City of Bloomington
Common Council

Legislative Packet

1 February 2012

Please consult the Legislative Packet issued in interest of the 18 January 2012 Common Council meeting for legislation and background material.

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Office of the Common Council
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City of Bloomington Indiana

City Hall
401 N. Morton St.
Post Office Box 100
Bloomington, Indiana 47402

Office of the Common Council
(812) 349-3409
Fax: (812) 349-3570
email: council@bloomington.in.gov

To: Council Members
From: Council Office
Re: Weekly Packet Memo
Date: January 27, 2012

Packet Related Material

Memo
Agenda
Calendar
Notices and Agendas:
None

Legislation for Second Reading:

- **Ord 12-02** To Amend the Planned Unit Development (PUD) District Ordinance and Preliminary Plan For Parcel C(a) of the Thomson Area PUD - Re: 1140 S. Morton Street (First Capital Management, Petitioner)
  Contact: James Roach: 349-3527 or roachja@bloomington.in.gov

- **Ord 12-03** To Amend the Planned Unit Development (PUD) District Ordinance and Preliminary Plan for Tract E of the Thomson PUD - Re: 1525 S. Rogers Street (NSSX Properties, LLC - Warehouse Community Center, petitioner)
  Contact: Eric Greulich: 349-3526, greulice@bloomington.in.gov

  Please see the Council Legislative Packet Prepared for the 18 January 2012 Regular Session for the Legislation, Summary and Related Materials.

Legislation and Background Material for First Reading:

- **Ord 12-04** To Amend the Bloomington Zoning Maps from Institutional (IN) to Residential Multifamily (RM) - Re: 718 East 8th Street (Cheryl Underwood, Petitioner)
  - Certification of Action of Plan Commission (Forwarding a Negative Recommendation by a Vote of 9 - 0); Map of Site and Surrounding Zoning and Structures; Map of University Courts with Zoning and Addresses of

Properties; Aerial Map of the Surrounding Blocks; Map of Zoning, Parcels, and Uses; Comparison of GPP and Zoning Maps; Memo to Council from Tom Micuda, Director of Planning; Staff Report for 5 December 2011 Plan Commission (Commission) Meeting; Staff Report for 7 November 2011 Commission Meeting; Letter from Petitioner; Site Plan; Exhibit 1 – IU Master Plan for Area; Exhibit 2 – Aerial and Zoning Map; Exhibit 3 – Zoning and Growth Policies Plan (GPP) Map; Exhibit 4 – Zoning Comparison (Pre- and Post- Unified Development Ordinance [UDO]); BMC 2.02.490 – Institutional (IN); BMC 2.02.130 Residential Multifamily (RM)

Contact: Tom Micuda at 349-3423 or micudat@bloomington.in.gov

Minutes from Regular Session:

None

Memo

Two Ordinances Ready for Second Reading and One Ordinance Ready for Introduction at the Regular Session on Wednesday, February 1st

Next Wednesday, there are two ordinances ready for second reading (which can be found online as indicated above) and one ordinance ready for first reading (which can be found in this packet and is summarized herein).

First Readings:

Item 1 – Ord 12-04 – Rezoning the Parcel at 718-720 East 8th Street from Institutional (IN) to Residential Multi-family (RM) at the Request of Cheryl Underwood

Ord 12-04 proposes the rezoning of 718-720 East 8th Street from Institutional (IN) to Residential Multi-Family (RM) at the request of Cheryl Underwood. It comes forward with a negative recommendation from the Plan Commission which, in a complementary action, directed staff to revisit the previous zoning process for the immediate area (which should be done later this year). Members of the Council should be familiar with her and the underlying circumstances of this proposal, given the many opportunities Underwood has taken to speak to the Council at Regular Sessions on this matter over the last few months. This summary is drawn

from materials and memo (Memo) provided by Tom Micuda, Director of Planning, as well as other material available to the Council Office.

Site and Surroundings. 718 - 720 East 8th Street is a 0.18-acre lot at the southwest corner of East 8th and Park with what was originally built as a large, limestone duplex and garage in the 1930s and now contains five multi-family units. It's located in the University Courts neighborhood which is about a nine-block area north of the Memorial Union and Dunn Meadow and can be characterized in the following manner:

- Physical Appearance: Mostly large, single-family homes built in the 1920s and 1930s on brick streets[1], but also including a fraternity and sorority, Collins Living Learning Center, the Mathers Museum and the new Hutton Honors College;
- Uses: A mix of residential and public/semi-public/institutional uses; and
- Ownership: Indiana University owns 82 of the 121 parcels.

Current Use. The site has the status of a lawfully non-conforming use[2] with authorization for five multi-family units,[3] nine bedrooms and 14 persons. This level of density is much higher than the medium density residential (RM) designation in place there from the early 1970s to 2007 when, as part of a City-wide repeal and re-enactment of the zoning text and maps, it was designated as Institutional (IN).

Genesis of Request. As noted in the Memo, this request "was initiated as part of an enforcement case. In the fall of 2010, City staff and the County Building Department discovered that two bedrooms each were added to two of the five units on the property … without any permit or approvals from City Planning, HAND, or County Building."

As the Memo also notes, the addition of these four bedrooms was, or would be, a violation of:

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[1] In 2007, much of this area was listed on the National Register of Historic Places as the University Courts Historic District.

[2] A lawful non-conforming use is also known as a "grandfathered" property. This category of use recognizes what are known as the "vested" rights of property owners who wish to continue the existing use of the property after it has been rezoned by the City while, at the same time, giving room for the City to protect its long-term vision for the area. This balance is achieved by allowing the existing, in this case, multifamily use to continue unless, at some point in the future, the property is "expanded, enlarged, extended or relocated to another portion of the lot or another part of the structure, … (or) any structure containing or associated with such use …(is) expanded, enlarged, extended, relocated, or altered so as to create additional bedrooms or other habitable space." BMC 20.08.050 (Changes in Use Restricted)

[3] Plan Staff determined that previous owners had obtained approval to install three units in the garage in 1980.

- the petitioner's lawful non-conforming use, where no additional bedrooms are allowed;
- IN zoning, where no residential uses are permitted; [4] and
- RM zoning, where no more than 7 units an acre are allowed which, for this small site, would mean that no more than 1.26 units [5] would be allowed without variance.

Given that fact, it is important to note that while the petitioner has many reasons for urging this rezone (which are summarized below), your decision to grant or deny it, will neither cure nor correct this violation.

Repeal and Re-Enactment of Zoning Ordinance and Maps in 2007. The City repealed and re-enacted what is now the Unified Development Ordinance (Title 20 of the BMC) in 2007. Rather than personally notifying all of the thousands of affected property owners, staff "relied on substantial media coverage, public open house meetings, and the lengthy public review process to give property owners an opportunity to bring up concerns about any potentially negative zoning proposals." In the course of the rezoning process, the petitioner's property, as well as others in the University Courts neighborhood, were rezoned from RM to IN without their knowledge. The notification procedure complied with statute [6] and was done without objection from City officials or citizens. The rezone was done with the recommendation of Plan Staff, for two reasons:

- Indiana University was the predominant owner of properties in the neighborhood and had included the area in their master plan; and
- The rezoned properties were located on block-faces predominantly owned by Indiana University (four out of five parcels in the case of the block-face containing the Petitioner's property).

<u>Issues Raised by the Petitioner and Plan Commission</u>

Rezone Notification. The petitioner argued that owners whose properties were rezoned should have received individual notification and members of the Plan

[4] Please note that fraternities and sororities are permitted in an IN district. BMC 20.02.500 (Institutional (IN) – Permitted Uses.

[5] Please note the Unified Development Ordinance (UDO) uses a weighted, "dwelling unit equivalents" scale based upon the number of bedrooms and size of apartment to determine the number of units on a property. The scale works as follows: 5 bedrooms = 2 units; 4 bedrooms = 1.5 units; 3 bedrooms = 1 unit; a 2 bedroom unit with less than 950 s.f. = 0.66 units; a1 bedroom unit with less than 700 s.f. = 0.25 units; and an efficiency or studio unit with less than 550 s.f. = 0.20 units.

[6] IC 36-7-4-604 which provides for notice by publication.

Commission asked if it were possible to do that. The Memo notes that personal notice could have been provided to affected property owners, but the City has not done that for the last two comprehensive revisions to the zoning code in 1995 and 2007. It also suggested that a discussion about notification procedure belonged with the preparation for the next update and not in the context of "a single rezoning request for a platted lot."

Why Rezone Privately Owned Parcels for Public Use? The petitioner asked why privately-owned parcels were rezoned for a public or quasi-public use. In response, staff noted that zoning districts may be designated based upon both current as well as "reasonably anticipated" future uses. Here the dominant owner of land in the area was IU, which had identified this area on their master plan.

May Property Owners Change the Interior of IN Zoned Property? The petitioner and members of the Commission both asked how the Institutional zoning restricted petitioner's ability to change the interior of residential structures. The memo indicated that the owners could add non-habitable spaces,[7] but could not add habitable[8] spaces unless approved by a variance.

City has Allowed Other RM Zoned Properties to Add Bedrooms; Why Not for the Petitioner? In response to examples the petitioner brought forward of additional bedrooms being allowed in other RM zoned property, staff noted that some changes are permitted. For example, single units with less than 5 bedrooms may add bedrooms as long as they meet other City requirements.[9] Also, some bedrooms may be added to another part of the structure, or "swapped out" with other rooms, as long as a corresponding number of bedrooms are also eliminated. The Memo also noted that some of the examples may have violated the code and have been "followed up in an appropriate manner."

Why were Other Properties on East 8th Zoned RM and Not IN Like Petitioner's Parcel? The petitioner asked why properties on the Southside of the 600 block and the north side of the 700 block of East 8th Street were zoned RM rather than IN. Staff replied that the ownership on those block-faces was more evenly split between public and private uses.

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[7] Non-habitable space includes "bathrooms, toilet compartments, closets, hallways, storage and utility space, and similar areas."

[8] Habitable space includes "bedrooms, units, living room/family room areas, or kitchen areas." Habitable areas may be "swapped out" as long as there is no increase in square footage or number of spaces.

[9] Principal among those requirements are found in the Property Maintenance Code.

Doesn't Rezoning Properties from Residential to Institutional Undermine the Fabric of Core Neighborhoods? The Commission asked about the wisdom of rezoning property from residential to institutional in areas designated as Core Residential (RC), particularly when IU is not subject to our zoning regulations and can demolish structures. Staff responded, in essence, by asking guidance from the Commission on how to handle properties in areas predominantly owned by IU and covered by overlapping master plans for both IU and the City.

Why Not Follow the Growth Policies Plan? The petitioner questioned why staff ignored the Growth Policies Plan designation of this parcel as Core Residential. After reading the material, my response is to offer a metaphor: the University Courts neighborhood appears on the Growth Policies Plan Map as a few yellow islands (of Residential Core) at the edge of a sea of blue (public and semi-public uses tied to Indiana University) that spreads south and far to the east. The petitioner's parcel is on the side of one of those islands. Staff had the difficult job of charting these transitional waters and, by looking at the surrounding shoals, decided to color it blue.

Please note that the Core Residential designation is intended to protect older neighborhoods[10] from encroachment from multi-family, institutional and commercial uses. The land use is primarily "higher density single-family residential" where existing housing stock should be maintained and conversion to apartments discouraged and where multi-family residential may be allowed in transitional areas "when appropriately integrated with adjacent uses …" In regard to site design, rehabilitation should "emphasize building and site compatibility with existing densities, intensities, building types, landscaping and other site planning features."

<u>Basis for Review</u>

In conclusion, the Memo from Micuda addresses the five factors that statute [11] requires the Commission and Council to consider when making a zoning decision. A summary of those considerations and comments follows:

- the Comprehensive (Growth Policies) Plan (GPP) -
    - Here the Memo concludes that the GPP fails to provide adequate guidance on how to zone this parcel which is located at the edge of

[10] These older neighborhoods are characterized by cottages and bungalows on a fabric of a "grid-like street system, alley access to garages, small street setbacks, and a mixture of owner occupants and rental tenants."
[11] IC 36-7-4-603

Core Residential and Public/Semi-Public/Institutional uses;

- current conditions and the character of current structures and uses in each district -
    - Here, after recognizing that the property is located in the University Core Survey District, where additions and demolitions would be subject to demolition delay review, the Memo states that the RM designation "would likely provide greater certainty that these structures would be preserved;"
- the most desirable use for which the land in each district is adapted -
    - Here the Memo concludes that either IN or RM zoning "can accommodate the current established residential use of this property;"
- the conservation of property values throughout the jurisdiction -
    - Here, the Memo concludes that the value of surrounding properties will not affected by this action and that the previous development and authorization as a lawful non-conforming use sets the property value rather the zoning for the parcel, but acknowledges that the petitioner is in disagreement on this point; and
- responsible development and growth
    - Here the Memo makes its primary case for denial by arguing that the most responsible manner for proceeding in this case is a:
        - Comprehensive approach done for the area as a whole;
        - Where, with notification, proper input can be received from IU, other property owners and the Old Northeast neighborhood Association; and
        - Where future lot-by-lot rezoning decisions can be avoided.

