DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council

FROM: John A. Schneider, MPA, Director, Community Development Services Department

DATE: November 1, 2018

SUBJECT: **An Ordinance Approving a Major Variance** (401 North Broadway Avenue / ZBA-2018-MAJ-10).

Introduction and Background

On behalf of Broadway Market LLC, Andrew Fell has submitted an application for a major variance to allow a parking lot configuration at 401 North Broadway Avenue that does not meet the minimum design standards of the zoning ordinance. The property is in the B-4, Central Business zoning district, which does not require parking. However, when parking is provided, it must meet the standards of the Zoning Ordinance. The approved building plans for the site show one row of parking next to the main building. However, the parking demand at the Broadway Food Hall has exceeded what can be accommodated by one row of parking, and a variance is therefore requested that would allow additional parking on site.

At present, the Broadway Food Hall has a temporary Certificate of Occupancy. A permanent Certificate of Occupancy will be issued once the parking lot is brought into compliance with the Zoning Ordinance or a Major Variance is granted, or when some combination of the two is achieved.

The site plans approved by the City for the Broadway Food Hall showed one row of parking in front of the building (Exhibit D). The approved parking configuration met the requirements of the Zoning Ordinance. However, when the parking lot was striped, an additional 13 parking spaces were added next to the sidewalk along Broadway Avenue (Exhibit G). Four of those spaces back directly onto Broadway Avenue. This violates Section VIII-4.E of the Zoning Ordinance, which states that only driveways for single- and two-family home can back directly onto a street. In addition, none of the parking spaces meet the minimum size required by the Zoning Ordinance (18 feet, 6 inches by 9 feet, or 19 feet by 8 feet, 6 inches).

The variance request is to allow the parking lot to remain as it is currently striped (Exhibit G). Specifically, the request is:

To allow four parking spaces that back directly onto Broadway Avenue; and

To allow 24 parking spaces that do not meet the minimum parking space dimensions[1], being:

11 spaces that are 18 feet, 2 inches long by 9 feet wide;
9 spaces that are 15 feet, 10 inches long by 9 feet wide;
1 space that is 16 feet, 11 5/8 inches long by 9 feet wide;
1 space that is 15 feet, 11 7/8 inches long by 9 feet wide;
1 space that is 14 feet, 11 7/8 inches long by 9 feet wide;
1 space that is 13 feet, 11 7/8 inches long by 9 feet wide;

[1] Minimum parking space dimensions are either 18 feet, 6 inches long by 9 feet wide or 19 feet long by 8 feet, 6 inches wide.

Staff recommends that a lesser variance be granted, which would allow two spaces to back directly onto Broadway Avenue, with those spaces reserved for employees only. The parking lot can otherwise be brought into compliance with the Zoning Ordinance.

At its October 17, 2018, meeting, the Zoning Board of Appeals (ZBA) held a public hearing on this case. No members of the public spoke at the hearing; however, two letters supporting the variance were received prior to the meeting (see Exhibit I). After discussion, the ZBA voted 6 ayes and 0 nays to recommend that City Council approve the variance request with conditions, including a condition that the owner not be required to remove the southern curb cut and driveway. That condition would exempt the property owner from Section 20-505 of the Urbana Municipal Code, which is not allowed by a variance. Variances can only be granted for regulations in the Zoning Ordinance, not City Code. Any variance that the City Council may approve can only apply to the regulations of the Zoning Ordinance. (*See "Public Hearing" under "Discussion" below for more information.)*

Description of Site

The site is located between Broadway Avenue and the Boneyard Creek. The existing building, which has been renovated and repurposed, is slightly offset from being parallel to Broadway Avenue. The front portion of the old building was demolished to make room for parking and to establish a new front and entrance to the Food Hall. The building has a northern addition that extends east past the front of the main building. Four parking spaces have been striped in front of this addition, all of which back directly onto Broadway Avenue. The site has two large driveway aprons on Broadway Avenue that were established many decades ago. The driveways were re-established between 2012 and 2014 when the city improved the streetscape along this section of Broadway Avenue.

Zoning and Land Use Table

The following is a summary of surrounding zoning and land uses for the subject site:

Location	Zoning	Existing Land Use	Future Land Use
Site	B-4, Central Business	Food Hall and Event Space	Central Business
North	B-4, Central Business	Commercial (Multiple)	Central Business
South	B-4, Central Business	Theater, Offices	Central Business
East	B-4, Central Business	Commercial	Central Business
West	B-4, Central Business	Park, Restaurant	Central Business

Discussion

The approved site plans for the Broadway Food Hall only showed one row of parking, which complied with the Zoning Ordinance (see Exhibit D). No parking spaces were striped before the Food Hall opened for business. Once it opened, it quickly became apparent that one row of parking would not be sufficient to meet parking demand. Without submitting revised plans to the city for review, the owners had parking spaces striped that were not consistent with the approved plan. The parking spaces do not meet the requirements of the Zoning Ordinance. After being informed by city staff that the parking lot did not meet the requirements, one of the property owners met with staff to discuss their options to bring the parking lot

into compliance, with one option being a Major Variance to allow the striped parking to remain in its current state.

If granted, the variance would allow 24 parking spaces.[1] Four of the spaces would require cars to back across the sidewalk and directly onto Broadway Avenue, which is not allowed per Section VIII-4.E of the Zoning Ordinance. In addition, six spaces would allow, but not require, cars to back across the sidewalk and directly onto Broadway Avenue; while this is technically allowed by the Zoning Ordinance, it is a safety hazard.[2] New parking spaces cannot back directly onto the street unless a variance is granted to allow it. In this case, it would be dangerous to grant the variance. The parking spaces are right up against the sidewalk, parked cars frequently overhang the sidewalk, and cars frequently pull through the parking spaces in either direction or back out across the sidewalk onto Broadway Avenue. Permitting so many parking spaces to remain, as they currently exist, would allow these unsafe conditions to continue.

The most prudent course of action, which is also required by Section 20-505 of the Urbana City Code, would be to close the southern driveway, either partially or fully. This would allow the parking lot to be brought into compliance with the Zoning Ordinance and would make the area safer. Had the property owner consulted with city staff prior to striping the parking lot, this would have been the required course of action.

Regarding the four parking spaces in front of the northern building addition, two of the spaces are too small even for compact vehicles and should be removed. That area could be used for something else, such as bike parking. Those spaces should also be blocked using bollards or large planters to prevent cars from being parked there. The remaining two spaces could be allowed, with a variance, as "employee only" parking spaces that back directly onto Broadway Avenue. Since employees' vehicles do not move as frequently as customers' vehicles, the potential number of conflicts from backing out onto Broadway Avenue would be minimized.

Alternatives Considered

Staff considered many alternatives to bring the parking lot into compliance with the Zoning Ordinance. The following is not an exhaustive list of every possible option considered, but it includes the main options that staff considered feasible.

For the **southern parking area**, the following alternatives were considered (in descending order of desirability):

1. Complete removal of the driveway, install a curb, and add wheelstops to all parking spaces adjacent to the sidewalk. In this scenario, the parking would be brought into compliance;

2. Partially remove the driveway, install a curb, and stripe a one-way or two-way access drive off of Broadway Avenue, plus add wheelstops to all parking spaces adjacent to the sidewalk. In this scenario, the parking would be brought into compliance;

3. Same as #1 or #2 above, but instead of installing a curb, install large planters in the driveway to provide a barrier to effectively close the driveway. The property owner would need to obtain a license agreement with the City to put planters in the public right-of-way and would need to assume liability for the area. In this scenario, the parking would be brought into compliance. However, this would be more of a temporary solution to a permanent issue. The result is less desirable than installing a

[1] Per Table VIII-1. Handicapped Parking, of the Urbana Zoning Ordinance and the Illinois Accessibility Code, two of those spaces would need to be converted into one additional handicapped parking space.

[2] While there are other instances in downtown Urbana where cars can back directly onto the street, those are either existing, nonconforming parking spaces or a variance has been granted to allow it. In most, if not all, cases, the streets that cars are backing into have less traffic than Broadway Avenue.

curb;

4. Remove all parking spaces in front of the driveway and add wheelstops to the remaining three parking spaces adjacent to the sidewalk. In this scenario, the parking would be brought into compliance, but six parking spaces would be lost. Customers would probably still park in the area even if spaces were no longer striped, so this alternative is highly undesirable.

For the **northern parking area**, the two northenmost spaces must be removed in any case. It is impossible to fit those spaces in without vehicles extending over the sidewalk. That being the case, the following alternatives were considered:

1. Allow one parking space that is parallel to the sidewalk, with bollards or planters installed to make pulling into the space directly off of Broadway impossible. This would bring the parking into compliance, but would reduce the number of spaces to just one;

2. Allow the two southernmost spaces to remain as "compact only". In this case, the two northernmost spaces would need to be blocked with bollards or planters to prevent their use. It would be preferable to limit the two spaces to "employee only" as well, to limit the numnber of in/out vehicle movements. This option is only allowable if a variance is granted;

3. Remove all four spaces. This would bring the parking into compliance, but would eliminate all parking spaces.

The option to **do nothing** (i.e. leave the parking as is) is only allowable if the variance request is granted. This option is **not desirable** because it does not address significant public safety concerns with the current parking layout.

Public Hearing

The ZBA held a public hearing for this case on October 17, 2018, and discussed the case in depth (see Exhibit K for draft meeting minutes). Ultimately, the ZBA recommended conditional approval of the variance, with the following conditions:

1. The variance is granted for all spaces except the four northernmost parking spaces adjacent to the northeastern part of the building. The two southernmost parking spaces must be signed to indicate that they are for employees only and for compact cars only. The two northernmost parking spaces are removed.

2. Wheel stops must be installed in all parking spaces that abut the public sidewalk unless the owner chooses to keep the south driveway. A new barrier curb and streetscaping are not required behind the wheel stops.

Section 20-505 of the Urbana Municipal Code requires the closure of unused driveways and the installation of curbs. Since variances can only pertain to regulations in the Zoning Ordinance, the condition to not require a barrier curb and streetscaping cannot be granted with a variance. If wheelstops are installed, the driveway must be closed.

Variance Criteria

Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals to make findings based on variance criteria. The following is a review of the variance criteria as they pertain to these cases:

1. *Are there special circumstances or special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance?*

   No parking is required for the property, but since parking is desired, the layout must meet the requirements of the Zoning Ordinance. The approved site plan included a parking layout that complied with the Zoning Ordinance. At a minimum, three more compliant parking spaces could be added to the site without requiring any site modifications. If more parking is desired, it would be possible to add more parking spaces by closing the southern driveway. There are no special circumstances or practical difficulties in applying the Zoning Ordinance to the southern part of this property.

   On the northeastern part of the property, there is an area between the building and the sidewalk that has historically been used for parking. The area cannot be used for parking that would meet the minimum requirements of the Zoning Ordinance. It could accommodate two compact car spaces, but would require a variance to allow the spaces to back out directly onto Broadway Avenue. This is a special circumstance with respect to this parcel.

2. *The proposed variance will not serve as a special privilege because the variance requested is necessary due to special circumstances relating to the land or structure involved or to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district.*

   The area on the northeastern part of the site, between the building addition and the sidewalk, has historically been used for parking, but it is not quite large enough to establish parking spaces that would meet the minimum requirements of the Zoning Ordinance and would not back out onto Broadway Avenue. This is a special circumstance which does not apply to other parcels in the district. Allowing two parking spaces, with conditions, would not serve as a special privilege to the property owner.

   The remaining variance requests, for the southern part of the site, would serve as a special privilege to the property owner. The area can already be used for parking that meets the requirements of the Zoning Ordinance (for example, by matching the approved site plans (Exhibit D)). If more parking is desired, the southern curb cut/driveway could be closed, and parking could be added that would meet code.

3. *The variance request is not the result of a situation or condition having been knowingly or deliberately created by the Petitioner.*

   When the owner purchased the property, the existing building had been vacant for several years. The areas in front of the building had historically been used for parking that backed directly onto Broadway Avenue, which is no longer allowed.

   As part of the building permit process, the owner submitted site plans that included demolishing the southern part of the building (which once had parking in front of it), and included a parking lot configuration that complied with the Zoning Ordinance. No parking was shown in the areas that had historically been used for parking. The City approved those site plans. On April 20, 2018, the Urbana Building Inspector advised one of the property owners that he should submit any alternative parking plans to staff prior to striping the parking lot, to ensure that the parking lot would comply with the Zoning Ordinance (see Exhibit E). Without submitting new plans, the owner had the parking lot striped in its current configuration, which does not comply with the Zoning Ordinance. The variance request is a direct result of the property owner's actions.

The area in front of the building on the northeastern part of the site had historically been used for parking. The part of the variance request that pertains to that area is not the result of a condition created by the property owner. They simply want to reestablish parking in that area.

4. *The variance will not alter the essential character of the neighborhood.*

   If granted, the variance would not alter the essential character of the neighborhood. In the surrounding area, there are surface parking lots on both sides of Broadway Avenue. Most of the parking lots on nearby properties are paved very close to the sidewalk and/or street.

5. *The variances will not cause a nuisance to the adjacent property.*

   Allowing more on-site parking spaces at the Broadway Food Hall will lessen the demand for on-street parking and for parking in nearby lots, which will limit any nuisance caused to nearby property owners that could arise if there is less parking on-site. The southern driveway is directly across Broadway Avenue from the vacated Courtesy Road, which is now a private driveway for the "Gill Building", which is being redeveloped. The owner of the Gill Building and the owners of C-U Adventures in Time and Space (which recently moved into the building) have indicated that they do not think that the variance request would create a nuisance (see Exhibit I). The variance request is unlikely to create a nuisance for other adjacent properties, either.

6. *The variance generally represents the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.*

   The request is to allow the parking lot to remain as is, with four parking spaces that must back directly onto Broadway Avenue, and all 24 parking spaces striped at various lengths that do not meet the minimum standards of the Zoning Ordinance. A lesser deviation from the requirements of the Zoning Ordinance would be to restripe the 20 southernmost parking spaces to meet the minimum required length of parking spaces; then the request would be to allow four substandard spaces and 10 spaces that back directly onto Broadway Avenue. If the southern driveway were closed or narrowed, as required by City Code[1], the entire parking area to the south could meet the requirements of the Zoning Ordinance, and only the four northernmost spaces would require variances. The staff recommendation is to allow two parking spaces in that area, to be used for employee parking. This represents the minimum deviation necessary from the requirements of the Zoning Ordinance. The two spaces would be shorter than typical parking spaces and would back out directly onto Broadway Avenue. The two remaining spaces requested cannot be allowed, because vehicles parked there would overhang the sidewalk.

Summary of Findings

1. Andrew Fell, on behalf of Broadway Market LLC, requests a Major Variance to allow 24 substandard parking spaces, and four of which must back directly onto Broadway Avenue, at 401 North Broadway Avenue in the B-4, Central Business District.

2. The Zoning Board of Appeals held a public hearing for the variance request on October 17, 2018. The Board recommended that City Council approve the request, with conditions, by a vote of 6 to 0. One of the conditions pertained to the Urbana City Code, and cannot be allowed by granting a

[1] Section 20-505 of the Urbana City Code requires unused curb openings (i.e. driveways) to be closed. If the parking spaces in front of the driveway were removed, the driveway could remain open. As currently configured, there are parking spaces immediately in front of the driveway, with the spaces acting as both parking spaces and access drives, which is not allowed. If the parking spaces remain, the driveway must be removed, and vice versa.

variance.

3. There are no special circumstances or practical difficulties in carrying out the requirements of the ordinance with respect to the property. Additional parking spaces could be installed that comply with the ordinance requirements.

4. The variance request would serve as a special privilege to the property owner if granted. There are no special circumstances relating to the land or structure that are not applicable to other properties in the district.

5. The variance request is a direct result of a situation knowingly created by the property owner. The owner was advised to submit revised plans to the city prior to installing parking that differed from the approved plans. The owner did not submit new plans prior to having the parking lot striped.

6. The variance request will not alter the essential character of the neighborhood.

7. The variance request will not cause a nuisance to adjacent properties.

8. The variance request does not generally represent the minimum deviation from the requirements of the Zoning Ordinance. Staff recommends a lesser request that does represent the minimum deviation necessary.

Options

The Urbana City Council has the following options for these cases:

1. **Approve** the variance based on the findings in this memo; or

2. **Approve the variance with certain terms and conditions**, and if so, articulate all terms, conditions, and findings; or

3. **Deny** the variance request, and if so, articulate findings supporting the denial.

Recommendation

The Zoning Board of Appeals recommended **CONDITIONAL APPROVAL** of a Major Variance to City Council that would allow the two longest spaces on the north side of the lot to remain as compact spaces for employees, require wheelstops for all parking spaces adjacent to the public sidewalk, and <u>not</u> require the southern curb cut/driveway to be partially or fully closed. Variances can only be granted for provisions in the Zoning Ordinance. The last condition is therefore not valid, because it would exempt the property owner from Section 20-505 of City Code. The following are revised conditions.

Recommended Conditions:

1. Only the requests pertaining to the two southernmost parking spaces adjacent to the northeastern part of the building are granted. Those spaces, with the dimensions specified in Exhibit G, are allowed to back directly onto Broadway Avenue and must be signed to indicate that they are for employees only and for compact cars only;

2. Bollards or planters must be installed in the two northernmost parking spaces to prevent automobiles from parking there;

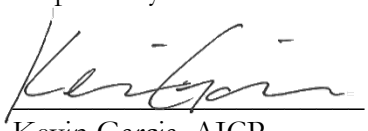
3. Wheelstops must be installed in all parking spaces that abut the public sidewalk, with the exception

of the two spaces referenced in Condition 1 above;

4. The southern driveway must be removed and replaced with a new barrier curb and streetscaping to match the existing streetscape on Broadway Avenue. The driveway may be partially closed if an access drive is installed that meets the standards of the Zoning Ordinance and City Code.

The property owner does not agree with the recommended conditions.

