



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Planning Division*

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: John A. Schneider, MPA, Director, Community Development Services Department  
Lorrie Pearson, AICP, Planning Manager and Zoning Administrator  
Lily Wilcock, Planner I

DATE: May 30, 2019

SUBJECT: **An Ordinance to Approve a Major Variance** (812 South Race Street/ZBA Case No. 2019-MAJ-01)

---

### **Introduction**

Kimberly Hubbard requests a Major Variance to allow a garage to be built five feet into the required ten-foot rear yard at 812 South Race Street.<sup>1</sup> Garages are typically considered accessory structures and are permitted to be built up to 18 inches from the property line. However, this proposed garage will include a second-story apartment, which makes it a principal structure. Principal structures cannot be built in a required yard, so a variance is required. The variance request would allow the applicant to build the proposed new garage and apartment without removing a mature tree on the eastern half of her lot. Without a variance, the tree would need to be removed.

At its May 15, 2019, meeting, the Zoning Board of Appeals (ZBA) held a public hearing on this case. No members of the public spoke. The ZBA voted unanimously (six ayes and zero nays) to recommend that City Council approve the variance request. The ZBA also approved a Conditional Use Permit (CUP) to allow a new garage with a second-floor dwelling unit as a second principal structure on the lot.

### **Background**

Ms. Hubbard would like to replace her existing one-story garage with a two-story garage with a second-story apartment for her mother to live in. She would like to save the two mature trees in her back yard, but to meet the required ten-foot rear yard would require the removal of a mature spruce tree. After consulting with Mike Brunk, the City Arborist, Ms. Hubbard believes that placing the new building five feet from the side and rear property lines would allow her to construct the garage and save the mature spruce tree (see Exhibit D).

### **Description of Site and Area**

The lot at 812 South Race Street is approximately 6,500 square feet, and is located at the northeast corner of Race and Washington Streets. The property is improved with a single family home, a one-story garage, a driveway, and a fence. Exhibit D and Ordinance Attachment A shows the proposed site plan submitted by the property owner. Exhibit E shows a site plan with additional details.

---

<sup>1</sup> Section VI-5.B and Table VI-3.1 of the Urbana Zoning Ordinance.

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

Location	Zoning	Existing Land Use	Future Land Use
Site	R-3, Single- and Two-Family Residential	Single Family Home	Residential
North	R-3, Single- and Two-Family Residential	Single Family Home	Residential
South	R-2, Single-Family Residential	Duplex	Institutional
East	R-4, Medium Density Multiple Family Residential	Apartments	Residential
West	R-3, Single- and Two-Family Residential	Single Family Home	Residential

### Discussion

The major variance would allow the applicant to build the garage/apartment five feet into the required ten-foot rear yard, which would help save a mature tree on the property (see Ordinance Attachment A). Siting the new garage closer to the street would require removing one of the trees. Siting the garage closer to the house would allow the rear yard requirement to be met, but would require removing a mature spruce tree. To save both trees, the garage would have to be built in the northeast corner of the lot. If the garage is built in that proposed location, the property would meet all other development regulations (FAR, OSR, and yard requirements).

The following is a summary of the development regulations for the proposed garage apartment:

	FAR	OSR	Yards (ft.)		
			Front	Side	Rear
R-3 Requirements	0.40 (max.)	0.40 (min.)	15 (min.)	5 (min.)	10 (min.)
Existing	0.21	2.6	30	5	8
Proposed	0.27	2.3	30	5	5

### Zoning Board of Appeals

The discussion at the May 15, 2019, ZBA meeting focused on the conditions of approval for the CUP to allow a new garage with a second-floor dwelling unit as a second principal structure on the lot, which was approved. The ZBA voted to recommend approval of the Major Variance to City Council by a vote of six ayes to zero nays.

## Variance Criteria

Section XI-3 of the Urbana Zoning Ordinance requires the City Council to make findings based on variance criteria. The following is a review of the variance criteria as they pertain to this case:

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

The Zoning Ordinance requires a ten-foot rear yard for the R-3 zoning district, so no principal structure may be built within ten feet of the rear property line. As this is a corner lot, the eastern lot line is considered the rear lot line. The location of the two trees on the eastern half of the lot create a practical difficulty in carrying out the requirements of the zoning ordinance. As discussed above, various locations on the site were considered for the proposed garage, but locations that would meet the requirements would require either removing a mature tree or moving the driveway closer to the intersection.

2. The proposed variance will not serve as a special privilege because the variance requested is necessary due to special circumstances relating to the land or structure involved or to be used for occupancy thereof, which is not generally applicable to other lands or structures in the same district.

The proposed reduction in the rear yard will not be a special privilege to the applicant. The variance is needed to keep the mature spruce tree, and the five-foot setback will match the character of other homes along Washington Street.

3. The variance request is not the result of a situation or condition having been knowingly or deliberately created by the Petitioner.

The variance request is due to the location of the trees on the lot, which were not planted by the applicant, and the driveway, which should be kept as far from the intersection as possible for safety and traffic concerns.

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

If granted, the variance would not alter the essential character of the neighborhood. Two-family residences are allowed by right in the neighborhood. There are duplexes and multiple-family residences adjacent to this property. The proposed two-car garage will replace the existing garage, which as accessory structures, are allowed within 18 inches of the property line. Many garages in the neighborhood, including garages on neighboring properties, are within five feet of the rear property line. There are also homes on Washington Street that are five feet from the property line, so the proposal will not be out of character.

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

The variance would not cause a nuisance, as the proposed garage/apartment will be five feet from the property line, similar to other structures in the neighborhood, and matching the setback for other lots facing Washington Street. The proposed location is also similar to that of the existing garage. If the variance is not granted, at least one mature tree would have to be removed, which could be a negative outcome for the neighborhood.

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

The proposed building is sited as close to the existing trees as possible while minimizing potential harm. It is not possible for the structure to be farther from the rear property line while keeping a safe distance from the trees. The request therefore represents the minimum deviation from the Zoning Ordinance necessary.

