

**CITY OF BLOOMINGTON**



**SEPTEMBER 24, 2015 @ 5:30**

**p.m.**

**COUNCIL CHAMBERS #115**

**CITY HALL**

CITY OF BLOOMINGTON  
BOARD OF ZONING APPEALS  
September 24, 2015 at 5:30 p.m.

Council Chambers - Room #115

---

**ROLL CALL**

**MINUTES TO BE APPROVED:** August 27, 2015

**REPORTS, RESOLUTIONS, AND COMMUNICATIONS:**

**PETITION CONTINUED TO:** October 22, 2015

---

**PETITIONS:**

- CU/V-23-15 **City of Bloomington Parks and Recreation**  
545 S. Adams St.  
Request: Conditional use approval for a communication facility. Also requested are variances from maximum number of drive-cuts, fence and landscaping requirements, and setback standards.  
Case Manager: Eric Greulich
  
- UV-31-15 **Sherman L. Guth**  
2301 E. Moores Pike  
Request: Use variance to allow a two-unit building in a Residential Single-family (RS) zoning district.  
Case Manager: James Roach

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 545 S. Adams Street**

**CASE #: CU/V-23-15**  
**DATE: September 24, 2015**

---

**PETITIONER:** City of Bloomington Parks and Recreation Department  
 401 N. Morton Street, Bloomington

---

**REQUEST:** The petitioner is requesting conditional use approval to allow a “communication facility” in a Commercial Arterial (CA) zoning district. Also requested are variances from cell tower setback, paving, fence, and landscaping standards to allow a new cell tower to be installed.

---

**SITE DESCRIPTION:** This property is located at 545 S. Adams Street and is within the Commercial Arterial (CA) zoning district. The property has frontage on Patterson Drive to the east and Adams Street to the west. Surrounding land uses include a school and multi-family residences to the north, multi-family residences to the east, office building and mixed-use to the west, and offices and a single family residence to the south.

The property has been developed with an office, fuel station, and warehouse facility that are owned and used by the City of Bloomington. Portions of this property serve as a parking area for the City’s seasonal employees who park here and then use City vehicles parked at this location to perform maintenance on City properties. The property also has a fuel center and an operations office that is used by the Parks Department.

The petitioner is requesting conditional use approval for a “communication facility” to allow a 125’ monopole cell tower to be constructed. The new tower and related appurtenances would be located on the southern portion of the property inside an existing fenced compound where vehicles are parked. All of the ground based communication equipment would be inside an existing building. The compound has a 6’ tall privacy fence along both street frontages. As part of this petition there will be several improvements to the existing site including reducing drive cuts on Adams Street, installing new on-street parking and street trees on Adams, installing new bike racks, and paving and striping an existing parking area. New landscaping will also be installed on the property where feasible.

The petitioner is requesting variances from certain requirements of the UDO in regards to the cell tower and the improvements to the property that are required with the conditional use approval. The petitioner is requesting a variance from:

**Buffer Requirements [20.05.020(b)]:** The UDO requires an evergreen screen consisting of a hedge, planted at a maximum of three (3) feet on center, or a row of evergreen trees planted at a maximum of ten (10) feet on center shall be planted around the entire communication facility and each of the guy wires and anchors, if used. The height of all plants at the time of planting shall be no less than five (5) feet. An eight (8) foot high wood fence or brick masonry wall is also required to completely surround the entire communication facility, excluding the guy wires and anchors.

**Setbacks [20.05.020(e)]:** The UDO requires that communication towers be

setback from any property line a distance equal to at least 80% of the height of the tower, which would require a 100' setback from property lines for the proposed 125' tower. The UDO also prohibits any tower from being placed 500' from any residential structure. The proposed tower would be 250' from the recently constructed multi-family residences to the east, 300' from a single family residences to the south, and 220' from the multi-family residences to the west.

**Paving [20.05.070(m)]:** With the conditional use approval, the UDO requires that all areas used for parking must be paved. The petitioner is requesting a variance to not pave the interior compound area that is used by the heavy equipment trucks.

---

## Criteria and Findings for Conditional Use Permits

### 20.05.023 Standards for Conditional Use Permits

No Conditional Use approval shall be granted unless the petitioner shall establish that the standards for the specific Conditional Use are met and that the following general standards are met.

1. *The proposed use and development must be consistent with the Growth Policies Plan and may not interfere with the achievement of the goals and objectives of the Growth Policies Plan;*

**Staff Finding:** The Growth Policies Plan identifies this area as “Public/Semi-Public/Institutional”. The use of the property as a government operations center matches the goals and objectives of the Growth Policies Plan for this area.

2. *The proposed use and development will not create nuisance by reason of;*

**Staff Finding:** The proposed use will not create any nuisance by reason of noise, smoke, odors, vibrations, or objectionable lights. There are no noise, smoke, odors, vibrations, or objectionable lights that have been identified with this new tower.

3. *The proposed use and development will not have an undue adverse impact upon the adjacent property, the character of the area, or the public health, safety and general welfare;*

**Staff Finding:** Staff finds no adverse impacts to the adjacent properties or character of the area as a result of this petition. The use is surrounded by other commercial businesses, schools, office buildings, and industrial uses. The location of the equipment inside of an existing enclosed and fenced compound greatly reduces the visual impact.

4. *The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, stormwater management structures, and other services, or that the applicant will provide adequately for such services;*

**Staff Finding:** The use requires no additional infrastructure services. There is adequate utility service in this area and no improvements are needed.

5. *The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;*

**Staff Finding:** There will not be any traffic associated with the proposed cell tower.

6. *The proposed use and development will not result in the excessive destruction, loss or damage of any natural, scenic, or historic feature of significant importance;*

**Staff Finding:** There are no natural, scenic, or historic features on this site.

7. *The hours of operation, outside lighting, and trash and waste collection must not pose a hazard, hardship, or nuisance to the neighborhood.*

**Staff Finding:** No special lighting or waste collection needs are proposed. This use is also not located within any residential neighborhoods. The tower is not tall enough to require special lighting.

8. *Signage shall be appropriate to both the property under consideration and to the surrounding area. Signage that is out of character, in the Board of Zoning Appeal's determination, shall not be approved.*

**Staff Finding:** No signage is proposed or approved for the cell tower.

9. *The proposed use and development complies with any additional standards imposed upon the particular use by Chapter 20.05; CU: Conditional Use Standards.*

- (a) The proposed communication facility shall comply with *Chapter 20.05; §CF: Communications Facility Standards* of this Unified Development Ordinance.

**Staff Finding:** The petitioner meets the requirements of the Communication Facility Standards, with the exception of the standard of a setback from a property line and setback from a residential structure from which the petitioner is seeking a variance.

- (b) The communication facility shall minimize land use impacts by accommodating future collocation by at least five (5) other users.

**Staff Finding:** The tower has been designed to accommodate at least 5 future users.

- (c) The tower shall be masked to blend with surroundings and reduce negative visual impact.

**Staff Finding:** The proposed tower will be a white monopole design.

Staff does not feel that any special modifications should be made to the antennae's appearance. The location of the tower adjacent to existing buildings and distance from the road will minimize any negative visual impacts.

---

## CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

**20.09.130 e) Standards for Granting Variances from Development Standards:** A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

### **STAFF FINDING:**

**Paving:** Staff finds that allowing the interior courtyard to remain as gravel will not be injurious to the public health, safety, morals, or general welfare of the community. The public parking areas will be paved and only the interior courtyard that serves as a parking area for heavy equipment trucks would remain as gravel. The ADA parking spaces will be paved with this petition.

**Setback:** Staff finds no injury to the public health, safety, morals, or general welfare of the community with the variance request. The reduced setback is buffered by another property owned by the City to the south.

**Buffer Yard:** Staff finds no injuries to the public health, safety, morals, or general welfare of the community by not requiring the landscaped area around the base of the tower and building.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

### **STAFF FINDING:**

**Paving:** Staff finds that the use and value of the area adjacent to the property will not be affected in a substantially adverse manner by not requiring the interior courtyard to be paved. The impacts from this variance only impact the petitioner.

**Setback:** Staff finds that the use and value of the area adjacent to the property will not be affected in a substantially adverse manner by the reduced setback. The location would meet the sideyard setback requirements and would be 59' from the south property line. A portion of the adjacent property to the south is shared by another City owned property and the other adjacent use to the south is an outdoor storage yard and building trade shop.

**Buffer Yard:** Staff finds that the use and value of the area adjacent to the property will not be affected in a substantially adverse manner by not requiring

the landscaping around the base of the tower. The base of the tower and equipment will not be visible from the public right-of-way due to being inside an enclosed building and the existing privacy fence that surrounds the compound.

- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

**STAFF FINDING:**

**Paving:** Staff finds that the strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property in that since the interior courtyard is used for parking heavy equipment trucks, the use of asphalt would not be appropriate to withstand the turning movements of the trucks. Concrete or gravel are the best materials that can function in these situations. The gravel parking areas have not caused any negative impacts. The practical difficulties are peculiar to the property in question in that the existing use of the property functions with the gravel in place and the gravel is contained to the center courtyard, and not in the public parking spaces. The granting of the development standards variance will relieve the practical difficulties by reducing the burden on taxpayers to fund the required improvements that would not have a direct benefit to the public. Allowing the existing gravel to remain will allow the interior courtyard to continue to function in its current state.

