

AN ORDINANCE RATIFYING
AN AGREEMENT OF SETTLEMENT
OF A ZONING DISPUTE CASE

WHEREAS, Dwight E. Dobbs and Patricia Dobbs filed their complaint for declaratory relief and an injunction against the City of Urbana seeking to have the zoning classification on the parcel of property described below, commonly known as the Lincoln School site, declared unconstitutional, and the City enjoined from interfering with their development plans in cause #78-L-954; and

WHEREAS, subsequent thereto, Michael Walker was granted leave to intervene in this case; and

WHEREAS, all parties negotiated a proposed settlement of the zoning dispute which was presented to the Urbana City Council; and

WHEREAS, the negotiated settlement was presented to the Urbana Plan Commission in case #1059; and

WHEREAS, after public hearing, the Urbana Plan Commission recommended approval of the negotiated settlement.

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

1. That the following described property, to-wit:

Lots 2, 3, 4, 5, 6, 7 and 8 of a Subdivision of Lot 21 of M. W. Busey's Heirs' Addition to Urbana, part of Old Bloomington Road and Block 46 of Seminary Addition to Urbana, as shown by Plat recorded in Book "B", page 147, and also:

The East 9 rods of Lot 21 of M. W. Busey's Heirs' Addition to Urbana, Illinois, said East 9 rods sometimes referred to as Lot 1 of said Subdivision of said Lot 21, all comprising a tract of land bounded on the North by Clark Street, on the East by Lincoln Avenue, on the South by Main Street and on the West by Gregory Street, situated in the City of Urbana, in Champaign County, Illinois,

is hereby rezoned to a special zoning classification as described in the court order entered in cause #78-L-954. *(See attachment file)*

2. That the limitations set forth in the above said court order shall be and the same are hereby ordained to be the zoning regulations for such property unless and until there occur

material changes in circumstances respecting said parcel that require different zoning regulations be duly enacted.

This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Section 1-2-4 of the Illinois Municipal Code.

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 regular meeting of said Council on the 15th day of January, 1979.

PASSED by the City Council this 15th day of January, 1979.

Beverly Umbarger
Beverly Umbarger, Acting City Clerk

APPROVED by the Mayor this 28th day of February, 1979.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

CERTIFICATE OF PUBLICATION

I, Beverly Umbarger, Acting City Clerk, City of Urbana, Illinois, do herewith certify that I caused the above Ordinance to be duly published in the C-U Courier on the 6th day of March, 1979, and a Certificate of Publication is attached hereto.

Beverly Umbarger
Beverly Umbarger, Acting City Clerk

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WHEREAS, the negotiated settlement was presented to the Urbana Plan Commission in case No. 1059; and

WHEREAS, after public hearing, the Urbana Plan Commission recommended approval of the negotiated settlement.

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

1. That the following described property, to-wit:

Lots 2, 3, 4, 5, 6, 7 and 8 of a Subdivision of Lot 21 of M. W. Busey's Heirs' Addition to Urbana, part of Old Bloomington Road and Block 45 of Seminary Addition to Urbana, as shown by Plat recorded in Book "B", page 147, and also:

The East 9 rods of Lot 21 of M. W. Busey's Heirs' Addition to Urbana, Illinois, said East 9 rods sometimes referred to as Lot 1 of said Subdivision of said Lot 21, all comprising a tract of land bounded on the North by Clark Street, on the East by Lincoln Avenue, on the South by Main Street and on the West by Gregory Street, situated in the City of Urbana, in Champaign County, Illinois.

is hereby rezoned to a special zoning classification as described in the court order entered in case No. 78-L-954.

2. That the limitations set forth in the above said court order shall be and the same are hereby ordained to be the zoning regulations for such property unless and until there occur material changes in circumstances respecting said parcel that require different zoning regulations be duly enacted.

This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Section 1-2-4 of the Illinois Municipal Code.

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PASSED by the City Council this 15th day of January, 1979.

BEVERLY UMBARGER, Acting City Clerk

APPROVED by the Mayor this 28th day of February, 1979.