## Summary of Findings

1. Kimberly Hubbard was granted a CUP by the ZBA to allow a second principal structure on her property at 812 South Race Street, in the R-3, Single- and Two-Family Residential zoning district;
2. Ms. Hubbard has also requested a major variance to reduce the required rear yard from ten feet to five. The ZBA unanimously recommended that City Council approve the major variance request;
3. The variance will allow two mature trees to be saved, and for the driveway to maintain its distance from the intersection of Race Street and Washington Street;
4. The variance request would not serve as a special privilege to the property owner if granted, as there are special circumstances relating to the land such as location of mature trees and the access drive;
5. The property owner did not deliberately create this situation, as the mature trees were not planted by the applicant;
6. The variance will not alter the essential character of the neighborhood, as the proposed structure will match homes and garages facing Washington Street;
7. The variance will not create a nuisance, as it will be in a similar location to the existing garage and set back five feet from the property line like other structures along the block; and
8. The variance represents a minimum deviation from the zoning ordinance, as the variance is required to save two mature trees and maintain the distance of the driveway to the intersection at Race Street and Washington Street.

## Options

The City Council has the following options in case ZBA-2019-MAJ-01:

1. **Approve** the variance based on the findings in this memorandum; or
2. **Approve the variance with certain terms and conditions**, and if so, articulate all terms, conditions, and findings; or
3. **Deny** the variance request, and if so, articulate findings supporting the denial.

## Recommendation

At its May 15, 2019, meeting, the ZBA voted six ayes and zero nays to forward this case to City Council with a recommendation to **APPROVE** the request, with the following two conditions:

1. That the proposed structure's location and construction generally conform to the site plan and specifications in Ordinance Attachment A.
2. The proposed structure can be no taller than 25 feet from the grade of the property.

City staff likewise recommends approval.

Attachments: Exhibit A: Location and Land Use Map  
Exhibit B: Zoning Map  
Exhibit C: Future Land Use Map  
Exhibit D: Site Plan  
Exhibit E: Aerial Site Plan with Lot Lines  
Exhibit F: Major Variance Application  
Exhibit G: Draft Zoning Board of Appeals Minutes from May 15, 2019, meeting

cc: Kimberly Hubbard, Owner/Applicant

**ORDINANCE NO. 2019-06-032**

**AN ORDINANCE APPROVING A MAJOR VARIANCE**

**(Hubbard Garage Apartment/ 812 South Race Street / ZBA Case No. ZBA-2019-MAJ-01)**

**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 a major variance where there is a special circumstance or condition with a parcel of land or a structure; and

**WHEREAS**, Kimberly Hubbard has submitted a petition for a major variance to allow a reduction in the required rear yard setback from ten feet to five feet on her property at 812 South Race Street in the R-3, Single and Two-Family Residential zoning district.

**WHEREAS**, the Zoning Board of Appeals held a public hearing on such petition at 7:00 p.m. on May 15, 2019, in ZBA Case No. 2019-MAJ-01; and

**WHEREAS**, in accordance with Urbana Zoning Ordinance Section XI-10, due and proper notice of such public hearing was given by publication in *The News-Gazette*, a newspaper having a general circulation within the City, on a date at least 15 days but no more than 30 days before the time of the public hearing, and by posting a sign containing such notice on the real property identified herein; and

**WHEREAS**, the Zoning Board of Appeals voted six (6) ayes and zero (0) nays to forward the case to the Urbana City Council with a recommendation to approve the requested variance; and

**WHEREAS**, the City Council finds that the requested variance conforms with the major variance procedures in Article XI, Section XI-3(C)(2)(d) of the Urbana Zoning Ordinance; and

**WHEREAS**, the City Council has considered the variance criteria established in the Urbana Zoning Ordinance and has made the following findings of fact:

1. Kimberly Hubbard was granted a Condition Use Permit by the Zoning Board of Appeals to allow a second principal structure on her property at 812 South Race Street, in the R-3, Single- and Two-Family Residential zoning district;
2. Ms. Hubbard has also requested a major variance to reduce the required rear yard from ten feet to five. The Zoning Board of Appeals unanimously recommended that City Council approve the major variance request;
3. The variance will allow two mature trees to be saved, and for the driveway to maintain its distance from the intersection of Race Street and Washington Street;
4. The variance request would not serve as a special privilege to the property owner if granted, as there are special circumstances relating to the land such as location of mature trees and the access drive;
5. The property owner did not deliberately create this situation, as the mature trees were not planted by the applicant;
6. The variance will not alter the essential character of the neighborhood, as the proposed structure will match homes and garages facing Washington Street;
7. The variance will not create a nuisance, as it will be in a similar location to the existing garage and set back five feet from the property line like other structures along the block; and
8. The variance represents a minimum deviation from the zoning ordinance, as the variance is required to save two mature trees and maintain the distance of the driveway to the intersection at Race Street and Washington Street.

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

**Section 1.**

In ZBA Case No. 2019-MAJ-01, the major variance requested by Kim Hubbard to allow for a reduction in the required rear yard setback from ten feet to five feet in a residential zoning district is hereby approved in the manner proposed in the application with the following condition:

1. That the proposed structure's location and construction generally conform to the site plan and specifications in Ordinance Attachment A.
2. The proposed structure can be no taller than 25 feet from the grade of the property.

The major variance described above shall only apply to the property more particularly described as follows:

Lot 4, except the North 18 inches thereof, in Bogg's Replat in the City of Urbana, as per Plat recorded in Book "D" at page 74, in Champaign County, Illinois.

