

ORDINANCE NO. 7879-106

AN ORDINANCE ADDING SECTION 34.74-B SPECIAL PROCEDURE IN THE BONEYARD CREEK DISTRICT TO ARTICLE XIII OF THE ZONING ORDINANCE ESTABLISHING A BONEYARD CREEK OVERLAY DISTRICT AND PROCEDURES AND STANDARDS FOR DEVELOPMENT AND REDEVELOPMENT THEREIN

WHEREAS, Section 6 (a) of Article VII of the 1970 Constitution of the State of Illinois, provides that any municipality which has a population of more than 25,000 is a home rule unit, and the City of Urbana, Champaign County, Illinois, with a population in excess of 25,000 is a home rule unit and may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare, and

WHEREAS, after due publication, a public hearing by the Urbana Plan Commission was held on the 10th day of May, 1979 pursuant to the provisions of the Urbana Zoning Ordinance as amended, and

WHEREAS, the Plan Commission has recommended approval of this section to facilitate the implementation of a Plan for the conservation and redevelopment of the Boneyard Creek District, and

WHEREAS, the plan for development and redevelopment of the Boneyard Creek District entitled Boneyard Creek Master Plan was prepared under authority of An Agreement for Establishing of an On-going Commission for the Boneyard Creek, adopted by this City Council the 21st day of July, 1976, and

WHEREAS, the Boneyard Creek Commission created by agreement has accepted, after notice and hearing, by majority vote dated October 18, 1978, and recommended that the City adopt said Master Plan and report of the joint venture of Conklin and Rossant/Clark Dietz Engineers, Inc. entitled draft Boneyard Creek Master Plan, and

WHEREAS, the Boneyard Creek Commission, by majority vote dated March 28, 1979, has recommended that the City adopt a final plan entitled Boneyard Creek Master Plan, and

WHEREAS, an ordinance amending the Comprehensive Plan of the City of Urbana, Illinois was adopted on the 18th day of December, 1978, and

WHEREAS, the City Council of the City of Urbana has determined by reason of the findings and purposes hereinafter made, that the health, safety, general welfare and the best interests of the residents of the City of Urbana will be served by providing for the implementation of said plan in the manner hereinafter provided;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA AS FOLLOWS:

Subsection One: Purposes: The purposes of this section are as follows:

A. To establish a Boneyard Creek District as an area of vital significance to the cultural, economic and environmental future of the City.

B. To promote and facilitate sound storm drainage management practices, to assist in the reduction of flood hazards to persons and property, to improve water quality and to prevent encroachments and land uses which adversely affect water runoff.

C. To encourage the development and maintenance of the Boneyard Creek District as a recreational resource and circulation area and to reclaim for the City the benefits of a natural waterway that have been ignored as a design asset and to provide a focal point for urban redevelopment.

D. To improve the maintenance of the creek bank in a manner which will reduce harmful mosquito and insect reproduction.

E. To provide incentives for redevelopment through private initiative in a manner consistent with the Boneyard Creek Master Plan.

F. To promote and conserve the economic value of land and buildings and thereby protect and improve the City's tax base.

G. To implement the Boneyard Creek Master Plan, as such may be amended from time to time by the Boneyard Creek Commission, in a manner consistent with the Urbana Comprehensive Plan.

Subsection Two: Applicability to Urbana Zoning Ordinance and Zoning Map:

A. Definitions and requirements of the Urbana Zoning Ordinance are applicable unless specifically modified pursuant to this section, but no lawful existing use or building shall be made non-conforming by virtue of the provisions of this section so long as the existing use or building is not modified.

B. The provisions of this section are applicable to the area within the Boneyard Creek District, the boundaries of which are established on the attached map entitled Boneyard Creek District Map, dated March 28, 1979, which is hereby adopted as a part of this article as constituting an overlay district on the official zoning map of the City.

C. This section authorizes granting a "Creekway permit," that may modify the requirements of the underlying zoning district and establishing new standards for the use of property within the Boneyard Creek District.

Subsection Three: General Considerations:

Upon the review of a "Creekway permit," the following factors shall be considered:

A. Whether the Creekway permit is compatible with the Boneyard Creek Master Plan as it may be amended from time to time in a manner consistent with the Urbana Comprehensive Plan.

B. Whether the location, size and type of the proposed use is appropriate to the objectives of the Boneyard Creek District.