Recommendation. After long hearings on November 7th and December 5th, the Plan Commission unanimously decided to give this proposal a negative recommendation. At the same time, the Commission, by a 7 - 2 vote, adopted a resolution directing staff to review the zoning procedure followed in 2007 in light of these deliberations. The Memo indicates that staff's goal is to present a new proposal some time later this year.

NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL REGULAR SESSION
7:30 P.M., WEDNESDAY, FEBRUARY 1, 2012
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: *None*

IV. REPORTS (A maximum of twenty minutes is set aside for each part of this section.)

1. **Councilmembers**
2. **The Mayor and City Offices**
3. **Council Committees**
4. **Public**

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Ordinance 12-02 To Amend the Planned Unit Development (PUD) District Ordinance and Preliminary Plan For Parcel C(a) of the Thompson Area PUD – Re: 1140 S. Morton Street (First Capital Management, Petitioner)

Committee Recommendation: Do Pass: 7 - 0 - 2

2. Ordinance 12-03 To Amend the Planned Unit Development (PUD) District Ordinance and Preliminary Plan for Tract E of the Thomson PUD – Re: 1525 S. Rogers Street (NSSX Properties, LLC – Warehouse Community Center, Petitioner)

Committee Recommendation: Do Pass: 6 - 0 - 3

VII. LEGISLATION FOR FIRST READING

1. Ordinance 12-04 To Amend the Bloomington Zoning Maps from Institutional (IN) to Residential Multifamily (RM) – Re: 718 East 8th Street (Cheryl Underwood, Petitioner)

VIII. ADDITIONAL PUBLIC COMMENT * (A maximum of twenty-five minutes is set aside for this section.);

IX. COUNCIL SCHEDULE

X. ADJOURNMENT

* Members of the public may speak on matters of community concern not listed on the agenda at one of the two *Reports from the Public* opportunities. Citizens may speak at one of these periods, but not both. Speakers are allowed five minutes; this time allotment may be reduced by the presiding officer if numerous people wish to speak.

Posted & Distributed: Friday, January 27, 2012

City of Bloomington
Office of the Common Council

To: Council Members
From: Council Office
Re: Calendar for the Week of 30 January –3 February 2012

Monday, 30 January 2012

4:00 pm Council for Community Accessibility, McCloskey
5:00 pm Farmers' Market Advisory Council, Parks Conference Room 250
5:00 pm Utilities Service Board, Utilities, 600 E. Miller Dr.

Tuesday, 31 January 2012

1:30 pm Development Review Committee, McCloskey
5:30 pm Board of Public Works, Council Chambers
5:30 pm Animal Control Commission, Hooker Room
5:30 pm Bloomington Public Transit Corporation, Transit, 130 W. Grimes Lane

Wednesday, 1 February 2012

12:00 pm Bloomington Urban Enterprise Association, McCloskey
5:30 pm Commission on Hispanic and Latino Affairs, McCloskey
7:30 pm Common Council Regular Session, Council Chambers

Thursday, 2 February 2012

6:00 pm Black History Month Kickoff & Reception, Keynote by Karen Freeman–Wilson, Mayor of Gary, Council Chambers & Atrium
4:00 pm Bloomington Digital Underground Advisory Council, McCloskey
5:30 pm Commission on the Status of Women, McCloskey

Friday, 3 February 2012

7:00 pm Lecture, "Making Bloomington Modern: The Showers Family Legacy", Council Chambers

Posted and Distributed: Friday 27 January 2012

401 N. Morton Street • Bloomington, IN 47404 **City Hall** **Phone: (812) 349-3409 • Fax: (812) 349-3570**
www.bloomington.in.gov/council
council@bloomington.in.gov

ORDINANCE 12-04

TO AMEND THE BLOOMINGTON ZONING MAPS
FROM INSTITUTIONAL (IN) TO RESIDENTIAL MULTIFAMILY (RM) -
Re: 718 East 8th Street
(Cheryl Underwood, Petitioner)

WHEREAS, Ordinance 06-24, which repealed and replaced Title 20 of the Bloomington Municipal Code entitled, "Zoning", including the incorporated zoning maps, and incorporated Title 19 of the Bloomington Municipal Code, entitled "Subdivisions", went into effect on February 12, 2007; and

WHEREAS, the Plan Commission has considered this case, ZO-27-11; recommended that the petitioner, Cheryl Underwood, be denied this request to rezone the property from Institutional (IN) to Residential Multifamily (RM); and, thereby requests that the Common Council consider this petition;

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

SECTION 1. Through the authority of IC 36-7-4 and pursuant to Chapter 20.09.160 of the Bloomington Municipal Code, the property located at 718 East 8th Street shall be rezoned from Institutional (IN) to Residential Multifamily (RM). The property is further described as follows:

> Lot Number Six (6) in Second Court of University Courts Addition to the City of Bloomington, Indiana, as shown by the plat thereof, recorded in Plat Cabinet B, Envelope 32 (Plat Book 2, pages 109-109A), in the Office of the Recorder of Monroe County, Indiana.

SECTION 2. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. 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 _____ day of _____, 2012.

_____
TIM MAYER, President
Bloomington Common Council

ATTEST:

_____
REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2012.

_____
REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2012.

_____
MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance would approve the rezoning of 0.18 acre of land at 718 East 8th Street from Institutional (IN) to Residential Multifamily (RM).

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 12-04 is a true and complete copy of Plan Commission Case Number ZO-27-11 which was given a recommendation of denial by a vote of 9 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on December 5, 2011.

Date: December 14, 2011

Thomas B. Micuda, Secretary
Plan Commission

Received by the Common Council Office this 3RD day of January, 2012

Regina Moore, City Clerk
Deputy 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

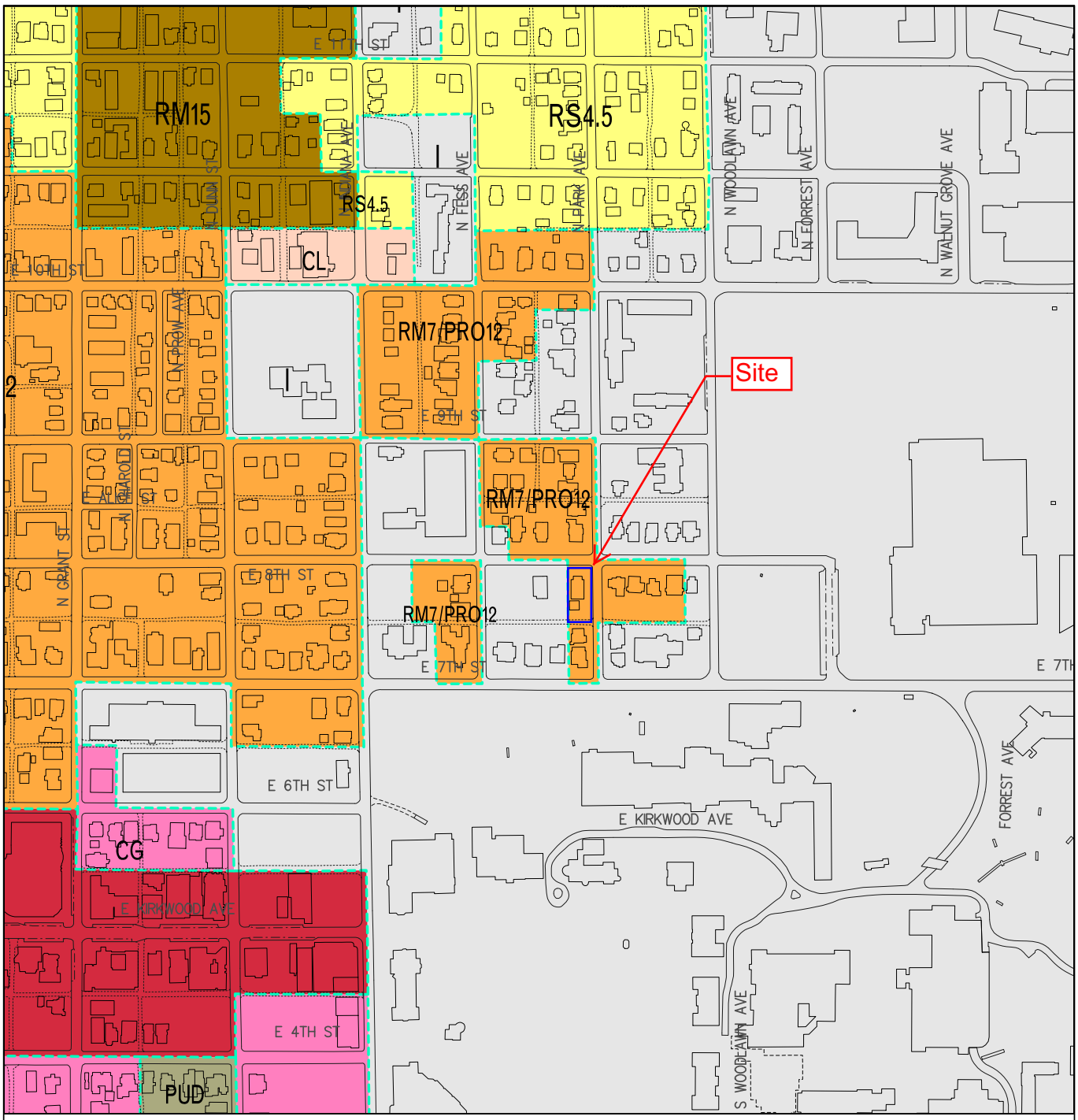
Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues?

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.)

FUKEBANE\ ORD=CERT.MRG



City of Bloomington 1996 Zoning
around 718 E 8th St

By: haleyl
30 Nov 2011

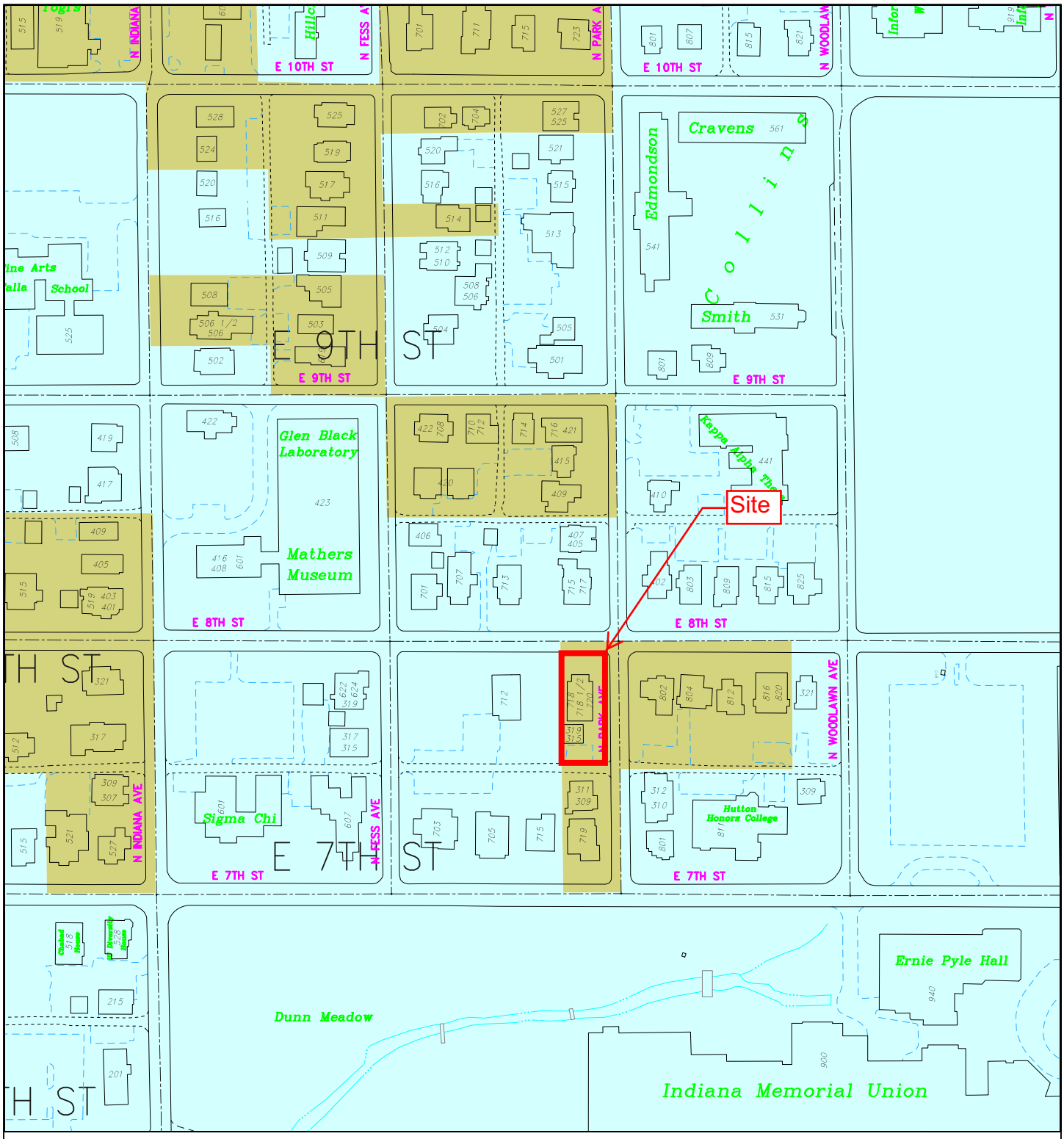
400 0 400 800 1200

N

City of Bloomington
ITS Department

Scale: 1" = 400'

For reference only; map information NOT warranted.



