Passed: 8-0

ORDINANCE 95-11

TO AMEND THE BLOOMINGTON ZONING MAPS FROM RL/PUD TO BA/PCD AND AMEND OUTLINE PLAN
Re: 105 Westplex Ave.
(Robert Shaw, Petitioner)

WHEREAS, the Common Council passed a Zoning Ordinance amendment and adopted new incorporated zoning maps on June 7, 1978 which are now incorporated in Title 20 of the Bloomington Municipal Code; and

WHEREAS, the Plan Commission has considered this case, BA/PCD-92-94, and recommended that the petitioner, Robert Shaw, be granted PCD designation and outline plan amendment and request that the Common Council consider their petition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. Through the authority of IC 36-7-4 and pursuant to Chapter 20.13 of the Bloomington Municipal Code, that a Planned Commercial Development be designated and an outline plan approved for property located at 105 Westplex Avenue. The property is further described as follows:

Westplex Park Lot 7 as recorded in Plat Cabinet C , Envelope 14, Office of the Recorder of Monroe County, Indiana.

Also, part of Westplex Park Lot 6 as recorded in Plat Cabinet C , Envelope 14, Office of the Recorder of Monroe County, Indiana, being more particularly described as follows:

Commencing at the Southeast corner of said Lot 6; thence North 66 degrees 00 minutes 00 seconds West along the South line of said lot 67.86 feet; thence North 17 degrees 35 minutes 24 seconds East 128.56 feet to the south right-of-way of the Indiana Railroad Company being a point on a curve to the right with a radius of 1,028.20 feet, a central angle of 04 degrees 34 minutes 57 seconds, and a chord of 82.22 feet bearing south 66 degrees 01 minutes 42 seconds east; thence southeasterly along said right-of-way and along said curve 82.24 feet to the northeast corner of said lot 6; thence south 24 degrees 00 minutes 00 seconds west along the east line of said lot 127.79 feet to the point of beginning, containing 0.221 acres, more or less.

SECTION II. The Outline Plan shall be attached hereto and made a part thereof.

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 15th day of March, 1995.

Iris Kiesling
IRIS KIESLING, President
Bloomington Common Council

ATTEST:
Patricia Williams
PATRICIA WILLIAMS, Clerk
City of Bloomington

PRESENTED by me to Mayor of the City of Bloomington, Monroe County, Indiana, upon this 2nd day of March, 1995.

Patricia Williams
PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED AND APPROVED by me upon this 3rd day of March, 1995.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This ordinance grants a rezone from RL/PUD to BA/PCD and approves an outline plan for 0.221 acres of land located at 105 Westplex Ave.

Signed copies to:
Petitioner
Planning

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 95-11 is a true and complete copy of Plan Commission Case Number BA/PCD-92-94 which was given a recommendation of approval by a vote of 6 Ayes, 0 Nays, and 1 Abstentions by the Bloomington City Plan Commission at a public hearing held on January 30, 1995.

Date: January 31, 1995

Timothy A. Mueller

Tim Mueller, Secretary
Plan Commission

Received by the Common Council Office this 1 day of February, 1995,

Patricia Williams

Patricia Williams, City Clerk

Appropriation Ordinance #_____ Fiscal Impact Statement Ordinance #_____ Resolution #_____

Type of Legislation:

Appropriation	End of Program	Penal Ordinance
Budget Transfer	New Program	Grant Approval
Salary Change	Bonding	Administrative Change
Zoning Change	Investments	Short-Term Borrowing
New Fees	Annexation	Other_____

If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

Planned Expenditure_____ Emergency_____
Unforseen Need _____ Other_____

Funds Affected by Request:

Fund(s) Affected		
Fund Balance as of January 1	$	$
Revenue to Date		
Revenue Expected for Rest of year		
Appropriations to Date		
Unappropriated Balance		
Effect of Proposed Legislation (+/-)		
Projected Balance	$	$

Signature of Controller_____

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues? Yes_____ No_____

If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)

MEMO

To: Common Council
From: Planning Dept.
Date: January 31, 1995
Case No.: BA/PCD-92-94
Location: 105 Westplex Ave.
Petitioner: Robert Shaw
Counsel: Kevin Potter

On January 30, 1995 the Bloomington Plan Commission approved a request for a rezone from RL/PUD to BA/PCD, outline plan and development plan approval for a parcel of land 0.221 acres in size located at 105 Westplex Ave. This small parcel of land is needed to expand the business use and parking facility.

