

CITY OF BLOOMINGTON



May 24, 2018 @ 5:30 p.m.
COUNCIL CHAMBERS #115
CITY HALL

ROLL CALL

MINUTES TO BE APPROVED: February 15, 2018
March 22, 2018

REPORTS, RESOLUTIONS, AND COMMUNICATIONS:

PETITIONS CONTINUED TO: June 21, 2018

AA-12-18 **Bryan Rental, Inc.**
3175 W. 3rd St.
Request: Administrative Appeal from Staff's decision regarding limiting the size of
an individual tenant panel.
Case Manager: Eric Greulich

PETITIONS:

V-05-18 **Shahyar Daneshgar**
703 W. 9th St.
Request: Variance from front yard setback standards to build a porch in the
Residential Core (RC) zoning district.
Case Manager: Jackie Scanlan

AA-09-18 **U.J. Eighty (UJ80) Corporation**
1640 N. Jordan Ave.
Request: Administrative Appeal of Staff's decision to issue two Notices of
Violation of non-compliance with the *Unified Development Ordinance (UDO)*
Section 20.02.500
Case Manager: Jackie Scanlan

UV-13-18 **UJ Eighty (UJ80) Corporation**
1640 N. Jordan Ave.
Request: Use Variance to allow a single-family detached dwelling in the
Institutional (I) zoning district.

V-14-18 **Michael Boulton (Storage Express)**
606 W. Gourley Pike
Request: Variance from landscaping standards to allow riprap to be placed
around the perimeter of a building without landscaping.
Case Manager: Eric Greulich

AA-15-18 **BMI Properties, LLC**
1000 & 1002 E. Atwater Ave.
Request: Administrative Appeal of issuance of Notice of Violation (NOV).
Manager: Jackie Scanlan

****Next Meeting: June 21, 2018**

Last Updated: 2/22/2018

PETITIONER: **Shahyar Daneshgar**
 703 W. 9th Street, Bloomington

REQUEST: The petitioner is requesting a variance from front yard building setback standards in the Residential Core (RC) zoning district to allow the construction of an enclosed porch.

REPORT: The site is located at the southwest corner of 9th and Fairview Streets and is zoned Residential Core (RC). Surrounding properties to the west, south, and east are also zoned RC and have been developed with single-family structures. The property across 9th Street to the north is zoned Institutional (IN) and is Reverend Butler Park.

The petition site is used as a single-family residence and was built around 1900 per County records. The petitioner is proposing to construct a new covered porch on the north (or front) of the structure. Previously, a deck existed in that space, but has since been removed. The dimensions of the house as compared with other homes in the neighborhood, suggest that the front portion of the house may have been a covered porch which was enclosed at some time in the past.

The existing structure is 8.5 feet from the right-of-way line. However, the right-of-way line does not appear to be at the back of the sidewalk, as it is in many neighborhoods. The line appears to be at least 10 feet behind the back on the sidewalk and 8.5 feet from the house.

The petitioner's build-to-line is defined as:

15 feet from the proposed right-of-way indicated on the Thoroughfare Plan; or the block face average setback of the existing structures on the same block face, whichever is less.

Because the existing houses on the block face are all currently in line and are less than 15 feet from the right-of-way line, a variance for the porch is required.

The petitioner is requesting a variance from the defined front yard building setback (the build-to-line described above) in order to allow an 8 foot porch to be built on the front of the house, leaving .5 feet between the structure and the right-of-way line.

CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

Front Yard Setback

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.*

PROPOSED FINDING: No injury is found with the petition request. The lot is developed with a single family residence, and the petitioner is requesting a covered porch. Many of the houses in the surrounding area contain covered porches. The porch would be .5 feet from the right-of-way line, but roughly 10.5 feet behind the southern edge of the sidewalk. The porch addition will not have a negative effect on the pedestrian realm.

- 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.*

PROPOSED FINDING: No negative effect from the construction of a porch is expected. The use on the lot will remain as single-family, and the addition of the porch is similar in style to the character of the area where two of the three other houses on the block have open covered porches.

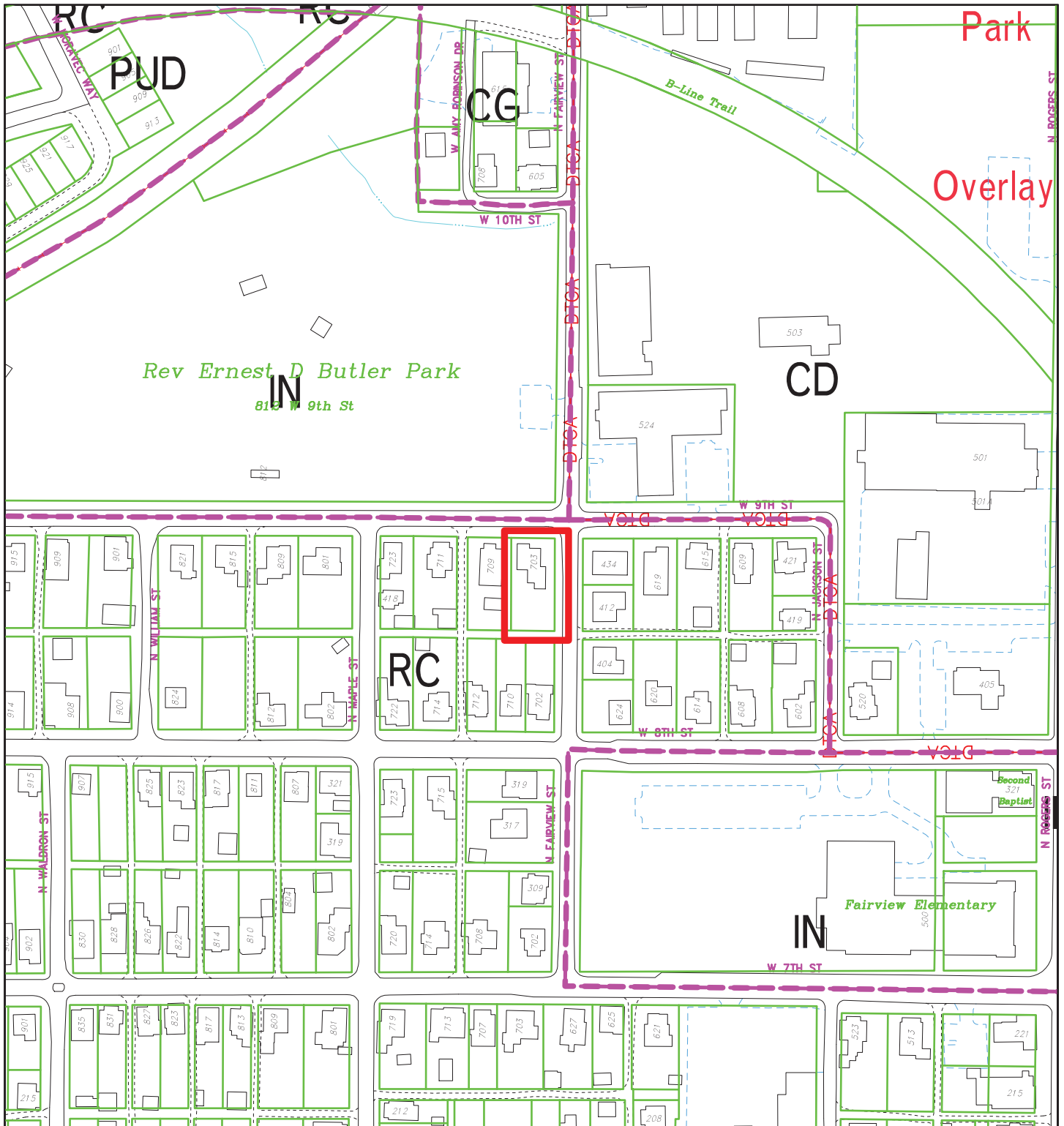
- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

PROPOSED FINDING: Practical difficulty is found in that requiring the structure to meet the build-to-line requirements restricts the addition of the open covered porch, which is a feature of the houses in this area because the current setback is in line with the other houses on the block, which establishes the location of the build-to-line. However, a build-to-line is included in the RC zoning district because development closer to the road is desired. While the house may have had an open porch that was closed in decades ago, further development of the use of the house does not allow the opening of that area. Peculiar condition is also found in the excessive portion of right-of-way between the existing house and the back of the sidewalk. The addition will not impede the comfort of users of the sidewalk and may improve the relationship between the property and the public space by creating the outdoor living space. Peculiar condition is also found in the topography of the lot. The existing house sits 4 to 6 feet above the sidewalk and the addition of the porch will improve the usability of that portion of the lot.

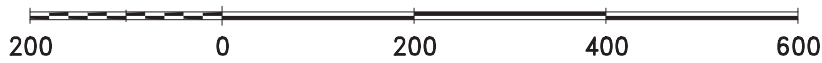
RECOMMENDATION: The Department recommends that the Board of Zoning Appeals adopt the recommended findings and approve of V-05-18 with the following conditions:

1. The variance is only for an 8 foot deep covered porch. Enclosure of the porch is not included in this variance approval.
2. Issuance of a building permit is required for construction of the porch.
3. The petitioner shall record a Zoning Commitment which state that the petitioner shall agree to forgo any damages during the acquisition of any needed property for the widening of 9th Street that would be incurred due to the approval of this

variance. This commitment must be recorded in the Monroe County Recorder's Office prior to release of any building permit related to this variance.



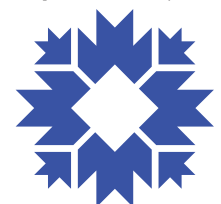
By: scanlanj
18 May 18



For reference only; map information NOT warranted.



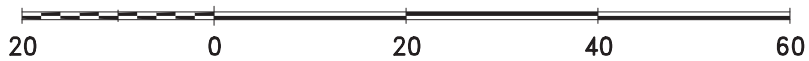
City of Bloomington
Planning & Transportation



Scale: 1" = 200'



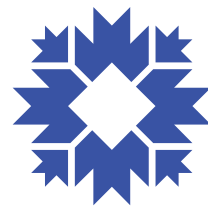
By: scanlanj
18 May 18



For reference only; map information NOT warranted.



City of Bloomington
Planning & Transportation



Scale: 1" = 20'

March, 6, 2018

To: Planning and Transportation Department: Board of Zoning Appeals

Subject: Request for permission to build a porch:

Dear Board of Zoning Appeals Members:

My name is Shahyar Daneshgar, residing at 703 West Ninth St, located in the Near Westside Neighborhood. I have lived in my house since 1996. Before I moved in, the previous owner had built a deck with elaborate railing and steps that covered the original steps running all the way to the street. We only discovered these original steps much later, when I had the house insulated. The deck survived for some 30 years, until it became unusable and had to be removed. At that point, I decided to replace it with a porch.

I have decided to build an environmentally friendly porch made of composite board. The width of the board will be 8' long. In the entire Near Westside Neighborhood around 6th, 7th, 8th and 9th streets, my house is the only house which I am aware of that does not have a porch. My contactor applied for a permit to build the porch from the city's Planning and Transportation Department last December. We were told that we have to meet certain requirements before being granted permission. Meanwhile, the main entrance to the house where the old deck was taken down appears very unsightly.

I believe I have now fulfilled all the requirements stipulated by the Planning and Transportation Department. I have secured the support of the Bloomington historical preservation society: They have approved the construction and confirmed that it does not violate their rules and regulations. Likewise, I have the support of my neighbors: They feel that the addition of the porch would only enhance the beauty of the neighborhood, and they are eager for this to happen soon because, currently, the main entrance to the house looks unsightly.

I look forward to getting the necessary permit as soon as possible so that I can once again sit on my porch and enjoy the beautiful view of Butler Park facing my house – something I have not been able to do for the past twenty-two years. Thank you for your consideration.

Respectfully,


Shahyar Daneshgar

703 West Ninth St.

Bloomington, IN 47404

Philip O. Tapp & Company, Inc.

BOUNDARY SURVEY
LOT 28 FAIRVIEW ADD.

BLOOMINGTON, IN 9TH ST.(53' R/W)

JOB #6290

62.00'



10'

8.5'

11'

PE FD,
TALL

SCALE: 1"=40'

5/8" REBAR/YELLOW
CAP SET FLUSH

EXIST. HOUSE

132.00'

N00°29'02"E

9.5'

N00°29'02"E

132.00'

11'

28

61'

5/8" REBAR/YELLOW
CAP SET FLUSH

62.00'

S89°40'53"E

FAIRVIEW ST.(40' R/W)

NOTE:

1. FIELD WORK COMPLETED 2-6-18.
2. ALL 5/8" REBAR/YELLOW CAP SET ARE STAMPED: TAPP 80900014
3. BASIS OF BEARING IS FROM STATE PLANE COORDINATES BY GPS SURVEY.

SHEET 1 OF 1

5040 Lizzy Lane

Bloomington, IN 47403

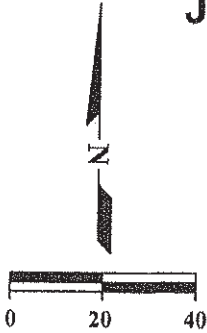
Phone: 812-327-8522 - Fax:812-825-5703

I affirm under penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. Philip O. Tapp



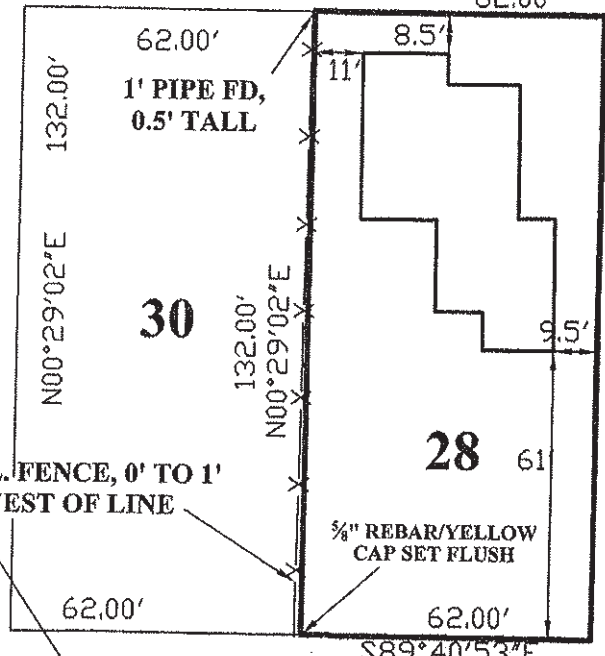
Philip O. Tapp & Company, Inc.