Commonly known as 812 South Race Street, Urbana, Illinois  
P.I.N.: 92-21-17-261-013

**Section 2.**

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code. Upon approval of this Ordinance, the City Clerk is directed to record a certified copy with the Champaign County Office of the Recorder of Deeds and transmit one copy of the recorded Ordinance to the petitioner.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

**PASSED BY THE CITY COUNCIL** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSTENTIONS:

\_\_\_\_\_  
Charles A. Smyth, City Clerk

**APPROVED BY THE MAYOR** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Diane Wolfe Marlin, Mayor



**CERTIFICATE OF PUBLICATION IN PAMPHLET FORM**

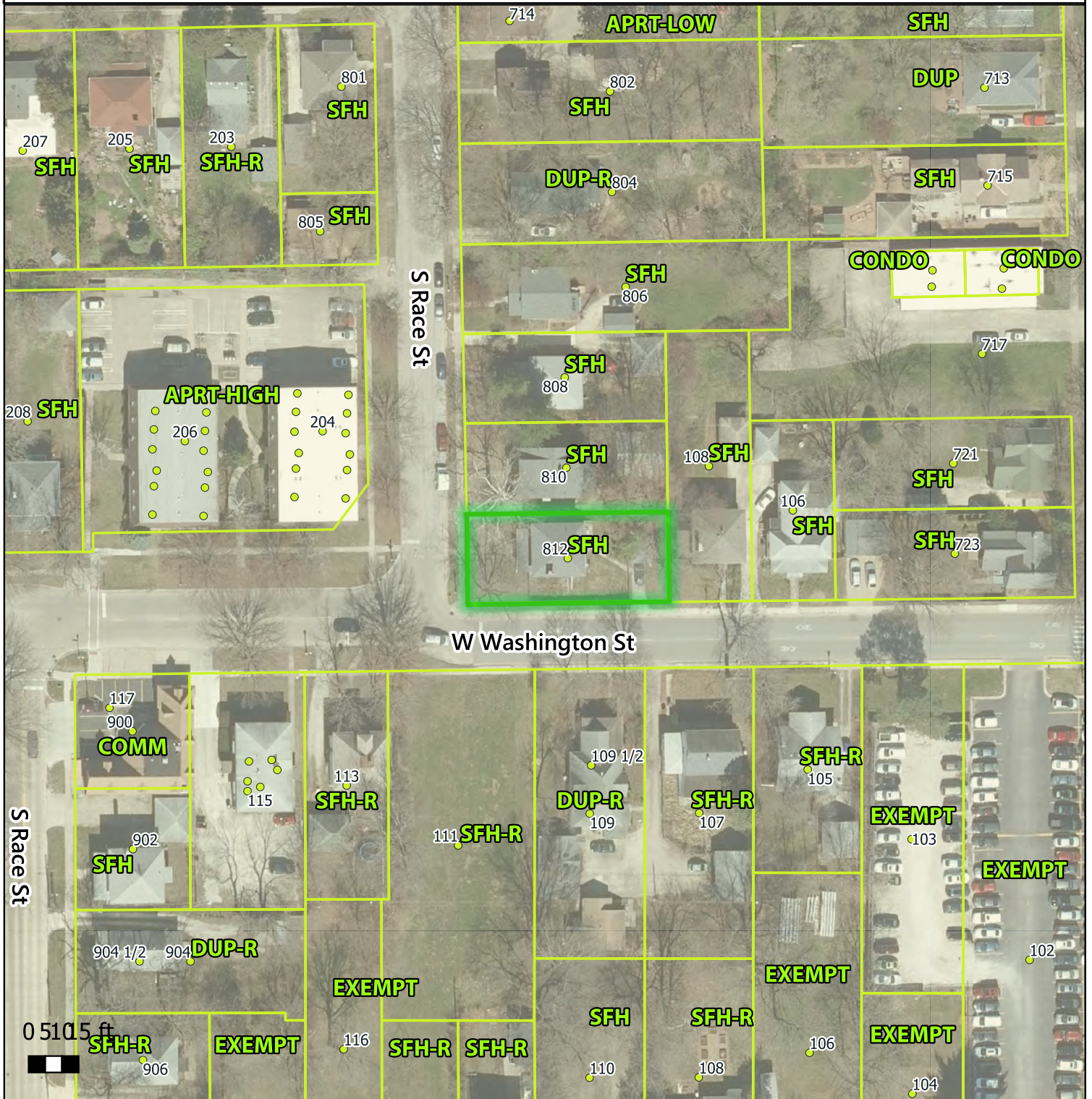
I, Charles A. Smyth, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the \_\_\_\_ day of \_\_\_\_\_, 2019, the corporate authorities of the City of Urbana passed and approved Ordinance No. \_\_\_\_\_, entitled “An Ordinance Approving a Major Variance (812 South Race Street / ZBA-2019-MAJ-01)” 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 \_\_\_\_\_, 2019, 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 \_\_\_\_\_, 2019.