The existing use is Textillery Weavers Inc. This company weaves rugs , fabric, and small items. The parking lot has been constructed. They are now asking to expand their building by 2200 sq. ft. This will allow them space to operate more efficiently and also will enable them to add additional jobs. The area to be rezoned is directly next to the site. The zoning currently is RL/PUD and the land was to be used as open space and buffering from the business to the proposed duplexes to the west. Parking for the duplexes and the apartments is met. The proposed duplex adjacent to this site will not be built and a tree buffer will be placed between the parking lot and the adjacent duplex. Please refer to the site plan.

R.O.W. has already been dedicated for this development. Access will not change from the current configuration on Westplex Dr. This area is business in nature. The Growth Policies Plan calls for business in the area and within this PCD.

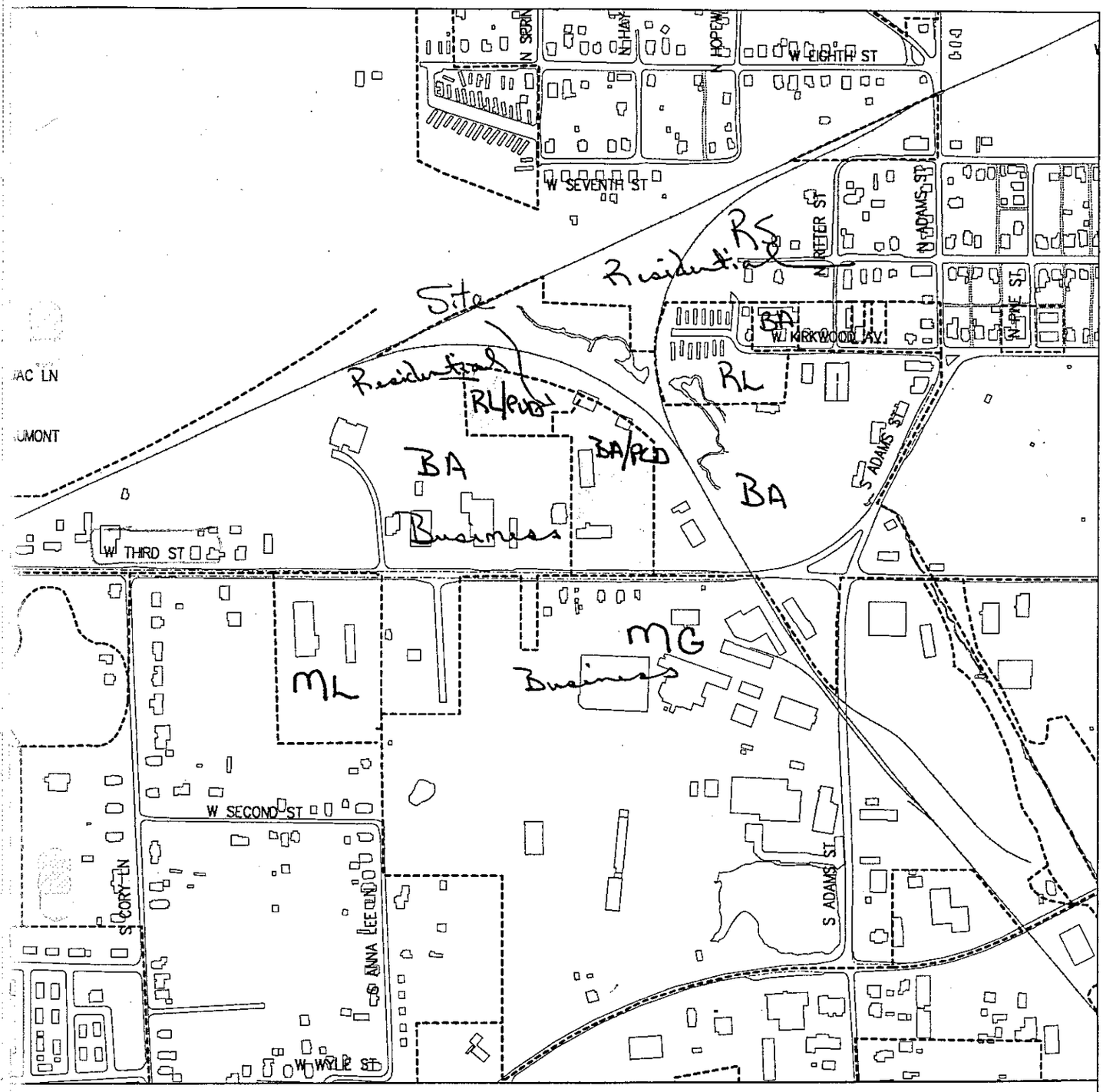
BA/PCD-92-94
Conditions of Approval

1) A vegetative buffer, including evergreens, be placed between the business and residential properties. A minimum of eight (six ft. tall) white pines be placed as a buffer on Lot #6. Landscaping on the remainder of the site to staff satisfaction.

