



# **Zoning Board of Appeals**

## **2008 Annual Report**

*Prepared By:*

*Jeff Engstrom  
Planner I*

## Overview

In calendar year 2008, the City of Urbana’s Zoning Board of Appeals met seven times and considered 17 cases. This reflects the largest case level since 2005. A summary of past years case activity is below.

Year	Meetings	Cases
2000	10	13
2001	9	23
2002	8	17
2003	9	20
2004	7	19
2005	9	15
2006	10	11
2007	6	13
2008	7	17

This report contains a summary of each case considered in 2008 by case type. Decision sheets, adopted ordinances, and minutes are attached.

### **Members of the Zoning Board of Appeals included:**

Paul Armstrong, Herb Corten, Anna Merritt, (chairperson), Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn, and Harvey Welch.

### **Staff support to the Zoning Board of Appeals was provided by:**

Libby Tyler, PhD, FAICP	Director of Community Development Services, Zoning Administrator and City Planner
Robert Myers, AICP	Planning Manager, and Secretary of the Zoning Board
Lisa Karcher, AICP	Planner II
Paul Lindahl	Planner II
Rebecca Bird	Planner I
Jeff Engstrom, AICP	Planner I
Teri Andel	Planning Secretary

### **2007 ZBA Meeting Dates**

March 12    April 16    May 21    June 11    September 17    October 15    November 19

The ZBA held no meetings in the months of January, February, July, August or December.

**2008 Zoning Board of Appeals Case Log**

<b>Total Number of Applications Submitted</b> .....	16
Number of Cases Heard .....	17
Number of Cases Withdrawn .....	1
Number of Cases Incomplete .....	0

**APPEAL REQUESTS**

<b>Total Number of Appeals Heard</b> .....	1
♦ Appeal of the Zoning Administrator’s approval for an adaptive re-use in the MOR Zoning District.	
<b>Number of Appeals Denied by the Zoning Board of Appeals</b> .....	1

**CONDITIONAL USE PERMIT REQUESTS**

<b>Total Number of Conditional Use Requests Heard</b> .....	2
<b>By Type:</b>	
♦ Allow a Duplex use in the R-2 Zoning District.	
♦ Allow the expansion of a Daycare use in the B-3 Zoning District.	
<b>Number of Conditional Use Permit Requests Approved by the Zoning Board of Appeals</b> .....	1

**MINOR VARIANCE REQUESTS**

<b>Total Number of Minor Variance Requests Heard</b> .....	2
<b>By Type:</b>	
♦ Allow an increase in area of a freestanding sign from 75 to 80 square feet in the B-3 Zoning District.	
♦ Allow the construction of a garage to encroach 25% into the required 29.5-foot required yard in the R-1 Zoning District.	
<b>Number of Minor Variance Requests Granted by the Zoning Board of Appeals</b> .....	2

**MAJOR VARIANCE REQUESTS**

**Total Number of Major Variance Requests Heard** ..... 10

**By Type:**

- ◆ Allow the message to change every ten seconds on an electronic display in the B-3 Zoning District.
- ◆ Allow an electronic display to be multi-colored in the B-3 Zoning District.
- ◆ Allow construction of a building with front yard setbacks along both University and Lincoln Avenues ranging from zero to ten feet in the B-3 and B-3U Zoning districts.
- ◆ Allow parking to encroach greater than ten feet into the required 15-foot setback in the B-3 and B-3U Zoning districts.
- ◆ Allow parking to encroach into the side yard setback in the B-3 Zoning District.
- ◆ Allow vehicles to back out onto a public street in the R-4 Zoning District.
- ◆ Allow parking to encroach 100% into the required front yard in the R-4 Zoning District.
- ◆ Allow encroachment into front yard setback along Broadway Avenue for construction of a new garage in the R-2 Zoning District.
- ◆ Allow three-foot addition onto an existing garage that will encroach 15 feet into the required 25-foot yard setback in the R-1 Zoning District.
- ◆ Allow the construction of a detached accessory building to be less than 18 inches as required from the side yard property line in the R-2 Zoning District.

**Number of Major Variance Requests Recommended for Approval  
by the Zoning Board of Appeals** ..... 8

**Number of Major Variance Requests Approved by the City Council** ..... 8

**Number of Major Variance Requests Denied by the City Council** ..... 0

## **CASE SUMMARIES**

### **Appeals**

#### **ZBA-2008-A-1**

601 West Green Street

An appeal by Richard Cahill and Gail Taylor of Zoning Administrator Approval of Plans for the Adaptive Reuse of an Existing House in the MOR, Mixed Office Residential Zoning District.

*Case heard and dismissed by the Zoning Board of Appeals on [October 15, 2008](#) by a vote of 6 ayes - 1 nay*

### **Conditional Use Permits**

#### **ZBA-2008-C-01**

802 West Iowa Street

A request filed by Illinois Properties for a Conditional Use Permit to allow the establishment of a Duplex in the R-2, Single-Family Residential Zoning District.

*Case heard and denied by the Zoning Board of Appeals on [May 21, 2008](#) by a vote of 5 ayes - 0 nays*

#### **ZBA-2008-C-02**

2501 South Myra Ridge Drive

A request by the Atkins Group for a Conditional Use Permit to expand the existing daycare in the B-3, General Business Zoning District.

*Case heard and approved by the Zoning Board of Appeals on [June 11, 2008](#) by a vote of 4 ayes - 0 nays ([Document No. 2008R17415](#))*

### **Minor Variances**

#### **ZBA 2008-MIN-1**

1708 South Philo Road

A request filed by Maruti Gagan Management, LLC for a Minor Variance to erect a freestanding sign of 80 square feet in the area rather than the maximum 75 square feet allowed by Table IX-1 of the Urbana Zoning Ordinance in the B-3, General Business Zoning District.

*Case heard and approved by the Zoning Board of Appeals on [May 21, 2008](#) by a vote of 5 ayes - 0 nays ([Document No. 2009R06375](#))*

**ZBA 2008-MIN-02**

401 West Delaware Avenue

A request filed by Robert Wyer for a Minor Variance to allow construction of a garage encroaching 25% into the required 29.5-foot front yard setback in the R-1, Single-Family Residential Zoning District.

*Case heard and approved by the Zoning Board of Appeals on [September 17, 2008](#) by a vote of 5 ayes - 0 nays ([Document No. 2009R02750](#))*

**ZBA 2008-MIN-02**

401 West Delaware Avenue

A request filed by Robert Wyer to amend a Minor Variance to allow a driveway from Carle Avenue to remain in the R-1, Single-Family Residential Zoning District.

*Case heard and approved by the Zoning Board of Appeals on [November 19, 2008](#) by a vote of 4 ayes - 0 nays ([Document No. 2009R02751](#))*

**ZBA 2008-MIN-03**

409 West Elm Street

A request filed by George Klatt for a Minor Variance to increase the allowed Floor Area Ratio by 5% in the R-5, Medium-High Density Multiple-Family Residential Zoning District.

*Case Withdrawn*

**Major Variances**

**ZBA 2008-MAJ-01**

Southeast Corner of Windsor and Philo Roads

Request by the Atkins Group for a Major Variance to allow an Electronic Message Board (LED) Sign to increase the frequency of message changes from once per three minutes to once per ten seconds in the B-3, General Business Zoning District.

*Case heard and recommended for approval by the Zoning Board of Appeals on [March 12, 2008](#) by a vote of 6 ayes - 0 nays*

*Case heard and approved by City Council on April 7, 2008 by a vote of 7 ayes - 0 nays ([Ordinance No. 2008-03-017](#))*

**ZBA 2008-MAJ-02**

Southeast Corner of Windsor and Philo Roads

Request by the Atkins Group for a Major Variance to allow an Electronic Message Board (LED) Sign to be multi-colored in the B-3, General Business Zoning District.

*Case heard and recommended for approval by the Zoning Board of Appeals on [March 12, 2008](#) by a vote of 6 ayes - 0 nays*

*Case heard and approved by City Council on April 7, 2008 by a vote of 7 ayes - 0 nays ([Ordinance No. 2008-03-018](#))*

**ZBA 2008-MAJ-03**

901 West University Avenue, 902 and 904 West Clark Street

Request by Vermilion Development Corporation for a Major Variance to allow for the construction of a mixed-use retail/office building with front yard setbacks ranging from zero to ten feet along both University and Lincoln Avenues in the B-3, General Business and B-3U, General Business – University Zoning Districts.

*Case heard and recommended for approval by the Zoning Board of Appeals on [March 12, 2008](#) by a vote of 6 ayes - 0 nays*

*Case heard and approved by City Council on March 24, 2008 by a vote of 6 ayes - 0 nays ([Ordinance No. 2008-03-019](#))*

**ZBA 2008-MAJ-04**

901 West University Avenue, 902 and 904 West Clark Street

Request by Vermilion Development Corporation for a Major Variance to allow parking to encroach greater than ten feet into the required fifteen-foot front yard setback in the B-3, General Business and B-3U, General Business – University Zoning Districts.

*Case heard and recommended for approval by the Zoning Board of Appeals on [March 12, 2008](#) by a vote of 6 ayes - 0 nays*

*Case heard and approved by City Council on March 24, 2008 by a vote of 6 ayes - 0 nays ([Ordinance No. 2008-03-020](#))*

**ZBA 2008-MAJ-05**

908 West Clark Street

Request by Vermilion Development Corporation for a Major Variance to reduce the side-yard setbacks from five feet to 3.25 feet for a parking lot in the B-3U, General Business – University Zoning District.

*Case heard and approved as a Minor Variance by the Zoning Board of Appeals on [April 16, 2008](#) by a vote of 6 ayes - 0 nays ([Document No. 2008R17414](#))*

**ZBA 2008-MAJ-06**

202 North Coler Avenue

Request for a Major Variance filed by Steve Bantz to allow vehicles to back out onto a public street in the R-4, Medium Density Multi-Family Residential Zoning District.

*Case heard on [May 21, 2008](#), and then re-heard and recommended for approval by the Zoning Board of Appeals on [June 11, 2008](#) by a vote of 6 ayes - 0 nays*

*Case heard and approved by City Council on August 4, 2008 by a vote of 6 ayes - 1 nay ([Ordinance No. 2008-08-082](#))*

**ZBA 2008-MAJ-07**

102 West Pennsylvania Avenue

Request filed by Marc and Fran Ansel for a Major Variance to reduce the required front yard setback allow for construction of a garage in the R-2, Single-Family Residential Zoning District.

*Case heard and recommended for approval by the Zoning Board of Appeals on [May 21, 2008](#) by a vote of 5 ayes - 0 nays*

*Case heard and approved by City Council on June 2, 2008 by a vote of 5 ayes - 0 nays ([Ordinance No. 2008-06-049](#))*

**ZBA 2008-MAJ-08**

202 North Coler Avenue

Request for a Major Variance filed by Steve Bantz to allow parking to encroach 100% into the required front yard setback in the R-4, Medium Density Multi-Family Residential Zoning District.

*Case heard on [May 21, 2008](#), and then re-heard and recommended for denial by the Zoning Board of Appeals on [June 11, 2008](#) by a vote of 4 ayes - 0 nays*

**ZBA 2008-MAJ-09**

401 West Delaware Avenue

A request filed by Robert Wyer for a Major Variance to allow a 3-foot addition onto an existing garage that will encroach approximately 15 feet into the required 25-foot front yard setback in the R-1, Single-Family Residential Zoning District.

*Case heard and recommended for approval by the Zoning Board of Appeals on [September 17, 2008](#) by a vote of 5 ayes - 0 nays*

*Case heard and approved by City Council on October 6, 2008 by a vote of 7 ayes - 0 nays ([Ordinance No. 2008-10-120](#))*

**ZBA 2007-MAJ-10**

706 West Iowa Street

A request filed by Phillip and Sonia Newmark for Major Variance to allow construction of a detached accessory building less than 18 inches from the side-yard property line in the R-2, Single-Family Residential Zoning District.

*Case heard by the Zoning Board of Appeals on [October 15, 2008](#). Vote to forward to Council with recommendation for approval failed 4 ayes - 3 nays.*

**ZBA 2008-MAJ-09**

401 West Delaware Avenue

A request filed by Robert Wyer to amend a previously approved Major Variance to allow a driveway from Carle Avenue to remain in the R-1, Single-Family Residential Zoning District.

*Case heard and recommended for approval by the Zoning Board of Appeals on [November 19, 2008](#) by a vote of 4 ayes - 0 nay*

*Case heard and approved by City Council on December 1, 2008 by a vote of 7 ayes - 0 nays ([Ordinance No. 2008-12-137](#))*

# **2008 Zoning Board of Appeals**

## **Decision Sheets / Ordinances (without attachments)**



2008R17415

RECORDED ON  
07/07/2008 04:01:43PM  
CHAMPAIGN COUNTY  
RECORDER  
BARBARA A. FRASCA  
REC FEE: 25.00  
RHSPS Fee:  
REV FEE:  
PAGES 2  
PIAT ACT: 0  
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CITY OF URBANA  
ZONING BOARD OF APPEALS

DECISION SHEET

REQUEST FOR CONDITIONAL USE  
IN CASE No. ZBA-2008-C-02

At a called meeting of the Urbana Zoning Board of Appeals, a public hearing was held on Wednesday, June 11, 2008 at the City of Urbana Council Chambers, 400 South Vine Street, Urbana, Illinois, at which time and place the Board considered the following request in Case No. ZBA-2008-C-02 for a conditional use pursuant to Section VII-2 and XI-3 of the Urbana Zoning Ordinance.

A request filed by The Atkins Group for a conditional use permit to expand the existing daycare at 2501 South Myra Ridge Drive, in Urbana's B-3, General Business Zoning District.

The subject property affected by this case is described more particularly as follows:

**Common Street Address:** 2501 and 2507 South Myra Ridge Drive

**Owner of Record:** The Atkins Group

**Permanent Parcel No.:** 93-21-21-400-024 and 93-21-21-400-025

**Legal Description:** Lot 202 and 203 of Eastgate Subdivision No. 2, to the City of Urbana as per plat thereof recorded as Document No. 1996R30132 in the Office of the Champaign County Recorder of Deeds, situated in the City of Urbana, Champaign County, Illinois.

After careful review of staff's findings in this case, and upon considering all the evidence and testimony presented at the public hearing, the following decision was made by the Urbana Zoning Board of Appeals: By a roll call vote of **four ayes, zero nays, and zero abstentions**, the Urbana Zoning Board of Appeals voted to **APPROVE with CONDITIONS** the requested conditional use based on the following findings:

1. The subject property is zoned B-3, General Business. Daycare facilities are permitted as a conditional use in the B-3 Zoning District.
2. The existing Little Hearts & Hands daycare facility has been in operation at the site since 2004.
3. The daycare facility is currently at capacity. The proposed addition will increase the capacity of the daycare from 168 to 330 children (162 children) and 31 to 49 full-time staff (18 staff).
4. The proposed development is conducive to the public convenience at the location because it will offer a daily need for the community at a location convenient to nearby residential neighborhoods and employers.

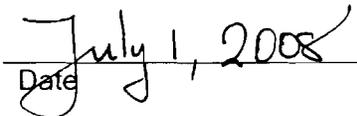
5. The proposed development will not be unreasonably injurious or detrimental to the B-3, General Business zoning district in which it is proposed to be located or otherwise injurious or detrimental to the public welfare. A daycare facility is less intensive than most commercial development allowed by right. Unlike most commercial enterprises the daycare will not be open in the evening or on weekends. In addition, a five-foot landscape buffer is required between the daycare property and the residential uses to the north.
6. Overall, the proposed use conforms to the applicable regulations and standards of and preserves the essential character of, the zoning district in which it is located. City staff will work with the petitioner to ensure that an adequate buffer is installed between the daycare and the residential uses to the north.

The conditional use was approved with the following **CONDITIONS**:

1. The general layout of the site shall be completed in general conformance to the layout depicted in the site plan submitted as part of the application.
2. A landscape buffer shall be constructed along the northern property line of the development to adequately screen the entire daycare facility from the adjacent residential uses. The landscape buffer shall be included in the final landscape plan. The plan shall be reviewed and approved by the Zoning Administrator and the City Arborist.

I do hereby affirm that to the best of my knowledge, the forgoing is a true and accurate record of Case No. ZBA-2008-C-02.

  
\_\_\_\_\_  
Anna Merritt, Chair

  
\_\_\_\_\_  
Date

The complete and official record of this case is on file at the City of Urbana Department of Community Development Services located at 400 South Vine Street, Urbana, Illinois.

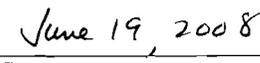
**DOCUMENT TO BE FILED AT THE CHAMPAIGN COUNTY RECORDER'S OFFICE**

CITY OF URBANA - ZONING BOARD OF APPEALS - DECISION SHEET

CASE No. ZBA-2008-C-02 - REQUEST FOR A CONDITIONAL USE PERMIT

APPROVED FOR RECORDING BY:

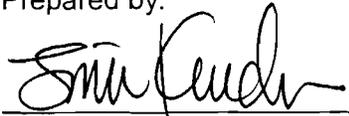
  
\_\_\_\_\_  
Jack Waaler, Special Counsel

  
\_\_\_\_\_  
Date

(G)

Please return original decision sheet to the attention of Lisa Karcher, City of Urbana Community Development Services, 400 South Vine Street, Urbana, IL 61801. Phone: 217-384-2440, Fax: 217-384-2367

Prepared by:

  
\_\_\_\_\_  
Lisa Karcher, Planner II  
Community Development Services, Planning Division  
400 South Vine Street, Urbana, IL 61801

2



\* 2 0 0 8 R 1 7 4 1 4 2 \*

2008R17414

RECORDED ON

07/07/2008 04:01:42PM

CHAMPAIGN COUNTY

RECORDER

BARBARA A. FRASCA

REC FEE: 25.00

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REV FEE:

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PIAT ACT: 0

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CITY OF URBANA  
ZONING BOARD OF APPEALS

DECISION SHEET

REQUEST FOR MAJOR VARIANCE  
IN CASE #ZBA-2008-MAJ-05

At a called meeting of the Urbana Zoning Board of Appeals, a public hearing was held on Wednesday, April 16, 2008 at the City of Urbana Council Chambers, 400 South Vine Street, Urbana, Illinois, at which time and place the Board considered Case **#ZBA-2008-MAJ-05** a request for a Major Variance pursuant to Section XI-3 of the Urbana Zoning Ordinance.

**A request filed by Vermilion Development, Inc. to reduce the side yard setbacks at 908 W. Clark Street to allow for the construction of an accessory parking lot in Urbana's B-3U, General Business-University Zoning District.**

The subject property affected by this case is described more particularly as follows:

**Common Street Address:** 908 W. Clark Street

**Owner of Record:** Mark Corkins

**Permanent Parcel No:** 91-21-07-484-005

**Legal Description:** The East 66 feet of the West 132 feet of Lot 22 of Col. M. W. Busey's Heirs Addition to the Town (now City) of Urbana, as recorded in Deed Record Book 8, at page 444 in the Office of the Recorder of Deeds, Champaign County, Illinois.

After careful review of staff's findings in this case, and upon considering all the evidence and testimony presented at the public hearing, the following decision was made by the Urbana Zoning Board of Appeals: By a roll call vote of **six ayes, zero nays, and zero abstentions**, the Urbana Zoning Board of Appeals voted to **APPROVE** an amended request for a minor variance to reduce the side yard setbacks from five feet to 3.75 feet based on the following findings:

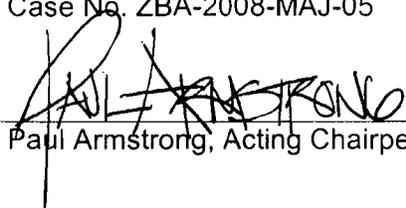
1. The petitioner is proposing an off-site accessory parking lot to serve the proposed mixed-use office/retail development at 901 W. University. Additional parking is needed both to meet the minimum required parking under the Zoning Ordinance and for the viability of the development.
2. The proposed parking meets the parking standards of the Urbana Zoning Ordinance.
3. The width of the lot is a practical difficulty in developing the lot for parking. The lot is only 66 feet wide. A total of 68.5 feet is needed to develop a parking lot with 90 degree parking. A variance for reduced side yard setbacks of 3.75 feet is necessary.
4. The reduced side yard setback will not cause a nuisance to adjacent properties. The reduction of the required side yards by 1.25 feet still allows for the installation of screening as required by the Urbana Zoning Ordinance.

5. The proposed parking layout will optimize traffic flow by allowing two-way traffic as opposed to one-way traffic.

The variance was approved with the following **CONDITIONS**:

1. The parking lot shall be constructed in general conformance to the site plan layout submitted as part of the application.
2. A landscape buffer shall be provided along the east and west property lines to screen the proposed parking from adjacent properties. The landscape buffer shall be reviewed and approved by the Zoning Administrator and the City Arborist.
3. The front and rear yard setbacks shall be discussed with the City Engineer, City Planner and City Arborist, and if possible, the greater setback should be provided along Clark Street and the lesser setback should be along the alley on the north side of the property.

I do hereby affirm that to the best of my knowledge, the foregoing is a true and accurate record of Case No. ZBA-2008-MAJ-05

  
Paul Armstrong, Acting Chairperson

17 JUNE 2008  
Date

The complete and official record of this case is on file at the City of Urbana Department of Community Development Services located at 400 South Vine Street, Urbana, Illinois.

**DOCUMENT TO BE FILED AT THE CHAMPAIGN COUNTY RECORDER'S OFFICE**

CITY OF URBANA - ZONING BOARD OF APPEALS - DECISION SHEET

CASE# ZBA-2008-MAJ-05 - REQUEST FOR MAJOR VARIANCE

APPROVED FOR RECORDING BY:

  
Jack Waaler, Special Counsel

6/11/08  
Date

(G)

Please return original decision sheet to the attention of Lisa Karcher, at City of Urbana Community Development Services, 400 South Vine Street, Urbana, IL 61801. Phone: 217-384-2440, Fax: 217-384-2367

Prepared by:

  
Lisa Karcher, Planner II  
Community Development Services, Planning Division  
400 South Vine Street, Urbana, IL 61801

3



2009R06375

RECORDED ON  
03/10/2009 03:51:54PM  
CHAMPAIGN COUNTY  
RECORDER  
BARBARA A. FRASCA  
REC FEE: 25.00  
RHSPS Fee:  
REV FEE:  
PAGES 3  
PIAT ACT: 0  
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**CITY OF URBANA  
ZONING BOARD OF APPEALS**

**DECISION SHEET**

**REQUEST FOR MINOR VARIANCE  
IN CASE #ZBA-2008-MIN-01**

At a called meeting of the Urbana Zoning Board of Appeals, a public hearing was held on Wednesday, May 21, 2008 at the City of Urbana Council Chambers, 400 S. Vine Street, Urbana, Illinois, at which time and place the Board considered Case #ZBA-2008-MIN-01 a request for a Minor Variance pursuant to Section XI-3 of the Urbana Zoning Ordinance.

**A request for a minor variance by Maruti Gagan Management, LLC to erect a freestanding sign of 80 square feet in area rather than the maximum 75 square feet allowed by Table IX-1 of the Urbana Zoning Ordinance at 1708 South Philo Road**

**Common Street Address:** 1708 S. Philo Road, Urbana, IL

**Owner of Record:** Maruti Gagan

**Permanent Parcel Index #:** 93-21-21-201-011

**Legal Description:**

Part of the North East ¼ of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly bounded and described as follows, to-wit:

Commencing at the North West Corner of Said North East ¼ of Section 21 and running thence South along the West Line of said quarter section a distance of 430 feet to the point of beginning; thence east 215 feet, thence North 175 feet, thence West 215 feet more or less to the West line of said quarter section, thence South along said west line to the point of beginning, reference being made to the plat of survey recorded as document 72 R 8004, situation in Champaign County, Illinois.

EXCEPT 0.181 acres (7,875 square feet) more or less conveyed to the State of Illinois on April 20, 1976 as document 76 R 6550 and described as:

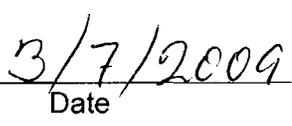
Commencing at the North West Corner of the North East ¼ of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, thence southerly along the West Line of the North East ¼ of Section 21, 430 feet for a true point of beginning; thence easterly parallel with the north line of said Section 21, 45 feet; thence Northerly parallel with the West line of the North East ¼ of said Section 21, 175 feet; thence Westerly parallel with the North line of said Section 21, 45 feet; thence Southerly along the West line of the North East ¼ of said Section 21 to the point of beginning, commonly known as 1708 South Philo Road, Urbana, Illinois.

After careful review of staff's findings in this case, and upon considering all the evidence and testimony presented at the public hearing, the following decision was made by the Urbana Zoning Board of Appeals: By a roll call vote of **five ayes, zero nays, and zero abstentions**, the Urbana Zoning Board of Appeals voted to **APPROVE** the requested minor variance based on the following findings:

1. Maruti Gagan Management, LLC has applied for a variance to erect an 81-square foot, freestanding monument sign at 1708 S. Philo Road in the B-3, General Business zoning district.
2. The Urbana Zoning Ordinance limits freestanding monument signs in B-3 zoning districts to 75 square feet in area.
3. Section IX-3.A(1) of the Urbana Zoning Ordinance defines the area of flat signs as "the area of the smallest convex geometric figure encompassing the sign."
4. The proposed sign includes two sign elements which if measured separately total 74 square feet in area.
5. When measured with the smallest convex geometric figure encompassing the two elements, including the gap between the two elements, the sign area is computed as 81 square feet.
6. The application asserts that the two sign elements cannot be further reduced in area given franchise and readability constraints.
7. The variance will not serve as a special privilege given the specific facts taken as a whole, including sign sizes available for this franchise, effective communication, relative complexity of driver and sign environments, and sign geometry.
8. The variance will not alter the essential character of the neighborhood as this sign would be 8% larger in area than what is allowed by right for other businesses in the B-3 zoning district.
9. The variance will not cause a nuisance. The proposed sign will be 8% larger in area than freestanding, monument signs allowed by right in this zoning district, and difference in area being equal to the gap between the two sign elements.
10. The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request. The applicant has reduced the size of the sign to the smallest available for this franchise and still communicate effectively.
11. The variance requested is the result of practical difficulties or particular hardship. The company's available standard logo sizes, combined with how Urbana's Zoning Ordinance measures the size of flat signs, presents an impediment for corporate approval.

I do hereby affirm, that to the best of my knowledge, the foregoing is a true and accurate record of Case No. ZBA-2008-MIN-01

  
Anna Merritt, Chairperson

  
Date

The complete and official record of this case is on file at the City of Urbana Department of Community Development Services located at 400 S. Vine Street, Urbana, Illinois.

**DOCUMENT TO BE FILED AT THE CHAMPAIGN COUNTY RECORDER'S OFFICE**

CITY OF URBANA - ZONING BOARD OF APPEALS - DECISION SHEET

CASE# ZBA-2008-MIN-01 - REQUEST FOR MINOR VARIANCE

APPROVED FOR RECORDING BY:

Jack Waaler March 10 2009  
Jack Waaler, Special Counsel Date

(G) Please return original decision sheet to the attention of Rebecca Bird, at City of Urbana Community Development Services, 400 S. Vine Street, Urbana, IL 61801. Phone: 217-384-2440, Fax: 217-384-2367

Prepared by:

Jeff Engstrom  
Jeff Engstrom, Planner I  
Community Development Services Planning Division  
400 S. Vine Street Urbana, IL 61801



\* 2 0 0 9 R 0 2 7 5 0 2 \*

2009R02750

RECORDED ON  
02/03/2009 12:56:33PM  
CHAMPAIGN COUNTY  
RECORDER  
BARBARA A. FRASCA  
REC FEE: 25.00  
RHSPS Fee:  
REV FEE:  
PAGES 2  
PLAT ACT: 0  
PLAT PAGE:

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CITY OF URBANA  
ZONING BOARD OF APPEALS

DECISION SHEET

AMEND THE CONDITIONS OF APPROVED MINOR  
VARIANCE #ZBA-2008-MIN-02

At a called meeting of the Urbana Zoning Board of Appeals, a public hearing was held on Wednesday, November 19, 2008 at the City of Urbana Council Chambers, 400 S. Vine Street, Urbana, Illinois, at which time and place the Board considered an amendment to the conditions of approved variance Case #ZBA-2008-MIN-02 a request for a Minor Variance pursuant to Section XI-3 of the Urbana Zoning Ordinance.

To amend the conditions of approved variance ZBA-2008-MIN-02 to allow a driveway on Carle Avenue to remain at 401 West Delaware Ave in the R-1, Single-Family Residential Zoning District.

**Common Street Address:** 401 W. Delaware Ave, Urbana, IL

**Owner of Record:** Robert Wyer

**Permanent Parcel Index #:** 93-21-17-379-007

**Legal Description:**

Lot 1 and the East 40 feet of Lot 2 in Block 6 in Hubbard Terrace, being an addition to the City of Urbana, as per plat recorded in Plat Book "D" at Page 3, situated in Champaign County, Illinois.

After careful review of staff's findings in this case, and upon considering all the evidence and testimony presented at the public hearing, the following decision was made by the Urbana Zoning Board of Appeals: By a roll call vote of **four ayes, zero nays, and zero abstentions**, the Urbana Zoning Board of Appeals voted to **APPROVE** the requested amendment to the conditions of approved variance ZBA-2008-MIN-02 (September 17, 2008) based on the following findings:

1. That keeping the driveway on Carle Avenue is a necessary condition for construction the detached garage on Delaware Avenue due to the health needs of the petitioner and his wife.
2. There is no sidewalk on the west side of Carle Avenue between Florida and Delaware Avenues and the City has no plans to install a sidewalk there.

The variance was approved with the following **CONDITIONS**:

1. The garage shall be constructed in general conformance to a revised site plan layout submitted to and approved by the Zoning Administrator as discussed in the public hearing on this case.

