



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Bruce Walden, Chief Administrative Officer

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

DATE: November 21, 2003

SUBJECT: (Request to reduce the side yard setback from 10-feet to zero feet at 1104 N. Cunningham Avenue, in Urbana's B-3, General Business Zoning District / Case No. ZBA 03-MAJ-9)

Introduction

El Toro Restaurant requests a major variance to reduce the side yard setback in order to enclose a 400-square foot outdoor patio seating area. The required side yard setback is an additional 10-feet west and the request is to reduce it to zero. The proposed enclosure would extend the existing building wall 10-feet along the southern property line. The request is for a 100% reduction of the required side yard setback to allow for the patio enclosure. The request is classified as a major variance of the Urbana Zoning Ordinance and requires City Council approval.



Discussion

The petitioners currently utilize the unenclosed patio area to provide additional seating throughout the warmer months; because of the success of the restaurant they wish to expand their seating area for the entire year. They would like to enclose the patio seating area by extending the building 10-feet west along the southern property line, and extend the existing zero lot line setback. The patio enclosure would be built according to the submitted site plan. The west wall would contain four bays windows that could be opened during the summer.

El Toro Restaurant building lies upon the southern property line. The adjacent business to the south is the Manor Motel. Parking areas for both the restaurant and the motel are completely separate. The proposed construction should meet applicable building safety codes relating to fire rating. The proposal should not negatively affect the safety of any guests at the motel as it lies approximately 60 feet south of El Toro Restaurant. Although the south wall of the restaurant building directly abuts the Manor Motel parking access area, the distance should help alleviate any negative effects.

At the November 19, 2003 Zoning Board of Appeals meeting there was no public comment on the request. The Zoning Board of Appeals by unanimous vote of (5-0) voted to recommended approval of the variance request to the City Council.

Variance Criteria

In order to review a potential variance, Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals and City Council to make findings based on variance criteria. At the September 17, 2003 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?*

There practical difficulty relates to the current location of the restaurant building on the lot line and the older narrow lot. The restaurant building was built prior to the current ordinance. The petitioners would not be able to enclose the patio with their current design without the 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 requested variance would not serve as a special privilege. Other variances have been granted in the City for minor additions to older properties that required setback reductions due to legally non-conforming situations.

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

The petitioners are aware of the requirements of the Zoning Ordinance and have applied for a variance prior to construction.

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

The design is compatible with the existing building. The request for a zero lot line setback should not negatively affect the character of the commercial corridor or the general neighborhood.

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

The variance should not cause a nuisance to adjacent properties.

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

The petitioner is requesting the variance to construct the patio enclosure to provide much needed seating in a manner that is visually pleasing from Cunningham Avenue. Because of the narrow lot, the petitioners would be forced to remove required parking spaces in order to build an addition within the confines of the current side yard regulations.

Options

The City Council has the following options this case:

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

Recommendation

Based on the findings outlined herein, the Zoning Board of Appeals voted 5-0 to forward the variance request to the Urbana City Council with a **recommendation for approval to allow the petitioners to reduce the side yard setback from 10 ft. to zero feet at 1104 N. Cunningham Avenue**, Staff concurs with the ZBA and recommends that City Council **GRANT** the variance as requested.

Attachments: Proposed Ordinance
 Draft Minutes of November 19, 2003 ZBA Public Hearing
 Exhibit A: Location Map
 Property Owner List within 250 Sq.Ft.
 Photo Exhibit
 Site Plan with Elevations (not available in digital format)

Prepared by:

Michaela Bell, Senior Planner

c: Martin Fuentes, 1104 N. Cunningham Ave, Urbana, IL 61801
 Gaylord Swisher, 2310 Slayback, Urbana, IL 61801

ORDINANCE NO. 2003-12-137

AN ORDINANCE APPROVING A MAJOR VARIANCE

(Reduction of the side yard setback from 10-feet to zero feet in Urbana's B-3, General Business Zoning District / 1104 N. Cunningham Avenue, Case No. ZBA-03-MAJ-09)