**Setback:** The Staff finds that the strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property in that it would require the tower to be located in the center of the courtyard which would restrict interior traffic flow. The location and elevation of this site provides an ideal location for a cell tower to serve this area. The presence on a City property mitigates negative impacts to private properties and allows the tower and appurtenances to be adequately screened from public view by an existing building and fence. The practical difficulties are peculiar to the property in question as the need for a cell tower in this location only allows a few areas to be potential sites. With the construction of several mixed-use buildings in this area, it is difficult to find a location that does not have a residence within 500' and still meets geographic requirements for appropriate elevations for a tower. This property's location and elevation relative to other towers is unique to meet the needs of the community. The granting of the development standards variance will relieve the practical difficulties by allowing the tower equipment to be located inside an existing enclosed building which best screens the equipment from view.

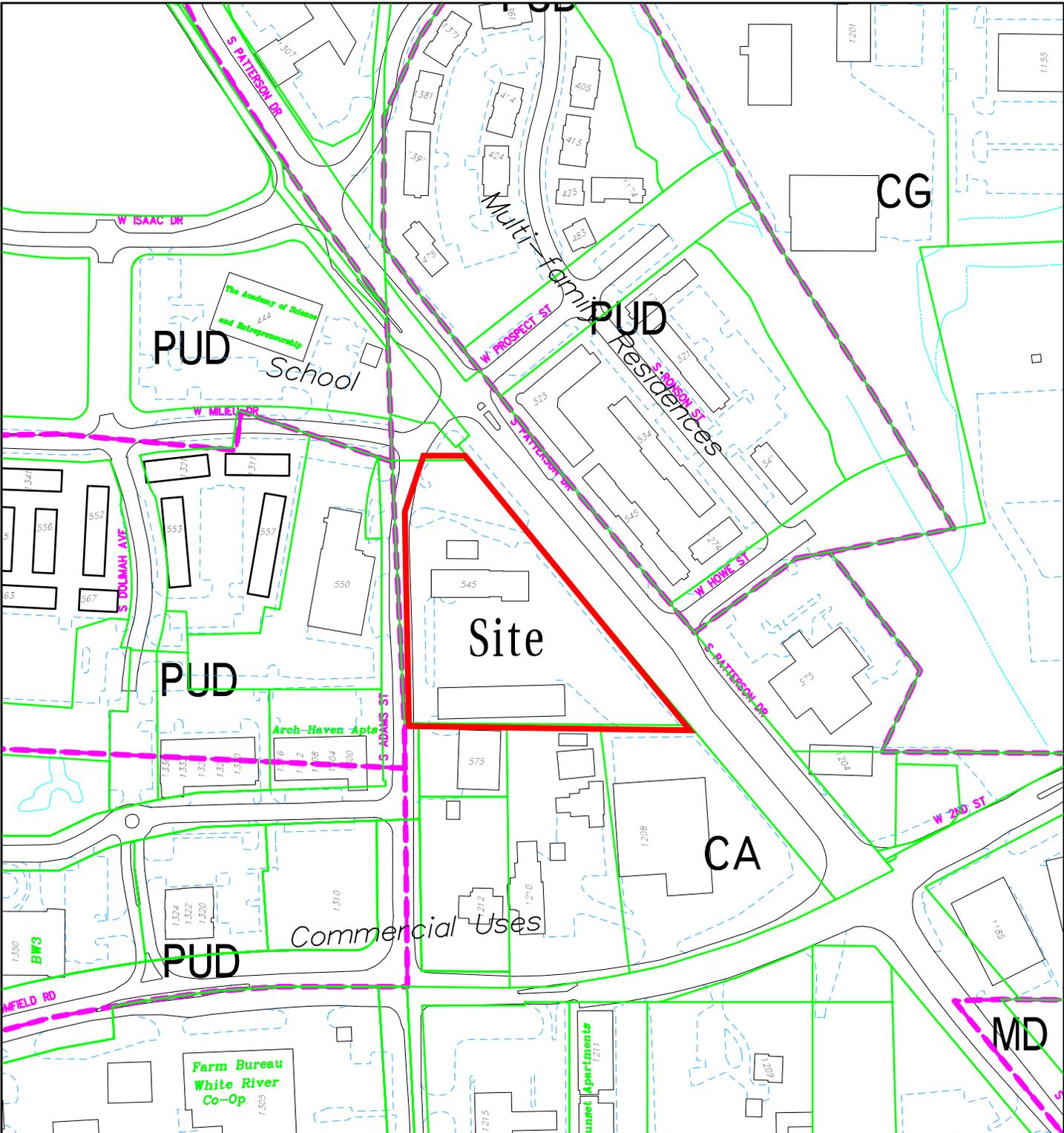
**Buffer Yard:** Staff finds that the strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property in that it would require landscaping to be installed inside an existing storage yard that is already screened from view. The practical difficulties are peculiar to the property in question in that there is an existing building and fence

that will adequately screen the equipment and a duplicate fence and landscaping would not have any benefit. The granting of the development standards variance will relieve the practical difficulties by not requiring a landscaped area to be installed within the existing enclosed courtyard, which is not visible from the public right-of-way.

---

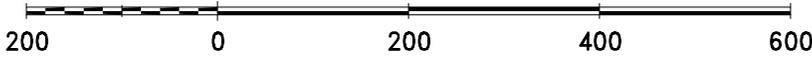
**RECOMMENDATION:** Staff recommends approval of CU/V-23-15 with the following conditions:

1. All site improvements must be installed with the building permit for the new tower.



CU/V-23-15 City of Bloomington Parks and Recreation  
 545 S Adams Street  
 Board of Zoning Appeals  
 Site Location, Zoning, Land Use, Parcels

By: greulice  
 20 Aug 15

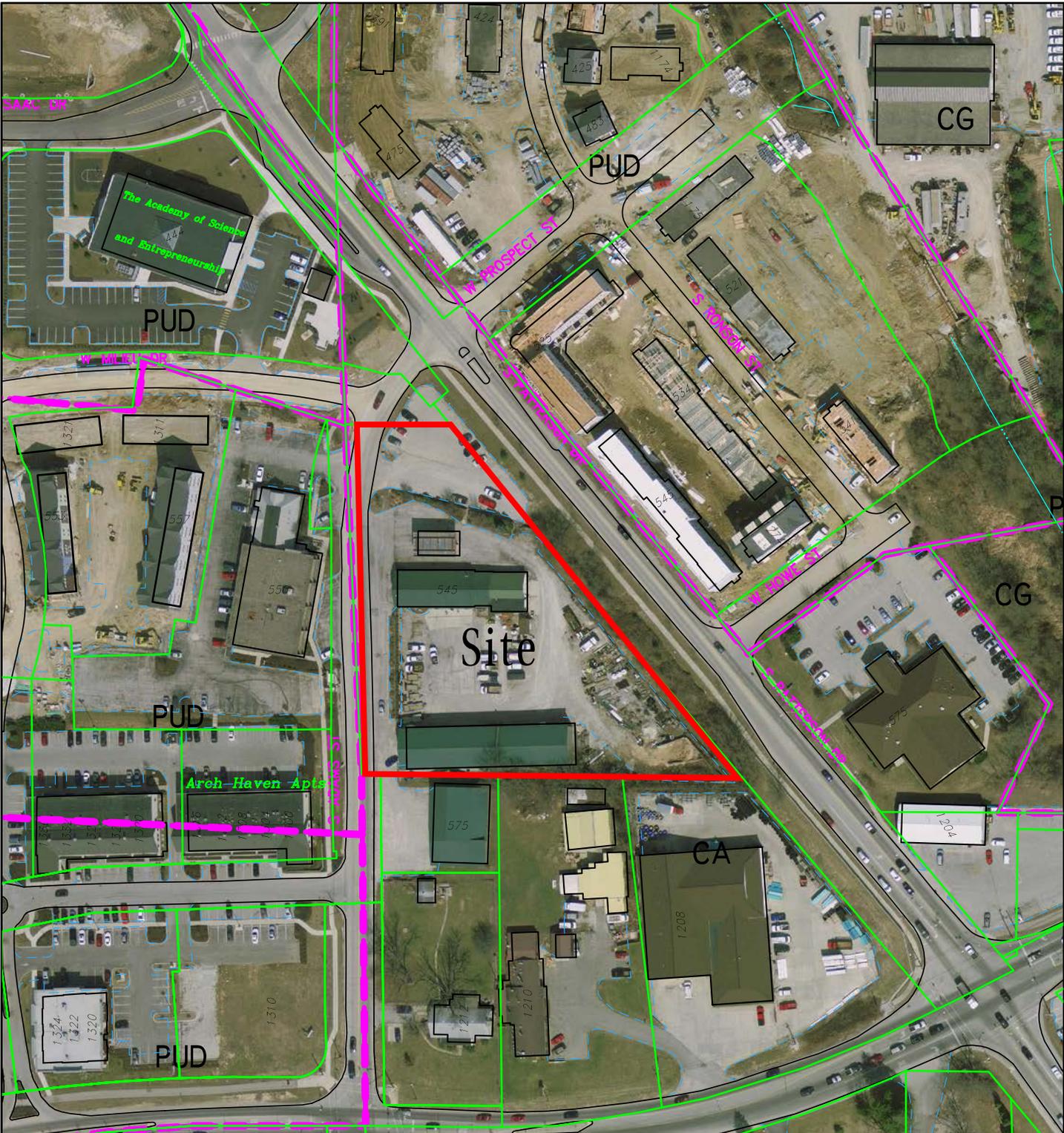


City of Bloomington  
 Planning & Transportation

N

Scale: 1" = 200'

For reference only; map information NOT warranted.