JEFFREY T. MARKLAND Mayor

28983 Certificate of Publication

STATE OF ILLINOIS } ss. Champaign County }

CHAMPAIGN-URBANA COURIER, Inc., a corporation hereby certifies that it is the publisher of THE MORNING COURIER, a daily secular newspaper of general circulation in said County, printed in the City of Urbana, and published in the City of Urbana and in the City of Champaign, in said County and State, and that said newspaper is a newspaper as defined in "An Act to revise the law in relation to notices," approved February 13, 1874, as amended, and that the printed notice hereto annexed and hereby made a part of this certificate has been published in

said newspaper at least once each week for one successive weeks in each and every copy

and impression thereof; that the date of the first newspaper containing said publication was

March 6, A.D. 19 79 and that the date of the last newspaper containing said

publication was _____ A.D. 19 _____; and that _____

Barbara A. Nees by resolution of the Board of Directors of said CHAMPAIGN-URBANA COURIER, Inc., has been authorized to make this certificate.

IN TESTIMONY WHEREOF said CHAMPAIGN-URBANA COURIER, Inc., has caused this cer-

tificate to be executed in its name by said Barbara A. Nees

this 6th day of March A.D. 19 79.

CHAMPAIGN-URBANA COURIER, Inc.

Publication Fee, \$ 25.00

By Barbara A. Nees

CERTIFICATE OF PUBLICATION

in

THE MORNING COURIER
CHAMPAIGN AND URBANA, ILLINOIS

In the Matter of

Ordinance 7879-69

**settlement of zoning
dispute**

Solicitors or
Attorneys

City of Urbana

City Clerk

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 7879-69 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens, City Clerk

Date

For reference purposes

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

DWIGHT E. DOBBS and)
PATRICIA DOBBS,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF URBANA, an)
 Illinois Municipal)
 Corporation,)
)
 Defendant,)
)
 and)
)
 MICHAEL WALKER,)
)
 Intervenor Defendant)

No. 78-L-954

ORDER

This cause coming on to be heard and all parties to said cause being represented by their respective attorneys and the Plaintiffs, Dwight E. Dobbs and Patricia Dobbs, by Webber & Thies, P.C., their attorneys, and the Defendant, The City of Urbana, by Jack Waaler, its attorney, and the Intervenor Defendant, Michael Walker, by James Kuehl, his attorney, all now consenting that this Order be entered in the above entitled cause and that the court being fully advised in the premises finds:

1. That the subject property is owned by the Plaintiffs, and is legally described as follows:

Lots 2, 3, 4, 5, 6, 7 and 8 of a Subdivision of Lot 21 of M. W. Busey's Heirs' Addition to Urbana, part of Old Bloomington Road and Block 46 of Seminary Addition to Urbana, as shown by Plat recorded in Book "B", page 147, and also:

The East 9 rods of Lot 21 of M.W. Busey's Heirs' Addition to Urbana, Illinois, said East 9 rods sometimes referred to as Lot 1 of said Subdivision of said Lot 21, all comprising a tract of land bounded on the North by Clark Street, on the East by Lincoln Avenue, on the South by Main Street and on the West by Gregory Street, situated in the City of Urbana, in Champaign County, Illinois.

More commonly described as the Lincoln School block in Urbana, Illinois.

- 2. That the property is 85,272 square feet.
- 3. That under the 1940 and 1950 zoning ordinances the subject property was zoned R-2 Multiple Family Residential (See Exhibits B and C which are copies of the 1940 and 1950 zoning maps, respectively).
- 4. That in 1970 an ordinance was passed purporting to re-zone the subject property R-1, One and Two Family Residential.

5. That the Plaintiffs requested that the City of Urbana zone the subject property R-2, which application is attached hereto as Exhibit A and by this reference made a part hereof.

6. That under current R-2 zoning Exhibit D represents the permitted uses. (Exhibit D attached being a copy of the R-2 zoning regulations.)

7. That although there is a substantial dispute as to the current actual zoning classification of the property, the classification of R-1 on this property would be unreasonable and unenforceable. The claim by the Plaintiffs that this property is currently zoned multiple family, with potential density greater than allowed by this Order, is a good faith, and substantial claim.

