



## 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, City Planner, Director

**DATE:** November 4, 2005

**SUBJECT:** Plan Case No. 1960-SU-05, Request by Happy Brothers Nine Corporation to allow retail liquor sales at a grocery store within the B-1 Zoning District.

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### **Introduction**

The Happy Brothers Nine Corporation has submitted a request to allow retail liquor sales at a grocery store proposed to be located at 907 W. Fairview Avenue in the B-1, Neighborhood Business Zoning District. While liquor is commonly defined as beer, wine and/or hard alcohol, the petitioners have agreed to sell only beer and wine if the special use request is granted. The grocery store will be located in the building previously occupied by Marino Engineering, which has moved to the Philo Road area. The building is approximately 2,350 square feet in area. The petitioners will modify the building to accommodate the grocery store and proposed liquor sales, including the addition of coolers, sinks, other sanitary systems, and storage space for products. The special use request is to allow the retail liquor sales component alone, as grocery stores in the B-1 District are permitted by right if under 3,500 square feet. Retail liquor sales require a special use permit in the B-1 District.

The site adjoins the Family Video store to the east. A cross-access easement across the front access drive of the Family Video parking lot was granted by Marino Engineering. The petitioners have expressed their desire to maintain this easement for future access to Lincoln Avenue. Access to the site is also provided via Fairview Avenue, with two curb cuts, one of which is shared with Family Video. Approximately ten parking spaces are currently provided on the site in conformance with the requirements of the Urbana Zoning Ordinance.

### **Background**

The corner of Fairview and Lincoln has historically been used as a commercial area serving the King Park neighborhood. The 1982 Urbana Comprehensive Plan identified the future land use for the site as commercial. The 1989 King Park Plan also identified the site as suitable for commercial uses. During the public workshops for the recent comprehensive planning effort, many neighbors expressed their

desire to have convenient grocery or other types of stores that could serve daily needs for the neighborhood. Based on this input, the 2005 Urbana Comprehensive Plan identified the site for community business, and identified possible uses to serve the University population and immediate neighborhood.

### **Grocery Store Zoning Interpretation**

In 2004, the City revised the allowable uses and regulations in the B-1 District. Under the new regulations, a grocery store is permitted by right if the building is less than 3,500 square feet and by special use if more than 3,500 square feet in area; and a convenience store requires a special use permit. As noted above, retail liquor sales in the B-1 district also require a special use permit.

City staff had to determine if the petitioner's proposal was for a grocery or a convenience store. The Zoning Ordinance does not define either of these terms. Definitions published by the American Planning Association indicate that the typical distinction between a grocery and convenience store is based on store size. Grocery stores are often defined as being at least 10,000 square feet in area and offering a more diverse product line than a convenience store. However, under the recently amended regulations for the B-1 district, the Urbana Zoning Ordinance allows grocery stores by right if they are less than 3,500 square feet. The rationale behind this regulation was to encourage neighborhood grocery stores, such as the Sunshine Grocery, in the B-1 District. Thus, within the confines of the Urbana Zoning Ordinance, the logical distinction between grocery and convenience is product line. A list of products submitted by the petitioner (see Exhibit F) indicates that the store will carry grocery items such as milk, eggs, dry goods, fresh vegetables and frozen foods. According to the petitioner, groceries will constitute 75% of the store's product line. The remainder of the product line will include cigarettes, snacks, beer and wine. Based on this product line, the Zoning Administrator made the determination that there was enough diversity in the product line to call the business a grocery store.

The Zoning Administrator also determined that the proposed alcohol sales would require a special use permit under the provisions of the Table of Uses of the Zoning Ordinance which requires "retail liquor sales" in the B-1 district to obtain a special use permit. The Zoning Administrator noted that the only other instances of alcohol sales in the B-1 District are the two gas stations on Green Street. In these cases, liquor sales are a grandfathered use since the two gas stations were constructed prior to the properties being zoned B-1 in 1991 as part of the Downtown to Campus Plan.

If this special use request is denied, the grocery store can still be established, but will not be permitted to sell liquor of any type. In addition, if the product line changes from the mixture indicated in Exhibit F, then the grocery store could be in violation of the Zoning Ordinance use regulations. At such time, the owner would have to restore the appropriate product line mixture or apply for a special use to allow a convenience store.

### **Liquor License Regulations**

The City of Urbana offers a variety of liquor licenses, all of which are administered by the Mayor's Office. The following two types are relevant to this case:

- BBB** Off-premise consumption; only beer and wine
- C** Off-premise consumption; packaged liquor sales (including hard alcohol)

The Mayor's Office has indicated that no C liquor licenses are available at this time. The petitioners have indicated that they would apply for a BBB liquor license contingent upon the approval of this Special Use Permit request.

In order to receive a liquor license, a completed application and fee must be submitted to the Mayor's Office and approved by the individual department heads. The Urbana Police Department will conduct a background check on the business owner. The Illinois State Police conducts a fingerprint background check for the manager.

### **Development Regulations**

The proposed store would locate in an existing building. The petitioners have indicated that they would remodel the building to fit the needs of a grocery store, including the installation of coolers and storage space. The building will not be expanded beyond the current 2,350 square feet.

Parking is already provided for on the site, and there are access drives located on Lincoln and Fairview Avenues. According to Table VIII-6 of the Zoning Ordinance, the requirement for a grocery store is one space per 250 square feet, for a total of 10 required parking spaces. Per Table VIII-1, one handicapped accessible parking space is required. The proposed grocery store would meet its minimum parking requirements.

The proposed store is not allowed to have a freestanding sign (according to Table IX-1), and a wall sign may only comprise 10 percent of the wall area, or no greater than 150 square feet. Staff has recommended a condition for approval that would allow only external sign lighting (rather than internal illumination) to minimize the impact on adjacent residences.

### **Description of the Site and Surrounding Properties**

The southwest corner of Fairview and Lincoln Avenues is comprised of a neighborhood business area consisting of the subject building and the Family Video. Immediately west, south and north of the site are residential properties in the King Park neighborhood. Also north of the site is the Care Centre of Urbana, a Medicare, Medicaid, and Veterans Administration, 99-bed skilled-care facility. The facility provides long- and short-term nursing care; physical, occupational and speech therapy; respite care and rehabilitation. There is a home daycare located directly south of the site. The 2005 Urbana Comprehensive Plan recommends that this neighborhood business area expand to the north along Lincoln Avenue to south of King Park. The store would be located approximately 590 feet from Martin Luther King, Jr. Elementary School, and approximately 175 feet from the Care Centre of Urbana. These distances would be in excess of the 100 feet required by state statute regarding the regulation of liquor sales near schools, churches, nursing homes or military/naval stations (235 ILCS 5/6-11).

<b>Direction</b>	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use</b>
Site	B-1, Neighborhood Business	Offices	Community Business
North	R-2, Single Family Residential and R-5, Medium High Density Multiple Family Residential	Residential / Nursing Home	Community Business
East	B-1, Neighborhood Business	Family Video	Community Business
South	R-2, Single Family Residential	Residential	Community Business
West	R-2, Single Family Residential	Residential	Residential

**Plan Commission Discussion**

On October 20, 2005, the Plan Commission held a public hearing on the proposed Special Use Permit. Approximately 37 residents from the King Park neighborhood attended the meeting and all of the 14 residents who spoke were opposed to beer and wine sales. Several also opposed the grocery store. The public comments are summarized below:

- Opposition to any liquor sales, including beer and wine.
- Some residents also expressed opposition to any small grocery store located at this site, stating that they frequented larger stores such as Schnuck’s or County Market which are more affordable;
- Children are active in the neighborhood and may be harassed or influenced by those buying beer and wine;
- Fear of increased loitering and litter as a result of the grocery store and alcohol sales;
- Problems associated with alcohol availability near King Park. This will encourage loiterers in the park and will interfere with use by children and family reunion groups;
- King School staff often has to clean up liquor bottles prior to recess;
- King School walking route is along Fairview Avenue in front of the proposed store;
- Neighbors noted that Community Development, Police, and other community agencies have invested significant resources to support the neighborhood;
- A grocery store would not be financially feasible, beer and wine would become the focus;
- Concerns about the types of patrons of the store, including University students;
- Potential disturbances between patrons and Family Video staff in regard to parking problems;
- Proximity to a nearby home daycare center.
- History of crime in the neighborhood, including a recent homicide. The alcohol sales would not help keep the neighborhood safe.

One resident presented (but did not formally submit) a petition against the store signed by a number of

residents. The Plan Commission inquired about the formal written protest procedures for this case. According to the Zoning Ordinance, at least 40% of residents within 250 feet of the subject property must sign a petition and submit it to the City prior to the beginning of the City Council meeting (Note: Currently a petition is being circulated throughout the neighborhood, and staff anticipates that it will be formally submitted prior to the City Council meeting on November 7, 2005). After considering public comments and concerns, the Plan Commission clarified several points and then voted 8 ayes to 0 nays to recommend the City Council deny the Special Use Permit request based upon the evidence presented regarding neighborhood impacts.

## **Discussion**

### **Requirements for a Special Use Permit**

According to Section VII-6 of the Urbana Zoning Ordinance, an application for a Special Use Permit shall demonstrate the following:

- 1. That the proposed use is conducive to the public convenience at that location.*

Although residents of the area have previously indicated their desire for a neighborhood grocery store, the Special Use Permit only relates to the *Retail Liquor Sales* component of the proposed store. The liquor component of the store, for those who choose to purchase these products, could be convenient due to the accessibility of the subject property. However, as noted during the public hearing, liquor sales could be a detriment to the neighborhood due to the proximity of the proposed store to King School, King Park, a home daycare, and the Care Centre of Urbana. Many residents at the Plan Commission meeting spoke about the problems that already exist in the area, Youths and others loiter along Fairview Avenue, and several residents spoke about liquor bottles and other litter problems in King Park. One resident noted that Douglas Park in Champaign is no longer a safe place for children to play because of the number of people who drink alcohol in the park. Overall, those who spoke feared that the proposed use would only compound these problems and work against the positive gains made in the neighborhood.