Prepared by:



Kevin Garcia, AICP
Planner II

Attachments:
A: Location Map
B: Zoning Map
C: Application
D: Approved Site Plan
E: Staff Correspondence
F: Site Photos
G: Proposed Site Plan (Reflects Current State)
H: Staff Site Plan Recommendations
I: Communications
J: Public Works Parking Lot Schematic
K: Draft ZBA Meeting Minutes – 10/17/2018

ORDINANCE NO. 2018-11-073

AN ORDINANCE APPROVING A MAJOR VARIANCE

(401 North Broadway Avenue / ZBA-2018-MAJ-10)

WHEREAS, the Urbana Zoning Ordinance provides for a major variance procedure to permit the Zoning Board of Appeals and the Corporate Authorities to consider applications for a major variance where there is a special circumstance or condition with a parcel of land or a structure; and

WHEREAS, Andrew Fell, on behalf of Broadway Market LLC, has submitted a petition for a major variance to allow four parking spaces that back directly onto Broadway Avenue and to allow 24 parking spaces that do not meet the minimum parking space dimensions; and

WHEREAS, the Zoning Board of Appeals held a public hearing on such petition at 7:00 p.m. on October 17, 2018, in ZBA Case No. 2018-MAJ-10; and

WHEREAS, in accordance with Urbana Zoning Ordinance Section XI-10, due and proper notice of such public hearing was given by publication in *The News-Gazette*, a newspaper having a general circulation within the City, on a date at least 15 days but no more than 30 days before the time of the public hearing, and by posting a sign containing such notice on the real property identified herein; and

WHEREAS, the Zoning Board of Appeals voted six (6) ayes and zero (0) nays to forward the case to the Urbana City Council with a recommendation to approve the requested variance with conditions; and

WHEREAS, the City Council finds that the requested variance conforms with the major variance procedures in Article XI, Section 3(C)(2)(d) of the Urbana Zoning Ordinance; and

WHEREAS, the City Council has considered the variance criteria established in the Urbana Zoning Ordinance and made the following findings of fact:

1. Andrew Fell, on behalf of Broadway Market LLC, requests a Major Variance to allow 24 substandard parking spaces, and four of which must back directly onto Broadway Avenue, at 401 North Broadway Avenue in the B-4, Central Business District.
2. The Zoning Board of Appeals held a public hearing for the variance request on October 17, 2018. The Board recommended that City Council approve the request, with conditions, by a vote of 6 to 0. One of the conditions pertained to the Urbana City Code, and cannot be allowed by granting a variance.
3. There are no special circumstances or practical difficulties in carrying out the requirements of the ordinance with respect to the property. Additional parking spaces could be installed that comply with the ordinance requirements.
4. The variance request would serve as a special privilege to the property owner if granted. There are no special circumstances relating to the land or structure that are not applicable to other properties in the district.
5. The variance request is a direct result of a situation knowingly created by the property owner. The owner was advised to submit revised plans to the city prior to installing parking that differed from the approved plans. The owner did not submit new plans prior to having the parking lot striped.
6. The variance request will not alter the essential character of the neighborhood.
7. The variance request will not cause a nuisance to adjacent properties.
8. The variance request does not generally represent the minimum deviation from the requirements of the Zoning Ordinance.

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

Section 1.

In ZBA Case No. 2018-MAJ-10, the major variance requested by Andrew Fell, on behalf of Broadway Market LLC, to allow four parking spaces that back directly onto Broadway Avenue and to allow 24 parking spaces that do not meet the minimum parking space dimensions, is hereby approved in the manner proposed in the application with the following conditions:

1. Only the requests pertaining to the two southernmost parking spaces adjacent to the northeastern part of the building are granted. Those spaces, with the dimensions specified in Exhibit G, are allowed to back directly onto Broadway Avenue and must be signed to indicate that they are for employees only and for compact cars only;

2. Bollards or planters must be installed in the two northernmost parking spaces to prevent automobiles from parking there;

3. Wheelstops must be installed in all parking spaces that abut the public sidewalk, except for the two spaces referenced in Condition 1 above;

4. The southern driveway must be removed and replaced with a new barrier curb and streetscaping to match the existing streetscape on Broadway Avenue. The driveway may be partially closed if an access drive is installed that meets the standards of the Zoning Ordinance and City Code.

The major variance described above shall only apply to the property, more particularly described as follows:

That part of Lot 4 in Hooper and Park's Addition of Out Lots to the Town (now City) of Urbana, Illinois, as per plat recorded in Deed Record "F" at Page 520, in Champaign County, Illinois.

PIN: 91-21-08-455-017

Section 2.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

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

PASSED BY THE CITY COUNCIL this___ day of _____, _____.

AYES:

NAYS:

ABSTENTIONS:

_____
Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____ _____, _____.

_____
Diane Wolfe Marlin, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Charles A. Smyth, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the _____ day of _____, 2018, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "An Ordinance Approving a Major Variance (401 North Broadway Avenue / ZBA-2018-MAJ-10)" which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No._____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, 2018, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____, 2018.

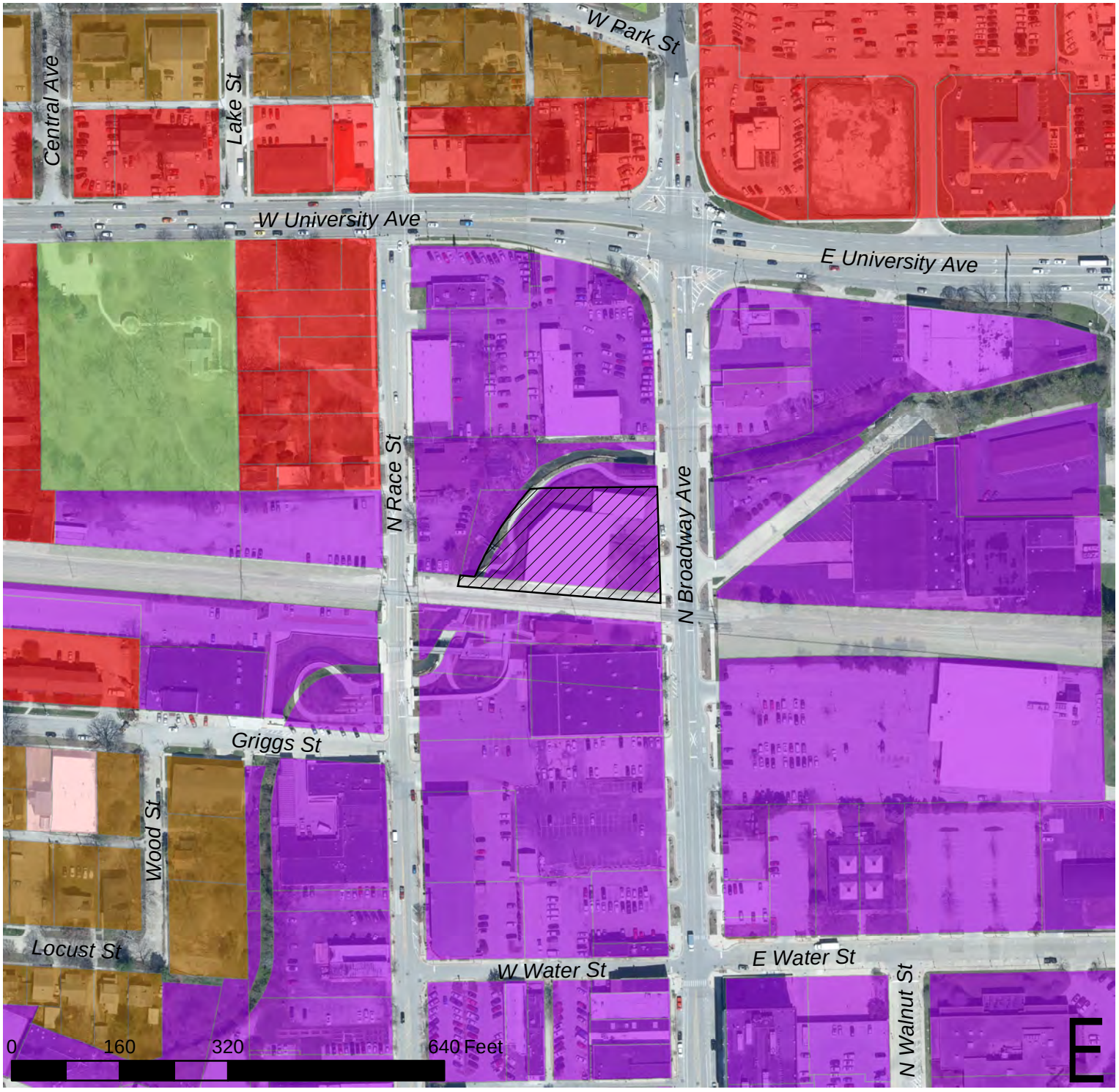
Exhibit A: Location & Existing Land Use Map

Case: ZBA-2018-MAJ-10
Subject: Parking Lot Variance
Location: 401 North Broadway Avenue
Petitioner: Andrew Fell

Subject Property

Prepared 10/12/2018 by Community Development Services - Kevin Garcia

Exhibit B: Zoning Map



Case: ZBA-2018-MAJ-10
Subject: Parking Lot Variance
Location: 401 North Broadway Avenue
Petitioner: Andrew Fell

B1
B3
B4
CRE
IN-1
R5
Subject Property

Prepared 10/9/2018 by Community Development Services - Kevin Garcia

Exhibit C - Application

RECEIVED SEP 13 2018 2:15pm

CITY OF URBANA

Application for Variance

ZONING BOARD OF APPEALS

The application fee must accompany the application when submitted for processing. Please refer to the City's website at http:/www.urbanaillinois.us/fees for the current fee associated with this application. **The Applicant is also responsible for paying the cost of legal publication fees.** Estimated costs for these fees usually run between $75.00 and $225.00. The applicant will be billed separately by the News-Gazette.

DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY

Date Request Filed 09-13-2018 ZBA Case No. ZBA-2018-MAJ-10

Fee Paid - Check No. 1201 Amount $175.00 Date 09-13-2018

Still Owe $25.00

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

A VARIATION is requested in conformity with the powers vested in the Zoning Board of Appeals to permit the following variation ***(Describe the extent of the Variation Requested)***

for less than 23' access aisle, smaller parking space length, and exit on right of way on the property described below, and in conformity with the plans described on this variance request.

1. APPLICANT CONTACT INFORMATION

Name of Applicant(s): Andrew Fell Phone: 217-363-2890

Address *(street/city/state/zip code)*:

Email Address: 515 Hickory St, Champaign, IL 61820

Property interest of Applicant(s) *(Owner, Contract Buyer, etc.)*: Architect

2. OWNER INFORMATION

Name of Owner(s): Broadway Market LLC Phone: 217-377-9080

Address *(street/city/state/zip code)*: 401 N Broadway Ave, Urbana IL 61801

Email Address: info@broadwaymarket.com

Is this property owned by a Land Trust? ☐ Yes ☑ No

If yes, please attach a list of all individuals holding an interest in said Trust.

3. PROPERTY INFORMATION

Location of Subject Site: 401 N Broadway Ave, Urbana IL 61801

PIN # of Location: 91-21-08-455-017

Lot Size: NA

Current Zoning Designation: [redacted] B4

Current Land Use *(vacant, residence, grocery, factory, etc*: **Restaurant**

Proposed Land Use: **NA**

Legal Description *(If additional space is needed, please submit on separate sheet of paper)*:

That part of Lot 4 in Hooper and Park's Addition of Out Lots to the Town (now City) of Urbana, Illinois, as per plat recorded in Deed Record "F" at Page 520, in Champaign County, Illinois.

4. CONSULTANT INFORMATION

Name of Architect(s): Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Engineers(s): Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Surveyor(s): Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Professional Site Planner(s): Phone:

Address *(street/city/state/zip code)*:

Email Address:

Name of Attorney(s): Phone:

Address *(street/city/state/zip code)*:

Email Address:

5. REASONS FOR VARIATION

Identify and explain any special circumstances or practical difficulties in carrying out the strict application of the Zoning Ordinance with respect to the subject parcel.

Per zoning, parking is not a requirement. However, the absence of sufficient striping would result in a hazardous parking situation as evidenced by the first four months of operation where no striping was provided. The parking diagram demonstrates how vehicles parking in the three spaces to the north can exit safely within right of way. It also shows how vehicles can exit from space #20 with enough room to maneuver safely.

Explain how the variance is necessary due to special conditions relating to the land or structure involved which are not generally applicable to other property in the same district.

The lot is angled along Broadway creating an angled business frontage. Even with the demolition of an existing building to increase parking surface area, the property tapers to the north, which results in a less than 23 foot aisle that impacts only one space (#20) and a smaller parking lot space for three spaces to the north (#23, 24, 25). Removal of these spaces or recommendations that would complicate the existing striping would introduce new parking hazards and have a negative economic impact to the business.

Explain how the variance is not the result of a situation or condition that was knowingly or deliberately created by you (the Petitioner).

See above.

Explain why the variance will not alter the essential character of the neighborhood.

Parking is consistent with many other properties within walking distance that do not meet the 23 foot aisle, parking lot length, and/or exit in a right of way (see photos).

Explain why the variance will not cause a nuisance to adjacent property.

Directly adjacent properties are the Boneyard Creek and a minimally used railroad. Parking diagram shows that cars can sufficiently exit on the right of way without entering the street as well as exit from space #20 with enough room to maneuver safely.

Does the variance represent the minimum deviation necessary from the requirements of the Zoning Ordinance? Explain.

Yes. Although the space does not meet the required length, it is shown that vehicles can exit safely from the three northernmost spaces without interfering with street traffic. In addition, the less than 23 foot aisle for space #20 is show to exit with more than enough space. Finally, there are several properties within walking distance that do not meet the 23 foot aisle, parking lot length, and/or exit in a right of way.

NOTE: If additional space is needed to accurately answer any question, please attach extra pages to the application.

By submitting this application, you are granting permission for City staff to post on the property a temporary yard sign announcing the public hearing to be held for your request.

CERTIFICATION BY THE APPLICANT

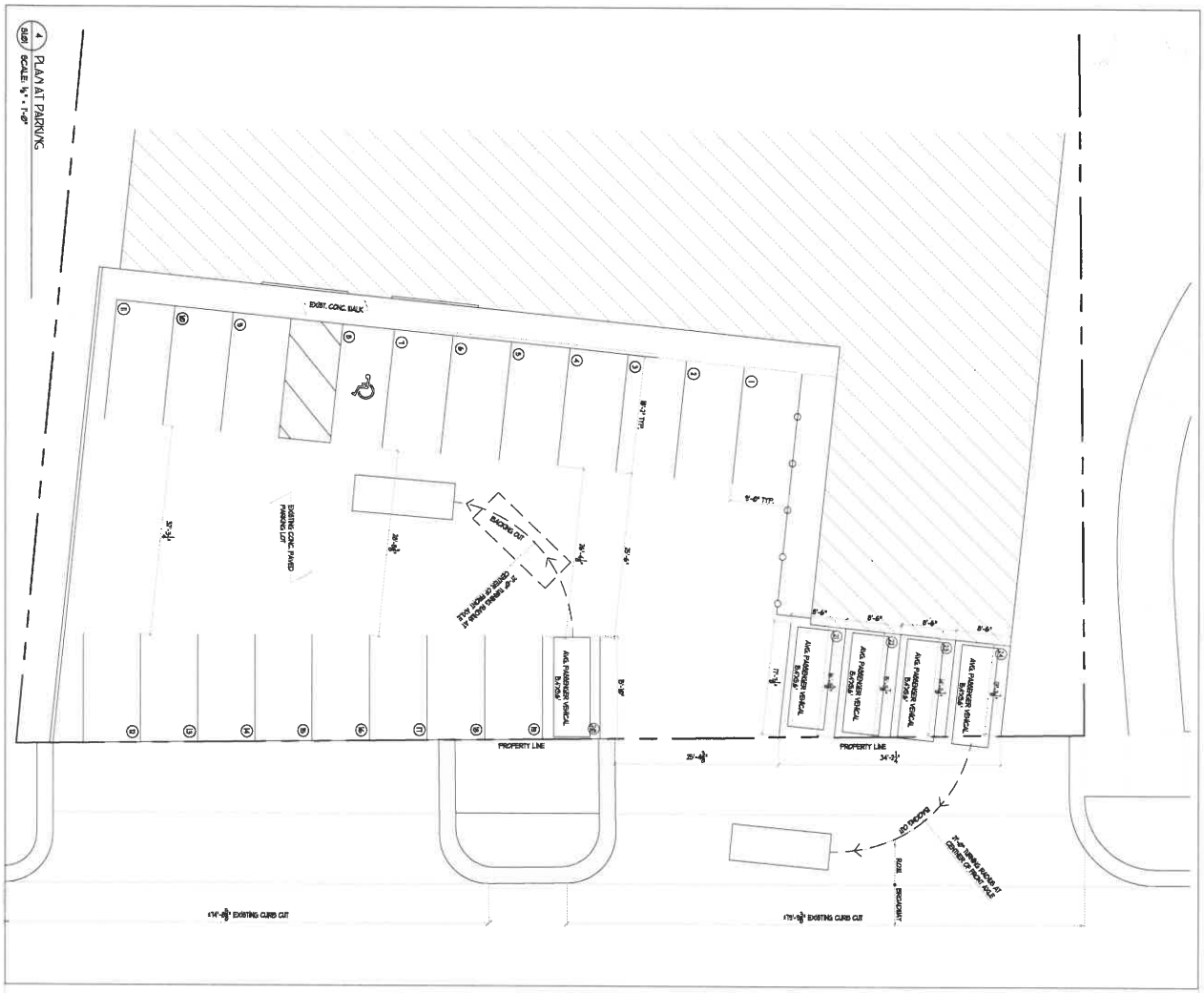
I certify all the information contained in this application form or any attachment(s), document(s) or plan(s) submitted herewith are true to the best of my knowledge and belief, and that I am either the property owner or authorized to make this application on the owner's behalf.

Applicant's Signature

9-13-18
Date

PLEASE RETURN THIS FORM ONCE COMPLETED TO:

City of Urbana
Community Development Department Services
Planning Division
400 South Vine Street, Urbana, IL 61801
Phone: (217) 384-2440
Fax: (217) 384-2367



S1.01

COMMERCIAL PROJECT

PARKING LAYOUT

401 N BROADWAY
SUITE 101 & 102
URBANA, ILLINOIS 61801

These drawings and specifications are the property and copyright of Andrew Fell, Architecture and Design and shall not be used on any other work except by written agreement with the Architect. Only written dimensions shall be used. Do not scale drawings. Dimensions shall be verified on the job site. Any discrepancy shall be brought to the notice of the Architect prior to the commencement of any work.

