



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

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

**TO:** Urbana Zoning Board of Appeals

**FROM:** Paul Lindahl, Planner I

**DATE:** May 11, 2007

**SUBJECT:** ZBA 07-MAJ-02, Request filed by Gregory and Denise Reynolds for a Major Variance to permit a 3,500 square foot accessory structure at 1714 E. Airport Road, in the IN, Industrial Zoning District.

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**Preface**

This case is the same as was first heard by the Zoning Board of Appeals April 19, 2007. Due to an error in legal description for that case, we are asking the ZBA to re-hear and re-consider the request for a major variance to allow 3,500 square foot accessory structure at 1714 E. Airport Road.

None of the pertinent background information in the cases has changed and the petitioner's positions and City recommendations are unchanged.

**Introduction**

The petitioners, Gregory and Denise Reynolds, is requesting a Major Variance to permit an accessory structure in excess of 1,000 square feet at 1714 E. Airport Road, in the IN, Industrial Zoning District. The subject property is comprised of two lots: one in the City of Urbana and one in unincorporated Champaign County. The subject property contains a house and an accessory structure built across the lot line by a previous owner and so the structures are part in the city and part in the county. The subject property is used as a single-family residence.

Section V-2.D.7 of the Urbana Zoning Ordinance states that homes larger than 1,500 square feet may have an accessory structure up to 50 percent of the home's floor area, or 1,000 square feet, whichever is less. An accessory structure of approximately 3,500 square feet is currently located behind the principal structure and is used for personal and recreational vehicle storage, as well as personal workspace. The major variance request is to allow that half of the structure which is on the lot in the City to be 1,750 square feet rather than the maximum permitted 1,000 square feet. Mathematically the variance request is 75%.

## Background

A brief history of pertinent events leading to this variance case is provided below:

*1991 - GKC Theaters Annexation Agreement:* The old drive-in movie theater property was annexed into the City and zoned IN, Industrial. The property is adjacent to 1714 E. Airport Road.

*1994 - Matthews Annexation Agreement:* An annexation agreement for 1714 E. Airport Road was approved by the Urbana City Council (Ord. No. 9495-09), which stipulated that the current or future property owner would annex into the City of Urbana once the property became contiguous (the property was contiguous at the time the agreement was approved). The agreement also contained a condition that the City would not annex the property until it could be adequately served by all public services. At the time, staff determined that fire protection could not be adequately provided to the property, thus it was not immediately annexed.

*1999 – Accessory Structure Constructed:* The previous owner applied for and received a County building permit for an approximately 3,500 square foot accessory structure. The accessory structure was constructed across property lines and in both Champaign County and the City of Urbana but did not have a City permit.

*2001 – Petitioners Purchase Property:* The petitioners purchased the property from James Matthews though were unaware of the previous annexation agreement.

*Spring 2003 - Petitioners Expand Home:* The petitioners conducted preliminary engineering work to expand their home and discovered that the existing home and accessory structure encroached 65 feet into the eastern neighboring property which was part of the GKC annexation property. The petitioners contacted the adjacent owner and both parties agreed to a purchase of land to mitigate the encroachment. This tract is now the eastern portion of the Reynolds property, is in the City limits, and is the topic of the variance case for that portion of the accessory structure.

*Fall 2003 – Petitioners Construct New Home:* The petitioners purchased a manufactured home for the property to replace the existing home. The home was placed in approximately the same location as the existing structure, and the accessory structure remains in the same place.

The property issues came to the attention of the Urbana Building Safety Division, which issued a stop work order on the property although the home was already installed. A number of problems were cited including:

- a structure crossing jurisdictional lines
- the need to replat the property as one lot
- a lack of City building permits
- a lack of County building permits
- zoning inconsistent with actual uses
- need for an accessory structure variance

*Summer 2006 - Reynolds Annexation Agreement:* An annexation agreement for the subject property was approved by the Urbana Plan Commission and City Council in 2006 but will be returned to Plan Commission and City Council in May and June 2007 for re-approval due to the previously mentioned error in legal notifications. The facts of the case and the substance of the agreement reached remain unchanged.

The annexation agreement was necessitated by location of the structures crossing the lot line and the petitioners' wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced.

