



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Zoning Board of Appeals

FROM: Lisa Karcher, Planner II

DATE: October 9, 2008

SUBJECT: ZBA-2008-MAJ-10: Major Variance Request to allow for the construction of a detached accessory building less than 18 inches from the side lot line.

Introduction and Background

The petitioners, Phillip and Sonia Newmark, request a major variance to encroach into the required side yard setback to allow for the construction of a detached accessory building at 706 West Iowa Street. The subject property is zoned R-2, Single-Family Residential and is occupied by a single-family residence and a detached one-car garage with an attached shed that is in a state of disrepair. (See Exhibit A and D) The existing accessory structure is located close to, or on the west property line.

The R-2 Zoning District requires a side yard setback of five feet for principal structures. Section VI-5.D.9 allows for accessory structures, no larger than 750 square feet in area, to encroach into the required five-foot side yard setback, but no closer than 18 inches as measured from the closest part of the structure. The existing garage is closer than 18 inches from the side lot line and thus is nonconforming. Once the existing accessory structure is removed, it will lose its nonconforming status and a new garage is required to meet the minimum 18 inch setback requirement. The new garage will be approximately 12 feet by 28 feet, or 336 square feet in area and is proposed to be located in the same location as the existing structure. The petitioners are requesting a major variance to allow for an accessory structure to encroach up to 100% into the required side yard setback.

Pursuant to the Urbana Zoning Ordinance, the Zoning Board of Appeals must recommend approval of a major variance by a two-thirds majority for the case to be forwarded to City Council for a final decision.

Description of the Site

The subject property is located on the north side of West Iowa Street between South Busey Avenue and South Orchard Street. The property is commonly known as 706 West Iowa Street. There is

currently a single-family home and a detached garage/shed situated on the property. The lot measures approximately 55 feet wide by 135 feet deep, totaling 7,425 square feet in area.

Adjacent Land Uses, Zoning Designations and Comprehensive Plan Designations

The surrounding area to the north, south, east and west of the subject property is residential in nature and is zoned R-2, Single-Family Residential. The subject property and the surrounding neighborhood were originally platted with lots narrower than are common today. The R-2 Zoning District requires a minimum lot width of 60 feet, and the subject property is only 55 feet in width. The area consists mainly of single-family residences with a few duplexes mixed throughout. The 2005 Urbana Comprehensive Plan indicates the future land use for the subject property as well as the surrounding area as “Residential – Urban Pattern”. Please refer to Exhibits A, B and C for additional detail.

Discussion

The petitioner is planning to demolish the existing accessory structure and build a new larger garage. The petitioner has noted in their variance application a number of reasons justifying their request to allow for the construction of the new garage in the same location of the existing garage. First, the neighbor to the west (708 West Iowa Street) has constructed a fence along the adjoining property line. The fence does not continue along the side of the existing accessory structure. If the new garage is constructed 18 inches from the property line, there will be a gap in the fence. The property owner at 708 West Iowa Street submitted a letter of support as part of the petitioner’s application. (See Exhibit E) Second, the new garage will be two feet wider than the existing structure. If the new garage is moved an additional 18 inches to the east, it will be located close to an existing deck on the rear of the house. In addition, the overhead door to the garage will no longer be in line with the existing driveway. Finally, moving the garage 18 inches to the east will result in the loss of the petitioner’s usable yard area while creating a strip of unusable yard between the new garage and the adjacent property to the west. Correspondence in support of the requested variance has been received. (See Exhibit G)

The general intent of a side yard setback is to provide open space between lots, and allow the provision of light and air to adjacent structures. In the case of the R-2, Single-Family Residential District, the side yard setback requirement of five feet for principal structures allows for adequate separation between neighboring structures for fire safety purposes, creates an opportunity for landscaping, and allows adequate space for yard maintenance. The allowance for the reduction of the side yard setback for accessory structures to 18 inches takes into account that accessory structures are smaller in size and less prominent of the lot. A minimum setback of 18 inches is required to avoid the need to access neighboring properties for maintenance and to minimize potential water runoff onto neighboring properties. The allowance to locate an accessory structure 18 inches from the property line has been in practice since the passage of the 1950 Zoning Ordinance.

