



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, Director, Community Development Services

DATE: July 31, 2008

SUBJECT: ZBA-2008-MAJ-06: Major Variance Request to allow vehicles to back out onto a public street for a multi-family residence at 202 North Coler Avenue.

Introduction

Steve Bantz is requesting a major variance related to parking at a multi-family residence at 202 North Coler Avenue. This variance would allow parked vehicles to back out onto a public street. Section VIII-4.E of the Urbana Zoning Ordinance prohibits parking spaces which require vehicles to back out onto a public street (except for single- and two-family residences). The petitioner had originally requested a second variance, which was denied by the Zoning Board of Appeals on June 11th, 2008. The second variance would have allowed vehicles to park on an existing concrete area in the required front yard setback, which is prohibited by Section VIII-4.F of the Zoning Ordinance. The petitioner requested these variances in order to meet the required number of off-street parking spaces for his rental property. The building contains one studio, one one-bedroom, and three two-bedroom apartments and is therefore required to have a minimum of five off-street parking spaces.

The subject property received a variance in 1984 to allow parking to be off site, as recorded in the Decision Sheet for Case ZBA-84-V-7. At that time, the previous owner wanted to add a fourth dwelling unit to the property. In order to allow the fourth unit, four parking spaces were required. Since parking was not allowed in the front yard, the owner's solution was to have two cars parked in the garage and to lease two parking spaces at the Glen Poor's site, within 300 feet of the subject property. One of the conditions of that variance was to require the leasing of the two off-site parking spaces. At the time, no variance was required to allow vehicles parked at a multi-family property to back out onto a public street, but a variance was needed to allow off-street parking on a separate lot. Current regulations allow the owner to provide off-street parking on a separate lot within 600 feet of the principal use without a variance.

Recently, building inspectors from the City learned that the garage had been converted into an unauthorized, uninspected fifth unit by a previous owner. Also, the tenants were no longer

parking at the Glen Poor's site, and were instead parking in the driveway within the required front yard set back. Because this property has no side or rear yards, the current owner requested the variances to allow parking in the front yard (on an existing driveway) and to allow vehicles to back onto a public street. After the owner demonstrates that the property meets zoning regulations, the fifth unit must also be inspected by the Building Safety Division to show that it meets safety requirements.

At their June 11, 2008 meeting, the Zoning Board of Appeals voted 4 ayes to 0 nays to deny the major variance to allow parking in the required front yard. The ZBA found that the variance would be "a special privilege, and is not due to special circumstances". However, they did vote to forward the second major variance, allowing vehicles to back out onto a public street, to City Council with a recommendation of approval by a vote of 4 ayes and 0 nays.

Since the variance to allow parking in the required yard was denied, there is nowhere on the lot to legally park a vehicle. Should the petitioner convert the fifth dwelling unit back into a garage, or otherwise obtain parking on the site, the property would require the requested variance to allow vehicles to back onto a public street. In either case, the petitioner will need to obtain off-site parking for the remainder of his required spaces to meet Zoning Ordinance requirements. A City-owned parking lot is has spaces available within 600 feet of the property.

Description of the Site

The subject property is located at the northeast corner of Coler Avenue and Stoughton Street, one block north of Springfield Avenue. The site is zoned R-4, Medium Density Multiple-Family Residential. This corner lot is 66 feet deep by 139.75 feet wide, with an area of 9,223 square feet. The site is in conformance with development regulations, including Floor Area Ratio, Open Space Ratio, and required front and side yards. The rear yard is nonconforming. The side and rear yards are 6.25 and 7.25 feet deep, respectively, which do not allow any space for parking behind or to the side of the structure.

Adjacent Land Uses and Zoning Designations

The surrounding areas to the north and east of the subject property contain multi-family dwellings and are zoned R-5 to the north and R-4 to the east. To the west are single-family homes zoned R-3. To the south are single-family homes, zoned R-5. The 2005 Urbana Comprehensive Plan indicates the future land use for the area as "Residential". The plan states that Residential areas:

"Contain primarily single-family residential housing but may also include a variety of compatible land uses such as duplexes, town homes, civic uses, institutional uses, and parks where zoning is appropriate."

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

Location	Zoning	Existing Land Use	Comprehensive Plan - Future Land Use
Site	R-4, Medium Density Multiple-Family Residential	Apartment Building	Residential
North	R-5, Medium High Density Multiple-Family Residential	Apartment Building	Residential
East	R-4, Medium Density Multiple-Family Residential	Apartment Building	Residential
South	R-5, Medium High Density Multiple-Family Residential	Single-Family Homes	Campus Mixed-Use
West	R-3, Single and Two-Family Residential	Single-Family Homes	Residential

Discussion

Variance Criteria

Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals to make findings based on variance criteria. The following is a review of the criteria outlined in the ordinance, followed by staff analysis for this case:

1. *Based on evidence presented, determine whether there are special circumstances or special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance.*

The practical difficulty is that this lot is on a corner and has two required front yard set backs. The building is pushed against the two opposite lot lines, and there is no room for parking behind it in either the side or rear yard. Since there is no room to turn around in the front yard, a variance is requested to allow backing onto a public street.

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.*

This property previously received a variance to allow parking at another site. In that case the Zoning Board of Appeals acknowledged that while a corner lot in itself is not a special circumstance, there is a hardship involved “when parking is only possible on the two sides considered a front yard.” The side and rear yards have setbacks of 6.25 and 7.25 feet, which are not wide enough for a parking space or drive. Thus, parking is not possible without backing cars onto a street.

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

The building was constructed in the 1950's with no space devoted behind the structure for parking. The petitioner is working with the City to bring his property into conformance with the Zoning Ordinance and Building Codes. The City's zoning requirement prohibiting vehicles to back onto a public street from a multi-family residence was instituted after this property was developed.

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

The applicant states that the building will not be expanded or changed in appearance, and is essentially the same as when it was built in the 1950's. There are single family homes in the area, which are allowed to have vehicles back out onto the street.

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

The proposed variance will not cause a nuisance to the adjacent properties. There are only five units in the building, and the owner will be providing some off-site parking also, so any traffic backing out from the property will be minimal. Also, single-family rental homes across the street are allowed to back out by right.

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

The variance represents the minimum derivation from the requirements of the Zoning Ordinance necessary. Since there is no room to turn around on the property, any vehicle parked on the property would be forced to back out onto the street.