2) All outdoor storage must be removed.

3) There may be no disturbance or tree removal on the railroad property (right-of-way). Trees in the nondisturbance area are to be protected with snow fencing and inspected before construction commences.

4) The duplex closest to this lot will not be built.



Zoning/Land Use Map

BA/PCD-92-94

City of Bloomington

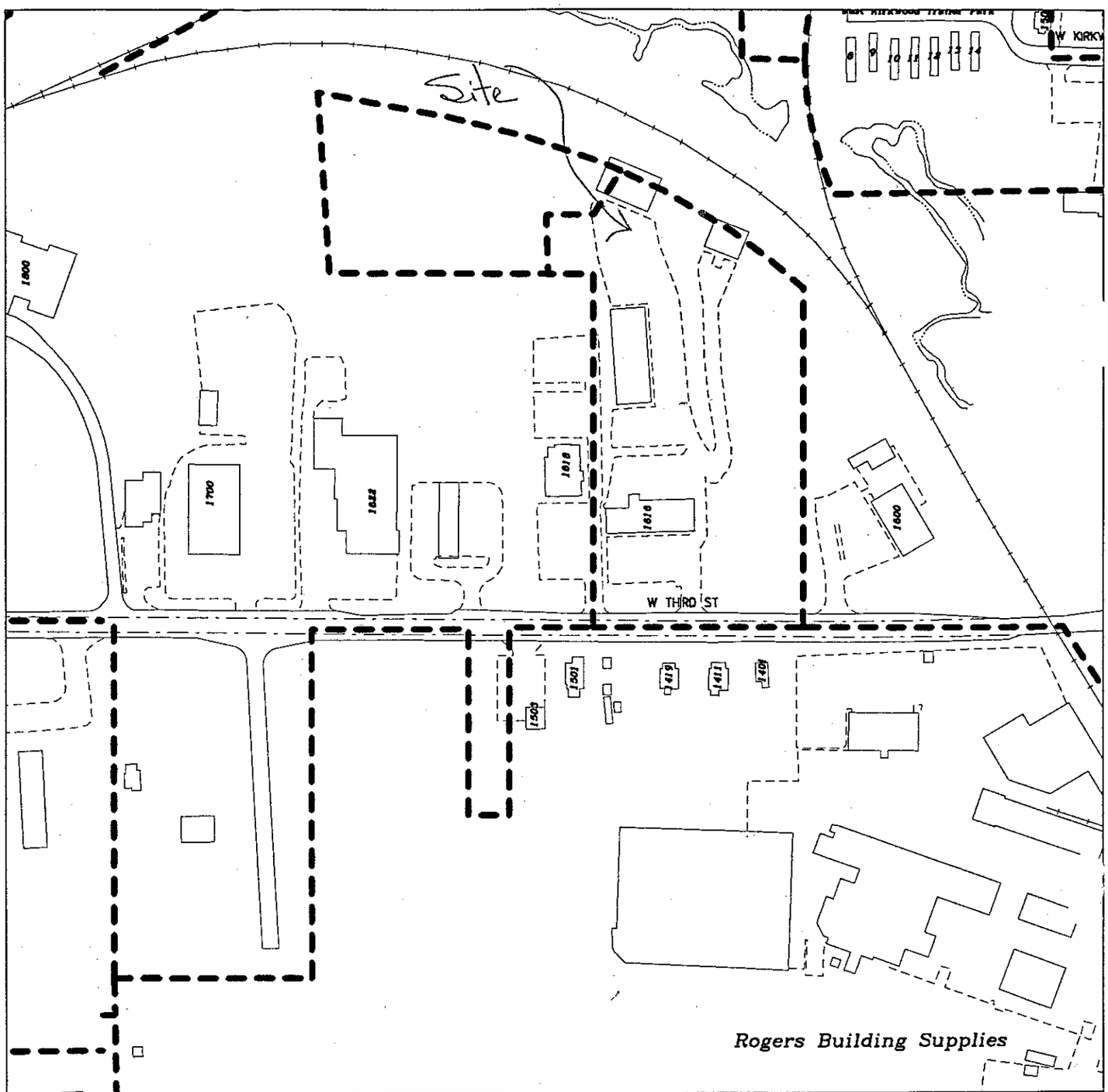
1500

Date: 23 Dec 1994

100 0 500 500 1000

Scale: 1" = 500'