2. The garage shall have a setback from the Delaware Avenue property line of a minimum of 25.25 feet, putting it in line with the front of the house along Delaware Avenue.

3. The garage shall be positioned so that it is not in line with the streetlight and the location shall be approved by the Director of Public Works.

4. The curb cut on Carle Avenue may remain until such time as the City of Urbana and/or the property owner decides to install a public sidewalk along the west side of Carle Avenue between Delaware and Florida Avenues. At such time the property owner shall remove the curb cut at his/her expense and install landscaping.

I do hereby affirm, that to the best of my knowledge, the foregoing is a true and accurate record of the amendment of the conditions of approved variance ZBA-2008-MIN-02.

Anna Merritt 1/28/2009  
Anna Merritt, Chairperson Date

The complete and official record of this case is on file at the City of Urbana Department of Community Development Services located at 400 S. Vine Street, Urbana, Illinois.

**DOCUMENT TO BE FILED AT THE CHAMPAIGN COUNTY RECORDER'S OFFICE**

CITY OF URBANA - ZONING BOARD OF APPEALS - DECISION SHEET

CASE# ZBA-2008-MIN-02 – AMENDMENT TO THE CONDITIONS OF AN APPROVED MINOR VARIANCE

APPROVED FOR RECORDING BY:

Jack Waaler 22 JAN 2009  
Jack Waaler, Special Counsel Date

Please return original decision sheet to the attention of Rebecca Bird, at City of Urbana Community Development Services, 400 S. Vine Street, Urbana, IL 61801. Phone: 217-384-2440, Fax: 217-384-2367

Prepared by: *+ Ret to*

(G) R. Primus  
Rebecca Bird, Planner  
Community Development Services Planning Division  
400 S. Vine Street Urbana, IL 61801

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2009R02751

CITY OF URBANA  
ZONING BOARD OF APPEALS

DECISION SHEET

REQUEST FOR MINOR VARIANCE  
IN CASE #ZBA-2008-MIN-02

RECORDED ON  
02/03/2009 12:56:34PM  
CHAMPAIGN COUNTY  
RECORDER  
BARBARA A. FRASCA  
REC FEE: 25.00  
RHSPS Fee:  
REV FEE:  
PAGES 2  
PLAT ACT: 0  
PLAT PAGE:

At a called meeting of the Urbana Zoning Board of Appeals, a public hearing was held on Wednesday, September 17, 2008 at the City of Urbana Council Chambers, 400 S. Vine Street, Urbana, Illinois, at which time and place the Board considered Case #ZBA-2008-MIN-02 a request for a Minor Variance pursuant to Section XI-3 of the Urbana Zoning Ordinance.

A request filed by Robert Wyer to build a garage that encroaches approximately 7.6 feet into the required 29.5 foot yard at 401 West Delaware Ave in the R-1, Single-Family Residential Zoning District.

**Common Street Address:** 401 W. Delaware Ave, Urbana, IL

**Owner of Record:** Robert Wyer

**Permanent Parcel Index #:** 93-21-17-379-007

**Legal Description:**

Lot 1 and the East 40 feet of Lot 2 in Block 6 in Hubbard Terrace, being an addition to the City of Urbana, as per plat recorded in Plat Book "D" at Page 3, situated in Champaign County, Illinois.

After careful review of staff's findings in this case, and upon considering all the evidence and testimony presented at the public hearing, the following decision was made by the Urbana Zoning Board of Appeals: By a roll call vote of five **eyes, zero nays, and zero abstentions**, the Urbana Zoning Board of Appeals voted to **APPROVE** the requested minor variance based on the following findings:

1. The petitioner is proposing to build a detached garage to replace an existing garage which the petitioner is converting into habitable space;
2. The setback of petitioner's house along Delaware Avenue is 25.25 feet. The average setback on the block face is 29.5 feet;
3. The proposed location for the garage is 22.1 feet from the property line and is in line with a streetlight in the City right-of-way;
4. Allowing the proposed detached garage to be in line with petitioner's house along Delaware Avenue would not serve as a special privilege;

5. As the existing house is setback 25.25 feet from the property line, allowing a garage in line with petitioner's house would not alter the essential character of the neighborhood; and
6. A reduced front yard setback locating the proposed garage in line with the house would not cause a nuisance to the adjacent property.

The variance was approved with the following **CONDITIONS**:

1. The garage shall be constructed in general conformance to a revised site plan layout to be submitted to and approved by the Zoning Administrator as discussed in the public hearing on this case.
2. The garage shall have a setback from the Delaware Avenue property line of a minimum of 25.25 feet, putting it in line with the front of the house along Delaware Avenue.
3. The garage shall be positioned so that it is not in line with the streetlight and the location shall be approved by the Director of Public Works.
4. The curb cut on Carle Avenue will be removed and landscaping installed.

I do hereby affirm, that to the best of my knowledge, the foregoing is a true and accurate record of Case No. ZBA-2008-MIN-02

Anna Merritt 1/28/2009  
Anna Merritt, Chairperson Date

The complete and official record of this case is on file at the City of Urbana Department of Community Development Services located at 400 S. Vine Street, Urbana, Illinois.

**DOCUMENT TO BE FILED AT THE CHAMPAIGN COUNTY RECORDER'S OFFICE**

CITY OF URBANA - ZONING BOARD OF APPEALS - DECISION SHEET

CASE# ZBA-2008-MIN-02 - REQUEST FOR MINOR VARIANCE (See November 19, 2008 for Amendment)

APPROVED FOR RECORDING BY:

Jack Waaler 22 JAN 2009  
Jack Waaler, Special Counsel Date

Please return original decision sheet to the attention of Rebecca Bird, at City of Urbana Community Development Services, 400 S. Vine Street, Urbana, IL 61801. Phone: 217-384-2440, Fax: 217-384-2367

Prepared by: *R. Bird*

(G) R. Bird  
Rebecca Bird, Planner  
Community Development Services Planning Division  
400 S. Vine Street Urbana, IL 61801

**2008 Zoning Board of Appeals  
Meeting Minutes**

**MINUTES OF A RESCHEDULED MEETING**

**URBANA ZONING BOARD OF APPEALS**

**DATE:** March 12, 2008

**APPROVED**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Paul Armstrong, Herb Corten, Anna Merritt, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

**MEMBERS EXCUSED:** Joe Schoonover

**STAFF PRESENT:** Elizabeth Tyler, Director of Community Development Services Department; Robert Myers, Planning Manager; Paul Lindahl, Planner II; Lisa Karcher, Planner II; Connie Eldridge, Grants Management Secretary

**OTHERS PRESENT:** Dave Cocagne, Chris Dillion, John Kunzie, Jenny Park, Bob Patel, Tim Pellegrini, Jane Solon, Jason Wisniewski

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**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:32 p.m. Roll call was taken, and a quorum was declared present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF MINUTES**

Ms. Uchtmann moved to approve the minutes from the November 14, 2007 meeting with the following corrections:

- 1) Page 3, Paragraph 2, 6<sup>th</sup> Line: replace "*likely hood*" with "*likelihood*"
- 2) Page 4, Paragraph 6, 2<sup>nd</sup> Line: replace "*Wash*" with "*Walsh*"

Mr. Armstrong seconded the motion. The minutes were approved by unanimous voice vote as corrected.

#### **4. WRITTEN COMMUNICATIONS**

There were none.

**NOTE:** Chair Merritt swore in members of the audience who indicated they might want to speak during the public input portion of the hearing.

#### **5. CONTINUED PUBLIC HEARINGS**

There were none.

#### **6. NEW PUBLIC HEARINGS**

**ZBA Case No. 2008-MAJ-01: A major variance request by the Atkins Group to allow an Electronic Message Board (LED) Sign to increase the frequency of message changes from once per three minutes to once per ten seconds at the southeast corner of Windsor and Philo Roads in the City's B-3, General Business Zoning District.**

**ZBA Case No. 2008-MAJ-02: A major variance request by the Atkins Group to allow an Electronic Message Board (LED) Sign to be multi-colored at the southeast corner of Windsor and Philo Roads in the City's B-3, General Business Zoning District.**

Paul Lindahl, Planner II, presented these two cases to the Zoning Board of Appeals together. He discussed the proposed use of the site and what signage is allowed according to the current standards in the Urbana Zoning Ordinance. He stated that the proposed two major variances would reduce the amount of freestanding signage overall.

He referred to Exhibit F to show what the proposed sign would look like. He discussed the administrative code of the Illinois Department of Transportation (IDOT) and explained that they updated their code so messages on digital signs within 600 feet of highways could change no more than every ten seconds.

Mr. Lindahl read the options of the Zoning Board of Appeals and presented staff's recommendation for approval of each case with the standard conditions, which are as follows:

##### **ZBA-2008-MAJ-01:**

- 1. That the monument sign with LED Electronic Message Board be constructed in substantial conformity with the submitted site plan illustrating the design and location.*
- 2. That the variance for message frequency is approved for the proposed monument sign with LED Electronic Message Board located in the application site diagram at the*

*corner of Philo and Windsor Roads and does not extend to any other signs located at The Pines at Stone Creek Commons property.*

3. *That the sign will conform to the other requirements of Urbana Zoning Ordinance Section IX.4.D.3 that prohibit Electronic Message Board (LED) signs from being animated, flashing, or scrolling.*
4. *That the variance is granted contingent on no other tenant directory or shopping center signs being permitted on the Pines property.*

**ZBA-2008-MAJ-02:**

1. *That the monument sign with LED Electronic Message Board be constructed in substantial conformity with the submitted site plan illustrating the design and location.*
2. *That the variance for message frequency is approved for the proposed monument sign with LED Electronic Message Board located in the application site diagram at the corner of Philo and Windsor Roads and does not extend to any other signs located at The Pines at Stone Creek Commons property.*
3. *That the sign will conform to the other requirements of Urbana Zoning Ordinance Section IX.4.D.3 that prohibit Electronic Message Board (LED) signs from being animated, flashing, or scrolling.*
4. *That the variance is granted contingent on no other tenant directory or shopping center signs being permitted on the Pines property.*

He mentioned that there were representatives present from the Atkins Group (petitioner) and from the manufacturers of the proposed sign.

Ms. Uchtmann noticed that there is already a sign for Monical's Pizza and for Busey Bank. Would each tenant be able to put a sign on their building? Mr. Lindahl replied yes. One of the major points behind this is that in the central lot, which is about five acres, there are eight to twelve tenants that do not have any signs along the streets. They have signs and logos on the buildings themselves, but they are much further away from the road and much less visible than the corner outlots. In order to give the retail customers the visibility that they need, the petitioner is requesting the proposed variances for a shopping center sign which would in essence provide visibility.

Ms. Uchtmann asked if the proposed sign would be reserved for the tenants who would not have a sign facing Philo or Windsor Roads. Mr. Lindahl said yes. The tenants located on the outlots will have their own signs.

Chair Merritt inquired if the tenants in the outlots would be included in the scroll. Mr. Lindahl said that they would need to ask the petitioner that question.

Mr. Warmbrunn wondered why these are considered major variances rather than minor variances. Mr. Lindahl answered that these two cases are considered major because in the Urbana Zoning Ordinance, multi-colored LED signs were excluded. As for frequency, under the current Zoning Ordinance, a message is allowed to change once every three minutes. The

proposed variance request, if approved, would allow the messages to change once every ten seconds. This percentage of a difference from the standard constitutes a major variance.

Mr. Warmbrunn asked how frequently the Walgreen's sign, located at the Five Points corner, is allowed to change. Robert Myers, Planning Manager, said that the Walgreen's sign changes once every three minutes. Mr. Warmbrunn questioned if this would be the first sign allowed in the City of Urbana to change quicker than once every three minutes. Mr. Myers replied yes. Elizabeth Tyler, Director of Community Development Services Department, added that Walgreen's requested three minutes as part of a variance for their sign two or three years ago. The City modeled the language in the Zoning Ordinance after the Walgreen's sign was approved. We are seeing more and more of the LED signs for message boards rather than the manual signs, so the City included the LED signs in a text amendment to allow them by right. The size limits and the time limit were based on the Walgreen's sign.

Mr. Warmbrunn stated that they are now talking about ten seconds per message change. He inquired as to what "flashing" means. Mr. Lindahl said that the original technology for message boards was something that people would think of as "the old time Time Square" kind of thing, where they used incandescent lights to create letters, used scrolling and could flash on and off. This was the kind of proliferation of busy startling signs that no one wanted. So, when we talk about animated or flashing signs in the Zoning Ordinance, this is more like what they mean. Simply changing once every ten seconds without a visible transition is not considered flashing.

Mr. Warmbrunn mentioned that the digital billboards that IDOT allows to change every ten seconds are much larger than the proposed sign. They are larger, because they are located further away. People can see them for about a half a mile. In this case, someone heading east will not be able to pick up this sign until they get about 100 yards from the intersection due to the fence where the University of Illinois (U of I) has the trees, etc. Mr. Lindahl was not sure exactly how visible the sign would be.

Mr. Corten arrived at 7:50 p.m.

Mr. Welch wondered if the Zoning Ordinance should be amended to reflect these technological changes so the Zoning Board of Appeals does not have to deal with these types of variance requests over and over again. It seems to him that this is "a sign of things to come", especially if IDOT has changed their code to allow messages to change once every ten seconds. Laws that don't continue to change with the times are not necessarily good laws or codes. Mr. Lindahl replied that in some ways we could agree with that. City staff has thought that a text amendment might be in order. Chair Merritt added that it is appropriate for the Zoning Board of Appeals to make such suggestion to City staff, correct? Mr. Lindahl said that is correct.

Mr. Myers noted that City staff will take this suggestion under advisement. They will carefully consider how this would impact other sign provisions for the City of Urbana before proposing an amendment to the code. In this case, the applicants are making the case in the application that they have special circumstances because of the layout of the shopping center and are reducing other signage on the property to mitigate increased message frequency.

Mr. Myers continued that there are two issues with changes in Federal and state laws. First, in 2006, IDOT changed the law for routes controlled by IDOT. Changeable message signs, whether they are billboards or other changeable message sign, are allowed to change no more than every ten seconds. He believes this has an affect on how Illinois communities will look at their own sign codes. Second, in the fall of 2007, the Federal Highway Administration came out with the results of a long study that they did on whether changeable message signs are considered “flashing” or “intermittent” signs. The State of Illinois, in receiving Federal highway funds, is prohibited from having flashing or intermittent signs along Federally-funded routes. The Federal Highway Administration conducted a study to determine if multiple-message signs being approved by states would be considered flashing or intermittent. Their study found that states have different standards for the minimum number of seconds for multiple messages ranging from four to ten seconds. They recommended to states a minimum of eight to ten second message changes in order for these signs not to be considered “intermittent” or “flashing.”

With no further questions for City staff, Chair Merritt opened the public hearing up to take testimony and/or gather input from the petitioner and other members of the audience.

Jenny Park, of Meyer Capel Law Firm and representative of the Atkins Group, approached the Zoning Board of Appeals to speak. She mentioned that Jane Solon from the Atkins Group is present to answer any questions as well as John Kunzie, a representative from Watchfire. Mr. Kunzie brought a display of what the sign would be so the Zoning Board of Appeals could actually see what it would look like. She invited them up to join her in presenting their case.

Ms. Solon stated that she brought a site plan to give the Zoning Board of Appeals an idea of where the message board would be placed and where the retail stores are located that do not have much frontage on Philo or Windsor Roads. Signage is very important to retailers so pedestrians and vehicular traffic can see where the stores are located.

She pointed out that they created the shopping center using this specific design so that it is a neighborhood center that has a community feel. There are plazas out front with benches and green space. People can ride their bicycles or skate down the boardwalk. They want it to be a place where people can meet. This is the reason why many of the stores are set back from the roads.

She answered a previous question by saying that the tenants having frontage on either roads, such as Monical’s Pizza or Busey Bank, will be allowed to have their names on the proposed sign as well. Mr. Corten inquired as to how many names would be displayed on the sign. Ms. Solon replied by saying that there would be as many names as there are tenants.

Ms. Solon gave a PowerPoint simulation of what the proposed sign would display. The proposed sign would display the names of the shops as well as advertising for the shops and community events and spirit. The presentation represented the ten second delay in message changes.

Mr. Corten asked if this would not be considered a safety hazard or dangerous for vehicular drivers being distracted. Ms. Solon clarified that it is not considered dangerous.

Ms. Park noted that the proposed sign would be placed where there will be traffic signals. So, it will essentially be drivers sitting at red lights that will be watching the sign rather than drivers going by.

Mr. Myers added that the variances requested would not allow scrolling, animation, and flashing messages, only increased frequency and color.

Mr. Armstrong agreed with Mr. Welch's earlier point that this appears to be technology that will become more ubiquitous as time goes on. He expressed his appreciation for Ms. Solon bringing the actual video of the sign's display, because it is more difficult to make these types of decisions when the members are looking at static images than to consider how much and how long the messages would be displayed and the impact of that it may have. Quite frankly, it does not seem to have any significantly more impact than the time and temperature that could be read on a bank sign. There are certainly more distractions on the roadway than the proposed sign. It seems to him to be relatively low impact visually. He feels it would be a different issue if they were considering animated billboards or something of that nature.

Chair Merritt reminded everyone that the alternative would be that they could put four large signs. Mr. Lindahl noted that is true. They could have two shopping center signs per frontage, and they could have shopping center directory signs listing all of the tenants such as at Lincoln Square Mall. The signs could be up to 30 feet tall.

Mr. Corten wondered when the sign would be installed. Ms. Solon replied that they just need the approval to do so.

With no further questions or comments from the audience, Chair Merritt closed the public input portion of the hearing and opened it up for the Zoning Board of Appeals discussion and/or motions.

Mr. Armstrong moved that the Zoning Board of Appeals forward ZBA Case No. 2008-MAJ-01 to the City Council with a recommendation for approval and that it conform to the conditions provided in the written staff report. Mr. Corten seconded the motion. Roll call on the motion was as follows:

Paul Armstrong	-	Yes	Herb Corten	-	Yes
Anna Merritt	-	Yes	Nancy Uchtmann	-	Yes
Charles Warmbrunn	-	Yes	Harvey Welch	-	Yes

The motion was passed unanimously.

Mr. Armstrong moved that the Zoning Board of Appeals forward ZBA Case No. 2008-MAJ-02 to the City Council with a recommendation for approval and that is conform to the conditions provided in the written staff report. Mr. Corten seconded the motion. Roll call on the motion was as follows:

Paul Armstrong	-	Yes	Herb Corten	-	Yes
Anna Merritt	-	Yes	Nancy Uchtmann	-	Yes
Charles Warmbrunn	-	Yes	Harvey Welch	-	Yes

The motion was passed by unanimous vote.

Mr. Myers explained that because both these cases are major variance requests, they will go before the City Council on March 24, 2008. The City Council will be holding a special Council meeting that night.

Mr. Warmbrunn remarked that City staff should review the Zoning Ordinance regarding LED signs and the frequency of message changes. Mr. Myers stated that if this is the consensus of the Zoning Board of Appeals, then City staff will take this into consideration. Chair Merritt commented that there is definitely a consensus. Mr. Welch agreed.

**ZBA-2008-MAJ-03: A major variance request by the Vermilion Development Corporation to allow for the construction of a mixed-use retail/office building with front yard setbacks ranging from zero to ten feet along both University and Lincoln Avenues located at 901 West University, 902 West Clark Street and 904 West Clark Street in the City's B-3, General Business Zoning District, and B-3U, General Business-University Zoning District.**

**ZBA-2008-MAJ-04: A major variance request by the Vermilion Development Corporation to allow for parking to encroach greater than ten feet into the required fifteen-foot front yard setback located at 901 West University, 902 West Clark Street and 904 West Clark Street in the City's B-3, General Business Zoning District, and B-3U, General Business-University Zoning District.**

Robert Myers, Planning Manager, introduced Lisa Karcher, Planner II, as being the newest staff member in the Planning Division. He briefly described her work experience and noted that she is a member of the American Institute of Certified Planners.

Ms. Karcher gave the staff presentation for these two cases together. She began with an explanation for the proposed two major variance requests. Referring to Exhibit A (Location and Existing Land Use Map), she gave a brief description of the site and of the surrounding adjacent properties noting their zoning designations and land uses. Using Exhibit C (Future Land Use Map), she showed how the proposed use fits into the 2005 Comprehensive Plan.

She discussed a development agreement that the City of Urbana and the University of Illinois entered into in 1997 to develop the proposed site. It was the intent of the agreement to create a significant, architectural presence to improve the urban feel and character of University Avenue. She stated that the proposal for the mixed-use office-retail building is consistent with the following three things: 1) zoning category, 2) campus mixed-use, and 3) the gateway for the University as well as meeting the intent of the 1997 development agreement to create a tax generating business at that corner.

She mentioned the major difficulties in developing the proposed site. First, the small size of the three parcels is only about 34,400 square feet, which is not much when taking into consideration that their location is along two major thoroughfares (high traffic counts and high demand for use of the site). Second, an alley bisects the site with major utilities that run through the alley, so the footprint of the building has to be located north of the alley. Third, concerning site geometry, the sidewalk along University Avenue curves around to Lincoln Avenue creating a gateway on the northeast portion of the property. This area was dedicated for the gateway, and because of this there is a larger setback area that the petitioner is not allowed to build on.

Exhibit D, which is the Site Layout, shows the proposal to develop the site to its fullest potential and to create a gateway for the intersection of University Avenue and Lincoln Avenue. The plan shows why the petitioner needs a variance for the setback. City staff gave a range because as you can see it will vary along Lincoln Avenue due to the step back design of the proposed building.

In addition, to help out with site circulation and safety, the petitioner wants to vacate the portion of the alley along the north end of the two smaller properties that exits onto Lincoln Avenue. Instead they are proposing to designate an easement along the western side of the proposed site to continue the alley to exit on Clark Street.

Ms. Karcher talked about parking and mentioned that the petitioners plan to provide additional offsite parking as well. She reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance. She summarized staff findings and read the options of the Zoning Board of Appeals. She presented staff's recommendations for both cases, which are as follows:

**ZBA-2008-MAJ-03:**

*Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals forward major variance Case ZBA-2008-MAJ-03, to allow for encroachment of a building in the required front yard setback along University and Lincoln Avenues, to the Urbana City Council with a recommendation for approval with the following conditions:*

- 1. The development shall be constructed in general conformance to the site plan layout submitted as part of the application and attached hereto.*
- 2. The area between the proposed building face and the curb shall be improved to include landscaping and improvement of the existing walkway. The improvements shall be reviewed and approved by the Zoning Administrator and the City Arborist.*

**ZBA-2008-MAJ-04:**

*Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals forward major variance Case ZBA-2008-MAJ-04, to allow parking to encroach greater than ten feet into the required fifteen-foot*

*front yard setback along Lincoln Avenue, to the Urbana City Council with a recommendation for approval with the following conditions:*

- 1. The development shall be constructed in general conformance to the site plan layout submitted as part of the application and attached hereto.*
- 2. A landscape buffer shall be provided along the east and south side of the proposed parking area. The landscape buffer shall be reviewed and approved by the Zoning Administrator and the City Arborist.*

With no questions from the Zoning Board of Appeals for City staff, Chair Merritt opened the meeting up to take testimony from the public. She began with the petitioner and others who are in favor of the proposed development.

Chris Dillion and Dave Cocagne, of the Vermilion Development Corporation (petitioners), and Tim Pellegrini, of the Farnsworth Group, approached the Zoning Board of Appeals to speak. Chair Merritt swore in Mr. Dillion and Mr. Cocagne. They were not present when she swore in other members of the audience.

Mr. Cocagne elaborated on the overall vision for the project. The City of Urbana and the University of Illinois have for many years now talked about a gateway building at the corner of University and Lincoln Avenues. In fact, it is contemplated in the City's 2005 Comprehensive Plan.

He showed an elevation drawing of the proposed development. He commented that they feel it will be a focal point for visitors coming to the University of Illinois campus as well as other visitors travelling down the University Avenue corridor.

It is a five to six million dollar investment, and it is one of the few private redevelopment projects along the University Avenue corridor between Lincoln Avenue and Wright Street. Most of the redevelopment along this corridor has been done by the University of Illinois. They feel the proposed development will provide a nice bookend to the University Avenue corridor for the University of Illinois campus. The proposed type of building will also advance the City's goal to create some urban fabric on the University Avenue corridor. It will return a piece of property to the tax rolls and will generate significant incremental property tax revenue for the various taxing bodies in the City of Urbana. Therefore, it represents a great example of public-private partnership, and it accomplishes the goals of the City and of the University of Illinois.

He responded to an earlier comment/question regarding parking. He mentioned that they are working on a memorandum of understanding with the University of Illinois to provide some offsite parking at the parking deck located immediately east of the Beckman Institute. They will be coming before the Zoning Board of Appeals again in the near future for another variance request for a setback to allow some additional parking on a property with a single-family home. They just signed a contract with the owner of the property. They must assemble parking as they can.

He thanked the Zoning Board of Appeals for allowing him the opportunity to present their case.

Mr. Armstrong commented that the University of Illinois is generally committed to the idea that if they construct a building on campus, then it will have a long life cycle. They often speak about their buildings lasting 100 years. Considering that the proposed site is part of the University of Illinois, how did this factor into the discussions about the building materials, etc? Mr. Cocagne replied that the site technically sits outside of the University's Master Plan boundaries. This is why they had entered into an agreement with the City years ago.

He went on to say that that they could have designed a rectangular building for the proposed site, but it would not have created the aesthetic that anyone was hoping to achieve on this site. Whether it is the architecture or the selection of building materials, one would find that they plan to construct the property to the highest quality commercial standards in Champaign-Urbana. He feels that part of the trade off that the University faces quite frankly in terms of first cost versus maintenance cost is very challenging for the University to obtain funds for deferred maintenance from the general assembly. Unlike the University, Vermilion Development Corporation appropriates funds every year to maintain the structures they build. In terms of quality, he feels that it will be exactly what the University of Illinois would expect. In fact, they consulted with the University's architect about their plans and received his blessing.

Mr. Corten inquired about the use of each floor. Mr. Cocagne explained that the first floor would be used partially for retail space with the balance of the floor being used for commercial/office space. The upper two floors will be used for office space. Carle Development Foundation will be locating some of its offices in the proposed building. They are currently in discussions with another institutional user as well.

Mr. Corten asked if there would be no apartments. Mr. Cocagne said that is correct. No housing is contemplated for this site.

Ms. Uchtmann questioned how the proposed development would affect the existing sidewalk. Mr. Cocagne stated that they would have to reconstruct the sidewalk given the way that the building will be situated on the site. They have budgeted about \$50,000 for sidewalk replacement.

Ms. Uchtmann asked if the sidewalk replacement would be in the same location. Mr. Pellegrini replied yes. It is sitting right along the right-of-way line, so it will need to be replaced in the same exact spot.

Ms. Uchtmann inquired about the mature trees along Lincoln Avenue between the sidewalk and the proposed parking area. What are they proposing to do with the trees? Mr. Cocagne explained that the large trees do not pertain to the variance. The trees are located in the center of the south two lots off of Clark Street and along the western boundary of the property. The trees are in the middle of the proposed site and do not have anything to do with either variance request. Ms. Uchtmann stated that there are also four trees along Lincoln Avenue. Mr. Cocagne stated that they have contemplated doing some replacement landscaping. Because of the proximity to the proposed parking area, they will most likely be unable to save the trees. However, the variance request includes their replacement landscaping across the site.

Ms. Uchtmann commented that the only reason she asked about the trees is because as you look farther down Lincoln Avenue, you see a series of trees the same size. It provides a nice feeling for pedestrians as they walk down the street. Mr. Cocagne appreciated her sensitivity to this, and they will certainly try to create enough of a landscaping buffer that will provide some appeal to pedestrians who walk in the area. They are doing a number of other things to look at additional beautification of the University Avenue corridor. He mentioned that the City is currently engaged with some other parties in a streetscaping study, which Vermilion Development Corporation is very interested in. He has a long history in working in this corridor and helped work on the medical office building project at Provena-Covenant, so he is particularly interested and very committed to seeing it cleaned up. There are just certain limitations they have to make the proposed project viable. They are sensitive to the landscaping issue, but he does not want to misrepresent in any way that they think they will be able to save the trees.

Mr. Warmbrunn wondered how one would pull into the proposed parking lot. It appears that the parking is kind of close to the apartment building that is next door. There does not appear to be any room to buffer the parking lot either. Mr. Cocagne responded by saying one would enter the facility from the Clark Street curb cut. Ms. Karcher explained that they would either pull into a parking space right off the alleyway or pull into the parking area and park in one of the spaces. The Site Layout Plan is confusing because it shows extra dimension lines in the parking spaces. She noted that there is 2.23 feet along the easement in gross, and according to the City's zoning regulations, the petitioner could install a fence as their buffer between the two properties.

Mr. Warmbrunn wondered if the City has requested the petitioner to install the fence. Mr. Myers replied yes. It is part of the City's normal requirement for buffering. Ms. Karcher added that when the site plan comes in for review, it would be a requirement for approval of the site plan.

Chair Merritt wondered if the City could request a certain type of fence. Mr. Myers said it has to be an opaque fence to serve as a screen.

Mr. Warmbrunn asked if they would still be required to install the fence even with an easement on the west side. Ms. Karcher explained that it is an easement in gross, which means that technically it will still be there property, but it gives the public the right to use the easement. Mr. Warmbrunn still wondered why the City does not require a five foot buffer on the west side. Mr. Myers answered by saying that the Zoning Ordinance requirement is for a minimum of a fence, so the petitioner will be providing a fence, because they do not have five feet to provide a buffer. Therefore, they will be meeting the minimum requirement on the west side.