Ordinance Attachment A



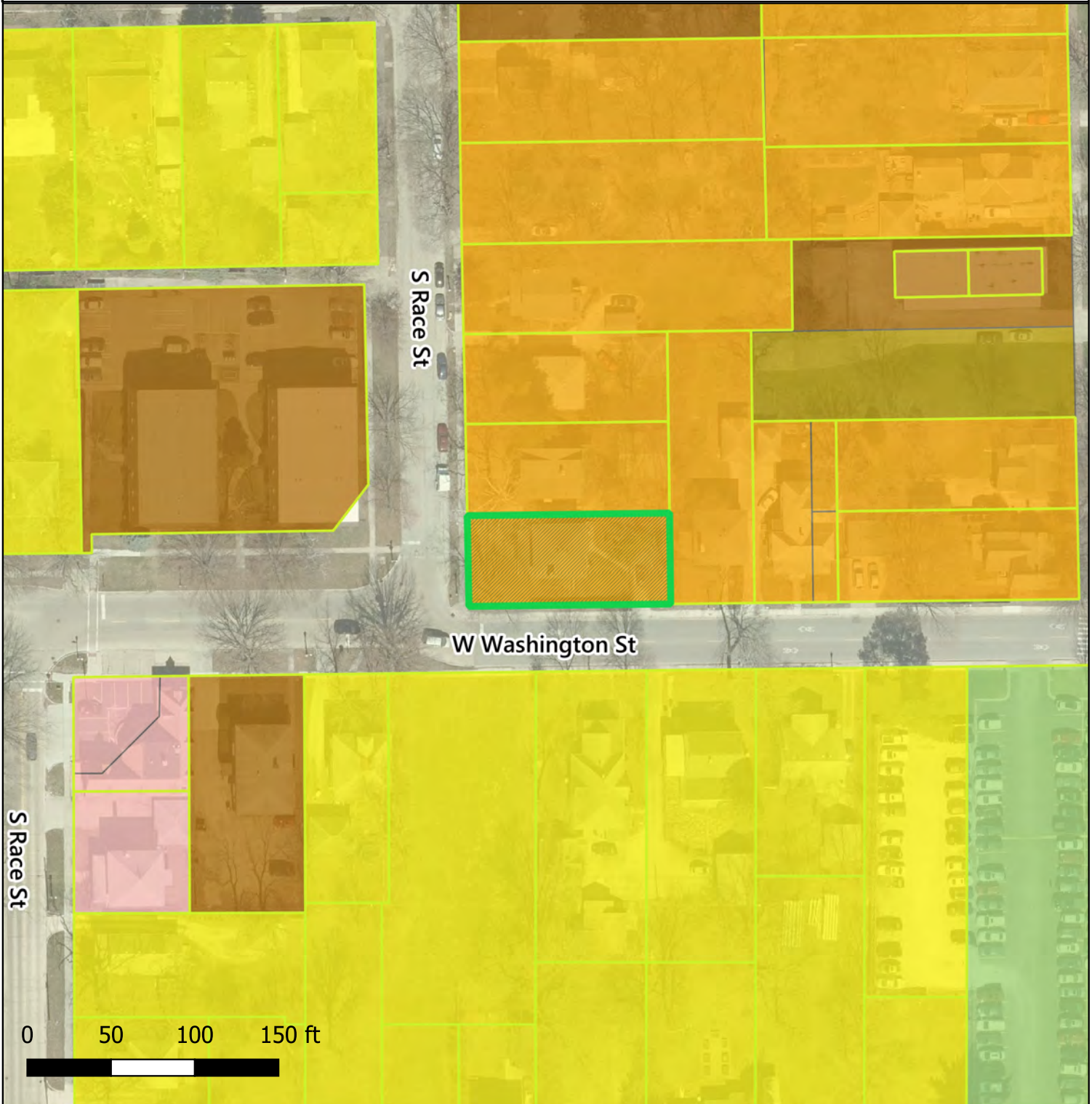
# Exhibit A - Location & Existing Land Use Map










Case: ZBA-2019-C-01 and ZBA-2019-MAJ-01  
 Subject: Hubbard CUP and Major Variance  
 Location: 812 S. Race Street  
 Petitioner: Kimberly Hubbard