The annexation agreement has an "*Article II: Representations and Obligations of the Corporate Authorities,*" which contains a "*Section 5: Accessory Structure Variance.*" In that Section 5 the City specifically grants a Variance to allow the portion of the 3,500 square foot accessory structure located *outside* the corporate limits, to be in excess of the 1,000 square feet permitted by the Zoning Ordinance. The agreement states the City Corporate Authorities further agree that the granting of this variance is consistent with the established criteria identified in Section XI-3 of the Urbana Zoning Ordinance.

Also in the annexation agreement Article II is Section 6: "Adjacent Territory Accessory Structure Variance" in which the City specifies implicit support for approval of a Major Variance to allow that portion of the accessory structure located *within* the corporate limits, to be in excess of the 1,000 square feet permitted by the Zoning Ordinance.

The combined variances - one granted by the Annexation Agreement and one by the current ZBA case would allow the owners to maintain the accessory structure at its current size.

The annexation agreement is contingent on approval of the major variance for the portion of the structure within the City limits (this variance case 2007-MAJ-02) as well as the requested rezoning of the property in the City from IN, Industrial to R-2, Single Family Residential (Plan Case 2039-M-07.)

### **Concurrent Efforts**

On Thursday May 24, 2007 the Urbana Plan Commission will repeat the hearing of Plan Case 2039-M-07 which proposes to rezone the portion of the subject property in the City (the eastern half) from IN, Industrial to R-2, Single-Family Residential. The rezoning case will have no impact on the proposed major variance.

The purpose of the annexation agreement, this Zoning Board of Appeals major variance case, the Plan Commission rezoning case (2039-M-07) and a Subdivision Case (1903-S-04) combining the two lots of the subject property, is to jointly correct all outstanding issues with the subject property.

Staff has been working on this case with the petitioners' attorney for three years and has come to the concluding stages of a resolution agreed upon by all parties.

### **Surrounding Properties**

The property is currently surrounded by both industrial (north of Airport Road) and residential (south of Airport Road) land uses. The 2005 Urbana Comprehensive Plan indicates the future land use for the area as Residential, with Regional Business along US Route 45.

<i>Direction</i>	<i>Zoning</i>	<i>Existing Land Use</i>	<i>Comprehensive Plan - Future Land Use</i>
<b>Site</b>	West half - County AG-2, Agriculture East half - City IN, Industrial	Residential	Regional Business
<b>North</b>	IN, Industrial	Vacant	Regional Business
<b>East</b>	IN, Industrial	Agriculture	Residential
<b>South</b>	County AG-2, Agriculture, and County R-5, Mobile Home Park	Residential	Residential
<b>West</b>	County B-3, Highway Business	Mini-Warehouse	Regional Business

## Variance Criteria

Section XI-3.C.2.c 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 (*in italics*), followed by staff analysis for this case:

1. *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 special circumstances concerning the accessory structure are that the structure was built prior to the petitioner's ownership of the property. The practical difficulty in strict compliance would require the demolition of the structure. In this case, the petitioners wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced. However the variance would not permit the accessory structure, if rebuilt, to be further expanded without an additional variance.

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

The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The variance requested is necessary due to special

circumstances relating to the structure including that strict compliance would require the demolition of the structure which is not the usual case in variance requests in this or other districts.

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

The accessory structure was constructed prior to the petitioners purchasing the subject property. The petitioner is aware of the requirements of the Zoning Ordinance and has asked for the variance to ensure the accessory structure will be legally conforming.

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

The surrounding area is rural and industrial in character. The variance will not change existing conditions. The accessory structure is located entirely behind the principal structure, and is approximately 40 feet from the eastern property line.

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

The western adjacent property is developed as self-storage warehouses, and is significantly separated from the petitioners' property. The eastern adjacent property is undeveloped agricultural land. The structure is behind the house and is only partially visible from the road.

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

The accessory structure has already been constructed half in the city and half in the county. The petitioner is making all necessary efforts to bring the property into compliance under a single jurisdiction.