C. Whether the proposed use is compatible with the character of the area in which it is located.

D. Whether the proposed use would be compatible with the spirit of the underlying zoning district.

E. Whether there are adequate community services to support the proposed use, such as, but not limited to, streets, water, sewer, recreational and public school facilities.

F. Whether the design of the proposal as to size, height and open space allows adequate access of light and air to surrounding streets, parkways and properties.

Subsection Four: Creekway Permits Required:

A. No permits for construction, demolition, change of use classification or other zoning permits within the Boneyard Creek District shall be granted except in compliance with the provisions of this section.

B. It shall be unlawful to proceed with any construction, demolition, excavation, reconstruction, installation of poles, pipes, and other objects in the Boneyard Creek District without a Creekway permit.

Subsection Five: Standards: Each application for a Creekway permit required by this section on property within the Boneyard Creek District shall be subject to the provisions of and eligible for the benefits of this section. A Creekway permit shall establish specific standards of construction, including time limits, and may require posting of a performance bond or other guarantees of adequate, timely performance.

A. The provisions of the City of Urbana Zoning Ordinance, as amended, apply to all applications for permits within the Boneyard Creek District, except as modified by this section or as modified pursuant to the procedures of this section.

B. Minimum Area and Yards: The minimum zoning lot shall be 6,000 square feet for any new building or use in the Boneyard Creek District, except for lots of record on the effective date of this ordinance which shall be considered buildable lots subject to the provisions of this section.

C. Building Line: Boneyard Creek corridor limit lines shall be as indicated on the Boneyard Creek Master Plan engineering drawings which are hereto attached and incorporated herein. The building line shall be set back five (5) feet from the corridor limit lines. No fence or structure, other than sidewalks, bike paths and drainage facilities, shall be permitted between the building lines.

D. Access: In addition to frontage on a public street, additional requirements may include easements for the construction of public sidewalks, bike paths and drainage facilities consistent with the Boneyard Creek Master Plan and, when necessary, shall include easements for construction, maintenance, police and fire access to the riparian properties of the Boneyard Creek.

E. Zoning Lot: A proposed development shall occur on a zoning lot. For the purposes of this section, a zoning lot shall be approved by the permit granting entity and need not be within a single block. A zoning lot may include land not within the Boneyard Creek District and land within said district if the development of such a zoning lot substantially contributes to the implementation of the Boneyard Creek Master Plan.

F. Landscaping and Screening: Each application for construction under a Creekway permit shall include a plan indicating the type, number, size and location of trees, shrubs and other landscaping features to be retained or provided. Such plan shall be consistent with the Boneyard Creek Master Plan.

G. Flood Hazard Area; The provisions of this section shall not be deemed to be an amendment of the Flood Control Ordinance No. 7677-107 of the City of Urbana, as amended. Additional requirements may be imposed by a Creekway permit when deemed necessary to prevent hazards to persons or property, or to decrease the need for public expenditures to avoid flood hazards.

H. Prohibited Structures; Construction of structures in, or over, the Boneyard Creek which would substantially interfere with the development of the district, the park and recreational uses, or increase the flood hazard is deemed to be inconsistent with the purposes of this section and is prohibited.

I. Lighting; Lighting along the creek shall be provided to produce a minimum of one-tenth (0.1) foot candle at every point within the public access areas. Potentially hazardous locations such as intersections and major pedestrian crossings shall be illuminated with a minimum of three-tenths (0.3) foot candle. New utility, gas, and electric service lines shall be located underground where appropriate to implement the Boneyard Creek Master Plan.

J. Improvement Fund: When an application for a Creekway permit on a zoning lot containing or contiguous to the building line or public access area established by this section results in modifications which increase floor area over that permitted by the underlying zoning district requirements, the applicant shall contribute to a special fund of the City. Such amount shall equal one dollar (\$1.00) per each additional square foot. The fund shall be used for the installation and maintenance of public improvements and public landscaping of the Creek bank.

K. Dedication: Each application for a Creekway permit on a zoning lot containing or contiguous to the building line or public access area established by this section will include an irrevocable offer by the owner for the term specified below to dedicate a portion of the zoning lot as determined by the Plan Commission. Provided, that such dedication is not required if none of the bonus provisions of Subsection Six are requested by the applicant. The parcel to be dedicated shall be determined in accord with applicable provisions of the Boneyard Creek Master Plan but shall not exceed an amount greater than twenty percent (20%) of the zoning lot area or a strip of land averaging twenty (20) feet in width, whichever is smaller. The parcel offered or dedicated shall

for computation purposes remain as part of the zoning lot and shall be counted as open space or yards. The dedication shall be to a governmental unit to be specified in the Creekway permit but shall not be effective until officially accepted by such governmental unit provided that such offer shall lapse if not accepted within two years of the date of granting of the Creekway Permit. Such dedicated parcel shall be for public use to serve the users or residents of the proposed development, to serve the public and to enhance the parcel's value by allowing creek development and improvements.