Growth Policies Plan Map

By: greulice

30 Nov 11

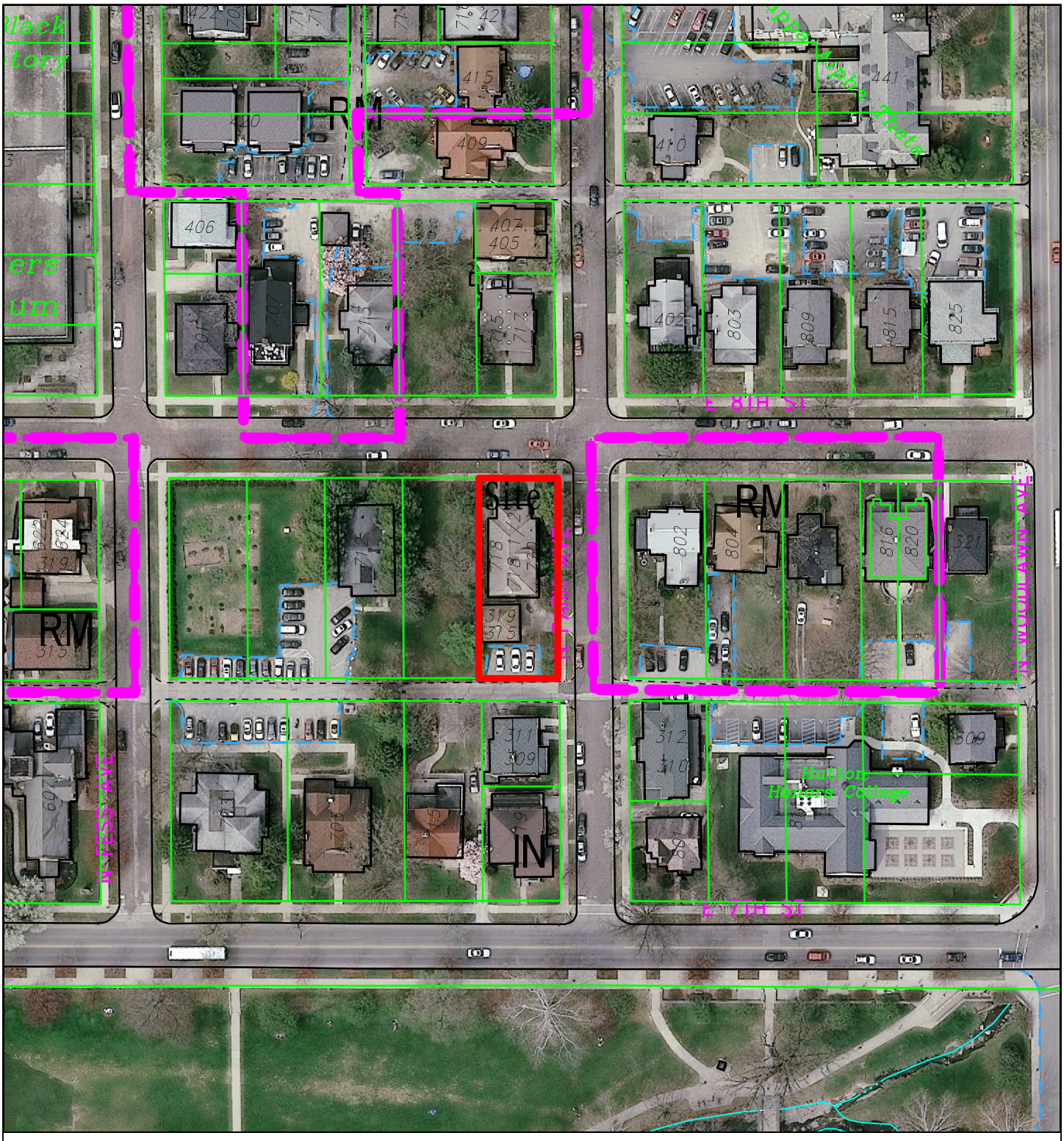
200 0 200 400 600

N

City of Bloomington
Planning

Scale: 1" = 200'

For reference only; map information NOT warranted.



Z0-27-11 Underwood

718 E 8th Street

Plan Commission

2010 Aerial Photograph

By: greulice

1 Dec 11

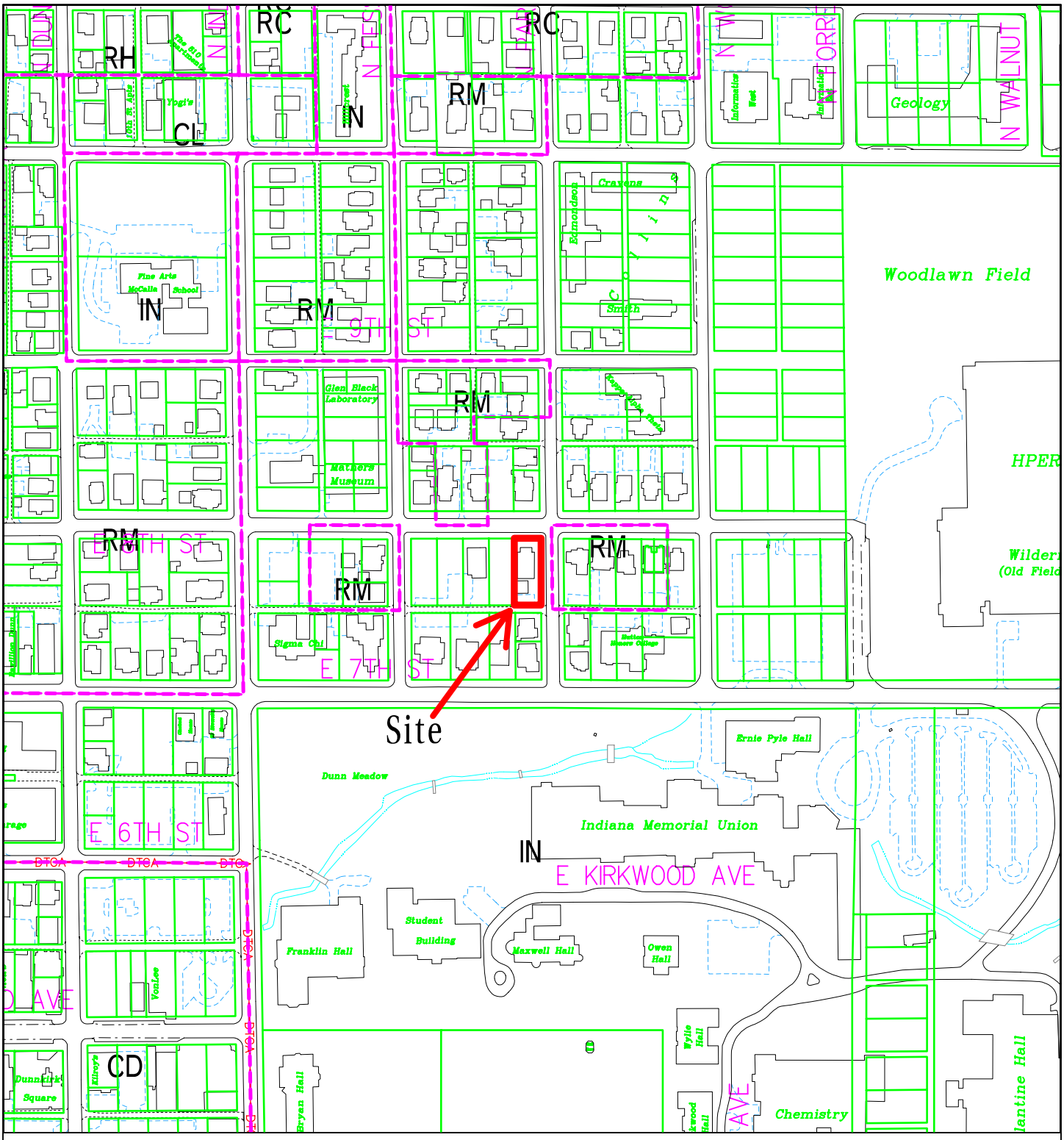
100 0 100 200 300

N

City of Bloomington
Planning

Scale: 1" = 100'

For reference only; map information NOT warranted.



ZO-27-11 Underwood

718 E 8th Street

Plan Commission

Site Location, Zoning, Land Use

By: greulice

1 Dec 11

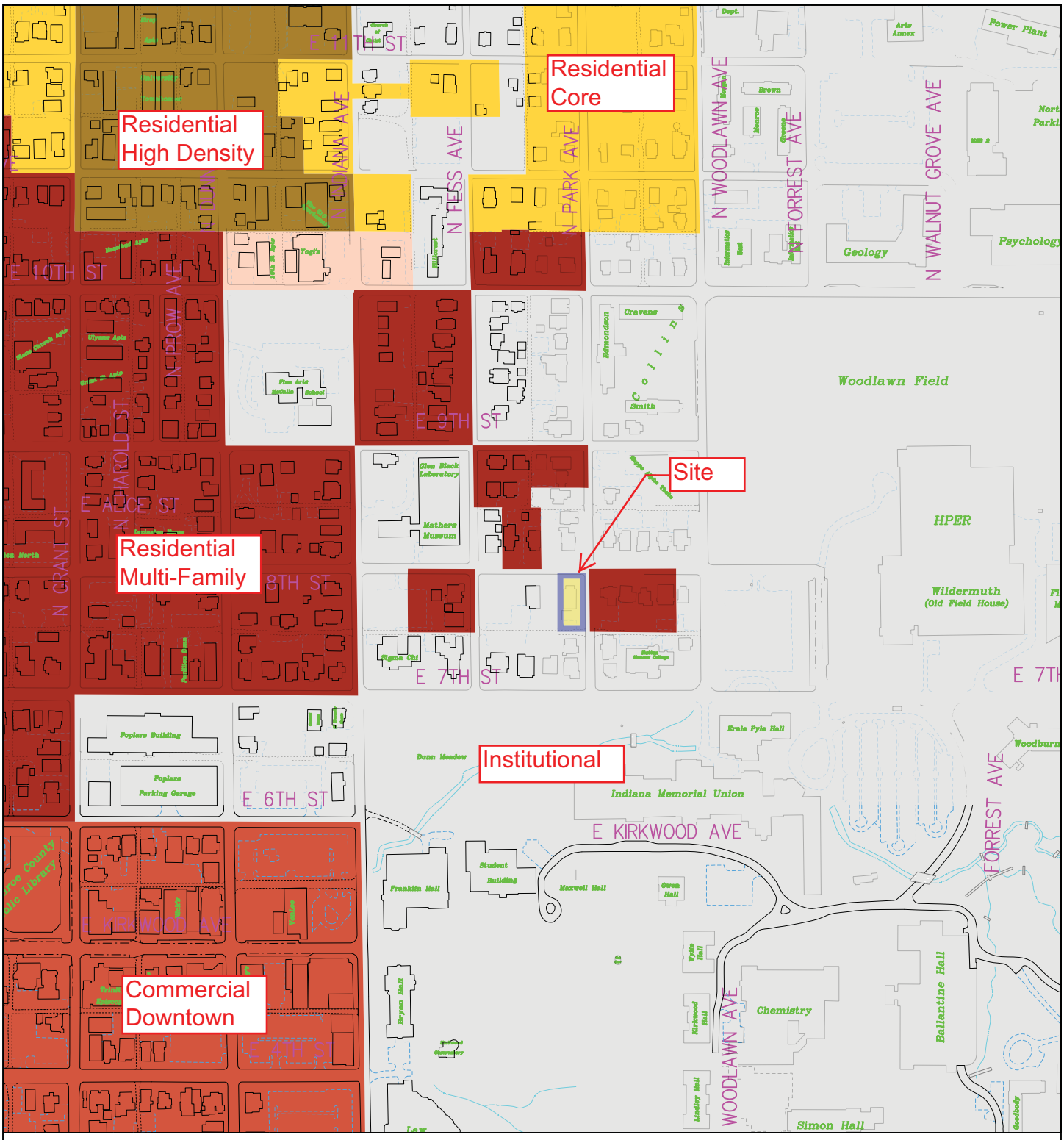
300 0 300 600 900

N

City of Bloomington
Planning

Scale: 1" = 300'

For reference only; map information NOT warranted.