Summary of Findings

1. The petitioner is seeking a major variance from Section VIII-4.E to allow parking for a multi-family residence to back onto a public street.
2. The property previously received a variance to allow two off-site parking spaces (with the other two required spaces in the garage) in Case ZBA-84-V-7.
3. The requested variance would allow vehicles parked in the garage to back out onto the street if the garage is converted from a dwelling unit back into parking.
4. The variance is made necessary by the practical difficulty of a small lot without space for vehicles to turn around.
5. The requested variance will not alter the character of the neighborhood or cause a nuisance to adjacent properties, as there are only five units in the building and there will be no change to the exterior of the building.

6. The proposed variance represents the minimum possible deviation from the Zoning Ordinance that will allow continued use of the property as a multi-family dwelling, should the garage again be used for parking.

Options

The Urbana City Council has the following options in major variance case ZBA-2008-MAJ-06:

- a. Approve the variance as requested based on the findings outlined in this memo;
- b. Approve the variance as requested along with certain terms and conditions; or
- c. Deny the requested variance.

Recommendation

Based on the analysis and findings presented herein, the Zoning Board of Appeals and staff recommend that City Council **APPROVE** major variance case ZBA-2008-MAJ-06, subject to the following condition:

- 1) That the variance shall be effective only upon certification by the Zoning Administrator that the applicant has provided approved parking on the site.

Prepared by:

Jeff Engstrom
Planner I

Attachments: Exhibit A: Location and Existing Land Use Map
 Exhibit B: Existing Zoning Map
 Exhibit C: Future Land Use Map
 Exhibit D: Site Photos
 Exhibit E: Application

Draft Minutes of the May 21, 2008 Zoning Board of Appeals Hearing
Draft Minutes of the June 11, 2008 Zoning Board of Appeals Hearing

cc: Steve Bantz
 302 West Elm Street
 Urbana, IL 61801

ORDINANCE NO. 2008-08-082

AN ORDINANCE APPROVING A MAJOR VARIANCE

(A request by Steve Bantz to allow vehicles to back out onto a public street for a multi-family residence at 202 North Coler Avenue in the R-4, Medium Density Multiple-Family Residential District. - Case No. ZBA-2008-MAJ-06)

WHEREAS, the Urbana Zoning Ordinance provides for a major variance procedure to permit the Zoning Board of Appeals and the Corporate Authorities to consider applications for major variances where there are special circumstances or conditions with a parcel of land or the structure; and

WHEREAS, Steve Bantz has applied for a major variance to allow vehicles parked at a multi-family residence located at 202 North Coler Avenue to back out onto a public street; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case No. ZBA-2008-MAJ-06; 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 held a public hearing on the proposed major variance on June 11, 2008 and voted 4 ayes and 0 nays to recommend to the Corporate Authorities approval of the requested variance; and

WHEREAS, after due and proper consideration, the Corporate Authorities of the City of Urbana have determined that the major variance referenced herein conforms with the major variance procedures in accordance with Article XI, Section XI-3.C.2.d of the Urbana Zoning Ordinance; and

WHEREAS, the Corporate Authorities have considered the variance criteria established in the Urbana Zoning Ordinance and have determined the following findings:

1. The variance is made necessary by the practical difficulty of a small lot without space for vehicles to turn around.
2. The requested variance will not alter the character of the neighborhood or cause a nuisance to adjacent properties, as there are only five units in the building and there will be no change to the exterior of the building.
3. The proposed variance represents the minimum possible deviation from the Zoning Ordinance that will allow continued use of the property as a multi-family dwelling, should the garage again be used for parking.

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

Section 1. The major variance request by Steve Bantz, in Case No. ZBA-2008-MAJ-06, is hereby approved to allow vehicles to back out onto a public street for a multi-family residence at 202 North Coler Avenue, in the manner proposed in the application, subject to the following condition:

- 1) That the variance shall be effective only upon certification by the Zoning Administrator that the applicant has provided approved parking on the site.

The major variance described above shall only apply to the property located at 202 North Coler Avenue, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION:

LOT 30 OF MASTER IN CHANCERY'S SUBDIVISION OF THE SOUTH PART OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THE SOUTH HALF OF THE VACATED ALLEY LOCATED BETWEEN LOTS 5 AND 30 OF SAID MASTER IN CHANCERY SUBDIVISION, SITUATED IN THE CITY OF URBANA IN CHAMPAIGN COUNTY, ILLINOIS.

Permanent Index No. 91-21-08-363-010

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).

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the Corporate Authorities of the City of Urbana, Illinois, at a regular meeting of said Authorities on the ____ day of _____, 2008.

PASSED by the Corporate Authorities this ____ day of _____, 2008.

AYES:
NAYS:
ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2008.