**BOUNDARY SURVEY
LOT 28 FAIRVIEW ADD.
BLOOMINGTON, IN
JOB #6290**



SCALE: 1"=40'

9TH ST.(53' R/W)



**5/8" REBAR/YELLOW
CAP SET FLUSH**
N00°29'02"E
132.00'
132.00'

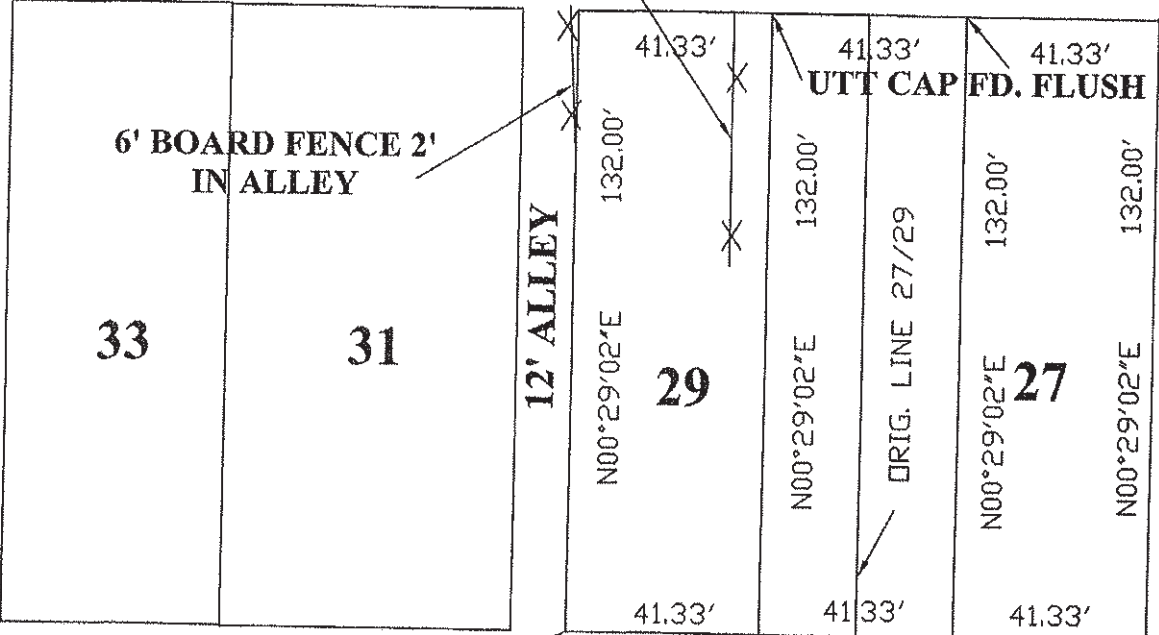
FAIRVIEW ST.(40' R/W)

**4' C.L. FENCE, 0' TO 1'
WEST OF LINE**

**6' BOARD FENCE 8' OFF
PROP. LINE.**

12' ALLEY

MAPLE ST.(40' R/W)



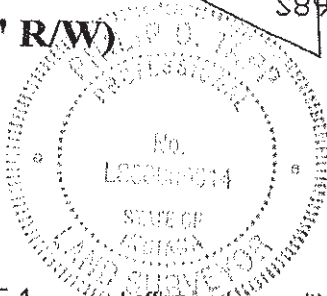
MAG NAIL FD, FLUSH

8TH ST.(60' R/W)

UTT CAP FD. FLUSH

NOTE:

1. FIELD WORK COMPLETED 2-8-18.
2. ALL 5/8" REBAR/YELLOW CAP SET ARE STAMPED: TAPP 80900014
3. BASIS OF BEARING IS FROM STATE PLANE COORDINATES BY GPS SURVEY.



Philip O. Tapp
2/8/2018

**SHEET 1 OF 1
5040 Lizzy Lane
Bloomington, IN 47403**

I affirm under penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. Philip O. Tapp

Phone: 812-327-8522 - Fax: 812-825-5703



Dear Madam/ Sir,

I have lived in Near Westside Neighborhood for the last 15 years, at 810 W 7th Street. For 12 years, I actively took part in this neighborhood association. In fact, one of the reasons that I moved to this neighborhood, was several friends of mine also lived in this neighborhood. One of such friends is Shahyar Daneshgar whose house is a block away from mine.

He has been trying to improve his house for years now. He wants to add a porch that will enrich his life and add character to our neighborhood. Almost every house in this neighborhood has a porch, except Shahyar's.

Would you be kind enough to let this gentleman add a porch to his house? He promised to have a chicken barbecue dinner to celebrate the erection of his new porch! You allow the porch and we will bend his arm, to have the barbecue.

Thank you for your consideration of the porch and laughter about the barbecue.

Burhan Elturan
810 W 7th Street
Bloomington, In. 47404
(812) 671-5474



Jan. 16, 2018

Planning and Transportation
City of Bloomington
401 N. Morton St.
Bloomington, IN 47404

710 W. 8th St.
Bloomington, IN 47404

Dear Sir/Madam:

Shahyar Daneshgar talked to me about building a porch on his property at 703 W. 9th St. He asked me to write in support of the project. I have no objection to the construction of the porch on his property. I welcome his plan for building a porch, as he has had no porch the last few years. A new porch would be an improvement from my point of view. Any enhancement in the neighborhood benefits all of the Near Westside neighborhood.

Thank you for your time. Please let me know if you have any questions regarding my letter of support.

Sincerely,

A handwritten signature in black ink that reads "Katherine Pastel". The signature is written in a cursive style.

Katherine Pastel

Near West Side Neighborhood Association
<http://nearwestside.bloomington.in.us/>
Bloomington, IN 47404

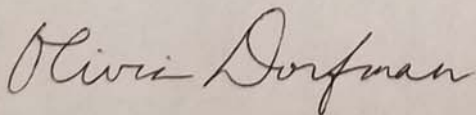
March 26, 2018

Dr. Shahyar Daneshgar
703 West Ninth St
Bloomington, IN 47404

Dear Dr. Daneshgar,

At the meeting of the Near West Side Neighborhood Association on March 20, 2018, we voted unanimously to approve your plan to construct an 8' x 14' deck in front of your house on 9th St. We understand that this plan requires a variance from the City of Bloomington, and we hereby request that your variance be granted.

Sincerely,

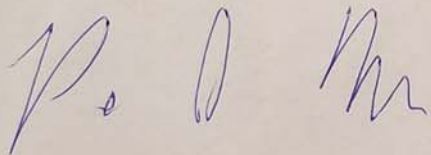


Olivia Dorfman
Secretary
Near West Side Neighborhood Association

TO WHOM IT MAY CONCERN,

I SUPPORT SHAHYAR DANESHVAR'S REQUEST FOR A SETBACK VARIANCE. I AM HIS NEIGHBOR TO THE SOUTH AND HAVE SEEN THE CONSIDERABLE EFFORTS THAT HE'S BEEN MAKING TO IMPROVE HIS PROPERTY. THESE EFFORTS ILLUSTRATE AND EXEMPLIFY THE SPIRIT OF THE NEAR WEST SIDE AND ARE A CREDIT TO THE NEIGHBORHOOD. THANK YOU

BEST,



PETER J MCCOBB
702 W. 8TH ST.
25 MAR 18

BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
Location: 1640 N. Jordan Avenue

CASE #: AA-09-18
DATE: May 24, 2018

PETITIONER: UJ Eighty Corporation
 444 Lake Cook Road #11, Deerfield, IL

COUNSEL: Manley Burke
 225 W. Court Street, Cincinnati, OH

REQUEST: The petitioners is requesting an administrative appeal to the Planning Department’s (the “Department”) decision to issue two Notices of Violation of non-compliance with the Unified Development Ordinance Section 20.02.500.

REPORT: This appeal request is the result of a non-permitted land use enforcement action against a building located at 1640 N. Jordan Avenue. The property is located on the north side of Jordan Avenue between N. Fisher Court and E. Balfour Street. This property is zoned Institutional (IN). The violation is a result of at least one individual living in the structure after a fraternity that occupied the property had vacated the building.

As shown below, Section 20.02.500 of the Unified Development Ordinance (“UDO”) permits twenty six (26) uses within the IN zoning district:

20.02.500 Institutional (IN); Permitted Uses	
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • school, preschool • school, primary/secondary • school, trade or business • transportation terminal • university or college • utility substation and transmission facility*

Additionally, Section 20.02.510 of the UDO allows the following nine (9) conditional uses within the IN zoning district:

20.02.510 Institutional (IN); Conditional Uses
<p>*Additional requirements refer to Chapter 20.05; §CU: Conditional Use Standards.</p> <ul style="list-style-type: none">• crematory• day-care center, adult*• day-care center, child*• historic adaptive reuse*• homeless shelter• jail*• juvenile detention facility*• prison* • rehabilitation clinic

Five (5) of the permitted uses would typically involve a residential component in the primary use of the property. Those uses are: Fraternity/Sorority House; Group Care Home for Developmentally Disabled; Group Care Home for Mentally Ill; Group/Residential Care Home; and University of College.

Section 20.11.020 of the UDO defines the ‘Fraternity/Sorority House’ as:

“A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students who meet the following requirements: all students living in the building are enrolled at the Indiana University Bloomington campus; and Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition. Shall also include a building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.”

The Planning and Transportation Department was informed that, as of February 18, 2018, the occupancy of the property could no longer meet the definition of ‘fraternity/sorority house’ as defined by the Unified Development Ordinance, as the fraternity on the site was no longer sanctioned by Indiana University.

On February 20, 2018, the Department was informed by the City Legal Department that two individuals were still occupying the property. Since residential occupancy outside of the five (5) listed above uses is not a permitted use in IN zoning district, a Notice of Violation was issued on February 22, 2018. Upon speaking with the property owner on February 27, 2018, a second Notice of Violation was issued on February 28, 2018 to correct technical deficiencies in the first.

The owner and agent have requested an appeal of the City’s decision to issue the Notices of Violation on the following basis:

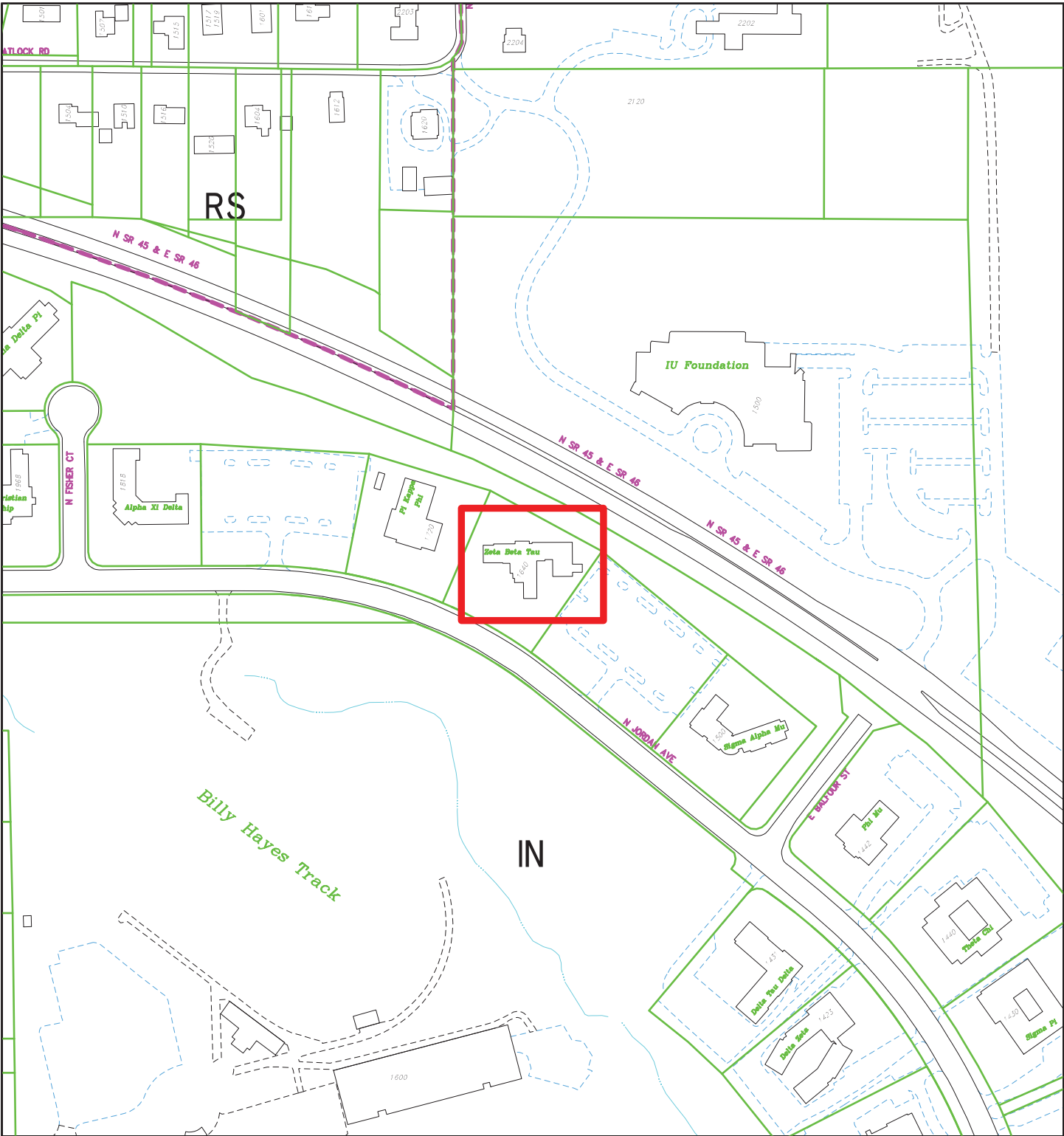
- 1) No violation has occurred at 1640 N. Jordan Avenue because under the current language of UDO Section 20.11.060, IU does not require that TKE be a recognized fraternity by IU.

- 2) The City of Bloomington has created an unlawful delegation of zoning authority to IU by authorizing IU to define the meaning of “Fraternity/Sorority House” under UDO Section 20.11.060. (*Incorrect reference by the petitioner.)
- 3) The interpretation by the Zoning Administrator essentially renders the Subject Property useless and it constitutes a taking.
- 4) UJ80 has a right as a nonconforming use to rent the Subject Property out to fraternity and sorority members who may not be recognized by IU, since at the time that UJ80 purchased the property the previous UDO was in effect which defined the “Fraternity/Sorority House” as:
“A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking eating facilities, for groups of unmarried students in attendance at an educational institution. Shall also include any building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited.”

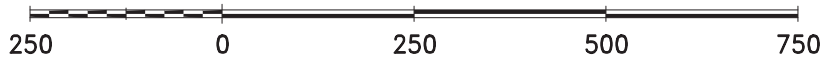
The Department and Legal Department Response to each appeal:

- 1) The Department contends that once Indiana University no longer sanctioned or recognized the fraternity occupying the petitioner’s location, the use ‘fraternity/sorority house’ could no longer be applied to use by those occupants.
- 2) The City of Bloomington has not delegated zoning authority to IU. Fraternity/Sorority Houses only exist because of the university and it is reasonable to define the term according to whether the university acknowledges that the occupants are a sanctioned fraternity/sorority. There is a generally accepted understanding of what a fraternity/sorority is, and it is not a group of people who simply decide to live together and call themselves a fraternity or sorority absent any official recognition by IU, and in this case, recognition even from the fraternity’s national organization.
- 3) The property is not rendered useless by the issuance of the Notices of Violation. Twenty six (26) permitted uses and seven (7) conditional uses are allowed in the IN zoning district. Petitioner can enjoy using his property by having any of the mentioned uses in the Subject Property.
- 4) Petitioner appears to be arguing that under the previous UDO provision in place when petitioner purchased the fraternity house, the house was occupied only by “groups of unmarried students in attendance at an educational institution.” That may have been true, but since we know that this house has continuously been occupied by a fraternity since prior to petitioner’s purchase, those students were also “members of a specific fraternity or sorority.” Therefore, there has been no change in use and there is no non-conforming use in play here.

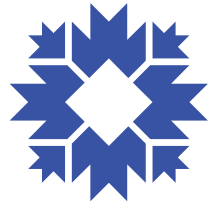
RECOMMENDATION: Based on the findings in this report, the Department recommends denial of Case # AA-09-18.



By: scanlanj
18 May 18



City of Bloomington
Planning & Transportation

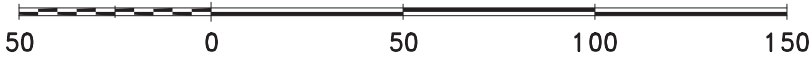


Scale: 1" = 250'

For reference only; map information NOT warranted.



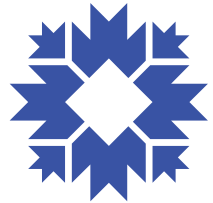
By: scanlanj
18 May 18



For reference only; map information NOT warranted.



City of Bloomington
Planning & Transportation



Scale: 1" = 50'

March 7, 2018

Board of Zoning Appeals
City of Bloomington
401 N. Morton Street
Bloomington, IN 47404

Re: Appeal of Notice of Violation, 1640 N. Jordan Ave

Dear Chairman and Members of the Board,

This letter is written on behalf of applicant and current property owner, U.J. Eighty Corp. (“UJ80” or “Applicant”). Pursuant to Unified Development Ordinance (UDO) Section 20.09.350, notice is hereby given of the appeal of the Zoning Compliance Planner’s decision to issue two Notices of Violation (NOV) of non-compliance with the Unified Development Ordinance (UDO) Section 20.02.500 [Institutional (IN); Permitted Uses] at 1640 N. Jordan Ave. (the “Subject Property”).