7. *The variance requested is the result of practical difficulties or particular hardship in the way of carrying out the strict letter of the Zoning Ordinance relating to the use, construction, or alteration of buildings or structures or the use of land.*

The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The hardship would be that strict compliance would require the demolition of the structure. Because the shed was built in two jurisdictions, there are practical difficulties for compliance with the regulations of both.

## Summary of Findings

1. The subject property is comprised of two lots with one located in unincorporated Champaign County and one in the City of Urbana. The property is zoned AG-2, Agriculture in the County and IN, Industrial in the City.
2. The western part of the subject property (currently in the County) is subject to a 1994 annexation agreement. The 1994 agreement did not contain any conditions except that the property would be annexed when it could be adequately served by City public services. That agreement does not apply to the eastern half of the subject property which is the subject of this variance case.
3. The western part of the subject property (currently in the County) will be the subject of an annexation agreement soon to be heard by the Urbana City Council.
4. The purpose of the annexation agreement, this Zoning Board of Appeals Major Variance case, the Plan Commission rezoning case (2039-M-07) and a Minor Subdivision Case (1903-S-04) combining the two lots of the subject property, is to jointly correct all outstanding issues with the subject property.
5. The annexation agreement would grant a Major Variance for the 1,680 square foot portion of the accessory structure currently located in unincorporated Champaign County.
6. The annexation agreement requires that the petitioners submit an application for a Major Variance for that portion of the accessory structure currently in the City. The annexation agreement is contingent upon the City granting the Major Variance.
7. The annexation agreement requires the petitioners' to submit an application for a Zoning Map Amendment from IN, Industrial to R-2, Single-Family Residential for the portion of the property currently in the City. The annexation agreement is contingent upon granting the rezoning.
8. The annexation agreement requires the petitioners to prepare and record a Minor Subdivision Plat to combine the parcel in the County with the tract in the City. The plat must comply with the Urbana Subdivision and Land Development Code.
9. The special circumstances concerning the accessory structure are that the structure was built prior to the petitioner's ownership of the property. The practical difficulty in strict compliance would require the demolition of the structure.
10. The proposed variance will not serve as a special privilege because the accessory structure was constructed prior to the petitioners purchasing the subject property. The circumstances leading to the construction of the structure included confusion about the location of the property line and a permit issued in error by County zoning officials, and resulted in the structure being built across the line of City and County jurisdiction. The hardship would be that strict compliance would require the demolition of the structure. Because the shed was built in two jurisdictions, there are practical difficulties for compliance with the regulations of both.

11. The variance requested is necessary due to special circumstances relating to the structure including that strict compliance would require the demolition of the structure which is not the usual case in variance requests in this or other districts.
12. The petitioners wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced. However the variance would not permit the accessory structure, if rebuilt, to be further expanded without an additional variance.

## Options

In Case ZBA-07-MAJ-02, the Zoning Board of Appeals may:

- a. Forward this case to the City Council with a recommendation for approval of the proposed major variance; or
- b. Forward this case to the City Council with a recommendation for approval of the proposed major variance, subject to recommended changes. If the Zoning Board of Appeals elects to recommend conditions or recommend approval of the variances on findings other than those articulated herein, they should articulate findings accordingly; or; or
- c. Forward this case to the City Council with a recommendation for denial of the proposed major variance. If the Zoning Board of Appeals elects to do so, the Board should articulate findings supporting its denial.