# Exhibit B - Zoning Map

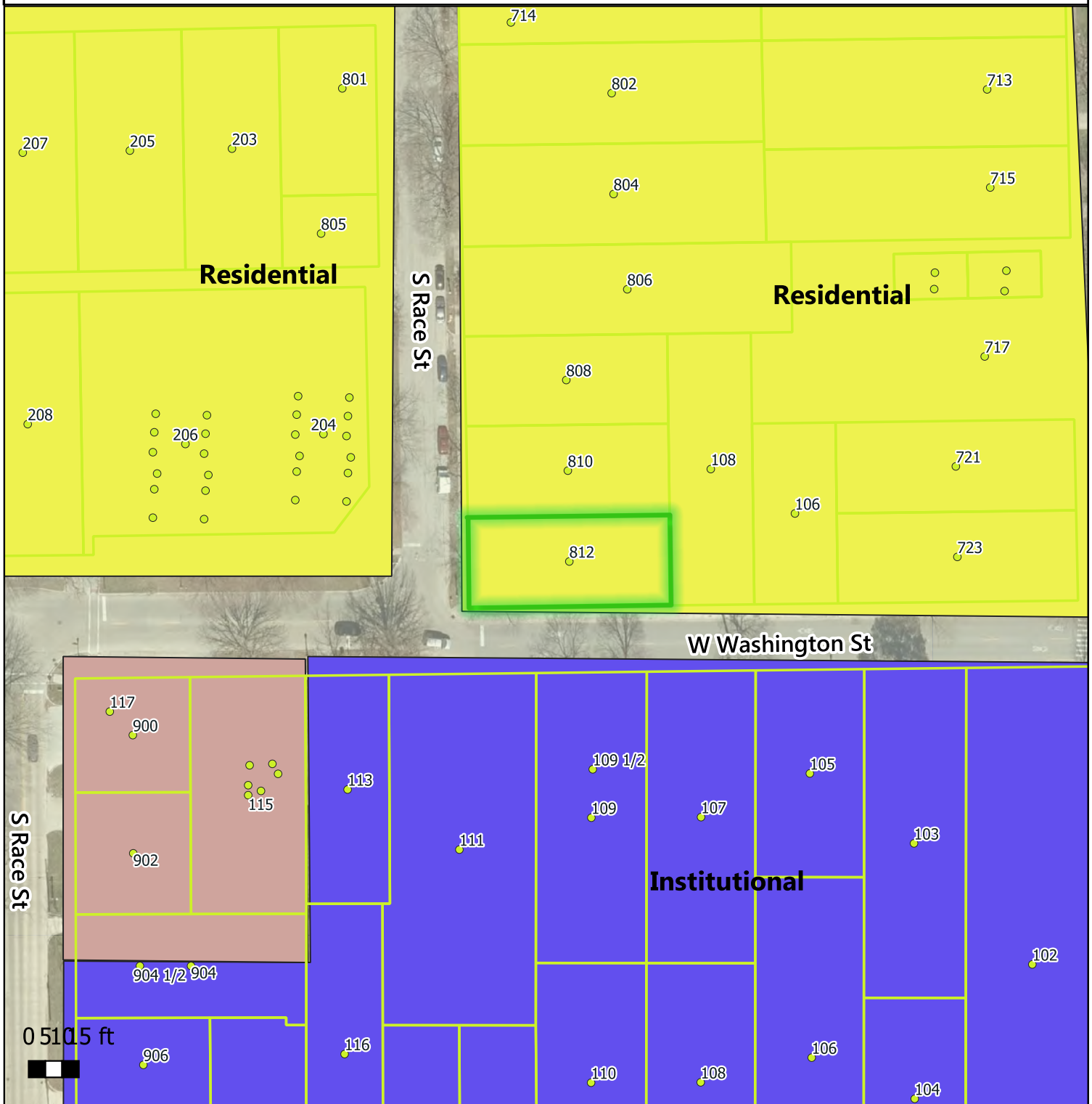


Case: ZBA-2019-C-01 and ZBA-2019-MAJ-01  
 Subject: Hubbard CUP and Major Variance  
 Location: 812 S. Race Street  
 Petitioner: Kimberly Hubbard

- |  |                  |   |     |
|--|------------------|---|-----|
|  | Subject Property |  | R-2 |
|  | B-1              |  | R-3 |
|  | CRE              |  | R-4 |
|  |                  |  | R-5 |