As stated above, the petitioner has noted a number of practical reasons why a variance to allow for an accessory structure to encroach up to 100% in the side yard setback is justified. It appears that the requested variance would have little impact on the surrounding neighborhood based upon a site visit and supporting letters from neighbors. There does not however, appear to be a practical difficulty in carrying out the strict letter of the Zoning Ordinance. The dimensions of the lot would

allow for the proposed accessory structure to be located such that it could meet the required 18 inch side yard setback while not impacting access to the deck on the rear of the house, while also allowing appropriate area for a vehicle to maneuver into and out of the proposed garage. The drawback as noted by the petitioner is that a new section of fence would need to be constructed and yard area would be lost. Exhibit F is an illustration provided by the petitioner that shows the location of the existing garage in blue, the proposed location of the new garage in pink, and the location of the garage if required to meet the 18 inch side yard setback in green.

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 petitioner has indicated that: “If the new structure is built with the required setback of 18 inches, it will encroach upon more of the green space in our back yard. Furthermore, the neighbors whose property is abutted by the garage and shed use these structures as fencing for their back yard. A setback of 18 inches would require an additional fence to be built and would create an unsightly gap between the two properties”. Aside from these two items, it appears that the dimensions of the subject property would allow the petitioner to construct the proposed garage in compliance with the setback requirements of the Urbana Zoning Ordinance.

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 petitioner has indicated that the existing accessory structure is in need of “substantial and costly repairs” and that “the required repairs would cost more than a new garage and would only last a few years because the garage itself is on the verge of becoming structurally unsound (it has a pronounced lean toward one side)”. Replacement of the structure would be an improvement for the property owner and the neighborhood. Aside from the use of one wall of the proposed garage as a portion of the fence between the adjacent property, it does not appear that a variance is necessary due to special circumstances relating to the land or structure involved.

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

The existing accessory building was built prior to the petitioner taking ownership of the subject property. The need for a variance has not yet been created. The petitioner is aware of the side yard setback requirement for the new garage. The petitioner is proposing to construct the new garage in the same location as the existing garage, which does not meet the required side yard setback. The

petitioner is therefore requesting a variance to allow for up to 100% encroachment into the required side yard setback.

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

Granting the variance would not have a significant impact on the essential character of the neighborhood because the proposed location of the new garage is the same as the existing garage. The existing accessory building is in a state of disrepair. Replacing the deteriorated structure would be an improvement for the property and the neighborhood as a whole.

Although the nonconforming setback line already exists, a preexisting situation alone is not an adequate reason to grant a variance. It is important to evaluate the reasons why the nonconforming setback was originally established, whether those reasons are still relevant, and whether it makes sense to allow the nonconforming setback to continue.

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

A fence has been constructed by the adjacent property owner to the west. The existing garage on the subject property currently functions as a section of the fence. The variance would allow for the new garage to be built in the same location as the existing garage and therefore would not require the adjacent neighbor to build a new section of fence. A drawback in using an exterior wall of the garage as a section of the fence is that the owner of the garage loses their ability to maintain the exterior wall without access to the adjacent property. A letter was submitted by the adjacent property owner in support of the variance request with the petitioner's variance application. (See Exhibit E)

Although the current adjacent property owner does not think that the proposed variance would cause a nuisance to them, a future owner may. A future owner of the adjacent lot may not allow access to their property to maintain the garage or, may choose to construct a fence along the garage wall effectively eliminating any ability to maintain the exterior garage wall. The zero setback could also cause a safety hazard with respect to fire.

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

The petitioner has indicated that the requested variance is the "minimum deviation required to maintain (and improve) the appearance of the neighborhood, by replacing a failing structure with a new one, while maintaining green space and not creating unsightly gaps between properties". While the variance represents the minimum deviation from Zoning Ordinance requirements that is reasonable to the petitioner, it does not represent the minimum deviation that is possible. For example the size of the subject property would allow for the garage to be moved to the east so that it complies with the required setbacks for the R-2 Zoning District.

Summary of Findings

1. The petitioner is proposing to demolish an existing accessory structure and build a new garage in the same location as the existing structure. The new garage is proposed to be 12 feet by 28 feet, or 336 square feet in area.