46



Site Plan

BA/PCD-92-94

City of Bloomington

N

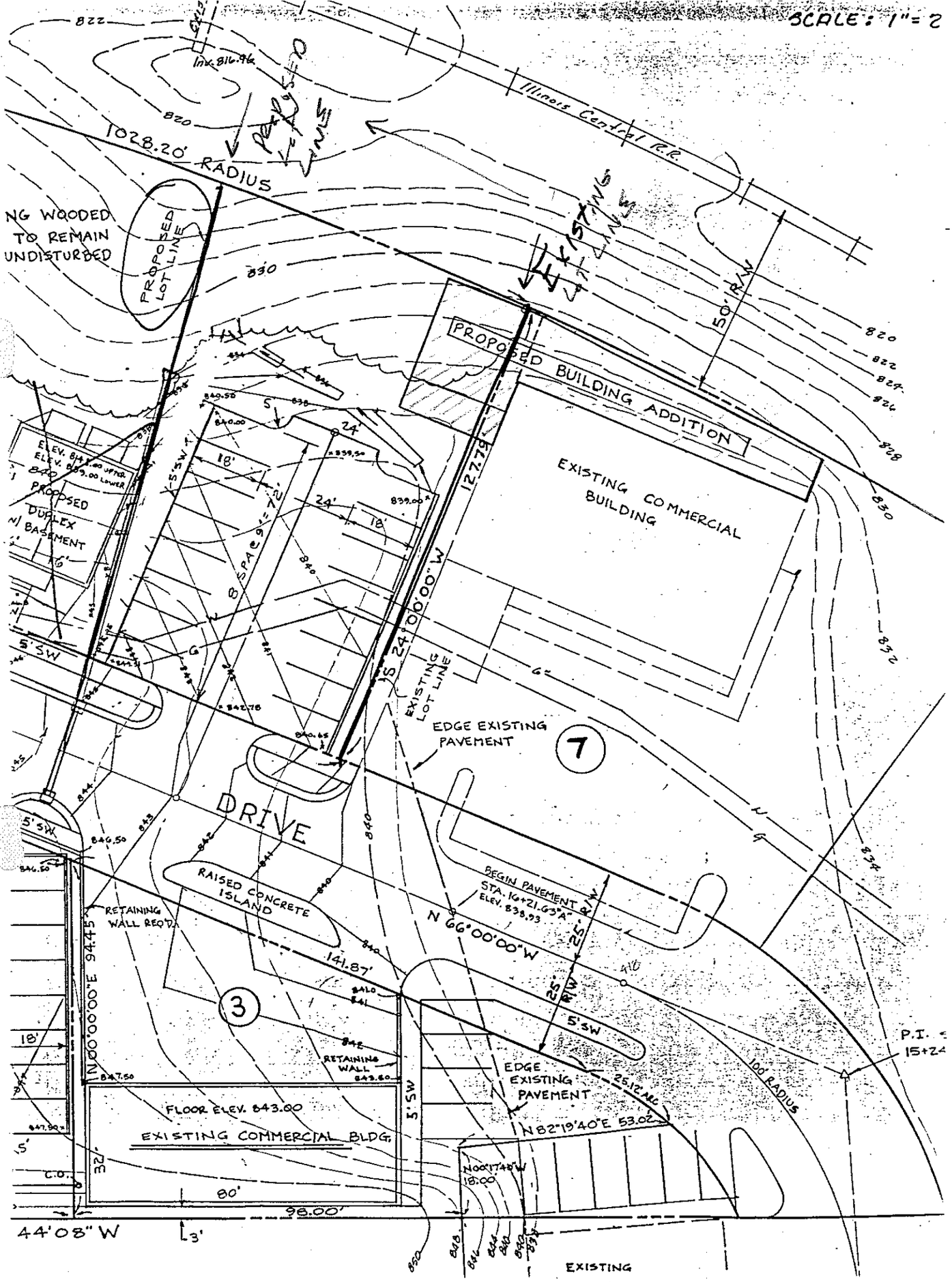
600

Date: 23 Dec 1994

100 0 200 200 400

Scale: 1" = 200'

