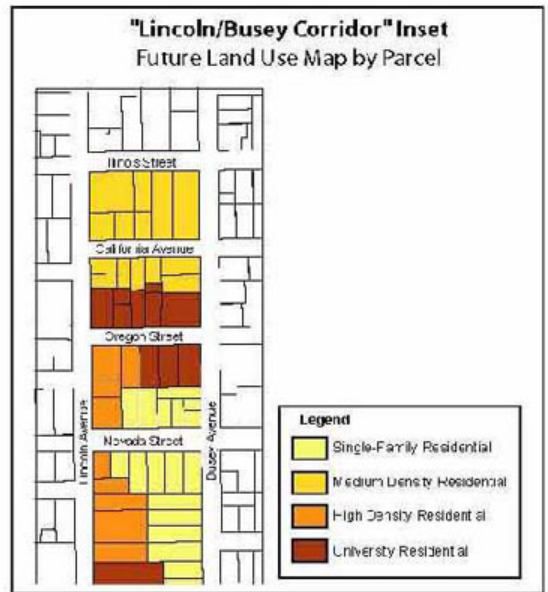
Future Land Use Map

EXHIBIT "D"

Source: Comprehensive Plan Future Land Use
Map # 8, p. 79 - Detailed Section



1. Explore 'Neigh'
2. Promote Singl
3. Preserve exist
4. New developm

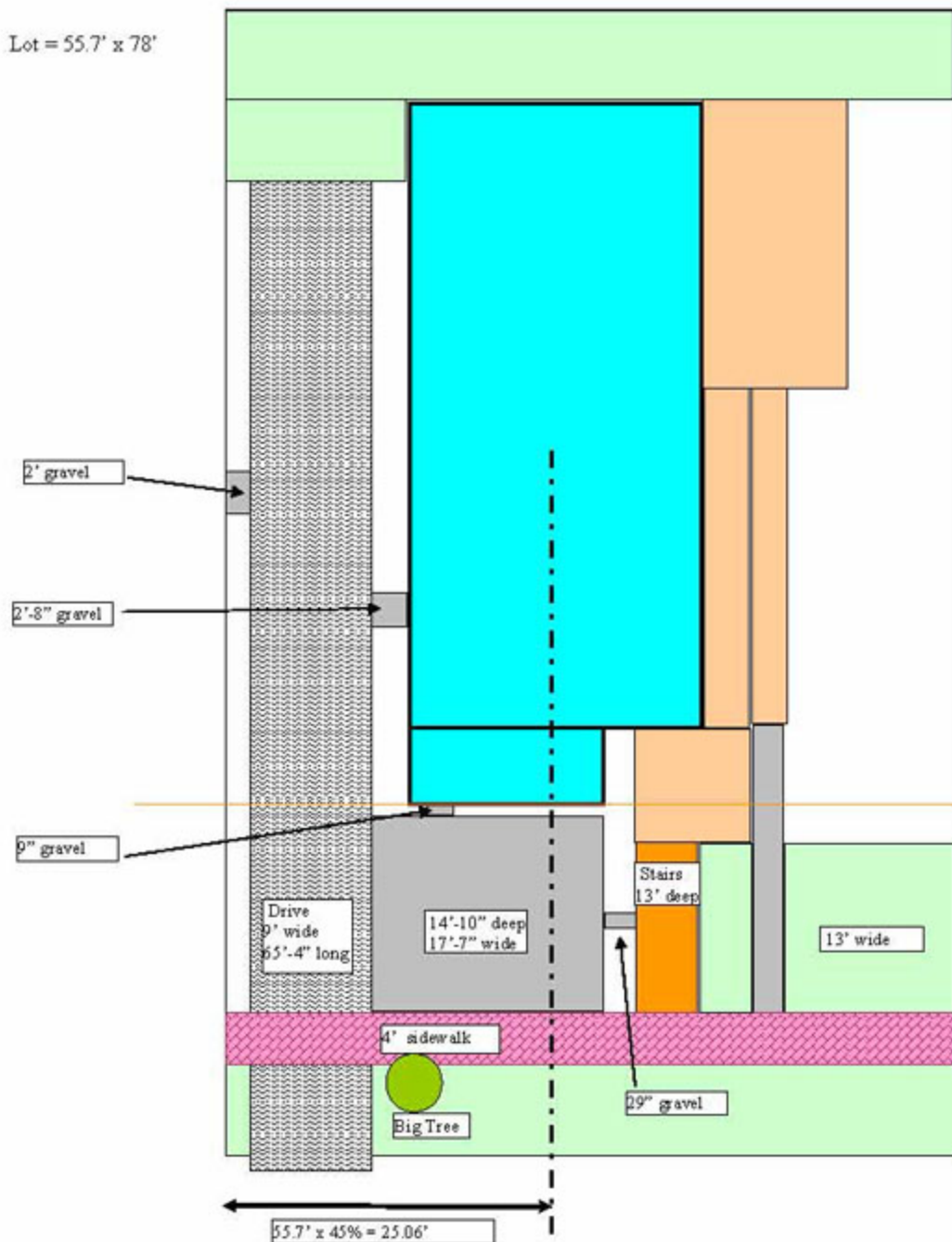


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Petitioners: Rita and David Mennenga
Location: 805 W. California Ave

Site Diagram - 805 W. California

EXHIBIT "F"

Lot = 55.7' x 78'





1



2