CU/V-23-15 City of Bloomington Parks and Recreation

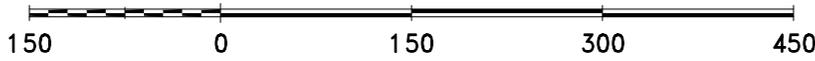
545 S. Adams Street

Board of Zoning Appeals

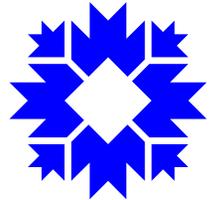
2014 Aerial Photograph

By: greulice

20 Aug 15

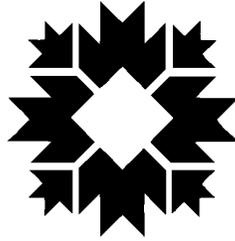


City of Bloomington  
Planning & Transportation



Scale: 1" = 150'

For reference only; map information NOT warranted.



**CITY OF BLOOMINGTON**  
**parks and recreation**

**Date:** July 22, 2015

**To:** Tom Micuda  
Eric Greulich  
City of Bloomington  
Planning Department

**From:** Dave Williams, Operations Director  
City of Bloomington  
Parks and Recreation

**Re: Petitioner's Statement - Conditional Use Approval and Variance Requests  
Cell Tower Installation - BP&R Operations Center (545 S. Adams St.)**

Gentlemen,

The City of Bloomington, Department of Parks and Recreation, wishes to file a request for Conditional Use Approval for a new communication facility at the department's Operations Center located at 545 S. Adams Street. We are also seeking variances from the 500' setback from a residential structure, setback from the property line, maximum number of drive cuts, paving of the maintenance compound, and fencing and landscaping of the cell tower.

The department has received a proposal from Verizon Wireless to install a 120' monopole cell tower in the maintenance compound of the Operations Center. There were several proposed locations at this facility; some of which were rejected due to storage and vehicle mobility requirements. The site plan proposal (attached) calls for a 65' x 20' leased area and utilizes one bay of an existing open sided pole barn building in the maintenance compound. A 22' x 11.5' prefabricated building would be set in the pole barn bay, with the monopole located approximately 14.5' from the edge of the pole barn.

If BZA approval is granted, Verizon Wireless has agreed to pay the Department \$80,000 to cover costs of required site improvements on Adams St., to include construction of a 5' concrete sidewalk, reducing the width of existing drive cuts to 34', paving and striping of the employee parking lot (corner of Adams and Patterson), and the installation of bike racks and street trees.

CU/V-23-15  
petitioner statement

As you are aware, the character of this area of the city is rapidly changing with substantial commercial, multi-family, and office development projects underway or nearing completion. A monopole cell tower installation at this location, as evidenced by the location photos supplied recently, would be fairly discreet and screened within the Operations Center fenced compound.

It is our department's position that the proposed 120' monopole cell tower at this location meets the Use Variance and Conditional Use Criteria and request full consideration of our project request. Please let me know if any additional information is required.

Respectfully,



Dave Williams  
Operations Director  
Bloomington Parks and Recreation

cc: Mick Renneisen  
JD Boruff  
Dan Coots/Verizon

Attachments:

Verizon Site Plan ("Anna Lee" - Site I.D.: 268852)  
Aerial photo-Required site improvements

CU/V-23-15  
petitioner statement



August 11, 2015

RE: Proposed Verizon Wireless Communications Facility  
Site Name: **WS Anna Lee**

To Whom It May Concern:

As a radio frequency engineer for Verizon Wireless, I am providing this letter to state the need for a Verizon Wireless site called **WS Anna Lee**.

The WS Anna Lee site is proposed with the below objectives:

1. Offload 4G traffic from busy site to the North West.
2. Offload 4G traffic from busy site to the North East.
3. Offload 4G traffic from busy site to the South East.
4. Offload 4G traffic from busy site to the South West.
5. Improve 4G throughput to existing heavy data users.
6. Improve 4G network reliability by increasing the amount of time our customers operate on 4G instead of 3G.

Currently the area is experiencing high demand for wireless high-speed data. Growth forecasts have triggered the need for an additional site in the area. The tower is needed to provide all Verizon customers in the area with the best experience on their 4G wireless devices.

Raw Land – Design plans for a new tower would provide an antenna height of 120'. The new structure height was decided upon to best cover the offload area and interact with the existing Verizon sites. If we are limited to building a structure less than the proposed height, another tower would be needed in the vicinity in the near future. In addition, building a structure that is too short can cause existing taller sites to transmit over the proposed site and building a site that is too tall can cause the proposed site to transmit over existing sites. Both situations create a poor experience from a user perspective. The new structure will be placed near the center of the area with high traffic demand and offload the surrounding sites greatly. The new tower design meets stated objectives.

CU/V-23-15  
petitioner statement

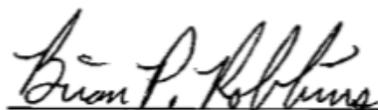
Verizon Wireless cares about the communities as well as the environment and prefers to collocate on existing structures when available. It can be noticed from the map that Verizon Wireless is currently collocated on existing structures in the area. We prefer collocation due to reduced construction costs, faster deployment, and environment protection. However, Verizon Wireless was unable to find a suitable structure within the center of demand area to collocate the proposed **WS Anna Lee** site.

Verizon Wireless design engineers establish search area criteria in order to effectively meet coverage objectives as well as offload existing Verizon cell sites. When met, the criterion also reduces the need for a new site to cover the area in the immediate future. Each cellular site covers a limited area, depending on site configuration and the surrounding terrain. Cell sites are built in an interconnected network; which means each cell site must be located so that their respective coverage areas are contiguous. This provides uninterrupted communications throughout the coverage area.

Since collocation is generally the most cost-effective means for prompt deployment of new facilities, Verizon Wireless makes every effort to investigate the feasibility for using existing towers or other tall structures for collocation when designing a new site or system expansion. However, collocation on an existing tower or tall structure is not always feasible due to location of existing cell sites. Cell sites are placed in a way so they provide smooth hand off to each other and are placed at some distance from each other to eliminate too much overlap. Too much overlap may result in a waste of resources and raise a system capacity overload concern.

This cell site has been designed, and shall be constructed and operated in a manner that satisfies regulations and requirements of all applicable governmental agencies that have been charged with regulating tower specifications, operation, construction, and placement, including the FAA and FCC.