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

WHEREAS, the petitioner, Martin Fuentes, has submitted a petition requesting a major variance to allow reduction of the side yard setback from 10-feet to zero feet. The request is to allow the enclosure of 400-square foot patio area at El Toro Restaurante in Urbana's B-3, General Business Zoning District; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA 03-MAJ-9; 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 about the proposed major variance on November 19, 2003 and the ZBA by a unanimous vote (5-0) of its members recommended approval of the requested variance, to the City Council; and

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

WHEREAS, the City Council agrees with the following findings of fact adopted by the ZBA in support of its recommendation to approve the application for a major variance as requested:

1. There practical difficulty relates to the current location of the restaurant building on the lot line and the older narrow lot. The restaurant building was built prior to the current ordinance. The petitioners would not be able to enclose the patio with their current design without the variance.
2. The requested variance would not serve as a special privilege. Other variances have been granted in the City for minor additions to older properties that required setback reductions due to legally non-conforming situations.
3. The petitioners are aware of the requirements of the Zoning Ordinance and have applied for a variance prior to construction.
4. The design is compatible with the existing building. The request for a zero lot line setback should not negatively affect the character of the commercial corridor or the general neighborhood.
5. The variance should not cause a nuisance to adjacent properties.

6. The petitioner is requesting the variance to construct the patio enclosure to provide much needed seating in a manner that is visually pleasing from Cunningham Avenue. Because of the narrow lot, the petitioners would be forced to remove required parking spaces in order to build an addition within the confines of the current side yard regulations.

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

The major variance request by Martin Fuentes, in Case #ZBA 03-MAJ-9 is hereby approved to allow reduction of the side yard setback from 10-feet to zero feet at 1104 North Cunningham Avenue in Urbana's B-3, General Business Zoning District as approved by the Zoning Board of Appeals.

The major variance described above shall only apply to the property located at 1104 North Cunningham Avenue, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION: Lot 1 of Gorski's Subdivision, Urbana, Illinois

PERMANENT PARCEL #: 91-21-09-151-010

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 _____, 2003.

PASSED by the City Council this _____ day of _____, 2003.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2003.

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

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

I certify that on the ____ day of _____, 2003, the corporate authorities of the City of Urbana passed and approved Ordinance No.

_____, entitled "AN ORDINANCE APPROVING A MAJOR VARIANCE

(Reduction of the side yard setback from 10-feet to zero feet in Urbana's B-3, General Business Zoning District / 1104 N. Cunningham Avenue, Case No.

ZBA-03-MAJ-09) 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 _____, 2003, and continuing for at least

ten (10) days thereafter. Copies of such Ordinance were also available for

public inspection upon request at the Office of the City Clerk.

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

DATE: November 19, 2003
TIME: 7:30 p.m.
PLACE: Urbana City Building
400 S. Vine Street
Urbana, IL 61801

DRAFT

MEMBERS PRESENT: Paul Armstrong, Herb Corten, Anna Merritt, Joe Schoonover, Harvey Welch
MEMBERS ABSENT: Darwin Fields, Harvey Welch
STAFF PRESENT: Michaela Bell, Senior Planner; Teri Andel, Secretary
OTHERS PRESENT: B. H. Cho, Martin Fuentes, Tim Macholl

1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

The meeting was called to order at 7:32 p.m. The roll call was taken, and a quorum was declared present.

5. NEW PUBLIC HEARINGS

ZBA-03-MAJ-09: Request to reduce the side yard setback from 10 feet to zero feet at 1104 North Cunningham Avenue, in Urbana's B-3, General Business Zoning District.

Michaela Bell, Senior Planner, introduced the case to the Zoning Board of Appeals. She explained that the El Toro Restaurant was requesting the major variance to be able to enclose a 400-square foot outdoor patio seating area. She gave a brief description of the site. She reviewed the Variance Criteria from Section XI-3 of the Urbana Zoning Ordinance as they pertained to this case. Ms. Bell read the options of the Zoning Board of Appeals. Staff recommendation was as follows:

Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Urbana Zoning Board of Appeals recommend approval of the variance to the Urbana City Council as requested.