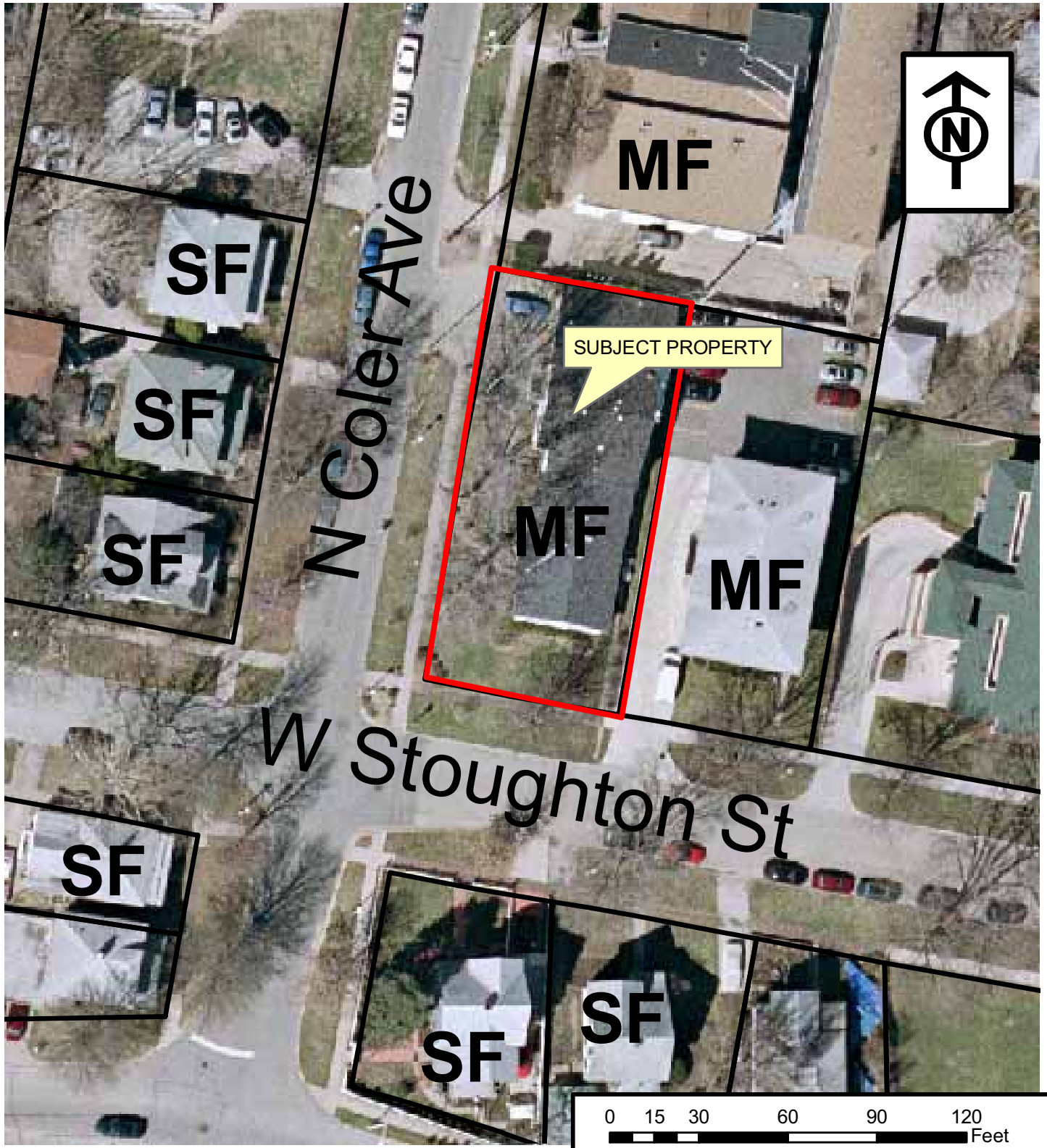
Laurel Lunt Prussing, Mayor

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 ____ day of _____, 2008, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "AN ORDINANCE APPROVING A MAJOR VARIANCE (To allow vehicles to back out onto a public street for a multi-family residence at 202 North Coler Avenue. - Case No. ZBA-2008-MAJ-06)" 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 _____, 2008, 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 _____, 2008

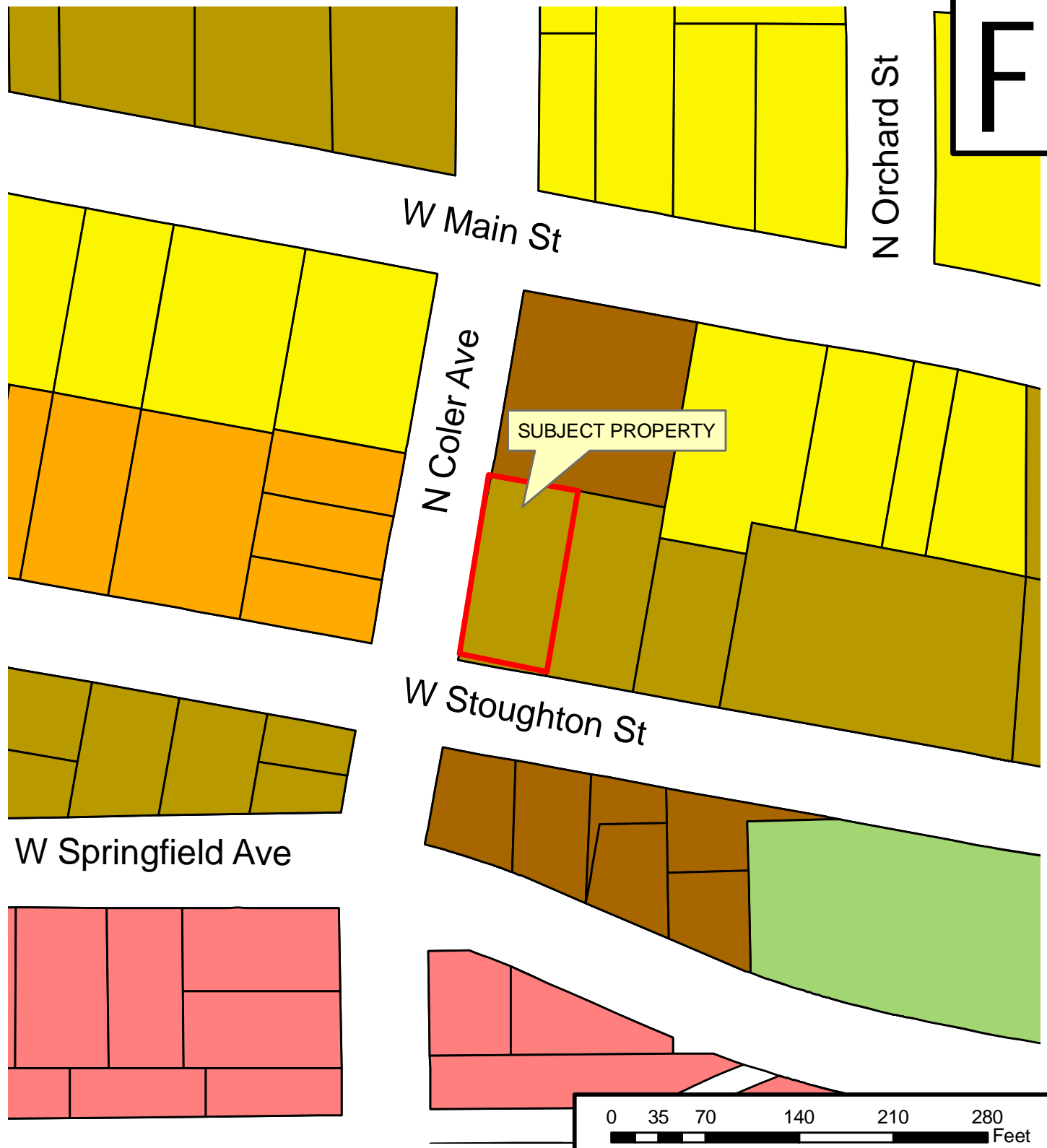
Exhibit A: Location and Existing Land Use Map



ZBA Case: ZBA-2008-MAJ-06 & ZBA-MAJ-08
Description: Major Variance to Allow Parking in a Required Yard and to Allow Parking to Back onto a Public Street
Petitioner: Steve Bantz
Location: 202 North Coler Avet
Zoning: R-4: Medium Density Multiple-Family Residential

Prepared 4/08 by Community Development Services - jme

Exhibit B: Zoning Map



ZBA Case: ZBA-2008-MAJ-06 & ZBA-MAJ-08
 Description: Major Variance to Allow Parking in a Required Yard and to Allow Parking to Back onto a Public Street
 Petitioner: Steve Bantz
 Location: 202 North Coler Ave
 Zoning: R-4: Medium Density Multiple-Family Residential