## Staff Recommendation

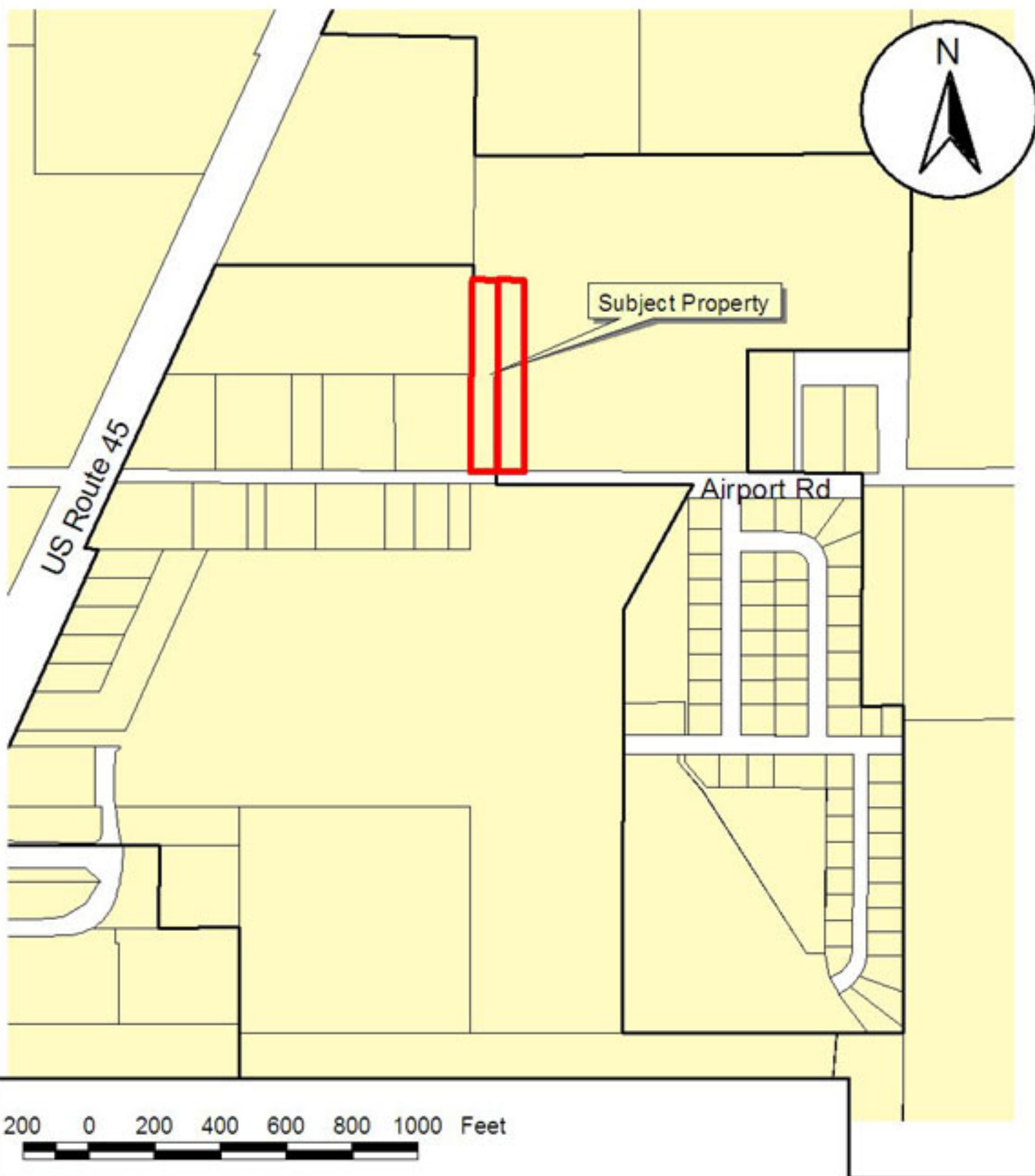
Based on the analysis and findings presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Zoning Board of Appeals forward Case ZBA-07-MAJ-02 to the Urbana City Council with a recommendation for **APPROVAL**.

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Greg Reynolds  
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Attachments: Copy: 2006 Reynolds Annexation Agreement  
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 G: Site Requirements Map (from annexation agreement)

# Exhibit A: Location Map



Plan Case: 2039-M-07  
Subject: Rezoning IN, Industrial to R2, Single Family Residential