SCALE: 1" = 2


Illinois Central R.R.
1028.20' RADIUS
NG WOODED TO REMAIN UNDISTURBED
PROPOSED LOT LINE
PROPOSED BUILDING ADDITION
EXISTING COMMERCIAL BUILDING
50' R/W
127.79
S 24°00'00" W
EXISTING LOT LINE
EDGE EXISTING PAVEMENT
7
DRIVE
RAISED CONCRETE ISLAND
RETAINING WALL REQ'D.
N 00°00'00" E 94.45'
141.87'
N 66°00'00" W
BEGIN PAVEMENT
STA. 16+21.63 "A"
ELEV. 838.93
25' R/W
5' SW
3
RETAINING WALL
EDGE EXISTING PAVEMENT
25.12' ARC
100' RADIUS
P.I. 15+24
N 82°19'40" E 53.02'
FLOOR ELEV. 843.00
EXISTING COMMERCIAL BLDG.
32'
80'
98.00'
44'08" W
EXISTING

BLOOMINGTON PLAN COMMISSION
PRELIMINARY REPORT
Location: 105 Westplex Ave.

CASE NO.: BA/PCD-92-94
DATE: January 30, 1995

PETITIONER: Name : Robert Shaw
Address: 1609 N. Kinser Pike

COUNSEL: Name : Kevin Potter
Address:

PRELIMINARY HEARING DATE: January 30, 1995
FINAL HEARING DATE: February 20, 1995

REQUEST: The petitioner is requesting a rezone from RL/PUD to BA/PCD, outline plan and development plan approval for a parcel of land 0.221 acres in size. This small parcel of land is needed to expand the business use and parking facility.

SUMMARY REPORT:: The existing use is Textillery Weavers Inc. This company weaves rugs and small items. The parking lot has been constructed. They are now asking to expand their building by 2200 sq. ft. This will allow them space to operate more efficiently and also will enable them to add additional jobs. The area to be rezoned is directly next to the site. The zoning currently is RL/PUD and the land was to be used as open space and buffering from the business. Parking for the duplexes and the apartments is met.One of the proposed duplexes will not be built and a tree buffer will be placed between the parking lot and the adjacent duplex. Please refer to the site plan.

ISSUES:
R.O.W. Dedication: R.O.W. has already been dedicated for this development.

Access: Access will not change from the current configuration on Westplex Dr.

Utilities: Utilities are in place.

Drainage: Drainage will not change with this proposal. The building will be expanded, but one duplex will not be built.

Tree Preservation: Some small trees and brush will be removed for the addition. Staff has not identified any specimen trees that will be removed.

Landscaping: A buffer including evergreens will be planted between the duplex to the west and the business use of Textillery Weavers.

Architectural Compatibility: The addition to the building will match the existing facade and roof line.

Sidewalks: Sidewalks are in place.

Plan Compliance: This area is business in nature. The Growth Policies Plan calls for business in the area.

Variance: No variances have been requested.

RECOMMENDATION: Staff recommends approval of this petition with waiver of second hearing, if the Plan Commission is satisfied with the proposal with the following conditions.

1) A vegetative buffer, including evergreens, be placed between the business and residential properties. Landscaping on the remainer of the site to staff satisfaction.

2) All outdoor storage must be removed.

3) There may be no disturbance or tree removal on the railroad property (right-of-way). Trees in the nondisturbance area are to be protected with snow fencing.

4) The duplex closest to this lot will not be built.

January 30, 1995

To: Tim Mueller

From: T. Micuda, K. Komisarcik, G. Heise,
M. Wedekind, P. Werner

Subj: BA/PCD-92-94 Robert Shaw 105 Westplex Ave. (Lot 7)

Site Description - The petitioner's request will essentially allow an existing parking lot and some greenspace on the rear of the lot to be incorporated into commercial rather than residential zoning. An existing building on the eastern adjacent lot will then be expanded into the newly created commercial zone. Turning to the site itself, the parking lot is unlandscaped except for eight small evergreens on the eastern lot boundary. The rear of the lot is steeply sloping, with a mixture of small caliper hardwoods and a few larger specimen trees. This area will be affected by the proposed building expansion.

Tree Preservation - Most of the area affected by the proposed building expansion consists of small caliper trees. However, several larger trees in the 8-12 inch caliper range will be affected. The petitioners are showing an area of tree disturbance that extends 10 feet off the property line into a railroad right-of-way. Off-site disturbance is not allowed by code without permission from the adjacent property owner. Even if permission has been granted, the Environmental Commission is conerned about the removal of trees and grading on an area with greater than 20 percent slopes. We would like to see an attempt made to construct the building to grade and limit site disturbance. When a decision is made on the appropriate limits of nondisturbance, this area should be protected with snow fencing during construction to insure tree protection.