Prepared 4/08 by Community Development Services - jme







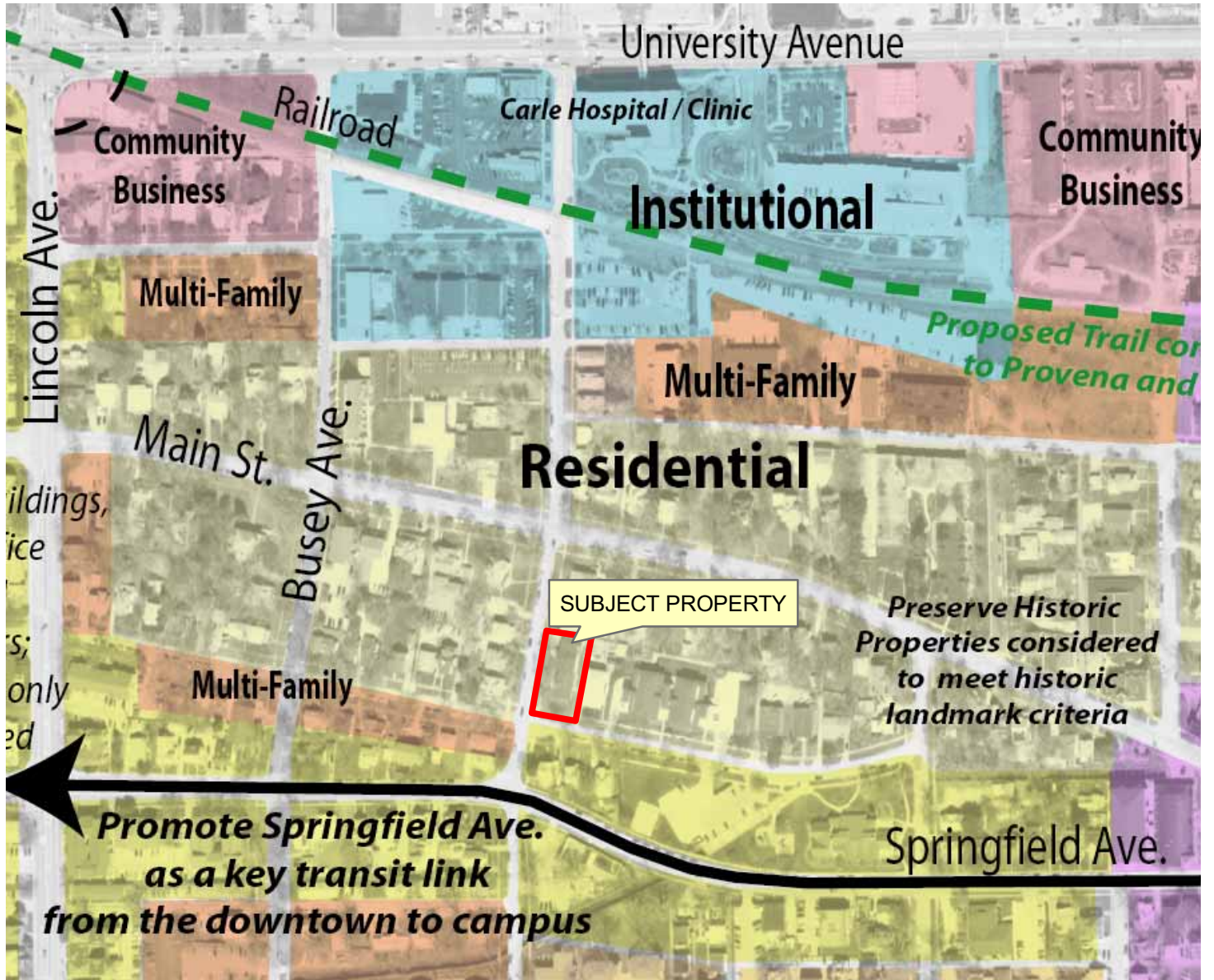
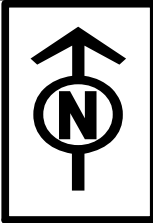
	B2		R2
	CRE		R3
			R4
			R5

Exhibit C: Future Land Use Map



ZBA Case: ZBA-2008-MAJ-06 & ZBA-MAJ-08
Description: Major Variance to Allow Parking in a Required Yard and to Allow Parking to Back onto a Public Street
Petitioner: Steve Bantz
Location: 202 North Coler Avet
Zoning: R-4: Medium Density Multiple-Family Residential

Prepared 4/08 by Community Development Services - jme

Exhibit D: Site Photos



View from southwest.



Parking Area as seen from the northwest.



Looking along east rear yard.



Looking along north side yard.

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

DATE: May 21, 2008

DRAFT

TIME: 7:30 p.m.

PLACE: Urbana City Building
City Council Chambers
400 S. Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Paul Armstrong, Herb Corten, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

MEMBERS EXCUSED: Anna Merritt, Joe Schoonover

STAFF PRESENT: Robert Myers, Planning Manager; Rebecca Bird, Planning Associate; Teri Andel, Planning Secretary

OTHERS PRESENT: Marc and Fran Ansel, Peter Baksa, Carolyn Baxley, Pat Cardenas, Joanne Chester, Claude and Susan Cole, Elizabeth Cronan, Paul Debevec, Ed and Sharon DeWan, Charles Dold, Audrey Fisher, Susan Frobish, Charlotte Hall, Katherine Hunter, Milorad Ketchens, Leslie McNeil, Evan and Lee Melhado, Georgia Morgan, Dannie Otto, Georgia Paquin, Esther Patt, Michael and Elizabeth Plewa, Steve Ross, Muriel Scheinman, Maruti Seth, Shirley Stillinger, Huseyin Schitoglu, Lisa Treul, and Roger Webber

NEW PUBLIC HEARINGS

ZBA-2008-MAJ-06: A request by Steve Bantz for a major variance to allow vehicles to back out onto a public street at 202 North Coler Avenue in the City's R-4, Medium Density Multiple Family Residential Zoning District.

ZBA-2008-MAJ-08: A request by Steve Bantz for a major variance to allow parking to encroach 100% into the required front yard at 202 North Coler Avenue in the City's R-4, Medium Density Multiple-Family Residential Zoning District.

Acting Chair Armstrong stated that City staff would present both of these cases at the same time since they were regarding the same property. However, the Zoning Board would vote on the two cases separately.