**Subsection Six: Bonus Provisions:**

A. **Development Rights Transfer:** The maximum floor area and the height permitted on a zoning lot may be increased by the amount of floor area of development rights transferred from an adjoining lot or successively adjoining lots.

For the purpose of this subsection, development rights means the total square feet of floor area that may be constructed on an existing parcel of land as permitted by the underlying zoning classification in which it is located, less the amount of any existing floor area retained or in use. The transferor and transferee of development rights shall record their instrument of transfer for each parcel with the Champaign County Recorder as a real property transfer for the benefit of the transferee and such instrument of transfer shall include assumption of obligation for real estate taxes in proportion to the value of the interest transferred.

B. **Extra Lot Size:** For computation purposes a zoning lot contiguous to the Boneyard Creek may include the area between the lot lines which intersect the Creek extended to the centerline of the Creek.

C. **Yards:** Yard requirements may be decreased or waived when necessary to permit acceptable densities and a more desirable setback from the Boneyard Creek.

D. **Height:** Height requirements may be modified to add an additional story provided such height modification shall not exceed twelve (12) feet.

E. **Parking:** Off street parking shall be provided if required by the underlying zoning classification or by the Creekway permit and may be off-site parking but shall be located within six hundred (600) feet of the zoning lot.

F. Mixed Uses: Residential uses other than those listed as permitted by right or permitted with special or conditional permits may be authorized in any underlying zoning classification and mixed use of a zoning lot may be permitted.

Subsection Seven: Application Procedure: The procedures of this section shall supersede the general procedures of the zoning ordinance for zoning lots within the Boneyard Creek District.

A. Preliminary Conference: The Zoning Administrator shall provide all necessary information to prospective applicants for Creekway permits under this section. An applicant shall secure an appointment for a preliminary conference with the Zoning Administrator and with a representative of the Boneyard Creek Commission to discuss the Boneyard Creek Master Plan and the Creekway permit procedures.

B. Application Requirements: After the preliminary conference, and on forms provided by the Zoning Administrator, a written application shall be filed by the owners of the subject property within the Boneyard Creek District with the Zoning Administrator. Such application shall indicate the subsection of the section under which construction or use authorization is sought; the reasons for which any modification in the underlying zoning requirements is sought and information necessary for determining whether a Creekway permit shall be issued. In addition to the information required by this section, the applicant shall provide information required by the Rules of Procedure promulgated for the Boneyard Creek District by the Plan Commission.

C. Zoning Administration Permit: The Zoning Administrator shall be authorized to grant a Creekway permit based on his determination that the provisions of the underlying zoning classification have been complied with and that:

1. A requested modification of the front or rear yard requirements of the underlying zoning classification of not more than thirty (30) feet is reasonable; and

2. That the minimum setback from the Creek is maintained in accord with the building line requirements of this Article; and

3. That the standards of Subsection Five, D, E, F, G, H, and I of this section are complied with.

When approval may be granted by the Zoning Administrator pursuant to Subsection Seven, C, he shall transmit notice of intent to grant a Creekway permit and a copy of the proposed permit to the Plan Commission and the Boneyard Creek Commission. If no objection is received from either Commission within ten (10) days from its date of transmittal, the Zoning Administrator shall grant such permit. During such ten (10) day period any aggrieved party or any public official or entity may appeal the Administrator's proposed grant of the Creekway permit to the City Council.

D. Referral to Plan Commission: When an application for a Creekway permit requests modifications in excess of those authorized by Subsection Seven, C, the Zoning Administrator shall, within five (5) working days after receipt of an application determined by the Zoning Administrator to be complete, provide a complete copy of the application to the Plan Commission and the Boneyard Creek Commission. The Boneyard Creek Commission and appropriate City staff shall submit any recommendations with respect to each application to the Plan Commission within twenty (20) days.