Sincerely,  
Brian Robbins

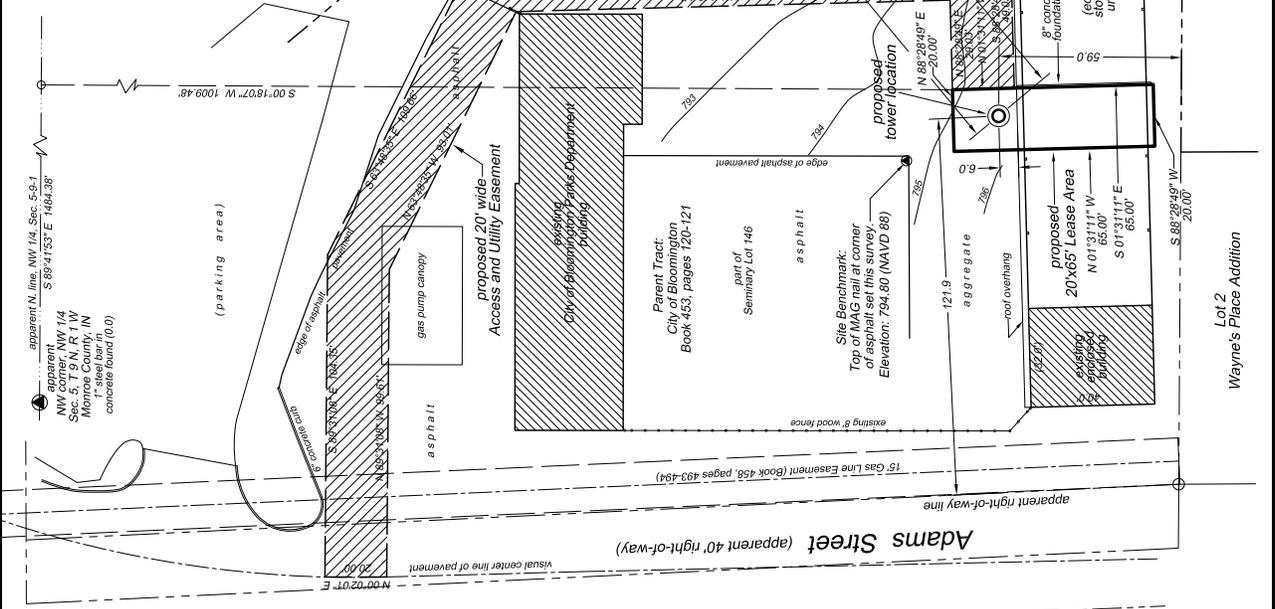


RF Engineer, Verizon Wireless

CU/V-23-15  
petitioner statement

REV. NO.	DATE	DESCRIPTION

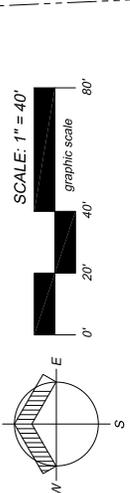
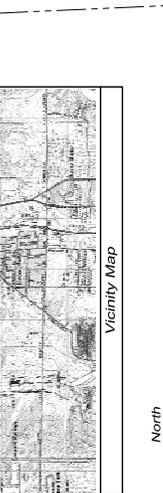
**NOTES:**  
 THE CENTER OF EXISTING TOWER COORDINATES (LATITUDE AND LONGITUDE) WERE OBTAINED VIA GPS OBSERVATIONS FROM NGS STATION "BLOOMINGTON NCMN 7291" (NAD 83) VERTICAL DATUM SHOWN HEREON IS BASED ON NGS STATION "BLOOMINGTON NCMN 7291" (ELEV: 827.4 (NAVD 88))  
 ALL BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH USING SOKKIA LOCUS GPS RECEIVERS FOR OBSERVATIONS ON VARIOUS CONTROL POINTS SET THIS SURVEY.  
 THIS SURVEY REFLECTS ABOVE GROUND INDICATIONS OF UTILITIES AND INFORMATION AVAILABLE FROM UTILITY COMPANIES AT TIME OF SURVEY. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA. IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED, ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED UNDERGROUND UTILITIES.  
 ALL BOUNDARY INFORMATION AS SHOWN HEREON WAS ESTABLISHED FROM MONUMENTS LOCATED IN THE FIELD AND INFORMATION AS REFERENCED HEREON. A TITLE 865 BOUNDARY SURVEY WAS NOT PERFORMED IN CONJUNCTION WITH THIS SURVEY.  
 FIELD WORK FOR THIS SURVEY WAS PERFORMED ON JUNE 17, 2014.



**apparent N line, NW 1/4, Sec. 5-9-1**  
 apparent NW 1/4  
 NW 1/4, Sec. 5, T 9 N, R 1 W  
 Monroe County, IN  
 1" steel bar in concrete found (0.0)

(parking area)

edge of driveway  
 15' Gas Line Easement (Book 458, pages 493-494)  
 20' wide Access and Utility Easement  
 gas pump canopy  
 existing City of Bloomington Police Department building  
 Parent Tract: City of Bloomington Book 453, pages 120-121  
 part of Summary Lot 146  
 asphalt  
 edge of asphalt pavement  
 existing 8" wood fence  
 aggregate  
 existing 6" chain link fence  
 proposed tower location  
 20'x65' Lease Area  
 existing processing building  
 8" concrete foundation wall (equipment storage area under roof)  
 8" steel support post (typical)  
 boundary line per Monroe County GIS  
 Lot 2  
 Wayne's Place Addition



**LEGEND**

POWER POLE	---	UNDERGROUND TELEPHONE	---
LIGHT POLE	---	UNDERGROUND GAS LINE	---
UTILITY PREDESTAL	---	UNDERGROUND WATER LINE	---
FIRE HYDRANT	(FH)	MEASURED	(M)
WATER VALVE	(V)	RECORDED	(R)
OVERHEAD POWER LINE	---	CALCULATED	(C)
UNDERGROUND POWER LINE	---	EXISTING SURVEY INFORMATION	(E)
OVERHEAD TELEPHONE	---		

**TOWER COORDINATES:**  
 DEGREES 09 MINUTES 41.59 SECONDS (MAD 83)  
 9 DEGREES 33 MINUTES 01.15 SECONDS (MAD 83)  
 786.0 FEET AMSL (NAVD 88)

BEY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR OF THE STATE OF INDIANA, AND THAT THE INFORMATION SHOWN HEREON IS TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.  
 JULY, 2014.

**CU/V-23-15 site plan**

Professional seal for Timothy S. Gouloff, Registered Professional Land Surveyor, No. 29500017, State of Indiana.









Proposed Tower





Looking South From Patterson St. and Isaac Dr.

Anna Lee  
Bloomington, IN



**BLOOMINGTON BOARD OF ZONING APPEALS  
STAFF REPORT  
Location: 2301 E. Moores Pike**

**CASE #: UV-31-15  
DATE: September 24, 2015**

---

**PETITIONER: Sherman Guth  
2301 E. Moores Pike, Bloomington**

---

**REQUEST:** The petitioner is requesting a use variance to allow a second dwelling unit in a single family zoning district.

---

**REPORT:** The property is located on the north side of E. Moores Pike, between S. High Street and S. Valley Forge Road and is zoned Residential Single-family (RS). The property is approximately 1.1 acres in size and contains an approximately 1880 square foot house built circa 1955. Surrounding uses are all single family.

The petitioner purchased the property in 1992 and immediately remodeled the lower level to include a second dwelling unit. The property was also zoned for single family uses at the time. Staff could find no evidence of a building permit or variance approval for this remodeling. The lower level unit has never been registered with or inspected by the City's Housing and Neighborhood Development Department. Structures with two dwelling units, or duplexes, are not a permitted use in this zoning district.

Staff became aware of this dwelling unit after receiving a call from a real estate appraiser. This petition is an attempt to legalize this illegal second unit. The petitioner argues that the length of time the second unit has been in the house without complaint, his age, his extensive travels, and the age and maintenance needs of the house make it necessary to have a second dwelling unit in the house.

---

**PLAN COMMISSION RECOMMENDATION:** The Plan Commission reviewed the use variance request at their September 14, 2015 meeting. The Plan Commission did not reach a consensus on the petition. They made two motions, one to recommend that the petition did substantially interfere with the GPP and one that it did not. Both motions failed to gain a majority of votes of the Commission. Discussion about the petition involved whether the length of time the second dwelling unit had been in place without complaint should be considered; the desire for the City to write new aging in place policies and regulations; the fact that the petitioner could still have roommates and tenants but just could not have a second dwelling unit; and the desire to allow the unit to remain but only for the petitioner with some sort of sunset provision. Because of the failed motions, this petition comes to the BZA with no recommendation from the Plan Commission.

---

**20.09.140 CRITERIA AND FINDINGS FOR USE VARIANCE:**

Pursuant to IC 36-7-4-918.4., the Board of Zoning Appeals or the Hearing Officer may grant a variance from use if, after a public hearing, it makes findings of fact in writing, that:

- (1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and*

**Staff Finding:** Staff finds no injury to public health, safety, morals, and general welfare with a two-family dwelling. The property has been used for a two-family dwelling since 1992 with no known injury.

- (2) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and*

**Staff Finding:** Staff finds no substantial adverse impacts to the adjacent area from this request. The property is large and can support the use and associated parking. The house is set back from the street and adjacent homes by a considerable distance.

- (3) *The need for the variance arises from some condition peculiar to the property involved; and*

**Staff Finding:** Staff finds no peculiar condition to the property. The property is very similar in size to adjacent properties. The petitioner argues that the age of the house necessitates the need for a second dwelling unit, however this is not peculiar to this property. This would be the case with any home of this age or older. The petitioner also argues that peculiar condition is found in the length of time the second dwelling unit has been in the house. Staff rejects this argument because it was created illegally.

- (4) *The strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and*

**Staff Finding:** Staff finds that the strict application of the UDO does not constitute an unnecessary hardship in the use of the property. The petitioner can still utilize the house as a single family house. The petitioner can still rent rooms to individuals willing to help him maintain the house and property provided that there is only one dwelling unit with only one kitchen and no more than three (3) unrelated adults living in the house (per the single family definition of family).