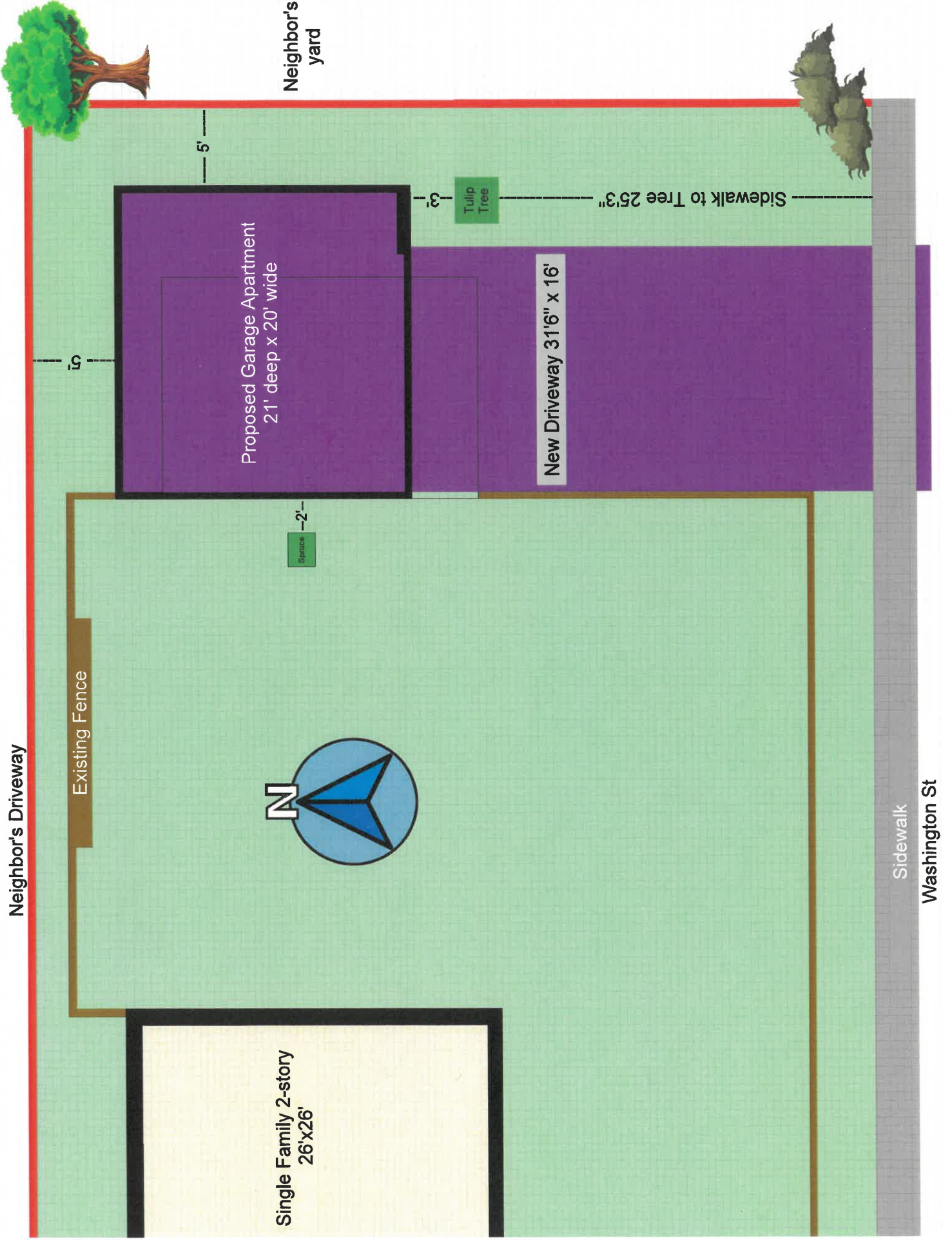
# Exhibit C - Future Land Use Map



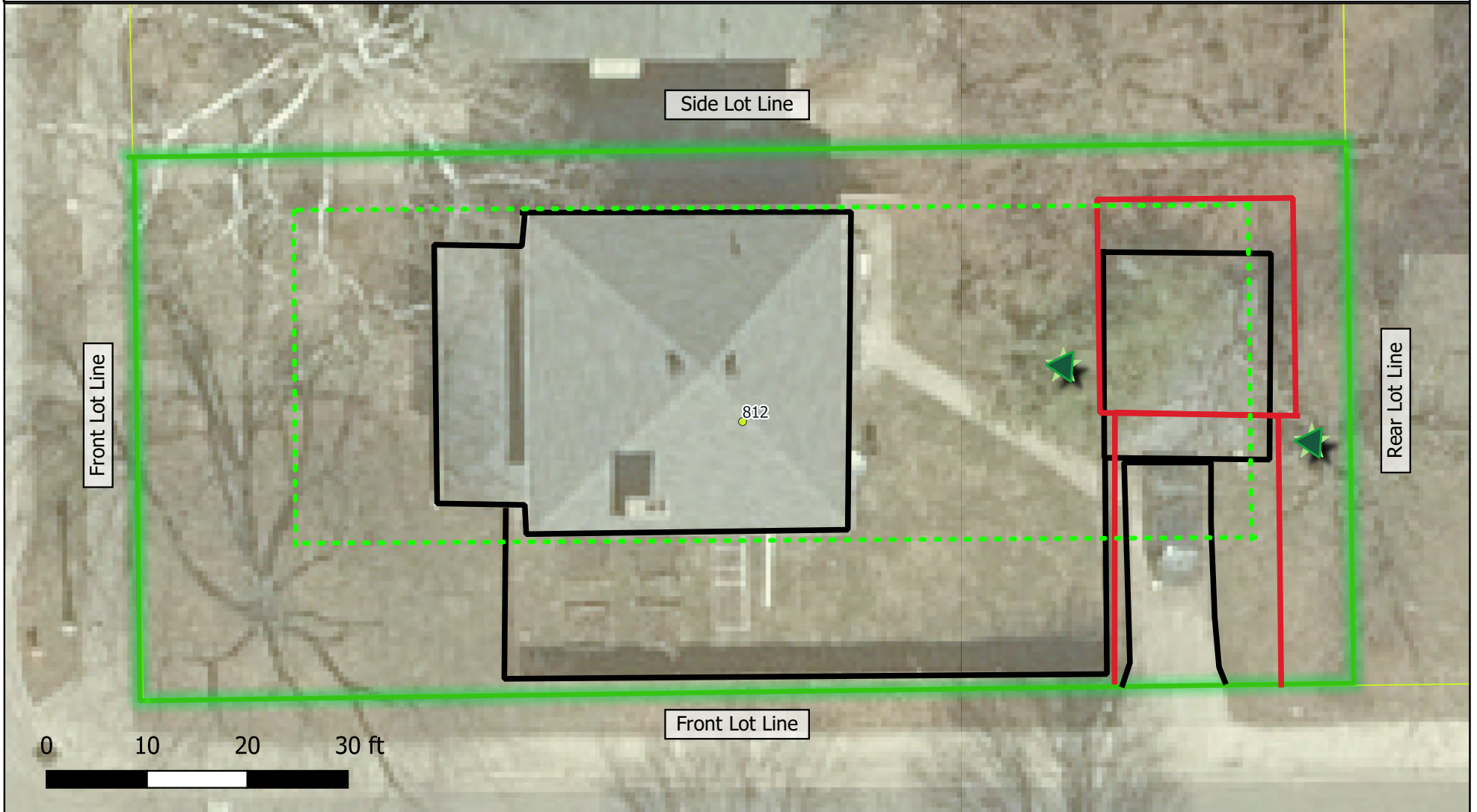
Case: ZBA-2019-C-01 and ZBA-2019-MAJ-01  
Subject: Hubbard CUP and Major Variance  
Location: 812 S. Race Street  
Petitioner: Kimberly Hubbard



Exhibit D



# Exhibit E - Approximate Site Plan at 812 S. Race St.



Created 5/24/2019 by Community Development Service - Lily Wilcock

### Legend

- Trees
- Proposed
- Existing
- Parcel
- Yard Lines





# Application for Variance

# ZONING BOARD OF APPEALS

The application fee must accompany the application when submitted for processing. Please refer to the City's website at <http://www.urbanaininois.us/fees> for the current fee associated with this application. The Applicant is also responsible for paying the cost of legal publication fees. Estimated costs for these fees usually run between \$75.00 and \$225.00. The applicant will be billed separately by the News-Gazette.

**DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY**

Date Request Filed 04-23-2019 ZBA Case No. ZBA-2019-MAJ-01  
Fee Paid - Check No. 1590 Amount \$200.00 Date 04-23-2019

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION**

A VARIATION is requested in conformity with the powers vested in the Zoning Board of Appeals to permit the following variation *(Describe the extent of the Variation Requested)*

\_\_\_\_\_ on the property described below, and in conformity with the plans described on this variance request.

**1. APPLICANT CONTACT INFORMATION**

Name of Applicant(s): Kim Hubbard Phone: 217-840-3344  
Address (street/city/state/zip code): 812 S Race St # Urbana, IL 61801  
Email Address: Kimberlymhubbard@gmail.com  
Property interest of Applicant(s) (Owner, Contract Buyer, etc.): owner

**2. OWNER INFORMATION**

Name of Owner(s): \_\_\_\_\_ Phone: \_\_\_\_\_  
Address (street/city/state/zip code): \_\_\_\_\_  
Email Address: \_\_\_\_\_

Is this property owned by a Land Trust?  Yes  No  
*If yes, please attach a list of all individuals holding an interest in said Trust.*

**3. PROPERTY INFORMATION**

Location of Subject Site: 812 S Race Urbana, IL 61801  
PIN # of Location: 92-21-17-201-013  
Lot Size: 53.5 x 121.5 = 6500.25



Exhibit F

Current Zoning Designation: R3 single + 2-family residential  
Current Land Use (vacant, residence, grocery, factory, etc): single family residential  
Proposed Land Use: 2-family residential  
Legal Description (If additional space is needed, please submit on separate sheet of paper):

**4. CONSULTANT INFORMATION**

**Name of Architect(s):** Phone:

Address (street/city/state/zip code):

Email Address:

**Name of Engineers(s):** Phone:

Address (street/city/state/zip code):

Email Address:

**Name of Surveyor(s):** Phone:

Address (street/city/state/zip code):

Email Address:

**Name of Professional Site Planner(s):** Phone:

Address (street/city/state/zip code):

Email Address:

**Name of Attorney(s):** Phone:

Address (street/city/state/zip code):

Email Address:

**5. REASONS FOR VARIATION**

Identify and explain any special circumstances or practical difficulties in carrying out the strict application of the Zoning Ordinance with respect to the subject parcel.