I. Property Description

The parcel at issue in this application is 1640 N. Jordan Avenue, Monroe County Parcel Identification Number 53-05-27-301-006.000-005. The Subject Property is located in the Institutional (IN) District.

II. Background and Proposed Development

UJ80 acquired title to the Subject Property from Farmers State Bank in June 2002. Prior to UJ80’s acquisition, Sigma Alpha Mu fraternity had purchased the Subject Property from Indiana University Bloomington (“IU”). On August 4, 2016, UJ80 leased the Subject Property to the Gamma-Kappa Chapter of Tau Kappa Epsilon, Inc. (“TKE”) and intended the Subject Property to be used, occupied and maintained by TKE as a student dormitory for the members of TKE and as lodging for TKE’s House Director (the

Bloomington Board Zoning Appeals

March 6, 2018

Page 2

“Lease Agreement”). The term of the Lease Agreement began on August 5, 2016 and was to continue until May 14, 2019.

The students were notified that TKE chapter would no longer be recognized by IU or its national. However, IU also informed those members of TKE that they could no longer reside in the house located at the Subject Property because of the loss of recognition. In turn, IU offered the TKE members an opportunity to move into IU dormitories as alternative options for their next residence. Most TKE members who had Housing Contracts to live in 1640 N. Jordan quit residing at the Subject Property and found university housing or other housing alternatives.

Then, on February 25, 2018, UJ80 received the NOV from the City of Bloomington Planning and Transportation Department dated February 22, 2018, through their Zoning Compliance Planner, Carl Buddin (the “February 22 NOV”), which did not comply with the Code. The February 22 NOV stated that it served as a formal warning of non-compliance with the Unified Development Ordinance (UDO) Section 20.02.500 [Institutional (IN); Permitted Uses] at the Subject Property. Accordingly, Section 20.02.500 provides the list of permitted uses in the Institutional (IN) District, including “fraternity house/sorority house.”

The February 22 NOV went on to state that, “as of February 18, 2018, 1640 N. Jordan Ave no longer meets the UDO definition of a ‘fraternity’, a permitted use in Institutional zoning districts.”

The February 22 NOV stated that the Planning and Transportation department was informed on February 20, 2018, that two individuals had not vacated the house on the Subject Property and was thus an illegal land use. Under UDO Section 20.10, this violation carries a fine of up to \$2,500. The February 22 NOV stated that subsequent violations could be found and UJ80 would be fined up to \$7,500, three times the previous fine, if the Subject Property was still being used as a residence.

While no fines were issued at the time of the February 22 NOV, the Planning and Transportation Department sent UJ80 a second NOV on February 28, 2018 (the “February 28 NOV”), which was received by UJ80 on March 3. In the February 28 NOV, the City restated the warning of non-compliance with the UDO Section 20.02.500 Institutional Permitted Uses issued in the previous February 22 NOV, but this time

stating that the Subject Property no longer meets the UDO definition of a 'Fraternity/Sorority House.' It was meant to correct defects in the February 22 NOV.

Once again, the Planning and Transportation Department issued no fines, but did offer two options to "remedy the situation and avoid further enforcement." The first of which was to cease use of the house as a dwelling unit.

III. Requested Relief

UJ80 requests the Board of Zoning Appeals revoke both the February 22 NOV and February 28 NOV because UJ80 is not in violation of UDO Section 20.11.020. Additionally, while UJ80 recognizes that it must take several further steps in order to perfect this request, it also intends to request a use variance while this matter is being resolved so that one individual may occupy the Subject Property as a house director to maintain the Subject Property and look after its safety.

IV. Basis for ZBA Reversal of Decision

The Zoning Compliance Planner, Carl Buddin, issued the two NOVs without a basis for a violation. Applicant states that there are four reasons for both the February 22 NOV and February 28 NOV to be dismissed.

First, no violation has occurred at the Subject Property because, under the language of UDO Section 20.11.060, 'Fraternity/Sorority House', IU does not require that TKE be a recognized fraternity by IU. The definition expressly states:

"Fraternity/Sorority House" means a building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students who meet the following requirements: all students living in the building are enrolled at the Indiana University Bloomington campus; and **Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority** through whatever procedures Indiana University uses to render such a sanction or recognition. Shall also include a building or portion thereof in which

individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.

UDO Section 20.11.020 (emphasis added). Under the language of this Section 20.11.020, there is no requirement that all students living in the building be members of a *recognized* fraternity or sorority. Instead, the definition of Fraternity/Sorority House merely requires that “Indiana University has sanctioned or **recognized the students** living in the building as being members of a fraternity or sorority . . .” UDO Section 20.11.020.

Under the language provided in this definition of Fraternity/Sorority House, the City of Bloomington does not require that the *fraternity* be recognized by IU, but instead requires that the *students* living in the building be recognized as members of a fraternity or sorority. Under this definition, the house located at the Subject Property could house members of the fraternities of TKE, Alpha Epsilon Pi, and Delta Tau Delta as well as provide housing to members of the sororities Alpha Delta Pi and Chi Omega, so long as IU recognizes that the *students* are members of those fraternities and sororities.

In this case, IU has recognized that the students that were residing at the Subject Property are members of the TKE fraternity. While IU does not sanction TKE, it would undoubtedly acknowledge that the tenants of the house remain members of TKE. Therefore, UJ80’s use of the Subject Property is not a violation of Section 20.11.060. As a result, UJ80 requests that this Board of Zoning Appeals find that the Zoning Compliance Planner misinterpreted the definition of “Fraternity/Sorority House” to require the fraternity to be recognized by IU, instead of merely requiring that IU has “recognized the students living in the building as being members of a fraternity or sorority.”

Additionally, IU requires every recognized fraternity and sorority that occupies a facility to have live-in house director. These house directors are sometimes graduate

students of IU. However, they are often not members of a fraternity or sorority (or at least one recognized by IU). Thus, if one uses the incorrect interpretation of the UDO employed by the Zoning Compliance Planner and then applies IU's own policy with respect to live-in house directors, it becomes impossible for any fraternity or sorority to fully comply with the UDO.

Second, to the extent IU is authorized to determine which groups are recognized for purposes of zoning, the City of Bloomington has created an unlawful delegation of zoning authority to IU by authorizing IU to define the meaning of "Fraternity/Sorority House" under UDO Section 20.11.060. It is instructive to note that the applicable definition under the UDO in effect until at least 2007 made no reference whatsoever to IU or any other specific educational institution and, therefore, did not unlawfully delegate zoning authority.

Further, this unlawful delegation has allowed IU to profit from Applicant's hardship because IU has a financial interest in causing the students who are members of TKE to move out of the UJ80's Subject Property and into IU housing. In other words, IU is deriving financial gain from the Subject Property being prohibited from renting its house to the student members of TKE or any other fraternity or sorority.

This delegation by the City of Bloomington is an illegitimate delegation of power to a limited institution and effectively constrains the City to act within the confines of determinations made by one institution, IU. As a result of this delegation of authority, the City has created an effect over its own authority and has limited its final decision-making authority over zoning matters involving Fraternity or Sorority Houses.

Third, the interpretation by the Zoning Administrator essentially renders the Subject Property useless. It constitutes a taking. If IU is allowed to dictate that only certain members of fraternities or sororities may lease the Subject Property, there becomes a small or nonexistent pool of potential tenants for UJ80 to rent the Subject Property to. This is even more problematic when IU has a financial interest in constraining the pool of applicants so that more students will pay to live in IU residence halls.

Fourth and finally, at the very least, UJ80 has a right as a nonconforming use to rent the Subject Property out to fraternity and sorority members who may not be in a

group recognized by IU. The definition of fraternity/sorority house was amended in the Code in December of 2016, 14 years after UJ80 purchased the Subject Property. The applicable definition at the time Applicant acquired the Subject Property made no reference whatsoever to IU or any other specific educational institution and read as follows:

A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students in attendance at an educational institution. Shall also include any building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited.

Applicant has a right to continue to operate in accordance with the Code at the time they purchased the Subject Property as a nonconforming use. Their use is grandfathered.

V. Conclusion

Applicant U.J. Eighty Corp. respectfully request that the Board dismiss the decision of the Zoning Compliance Planner to issue the Notices of Violation of non-compliance with UDO Section 20.02.500 [Institutional (IN) Permitted Uses] at 1640 N. Jordan Avenue. UJ80 reserves the right to submit additional documentation in advance of its appeal hearing.

Sincerely,

Michael Shartiag
President, UJ 80 Corporation

Timothy M. Burke
Sean P. Callan
Micah E. Kamrass
Manley Burke, LPA

Garry L. Founds
D. Michael Allen
Mallor Grodner LLP



**City of Bloomington
Planning and Transportation Department**

February 22, 2018

U.J. Eighty Corp.
c/o Mr. Michael J. Shartiag
444 Lake Cook Road, Suite 11
Deerfield, Illinois 60015

Tenant
1640 N. Jordan Ave.
Bloomington, IN 47406

Re: **Notice of Violation**
Illegal Land Use at 1640 N. Jordan Ave

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with the Unified Development Ordinance (UDO) Section 20.02.500 [Institutional (IN); Permitted Uses] at 1640 N. Jordan Ave. Records show that you are the owner (or tenant) of this property.

This building is located in an Institutional (IN) zoning district which does not permit dwelling of any type, as per the Bloomington Municipal Code's **Unified Development Ordinance (UDO) Section 20.02.500 Institutional Permitted Uses**. As of February 18, 2018, 1640 N. Jordan Ave no longer meets the UDO definition of a 'fraternity', a permitted use in Institutional zoning districts. The Planning and Transportation Department was informed on 2/20/2018 that two individuals had not vacated the house at 1640 N. Jordan Ave, thus an illegal land use.

In accordance with the UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Subsequent violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

No fines have been issued at this time. To avoid fines, the use of the house as a dwelling must cease by March 1, 2018.

Please contact me at buddinc@bloomington.in.gov or 812-349-3573 with any questions or concerns.

Sincerely,

Carl Buddin
Zoning Compliance Planner



City of Bloomington
Planning and Transportation Department

February 28, 2018

U.J. Eighty Corp.
c/o Mr. Michael J. Shartiag
444 Lake Cook Road, Suite 11
Deerfield, Illinois 60015

Tenant
1640 N. Jordan Ave.
Bloomington, IN 47406

Re: Notice of Violation
Illegal Land Use at 1640 N. Jordan Ave.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with the Unified Development Ordinance (UDO) Section 20.02.500 [Institutional (IN); Permitted Uses] at 1640 N. Jordan Ave. Records show that you are the owner (or tenant) of this property.

This building is located in an Institutional (IN) zoning district which does not permit dwelling of any type other than 'Fraternity/Sorority House', as per Bloomington Municipal Code's **Unified Development Ordinance (UDO) Section 20.02.500 Institutional Permitted Uses**. As of February 18, 2018, 1640 N. Jordan Ave. no longer meets the UDO definition of a 'Fraternity/Sorority House', a permitted use in Institutional zoning districts. The definition is as follows:

Fraternity/Sorority House: A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students who meet the following requirements: all students living in the building are enrolled at the Indiana University Bloomington campus; and Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition. Shall also include a building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.

The Planning and Transportation Department was informed on 2/20/2018 that two individuals had not vacated the house at 1640 N. Jordan Ave, thus an illegal land use.

In accordance with UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Subsequent violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

May 18, 2018

No fines have been issued at this time. You have the following options to remedy the situation and avoid further enforcement.

1. Cease use of the house at 1640 N. Jordan Ave. as a dwelling unit by March 7, 2018, **OR**;
2. A property owner or lessee of property within the City or its zoning jurisdiction may file for a Use Variance through the Board of Zoning Appeals in accordance with the UDO Sections 20.09.030 [Applications; General] and Section 20.09.140 [Use Variance]. The next available Board of Zoning Appeals hearing date is 4/19/2018. The filing date for this meeting is 3/22/18. In order for your case to be heard at this meeting, a Pre-Application Meeting must be scheduled with a planner by 3/15/2018.

If a fine is issued, the final fine amount shall be paid to the City of Bloomington Planning and Transportation Department and directed to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47402. All fines may be appealed to the Board of Zoning Appeals or contested in the Monroe County Circuit Courts. Failure to resolve this violation or to pay the final fine amount may result in further legal action.

Please contact me at buddinc@bloomington.in.gov or 812-349-3573 with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carl Buddin'.

Carl Buddin
Zoning Compliance Planner

BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
Location: 1640 N. Jordan Avenue

CASE #: UV-13-18
DATE: May 24, 2018

PETITIONER: UJ Eighty
444 Lake Cook Road #11, Deerfield, IL

COUNSEL: Manley Burke
225 W. Court Street, Cincinnati, OH

Mallor Grodner LLP
511 Woodcrest Drive, Bloomington

REQUEST: The petitioner is requesting a use variance to allow 'dwelling, single-family (detached)' in the Institutional zoning district.

REPORT: The petitioner proposes to allow the use of the building at 1640 N. Jordan Avenue as a residence for an individual or group meeting the definition of 'family' in the Unified Development Ordinance. The property is located on the north side of Jordan Avenue between N. Fisher Court and E. Balfour Street. This property is zoned Institutional (IN). The property is surrounded by IN zoning, with some Residential Single-Family (RS) zoning across State Road 45/46 to the northwest. The maximum number of unrelated adults that would be allowed to live in the building under that use and definition is five (5) people.

There are twenty-six (26) permitted uses and nine (9) conditional uses in the IN zoning district. Of the 26 permitted uses, five (5) of the uses would typically involve a residential component in the primary use of the property. Those uses are: Fraternity/Sorority House; Group Care Home for Developmentally Disabled; Group Care Home for Mentally Ill; Group/Residential Care Home; and University of College. Under the existing zoning, the site could contain any of those uses, as long as any conditions associated with the uses are met.

The petitioner does not desire to find a user for any of the thirty-five (35) uses listed above, but is requesting the use variance so that a caretaker or a few people can live at the site when it would otherwise be vacant.

The character of the area is institutional with fraternity/sorority houses along N. Jordan Avenue and Indiana University property immediately adjacent.

Comprehensive Plan: The Comprehensive Plan designates this property as Institutional/Civic. The I/C designation includes uses such as libraries, schools, cemeteries, municipal buildings, fire stations, and utility stations. The intent of this district is to provide adequate land to support the activities of compatible government, social service, and limited non-profit entities. Land development policy guidance for the district is as follows:

- Public agencies should periodically meet to coordinate future facilities needs in advance of land acquisition/construction.
- Non-profit land uses should be located in every sector of the community to provide a balanced distribution of services.
- Land dedications must have clear agreements in place – including dates and timelines- as part of the land development approval process.
- Uses in this category should provide measures to mitigate undesirable operational impacts such as light and noise pollution, traffic congestion, and spillover parking.

As can be seen from the guidance above, the designation in the Comprehensive Plan does not envision single-family uses.

20.09.140 CRITERIA AND FINDINGS FOR USE VARIANCE:

Findings of Fact: 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

Proposed Finding: The Department finds that the proposal will not be injurious to the public health, safety, morals, and general welfare of the community as the requested use would be limited to the interior of the building.

(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

Proposed Finding: The Department finds no adverse impacts on the use and value of the adjacent properties associated with the proposed use variance. The surrounding uses are predominantly Indiana University or Indiana University student related.

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

Proposed Finding: The Department finds no peculiar condition to the property involved warranting the need for the use variance. The property is developed as a fraternity/sorority house and can be used in that way. Additionally, there are thirty-four (34) other uses permitted or conditional in the IN zoning district that can be used at the site if their conditions are met. No practical difficulties are found in the characteristics of the property or its surroundings that necessitate relief from the use regulations of the UDO. Additionally, security measures can be put into place to address concerns of the building being empty if the owner continues to choose not to put the property to a legal use. There are many vacant buildings in town at any given time, and numerous options exist for care of the building outside of a resident onsite. Fraternity/Sorority Houses are

limited exclusively to the IN district and the granting of a use variance to allow a single-family dwelling would take away another possible fraternity/sorority from reusing this structure.