ANDREW FELL
ARCHITECTURE AND DESIGN

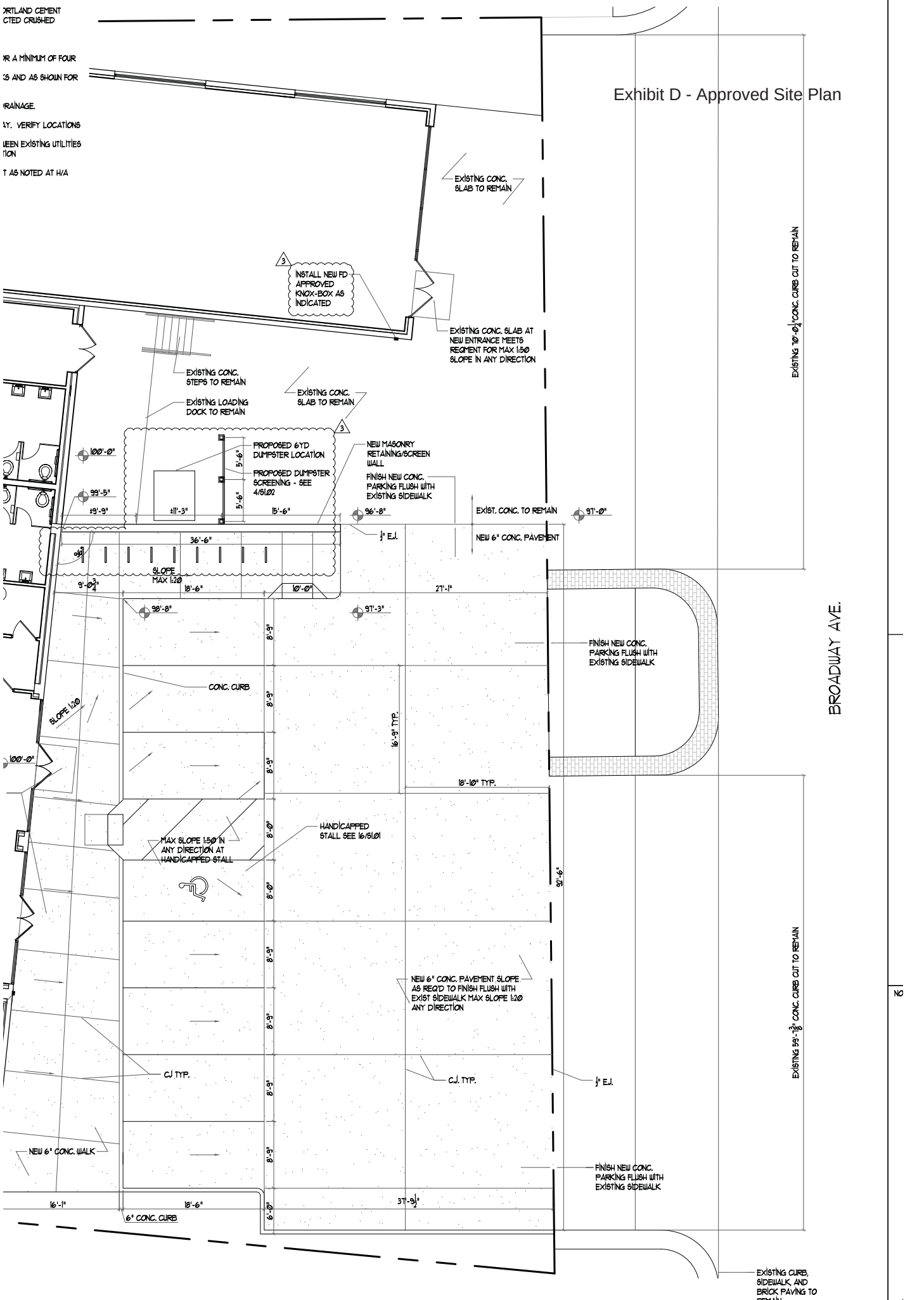
515 N HICKORY STREET
CHAMPAIGN, ILLINOIS 61820
PHONE: 217.363.2890
WWW.ANDREWFELL.COM
EMAIL: andrewfell@comcast.net

PROJECT #16002

DATE: 18.09.05 TM

REVISIONS:

Exhibit D - Approved Site Plan



From: Bolger, John (Patrick)
Sent: Thursday, January 04, 2018 3:07 PM
To: 'Matthew Cho'
Cc: Schneider, John
Subject: 401 N Broadway

Matt,

The following is the list of conditions for the 401 N Broadway temporary certificate of occupancy. The building safety office can issue a temporary certificate of occupancy for up to 90 days. The fee for a temporary certificate of occupancy for up to 35 days is $150.00, for up to 65 days the fee is $250.00, and for up to 90 days the fee is $500.00. The first three items below must be completed within 35 days. **The due date for the first three items to be corrected will be February 9, 2018 and the fee for the temporary certificate of occupancy is $150.00.**

1) The makeup air for the kitchen hoods needs to be tempered (heating) in accord with the 2009 International Mechanical Code. Section 508.1.1 "The temperature differential between make up air and the air in the conditioned space shall not exceed 10^{o} F except where the added heating and cooling loads of the makeup air do not exceed the capacity of the HVAC system."

2) The trash containers and trash collection areas shall be screened so that no portion of such container or area is visible from public rights-of-way or adjacent properties in accordance with the approved plans.

3) The downspout discharge piping shall not be obstructing the egress path on the south side of the building. The roof water shall not be discharged in a manner that creates a public nuisance.

Upon completion of the above three items our office will issue a temporary certificate of occupancy for the remaining site grading, landscaping and parking items with a fee of $50.00.

The following items must be corrected by no later than May 15, 2018

1) The parking striping, parking blocks and handicap parking identification signage shall be installed in accordance with the approved plans.
2) The bicycle parking shall be installed in accordance with the approved plans.
3) Grass establishment on all disturbed bare soil areas along the north side of the building - use special low grow seed mix
4) Repair any of the damaged MSE walls.
5) Removal of silt fence at north side of building after grass establishment. Contact Beth Reinke, storm water engineering technician at 217-384-2342 to schedule an inspection before removing the silt fence.

J. Patrick Bolger Building Inspector
City of Urbana Community Development Services
400 South Vine Street, Urbana IL
Phone: (217) 384-2430 | Fax: (217) 384-0200
www.urbanaillinois.us

From: Bolger, John (Patrick)
Sent: Friday, April 20, 2018 8:29 AM
To: 'Matthew Cho'
Cc: Schneider, John
Subject: 400 S Broadway

Matt,

As a reminder we are fast approaching the May 15, 2018 deadline for the temporary certificate of occupancy at Broadway Food Hall. When you have a plan in place for the parking striping please contact our office to verify that the plan complies with City requirements. If you have questions of concerns regarding the other conditions please let me know.

J. Patrick Bolger
Building Inspector
City of Urbana Community Development Services
400 South Vine Street, Urbana IL
Phone: (217) 384-2430 | Fax: (217) 384-0200
www.urbanaillinois.us

October 9, 2018

Exhibit F – Site Photos

May 10, 2018

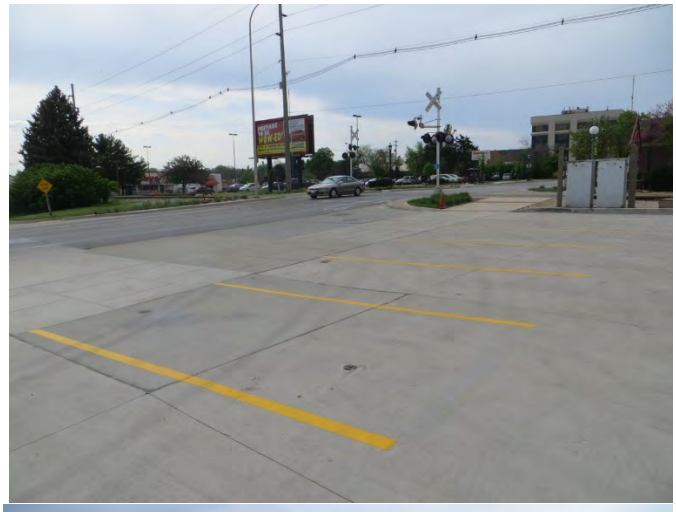
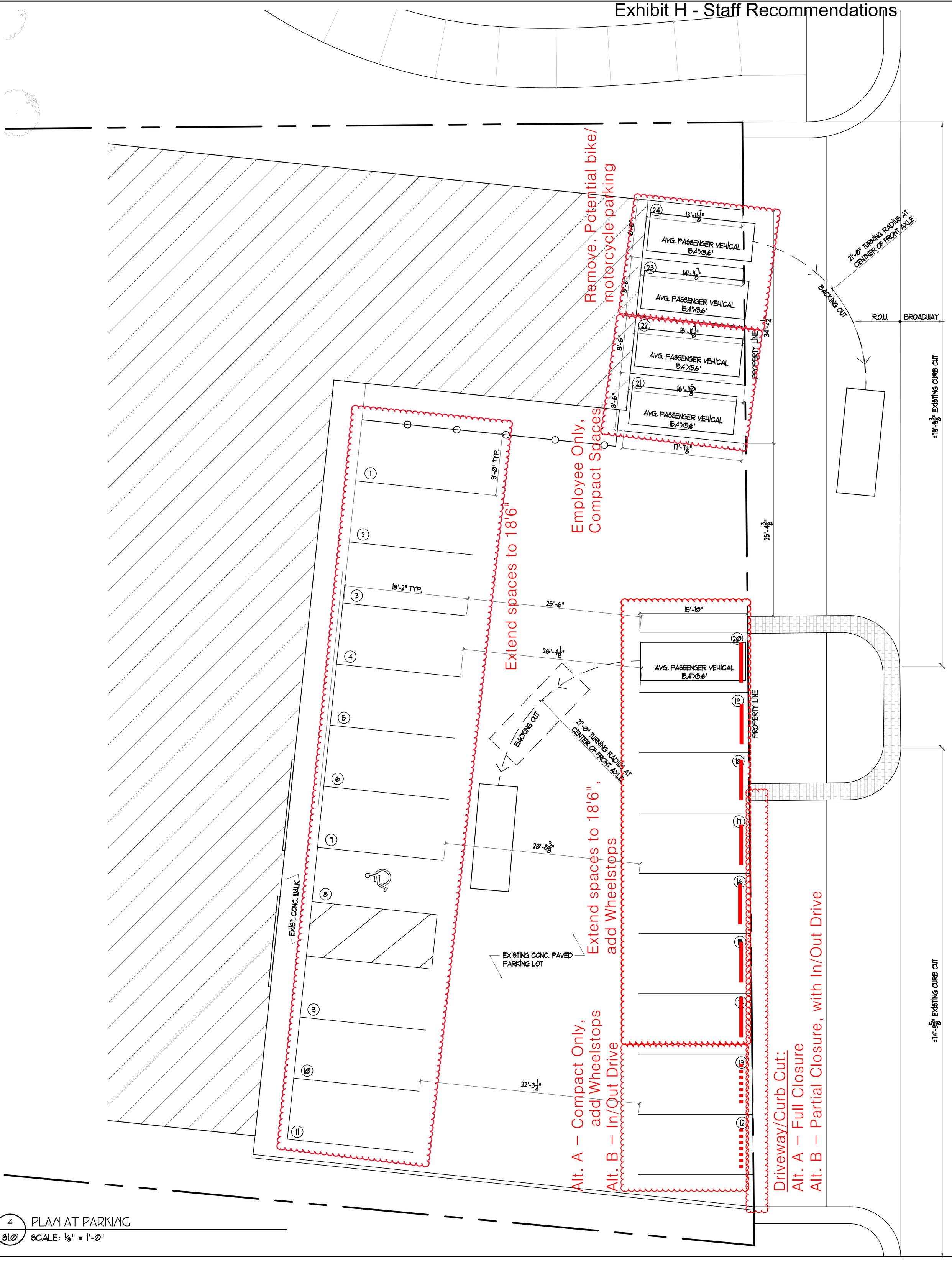


Exhibit G - Proposed Site Plan

4 / S1.01 PLAN AT PARKING

SCALE: 1/8" = 1'-0"

Exhibit H - Staff Recommendations



4 / S1.01 PLAN AT PARKING

SCALE: 1/8" = 1'-0"

From: Garcia, Kevin
To: Andel, Teri
Subject: FW: ZBA items related to Broadway Food Hall
Date: Wednesday, October 17, 2018 1:45:54 PM

Teri,
Here's another correspondence re: Broadway Food Hall.
Kevin

From: Mike Hosier
Sent: Wednesday, October 17, 2018 1:33 PM
To: Garcia, Kevin ; Pearson, Lorrie
Subject: ZBA items related to Broadway Food Hall

Kevin & Lorrie,

As you know, I am the owner of the properties at 302 N. Broadway and 400 N. Broadway in downtown Urbana. I am sorry that I will not be able to attend the meeting tonight, I am out of town for the remainder of the week. I did want to touch base and make sure that the City and the ZBA understand that I have no issues with the variance that Broadway Food Hall has requested. As you may know, I have been working on the 302 (old Gill building) project for the last year and I have spent time at the property almost daily during the renovation. I watched with anticipation and looked forward to the opening of the Broadway Food Hall. I observed the parking confusion when they first opened with no parking lot striping or clear entry or exit markings. Before the striping, I often observed cars parking on the west end of my lot and BFH customers walking across Broadway. I was relived as soon as the striping was in place and confusion in the lot was replaced by order. I have not seen one BFH customer car parked in my lot since the striping was completed. I have seen the BFH become a successful addition to downtown and popular destination for many and I have already received positive comments from my tenants at 302 N. Broadway. I think it would be a mistake to do anything that would reduce the number of parking spaces at BFH or to remove the striping and go back to the confusing condition of an unmarked parking lot. I do not believe there will be any negative impact to my properties or the traffic flow in the area.

Again, I am sorry I will not be able to attend the meeting but I am available for a phone call if either of you would like to discuss this further.

Thanks,

Mike Hosier
217-352-2222, office
217-369-0018, mobile
www.rrentals.biz

From:	Garcia, Kevin
To:	Andel, Teri
Subject:	FW: Broadway Food Hall Parking
Date:	Wednesday, October 17, 2018 3:46:52 PM

Teri, here's another correspondence re: Broadway Food Hall.

-Kevin

From: Anne Lukeman
Date: October 17, 2018 at 2:11:50 PM CDT
To: kjgarcia@urbanaillinois.us, "Pearson, Lorrie"
Cc: Matthew Cho
Subject: Broadway Food Hall Parking

> To whom it may concern,
> Matt Cho recently reached out to my husband Chris and me regarding his request for a zoning variance for his parking lot. We were surprised to find our business, CU Adventures in Time & Space, mentioned in the October 12 memo about it!
> We just wanted to express our opinion, for what it's worth, that we don't think the current parking situation at Broadway Food Hall will impact us in any way. While we'll have more traffic as we open our new games across the street, I can't imagine we'll have more than several vehicles per hour except for very special occasions. We obviously aren't experts on traffic flow or parking requirements or anything like that, though!
> We'd like to mention that the proximity of Broadway Food Hall was one of the reasons we chose to lease the space at 302 N. Broadway, and we're excited to further build up North Broadway as a hip, artistic area.
> Please feel free to reach out to us if you have any questions or thoughts!
> Thanks so much,
> Anne & Chris Lukeman

MEYER CAPEL
A PROFESSIONAL CORPORATION

306 West Church Street
Champaign, IL 61820

Phone 217-352-1800
Fax 217-352-1083

www.meyercapel.com

JENNY PARK
jpark@meyercapel.com

October 17, 2018

VIA HAND DELIVERY

Zoning Board of Appeals
c/o Kevin Garcia, AICP, Planner II
400 South vine Street,
Urbana IL 61801

Re: 401 North Broadway Avenue

Dear Board Members:

This law firm has been asked by our client, Broadway Market LLC, to review the circumstances surrounding the denial of the continuance of a nonconforming use and the request for a major variance regarding the property located at 401 North Broadway Avenue in Urbana, Illinois. We have reviewed the staff member's memorandum dated October 12, 2018, email correspondence, Article X-Nonconformities of the Urbana Zoning ordinance, the Illinois Compiled Statutes on nonconforming uses (65 ILCS 5/11-13-1), and Illinois case law on the validity of zoning ordinances and nonconforming uses. After the previous review and investigation we encourage you to consider the following (with appropriate cites):

1. We believe that the nonconforming use was not abandoned. The purpose of enabling statute's provision pertaining to existing uses is to provide protection for nonconforming uses in existence at the time a zoning ordinance is enacted. *Tim Thompson, Inc. v. Village of Hinsdale, 247 Ill.App.3d 863, 883.* A nonconforming use is a property right of which the owner cannot be unreasonably and arbitrarily deprived. *City of Des Plaines v. LaSalle Nat. Bank of Chicago, 44 Ill.App.3d 815, 820.* Furthermore, mere cessation of use will not necessarily result in loss of right to resume a nonconforming use; an actual intent to abandon the use must be demonstrated. *Id.* To constitute "abandonment" of a nonconforming use of premises, it must appear that there is an attempt to abandon the nonconforming use, and mere cessation of use will not result in a loss of right to resume such use. *People ex rel. Delgado v. Morris, 334 Ill.App. 557, 565.*

2. The nonconforming use was not discontinued as per Section X-4.A of the Urbana Zoning Ordinance. The word "discontinued" particularly when in reference to a nonconforming use has a very specific legal definition that does not apply in this case. Case law instructs that under a zoning ordinance with respect to discontinued nonconforming uses, "discontinued" means more than mere suspension of nonconforming use; it is equivalent of abandoned and there must be intent by owner to abandon such nonconforming use in order for it to be said that such has been discontinued. *McCoy v. City of Knoxville, 41 Ill.App.2d 378, 383.* Specifically the central issue in this case, the parking lot use, has not substantially changed from its previous nonconforming use.