- (5) *The approval does not interfere substantially with the Growth Policies Plan.*

**Staff Finding:** The GPP designates this property as “Urban Residential.” The fundamental goal of these areas is to “encourage the maintenance of residential desirability and stability.” Regarding infill development, the GPP states that it should be “consistent and compatible with preexisting developments.” Although the primary land use in this category is single family, multi-family housing is appropriate in some areas if designed to be compatible with preexisting developments. The Plan Commission did not come to a consensus as to whether the use variance will or will not substantially interfere with the goals of the GPP. However based on the

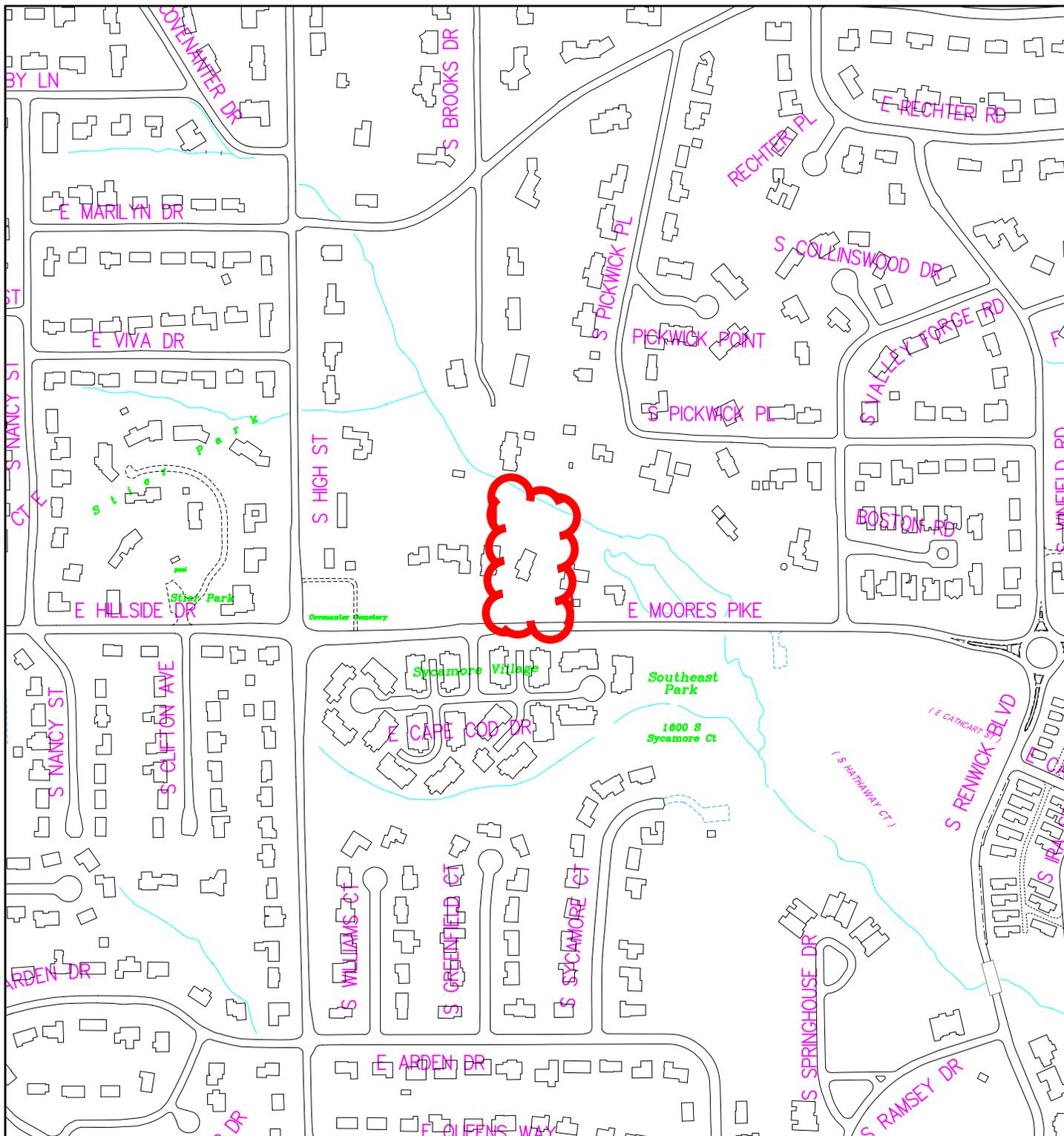
discussion of the Plan Commission, staff finds that this petition does not substantially interfere with the policies of the GPP.

---

**CONCLUSION:** Staff finds that this is an inappropriate variance for a second dwelling unit on this lot. The petitioner has not demonstrated peculiar condition or practical difficulty in the use of the property. The petitioner could still rent to no more than 2 roommates or tenants as long as they shared common living space, including a single kitchen, and shared the house.

---

**RECOMMENDATION:** Based upon the written findings above, staff recommends denial of UV-31-15. Staff will work with the petitioner to determine a reasonable time period for compliance.

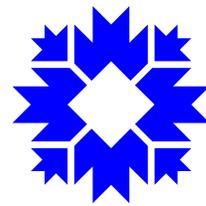


**UV-31-15  
Location Map**

By: roachja  
10 Sep 15



City of Bloomington  
Planning & Transportation



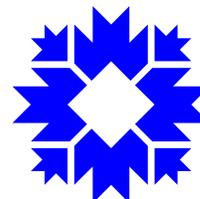
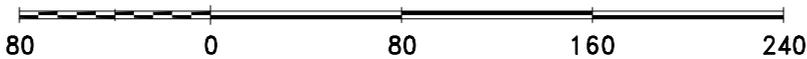
Scale: 1" = 400'



UV-31-15  
Location Map

City of Bloomington  
Planning & Transportation

By: roachja  
10 Sep 15



Scale: 1" = 80'

For reference only; map information NOT warranted.



**+Sherman Leon (“Lee”) Guth, Ph.D.**  
**2301 E Moores Pike**  
**Bloomington, IN 47401**

Phone: (812) 335-1352; (812) 929-7464 (Cell)

Email: guth@indiana.edu

August 18, 2015

To: City of Bloomington  
 Planning and Transportation Department  
 Plan Commission  
 and  
 Board of Zoning Appeals

Re: Use Variance for property at 2301 E Moores Pike, Bloomington, IN 47401

Note: Footnote numerals refer to 13 enclosures/attachments, which begin on the third page.

Dear Commission and Board members,

The variance being applied for is required because of the current zone-violating “grandmother’s apartment,” (GMA) which has been installed, and rented, ever since I purchased the house 23 years ago, in April, 1992. (I have located the first lease<sup>1</sup>, dated 4/21/92, and the current lease, dated 6/1/15, as well as leases for 12 of the intervening years. Others were either renewed verbally or probably discarded. (The located leases for 14 of the 23 years have been made available to the Commission.)

This letter, and one sent earlier to the Commission, mention facts that might be judged as irrelevant; nevertheless, given the importance of my appeal, I aim to make every effort to influence the outcome. From an objective viewpoint, the basic issue is, of course, impersonal, but it is extremely personal for me.

First, some history: Looking back 23 years, I viewed the property shortly after returning from a year’s leave in Paris, France. I was enthusiastic about a purchase, but, because of a serious personal relationship that developed in Paris, I thought I would spend half my life in Europe. A question remained as to how to manage things while I was gone. A solution seemed to be a conversion of one of the 3 BR’s in the lower level to a kitchen, thereby creating a GMA for rental to tenants, who would serve as managers in my absence. That has, in fact, been the solution. (At the time, and much too naively, zoning problems did not even occur to me. It was common knowledge that homes with GMA’s were pervasive throughout Bloomington.) Tenants, whom I carefully choose, serve to manage the property when I’m gone. (They tend to be very cooperative, partly due to their very low rent and idyllic environment, with the apartment having been rented, without even a single month’s vacancy, during the 23 years.)

The Paris relationship did not survive on a serious level, but, subsequently, I have been married for 19 years to a woman whose roots are in yet a different continent. That is, my wife is a Chinese-American woman, who has taught for over 12 years at Smith College in Northampton, MA. I frequently visit (with serious air-fare budget consequences) for long weekends as well as for much longer University breaks. During summers, we often spend time in China, where I was this summer, for almost seven weeks.

To summarize the previous two paragraphs, I travel extensively.

Second, the property<sup>2,3,4</sup>: It comprises 1.4 acres (“more or less,” according to the certified surveyor’s report<sup>5</sup> with large areas in front and rear, and with private access on sides. The approximately 850 sqft GMA<sup>6</sup> is the entire inhabitable lower level of the house, with one of the three lower-level bedrooms having been converted to a kitchen as part of the purchase agreement<sup>7</sup>. The front of the GMA<sup>8</sup> and its

UV-31-15  
 Petitioner's  
 Statement

picture window, face the rear of the property, which can be likened to an area of a state park<sup>9</sup>. The apartment's private entrance is accessible by a private walk. (Comprehensive coverage of the GMA, including room by room photos will be provided at my presentation.) There's a creek along the north end of the property. The GMA is essentially invisible to all neighbors, and, in 23 years, no one has objected, or even offered an off-hand comment, about the unit. Regarding the upper-level main area of the residence, the almost 1900 sqft unusual living area<sup>10</sup> includes an extraordinary 24 ft. x10.5 ft. indoor atrium. (The house has been featured in a past issue of Bloom magazine<sup>11</sup>.) There's a large driveway/parking area, with space for many cars, but, visitors aside, only the tenants' parked vehicle, set far back from the street, is slightly visible.<sup>12</sup> (My cars are usually garaged). A more comprehensive property delineation will be presented with PPT slides during my BZA presentation.

Third, of crucial importance is an explanation of the need for the GMA. There are two basic reasons.