(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

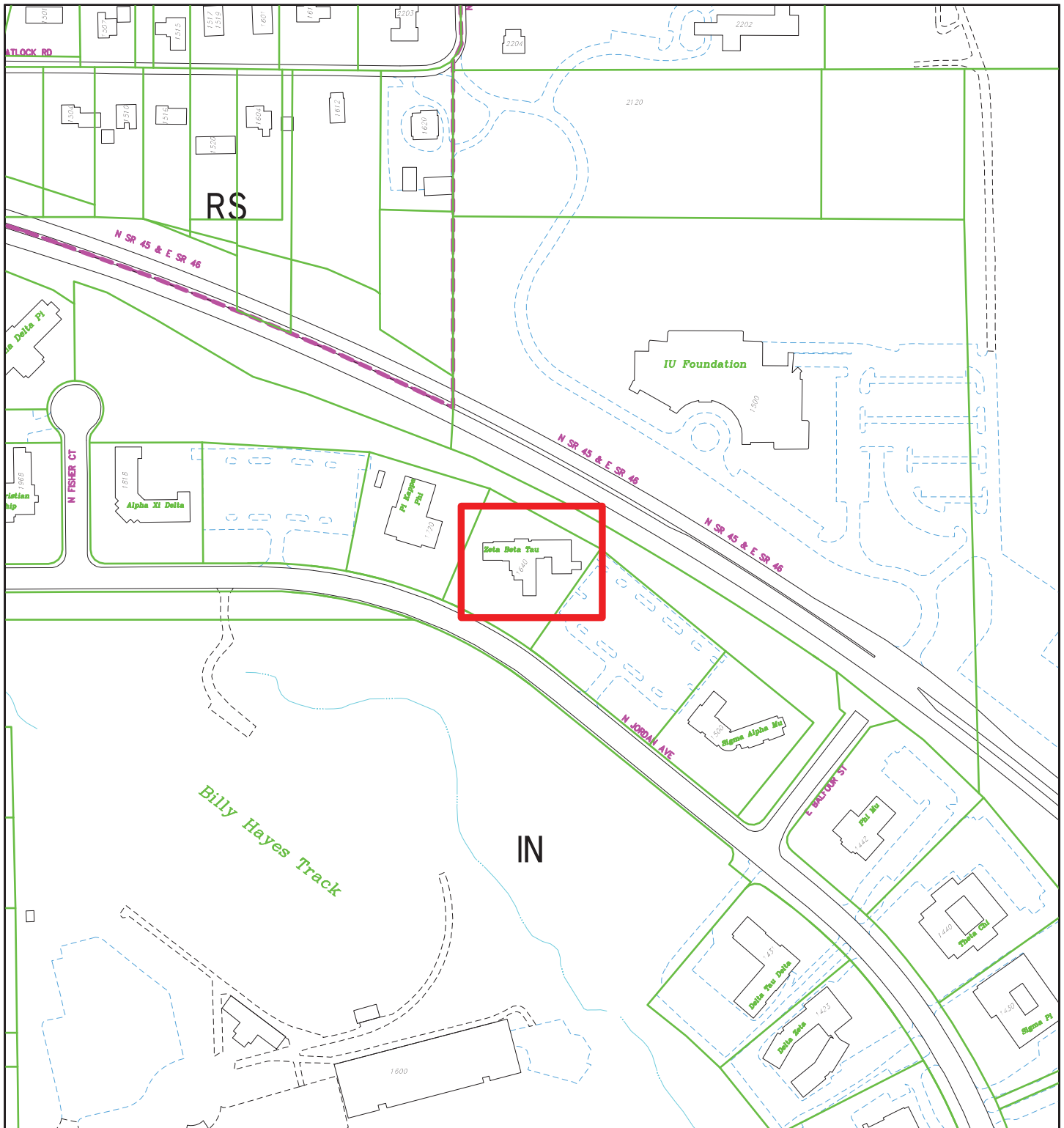
Proposed Finding: The Department finds that the strict application of the Unified Development Ordinance will not place an unnecessary hardship on the property, as there are 35 potential uses allowed on the site by the UDO.

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

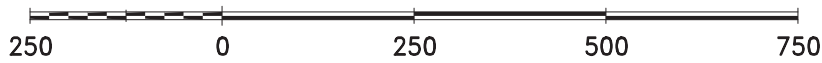
Proposed Finding: The Department finds that this request does substantially interfere with the Comprehensive Plan. The Comprehensive Plan designates this property as Institutional/Civic. The uses discussed for this designation are all institutional or civic in nature, and do not include single-family residential.

CONCLUSION: The Department finds that the proposal does substantially interfere with the intents of the Comprehensive Plan. Allowing the 'dwelling, single-family (detached)' use on the property does not promote the intent of the Institutional/Civic designation of the recently adopted Comprehensive Plan. There are no unique characteristics of the property that require that a use variance be granted to allow a use outside of the thirty-five (35) that are permitted or conditional for the zoning district.

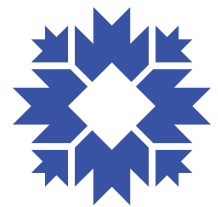
RECOMMENDATION: The Department recommends that the Board of Zoning Appeals denies petition #UV-13-18, a use variance request to allow 'dwelling, single-family (detached)' in the Institutional zoning district.



By: scanlanj
18 May 18



City of Bloomington
Planning & Transportation

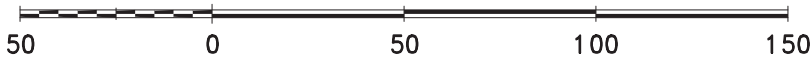


Scale: 1" = 250'

For reference only; map information NOT warranted.



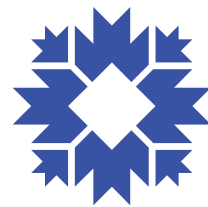
By: scanlanj
18 May 18



For reference only; map information NOT warranted.



City of Bloomington
Planning & Transportation



Scale: 1" = 50'

MALLOR | GRODNER
Attorneys

Garry L. Founds
Attorney at Law
Registered Civil Mediator

gfound@s@lawmg.com

March 21, 2018

Board of Zoning Appeals
City of Bloomington
401 North Morton Street
Bloomington, Indiana 47404

Re: UJ Eighty Corporation: 1640 N. Jordan Ave.

Dear Members of the BZA:

UJ Eighty Corporation, an Indiana corporation ("Petitioner"), respectfully requests a Use Variance for the property located at 1640 North Jordan Avenue in Bloomington, Indiana, which is more particularly described by its legal description as 013-52000-03, N. Jordan Ave. Extension Lot 3 (the "Property").

The Property is presently zoned Institutional. The structure located on the Property has been used as a fraternity/sorority house since its construction in 1984 and since Petitioner's acquisition of the Property in June 2002. Petitioner proposes a Use Variance to use the Property as a "single family detached dwelling," as such term is defined under the Bloomington, Indiana Unified Development Ordinance ("UDO"), Section 20.11. In support of its petition, Petitioner states the following:

I. Background

On August 4, 2016, Petitioner leased the Property to the Gamma-Kappa Chapter of Tau Kappa Epsilon, Inc. ("TKE") pursuant to that certain Lease Agreement dated August 4, 2016 (the "Lease Agreement"). Under the Lease Agreement, the Property was intended to be used, occupied, and maintained by TKE as a student dormitory for the members of TKE and as lodging for TKE's House Director. The term of the Lease Agreement began on August 5, 2016 and continues until May 14, 2019.

Sometime around February 8, 2018, the individuals residing at the Property (the "Occupants") read in the Indiana Daily Student that TKE was no longer recognized by Indiana University (the "University") or by TKE's national organization and that the Occupants could no longer reside at the Property because of this loss of recognition. No other notice was ever given to any of the Occupants. No other justification for the University's notification was provided. The University then told the Occupants that they could move into the University's own dormitories, if they paid the applicable dormitory fees. Most Occupants left the Property and

MALLOR | GRODNER LLP

Bloomington / 511 Woodscrest Drive / Bloomington, Indiana 47401 / p 812.332.5000 / f 812.961.6161 / www.lawmg.com
Indianapolis / 101 West Ohio Street / Suite 1600 / Indianapolis, Indiana 46204 / p 317.453.2000 / f 317.631.1314

moved into the University's dormitories or found other housing alternatives. There are multiple pending public records requests related to this but once they are fulfilled, we should be able to provide more information.

On February 25, 2018, Petitioner received a Notice of Violation from the City of Bloomington Planning and Transportation Department ("Planning") dated February 22, 2018 (the "February 22 NOV"). On March 3, 2018, Petitioner received a Notice of Violation from Planning dated February 28, 2018 (the "February 28 NOV") (collectively, the February 22 NOV and the February 28 NOV are the "NOVs"). The February 22 NOV, which was defective, stated that it served as a formal warning of non-compliance with the UDO, Section 20.02.500 [Institutional (IN); Permitted Uses], at the Property. The February 22 NOV went on to state that "as of February 18, 2018, 1640 N. Jordan Ave no longer meets the UDO definition of a 'fraternity', a permitted use in Institutional zoning districts." The February 22 NOV also alleged that two individuals had not vacated the Property and that their occupation of the Property was an illegal land use.

In the February 28 NOV, Planning restated its warning of non-compliance with the UDO, Section 20.02.500, by stating that the Property no longer meets the UDO definition of a "Fraternity/Sorority House." The February 28 NOV was intended to correct defects in the February 22 NOV. In the February 28 NOV, Planning offered two options to "remedy the situation and avoid further enforcement." The first of which was to cease use of the Property as a dwelling unit.

One of the Occupants who allegedly prompted the issuance of the NOVs was a live-in house director (the "Caretaker"). Most other fraternity and sorority houses in the area have non-student adult live-in directors, and the University is aware of this practice. It should also be noted that individuals are living in the building located on the Christian Fellowship parcel, even though these individuals are not members of a fraternity or sorority. Petitioner should be treated no differently than these other property owners. The role of these live-in house directors includes ensuring that fraternity/sorority houses are monitored and properly maintained. The Petitioner now desires a use variance to allow the Caretaker to remain on the Property to ensure proper care and maintenance, to protect the Property and the surrounding properties, and to preserve the Property for use as a fraternity/sorority house or other student housing.

On March 7, 2018, Petitioner filed its Appeal of Notice of Violation, challenging the claims contained in the NOVs (the "Appeal"). Petitioner anticipates that resolution of the Appeal could take a substantial amount of time. Therefore, Petitioner requests that the length of the requested use variance track resolution of the Appeal. Of course, if the Appeal is decided in Petitioner's favor, the requested use variance will no longer be necessary.

II. The Necessity of the Requested Variance

Petitioner acknowledges Planning's observation that other buildings around Bloomington might currently be vacant without a live-in caretaker. But those situations certainly are not ideal. Moreover, this particular situation is different. Unlike other vacant buildings around Bloomington, the structure located on the Property was built to be a residence. It is located in what is effectively a residential area. It is not a warehouse or other commercial property, which likely would not have proper living facilities and which would not ordinarily have residential occupants.

Also, the risks created by a vacant house are unique. A vacant house, as opposed to a vacant warehouse or other commercial structure, presents unusual and more significant problems for its owner, the Property itself, future occupants or owners, and its neighbors. Of course, an empty house is an easy target for crime. It is more easily vandalized and burglarized. But there are also other potential dangers to the structure and the neighbors.

One should also consider the location of this house and the surrounding fraternities and sororities. These properties are not vandalized in the middle of the days with hundreds if not thousands of students walking by. It happens at night, when Planning claims that Petitioner is not allowed to have a "watchman" on site to stop this from occurring

Plumbing can be damaged by vacancy, and taking the typical precautions, such as draining pipes etc., will not completely protect against this problem. Valves, gaskets, and hoses need water to stay pliable. If any of these dries out, the seal will crack and will fail when the water is turned back on, resulting in leaks and possible flooding. The pipes can also dry out, crack, and result in similar damage when water pressure is restored. The valves in dishwashers and similar appliances can get stuck in the closed position when they remain unused for extended periods. When the water is turned back on, it is likely to result in leaks and/or flooding, and the owner might need to replace the appliance or the damaged parts. A lack of use, cleaning, and flushing of toilets means that drains do not get flushed through regularly, and, as a result, they can start to emit odors. These unused drains also provide a good access point for pests and vermin to enter the house.

A vacant house attracts small wildlife, of which there is an abundance in Bloomington. Squirrels and similar animals can chew access holes to enter the structure. These animals, once inside, cause property damage and health risks. Small animals can also chew insulation and wiring, resulting in not only property damage, but also fire.

Fire is a danger that is best limited by occupation. Fire will not be detected nearly as quickly in a vacant house as compared to an occupied house, and fire can spread much more quickly in a vacant house than it can in an occupied house. Statistics from the U.S. Fire

Administration indicate that 53% of all vacant building fires spread to involve the entire structure, and 10% of all vacant building fires spread to adjacent properties.¹

Clearly, a vacant house is not an ideal situation. The presence of a live-in Caretaker could alleviate these health and safety risks without any downside deriving from the Caretaker's occupancy. When the naturally associated risks and dangers can be prevented easily with a temporary use variance to allow continued occupation, the decision to allow a temporary use variance to protect the Property, its owners, the neighborhood, and other innocent parties seems like a rather obvious decision and is easy and proper for the Board of Zoning Appeals to make.

With these issues in mind, the applicable UDO factors for a use variance are easily satisfied.

III. Satisfaction of UDO Factors

The requested use variance satisfies the factors set forth in the UDO, Section 20.09.140.

A. The approval will not be injurious to the public health, safety, morals and general welfare of the community.

As explained in the preceding section of this letter, the requested use variance certainly will not be injurious to the public health, safety, morals, or general welfare of the community. In fact, the requested use variance will help improve and, to a substantial extent, is necessary to protect the public health, safety, and general welfare of the community.

B. The use and value of the area adjacent to the property included in the use variance will not be affected in a substantially adverse manner.

Almost all other surrounding properties are used as fraternity or sorority housing, which is, at heart, a residential purpose. The Property is bound on the North by the Highway 45/46 Bypass, and to the South by Jordan Avenue. The contiguous parcel to the West, 1720 North Jordan Avenue, is owned by the Alpha Psi Chapter of Pi Kappa Phi, Inc., and is used as the fraternity house for Pi Kappa Phi. The contiguous parcel to the East is owned by the University and is used as parking for fraternities. In fact, of the approximately 22 parcels on the North Jordan Avenue Extension between North Fee Lane and East 17th Street, only five (5) are used for purposes that appear to be unrelated to the housing of students: 1968 North Jordan Avenue is owned by Christian Student Fellowship at Indiana University, Inc. (the "Christian Fellowship"); the property contiguous and to the east of 1968 North Fee Lane appears to be owned by the University and used by the Christian Fellowship building for parking; and the three other parcels are vacant and owned by the University.

¹ U.S. Fire Administration, Topical Fire Report Series, Volume 18, Issue 9, January 2018.

It is also instructive to note that most other fraternity and sorority houses in the area have non-student adult live-in directors. This use, according to Planning, is a violation of the UDO, since such individuals are not students and are not recognized as members of a fraternity or a sorority. It should also be noted that individuals are living in the building located on the Christian Fellowship parcel, even though these individuals are not members of a fraternity or sorority. Petitioner should be treated no differently than these other property owners.

Petitioner's requested use will not differ in any substantive manner from the predominate use of the surrounding properties and Petitioner's requested use will not affect in any way the use of adjacent properties. Moreover, for the reasons discussed above, Petitioner's requested use will protect the value of adjacent properties.

C. The need for the variance arises from some condition peculiar to the property itself.

The Property is unique in that the structure located on the Property is constructed as a residence, to be used only as a residence for either students or, as is sometimes the case with the University mandated live-in house director, non-students. This use is actually the same use requested by Petitioner. Petitioner is not requesting temporary residential use of an office or warehouse or similar commercial structure. Rather, Petitioner is requesting a use variance to allow residential use of a "house." This is a unique scenario in that, although the structure located on the Property is a house, and although that structure is designed only for use as a residence, the structure cannot be used as such solely due to the Property's unique zoning status. It should also be noted that Petitioner's requested use for the Property is actually a less intense use than that of nearly any other authorized use of the Property and of all surrounding properties.