Mr. Myers stated that he has more information on the trees. Ms. Uchtmann noted that there are large trees to the east of the Dairy Queen property. What will happen to these trees? Mr. Myers explained that these trees are either on private or public property. On private property, since the City does not have a tree preservation ordinance, essentially it would be up to the property owner to determine how to deal with the trees. Property owners see mature trees as an amenity, because there are a number of benefits. But in this case, the proposed site has high demand and high traffic counts, so it is logical that the proposed site will be more intensively developed. For trees on public property, the City has a tree program to manage trees in the rights-of-way. The City of Urbana's Tree Program is recognized not only in the State of Illinois, but elsewhere

across the country. We have a City Arborist, City Forestry Technician, and City Landscaping Technician. Their jobs are to manage the trees in the rights-of-way, which includes planting trees, maintain the trees and removing trees that are dangerous or dead. There is a life cycle and a maintenance cycle for the trees in the public rights-of-way. When new developments take place and trees need to be removed from the public rights-of-way, there are policies that make sure the public is compensated either with new replacement trees or with money to plant trees elsewhere. The program takes into account the size of the trees being removed as well. However, it would not be fair to a property owner of a vacant lot to not be able to develop the lot due to the presence of street trees. So, we make sure that trees in the rights-of-way are replaced.

Chair Merritt recalled that the University of Illinois had planted a bunch of little trees where the donut shop use to be. Hopefully, they will move the trees to another location. Mr. Myers noted that the City Arborist will consult with the developers to work out a plan or solution for how to deal with any trees in the right-of-way.

Bob Patel, owner of Dairy Queen, expressed his concern about closing off the alley. It will affect a lot of the public who uses the alley. Mr. Myers explained that even though the alley would be closed off exiting onto Lincoln Avenue, it would be rerouted to exit south onto Clark Street. Mr. Patel replied that he understood, but it would still affect the public who uses the alley.

Mr. Patel inquired about what type of restaurant would be allowed in the proposed building. Chair Merritt answered that they did not know this yet. Mr. Patel replied by saying that they need to figure that out. Mr. Welch explained that what type of food or restaurant they have has nothing to do with zoning of a property. Mr. Patel expressed his concern about it being a fast-food restaurant, because there is already a high volume of traffic. More businesses mean more traffic for an already high traffic intersection. Mr. Welch did not feel that it would accommodate a fast-food restaurant because a drive thru is not contemplated in the plans. More businesses would mean more business for Dairy Queen as well.

Mr. Myers stated that an alley closure would have to be approved separately by the City Council. He mentioned that Mr. Patel should receive a notice about the City Council hearing. Mr. Patel may provide further input at the City Council meeting about how the alley closure would affect adjoining neighbors.

He went on to say that whether or not the alley remains as it currently is, the utilities will stay in that area. One reason is because it would be very expensive to move the utilities. This means that the petitioner is not allowed to construct a building over the utility lines, so they are either going to have to build north of the existing alley or south of it. The petitioner is proposing to build north of the alley.

Mr. Warmbrunn asked for clarification about whether a fence is going to be built without the need for further language/conditions placed on the approval of the variance request. Mr. Myers said yes. Mr. Welch pointed out that if the petitioner is planning to build a five to six million dollar building then they will probably install a decent fence. They would not want to detract from the property by installing a cheap looking fence. Mr. Cocagne commented that he is absolutely right. If he had his way, he would make it a landscaping buffer rather than a fence,

because it would be better in terms of greening the property. However, the City requires a fence, so they will construct a fence, and it will look first rate.

Mr. Warmbrunn wondered why there needs to be a fence. Is it because of the parking lot and the need to provide a buffer in a five foot area? Mr. Myers explained that there is a residence next door. The petitioner needs to install a fence to help screen the vehicular headlights in the parking lot, so the headlights do not intrude on the neighboring residents.

Mr. Warmbrunn asked if this is why the alley is 2.23 feet smaller to accommodate the fence. Mr. Myers replied by saying that the alley is not actually smaller. The proposed alley will be 21.5 feet, which is the width of a back out for a parking aisle. Many alleys are not this wide.

Mr. Warmbrunn inquired as to whether a semi truck would be able to make the turn in the proposed alley. Mr. Myers said yes, the size of trucks that use the alley will be able to make the turn. City staff has researched this.

With no further questions or comments from the public audience, Chair Merritt closed the public input portion of the hearing. She opened it up for Zoning Board of Appeals discussion and/or motions.

Mr. Corten moved that the Zoning Board of Appeals forward ZBA Case No. 2008-MAJ-03 to the City Council with a recommendation for approval with the conditions as recommended by City staff. Mr. Welch seconded the motion. Roll call on the motion was as follows:

Paul Armstrong	-	Yes	Herb Corten	-	Yes
Anna Merritt	-	Yes	Nancy Uchtmann	-	Yes
Charles Warmbrunn	-	Yes	Harvey Welch	-	Yes

The motion was approved by unanimous vote.

Ms. Uchtmann wondered if the petitioner was not asking for the additional setback along Lincoln Avenue, would they still need to remove the large trees? Mr. Cocagne replied that there are no trees in the setback area. Ms. Uchtmann stated that she was referring to the trees to the south in the parking area. Mr. Cocagne explained that the variance for the setback does not extend down into the southern parcels. It is only for the northern property where they plan to construct the building.

Ms. Uchtmann moved that the Zoning Board of Appeals forward ZBA Case No. 2008-MAJ-04 to the City Council with a recommendation for approval along with the conditions as recommended by City staff. Mr. Armstrong seconded the motion. Roll call on the motion was as follows:

Paul Armstrong	-	Yes	Herb Corten	-	Yes
Anna Merritt	-	Yes	Nancy Uchtmann	-	Yes
Charles Warmbrunn	-	Yes	Harvey Welch	-	Yes

The motion was approved by unanimous vote.

Mr. Myers noted that these two cases would go before City Council on March 24, 2008 at a special City Council meeting.

**7. OLD BUSINESS**

There was none.

**8. NEW BUSINESS**

There was none.

**9. AUDIENCE PARTICIPATION**

There was none.

**10. STAFF REPORT**

There was none.

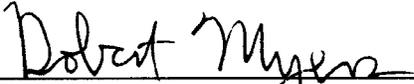
**11. STUDY SESSION**

There was none.

**12. ADJOURNMENT OF MEETING**

The meeting was adjourned at 9:08 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

**MINUTES OF A REGULAR MEETING**

**URBANA ZONING BOARD OF APPEALS**

**DATE:** April 16, 2008

**APPROVED**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Paul Armstrong, Herb Corten, Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

**MEMBERS EXCUSED:** Anna Merritt

**STAFF PRESENT:** Robert Myers, Planning Manager; Lisa Karcher, Planner II; Teri Andel, Planning Secretary

**OTHERS PRESENT:** Chris Dillion

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**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:37 p.m. Roll call was taken, and a quorum was declared present.

NOTE: Mr. Warmbrunn moved that Paul Armstrong serve as Acting Chairperson in the absence of Chair Anna Merritt. Mr. Welch seconded the motion. The Zoning Board of Appeals member approved the motion by unanimous voice vote.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF MINUTES**

Mr. Warmbrunn recommended changing Paragraph 3 on Page 4 to read as such, "Mr. Warmbrunn mentioned that the digital billboards that IDOT allows to change every ten seconds are ~~not~~ much larger than the proposed sign." Mr. Corten moved to that the Zoning Board of Appeals approve the minutes as amended. Mr. Warmbrunn seconded the motion. The minutes of the March 12, 2008 Zoning Board of Appeals meeting were approved by unanimous voice vote.

**4. WRITTEN COMMUNICATIONS**

◆ Site Layout Plan for Case No. ZBA-2008-MAJ-05

**NOTE:** Acting Chairperson Armstrong swore in members of the audience who indicated they might want to speak during the public input portion of the hearing.

**5. CONTINUED PUBLIC HEARINGS**

There were none.

**6. NEW PUBLIC HEARINGS**

**Case No. ZBA-2008-MAJ-05: A request by Vermilion Development Corporation for a major variance to reduce the side-yard setbacks from 5 feet to 3.25 feet for a parking lot at 908 West Clark Street in the City's B-3U, General Business – University Zoning District.**

Lisa Karcher, Planner II, presented the case to the Zoning Board of Appeals. She stated the purpose for the proposed major variance request, which is to allow an accessory parking lot use of 908 West Clark Street. She described the proposed site noting its current land use and zoning designation as well as that of the adjacent properties. She discussed the parking requirements and the problems with developing 902 West Clark Street.

She referred to the handout, which is the Site Layout Plan. The Plan shows the three properties to be operated by Vermilion Development. She stated that there was essentially a miscalculation in the dimensions of the proposed lot, so it did not include a foot of what would be a curb. So the actual lot width is 66 rather than 65 feet. This means that the major variance that the petitioner originally requested is actually for 1.25 feet along each side yard lot line rather than 1.75 feet. This means that the request is now defined as a minor variance, and it will be decided upon by the Zoning Board of Appeals. This case will not be forwarded to the City Council.

She discussed access to the proposed site and parking lot layout and configuration. She explained that the petitioner would need 90 degree parking spaces in order to meet the required number of parking spaces they need. They would lose about 8 parking spaces if they used 45 degree parking spaces. She also discussed landscaping. She reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance that pertains to this case. She clarified the options of the Zoning Board of Appeals for the proposed minor variance, and she presented staff's recommendation, which was as follows:

*Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Zoning Board of Appeals approve this case as a minor variance with the following conditions:*

- 1. The parking lot shall be constructed in general conformance to the site plan layout submitted as part of the application and attached to the written staff report.*

2. *A landscape buffer shall be provided along the east and west property lines to screen the proposed parking from adjacent properties. The landscape buffer shall be reviewed and approved by the Zoning Administrator and the City Arborist.*

Ms. Uchtmann stated that she could not tell on the site plan where the sidewalk is located. How much space is there between the proposed parking lot and the sidewalk? Ms. Karcher explained that the bottom black line on the site plan represents the property line. When looking at Exhibit A, Location and Existing Land Use Map, you can see that the sidewalk is pretty close to the property line. Sidewalks are typically constructed about a foot outside the property line. In the B-3U Zoning District, a property owner is allowed to have a 5-foot front yard setback provided they have a 5-foot landscape buffer. The petitioner has provided 5 feet so the parking lot will be a little more than 5 feet of the sidewalk.

Ms. Uchtmann pointed out that the proposed parking lot will come almost to Clark Street. Won't this change the character of the neighborhood? What about the large tree in the City's right-of-way, which can be seen better in Exhibit D, Site Photos? She expressed concern about the petitioner removing a large tree along Clark Street. Does the City staff realize what this does long-term to the character of the area? We are talking about very large trees that if removed will diminish the beauty of the area. As people drive down Lincoln Avenue, it will be very barren. Ms. Karcher responded that the City does require one shade tree per nine parking spaces. So the petitioner would be required to provide for shade trees on the proposed lot.

Ms. Uchtmann inquired as to what the definition is for a landscape buffer that the petitioner has proposed. Ms. Karcher explained that the petitioner has not yet submitted a landscape plan. However, City staff has recommended that a second condition be placed on the approval of the proposed Special Use Permit requiring the petitioner to submit a landscape buffer to be reviewed and approved by the City Administrator and the City Arborist, so they could insure that the landscape buffer is appropriate to screen particularly the headlights of cars from adjacent properties.

Mr. Corten commented that it seems to him that the nature of this portion of the neighborhood is changing from purely residential to retail/business. He agrees that the lack of trees is undesirable, but he did not feel that there is much that the Zoning Board of Appeals can do about it with the size of the buildings that are being constructed in this area.

Mr. Warmbrunn asked for City staff to explain why the case went from a major variance request to a minor variance request. What would the number of the minor variance be? Ms. Karcher replied that the parking lot would have a side-yard setback of 3.75 feet rather than a minimum of 5 feet as required by the Zoning Ordinance. The Zoning Ordinance states that to be considered a minor variance it cannot exceed 25% of the required side-yard setback. Therefore the proposal now meets the standard of a minor variance. It is difference in percentage of required setback.

Mr. Warmbrunn pointed out that in application, the petitioner states that the City prefers a center parking lot versus an alternate format, whereby the parking area would be shifted from one side to gain compliance on the opposite side. Is this true? Is this staff's position? Ms. Karcher stated

that when the City staff reviewed the case as a major variance request, it was a consensus that it would be better to provide for the same amount of screening on both sides.

Mr. Warmbrunn mentioned that on the west side of the property there is another parking lot with a fence. His main concern would be with the apartment building on the east side, and if we could give them five feet for a landscape buffer. Ms. Karcher stated that if the Zoning Board of Appeals wanted to shift the parking lot, then it could place this condition on its approval, but it would bring the case back to a major variance request. City staff would need to change their recommendation depending on what they wanted to do. Mr. Warmbrunn stated that he would just leave it as is presented.

Mr. Warmbrunn asked about the case number which refers to this as being a major variance. Robert Myers, Planning Manager, replied that City staff would just make the notation in the file.

Mr. Corten requested that City staff figure out the number before they make a motion. Mr. Welch commented that in court if someone is charged with a felony and it is reduced to a misdemeanor, then the court does not renumber the case. Mr. Myers stated that the petitioner did not make an application for a major or minor variance. This is something that City staff assigns, so he recommended that the Zoning Board of Appeals either approve the application, approve the application with changes, or deny the application. City staff will work out the numbering on the case.

Mr. Warmbrunn wondered if a truck or semi could get through the parking lot. Ms. Karcher responded that they had the Public Works Department review the Site Plan. They determined that the petitioner could change the radius of the entrance into the parking lot, even on angled parking, to provide for trucks to turn on this radius. So, this will not be an issue for garbage trucks or delivery trucks that might be 21 feet in length.

Mr. Warmbrunn questioned how many parking spaces would be required for the entire project. How can the Zoning Board of Appeals approve this knowing that there are only going to be 75 parking spaces? Ms. Karcher explained that the petitioner would need a Certificate of Occupancy for the building. Parking would be reviewed and checked prior to City staff issuing a Certificate of Occupancy. The petitioner would then be required to show they have sufficient parking. This will likely include a memorandum of understanding with the University of Illinois providing for shared parking.

Mr. Warmbrunn mentioned that the Zoning Board of Appeals, if they vote to approve the proposed variance request, would be granting the variance request prior to the Plan Commission granting the Special Use Permit. He felt the variance request should come after the approval of the Special Use Permit. Ms. Karcher believes that it is a timing issue. The petitioner is under some time constraints in working with the University of Illinois and other different contracts that the developer has. Since they missed the first scheduled meeting in April for the Plan Commission, the original goal was to have the Zoning Board of Appeals review and make a recommendation on the major variance application and have the Plan Commission review and make a recommendation on the Special Use Permit, and to take both to the City Council at the same time. Since the Zoning Board of Appeals meeting came first, it is why they are reviewing the variance request before the Plan Commission reviews the Special Use Permit.

Mr. Welch commented that the various levels of approval are in place to catch the other issues as the project moves toward completion. As he understands it, if they only end up with a certain amount of space left to rent out in the future complex, then they may not be able to rent to two or three restaurants because there would not be enough parking spaces to allow it. He feels that sometimes the Zoning Board of Appeals has to approve the big picture. If there is only a certain amount of parking spaces, then that will somewhat limit what can be done with the space once construction is done and they start having tenants.

Acting Chairperson Armstrong stated that this is why he would like City staff to speak more about the criteria for the difference in the three different options for parking configurations. Each option obviously has an impact on the number of cars, but also on the setback requirements. The questions have primarily centered on the issue of the setbacks and the opportunity to create the landscaping buffers in the setback zones. Presumably the 45 degree angle parking would permit the greatest percentage of setback area and the largest zone in which to introduce plantings. The 90 degree parking would allow the smallest setback areas and is the triggering mechanism for either a minor or major variance. Of course, the petitioner is trying to anticipate how many parking spaces are going to be needed down the line. If the Zoning Board of Appeals approves the 90 degree parking configuration, is it possible that the number of parking spaces would still be inadequate to meet the needs of the businesses that plan to be located in the future complex? Or is it as Mr. Welch pointed out that the number of parking spaces would be the ultimate constraining factor as to how many businesses or employees can occupy the complex?

Ms. Karcher believed that it is the intention of the developer to provide the proposed accessory parking lot for employees in overflow parking in case the lot at 901 West University Avenue would be full. The petitioner is working with the University of Illinois and with Carle to provide parking within that area. The second and third floor of the future complex is set to be office uses, so the goal is to provide further off-site parking for employees. The proposed lot would be designated for this and would be controlled. The office uses that will go in there will obviously make sure that they have enough parking off-site for their employees, so that there is not a detriment. The goal is to provide adequate parking for the customers and to not have the employees park close to the building, so she felt that adequate parking would be provided through the Memorandum of Understanding with the University or Carle.

Acting Chairperson Armstrong stated that the issue is whether the City wants the parking to essentially occupy the majority of the proposed site or do they want to maintain the buffer zone. The Zoning Board of Appeals has the opportunity to maximize the buffer zone between the parking lot to the west and the proposed lot and between the apartment complex to the east and the proposed lot by selecting or choosing an alternate parking plan. It would obviously encumber the owner in various ways, but it is an option. Ms. Karcher said that this is correct. The Zoning Board of Appeals could increase the buffer by changing the layout. It would essentially decrease the amount of parking that is available.

She went on to say that the Board needs to consider that when there is angle parking it is one way. There are some logistics to consider. As people drive down Clark Street and pull into the proposed angled parking lot, they would need to keep in mind that these drivers will need to exit the parking lot into the alley. Part of the reasoning for allowing the 90 degree parking is to

provide easier access to and from the proposed site. Another reason is that by providing more employee parking on the proposed site, it frees up more customer parking spaces in the lot at 901 West University Avenue, which prevents customers from having to park along Clark Street.

The petitioner will still be able to meet the requirements for landscaping with 90 degree parking. They can still protect the adjacent properties from the headlights. She pointed out that if the proposed use would be an apartment complex rather than an off-street accessory parking lot, the City would not require landscaping screening. By approving the 90 degree parking layout, she feels that the Zoning Board of Appeals would be allowing for screening, allowing the petitioner to maximize the number of parking spaces, helping with traffic flow and helping with parking in the area in general.

Ms. Uchtmann believes that the petitioner is creating his own problem by closing off the alley. Were the alley to be kept open onto Lincoln Avenue, people could go into the parking lot from the north and exist onto Lincoln Avenue or Clark Street.

She noticed that there is a 10-foot island on the north side of the proposed lot. Ms. Karcher explained that it is really not an island. It is really the radius of the entrance into the proposed parking lot. It is where the curb will go as you enter into the parking lot. Ms. Uchtmann suggested that rather than having the parking area closer to the street, which will detract from the appearance of the apartment buildings to the east and west, the petitioner should allow the 10-foot area to be on the street side. This would also allow the petitioner to do a little more with the landscaping.

Mr. Warmbrunn wondered if there was a telephone pole in the way of allowing this reversal. Mr. Welch thought the idea of closing the alley was to pull the traffic away from exiting onto Lincoln Avenue due to the high-traffic flow along Lincoln Avenue. Ms. Karcher pointed out that the petitioner will in essence be creating an alley/exit onto Clark Street to make up for what they are taking off of Lincoln Avenue.

Acting Chairperson Armstrong mentioned that on each parking lot configuration it shows the turning radius of a large vehicle and the differences of the width of the drive and how it impacts a larger vehicle. So, presumably the major criteria is the width of the drive and the radius that a large trucks needs to turn. This seems to be determining some of this. In addition to this could presumably be other easements for utility poles, etc.

Mr. Welch wondered if the larger vehicles would be for the other businesses. The bigger turning radius and width of the drive would be to give the larger vehicles access to Clark Street. Ms. Karcher said yes. A delivery truck going to Dairy Queen or a garbage truck would have the ability to come through the proposed parking lot or go to the access for 901 West University Avenue.

Mr. Warmbrunn did not see why they would want to encourage anyone to enter through the south access of the proposed parking lot and turn left onto the alley. There is the Dairy Queen drive-thru and the trash container for the apartment complex located there. They are going to turn the alley into a street, and he did not feel that was the intention of the alley to begin with. Larger vehicles can go down to the end of the alley and make the turn and exit onto Clark Street

out of 901 West University, since many of the deliveries will probably be to the new development anyway.

He suspected that many of the people who are employed at the new development will get off work at 4:30 p.m., jump in their cars, drive down Mulberry Alley past the Dairy Queen, and turn right to get to University Avenue. On the other hand, if the Zoning Board of Appeals were to do nothing with this case, the Plan Commission can still give the petitioner permission to use the lot as a parking lot. The only difference is that they would probably use the angle parking configuration and have less spaces, correct? Ms. Karcher said that was correct. They would have 18 parking spaces instead of 26 parking spaces.

Mr. Warmbrunn wondered how 8 parking spaces would make that much difference because the petitioner still needs to come up with 52 more parking spaces even with the approval of the proposed variance request. Without approval of the proposed variance request, the petitioner would need to come up with 60 more parking spaces. So, the real issue is how much intensity these 8 parking spaces will add to this particular block.

Chris Dillion, with the Vermilion Development Corporation, stated that they would not be opposed to flipping the front and rear parking lot setbacks so that the setback on Clark Street is 10 feet. This will increase the amount of landscape buffer. He felt this would be a fine solution.

Regarding the project taken as a whole, it is grossly under parked. The purpose of the project has always been to create an institutional gateway presence at the corner of Lincoln and University Avenues, which means a mixed use project. Obviously, parking has to be part of the discussion from day one. Unfortunately, they were not able to bring this component of the larger project forward at the previous Zoning Board of Appeals meeting because they did not have this specific parcel, 908 West Clark Street, under contract at that point in time. They have worked very hard with the City staff to turn this case into a minor variance. They are certainly willing to continue to work with the Zoning Board of Appeals.

City staff's figure of 127 parking spaces for this project is merely an estimate. Mr. Welch is correct in that when they are looking at the space in the building, they look at the number of parking spaces which they have allocated for the site. This helps them make determinations based on what types of uses they can put into the building.

Frankly, the difference right now is that if they are not able to provide additional parking, then it really makes retail not viable at this location. In the leasing process that they have had thus far, parking is always the primary concern of any retailer.

According to what they are currently looking at, as far as their projections go and based on demand from a leasing perspective, they have interest from a specific restaurant that would take roughly 3,000 to 3,800 square feet on the first floor. This is significantly larger than what the City staff had designated as the retail space. City staff had approximated at 2,365 square feet. This is also part of the impetus for requesting the 90 degree parking, because it will get them up to the 135 approximate spaces that they will be required.

April 16, 2008

The truck turning radius diagrams are merely for presentation only. They do not anticipate that there will be any deliveries or anything that would be going down the alleyway. However, they cannot control who will be driving down the alleyway. One of their concerns is that should the delivery drivers or garbage truck drivers go down the corridor through the middle of 908 West Clark, if it is one way, there will be an issue, and it will spill over onto the landscape buffer.

The parking lot, itself, will predominantly be used during the daytime. They are looking at the proposed lot as almost permit type parking for specific employees related to the uses of both Carle Development Foundation and the University of Illinois in the future building. Therefore, the use of the proposed parking lot would be primarily during the daytime. Very rarely would there be cars parked in this parking lot at night. It is really just an employee lot associated with the larger development itself.

Mr. Warmbrunn stated that the restaurant will be open say from 11:00 a.m. to 11:00 p.m. He asked whether the 49 spaces near the building would provide enough parking for the restaurant. Mr. Dillion replied by saying that if the restaurant does take up 3,300 square feet on the first floor, then it would necessitate 33 parking spaces. So, the 49 parking spaces in the lot near the future building would be sufficient.

He reiterated that the proposed parking lot would be used as a permit type lot, where there would be assigned spaces to designated employees of Carle Development Foundation and the University of Illinois. In essence, those parking spaces would be rented 24 hours a day/7 days a week.

Mr. Warmbrunn wondered if they would be putting up lights. Mr. Dillion said no.

Mr. Warmbrunn inquired as to whether they have a way to enforce 24 hour permit parking. Mr. Dillion responded said they could either have a contract with a local towing company and/or it would largely be enforced by the individuals who hold the permits.

Mr. Warmbrunn commented that it defeats the purpose of overflow parking then. Mr. Dillion stated that it defeats the purpose of overflow parking at night. They simply need more parking. There will still be employees parking in the 49 spaces near the building; therefore, he feels that parking will be problematic as it is currently designed. Frankly, it is absolutely essential that they find a parking solution in order to make this project viable and to put it in a position to move forward. The proposed site is really the only viable site without crossing Lincoln or University Avenues.

Mr. Warmbrunn asked if the proposed parking lot would solve their parking problems. Mr. Dillion replied yes. If you look at the numbers specifically, the 90 degree parking would provide 26 spaces, which would get them to 135 parking spaces when combined with the Memorandum of Understanding with the University of Illinois. This would cover the worst case scenario with the large restaurant that they are currently in negotiations with.

Ms. Uchtmann asked their plan with the University of Illinois. Mr. Dillion answered by saying that the University of Illinois is really one of their flagship tenants. They are locating one of their units in the future development at 901 West University Avenue, and they are taking roughly

16,000 square feet, which has been approved by the University's Board of Trustees. Vermilion Development Corporation is also purchasing the property from the University of Illinois.

Ms. Uchtmann wondered how many parking spaces the University of Illinois would need for the use of this development. Mr. Dillion responded by saying that the University of Illinois would actually be providing all of their employee parking off-site, which is roughly 60 parking spaces.

Mr. Schoonover expressed confusion over what the parking lot at 901 West University Avenue would actually be used for. Mr. Dillion stated that this specific lot will primarily be utilized by the retail or restaurant component. There will obviously be additional parking for visitors to both the other office tenants. However, when you combine all the various uses, they simply do not have enough parking. Therefore, to ease this situation they are requesting a Special Use Permit from the City to allow them to use the lot at 908 West Clark Street as an accessory parking lot, which would be used for employee type parking.

Mr. Corten wondered if there was another lot where they could use as an accessory parking lot. Mr. Dillion explained that they have looked at other viable options, but everything is cost prohibitive, including the proposed lot. However, they need a parking solution. So, this is the only viable solution that they were able to find.

Mr. Warmbrunn questioned whether they would resurface the alley. Mr. Dillion stated that the City has already given them approval to vacate the alley from Lincoln Avenue to the west property line of 902 West Clark Street. They are providing an access easement for delivery and garbage vehicles. They do not have intentions of doing any further improvements to the remainder of the Mulberry Alley.

With no further questions or comments from the public, Acting Chairperson Armstrong closed the public input portion of the hearing. He, then, opened it up for the Zoning Board of Appeals discussion and/or motion.

Mr. Warmbrunn asked if there were any requirements for lighting for the proposed parking lot. Ms. Karcher replied that the City does not currently require any lighting under our existing Zoning Ordinance.

Mr. Warmbrunn wondered if the City had any plans to resurface the remainder of the alley. Mr. Myers pointed out that some of these concerns will be addressed with the review of the Special Use Permit by the Plan Commission. The issue before the Zoning Board of Appeals is whether a variance for 1 foot, 3 inch narrower landscape strip on each side of the parking lot is appropriate or not.

Mr. Warmbrunn questioned whether the Zoning Board of Appeals should assume that the Special Use Permit has been granted, and they are looking at the proposed site as an accessory parking lot. They should go from there and decide whether there should be 18 or 26 parking spaces. Mr. Myers answered that in order to do the project as they have planned, the petitioner needs to get approval of both the variance and the Special Use Permit. The Zoning Board of Appeals should look at the proposed variance in terms of if the parking lot would otherwise be approved through a Special Use Permit, what would be appropriate in terms of the side-yard

setbacks? Does the evidence presented at this meeting and in the staff report justify a variance for 1 foot, inches?

Mr. Welch feels that a parking lot is needed. Powers greater than the Zoning Board of Appeals have already set this development in motion. The petitioner is saying that if the development is to happen, then the proposed parking lot is needed. Now, the Zoning Board of Appeals has to decide the aesthetics and other issues associated with the proposed parking lot. Mr. Myers explained that the City does run into the same situation where any one project requires multiple approvals. Any one board could say that they are not going to make a decision until the other board does, but then you get into a stalemate. One board has to move first.

Mr. Warmbrunn asked if the Plan Commission will be informed of the Zoning Board of Appeals' decision. Will this decision influence their decision? Mr. Myers stated that City staff would inform the Plan Commission of the decision made. They could say that "If the Plan Commission approves the Special Use Permit, then the Zoning Board of Appeals has authorized the parking lot to be in this configuration with a 1 foot, 3 inch reduction in the side-yard setback." Or if the Zoning Board of Appeals denies the proposed variance request, then City staff might say, "The minor variance was denied so the petitioner has had to redesign their parking lot layout in order to accommodate that, but this also means that they have 30% less parking spaces than a 90 degree angle would have allowed."

Mr. Schoonover feels that the tenants of the future development at 901 West University Avenue would be the people who use the alley and access onto Clark Street more than anyone else. Mr. Dillion replied that the most significant users of the alleyway would be people who are going to and from Dairy Queen. Once the alley is vacated exiting onto Lincoln Avenue, he believes that it might be up for discussion as to who will use the alleyway the most.

Mr. Corten moved that the Zoning Board of Appeals approve Case No. 2008-MAJ-05 along with the conditions recommended by the City staff, which are as follows:

1. *The parking lot shall be constructed in general conformance to the site plan layout submitted as part of the application and attached to the written staff report.*
2. *A landscape buffer shall be provided along the east and west property lines to screen the proposed parking from adjacent properties. The landscape buffer shall be reviewed and approved by the Zoning Administrator and the City Arborist.*

Mr. Myers asked for clarification about the reversing the layout of the proposed parking lot front-to-back. Ms. Uchtmann asked if Mr. Corten would amend his motion to include that the layout be flipped so that the 10-foot setback would be along Clark Street rather than along the alley. Mr. Corten said he would accept this as an addition to the motion.