8. That Plaintiffs acquired the subject parcel from the school board at public auction where they submitted the only bid after a previous auction at which no one bid. Plaintiff paid \$125,000 for the subject property. Demolition costs are estimated to be \$45,000.

9. That as an R-1 development only 12 single-family or 8 duplex buildings could be constructed, and in the neighborhood of the subject parcel, such development would be considerably below the current dwelling unit density, and would not be economically feasible under R-1 zoning classification.

10. That the property immediately surrounding the subject property is classified in the R-2 multiple family residential district and is developed with both single and multiple family dwelling units, with the immediate area west of Lincoln Street having a density of approximately 40 living units per block, which density has been increasing at the rate of approximately 20% from 1970 to 1978, and continues to increase.

11. That the subject property is suitable for multiple family residential development.

12. That multiple family residential development of the said property would be compatible with the use, development and density of the abutting and nearby property.

13. That the proposed development of the said property by the Plaintiff within the limits of this order would be in accordance with the Comprehensive Plan and Comprehensive Plan Update.

14. That should the general area surrounding the said property be zoned so as to allow a more dense use, there are no reasons why this property should not also be allowed such a use.

15. That the parties to this suit have reached an agreement in resolution of this dispute.

16. That said agreement is attached hereto as Exhibit E and made a part hereof, and this agreement has been presented and approved by the Urbana Plan Commission and the Urbana City Council. The incorporation in the agreement of a class of uses, e.g. allowing multiple-family dwelling within certain parameters, is a reasonable method of resolving the dispute herein, and that it is a genuine compromise of substantial disputes.

17. That said approval by the respective bodies of the City of Urbana, a Home Rule Unit, has met all statutory and constitutional requirements of notice and due process, and, more particularly, has met the requirements of Martin v. Greenville, 369 N.E.2d 543, 54 Ill. App. 3d 42 (1977), and has had the effect of establishing a new zoning classification.

18. That in reliance upon this agreement by all parties, Plaintiffs have agreed to this compromise order and have proceeded in planning the development of the subject property.

19. That more restrictive limitations than those set forth in the agreement should be unenforceable by the City for a reasonable time,, it being the opinion of the court that any time under 10 years would be unreasonable absent a material change in circumstances.

20. The settlement has been entered into during the hearings and deliberation surrounding a new comprehensive amendment to Urbana's Zoning Ordinance and this order is in accordance with the general intent of that amendment. It appears that all parties agree that it is likely that the Comprehensive Zoning Ordinance Amendment will be enacted in the near future. However, because of the uncertainty of the timing of the enactment of the said zoning ordinance amendment, it is manifestly not feasible for the Plaintiff to develop specific plan to present to the Court to show the reasonableness of the intended use, and thus under the posture of this case, the development of the Decree, under the doctrine laid down in Sinclair Pipeline Co. v. Village of Richton Park, 19 Ill. 2d 370, 167 N.E.2d 406 (1960), can be followed only to the extent of describing certain development restrictions and regulations. In setting forth such restrictions in this Decree, the Court is attempting to reflect the developmental concepts set forth in the Proposed Zoning Ordinance Amendment.

THEREFORE IT IS ORDERED THAT:

A. A zoning classification of R1 for the subject property is unenforceable, unreasonable and void.

B. The property may be developed for multiple family dwellings, within limitations, with the definitions of terms being as set forth in the March 1978 proposed Comprehensive Amendment to the Urbana Zoning Ordinance which definitions

are incorporated herein by reference. Having found the R-1 zoning classification to be unreasonable and void and to avoid the undesirable effects of leaving the subject property unzoned, the Court hereby orders that the City of Urbana refrain from interfering with the Plaintiffs' development of the subject parcel for multiple-family use providing the development is within the following regulations, restrictions and limitations:

- (1) Maximum floor area ratio .675;
- (2) Minimum open space ratio .35;
- (3) Maximum height limit 35 feet;
- (4) Minimum setbacks 15 feet (setbacks alone may be reduced by later ordinance or by variation in exception to the above findings of fact);
- (5) Minimum parking for efficiencies and one-bedroom units, one space per unit;
- (6) Minimum parking for two bedrooms, 1.85 spaces per unit;
- (7) Minimum parking for three bedrooms or more, two spaces per unit.
- (8) Compact car spaces may be used for a maximum of up to 50% of spaces required for (5), (6) and (7) above.