2. The existing accessory building does not meet the current required side yard setback and is therefore nonconforming. The petitioner has requested a variance to allow for the new garage to encroach up to 100% into the required side yard setback.
3. Granting the requested variance would not have a significant impact on the character of the neighborhood as the proposed location of the new garage is the same as the existing garage.
4. Although the nonconforming setback line already exists, a preexisting situation alone is not an adequate reason to grant a variance.
5. The current adjacent property owner has indicated that the proposed variance would not cause a nuisance to them; however, a future owner may.
6. Granting the requested variance could extend a special privilege to the petitioner because the size of the subject property would allow for the proposed garage to be situated so that it complies with the required setbacks for the R-2 Zoning District.
7. The requested variance does not represent the minimum deviation from the Zoning Ordinance.
8. Granting the requested variance would eliminate the necessary area, as required by the Zoning Ordinance, for maintenance and to minimize potential water runoff onto the neighboring property. The zero setback could also cause a safety hazard with respect to fire.

Options

The Zoning Board of Appeals has the following options in major variance case ZBA-2008-MAJ-10:

- a. Recommend approval to the Urbana City Council, by two-thirds majority, of the variance as requested based on applicable findings outlined in this memo;
- b. Recommend approval to the Urbana City Council, by two-thirds majority, of the variance as requested along with certain terms and conditions. If the Urbana Zoning Board of Appeals elects to add conditions they should articulate findings accordingly; or
- c. Deny the variance as requested. 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 **DENY** the requested major variance in Case ZBA-2008-MAJ-10. The basis for the staff recommendation for denial is that there does not appear to be a practical difficulty with complying with the Zoning Ordinance, that the proposed variance does not represent the minimum deviation from the Zoning Ordinance, and that the requested variance poses a potential

nuisance to the adjacent property. In this case, the benefits for providing for a side yard setback such as to allow for maintenance, to minimize potential water runoff onto the neighboring property and for fire safety, outweigh the drawbacks of providing for a side yard setback as stated by the petitioner.

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
 Exhibit F: Garage Location Diagram
 Exhibit G: Public Correspondence

cc: Phillip and Sonia Newmark
 706 West Iowa Street
 Urbana, IL 61801

Exhibit A: Location and Existing Land Use Map



ZBA Case: ZBA-2008-MAJ-10

Description: A request for a major variance to allow an accessory building to encroach 100% in the required side yard setback.

Petitioner: Phillip and Sonia Newmark

Location: 706 West Iowa Street

Zoning: R-2, Single-Family Residential

Prepared 10/08 by Community Development Services - Ikk

Land Use

DUP - Duplex
SF - Single-Family

Exhibit B: Existing Zoning Map



ZBA Case: ZBA-2008-MAJ-10

Description: A request for a major variance to allow an accessory building to encroach 100% in the required side yard setback.