A: My travels: For owners who travel extensively, on-site supervision is essential for the land and residence. For example, the upper level atrium encloses a large tree, a bougainvillea vine, orchids and many other large plants<sup>13</sup>. Even by itself, the tree is a very valuable addition to the house, and it, together with the other plants, must be carefully and reliably cared for. Regarding the land, overseeing the 1.4 acres is a major task, and special needs often require attention by a highly-motivated person, such as a GMA tenant. For another example (only as one arbitrary example of demanding problems that arise) moles are an increasing serious problem, and, if the GMA tenants had not continued my sometimes daily eradication procedures while I was away for seven weeks, the entire lawn would have been burrowed-up, and completely ruined. (That is not an exaggeration -- there seems to be an endless supply of moles, coming from an adjoining property.) The relevant point here is that GMA tenants serve as the required on-site care-takers when I am gone.

B. My age: The preceding emphasis on travel-related property requirements obscures the fact that, because of unavoidable age-related limitations (I'll be 83 in December of this year) assistance from GMA tenants will all-to-soon be required, even when I'm not traveling. Currently, my I.U. department has hired me back from retirement as an Adjunct Instructor, paid on a per-course basis. I need the relatively meager supplementary income to help my continuing support for my single-mom daughter (who has no other source of support) and for other family reasons. However, I am probably one of the oldest, or, perhaps the oldest, instructor on campus, and my teaching will soon have to end. That will present a difficult financial situation, making it impossible for me to hire the kind of property (and personal) assistance I will need in my later declining years. Tenants from the GMA will be essential.

In overall summary, the existing GMA, with its property-supervising tenants, is justified, not only by my frequent absences from the extensive 1.4 acre property, with its unusual house, but also by my age. (The nature of the property is such that many possible future owners could very well have similar problems.)

In conclusion, I hope this letter, together with my presentation on 9/14, will provide enough information to allow the BZA's approval of my appeal. Otherwise, it is not clear that I will be able to remain, through my later years, in my beautiful Bloomington home, which I have loved and lived in for 23 years.

Sincerely,

Professor Emeritus and Adjunct Instructor  
Dept. of Psychological and Brain Sciences  
Indiana University, Bloomington, 47405

# 1

Top portion only (scanning problem) of first lease. Complete original has been made available to the Commission.

## Apartment Lease

This Indenture, Made this 21<sup>st</sup> day of April 19 92  
 BY AND BETWEEN Sherman Leon Gutth  
 Lessor, and John Roderick Foster Debbie J. Glanville  
 Lessee, witnesseth: That said Lessor, in consideration of the covenants of said Lessee, hereinafter set forth, does by these presents lease to said Lessee the following described property, to-wit:

TO have and to hold the same to Lessee, from the first day day of May 1992, to the first day day of August 1993;  
 And said Lessee, in consideration thereof, covenants and agrees to pay said Lessor, as rent for said premises, the sum of \$ 475.<sup>00</sup> four hundred and seventy-five dollars, rent per month, payable in monthly installments, without relief from valuation and appraisal laws, as follows:  
\$ 475.<sup>00</sup> on the first day of each and every month in advance so long as this lease is in force and effect, and with 5% interest on each installment after the same becomes due, and attorneys fees. (Interest accrues after the 7<sup>th</sup> of the month)

### LESSOR AND LESSEE FURTHER COVENANT AND AGREE:

The Lessee shall not paint, decorate or otherwise embellish and/or change and shall not make nor suffer any additions or alterations to be made in or to the leased premises without the prior written consent of the Lessor, nor make nor suffer any strip or waste, nor suffer the heat or water to be wasted, and at the termination of this lease shall deliver up the leased premises and all property belonging to the Lessor in good, clean and tenantable order and condition, reasonable wear and tear excepted.

The Lessee shall maintain the leased premises in a clean condition. He shall not sweep, throw, or dispose of, nor permit to be swept, thrown or disposed of, from said premises nor from any doors, windows, balconies, porches or other parts of said building, any dirt, waste, rubbish or other substance or article into any other parts of said building or the land adjacent thereto, except in proper receptacles and except in accordance with the rules of the Lessor.

The Lessee shall not make any disturbing noises in the building nor permit the making of any such noises therein by his family friends, relatives, invitees, visitors, agents or servants; nor do, nor permit anything to be done by such persons that will interfere with the rights, comforts, or conveniences of other occupants in the building. No electric or automatic washing machine, television or other aerials, or other like equipment shall be installed without written consent from the Lessor. No Lessee shall play upon, nor suffer to be played upon, nor operate any musical instrument, radio, television or other like device in the leased premises in a manner offensive to other occupants of the building, nor between the hours of eleven o'clock P.M. and the following eight o'clock A.M.

The Lessor agrees that he will furnish reasonably hot and cold water and reasonable heat during the regular heating season to radiators in the leased premises, except in the case of accident, or restriction by City, State, or Federal regulations, or during necessary repairs to the apparatus and except for causes beyond the control of the Lessor. The failure of the Lessor to provide any of the foregoing items to any specific degree, quantity, quality or character shall not form a basis of any claim for damages against the Lessor.

Lessee understands and agrees that it shall be Lessee's own obligation to insure his personal property.

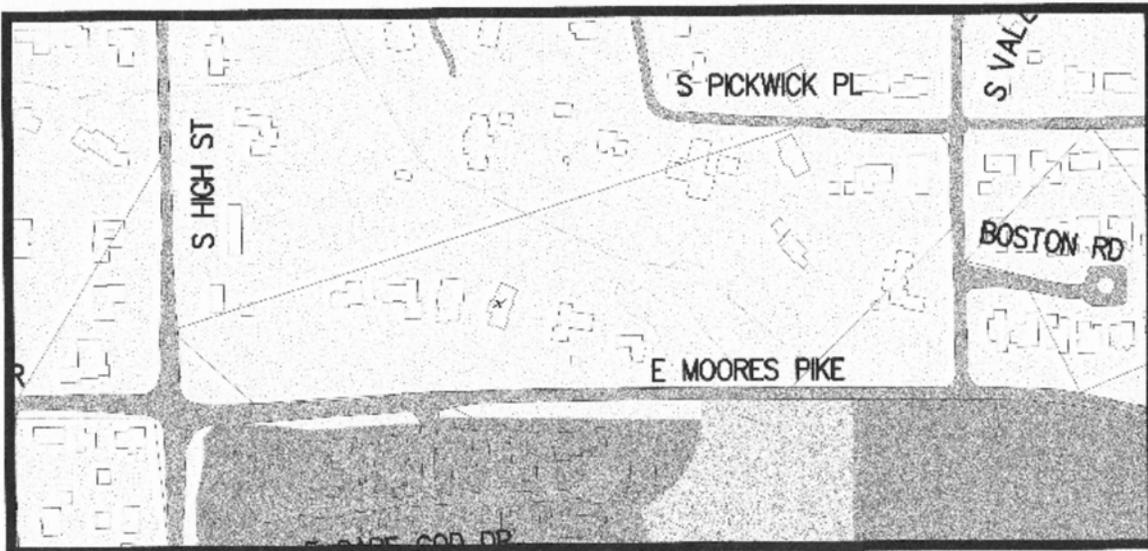


# 3

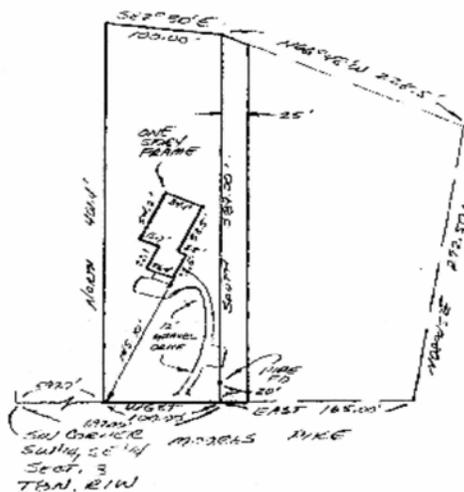


**Aerial view showing red-outlined subject property  
(vertical narrow strip at right plus west of narrow strip)  
and neighboring properties**

# 4



**Schematic aerial view of subject house (small "x") and neighbors.**

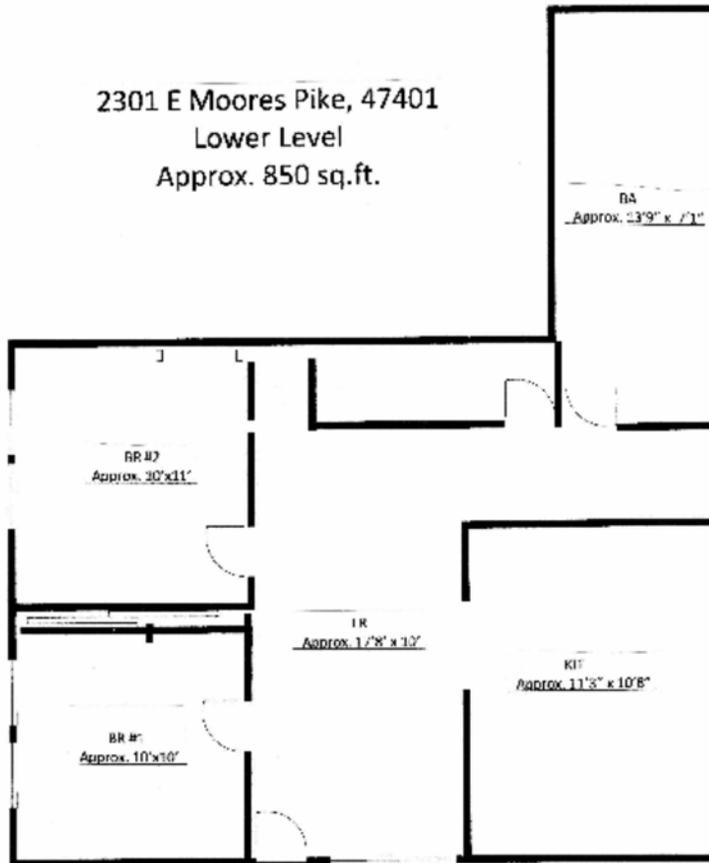


A strip of ground of even width of 25 feet off of the entire West side of the following described real estate: Part of the Southwest quarter of the Southeast quarter of Section 3, Township 8 North, Range 1 West: Beginning at a point 697.7 feet East of the Southwest corner of said quarter quarter, said point being in the centerline of Moore's Pike, thence East, over and along the South line of said quarter quarter, said line being the centerline of Moore's Pike, for 165.0 feet, thence North 8° 45' East for 292.5 feet, thence North 66° 48' West for 228.5 feet, thence South for 389.0 feet and to the place of beginning, containing 1.46 acres, more or less.

