

ORDINANCE NO. 9899-23

AN ORDINANCE

APPROVING A GENERAL VARIANCE TO ALLOW THE CONSTRUCTION OF A
GRAVEL PARKING LOT

(106 N. Mc Cullough -- Case No. ZBA-98-GV-4)

WHEREAS, the Zoning Ordinance provides for a general variance procedure to permit the Zoning Board of Appeals and the City Council to consider special situations where strict application of the Zoning Ordinance may cause hardships situations where other permitted variances are not adequate; and

WHEREAS, the owner of the subject property, Darrel Foste, has submitted a petition requesting a general variance to allow the construction of a gravel parking lot; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA 98-GV-4; and

WHEREAS, after due publication in accordance with Section IX-7 of the Urbana Zoning Ordinance and with Chapter 65, Section 5/11-13-14 of the Illinois Compiled Statutes (65 ILCS 5/11-13-14), the Urbana Zoning Board of Appeals (ZBA) held a public hearing on the proposed general variance on September 2, 1998, and the ZBA by vote of two thirds of its members recommended to the City Council approval of the requested variance; and

WHEREAS, after due and proper consideration, the City Council of the City of Urbana has determined that the general variance referenced herein conforms with the general variance procedures in accordance with Article XI, Section XI-3.C.2.d of the Urbana Zoning Ordinance; and

WHEREAS, the City Council agrees with the following findings of fact adopted by the ZBA in support of its recommendation to approve the application for a general variance:

1. The granting of the variance will be in harmony with the general purpose and intent of the Ordinance, and will not be unreasonably injurious or detrimental to the neighborhood, or otherwise injurious or detrimental to the public welfare.
2. The variance requested will not serve as a special privilege, and will alleviate some demonstrable and unusual hardship that is the result of special conditions and circumstances relating to that land or structure involved, or to the use or occupancy thereof, which are not generally applicable to other lands or structures in the same district.

The lot may be prone to subsidence that could be caused by the adjacent Boneyard Creek.

3. Literal interpretation of the provisions of this Ordinance would impose a hardship by depriving the applicant of rights commonly enjoyed by other lands or structures in the same district under the terms of this Ordinance.
4. The special conditions, circumstances or hardships are not the result of the actions of the applicant.

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

The general variance request by Darrel Foste in Case #ZBA-98-GV-4 is hereby approved to allow the construction of a gravel parking lot, in the manner proposed in the application for the general variance in that case.

The general variance described above shall only apply to the property located at 106 N. McCullough, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION: Lot 5 of Porten's Replat, as per plat recorded in Plat Book "D" at page 86, situated in the City of Urbana, in Champaign County, Illinois.
Commonly known as 106 N. McCullough.

PERMANENT PARCELS #: 92-21-17-130-001

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities. This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Chapter 65, Section 1-2-4 of the Illinois Compiled Statutes (65 ILCS 5/1-2-4).


This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said Council on the 21st day of September, 1998.

PASSED by the City Council this 21st day of September, 1998.

AYES Huth, Patt, Wheeler, Wyman

NAYES Hayes, Kearns, Taylor

ABSTAIN _____


Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 1998.

Tod Satterthwaite, Mayor

c:\...98 GV 4 ordinance



**CERTIFICATE OF PUBLICATION
IN PAMPHLET FORM**



I, PHYLLIS D. CLARK, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the 21st day of September, 1998, the corporate authorities of the City of Urbana passed and approved Ordinance No. 9899-23, entitled An Ordinance Approving A General Variance To Allow The Construction Of A Gravel Parking Lot (106 N. McCullough -- Case No. ZBA-GV-4

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 9899-23 was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, 19____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

Dated at Urbana, Illinois, this _____, day of _____, 19____.

(SEAL)

Phyllis D. Clark, City Clerk

*Mayor vetoed Ord. No. 9899-23. A motion to override the Mayor's veto failed at the November 2, 1998 City Council meeting.

V E T O

ORDINANCE NO. 9899-23

By Mayor

Date: 9-28-98

AN ORDINANCE

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GRAVEL PARKING LOT

(106 N. Mc Cullough -- Case No. ZBA-98-GV-4)

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WHEREAS, after due and proper consideration, the City Council of the City of Urbana has determined that the general variance referenced herein conforms with the general variance procedures in accordance with Article XI, Section XI-3.C.2.d of the Urbana Zoning Ordinance; and

WHEREAS, the City Council agrees with the following findings of fact adopted by the ZBA in support of its recommendation to approve the application for a general variance:

1. The granting of the variance will be in harmony with the general purpose and intent of the Ordinance, and will not be unreasonably injurious or detrimental to the neighborhood, or otherwise injurious or detrimental to the public welfare.
2. The variance requested will not serve as a special privilege, and will alleviate some demonstrable and unusual hardship that is the result of special conditions and circumstances relating to that land or structure involved, or to the use or occupancy thereof, which are not generally applicable to other lands or structures in the same district.

The lot may be prone to subsidence that could be caused by the adjacent Boneyard Creek.