Actually, as per Section X-2.B. of the Urbana Zoning Ordinance, there is a provision that explicitly permits the extension or expansion of nonconforming use when it comes to accessory parking.

3. Even if the nonconforming use was abandoned or discontinued the nonconforming use must be treated equally with other property under the municipality's jurisdiction. Case law dictates that a particular piece of property may acquire characteristics of surrounding property and thereby invalidate zoning classifications of particular property. *Bluhm v. City of Chicago, 110 Ill.App.2d 136, 143.* Also that a factor of primary importance in determining whether the presumptive validity of a zoning ordinance has been overcome is the existing uses and zoning of nearby property. *La Grange State Bank v. Village of Glen Ellyn, 227 Ill.App.3d 308, 316.* Case law also dictates that of paramount importance in a zoning case is the factor relating to existing uses and zoning of nearby properties. *Fay v. City of Chicago, 71 Ill.App.3d 603, 608.* Overall a zoning restriction may not operate arbitrarily or capriciously upon a citizen, *Village of Glenview v. Van Dyke, 98 Ill.App.2d 118, 123.*

In conclusion, the ordinance of the City of Urbana as applied to this case will likely not hold if challenged based on the correspondence received indicating that the nonconforming use was abandoned simply because "The building and its parking areas were vacant for longer than six months." Further, the nonconforming use was not "discontinued" as there was never intent by the owner to abandon such nonconforming use. These are not consistent with the intent of the law or with case law rulings. Secondly, this property must be treated the same as other property in Urbana that is subject to the same zoning laws. The City of Urbana is well aware of the countless other properties that are in the same or worse condition. We strongly encourage the Board to consider all factors in making their decision and allow for the continued nonconforming use in this case or in the alternative grant the major variance as requested by the petitioner.

Very truly yours,

Meyer Capel, A Professional Corporation

By: Jenny H. Park

cc: Matthew Cho (via email)

KENSIUM

October 17, 2018

Zoning Board of Appeals
400 South Vine Street,
Urbana IL 61801

Ref: ZBA-2018-MAJ-10

Dear Board Members:

The City of Urbana has cited Broadway Market LLC, owners of the property located at 401 N. Broadway Avenue, for zoning violations regarding the layout of parking spaces. As one of the managing members of Broadway Market LLC, we chose a local company with over thirty (30) years of experience striping lots in Urbana to stripe our parking lot. As a result, the citations from the City were both disappointing and surprising.

Our lawyer, Jenny Park of Meyer Capel, has submitted a letter stating legal precedent for the nonconforming use of parking spaces that were neither abandoned nor discontinued per the interpretation of City of Urbana staff. In addition, we have surveyed properties less than a quarter-mile from our location in Urbana with similar layouts and have found that there are numerous parking lots, including City-owned properties, that have similar if not more extreme violations. For the record, photos have been provided and include the following addresses:

101 W Main St
114 W Main St
126 W Main St
306 W Main St
111 N Race St
501 N Race St
203 S Cedar St
208 W Griggs
301 W Springfield Ave
306 W Springfield Ave
212 W Green St
210 N Broadway Ave
220 N Broadway Ave
221 N Broadway Ave
405 N Broadway Ave
102 W University Ave
304 W Elm St
101 W Park St
City Lot #01

311 South Wacker Drive, Suite 440, Chicago, IL 60606
877-KENSIUM (877-536-7486)
www.kensium.com

City Lot #02
City Lot #05
City Lot #17
Lot Tepper
Downtown Urbana Parking Deck

It would seem that these other locations do not pose a threat to safety or they would have been cited and forced to comply with the zoning requirement. We are not asking for any special privilege in this matter, but to merely be treated the same as other property owners where a zoning restriction may not operate arbitrarily or capriciously upon a citizen.

Our investment in Urbana has been a mutually beneficial partnership with the City and its administrative staff. The owners of the property and business, together with the City, have invested more than $1 million into the refurbishment of the property at 401 N. Broadway. What was once a warehouse is now a vibrant commercial entity where parking is a necessity. We are asking the City to provide an exemption with no conditions for the referenced citation in the spirit of continued cooperation to make this project a thriving example of "Urbana open for business."

Thank you for your consideration of this matter.

Sincerely,

Richard Grossi
CFO, Kensium Solutions LLC

311 South Wacker Drive, Suite 440, Chicago, IL 60606
877-KENSIUM (877-536-7486)
www.kensium.com

N Broadway Ave
N Broadway Ave
Broadway Ave
Boneyard Creek
401 North
Broadway Avenue
Broadway Food Hall
Spartan Restaurant
Equipment & Supply
Silvercreek

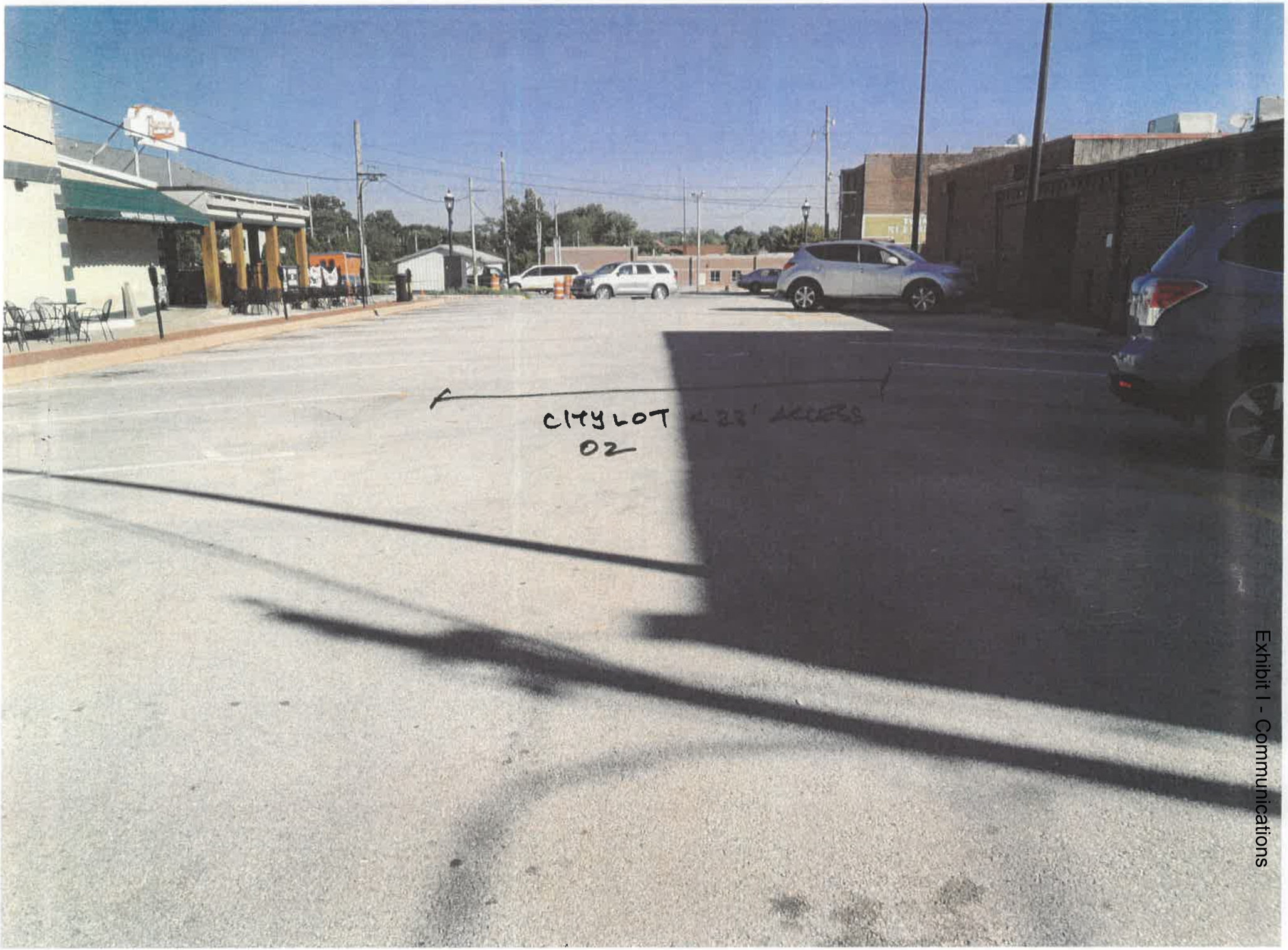
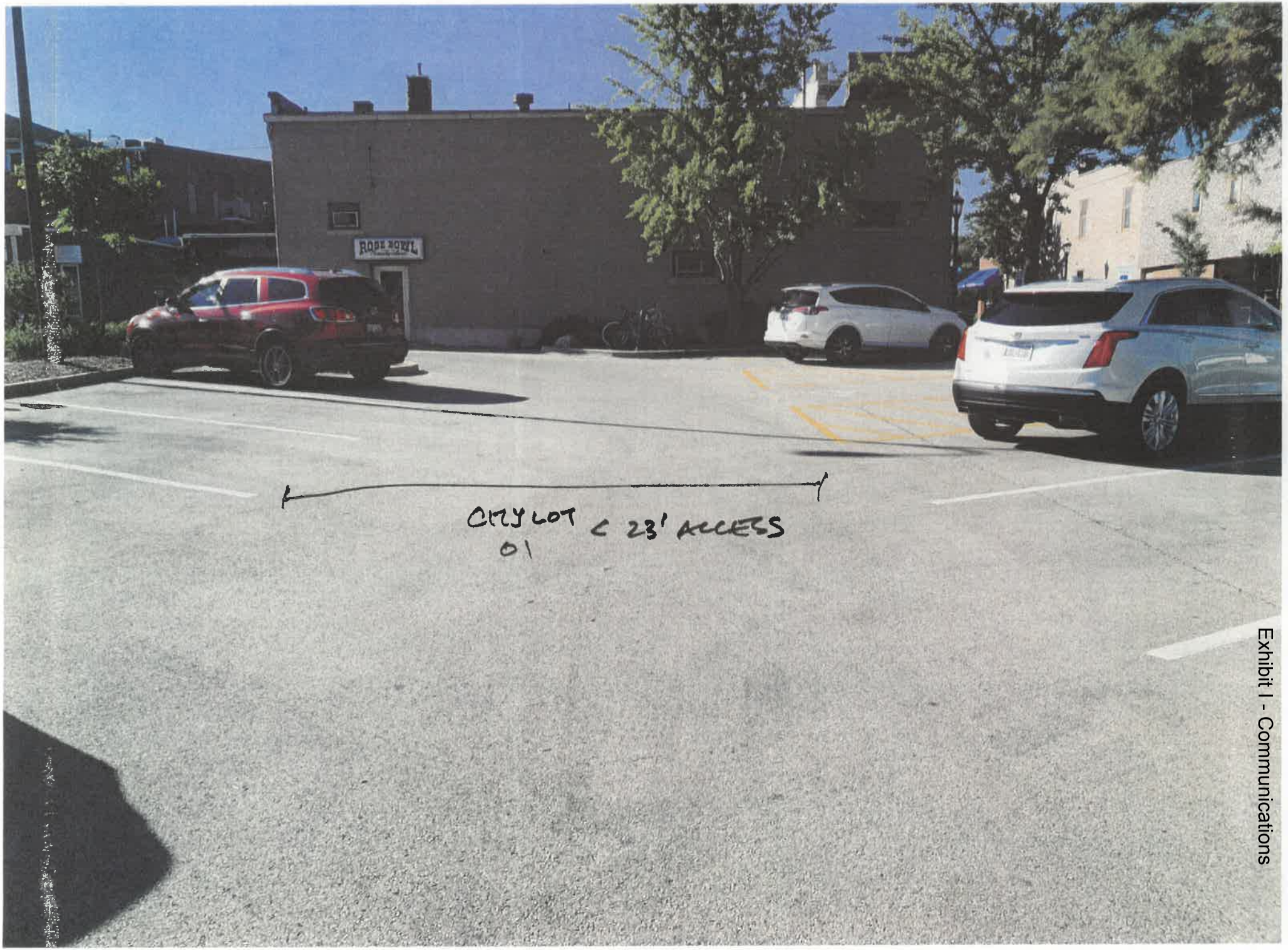


Exhibit I - Communications



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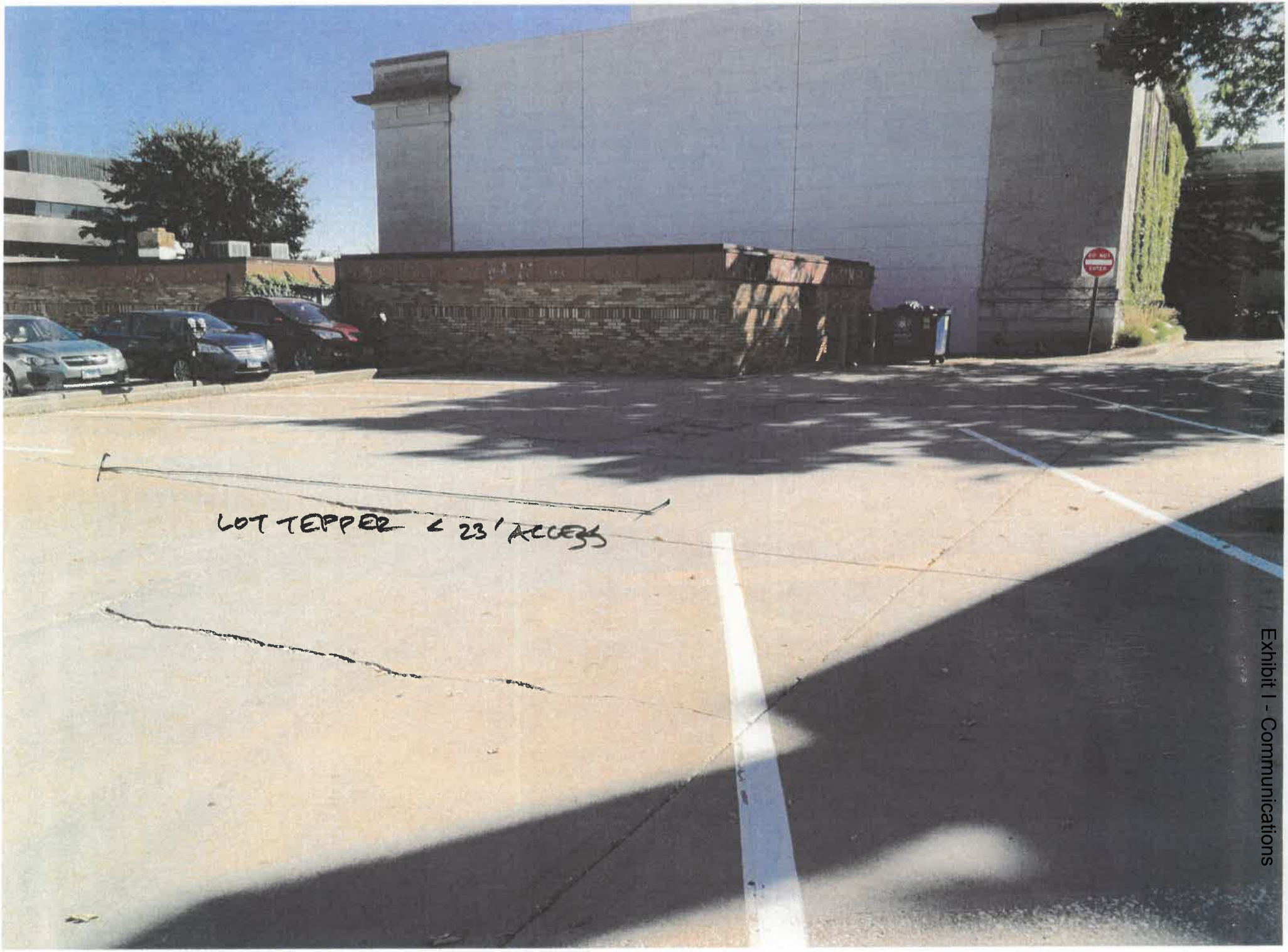

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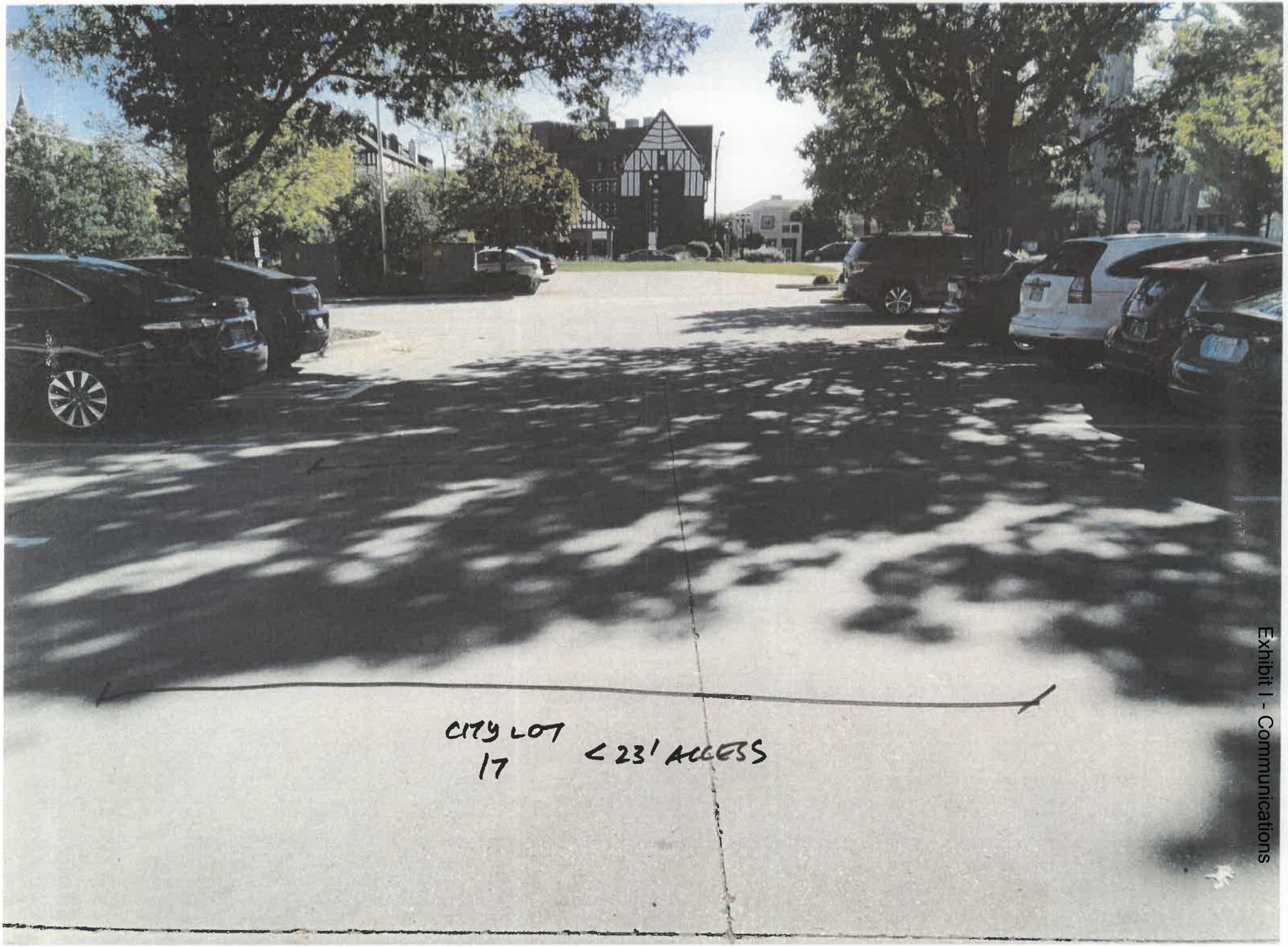