C. Should a more dense zoning be allowed for the said property by a later ordinance, then the limitations of the later ordinance shall apply and the property may be developed beyond the limitations of this Order as within the limitations of the new ordinance.

D. More restrictive limitations than those set forth above are unenforceable by the City for a reasonable time.

E. This Order shall not be construed so as to relieve Plaintiffs from compliance with all laws and ordinances which now or in the future are not in conflict herewith.

F. The Court retains jurisdiction of this matter in order to enforce the terms set forth herein.

DATED February 22, 1979.

ENTER: /s/ John P. Showkwiler, Judge.

APPROVED AS TO FORM:

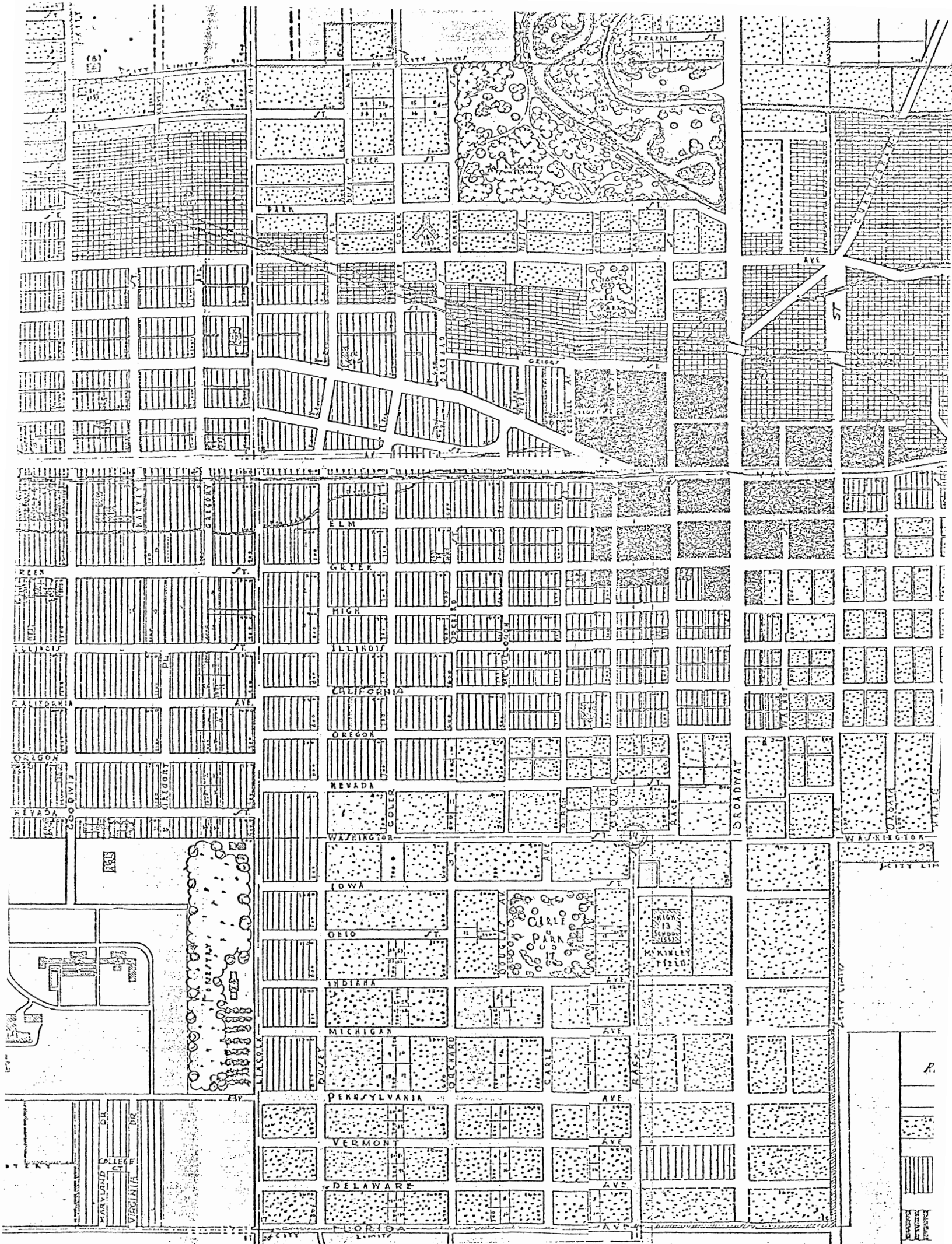
JW

Jack Waaler for the City of Urbana

JK

James Kuehl for Michael Walker

Prepared by: Carl M. Webber
Webber & Thies, P.C.
202 Lincoln Square
Urbana, IL 61801