Petitioner: Phillip and Sonia Newmark

Location: 706 West Iowa Street

Zoning: R-2, Single-Family Residential

Prepared 10/08 by Community Development Services - Ikk

Zoning



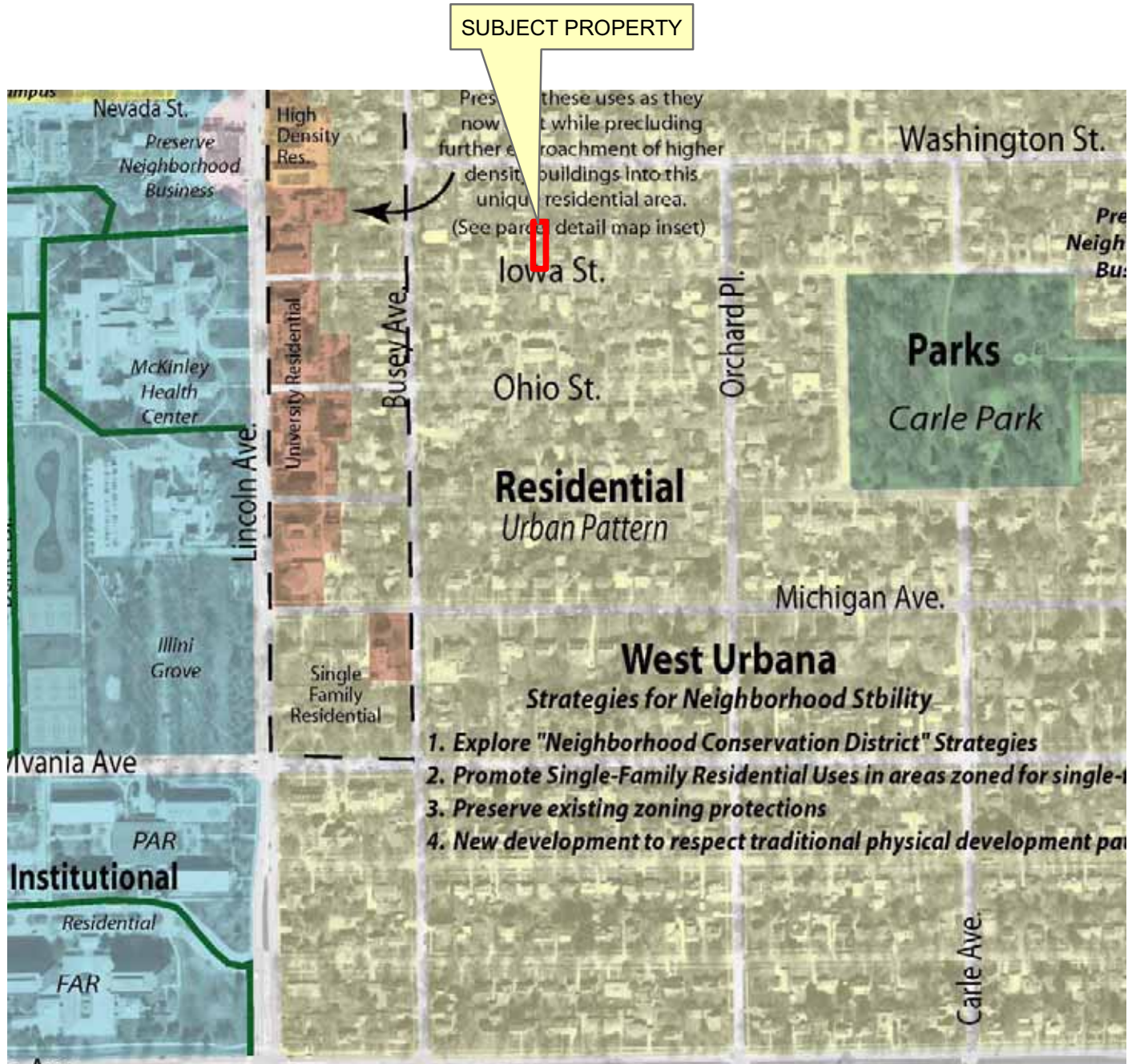
-  R2
-  R7

Exhibit C: Future Land Use Map



ZBA Case: ZBA-2008-MAJ-10

Description: A request for a major variance to allow an accessory building to encroach 100% in the required side yard setback.

Petitioner: Phillip and Sonia Newmark

Location: 706 West Iowa Street

Zoning: R-2, Single-Family Residential

Prepared 10/08 by Community Development Services - Ikk

EXHIBIT D



Looking north towards garage



Looking northwest towards garage and adjacent property



Looking northeast towards garage, deck and backyard



Looking southwest towards garage and adjacent property



Request for Variance

Zoning Board Of Appeals

APPLICATION FEE – \$150.00 (Major) and \$125.00 (Minor)

The Applicants are responsible for paying the cost of legal publication fees as well. The fees usually run from \$75.00 to \$125.00. The applicant is billed separately by the News-Gazette.

DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY

Date Request Filed 9/22/2008 ZBA Case No. ZBA-2008-MAJ-10
 Type of Variance (Circle One) Major Minor
 Fee Paid - Check No. 5376 Amount \$125.00 Date 9/25/2008

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 (insert use or construction proposed and the type and extent of variation requested) _____

construction of a new detached garage with reduced setback to replace the existing structure.

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

1. Location of Subject Site 706 West Iowa Street, Urbana, Illinois 61801
2. PIN # of Location 93-21-17-305-023
3. Name of Applicant/Petitioner(s) Phillip and Sonia Newmark Phone 217-367-9165
 Address 706 West Iowa Street, Urbana Illinois 61801
 (street/city) (state) (zip)
 Property interest of Applicant(s) owners
 (owner, contract buyer, etc)

4. Name of Owner(s) _____ Phone _____
Address _____
(street/city) (state) (zip)

If there are additional owners, please attach extra pages to the application.