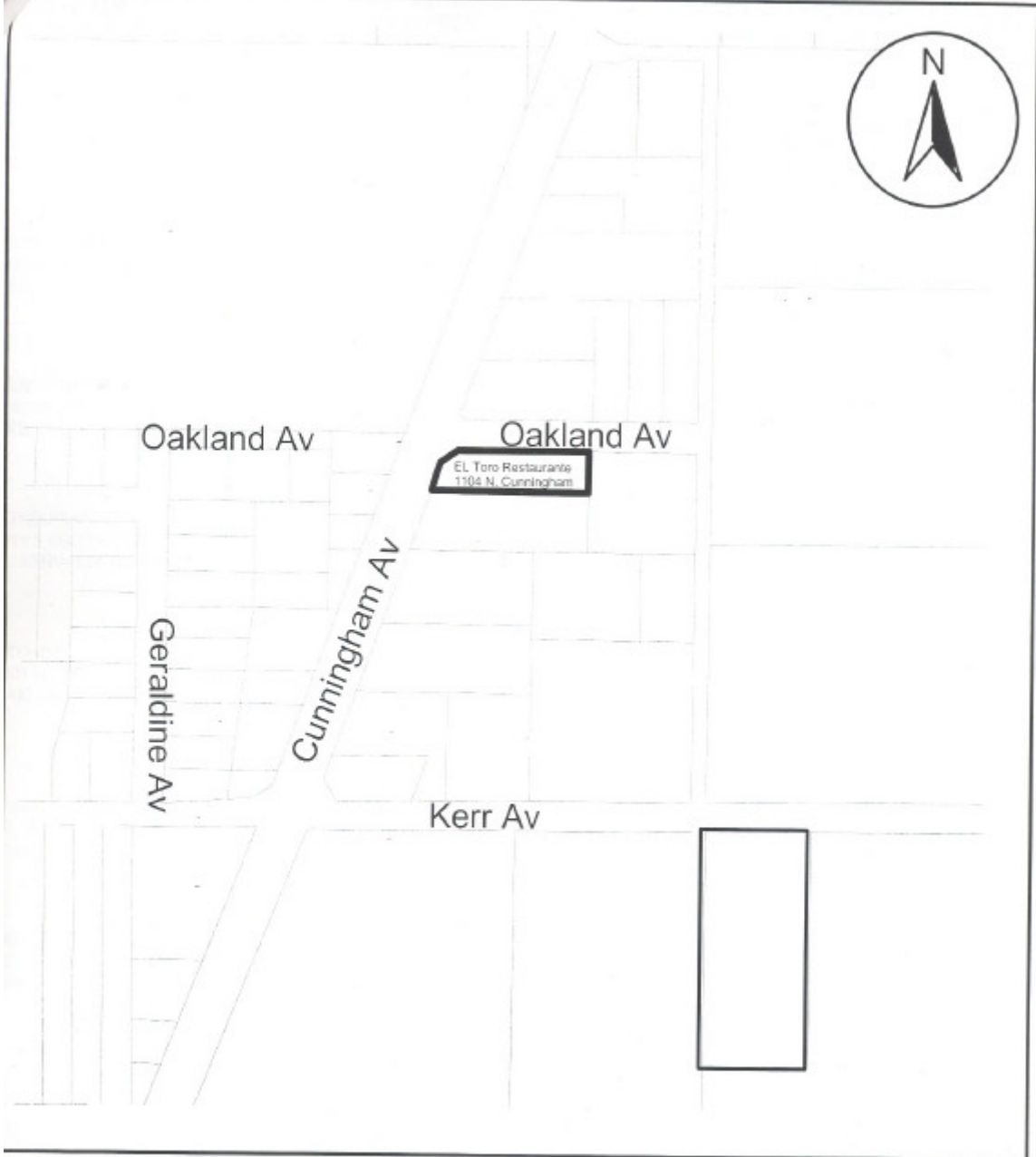
Mr. Schoonover questioned if the enclosure would affect the existing sign? Ms. Bell said that it should not affect the existing wall signage. The patio enclosure roof will meet the building under the current overhang.