Landscaping - Because the additional land is proposed for BA/PCD zoning, there are no street tree or rear yard landscaping requirements. The petitioner is meeting code requirements by providing a buffer to residentially zoned land to the west. However, the landscaping standards for the parking lot and street setback cannot be met without using landscaping from the west property line. Because the parking lot and street frontage area have already been constructed, it may be difficult to meet standards. The Environmental Commission is working with the Planning staff to resolve this issue.

TEXTILLERY
WEAVERS
PO BOX 3190
BLOOMINGTON IN 47402
(812)334-1555 * (800)223-7673
FAX (812)334-1655

Oct. 12, 1994

Monroe County Planning and Zoning
Courthouse
Bloomington IN 47401

To whom it may concern:

The continued growth of our weaving studio, *TEXTILLERY* weavers, necessitates that we add more space.

We currently handweave our product in our building at 1608 West Third St. (Westplex). Our plan is to add approximately 2200 square feet along the back and to the west side. Our immediate need is to use this space for much needed storage and preparation area - a move which will greatly improve our efficiency. We have put into our plan the option to add equipment when growth indicates the need. *TEXTILLERY* has added at least 5 new full time jobs in the last year - we would hope to be able to do the same in the coming year. But we do need space to do that.

We will not be building in the parking lot next to us but need it in order to provide for additional parking. We need your approval to have the parking lot for this use; at which time we will purchase it from Mr. Shaw.

Mr. Shaw is letting us use this lot for overflow parking now. Therefore we feel that the impact on Westplex will be minimal.
The only additional traffic will be at shift change times.

Should you need further information please don't hesitate to contact either of us at the above number. We look forward to your favorable response.

Sincerely,

A John Rose II
president

Judith C Rose
vice president

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Petitioner's Statement BA/PCD-92-94

*** AMENDMENT FORM ***

ORDINANCE #: 95-18

AMENDMENT #: 2

SUBMITTED BY: Council Office

DATE: 2/14/95

COMMITTEE ACTION: None

PROPOSED AMENDMENT:

1. Amend Section I of the ordinance so that subpart b) 3) of Section 3.02.400 regarding Cable Consumer Protection be amended to read as follows:

> The Board of Public Works shall forward the resolution containing the proposed customer service standard(s) to the Common Council, which shall place it on their agenda in the form of an ordinance and consider it for adoption in accordance with the procedures set forth in Chapter 2.04 of the Bloomington Municipal Code.

SYNOPSIS

This amendment would have the Common Council consider Cable Consumer Protection standards in the same manner as other ordinances that are brought to the Council are considered.

requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any state or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any state or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) *Cable system office hours and telephone availability* —

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) *Installations, outages and service calls.* Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) *Communications between cable operators and cable subscribers* —

(i) Notifications to subscribers —

(A) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions programming carried on the system; and,

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(ii) Billing —

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(iii) Refunds — Refund checks will be issued promptly, but no later than either —

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(iv) Credits — Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) *Definitions* —

(i) *Normal business hours* — The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In

all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions* — The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption* — The term "service interruption" means the loss of picture or sound on one or more cable channels.

Subpart I — Forms and Reports

§76.400 Operator, mail address, and operational status changes.

Within 30 days following a change of cable television system operator, and/or change of the operator's mail address, and/or change in the operational status of a cable television system, the operator shall inform the commission in writing of the following, as appropriate;

(a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. See §76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the commisson shall be supplied;

(b) The assumed name (if any) used for doing business in each community;

(c) The new mail address, including zip code, to which all communications are to be directed;

(d) The nature of the operational status change (e.g., became operational on (year) (month), exceeded 49 subscribers, exceeded 499 subscribers, operation terminated temporarily, operation terminated permanently);

(e) The names and FCC identifiers (e.g., CA0001) of the system communities affected.

NOTE: FCC system community identifiers are routinely assigned upon registration. They have been assigned to all reported system communities based on previous Form 325 data. If a system community in operation prior to March 31, 1972, has not previously been assigned a system community identifier, the operator shall provide the following information in lieu of the identifier: Community Name, Community Type (i.e., incorporated town, unincorporated settlement, etc.) County Name, State, Operator Legal Name, Operator Assumed Name for Doing Business in the community, Operator Mail Address, and Year and Month service was first provided by the physical system.