Robert Myers, Planning Manager, began his presentation by noting the zoning of the proposed property, which is R-4, Medium-Density Multiple Family Residential Zoning District. Apartments are allowed by right but must comply with all development requirements. In this case there are currently five units on the property, and the property owner is trying to bring one of the units into compliance. The proposed two major variance requests are to allow parking in a required front yard and to allow vehicles to back out onto a public street. The Zoning Ordinance allows both of these for a single-family home or duplex but not for apartments.

He pointed out that if the Zoning Board of Appeals were to deny these two cases, it would not change the fact that there are five units, and there would still be a demand for parking for the proposed property. The property has no rear or side yard areas so parking can't be accommodated there. So where are tenants to park? Their options are to park in the street, off-site, or on-site. Although there is a concrete pad in front, it is located in the required front-yard setback. If the property were a single-family or duplex residence, then the residents would be allowed by right to park in a driveway in the front-yard setback, but because it is an apartment building, the tenants are not allowed to do so..

Mr. Myers mentioned a previous variance approved for this property which allowed them to park two cars off-site elsewhere. The lease for these two off-site parking spaces is expired, and now the petitioner is applying for a separate variance to allow parking on the existing concrete pad in the front-yard setback. If the request is denied, then the petitioner would need to either block off the parking pad or put up some sort of physical barrier to prevent people from parking there.

He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance pertaining to these two cases. He noted that the petitioner was not present at the meeting; however, there are people in the audience who wished to speak.

Mr. Warmbrunn inquired if the garage existed in 1984. Mr. Myers answered yes. Mr. Warmbrunn stated that it seems that the illegally-converted garage is the main problem here. There never was enough on-site parking at this location. It has always been a problem. He wondered if cars parked on the street across Coler Avenue would be a problem for tenants being able to back straight out. Mr. Myers said that may be a possibility.

Mr. Warmbrunn questioned whether the petitioner has ever come before the City asking for permission to park somewhere else. Mr. Myers said that the previously approved variance request granted the tenants permission to park off-site.

Mr. Warmbrunn asked how wide the driveway and concrete pad are in total feet. Is there the required 22-foot length per parking space? Mr. Myers said that he did not know the length of each stall. If the Zoning Board of Appeals feels that they need this information, then they could continue the case until a future date and City staff would supply this information. Acting Chair Armstrong pointed out that Exhibit E: Proposed Parking Plan indicates that there is 26 feet from the sidewalk to the garage. Presumably there is enough depth to park vehicles. Mr. Corten noticed that it did not show the width of the driveway and concrete pad though.

Mr. Welch wondered if City staff expected the petitioner to not attend the meeting. City staff said no, it was not expected. Mr. Warmbrunn asked if City staff knew whether the petitioner had been there but left due to the lateness of the hour. Mr. Myers answered that he looked earlier but did not see the petitioner in the audience.

Ms. Uchtmann questioned if the parking pad was illegal. Was there a permit issued for the pad? Mr. Myers responded that the concrete pad is not illegal. Until recently the City has not required a permit to pour a concrete pad, for parking or otherwise.

Danny Otto, 405 West Illinois, opposes this request. He feels that the Zoning Board of Appeals needs to take a look at what was done in 1984. The petitioner had asked for a variance to get an occupancy permit for four units. The only way to do this was to lease off-site parking spaces, because it was a condition of the variance. No one was in place to enforce whether the petitioner maintained these leases. This is a matter of public record, and the petitioner in the proposed case is assumed to know that. So right now the property owner is out of compliance. One could now argue that this is a single-family residence. City staff presented this property as being apartments. It is true that the zoning would allow more density, but the apartments in question are on the north side and the east side, where the tenants cannot see the amount of parking in front of their building. All of the homes across the street are currently zoned single-family residences look out and see a parking lot. The City has been promising to help upgrade these neighborhoods. We simply cannot turn front yards into parking lots. The owners of rental properties must simply learn to deal with parking in the neighborhood.

Although City staff recommended approval of the proposed major variance requests, he urged the Zoning Board of Appeals to deny both requests. He reviewed the variance criteria and gave his opinion about each one, which is as follows:

1. The special circumstances were there in 1984. That is why in 1984 the Zoning Board of Appeals granted the variance request with the condition that the owner must find off-site parking spaces.
2. The property is out of compliance. Everything mentioned in the written staff report was true in 1984 so the owner needs to follow what was determined in 1984.
3. Variances go to the property, not to the petitioner. Therefore, one could say that the petitioner did create the problem; albeit, the petitioner is the land owner. The petitioner did create the problem when they converted it to a four-unit building.
4. It is a question of judgment whether front-yard parking will alter the character of the neighborhood. He feels that it does.
5. He feels it is a nuisance to see a parking lot in front of the apartment building.

He believes this would set a bad precedent. The answer to the petitioner is to either convert the garage back to its intended use or provide 2 leased parking spaces.

Steve Ross, of 609 West Green Street, spoke against the request. He stated that Mr. Otto had already expressed many of his points and concerns. One additional comment is that the special privilege is due to the illegal conversion of the garage into an additional apartment unit. This, along with the petitioner not continuing to lease the two off-site parking spaces, are the real

reasons for the parking problems. He urged the Zoning Board of Appeals to deny the two requests because it would set a bad precedent. He is worried about land owners closer to his neighborhood wanting to get variances for the same reason.

With no further questions or comments, Acting Chair Armstrong closed the public input portion of the hearing. He opened the hearing up for discussion and motion(s) by the Zoning Board of Appeals.

Ms. Uchtmann moved that the Zoning Board of Appeals deny Case No. ZBA-2008-MAJ-08 because the Zoning Board of Appeals wants to uphold the previous variance requirement as set forth in 1984. Mr. Corten seconded the motion.

Mr. Welch proposed that absent knowing why the petitioner was not present at the meeting that the Zoning Board of Appeals should table the vote. They would not be giving the petitioner either approval or disapproval. The petitioner cannot do anything legally unless the Zoning Board of Appeals and then the City Council approve the variance requests. After being renoticed, if the petitioner does not appear, then he would not have a problem voting. He feels that if they do not know why the petitioner is not present, then they should afford the petitioner another opportunity to have his voice heard. Mr. Corten agreed with Mr. Welch.

Ms. Uchtmann commented that the petitioner has already stated his reasons in the written petition/application. Mr. Welch said yes, but the Zoning Board of Appeals affords as part of the process an opportunity for the petitioner to appear. He does not see any harm in tabling the vote, especially since the petitioner did not inform City staff that they would not be appearing.