Mr. Corten moved that the Zoning Board of Appeals recommend approval of this case to the City Council with no additional requirements. Mr. Welch seconded the motion. The roll call was as follows:

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

The motion was passed by unanimous vote.

Exhibit "A": Location Map



ZBA-03-MAJ-9 Major Variance
Reduction in Side Yard setback
To a Zero Set Back
1104 N. Cunningham
Petitioner: El Toro Restaurant



TOWN<& COUNTRY APARTMENTS
1032 KERR AVE
URBANA, IL 61802

BNG<MANAGEMENT
55 W MONROE STE 990
CHICAGO, IL 60603

BENDER<THOMAS D
1206 N CUNNINGHAM
URBANA, IL 61802

BENDER<DONALD H.
1113 BRAD DR
URBANA, IL 61801

CHO<BYUNG HUI
3909 CLUBHOUSE DR
CHAMPAIGN, IL 61821

OAKLAND<AVE STORAGE
800 OAKLAND AVE
URBANA, IL 61802

JOHNSON<ANNICE D
503 E OAKLAND
URBANA, IL 61801

FOTZLER<NEIL
1010 S SECOND
CHAMPAIGN, IL 61820

GULLIFORD<RUSS E
1009 N BOYDEN ST
URBANA, IL 61802

NAIK<BHUPENDRA A
1102 CUNNINGHAM
URBANA, IL 61802

SCROGUM<KAREN L.
1104 GERALDINE
URBANA, IL 61801

BRODERICK<PAULINE
1009 N CUNNINGHAM
URBANA, IL 61801

FOTZLER<NEIL
1010 S SECOND ST
CHAMPAIGN, IL 61820

DALTON<REITA
1102 N GERALDINE AVE
URBANA, IL 61801

GULLIFORD<RUSS E
1009 N BOYDEN ST
URBANA, IL 61802

OTG<INC
3003 BUTTERFIELD
OAK BROOK, IL 60523

MARSHALL<JOHN R
1309 CARROLL AVE
URBANA, IL 61801

C-U<INDEPENDENCE INC
1304 W BRADLEY
CHAMPAIGN, IL 61821

CURRENT RESIDENT
610 E. Oakland Avenue
Urbana, Il 61801

CURRENT RESIDENT
608 E. Oakland Avenue
Urbana, Il 61801

CURRENT RESIDENT
606 E. Oakland Avenue
Urbana, Il 61801

CURRENT RESIDENT
1105 N. Cunningham
Urbana, Il 61801

CURRENT RESIDENT
1103 N. Cunningham
Urbana, Il 61801

CURRENT RESIDENT
1009 N. Cunningham
Unit B
Urbana, Il 61801

CURRENT RESIDENT
1014 N. Geraldine Avenue
Urbana, Il 61801

CURRENT RESIDENT
1009 N. Cunningham
Unit A
Urbana, Il 61801

Business Manager
1108 N. Cunningham
Urbana, Il 61801

Business Manager
1106 N. Cunningham
Urbana, Il 61801

Business Manager
1104 N. Cunningham
Urbana, Il 61801

Business Manager
609 E. Oakland Ave
Urbana, Il 61801

Business Manager
1101 N. Cunningham
Urbana, IL 61801

Business Manager
1010 N. Cunningham
Urbana, IL 61801

Business Manager
1008 N. Cunningham
Urbana, IL 61801

Business Manager
610 E. Kerr Ave
Urbana, IL 61801

Exhibit H: Photos of Site
ZBA-03-C-09
El Toro Restaurante
1104 N. Cunningham Ave.



Patio Area - Looking North



Patio Area-Looking South



Subject Property Facing East



Southern Property Line-Facing East