D. The strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if they are applied to the subject property.

If the Zoning Ordinance is strictly applied, Petitioner will be required to seek a rezoning for the Property. In addition, and more importantly, strict application of the UDO in this instance will put the Property at substantial risk for crime, vandalism, and property damage, as noted above. These hardships clearly are not necessary, given the fact that the Property is already designed for the very use that is being requested—a residence.

E. The approval of the use variance will not interfere substantially with the goals and objectives of the Growth Policies Plan.

Given that the requested use is essentially the same as the prior use of the Property and the use of the surrounding properties, and given the temporary nature of the requested variance, Petitioner's requested use will not conflict in any manner with the Growth Policies Plan. Petitioner's requested use is also a less intense use of the Property than almost every other use for which the Property is authorized under its current zoning status. Finally, no aspect of the

structure currently located on the Property and no other physical aspect of the Property will need to be altered in any manner to accommodate Petitioner's requested use.

IV. Conclusion

In sum, not only does Petitioner's requested use satisfy all of the factors that the UDO requires for a use variance, Petitioner's requested use also provides beneficial protections for the Property, its neighbors, and the surrounding community and properties. For the foregoing reasons, Petitioner requests a Use Variance to use the Property as a single family detached dwelling.

Sincerely,

Michael Shartiag
President, UJ 80 Corporation

Timothy M. Burke
Sean P. Callan
Micah E. Kamrass
Manley Burke, LPA

Garry L. Founds
D. Michael Allen
Mallor Grodner LLP



Imagery ©2018 Google, Map data ©2018 Google 100 ft

Google Maps



Imagery ©2018 Google, Map data ©2018 Google 20 ft

PETITIONER: Storage Express
606 W. Gourley Pike, Bloomington

REQUEST: The petitioner is requesting a variance from landscaping standards to allow riprap to be placed around the perimeter of the building.

STAFF REPORT: This property is zoned Commercial Arterial (CA) and has been developed with a mini-warehouse facility. Surrounding land uses include a funeral home to the west, a motorcycle dealership to the east, hotels to the north, and multi-family residences to the south.

The petitioners constructed 2 new mini-warehouse buildings on the site in 2017. Due to a lack of gutters being installed along the roof, there was significant erosion around the perimeter of one the buildings from rainwater runoff and riprap was installed to address the exposed soil. The riprap extends approximately 4' around 2 sides of one of the buildings. The riprap was not shown on the approved landscape plan or site plan. The Unified Development Ordinance allows decorative mulch and stone planting beds only around the perimeter of trees and shrubs and all other portion of a site are required to be planted with grass or other vegetative ground cover.

Section 20.05.052 of the Unified Development Ordinance states that-

- (e) Ground Cover: Grass and other vegetative ground cover shall be used for all open space including parking lot bumpouts and islands. The exceptions are as follows:
 - (1) Decorative mulch or stone planting beds shall not extend more than one (1) foot beyond the drip line of shrubbery, and shall be no more than six (6) feet in diameter surrounding the trees.

The petitioner is requesting a variance from section 20.05.052 (e)(1) of the Landscaping requirements in order to allow riprap to be placed around the perimeter of the buildings.

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.*

PROPOSED FINDING: The granting of the variance from the standards to allow the riprap will not be injurious to the public health, safety, or morals. However, it

does conflict with the stated goals of the comprehensive plan to increase the amount of vegetative cover within the City.

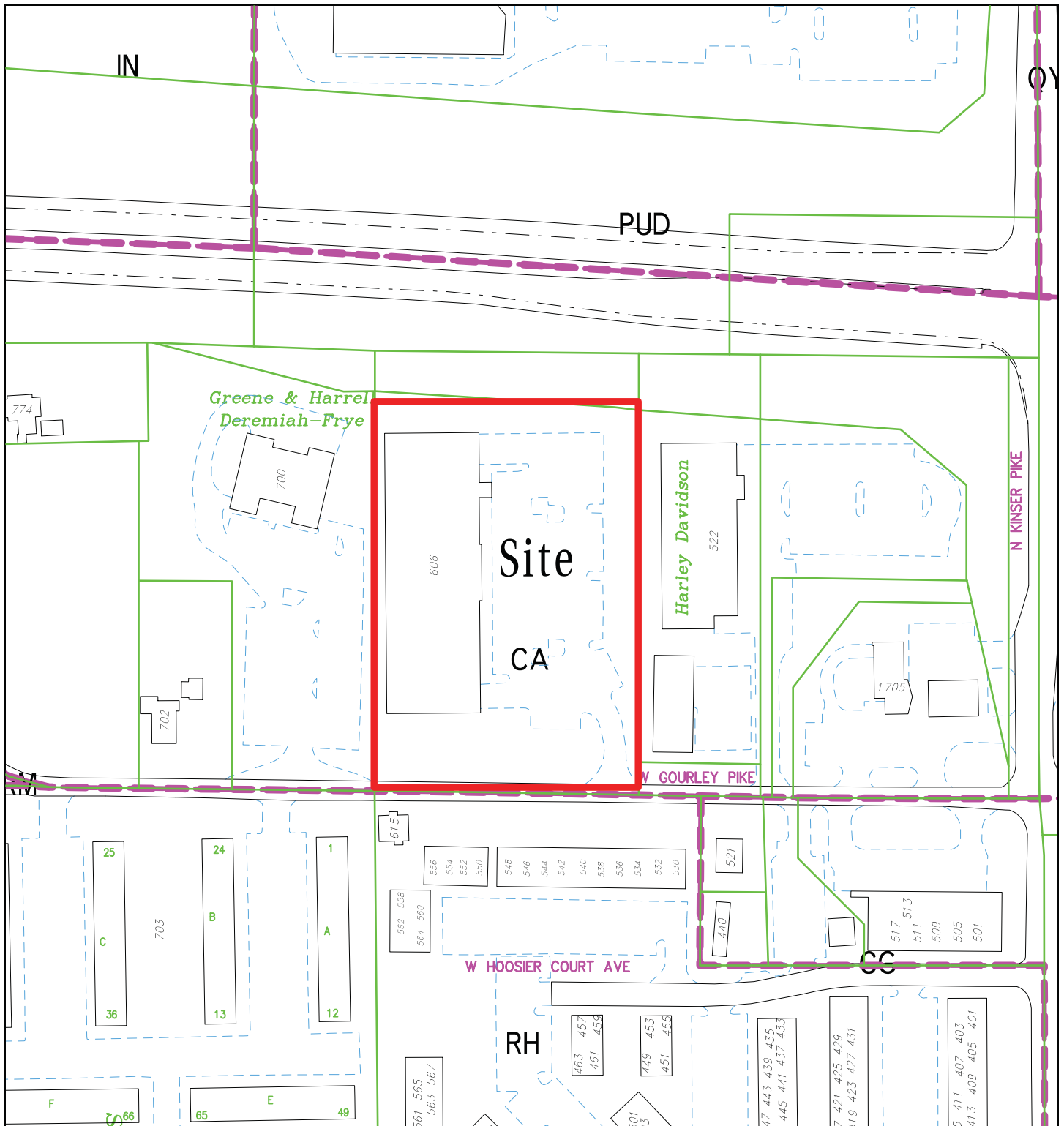
- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

PROPOSED FINDING: No negative effects from this proposal are found on the use and value of the areas adjacent to the property.

- 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.*

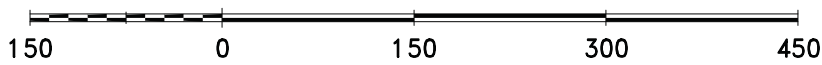
PROPOSED FINDING: The strict application of the UDO will not result in practical difficulty in the use of property. The lack of gutters on the building and associated stormwater runoff is a self-imposed hardship and is something that can be fixed by the petitioner and is not unique to the property. There are no peculiar conditions on this property that are different than other commercial properties that do not allow them to meet the landscaping restrictions of the UDO.

RECOMMENDATION: The Department recommends that the Board of Zoning Appeals adopt the proposed findings and deny the variance.



V-14-18 Storage Express
 606 W. Gourley Pike
 Board of Zoning Appeals
 Site Location, Zoning, Parcels

By: greulice
 18 May 18

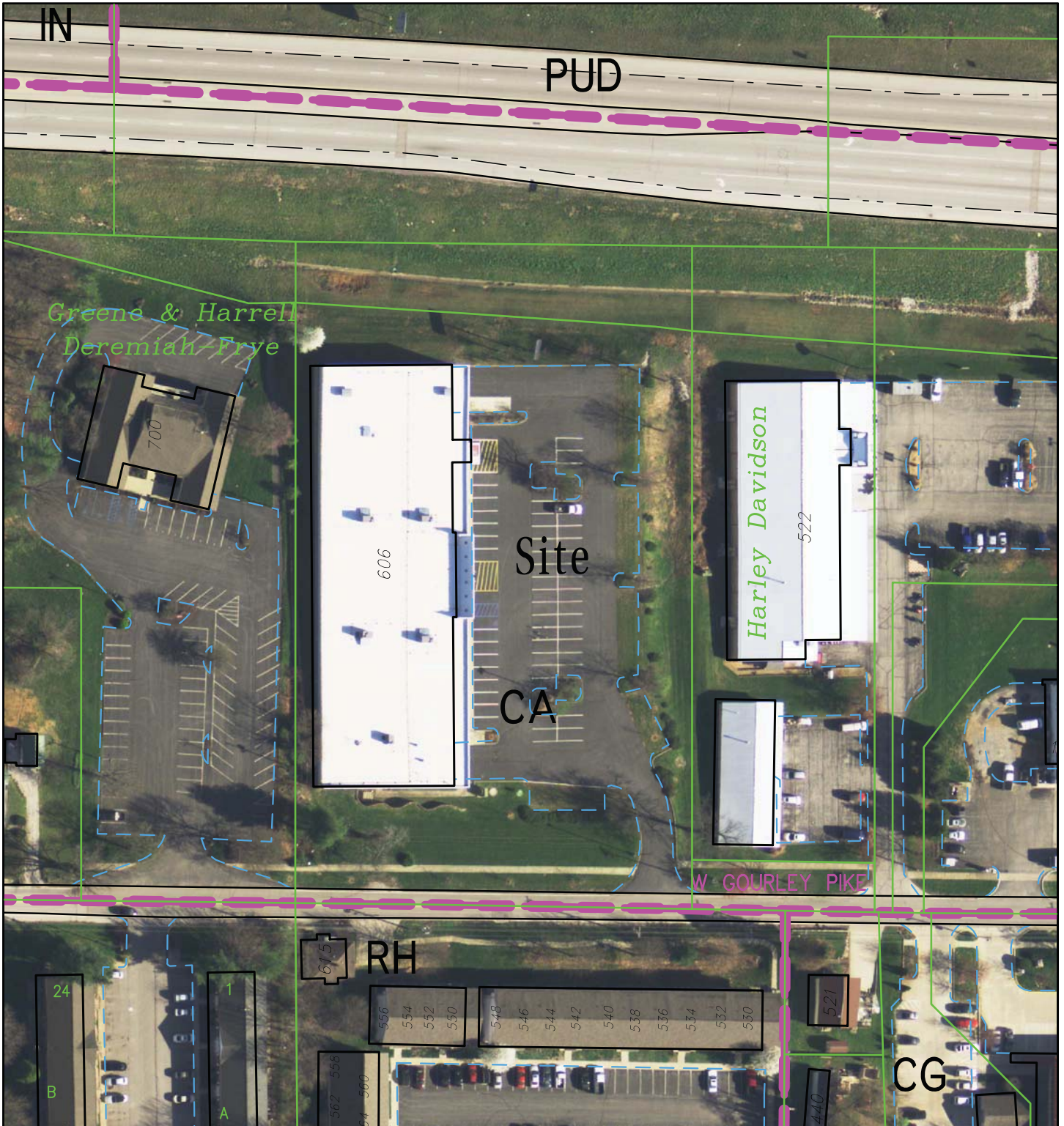


City of Bloomington
 Planning & Transportation

N

Scale: 1" = 150'

For reference only; map information NOT warranted.



V-14-18 Storage Express

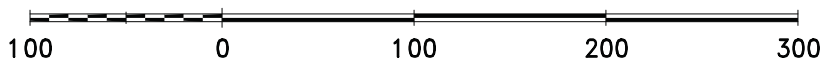
606 W Gourley Pike

Board of Zoning Appeals

2016 Aerial Photograph

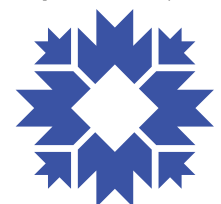
By: greulice

18 May 18



For reference only; map information NOT warranted.

City of Bloomington
Planning & Transportation



Scale: 1" = 100'

April 25, 2018

Mr. Eric Greulich
Planning and Transportation Dept.
401 N. Morton St., Suite 130
P.O. Box 100
Bloomington, IN 47402

Re: Development Standards Variance Application
606 Gourley Pike Property

Dear Mr. Greulich:

Subject property is located on Gourley Pike directly behind the Harley Davison dealership off of Rogers and the 46 Bypass. The original property was the old HH Gregg store, a single story 30,000 SF masonry building. The HH Gregg property was purchased and redeveloped as an interior heated/cooled facility in 2014. Property was required to go through "change of use" permit process which required new/additional landscaping, reduction in permeable pavement, revised (reduction) of site lighting and revised, (reduction) in building and site signage.

In the Spring of 2017 we constructed two new storage buildings in the parking lot area in front of the above referenced building. Both of the new buildings were required to have "special exterior design" on all four sides, we increased the site landscaping and again we revised (reduced) the site lighting.

The site has one driveway entrance onto Gourley Pike and the required parking (8 stalls) is adjacent to the main building entrance of the original structure. We added 45 spaces of exterior storage to the facility.

The land between our eastern most building and the Harley Davison property is a retention basin (8200 SF) that takes the run-off from our property (including the roof of the 30,000 SF original building), the two new buildings, the remaining asphalt parking area and the driveways. We were required by Phil Peden to do maintenance clearing and grubbing of 20 years of growth in the retention basin as part of our permit to construct the two new buildings. No additional grading or expansion of the existing retention basin was required. The west bank of our retention basin (directly behind building #3) is a 3:1 slope (33%) and it drops in excess of 7' from the back of the building (top of the slope) to the center line of the retention basin. (See attached plan C-1 dated 4/24/18)

The UDO violation is that a 6' strip of rip-rap was installed at the top of the slope directly behind building #3 to prevent erosion of the bank as the water sheds off of the roof of the building. This work was completed without notifying the Planning Department that we were modifying the plans. Because there were 2 other areas on the approved plans showing rip-rap, the assumption was made that adding rip-rap for purposes of erosion control was acceptable. If required to remove the material in question, I will still have an erosion control problem. If the variance is granted, I would make the offer to:

- a. Provide screening on the north end of the retention basin with an approved hedge or pine trees.
- b. Cover the entire west bank of retention basin (including the rip-rap) with an approved ground cover (ivy or other approved material).
- c. Provide approved landscape enhancement in other areas of the property.

I believe that the strict application of the terms of the UDO may create additional erosion control problems for this area of the property. I also believe that if allowed to leave this area in its current condition, the downstream impact of sedimentation run-off will continue to be improved.