3. Literal interpretation of the provisions of this Ordinance would impose a hardship by depriving the applicant of rights commonly enjoyed by other lands or structures in the same district under the terms of this Ordinance.
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PERMANENT PARCELS #: 92-21-17-130-001

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This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said Council on the 21st day of September, 1998.

PASSED by the City Council this 21st day of September, 1998.

AYES Huth, Patt, Whelan, Wyman

NAYES Hayes, Kearns, Taylor

ABSTAIN

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 1998.

Tod Satterthwaite, Mayor

c:\...98 GV 4 ordinance



**TOD SATTERTHWAITE
MAYOR**

**(217) 384-2456
FAX (217) 384-2426**

City of Urbana
400 South Vine Street
Post Office Box 219
Urbana, Illinois 61801-0219
(217) 384-2362
FAX (217) 384-2363

September 28, 1998

RE: VETO MESSAGE

Veto of An Ordinance Approving A General Variance To Allow The Construction Of A Gravel Parking Lot (106 N. McCullough – Case No. ZBA-98-GV-4)

Dear Council Members:

I return to you, Ordinance No. 9899-23, entitled "An Ordinance Approving A General Variance To Allow The Construction Of A Gravel Parking Lot" with my objections.

The criteria for granting a general variance are clearly set forth in our ordinance which summarized are as follows:

- *granting of the variance will be in harmony with the general purpose and intent of the Zoning Ordinance and will not be detrimental to the neighborhood or general public, AND*
- *a special condition or hardship that is specific to the subject property must be identified necessitating the variance.*

The ZBA and Council discussed these criteria when considering this case, but also introduced other concerns such as:

- other graveled lots and alleys in the area,
- storm water detention and Boneyard flooding.

These added concerns are irrelevant. It is clear that under our Ordinance, concerns about other graveled areas and storm water management should not be considered in deciding whether to grant a general variance or not. If the Council wants to make policy changes regarding the appropriate criteria to consider when granting a variance or regarding storm water management standards, then changing the appropriate Ordinance is the way to do it, not by granting a general variance using criteria that should not be considered.

The criteria that should be used in this decision are set out in our Ordinances:

1. *Granting of the variance will be in harmony with the general purpose and intent of the Zoning Ordinance and will not be detrimental to the neighborhood or general public.*

Staff has identified several reasons that this variance request does not meet this criterion.

- a. Section VIII-2 of the Zoning Ordinance states that all parking lots “shall be paved with a suitable form of hard surface” (emphasis added) so that a dust-free environment is created. A gravel lot is neither a hard surface nor dust free.
 - b. A gravel lot is not conducive to handicapped accessibility. It is difficult, if not impossible, to navigate wheelchairs and other devices across gravel, especially if it is wet or ice- and snow-covered.
 - c. A gravel lot cannot be properly striped. There is no delineation of parking spaces and parking can become haphazard or dangerous.
 - d. Granting of this variance could set a precedent that would undermine the intent of the Zoning Ordinance. Staff enforces our Ordinances in a fair and consistent manner. If this gravel lot is allowed when our own criteria have not been met, it becomes very difficult to hold others to the standards of the Ordinance. Staff is currently working with owners of non-conforming parking lots in other areas of the City to ensure that their lots are paved. Granting this variance could jeopardize those efforts.
2. *A special condition or hardship that is specific to the subject property must be identified necessitating the variance.*

Even if the granting of this variance were in harmony with the general purpose and intent of the Zoning Ordinance and not detrimental to the neighborhood or the general public, the petitioner would still have to show that the variance is necessary due to a special condition or a hardship.

The only special condition or circumstance that has been stated is that “underground voids” are being created by “subsurface water flows” which in turn “create surface sink holes.” The petitioner wants us to believe that these conditions in fact exist and that they are a result of the property’s proximity to the Boneyard Creek.

In making his claim of a special condition, the petitioner has offered only his own opinion that this is the true condition. The petitioner himself is not professionally qualified to make an assessment of the property’s subsurface characteristics, nor does he offer a professional evaluation. So, in fact, we have only the word of the petitioner that there is a special condition that necessitates this variance. Even if it does exist, there are means of handling such a problem within the parameters of our ordinance without a variance, i.e., an oil and chip or brick paver surface.

On the other hand, there is a paved parking lot in the block just west of the petitioner’s property (i.e., Park District’s Phillips Center lot) that is not only adjacent to the Boneyard, but actually goes over top of it. This parking lot has not shown any signs of

breaking apart. Additionally, when an engineer from the Urbana Public Works Department took a preliminary look at the situation, he could not conclude that subsurface water flows were causing any settlement or sink holes. He recommended that the petitioner consult with an engineer regarding whether special subsurface conditions existed that should be considered in selecting an appropriate pavement design.

To make a finding that a special condition exists with nothing other than the word of the petitioner to document that special condition does not responsibly meet the terms of our Ordinance.

To grant a variance based on these facts would send the message that the paving requirement of our ordinance is not a serious concern, and that one need only to come to Council where a variance will be easily granted.

Since the criteria set out in our Ordinance for granting a variance request of this nature have not been met, I urge Council members to sustain my veto of this Ordinance.

Sincerely,

A handwritten signature in cursive script, reading "Tod Satterthwaite".

Tod Satterthwaite
Mayor

TS:NM