- 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 beer and wine will be stored and sold in coolers. In addition, the petitioner has argued that beer and wine are available for purchase at three other locations along North Lincoln Avenue (e.g., Mobil, BP and Circle K).

The majority of residents expressed concerns about the proximity of the proposed use to King Elementary School and King Park. Many children travel along Fairview Avenue on their way to school, and will likely use the store to purchase grocery or snack items. The principal of King School indicated that her staff often has to clean up alcohol bottles prior to recess. This was felt to have a detrimental impact on the school children.

In addition to opposition to the proposed use, some residents also stated that they would not support the grocery store. They noted that smaller grocery stores often charge more for products that can be found at larger grocery stores. Many people in the neighborhood have access to private automobiles, and currently shop at these larger grocery stores. As a result of this lack of support, residents questioned the financial feasibility of the grocery store. Several residents felt that if the petitioners could not make money with grocery items, they would rely more on beer and wine sales.

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-7.*

The proposed store and liquor sales would meet all of the applicable zoning regulations of the Urbana Zoning Ordinance. A liquor license would have to be obtained in order to operate the facility, and the Mayor's Office has indicated that there is a BBB liquor license available.

As defined in Section IV-2, the purpose of the B-1, Neighborhood Business District is as follows:

*The B-1 District is intended 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.*

This purpose implies that any successful neighborhood business should be compatible with nearby residences. As defined in Section IV-2, the purpose of all residential zoning districts is as follows:

*The Residential Districts are generally intended to provide desirable settings for residential development within the several density ranges described in Urbana's Comprehensive Plan, and for various types of dwelling units, with appropriate regulations regarding physical development. As appropriate, the districts also allow other uses compatible with residential areas, either as permitted or as condition or special uses.*

In particular, the purpose of the R-2, Single-Family Residential District is as follows:

*The R-2 District is intended to provide areas for single-family detached dwellings at a low density, on lots smaller than the minimum for the R-1 District. The R-2 District is also intended to provide for a limited proportion of two-family dwellings.*

The common thread among these three purposes is compatibility. The King Park neighborhood is a close-knit residential community. King School and King Park, two of the social centers for the neighborhood, are located just north of the site. Several residents who spoke opposed both the proposed use and the grocery store. Much of the rationale for this opposition has centered on the overall negative impact of liquor on this neighborhood. These concerns are largely based on past experiences in the King Park Neighborhood and from other neighborhoods throughout Urbana-Champaign.. Over the past several years, the King Park Neighborhood has improved through the hard work of residents and property owners. The City has invested block grants in the neighborhood and the King School and King Park properties have both recently been upgraded. Given these concerns and dependent upon the

management practices of the store, one could reasonably conclude that the proposed use would, on balance, be detrimental to the public welfare.

## Summary of Findings

1. The requested Special Use Permit is only regarding the *Retail Liquor Sales* component of the proposed store.
2. Under the interpretation by the Zoning Administrator, the proposed store would be considered a *grocery store* based on the proposed product line submitted by the petitioner (see Exhibit F). According to Table V-1 of the Urbana Zoning Ordinance, a grocery store under 3,500 square feet is permitted by right in the B-1, Neighborhood Business Zoning District.
3. The proposed use would likely not be conducive to the public convenience at this location. Residents expressed concerns about the potential negative impact of the proposed use on the area, including loitering along Fairview Avenue, safety issues, alcohol-related litter, and accessibility of liquor.
4. The proximity of the proposed use to King School and King Park, two social centers of the neighborhood, is a concern. Many residents noted existing problems with liquor bottles and other litter at King Park and on the King School grounds, loitering, and harassment of children walking to school along Fairview Avenue.
5. The proposed use could, on balance, pose a detriment to the district in which it is proposed to be located. Although the proposed store will be more than 100 feet from King School, King Park and the Care Centre of Urbana, the accessibility and visibility of liquor near these sensitive uses is a concern.
6. Several neighborhood residents spoke in opposition to the proposed special use permit at the October 20, 2005 Plan Commission meeting,
7. The Urbana Plan Commission voted 8 ayes and 0 nays to recommend that the City Council deny the Special Use Permit request.
8. The proposed use meets all applicable zoning standards and regulations of the district in which it is located.
9. The proposed use is generally compatible with the existing land use pattern of the subject site and surrounding area. The site has historically been used as some type of commercial use.
10. The proposed use is consistent with the future land use designation of Community Business for the subject property, as identified in the 2005 Urbana Comprehensive Plan.
11. The Mayor's Office has indicated that a BBB liquor license for the off-premise consumption

of beer and wine is available. A C liquor license for the off-premise consumption of beer, wine and hard alcohol is not currently available and is not being requested at this time.

## **Options**

The City Council has the following options in Plan Case 1960-SU-05:

1. Approve the request for a special use permit without any additional conditions.
2. Approve the request for a special use permit with any conditions deemed appropriate or necessary for the public health, safety, and welfare, and to carry out the purposes of the Zoning Ordinance
3. Deny the request for a special use permit.

## **Recommendation**

Based on the evidence presented in the discussion above, the Plan Commission recommended that the City Council DENY Plan Case No. 1960-SU-05. Staff concurs with this recommendation. If the City Council chooses to approve the case, staff recommends the following CONDITIONS:

1. That the proposed store shall only be eligible for a BBB liquor license for the off-premise consumption of beer and wine. The proposed store shall not be eligible for a C liquor license without an amendment to the Special Use Permit, including further review by the Plan Commission and approval by the City Council.
2. That any signs or other means of advertising beer, wine, or cigarette sales shall not be visible from the public right-of-way.
3. That grocery products, as identified in Exhibit F, shall constitute at least 75 percent of all products available for sale. Non-grocery products, as identified in Exhibit F, shall not exceed 25 percent of all products available for sale, as measured by relative shelf space or square footage.
4. That the hours of operation shall be no earlier than 7:30 am and no later than 12:00 midnight Monday through Saturday, and no earlier than 8:00 am and no later than 10:00 pm on Sunday as outlined in Exhibit F.
5. That no additional exterior lighting shall be permitted, except where deemed appropriate by the Zoning Administrator.
6. That signage related to the proposed store shall meet the requirements of the Urbana Zoning Ordinance. The sign shall be externally illuminated in a manner approved by the Zoning Administrator.



7. That one handicapped accessible parking space shall be created prior to the issuance of a Certificate of Occupancy.

Prepared by:

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Matt Wempe, Planner I

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: Site Data and Product Listing (provided by petitioner)  
Exhibit G: Public Comments (submitted prior to meeting)

CC: Ibrahim Odeh  
Happy Brothers Nine Corporation  
1617 E. Fairlawn Drive  
Urbana, IL 61801

ORDINANCE NO. 2005-11-152

An Ordinance Approving A Special Use Permit  
(To Allow the Establishment of *Retail Liquor Sales* as part of a *Grocery Store*  
in the B-1, Neighborhood Business Zoning District - 907 W. Fairview Avenue/Plan  
Case No. 1960-SU-05)

WHEREAS, the subject property is located at 907 W. Fairview; and

WHEREAS, the subject property is zoned B-1, Neighborhood Business according to the Official Zoning Map for the City of Urbana; and

WHEREAS, the Happy Brothers Nine Corporation has requested a Special Use Permit to establish retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning District; and

WHEREAS, the Urbana Zoning Ordinance permits *retail liquor sales* within the B-1 Zoning District with the granting of a Special Use Permit, as approved by the Urbana City Council; and

WHEREAS, the Happy Brothers Nine Corporation has petitioned the Urbana Plan Commission in Case No. 1960-SU-05 to consider a request to establish retail liquor sales as part of a grocery store in the B-1 Zoning District; and

WHEREAS, all applicable development regulations will be met, including those involving setbacks, signage, parking, drainage, and vehicular access considerations; and

WHEREAS, the conditions placed on the approval in Section 1 herein should reduce the impact of the proposed development on surrounding properties; and

WHEREAS, after due publication, a public hearing was held by the Urbana Plan Commission on October 20, 2005 concerning the petition filed by the petitioner in Plan Case No. 1960-SU-05; and

WHEREAS, on October 20, 2005, the Urbana Plan Commission voted 8 ayes and 0 nays to forward the case to the Urbana City Council with a recommendation to deny the request for a Special Use Permit; and

WHEREAS, the approval of the Special Use Permit, with the conditions set forth below, is consistent with the requirements of Section VII-6 of the Urbana Zoning Ordinance, Special Use Permit Procedures, and with the general intent of that Section of the Ordinance; and

WHEREAS, the findings of the Plan Commission found that, on balance, approval of the special use permit would not be in harmony with the general purpose and intent of the Zoning Ordinance and would be injurious or detrimental to the public welfare.

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

Section 1. A Special Use Permit is hereby approved to allow the establishment of retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning Districts with the following conditions upon approval:

1. That the proposed store shall only be eligible for a BBB liquor license for the off-premise consumption of beer and wine. The proposed store shall not be eligible for a C liquor license without an amendment to the Special Use Permit, including further review by the Plan Commission and approval by the City Council.
2. That any signs or other means of advertising beer, wine, or cigarette sales shall not be visible from the public right-of-way.
3. That grocery products, as identified in Exhibit A, shall constitute at least 75 percent of all products available for sale. Non-grocery products, as identified in Exhibit A, shall not exceed 25 percent of all products available for sale, as measured by relative shelf space or square footage.