Z0-27-11 Underwood

718 E 8th Street

Plan Commission

2011 Zoning Map

By: greulice

30 Nov 11

400 0 400 800 1200

N

City of Bloomington
Planning

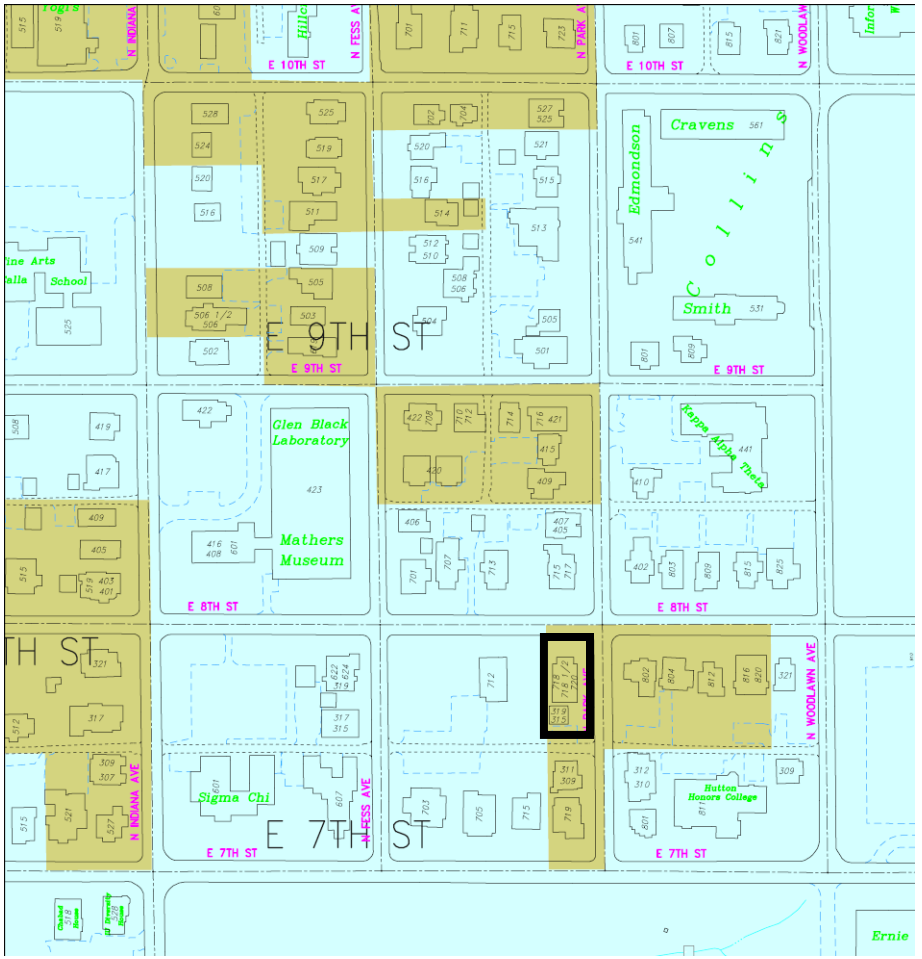
Scale: 1" = 400'

For reference only; map information NOT warranted.

Cheryl Underwood

ZO-27-11

Current Zoning and Growth Policies Plan



To: **Members of the Common Council**
From: **Tom Micuda, Planning Director**
Subject: **Case # ZO-27-11**
Date: **January 13, 2012**

Attached are the materials pertaining to Plan Commission Case # ZO-27-11. Included are the staff reports, petitioner's statement and exhibits reviewed by the Plan Commission at their November 7 and December 5 meetings. The Plan Commission voted 9-0 to send this petition to the Common Council with a negative recommendation.

REQUEST: The petitioner, Cheryl Underwood, is requesting that the property be rezoned from Institutional (IN) to Residential Multifamily (RM).

BACKGROUND:

Area:	0.18 acres
Current Zoning:	IN
GPP Designation:	Core Residential
Existing Land Use:	5 multifamily units over 2 structures
Surrounding Uses:	North – Residential; IU Trustees
	South – Residential; IU Foundation
	East – Residential; Private Ownership
	West – History Department offices; IU Trustees

REPORT: The petitioner is requesting to rezone property located at 718 East 8th Street from Institutional (IN) to Residential Multifamily (RM). The petitioner owns a 5-unit rental property located at the southwest corner of East 8th Street and Park Avenue. The property contains two structures and is registered for 5 multifamily units containing 9 bedrooms and a 14 person occupant load.

Between 1973 and 2007, the property was zoned medium density multifamily. The petitioner has been an owner or agent of the property since approximately 1993. In 2007, as part of the City's creation of the Unified Development Ordinance as well as the update of the City-wide zoning map, the property was rezoned from RM to IN. This zoning change was made for two principal reasons:

1) The property is located in an area designated by Indiana University as part of its campus master plan. Between 7th Street, Indiana Avenue, 10th Street, and Woodlawn Avenue, Indiana University currently owns approximately 82 lots while approximately 39 lots are owned by private parties.
2) The block face on the south side of 8th Street, between Park and Fess, contains 5 parcels. Four of the 5 parcels are owned by Indiana University.

Given that the petitioner's site is located within the University's Master Plan area, the University is the dominant lot owner in this area, and the University is the prevailing owner on many individual block faces, Planning staff opted to recommend rezoning this property and some other privately held properties

Institutional rather than Multifamily. Essentially, staff reviewed property ownership on a block by block basis. In cases where Indiana University ownership was clearly more dominant, multifamily zoned properties were rezoned Institutional. The Official Zoning Map was eventually adopted by the City Council in 2007.

During the UDO and zoning map update process, the Planning Department did not opt to notify all property owners who could potentially be affected by this and other zoning map changes. Rather, staff relied on substantial media coverage, public open house meetings, and the lengthy public review process to give property owners an opportunity to bring up concerns about any potentially negative zoning map proposals. The petitioner was not specifically notified, nor did she know that the property was being rezoned from Residential Multifamily to Institutional. For the record, staff notes that this notification process was never objected to by any Plan Commissioner, Council member, or property owner while the zoning map updates were being considered.

The petitioner's rezoning request was initiated as part of an enforcement case. In fall of 2010, City staff and the County Building Department discovered that two bedrooms each were added to two of the five units on the property. These bedrooms were added without any permit or approvals from City Planning, HAND, or County Building.

From a zoning perspective, this was a violation under either IN or RM zoning. With the current Institutional zoning, residential uses are not permitted. Therefore, the creation of two more bedrooms in each of the units is considered an illegal expansion of a lawful nonconforming use. If the property was still zoned RM, residential use is clearly permitted. However, the five units on 0.18 acre translate to a density of 28 units per acre. RM zoning allows 7 units per acre. Although the property was clearly grandfathered for the 5 existing units and 9 bedrooms, the addition of 2 bedrooms to 2 of these units required zoning approval. Such approval would never have been granted without variance because the previous density already exceeded RM zoning district limits.

While this zoning violation is still being contested in the legal process, the petitioner has opted to exercise her right to rezone the property even though staff has indicated that the additional bedrooms are still illegal and would not have been permitted under either zoning designation.

ISSUES CONSIDERED IN THE PLAN COMMISSION PROCESS: The following is a list of questions raised during the Plan Commission process:

1. (From the petitioner) Why were privately owned properties in this area zoned Institutional when the purpose of the IN zoning district is to provide regulations for properties associated with public and quasi-public use?

   Answer: Zoning districts are created both for land uses that are currently present on properties as well as land uses that may be reasonably anticipated to occur in the future. Considering that Indiana University is the dominant land owner in the area, the dominant land owner on the block face containing

the petitioner's property, and that the area is contained within the University's Master Plan, an Institutional zoning designation is not an unreasonable approach for the City to take. It is not unusual for zoning districts to create some nonconforming uses such as what is occurring on the petitioner's site.

2. (From the petitioner) – Why was the property rezoned to IN when such a land use was not recommended by the Growth Policies Plan?

Answer: A more detailed explanation to this question can be found in the GPP section below. Staff acknowledges that the staff recommendations concerning RM versus IN zoning in this area were made more based on dominant property ownership rather than strict adherence to the GPP. Parcel specific land use recommendations in the GPP were not made using the same, more rigorous block face analysis as occurred during the UDO process.

3. (From the petitioner/also asked by Commissioners) – Does Institutional zoning prevent changes from being made to the interior of the petitioner's property?

Answer: No. The petitioner or any future private owner may remodel the structure to add non-habitable space such as bathrooms, toilet compartments, closets, hallways, storage or utility space, and similar areas. The petitioner may not add bedrooms, units, living room/family room areas, or kitchen areas without going through a Use Variance process. However, bedrooms, living areas, and kitchens can be "swapped out" as long as the square footage or number of these spaces does not increase.

4. (From the petitioner) – Other properties zoned RM have been allowed by the City to add bedrooms so, by inference, an RM zoning designation would allow the petitioner to legalize the bedroom increases that occurred.

Answer: In situations where properties zoned RM have a single unit and less than 5 bedrooms, the addition of bedrooms up to a maximum of 5 is perfectly permissible according to zoning provided that the new bedrooms meet Property Maintenance Code requirements. As noted above, the swapping of bedrooms in multi-unit situations would also be permitted. In the first Plan Commission hearing, the petitioner noted several properties such as 528 North Washington St. and 816-820 East 8th Street where the petitioner believes that bedrooms have been impermissibly added. Staff has researched both cases and has followed up in an appropriate manner.

5. (From the Plan Commission) – Is the petitioner's property located on East 8th Street a lawful nonconforming use or a non-lawful nonconforming use? The question is whether the 5 units and 9 bedrooms occurring in the two structures were ever legally established under the controlling zoning ordinance at the time,

Answer: Staff has researched the department's index of Plan Commission and Board of Zoning Appeals approvals. A Board of Zoning Appeals approval was granted in 1980 to allow the garage addressed off Park Avenue to be converted into three apartment units. At the time, the structure at 718 East 8th St. was already acknowledged as being used for a duplex. Based on this approval, the use and density of the project (5 units over 0.18 acres) was determined to comply with the zoning regulations in 1980. This means the property contains a lawful nonconforming use.

6. (From the Plan Commission) – Why would the City want to rezone the property Institutional when the University is not subject to City zoning laws and has the ability to tear down structures? Doesn't this go against the GPP's goal of protecting core neighborhoods?

Answer: Staff cannot rebut this argument. The only answer we can provide is that the area being evaluated is a mixture of Indiana University owned and privately owned properties. The University's ownership dominates both the general area as well as the block face in question. Both public entities, the University and the City, have master plans that overlap. If the GPP recommended Core Residential land uses throughout the area between 10th Street, 7th Street, Woodlawn Avenue, and Indiana Avenue, staff's recommendation would have been to zone the area RM. There's no certainty that the University will tear down the structures or use the property differently from the petitioner.

7. (From petitioner and Plan Commission) – Why weren't the structures located at 622, 707, and 713 East 8th Street zoned Institutional as well?

Answer: For 707 and 713 East 8th Street, they are part of 5 lots that front along 8th Street. Two of these lots are privately owned rentals and three are owned by Indiana University. In this case, the split in ownership caused the staff to recommend having the zoning split as well.

As for 622 East 8th Street, the four lots fronting along 8th Street are split between a private rental and fraternity/sorority. That's why the area was not changed from its previous zoning designation.