Best Regards,



Mike Boulton
Construction Manager



STORAGE
EXPRESS





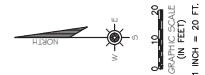
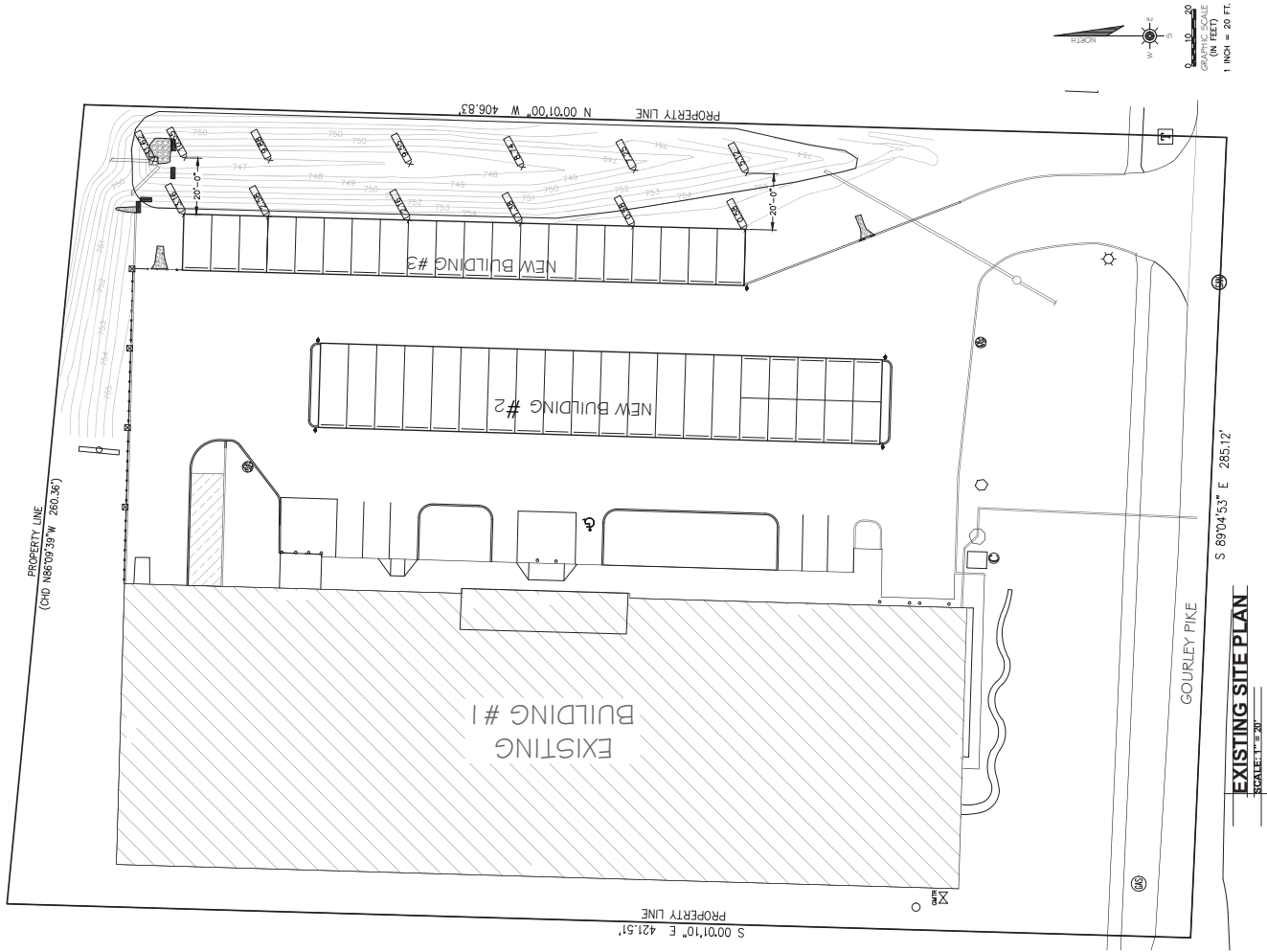
Property Info:
BL-GP, #012

EXISTING SELF-STORAGE FACILITY AT:
BLOOMINGTON-GOURLEY PIKE
606 Gourley Pike, Bloomington, IN 47404
EXISTING SITE PLAN

P.O. BOX 70 BLOOMINGTON IN 47402 PH 812-339-6339
STORAGE EXPRESS

Date: 4/24/2018
Revision:
Drawn by: CJB
Sheet

C-1



BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
Location: 1000 & 1002 E. Atwater Avenue

CASE #: AA-15-18
DATE: May 24, 2018

PETITIONER: BMI Properties LLC
425 N. Walnut Street, Bloomington

COUNSEL: Clendening, Johnson, & Bohrer, PC
409 W. Patterson Drive, Suite 205 Bloomington

REQUEST: The petitioner is requesting an administrative appeal of the issuance of a Notice of Violation.

REPORT: This appeal request is the result of issuance of a Notice of Violation related to a non-permitted land use enforcement action against two buildings located at 1000 & 1002 E. Atwater Avenue. The property at 1000 E. Atwater Avenue is located at the southeast corner of E. Atwater and S. Faculty Avenues. 1002 E. Atwater Avenue is located immediately adjacent to the east. This property is zoned Residential Multifamily (RM). Surrounding properties to the west and east are also zoned RM. Properties to the north across E. Atwater Avenue are zoned Institutional (IN), and adjacent properties to the south are zoned Residential Core (RC). The violation is a result of the tenants of both buildings operating as a 'Fraternity/Sorority House' as defined in the Unified Development Ordinance (UDO).

'Fraternity/Sorority House' is defined in the UDO as:

A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students who meet the following requirements: all students living in the building are enrolled at the Indiana University Bloomington campus; and Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition. Shall also include a building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.

'Fraternity/Sorority House' is not an approved use in the RM zoning district. Each of the buildings at 1000 & 1002 Atwater previously operated as a legal nonconforming use from the 1973 zoning code, 'Rooming/Lodging House', defined as:

A building with more than two guest rooms where lodging, with or without meals, is provided for compensation, or a single household dwelling, occupied by more than five unrelated adult individuals, but not a hotel or motel.

The owner has requested an appeal of the City's Notice of Violation issued April 27, 2018

that stipulated that the property has abandoned its legal nonconforming use by operating a new use (Fraternity/Sorority) on the site for six months. The relevant code regulation is 20.08.100(b).

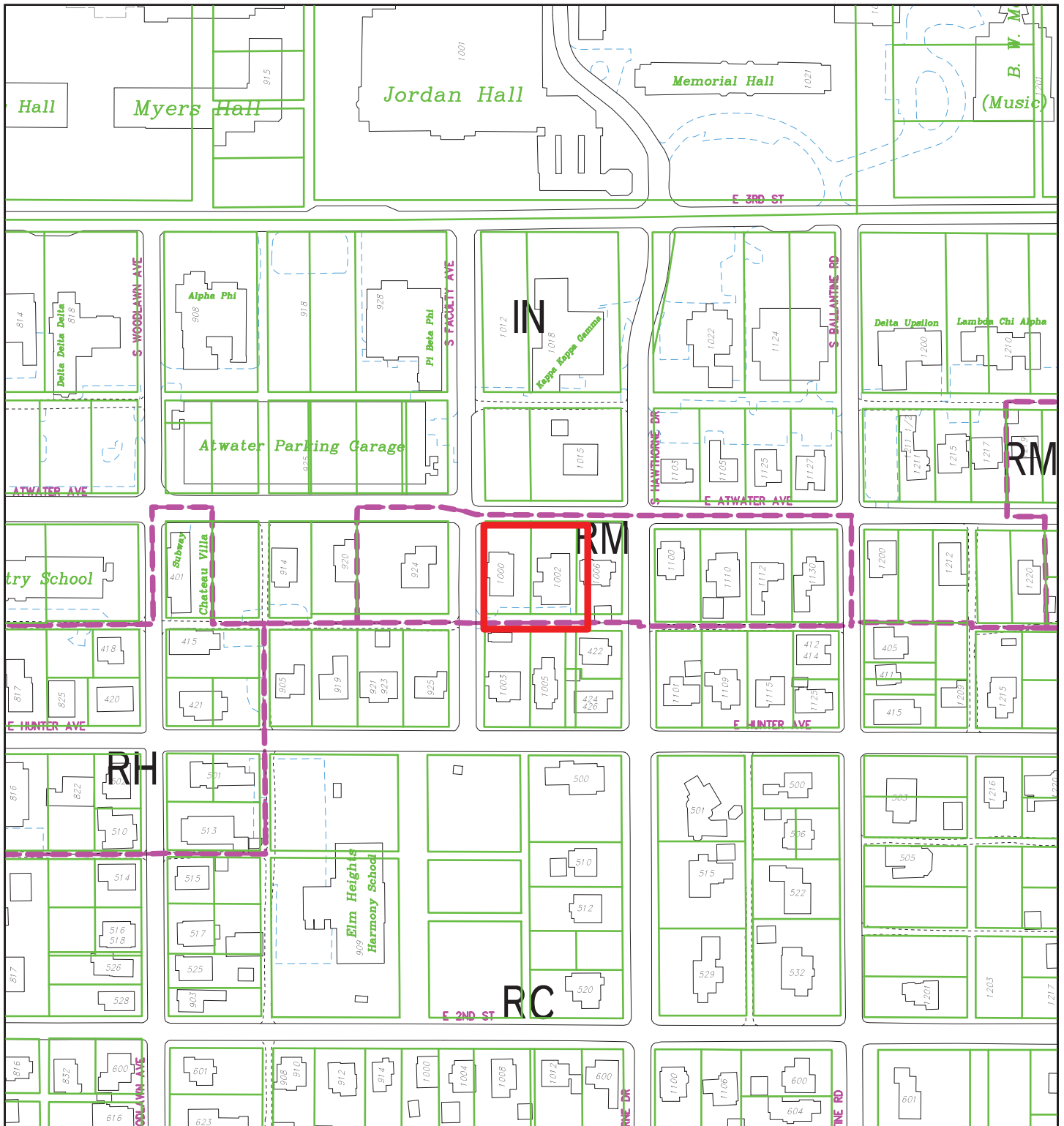
20.08.100(b): Other Nonconforming Uses: A lawful nonconforming use shall be deemed abandoned when the nonconforming use has been replaced by a conforming use or when the nonconforming use has ceased and has not been resumed for a continuous period of six (6) months, or when the furnishings have been removed and not replaced for a continuous period of six (6) months. (emphasis added)

The Planning and Transportation Department has been in contact with both the owner and the tenants at various times regarding the use of the property since a first complaint was received in August 2017. All Notices of Violation with exhibits are attached to this report.

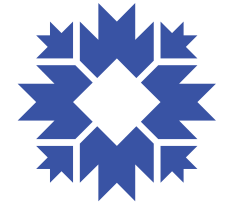
Date	Action Taken
August 28, 2017	Department notified of potential illegal land use
September 1, 2017	Meeting with Owner, Tenants, P&T Staff, HAND Staff, IU Staff
September 7, 2017	Notice of Violation sent explaining zoning and compliance option
October 10, 2017	Confirmation of Compliance Plan sent
October 13, 2017	Notice of Violation with fine issued (\$2500)
October 25, 2017	Fine reduced to \$250
November 29, 2017	Notice of Violation with fine issued (\$5000)
February 21, 2018	Three Notices of Violation with fines issued (\$22,500)
April 27, 2018	Notice of Violation with fine issued

The Department contends that repeated and ongoing behavior of the tenants of the property including the hanging of identifying signs, advertising of the fraternity at that location, advertising of rush events, and the fraternity itself admitting that the houses will be used as a fraternity, are characteristic of the operation of a fraternity/sorority house and that the behavior has been occurring continuously for over a period of six (6) months. Therefore, the petitioner has abandoned the legal nonconforming use and must bring the property into compliance with the UDO.

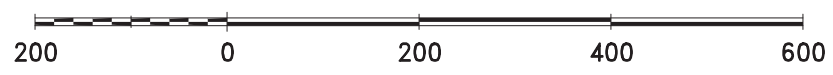
RECOMMENDATION: Based on the findings in this report, the Department recommends denial of Case # AA-15-18.



City of Bloomington
 Planning & Transportation

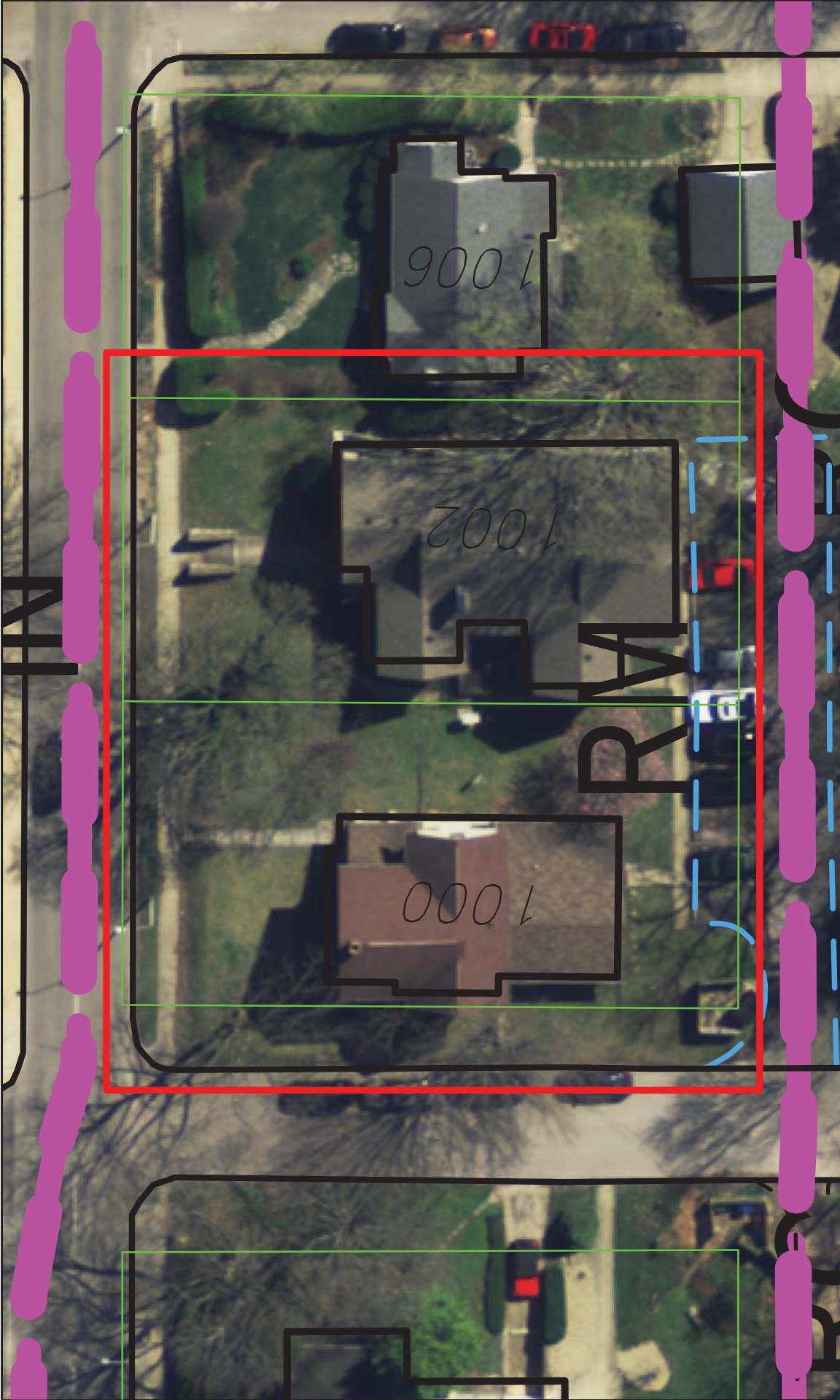


Scale: 1" = 200'



By: scanlanj
 18 May 18

For reference only; map information NOT warranted.



City of Bloomington
Planning & Transportation



Scale: 1" = 30'



By: scanlanj
18 May 18

For reference only; map information NOT warranted.



Cheyenne N. Riker
Attorney at Law

criker@lawcjb.com

May 2, 2018

City of Bloomington
Board of Zoning Appeals
401 N. Morton St.
Bloomington, Indiana 47404

RE: Appeal of Notice of Violation for BMI Properties LLC

Dear Board Members,

Clendening Johnson & Bohrer, P.C. represents BMI Properties LLC ("BMI"), the owner of the real properties located at 1000 and 1002 E. Atwater, Bloomington, Indiana (collectively, "the Properties"). This appeal is made on behalf of BMI pursuant to Unified Development Ordinance ("UDO") Section 20.10.060, which permits appeals of Notices of Violation.

Summary

BMI is the landlord of the Properties. The City has improperly cited BMI for an improper use, based on its position that it operates the Properties as a "Fraternity/Sorority House" as defined in the UDO. The City's erroneous claim is that BMI's use of the Properties extends beyond the lawful nonconforming use, even though BMI has not modified the use of the Properties since it purchased them.