Ms. Uchtmann seconded the motion.

Mr. Warmbrunn wondered what would happen if there is a telephone pole in the way and the layout cannot be flipped. Acting Chairperson Armstrong wondered the same thing. He was

curious as to why the 10-foot dimension was adhered to in the plan. Mr. Warmbrunn stated that the pictures do not show what is behind the existing garage. Mr. Dillion stated that he is not familiar with why this determination was made. Obviously, they would flip the layout around and provide more of a setback along Clark Street if it is practical given utilities and any other variables.

Acting Chairperson commented that without the City Engineer or the City Planner in attendance at this meeting, they do not know what the considerations are for the turning radius or for the setback utility requirements are. However, the Zoning Board of Appeals could add some language to the motion that would ask them to look into these alternatives.

Ms. Uchtmann moved to amend the motion that the setback be discussed with the City Engineer, the City Planner, and City Arborist. If possible the greater setback should be along Clark Street and the lesser setback should be along the alley on the north side of the proposed property. Mr. Warmbrunn seconded the motion to amend.

Acting Chairperson asked for the motion to be read back to the Zoning Board of Appeals, including the amendment. It is as follows:

*The Zoning Board of Appeals approve Case No. ZBA-2008-MAJ-05 along with the conditions recommended by City staff, which are as follows:*

- 1. The parking lot shall be constructed in general conformance to the site plan layout submitted as part of the application and attached to the written staff report.*
- 2. A landscape buffer shall be provided along the east and west property lines to screen the proposed parking from adjacent properties. The landscape buffer shall be reviewed and approved by the Zoning Administrator and the City Arborist.*

*Along with the amendment that the setback should be discussed with the City Engineer, the City Planner and the City Arborist, and if possible, the greater setback should be along Clark Street and the lesser setback should be along the alley on the north side of the proposed property.*

Roll call on the motion, including the amendment, was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Mr. Schoonover	-	Yes	Ms. Uchtmann	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes

The motion was approved by unanimous vote.

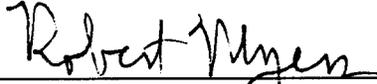
**7. OLD BUSINESS**

There was none.

**12. ADJOURNMENT OF MEETING**

The meeting was adjourned at 9:08 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert Myers". The signature is written in black ink and is positioned above a horizontal line.

Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

April 16, 2008

**MINUTES OF A SPECIAL MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** April 16, 2008  
**TIME:** 6:00 p.m.  
**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

**APPROVED**

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**MEMBERS PRESENT:** Paul Armstrong, Herb Corten, Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

**MEMBERS EXCUSED:** Anna Merritt

**STAFF PRESENT:** Robert Myers, Planning Manager; Lisa Karcher, Planner II; Teri Andel, Planning Secretary

**OTHERS PRESENT:** There were none.

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**WRITTEN COMMUNICATIONS**

- ◆ Participant Information Packet
- ◆ Program Evaluation
- ◆ Presentation Outline

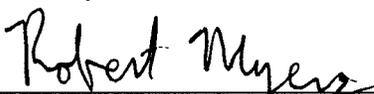
**TRAINING**

**Introduction to the Zoning Board of Adjustment**

City staff provided an audio/web training conference for the Zoning Board of Appeals through the Lincoln Institute of Land Policy. Guest speakers were Stuart Meck, Jeri Parish, Jim Driscoll and Dwight Merriam. The training conference focused on three main topics, which were conducting Zoning Board of Appeals hearings, zoning variances and findings of fact and conditional and special uses.

Written communications are attached to these minutes.

Respectfully submitted,

  
\_\_\_\_\_  
Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

**MINUTES OF A REGULAR MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** May 21, 2008

**APPROVED**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Paul Armstrong, Herb Corten, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

**MEMBERS EXCUSED:** Anna Merritt, Joe Schoonover

**STAFF PRESENT:** Robert Myers, Planning Manager; Rebecca Bird, Planning Associate; Teri Andel, Planning Secretary

**OTHERS PRESENT:** Marc and Fran Ansel, Peter Baksa, Carolyn Baxley, Pat Cardenas, Joanne Chester, Claude and Susan Cole, Elizabeth Cronan, Paul Debevec, Ed and Sharon DeWan, Charles Dold, Audrey Fisher, Susan Frobish, Charlotte Hall, Katherine Hunter, Milorad Ketchens, Leslie McNeil, Evan and Lee Melhado, Georgia Morgan, Dannie Otto, Georgia Paquin, Esther Patt, Michael and Elizabeth Plewa, Steve Ross, Muriel Scheinman, Maruti Seth, Shirley Stillinger, Huseyin Schitoglu, Lisa Treul, and Roger Webber

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**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:34 p.m. Roll call was taken, and a quorum was declared present.

**NOTE:** Mr. Corten moved that Paul Armstrong serve as Acting Chairperson in the absence of Chair Anna Merritt. Ms. Uchtmann seconded the motion. The Zoning Board of Appeals member approved the motion by unanimous voice vote.

**2. CHANGES TO THE AGENDA**

There were none.

### 3. APPROVAL OF MINUTES

#### **April 16, 2008 Special Meeting Minutes:**

Mr. Warmbrunn moved that the Zoning Board of Appeals approve the minutes as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

#### **April 16, 2008 Regular Meeting Minutes:**

Mr. Warmbrunn moved that the Zoning Board of Appeals approve the minutes as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

### 4. WRITTEN COMMUNICATIONS

#### **Regarding Case No. ZBA-08-C-01**

- ◆ Letter from C. K. Gunsalus and Michael W. Walker
- ◆ E-mail from Willard Broom
- ◆ E-mail from Mark M. Clark
- ◆ E-mail from Maryly Crutcher
- ◆ E-mail from Jo and Doug Kibbee
- ◆ E-mail from Erik S. McDuffie
- ◆ E-mail from Lori Raetzman
- ◆ Photos of 802 West Iowa and of other properties on the block submitted by Roger Webber
- ◆ General Information Sheet submitted by Roger Webber
- ◆ Letter from Mike Mahoney submitted by Roger Webber
- ◆ Testimony of Charles N. Dold submitted by Charles Dold
- ◆ Letter from Phillip and Sonia Newmark submitted by Esther Patt
- ◆ Letter from Deborah K. Ghrist submitted by Esther Patt
- ◆ Petition Signed in Opposition submitted by Esther Patt
- ◆ Typographical Correction to Requirement No. 1 for a Conditional Use Permit submitted by City staff

### 5. CONTINUED PUBLIC HEARINGS

There were none.

Acting Chairperson Armstrong asked Robert Myers, Planning Manager, to explain some procedural issues to the public audience. Mr. Myers stated that the Zoning Board of Appeals is primarily an appeals body and is considered quasi-judicial, which means that it functions somewhat like a court. People who wish to testify are asked to be sworn in and are asked to keep their testimony to the matter at hand. They are asked to avoid making prejudicial statements about the case.

Acting Chair Armstrong announced that since there are several items on the agenda to be reviewed by the Zoning Board of Appeals and since there are several people who are present and might want to testify, each speaker will have a maximum of five minutes to give their testimony in order to allow everyone the opportunity to testify.

Acting Chair Armstrong swore in members of the audience indicating they may want to speak during the public hearing. He then summarized the procedures for public hearings.

## 6. NEW PUBLIC HEARINGS

### **ZBA-2008-C-01: A request filed by Illinois Properties for a Conditional Use Permit to allow a Duplex at 802 West Iowa Street in the R-2, Single-Family Zoning District.**

Robert Myers, Planning Manager, presented this case to the Zoning Board of Appeals. He began by explaining the purpose of the request. He talked about the differences between the R-1, R-2, and R-3 zoning districts in how they prohibit or allow duplexes. He stated that there is currently a single-family house on the proposed site that was converted into a duplex in terms of occupancy without building code or zoning approval. This has resulted in past zoning, building and occupancy code violations.

He clarified the difference between how the Zoning Ordinance and the Building Code defines and treats duplexes. Under zoning, a duplex accommodates two households. These two households typically have two separate kitchens, and they are two housekeeping units. A household under the Zoning Ordinance is defined as a family plus no more than three unrelated individuals. In terms of building codes, a duplex has two units that are separated. They typically have two electric meters and two separate heating and cooling systems which are not shared. He gave examples of emergency situations resolved by properly separating duplex units per the building code.

He pointed out that there is a written petition in opposition of the proposed Conditional Use Permit signed by more than 40% of the adjacent property owners located within 250 feet of the proposed site. This means that for this application to be approved, a two-thirds majority vote of the Zoning Board of Appeals is required.

Mr. Myers discussed how the Downtown to Campus Plan relates to the proposed site. As a result of the Downtown to Campus Plan, many properties in the area, including the proposed site, were rezoned. The site was rezoned from R-4, Medium Density Multiple Family Residential Zoning District, to R-2, Single-Family Residential Zoning District. Records show that the City then notified the property owner of the rezoning and that the City recognized the use of the property as a single-family residence.

He spoke about the zoning and property maintenance violations that were cited on the property in 2000. The property owner abated the property maintenance and use violations by the next year. However, in 2005, City staff learned that the property was again being used as a duplex. In terms of occupancy, it was never converted to a duplex to meet the building code requirements. Since 2005, the City had tried unsuccessfully to gain compliance. As a result, the City in 2007 filed a complaint in Circuit Court. The judge gave the property owner two options: 1) use it as a single-family residence or 2) apply for a conditional use permit to allow the duplex use. If the conditional use permit is denied, then it must remain a single-family residence.

Mr. Myers reviewed the development regulations for a duplex in the R-2 Zoning District. He spoke about the parking requirements and showed photos of the driveway at the proposed location. A minimum of four off-street parking spaces are needed for a duplex. He pointed out that the driveway is shallow and doesn't meet the minimum length requirement in the Zoning Ordinance for a parking space. A large vehicle parked in front of the garage would extend into the right-of-way. Regarding the two additional parking spaces on the side of the driveway, he stated that typically cars should be able to back straight out onto the road or street; however in this situation it's not possible because the driveway is too narrow to allow backing straight out. So, it is City staff's opinion that although technically they could fit four cars on the property, in intensifying the use of a single-family home that has small yards, it is questionable whether or not they could reasonably fit four cars on the lot.

In terms of property maintenance, there are some things that could be improved. Neighbors have complained about the condition of the fence. If the Zoning Board of Appeals should decide to approve the proposed conditional use permit, it is the City staff's opinion that there should be conditions placed on the approval, one of which would be to repair the fence and abate any other obvious exterior maintenance violations.

He showed photos of the surrounding properties noting their existing land uses. He talked about how the Future Land Use Map from the 2005 Comprehensive Plan relates to the proposed conditional use permit request.

Mr. Myers reviewed the requirements for a conditional use permit according to Section VII-2 of the Urbana Zoning Ordinance. He noted that there is a typographical error on Page 5 of the written staff report, and he handed out a paper showing the correction. The first requirement should read as such, "*City staff finds that allowing an additional dwelling unit at this location, which is within walking distance of the University of Illinois campus, would be conducive to the public convenience. However, doing so would not reduce the amount of automobile traffic on Lincoln Avenue or the University campus.*"

He read the options of the Zoning Board of Appeals and presented staff's recommendation, which was as follows:

*Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals deny the request as having insufficient space to intensify use of this property, as illustrated by having substandard parking and access as required by Article VIII of the Zoning Ordinance.*

*Should the Zoning Board of Appeals instead decide to grant this variance, the following conditions for approval are recommended:*

- 1. That the property shall meet all applicable standards and regulations of the Urbana Zoning Ordinance and Urbana Subdivision and Land Development Code.*

2. *That the property shall comply with applicable Building Codes (such as fire and utility separation), and that the petitioner shall obtain and comply with a Certificate of Occupancy for a duplex.*
3. *That the petitioner shall submit to the City a site plan illustrating that the property can meet all City parking and access requirements, and subject to approval by the Zoning Administrator and City Engineer.*
4. *That the garage shall be kept clear for use as one of the four required parking spaces.*
5. *That no more than two vehicles shall be allowed to park in accessory spaces west of the garage at any time.*
6. *That the petitioner shall abate any property maintenance violations, but minimally shall include repairing the fence along with west property line.*

Mr. Corten wondered if the Zoning Board of Appeals is to make the assumption that the tenants would be able to get one of any of the four vehicles out of the parking area without moving the other three. Mr. Myers responded that the tenants would easily enough be able to move the vehicle in the driveway by backing out. If a car in the garage needs to leave and a car were parked in the driveway, then they would need to have the owner of the vehicle in front of the garage move it so they could get out.

Mr. Warmbrunn asked how many duplexes were currently in any one of these areas, such as the Lincoln-Busey corridor. Mr. Myers said he did not know the answer, but that in walking around the block, he noted that north of the property and along the west side of Busey Avenue, which is a long block, he did not see indications of any duplexes.

Mr. Warmbrunn inquired as to how many of the people who signed the petition live in duplexes. Mr. Myers responded that he didn't know.

Mr. Warmbrunn asked if a duplex could be used as a transitional phase from the dorms and other high intense residential uses on Lincoln Avenue. Mr. Myers answered yes.

Mr. Warmbrunn questioned if the existing building were demolished and the owner came before the City for a conditional use permit to allow a duplex, the owner would still be required to provide four parking spaces, correct? Mr. Myers said yes.

Mr. Corten wondered if the owner lives in one of the units. Mr. Myers said he did not know. The applicant's representative is present in the audience and could answer this question.

Mr. Welch asked how many parking spaces would be required for a single-family residential use. Mr. Myers replied that there is not a maximum number of required parking spaces, but the minimum of two required parking spaces for single-family residential uses. Mr. Welch gave the scenario of a large family with five drivers and five cars. Practically, the cars would not fit, but

could not there be five cars allowed with a single-family use if they fit into the parking area? Mr. Myers said yes. If a family in a single-family house could fit five cars in the parking area, then they would be allowed to have five cars.

Mr. Welch wanted to clarify this, especially since there would be no physical changes to the outside of the existing building. Therefore, if the Zoning Board of Appeals denies the proposed conditional use permit to allow a duplex use, then they would be denying what is going on in the inside of the home. Mr. Myers responded that there would still be substandard parking whether it is approved or denied in that one of the two regular parking spaces (in the driveway) seems to extend into the street right-of-way. Mr. Welch said that this is the main thing he was trying to point out.

With no further questions from the Zoning Board of Appeals for City staff, Acting Chair Armstrong opened the hearing to public input.

Roger Webber, attorney for Peter Baksa (the petitioner), stated that he has not seen the protest petition. Aren't he and his client entitled to see the petition to give them a chance to respond to it? He stated that he did not need to see it at this moment, but would like a copy, if possible. Also, since they are the applicants, are they entitled to more than five minutes to speak? Acting Chair Armstrong replied that they have some leeway on the amount of time to testify.

Mr. Webber submitted additional documents which included photos taken by his investigator walking around the block without crossing any streets. The purpose of the photos is to show the character and the nature of the neighborhood. The photos show a number of houses that do not appear to be used as single-family residences. This suggests that what they are proposing is consistent with the way the neighborhood is being used already.

They agree in that there are no changes needed to the exterior of the building. They also feel that there are not any changes needed to be made to the interior as well. The property has been physically used as a duplex for about 20 years or more. There might be some requirements or modifications needed to bring the building up to code.

Mr. Corten asked about the exterior of the property in general, such as the bushes, trees, fence, etc. Mr. Webber replied that he could not commit for Mr. Baksa; however, he believes that Mr. Baksa is willing to intensify his efforts to maintain the property.

Mr. Corten wondered if Mr. Baksa currently lives there. Mr. Webber said no, not at this time. He did live on the property for a number of years when he first acquired it.

Mr. Corten inquired if Mr. Baksa lives in town. Mr. Webber stated that Mr. Baksa has a residence in Champaign, a residence in Chicago, and he spends some time down in Florida during the winter.

Mr. Webber talked about the statement by Mr. Myers that the City first learned of the conversion to a duplex in the year 2000. Mr. Baksa and he did not believe this to be accurate. Back in 1986, Craig Grant, who was the City's Building Safety Manager, was inside the property and

told Mr. Baksa that what he was doing with the property as a duplex was fine. However, in 1986, the property was still zoned R-4. The zoning changed in 1991 when the Downtown Campus Plan was put into place.

When Mr. Baksa purchased the property from a University professor. He lived in one unit for a number of years and continued renting the other unit to students. Apparently through the lawsuit that was mentioned, the professor who sold the property as a duplex never got a Certificate of Occupancy or any other document authorizing the property to be used as a duplex. So, he can understand why from the City looking at records, it appears that the property is a single-family residence. As a practical matter, Mr. Baksa bought a duplex; he used it as a duplex; the County Assessor has been taxing it as a duplex since at least 1992; and now since 2005, the City is saying that Mr. Baksa is not allowed to use the property as a duplex anymore because in 1991 the City changed the zoning.

Mr. Corten wondered if there were two furnaces in the building -- one for each unit. Mr. Webber said no there are not.

Mr. Webber talked about Mr. Baksa's background. He mentioned that Mr. Baksa had attended the University of Illinois and earned a degree in architecture and related fields. In 1993, he was granted the Heritage Award for his work in historic preservation in multiple cities, including the City of Urbana. He served as a volunteer working with City staff to develop the criteria for the MOR, Mixed Office-Residential Zoning District. He has been a visiting professor at the University of Illinois, teaching at the 500 course level. He served for a period of time as the President of the Champaign-Urbana Symphony. So, he is not an evil carpetbagger that he perceives some of the objectors have presented him to be.

He commented that in the mid 1990s, Mr. Baksa placed the proposed property with a holding company and turned over management to Ramshaw Realty, which is a large, professional management company in town. They believe that Ramshaw Realty did everything they could to maintain the property in compliance with the City's codes. The only longstanding issue that he is aware of is the occupancy and single-family versus duplex.

Around 2005, Mr. Baksa was advised by Ramshaw Realty about the City's findings that they were over-occupied. So, Mr. Baksa became actively involved in managing the property again, and he started taking steps to reduce the occupancy. He had existing leases and was not going to kick out tenants with valid leases. The house now complies with the occupancy requirements.

Mr. Corten asked what they believe the occupancy requirements are. Mr. Webber said that it would be no more than four unrelated people per unit.

Mr. Webber feels that the objections that were filed with the report seem to be primarily based on the idea that the owner converted the property into a duplex, flaunting the zoning regulations, and has only reduced the occupancy when faced with a lawsuit, when in fact Mr. Baksa bought what he believed was a duplex, used it as a duplex for 20 years, and now is told no more duplex.

What does he do? Just give up and surrender his investment or try to work to figure out a way to proceed?

At that time, Ramshaw Realty was told by City staff that the only way to have a duplex would be to apply for a conditional use permit. So, Mr. Baksa instructed Ramshaw Realty to pursue it. Ramshaw Realty was then told by City staff that they need not bother applying because it would not be approved.

In trying to analyze the standards, he also looked into what the courts do with Zoning Ordinances that restrict an owner's use of his/her property. He found three cases that specifically set out the standards which cities are suppose to look at. These three cases are as follows:

1. *Harris Trust & Savings Bank v. Duggan*, 95 Ill.2d 516

This case is about Harris Trust and Savings Bank purchasing a property that was zoned R-8 or High-Rise Buildings. While they were trying to go through the process of obtaining demolition permits to raze the existing structures to build a high rise, the City of Chicago granted a demolition permit and latter rescinded it. The City then changed the zoning to R-6, Medium Rise Apartment Buildings. Harris Trust and Savings Bank sued, and the Illinois Supreme Court announced a series of five or six factors that are to be considered when evaluating the validity of a Zoning Ordinance that restricts an owner's use of his property. Harris Trust and Savings Bank won the court case, and the City of Chicago paid them over a million dollars. They were also ordered to allow Harris Trust and Savings to do the demolition and build the high-rise building.

2. *Lambrecht v. County of Will*, 217 Ill.App. 3d 591

This case articulates in the most clear and definitive way the standards that the courts look at. Those standards are:

- A. *The Zoning Board of Appeals is to consider the existing uses and zoning of nearby properties.* He explained how this relates to the proposed case by stating that in the block there are nine lots zoned R-2 (Single-Family Residential), six lots are zoned R-6 (High Density Multiple Family Residential), five lots are zoned R-7 (University Residential), and one lot is zoned R-4 (Medium Density Multiple Family Residential). He spoke about the adjacent land uses and pointed out that these uses show that the use of the proposed property as a duplex fits in exactly with the Downtown to Campus Plan and the overall scheme of buffering. You go from a big high-density apartment building and rooming house down to two duplex uses and finally down to single-family residences.
- B. *The extent to which property values are diminished by the particular zoning restrictions.* He submitted a letter from Mike Mahoney, realtor for Prudential Snyder Real Estate, which discusses the difference in fair market value of a duplex and a single-family house. The letter states that a duplex is typically valued at one-and-a-half times a single-family house.

- C. *The extent to which the destruction of the property values of the plaintiff promotes the health, safety, morals or general welfare of the public.* He believes that the City would lower the value of the petitioner's property by about a third if it denies the Conditional Use Permit. The City would be getting a marginal, if any, real benefit to the health, safety, welfare and morals because as a practical matter on a lot where there is fraternity housing and high-density apartment buildings, is two or three additional people on the lot really going to have a significant impact on the health, safety, welfare and morals of the community? He also pointed out that in the written staff report, City staff stated that having a duplex here would be convenient because the property is close enough to campus for student renters to walk. Then staff contradicted themselves by saying that a duplex would not reduce the traffic and overall traffic congestion. If students have to live further out than they would drive to campus.
  - D. *The relative gain to the public as compared to the hardship imposed upon the property owner.* He feels this is a restatement of the balancing of what the benefit is to the community, which he feels would be minimal, versus cutting the property value by a third.
  - E. *The suitability of the subject property for the zoned purposes.* As he looked through the written staff report, seven out of the eight factors in the development regulations were met. The only one that has not been met is the rear-yard setback. Parking may be considered a debatable issue, but one that could be easily resolved by trimming back the shrubbery or widening the curb-cut. Either one of these or both of these could be imposed by the Zoning Board of Appeals in granting approval of the proposed conditional use permit.
  - F. *The length of time that the property has been vacant as zoned considered in the context of land development.* He did not feel that this applied one way or the other to the proposed case because the property has not been vacant. It has been used as a duplex pretty much continuously for 20 plus years.
  - G. *Any other considerations about the degree of care that the community has taken to plan its land use development and evidence of the community need for the proposed use.* The Downtown to Campus Plan suggests a high degree of care by the community, but he feels the proposed property and the use they are requesting meshes perfectly with the Downtown to Campus Plan. The duplex use is a very good use of housing as a transition.
3. *Blazer v. St. Clair County*, 209 Ill.App. 3d 928.

This case talks about the validity of a zoning ordinance in total when looking at a special use permit, variance or something of that nature.

Mr. Myers stated that he was surprised in Mr. Webber's presentation. Mr. Myers understood his argument to be that the property is being used as a duplex, and that by denying a conditional use permit for a duplex the City would be lowering his client's property values. He is surprised

because in the judge's court order, to which Illinois Properties stipulated and agreed, that [reading] *"The subject property is a single-family residence. It is properly zoned as a single-family residence and shall not be converted or modified in anyway or anything other than a single-family residence unless or until the property is granted a conditional use permit or otherwise legally rezoned by the City of Urbana."* If the petitioner agreed with the judge that the property is a single-family residence, then how by denying the conditional use permit would the property's value be lowered?

Mr. Webber responded that there are two competing concepts there whether it is legally a duplex or whether it is practically a duplex. The City can say that a building that has separate entrances and any adjoining doors can be locked is not a duplex even if there are two kitchens and two complete sets of households, but as a practical matter that is a duplex. It is not legally a duplex until the City issues occupancy permits and other documentation that acknowledge its stature as a duplex. When there is a lawsuit pending and you have a choice of entering into an agreement that resolves the case with a fine and be given the opportunity to request from the City the legal stature to be placed on the property that you purchased the property believing it to be already, do you take that agreement and try to get the legal approval? Or do you roll the dice with the judge and run the risk of paying a daily fine for the last three years?

Ms. Uchtmann understood Mr. Myers' concern to be that for many years, the property owner has known that to have a conforming duplex, he must provide a separate heating/cooling system and a separate electrical system. Since the property owner refused to separate these two systems, then he knew that the property was considered by the City to be a single-family residence, because it did not meet the code for a duplex. Mr. Myers explained that there is a definition for duplex in terms of zoning and in terms of building code. Any duplex would need to comply with both definitions.

Mr. Webber stated that the building appears to be a duplex with separate entrances and a common door that can be locked from both sides. Also, Mr. Baksa was told by the previous owner that it is a duplex. What was he to do? Investigate whether it is really a duplex or not because there are not two furnaces? Mr. Corten answered by saying that when he received one bill for the electric/gas services and one bill from the water company, then he should have known it was a single-family residence. Mr. Webber argued that in the past there have been apartment buildings with 8, 10 or 20 units where utilities are included in the rent. There is one bill that gets sent to the landlord. Does that make it a single-family residence? So there are many factors that could lead one to believe that the proposed property is a duplex. Mr. Baksa believed it to be a duplex when he purchased it.

Peter Baksa, owner of 802 West Iowa Street, stated that he purchased the proposed property in the mid 1980s when he was attending the University of Illinois and was working on his Masters degree. He lived in the unit on the west side and rented out the unit on the east side. If you look at the floor plan, it is a duplex floor plan. The property is taxed by the County as being a duplex. He has been using it as a duplex. He said that he is willing to do any work that the Zoning Board of Appeals requests him to do in order to bring the property up to code. He turned management of the property over to Ramshaw Real Estate. They are directed to cooperate with the City, to

take care of the residents, and to take care of the property. There is funding available to make any necessary changes.

Chairman Armstrong asked if anyone in the audience, beginning in the front row, wished to speak about this case.

Muriel Scheinman, 907 South Busey Avenue, said that she lives next door to the proposed property. She has lived there since 1964 and has learned that high density and more people can have a negative impact on neighboring properties, and that zoning restrictions on occupancy are important. She expressed her concern with the owner's continued illegal over-occupancy under Urbana's zoning regulations. Since 2000, the City notified the property owner many times that the property had been rezoned in 1991 from R-4 to R-2 and was clearly a "single-family residence" and not a duplex and that a conditional use permit was required to allow a duplex to be established.

Over the years, the house has had insufficient parking spaces. Sometimes the vehicles block the sidewalk so pedestrians have to walk around them. The property has always been over occupied with anywhere from five to eight people living there at any one time. The City has documentation to verify this. Moreover she is concerned about the precedent this case will establish if the conditional use permit is granted.

Mr. Warmbrunn inquired as to whether the Zoning Board of Appeals is to be concerned with and take into consideration what happened in 1991. Or are they only to be concerned about 2008? Mr. Myers replied that the essential question is what should this building be in the future? Should it be a single-family residence or a duplex? Either way the property owner will need to comply with City code. Although the past has bearing as background information, he did not feel that it should determine how the Zoning Board of Appeals should decide.

Acting Chair Armstrong requested that the audience limit the amount of history they offer and mainly focus on the present condition of the duplex and its impact on the neighborhood.

Georgia Paquin, 1006 South Busey Avenue, lives within 250 feet the proposed property. She prefers to keep the use of the proposed site as single-family residential. When she purchased her house five years ago she understood the proposed property to be a single-family dwelling.

Joanne Chester, Cunningham Township Assessor, addressed the board. She clarified that when Mr. Webber stated that the petitioner pays duplex taxes on the property, he was referring to the Property Code. She recalled that it was changed from single-family residential to duplex in 1992. This coding is irrelevant to how her office assesses the property. The property has been assessed as a single-family house with one additional bathroom. She remembers seeing two permits for additions in 1987 and 1988 or 1989. The permit was for an addition to a single-family house. She explained that there is really no difference in the way that a single-family house and a duplex are assessed except for added fixtures. She believes that in this neighborhood, the highest and best use of property is a single-family residence. Contrary to what Mr. Webber testified, if you have two similar buildings in size, and one is a house and the other a duplex, the house will sell for a higher price.

Shirley Stillinger, 1003 South Busey Avenue, contacted the daughter of the previous owner, who was Professor Yapp, to find out how the house was used prior to Mr. Baksa purchasing it. Annette Yapp told her that she does not remember the house being used as a duplex. She remembered there only being one kitchen. There were two rooms, one at each end of the building, that were rented to students. The renters were not allowed to use the kitchen. So, to say that the property had been a duplex before and to use it as the reason for continuing to use it as a duplex would take a lot more proof. In looking around the neighborhood, the R-5 and R-7 zoned properties are along Lincoln Avenue. The single-family zoned residences begin on Busey Avenue and go east. Therefore she is opposed to the Zoning Board of Appeals granting the request for a conditional use permit.

Esther Patt, 706 South Coler Avenue, lives within three blocks of the proposed property. She pointed out that the Zoning Ordinance says that the R-2 Zoning District is also intended to provide for a limited portion of two-family dwellings. The real question before the Zoning Board of Appeals is how many single-family homes in this neighborhood are to be converted into duplexes. Regarding parking, if the proposed property is used as a single-family home and four people live in it, whether they are related or not, every owner of the vehicles in the driveway and garage live in the same household and will have access to each other's keys. If the proposed property is used as a duplex, then it means that the tenants live in two units and do not have access to each other's keys. Someone will have to move their car that is parked behind the garage in order for anyone else to be able to get out.