8. Could City Planning have notified all property owners who were experiencing some change in zoning in 2007?

Answer: Yes. However, the policy decision of the City over the last two zoning map updates (1995 and 2007) has not been to utilize individual property owner notice. There are pros and cons concerning community-wide notice versus individual property owner notice. The bottom line is that the community-wide notice option was not a point of contention for Plan Commissioners, Council members, and property owners in the time leading up to the 2007 zoning map update. From staff's perspective, the merits of each approach should be discussed in association with future code updates, but should not be used to justify a single rezoning request for a platted lot.

GROWTH POLICIES PLAN: The GPP designates this lot as Core Residential. Obviously, there are discrepancies in how the zoning designations of the general area correspond to the GPP recommended land use designations of Core Residential and Public/Semi-Public/Institution. However, this should not be surprising or of significant concern to the Council because the actual property usage is still residential in nature. The area within the western edge of the IU Campus Master Plan and the eastern edge of the Old Northeast Neighborhood has always been a fine grained mix of public versus private ownership, private rental property and IU rentals, and a mix of institutional style buildings and older historic homes.

With the University's ownership in the area gradually increasing over the years, determining Institutional versus Multifamily zoning has always been a difficult zoning recommendation to make for the Planning staff. If these zoning decisions are only based on property ownership, the zoning map would become quickly out of date once properties change from private to public ownership (or visa versa).

In order to aid the Council's decision making to determine the appropriate zoning for this property, staff is including the following text from Page 30 of the GPP (Core Residential Land Use Policy).

Land Use

The predominant land use for this category is single family residential; however, redevelopment has introduced several uncharacteristic uses such as surface automobile parking, apartments, offices, retail space and institutional activities. This district is designed primarily for higher density single family residential use. The existing single family housing stock and development pattern should be maintained with an emphasis on limiting the conversion of dwellings to multi-family or commercial uses, and on encouraging ongoing maintenance and rehabilitation of single family structures. Multi-family (medium and high-density) residential and neighborhood-serving commercial uses may be appropriate for this district when compatibly designed and properly located to respect and compliment single family dwellings. Neighborhood-serving commercial uses, and possibly even office uses, may be most appropriate at the edge of Core Residential areas that front arterial street locations. More specific land use policies include:

• Allow multi-family redevelopment along designated major streets, in transition areas between the downtown and existing single family residential areas, and when appropriately integrated with adjacent uses per adopted form district requirements.
• Explore opportunities to introduce nodes of appropriately designed, neighborhood scaled commercial uses within the core neighborhoods.
• Discourage the conversion of single family homes to apartments.

FINAL ANALYSIS: In accordance with 20.09.160 (Amendment to Zoning Map), the Council shall base its rezoning decision on the following findings:

(A) The recommendations of the Growth Policies Plan;

Staff Finding: As noted above, staff concludes that the GPP does not provide adequate guidance in either direction. The property specific recommendation is Core Residential while the area-wide recommendation is dominated by a Public/Semi-Public/Institutional land use designation. Both recommendations are clearly valid.

(B) Current conditions and character of structures and uses in each zoning district;

Staff Finding: The structures on the site and surrounding area are located in the University Courts Survey District. For those structures not owned by Indiana University, this means that additions or demolitions of those structures are subject to demolition delay review. The structures are largely residential in character, containing a mixture of institutional and residential land uses. Rezoning the property or larger area to Multifamily Residential would likely provide a greater certainty that these structures would be preserved.

(C) The most desirable use for which the land in each zoning district is adapted;

Staff Finding: Although RM zoning is conventionally associated with residential land uses while IN districts involve uses associated with public and semi-public institutions, the areas surrounding the IU campus are typically associated with both residential and institutional uses contained in residential style buildings. As a result, either zoning district can accommodate the current established residential use of this property.

(D) The conservation of sensitive environmental features;

Staff Finding: This criterion is not applicable since there are no environmental features in question.

(E) The conservation of property values throughout the jurisdiction;

Staff Finding: Although staff and the petitioner disagree on this point, the value of the property is controlled less by zoning but rather because previous development has established five multifamily dwelling units containing nine bedrooms. Because the rezoned property is only 0.18 acres, a change of zoning would have a negligible affect on surrounding property values.

and (F) Responsible development and growth.

Staff Finding: This is the key finding that caused staff to recommend denial of the petition. When evaluating whether a single 0.18 acre platted lot in this neighborhood should be zoned Residential Multifamily or Institutional, staff recommended that the more responsible method for proceeding would be to review the entire multi-block area west of the IU campus. If it is determined that

Institutional zoning should be changed to Residential Multifamily in order to make such zoning precisely consistent with either private property ownership or the Growth Policies Plan, such a determination should be made for the area as a whole rather than for an individual platted lot surrounded by IN zoning and university ownership on three of four sides.

Additionally, taking an area-wide approach to the zoning issue rather than a single lot approach makes more sense because if zoning changes end up being proposed by staff, full property owner notification and input from the University and Old Northeast Neighborhood could be incorporated. Finally, making an area-wide zoning decision would eliminate the need for the Plan Commission and Council to make additional lot by lot rezoning decisions in the future.

RECOMMENDATION: The Plan Commission recommended that this rezoning request be forwarded to the Common Council with a denial recommendation of 9:0. However, the Plan Commission did adopt a resolution by a 7:2 vote directing staff to review the zoning procedure followed. The goal is for staff to revisit the Plan Commission with a new proposal some time later in 2012.

BLOOMINGTON PLAN COMMISSION **CASE #: ZO-27-11**
FINAL REPORT **DATE: December 5, 2011**
LOCATION: 718-720 East 8th Street

PETITIONER: Cheryl Underwood
718-720 East 8th Street, Bloomington, IN

REQUEST: The petitioner is requesting that the property be rezoned from Institutional (IN) to Residential Multifamily (RM).

BACKGROUND:

Area:	0.18 acres
Current Zoning:	IN
GPP Designation:	Core Residential
Existing Land Use:	5 multifamily units over 2 structures
Surrounding Uses:	**North –** Residential; IU Trustees
	South – Residential; IU Foundation
	East – Residential; Private Ownership
	West – History Department offices; IU Trustees

REPORT: This is the second and final hearing report for a request from the petitioner to rezone property located at 718-720 East 8th Street from Institutional (IN) to Residential Multifamily (RM). The petitioner owns a 5-unit rental property located at the southwest corner of East 8th Street and Park Avenue. The property contains two structures and is registered for 5 multifamily units containing 9 bedrooms and a 14 person occupant load.

Between 1973 and 2007, the property was zoned medium density multifamily. The petitioner has been an owner or agent of the property since approximately 1993. In 2007, as part of the City's creation of the Unified Development Ordinance as well as the update of the City-wide zoning map, the property was rezoned from RM to IN. This zoning change was made for two principal reasons:

1) The property is located in an area designated by Indiana University as part of its campus master plan. Between 7th Street, Indiana Avenue, 10th Street, and Woodlawn Avenue, Indiana University currently owns approximately 82 lots while approximately 39 lots are owned by private parties.
2) The block face on the south side of 8th Street, between Park and Fess, contains 5 parcels. Four of the 5 parcels are owned by Indiana University.

Given that the petitioner's site is located within the University's Master Plan area, the University is the dominant lot owner in this area, and the University is the prevailing owner on the petitioner's particular block face, Planning staff opted to recommend rezoning this property and some other privately held properties Institutional rather than Multifamily. Essentially, staff reviewed property

ownership on a block by block basis. In cases where Indiana University ownership was clearly more dominant, multifamily zoned properties were rezoned Institutional. The Official Zoning Map was eventually adopted by the City Council in 2007.

During the UDO and zoning map update process, the Planning Department did not opt to notify all property owners who could potentially be affected by this and other zoning map changes. Rather, staff relied on substantial media coverage, public open house meetings, and the lengthy public review process to give property owners an opportunity to bring up concerns about any potentially negative zoning map proposals. The petitioner was not specifically notified.. For the record, staff notes that this notification process was never objected to by any Plan Commissioner, Council member, or property owner while the zoning map updates were being considered and is consistent with how zoning maps have been updated in the past by the City.

The petitioner's rezoning request was initiated as part of an enforcement case. In fall of 2010, City staff and the County Building Department discovered that two bedrooms each were added to two of the five units on the property. These bedrooms were added without any permit or approvals from City Planning, HAND, or County Building.

From a zoning perspective, this was a violation under either IN or RM zoning. With the current Institutional zoning, residential uses are not permitted. Therefore, the creation of two more bedrooms in each of the units is considered an illegal expansion of a lawful nonconforming use. If the property was still zoned RM, residential use is clearly permitted. However, the five units on 0.18 acre translate to a density of 28 units per acre. RM zoning allows 7 units per acre. Although the property was clearly grandfathered for the 5 existing units and 9 bedrooms, the addition of 2 bedrooms to 2 of these units required zoning approval. Such approval would never have been granted without a variance because the previous density already exceeded RM zoning district limits.

While this zoning violation is still being contested in the legal process, the petitioner has opted to exercise her right to rezone the property even though staff has indicated that the additional bedrooms are still illegal and would not have been permitted under either zoning designation.

ISSUES RAISED AT FIRST HEARING: The following is a list of questions raised at the November 7 Plan Commission hearing:

1. (From the petitioner) Why were privately owned properties in this area zoned Institutional when the purpose of the IN zoning district is to provide regulations for properties associated with public and quasi-public use?

Answer: Zoning districts are created both for land uses that are currently

present on properties as well as land uses that may be reasonably anticipated to occur in the future. Considering that Indiana University is the dominant land owner in the area, the dominant land owner on the block face containing the petitioner's property, and that the area is contained within the University's Master Plan, an Institutional zoning designation is not an unreasonable approach for the City to take. It is not unusual for zoning districts to create some nonconforming uses such as what is occurring on the petitioner's site.

2. (From the petitioner) – Why was the property rezoned to IN when such a land use was not recommended by the Growth Policies Plan?

Answer: A more detailed explanation to this question can be found in the GPP section below. Staff acknowledges that the staff recommendations concerning RM versus IN zoning in this area were made more based on dominant property ownership rather than strict adherence to the GPP. Parcel specific land use recommendations in the GPP were not made using the same, more rigorous block face analysis as occurred during the UDO process.

3. (From the petitioner/also asked by Commissioners) – Does Institutional zoning prevent changes from being made to the interior of the petitioner's property?

Answer: No. The petitioner or any future private owner may remodel the structure to add non-habitable space such as bathrooms, toilet compartments, closets, hallways, storage or utility space, and similar areas. The petitioner may not add bedrooms, units, living room/family room areas, or kitchen areas without going through a Use Variance process. However, bedrooms, living areas, and kitchens can be "swapped out" as long as the square footage or number of these spaces does not increase.

4. (From the petitioner) – Other properties zoned RM have been allowed by the City to add bedrooms so, by inference, an RM zoning designation would allow the petitioner to legalize the bedroom increases that occurred.

Answer: In situations where properties zoned RM have a single unit and less than 5 bedrooms, the addition of bedrooms up to a maximum of 5 is perfectly permissible according to zoning provided that the new bedrooms *may* need to meet Property Maintenance Code and Indiana Building Code requirements. As noted above, the swapping of bedrooms in multi-unit situations would also be permitted. In the first hearing, the petitioner noted several properties such as 528 North Washington St. and 816-820 East 8th Street where the petitioner believes that bedrooms have been impermissibly added. Staff has researched both cases and will follow up in an appropriate manner.

5. (From the Plan Commission) – Is the property located at 816 East 8th Street a lawful nonconforming use or a non-lawful nonconforming use? The question is whether the 5 units and 9 bedrooms occurring in the two structures were ever legally established under the controlling zoning ordinance at the time

Answer: Staff has researched the department's index of Plan Commission and Board of Zoning Appeals approvals. A Board of Zoning Appeals approval was granted in 1980 to allow the garage addressed off Park Avenue to be converted into three apartment units. At the time, the structure at 718 East 8th St. was already acknowledged as being used for a duplex. Based on this approval, the use and density of the project (5 units over 0.18 acres) was determined to comply with the zoning regulations in 1980. This means the property contains a lawful nonconforming use.

6. (From the Plan Commission) – Why would the City want to rezone the property Institutional when the University is not subject to City zoning laws and has the ability to tear down structures? Doesn't this go against the GPP's goal of protecting core neighborhoods?

Answer: Staff cannot rebut this argument. The only answer we can provide is that the area being evaluated is a mixture of Indiana University owned and privately owned properties. The University's ownership dominates both the general area as well as the block face in question. Both public entities, the University and the City, have master plans that overlap. If the GPP recommended Core Residential land uses throughout the area between 10th Street, 7th Street, Woodlawn Avenue, and Indiana Avenue, staff's recommendation would have been to zone the area RM. There's no certainty that the University will tear down the structures or use the property differently from the petitioner.