4. That the hours of operation shall be 7:30 am to 12:00 midnight Monday through Saturday, and 8:00 am to 10:00 pm on Sunday as outlined in Exhibit A.
5. That no additional exterior lighting shall be permitted, except where deemed appropriate by the Zoning Administrator.
6. That signage related to the proposed store shall meet the requirements of the Urbana Zoning Ordinance. The sign shall be externally illuminated in a manner approved by the Zoning Administrator.
7. That one handicapped accessible parking space shall be created prior to the issuance of a Certificate of Occupancy.

LEGAL DESCRIPTION:

Lot 3 of Sim's Addition, as per plat recorded in the office of the Recorder of Champaign County, Illinois

Parcel No.: 91-21-07-428-022

Section 2. 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).

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

AYES:

NAYS:

ABSTAINS:

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

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

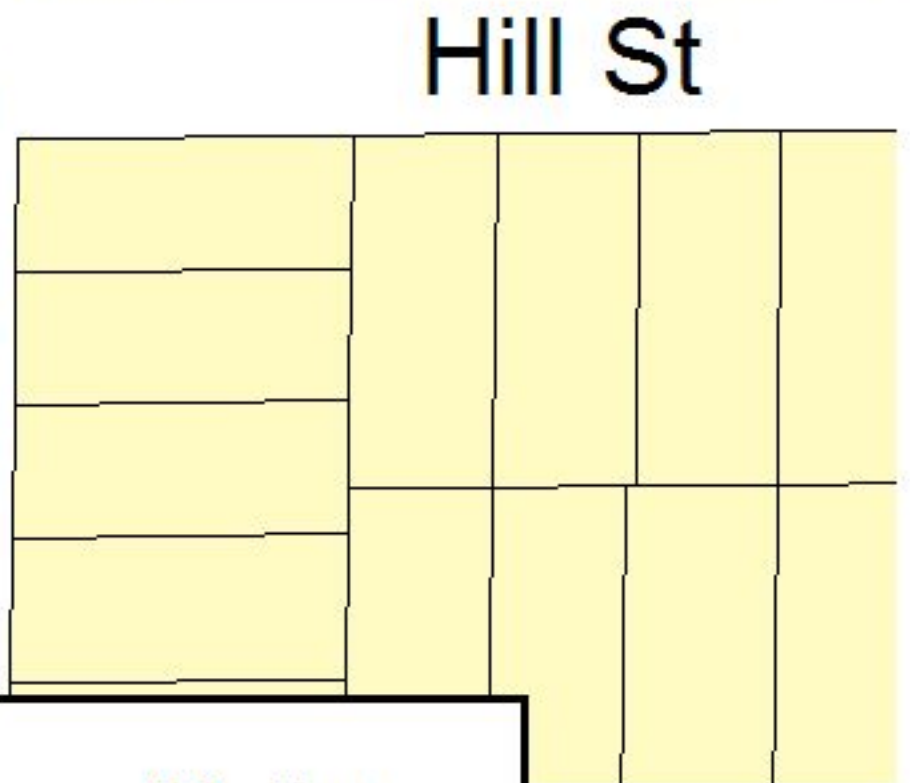
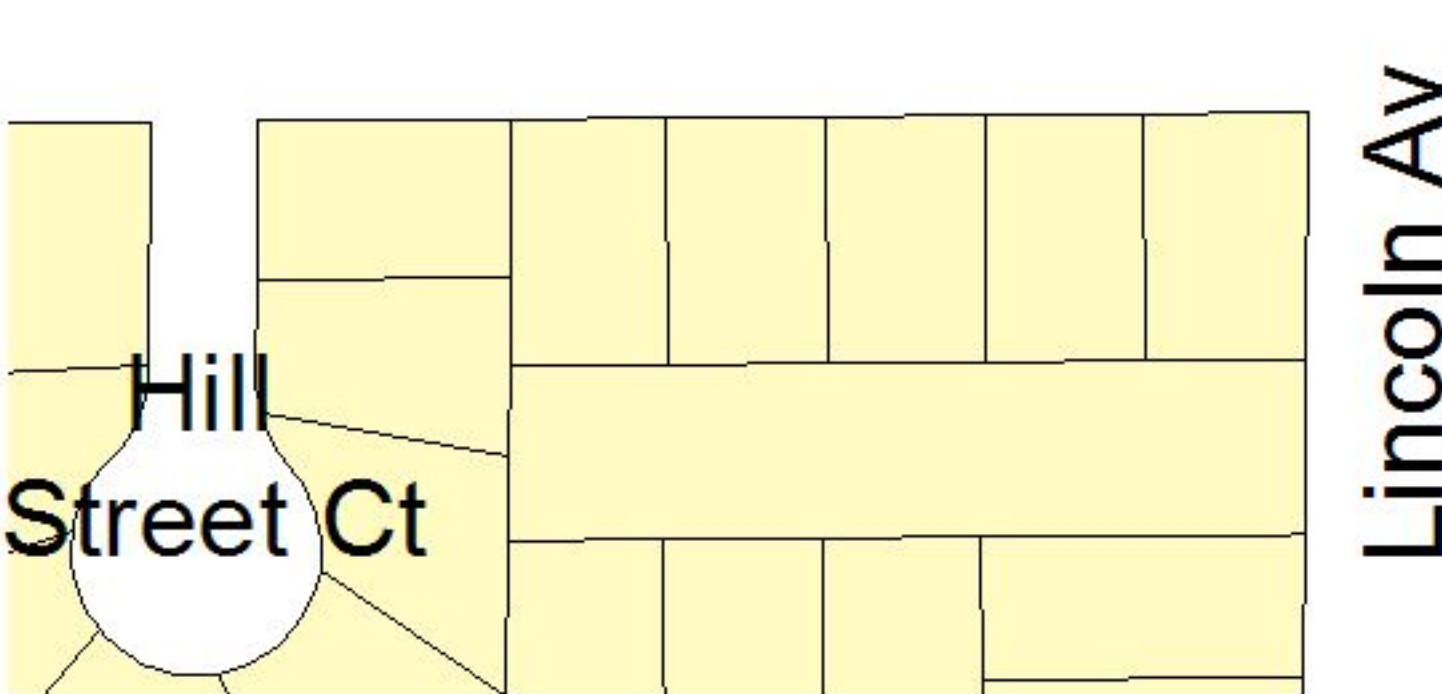
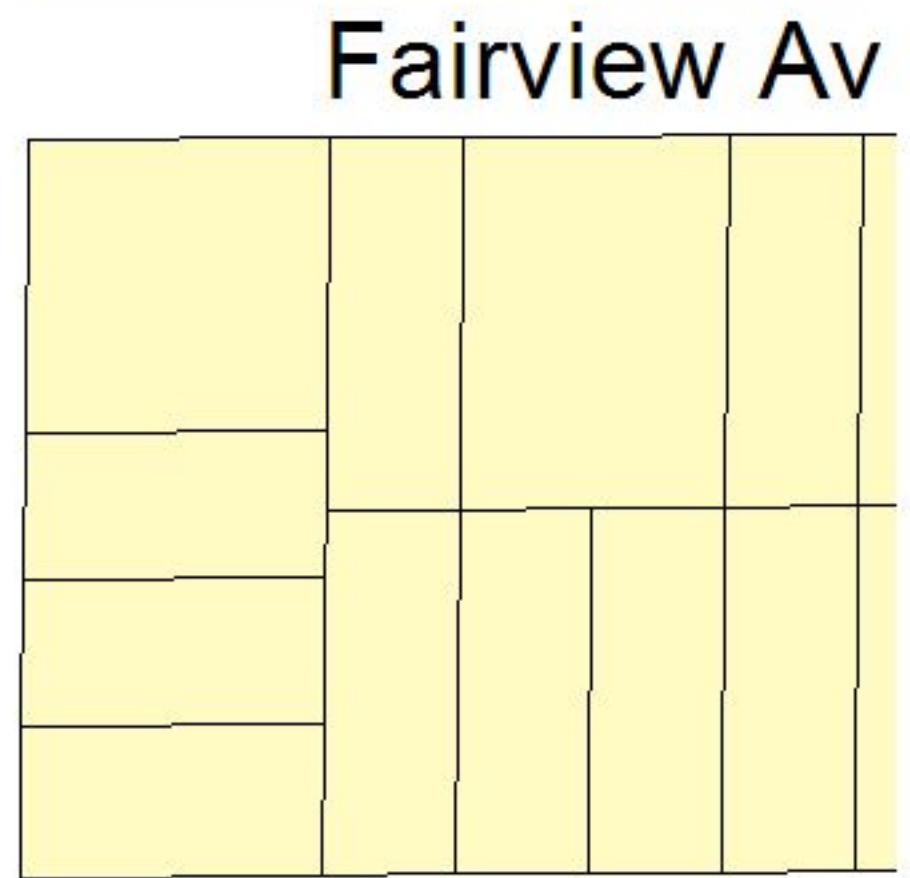
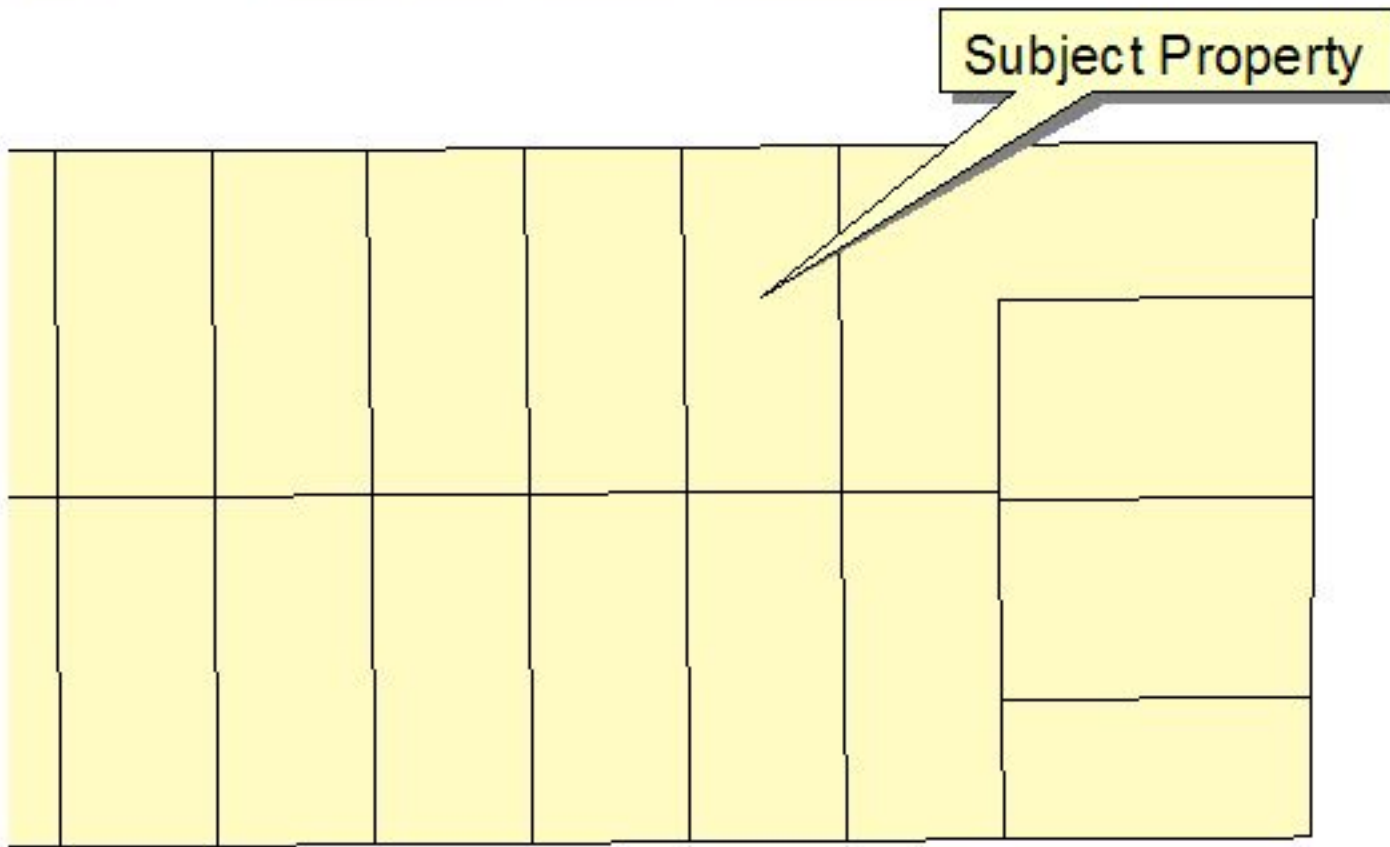
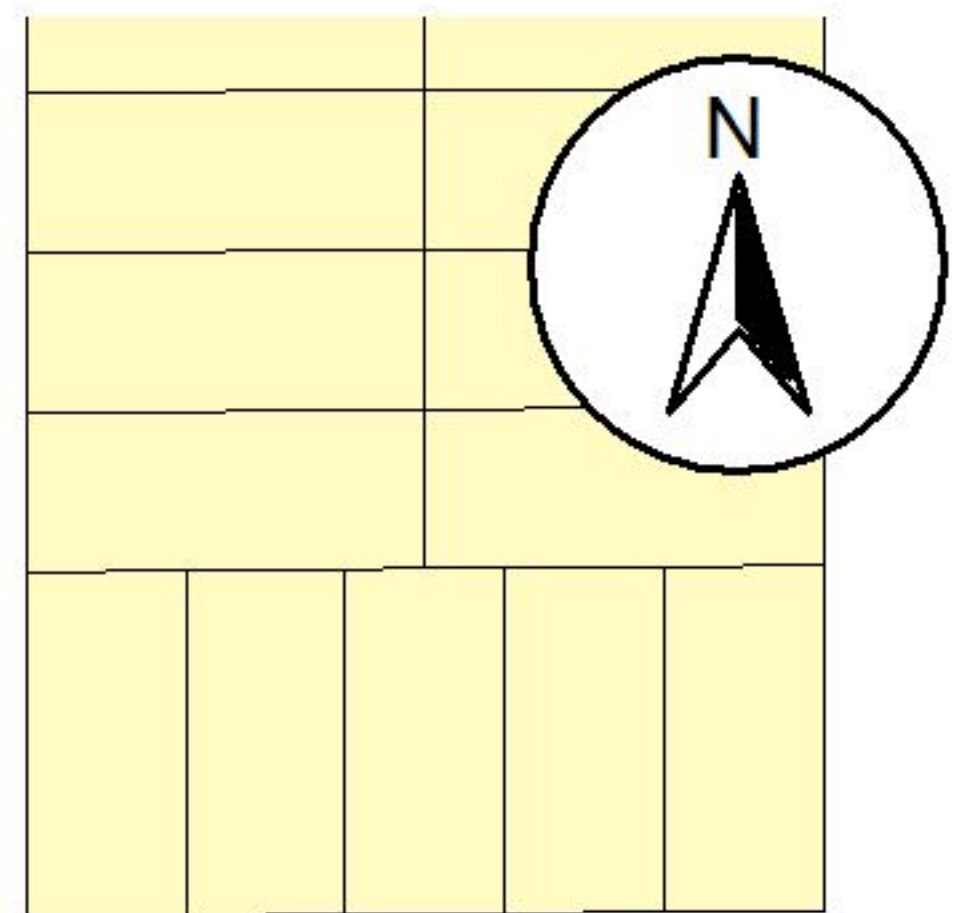
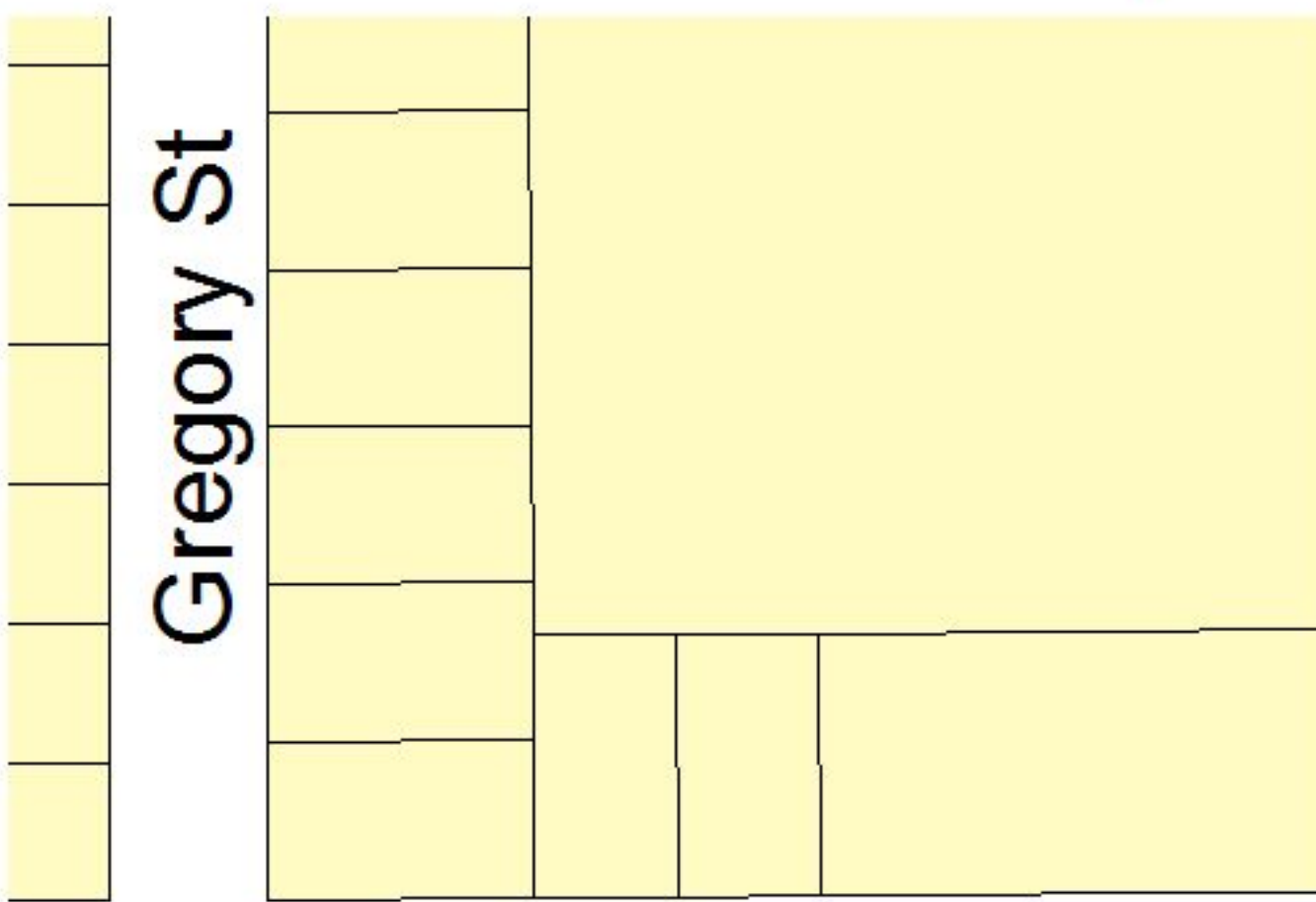
\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

**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 7th day of November, 2005, the Corporate Authorities of the City of Urbana passed and approved Ordinance No. \_\_\_\_\_, entitled "AN ORDINANCE APPROVING A SPECIAL USE PERMIT (To Allow the Establishment of *Retail Liquor Sales*" as part of a *Grocery Store*" in the B-1, Neighborhood Business Zoning District - Plan Case No. 1960-SU-05) 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 \_\_\_\_\_, 2005, 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 \_\_\_\_\_, 2005.