Ms. Uchtmann removed her motion from the table. Mr. Welch, then, moved that the Zoning Board of Appeals continue this case to the next meeting to allow the petitioner an opportunity to appear and speak in favor of their two major variance requests (Case No. ZBA-2008-MAJ-06 and Case No. ZBA-2008-MAJ-08). Mr. Corten seconded the motion. The Zoning Board of Appeals approved the motion by unanimous voice vote.

Mr. Myers announced that the next Zoning Board of Appeals meeting is scheduled for June 11, 2008.

MINUTES OF A SPECIAL MEETING

URBANA ZONING BOARD OF APPEALS

DATE: June 11, 2008

DRAFT

TIME: 7:30 p.m.

PLACE: Urbana City Building
City Council Chambers
400 S. Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Herb Corten, Anna Merritt, Joe Schoonover, Charles Warmbrunn

MEMBERS EXCUSED: Paul Armstrong, Nancy Uchtmann, Harvey Welch

STAFF PRESENT: Robert Myers, Planning Manager; Lisa Karcher, Planner II; Teri Andel, Planning Secretary

OTHERS PRESENT: Steve Bantz, Mark Dixon, Georgia Morgan, Jenny Park, Terri Smart

CONTINUED PUBLIC HEARINGS

ZBA-2008-MAJ-06: A request by Steve Bantz for a major variance to allow vehicles to back out onto a public street at 202 North Coler Avenue in the City's R-4, Medium Density Multiple Family Residential Zoning District.

ZBA-2008-MAJ-08: A request by Steve Bantz for a major variance to allow parking to encroach 100% into the required front yard at 202 North Coler Avenue in the City's R-4, Medium Density Multiple-Family Residential Zoning District.

Robert Myers, Planning Manager, presented the two cases together to the Zoning Board of Appeals. He explained that these two cases were postponed from the May 21, 2008 meeting at the request of the Board members to allow the petitioner an opportunity to attend the meeting and answer any questions they may have.

Mr. Myers stated that since he gave a full presentation at the previous Zoning Board of Appeals meeting regarding the proposed two cases, he would simply give a summary of the information at this meeting. He noted that the applicant was present and available to answer any of the Board members questions.

He described the proposed property and the surrounding adjacent properties by noting their current land uses and zoning designations. Referring to Exhibit A (Location and Existing Land Use map), he showed where the property is located in the City of Urbana. He pointed out that there is no real backyard or side yard to the north. It appears to be a single-family home that was converted into a multi-family apartment building. There are currently five units in the building.

The purpose of the variance request in ZBA Case No. ZBA-08-MAJ-08 is to allow five parking spaces in the driveway. The petitioner is required to provide five parking spaces, one for each unit. He pointed out that there is no other place to provide parking on-site except for in the driveway, which is in the front-yard setback area. He talked about a variance that the previous owner was granted that allowed two vehicles to be parked in the two-car garage and provide two off-site parking spaces. At the time, there were only four units in the building.

Subsequently, one of the property owners converted the garage into a fifth apartment unit. He mentioned that the City staff is currently in the process of trying to get the property into compliance. The current property owner wants to do the same.

Referring to Exhibit C, he showed how the two major variance requests relate to the 2005 Comprehensive Plan. Regardless of what the Comprehensive Plan's land use policy is for the proposed site, the fact is that it is still an existing apartment building, and they are not allowed to park in the front-yard setback or back out onto a street.

Mr. Schoonover questioned whether they took into consideration when getting a permit for the fifth unit that they needed to find alternative parking spaces for the tenants. Mr. Myers explained that the previous property owner did not get a permit for the fifth dwelling unit in the garage. This is what is at issue right now with getting the building into compliance with all the building and zoning codes. Another option for the petitioner would be to ask for a variance to allow off-site parking, but how realistic is it to expect the tenants to walk back and forth to the parking spaces when there is a concrete pad in the front yard.

Mr. Warmbrunn reviewed the options of the Zoning Board of Appeals, which are as follows: 1) deny the proposed variance request to allow parking encroachment, which would allow five apartment units with no onsite parking; 2) suggest that the petitioner turn the fifth unit back into a garage, which will allow two-onsite parking spaces and require two-offsite parking spaces; and 3) approve the variance request for parking encroachment, which would allow five onsite parking spaces. Mr. Myers replied that if the Zoning Board of Appeals denies the proposed variance request for parking encroachment, then the property would be in violation of not meeting the zoning requirements for parking. The property is in violation now, and that is the reason for the petitioner's request for the two variances. He mentioned that the City can offer suggestions or recommendations for solutions, but the property owner is the one decides what solution to pursue. He added that since it is a major variance request, if the Zoning Board of Appeals denies the request by a two-thirds majority vote, then the request is not forwarded on to the City Council. If the Zoning Board of Appeals recommends approval, then the case is sent to the Urbana City Council, and they make the final decision.

Mr. Warmbrunn asked how many feet wide does the City require for each parking space. Mr. Myers said that one of the sketches shows each space to be 8-1/2 feet wide. Chair Merritt wondered if that would meet the City's regulations. Mr. Myers yes, 8-1/2 feet is the required width for parking. City staff has recommended two conditions for the parking area to be placed on the approval of the proposed variance, which are as such: 1) The parking lot shall be striped and contain wheelstops and 2) The curb cut shall be expanded to allow access to the parking spaces easier. However, he received a phone call from a concerned neighbor that believes striping the parking area would give it less of a single-family feel.

Mr. Warmbrunn questioned whether the parking area is 42-1/2 feet wide to accommodate five cars. Mr. Myers answered by saying that if it is not 42-1/2 feet wide, then it is pretty close. The Zoning Board of Appeals could note this as a condition for approval.

Mr. Warmbrunn inquired as to whether there would be on-street parking on the other side of Coler Avenue, where the tenants of 202 North Coler Avenue would be backing out into. Mr. Myers said yes.

Chair Merritt commented that in affect, while the Zoning Board of Appeals is being asked for a variance to allow parking, they are also being asked to sanction the illegal construction of a number of years ago with the fifth unit. She feels uncomfortable taking on this task. Mr. Myers responded by saying that the City staff is not asking the Zoning Board of Appeals or the City Council to approve the fifth unit. They are simply trying to work with the current owner in bringing the property up to compliance with the building and zoning regulations.

When a previous owner created the violation, it does bring up the questions, "Who do you prosecute? How do you move forward with the prosecution?" Mr. Myers pointed out that parking is not the only violation occurring at this property. There are many building code violations that need to be addressed as well. The petitioner, Steve Bantz, has applied for a building permit to bring some of these issues into compliance; however, the Building Safety Division has held up issuing the petitioner the building permit until the variance requests have been decided upon, because they do not want the owner to spend a lot of money on the improvements if he cannot get zoning approval for the parking. The number of dwelling units allowed does hinge upon parking.