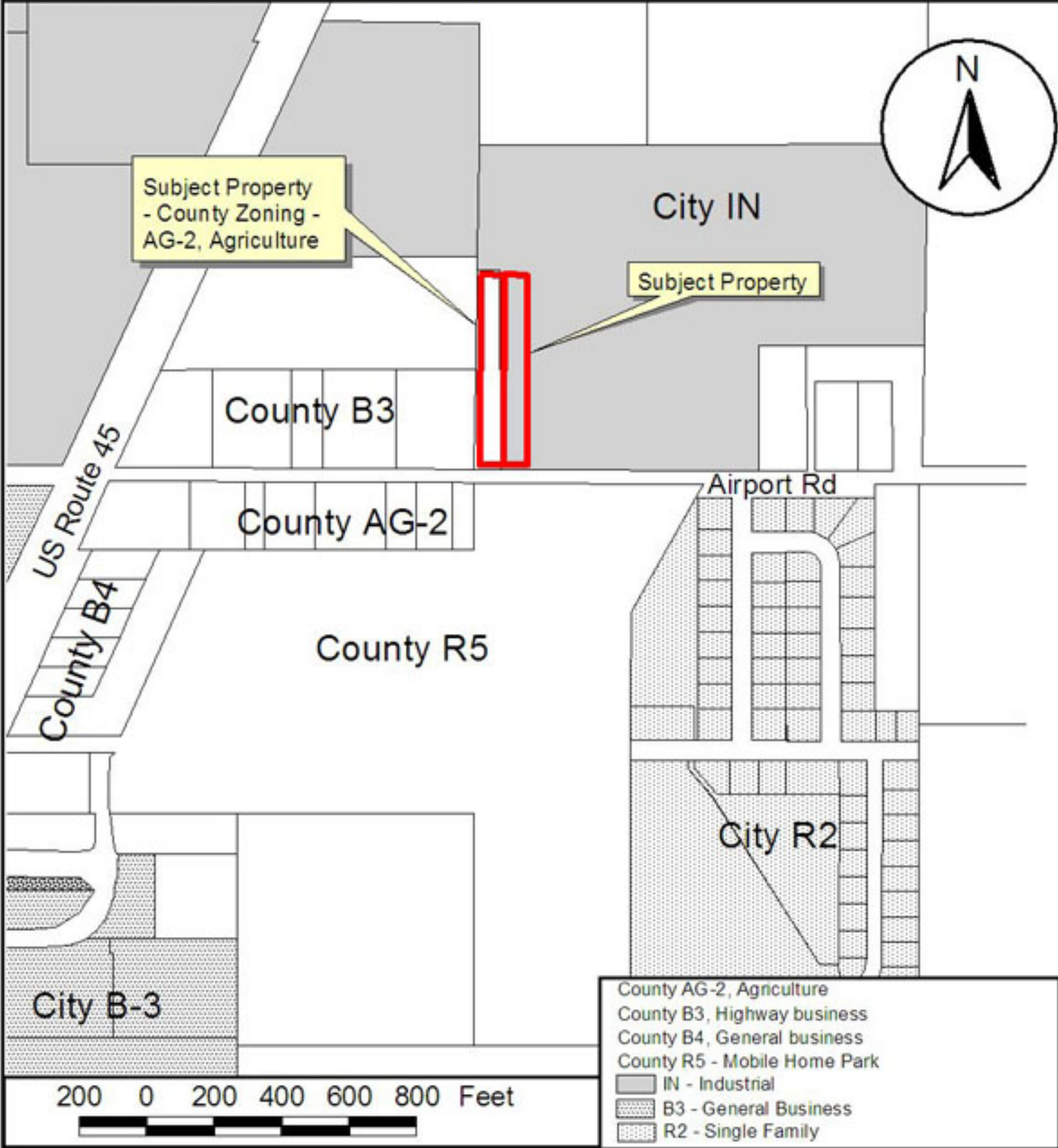
ZBA Case: 2007-MAJ-2  
Subject: A Major Variance request for a 3,500 square foot accessory structure