§76.403 Cable television system reports.

The operator of every operational cable television system shall correct and/or furnish information in response to forms, encompassing each community unit, mailed to said operator by the commission. These include:

Community unit data — "Annual Report of Cable Television System," Form 325, Schedule 1

Physical system data — "Annual Report of Cable Television System," Form 325, Schedule 2

Operator ownership data — "Annual Report of Cable Television," Form 325, Schedules 3 and 4

These forms shall be completed and returned to the commission within 60 days after the date of mailing by the commission.

NOTE: The operator of a cable television system having fewer than 1,000 subscribers shall only be required to file Schedules 1 and 2 of Form 325 for each community unit.

Subpart J — Diversification of Control

§76.501 Cross-ownership.

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with §73.684 of part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(b) (1) A cable television system (including all parties under common control) may directly or indirectly own, operate, control, or have an interest in a national television network (such as ABC, CBS, or NBC) only if such a system does not pass more than:

(i) 10 percent of homes passed on a nationwide basis when aggregated with all other cable systems in which the network holds such a cognizable interest, and

(ii) 50 percent of homes passed within any one ADI, except that a cable television system facing a competing system will not be counted toward this 50-percent limit.

(2) The requirements of paragraph (b)(1) of this section are applied at the acquisition date, except that a party with no prior attributable interests in a broadcast network or cable systems may exceed these limits in connection with a purchase of these operations from a party with such existing network-cable interests. Paragraph (b) of this section will not be applied so as to require divestiture of existing facilities.

(3) For purposes of paragraph (b) of this section:

(i) *Homes passed* is defined as the number of homes to which cable service is currently available whether or not a given household subscribes to the service.

(ii) *ADI* is defined as the Arbitron Area of Dominant Influence.

(iii) *A competing system* is faced by a network-owned cable system where the cable system provides service in the same area as another independently owned, multichannel video delivery system, as specified in §76.33(a)(2)(ii). In order to be counted, such multichannel competitor must be capable of providing a package of local broadcast signals integrated within the service.

NOTE 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2: In applying the provisions of this section,

(c) Cable operators must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be retained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

NOTE 1: Commercial matter means air time sold for purposes of selling a product or service.

NOTE 2: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

Subpart H — General Operating Requirements

§76.300 Scope of application.

(a) The provisions of §§76.302, 76.306, and 76.307 are applicable to all cable television systems.

NOTE: In addition to this band, stations in Puerto Rico may continue to be authorized on 942.5, 943.0, 943.5, 944.0 MHz in the band 942-944 MHz on a primary basis to stations and services operating in accordance with the Table of Frequency Allocations.

(b) The provisions of §§76.301 and 76.305 are not applicable to any cable television system serving fewer than 1,000 subscribers.

§76.301 Copies of rules.

The operator of a cable television system shall have a current copy of Part 76, and is expected to be familiar with the rules governing cable television systems. Copies of the commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost.

§76.302 Required recordkeeping for must-carry purposes.

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to §76.56. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend.

(c) Such records must be maintained in accordance with the provisions of §76.305(b).

(d) Upon written request from any person, a cable operator is required to provide the list of signals specified in paragraph (a) of this section in writing within 30 days of receipt of such request.

§76.305 Records to be maintained locally by cable system operators for public inspection.

(a) *Records to be maintained.* The operator of every cable television system having 1,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §76.207 (political file); §76.221(f) (sponsorship identifications); §76.79 (EEO records available for public inspection); §76.225(c) (commerical records for children's programming); §76.601(c) (proof-of-performance test data); §76.601(e) (signal leakage logs and repair records) and §76.701(h) (records for leared access).

(b) *Location of records.* The public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

(c) The records specified in paragraph (a) of this section shall be retained for the period specified in §§76.207, 76.221(f), 76.79, 76.225(c), 76.601(c), and 76.601(e), respectively.

(d) *Reproduction of records.* Copies of any material in the public inspection file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The system operator is not required to honor requests made by mail but may do so if it chooses.

§76.307 System inspection.

The operator of a cable television system shall make the system, its public inspection file (if required by §76.305), and its records of subscribers available for inspection upon request by any authorized representative of the commission at any reasonable hour.

§76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service

requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any state or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any state or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be bject to the following customer service standards:

(1) *Cable system office hours and telephone availability* —

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations ill be open at least during normal business hours and will be onveniently located.