We would like to avoid, as much as possible, tearing down the tulip and spruce trees on my property. If we can build further East, toward the back of my property into the setback, still leaving 5', I can physically avoid both trees

## Exhibit F

Explain how the variance is necessary due to special conditions relating to the land or structure involved which are not generally applicable to other property in the same district.

Two trees are located in every possible layout and I'd rather not tear them down.

Explain how the variance is not the result of a situation or condition that was knowingly or deliberately created by you (the Petitioner).

I purchased this home with these pre-existing trees

Explain why the variance will not alter the essential character of the neighborhood.

The setback will still be at 5' and my structure will not be uncomfortably close to any nearby structures

Explain why the variance will not cause a nuisance to adjacent property.

It's only a garage apartment and there will still be at least 10' between structures, of yard that is rarely used.

Does the variance represent the minimum deviation necessary from the requirements of the Zoning Ordinance? Explain.

Yes, we will still have 5' of setback from my neighbor's property

**NOTE: If additional space is needed to accurately answer any question, please attach extra pages to the application.**

**By submitting this application, you are granting permission for City staff to post on the property a temporary yard sign announcing the public hearing to be held for your request.**

Exhibit F

**CERTIFICATION BY THE APPLICANT**

I certify all the information contained in this application form or any attachment(s), document(s) or plan(s) submitted herewith are true to the best of my knowledge and belief, and that I am either the property owner or authorized to make this application on the owner's behalf.

Kim Hubbard  
Applicant's Signature

4/23/2019  
Date

**PLEASE RETURN THIS FORM ONCE COMPLETED TO:**

City of Urbana  
Community Development Department Services  
Planning Division  
400 South Vine Street, Urbana, IL 61801  
Phone: (217) 384-2440  
Fax: (217) 384-2367

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

**DATE:** May 15, 2019

**DRAFT**

**TIME:** 7:00 p.m.

**PLACE:** City Council Chambers, 400 South Vine Street, Urbana, IL 61801

---

**MEMBERS PRESENT** Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Charles Warmbrunn, Harvey Welch

**MEMBERS ABSENT** Nancy Uchtmann

**STAFF PRESENT** Lorrie Pearson, Planning Manager; Lily Wilcock, Planner I

**OTHERS PRESENT** Kim Hubbard

---

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

Chair Welch called the meeting to order at 7:05 p.m. Roll call was taken, and he declared a quorum of the members present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF THE MINUTES**

The minutes from the March 20, 2019, regular meeting were presented for approval. Ms. McLaughlin suggested an amendment to change the second “Members Present” at the top of Page 1 to “Members Absent”. She moved to approve the minutes as corrected. Mr. Cho seconded the motion. The minutes were approved by unanimous voice vote as corrected.

**4. COMMUNICATIONS**

There were none.

**5. CONTINUED PUBLIC HEARINGS**

There were none.

**NOTE:** Chair Welch swore in members of the audience who indicated that they might give testimony during a public hearing.

## 6. NEW PUBLIC HEARINGS

**ZBA-2019-C-01 – A request by Kim Hubbard for a Conditional Use Permit to allow a second principal structure at 812 South Race Street in the R-3, Single and Two-Family Residential Zoning District.**

**ZBA-2019-MAJ-01 – A request by Kim Hubbard for a Major Variance to allow a reduction from ten feet in the required rear yard setback to five feet at 812 South Race Street in the R-3, Single and Two-Family Residential Zoning District.**

Chair Welch opened the public hearings for these two cases to be heard at the same time since they were related to the same property. Lily Wilcock, Planner I, began by noting the conditions proposed for the Conditional Use Permit, including two additional conditions not mentioned in the written staff report. They were as follows:

1. That the proposed structure's location and construction generally conform to the attached site plan and specifications;
2. *New* – Prior to the issuance of a building permit, the owner/applicant will sign a deed restriction, to run with the land that will require the proposed structure may not be sold separately from the land and subdivided.
3. *New* – The proposed structure can be no taller than 25 feet from the grade of the property.

Ms. Wilcock presented the staff report to the Zoning Board of Appeals. She stated the purpose for the Conditional Use Permit and Major Variance requests, which is to build a second principal structure on a single lot within five feet of the rear property line. Using Exhibit A, she showed the location and existing land use of the subject property. She noted the zoning and future land use designations of the proposed site and of the surrounding areas. Referring to the Site Plan, she showed where the proposed garage would be constructed in relation to the existing garage and house. She reviewed the requirements for a Conditional Use Permit according to Section VII-2 of the Urbana Zoning Ordinance and the criteria for a variance in Section XI-3. She summarized City staff findings and read the options of the Zoning Board of Appeals for each case. She stated City staff's recommendation for each case including ALL conditions as mentioned at the beginning of the public hearing.

Lorrie Pearson, Planning Manager, pointed out that while a Conditional Use Permit would expire if the proposed structure was NOT constructed within a year, the major variance if approved would continue on forever more. She recommended that the Zoning Board of Appeals include at least Conditions #1 and #3 for the Major Variance as well.

Chair Welch asked if any members of the Zoning Board of Appeals had questions for City staff.

Mr. Cho asked for more clarification on Condition #2 and wondered if it was within the scope of the Zoning Board of Appeals to require a deed restriction. Ms. Wilcock replied that City staff within Community Development Services does deed restrictions, especially when it involves grants. Many communities, especially along the West Coast, consider garage apartments to be accessory dwelling units and require deed restrictions to prevent the garage apartment from being sold as an individual structure or piece of land. She has seen Champaign County having properties like this that are then annexed into the City of Urbana and creates non-conforming

issues with the Urbana Zoning Ordinance. Requiring a deed restriction, it would be recorded by the Champaign County Recorder's Office and would show up in a title search when a proposed future buyer looks at purchasing the lot. Ms. Pearson added that Condition #2 is intended to require the owner to sign a deed restriction agreeing to not illegally subdivide the property. Because this condition is tied to the approval of a Conditional Use Permit, then it is within the purview of the Zoning Board of Appeals.

