



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning and Economic Development Division*

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

**TO:** Bruce K. Walden, CAO

**FROM:** April D. Getchius, AICP, Director

**DATE:** March 6, 2000

**SUBJECT:** Case ZBA-00-MAJ-1: A request by Rob Smith for a Major Variance at 601 E. University Street. The site is occupied by Commercial Flooring.

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**Introduction**

Rob Smith has submitted an application for a Major Variance at 601 E. University Avenue. The site, known as Commercial Flooring, is located on the south side of University Avenue and two lots east of Maple Street. Commercial Flooring is currently building an addition to its existing structure on the west side of the lot and is requesting the variance to allow a reduction of the required side yard setback in the B-3 zone from ten feet to five feet. Construction of the addition has already commenced with the foundation being set. Since the addition was being constructed in violation of the setback requirements of the Urbana Zoning Ordinance, the owner was instructed to discontinue work until a variance request was considered by the Zoning Board of Appeals.



Without access to an accurate and current survey of the property, the site designer used aerial photos and an existing deed to determine the location of the existing structure on the lot. Once that location was determined, a layout was produced which placed the addition outside the required sideyard by two feet. Once the contractor started construction of the addition, it was soon noticed that the foundation was seven feet off and now inside the required sideyard. At that point, the owner stopped construction and sought to rectify the situation through the variance process. Without a formal staked survey, the estimate of where the existing structure was located turned out to be inaccurate. The owner is now in the process of having a professional survey completed but

it is a difficult task since records and deeds are vague in describing the property. The closest complete survey from which surveyors can tie down monuments is four parcels away.

## **Background**

### **Description of the Site**

Located on the south side of University Avenue two parcels east of Maple Street, the site currently contains the existing Commercial Flooring structure which is approximately 4,000 square feet in area.

The building sits in the center of the lot with parking provided in the front. The neighboring use to the west of where the addition is proposed is a manual car wash. The bays of the car wash face the site and cars currently pull out of the bays and dry off in a sheltered area directly along the property line.

The site does not abut any residential zones or land uses. The area can be described in general as containing industrial and intensive commercial uses. Further, University Avenue is a busy, wide arterial street at this point.

## **Findings**

In order to review a potential variance, Section XI-3 of the Urbana Zoning Ordinance requires the ZBA and City Council to make findings based on variance criteria. At the February 17, 2000 meeting, the ZBA cited the following findings for their recommendation for approval of the requested variance:

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

In this case, there are special practical difficulties due to the fact that the applicant has designed and begun construction of an addition which would require a reduction of the side yard to five feet in order to avoid dismantling the foundation work. The current size of the parcel would not be able to contain the existing structure along with the proposed addition and still meet the requirements of the Urbana Zoning Ordinance. Further, the location of the existing building in the center of the lot does not allow the flexibility to locate an addition a the desired size in a location that would meet the setback requirements.

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 requested variance does serve as a special privilege because it allows the construction of an addition that was constructed in violation of setback requirements, albeit inadvertently. The lot does not have the necessary space on either the west side or the east side of the lot to accommodate the proposed addition.

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

Although the foundation of the addition has been started without an approved variance, the applicant indicates that the placement of the addition over the required side yard setback was not intentional and did not constitute a deliberate circumvention of the regulations. The applicant simply indicates that there was an error in the initial location of the existing building on the site plan and that once it was detected, efforts have been made in the form of this variance request to bring the property back into compliance. The site plan shows the accurate sideyard setback requirements but simply had the existing structure in the wrong location.

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

If the variance is granted, there would be no negative effect to the character of the neighborhood. The surrounding land uses consist of businesses and industry. There would be no impact to any residential areas or other sensitive land uses.

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

The adjacent property to the west of the site is a manual car wash which is actively used. The portion of the car wash adjacent to the site is the area where customers exit the bays and dry off their cars. There are no structures within approximately fifteen feet of the proposed addition. The proposed variance would have little impact, if any on this use. Further, there is an existing tree buffer along the property line supplied by the owner of the car wash site. The applicant has indicated that addition landscaping will be provided along the side of the addition as well.

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

The applicant is not requesting the minimum deviation of the requirements.

## **Options**

The City Council has the following options this case:

- a. The Council may deny the variance request. If the Council elects to do so, they should articulate findings supporting its denial; or
- b. The Council may grant the variance as requested based on the findings outlined in this memo; or

- c. 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 articulated herein, they should articulate its findings in support of the approval and any conditions imposed.

## **Recommendation**

Based on the findings outlined herein, the Zoning Board of Appeals voted 7-0 to forward the variance request to the City Council with a recommendation for approval.

As stated to the Zoning Board of Appeals in the February 17, 2000 meeting, staff is concerned of the precedent about approving variance cases subsequent to the commencement of construction. Nevertheless, in this case, the alternative would be to tear out the foundation and start the process again which would be extreme when it appears that the requested variance would have little, if any, impact on the surrounding neighborhood and will not affect the general safety and welfare of the public.

Further, the construction within the required side yard setback was unintentional on the applicant's part and was the result of a surveying error of the existing structure at the beginning of the project.

Therefore, staff concurs with the ZBA and recommends that City Council **GRANT** the variance as requested.

c: Rob Smith, Applicant

Prepared by:

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