Factual Overview

On or about April 27, 2018, counsel for the City of Bloomington's ("the City") Planning and Transportation Department ("P&T Dept.") delivered a Notice of Violation (attached) to BMI alleging that BMI's use of the Properties was not in accordance with the UDO. Specifically, the City claims that BMI, by housing tenants, some of whom belong to the fraternity Phi Kappa Sigma ("PKS"), is using the Properties as a fraternity in violation of Title 20 of the UDO. This appeal is taken on May 2, 2018, which is timely pursuant to UDO 20.09.350(c)(1).

409 W. PATTERSON DR., SUITE 205, BLOOMINGTON, IN 47403 · P.O. BOX 428, BLOOMINGTON, IN 47402-0428

201 NORTH ILLINOIS STREET, 16TH FLOOR, SOUTH TOWER, INDIANAPOLIS, IN 46204

T·812-332-1000 · F·812-332-7601
WWW.LAWCJB.COM

Prior to the April 27, 2018, Notice of Violation, the City directed Notices of Violation to BMI on three other occasions, each of which alleged that BMI was operating a fraternity house at the Properties. In fact, however, without the knowledge of, and contrary to the dictates of, both BMI and the City, the individual tenants, whom the City contends are members of PKS, advertised to hold a meeting at the Properties. Additionally, the individual tenants hung a series of flags between the Properties, one of which bore a PKS logo.

BMI did not pay the fines assessed by the City. BMI did not violate the UDO. BMI does not lease the premises to PKS, but to individual tenants, some of whom may or may not be members of PKS or any other fraternity.

Since BMI purchased the Properties in May, 2016, it has not limited occupancy to members of any group, fraternity, sorority, or otherwise. BMI leases its units to any individual, without limitation on their social involvement. In fact, each room in the Properties is leased to an individual tenant, regardless of whether such tenants are members of a specific fraternity or sorority.

The Present Dispute

According to the City, the Properties were previously operating under a "lawful nonconforming use," "specifically as a 'rooming house' as that term was defined under the old zoning code." According to the City Attorney, the "old zoning code" reference is to the 1973 ordinance, which cites the definition of "Lodginghouse, Roominghouse" as follows:

a building with more than two guest rooms where lodging, with or without meals, is provided for compensation, or a single household dwelling, occupied by more than five unrelated adult individuals, but not a hotel or motel.

1973 Ordinance, Section 20.04.01.00. This is the definition under which BMI has operated, and continues to operate, the Properties since it purchased them.

The City has, in error, taken the position that BMI has operated the Properties as a fraternity house for more than six (6) months, and pursuant to UDO Section 20.08.100(b) is no longer a lawful nonconforming use under the Roominghouse definition cited above. As a result, the City contends that no occupancy permit can be issued, and the Properties must be operated under a different permitted use set forth in the UDO. The City's position is unlawful, unconstitutional, and should be reversed.

A. The Definition of Fraternity/Sorority House

The position taken by the City is erroneous for multiple reasons. First, the City refers to BMI's use of the Property as a "fraternity," without regard for the definition of the term as it is set forth in the UDO. Under the UDO, Fraternity/Sorority House is defined as follows:

A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students who meet the following requirements: all students living in the building are enrolled at the Indiana University Bloomington campus; and Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition. Shall also include a building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.

UDO 20.11.020. The Properties are not being utilized as a fraternity house.

The definition requires that Indiana University “has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition.” While Phi Sigma Kappa is a fraternity recognized by Indiana University, BMI is unaware of whether “the students living in the building” have been “sanctioned or recognized” as members of a fraternity.

Under the City’s apparent interpretation of the definition, all landlords owning rental properties in the City, in order to maintain compliance with relevant zoning requirements, would be required to undertake the Herculean task of seeking out information from Indiana University on every individual tenant to determine whether he/she is a member of a fraternity or sorority. This could only be done by contacting Indiana University for every rental application, since the definition requires that Indiana University “has sanctioned or recognized the students living in the building” as members of a fraternity. Not only is this interpretation of the definition impracticable, but the likelihood of Indiana University providing personal information of its students is slim at best. The City’s interpretation is not what is intended by the definition.

The second sentence of the definition brings within it all buildings or portions “thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.” In essence, if “occupancy is limited to members of a specific fraternity or sorority,” then it qualifies as a fraternity or sorority.

BMI does not limit occupancy to members of any group, fraternity, sorority, or otherwise. BMI leases its units to any individual, without limitation on their social involvement. In fact, each room in the Properties is leased to an individual tenant, regardless of whether such tenants are members of a specific fraternity or sorority.

The City's interpretation would effectively force landlords to ask each tenant about his or her group affiliations prior to accepting the tenant. It would further require landlords to contact Indiana University to determine whether each tenant is a member of a fraternity or sorority in order to maintain compliance with their respective zoning laws. The City's interpretation of the definition invites discriminatory practices, which cannot be tolerated.

B. Constitutional Issues with the City's Interpretation

1. *The UDO's definition of "Fraternity/Sorority House" is unconstitutionally vague.*

Notwithstanding the City's interpretation, the definition is unconstitutionally vague on its face in violation of the Fifth and Fourteenth Amendments to the United States Constitution. As described above, there are a number of interpretations of the definition of Fraternity/Sorority house, each of which results in a different outcome and neither of which provides reasonable notice as to what is intended thereby.

For example, "groups of unmarried students" could mean two or more unmarried students. In this event, if there are two (2) unmarried students who happen to belong to the same fraternity and who live together in an off-campus location, under the City's interpretation of the definition, the building or section of the building in which these students are housed will be a fraternity/sorority house.

2. *The City's interpretation invites and encourages discrimination based on group affiliation.*

Further, the City's interpretation forces landlords to ask each tenant about his or her group affiliations prior to accepting the tenant, in order maintain compliance with zoning requirements. The City's interpretation of the definition effectively forces landlords to discriminate against prospective individual tenants based on their group affiliations, which cannot be tolerated.

What is to stop the City from later forcing landlords to inquire into other affiliations, such as, for example, the religious affiliations of certain prospective tenants to ensure that a property is not improperly being used as a "place of worship" (see, e.g. UDO 20.11.020, definition of "Place of worship")? The leap from forcing landlords to inquire into group affiliation to comply with zoning restrictions is not far from inquiries into other affiliations, and under the City's improvident reading of the definition, landlords are invited and incentivized to request this deeply personal information.

Conclusion

The City's Notice of Violation and assertion that BMI has abandoned its use on the basis that it is operating as a fraternity runs afoul of the definition of "fraternity/sorority house" set forth in the UDO. Further, the City's interpretation of the definition forces landlords to discriminate, and is unconstitutionally vague. For the reasons set forth herein, and based on the evidence that will be presented at the next regularly scheduled Board of Zoning Appeals meeting, the Board should deny the City's assertion that BMI is no longer operating under a lawful nonconforming use.

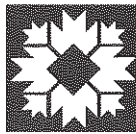
Respectfully submitted,



Cheyenne N. Riker
Counsel for BMI Properties LLC

Cc: Jeffrey T. Brawley
Anahit Behjou, City Attorney

Corporation Counsel
Philippa M. Guthrie



City of Bloomington
Legal Department

Assistant City Attorneys
Larry Allen
Anahit Behjou
Barbara E. McKinney
Jacquelyn F. Moore
Christopher J. Wheeler

City Attorney
Michael M. Rouker

April 27, 2018

Jeff Brawley
BMI Properties LLC
115 N College Ave, Suite 015
Bloomington, IN 47404

Re: Notice of Violation
Illegal Land Use at 1000 & 1002 E. Atwater Avenue

Dear Mr. Brawley:

The City of Bloomington's ("City") Planning and Transportation Department ("P&T Department") has requested the assistance of our office in regards to an ongoing violation of the Bloomington Municipal Code's ("BMC") Unified Development Ordinance ("UDO"), Section 20.02.140 Residential Multifamily Permitted Uses at the properties located at 1000 and 1002 E. Atwater Ave, Bloomington, Indiana 47401 (collectively the "Properties"). Records show that you are the owner of the Properties.

If the violations mentioned in this Notice of Violation, and any attached documents, are not remedied on or before the deadlines imposed herein, the City will pursue further legal action against you.

Violation of BMC Title 20 (Unified Development Ordinance)

On September 7, 2017, the P&T Department sent you a Notice of Violation ("NOV") letter for operating a 'fraternity/sorority house' at the Property. The NOV letter set forth your options for achieving compliance with the UDO requirements.

On October 13, 2017, you received a second NOV letter for continuing to use the Properties as a fraternity/sorority house and were assessed a fine in the amount of Two Thousand Five Hundred Dollars (\$2,500.00). The P&T Department subsequently reduced the fine to Two Hundred Fifty Dollars (\$250.00) when a fraternity banner was removed from the premises on the same date.

On November 29, 2017, you received another NOV letter for continuing to use the Properties as a fraternity/sorority house and were assessed a fine in the amount of Five Thousand Dollars (\$5,000) for the continuing violation.

On February 21, 2018, the P&T Department sent you a final NOV letter for continuing to use the Properties as a fraternity/sorority house and a fine of Twenty Two Thousand Five Hundred Dollars (\$22,500) was assessed.

As of the date of this letter, you have not responded to the last two communications from the P&T Department, nor have you paid any of the fines.

UDO Section 20.08.100(b) states:

“A lawful nonconforming use shall be deemed abandoned when the nonconforming use has been replaced by a conforming use or when the nonconforming use has ceased and has not been resumed for a continuous period of six (6) months, or when the furnishings have been removed and not replaced for a continuous period of six (6) months.”

The individual houses comprising the Properties have been regulated under the UDO as a “lawful nonconforming use,” specifically as a “rooming house” as that term was defined under the old zoning code. The rooming house uses established before the creation of the UDO were able to continue subject to all other applicable provisions of BMC 20.08. However, since the Properties have not been used as rooming houses but rather as a fraternity/sorority house for a continuous period of six (6) months, the lawful nonconforming use has been deemed abandoned. Additionally, as we have notified you repeatedly, a fraternity/sorority house is not a permitted use in the Properties’ current Residential Multifamily (RM) zoning district.

To achieve compliance with the UDO, you must meet the following conditions:

- 1) The fraternity use must be discontinued by May 11, 2018.
- 2) You may operate under any of the permitted uses in UDO Section 20.02.140 Residential Multifamily. Please note that while rooming houses are allowed in the RM district, you must comply with Section 20.05.104 SC-21 [Special Conditions; Rooming House] of the current UDO to reestablish this use on the Properties. This section requires, that a rooming house may have no more than five (5) bedrooms excluding the owner’s living space, and that the owner reside in the rooming house. Moreover, please note that if you decide to use each building as a ‘Dwelling, Single-Family (detached)’ house, the definition of ‘family’ limits the number of unrelated adults in each house to five (5) individuals.

If you dispute the City’s assertion that you have abandoned the use of the property as a rooming house, you may file an appeal with the City’s Board of Zoning Appeals. Said appeal shall be filed with the P&T Department within five (5) days of your receipt of this Notice of Violation and shall conform to the requirements of UDO Section 20.09.350 Administrative Appeals.

Violation of BMC Title 16 (Residential Rental Unit &
Lodging Establishment Inspection Program)

You are also in violation of Title 16 since you have permitted the house at 1000 E. Atwater to be occupied without a valid occupancy permit. Per Bloomington Municipal Code Section 16.03.030(a) an occupancy permit is required for all rental units.

Under Bloomington Municipal Code Section 16.03.030(b), the Housing and Neighborhood Development (“HAND”) cannot issue a new occupancy permit for this property until it is in compliance with all provisions of the Bloomington Municipal Code. Since you have not met the provisions of Title 20 as stated above, HAND cannot issue you a new occupancy permit.

For reference please see the letter dated March 27, 2018, from Assistant City Attorney Christopher J. Wheeler to BMI Properties, LLC and directed to your attention regarding continuing violations of Title 16 of the Bloomington Municipal Code at your Properties.

Failure to meet the deadline noted in this Notice of Violation and failure to remediate the violations described herein may result in the City taking legal action against you. Legal action may include, but not be limited to, initiating litigation against you in the Monroe County Circuit Court and/or requesting injunctive relief.

Thank you for your prompt attention to this matter.

Sincerely,
Anahit Behjou
Assistant City Attorney

Enclosure

cc: Philippa Guthrie
Terri Porter
Doris Sims



City of Bloomington
Planning and Transportation Department

September 7, 2017

Jeff Brawley
The Brawley Group
P.O. Box 5543
Bloomington, IN 47407

Re: **Notice of Violation**
Illegal Land Use at 1000 and 1002 E. Atwater Ave.

Dear Mr. Brawley:

The Planning and Transportation Department was informed on 8/28/2017 that a fraternity use (Phi Kappa Sigma, Delta Pi Chapter) has been established at two lawful nonconforming rooming houses located at 1000 and 1002 E. Atwater Ave. These buildings are located in a Residential Multifamily (RM) zoning district which does not permit a fraternity use, as per the Bloomington Municipal Code's **Unified Development Ordinance (UDO) Section 20.02.140 Residential Multifamily Permitted Uses**. The property is now in violation of the City of Bloomington's UDO. According to the UDO Section 20.11, a **Fraternity/Sorority House** is defined as:

A building or portion thereof used for sleeping accommodations, with or without accessory common rooms and cooking and eating facilities, for groups of unmarried students who meet the following requirements: all students living in the building are enrolled at the Indiana University Bloomington campus; and Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition. Shall also include a building or portion thereof in which individual rooms or apartments are leased to individuals, but occupancy is limited to members of a specific fraternity or sorority, regardless of the ownership of the building or the means by which occupancy is so limited, provided the two requirements noted in the first sentence of this definition are also met.

The buildings at these addresses are lawful nonconforming (grandfathered) as rooming houses. There are 8 sleeping rooms at 1000 E. Atwater and 13 sleeping rooms at 1002 E. Atwater per the Housing and Neighborhood Development Department's Residential Rental Occupancy Permits. A change in use for these structures is prohibited by **UDO Section 20.08.050 Changes in Use Restricted:**

(b) A lawful nonconforming use may be changed to any conforming use, subject to compliance with all development standards and other requirements of this Unified Development Ordinance, **but shall not be changed to another nonconforming use.**

To reach compliance, you must comply with one of the below options:

- 1.) The fraternity use must be discontinued by 10/10/2017. These buildings cannot be the site for any formal fraternity activity. There can be no signage, meetings, sanctioned events, recruitment events, etc., at these buildings. The addresses of these two buildings cannot be used as the addresses for the fraternity with Indiana University or any other marketing mechanism.

September 7, 2017

- 2.) The properties must receive approval for a use variance from the City of Bloomington Board of Zoning Appeals. If you choose this route, the use variance must be filed for the 11/6/17 Plan Commission hearing by 10/10/2017. In addition, the use variance must be filed for the 11/16/17 Board of Zoning Appeals hearing by 10/18/17. Contact me prior to the deadline to discuss filing requirements.
- 3.) The properties must receive approval for a rezoning from Residential Multifamily (RM) to Institutional (IN) zoning. If you choose this route, the rezoning request must be filed for the 11/6/17 Plan Commission hearing by 10/10/2017 to start the process. Contact me prior to the deadline to discuss filing requirements.

Please respond by 9/29/17 to inform the Planning and Transportation Department which option will be pursued to reach compliance. In accordance with the UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Subsequent violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500). No fines have been issued at this time. To avoid fines, the use must be returned to a rooming house use as defined in UDO Section 20.11, a use variance must be approved for a fraternity use on the properties, or a rezoning to IN must be approved. The change of use at the properties to an illegal fraternity use can result in the loss of the rooming house lawful nonconforming use if the properties do not reach compliance.

Please contact me at jacksobr@bloomington.in.gov or 812-349-3529 with any questions or concerns.

Sincerely,



Brad Jackson, AICP
Senior Zoning Compliance Planner

cc. Doris Sims, HAND Director
Anahit Behjou, Assistant City Attorney
Chris Wheeler, Assistant City Attorney
Sara Ivey Lucas, Assistant Dean for Parent and Off Campus Student Affairs, Indiana University



City of Bloomington
Planning and Transportation Department

October 13, 2017

Jeff Brawley
The Brawley Group
P.O. Box 5543
Bloomington, IN 47407

Re: Notice of Violation
Illegal Land Use at 1000 and 1002 E. Atwater Ave.