ALSO, a part of the Southwest quarter of the Southeast quarter of Section 3, Township 8 North, Range 1 West, Monroe County, Indiana further described as follows, to-wit: Beginning at a point 597.7 feet East of the Southwest corner of said quarter quarter, thence North 401.4 feet, thence South 82° 30' East 100.0 feet, thence South 389.0 feet, thence West 100.0 feet, over and along the South line of said quarter quarter, said line being the centerline of Moore's Pike, and to the place of beginning. Containing 0.29 acre, more or less.

**Professional survey of property. Last line of first paragraph states that property contains 1.4 acres, more or less.**

2301 E Moores Pike, 47401  
Lower Level  
Approx. 850 sq.ft.



**Owner's rough diagram of tenants' floor plan. Entrance door is at bottom (blank space right of entrance is window)**

Addendum 11 Offer to Purchase 2301 Moores Pike.  
Amended 2-17-92 by agreement of buyer and seller.

The following items are to be performed to property at  
se1lers [sic] expense to a maximum amount of 58,000.00

1. Install new floor coverings in lower level of house and  
ceramic tile around fireplace. Viny1, ceramic and carpet to be  
selected by buyer.

2. Place precast stepping stones to create a walkway from  
driveway to lower level entry. Such placement is to be flush  
with surrounding ground and spaced to provide comfortable  
walking. Trim trees as required.

7. Purchase and install curtains or vertical blinds  
selected by buyer. Areas to be considered are dining room,  
living room, bedroom, and new windows in bedroom and kitchen.  
**Mother in law quarters may also require new blinds.**

**8. Install kitchenette in west bedroom downstairs for  
mother-in-law unit.**

NOTE: Total of 14 items on this first page, then two additional  
pages.

**Re-typed portion of original signed construction agreement.**

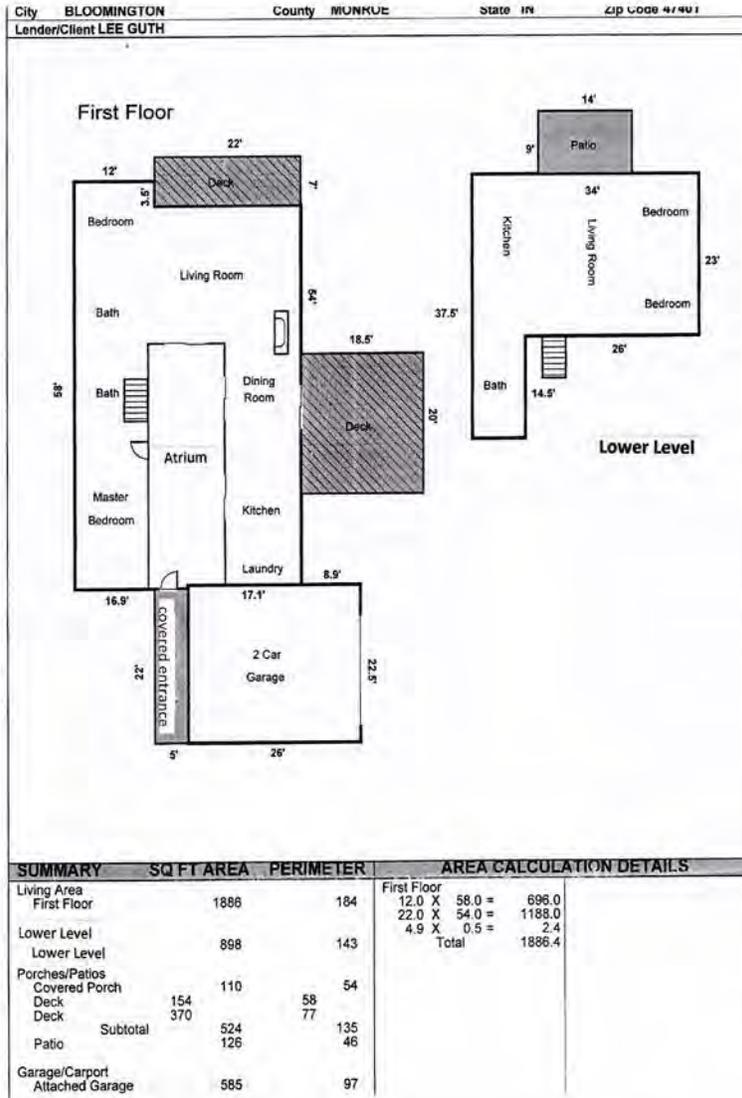
**The Three-page original has been made available to the Commission.**



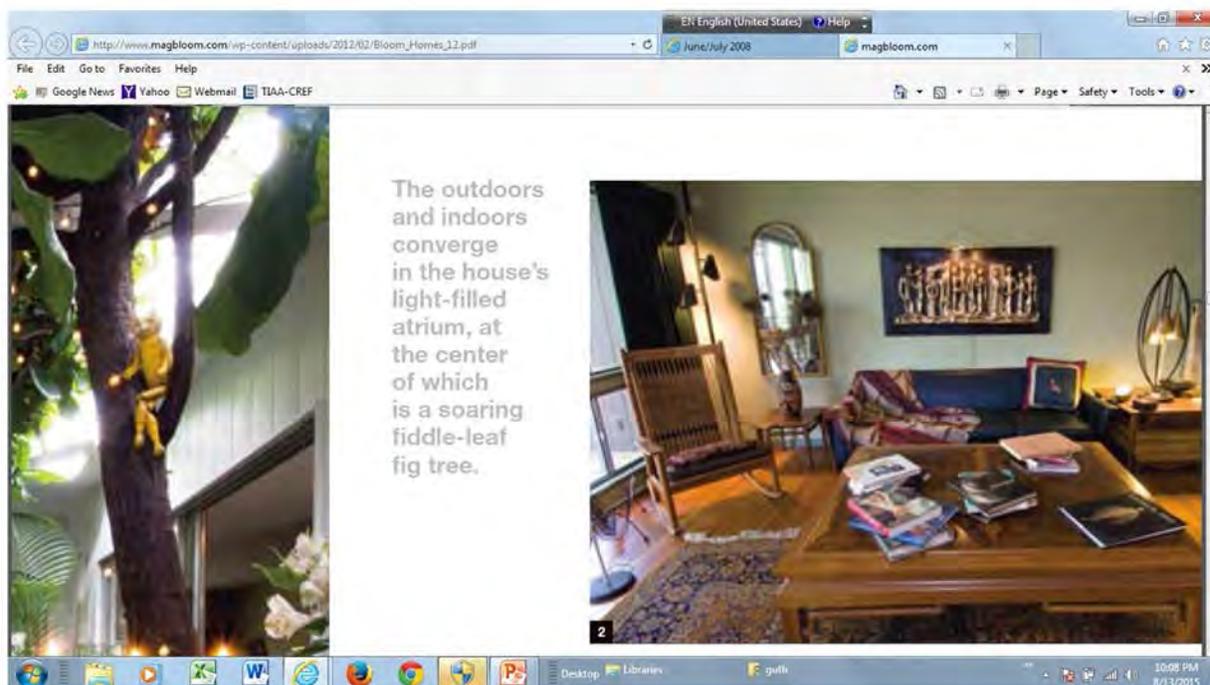
**Front of tenants' apartment, showing entrance door, picture window, and walkway path coming from the left. (Note "bug post.") Over-hanging deck is accessible only from owner's upper-level living room.**



**Narrow view of rear of property as seen from apartment's entrance patio, or from apartment's front picture window. (Note "bug-post" in foreground.) Property is much deeper than it appears here, because of non-obvious steep drop-off at about tree line. Property is also much wider.**



Professionally drafted upper and lower floor plans



**A page from 4-page, 7-photo “Bloom” magazine article, showing portions of atrium tree and living room. A “Print Screen” image taken from:**

**[http://www.magbloom.com/wp-content/uploads/2012/02/Bloom\\_Homes\\_12.pdf](http://www.magbloom.com/wp-content/uploads/2012/02/Bloom_Homes_12.pdf)**