5. Name of Professional Site Planner(s) _____ Phone _____
Address _____

6. Name of Architect(s) Terry Bullock Garages, Inc. Phone 217-355-2761
Address 703 Bloomington Road, Champaign Illinois 61820
(street/city) (state) (zip)

7. Name of Engineers(s) _____ Phone _____
Address _____
(street/city) (state) (zip)

8. Name of Surveyor(s) _____ Phone _____
Address _____
(street/city) (state) (zip)

If there are additional consultants, please attach extra pages to application.

DESCRIPTION, USE, AND ZONING OF PROPERTY: Attach an additional sheet if necessary

Legal Description Lot 12 of block "A" of Assessor's Plat of the NW Quarter of the
Southwest Quarter of Section 17, Township 19 North, Range 9 East of the Third
Principal Meridian in Champaign County, Illinois, situated in the City of Urbana in
Champaign County, Illinois

Lot Size 55 feet x 165 feet = 9075 square feet

Present Use Residential
(vacant, residence, grocery, factory, etc)

Zoning Designation R-2

REASONS FOR REQUEST FOR VARIATION:

Note: The following questions must be answered completely. If additional space is needed, please attach additional sheets.

1. 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.

The existing one-car garage and attached shed that we seek to replace were originally built (by previous owners) close to the property line. If the new structure is built with the required setback of 18 inches, it will encroach upon more of the green space in our back yard. Furthermore, the (next page)

2. 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.

The existing garage and shed are in need of substantial and costly repairs. Both structures need new roofs, and the shed needs to be rebuilt completely. Because it is attached to the garage and serves as an external wall, a new garage wall would also have to be built. The required repairs (next page)

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

We did not build the existing garage or the shed that is attached to it

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

The variance will enable the new garage to be built such that it occupies a similar footprint as the existing structure, while minimizing the loss of green space in our backyard. Furthermore, it will enable us to replace a failing structure that risks becoming an eyesore with a new one.

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

The neighbors directly affected by the variance have no objection to the new structure (see enclosed letter). One wall of the existing garage serves as a portion of their backyard fence. The variance would permit the new structure to continue serving this function; a new fence would not need to be built.

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

Yes, the variance is the minimum deviation required to maintain (and improve) the appearance of the neighborhood, by replacing a failing structure with a new one, while maintaining green space and not creating unsightly gaps between properties.

REASONS FOR REQUEST FOR VARIATION:

1. (continued) neighbors whose property is abutted by the garage and shed use these structures as fencing for their back yard. A setback of 18 inches would require an additional fence to be built and would create an unsightly gap between the two properties.

2. (continued) would cost more than a new garage and would only last a few years because the garage itself is on the verge of becoming structurally unsound (it has a pronounced lean toward one side). At some point in the past, previous owners had it treated for termites. A carpenter that we consulted about repairing the garage and shed told us that the remnants of this strong chemical treatment were all that was holding off the complete destruction of the rotted wood; when the last of this treatment wears off, the wood will rot completely and the structure will no longer be sound. Thus, it is important for us to re-build the garage before it reaches this point.

PLEASE NOTE: The Urbana Zoning Ordinance provides that, by submitting this request for variation for this property, you are granting permission to Staff of the Department of Community Development Services to place a temporary yard sign in the front yard of the property to provide notice of the time and place of the public hearing to consider this request. The sign will be placed in the front yard at least fifteen (15) but not more than thirty (30) days prior to the date of the hearing, and will be removed no later than ten (10) days after the completion of the public hearing. Please call 384-2440 if you have any questions about this requirement.

WHEREFORE, petitioner prays that this petition be heard by the Zoning Board of Appeals and the variations to the regulations of the Zoning Ordinance be changed as herein requested.

Respectfully submitted this 16th day of September, year, 2008 A.D.