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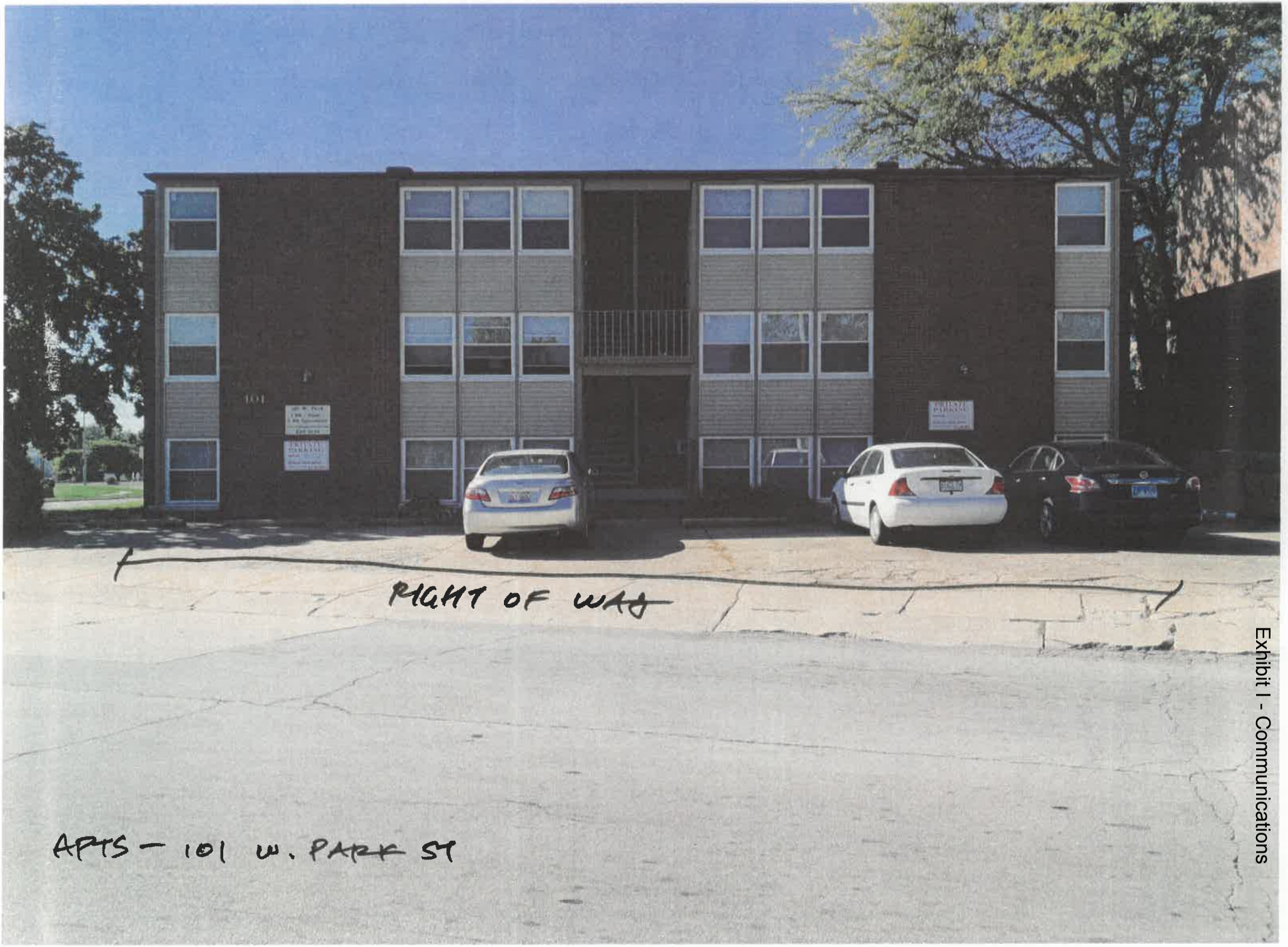

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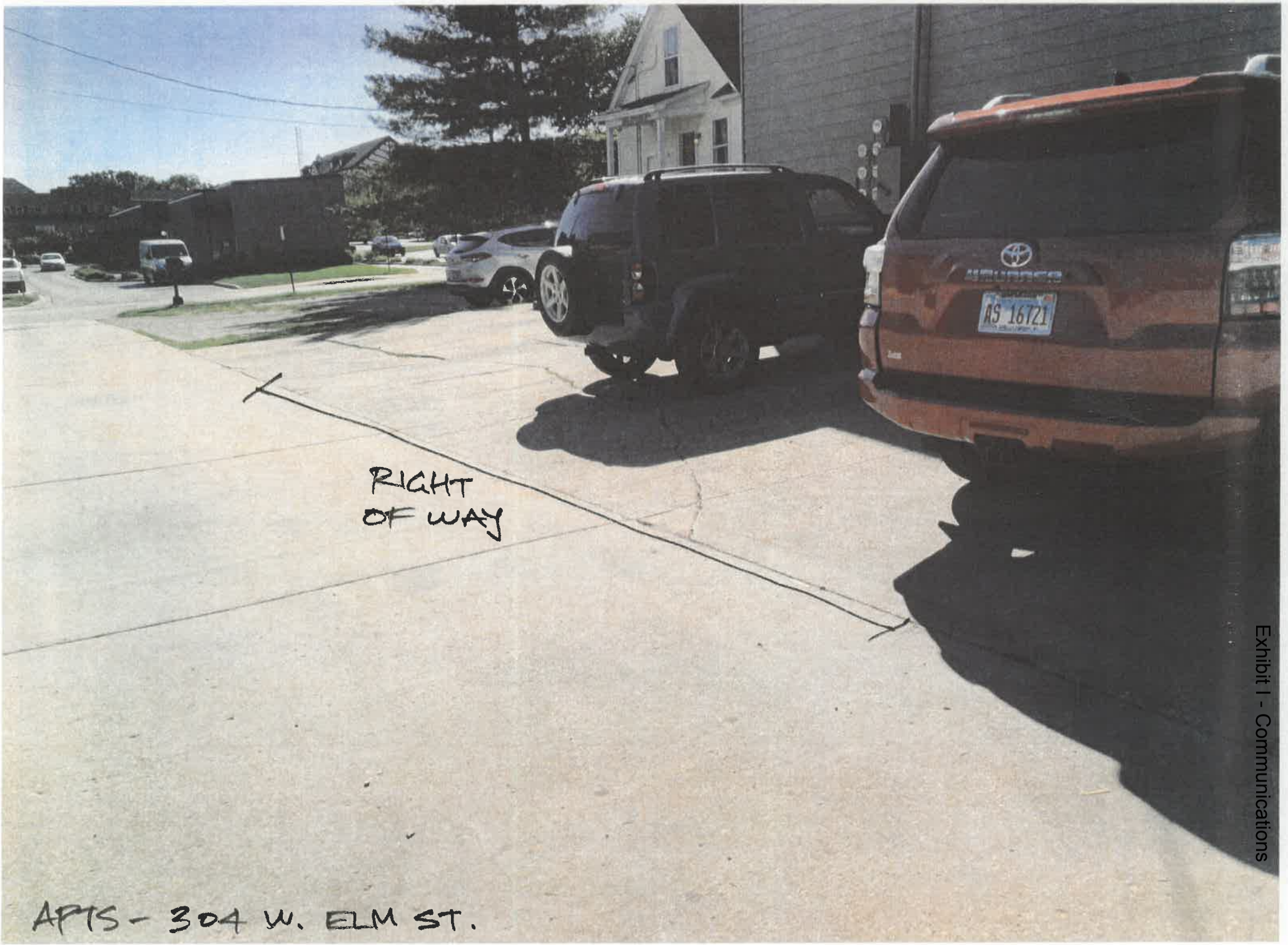
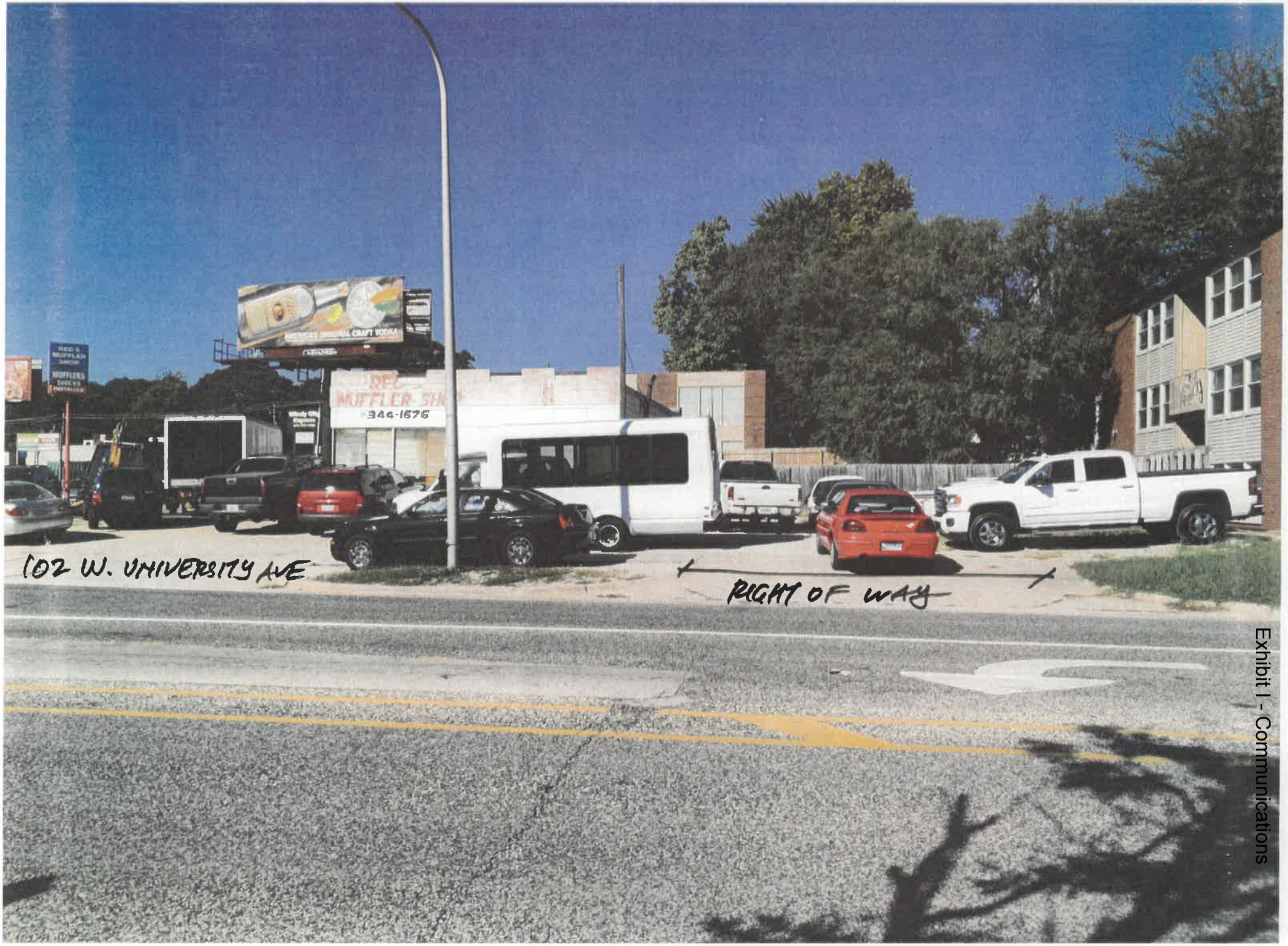


APTS - 304 W. ELM ST.

Exhibit I - Communications



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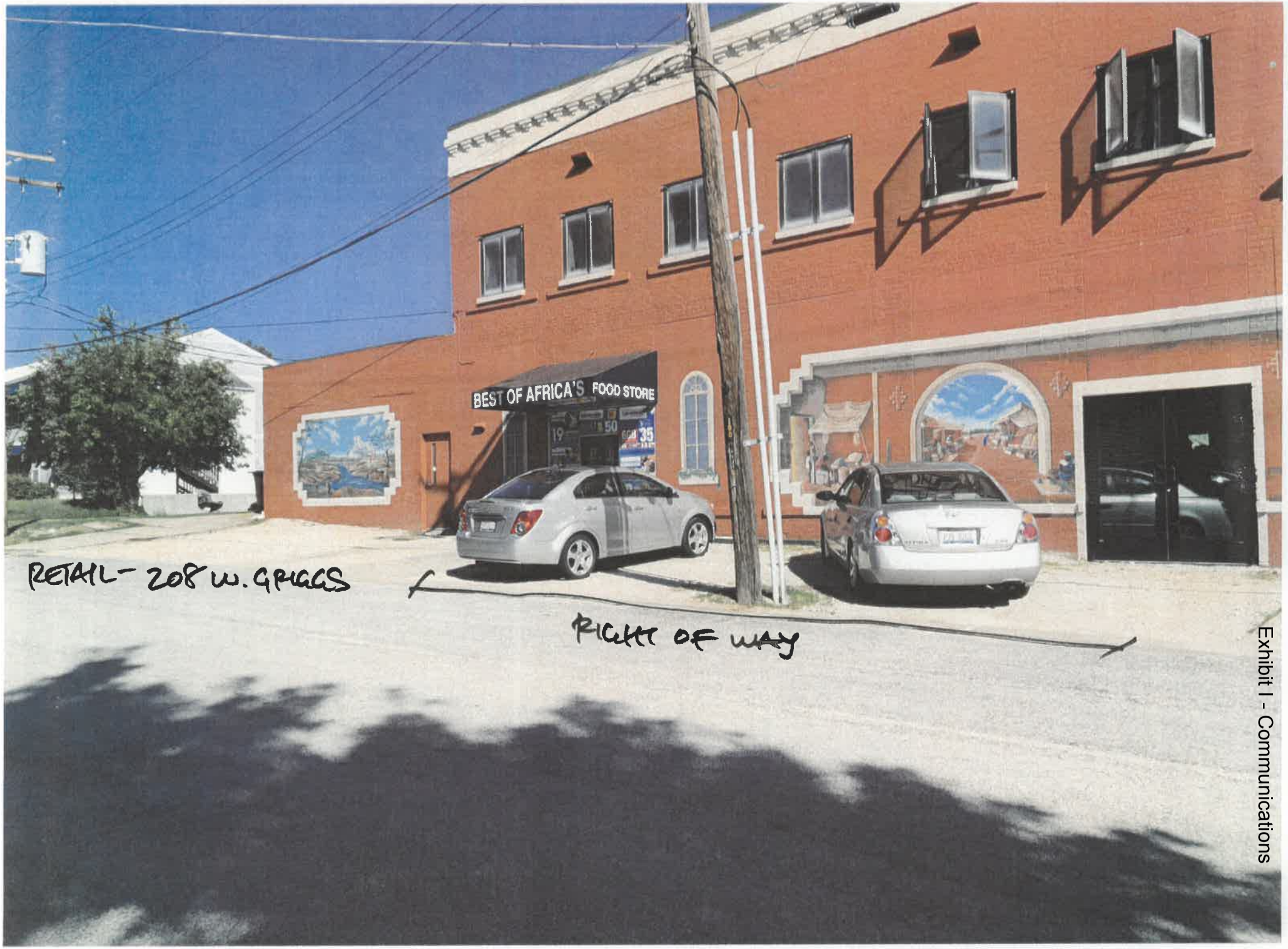