She continued that duplex means that no more than four unrelated people can live in each unit and no more than eight people living in the building at one time. On May 11, 2004, the Daily Illini advertised the property as such, "*802 Iowa, Urbana. Newly renovated architect's home. Group House. Jet spa, hot tub, ..... Rent \$2,350.00*". This proves that the property owner was advertising the property as a group house and not as a duplex. In the fall of 2007, there was a flashy flyer inserted in every newspaper of the Daily Illini for one day. The flyer states, "*802 West Iowa, Urbana, Illinois. 2 or 6 person residence.*" What is a 6-person residence? It is an over-occupied single-family home. Today she went to Ramshaw Real Estate's website and found listed under Houses (not duplexes or apartments) was 802 West Iowa Street. She clicked on the link, and the website describes the property as having 4+ bedrooms. 4+ is the code word that property owners use to describe their rental properties to let larger groups know that they are willing to rent to the entire group even though it is illegal to rent to more than four unrelated people.

The one lawsuit that Mr. Webber did not mention that she feels is more relevant is the lawsuit filed by Howard Wakeland against the City of Urbana. He bought a property in 1998 located at 807 West Main Street. His property was also zoned R-4 when he bought it although the structure on it was a single-family home. The Downtown to Campus Plan down zoned his property along with many other properties, including 802 West Iowa Street, to R-2. Mr. Wakeland applied for a zoning map amendment, which was denied. He then filed a lawsuit against the City of Urbana. The Circuit Court ruled in favor of the City saying that the fact it was zoned R-4 in 1988 was irrelevant because cities have the right to down zone for the purpose of protecting single-family homes and neighborhoods. Mr. Wakeland was not happy with this

decision so he appealed it to the Appellate Court, and they ruled that the City and the Circuit Court were right.

She feels that the Zoning Board of Appeals should have some reason to grant a permit to change a single-family home to duplex other than because the petitioner wants it. There needs to be something special about the property to make it appropriate, especially when the Zoning Ordinance calls for a limited portion of two-family dwellings. As the petitioner's representative pointed out, there are already a lot more than just a few in the neighborhood. The Comprehensive Plan states that the City should "*preserve the uses in the Lincoln-Busey corridor as they now exist while precluding further encroachment of higher density buildings into this unique residential area*". Conversion to a duplex use will have two major negative impacts, which are 1) increasing population density, which means more vehicles and more noise and 2) it makes it more economical for people who want income property to purchase owner-occupied, single-family homes and turn them into rentals, which destabilizes the single-family nature of the neighborhood. She encouraged the Zoning Board of Appeals to deny the proposed conditional use permit.

Charles Dold, 708 South Busey Avenue, read a letter that he prepared in opposition of the proposed conditional use permit. The letter noted the quality of the neighborhood and about his family. In the letter, he stated that he and his wife are opposed to the proposed use.

Danny Otto, 405 West Illinois Street, wanted to point out three facts. First, it is the buyer's duty to know matters of public record. The zoning of the house was a matter of public record when Mr. Baksa purchased it. The down zoning and the repeated notifications of violations were also matters of public record. So ignorance of the house's legal status is no excuse. The second fact is the issue of density. The Comprehensive Plan states that changes should not result in increased density in the Lincoln-Busey corridor. The petitioner is asking to double the density on his property. Rental housing affects the character of the neighborhood. It is a matter of life. He also hopes that the Zoning Board of Appeals does not feel threatened by Mr. Webber's mention of the three lawsuits. If they do then there is no point in having a Zoning Ordinance and we might as all well quit.

Georgia Morgan, 804 West Nevada Street, urged the Zoning Board of Appeals to deny the request. To grant it would be contrary to the intent of the Downtown to Campus Plan and the Comprehensive Plan. The property is zoned R-2, Single-Family Residential. It is in a very stable residential area. Many of the owner-occupied homes have been occupied by their present owners for decades. Converting 802 West Iowa Street increases its contribution to neighborhood density and automobile traffic by 100%. Although it is convenient to walk to campus from this area, the tenants will still have cars even if they are students because it is inconvenient to walk to places like the grocery store. This location is not suitable for a duplex use. Again she urged the Zoning Board of Appeals to deny the request.

Michael Plewa, 708 West Iowa Street, mentioned that he lives about a block away from the proposed property. He has noticed the property several times because of the noise and of the parking. The property has been out of compliance for decades even after the City brought it to the owner's attention. It is out of compliance with the Downtown to Campus Plan or the 2005

Comprehensive Plan. He spoke about the award that the West Urbana Neighborhood received from the American Planning Society for being one of ten best neighborhoods to live in the nation. That recognition is due to the efforts of the people in the audience and in the neighborhood. He mentioned that he walks back and forth to work. The students do not walk back and forth. Look at the streets today when school is out; and then, look at the streets in September. There is a big difference. It is the job of the Zoning Board of Appeals to protect the reputation of the West Urbana Neighborhood. Does the Zoning Board of Appeals want to be the instrument that continues these types of honors or do they want to be the instrument that removes these honors? So he strongly appealed that the Zoning Board of Appeals reject the request.

Susan Frobish, 809 West Delaware Avenue, stated that she is a realtor. She showed an illustration of the intersection of West Iowa Street and South Busey Avenue. There are already more multi-family properties than single-family properties in this area. She stated that she has listed for sale the property located on the southeast corner of the intersection of West Iowa Street and South Busey Avenue. She has had three families looking for a large house to purchase. Each family walked away because they were afraid of what was happening in the immediate area with all of the multi-family housing. If the house she has for sale would be located one block east it would probably be a \$500,000 home. The proposed duplex is hurting the ability to sell the house on the adjacent corner and hurting its property value. She asked the Zoning Board of Appeals to deny this application.

Mr. Corten asked if she believes that the property at 802 West Iowa Street is not well maintained because it is not owner-occupied. Ms. Frobish replied that in this case, yes. The exterior of the building needs paint. The fence is falling apart. The bushes are overgrown. The tenants are parking on non-approved surfaces. Parking on the street during the school year is impossible because of the students. During the summer there are not as many vehicles parked on the street. If the petitioner would fix the house up as a single-family house, it would be worth much more than its value is as an income property. She noted that before Mr. Baksa purchased the home, it was advertised for sale under single-family home rather than as a duplex.

Mr. Myers asked what the address is of the property for sale. Ms. Frobish replied 1002 South Busey Avenue. Mr. Myers inquired how she knew the reason the potential buyers did not purchase 1002 S. Busey because of 802 W Iowa. Ms. Frobish answered that the clients she showed the house to said they were afraid to live there because they thought it might be noisy because of the students living across the street.

Lee Melhado, of 612 West Ohio Street, commented that she either walks or rides her bicycle past the proposed site almost every day. For the last 10 to 15 years, repair on the existing structure is one of the worst in the whole neighborhood. There is trash in the yard. The maintenance of the lawn and the bushes is very poor. The fence appears to be falling over. They do not shovel the snow on the sidewalks which causes neighbors to have to walk on the street. She is amused by the fact that because Mr. Baksa has been illegally using the proposed property as a duplex for a long time, then that is his reason for why he should continue to use it as a duplex. Therefore, she strongly urged the Zoning Board of Appeals to deny the request.

Lisa Treul, 714 West Iowa Street, stated that she believes and trusts in the wisdom of the Comprehensive Plan. It gives her the trust that the value of her single-family home will not decrease. She is saddened to hear that her neighbors at 1002 South Busey Avenue are having a difficult time selling their home. She then read a letter from one of her neighbors, Debbie Ghrist, who lives at 1002 South Busey Avenue. Ms. Treul commented that if everyone gets granted a conditional use permit for a duplex, then let's throw out the zoning because what is the point of it. Her family has purchased three homes in the area on the trust and promise of the zoning. Duplexes are allowed on the granting of a conditional use permit, not just because someone wanted it because it would bring more income to a property.

She said that the proposed use is not designed and to be operated so that it does not have an injurious and detrimental effect on the district. The duplex next door to her property was built by the family that built her home. They built it for their mother and her caregiver many years ago and it is grandfathered in. It is a different situation to grandfather a duplex in versus granting a conditional use permit. It is not respectful of how she reads the Comprehensive Plan. So she asked the Zoning Board of Appeals to deny the request.

Ms. Treul also submitted two letters opposing the request, the one she read from Debbie Ghrist and one from Phillip and Sonia Newmark. She also submitted a petition in opposition signed by 45 neighbors.

Kate Hunter, 510 West Oregon Street, stated that she grew up in the City of Urbana and has seen a lot of change in the town. Most of her concerns have already been addressed by previous speakers. Many of the problems that they face in the neighborhood now are because there was a period of time in Urbana where zoning was totally disregarded. No one paid attention, and she feels that we are paying the consequences now. She feels it is time to draw the line, go back and look at what the City has decided and stick to it.

Carolyn Baxley, 510 West Main Street, spoke as a former Urbana Plan Commission member. She was on the Plan Commission at the time when the Downtown to Campus Plan was drafted. At the time, the West Urbana Neighborhood was studied intensely, and it was very clear that the neighborhood, especially along the Lincoln-Busey corridor and adjacent blocks, were on the brink of collapse. It was rapidly being converted from single-family homes to rental housing that were being poorly maintained. Single-family property owners in the area were desperate. They came to the City and begged us to do something about it. The City came up with the Downtown to Campus Plan and felt it was fair to everyone.

So now the Zoning Board needs to uphold the Zoning Ordinance and the Comprehensive Plan. To do that the Board will need to deny the proposed request. City staff has done a great job of making their recommendations and have given the Zoning Board the reasons why they need to deny the request, and she asked that the Zoning Board follow the City staff's recommendations.

Mr. Corten stated that this neighborhood is in transition and will continue to be in transition over the next 50 years because the University of Illinois continues to grow. As the University continues to grow this will continue to be a problem. He wondered if this was taken into consideration by the Plan Commission when they originally reviewed the Downtown to Campus

Plan. Ms. Baxley replied that the Comprehensive Plan gets reviewed every so often. Since the Downtown to Campus Plan, she believes the area east of Lincoln Avenue is sacrosanct. This area is our most vital and historic neighborhood. Mr. Corten stated that he agrees with this at the moment. However, 50 years ago this was not a problem. In another 50 years he believes that the University of Illinois will have taken over a lot of the property that we are talking about. Ms. Baxley remarked that she did not agree.

Mr. Welch commented that this is a valid question. The point that Mr. Corten is making is that the very location is what causes the problem. When studying the Downtown to Campus Area prior to adopting the plan, there was a desire to balance and be fair to everyone, and this is part of what he believes is driving the proposed request because what is proposed is allowed if a conditional use permit is approved. It is not prohibited. So in balancing this, the neighborhood has the competing interests of someone's desire to make money, which is allowed.

As Mr. Corten said it is a valid concern when the population of the University of Illinois was considerably smaller 20 years ago. The University campus butts up to the West Urbana neighborhood. It is an issue because the location drives the problem. Ms. Baxley said it is an issue but the Zoning Board of Appeals should be governed by the Comprehensive Plan. Mr. Welch replied that the Zoning Board never said that they would not use the Comprehensive Plan to guide them in their decision.

Ms. Baxley remarked that it seems that the Zoning Board of Appeals is playing devil's advocate. Mr. Welch responded that it is part of their role because the members of the Zoning Board of Appeals should not come to the meeting with their minds already made up.

Ms. Baxley reiterated that the Zoning Board of Appeals needs to follow the recommendation of the Comprehensive Plan. Mr. Welch stated that the Comprehensive Plan may say that the area is designated to be single-family residential, but that does not prohibit what is being proposed. Ms. Baxley commented that as Ms. Frobish stated what is at stake here is a balance. There are already a lot of other properties in the area that are still causing pressure on this very fragile area. If the City allows another property of that nature then it creates even more pressure.

She pointed out that there is nowhere to park on the streets now. Heaven help the single-family owners if they have a guest come over because there is no where to park. So if the tenants at the proposed duplex cannot park all of their vehicles in the driveway then they will have to park on the street. The neighborhood is already under pressure as it has been for years.

Mr. Welch stated that it will continue to be under pressure. Ms. Baxley noted that the Comprehensive Plan is trying to reverse it though. Mr. Welch replied that it left a loop hole that the Zoning Board of Appeals has to look at. They cannot just say no. They need to have a reason. Ms. Baxley commented that City staff has given the Zoning Board the reason to deny the case. She urged the Zoning Board to look at the reasons and to listen to the City staff.

Huseyin Schitoglu, 805 West Michigan Avenue, mentioned that he has lived in the West Michigan Avenue area for 20 years. When he first moved there, the area was zoned R-2. It never occurred to him that there would be a discussion about this being a transitional or buffer

area. It did not occur to him to think this would be possible because there were families living to the left and right of his property. When he sees single-family homes converted to boarding or rooming houses, he is saddened. These homes are not well maintained. By approving the request for a duplex, it does not help the character of the neighborhood. So he urged the Zoning Board of Appeals to deny this petition.

Glenn Berman, 611 West Washington Street, stated that he worked for the City of Urbana for approximately 25 years. He was involved in a number of discussions and meetings that involved the University of Illinois and their expansion plans and their continued absorption of tax producing property for the City. Although he did not believe that there were any explicit formal agreements in place, he recalled that there are meeting minutes and memoranda where the University clearly agreed that Lincoln Avenue is the line in the sand. They agreed to not expand east of Lincoln Avenue. If they keep this agreement, then the only thing that can change the West Urbana neighborhood would be land use changes. So he did not share Mr. Corten's vision into the future that there will be a tidal wave that cannot be dammed that will slowly eat away at the neighborhood. He believes the only thing that can compromise the neighborhood is the Zoning Board of Appeals interpretation of the Comprehensive Plan.

Paul Debevec, 708 West California Avenue, stated that when he looks at Urbana and Champaign, he notices that the most dramatic change in regards of housing of graduate and under-graduate students are the extremely large apartment buildings that are being constructed. In fact there are a considerable number of rental properties located on his block. Three of them currently have "for rent" signs on them. The question of which direction properties will be going is a very open matter. Somebody is going to occupy those 10, 15 and 20-story buildings, which have wonderful amenities.

The other matter is the question about the appropriateness of granting a conditional use permit simply to make more money from a property. He tried to research if there is a document that actually describes the basis on which the Zoning Board of Appeals makes a decision. He could not find one. Many cities have such a document, and some of them speak to some part of the Illinois code. Many of those communities have in their Zoning of Appeals manuals/documents a phrase that reads as such, "*the purpose of the variance cannot be granted solely/exclusively on the desire to make money off a property*". So in fact, this should not be the Urbana Zoning Board of Appeals consideration. What should be their consideration is the rezoning of 1991 from R-4 to R-2 and the 2005 Comprehensive Plan.

Audrey Fisher, 902 South Orchard Street, expressed her concern about balance in the area. She has an understanding of the Lincoln-Busey corridor as being high density on Lincoln Avenue with the buffering away from it on Busey Avenue facing into the lower density residential neighborhood. The proposed corner is of concern because it already has a rooming house located on it. Her fear is that the next block is so long that if the 800 Block starts becoming the transitional zone instead of the Lincoln-Busey corridor for high density to single-family residential, then that includes half of the neighborhood that the residents are trying to protect. Our country was founded on certain rights. It seems like in the last few years it has been very popular to see it as a right that making the most money out of an opportunity is your right regardless of environmental and social costs. She mentioned that she is life-long resident of the

City of Urbana, and one thing she likes is the sense of balance. Being able to preserve this jewel of a neighborhood, close and walkable to the University of Illinois, for people who appreciate the bikeable, walkable location and be able to enjoy the family atmosphere is very special, and she hopes it will be preserved. She is concerned about the weight of adding in a new duplex, not a grandfathered duplex at the proposed location facing in towards the single-family neighborhood.

With no one else wishing to speak on this case, Acting Chairperson Armstrong asked if the petitioner would like to respond or clarify anything.

Mr. Webber said that one of the great things about this country is people's rights to use properties. He agrees with all of what Ms. Fisher said, except there is a factor that is not completely explained. One of the things about this country is that if someone owns property, then it is their property. A property owner can do with their property as he/she sees fit unless the governmental body that controls zoning has a very good reason to restrict the property owner's right. The fact that neighbors do not like what a property owner wants to do with his/her property is not enough. If the neighbors can actually prove that the use will actually decrease their property values, then that is one of the six factors that the Zoning Board of Appeals is to considered. If you are going to limit Mr. Baksa's property rights, then there needs to be valid reasons that bear on the overall plan.

With no further comments or questions from the public audience, Acting Chair Armstrong closed the public input portion of the hearing. He then opened the hearing up for discussion and motion(s) by the Zoning Board of Appeals.

Mr. Corten moved that the Zoning Board of Appeals deny Case Number ZBA-2008-C-01. He feels the City needs to keep slowing down the rate at which these properties change. We need to keep it under control at this point so that people continue to live in the area.

Acting Chair Armstrong suggested that they include a reason as part of the motion. Ms. Uchtmann suggested that one reason is because a duplex use will diminish the surrounding property values of the surrounding single-family homes.

Mr. Corten added to his motion that the reason for denying the proposed case is to follow the recommendations in the Downtown to Campus Plan. Acting Chair Armstrong asked if he meant that by denying the proposed case it would keep the property within conformance of the redevelopment plan for the area. Mr. Corten agreed. Ms. Uchtmann seconded the motion.

Mr. Warmbrunn asked if Mr. Corten's motion to deny the proposed case included City staff's reasons, which are because of the insufficient space to intensify the use of the property and because of the substandard parking and access. Mr. Corten replied that parking is one of the big reasons, and also because the number of students in the area is making it less attractive to single-families that live in the area. He would like to slow this whole process down as much as possible.

Mr. Welch recommended that they rephrase the motion to say, “The Zoning Board of Appeals denies Case Number ZBA-2008-C-01 based on the fact that the proposed development, while consistent with the 2005 Comprehensive Plan, is in the opinion of the Zoning Board of Appeals not appropriate at this particular site, because it would over-intensify the use of an already over-built site.” Mr. Corten, as the motion maker, and Ms. Uchtmann, as the seconder, agreed with Mr. Welch’s suggested rewording of the motion.

With no further discussion or comments, a roll call vote on the motion was taken and was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion to deny was approved by unanimous vote.

Acting Chair Armstrong proposed a short recess prior to moving on to the next case. With approval of the members of the Zoning Board of Appeals, the meeting recessed at 10:06 p.m. The meeting was re-convened at 10:19 p.m.

**ZBA-2008-MAJ-06: A request by Steve Bantz for a major variance to allow vehicles to back out onto a public street at 202 North Coler Avenue in the City’s R-4, Medium Density Multiple Family Residential Zoning District.**

**ZBA-2008-MAJ-08: A request by Steve Bantz for a major variance to allow parking to encroach 100% into the required front yard at 202 North Coler Avenue in the City’s R-4, Medium Density Multiple-Family Residential Zoning District.**

Acting Chair Armstrong stated that City staff would present both of these cases at the same time since they were regarding the same property. However, the Zoning Board would vote on the two cases separately.

Robert Myers, Planning Manager, began his presentation by noting the zoning of the proposed property, which is R-4, Medium-Density Multiple Family Residential Zoning District. Apartments are allowed by right but must comply with all development requirements. In this case there are currently five units on the property, and the property owner is trying to bring one of the units into compliance. The proposed two major variance requests are to allow parking in a required front yard and to allow vehicles to back out onto a public street. The Zoning Ordinance allows both of these for a single-family home or duplex but not for apartments.

He pointed out that if the Zoning Board of Appeals were to deny these two cases, it would not change the fact that there are five units, and there would still be a demand for parking for the proposed property. The property has no rear or side yard areas so parking can’t be accommodated there. So where are tenants to park? Their options are to park in the street, off-site, or on-site. Although there is a concrete pad in front, it is located in the required front-yard setback. If the property were a single-family or duplex residence, then the residents would be

allowed by right to park in a driveway in the front-yard setback, but because it is an apartment building, the tenants are not allowed to do so..

Mr. Myers mentioned a previous variance approved for this property which allowed them to park two cars off-site elsewhere. The lease for these two off-site parking spaces is expired, and now the petitioner is applying for a separate variance to allow parking on the existing concrete pad in the front-yard setback. If the request is denied, then the petitioner would need to either block off the parking pad or put up some sort of physical barrier to prevent people from parking there.

He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance pertaining to these two cases. He noted that the petitioner was not present at the meeting; however, there are people in the audience who wished to speak.

Mr. Warmbrunn inquired if the garage existed in 1984. Mr. Myers answered yes. Mr. Warmbrunn stated that it seems that the illegally-converted garage is the main problem here. There never was enough on-site parking at this location. It has always been a problem. He wondered if cars parked on the street across Coler Avenue would be a problem for tenants being able to back straight out. Mr. Myers said that may be a possibility.

Mr. Warmbrunn questioned whether the petitioner has ever come before the City asking for permission to park somewhere else. Mr. Myers said that the previously approved variance request granted the tenants permission to park off-site.

Mr. Warmbrunn asked how wide the driveway and concrete pad are in total feet. Is there the required 22-foot length per parking space? Mr. Myers said that he did not know the length of each stall. If the Zoning Board of Appeals feels that they need this information, then they could continue the case until a future date and City staff would supply this information. Acting Chair Armstrong pointed out that Exhibit E: Proposed Parking Plan indicates that there is 26 feet from the sidewalk to the garage. Presumably there is enough depth to park vehicles. Mr. Corten noticed that it did not show the width of the driveway and concrete pad though.

Mr. Welch wondered if City staff expected the petitioner to not attend the meeting. City staff said no, it was not expected. Mr. Warmbrunn asked if City staff knew whether the petitioner had been there but left due to the lateness of the hour. Mr. Myers answered that he looked earlier but did not see the petitioner in the audience.

Ms. Uchtmann questioned if the parking pad was illegal. Was there a permit issued for the pad? Mr. Myers responded that the concrete pad is not illegal. Until recently the City has not required a permit to pour a concrete pad, for parking or otherwise.

Danny Otto, 405 West Illinois, opposes this request. He feels that the Zoning Board of Appeals needs to take a look at what was done in 1984. The petitioner had asked for a variance to get an occupancy permit for four units. The only way to do this was to lease off-site parking spaces, because it was a condition of the variance. No one was in place to enforce whether the petitioner maintained these leases. This is a matter of public record, and the petitioner in the proposed case is assumed to know that. So right now the property owner is out of compliance. One could now

argue that this is a single-family residence. City staff presented this property as being apartments. It is true that the zoning would allow more density, but the apartments in question are on the north side and the east side, where the tenants cannot see the amount of parking in front of their building. All of the homes across the street are currently zoned single-family residences look out and see a parking lot. The City has been promising to help upgrade these neighborhoods. We simply cannot turn front yards into parking lots. The owners of rental properties must simply learn to deal with parking in the neighborhood.

Although City staff recommended approval of the proposed major variance requests, he urged the Zoning Board of Appeals to deny both requests. He reviewed the variance criteria and gave his opinion about each one, which is as follows:

1. The special circumstances were there in 1984. That is why in 1984 the Zoning Board of Appeals granted the variance request with the condition that the owner must find off-site parking spaces.
2. The property is out of compliance. Everything mentioned in the written staff report was true in 1984 so the owner needs to follow what was determined in 1984.
3. Variances go to the property, not to the petitioner. Therefore, one could say that the petitioner did create the problem; albeit, the petitioner is the land owner. The petitioner did create the problem when they converted it to a four-unit building.
4. It is a question of judgment whether front-yard parking will alter the character of the neighborhood. He feels that it does.
5. He feels it is a nuisance to see a parking lot in front of the apartment building.

He believes this would set a bad precedent. The answer to the petitioner is to either convert the garage back to its intended use or provide 2 leased parking spaces.

Steve Ross, of 609 West Green Street, spoke against the request. He stated that Mr. Otto had already expressed many of his points and concerns. One additional comment is that the special privilege is due to the illegal conversion of the garage into an additional apartment unit. This, along with the petitioner not continuing to lease the two off-site parking spaces, are the real reasons for the parking problems. He urged the Zoning Board of Appeals to deny the two requests because it would set a bad precedent. He is worried about land owners closer to his neighborhood wanting to get variances for the same reason.

With no further questions or comments, Acting Chair Armstrong closed the public input portion of the hearing. He opened the hearing up for discussion and motion(s) by the Zoning Board of Appeals.

Ms. Uchtmann moved that the Zoning Board of Appeals deny Case No. ZBA-2008-MAJ-08 because the Zoning Board of Appeals wants to uphold the previous variance requirement as set forth in 1984. Mr. Corten seconded the motion.

Mr. Welch proposed that absent knowing why the petitioner was not present at the meeting that the Zoning Board of Appeals should table the vote. They would not be giving the petitioner either approval or disapproval. The petitioner cannot do anything legally unless the Zoning

Board of Appeals and then the City Council approve the variance requests. After being renoticed, if the petitioner does not appear, then he would not have a problem voting. He feels that if they do not know why the petitioner is not present, then they should afford the petitioner another opportunity to have his voice heard. Mr. Corten agreed with Mr. Welch.

Ms. Uchtmann commented that the petitioner has already stated his reasons in the written petition/application. Mr. Welch said yes, but the Zoning Board of Appeals affords as part of the process an opportunity for the petitioner to appear. He does not see any harm in tabling the vote, especially since the petitioner did not inform City staff that they would not be appearing.

Ms. Uchtmann removed her motion from the table. Mr. Welch, then, moved that the Zoning Board of Appeals continue this case to the next meeting to allow the petitioner an opportunity to appear and speak in favor of their two major variance requests (Case No. ZBA-2008-MAJ-06 and Case No. ZBA-2008-MAJ-08). Mr. Corten seconded the motion. The Zoning Board of Appeals approved the motion by unanimous voice vote.

Mr. Myers announced that the next Zoning Board of Appeals meeting is scheduled for June 11, 2008.

**ZBA-2008-MAJ-07: A request by Marc and Fran Ansel for a major variance to reduce the required front-yard setback to allow for the construction of a garage at 102 West Pennsylvania Avenue in the R-2, Single-Family Residential Zoning District.**

Rebecca Bird presented this case to the Zoning Board of Appeals. The petitioners are requesting the variance so that in replacing a deteriorating garage, a large Bald Cypress tree located close to the existing garage will be protected. Ms. Bird presented site photographs to the Commission.

Ms. Bird explained that Bald Cypress trees are uncommon this far north. The City Arborist has examined the tree and reported that it is one of the most significant trees in the neighborhood, if not in the community. The petitioners' own arborist states that it is one of the oldest and tallest Bald Cypress trees in Champaign County.

She reviewed the location of the existing garage as well as the location of the proposed replacement garage. The petitioners would like to move the garage three feet to help protect the tree. They are also planning to pour the concrete pad for the new garage over the existing concrete pad in order to minimize digging and root damage.

To both avoid the tree and construct a standard-sized garage, the petitioners plan to extend the new garage closer to Broadway Avenue than the existing garage. At 82 feet, the right-of-way for Broadway Avenue is unusually wide. Sixty feet is the standard right-of-way width for new streets. This additional right-of-way provides additional setback distance between the street and the homes not found on other streets.

Ms. Bird reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance. She then read the options of the Zoning Board of Appeals and presented staff's recommendation, which is as follows:

*Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals forward major variance Case No. ZBA-2008-MAJ-07 to the Urbana City Council with a recommendation for approval with the following conditions:*

- 1. The garage shall be constructed in general conformance to the site plan layout submitted as part of the application.*
- 2. The existing garage foundation shall be re-used and incorporated into the new foundation. The Building Safety Division will work with the petitioners to accomplish this.*
- 3. The petitioners shall work with their professional arborist or with the City Arborist to ensure damage to the tree is minimized.*

Mr. Corten asked for clarification on Condition #2. Ms. Bird replied that the petitioners have agreed to reuse the existing garage foundation which shows their commitment to preserve the tree. The Building Safety Division told the petitioners that they could use the existing pad, pour concrete above it to get the eight inches required for the footing, and then slope the driveway up to the garage.

The Acting Chairman provided an opportunity for the petitioners to present any information.

Marc Ansel, petitioner, stated that he and his wife had taken their time in filling out the application to ensure that it contained everything they wanted. They have worked closely with City staff. He felt that what City staff had presented to the Zoning Board of Appeals represents pretty much how he and his wife feel. They would love to preserve the tree but they are cornered in with the space available to them. Given the large setback that Broadway Avenue has and the fact that their lot is a corner lot, they have to deal with two front-yard setbacks. If they are going to save the tree they have no choice but to build the new garage a few feet closer Broadway Avenue.

Mr. Corten noticed that the front property line is right by the edge of the proposed new garage. The driveway will be in the right-of-way, which is owned by the City. Will this cause any problems with City codes? Mr. Ansel stated that they plan to use the same driveway that already exists and that driveways typically cross City property.

Ms. Bird pointed out that from the street it appears as if there is a deep setback. However, both the existing and new garages are very close to the property lines.

The Chairman asked if anyone else in the audience wished to speak on this case, either for or against. No one did so.

Mr. Warmbrunn moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-07 to the Urbana City Council with a recommendation for approval along with the three conditions outlined in the written staff report. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion was approved by unanimous vote.

**ZBA-2008-MIN-01: A request by Maruti Gagan Management, LLC for a minor variance to erect a freestanding sign of 80 square feet in area rather than the maximum 75 square feet allowed by Table IX-1 of the Urbana Zoning Ordinance at 1708 South Philo Road in the B-3, General Business Zoning District.**

Robert Myers, Planning Manager, presented this case to the Zoning Board of Appeals. He noted the location for the proposed sign, which is at the old Centure Bank location. He stated the purpose of the minor variance, which is to erect a freestanding sign of 80 square feet in area. The Zoning Ordinance allows a 75 square foot sign. There are two elements to the proposed sign. One element is the round “Burger King” logo, which is proposed to be 8 feet in diameter. The second element is a lower portion, which is a rectangular reader board that is 24 feet in area. He explained that if you take these two elements separately and add their areas, they equal less than the 75 square feet that would be allowed by right. In this case, the Zoning Ordinance measures the gap/air space between these two elements.

The issue is that the applicant is applying for a franchise from the corporate Burger King. They do not have an infinite number of sizes of logo signs. They have an 8 foot diameter and a 5 foot diameter. Burger King will not agree to the franchise with a 5-foot logo sign. If the reader board is smaller, then they cannot offer meaningful messages because the lettering can only be so small.