# Exhibit A: Location Map

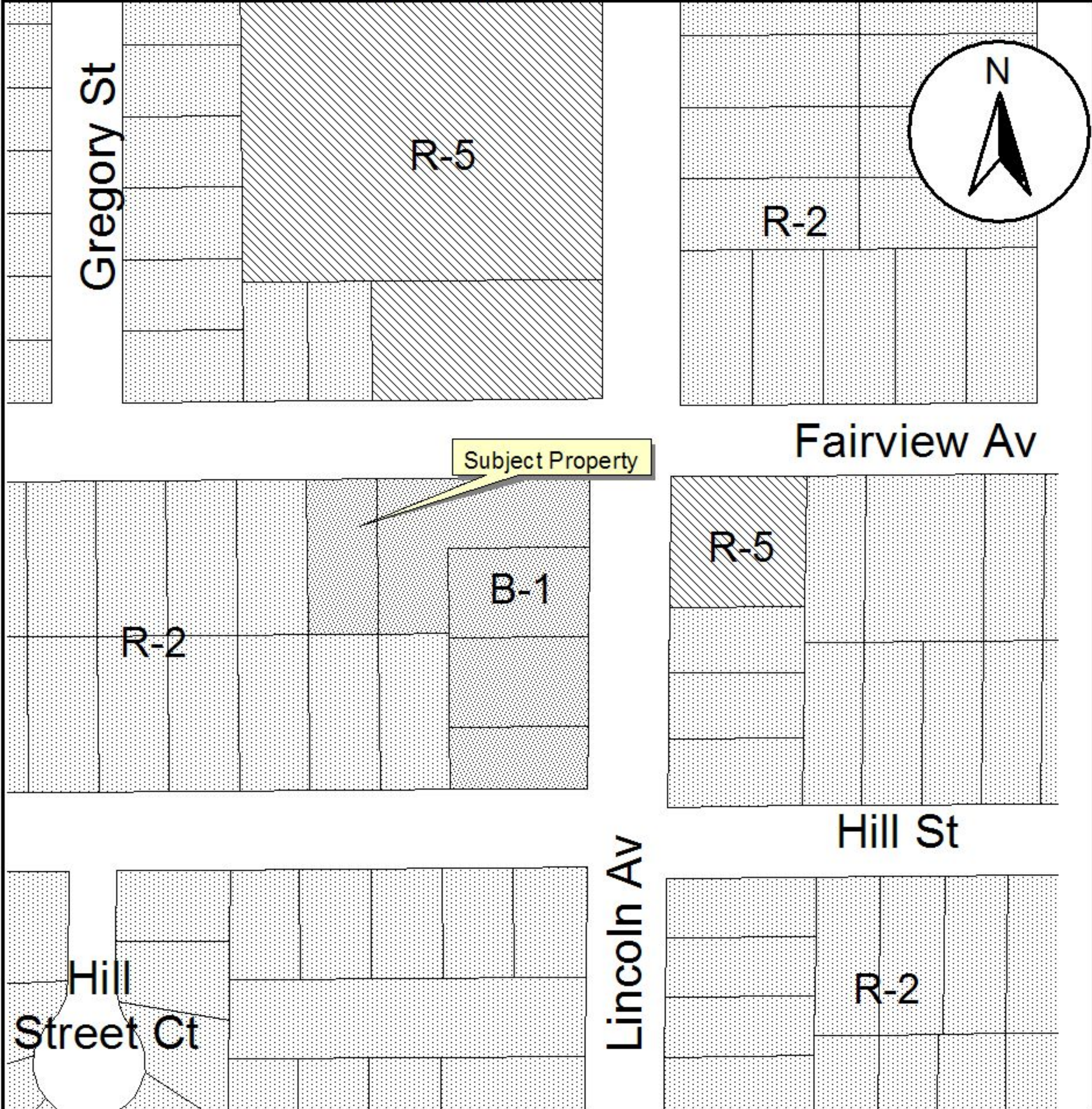


Plan Case: 1960-SU-05  
Petitioner: Happy Brothers Nine Corporation  
Location: 907 E. Fairview  
Zoning: B-1, Neighborhood Business  
Description: Allow retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning District

Prepared 10/13/05 by Community Development Services - mhw



# Exhibit B: Zoning Map

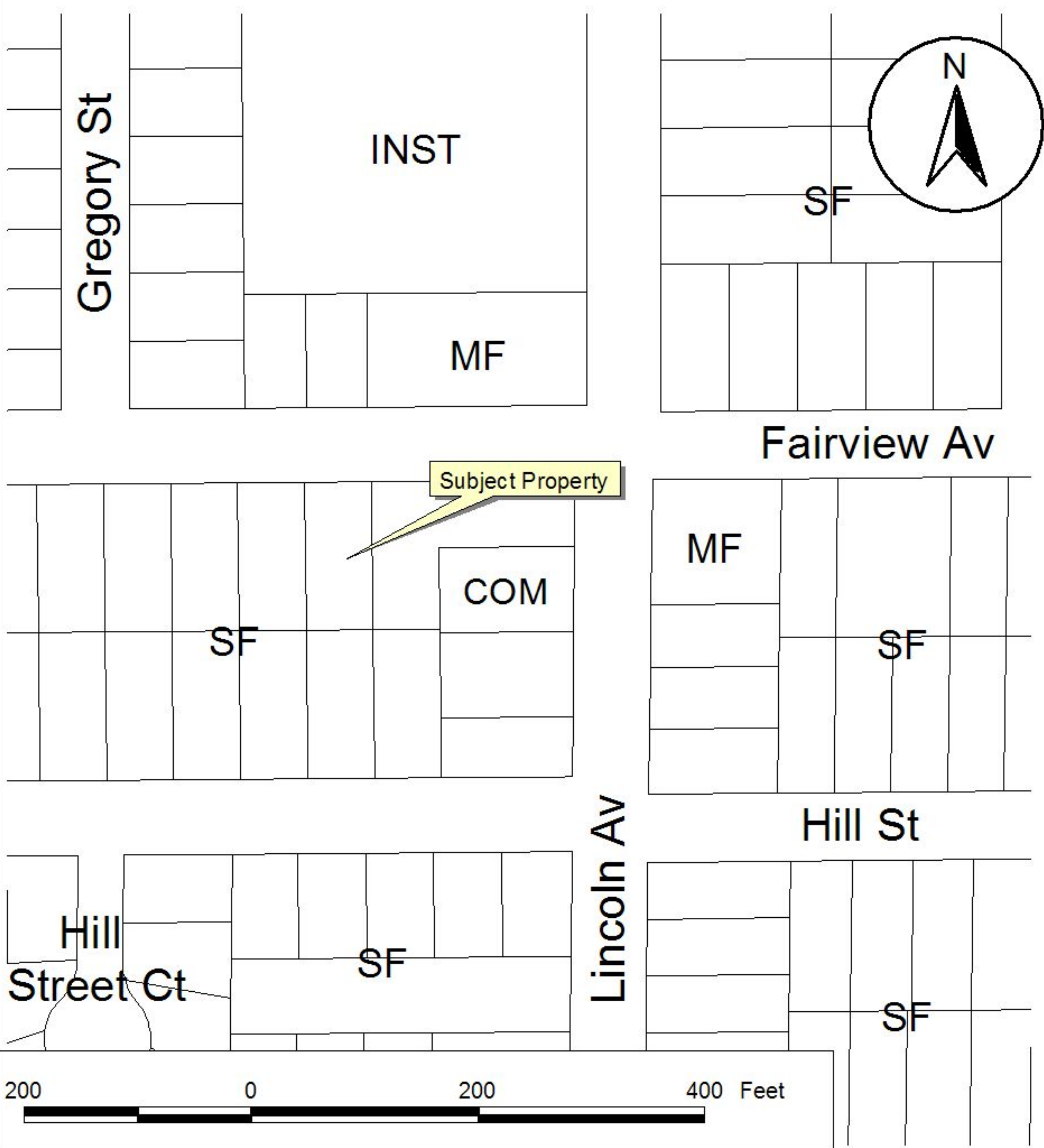


Plan Case: 1960-SU-05  
 Petitioner: Happy Brothers Nine Corporation  
 Location: 907 E. Fairview  
 Zoning: B-1, Neighborhood Business  
 Description: Allow retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning District