7. (From petitioner and Plan Commission) – Why weren't the structures located at 622, 707, and 713 East 8th Street zoned Institutional as well?

Answer: For 707 and 713 East 8th Street, they are part of 5 lots that front along 8th Street. Two of these lots are privately owned and three are owned by Indiana University. In this case, either Planning staff should have also recommended RM zoning for the whole block, or it made the conclusion that 60% University ownership wasn't sufficient.

As for 622 East 8th Street, the four lots fronting along 8th Street are all private in nature, that's why the area was not changed from its previous zoning designation.

8. Could City Planning have notified all property owners who were experiencing some change in zoning in 2007?

Answer: Yes. However, the policy decision of the City over the last two zoning map updates (1995 and 2007) has not been to utilize individual property owner notice. There are pros and cons concerning community-wide notice versus individual property owner notice. The bottom line is that the community-wide notice option was not a point of contention for Plan Commissioners, Council members, and property owners in the time leading up to the 2007 zoning map update. From staff's perspective, the merits of each approach should be discussed in association with future code updates, but should not be used to justify a single rezoning request for a platted lot.

GROWTH POLICIES PLAN: The GPP designates this lot as Core Residential. Obviously, there are discrepancies in how the zoning designations correspond to the GPP recommended land use designations of Core Residential and Public/Semi-Public/Institution. However, this should not be surprising or of concern to the Plan Commission because the actual property usage is still residential in nature. The area within the western edge of the IU Campus Master Plan and the eastern edge of the Old Northeast Neighborhood has always been a fine grained mix of public versus private ownership, private rental property and IU rentals, and a mix of institutional style buildings and older historic homes.

With the University's ownership in the area gradually increasing over the years, determining Institutional versus Multifamily zoning has always been a difficult zoning recommendation to make for the Planning staff. If these zoning decisions are only based on property ownership, the zoning map would become quickly out of date once properties change from private to public ownership (or visa versa).

In order to aid the Plan Commission's decision making to determine the appropriate zoning for this property, staff is including the following text from Page 30 of the GPP (Core Residential Land Use Policy).

Land Use

The predominant land use for this category is single family residential; however, redevelopment has introduced several uncharacteristic uses such as surface automobile parking, apartments, offices, retail space and institutional activities. This district is designed primarily for higher density single family residential use. The existing single family housing stock and development pattern should be maintained with an emphasis on limiting the conversion of dwellings to multi-family or commercial uses, and on encouraging ongoing maintenance and rehabilitation of single family structures. Multi-family (medium and high-density) residential and neighborhood-serving commercial uses may be appropriate for this district when compatibly designed and properly located to respect and compliment single family dwellings. Neighborhood-serving commercial uses, and possibly even office uses, may be most appropriate at the edge of Core Residential areas that front arterial street locations. More specific land use policies include:

• *Allow multi-family redevelopment along designated major streets, in transition areas between the downtown and existing single family residential areas, and when appropriately integrated with adjacent uses per adopted form district requirements.*
• *Explore opportunities to introduce nodes of appropriately designed, neighborhood scaled commercial uses within the core neighborhoods.*
• *Discourage the conversion of single family homes to apartments.*

FINAL ANALYSIS: In accordance with 20.09.160 (Amendment to Zoning Map), the Plan Commission shall base its rezoning decision on the following findings:

(A) The recommendations of the Growth Policies Plan;

Staff Finding: As noted above, staff concludes that the GPP does not provide adequate guidance in either direction. The property specific recommendation is Core Residential while the area-wide recommendation is dominated by a Public/Semi-Public/Institutional land use designation. Both recommendations are clearly valid.

(B) Current conditions and character of structures and uses in each zoning district;

Staff Finding: The structures on the site and surrounding area are located in the University Courts Survey District. For those structures not owned by Indiana University, this means that additions or demolitions of those structures are demolition delay review. The structures are largely residential in character, containing a mixture of institutional and residential land uses. Rezoning the property or larger area to Multifamily Residential would provide a greater certainty that these structures would be preserved.

(C) The most desirable use for which the land in each zoning district is adapted;

Staff Finding: Although RM zoning is conventionally associated with residential land uses while IN districts involve uses associated with public and semi-public institutions, the areas surrounding the IU campus are typically associated with both residential and institutional uses contained in residential style buildings. As a result, either zoning district can accommodate the current established residential use of this property.

(D) The conservation of sensitive environmental features;

Staff Finding: This criterion is not applicable since there are no environmental features in question.

(E) The conservation of property values throughout the jurisdiction;

Staff Finding: Although staff and the petitioner disagree on this point, the value of the property is controlled less by zoning but rather because previous development has established five multifamily dwelling units containing nine bedrooms. Because the rezoned property is only 0.18 acres, a change of zoning would have a negligible affect on surrounding property values.

and (F) Responsible development and growth.

Staff Finding: This is the key finding that causes staff to recommend denial of the petition. When evaluating whether a single 0.18 acre platted lot in this neighborhood should be zoned Residential Multifamily or Institutional, staff recommends that the more responsible method for proceeding would be to review the entire multi-block area west of the IU campus. If it is determined that Institutional zoning should be changed to Residential Multifamily in order to make such zoning precisely consistent with either private property ownership or the Growth Policies Plan, such a determination should be made for the area as a whole rather than for an individual platted lot surrounded by IN zoning and university ownership on three of four sides.

Additionally, taking an area-wide approach to the zoning issue rather than a single lot approach makes more sense because if zoning changes end up being proposed by staff, full property owner notification and input from the University and Old Northeast Neighborhood could be incorporated. Finally, making an area-wide zoning decision would eliminate the need for the Plan Commission and Council to make additional lot by lot rezoning decisions in the future.

RECOMMENDATION: Staff recommends that this rezoning request be forwarded to the Common Council with a denial recommendation. If a majority of the Commission believes that the procedure utilized by staff to make zoning recommendations for this general area was not properly executed, staff is amenable to the adoption of a Plan Commission resolution directing staff to review the zoning procedure followed. The goal would be for staff to revisit the Plan Commission with a new proposal basing its zoning recommendation on either the GPP land use map or the presence of public versus private ownership.

BLOOMINGTON PLAN COMMISSION **CASE #: ZO-27-11**
PRELIMINARY REPORT **DATE: November 7, 2011**
LOCATION: 718-720 East 8th Street

PETITIONER: Cheryl Underwood
718 East 8th Street, Bloomington, IN

REQUEST: The petitioner is requesting that the property be rezoned from Institutional (IN) to Residential Multifamily (RM).

BACKGROUND:

Area:	0.18 acres
Current Zoning:	IN
GPP Designation:	Core Residential
Existing Land Use:	5 multifamily units over 2 structures
Surrounding Uses:	**North –** Residential; IU Trustees
	South – Residential; IU Foundation
	East – Residential; Private Ownership
	West – History Department offices; IU Trustees

REPORT: The petitioner owns a 5-unit rental property located at the southwest corner of East 8th Street and Park Avenue. The property contains two structures and is registered for 5 multifamily units containing 9 bedrooms and a 14 person occupant load. The petitioner has a residence at this address. The current zoning of the property is Institutional (IN). The property is located in the University Courts subdivision, which is located at the eastern end of the Old Northeast neighborhood.

Between 1973 and 2007, the property was zoned medium density multifamily. The petitioner has been an owner or agent of the property since approximately 1993. In 2007, as part of the City's creation of the Unified Development Ordinance as well as the update of the City-wide zoning map, the property was rezoned from RM to IN. This zoning change was made for two principal reasons:

1) The property is located in an area designated by Indiana University as part of its campus master plan. The area, which is depicted in Exhibit #1, encompasses a portion of the Old Northeast Neighborhood and the University Courts subdivision. Between 7th Street, Indiana Avenue, 10th Street, and Woodlawn Avenue, Indiana University currently owns approximately 82 lots while approximately 39 lots are owned by private parties.
2) The block face on the south side of 8th Street, between Park and Fess, contains 5 parcels. Four of the 5 parcels are owned by Indiana University.

Given that the petitioner's site is located within the University's Master Plan area, the University is the dominant lot owner in this section of the Old Northeast

Neighborhood, and the University is the prevailing owner on many individual block faces, Planning staff opted to zone this property and some other privately held properties Institutional rather than Multifamily. Essentially, staff reviewed property ownership on a block by block basis. In cases where Indiana University ownership was more dominant, the block face was zoned Institutional. The petitioner argues, and staff acknowledges, that this zoning decision could have been made strictly by property ownership. In such case, Institutionally zoned property could have been limited strictly to those lots owned by Indiana University. However, staff followed a reasonable, systematic process to give deference to the Indiana University's master plan and dominant ownership in this area. An aerial map of the area with its current zoning designations can be found in Exhibit #2.

During the UDO code and zoning map update process, the Planning Department did not opt to notify all property owners who could potentially be affected by zoning map changes. Rather, staff relied on substantial media coverage, public open house meetings, and the lengthy public review process to give property owners an opportunity to bring up concerns about any potentially negative zoning map proposals. The petitioner was not specifically notified, nor did she know that the property was being rezoned from Residential Multifamily to Institutional.

The petitioner's rezoning request was initiated as part of an enforcement case. In fall of 2010, City staff and the County Building Department discovered that two bedrooms each were added to two of the five units on the property. These bedrooms were added without any permit or approvals from City Planning, HAND, and County Building.

From a zoning perspective, this was a violation under either Institutional or Multifamily zoning. With the current Institutional zoning, residential uses are not permitted. Therefore, the creation of more bedrooms in two of the units constituted an illegal expansion of a lawful nonconforming use. If the property was still zoned Residential Multifamily, residential use is clearly permitted. However, the five units on 0.18 acre translate to a density of 28 units per acre. RM zoning allows 7 units per acre of density. Although the property was clearly grandfathered for the 5 existing units and 9 bedrooms, the addition of 2 bedrooms to 2 of these units required zoning approval. Such approval would never have been granted.

While this zoning violation is still being contested in the legal process, the petitioner has opted to exercise her right to rezone the property even though staff has indicated that the additional bedrooms are still illegal and would not have been permitted under either zoning designation.

GROWTH POLICIES PLAN: The GPP designates this lot as Core Residential. A GPP and zoning map for this particular area can be found in Exhibit #3. Obviously, there are discrepancies in how the zoning designations correspond to

the GPP recommended land use designations of Core Residential and Public/Semi-Public/Institution. However, this should not be surprising or of concern to the Plan Commission because the actual property usage is still residential in nature. The area within the western edge of the IU Campus Master Plan and the eastern edge of the Old Northeast Neighborhood has always been a fine grained mix of public versus private ownership, private rental property and IU rentals, and a mix of institutional style buildings and older historic homes. With the University's ownership in the area gradually increasing over the years, determining Institutional versus Multifamily zoning has always been a difficult zoning decision to make for the Planning staff. If these zoning decisions are only based on property ownership, the zoning map would become quickly out of date once properties change from private to public ownership (or visa versa). A comparison map showing how the area was zoned prior and after the 2007 UDO adoption can be found in Exhibit #4.

In order to aid the Plan Commission's decision making to determine the appropriate zoning for this property, staff is including the following text from Page 30 of the GPP (Core Residential Land Use Policy).

Land Use

The predominant land use for this category is single family residential; however, redevelopment has introduced several uncharacteristic uses such as surface automobile parking, apartments, offices, retail space and institutional activities. This district is designed primarily for higher density single family residential use. The existing single family housing stock and development pattern should be maintained with an emphasis on limiting the conversion of dwellings to multi-family or commercial uses, and on encouraging ongoing maintenance and rehabilitation of single family structures. Multi-family (medium and high-density) residential and neighborhood-serving commercial uses may be appropriate for this district when compatibly designed and properly located to respect and compliment single family dwellings. Neighborhood-serving commercial uses, and possibly even office uses, may be most appropriate at the edge of Core Residential areas that front arterial street locations. More specific land use policies include:

• *Allow multi-family redevelopment along designated major streets, in transition areas between the downtown and existing single family residential areas, and when appropriately integrated with adjacent uses per adopted form district requirements.*
• *Explore opportunities to introduce nodes of appropriately designed, neighborhood scaled commercial uses within the core neighborhoods.*
• *Discourage the conversion of single family homes to apartments.*

From reviewing these recommendations, it's clear from staff's point of view that the Core Residential policy guidance simply doesn't speak to the zoning decision

in question. Because of this, staff recommends that the Commission consider the following issues when making this recommendation to the City Council:

1) Did the Planning staff follow a logical and transparent process when determining Institutional versus Residential Multifamily zoning in this area of the community and for the property under consideration? Staff believes that a reasonable zoning decision was made.
2) Should the zoning designation for this property and others in this area be based on public versus private ownership, or, conversely, should it be made based on dominant public sector ownership and through reasonable deference to the Indiana University Master Plan? In this case, there are arguments for both approaches. While staff wishes to get guidance from the Plan Commission, we also believe that the University's dominant ownership and Master Plan are factors to consider.
3) Does the zoning decision and requested solution have a significant affect on the petitioner's property rights? On this issue, staff points out that the petitioner's 5-unit rental property is approximately four times more dense than what could be developed under the requested RM zoning. This is a 'grandfathered' property whose use and current density can be continued indefinitely by both the petitioner and any future owners. However, the addition of bedrooms to a property with an excessive density would not be permissible under either zoning designation.