Mr. Rusch questioned if the Zoning Board does not include Condition #2 in the approval of the Conditional Use Permit, would the owner be allowed to sell the garage and apartment to an adjacent property owner in the future. Ms. Wilcock answered no. It would still be illegal to subdivide the property. Ms. Pearson explained that this would be a way to prevent City staff from having to enforce something that would already have been done versus prevent something that is illegal to do. Ms. Wilcock stated that by requiring a deed restriction it would be a big red flag for someone interested in purchasing the property to learn more about before purchasing it.

Mr. Rusch expressed concern about the City changing the rules about subdividing and this property then would not be allowed to because the owner signed a deed restriction. Ms. Pearson assured the Board members that City staff would work this into any future changes to accommodate for properties like this.

Ms. Chester commented that if the owner tried to see the garage/apartment, then she would be creating two lots that do not meet development regulation requirements, such as for open space or setbacks.

Mr. Cho felt uncomfortable with Condition #2. He had never seen it before and did not believe it was part of the Zoning Board of Appeals purview. It adds a lot more constraints than what the Zoning Board is able to vote on. Otherwise, he is in favor of the Conditional Use Permit and Major Variance requests.

Ms. Chester stated that in the past people have illegally subdivided parcels like this by recording a purchase of a portion of the property. Champaign County Recorder's Office will record any document without checking to see if it is legal or not legal. Then it becomes a real mess for people in the future. Mr. Cho asked how one would go about subdividing a property legally. Ms. Wilcock explained the procedure noting that there would be review by City staff and other entities looking for specific requirements to be met. If it meets the approval of the other public agencies and City staff, then it would be signed by the Director of Public Works, the Director of Community Development Services and the Zoning Administrator and recorded by the Champaign County Recorder's Office. However, sometimes, as Ms. Chester explained, people do not go through the proper method of subdividing and it becomes a mess.

Chair Welch noted that the Zoning Board of Appeals is an appeal body. They are being asked to approve a contractual issue between the applicant and the City of Urbana. This Board is free to add conditions to agreements as long as they are not illegal. The enforcement of the conditions is not the purview of the Board, but then the Board is not charged with enforcing any condition they place on decisions they make. If the applicant is comfortable with Condition #2, then he did not see anything wrong with requiring it.

Mr. Rusch expressed his concern about setting a precedent with the Zoning Board of Appeals requiring deed restrictions when it is already against the law to subdivide a property with a garage apartment. Mr. Cho added that the Zoning Board of Appeals has enforced homeowner’s rights which are not part of the Zoning Ordinance, and he this was a precedent that he did not want to uphold that either as part of the Zoning Board of Appeals or that it was even within their skill.

Ms. Pearson reminded Chair Welch that the Board has entered a discussion and the audience has not had an opportunity to speak.

Chair Welch opened the hearing for public input.

Kim Hubbard, applicant, approached the Zoning Board of Appeals to answer any questions that Board members may have. There was none, so he closed the public input portion of the hearing and opened the hearing for discussion and/or motion(s) by the Zoning Board of Appeals.

Mr. Warmbrunn moved that the Zoning Board of Appeals approve Case No. ZBA-2019-C-01 as requested based on the findings outlined in the written staff memo with the following conditions:

1. That the proposed structure’s location and construction generally conform to the attached site plan and specifications;
2. Prior to the issuance of a building permit, the owner/applicant will sign a deed restriction, to run with the land that will require the proposed structure may not be sold separately from the land and subdivided.
3. The proposed structure can be no taller than 25 feet from the grade of the property.

Ms. Chester seconded the motion.

Mr. Rusch moved to amend the motion to strike Condition #2. He felt this condition was unnecessary because it is already a law that the proposed lot cannot be subdivided. Mr. Cho seconded the motion to amend.

Ms. McLaughlin questioned what the additional burden would be to keep Condition #2. Mr. Rusch replied that the additional burden would be that there would be a deed agreement placed on the title for the lot. Mr. Cho expressed his opinion about whether the Zoning Board of Appeals had the right to impose restrictions on a homeowner.

Roll call on the motion to amend was as follows:

Ms. Chester	-	No	Mr. Cho	-	Yes
Ms. McLaughlin	-	No	Mr. Rusch	-	Yes
Mr. Warmbrunn	-	No	Mr. Welch	-	No

The motion failed.

Roll call on the motion regarding ZBA-2019-C-01 was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	No
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes

The motion passed by a vote of 5 to 1.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-01 to the Urbana City Council with a recommendation for approval including the following conditions:

1. That the proposed structure’s location and construction generally conform to the attached site plan and specifications;
2. The proposed structure can be no taller than 25 feet from the grade of the property.

Mr. Cho seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes

The motion passed by unanimous vote.

Ms. Wilcock noted that this case would be forwarded to City Council on June 3, 2019.

**7. OLD BUSINESS**

There was none.

**8. NEW BUSINESS**

There was none.

**9. AUDIENCE PARTICIPATION**

There was none.

**10. STAFF REPORT**

Ms. Pearson reported on the following:

- U-Haul Conditional Use Permit on Philo Road – U-Haul has completed the landscaping requirement and City staff will check back in September/October to see if all the plantings have survived.

Ms. Wilcock reported on the following:

- Bike with the Mayors on May 23, 2019 at 6:00 p.m.



**11. STUDY SESSION**

There was none.

**12. ADJOURNMENT OF MEETING**

Chair Welch adjourned the meeting at 7:51 p.m.

Respectfully submitted,

---

Lorrie Pearson, AICP  
Planning Manager  
Secretary, Urbana Zoning Board of Appeals