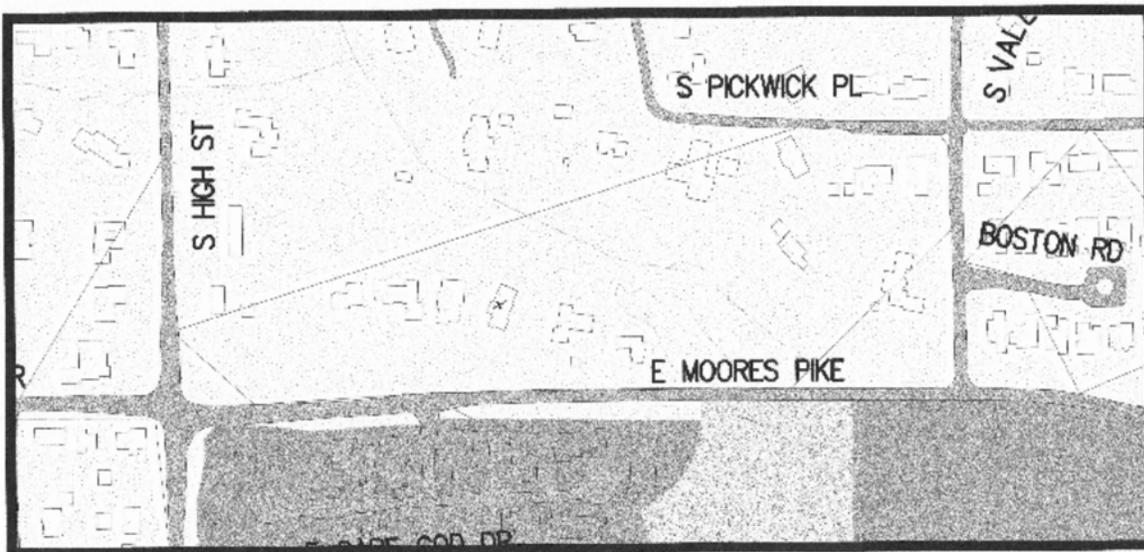


**View of property entrance, as seen from directly across Moores Pike. Tenants' parked car is barely visible at approximate center of top portion of picture.**



**Atrium from its far end, looking back toward main entrance door. Bedroom entrance is under Bougainville vine to the right, kitchen & dining room are to the left.**

# 4



**Schematic aerial view of subject house (small "x") and neighbors.**

**Sherman Leon (“Lee”) Guth, Ph.D.**  
**2301 E Moores Pike**  
**Bloomington, IN 47401**

Phone: (812) 335-1352; (812) 929-7464 (Cell)

Email: guth@indiana.edu

August 26, 2015

To: City of Bloomington  
Planning and Transportation Department  
Plan Commission  
and  
Board of Zoning Appeals

Re: Supplement to letter dated August 18, 2015 re. Use Variance for property at 2301 E Moores Pike.

Dear Commission and Board members,

In my previous letter, I neglected to discuss an important matter about a neighbor’s concern.

As required for my appeal application, I included four letters from my neighbors about my zoning appeal. Three of those indicated, unconditionally, no objection to a variance, but one neighbor (Mr. Kemp) specified conditional approval. Mr. Kemp had no objection to the “mother-in-law” apartment, but he did not want to offer blanket approval for any future property owners; therefore, I suggested the possibility, that, if the board were to approve my application, then a single-family-only covenant could be attached to my property’s deed. That would insure the property would always remain single-family for all future owners. (I also considered the possibility that such a covenant might make it easier for the Board to justify an approval of my application.) Additionally, I suggested that Mr. Kemp’s own attorney (Mr. Thomas Bunger) might draft a prospective covenant (at my expense) to assure that Mr. Kemp, the Commission and the Board would be satisfied. Mister Bunger has agreed to draft such a covenant, but he suggested that it only makes sense to wait for a possible variance approval before drafting the document.

Sincerely,

Sherman L. Guth, Ph.D.

Bloomington, August 30, 2015

Roger Temam  
2204 E. Cape Cod Drive  
Bloomington, IN 47401 (USA)  
Tel / Fax: 812 323 8374  
roger.temam@gmail.com

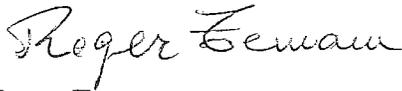
AUG 31 2015

To: Bloomington Planning and Transportation Department

Re: Variance for property of Professor Sherman L. Guth

As a neighbor of Prof. S. L. Guth, who has applied for a zoning variance for his property, I should like the Commission and the Board to know that I have absolutely no objection to a variance. I am familiar with Prof. Guth's property, but his rental unit is so unobtrusive that I was not even aware of its existence. Given the possibility that a negative variance approval might cause Prof. Guth to sell his property, I certainly recommend approval, for Prof. Guth and his property have been a credit to the neighborhood, and there is no way of knowing if the same would eventually be said of new owners.

Sincerely yours,



Roger Temam,  
Distinguished Professor, Indiana University

Terry Kemp

812-369-4459 2233 E. Moores Pike Bloomington IN 47401

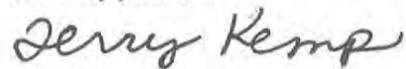
August 12, 2015

To whom it may concern;

In the interest of finding a solution that is reasonable for all concerned here is my idea.

I am giving conditional approval with the lower level rental unit at 2301 E. Moores Pike providing a covenant is placed on the property requiring it to revert back to a single family property when sold. I would also request that the property be owner occupied at all times until sold. I reserve the right to review the covenant before recording and final approval.

Sincerely yours,

A handwritten signature in cursive script that reads "Terry Kemp".

Terry Kemp

Terry Kemp

812-369-4459 2233 E. Moores Pike Bloomington IN 47401

September 14, 2015

To the City of Bloomington Plan Commission and the City of Bloomington Board of Zoning Appeals;

I am against the property at 2301 E. Moores Pike becoming a multi-family unit on a permanent basis. I live next door to this property and feel a variance would be unfair to me for the following reasons:

- I bought my home less than 2 years ago because it was zoned single-family. I did not want to buy next to a multi-family unit.
- A multi-family unit next to my property would cause uncertainty. It would be less desirable to someone who wanted a single-family residence. It would be less desirable to someone interested in a multi-family unit because they would need to get approval before converting. The City may not be in favor of converting at a later date or currently.
- These lots although large are only 100 feet wide. All of the houses set back at similar distances.

In the interest of finding a solution that is reasonable I would be in favor of a temporary conditional variance for the lower level rental unit at 2301 E. Moores Pike providing a covenant is placed on the property requiring it to revert back to a single family property when sold. I would also request that the property be owner occupied at all times until sold.

Thank you for your consideration in this matter.

Sincerely yours,

Terry Kemp

To: Plan Commission  
City of Bloomington  
Planning and Transportation Department

Date: August 1, 2015

From: Dr. and Mrs. Darin Wolfe  
2203 E. Moores Pk  
Bloomington, IN 47401

RE: Variance application for Prof. Sherman L. Guth

To Whom it May Concern:

My neighbor, Professor Guth, has explained to us the circumstances surrounding his application for a variance that will allow him to maintain the 2-BR apartment in the lower level of his house at 2301 E Moores Pike, Bloomington, IN 47401.

Regarding the variance, it is our understanding that statements of "No Objection" from neighbors are crucial for a possible approval of the application.

This is to insure the Commission that we, in fact, have no objection to the continued existence of the apartment, which has never disturbed us in any direct or indirect manner, whatsoever.

Sincerely,

Darin J. Wolfe MD

To: Plan Commission  
City of Bloomington  
Planning and Transportation Department

Date: 6/16/2014

From: Gerald Oswald  
2311 E. Moores Pike  
Bloomington, IN 47401

RE: Variance application for Prof. Sherman L. Guth

To Whom it May Concern:

My neighbor, Professor Guth, has explained to me the circumstances surrounding his application for a variance that will allow him to maintain the 2-BR apartment in the lower level of his house at 2301 E Moores Pike, Bloomington, IN 47401.

Regarding the variance, it is my understanding that statements of "No Objection" from neighbors are crucial for a possible approval of the application.

This is to insure the Commission that we, in fact, have no objection to the continued existence of the apartment, which has never disturbed us in any direct or indirect manner, whatsoever.

Sincerely,

*Gerald Oswald*

To: Plan Commission  
City of Bloomington  
Planning and Transportation Department

Date: 6/30/2015

From: Keith & Cathy Roberts  
2303 Moores Pike  
Bloomington, IN 47401

RE: Variance application for Prof. Sherman L. Guth

To Whom it May Concern:

My neighbor, Professor Guth, has explained to me the circumstances surrounding his application for a variance that will allow him to maintain the 2-BR apartment in the lower level of his house at 2301 E Moores Pike, Bloomington, IN 47401.

Regarding the variance, it is my understanding that statements of "No Objection" from neighbors are crucial for a possible approval of the application.

This is to insure the Commission that we, in fact, have no objection to the continued existence of the apartment, which has never disturbed us in any direct or indirect manner, whatsoever.

Sincerely,

*Cathy Roberts*  
*7/1/15*