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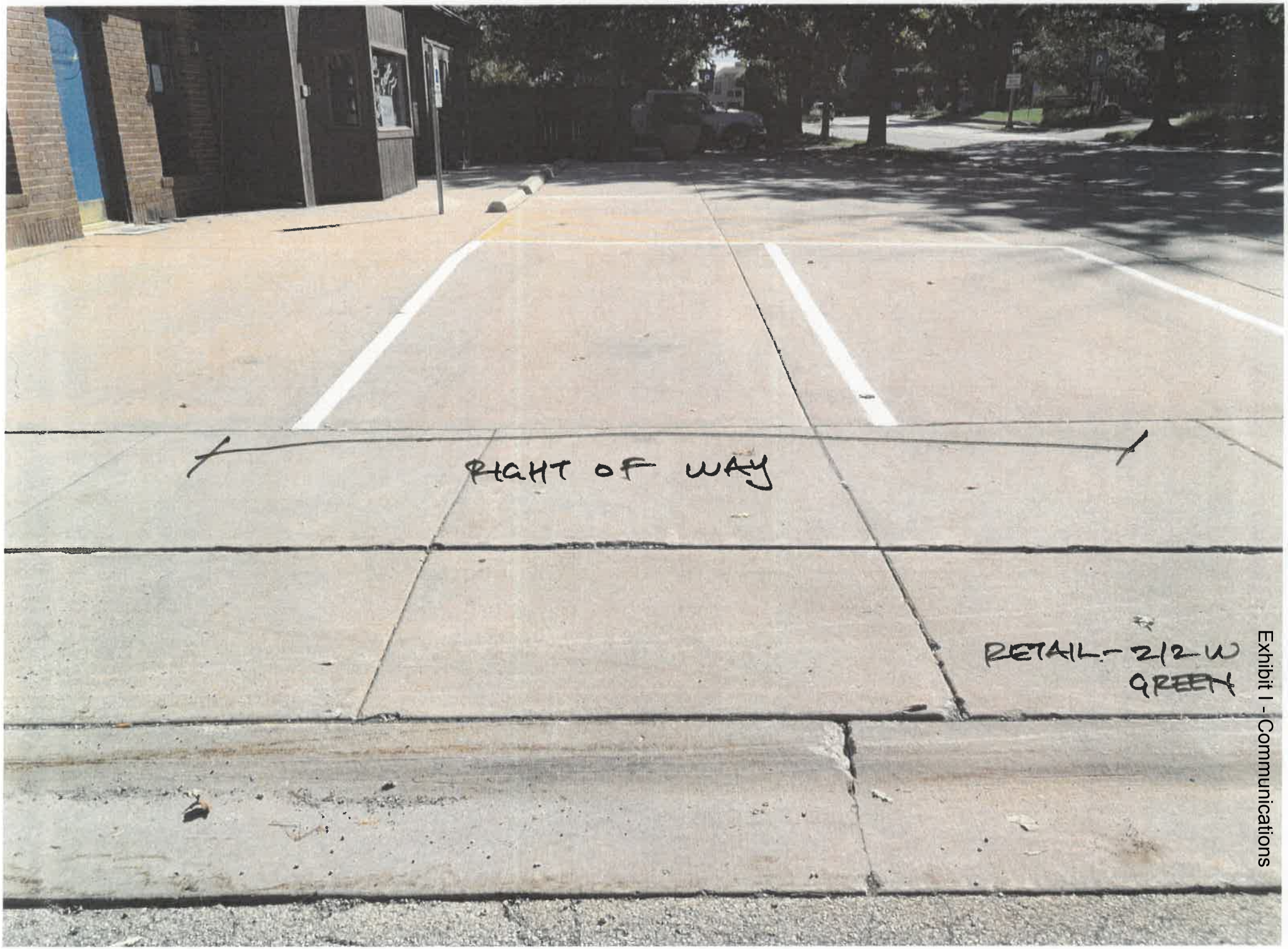

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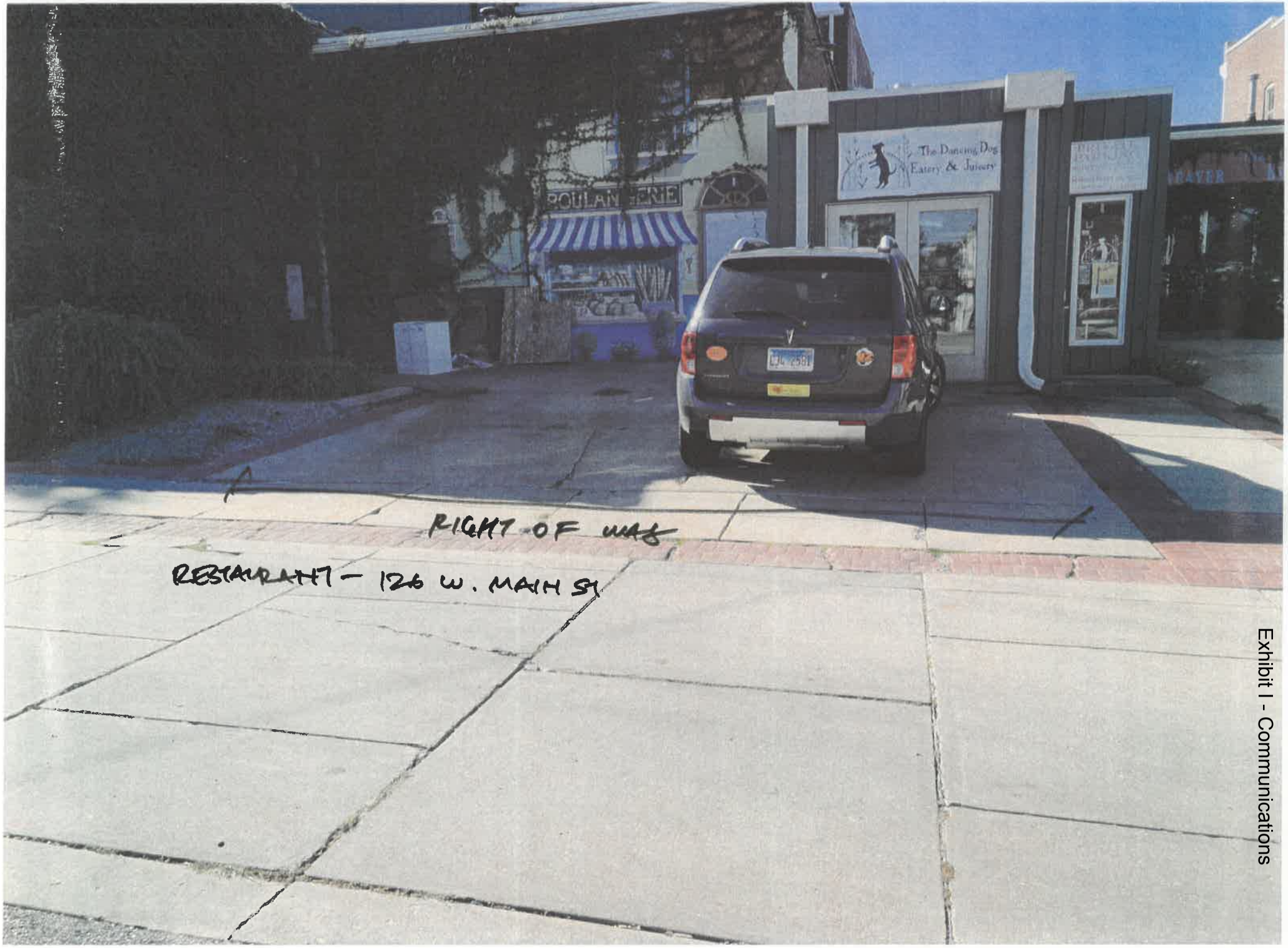

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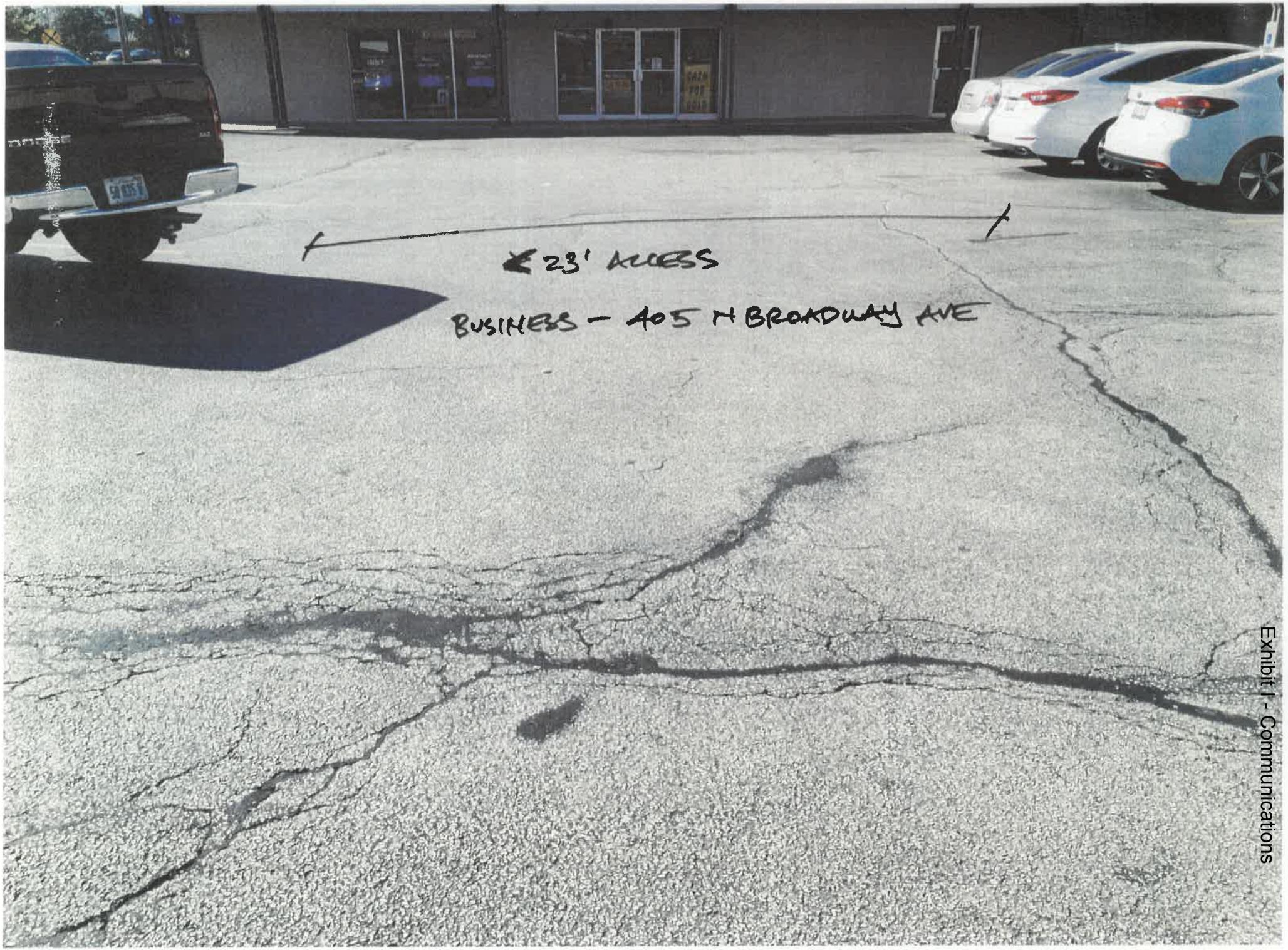

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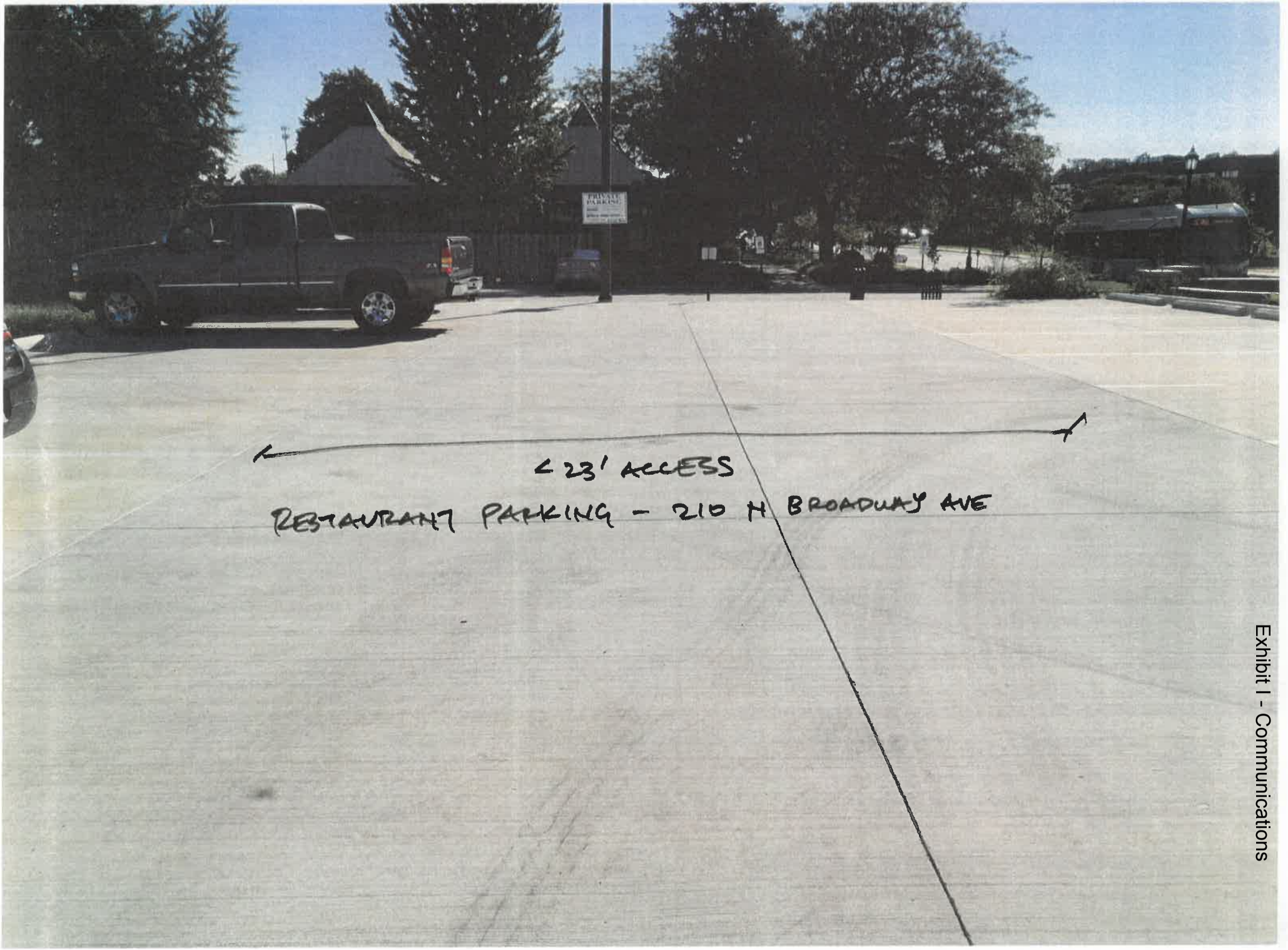

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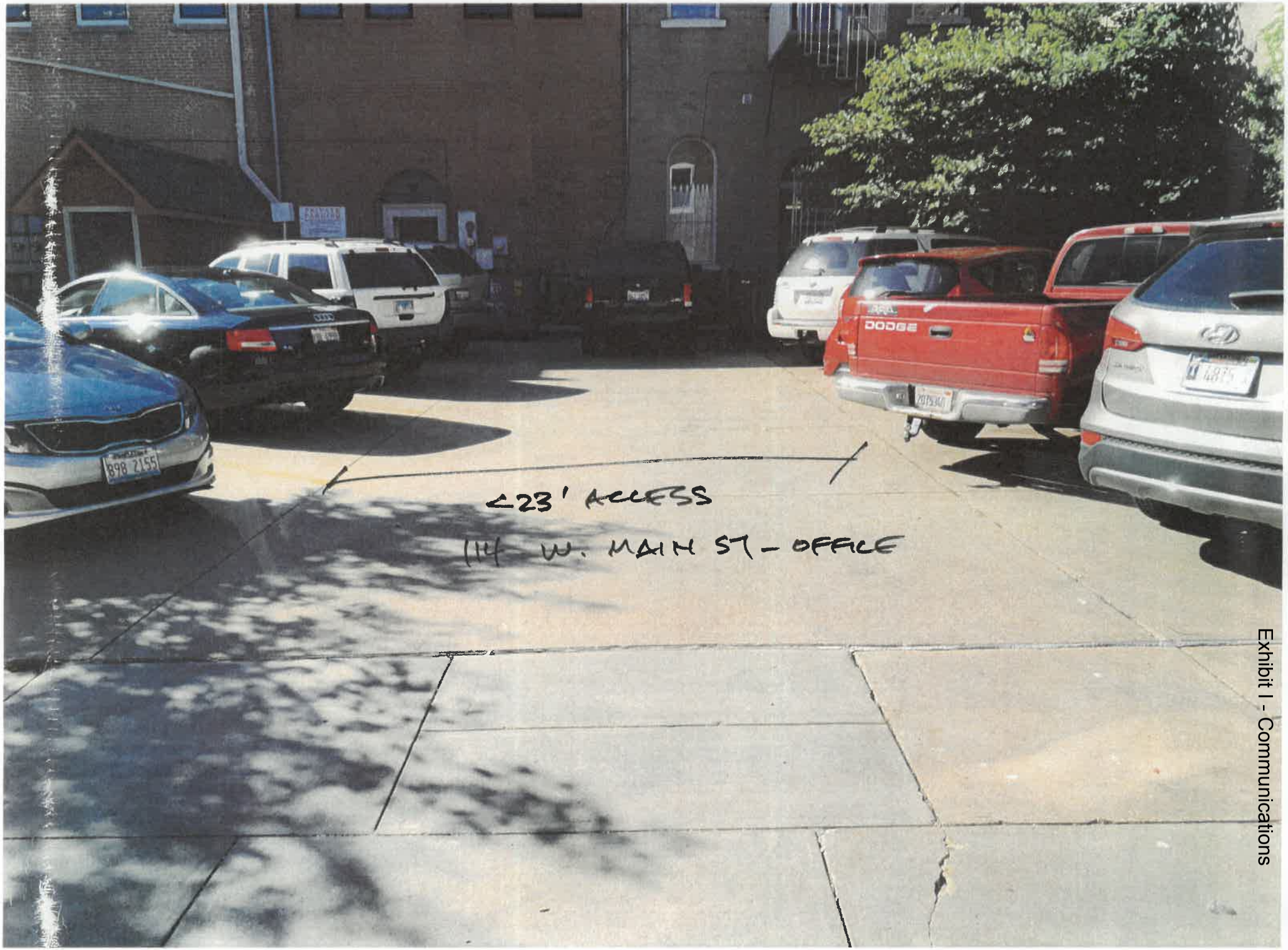
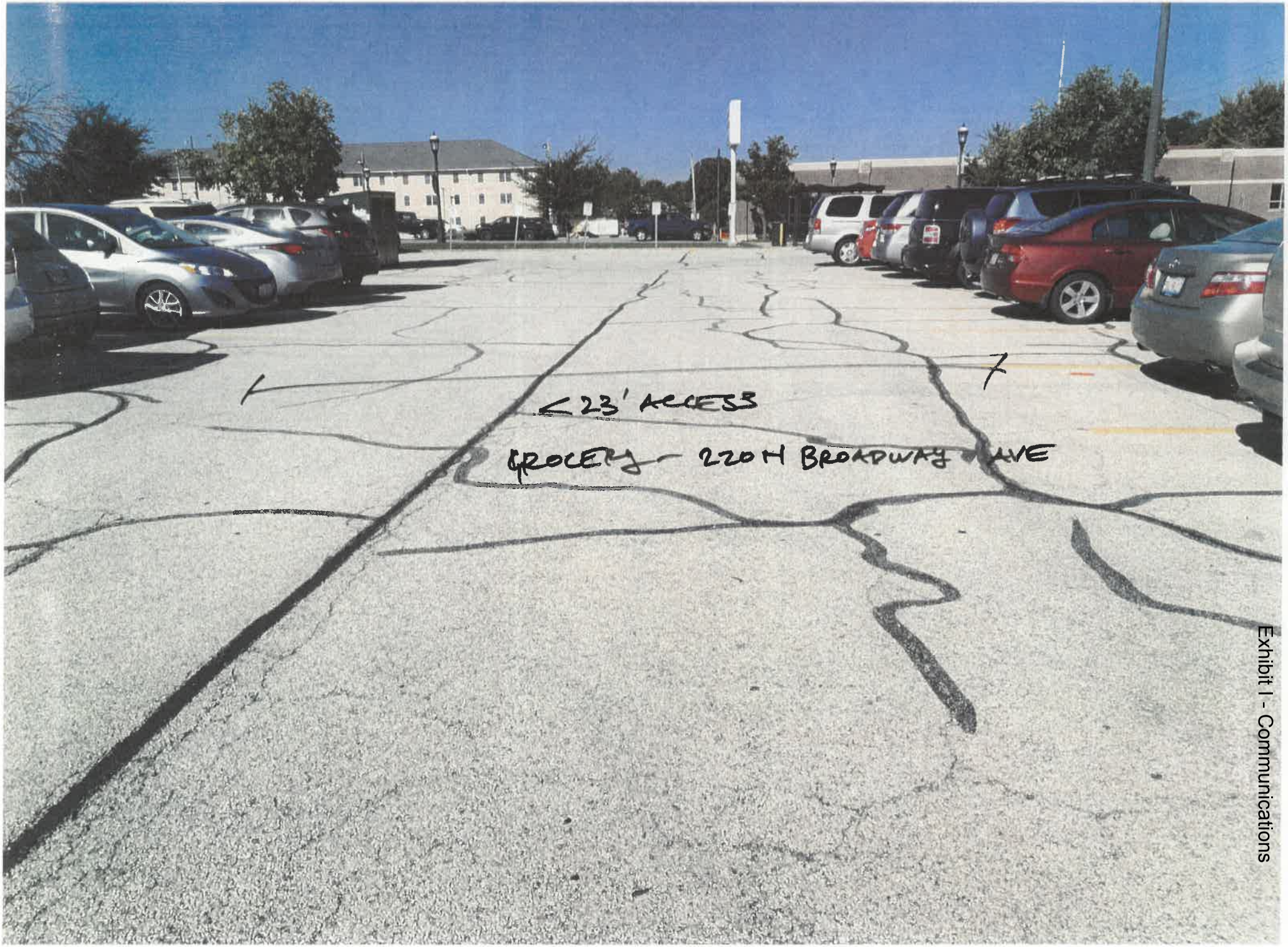