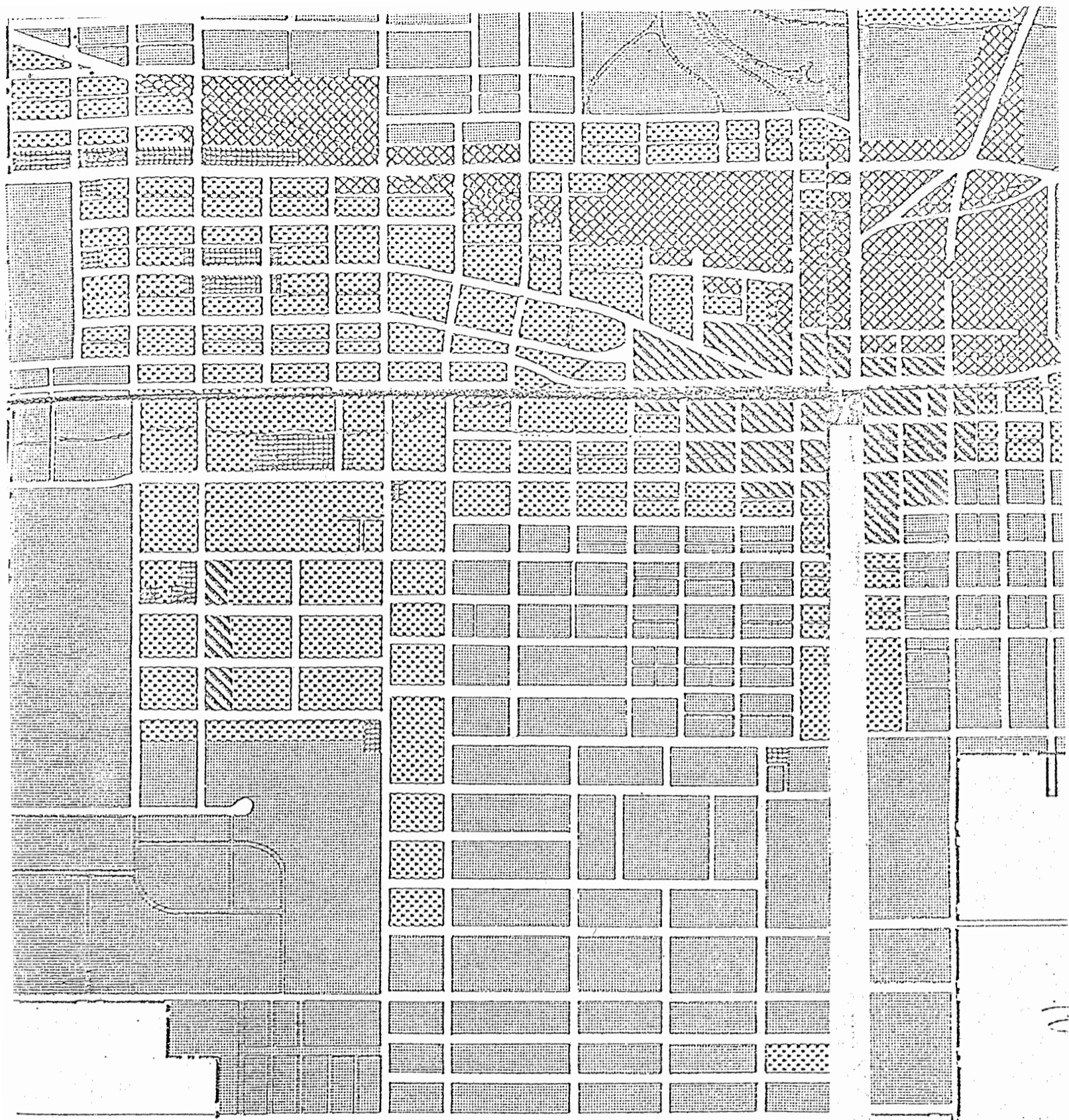


UNIVERSITY FARM
151

SUMMARY OF USE, HEIGHT & AREA REGULATIONS IN URBANA ZONING ORDINANCE

DISTRICTS	SUBDIV	HEIGHT		REAR YARD	SIDE YARD	FRONT YARD
		FEET	STORIES			
"A" RESIDENCE	SINGLE FAMILY	35	2 1/2	25	3-5	25
"B" MULTIPLE DWELLING (I-I.4 FAM. APARTMENTS)	MULTIPLE DWELLING (I-I.4 FAM. APARTMENTS)	35	2 1/2	25	3-5	25
	APARTMENT	45	3	15	3-5	25
"C" LOCAL COMMERCIAL	LOCAL	35	2 1/2	25	NONE EXCEPT ABUTTING BUILDINGS	NONE EXCEPT ABUTTING BUILDINGS
"D" GENERAL COMMERCIAL & LIGHT INDUSTRIAL	GENERAL COMMERCIAL & LIGHT INDUSTRIAL	65	5	25-15	NONE EXCEPT ABUTTING BUILDINGS	NONE EXCEPT ABUTTING BUILDINGS
"E" INDUSTRIAL	INDUSTRIAL	75	6	NONE	NONE	NONE

Exhibit B



- WATHEWS
- GOODWIN
- MARYLAND
- VIRGINIA
- GREGORY
- LINCOLN
- BUSEY
- COLER
- ORCHARD
- DOUGLAS - MC CULLOUGH
- CARLE - BIRCH
- GARFIELD
- CEDAR
- RACE
- WALNUT
- VINE
- URBANA
- MAPLE

DISTRICT		HEIGHT	DISTRICT	
	R-1 ONE & TWO FAMILY RESIDENCE	2 1/2 35'		B-2 CENTRAL COMMER
	R-2 MULTIPLE FAMILY RESIDENCE	3 35'		I-1 LIGHT INDUSTRIAL
	B-1 NEIGHBORHOOD BUSINESS	2 1/2 35'		I-2 HEAVY INDUSTRIAL

HEIGHT		
AL	6 75'	ZC
SEE ORD.		UF
SEE ORD.		SW/ARCI

EXHIBIT C

ARTICLE VI

R-2 District -- Multiple Family Residential

SECTION 34.18 USE REGULATIONS: In the R-2 District no building or land shall be used and no building shall be hereafter erected, converted, enlarged or structurally altered, except for one or more of the following uses:

- A. Any use permitted in the R-1 District.
- B. Multiple-Family dwelling.
- C. Boarding and rooming houses; tourist home.
- D. Community buildings, museums, and libraries.
- E. Private clubs and lodges, except skeet and gun clubs and those the chief activity of which is service customarily carried on as a business.
- F. Fraternities, sororities and dormitories.
- G. Group or row houses.
- H. Undertaking establishment.
- I. Hospitals and clinics; nursing home; doctor's office.
- J. Institutions of an educational, philanthropic or eleemosynary nature.
- K. Nurseries and greenhouses for the propagation and cultivation of plants only.
- L. Depot or receiving place for accumulated parcels of laundry articles to be laundered off the premises; and a storage place for trucks or vehicles used in transporting the laundry articles to and from said receiving place; provided, that only one person shall be regularly employed on the premises; that not more than two (2) trucks shall be used for transporting articles from said depot to the laundry and return.