Mr. Myers reviewed the variance criteria from Section XI-3.C.2 of the Urbana Zoning Ordinance. He presented staff’s recommendation, which was as follows:

*Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Urbana Zoning Board of Appeals approve the proposed minor variance with the following conditions:*

- 1. That the sign shall substantially conform in geometry to the drawing submitted with the application.*
- 2. That the sign shall not exceed 81 square feet in area as measured by the Urbana Zoning Ordinance.*

Ms. Uchtmann wondered what the total height of the sign would be. Mr. Myers replied that the total height would be 25 feet above grade.

Mr. Corten inquired as to how the proposed sign would compare with McDonalds across the street. Mr. Myers stated that based on scaling from a photograph, the McDonalds sign is approximately 30 feet tall. Mr. Welch commented that he believes the Chinese restaurant sign next door to McDonalds is even taller.

Mr. Warmbrunn asked if the reader board is subject to the three-minute rule. Mr. Myers said yes. Mr. Warmbrunn questioned whether the petitioner would be able to get a complete sentence that is understandable on the reader board for three minutes. Mr. Myers replied yes.

With no further questions for the City staff, Acting Chair Armstrong opened the public hearing up for input from the audience.

Maruti Seth, petitioner, approached the Zoning Board of Appeals to answer any questions that the Zoning Board of Appeals may have. He mentioned that he owns a franchise of Burger King stores in Danville, Rantoul and Tuscola.

Mr. Corten commented that Mr. Seth would be filling in some area that the City of Urbana is attempting to redevelop. Mr. Seth replied that he is trying. He feels it will be a good site for a Burger King development with all of the apartment buildings behind it and a new Walgreen's store down the street.

With no further comments or questions from the audience, Acting Chair Armstrong closed the public input portion of the meeting. He opened it up for discussion and a motion by the Zoning Board of Appeals.

Mr. Corten moved that the Zoning Board of Appeals approve Case No. ZBA-2008-MIN-01 including the two conditions as recommended by the City staff. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion was approved by unanimous vote.

## **7. OLD BUSINESS**

There was none.

## **8. NEW BUSINESS**

There was none.

Mr. Corten moved that the Zoning Board of Appeals approve Case No. ZBA-2008-MIN-01 including the two conditions as recommended by the City staff. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion was approved by unanimous vote.

## 7. OLD BUSINESS

There was none.

## 8. NEW BUSINESS

There was none.

## 9. AUDIENCE PARTICIPATION

There was none.

## 10. STAFF REPORT

Mr. Myers reported on the following topics:

- ◆ The Special Zoning Board of Appeals Meeting is scheduled for June 11, 2008 at 7:30 p.m. in the City Council Chambers.

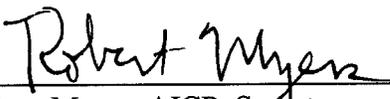
## 11. STUDY SESSION

There was none.

## 12. ADJOURNMENT OF MEETING

The meeting was adjourned at 11:12 p.m.

Respectfully submitted,

  
Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

**MINUTES OF A SPECIAL MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** June 11, 2008

**APPROVED**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Herb Corten, Anna Merritt, Joe Schoonover, Charles Warmbrunn

**MEMBERS EXCUSED:** Paul Armstrong, Nancy Uchtmann, Harvey Welch

**STAFF PRESENT:** Robert Myers, Planning Manager; Lisa Karcher, Planner II; Teri Andel, Planning Secretary

**OTHERS PRESENT:** Steve Bantz, Mark Dixon, Georgia Morgan, Jenny Park, Terri Smart

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**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:32 p.m. Roll call was taken, and a quorum was declared present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF MINUTES**

Since the Zoning Board of Appeals just received a hard copy of the May 21, 2008 minutes prior to the start of the meeting, Chair Merritt deferred the approval of the minutes until the next meeting.

**4. WRITTEN COMMUNICATIONS**

- ◆ Exterior Photos of 202 North Coler Avenue submitted by Robert Myers, Planning Manager, regarding Case No. ZBA-2008-MAJ-06 and Case No. ZBA-2008-MAJ-08
- ◆ Exterior Photos of 2501 South Myra Ridge Drive submitted by Lisa Karcher, Planner II, regarding Case No. ZBA-2008-C-02

## 5. CONTINUED PUBLIC HEARINGS

**ZBA-2008-MAJ-06: A request by Steve Bantz for a major variance to allow vehicles to back out onto a public street at 202 North Coler Avenue in the City's R-4, Medium Density Multiple Family Residential Zoning District.**

**ZBA-2008-MAJ-08: A request by Steve Bantz for a major variance to allow parking to encroach 100% into the required front yard at 202 North Coler Avenue in the City's R-4, Medium Density Multiple-Family Residential Zoning District.**

Robert Myers, Planning Manager, presented the two cases together to the Zoning Board of Appeals. He explained that these two cases were postponed from the May 21, 2008 meeting at the request of the Board members to allow the petitioner an opportunity to attend the meeting and answer any questions they may have.

Mr. Myers stated that since he gave a full presentation at the previous Zoning Board of Appeals meeting regarding the proposed two cases, he would simply give a summary of the information at this meeting. He noted that the applicant was present and available to answer any of the Board members questions.

He described the proposed property and the surrounding adjacent properties by noting their current land uses and zoning designations. Referring to Exhibit A (Location and Existing Land Use map), he showed where the property is located in the City of Urbana. He pointed out that there is no real backyard or side yard to the north. It appears to be a single-family home that was converted into a multi-family apartment building. There are currently five units in the building.

The purpose of the variance request in ZBA Case No. ZBA-08-MAJ-08 is to allow five parking spaces in the driveway. The petitioner is required to provide five parking spaces, one for each unit. He pointed out that there is no other place to provide parking on-site except for in the driveway, which is in the front-yard setback area. He talked about a variance that the previous owner was granted that allowed two vehicles to be parked in the two-car garage and provide two off-site parking spaces. At the time, there were only four units in the building.

Subsequently, one of the property owners converted the garage into a fifth apartment unit. He mentioned that the City staff is currently in the process of trying to get the property into compliance. The current property owner wants to do the same.

Referring to Exhibit C, he showed how the two major variance requests relate to the 2005 Comprehensive Plan. Regardless of what the Comprehensive Plan's land use policy is for the proposed site, the fact is that it is still an existing apartment building, and they are not allowed to park in the front-yard setback or back out onto a street.

Mr. Schoonover questioned whether they took into consideration when getting a permit for the fifth unit that they needed to find alternative parking spaces for the tenants. Mr. Myers explained that the previous property owner did not get a permit for the fifth dwelling unit in the garage. This is what is at issue right now with getting the building into compliance with all the

building and zoning codes. Another option for the petitioner would be to ask for a variance to allow off-site parking, but how realistic is it to expect the tenants to walk back and forth to the parking spaces when there is a concrete pad in the front yard.

Mr. Warmbrunn reviewed the options of the Zoning Board of Appeals, which are as follows: 1) deny the proposed variance request to allow parking encroachment, which would allow five apartment units with no onsite parking; 2) suggest that the petitioner turn the fifth unit back into a garage, which will allow two-onsite parking spaces and require two-offsite parking spaces; and 3) approve the variance request for parking encroachment, which would allow five onsite parking spaces. Mr. Myers replied that if the Zoning Board of Appeals denies the proposed variance request for parking encroachment, then the property would be in violation of not meeting the zoning requirements for parking. The property is in violation now, and that is the reason for the petitioner's request for the two variances. He mentioned that the City can offer suggestions or recommendations for solutions, but the property owner is the one decides what solution to pursue. He added that since it is a major variance request, if the Zoning Board of Appeals denies the request by a two-thirds majority vote, then the request is not forwarded on to the City Council. If the Zoning Board of Appeals recommends approval, then the case is sent to the Urbana City Council, and they make the final decision.

Mr. Warmbrunn asked how many feet wide does the City require for each parking space. Mr. Myers said that one of the sketches shows each space to be 8-1/2 feet wide. Chair Merritt wondered if that would meet the City's regulations. Mr. Myers yes, 8-1/2 feet is the required width for parking. City staff has recommended two conditions for the parking area to be placed on the approval of the proposed variance, which are as such: 1) The parking lot shall be striped and contain wheelstops and 2) The curb cut shall be expanded to allow access to the parking spaces easier. However, he received a phone call from a concerned neighbor that believes striping the parking area would give it less of a single-family feel.

Mr. Warmbrunn questioned whether the parking area is 42-1/2 feet wide to accommodate five cars. Mr. Myers answered by saying that if it is not 42-1/2 feet wide, then it is pretty close. The Zoning Board of Appeals could note this as a condition for approval.

Mr. Warmbrunn inquired as to whether there would be on-street parking on the other side of Coler Avenue, where the tenants of 202 North Coler Avenue would be backing out into. Mr. Myers said yes.

Chair Merritt commented that in affect, while the Zoning Board of Appeals is being asked for a variance to allow parking, they are also being asked to sanction the illegal construction of a number of years ago with the fifth unit. She feels uncomfortable taking on this task. Mr. Myers responded by saying that the City staff is not asking the Zoning Board of Appeals or the City Council to approve the fifth unit. They are simply trying to work with the current owner in bringing the property up to compliance with the building and zoning regulations.

When a previous owner created the violation, it does bring up the questions, "Who do you prosecute? How do you move forward with the prosecution?" Mr. Myers pointed out that parking is not the only violation occurring at this property. There are many building code

violations that need to be addressed as well. The petitioner, Steve Bantz, has applied for a building permit to bring some of these issues into compliance; however, the Building Safety Division has held up issuing the petitioner the building permit until the variance requests have been decided upon, because they do not want the owner to spend a lot of money on the improvements if he cannot get zoning approval for the parking. The number of dwelling units allowed does hinge upon parking.

Mr. Schoonover wondered how many years ago the house was grandfathered in. He knew the owner of the house 15 years ago. Mr. Myers deferred the question to the petitioner at his request.

With no further questions for the City staff by the Zoning Board of Appeals, Chair Merritt opened the hearing up for public comments, issues and/or questions. She swore in members of the audience indicating they may want to speak during the public hearing.

Steve Bantz, petitioner and property owner of 202 North Coler Avenue, stated that he has gathered bits and pieces of information in the past year that he has owned the property. He understood the building to start out as a three-unit apartment building. The actual footprint of the building has not changed since it was built in 1952 or 1953. Sometime in the last 15 to 20 years, the fourth unit was added to the second floor.

When he purchased the property about a year ago, his contractor informed him that one of the units was not in compliance with the City's electrical code. When he applied for an electrical permit, City staff discovered some of the other regulations that the property was violating. He did not know that there were any issues with the parking, because prior to purchasing the home, he contacted the City to see if there were any code violations and was told that there were not. So, this has been a very unpleasant surprise to find out that there is a zoning issue with parking.

Mr. Corten wondered if Mr. Bantz knows of any parking available elsewhere other than right in front of the proposed property on Coler Avenue. Mr. Bantz stated that there is a little bit of street parking. In terms of the history of tenant parking for this property, he believed that they have always parked in the driveway apron since it was built.

Mr. Corten asked if the driveway was made of concrete. Mr. Bantz said yes. It will need to be expanded though.

Mr. Corten inquired as to whether he lives in the apartment building. Mr. Bantz replied no.

Mr. Corten asked if Mr. Bantz rented out all five units. Mr. Bantz said yes.

Mr. Myers clarified that the previous variance for parking was granted in 1984.

Mr. Corten questioned if there had been any complaints about loud parties in the proposed building. Mr. Bantz said no, one of the reasons is because his son lives on the second floor apartment. His son gets his rent subsidized in return for helping him with things like that.

Mr. Corten wanted to know how many people could live in each apartment. Mr. Bantz explained that the apartment at 202A is a one bedroom unit. 202B is a two bedroom unit. 202C is a two bedroom unit. 202D is the second floor apartment and is a two bedroom unit. 202E is an efficiency apartment.

Chair Merritt asked if the sharp angle of the parking space to the south is due to the tree in the front yard. Mr. Bantz replied no. Mr. Corten wondered if Mr. Bantz would be willing to remove the tree. Mr. Bantz said that he would not want to do that, but if the City required it, then he would be willing. However, he believes that they could straighten the space out without having to remove the tree.

Mr. Warmbrunn inquired as to how much room there is from the side of the building to the north property line. Mr. Bantz answered by saying that there is about three to four feet. He referred to a photo that had been submitted by Mr. Myers. The photo shows a bush on the north side of the property. He mentioned that he had the bush removed to allow more room for the tenant who parks on the north end to be able to get in and out. He did not know for sure how many feet were between the building and the north property line.

Mr. Warmbrunn noticed a difference between the sketch and what is shown in the photographs of the driveway. It appears that the first parking spot is about five or six feet further north in the sketch than in the photos. Mr. Bantz assured the Zoning Board of Appeals that the apron does go several feet further north of the building.

Mr. Corten wondered if the tenants were students. Mr. Bantz stated that there are two students, but the other tenants are single, working people.

Mr. Corten asked Mr. Bantz if he would be upset if the Zoning Board of Appeals were to suggest that the fifth unit is not valid, which would reduce the number of required vehicles to four and reduce the number of apartment units to four. This would give him the opportunity to open the garage up again. Mr. Bantz said that it would be a huge financial hit. He wants to work with the City in bringing the property into compliance. He was prepared to have the electrical work done last year. The fifth unit is probably worth \$40,000 to \$50,000.

He suggested that the Zoning Board of Appeals could defer action on this case to take an opportunity to drive by and see the property and driveway. Tenants have been parking as shown in the photographs for 20 years. He feels that it is a good property, and it is an asset to the City of Urbana.

Mr. Warmbrunn commented that he had driven by the property several times prior to the May 15, 2008 meeting. He feels that it looks terrible to have five cars parked as shown in the photographs. He is trying to find justification in 2008 to overrule the decision that was made in 1984 on the previous variance request. He can imagine that parking was approved because the garage was still being used as a garage, and the Zoning Board of Appeals at the time required two off-site parking spaces. Now, the request is for five parking spaces in the front yard. He still does not know the width of the driveway to determine if there is enough room legally for five cars to park there.

In this neighborhood, there are single-family residential dwellings across the street and to the south. If he lived in one of the single-family homes, he would have a problem with five cars being parked in the front yard across the street. Would Mr. Bantz be in favor of providing off-site parking of some sort? Mr. Bantz replied that off-site parking is not that easy to get.

Mr. Warmbrunn remarked that lately the Zoning Board of Appeals has been presented with several cases asking for variances and conditional use permits to allow things that a good realtor should have informed them about prior to purchasing the properties. Mr. Bantz had mentioned that he checked with City staff about any outstanding violations, etc. prior to purchasing the property. He suggested that maybe City staff could create a database that lists code violations, permits and variances that have been issued for properties in the City, if one does not already exist. Then, when a person goes to buy a house, they can go online and click on the database and find out if there will be or have been any problems with the property they are interested in purchasing.

Mr. Bantz commented that he has been trying to work with the City staff. The proposed variance request is an idea that surfaced as a way to bring the property into compliance with the Zoning Ordinance, so he can get on with the life safety issues and bringing the property up to comply with the building code. He reiterated that tenants have been living there and parking like this for probably the last 20 years.

Chair Merritt inquired if the option of providing off-site parking at Glenn Poor's is still available. Mr. Bantz explained that he spoke with the owner, and the owner said he was no longer interested. He expressed his concern about being able to keep the tenants from parking in the driveway.

Mr. Warmbrunn asked staff if the Zoning Board of Appeals denies the proposed variance request to allow parking encroachment, then parking would not be allowed on the property at all, correct? Mr. Myers said that is correct. If the petitioner converted the fifth apartment unit back into a garage, then tenants would still need to have permission to be able to back out of the driveway, because it is not allowed in the R-4, Medium Density Multiple Family Residential Zoning District. In addition, he did not believe that the concrete could be pulled up and removed in the event that the property owner should someday want to convert the garage back into a garage use. As a result, it will be difficult to enforce no parking in the driveway.

Mr. Corten wondered what the problem is with allowing people to back out of multi-family properties, but yet it is permitted with properties that have single-family homes or duplexes on them. Mr. Myers responded by saying that this is a good question. Single-family homes do not create as much traffic than higher density apartment complexes, so it increases the chances of conflicts or accidents happening.

Mr. Corten noticed that it appears to be difficult for tenants to get in and out of their vehicles with how they are parked in the photographs. Mr. Myers stated that 8-1/2 feet is a fairly narrow parking space, but it would just meet the code requirements.

Chair Merritt wondered what would happen if the Zoning Board of Appeals does not approve the variance request for the parking encroachment. Mr. Myers said that the petitioner would then need to find another solution for meeting the zoning requirements. The solution could include the

following: 1) the property owner removing the fifth apartment unit, converting it back into a garage and finding two off-street parking spaces elsewhere, which would comply with the 1984 variance that was granted; 2) the property owner could apply for a separate variance to waive the parking requirements for the property, or 3) the property owner could apply for a separate variance to allow off-site parking for all five spaces. The problem with any of these solutions is that the tenants will need somewhere to park, and if parking is not allowed in the driveway, then it will need to be found or provided off-site, which means it will be hard for the City to enforce tenants not parking in the driveway. Tenants will get tired of walking to and from their vehicles, especially since there is a concrete pad located right in front of the house.

Mr. Corten asked if two cars could still get through on Coler Avenue, even though there is parking on-street. Mr. Myers said that it is possible for two cars to pass each other even with a car parked on one side of the street.

Georgia Morgan, of 804 West Nevada Street, spoke in opposition of the proposed two variance requests. She mentioned that over the past few years she has seen too many yards over rental properties converted to parking spaces. Although this is not what is happening in these two cases, she would hate to think that it has become a trend for owners of rental properties to pave their front yards and then ask for dispensations to make it legal afterwards.

Granting the proposed request will send a message that the City of Urbana is a pushover. It is okay to do what you want, and later come back claiming a hardship. She urged the Zoning Board of Appeals to think long and hard before making a decision.

Mr. Schoonover asked again if every time a property sells, are any non-conforming issues automatically grandfathered in. Or is it grandfathered after a certain period of time has elapsed? Mr. Myers replied that there is not really a set time. Mr. Schoonover feels the fifth apartment unit has been grandfathered even though it was constructed illegally. The previous owner converted the garage without seeking approval from the City of Urbana, and we are just going to let the property owner keep it. He commented that it seems to him that something should have been taken care of. Mr. Myers explained that the fifth unit is not grandfathered. Previously, there were four apartment units there, and according to our records, they are in compliance. Mr. Schoonover remarked that the fifth unit does not exist then. Mr. Myers replied it exists illegally. The property owner and the City staff are trying to bring it into compliance by requesting the proposed variance request. He pointed out that just because the solution to allow two parking spaces in the garage and two off-site parking spaces was approved by the Zoning Board of Appeals in 1984, it does not mean that is the only solution to the problem today.

Mr. Warmbrunn suggested reading the testimonies of Danny Oto and Steve Ross from the minutes of the previous meeting. Chair Merritt did not feel that they could read the minutes from the May 21, 2008 meeting because they had not been approved and had not become part of the record as of yet. Mr. Myers said that the May 21, 2008 Zoning Board of Appeals minutes were considered a communication, and the Board could approve them at the next meeting. Since they are an item under "Written Communications", the Board can make reference to them.

Mr. Warmbrunn explained that he was only attempting to point out that two people spoke out against the proposed variance to allow parking encroachment at the previous meeting. The case was continued to tonight's meeting to allow the petitioner an opportunity to speak in favor of his requests. Mr. Myers stated that because of the continuation anyone who spoke at the previous meeting, their testimony is part of the official record. Even though the minutes have not been approved, it is still part of the record that Mr. Oto and Mr. Ross came and spoke in opposition at the previous meeting.

Mr. Warmbrunn questioned what the proper way to proceed would be...if they do not want the variance to pass, should they move to deny or should they vote down a motion to approve? Mr. Myers explained that according to the Zoning Ordinance, in order for the variance case to allow parking encroachment to be forwarded to the Urbana City Council for their approval, it would require a 2/3 majority of the Zoning Board of Appeals members voting. If a motion to approve does not receive a 2/3 majority vote in favor, then the motion to forward the case would fail. Therefore, the application would fail. However, this would leave the Zoning Board of Appeals without necessarily approving any findings of fact.

So, another way to do this is to make a motion to approve. If a motion to approve does receive a 2/3 majority with findings of fact, then okay. But, if the motion failed, then the Zoning Board of Appeals could come back with a second motion for denial with certain findings of fact included. This way they would have findings of fact for their motion.

Mr. Corten moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-06 to the Urbana City Council with a recommendation for approval.

Mr. Schoonover asked if this request was not part of the variance request in 1984. Mr. Myers said no. The previous owner did not apply for or receive a variance to allow tenants to back out onto the street. Mr. Schoonover responded by saying that the previous owner did obtain a variance permit to allow two parking spaces in the garage. How did the City expect them to leave without backing out onto the street? Mr. Myers stated that he was not sure if multi-family tenants were allowed to back out onto the street in 1984.

Mr. Corten said that he does not see anyway to handle this to where the tenants do not have to back out. There was discussion about which case they should vote on first. They are both dependent upon each other.

Mr. Warmbrunn seconded the motion. If they approve the variance request to allow backing out onto the street, then no matter what parking solution is presented to them either in the next case or in the future, the property owner will have permission for his tenants to back out.

Roll call on the motion was as follows:

Mr. Corten	-	Yes	Chair Merritt	-	Yes
Mr. Schoonover	-	Yes	Mr. Warmbrunn	-	Yes

The motion passed by unanimous vote.

Mr. Warmbrunn moved that the Zoning Board of Appeals deny Case No. 2008-MAJ-08, because it is a special privilege, and it is not due to special circumstances. The problem is something that has been created from a deviation from a variance that was granted in 1984 by the Zoning Board of Appeals. Mr. Schoonover seconded the motion.

Mr. Warmbrunn explained that he cannot vote in favor of allowing five cars to park in the front yard. He does not understand the diagram well enough to do so.

Roll call on the motion was as follows:

Mr. Corten	-	Yes	Chair Merritt	-	Yes
Mr. Schoonover	-	Yes	Mr. Warmbrunn	-	Yes

The motion to deny passed by unanimous vote. Mr. Myers stated that since the case did not get a 2/3 majority vote for approval of the variance, then the case will not be forwarded to the City Council. The application is denied.

## 6. NEW PUBLIC HEARINGS

### **ZBA-2008-C-02: A request for a conditional use permit filed by The Atkins Group to expand the existing daycare at 2501 South Myra Ridge Drive, in the B-3, General Business Zoning District.**

Lisa Karcher, Planner II, presented this case to the Zoning Board of Appeals. She explained the purpose for the request, which is to construct a 12,800 square foot addition to the existing daycare facility. She described the proposed site noting the current land use and zoning of the site itself as well as of the surrounding properties. She gave some background information on the existing daycare, noting its hours of operation, etc. She talked about the proposed Site Plan, which is Exhibit F in the packet of information. She reviewed the requirements for a conditional use permit according to Section VII-2 of the Urbana Zoning Ordinance.

Mr. Corten questioned why the five-foot landscape buffer was not built along the northern property line when the daycare facility was originally developed. Ms. Karcher answered that City staff just recently learned that the buffer was not installed but is working with the petitioner to meet that requirement.

Ms. Karcher read the options of the Zoning Board of Appeals and presented staff's recommendation, which was as follows:

*Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Zoning Board of Appeals grant the proposed conditional use in case ZBA-2008-C-02 for the reasons articulated in the written staff report and along with the following conditions:*

1. *The general layout of the site shall be completed in general conformance to the layout depicted in the site plan submitted and attached to the written staff report as Exhibit E.*
2. *A landscape buffer shall be constructed along the northern property line of the development to adequately screen the entire daycare facility from the adjacent residential uses. The landscape buffer shall be included in the final landscape plan. The plan shall be reviewed and approved by the Zoning Administrator and the City Arborist.*

Mr. Schoonover inquired as to whether the landscape buffer on the north side of the property has to be a fence or bushes. Also, is the entire area fenced? Ms. Karcher showed photos of the property to show that the fence goes around the building and fences in the playground area.

Mr. Corten wondered if the children go outside of the fenced in area for any reason. Ms. Karcher deferred this question to the petitioner.

Mr. Warmbrunn asked if the fence is located on the property line. Ms. Karcher stated that when the plans were submitted for a conditional use permit, the fence was shown as being two to three feet off the property line. However, the petitioner has an exact measurement for the Zoning Board of Appeals.

Mr. Warmbrunn questioned if the original conditional use permit granted in 2004 included a playground on the southwest side of the building. Ms. Karcher referred to Exhibit D, which is a copy of the decision sheet from that case. It includes a copy of the Site Plan. The playground is indicated by a square in the upper left corner of the Site Plan.

Mr. Warmbrunn inquired as to whether the petitioner would be eliminating any playground area as well as parking area. Chair Merritt understood from the Site Plan that they would be keeping the original playground and adding a second one. Ms. Karcher pointed out that the daycare would not actually lose any parking. They are just relocating the parking further south.

Mr. Warmbrunn recalled that in 2004, the City did not regulate daycare use because the State of Illinois regulated the operation of daycare facilities. Does the City currently have any regulations stating that there needs to be a certain amount of playground for x number of children? Ms. Karcher replied that the State of Illinois regulates this with daycare facilities. She believed that is the reason the playground is located as close to the north property line as it is to ensure that they have adequate playground area that is required.

Chair Merritt asked what City staff means by “five-foot depth” of landscape buffer. Ms. Karcher explained that it means the buffer should extend five feet deep along the property line. Chair Merritt wondered if the density of the buffer is defined in the Zoning Ordinance. Ms. Karcher said yes. The City has different requirements for buffering based on the zoning districts.

Mr. Warmbrunn questioned if there was a condition on the original conditional use permit requiring a five-foot landscape buffer so the playground would not affect the neighboring

properties. Ms. Karcher noted that it was not a specific condition placed on the conditional use permit. According to the Decision Sheet, Exhibit D, it states the following, *“That the development should be completed in full conformity with all applicable provisions of the Urbana Zoning Ordinance.”* This is a catch all for everything.

Mr. Warmbrunn stated that he drove by the daycare facility and noticed a group of children playing around the picnic tables outside of the fenced area. He recalled that it was the desire of the Zoning Board of Appeals to keep the children fenced in so they would not run out into traffic. Is this something that they should address in the future? Ms. Karcher pointed out that the Zoning Ordinance does not regulate this. The petitioner just came up and told her that she could address this issue.

With no further questions for City staff from the Zoning Board of Appeals members, Chair Merritt opened the hearing up to take public input.

Jenny Park from Meyer, Capel Law Firm mentioned that she is the attorney for The Atkins Group. She introduced Mark Dixon, of the Atkins Group, and Terry Smart, one of the owners of the Little Hearts & Hands daycare facility. She stated that they are available to answer any questions or concerns that the Zoning Board of Appeals may have. She believes that Ms. Karcher presented the information fairly well.

Ms. Smart addressed Mr. Warmbrunn’s concern regarding the group of children he saw playing outside the fence. She noted that they are school-aged children and are allowed by the State of Illinois to be supervised outside of a fenced area. However, she said that the picnic area has been contracted to be fenced in.

Mr. Warmbrunn noticed that they would be adding a new playground on the southwest side of the building. He wondered if the entire west side would be considered playground area as well. Mr. Dixon showed where the fenced in and playground areas would be located on the Site Plan. He explained that the west side of the building would not be a playground area. It is just going to be solid terrain. The fence will prohibit the children from getting back behind there on the north and south sides of the building.

Mr. Dixon answered a previous question about the size of the playground area. He clarified that the Department of Children and Family Services (DCFS) dictates the size of the playground area. Mr. Warmbrunn inquired as to whether DCFS regulates the number of children and what ages you can have. Ms. Smart replied by saying yes. They figure so many square feet per 25% of your maximum capacity.

Mr. Corten noticed that even though they plan to double the number of children at the daycare facility, they only plan to increase staff by 18 workers. How do they explain this? Ms. Smart said that the State also has staff-child ratio. Since the expansion will be for older children, so it takes a lower amount of staff. The really young ones take more staff.

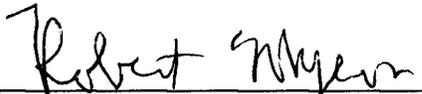
**11. STUDY SESSION**

There was none.

**12. ADJOURNMENT OF MEETING**

The meeting was adjourned at 9:12 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

**MINUTES OF A REGULAR MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** September 17, 2008

**APPROVED**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Paul Armstrong, Herb Corten, Anna Merritt, Charles Warmbrunn,  
Harvey Welch

**MEMBERS EXCUSED:** Nancy Uchtmann, Joe Schoonover

**STAFF PRESENT:** Robert Myers, Planning Manager; Rebecca Bird, Planning Associate;  
Teri Andel, Planning Secretary

**OTHERS PRESENT:** Everett Dade, Randy Donoho, Kevin Gaddis, Alice Novak

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**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:30 p.m. Roll call was taken, and a quorum was declared present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF MINUTES**

**May 21, 2008 Meeting Minutes:**

Mr. Armstrong moved that the Zoning Board of Appeals approve the minutes as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

**June 11, 2008 Special Meeting Minutes:**

Mr. Corten moved that the Zoning Board of Appeals approve the minutes as presented. Mr. Warmbrunn seconded the motion. The minutes were approved by unanimous voice vote.

**4. WRITTEN COMMUNICATIONS**

- ◆ Updated Staff Reports for both Case No. ZBA-2008-MAJ-09 and Case No. ZBA-2008-MIN-02
- ◆ E-mail from Jenelle Weaver
- ◆ E-mail from Evan H. DeLucia
- ◆ E-mail from Leslie DeLucia
- ◆ E-mail from Becky Mead
- ◆ Revised Site Plan submitted by Randy Donoho
- ◆ Corner Lot Property Survey submitted by Alice Novak
- ◆ Garage Survey submitted by Alice Novak

Chair Merritt asked that anyone who might want to testify to please stand and raise their right hands. She then swore in members of the audience who wished to speak.