<23' ACCESS

114 W. MAIN ST - OFFICE

Exhibit I - Communications



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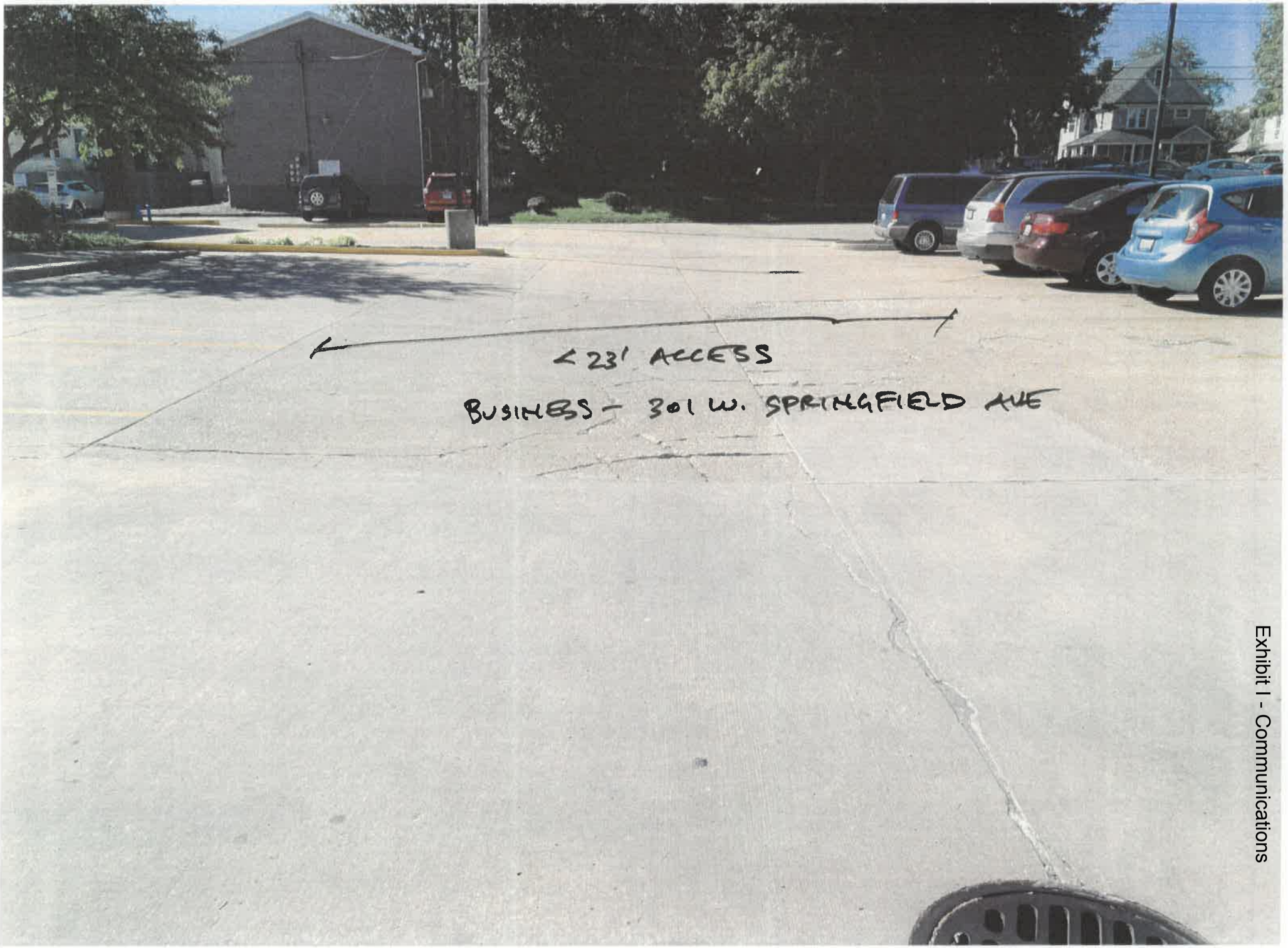
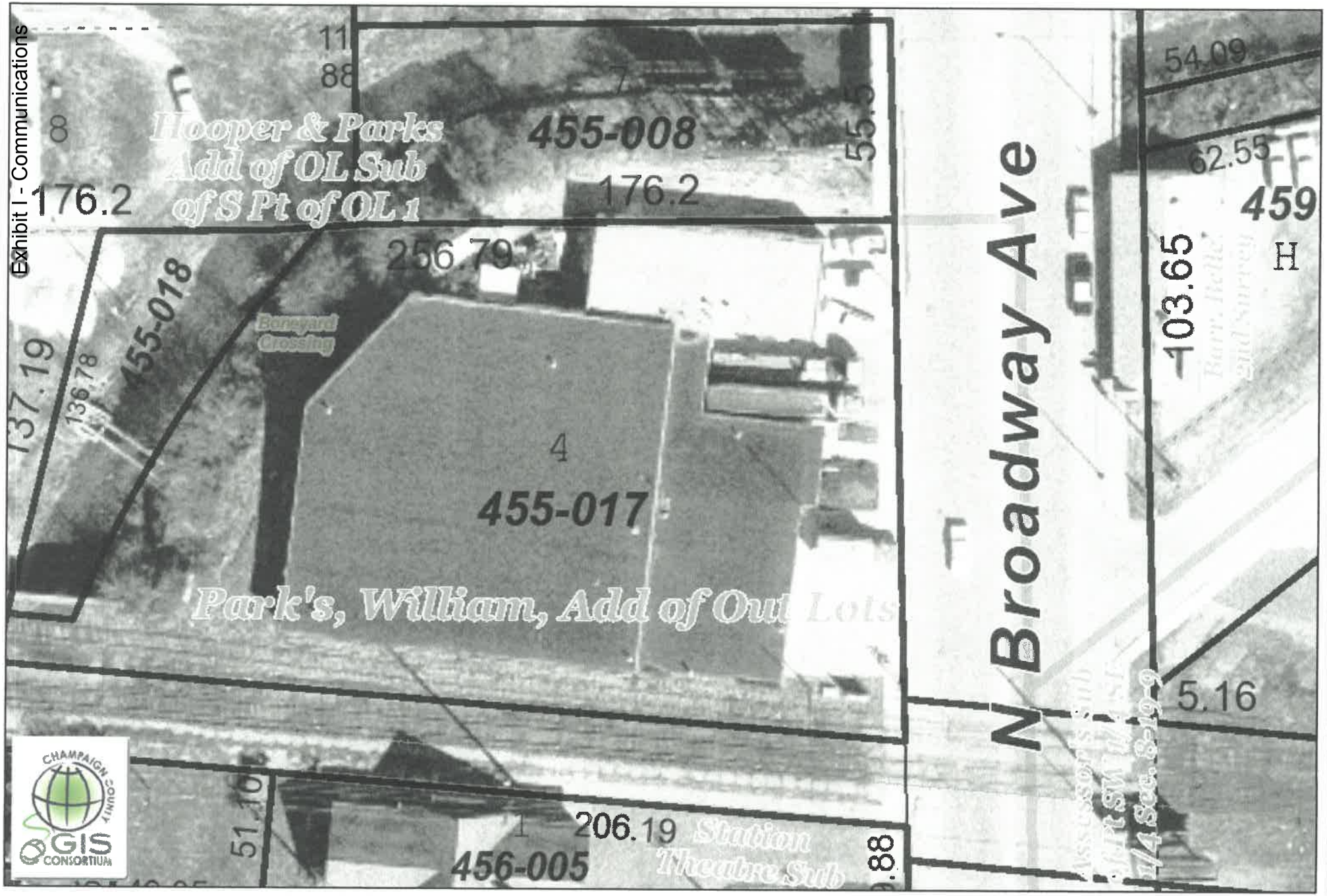


Exhibit I - Communications

1973

GIS Webmap Public Interface Champaign County, Illinois

Exhibit I - Communications



25 Feet

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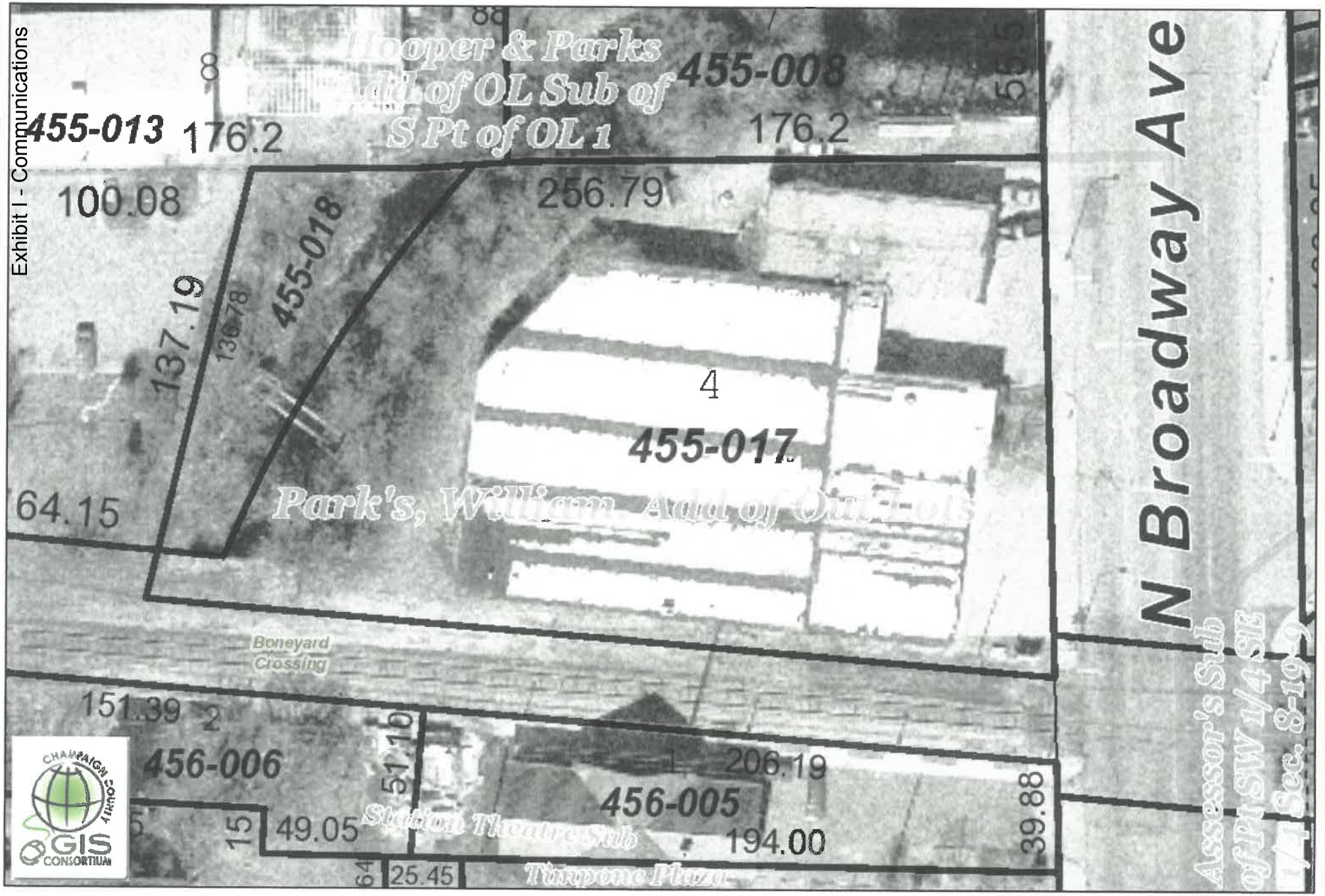
NORTH

Date: Wednesday, October 17, 2018

GIS Webmap Public Interface Champaign County, Illinois

Exhibit I - Communications



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NORTH

Date: Wednesday, October 17, 2018

2005

GIS Webmap Public Interface Champaign County, Illinois

Exhibit I - Communications

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NORTH

Date: Wednesday, October 17, 2018

GIS Webmap Public Interface Champaign County, Illinois

2014

Exhibit I - Communications

25 Feet

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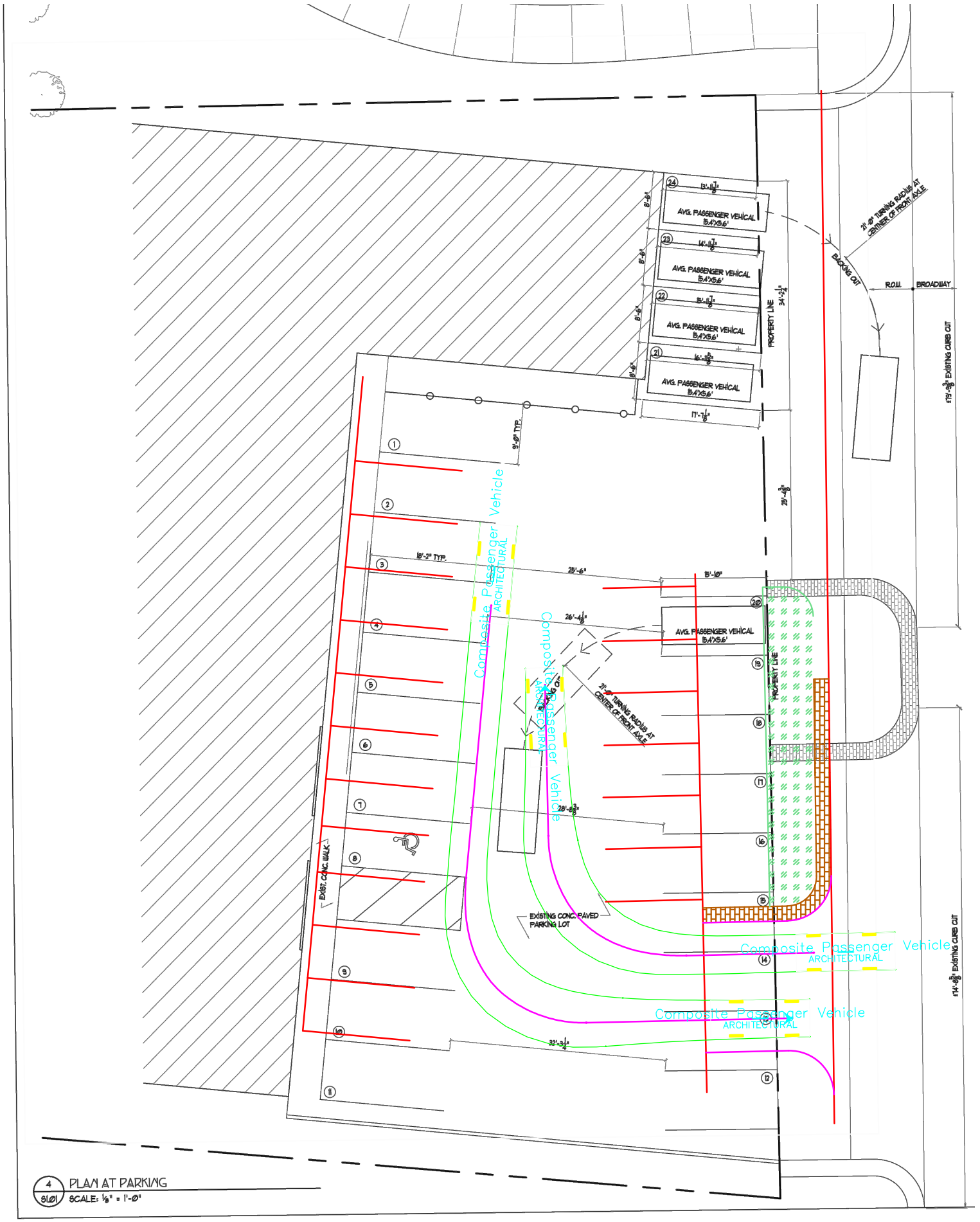
NORTH

Date: Wednesday, October 17, 2018

Exhibit J - Public Works Parking Lot Schematic



4 PLAN AT PARKING
S1.01 SCALE: 1/8" = 1'-0"

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: October 17, 2018 **DRAFT**

TIME: 7:00 p.m.