(2) *Installations, outages and service calls.* Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) *Communications between cable operators and cable subscribers* —

(i) Notifications to subscribers —

(A) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions programming carried on the system; and,

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(ii) Billing —

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(iii) Refunds — Refund checks will be issued promptly, but no later than either —

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(iv) Credits — Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) *Definitions* —

(i) *Normal business hours* — The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In

all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions* — The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption* — The term "service interruption" means the loss of picture or sound on one or more cable channels.

Subpart I — Forms and Reports

§76.400 Operator, mail address, and operational status changes.

Within 30 days following a change of cable television system operator, and/or change of the operator's mail address, and/or change in the operational status of a cable television system, the operator shall inform the commission in writing of the following, as appropriate;

(a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. See §76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the commisson shall be supplied;

(b) The assumed name (if any) used for doing business in each community;

(c) The new mail address, including zip code, to which all communications are to be directed;

(d) The nature of the operational status change (e.g., became operational on (year) (month), exceeded 49 subscribers, exceeded 499 subscribers, operation terminated temporarily, operation terminated permanently);

(e) The names and FCC identifiers (e.g., CA0001) of the system communities affected.

NOTE: FCC system community identifiers are routinely assigned upon registration. They have been assigned to all reported system communities based on previous Form 325 data. If a system community in operation prior to March 31, 1972, has not previously been assigned a system community identifier, the operator shall provide the following information in lieu of the identifier: Community Name, Community Type (i.e., incorporated town, unincorporated settlement, etc.) County Name, State, Operator Legal Name, Operator Assumed Name for Doing Business in the community, Operator Mail Address, and Year and Month service was first provided by the physical system.

§76.403 Cable television system reports.

The operator of every operational cable television system shall correct and/or furnish information in response to forms, encompassing each community unit, mailed to said operator by the commission. These include:

Community unit data — "Annual Report of Cable Television System," Form 325, Schedule 1

Physical system data — "Annual Report of Cable Television System," Form 325, Schedule 2

Operator ownership data — "Annual Report of Cable Television," Form 325, Schedules 3 and 4

These forms shall be completed and returned to the commission within 60 days after the date of mailing by the commission.

NOTE: The operator of a cable television system having fewer than 1,000 subscribers shall only be required to file Schedules 1 and 2 of Form 325 for each community unit.

Subpart J — Diversification of Control

§76.501 Cross-ownership.

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with §73.684 of part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(b) (1) A cable television system (including all parties under common control) may directly or indirectly own, operate, control, or have an interest in a national television network (such as ABC, CBS, or NBC) only if such a system does not pass more than:

(i) 10 percent of homes passed on a nationwide basis when aggregated with all other cable systems in which the network holds such a cognizable interest, and

(ii) 50 percent of homes passed within any one ADI, except that a cable television system facing a competing system will not be counted toward this 50-percent limit.

(2) The requirements of paragraph (b)(1) of this section are applied at the acquisition date, except that a party with no prior attributable interests in a broadcast network or cable systems may exceed these limits in connection with a purchase of these operations from a party with such existing network-cable interests. Paragraph (b) of this section will not be applied so as to require divestiture of existing facilities.

(3) For purposes of paragraph (b) of this section:

(i) *Homes passed* is defined as the number of homes to which cable service is currently available whether or not a given household subscribes to the service.

(ii) *ADI* is defined as the Arbitron Area of Dominant Influence.

(iii) *A competing system* is faced by a network-owned cable system where the cable system provides service in the same area as another independently owned, multichannel video delivery system, as specified in §76.33(a)(2)(ii). In order to be counted, such multichannel competitor must be capable of providing a package of local broadcast signals integrated within the service.

NOTE 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2: In applying the provisions of this section,

PAT - STATUTE
REQUIRES
THAT 2 COPIES BE
REC STANDARDS
BE KEPT ON FILE

*** AMENDMENT FORM ***

ORDINANCE #:	95-18
AMENDMENT #:	1
SUBMITTED BY:	Council Office
DATE:	February 8, 1995
COMMITTEE ACTION:	Pending

CA SH
2/9/95

PROPOSED AMENDMENT:

1. Amend SECTION I of the ordinance by adding the following two sentences after the first sentence in part b) of 3.02.400 Cable Consumer Protection:

> Those standards are found in 47 C.F.R. §76.309(c)(3). Two copies of those standards are on file in the Office of the City Clerk and are available for public inspection.

SYNOPSIS

This amendment refers to the specific FCC standards that are adopted by the City and states that two copies of those standards are on file and available for public inspection at the Office of City Clerk.