RECOMMENDATION: Staff recommends that this rezoning request be forwarded to the December 5 Plan Commission meeting.

Cheryl L. Underwood
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Bloomington, IN 47404
(812)334-0094
cunderwo@homefinder.org

6 October 2011

Planning & Zoning Department
City of Bloomington
401 N Morton St
Bloomington, IN 47404

To Whom It May Concern:

Is it my wish that my property at 718-720 E 8th be returned to its original zoning of Residential-Multi-Family. It was the only property of all the privately owned properties on 8th St between Fess & Woodlawn that was rezoned to INSTITUTIONAL. The intent of INSTITUTIONAL zoning as stated in the Unified Development Ordinance is "for publicly owned properties."

Sincerely,

Cheryl L Underwood

Cheryl L. Underwood

ZO-27-11 Petitioners Statement

received by
10/6/11

20-27-11 Site Plan

City of Bloomington
Planning

By: micudat
6 Oct 11

30 0 30 60 90

N

Scale: 1" = 30'

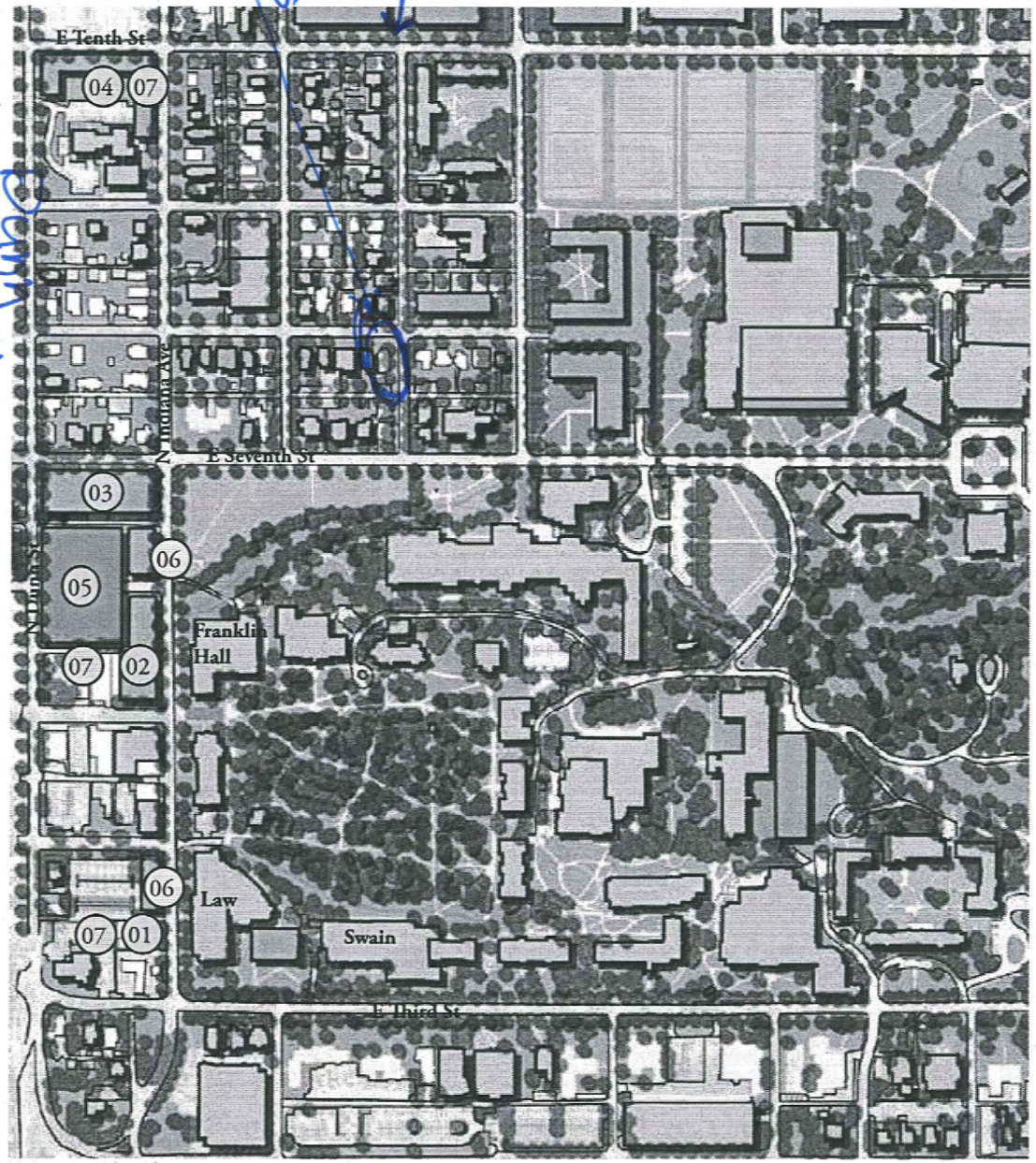
For reference only; map information NOT warranted.

Exhibit #1
IU Master Plan Map for
Westside Campus area

Petitioner's Site

Park Ave

Dunn Street
(western boundary of Master Plan)



KEY
- Existing Building
- Building Opportunity
- Parking Opportunity

University Edge Plan

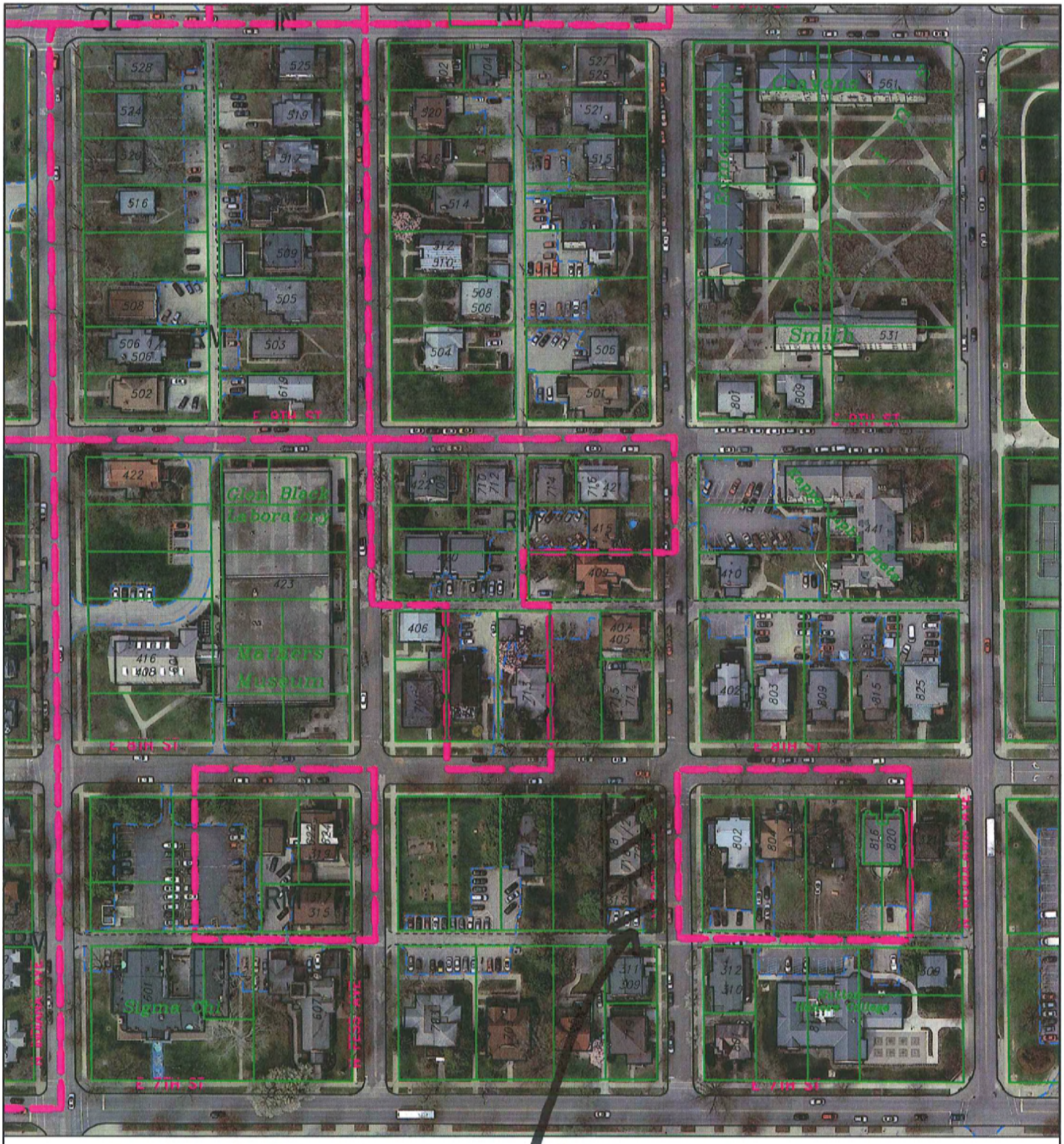


Exhibit #2

20-27-11 Aerial & Zoning Map

By: micudat
3 Nov 11

150 0 150 300 450

N

City of Bloomington
Planning

Scale: 1" = 150'

For reference only; map information NOT warranted.

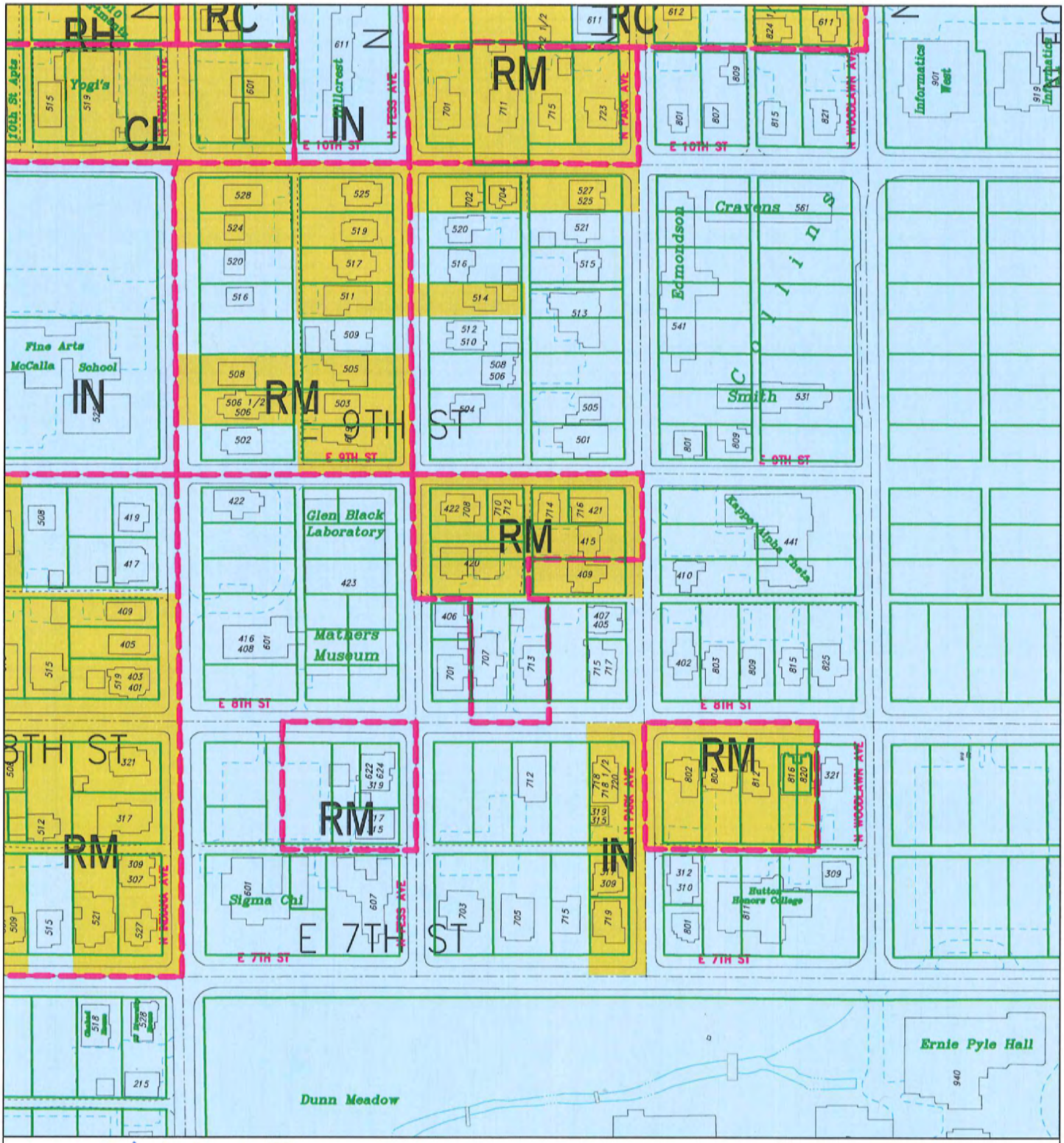


Exhibit #3
Zoning and GPP Map
Zoning boundaries marked by dotted lines
Core Residential shaded in yellow
Institutional shaded in blue

By: micudat
3 Nov 11

200 0 200 400 600

N

City of Bloomington
Planning

Scale: 1" = 200'

For reference only; map information NOT warranted.