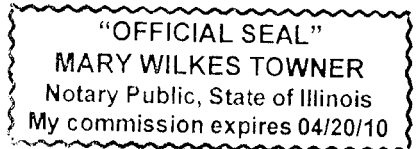
[Signature] [Signature]
Signature of Applicant

STATE OF ILLINOIS)
) SS
CHAMPAIGN COUNTY)

Phillip A. Newmark and Sonia E.W.Newmark, being first duly sworn on his/her/their oath, deposes and says, that he/she/they is/are the same person named in and who subscribed the above and foregoing petition, that he/she/they has/have read the same and knows the contents thereof, and that the matters and things therein set forth are true in substance and in fact as therein set forth.

Subscribed and sworn to before me on this 16 day of Sept, year 2008 A.D.

Mary Wilkes Towner
Notary Public



SEAL

Petitioner's Attorney: _____
(if applicable)

(address)

(telephone number)

Michael and Elizabeth Plewa
708 West Iowa Street
Urbana, IL, 61801

September 20, 2008

Phil and Sonia Newmark
706 West Iowa Street
Urbana, IL 61801

Dear Phil and Sonia,

We write in support of your request to the City of Urbana for a variance in the placement of the detached garage that you are planning to build at your home at 706 West Iowa Street. This detached garage is to replace your current garage. As your neighbor whose property lies adjacent to your current garage we fully support the replacement of your garage at its present site.

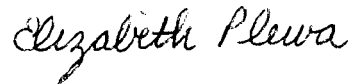
Our historic West Urbana neighborhood typically has detached garages that are located near the property line. The lot sizes and configuration of this older and award-winning neighborhood support this practice. Without this variance, replacing your garage with the current rule setback would be incongruous with the general design of our immediate neighborhood. Additionally such a placement could pose a safety problem in that you would lose your direct drive to the street.

We support your variance request because it complements the design of your home and property, it conforms to the general nature and design of detached garages within our older neighborhood and changing the placement may pose a safety risk.

Sincerely,



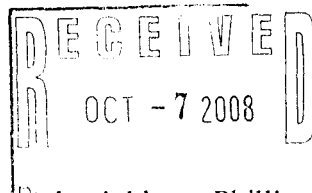
Michael Plewa



Elizabeth Plewa

October 4, 2008

To: Zoning Board of Appeals of the City of Urbana
 Re: ZBA Case 2008-MAJ-10



We write this letter in support of the requested variance of our ~~good neighbors, Phillip and~~ Sonia Newmark, 706 West Iowa Street, to build a new garage within 18 inches of their west property line. This matter is to be part of a public hearing Wednesday, October 15th in the Urbana City Council Chambers (notice attached).

We have lived at 704 West Iowa Street since 1985, immediately east of Phil and Sonia. We have no objection to their building a new garage on the west property line, and know personally that Michael and Elizabeth Plewa, immediately west of Phil and Sonia at 708 West Iowa, also have no objections. The site of the existing garage is within 18 inches of the property line, and is in need of replacement. Spacing the new structure differently than the existing will serve no purpose, and in fact, cause a loss of usefulness given the line of the driveway, and close proximity to the deck at the rear of their house.

This neighborhood is a close-knit group of friend, able to work together very well. We share lawn and garden equipment stored in Phil and Sonia's garage. We have done the same for years, with the previous owners of 706 West Iowa, Paul Goldbart and Jenny Singleton, and before them, Tom and Barb O'Halloran.

Please grant the requested variance and allow the building of the new garage within the 18 inch setback.

Respectfully,

Kevin & Sally Waspi
 704 West Iowa Street
 Urbana

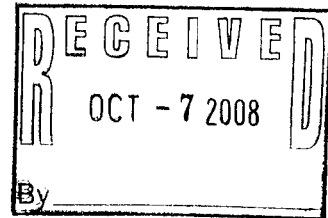
Other neighbors have requested that I prepare this letter for their signatures supporting this request as done so below.