Mr. Schoonover wondered how many years ago the house was grandfathered in. He knew the owner of the house 15 years ago. Mr. Myers deferred the question to the petitioner at his request.

With no further questions for the City staff by the Zoning Board of Appeals, Chair Merritt opened the hearing up for public comments, issues and/or questions. She swore in members of the audience indicating they may want to speak during the public hearing.

Steve Bantz, petitioner and property owner of 202 North Coler Avenue, stated that he has gathered bits and pieces of information in the past year that he has owned the property. He understood the building to start out as a three-unit apartment building. The actual footprint of

the building has not changed since it was built in 1952 or 1953. Sometime in the last 15 to 20 years, the fourth unit was added to the second floor.

When he purchased the property about a year ago, his contractor informed him that one of the units was not in compliance with the City's electrical code. When he applied for an electrical permit, City staff discovered some of the other regulations that the property was violating. He did not know that there were any issues with the parking, because prior to purchasing the home, he contacted the City to see if there were any code violations and was told that there were not. So, this has been a very unpleasant surprise to find out that there is a zoning issue with parking.

Mr. Corten wondered if Mr. Bantz knows of any parking available elsewhere other than right in front of the proposed property on Coler Avenue. Mr. Bantz stated that there is a little bit of street parking. In terms of the history of tenant parking for this property, he believed that they have always parked in the driveway apron since it was built.

Mr. Corten asked if the driveway was made of concrete. Mr. Bantz said yes. It will need to be expanded though.

Mr. Corten inquired as to whether he lives in the apartment building. Mr. Bantz replied no.

Mr. Corten asked if Mr. Bantz rented out all five units. Mr. Bantz said yes.

Mr. Myers clarified that the previous variance for parking was granted in 1984.

Mr. Corten questioned if there had been any complaints about loud parties in the proposed building. Mr. Bantz said no, one of the reasons is because his son lives on the second floor apartment. His son gets his rent subsidized in return for helping him with things like that.

Mr. Corten wanted to know how many people could live in each apartment. Mr. Bantz explained that the apartment at 202A is a one bedroom unit. 202B is a two bedroom unit. 202C is a two bedroom unit. 202D is the second floor apartment and is a two bedroom unit. 202E is an efficiency apartment.

Chair Merritt asked if the sharp angle of the parking space to the south is due to the tree in the front yard. Mr. Bantz replied no. Mr. Corten wondered if Mr. Bantz would be willing to remove the tree. Mr. Bantz said that he would not want to do that, but if the City required it, then he would be willing. However, he believes that they could straighten the space out without having to remove the tree.

Mr. Warmbrunn inquired as to how much room there is from the side of the building to the north property line. Mr. Bantz answered by saying that there is about three to four feet. He referred to a photo that had been submitted by Mr. Myers. The photo shows a bush on the north side of the property. He mentioned that he had the bush removed to allow more room for the tenant who parks on the north end to be able to get in and out. He did not know for sure how many feet were between the building and the north property line.

Mr. Warmbrunn noticed a difference between the sketch and what is shown in the photographs of the driveway. It appears that the first parking spot is about five or six feet further north in the sketch than in the photos. Mr. Bantz assured the Zoning Board of Appeals that the apron does go several feet further north of the building.

Mr. Corten wondered if the tenants were students. Mr. Bantz stated that there are two students, but the other tenants are single, working people.

Mr. Corten asked Mr. Bantz if he would be upset if the Zoning Board of Appeals were to suggest that the fifth unit is not valid, which would reduce the number of required vehicles to four and reduce the number of apartment units to four. This would give him the opportunity to open the garage up again. Mr. Bantz said that it would be a huge financial hit. He wants to work with the City in bringing the property into compliance. He was prepared to have the electrical work done last year. The fifth unit is probably worth \$40,000 to \$50,000.

He suggested that the Zoning Board of Appeals could defer action on this case to take an opportunity to drive by and see the property and driveway. Tenants have been parking as shown in the photographs for 20 years. He feels that it is a good property, and it is an asset to the City of Urbana.

Mr. Warmbrunn commented that he had driven by the property several times prior to the May 15, 2008 meeting. He feels that it looks terrible to have five cars parked as shown in the photographs. He is trying to find justification in 2008 to overrule the decision that was made in 1984 on the previous variance request. He can imagine that parking was approved because the garage was still being used as a garage, and the Zoning Board of Appeals at the time required two off-site parking spaces. Now, the request is for five parking spaces in the front yard. He still does not know the width of the driveway to determine if there is enough room legally for five cars to park there.

In this neighborhood, there are single-family residential dwellings across the street and to the south. If he lived in one of the single-family homes, he would have a problem with five cars being parked in the front yard across the street. Would Mr. Bantz be in favor of providing off-site parking of some sort? Mr. Bantz replied that off-site parking is not that easy to get.

Mr. Warmbrunn remarked that lately the Zoning Board of Appeals has been presented with several cases asking for variances and conditional use permits to allow things that a good realtor should have informed them about prior to purchasing the properties. Mr. Bantz had mentioned that he checked with City staff about any outstanding violations, etc. prior to purchasing the property. He suggested that maybe City staff could create a database that lists code violations, permits and variances that have been issued for properties in the City, if one does not already exist. Then, when a person goes to buy a house, they can go online and click on the database and find out if there will be or have been any problems with the property they are interested in purchasing.

Mr. Bantz commented that he has been trying to work with the City staff. The proposed variance request is an idea that surfaced as a way to bring the property into compliance with the Zoning Ordinance, so he can get on with the life safety issues and bringing the property up to comply with

the building code. He reiterated that tenants have been living there and parking like this for probably the last 20 years.

Chair Merritt inquired if the option of providing off-site parking at Glenn Poor's is still available. Mr. Bantz explained that he spoke with the owner, and the owner said he was no longer interested. He expressed his concern about being able to keep the tenants from parking in the driveway.

Mr. Warmbrunn asked staff if the Zoning Board of Appeals denies the proposed variance request to allow parking encroachment, then parking would not be allowed on the property at all, correct? Mr. Myers said that is correct. If the petitioner converted the fifth apartment unit back into a garage, then tenants would still need to have permission to be able to back out of the driveway, because it is not allowed in the R-4, Medium Density Multiple Family Residential Zoning District. In addition, he did not believe that the concrete could be pulled up and removed in the event that the property owner should someday want to convert the garage back into a garage use. As a result, it will be difficult to enforce no parking in the driveway.