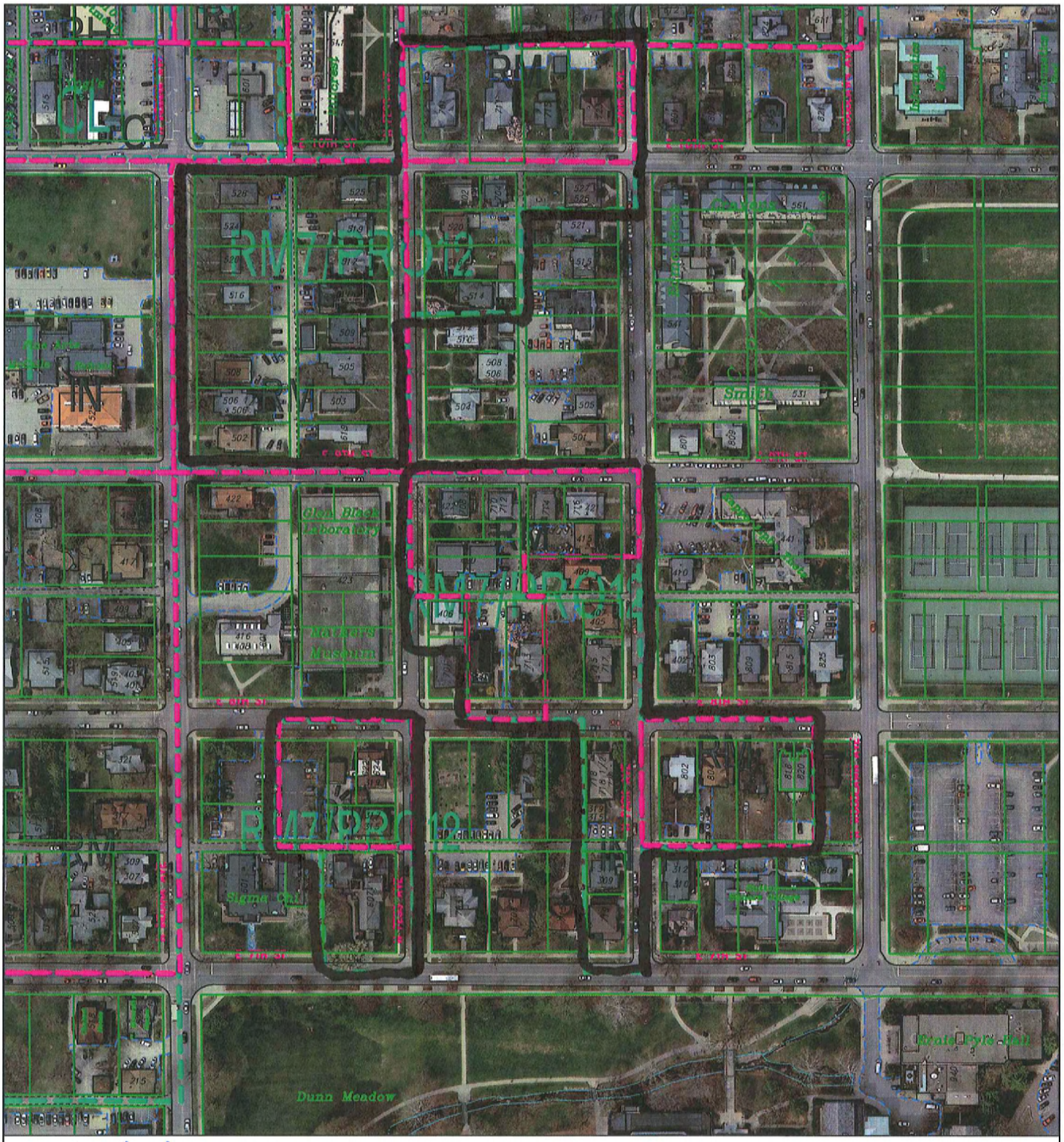


Exhibit #4 - Zoning Comparison
Black Areas - Pre-UDO zoning
Dotted Pink Areas - New Zoning

By: micudat
3 Nov 11

200 0 200 400 600

N

City of Bloomington
Planning

Scale: 1" = 200'

For reference only; map information NOT warranted.

Bloomington Municipal Code
Unified Development Ordinance (Title 20)
Institutional (IN) and Residential Multifamily (RM)

20.02.490 - Institutional (IN)—District intent.

The IN (institutional) district is intended to be used as follows:

> Provide regulations for properties owned by state, county, city, and quasi-public institutions; including but not limited to parks, schools, cemeteries, golf courses, and other facilities.

Plan commission/board of zoning appeals guidance:

> Ensure that institutional uses are adequately distributed throughout the community to prevent segments from being under served.
>
> Institutional uses should be located in areas that contain adequate public services. In particular, educational uses must be accessible via all modes of transportation.
>
> Encourage proposals that further the growth policies plan goal of sustainable development design featuring conservation of open space, mixed uses, pervious pavement surfaces, and reductions in energy and resource consumption.

20.02.500 - Institutional (IN)—Permitted uses.

Cemetery/mausoleum

Communication facility

Community center

Fraternity house/sorority house

Golf course

Government office

Government operations (non-office)

Group care home for developmentally disabled*

Group care home for mentally ill*

Group/residential care home*

Library

License branch

Museum

Outdoor Storage*

Park

Parking structure

Place of worship

Police, fire or rescue station

Post office

Recreation center

School, preschool

School, primary/secondary

School, trade or business

Transportation terminal

University or college

Utility substation and transmission facility*

* Additional requirements refer to Chapter 20.05, SC: Special Conditions Standards.

20.02.510 - Institutional (IN)—Conditional uses.

Crematory

Day-care center, adult*

Day-care center, child*

Historic adaptive reuse*

Homeless shelter jail*

Jail*

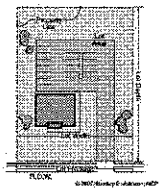
Juvenile detention facility*

Prison*

Rehabilitation clinic

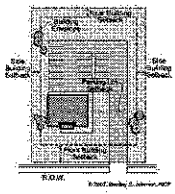
* Additional requirements refer to Chapter 20.05, CU: Conditional Use Standards.

20.02.520 - Institutional (IN)—Development standards.



Minimum lot area: 21,780 square feet

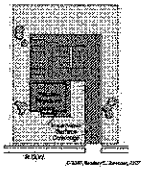
Minimum lot width: 50 feet



Minimum front building setback: 15 feet from the proposed right-of-way indicated on the thoroughfare plan

Minimum side building setback: 10 feet

Minimum rear building setback: 10 feet



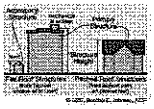
Maximum impervious surface coverage: 60% of the lot area

Minimum parking setback:

Front: 20 feet behind primary structure's front building wall

Side: 10 feet

Rear: 10 feet



Maximum structure height:

Primary structure: 50 feet

Accessory structure: 30 feet

Additional Development Standards that Apply	
Accessory Structure (AS)	
AS-01	Page 529
AS-05	Page 530
Alternative Transportation (AT)	
AT-01	Page 531
AT-02	Page 534
AT-03	Page 534
AT-05	Page 535
Architectural (AG)	
AG-01	Page 536
Communication Facilities (CF)	
CF-01	Page 538
Conditional Use (CU)	
CU-01	Page 541
CU-02	Page 542
CU-03	Page 543
CU-07	Page 544
CU-08	Page 544
CU-10	Page 545
Drainage Standards (DS)	
DS-01	Page 545
Entrances/Drives (ED)	
ED-01	Page 546
Environmental (EN)	
EN-01	Page 548
EN-02	Page 549
EN-03	Page 550
EN-04	Page 551
EN-05	Page 553
EN-06	Page 554
EN-07	Page 555
EN-08	Page 555
Fence and Wall	

20.02.130 - Residential multifamily (RM)—District intent.

The RM (residential multifamily) district is intended to be used as follows:

Allow medium density residential development to ensure an adequate mix of housing types throughout the community.

Facilitate compact development patterns in locations where there are high levels of public infrastructure capacity.

Plan commission/board of zoning appeals guidance:

Discourage the location of student-oriented housing distant from the main Indiana University Bloomington Campus.

Restrict the location of new multifamily development to areas serviced by public transportation.

Encourage proposals that further the growth policies plan goal of sustainable development design featuring conservation of open space, mixed uses, pervious pavement surfaces, and reductions in energy and resource consumption.

20.02.140 - Residential multifamily (RM)—Permitted uses.

Artist studio

Community center*

Community garden*

Dwelling, multifamily

Dwelling, single-family (attached)

Dwelling, single-family (detached)*

Group care home for developmentally disabled*

Group care home for mentally ill*

Group/residential care home*

Park

Recreation center*

Rooming house*

Urban architecture

Utility substation and transmission facility*

* Additional requirements refer to Chapter 20.05, SC: Special Conditions Standards.

20.02.150 - Residential multifamily (RM)—Conditional uses.

Bed and breakfast*

Day-care center, adult*

Day-care center, child*

Historic adaptive reuse*

Library

Museum

Place of worship

Police, fire or rescue station

Restaurant, limited service*

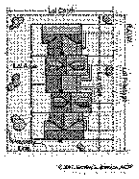
Retail, low intensity*

School, preschool

School, primary/secondary

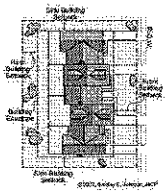
* Additional requirements refer to Chapter 20.05, CU: Conditional Use Standards.

20.02.160 - Residential multifamily (RM)—Development standards.



Minimum lot area for subdivision: 21,780 square feet

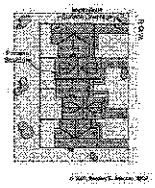
Minimum lot width: 85 feet



Minimum front building setback: 15 feet from the proposed right-of-way indicated on the thoroughfare plan; or the block face average setback of the existing primary structures on the same block face, whichever is more

Minimum side building setback: 15 feet

Minimum rear building setback: 15 feet



Maximum impervious surface coverage: 40% of the lot area

Maximum density:

7 units/acre (6,223 square feet per dwelling unit)

21 units/acre (2,074 square feet per dwelling unit) for the total net acreage (gross acreage minus acres set aside due to environmental constraints) provided that the maximum gross density does not exceed 7 units per acre (6,223 square feet per dwelling unit) over the entire development

Dwelling unit equivalents:

Five-bedroom unit = 2 units;

Four-bedroom unit = 1.5 units;

Three-bedroom unit = 1.0 unit;

Two-bedroom unit with less than 950 square feet = 0.66 of a unit;

One-bedroom unit with less than 700 square feet = 0.25 of a unit;

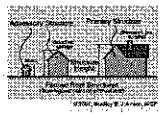
Efficiency or studio unit with less than 550 square feet = 0.20 of a unit.

Minimum parking setback:

Front: 20 feet behind primary structure's front building wall

Side: 7 feet

Rear: 7 feet



Maximum structure height:

Primary structure: 40 feet

Accessory structure: 20 feet

Additional Development Standards that Apply	
Accessory Structure (AS)	
AS-01	Page 529
Affordable Housing (AH)	
AH-01	Page 530
Alternative Transportation (AT)	
AT-01	Page 531
AT-02	Page 534
AT-04	Page 534
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AG-02	Page 537
AG-03	Page 538
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EN-05	Page 553
EN-06	Page 554
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