R2 - Single Family  
 R5 - Medium High Density MFR  
 B1 - Neighborhood Business



# Exhibit C: Existing Land Use Map

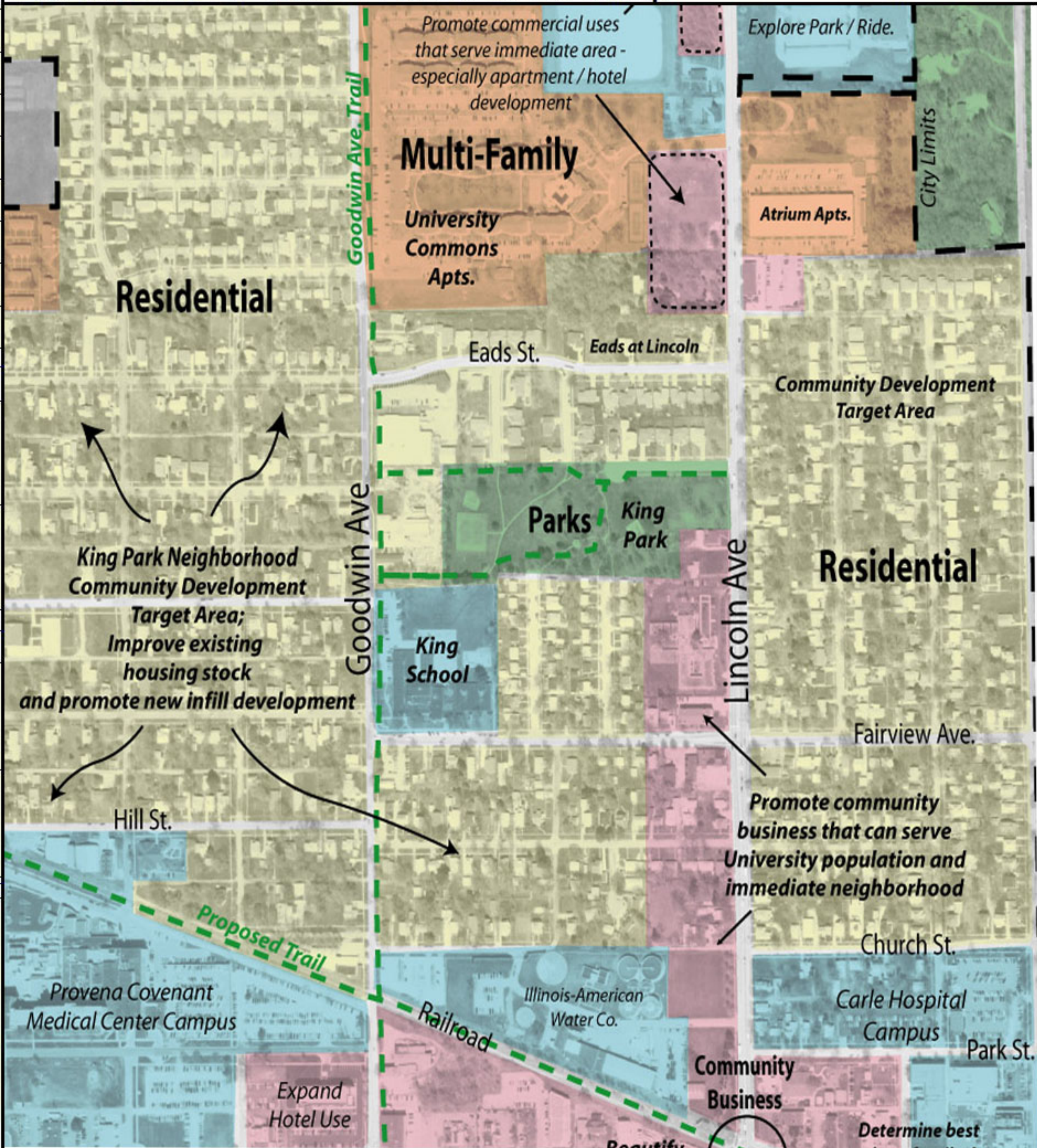


Plan Case: 1960-SU-05  
 Petitioner: Happy Brothers Nine Corporation  
 Location: 907 E. Fairview  
 Zoning: B-1, Neighborhood Business  
 Description: Allow retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning District

SF - Single Family  
 MF - Multi Family



# Exhibit D: Future Land Use Map

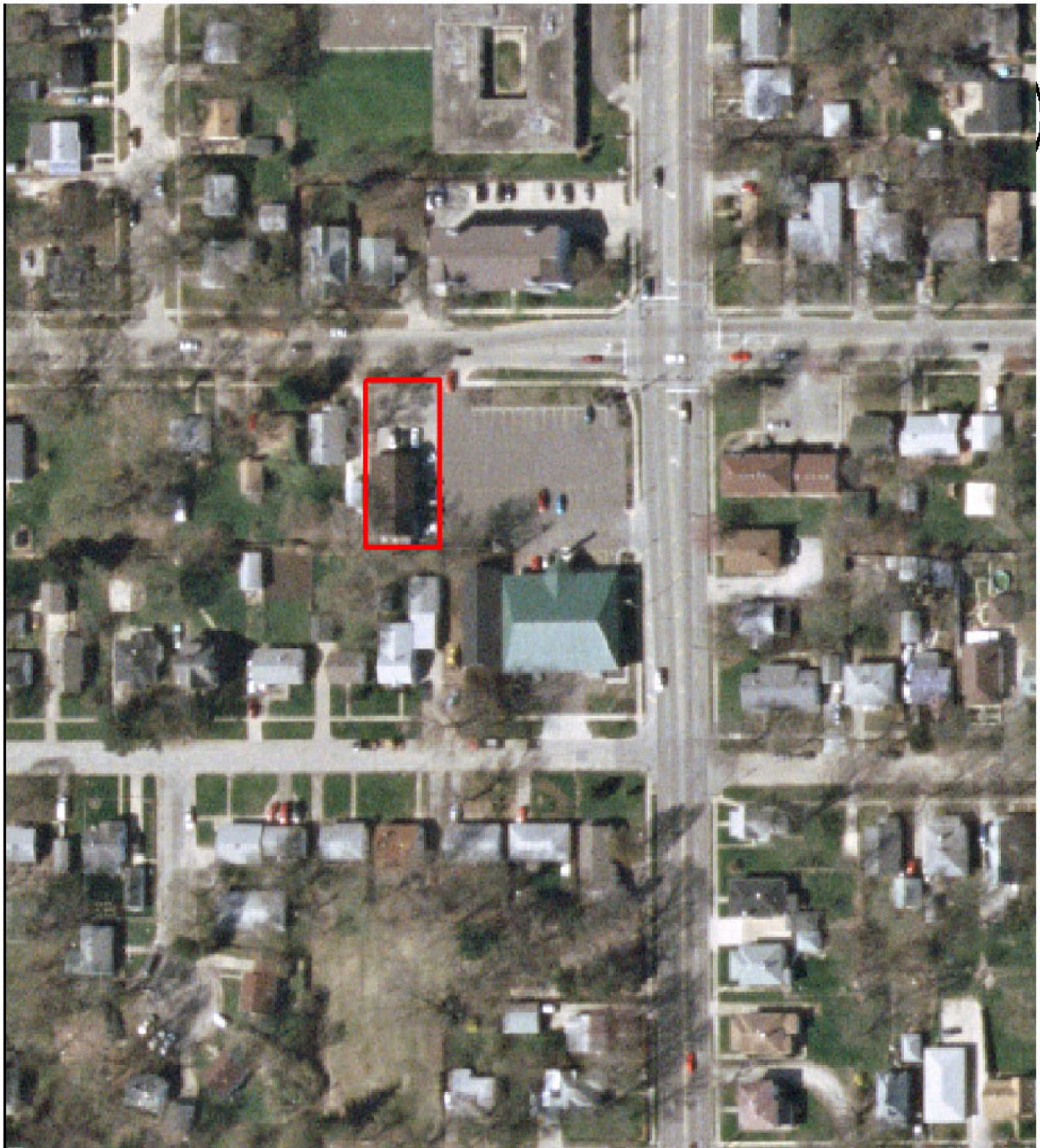


Plan Case: 1960-SU-05  
 Petitioner: Happy Brothers Nine Corporation  
 Location: 907 E. Fairview  
 Zoning: B-1, Neighborhood Business  
 Description: Allow retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning District

Prepared 10/13/05 by Community Development Services - mhw



# Exhibit E: Aerial Map



Plan Case: 1960-SU-05  
Petitioner: Happy Brothers Nine Corporation  
Location: 907 E. Fairview  
Zoning: B-1, Neighborhood Business  
Description: Allow retail liquor sales as part of a grocery store in the B-1, Neighborhood Business Zoning District

Prepared 10/13/05 by Community Development Services - mhw



**Happy Brothers Nine Corporation**  
**“Super Discount Market”**

Contact: Ibrahim Odeh  
Cell: 217-377-1069  
1617 E. Fairlawn Drive  
Urbana, IL 61801

Site Data:

Address: 907 West Fairview Avenue  
(directly west of Family Video)

Zoning: B-1, Neighborhood Business

[Special use permit required for convenience store and liquor sales, grocery store under 3,500 square feet permitted by right]

Building Size: 2,350 square feet

Parking Requirements: 10 spaces (already provided on site)

No additional exterior lighting proposed

Building to be converted to new use, meeting all applicable building & health codes

Proposal:

Neighborhood “grocery store”

To provide 75% groceries and 25% cigarette, snacks, beer and wine

Hours of operation would be 7:30 am to 12 midnight, M-Sat and 8:00 am to 10:00 pm on Sunday

Expected Grocery Products (75%):

- Milk, eggs, canned goods, dry goods, bread, cheese, packaged meat (possibly fresh sliced meat and cheese), fresh vegetables, frozen foods (e.g., pizza, juice, ice cream)
- Prepared foods: sandwiches, Italian beef, hot dogs, Polish sausage, other requests of customers
- Other items requested by customers
- Products eligible under new “food stamp” programs

Expected Non-Grocery Products (25%):

- Cigarettes, snacks (e.g., candy, donuts), beer, wine, newspapers

Submitted: Ibrahim Odeh, Sept. 9, 2005

**MINUTES OF A REGULAR MEETING**

**URBANA PLAN COMMISSION**

**DRAFT**

**DATE:**        **October 20, 2005**  
**TIME:**        **7:30 P.M.**  
**PLACE:**       **Urbana City Building**  
                  **400 South Vine Street**  
                  **Urbana, IL 61801**

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**MEMBERS PRESENT:**     Lew Hopkins, Ben Grosser, Randy Kangas, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant, James Ward, Don White

**MEMBERS EXCUSED:**    Laurie Goscha

**STAFF PRESENT:**       Elizabeth Tyler, Director of Community Development Services; Robert Myers, Planning Manager; Matt Wempe, Planner I; Paul Lindahl, Planner I; Teri Andel, Secretary

**OTHERS PRESENT:**     Carol Ammons, Mother Mary Brooks, Dorothy Carter, Leonard and Faye Christmon, Phyllis Clark, Almada Davis, Levi Dinkla, John Green, Lorean Howard, Ruby Hunt, Samuel and Frankie Johnson, Adam Judeh, Ibrahem Odeh, Bob Leach, Michael Lehman, Robert Lewis, Donna McKinley, Janice Mitchell, Jerry Moreland, Beverly Napper, Andrew O’Baouill, Del Owens, Lawrence Owens, Hayward and Virginia Patterson, Melvin Peeples, Ivan Ruiz, Emma Shelton, Doretha Simmons, Jennifer Tatum, Susan Taylor, Mary Thomas, Patrick Thompson, Asa Walker, Navarn Welch, Betty Williams, Joseph Wilson

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

The meeting was called to order at 7:30 p.m., the roll call was taken, and a quorum was declared.