M. Accessory buildings and uses when located on the same lot and not involving the conduct of a business, including private garages, but if such accessory building is not attached to the main building it shall be located not less than sixty (60) feet from the front line and not less than one and one-half ($1\frac{1}{2}$) feet from the rear line and side lines of the lot. Where garages and other accessory buildings are attached to the main structure or connected thereto by a breezeway, then such garage or accessory building shall be located not less than five (5) feet from the side line of the lot.

N. Radio and television towers and stations as a Conditional Use in R-2 District (Multiple Family Residential); such Conditional Use shall be first considered in a hearing in the Plan Commission pursuant to a fifteen (15) day published notice, and then can be authorized as such Conditional Use by the City Council.

SECTION 34.19 PARKING REGULATIONS: Whenever a building is erected, converted, enlarged or structurally altered for a use permitted in the R-2 District, there shall be provided an available and accessible off-street parking area as shall be required by the applicable provisions of Article XI hereof.

SECTION 34.20 HEIGHT REGULATIONS: No building hereafter erected or altered shall exceed three (3) stories nor shall it exceed thirty-five (35) feet in height, except as provided in Article XII hereof.

(4-3-72)

SECTION 34.21 AREA REGULATIONS: Every dwelling hereafter erected, enlarged, relocated, reconstructed shall be located upon lots containing the following areas and yards:

A. Intensity of Use:

1. A lot upon which there is located a single-family

dwelling or a two-family dwelling shall contain an area and have a width as required for such dwelling in Section 34.17 of Article V hereof.

2. A lot upon which there is erected a multiple family dwelling shall contain an area of not less than 1,000 square feet per family and, except lots of record on December 17, 1956, an average width of not less than sixty (60) feet. The lot area per family requirement shall not apply to dormitories, fraternities or sororities where no cooking is done in individual rooms or apartments.

B. Yards: The front yard, side yard and rear yard regulations are the same as those in the R-1 District.

C. Usable open space: A minimum of forty percent (40%) of a lot upon which a building is erected shall be devoted to usable open space.

ARTICLE VI-A

R-3 District -- Multiple Family Residential Only

SECTION 34.22. USE REGULATIONS: In the R-3 District, no building or land shall be used, and no building shall be hereafter erected, converted, enlarged or structurally altered, except for one or more of the following uses:

A. Any use permitted in the R-1 District -- Single and Two Family Residential.

B. Multiple Family Dwelling.

SECTION 34.23. PARKING REGULATIONS: Whenever a building is erected, converted, enlarged, or structurally altered for the use permitted in the R-3 District, there shall be provided and available and accessible off-street parking area as shall be required by the applicable provisions of Article XI hereof.

Agreement

Nov 20, 1978

Re: Lincoln School Block
Approx 85,200 sqft

The parties to present lawsuit stipulate and agree as follows:

① The property may be developed with the following limitations:

- a) Floor Area Ratio = .675
- b) Open Space Ratio = .35
- c) Height Limit = 35 feet
- d) Setbacks = 15 feet

(setbacks may be reduced by later ordinance or by variation)

- e) Parking for Eff + 1 BR 1 space/unit
- f) Parking for 2 BR 1.85 spaces/unit
- g) Parking for 3 BR + up 2 spaces/unit
- h) Compact car spaces may be used for up to 50% of spaces required for (e) (f) + (g) above.

② Stipulation reflects above + that above is reasonable in light of characteristics of area + will not be reduced by a lesser dense zoning of Council.

③ If more dense zoning is allowed by a later ordinance, then the later ordinance applies.

FILED

NOV 20 1978

Betty J. McMillan
CLERK OF THE COUNTY COURT
SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

James K. ...
Defendant

Carl ...
Plaintiff
allowing for

Paul ...
City Clerk

Mayor