E. The Plan Commission shall review all recommendations and the application and make its determination at a public meeting and return the documents to the Zoning Administrator with directions to:

1. Grant the Creekway permit based upon the application as approved by the Plan Commission and subject to any specific requirements or conditions as determined by the Plan Commission; or

2. Deny the Creekway permit based on the application's failure to present a plan in accordance with the Boneyard Creek Master Plan and the provisions of this section; or

3. Defer action on the application based on a determination that modifications of the use, density and other requirements of the underlying zoning ordinance are beyond those authorized by this section. In which case, the Zoning Administrator shall forward the application and the recommendations of the Plan Commission, the Boneyard Creek Commission and appropriate City staff

to the City Council. The City Council shall, after public notice, review the recommendations and application and conduct a public hearing and the application for a Creekway permit shall be granted only upon a vote necessary for the passage of an ordinance and, if granted, shall determine what conditions and requirements will be applied to the Creekway permit.

F. Appeal of a Creekway Permit Decision: Any aggrieved person, party, public official or governmental entity may appeal a decision of the Zoning Administrator or the Plan Commission to the City Council within ten (10) days of the date of such decision. No decision to grant a Creekway permit shall be acted upon by the Zoning Administrator until the lapse of the ten (10) day appeal period.

G. Lapse of a Creekway Permit: If no construction has begun or no approved use has been established pursuant to a Creekway permit within one (1) year from the date of its final approval, the Creekway permit shall lapse, be void and no longer in effect.

Subsection Eight: Notice of Hearing: Notice of hearing or of a required meeting to consider a Creekway permit shall be given in the same manner as required by the Urbana Zoning Ordinance for a hearing on special use permit. At the public hearing or meeting any person may appear in person or by agent or attorney.

Subsection Nine: Appeals: Any aggrieved person, party, public official or governmental entity may appeal final decision made pursuant to this section. Appeals are authorized to the City Council from a decision of the Zoning Administrator, the Plan Commission and their designees and shall be limited to the official record. Upon appeal of an application the Council shall review all recommendations. A Creekway permit shall be granted only upon a vote necessary for the passage of an ordinance and if granted shall determine what conditions and requirements will be applied. Appeals to the Circuit Court shall be subject to the provisions of the Administrative Review Act.

Subsection Ten: Hearing Officer: An administrative determination to be made by the Zoning Administrator or Plan Commission and a public hearing by the City Council may be conducted on behalf of the applicable unit of government by a Hearing Officer. Hearing Officers shall be appointed by the entity in whose place such action is taken. The terms of such appointment shall be established by the appointing entity. Hearing Officers shall be appointed based

upon their qualifications, including education and experience in evaluating plans and evidence submitted, and their ability to conduct a fair and expeditious hearing.

Subsection Eleven: This section shall be in full force and effect ten (10) days after its passage and publication. The City Clerk shall certify to the passage and approval of this section and cause it to be published in pamphlet form.

Subsection Twelve: The provisions of Section 34.87 of the Urbana Zoning Ordinance and Section 11-13-14 of the Illinois Municipal Code regarding written protests and the effect thereof shall not be applicable to changes of zoning proposed under the Creekway Permit Application.

Subsection Thirteen: Rules of Procedure and Application Fees: The Plan Commission is authorized to promulgate rules of procedure and schedules of fees consistent with this section.

Subsection Fourteen: Separability: In the event that any part of this section is found to be illegal, unconstitutional or otherwise unenforceable, the remainder shall remain in full force and effect.

PASSED by the City Council this 25<sup>th</sup> day of June, 1979.

Ayes: Castle, Cheverud, Edstrom, Finch, Maloney, Peterson, Stake, Wascher, and Wort

Nays: Johnson, Scott, and Whelan

Absent: Moore and Teuscher

Ruth S. Brookens  
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 29<sup>th</sup> day of July, 1979.

Jeffrey T. Markland  
Jeffrey T. Markland, Mayor

CERTIFICATE OF PUBLICATION

I, RUTH S. BROOKENS, City Clerk, City of Urbana, Illinois, do herewith certify that I caused the above Ordinance to be duly published in pamphlet form on the 6<sup>th</sup> day of July, 1979.

Ruth S. Brookens  
Ruth S. Brookens, City Clerk

RECORDED this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

7879-106

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN ORDINANCE  
NO. 7879-106 AND IS INCORPORATED THEREIN BY REFERENCE.

Ruth S. Brookens  
Ruth S. Brookens, City Clerk

July 25, 1979  
Date