## 5. CONTINUED PUBLIC HEARINGS

There were none.

## 6. NEW PUBLIC HEARINGS

**ZBA-2008-MAJ-09: A request by Robert Wyer for a major variance to build a 3-foot addition onto an existing garage that will encroach approximately 15 feet into a 25-foot required front yard at 401 West Delaware Avenue in the R-1, Single-Family Residential Zoning District.**

**ZBA-2008-MIN-02: A request by Robert Wyer for a minor variance to build a garage encroaching 25% into the required 29.5-foot front yard at 401 West Delaware Avenue in the R-1, Single-Family Residential Zoning District.**

Rebecca Bird, Associate Planner, presented the two cases together to the Zoning Board of Appeals. She referred to the updated staff report that was handed out prior to the start of the meeting. She began with a brief introduction by explaining the purpose of each of the proposed variance requests. She described the site noting the location of the house in relation to Carle and Delaware Avenues. She pointed out the zoning and future land use designation of the proposed site as well as that of the surrounding area.

Regarding the major variance case Ms. Bird talked about the front-yard setback of the other properties along Carle Avenue. She showed photos of the proposed property along Carle Avenue. She reviewed the variance criteria according to Section XI-3 of the Urbana Zoning Ordinance. She read the options of the Zoning Board of Appeals for this case and presented staff's recommendation, which was as follows:

*Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-09 to the Urbana City Council with a recommendation for approval and with the following conditions:*

1. *The addition shall be constructed in general conformance to the site plan layout submitted as part of the application and attached to the written staff report.*
2. *The petitioner shall close the curb cut along Carle Avenue.*
3. *The property owner shall provide two on-site parking spaces as required by the Urbana Zoning Ordinance.*

Regarding the minor variance case, Ms. Bird talked about the front-yard setback of the properties along Delaware Avenue. She showed photos of the proposed property along Delaware Avenue. She reviewed the variance criteria according to Section IX-3 of the Urbana Zoning Ordinance. She read the options of the Zoning Board of Appeals for this case and presented staff's recommendation, which was as follows:

*Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals approve Case No. ZBA-2008-MIN-02 with the following conditions:*

1. *The garage shall be constructed in general conformance to a revised site plan layout submitted to and approved by the Zoning Administrator as discussed in the public hearing on this case.*
2. *The garage shall have a setback from the Delaware Avenue property line of a minimum of 25.25 feet, putting it in line with the front of the house along Delaware Avenue.*
3. *The garage shall be positioned so that it is not in line with the streetlight and the location shall be approved by the Director of Public Works.*
4. *The curb cut on Carle Avenue will be removed and landscaping installed.*

Robert Myers, Planning Manager, clarified that although the applicant has applied for the front-yard setback for the garage to be 22.1 feet from the Delaware Avenue right-of-way, City staff is recommending a 25.25 setback instead which would be in line with the house. The large-format site plan submitted by the petitioner's representative prior to the start of the meeting shows what the petitioner has applied for. Mr. Warmbrunn asked if the City staff was recommending against the Site Plan submitted. Ms. Bird said that is correct.

Mr. Warmbrunn wondered what the percentage would be for the 22.1 foot setback that the petitioner is requesting. Ms. Bird stated that 22.1 feet would be a 25% encroachment into the front-yard setback.

Mr. Warmbrunn questioned if staff was recommending that the petitioner move the garage closer to the west property line to avoid the street light along Delaware Avenue as opposed to giving the petitioner the option to move the streetlight. Ms. Bird answered that City staff would be okay with the petitioner moving the streetlight as well. A complication is that the petitioner is currently out of the country, and so the contractor and the petitioner's representative are in attendance of this meeting. They are unsure whether Mr. Wyer would rather move the streetlight

or move the garage over further west. Either way, staff's analysis is the same in that the case is about the setback from the front rather than side property line.

Mr. Warmbrunn asked if the petitioner built the garage within the required setback, then he would be able to build by right and would not need approval of a variance, correct? Ms. Bird said that this is correct.

With no further questions for City staff from the Zoning Board of Appeals, Chair Merritt opened the hearing for public testimony.

Randy Donoho, 714 South Urbana Avenue, said that he is the general contractor for this project. He mentioned that the property owners are currently on sabbatical in Hong Kong. Mr. Wyer's concern is to have the maximum allowable variance for the garage setback along Delaware Avenue. There are a lot of windows on the west side of the house, and he wants to keep as much of the view as possible. He has not heard from Mr. Wyer about whether they should move the garage to the west or to make arrangements with the City to move the streetlight. Mr. Donoho explained that Mrs. Wyer has spinal fusion, and stairs are a big problem for her. There currently is no bedroom or full bath on the first floor. They are planning to turn the existing garage into a bedroom and full bath. Some of the landscape trees will need to be removed regardless of where the garage is built. However, there are plenty of trees on the property so it will not be that noticeable.

Mr. Corten wondered if there will be a walkway out to the existing garage. Mr. Donoho pointed out that the property is a lot and a half in size, and they did not know if it would be possible to keep the concrete pad where the existing garage is located in order to be able to drop Mrs. Wyer off closer to the house.

Concerning the minor variance request, Mr. Donoho agrees that it would be more aesthetically appealing to have the garage in line with the house, but Mr. Wyer wants to pursue the full 25% encroachment for a minor variance.

Mr. Warmbrunn noticed in the staff report for the minor variance, a recommended condition for approval is that the petitioner will landscape where the existing driveway is. For the major variance, staff's recommended condition is that the petitioner close the curb cut. Ms. Bird agreed. Mr. Warmbrunn inquired as to whether the petitioner would be able to leave the concrete pad or will he have to remove it. Mr. Myers clarified the when a curb cut is closed, some landscaping would need to be done to create a level ground surface behind the curb. As part of this, at least part of the driveway (the apron) would need to be taken up because it would extend into the right-of-way. The concrete pad on the private property technically could remain. There would be no access to it, because the curb cut would be removed. However, aesthetically it would be most desirable to remove the entire concrete pad. Mr. Donoho commented that he is positive that the Wyer family would want to remove the concrete pad because they have spent a lot of money on landscaping.

Mr. Warmbrunn questioned if Mr. Donoho would have any problem with a 25.25-foot setback along Delaware Avenue. Mr. Donoho answered that he did not see a problem with it if they also

moved the garage further west. By doing so, it would not block as much of the view which is the reason for requesting a 22.1-foot setback. However, he's unsure what Mr. Wyer will decide regarding the streetlight. He may decide to incur the cost of moving the streetlight.

Mr. Corten inquired as to whether the proposed garage would satisfy the recommended requirement by City staff for the petitioner to provide two onsite parking spaces. Mr. Myers replied yes.

Mr. Myers asked Mr. Donoho the width of the proposed driveway off Delaware Ave. Mr. Donoho explained that the driveway will be 18 feet wide, and the garage door is 16 feet wide, which would allow about a foot on either side of the garage door. Mr. Myers said he asked this question because the proposed garage would just barely be wide enough to open car doors. There won't be any room for storage on the sides of the garage. Mr. Donoho responded that if the City wants them to build a wide driveway and garage, then they will. However, they are already planning to provide a driveway that will be a foot wider than the City's minimum requirement. Mr. Myers replied that he was not suggesting that they need to widen the garage. He simply wants the property owners to understand what this will mean in terms of storing their cars.

Mr. Corten wondered if they had discussed constructing a sidewalk in the right-of-way along Carle Avenue. Mr. Donoho responded that they probably did not consider this. There is not a lot of room in front of the house along Carle. Much of their landscaping would have to be removed to construct a sidewalk there, which he is sure the property owner would not like. Mr. Welch commented that a sidewalk would need to be constructed all the way down Carle Avenue to Florida Avenue and not just be constructed in front of the proposed site. Mr. Donoho said that there are only two houses on this block. Mr. Myers responded that he is aware of no City plans to construct a sidewalk along Care Ave., and if it were to happen it would be constructed in the right-of-way and not on private property.

Mr. Armstrong pointed out that the Zoning Board of Appeals has two options. The first is to allow the garage to encroach 25% into the required front yard setback along Delaware Ave. The second option is to require the petitioner to build the garage in line with the house. He asked if the garage is built in line with the house, would they still need a variance to do so. Ms. Bird said yes, because the house encroaches into the required 29.25 foot setback. Mr. Myers added that City staff spoke at length with the petitioner to find alternate solutions, and he felt strongly that this was the only viable solution. Obviously the easiest solution would be for the petitioner to build within the required setbacks, but Mr. Wyer feels very strongly about light, the landscaping, etc.

Mr. Welch inquired about the trees. If they move the garage further west, wouldn't they need to remove more trees than originally planned? He stated that it appears to him that moving the garage back to the fence in line with the house would do the least amount of damage to the trees. Some of the correspondence from neighboring property owners asks the Zoning Board of Appeals to deny the variance request to construct the new garage because they feel that a reduction in the setback might be detrimental to the character of the neighborhood. In fact, it appears that if they built the garage within the setback lines, it would just be detrimental to the neighborhood, because they would need to remove many of the trees. Chair Merritt agreed that

by denying the request, the property owner could then build a garage by right in a location that would affect the neighborhood just as much.

Mr. Corten inquired about the roof. Mr. Donoho responded that the garage would have a truss roof system. Although it would not match the pitch on the house, because the house has an extreme pitch – 16/12 – but the new garage would have a 10/12 pitch which is steep.

Mr. Corten commented that it does not appear to him that the new garage would affect the light coming into the back yard. Mr. Donoho stated that the whole back side of the house facing the west is flush with windows. By moving the garage as close to Delaware Avenue and as far west as possible, they are trying to comply with the property owner's wishes.

Mr. Warmbrunn said that the neighboring property at 405 West Delaware is set back 23 feet from the property line. The difference between this property and the proposed garage would be less than one foot. The property owner who lives at 407 West Delaware wrote a communication objecting to the proposed garage, but she will not be able to see past the house at 405 West Delaware. So to him the question is should they move the streetlight or should they move the garage further to the west. He personally likes keeping the garage close to the house and moving the streetlight. Mr. Donoho replied that the petitioner may very well agree that this is the better option and that they are willing to incur the cost of moving the streetlight.

Mr. Corten pointed out the Zoning Board of Appeals is not required to consider aesthetics. They are to decide whether the proposed variance requests meet the requirements.

Mr. Warmbrunn asked for clarification on how to declare what the setback should be. Chair Merritt said that the Zoning Board of Appeals could make other conditions.

Mr. Welch commented that he would be in favor of following staff's recommendation, which would line the garage up with the fence and the existing house. It would look better and be more pleasing to the eye. Ms. Bird pointed out that the fence is not quite accurate on the site plan. The fence actually starts at the house and extends somewhat diagonal about three or four feet towards Delaware Avenue, then it extends parallel with Delaware Avenue. Mr. Donoho added that at this point, they are not sure if they will be building a new fence or what will happen with it. Mr. Welch stated that in that case, he feels the garage should align with the house. It would look better. Mr. Donoho agreed and mentioned that this was their original recommendation to the property owner.

Kevin Gaddis, of 2246 East County Road, 200 North in Longview, Illinois, approached the Zoning Board of Appeals to speak in favor of the proposed two variance requests. Chair Merritt swore him in.

Mr. Gaddis mentioned that he has been the caretaker and handy man for the Wyers since 1995. He takes care of their finances and their property while they are in Hong Kong. Mrs. Wyer has problems with stairways due to a degenerative condition. Her condition will only get worse as she gets older. They have a young child. Sometimes it is difficult for her to walk a distance, which is why they wondered if it would be possible to leave part of the existing driveway in to

make it easier for her to enter the house. The conversion of the existing garage into a bedroom and full bath is a necessity. It is not a luxury for them. They have discussed building a new home onsite or moving. However, they really like the neighborhood and do not want to move.

Mr. Corten inquired as to whether anyone has spoken with any of the neighbors about this process. Mr. Gaddis does not know if the Wyer family has talked with any of the neighbors. He mentioned that he has spoken with Everett Dade, the property owner of 405 West Delaware Avenue. Mr. Dade did not seem to have any problems with the proposed plans.

Everett Dade, of 405 West Delaware Avenue, spoke with the Wyer family over the backyard fence about this particular issue. He feels this is a good thing to do for Mrs. Wyer. He does not object to the building of the proposed garage and does not care about the setback from their common property line. However, it would be more aesthetically pleasing to have the garage in line with the house.

Alice Novak, of 601 West Delaware Avenue, asked the Zoning Board of Appeals to deny the minor variance request. She carried out a survey of garages on Delaware Avenue between Lincoln Avenue and Race Street and shared the results with the Board. One of her major findings is that detached garages along Delaware Avenue are never aligned with the house. They are set back to the rear corner or substantially setback from the front. There is no case where a detached garage is anywhere close to the front setback of a property. This is what she urges the Zoning Board of Appeals to consider with regard to the property owners' request for the minor variance of the erection of a garage. She would think that given the medical condition of Mrs. Wyer, the placement of the proposed garage seems quite awkward to her. She would think that leaving part of the existing driveway in place would be a necessity for Mrs. Wyer to enter the house. She talked about the landscaping and removal of trees. She stated that the closer the garage is moved towards the west property line, the more trees they will need to remove. The closer the garage is placed to the house, the fewer mature trees will be affected. She urged the Zoning Board of Appeals to consider the overall impact of the proposed new garage on the entirety of the street and not just for this particular property.

Mr. Corten stated that it appears she is asking the Zoning Board of Appeals to base their decision on aesthetics as opposed to the criteria in the Zoning Ordinance. Ms. Novak responded that Criteria 4 in the staff report states, "*The variance will not alter the essential character of the neighborhood.*" The variance will in fact alter the essential character because there is a very consistent garage pattern in how detached garages are created. The vast majority of the properties are older properties and have detached garages. As she mentioned earlier, detached garages in this neighborhood are never placed even aligned with the house, much less as being proposed by the petitioner.

Mr. Myers commented about the idea of leaving the existing driveway along Carle Avenue as a drop off place for the Wyers. Not closing the curb cut would present two problems. The first problem would be that the concrete pad would only be 16.2 feet deep once the converted garage would be extended three feet, so it would not be quite deep enough for a vehicle to park, even temporarily, without the car extending into the right-of-way. The second issue is that there is no way to enforce this as a "temporary" drop off area. This could turn into another permanent

parking situation. Some year there will be different property owners who might try to use it for parking. So at a minimum the Wyer family needs to close the curb cut and regrade and plant grass in the right-of-way. The petitioner could technically leave the concrete pad in place on private property, but aesthetically it would be better if the concrete pad would be removed.

Mr. Corten wondered if it makes any difference that they are using it to store garbage cans as well. Mr. Myers said that would be up to the petitioners. Mr. Corten asked if there was an alleyway between Delaware and Lincoln Avenues. Mr. Myers said no.

With no further questions or comments from the audience, Chair Merritt closed the public input portion of the hearing and opened it up for discussion and/or motions by the Zoning Board of Appeals.

Mr. Warmbrunn wondered if the Zoning Board of Appeals should leave the language as it is or should they add something about the concrete pad. Mr. Myers explained that as currently stated, the petitioner would have the choice of what to do with the existing concrete pad. Chair Merritt reiterated that there are regulations for closing up a curb cut, and those regulations include some minimal landscaping in the right-of-way area.

Mr. Warmbrunn moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-09 with a recommendation for approval, including the conditions as recommended by City staff in the updated written staff report. Mr. Corten seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Chair Merritt	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion passed by unanimous vote. Mr. Myers noted that this case would go before City Council on October 6, 2008.

Mr. Corten moved that the Zoning Board of Appeals approve Case No. ZBA-2008-MIN-02 with the conditions as recommended by City staff in the updated written staff report. Mr. Welch seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Chair Merritt	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion passed by unanimous vote.

**7. OLD BUSINESS**

There was none.

**8. NEW BUSINESS**

**8. NEW BUSINESS**

There was none.

**9. AUDIENCE PARTICIPATION**

There was none.

**10. STAFF REPORT**

Mr. Myers reported on the following topics:

- ◆ Case No. ZBA-2008-MAJ-06 regarding cars backing out at 202 North Coler Avenue was approved by City Council. At this point, Mr. Bantz has secured off-site parking.

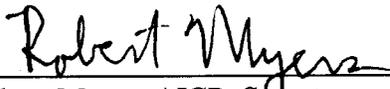
**11. STUDY SESSION**

There was none.

**12. ADJOURNMENT OF MEETING**

The meeting was adjourned at 8:56 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

**MINUTES OF A REGULAR MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** October 15, 2008

**APPROVED**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

**MEMBERS PRESENT** Paul Armstrong, Herb Corten, Anna Merritt, Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

**MEMBERS EXCUSED** There were none.

**STAFF PRESENT** Elizabeth Tyler, Director of Community Development Services Department; Robert Myers, Planning Manager; Lisa Karcher, Planner II; Rebecca Bird, CD Associate/Historic Preservation Planner; Teri Andel, Planning Secretary; Ron O’Neal, City Attorney

**OTHERS PRESENT** Brian Adams, Rich Cahill, Daniel Corkery, Tori Corkery, Scott Kunkel, Linda Lorenz, Georgia Morgan, Phillip Newmark, Michael Plewa, Steve Ross, Terrence Scudieri, Gail Taylor

**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:30 p.m. Roll call was taken, and a quorum was declared with all members present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF MINUTES**

Mr. Warmbrunn moved that the Zoning Board of Appeals approve the minutes from the September 17, 2008 meeting as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

**4. WRITTEN COMMUNICATIONS**

- ◆ Excerpt of a News-Gazette Listing of Building Permits regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Fred & Louise Krauss regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Betsey Cronan regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Kate Hunter regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Jo Kibbee regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Robert Nemeth regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Esther Patt regarding Case No. ZBA-2008-A-01
- ◆ E-mail from Joan Stolz regarding Case No. ZBA-2008-A-01
- ◆ E-mail from C. K. Gunsalus and Michael Walker regarding Case No. ZBA-2008-A-01
- ◆ Copy of Illinois State Statute 65 ILCS 5/11-13-12
- ◆ Copy of Affidavit of Glenn D. Beechy

Chair Merritt asked that anyone who might want to testify to please stand and raise their right hands. She then swore in members of the audience who wished to speak during either or both of the public hearings.

## 5. CONTINUED PUBLIC HEARINGS

There were none.

## 6. NEW PUBLIC HEARINGS

**ZBA-2008-MAJ-10: A major variance request by Phillip and Sonia Newmark to construct a detached accessory building less than 18 inches from the side-yard property line at 706 West Iowa Street in the R-2, Single-Family Residential Zoning District.**

Lisa Karcher, Planner II, presented the staff report to the Zoning Board of Appeals. She began with a description of the proposed site and of the surrounding properties noting their current zoning, existing land uses and Comprehensive Plan designations. She talked about the purpose of the major variance request. She discussed the R-2 zoning regulations and presented a site plan to show the proximity of the garage to the west side-yard property line. She reviewed the criteria from Section XI-3 of the Urbana Zoning Ordinance that pertains to the proposed variance request. She read the options of the Zoning Board of Appeals and presented staff's recommendation.

Mr. Corten inquired as to whether there is a concrete floor in the existing garage. Ms. Karcher referred the question to the petitioner. She assumed that the petitioners would need to tear up the existing floor because they plan to expand the size of the structure. So, they would need to increase the floor as well.

Mr. Warmbrunn wondered if both the existing garage and shed would be torn down. Ms. Karcher said yes.

With no further questions for staff from the Zoning Board of Appeals members, Chair Merritt opened the hearing up for public input.

Phillip Newmark, petitioner, noted that when looking at Exhibit A, you can see that about 80% of the houses have garages on the property lines. These houses and garages were built before the 1950 R-2 Zoning Regulations went into affect. The lots are narrower than the current building codes require for an R-2 Zoning District. He feels it would completely change the character of the neighborhood to require property owners to move their garages over as they need to be replaced.

If they have to go through and replace every single one of these garages in the West Urbana Neighborhood and move them all 18 inches from the side-yard property line, then they would also be losing a massive amount of green space in the City of Urbana. He pointed out that he only plans to expand his garage by about one foot-five and a half inches, so he can preserve as much of his lawn as possible. If the City requires him to construct the garage 18 inches from the property line, then he feels that he will be losing an additional 18 inches of his usable yard space. This ends up being about 84 square feet of usable yard space that just disappears. Therefore, he does not feel it is unreasonable to rebuild the garage in its current location. Every one of his neighbors is in favor of what he is proposing. Frankly, he is surprised that the City has a problem with it, especially since the City of Urbana prides itself on being a green City.

Mr. Corten inquired if there was a concrete base in the existing garage. Mr. Newmark answered by saying that there is not a current base; however, there are concrete footings at the corners. The existing garage and shed are really unsound.

Mr. Schoonover questioned whether the roof would extend over onto the adjacent property. Mr. Newmark explained that he would like for the roof and the gutter to come to the property line. Ms. Karcher noted that City setback measurements for detached structures are from the eave of the structure to the property line, rather than from the wall to the property line.

Ms. Uchtman ask how large the overhang would be. Mr. Newmark stated that he has not actually looked at the plans.

Mr. Schoonover asked if Mr. Newmark planned to put gutters on the west side of the proposed garage so rainwater would not runoff onto the neighbor's property. Mr. Newmark said that they had not talked about doing this, but he would be willing to do so if it makes a difference to anyone.

Mr. Welch commented that these types of properties that have garages or other structures constructed on the property lines would have to be one of the City's concerns. We would certainly hope that as these properties pass on that all of the neighbors would always be able to get along, but there is no guarantee of that. There is also a problem with having a fence and then having part of the demarcation for property being part of the neighbor's garage. There could be a small opening between the two, in which a pet or small child may be able to get through. Mr. Newmark replied that garages in the neighborhood were typically built on the property lines because the lots are so narrow. It strikes him amazing that there is not a rule in place to allow property owners access to their garages on neighboring properties to perform maintenance when they do not get along. Since this rule does not exist, then maybe we should be talking about it.

Mr. Welch responded that this is the very reason the City does not allow fences or garages/sheds to be built on property lines to begin with.

Mr. Corten added that the City would not require that all of the garages be torn down unless the property owners want to rebuild them. Ms. Karcher stated that this is correct. These types of structures are currently considered to be non-conforming uses/structures. At the time these structures are torn down and replaced, the property owners would need to comply or come before the City for a variance request.

Michael Plewa, of 708 West Iowa Street, stated that he resides in the property immediately to the west of the proposed site. He disagrees with the City in that this is a major variance, which requires a two-thirds vote. A minor variance is recognized as having potential impact on only the immediate neighborhood and adjoining properties. A major variance has the possibility of altering the character of the neighborhood. He said that he supports the Newmark's request for the variance. He talked about when he and his wife wanted to install a fountain in their back yard. The City suggested that they erect a fence to keep people from walking through the back yard, tripping over the fountain and getting hurt. So, they had a survey of their property done and erected a fence six inches from the property line.

He discussed the history of the neighborhood and the R-2 Zoning District regulations. Exhibit A shows that most of the garages in the neighborhood are single-car garages. These are high quality homes that were built between 70 and 90 years ago. The lots were plotted 40 years prior to the current R-2 Zoning District regulations. The current R-2 regulation is based on a minimum of 60 feet in width. The lots in the neighborhood are 55 feet in width. So, in this situation, the City is trying to force a 60-foot regulation on a 55-foot wide lot. It is not that their properties are incompliant with the Zoning Ordinance. It is that the Zoning Ordinance doesn't conform with reality.

The requirement for a major variance is that the change would significantly alter the character of the neighborhood. He argues that the architectural character of their immediate neighborhood is that small detached garages located on the property line are associated with the fine older homes. He calculated that 22 of the 26 parcels have detached garages on the property lines. Enforcing the current R-2 regulations in this neighborhood would tremendously alter the character of the neighborhood. Eighteen hundred and fifty square feet would be consumed by the automobile if the City would make all of the property owners of the neighborhood shown on Exhibit A rebuild their garages to be 18 inches from the property lines.

Mr. Plewa talked about the difficulty of backing out of the existing garage. There is not much room to back the car out from the existing garage. If the Newmarks have to move the garage over 18 inches, then this will create a jog in the driveway, which will make it even more difficult to back out.

Easements, fire protection and water damage or water drainage are non existing problems in this area. For 70 years, there has been no difficulty in access amongst a large variety of neighbors. The City may be able to project what can happen in the future, but scientists like himself look at

what has come before and use that as their projection. The neighborhood has a remarkable unanimity of agreement.

He asked that the Zoning Board of Appeals approve the variance request and keep the conditions on their street. The American Planning Association recently recognized the West Urbana Neighborhood as one of the 10 best neighborhoods to live in the United States. This was awarded with garages built on property lines.

Mr. Corten stated that Mr. Plewa has come to the wrong group to make his complaint. He should have complained back when the R-2 regulations were created. Mr. Plewa replied that he was not here in 1950. He is not sure when the 60 foot minimum width rule was added. He is only trying to point out that five feet can make a difference. It allows you to have a little more wiggle room where to place detached garages. The lots in the neighborhood are only 55 feet wide, and the architects and the planners allowed garages to be built on the property lines back then to help conserve space, to make easy access and to put some distance between the houses and the garages, which was the style back then. Many of the garages in the neighborhood are nearing the end of their lifetimes, so he can see the City causing 1,000s of square feet in loss of green space.

Mr. Warmbrunn asked how they consider it a loss of 18 inches, when they gain 18 inches on the west side. Mr. Plewa stated that his neighbor will not be able to use the 18 inches on the west side. It will be 18 inches of wasted area that the Newmarks have no access to, and they will probably have to spray herbicide to keep the weeds and rats out. So the Newmarks will actually lose the utility of 84 square feet of their yard by moving the garage over 18 inches to meet City requirements.

Mr. Plewa went on to say that these are smaller lots. The reason the original architects put these structures on the property lines was for the maximum efficiency in utility of the lots. By moving them over, property owners will lose that efficiency. His philosophy is that if something works, don't fix it. The architecture of the neighborhood has worked for 70 plus years. Mr. Corten commented that the Newmarks have chosen to fix the garage by rebuilding it, which requires them to follow new rules. Mr. Plewa said that is correct, but that this is the purpose for variances. He stated that it is not a major variance. The petitioner only wants to build a garage in the same location as the existing garage.

Mr. Welch wondered if the construction would be able to be done with removing Mr. Plewa's fence. Mr. Plewa said yes, because the fence is six inches from the property line. He noted that there is a concrete pad in the garage area of the structure, but not in the shed. So the concrete pad will have to be moved or replaced if the City does not approve the variance request.

Mr. Karcher clarified that Section 11-3 of the Zoning Ordinance outlines what is a minor and major variance. Minor variances for reductions in side-yard setbacks are specified as applications for a reduction no greater than 25% of the minimum. So, the reason the Newmark variance request becomes a major variance is because it is a 100% encroachment.

Dan Corkery, of 602 West High Street, talked about what might happen if the Newmarks would move the garage 18 inches to the east. The 18-inch strip would not be very usable, and it would not be very practical to perform maintenance. It would be difficult to use a ladder in an 18-inch strip. So the City may be creating a new set of problems by forcing the petitioner to comply with the regulations.

The Newmarks want to rebuild the garage to fit into the character of the neighborhood with driveway lining straight with the access to the garage. It is very difficult to maneuver a jog in the driveway, and you take the risk of damaging your car and home and neighboring property. So there are some implications and real day-to-day inconveniences created by what the City wants the Newmarks to do.

Mr. Corkery commented that using the side of a neighboring garage or shed as a boundary to an adjacent property is quite common. Mr. Welch did not question whether it is common. He did not believe it to be the preferred method of boundary demarcation. Mr. Corkery remarked that people have lived with these things for some time, the sun came up the next morning and there were really no great problems.

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

Mr. Myers responded to a statement made earlier about "all" the garages in the neighborhood being located on the property lines. No one can know this precisely by just looking at the properties. Are all of them on the property line, 10 inches from the property line, or 18 inches from the property line? It would take property surveys to determine that.

Second, in terms of the green space, although moving the garage 18 inches would not be a loss of green space in absolute terms, for use of the back yard, it would be a slight loss in usable space.

There are two types of encroachments with garages when they are placed right on the property line. The first one is typically an eave or a gutter -- above ground. The second is a below ground encroachment, such as a footing at the base of foundation walls. The City is sensitive about issuing building permits that allow encroachments on neighboring properties, either above or below ground.

The final observation is that there are other building codes that come into place. When you construct a building closer than X number of feet to the property line, then there a greater chance for communication of fire. This does not mean that you cannot build close to the property line. It just means that there is a heightened building code, such as installing fire wall protection, no windows, etc. So determining how close a garage can be located to a property line is part zoning, part values, and part technical building code requirements.

Ms. Uchtmann stated that if the garage roof was going to have an overhang of say 8 inches, then it seemed to her that the foundation would be 8 inches from the property line. Mr. Myers said

that most likely the footing would extend out slightly. It would be good to avoid an encroachment onto the neighbor's property.

Mr. Warmbrunn wondered how close a fence could be erected to a property line legally. Mr. Myers replied that you can build a fence all the way up to your property line as long as it is on your own property. Mr. Warmbrunn asked if it was possible for a person to erect a fence one inch from the property line so that his neighbor has 19 inches to get between the fence and his garage.

Ms. Uchtmann moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-10 to the Urbana City Council with a recommendation for approval with the understanding that there would possibly be an eight inch overhang for a gutter/spout to control the water runoff. Mr. Schoonover seconded the motion.