Petitioner: Greg Reynolds  
Location: North of Airport, East of US Route 45

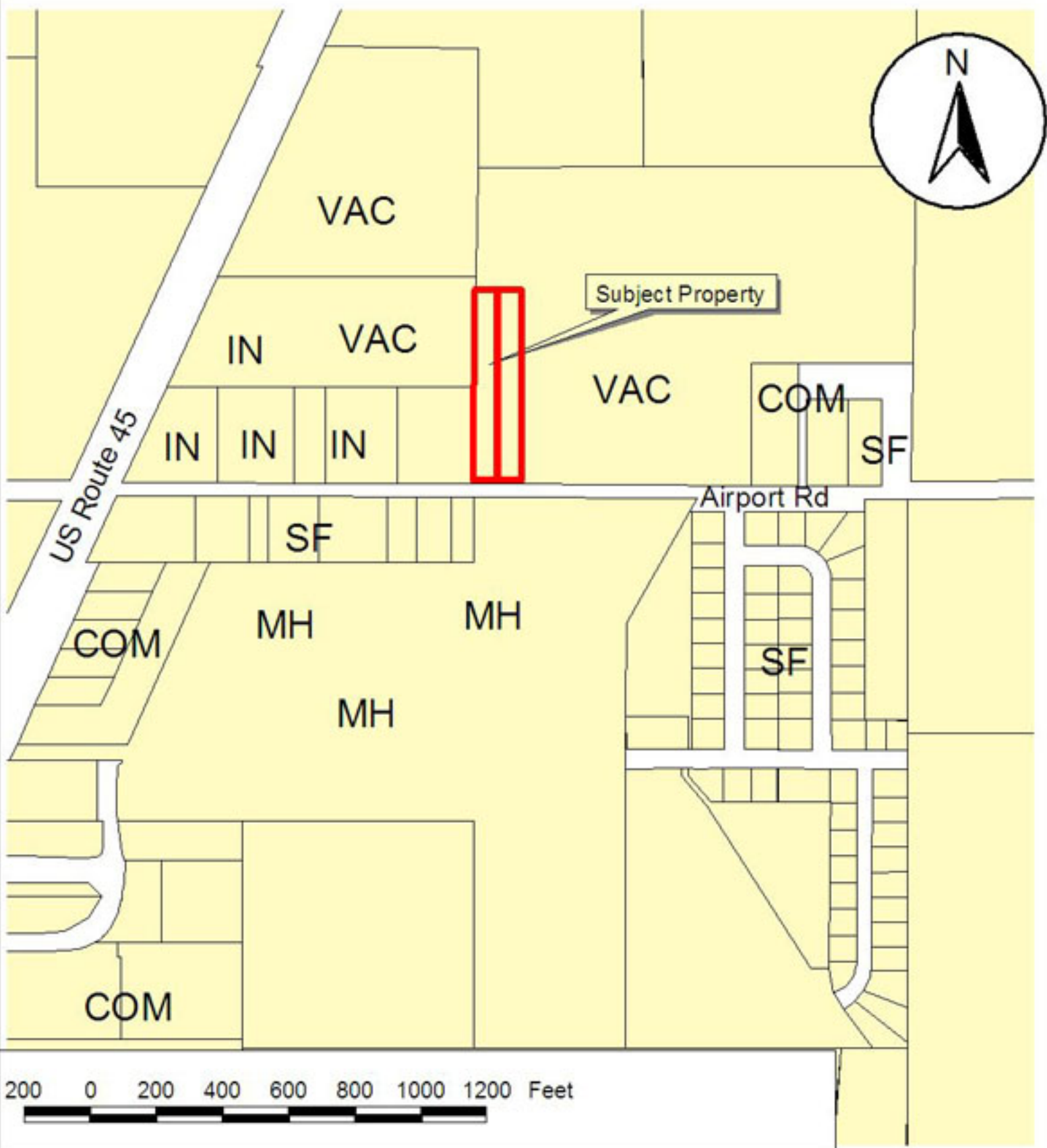
Prepared 03/29/2007 by Community Development Services - mhw



# Exhibit B: Zoning Map



# Exhibit C: Existing Land Use Map



Plan Case: 2039-M-07  
Subject: Rezoning IN, Industrial to R2, Single Family Residential

ZBA Case: 2007-MAJ-2  
Subject: A Major Variance request for a 3,500 square foot accessory structure  
Petitioner: Greg Reynolds  
Location: North of Airport, East of US Route 45  
Prepared 03/29/2007 by Community Development Services - mhw