Mr. Corten wondered what the problem is with allowing people to back out of multi-family properties, but yet it is permitted with properties that have single-family homes or duplexes on them. Mr. Myers responded by saying that this is a good question. Single-family homes do not create as much traffic than higher density apartment complexes, so it increases the chances of conflicts or accidents happening.

Mr. Corten noticed that it appears to be difficult for tenants to get in and out of their vehicles with how they are parked in the photographs. Mr. Myers stated that 8-1/2 feet is a fairly narrow parking space, but it would just meet the code requirements.

Chair Merritt wondered what would happen if the Zoning Board of Appeals does not approve the variance request for the parking encroachment. Mr. Myers said that the petitioner would then need to find another solution for meeting the zoning requirements. The solution could include the following: 1) the property owner removing the fifth apartment unit, converting it back into a garage and finding two off-street parking spaces elsewhere, which would comply with the 1984 variance that was granted; 2) the property owner could apply for a separate variance to waive the parking requirements for the property, or 3) the property owner could apply for a separate variance to allow off-site parking for all five spaces. The problem with any of these solutions is that the tenants will need somewhere to park, and if parking is not allowed in the driveway, then it will need to be found or provided off-site, which means it will be hard for the City to enforce tenants not parking in the driveway. Tenants will get tired of walking to and from their vehicles, especially since there is a concrete pad located right in front of the house.

Mr. Corten asked if two cars could still get through on Coler Avenue, even though there is parking on-street. Mr. Myers said that it is possible for two cars to pass each other even with a car parked on one side of the street.

Georgia Morgan, of 804 West Nevada Street, spoke in opposition of the proposed two variance requests. She mentioned that over the past few years she has seen too many yards over rental properties converted to parking spaces. Although this is not what is happening in these two cases,

she would hate to think that it has become a trend for owners of rental properties to pave their front yards and then ask for dispensations to make it legal afterwards.

Granting the proposed request will send a message that the City of Urbana is a pushover. It is okay to do what you want, and later come back claiming a hardship. She urged the Zoning Board of Appeals to think long and hard before making a decision.

Mr. Schoonover asked again if every time a property sells, are any non-conforming issues automatically grandfathered in. Or is it grandfathered after a certain period of time has elapsed? Mr. Myers replied that there is not really a set time. Mr. Schoonover feels the fifth apartment unit has been grandfathered even though it was constructed illegally. The previous owner converted the garage without seeking approval from the City of Urbana, and we are just going to let the property owner keep it. He commented that it seems to him that something should have been taken care of. Mr. Myers explained that the fifth unit is not grandfathered. Previously, there were four apartment units there, and according to our records, they are in compliance. Mr. Schoonover remarked that the fifth unit does not exist then. Mr. Myers replied it exists illegally. The property owner and the City staff are trying to bring it into compliance by requesting the proposed variance request. He pointed out that just because the solution to allow two parking spaces in the garage and two off-site parking spaces was approved by the Zoning Board of Appeals in 1984, it does not mean that is the only solution to the problem today.

Mr. Warmbrunn suggested reading the testimonies of Danny Oto and Steve Ross from the minutes of the previous meeting. Chair Merritt did not feel that they could read the minutes from the May 21, 2008 meeting because they had not been approved and had not become part of the record as of yet. Mr. Myers said that the May 21, 2008 Zoning Board of Appeals minutes were considered a communication, and the Board could approve them at the next meeting. Since they are an item under "Written Communications", the Board can make reference to them.

Mr. Warmbrunn explained that he was only attempting to point out that two people spoke out against the proposed variance to allow parking encroachment at the previous meeting. The case was continued to tonight's meeting to allow the petitioner an opportunity to speak in favor of his requests. Mr. Myers stated that because of the continuation anyone who spoke at the previous meeting, their testimony is part of the official record. Even though the minutes have not been approved, it is still part of the record that Mr. Oto and Mr. Ross came and spoke in opposition at the previous meeting.

Mr. Warmbrunn questioned what the proper way to proceed would be...if they do not want the variance to pass, should they move to deny or should they vote down a motion to approve? Mr. Myers explained that according to the Zoning Ordinance, in order for the variance case to allow parking encroachment to be forwarded to the Urbana City Council for their approval, it would require a 2/3 majority of the Zoning Board of Appeals members voting. If a motion to approve does not receive a 2/3 majority vote in favor, then the motion to forward the case would fail. Therefore, the application would fail. However, this would leave the Zoning Board of Appeals without necessarily approving any findings of fact.

So, another way to do this is to make a motion to approve. If a motion to approve does receive a 2/3 majority with findings of fact, then okay. But, if the motion failed, then the Zoning Board of Appeals could come back with a second motion for denial with certain findings of fact included. This way they would have findings of fact for their motion.

Mr. Corten moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-06 to the Urbana City Council with a recommendation for approval.

Mr. Schoonover asked if this request was not part of the variance request in 1984. Mr. Myers said no. The previous owner did not apply for or receive a variance to allow tenants to back out onto the street. Mr. Schoonover responded by saying that the previous owner did obtain a variance permit to allow two parking spaces in the garage. How did the City expect them to leave without backing out onto the street? Mr. Myers stated that he was not sure if multi-family tenants were allowed to back out onto the street in 1984.

Mr. Corten said that he does not see anyway to handle this to where the tenants do not have to back out. There was discussion about which case they should vote on first. They are both dependent upon each other.

Mr. Warmbrunn seconded the motion. If they approve the variance request to allow backing out onto the street, then no matter what parking solution is presented to them either in the next case or in the future, the property owner will have permission for his tenants to back out.

Roll call on the motion was as follows:

Mr. Corten	-	Yes	Chair Merritt	-	Yes
Mr. Schoonover	-	Yes	Mr. Warmbrunn	-	Yes

The motion passed by unanimous vote.

Mr. Warmbrunn moved that the Zoning Board of Appeals deny Case No. 2008-MAJ-08, because it is a special privilege, and it is not due to special circumstances. The problem is something that has been created from a deviation from a variance that was granted in 1984 by the Zoning Board of Appeals. Mr. Schoonover seconded the motion.

Mr. Warmbrunn explained that he cannot vote in favor of allowing five cars to park in the front yard. He does not understand the diagram well enough to do so.

Roll call on the motion was as follows:

Mr. Corten	-	Yes	Chair Merritt	-	Yes
Mr. Schoonover	-	Yes	Mr. Warmbrunn	-	Yes

The motion to deny passed by unanimous vote. Mr. Myers stated that since the case did not get a 2/3 majority vote for approval of the variance, then the case will not be forwarded to the City Council. The application is denied.