PLACE: City Council Chambers, 400 South Vine Street, Urbana, IL 61801

MEMBERS PRESENT	Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch
STAFF PRESENT	Kevin Garcia, Planner II; Lily Wilcock, Planner I; Teri Andel, Administrative Assistant II
OTHERS PRESENT	Andrew Fell

COMMUNICATIONS

Communications received regarding Case No. ZBA-2018-MAJ-10

- Letter from Jenny Park of Meyer Capel
- Email from Anne & Chris Lukeman
- Email from Mike Hosier
- Letter from Richard Grossi
- GIS Maps of the subject property from 1973, 1988, 2005 and 2014 submitted by Andrew Fell

NOTE: Chair Welch swore in members of the audience who indicated that they might give testimony during the public hearing.

NEW PUBLIC HEARINGS

ZBA-2018-MAJ-10: A request by Andrew Fell, on behalf of Broadway Market, LLC for a Major Variance to allow parking spaces that are less than the required length, an access drive that is less than the required width, and/or parking spaces that back directly onto the public right-of-way at 401 North Broadway Avenue in the B-4, Central Business Zoning District.

Chair Welch opened the public hearing for this case. Matt Cho recused himself from the case because he is one of the owners of the subject property.

Kevin Garcia, Planner II, presented the staff report to the Zoning Board of Appeals. He began by giving brief background information of the subject property. Referring to Exhibit D, he talked about the Site Plan that was previously approved indicating one row of parking spaces in front of the building. He showed Exhibit G (Proposed Site Plan) indicating where the parking spaces have been striped since the approval of the original Site Plan. He showed pictures of the parking during a peak time of day. Exhibit H (Staff Recommended Parking Layout) shows what City staff recommended.

Mr. Rusch asked what a partial closure would mean. Mr. Garcia responded that in this case, staff recommended that part of the one access drive to the south be closed to a certain point and leave enough of the access drive to allow for an in and an out driveway. Section 20 of the Urbana City Code requires that if a driveway is not being used, then it be closed. In this case, the parking spaces are also serving as both access drives and parking spaces, which is not allowed.

Mr. Garcia continued with his staff presentation by noting the zoning and existing land uses of the subject property and of the surrounding adjacent properties. He mentioned other properties in the downtown area where parking backs out directly onto a street and noted the reasons why it is allowed on those properties. He pointed out that the only thing for consideration by the Zoning Board of Appeals is the major variance, not the issue of non-conforming parking. He reviewed the criteria according to Section XI-3 of the Urbana Zoning Ordinance for a major variance. He read the options of the Zoning Board of Appeals and presented City staff's recommendation for Conditional Approval including the following conditions recommended by City staff:

1. Only the requests pertaining to the two southernmost parking spaces adjacent to the northeastern part of the building are granted. Those spaces, with the dimensions specified in Exhibit G, are allowed to back directly onto Broadway Avenue and must be signed to indicate that they are for employees only and for compact cars only.
2. The southern driveway must be removed and replaced with a new barrier curb and streetscaping to match the existing streetscape on Broadway Avenue. The driveway may be partially closed if an access drive is installed that meets the standards of the Zoning Ordinance and City Code.
3. Wheel stops must be installed in all parking spaces that abut the public sidewalk, except for the two spaces referenced in Condition 1.
4. All standard parking spaces must be striped to be 18 feet, 6 inches deep, and all compact parking spaces are striped to be at least 15 feet, 6 inches deep.

He read a statement by the City Attorney in response to the letter received by Jenny Park of Meyer Capel, who is representing the property owner.

Chair Welch asked if any members of the Zoning Board of Appeals had questions for City staff.

Mr. Rusch asked if the City Attorney was ordering or suggesting that the Zoning Board of Appeals to not discuss or review the non-conforming use. Mr. Garcia responded that it is the advice of the City Attorney to only discuss the variance request, because there is an appeal

process for a property owner to appeal a decision of a non-conforming use. The issue of non-conforming use is not before the Zoning Board of Appeals at this meeting.

Ms. McLaughlin inquired if City staff had received complaints about the use of the parking lot. Mr. Garcia said no, not to his knowledge.

Ms. McLaughlin questioned if there had been any crashes or safety issues. Mr. Garcia said that he was not aware of any.

Ms. Uchtmann wondered if the Broadway Food Hall had opened for business. Mr. Garcia replied yes. It has been open for business for about six months. There are various food vendors located inside and an open space with tables for people to sit and eat. Mr. Rusch added that it is similar to the food court at a mall.

Mr. Warmbrunn questioned if there any concerns with the location of the existing fire hydrant. Mr. Garcia stated that this is a concern that Planning staff intends to discuss with the staff in Public Works. Installing wheel stops would help resolve any concerns that they have. Mr. Warmbrunn noted that there is a similar situation down the street at Lil Porgy's; however, there are wheel stops at Lil Porgy's.

Mr. Warmbrunn wondered about snow removal. Is it the business owner's responsibility to clear snow from the sidewalk? Mr. Garcia answered yes in the downtown area. He was not certain if the subject property falls inside the downtown zone.

Mr. Warmbrunn asked if the City had issued a Certificate of Occupancy. Mr. Garcia said no. They are waiting to resolve the parking issues first.

Ms. Uchtmann questioned where the owner could post a sign stating "Compact Car". Mr. Garcia showed where a sign could be located using Exhibit F (Site Photos). Mr. Rusch clarified that only the two left northern parking spaces would be for compact cars and the two right northern parking spaces would be for bicycle or motorcycle parking only. Mr. Garcia said that was correct.

Ms. Uchtmann inquired where trucks making deliveries would park. Mr. Garcia stated that deliveries would be made where the big semi-truck was parked in Exhibit F. Normally, trucks do not make deliveries during the busiest times of the day.

Mr. Warmbrunn questioned if there was a formula for figuring the percentage of parking spaces for compact cars. Mr. Garcia pointed out that City staff was requesting four compact parking spaces due to their size. He would check the Zoning Ordinance to see what the percentage is.

Mr. Rusch asked what the parking spaces were currently striped in feet and inches. Mr. Garcia stated that they vary. On Exhibit H, parking spaces numbered 1-11 (closest to the building) are striped at 18 feet, 2 inches. Parking spaces numbered 12-20 are 15 feet, 10 inches, and spaces numbered 21-24 are various dimensions.

Mr. Rusch inquired about how often the City gives allowances to businesses in the downtown area to have spaces striped smaller than the standard 18 feet. Mr. Garcia replied that he did not have that information readily available. Any time staff receives Site Plans, they have to meet the standard requirements. Many of the downtown parking spaces have existed for decades,

Ms. Chester commented that there are compact parking spaces at Lincoln Square Mall due to trees being in the way.

With no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant to approach the dais to speak.

Andrew Fell, applicant, approached the Zoning Board of Appeals to speak about the proposed major variance request on behalf of Broadway Market LLC. He talked about the abandoned use issue. The owner does not feel that the use of the parking spaces were ever abandoned. In addition, the maps dating from 1973 to 2014 indicate that people have been parking along and backing directly out onto Broadway Avenue for the past 45 years. He did not believe it was reasonable to think that someone purchasing the building would not continue this, especially the parking spaces on the northeast. As a result, he did not understand why they needed a variance to have parking that backs out onto Broadway Avenue. The current parking layout makes it better so that drivers do not need to back out anymore. They do not feel that it would be necessary to provide curb or wheel stops in part because the City approved the original plan without requiring either. They do not feel that the way the parking lot is currently striped has been a hindrance or made a non-conforming use worse. They are only trying to provide as much parking space as possible because there is an issue with parking during lunch.

Mr. Garcia re-iterated that the issue of whether the parking use had been abandoned or not was not relevant to the proposed major variance. There is an appeals procedure that the applicant could apply for to address the non-conforming issue.

Mr. Warmbrunn asked if Kensium were owners of the property. Mr. Fell said yes.

Mr. Warmbrunn stated that the owners had plans to open a food hall with about 10 parking spaces in front of the building. Then all of a sudden, they have five restaurants inside the food hall. Their website states that they can have a wedding party with up to 400 guests and a meeting with 50 guests. It seemed to him that a good business plan would have acknowledged that parking would be an issue to begin with. He asked why the applicant did not bring the striping plan back to the City prior to striping the parking lot. Mr. Fell could not speak to that. Mr. Rusch stated that the City is trying to make Downtown Urbana a walkable community. Many of the Food Hall's customers probably walk from the Champaign County Courthouse or from the downtown businesses for lunch. Mr. Warmbrunn remarked that is another reason why they do not need vehicles parked on the sidewalk.

Mr. Warmbrunn stated that the Zoning Board of Appeals has tried to be friendly to businesses in the past. The Board appreciates businesses doing what they are supposed to do. The letter to Matt Cho from J. Patrick Bolger, City of Urbana Building Inspector, dated April 20, 2018 clearly states for Mr. Cho to contact him when he had a plan in place for the parking striping, but he did

not do that. As a result, the Zoning Board now had to decide whether they want to follow staff's recommendation to give the applicant as many parking spaces as safely possible.

Mr. Warmbrunn said that Broadway Avenue has gone through several changes improving the aesthetics and street including adding bicycle lanes. He noted that there is a bus stop right in front of the Broadway Food Hall. Exiting customers might peel out to get around the bus. With the way some people drive, it is dangerous to allow cars to back out onto a street. We need to take all the precautions that we can. The parking issue should have been foreseen, and the owners should have discussed it with City staff to handle it correctly.

Mr. Warmbrunn asked about the options of the owner with regards to closing off the south access drive. Mr. Garcia stated that their options are to partially close the south access drive or to completely close it and keep the parking spaces, but it cannot be used as both parking spaces and an access drive. If they decide to keep the two parking spaces, then the access drive needs to be closed off by constructing a curb. Mr. Fell replied that he could not make the decision for the owners; however, he felt that it would be unreasonable to change the four parking spaces on the northeast of the property. The owner should have been able to have the foresight that those parking spaces would continue to be allowed when he purchased the building. They were conforming before he purchased the property. Why are they not conforming now?

Mr. Fell said that the other contention with City staff's recommendation is that the City approved the plan for the parking lot with nothing along the south side of the property along Broadway Avenue. They did not require a curb or wheel stops or streetscape at that time, so he felt it was unreasonable for the City to request those things now. Ms. McLaughlin stated that she understood those things to be required now that the owner has parking along Broadway Avenue. The point of the curb requirement is to prevent drivers from parking their vehicles on the sidewalk. The City approved one design, then conditions changed and now additional safeguards are required for pedestrians.

Ms. Uchtmann asked who determines where the curb cut is located for the driveway. Mr. Garcia explained that the curb cut was reestablished between 2012 and 2014. The City of Urbana did streetscaping along Broadway Avenue by narrowing the street from four lanes to two lanes and by installing bicycle lanes. During these improvements, the existing building appeared as it had for decades, so it made sense to put the curb cut in as it currently exists. The front of the building was recently demolished to make room for parking.

Ms. Uchtmann questioned if during the streetscape improvements, if the City had planned to plant any trees. Mr. Garcia stated that was before he began working for the City of Urbana and did not know.

Mr. Rusch inquired if the four parking spaces to the northeast were grandfathered in when the City made streetscape improvements. Mr. Garcia replied yes.

Mr. Rusch asked if these four parking spaces were part of the original plan that was approved by the City when the applicant first purchased the property. Mr. Garcia stated that the Approved Site Plan is Exhibit D in the packet of information. It states "Existing Concrete to Remain". It

does not have striping indicating parking spaces. Had it been striped, the City would have made sure it was compliant with City code.

With no further input from the audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motion(s) by the Zoning Board of Appeals.

Mr. Rusch questioned how important it is for vehicles to not be allowed to pull out from the parking spaces onto Broadway Avenue. He understood that it is a City rule; however, there are many other businesses that have been grandfathered in to allow it. Mr. Warmbrunn felt the issue to be vehicles backing out onto Broadway Avenue. It would not just be the four parking spaces to the north, but all of the parking spaces along Broadway Avenue to the south would be allowed as well. Ms. McLaughlin pointed out that there is no need to back out when a driver could pull forward. Mr. Warmbrunn stated that they needed to think about all drivers, who are not all exceptionally good at driving.

Mr. Warmbrunn talked about a near accident that happened the day before when he visited the site during the noon hour. There was a small car parked next to a huge van in the parking spaces to the north. The van blocked the visibility of the driver of the car being able to see if any pedestrians or vehicles were coming when they started backing out onto Broadway Avenue. There was someone walking down the sidewalk and fortunately was able to stop before being hit by the driver of the car. He believed that two compact parking spaces designated for employee parking would be okay to keep to the north.

Ms. McLaughlin moved that the Zoning Board of Appeals forward Case No. ZBA-2018-MAJ-10 to City Council with a recommendation for CONDITIONAL APPROVAL with the following conditions:

1. Only the requests pertaining to the two southernmost parking spaces adjacent to the northeastern part of the building are granted. Those spaces, with the dimensions specified in Exhibit G, are allowed to back directly onto Broadway Avenue and must be signed to indicate that they are for employees only and for compact cars only.
2. Wheel stops must be installed in all parking spaces that abut the public sidewalk, except for the two spaces in the potential driveway, if the owner chooses to keep the driveway.

Mr. Rusch seconded the motion.

Mr. Garcia pointed out that if wheel stops are added to the parking spaces, then the south access drive would be considered closed and the owner would be required to install a curb. Mr. Warmbrunn noted that the curb on the Lil Porgy's lot is located on the street side of the sidewalk. Mr. Garcia responded that there are a lot of existing parking lots that are legally non-conforming. The only way to enforce conformity is that when a new development is constructed, it has to comply with the City's rules and regulations.

Ms. McLaughlin withdrew her original motion. She, then, moved that the Zoning Board of Appeals forward Case No. ZBA-2018-MAJ-10 to City Council with a recommendation for CONDITIONAL APPROVAL with the following condition:

1. Only the requests pertaining to the two southernmost parking spaces adjacent to the northeastern part of the building are granted. Those spaces, with the dimensions specified in Exhibit G, are allowed to back directly onto Broadway Avenue and adjacent to the northeastern part of the building

Ms. Uchtmann seconded the motion.

Mr. Warmbrunn asked if this motion were passed, it would only address the four parking spaces to the north, but it would not address any of the other parking spaces. Mr. Garcia understood the motion to only grant the two southernmost parking spaces. It would not be granting the parking spaces to the south, so there would be no resolution on those.

Ms. McLaughlin withdrew her motion.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2018-MAJ-10 to City Council with a recommendation for CONDITIONAL APPROVAL with the following conditions:

1. The two northernmost parking spaces be removed. The two southernmost parking spaces adjacent to the northeastern part of the building are signed to indicate that they are for employees only and for compact cars only.

Ms. McLaughlin seconded the motion.

Mr. Warmbrunn stated that it was the same motion. Ms. McLaughlin replied that the difference is her motion only addressed the four northern parking spaces. The current motion allows approval of everything except for the two northernmost parking spaces.

Ms. Chester felt that there should be wheel stops; otherwise, it will not be safe.

Mr. Warmbrunn asked what type of vote would be required to pass. Mr. Welch said there needs to be a 2/3 majority vote to pass the motion.

Roll call on the motion was as follows:

Ms. Chester	-	No	Ms. McLaughlin	-	Yes
Mr. Rusch	-	Yes	Ms. Uchtmann	-	No
Mr. Warmbrunn	-	No	Mr. Welch	-	No

The motion failed.

Ms. McLaughlin moved that the Zoning Board of Appeals forward Case No. ZBA-2018-MAJ-10 to City Council with a recommendation for CONDITIONAL APPROVAL with the following conditions:

1. The variance is granted for all spaces except the four northernmost parking spaces adjacent to the northeastern part of the building. The two southernmost parking spaces must be signed to indicate that they are for employees only and for compact cars only. The two northernmost parking spaces are removed.
2. Wheel stops must be installed in all parking spaces that abut the public sidewalk unless the owner chooses to keep the south driveway. A new barrier curb and streetscaping are not required behind the wheel stops.

Mr. Rusch seconded the motion.

Discussion ensued about the barrier curb. Mr. Warmbrunn stated that a curb would be between the sidewalk along the street. Ms. McLaughlin added that the wheel stops would prevent people from backing out onto Broadway Avenue or parking on the sidewalk.

Roll call on the motion was as follows:

Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes	Ms. Chester	-	Yes

The motion passed by unanimous vote. Mr. Garcia noted that this case would be forwarded to City Council on November 5, 2018.

Ms. Uchtmann wondered if the City would require businesses to re-stripe their parking lots or spaces. Mr. Garcia said no. The City cannot retro-actively enforce the Zoning Ordinance on property owners.