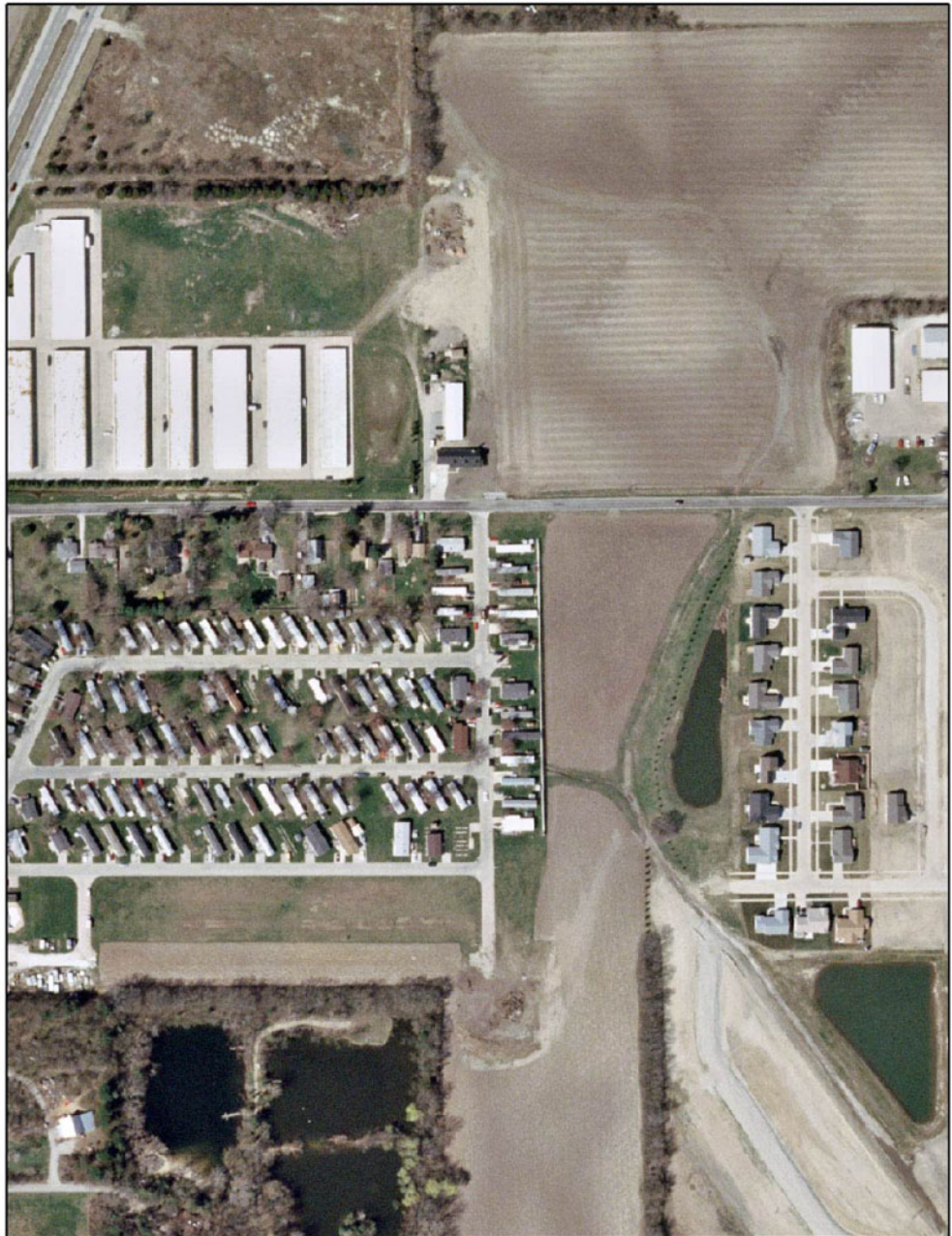
SF - Single Family  
IN - Industrial  
COM - Commercial  
MH - Mobile Homes  
VAC - Vacant

# Exhibit D: Future Land Use Map



ZBA Case: ZBA-07-MAJ-02  
Petitioner: Gregory Reynolds  
Location: North of Airport, East of US Route 45  
Description: A major variance to allow a 3,500 accessory structure

# Exhibit E: Aerial Map



ZBA Case: ZBA-07-MAJ-02  
Petitioner: Gregory Reynolds  
Location: North of Airport, East of US Route 45  
Description: A major variance to allow a 3,500 accessory structure

# Exhibit G: Site Requirements Map