**2.     CHANGES TO THE AGENDA**

Chair Pollock requested that they switch the order in which Plan Case No. 1961-SU-05 and Plan Case No. 1960-SU-05 were heard due to the fact that the majority of the people in the audience were there to speak on behalf of Plan Case No. 1960-SU-05. This way the people would not have to wait as long for the case to be heard. The Plan Commission approved the request.

### 3. APPROVAL OF MINUTES

Mr. Grosser moved to approve the minutes from the September 22, 2005 Plan Commission meeting as presented. Mr. Ward seconded the motion. The minutes were approved by unanimous voice vote.

### 4. WRITTEN COMMUNICATIONS

- Letter from Leslie Mullins in opposition to Plan Case No. 1960-SU-05
- Additional Case Communication (Revised Staff Recommendation) for Plan Case No. 1961-SU-05, Independent Media Center (IMC) Telecommunications Antenna with Tower
- Supplemental Case Documents and Communications for Plan Case No. 1961-SU-05, IMC Telecommunications Antenna with Tower
- Photo of the IMC Building relating to Plan Case No. 1961-SU-05

**NOTE: Elizabeth Tyler, Director of Community Development Services Department, introduced the new Planning Manager, Robert Myers, and the new City Attorney, Jim Gitz, to the Plan Commission. The Plan Commission welcomed them to the City of Urbana.**

### 5. CONTINUED PUBLIC HEARINGS

There were none.

### 6. OLD BUSINESS

There was none.

### 7. NEW PUBLIC HEARINGS

**Plan Case No. 1960-SU-05: Request by Happy Brothers Nine Corporation to allow liquor sales at a grocery store within the B-1, Neighborhood Business Zoning District.**

Matt Wempe, Planner I, presented the case to the Plan Commission. He began with an explanation for the special use permit request, which was to allow the petitioner to be able to sell beer and wine at the proposed grocery store, which would be located at 907 West Fairview Avenue. He described the proposed site and gave a brief background on the history of the proposed site. He talked about the grocery store zoning interpretation, development regulations, and liquor license regulations. He described the surrounding properties, noting the other nearby uses.

Mr. Wempe went on to review the requirements for a special use permit according to Section VII-6 of the Urbana zoning Ordinance. He summarized staff findings, read the options of the Plan Commission, and presented staff's recommendation, which was as follows:

*Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the*

*public hearing, staff recommended that the Plan Commission consider the testimony given at the public hearing before formulating a recommendation on Plan Case No. 1960-SU-05 for the Urbana City Council. If the Plan Commission chooses to forward the case with a recommendation for approval, staff recommended the following conditions:*

- 1. That the proposed store shall only be eligible for a BBB liquor license for the off-premise consumption of beer and wine. The proposed store shall not be eligible for a C liquor license without an amendment to the Special Use Permit, including further review by the Plan Commission and approval by the City Council.*
- 2. That any signs or other means of advertising beer, wine, or cigarette sales shall not be visible from the public right-of-way.*
- 3. That grocery products, as identified in Exhibit F, shall constitute at least 75 percent of all products available for sale. Non-grocery products, as identified in Exhibit F, shall not exceed 25 percent of all products available for sale, as measured by relative shelf space or square footage.*
- 4. That the hours of operation shall be 7:30 am to 12:00 midnight Monday through Saturday, and 8:00 am to 10:00 pm on Sunday as outlined in Exhibit F.*
- 5. That no additional exterior lighting shall be permitted, except where deemed appropriate by the Zoning Administrator.*
- 6. That signage related to the proposed store shall meet the requirements of the Urbana Zoning Ordinance. The sign shall be externally illuminated in a manner approved by the Zoning Administrator.*
- 7. That one handicapped accessible parking space shall be created prior to the issuance of a Certificate of Occupancy.*

Mr. Kangas asked for clarification on the enforcement of the 75/25 rule and what would be the repercussion of not complying with the 75/25 rule. Mr. Wempe explained that the City Attorney felt the best way to do this was to base it on square footage of products. For example, if there were 100 square feet of retail space, then the products identified on Exhibit F (milk, eggs, etc.) would have to equal or take up more than 75 square feet of the sales floor area. As far as the repercussions go, if the petitioner violated this particular condition, then they would be violating the special use permit as well as violating the zoning use.

Mr. Kangas inquired as to what would happen if the petitioner violated the special use permit. Ms. Tyler replied that typically staff would actively enforce this by going to the store and measuring square footage of grocery products or respond to neighbor complaints. If the store manager does not comply, staff would forward the case to the Legal Department, which would file a complaint in Circuit Court. In order for a petitioner to seek a remedy, they might come

back before the Plan Commission and the City Council for a special use permit to allow a convenience store. If the Circuit Court judge did not grant the petitioner's request, then it would become a use violation. So, ultimately, the petitioner would no longer be able to operate.

Mr. Kangas wondered how staff would know if the petitioner was following the 75/25 rule. Would it be up to the residents in the neighborhood to keep track of this and file a complaint with the City if the petitioner was noncompliant? Ms. Tyler responded by saying that they had set a similar condition on the Family Video regarding the amount of adult videos that could be rented out. In this case, Family Video is not allowed to exceed 10% of adult videos. If the Family Video would expand, then they would no longer be considered a video store, but more like an adult entertainment type of use. If staff went in and measured the space that they are operating in and found that the Family Video had expanded their adult section, then they could become in violation of this condition.

Mr. Ward questioned whether the handicap parking space would be in addition to the ten required parking spaces. Mr. Wempe answered by saying that the handicap parking space would be part of the ten required spaces. He pointed out that handicap accessible spaces are typically constructed as basically two parking spaces.

Mr. Ward wondered if there was an issue of sufficient space for the required parking spaces. Mr. Wempe replied by saying that the parking was currently at 45-degree angled parking, so he believed that the petitioner could meet the requirements.

Ms. Tyler noted that the petitioner, Ibrahem Odeh, was available for any questions from the Plan Commission. Mr. Odeh did not have anything to add at this time.

Members of the audience who spoke in opposition to the proposed special use permit were as follows:

Levy Dinkla, representative for Family Video expressed concern for the required number of parking spaces. He believed that the liquor sales would increase the amount of traffic to the grocery store, and he was concerned that eight parking spaces would not be enough causing the customers of the proposed grocery store to park at Family Video.

Mr. Wempe mentioned that after a rough analysis of the site, staff believed that the petitioner could meet the parking requirements. He did not believe that there would be any overflow parking in the Family Video parking lot. Ten parking spaces is the number required for a grocery store of this size according to the Zoning Ordinance. The City could not require a higher standard unless it was the will of the Plan Commission and City Council to do so. Ms. Tyler added that the easement was granted by the proposed property to Family Video. The City would expect both parties to use the easement for access and parking maneuvers and to use it in a respectful manner.

Samuel Johnson, of 807 North Harvey Street, stated that he would love to have a grocery store; however, he voiced his concern about the selling of alcohol being disastrous for the neighborhood by influencing the children at the nearby school and people drinking in the park.

Mary Brooks, of 1210 West Beslin, conveyed her concerns about the City of Urbana addressing the problems that already exist in the area. There are residents who sell drugs in the neighborhood. The police have been working very hard to get rid of these crimes. She stated that she was against the store and the selling of alcohol and against everything else that would come as a result of the store and the alcohol being sold from it. Take a look at the east side of town. A descent neighborhood is going down the drain because of these types of stores being permitted to sell cigarettes and alcohol. The City of Urbana does not have enough staff in the police department. We should try to curtail future problem areas. Would anyone on the Plan Commission consider having the proposed business in their neighborhood or around Leal School?

Ms. Stake recalled that during the process of updating the Comprehensive Plan, many residents asked for a grocery store to be located in this neighborhood. Ms. Brooks commented that they did not need a small grocery store in their neighborhood. Everything costs twice as much in a small grocery store than at Schnucks or County Market.

Doretha Simmons, owner of 907 West Hill Street, opposed the issuance of the liquor license to the Happy Brothers Nine Corporation. It is a great neighborhood, where kids ride their bicycles and skateboards in the street. She worried about the increase of traffic in the neighborhood and the types of clients that the proposed grocery store would attract. If someone wanted to buy alcohol, then there were other businesses already located further down the street. The residents in the area do not need another business selling alcohol right in their neighborhood and not so close to a school.

Carol Ammons, of 1108 North Busey Avenue, inquired as to what the process was to obtain a special use permit. When Mr. Wempe gave the staff presentation, it sounded as if he was a representative for the petitioner.

She voiced her concern about the safety of her children and other children walking to school. As a result of her son being questioned on his way to school by an older child and her son being frightened, she does not allow her son to walk to school anymore.