Dear Mr. Brawley:

The Planning and Transportation Department was informed on 8/28/2017 that a fraternity use (Phi Kappa Sigma, Delta Pi Chapter) has been established at two lawful nonconforming rooming houses located at 1000 and 1002 E. Atwater Ave. These buildings are located in a Residential Multifamily (RM) zoning district which does not permit a fraternity use, as per the Bloomington Municipal Code's **Unified Development Ordinance (UDO) Section 20.02.140 Residential Multifamily Permitted Uses**. In accordance with the original NOV sent 9/7/17, you agreed to discontinue the fraternity use, including but not limited to the below requirements:

The fraternity use must be discontinued by 10/10/2017. These buildings cannot be the site for any formal fraternity activity. **There can be no fraternity signage**, meetings, sanctioned events, State Interfraternity Council sanctioned events, or recruitment events (rush) at these buildings. The addresses of these two buildings cannot be used as the addresses for the fraternity with Indiana University or any other marketing mechanism.

On 10/13/17, Planning and Transportation Department staff noted a Phi Kappa Sigma sign hanging as a flag between 1000 and 1002 E. Atwater. A photo of the flag is included in this NOV letter. According to the UDO **Section 20.10.040 Penalty**:

(a) Any violation that is subject to Chapter 20.10: Enforcement and Penalties shall be subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500.00) for each such violation, and not more than seven thousand five hundred dollars (\$7,500.00) for the second and any subsequent violation, in addition to any and all other remedies available to the City, except where a lesser fine is specified herein.

The fine for an illegal land use listed in UDO 20.10.040 is \$2,500. As of the date of this Notice of Violation, the fine is two-thousand, five hundred dollars (\$2,500) for this violation of the Unified Development Ordinance. This fine will continue to accrue daily in accordance with Chapter 20.10 Enforcement and Penalties section of the City of Bloomington UDO until such time as the violation is remedied. Please contact the Planning and Transportation Department after the violation has been remedied for an inspection.

The final fine amount shall be paid to the City of Bloomington Planning and Transportation Department within two weeks of the date the violation is remedied and the final fine amount is calculated. Failure to resolve this violation or to pay the final fine amount will result in the City filing suit in the Monroe County Circuit Court. Please direct payment to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47404.

October 13, 2017

Please contact me at jacksobr@bloomington.in.gov or 812-349-3529 with any questions or concerns.

Sincerely,



Brad Jackson, AICP
Senior Zoning Compliance Planner

cc. Doris Sims, HAND Director
Anahit Behjou, Assistant City Attorney
Chris Wheeler, Assistant City Attorney
Sara Ivey Lucas, Assistant Dean for Parent and Off Campus Student Affairs, Indiana University



Phi Kappa Sigma Greek Flag hanging at 1000 and 1002 E. Atwater Avenue



**City of Bloomington
Planning and Transportation Department**

October 25, 2017

Jeff Brawley
The Brawley Group
P.O. Box 5543
Bloomington, IN 47407

Re: Notice of Violation -- Fine Assessment Notice
Illegal Land Use at 1000 and 1002 E. Atwater Ave.

Dear Mr. Brawley:

In accordance with the Notice of Violation (NOV) letter sent on 10/13/17, a fine has been assessed for one day of a violation of an illegal land use at 1000 and 1002 E. Atwater Ave. On 10/13/17 Planning and Transportation Department staff noted a Phi Kappa Sigma sign hanging as a flag between 1000 and 1002 E. Atwater. A photo of the flag is included in this NOV letter. The flag was removed later that afternoon, resulting in one day of a documented violation. Due to the rapid removal of the fraternity flag the same day the fine was issued, the fine amount has been reduced to \$250.00. Please direct payment to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47404.

The fine amount shall be paid to the City of Bloomington Planning and Transportation Department within two weeks of the date of this letter. Failure to resolve this violation or to pay the final fine amount will result in the City filing suit in the Monroe County Circuit Court.

due Nov 8

Please contact me at jacksobr@bloomington.in.gov or 812-349-3529 with any questions or concerns.

Sincerely,

Brad Jackson, AICP
Senior Zoning Compliance Planner

cc. Doris Sims, HAND Director
Anahit Behjou, Assistant City Attorney
Chris Wheeler, Assistant City Attorney

November 29, 2017



Phi Kappa Sigma Greek Flag hanging at 1000 and 1002 E. Atwater Avenue



City of Bloomington
Planning and Transportation Department

November 29, 2017

Jeff Brawley
The Brawley Group
P.O. Box 5543
Bloomington, IN 47407

Re: Notice of Violation- Second Violation
Illegal Land Use at 1000 and 1002 E. Atwater Ave.

Dear Mr. Brawley:

The Planning and Transportation Department was informed on 8/28/2017 that a fraternity use (Phi Kappa Sigma, Delta Pi Chapter) has been established at two lawful nonconforming rooming houses located at 1000 and 1002 E. Atwater Ave. These buildings are located in a Residential Multifamily (RM) zoning district which does not permit a fraternity use, as per the Bloomington Municipal Code's **Unified Development Ordinance (UDO) Section 20.02.140 Residential Multifamily Permitted Uses**. In accordance with the original NOV sent 9/7/17, you agreed to discontinue the fraternity use, including but not limited to the below requirements:

The fraternity use must be discontinued by 10/10/2017. These buildings cannot be the site for any formal fraternity activity. **There can be no fraternity signage**, meetings, sanctioned events, State Interfraternity Council sanctioned events, or recruitment events (rush) at these buildings. The addresses of these two buildings cannot be used as the addresses for the fraternity with Indiana University or any other marketing mechanism.

On **11/28/17**, Planning and Transportation Department staff documented a fraternity sign hanging from a window at 1002 E. Atwater. The sign reads "@ Alpha Phi we're still throwing down -Skullz." A photo of the sign is included in this NOV letter. On October 13, 2017, this property received a reduced fine of \$250 with payment due by 11/8/17 for this same land use violation. This first fine of \$250 has remained unpaid as of the date of this letter.

Since this is the second violation within 3 years of the first violation, the fine will be double the original fine in accordance with **UDO Section 20.10.040 Penalty**:

- (a) Any violation that is subject to Chapter 20.10: Enforcement and Penalties shall be subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500.00) for each such violation, and not more than seven thousand five hundred dollars (\$7,500.00) for the second and any subsequent violation, in addition to any and all other remedies available to the City, except where a lesser fine is specified herein.
- (b) The following violations of Title 20: Unified Development Ordinance shall be subject to the fines listed in the table below for the first offense. In addition, if a responsible party commits a second or subsequent violation of the same provision of this Unified Development Ordinance within three (3) years of the first such violation, regardless of whether the second or subsequent violation is on the same property as the first such violation, the listed fine for such second or subsequent offense shall be twice the previous fine, subject to the maximum set forth in Subsection 20.10.040(a) above. (For example, a

November 29, 2017

violation that is subject to a one hundred dollar (\$100) fine per the table will be subject to a two hundred dollar (\$200) fine for the second offense, a four hundred dollar (\$400) fine for the third offense, and so forth.) A responsible party will be deemed to have violated the same provision for purposes of this Subsection where the violations fall under the same Section of this Unified Development ordinance or under the same subject matter heading where such heading contains multiple Sections (for example, "Parking Standards (PK)", containing Sections 20.05.069 through 20.05.074.)

The standard fine for an illegal land use listed in UDO 20.10.040 is \$2,500. As of the date of this Notice of Violation, the fine is five thousand dollars (\$5,000) for this violation of the Unified Development Ordinance. This fine will continue to accrue daily in accordance with Chapter 20.10 Enforcement and Penalties section of the City of Bloomington UDO until such time as the violation is remedied. Please contact the Planning and Transportation Department after the violation has been remedied for an inspection.

The final fine amount shall be paid to the City of Bloomington Planning and Transportation Department within two weeks of the date the violation is remedied and the final fine amount is calculated. Failure to resolve this violation or to pay the final fine amount will result in the City filing suit in the Monroe County Circuit Court. Please direct payment to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47404.

Please contact me at jacksobr@bloomington.in.gov or 812-349-3529 with any questions or concerns.

Sincerely,



Brad Jackson, AICP
Senior Zoning Compliance Planner

cc. Doris Sims, HAND Director
Anahit Behjou, Assistant City Attorney
Chris Wheeler, Assistant City Attorney
Sara Ivey Lucas, Assistant Dean for Parent and Off Campus Student Affairs, Indiana University

November 29, 2017



Fraternity sign hanging at 1002 E. Atwater Avenue on 11/28/2017.



**City of Bloomington
Planning and Transportation Department**

February 21, 2018

Jeff Brawley
The Brawley Group
P.O. Box 5543
Bloomington, IN 47407

Re: **Notice of Violation- Violations 3, 4, and 5**
Illegal Land Use at 1000 and 1002 E. Atwater Ave.

Dear Mr. Brawley:

The Planning and Transportation Department was informed on 8/28/2017 that a fraternity use (Phi Kappa Sigma, Delta Pi Chapter) has been established at two lawful nonconforming rooming houses located at 1000 and 1002 E. Atwater Ave. These buildings are located in a Residential Multifamily (RM) zoning district which does not permit a fraternity use, as per the Bloomington Municipal Code's **Unified Development Ordinance (UDO) Section 20.02.140 Residential Multifamily Permitted Uses**. In accordance with the original NOV sent 9/7/17, you agreed to discontinue the fraternity use, including but not limited to the below requirements:

The fraternity use must be discontinued immediately. These buildings cannot be the site for any formal fraternity activity. **There can be no fraternity signage**, meetings, sanctioned events, State Interfraternity Council sanctioned events, or recruitment events (rush) at these buildings. **The addresses of these two buildings cannot be used as the addresses for the fraternity with Indiana University or any other marketing mechanism.**

On October 13, 2017, this property received a reduced fine of \$250 with payment due by 11/8/17 for this same land use violation. On 11/28/17 a second fine of \$5,000 was assessed for the same land use violation. As of the date of this letter, both fines remain unpaid.

On 2/20/18, Planning and Transportation Department staff documented a fraternity sign at 1002 E. Atwater. A photo of the sign is included in this NOV letter.

On 2/20/18, Planning and Transportation Department staff documented a fraternity marketing post on the Phi Kappa Sigma – Indiana University Facebook page. The post reads "Rush Phi Kappa Sigma this spring! Come meet the brothers at 1000 E Atwater!". A photo of the post is included in this NOV letter.

On 2/20/18, Planning and Transportation Department staff documented a fraternity marketing post on the Phi Kappa Sigma – Indiana University Facebook page. The post reads "Interested in rushing? Come through to 1000 E Atwater to meet the brothers of Phi Kappa Sigma!". A photo of the post is included in this NOV letter.

Since this is the third, fourth, and fifth violation within 3 years of the first violation, the fines will be triple the original fine in accordance with UDO **Section 20.10.040 Penalty**:

- (a) Any violation that is subject to Chapter 20.10: Enforcement and Penalties shall be subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500.00) for each such violation, and not more than seven thousand five hundred dollars (\$7,500.00) for the second and any subsequent

February 21, 2018

violation, in addition to any and all other remedies available to the City, except where a lesser fine is specified herein.

- (b) The following violations of Title 20: Unified Development Ordinance shall be subject to the fines listed in the table below for the first offense. In addition, if a responsible party commits a second or subsequent violation of the same provision of this Unified Development Ordinance within three (3) years of the first such violation, regardless of whether the second or subsequent violation is on the same property as the first such violation, the listed fine for such second or subsequent offense shall be twice the previous fine, subject to the maximum set forth in Subsection 20.10.040(a) above. (For example, a violation that is subject to a one hundred dollar (\$100) fine per the table will be subject to a two hundred dollar (\$200) fine for the second offense, a four hundred dollar (\$400) fine for the third offense, and so forth.) A responsible party will be deemed to have violated the same provision for purposes of this Subsection where the violations fall under the same Section of this Unified Development ordinance or under the same subject matter heading where such heading contains multiple Sections (for example, "Parking Standards (PK)", containing Sections 20.05.069 through 20.05.074.)

The standard fine for an illegal land use listed in UDO 20.10.040 is \$2,500. As of the date of this Notice of Violation, the fine is seven thousand five hundred dollars (\$7,500) **per violation** of the Unified Development Ordinance. As of the date of this letter, the total fine amount for the five violations is twenty-seven thousand seven hundred and fifty dollars (\$27,750). These fines will continue to accrue daily in accordance with Chapter 20.10 Enforcement and Penalties section of the City of Bloomington UDO until such time as the violation is remedied. Please contact the Planning and Transportation Department after the violation has been remedied for an inspection.

The final fine amount shall be paid to the City of Bloomington Planning and Transportation Department within two weeks of the date the violation is remedied and the final fine amount is calculated. Failure to resolve this violation or to pay the final fine amount will result in the City filing suit in the Monroe County Circuit Court. Please direct payment to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47404.

Please contact me at buddinc@bloomington.in.gov or 812-349-3573 with any questions or concerns.

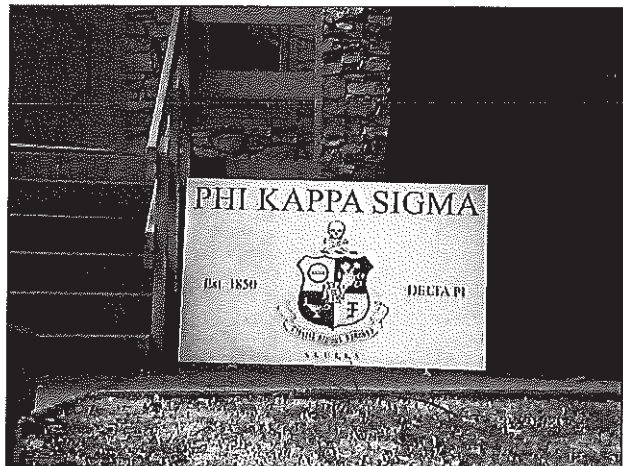
Sincerely,



Carl Buddin
Zoning Compliance Planner

cc. Doris Sims, HAND Director
Anahit Behjou, Assistant City Attorney
Chris Wheeler, Assistant City Attorney
Sara Ivey Lucas, Assistant Dean for Parent and Off Campus Student Affairs, Indiana University

February 21, 2018



Phi Kappa Sigma sign at 1002 E. Atwater Avenue on 2/20/2018.

Secure | <https://www.facebook.com/indianas/kulls/photos/pcb-118656111616591-22075200001519142331/1667693593043363/?type=3&theater>



- 2-5 OPEN HOUSE TOURS
- 2-7 OPEN HOUSE TOURS
- 2-9 IUBB GAME STREAM
- 2-10 PICKUP BASKETBALL
- 2-12 2K TOURNAMENT

ΦΚΣ

SPRING RUSH 2018

Phi Kappa Sigma - Indiana University
Live This Page - February 21, 2018


Rush Phi Kappa Sigma this spring! Come meet the brothers at 1000 E Atwater!

Erin Albala O'Neil, Jay Lacey Elcanst, Jeremy Krofno and 8 others like this

2 Shares

Phi Kappa Sigma Facebook post advertising spring rush events at 1000 E Atwater. Posted February 4, 2018.

Secure | <https://www.facebook.com/indiana/kulls/photos/pcb-449656411516591-22075200001519142331/1667647345531155/?type=5&theater>



- 2-16 BAR GAMES
7-9:30 PM
- 2-16 CASINO NIGHT
7-10 PM
- 2-17 COOKOUT
2-5 PM
- 2-19 CIGARS + BLAZERS
7-10 PM

ΦΚΣ

SPRING RUSH 2018

Interested in rushing? Come through to 1000 E Atwater to meet the brothers of Phi Kappa Sigma!

Phi Kappa Sigma - Indiana University
Live This Page - February 15, 2018

Phi Kappa Sigma Facebook post advertising spring rush events at 1000 E. Atwater. Posted February 15, 2018.