Mr. Warmbrunn feels that the issue needs to be sent on to the City Council, because this is something that will come up every time one of the neighbors needs to replace their existing garage in this neighborhood. The City Council and City staff needs to look at this. He is in favor of the motion.

Mr. Schoonover agrees that the City has regulations for historic structures and for zoning and building codes. The problem is that the City did not take into account what already exists and what was already built.

Roll call on the motion was as follows:

Mr. Armstrong	-	No	Mr. Corten	-	No
Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	No			

The motion failed for lacking a two-thirds majority vote in favor.

Mr. Newmark inquired as to what he should do next. Mr. Myers said that he could apply for a building permit to construct the garage 18 inches from the property line in conformance with the zoning requirements.

**ZBA-2008-A-01: An appeal of the Zoning Administrator's approval of plans for the adaptive reuse of an existing house at 601 West Green Street in the MOR, Mixed-Office Residential Zoning District.**

Ron O'Neal, City Attorney, stated that it is very rare that he would appear before the Zoning Board of Appeals, but on occasion a legal issue arises that he feels he needs to be proactive and come before a board or commission on a very discrete legal issue. In that the proposed appeal has been filed in a certain manner, there is a procedural hurdle that would need to be overcome in his legal opinion for this body to hear this appeal.

He gave a brief timeline for the redevelopment proposal by JSM Development for 601 West Green Street. On January 28, 2008, Scott Kunkel applied for a site plan approval for renovations to the existing residence. The Zoning Administrator granted zoning approval with two administrative variances on February 28, 2008. On April 10, 2008, the Zoning Administrator granted two additional variances. All four of the variances were minor variances. On April 15, 2008 a building permit was issued, and on April 20, 2008 the building permit was published in the *News-Gazette*. Between the dates of May 12, 2008 and May 23, 2008, demolition work was performed at 601 West Green Street. During this time, Glen Beachey (the demolition foreman) spoke on several occasions about this matter with one of the appellants, Rich Cahill.

Gail Taylor interrupted Mr. O'Neal and asked if this is a court of law. Are we appellants? She stated that she is one of the petitioners, and this is not a court of law. She asked Mr. O'Neal to bring his language down to common folks' language and to call them petitioners. Mr. O'Neal asked Ms. Taylor not to interrupt his presentation. Mr. O'Neal then asked Chairperson Merritt to ask Ms. Taylor to sit and wait her turn to speak.

Mr. O'Neal continued speaking. He stated that on September 19, 2008, Mr. Cahill and Ms. Taylor filed an appeal. He stated that Mr. Cahill also had previously spoken with Mr. Kunkel at least twice somewhere around the end of April. The problem that Mr. O'Neal has procedurally is that the City Zoning Ordinance, as well as State Statute, provides that there be 45 days from a date of an incident complained of for a person to bring an appeal before the Zoning Board of Appeals. No matter which date from which you choose to start counting -- whether it be April 15<sup>th</sup> when the building permit was issued, April 20<sup>th</sup> when the building permit was published, or even May 23<sup>rd</sup> when the demolition phase was finished, and Mr. Cahill had already spoken with Mr. Kunkel and Mr. Beachey -- the 45 day period to file an appeal had expired prior to September 19, 2008. So the appeal was not timely filed.

He handed out copies of and then read State Statute 65ILCS5/11-13-12. After reading the state statute, he stated that he did not believe that the proposed appeal could even be heard. Without getting into the substance of issues of the appeal or whether it is correct or not, he informed the Zoning Board that Mr. Cahill and Ms. Taylor claim that they had not been notified of the construction taking place. In fact there was significant construction taking place, and Mr. Cahill was aware of it and had held conversations with Mr. Kunkel. Mr. Cahill even took salvageable materials from the project. Therefore one could say that the appellants were on notice. Once they had been noticed that the project had begun, they had 45 days to file an appeal. Since they did not file an appeal until September 19, 2008, after the 45 days had expired, he did not feel that this case could be heard by the Zoning Board of Appeals. In this particular instance he asked that the appeal be dismissed.

Mr. Warmbrunn questioned why this case was even put on the agenda. He reviewed all of the information that was sent to the board members. His only conclusion was that there was no notification to the petitioners. He did not see where the City staff had done anything wrong. If the timeline is correct, then it seems to him that this case should not have even been put on the agenda.

Mr. O'Neal responded that he is caught between a rock and a hard place. The Zoning Administrator made some administrative decisions within her powers granted to her by the Zoning Ordinance. City staff came and asked his opinion about whether or not the appeal should go forward. If he had said no, then the public's response would have been that the City is trying to defend its own decision. If he said yes, then it is in violation of the City's Zoning Ordinance and State Statute. So he advised City staff to allow the appeal to be filed so that this decision could come before the Zoning Board of Appeals and he could provide the board with his legal opinion so that the Zoning Board of Appeals could act properly in compliance with our procedure.

Mr. Warmbrunn wondered if the Board dismissed the case then would they not listen to any testimony. Mr. O'Neal said that is correct. If the Zoning Board of Appeals hears testimony, then they are holding a hearing and the 45 days does not mean anything.

Mr. Welch asked if the Zoning Board of Appeals did act upon the proposed appeal, would their decision be considered null and void. Mr. O'Neal replied yes. If the Zoning Board of Appeals held the public hearing and made a decision, he feels that the decision would be void because the appeal was not timely filed.

Mr. Welch questioned if the people affected by a decision made by the Zoning Board of Appeals on the proposed appeal would be advised that they do not need to follow any of the recommendations that were made in that decision. Mr. O'Neal said that he would need to speak with the Zoning Administrator and the Mayor to determine what, if anything, he should do. Mr. Welch inquired if the petitioners would be able to file a new appeal if the Zoning Board of Appeals dismisses this case. Mr. O'Neal said no, because in this particular instance, the set of facts are the facts and the dates are the dates. The 45 day period to file an appeal has expired. If he is asking if there is some theoretical way to get around the City of Urbana's Zoning Ordinance and the Illinois State Law, then the answer is no.

Mr. Welch wondered if the petitioners feel they are aggrieved on some kind of continuing basis, is there anything else they can do? Mr. O'Neal did not believe so. In the proposed application to appeal, the appellants are really talking about the decision to even grant the minor variances. Those decisions have already been made. If they filed a new appeal, then it would be based on what they file the complaint on as to whether it would be forwarded or not.

Mr. Schoonover inquired as to when Mr. O'Neal was brought in for advisement. Mr. O'Neal answered that the case was brought to his attention around September 19, 2008 after the petitioners filed the appeal.

Ms. Uchtmann questioned if Mr. O'Neal was also concluding that there were no administrative errors made along the way. Mr. O'Neal stated that he does not feel there were any errors made. He has reviewed the Zoning Ordinance which grants the Zoning Administrator certain administrative powers to grant variances in adaptive reuse projects. He has looked at the site plans for 601 West Green Street. He has looked at the elevations and photographs and talked to the Zoning Administrator and the City staff extensively about this. He looked at the appeal to see what particular issues the appellants feel are incorrect. Substantially he does not feel that

there is any merit to the proposed appeal. What he takes from the appeal is that the appellants do not like the Zoning Administrator's decision, which is a completely different issue than whether the Zoning Administrator acted appropriately and according to the Urbana Zoning Ordinance.

Mr. Armstrong reviewed the information given to the Zoning Board of Appeals and found that the Urbana Zoning Ordinance does give the Zoning Administrator some latitude in making decisions in cases of adaptive reuse so that it could be more successfully encouraged. This case is unusual for the Zoning Board of Appeals because they usually review major and minor variances. The Board members review variance requests based on their merits and then make a decision. However, in this case the variance requests are coming before the Zoning Board of Appeal as a result of an appeal of the Zoning Administrator's decisions, which are based on the Administrator's latitude in making those decisions that ordinarily would come before the Zoning Board of Appeals. Mr. O'Neal stated that the reason the Zoning Ordinance grants the Zoning Administrator these powers is because it encourages adaptive reuse. If the City would have wanted a formal process, then there would be no need to grant the Zoning Administrator these administrative powers. Instead the Zoning Ordinance states the purpose of granting the Zoning Administrator administrative power to approve adaptive reuse projects. The Ordinance says very specifically what the Zoning Administrator may do.

Mr. O'Neal stated that the Zoning Administrator was completely in compliance. If you look at the Site Plan and the design of what will actually be done, every change that the Zoning Administrator approved corresponds to a particular section of the Zoning Ordinance that allowed her to make that decision. Whether or not anyone agrees with the Zoning Administrator having these powers or whether or not they feel the Zoning Ordinance is appropriate are completely different public policy issues. The issue that he believes this body would have to decide if the appeal would have been timely filed would be whether the Zoning Administrator followed the Zoning Ordinance and act appropriately. In his opinion, she did.

Mr. Corten moved that the Zoning Board of Appeals dismiss Case No. ZBA-2008-A-01 based on the recommendation of the City's Legal Counsel because it was not filed in a timely manner. Mr. Warmbrunn seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion to dismiss was approved by a vote of 6-1.

## **7. OLD BUSINESS**

There was none.

## **8. NEW BUSINESS**

There was none.

## 9. STAFF REPORT

Mr. Myers reported on the following topics:

- ◆ Wyer Major Variance was approved by City Council.

Mr. Warmbrunn inquired if he had some objections to the language in the Zoning Ordinance about the Mixed Office Residential (MOR) Zoning District, then who would he direct his comments to. He would like City staff to re-examine the entire MOR district policy. Mr. Myers replied that he could direct comments to the City Attorney's office, to the Zoning Administrator and/or to the Mayor.

Mr. Warmbrunn asked for a definition of "adaptive reuse". Mr. Myers stated that in a larger context "adaptive reuse" essentially means reusing the same buildings and making minor changes. This does not include removing an existing building and replacing it with a new one.

Chair Merritt inquired if the discussion held during the previous case would trigger anything. In the past, the Zoning Board of Appeals members have held discussions that then resulted in other bodies in the City taking up the issues. Mr. Myers replied that one of the powers that the Zoning Board of Appeals has is to make a recommendation to City staff to examine parts of the City Code that they feel need to be reviewed.

Mr. Warmbrunn believes that the Zoning Board should make a recommendation to have City staff look at the language of the MOR policy again. He could not find in the Zoning Ordinance where there is a requirement for public notification. Mr. Myers pointed out that the City Council approved this Ordinance several years ago with a provision that in the MOR Zoning District minor variances could be granted by the Zoning Administrator under certain circumstances. There are limitations on this however. The reason is to encourage adaptive reuse rather than to see existing buildings removed and replaced. When working on redevelopment projects in central Urbana, much of the time there is so many layers of difficulties for redevelopment that it can easily deter people investing in properties in the MOR Zoning District. Reusing existing buildings rather than replacing them with something totally different and out of scale is the vision for the MOR Zoning District.

Mr. Warmbrunn commented that the MOR Zoning District is such a small district. In the middle of the district we may be alright, but when we are talking about each side of it, it is potentially up against residential neighbors. He feels that it is incredibly difficult to believe that everyone needs to pick up a *News Gazette* and read the legal ads to find out that something is happening next door to them. It seems to be the only thing that the City is not encouraging the neighborhood to participate or comment.

He believes that what happened was perfectly legal. He could not find any reason why the City had to notify the neighbors. However, he feels the City should notify the neighbors if these types of projects are going to continue to happen. Chair Merritt agreed that this sort of thing has not happened before, and she certainly would not want future Zoning Board of Appeals members

to have this kind of thing happening all of the time. Mr. Myers mentioned that occasionally there are appeals, but they rarely happen.

Ms. Uchtmann questioned whether City staff would not consider the changes made to the front façade of 601 West Green Street to be major changes given the scope of them. Can there be an appeal to the Development Review Board? Was this case brought before the Board?

Mr. Myers commented that he would like to avoid holding the public hearing for the previous appeal's case since the Zoning Board of Appeals voted to dismiss the case. Chair Merritt agreed that they all need to keep this on a general issue and not discuss the previous case.

Mr. Warmbrunn suggested that the Board members should take the information home and read through it. The next time they meet, they could present their recommendations to City staff. To him, a lot of the process is flawed and does not seem to be very consistent. Ms. Uchtmann stated that she would be happy to make a motion to say that the Zoning Board of Appeals would like the MOR policy reviewed.

Elizabeth Tyler, Director of Community Development Services Department, stated that City staff has spent so much time working on the MOR Ordinance with the City Council and Plan Commission direction over the years. City staff has done two or three major revampings of the Ordinance, reconstituted the Development Review Board to a different kind of board, and encouraged the adaptive reuse of existing buildings. So, City staff is well aware that there are concerns, problems and sensitivity. Each project that is built on Green Street seems to come before the Zoning Board of Appeals as an appeal.

City staff has a very big workload on Zoning Ordinance fixes that are put forward to City staff by the City Council. There are sign regulations that are out of date and need to be updated. There is a request for design guidelines in the Historic East Urbana area. City staff has been working on an omnibus change to the Zoning Ordinance. So, the MOR Zoning District is just another area that City staff keeps trying to improve, because it keeps causing concern. However, she feels that the projects that have come out of the DRB process have been good projects that have been less intrusive than before changes were made.

This situation has not been a pleasant experience. There are more improvements that need to be made to the MOR Ordinance. So, City staff will add this to our list of issues that need to be reviewed again. Chair Merritt told the Board members that it is true that the MOR Ordinance has been reviewed several times, so she would like to see some specific ideas from the Board members to give to City staff.

## **10. AUDIENCE PARTICIPATION**

Richard Cahill, of 307 South Orchard Street, talked about the timelines that Mr. O'Neal had mentioned in Case No. ZBA-2008-A-01. Because the application and variance requests did not go before the Development Review Board there was no public notice. He feels the 45 day period to file an appeal is totally irrelevant in Case No. ZBA-2008-A-01.

He mentioned that he has been very active in the Preservation and Conservation Association (PACA). He coordinated a lot of architectural salvage and has worked with Mr. Kunkel in the past with some major JSM projects including the co-ed theatre on campus, etc. Last April, he worked with Scott Kunkel on a redevelopment project on a church in Bloomington-Normal. He coordinated salvage with the church and Mr. Kunkel. When the spring semester ended, that is when the demolition of interior walls began on the property at 601 West Green Street. Although he did notice that demolition was occurring and he did talk with Mr. Kunkel, at no point did he ask to see any plans for 601 West Green Street, nor did Mr. Kunkel offer to share the plans with him. So, none of the May period to early June is a valid 45 day period. He pointed out that there were tenants still living in two of the units while demolition was going on.

By late August, Franzen Construction comes in to demolish the addition to the back and to demolish the front porch. This is also when the three mulberry trees were removed. On September 3, 2008, he asked Libby Tyler, Director of Community Development Services Department, if he could see plans of the redevelopment project. So to him the 45-day period to file an appeal began on September 3, 2008.

Gail Taylor, of 307 South Orchard Street, stated that she has a problem with the City Attorney asserting power over the Zoning Board of Appeals and over the members of the audience. He was using language that one would expect to hear in a court room and not in a public hearing with citizens who serve on a board.

She mentioned that Jack Waaler, former City Attorney, suggested that they file an application for zoning appeal and allow the Zoning Board of Appeals to decide when the 45 day period to file an appeal began. Instead the Zoning Board of Appeals members allowed themselves to be railroaded by the City Attorney. However, she is happy to see that the Zoning Board of Appeals is recommending a review of the MOR Ordinance to the City Council.

Ms. Taylor stated that Mr. Cahill had talked to Ms. Tyler on September 3, 2008 prior to the start of the Historic Preservation meeting about the redevelopment project at 601 West Green Street. She gave him copies of the plans for the redevelopment project. He called with questions the following day. After speaking with Ms. Tyler, she began expressing concerns about the way Ms. Tyler granted variances because there was no notification to adjacent property owners and no signs placed in the yard at 601 West Green Street.

Ms. Tyler had told her that Mr. Cahill and herself should speak to the developer of the project. The developer told her that they needed to speak to the City, so they felt like they were pushed in between the City and the developer. As the adjacent property owner, she sees this power relationship as the City being number one. The City is partnered with JSM Development (the developer), who the citizens should not make mad, according to Charlie Smyth, Council person for Ward 1 in the City of Urbana, because JSM is a commercial developer in Urbana. Then there are the citizens.

Ms. Taylor stated that Ms. Tyler mentioned over the phone that she was aware that Mr. Cahill and Ms. Taylor lived in the MOR Zoning District, but that she was not aware that they lived adjacent to 601 West Green Street. This is not true because it is written on the plans that were

submitted by JSM that Richard Cahill is the owner of the property adjacent to the site to be redeveloped.

Ms. Taylor stated that Ms. Tyler also stated that she represents the interest of the City, which Ms. Taylor felt was a way for Ms. Tyler to minimize any concerns that she brought to Ms. Tyler as a citizen. By Ms. Tyler saying this, it also set the tone of the conversation in terms of establishing a power relationship between the two of them. During her conversation over the phone with Ms. Tyler, she stated that the actions to approve the plans were those that favored the interest of commercial developers over private homeowners. It is a business interest.

Ms. Taylor also expressed her concern about the way that staff had handled the approval of two sets of variances. JSM submitted plans along with two variance requests which Ms. Tyler approved in February of 2008. Something happened that caused JSM to go back and look at their plans again and come back to the City requesting two additional variances which Ms. Tyler approved as well. Why were there two sets of variances instead of just one at the very beginning of the process?

She and Mr. Cahill have expressed concerns about the design of the parking area in terms of living on a street where there is a lot of pedestrian traffic. There are little kids in the neighborhood and people going to church on Sunday. It is a high traffic area, and yet there is no consideration being given to the new parking area.

Ms. Taylor mentioned that when she spoke with Mr. Kunkel about a six-foot high plastic fence, he had stated that JSM wanted to take down her fence to install their own fence. So, there was going to be no conversation in terms of them taking down her fence that is six inches into her property. They just assumed that they could do this.

Another important issue is that when speaking with City staff, Ms. Tyler had said that she would talk to the City Attorney about how to advise the petitioners to proceed and then get back with her. Ms. Tyler never called her back. So, Ms. Taylor called and spoke with Jack Waaler in the City's Legal Department about how to proceed with their appeal.

She found it interesting that the City Attorney attended this meeting and gave the presentation for Case No. ZBA-2008-A-01. Why didn't Ms. Tyler, Mr. Myers or Ms. Bird give the presentation? To her this is a gross overstatement of power. This is a test case, and it could go to civil trial if they wanted to. She and Mr. Cahill want to make the MOR Zoning District a better place for everyone. It is a family area.

Mr. Corten commented that there are students and other types of people living in the area as well. Ms. Taylor replied that it has not historically been that way. Mr. Corten remarked that it will not remain the same. Ms. Taylor stated that they know this, but the thing is that there were no public notices. People came to this meeting thinking that they were going to have an opportunity to talk and present their points of view as opposed to having just one point of view for the Zoning Board of Appeals to base their decision on. They feel that there were administrative issues that misled them to believe that they had the right to file an appeal.

Mr. Welch asked if Ms. Taylor thought that the Zoning Board of Appeals had the power to review administrative decisions that do not particularly involve zoning. In other words, the Zoning Board of Appeals does not have the authority to second guess someone's decision unless that mechanism is established. It is the City Attorney's opinion that if the City followed the proper procedures, then what the Zoning Board of Appeals would have decided would have been null and void, and it would be just venting. Ms. Taylor did not believe that this is just venting. All kinds of mixed signals were sent. Mr. Waaler recommended that they file an appeal and come before the Zoning Board of Appeals. This is what they had to do to go to the next step of remedy. They already knew that they were in a no-win situation. Mr. Welch replied that if they feel like they have been cut out of a voice, it is not something that the Zoning Board of Appeals can remedy. Right way or wrong way, the Zoning Administrator exercised the discretion given to her, and the Zoning Board of Appeals is not allowed to review it because it is not a zoning issue.

Chair Merritt stated that in effect, the Zoning Board of Appeals is wasting Ms. Taylor's time by allowing her to talk, because it will not result in anything. Ms. Taylor responded by saying that she did not feel it was a waste of time. Regardless of what the Zoning Board of Appeals heard from the City Attorney, they need to give people a chance to talk. It upset her that the City Attorney handled the appeals case but not the Newmark variance request. Mr. Armstrong stated that the appeals case is a highly unusual situation.

Ms. Taylor asked when does this happen. Mr. Armstrong explained that the Zoning Administrator only has power to approve minor redevelopment plans and variances in the MOR Zoning District. Ms. Taylor questioned why the Zoning Board of Appeals is even in existence then. Chair Merritt commented that the Zoning Board of Appeals makes a lot of decisions. She agreed that the MOR Zoning District is an unusual area. The City of Urbana has made an effort to recognize the fact that it is an unusual area.

Mr. Armstrong stated that the Zoning Board of Appeals has gone on record as raising their concerns about the MOR Ordinance language. The Ordinance must be re-examined in terms of these procedural issues. Additionally, there may be other issues about what the future of the MOR Zoning District is; for example, is the MOR Ordinance and Zoning District working in conjunction with the original intentions or not, is it successful or unsuccessful, etc. All of these issues should be re-examined periodically anyway. Because she lives in the MOR Zoning District, she has the most vested interest in the neighborhood. So she can articulate her concerns to the City Council and go before the Plan Commission.

Dan Corkery, of 602 West High Street, stated that Mr. O'Neal asserted something as a fact that he feels is hearsay. Mr. O'Neal asserted that Mr. Cahill was notified by Mr. Kunkel or Glen Beachey of the redevelopment plans during their conversations. He really was not notified because they did not exchange the kind of information that would warrant notification.

There was not a legal ad posted. There was an editorial item under Building Permits that was run on Sundays. Editorial items printed in the newspaper are at the discretion of the *News-Gazette*. Therefore, it would not constitute legal notification. Mr. O'Neal gave this an air of authority, and it did not have the authority that anyone would think it would.

He is thrilled that the Zoning Board of Appeals wants to come up with something that will be forwarded on to the City Council. He realizes that there has been a lot of work done to the MOR Ordinance, but there is still clearly a flaw in it, and it has to do with getting the public involved on a variance. The most irritating things about adaptive reuse has really very little to do with the building. It has to do with the parking lot. The idea of a parking lot with vehicles' headlights pointing 15 feet from someone's living room is just not right.

Chair Merritt swore in Steve Ross, of 609 West Green Street.

Mr. Ross recommended some changes to the MOR Ordinance. Because this is the first time we have gone through the adaptive reuse process, we are just now noticing some holes in the Ordinance. He knows that there was a lot of effort involved in revising the MOR Ordinance, because he attended many of the hearings. There are two things lacking, which are as follows: 1) Definition of the word "substantial" and 2) lack of notification.

The word "substantial" is used in the MOR Ordinance. If it is not a substantial change, then the Zoning Administrator has the ability to make certain minor variances. We need to define what we mean by substantial.

When the Zoning Administrator reviews redevelopment plans for adaptive reuse of existing buildings, there is no requirement for notification. This is the only place where neighbors would not be notified of variances, and this is an open invitation for trouble.

Linda Lorenz, of 409 West High Street, read an e-mail written and submitted by Betsey Cronan who could not attend. Afterwards she stated that she has attended many City Council and Historic Preservation Commission meetings and has invested a great deal of volunteer time in doing house history research and in getting petitions signed to bring before the Zoning Board of Appeals. The bottom line is that the neighborhood is under attack in terms of the changes that are going on. There are more and more landlords and students.

She mentioned that she lives across the street from an apartment building. She hears doors slamming, bottles and cans landing on the parking lot and kids screaming and hollering at 3:00 a.m. Now, Mr. Cahill and Ms. Taylor are going to live next door to a horrid parking lot. The parking lot will decrease the value of their property. This will change not only their property value but the character of the neighborhood as well. This is the biggest issue of all.

The property owners in the area want to be notified so they can come to City staff and say something before it is a done deal. They live in the neighborhood because they love their old houses and maintain them and because they want to walk or ride their bicycles to the University of Illinois campus.

## **11. STUDY SESSION**

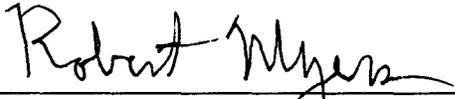
There was none.

October 15, 2008

**12. ADJOURNMENT OF MEETING**

The meeting was adjourned at 9:50 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert Myers". The signature is written in a cursive style with a horizontal line underneath the name.

Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals

**MINUTES OF A REGULAR MEETING  
URBANA ZONING BOARD OF APPEALS**

**DATE:** November 19, 2008

**DRAFT**

**TIME:** 7:30 p.m.

**PLACE:** Urbana City Building  
City Council Chambers  
400 S. Vine Street  
Urbana, IL 61801

**MEMBERS PRESENT** Herb Corten, Anna Merritt, Nancy Uchtmann, Harvey Welch

**MEMBERS EXCUSED** Paul Armstrong, Joe Schoonover, Charles Warmbrunn

**STAFF PRESENT** Robert Myers, Planning Manager; Rebecca Bird, CD Associate/  
Historic Preservation Planner; Teri Anandel, Planning Secretary

**OTHERS PRESENT** Randy Donoho, Kevin Gaddis

**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:31 p.m. Roll call was taken, and a quorum was declared present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF MINUTES**

Ms. Uchtmann moved that the Zoning Board of Appeals approve the minutes of the October 15, 2008 meeting as corrected. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

Chair Merritt had members of the audience expecting to testify at a hearing stand, raise their right hands, and swore them in.

**4. WRITTEN COMMUNICATIONS**

- ◆ 11” x 17” copy of the Site Plan regarding Case Nos. ZBA-2008-MAJ-09 and ZBA-2008-MIN-02

## 5. CONTINUED PUBLIC HEARINGS

There were none.

## 6. NEW PUBLIC HEARINGS

### **ZBA-2008-MAJ-09 and ZBA-2008-MIN-02: Amend the previously-approved variances to allow a driveway from Carle Avenue to remain at 401 West Delaware Avenue in the R-1, Single-Family Residential Zoning District.**

Rebecca Bird, Associate Planner, presented these two cases together to the Zoning Board of Appeals. She began with a brief introduction and presentation of background information regarding 401 West Delaware Avenue. The reason for the proposed amendment is due to a health condition of one of the residents. The petitioners believe it is necessary to keep a drop off closer to the house for Ms. Wyer, so they would like to keep the curb cut and driveway from Carle Avenue. Ms. Bird noted that there is no sidewalk in this block of Carle Avenue and the City of Urbana has no plans to install a sidewalk. So despite a car parked in the driveway encroaching in the right-of-way, the Urbana’s Public Works Director has agreed in this case to allow the curb cut and the driveway to remain because any car parked here wouldn’t block a public sidewalk. She reviewed the options of the Zoning Board of Appeals. She then presented the staff recommendations for both cases.

Mr. Corten asked City staff to define what the curb cut is. Does it include the driveway or is it just the curb? Ms. Bird explained that it is the “curb cut” includes the driveway apron up to the property line, which generally is located a foot inside the sidewalk.

Mr. Corten wondered if there was a sidewalk on the other side of Carle Avenue. Ms. Bird said yes, there is.

Chair Merritt questioned whether the petitioner intended to leave a vehicle parked on the concrete pad for any length of time or would it just be used as a drop off? Ms. Bird said that the petitioners want to use it as a drop off. The City considered designate it as “Handicap Only Parking” and posting a sign. However, since it is on private property, the City would not be able to enforce that.

With no further questions from the Zoning Board of Appeals for City staff, Chair Merritt opened the hearing to public input.

Randy Donoho, of 714 South Urbana Avenue, stated that he is the contractor on this project. He noted that the petitioners’ vehicles will not extend into the street but just encroach several feet within the right-of-way.

Mr. Corten stated that from the site plan, it appears that the driveway will be 30.5 feet long as opposed to 33.5 feet long. Mr. Donoho stated that this is correct. This is because the existing garage will be extended forward three feet and converted to living area.

Mr. Welch inquired if a corner lot normally is only allowed to have one curb cut. Ms. Bird answered that the Zoning Ordinance allows one curb cut per frontage. Because this is a corner lot, by right the petitioners are allowed to have a driveway on each frontage. The issue here is that because of the three foot building addition, a typical vehicle will extend over the property line several feet. This would be an issue if there was a sidewalk.

Mr. Corten moved that the Zoning Board of Appeals approve Case No. ZBA-2008-MIN-02 along with the conditions recommended by City staff as provided in the staff report. Mr. Welch seconded the motion. Roll call on the motion was follows:

Mr. Corten	-	Yes	Chair Merritt	-	Yes
Ms. Uchtmann	-	Yes	Mr. Welch	-	Yes

The motion passed by unanimous vote. Robert Myers, Planning Manager, noted that since this case is a request for a minor variance, it will not go before the Urbana City Council.

Mr. Welch moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-09 with a recommendation for approval along with the conditions recommended by City staff as provided in the staff report to the Urbana City Council. Mr. Corten seconded the motion. Roll call on the motion was as follows:

Mr. Corten	-	Yes	Chair Merritt	-	Yes
Ms. Uchtmann	-	Yes	Mr. Welch	-	Yes

The motion was approved by unanimous vote. Mr. Myers noted that this case is expected to go before City Council on December 1, 2008.

**7. OLD BUSINESS**

There was none.

**8. NEW BUSINESS**

There was none.

**9. AUDIENCE PARTICIPATION**

There was none.

**10. STAFF REPORT**

Mr. Myers reported on the following topics:

- ◆ MOR Zoning District Ordinance: Mr. Myers noted an e-mail from Charles Warmbrunn requesting that City staff review the rules in the MOR Zoning District in terms of noticing. City staff is following up on the ZBA's request to review this. The Board's request is being considered seriously.

## **11. STUDY SESSION**

There was none.

## **12. ADJOURNMENT OF MEETING**

The meeting was adjourned at 7:47 p.m.

Respectfully submitted,

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Robert Myers, AICP, Secretary  
Urbana Zoning Board of Appeals