There are existing problems of people loitering on the corner of Lincoln and Fairview Avenues. This would only increase with the availability of selling alcohol in the area. There have already been two murders in the area. It comes down to the moral question of whether we want to add to the problem or reduce the amount of work that our police department has to do.

She pointed out that alcohol affects residents on a number of levels. Douglas Park, for example, is no longer a safe place for children to play because of the number of people who drink alcohol in the park. Therefore, she did not see how the proposed grocery store and the possibility of the petitioner being able to sell alcohol could be a benefit to the neighborhood. She hoped that the Plan Commission and the City Council would look beyond what the law says can be done and look at what needs to be done in the best interest of the residents in the King Park neighborhood.

Mr. Pollock responded to her question/comment regarding the procedure for obtaining a special use permit and regarding Mr. Wempe. People come to the City staff with ideas for businesses, rezoning of properties, permits, etc. depending on what the City plan says they have to have in



order to develop a piece of property. The staff's responsibility and job is to put together a proposal and present it to the Plan Commission and to the City Council. Staff is not saying yes or no to any of the proposals. They make recommendations to the various boards and commissions, but they are a very good staff and do their jobs in terms of bringing the facts before the boards and commissions to consider.

Joseph Wilson, of 2306 Burlison Drive, concurred with the previous speakers about the proposed grocery store. He pointed out that the Sunshine Grocery had problems with kids hanging around the store outside, smoking cigarettes and carrying on. He believed the same thing would happen if the proposed grocery store came into their neighborhood. The King Park neighborhood is trying to grow and prosper. Alcohol will create trouble for the neighborhood, and he did not feel that they needed a grocery store as well.

Mr. Pollock questioned if a special use permit was needed in order to allow liquor sales. Mr. Wempe replied yes. Mr. Pollock asked Mr. Wempe to review whether a grocery store with less than 3,500 square feet would be permitted by right in the B-1 Zoning District. Mr. Wempe said yes. Mr. Pollock addressed the public by saying that the Plan Commission could not review whether or not to allow the grocery store, because a grocery store was permitted by right in the B-1 Zoning District. The Plan Commission was meeting to review whether liquor sales should be allowed at the proposed location.

Dell Owens, of 1310 Eureka Street, is against the selling of alcohol in their neighborhood. She is against the store as well. She would not support it.

Jennifer Ivory-Tatum, Principal of King Elementary School, expressed her concern regarding the liquor license and sales at the proposed grocery store and its close proximity to the school. She was not only concerned about the students that attend King Elementary School, but for the older children who catch a bus to the Middle School and High School as well. The proposed store would be opening about the time that students would be walking to school or to the corner to catch a bus.

School staff has to clean up the school grounds prior to recess each day. They find beer bottles, cigarettes, and other paraphernalia. The Urbana Park District has added playground equipment to King Park. The residents do not want to add a different element to the park other than the many children who have been enjoying the park.

The school spends a lot of time teaching children about "NO Smoking". Selling these products at the proposed store down the street would really deter this.

Janice Mitchell, of 111 South Dodson, talked about the effect that the Home Run convenient store has had on the East Urbana neighborhood. It has been a big devastation to the area. Anyone who keeps up with the media knows what is happening in the 1500 Block of East Washington.

She pointed out that there was a lot of home ownership in the neighborhood. Many people had expressed a desire for a convenient store or other types of stores that could serve the daily needs for the King Park neighborhood. Their daily needs do not include alcohol.

If the petitioner wants to argue that three other businesses sell beer and wine in the general area, then consider that the three other locations are further down Lincoln Avenue. They are not in the general area of the neighborhood.

As a resident of Urbana, she asked that the Plan Commission strongly consider the negative impacts of approving alcohol sales at the proposed site.

Faye Christmon, from the Park District Advisory Board and the Community Park District, stated that she lives at the Eads on Lincoln Avenue. She takes her grandchildren to King Park all the time. They already see people with alcohol in the park. Allowing alcohol to be sold at the proposed grocery store would only increase the number of people walking or loitering in the park while drinking alcohol. There are many special days and events held in the park. She would hate to have people drinking alcohol in the park on these special events days. Therefore, she was opposed to alcohol being sold at the proposed grocery store.

Dorothy Carter, of 1509 North Romine, voiced her opposition to the proposed store and to the selling of alcohol in the neighborhood.

Phyllis Clark, of 1206-1/2 West Dublin Street, stated that she is a resident of the King Park area. She reiterated what other residents had previously said already at the public hearing. She did not oppose the grocery store; however, she did oppose the sale of alcohol for the many reasons that had already been expressed. She read a statement that she had written earlier. The neighborhood has been working hard to provide a safe place for the children to play and for families to gather. This is beginning to come to light with the improvements that have been made in the King Park area.

The Happy Brothers convenient store will attract more of a nuisance in the community than they already have. There is much loitering already on Fairview Avenue across from the proposed site. There is much unwanted activity at the apartment complex on the southeast corner of Fairview and Lincoln Avenues. These already bad situations will only perpetuate within an establishment that provides a handy access to liquor.

The perspective owner of the proposed establishment has some affiliation with the Home Run on Washington Street. Although Adam Judeh has sold the business to someone else, the building and the land was still in his possession. Thus the element that was allowed to loiter in and outside of the Home Run on Washington Street cannot and should not be allowed to fester at Lincoln and Fairview Avenues. Therefore, she urged the Plan Commission to support the requests for helping in eliminating any more crime and substance abuse in the King Park neighborhood by denying the special use request that would allow the petitioner to sell alcohol in the community.

Betty Williams, of 1204 North Lincoln Avenue, opposed the proposed grocery store and the granting of the liquor license, because it would be demeaning and degrading. A grocery store next to homes would bring the property values down.

The Home Run on Washington Street has people hanging around all the time. The people are fighting, being loud, and selling drugs and sex. The police are constantly being called to the area. The King Park area does not need that in their community.

The residents in the neighborhood want to keep it good and do not want alcohol sales in the area. She expressed her concern for the children.

She inquired as to why there were not any black people on the Plan Commission.

Lorean Green, of 1114 West Church Street, stated that the City of Urbana needed a recreation center for the children. She has lived in the City her entire life and feels that the City of Urbana has let her down. One African proverb states that "It takes a community to raise a child." The community of Urbana is not raising children anymore. Children are raising themselves, and they have nothing to hold onto. Champaign has two or three high schools, and Urbana has one. Champaign has three or four recreation centers, and Urbana has two if you count the swimming pool. The children have nothing to do but hang out on the corners.

She mentioned that she has a list of about 104 names and addresses of people who are against the proposed grocery store and against the sale of alcohol in their neighborhood. Ms. Ammons asked if it would be helpful for the residents to circulate a petition against the proposed case. Mr. Pollock stated that petitions are an effective method of letting the City know how the community feels. The Plan Commission will make a recommendation to forward on to the City Council, and the City Council will make a decision on this case on November 7, 2005. Mr. Wempe added that there was a protest procedure. A written protest is valid if it is signed by owners of 40% of the subject lots within 250 feet of the land subject to the action. Basically, if 40% of the property owners within 250 feet of the proposed site sign a petition against the special use permit request and submit it before the City Council meeting, then it would require a 2/3 super majority vote of the City Council to vote in favor in order to get approval of the special use permit.

Mr. Grosser inquired if the Plan Commission had the right of review over the decision of the Zoning Administrator designating the proposed use as a grocery store as opposed to a convenience store. Mr. Wempe responded by saying that there was an appeal process. An appeal could be made to the Zoning Board of Appeals by any person aggrieved.

Mr. White stated that he felt it was very clear that this request was not compatible with the neighborhood. He really did not like the hours of operation being opened till midnight. He would not want to live next door to a store that was opened until midnight. Therefore, he moved that the Plan Commission forward the case to the City Council with a recommendation that it be denied. Ms. Stake seconded the motion.

Ms. Upah-Bant wondered what the Family Video store hours were. Mr. Dinkla answered by saying that Family Video was open from 10 am to midnight.

Ms. Stake commented that she appreciated all the public input that was heard during this public hearing. Children are often forgotten. Starting with the community, we need to take care of our children throughout the United States.

Mr. Kangas stated that the Plan Commission was a land use commission. He clarified that the City staff was not an advocate in favor of any case that comes up. He believed that staff did the best they could within the rules given to them. He mentioned that there periodically are openings for people to apply for a position on the Plan Commission. In fact, after this meeting there will be an opening. Mr. Pollock explained that the vacancy would be a result of Mr. Kangas retiring from the Plan Commission. He invited people from the neighborhood to fill out applications and turn them into the Mayor's office.

Mr. Grosser believed that from the list of items that the petitioner planned to sell, it sounded more like a convenience store rather than a grocery store. He encouraged people to follow up with the filing of an appeal of the decision of the Zoning Administrator on whether it should be a convenience store or grocery store.

Ms. Tyler stated that she, as Zoning Administrator, based upon the long list of products that were submitted to be sold at the proposed store and upon the direction from the City Council to allow a small grocery store by right in the B-1 Zoning District, determined that the proposed use would be more of a small grocery store. She used the Sunshine Grocery as an example to follow. She did not see a reason to discriminate against the proposed use versus the Sunshine Grocery Store. Mr. Pollock noted that there were instances of the B-1 Zoning District that the City wanted to encourage small neighborhood uses without requiring a special use permit.

Roll call on the motion to deny was as follows:

Mr. Grosser	-	Yes	Mr. Hopkins	-	Yes
Mr. Kangas	-	Yes	Mr. Pollock	-	Yes
Ms. Stake	-	Yes	Ms. Upah-Bant	-	Yes
Mr. Ward	-	Yes	Mr. White	-	Yes

The motion was passed by unanimous vote. The case will be heard by the City Council on November 7, 2005.