702 W. Iowa, Urbana 61801

702 W. Iowa, Urbana 61801

Lois Johnston
 601 W. Iowa, Urbana, IL 61801

10/6/08



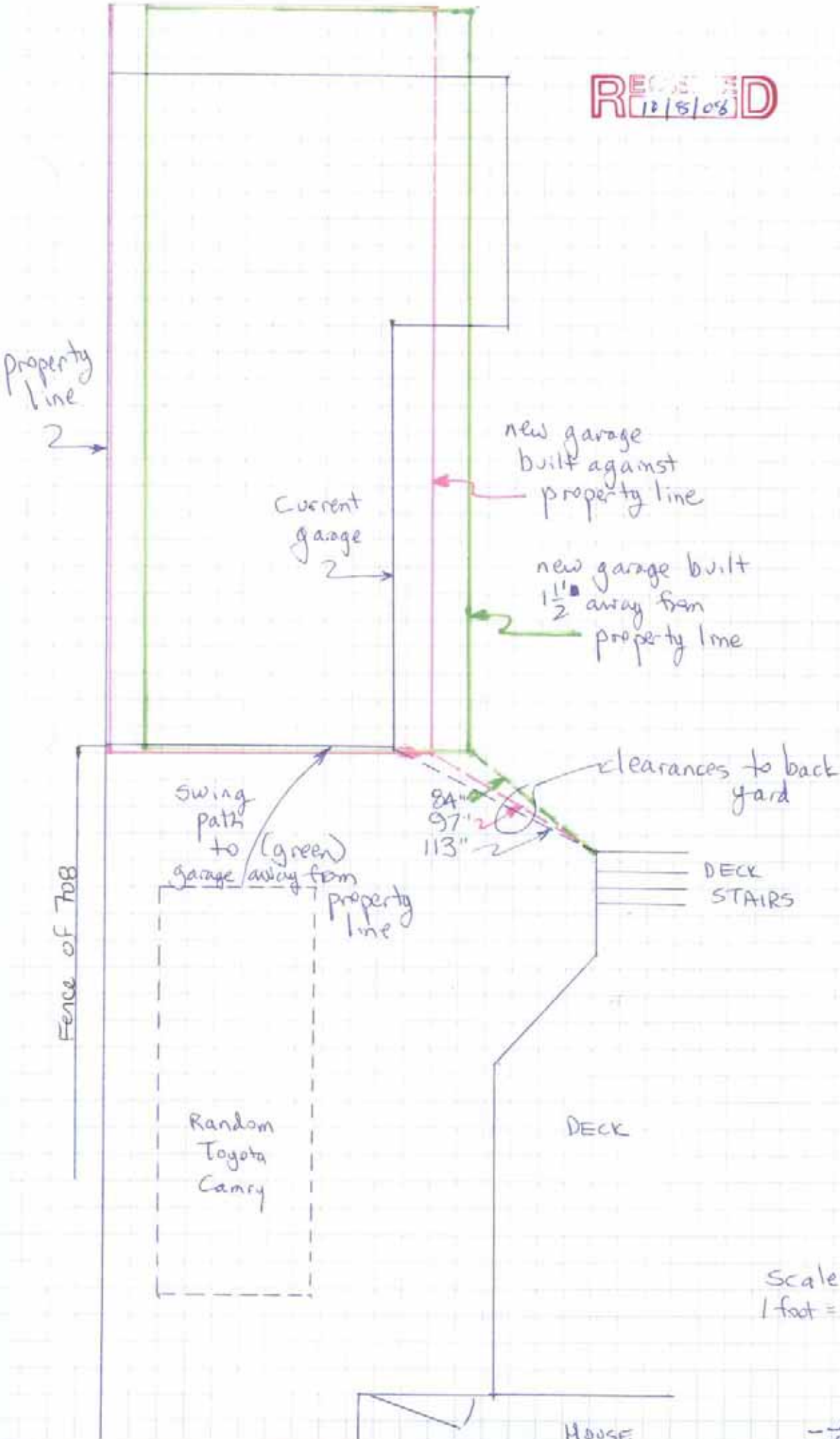
To: Dept. of Community Development Services

Re: ZBA Case 2008-MAT-10

We are writing in support of the City of Urbana granting the variance request filed by Sonia + Phillip Newmark. Since the lots in our neighborhood are extremely narrow, this exception seems warranted + their adjoining neighbors are in support of their request as well. Furthermore, we are pleased that our neighborhood has families, like the Newmarks, who are invested in the quality of their property.

Sincerely,
Kathy Hays Larry Hays
709 W. Iowa
Urbana IL

RECORDED
12/15/08
D



Scale:
1 foot = 1 square

—ERW— 10/7/08