

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

DATE: August 21, 2019

APPROVED

TIME: 7:00 p.m.

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

MEMBERS PRESENT Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Nancy Uchtmann, Charles Warmbrunn

MEMBERS ABSENT Harvey Welch

STAFF PRESENT John Schneider, Director of Community Development Services; Kevin Garcia, Planner II; Marcus Ricci, Planner II; Lily Wilcock, Planner I; Curt Borman, Assistant City Attorney

OTHERS PRESENT Paul Debevec, Ann Dickey, Kara Dudek, Bobbi Gordon, Daniel Gordon, Mary Pat McGuire, Tacey Miller, Esther Patt, Elizabeth Plewa, Michael Plewa, Jonah Weisskopf

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

Mr. Warmbrunn called the meeting to order at 7:00 p.m.

Mr. Rusch nominated Mr. Warmbrunn to serve as Acting Chair for this meeting in the absence of Chair Welch. Ms. Uchtmann seconded the motion. The nomination was approved by unanimous voice vote.

Roll call was taken, and Mr. Warmbrunn declared a quorum of the members present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF THE MINUTES

The minutes from the July 17, 2019, regular meeting were presented for approval. Mr. Rusch moved to approve the minutes as written. Ms. Uchtmann seconded the motion. The minutes were approved by unanimous voice vote as written.

4. COMMUNICATIONS

- Regarding Case Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05, ZBA-2019-MAJ-06, ZBA-2019-MAJ-08, ZBA-2019-MAJ-09 and ZBA-2019-MAJ-10
 - Letter in Support from Dan Gordon, Applicant
 - Packet of Correspondence from the following people:
 - Email from Trent Shepard
 - Email from Ming Juo
 - Letter from Elizabeth and Michael Plewa
 - Email from Deborah Katz-Downie
 - Email from Becky Mead
 - Email from Magdalena Casper-Shipp
 - Letter in Opposition from Esther Patt
 - Presentation by Michael Plewa

NOTE: Mr. Cho entered the meeting.

5. CONTINUED PUBLIC HEARINGS

There were none.

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

6. NEW PUBLIC HEARINGS

ZBA-2019-MAJ-07 – A request by Derek Liebert, on behalf of the Urbana Park District, for a Major Variance to expand the existing parking lot up to 16 feet into the 25-foot required front yard at Leal Park, located at 303 West University Avenue in the CRE, Conservation-Recreation-Education Zoning District.

Acting Chair Warmbrunn opened the public hearing for this case. Marcus Ricci, Planner II, presented the staff report for the case. He began by explaining the purpose for the proposed Major Variance request, which is to consolidate visitor and staff parking by expanding the existing parking lot eastward to add eight parking spaces. He described the location of the subject property noting the surrounding land uses and current zoning. He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance as they pertained to the case. He read the options of the Zoning Board of Appeals and presented City staff's recommendation for approval with the condition that *the proposed parking lot expansion shall generally conform to the attached site plan and specifications.*

Acting Chair Warmbrunn asked if any members of the Zoning Board of Appeals had questions for City staff. There were none, so he opened the hearing for public input. He invited the applicant's representative to speak on behalf of the proposed request.

Kara Dudek, of the Urbana Park District, spoke in favor of the proposed request. She stated that the Park District’s philosophy is “green over grey” meaning that they do not like to have pavement or surfaces that affect stormwater runoff. She discussed the need for the expansion of parking and the location of the expansion. The Urbana Park District intends to buffer the parking lot from University Avenue by planting shrubs, grasses and flowering plants.

Ms. Uchtmann inquired if the pavement would be pervious concrete or asphalt. Ms. Dudek explained that any stormwater runoff would tie into the existing storm sewer. They also try to mitigate some of the stormwater by adding plants to soak it up as opposed to only having turf grass.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-07 to the City Council with a recommendation for approval based on the findings in the written staff memorandum and with the following condition: *the proposed parking lot expansion shall generally conform to the attached site plan and specifications.* Ms. McLaughlin seconded the motion. Roll call on the motion was as follows:

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

The motion passed by unanimous vote. Kevin Garcia, Planner II, noted that this case would be forwarded to City Council on September 3, 2019.

ZBA-2019-C-03 – A request by Daniel Gordon for a Conditional Use Permit to allow a second principal structure containing a second dwelling unit at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-05 – A request by Daniel Gordon for a Major Variance to increase the maximum Floor Area Ratio from 0.4 to 0.51 at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-06 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach seven feet into the required ten-foot rear yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-08 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach four feet into the required five-foot side yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-09 – A request by Daniel Gordon for a Major Variance to reduce the required parking for two dwelling units from four spaces to two at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-10 – A request by Daniel Gordon for a Major Variance to reduce the required lot width for establishing a duplex on a lot from 60 feet to 58 feet at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

Acting Chair Warmbrunn opened the public hearing for each case simultaneously. Lily Wilcock, Planner I, presented the staff report for these cases. She began by noting the history of the use and modification of the property prior to the applicant acquiring the property. She described the subject property and surrounding area by noting the existing land uses and zoning. She reviewed the dwelling unit and parking space configuration of the lot, noting that there is space for three vehicles, not two as stated in the staff memo. The Urbana Zoning Ordinance requires two parking spaces per dwelling unit. She reviewed the past modifications of the lot and recent boundary survey performed by Berns, Clancy and Associates. She talked about the platting timeline of the subject property and the illegal addition to the garage and the violations it created regarding the Floor Area Ratio (FAR), rear yard and side yard setbacks. She reviewed each variance request individually and pointed out the public correspondence/comments received. She stated that City staff requests that the Zoning Board of Appeals hear public input and then continue all of the proposed cases to the next regular Zoning Board of Appeals meeting on Wednesday, September 18, 2019.

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

Ms. Chester asked if the existing dwelling units in the garage were connected to the sanitary sewer. Ms. Wilcock was uncertain. Mr. Rusch noted that he used to live in the immediate area and the sanitary sewer connector is located in the alley.

Mr. Rusch inquired about the electrical wiring. If it were wired from the house, then it would be a major code violation, correct? Ms. Wilcock said yes, and it would need to be fixed if the proposed conditional use and variances are approved.

Ms. Uchtmann asked how many tenants lived at the subject property. Ms. Wilcock said that there were four tenants living in the house and three tenants living in studio/efficiency apartments in the garage.

Ms. Wilcock read the options of the Zoning Board of Appeals and reiterated that City staff would like the Zoning Board of Appeals to hear public input and then continue all six cases to the September 18, 2019 regular meeting. Acting Chair Warmbrunn confirmed that the Board would listen to public input and then decide whether to continue or to move forward with the proposed cases.

Mr. Cho noticed in Exhibit F that the last entry says, “*Owner will need to buy two feet from a neighboring property owner.*” He asked if the option to buy two feet from the neighboring property owner had been agreed upon. Ms. Wilcock said no. This would be an option if the Conditional Use Permit is approved and if the Major Variance (ZBA-2019-MAJ-10) is denied. The applicant would need two additional feet to be able to have a second principal building on their lot. The only neighboring property that this would be possible is 306 West California

Avenue; however, the property owner of 306 West California Avenue would have to be amicable and a shared driveway would have to be established.

With no further questions for City staff, Acting Chair Warmbrunn opened the hearing for public input. He invited the applicant to speak on behalf of his requests.

Dan Gordon, representing RSGordon LLC, approached the Zoning Board of Appeals to speak in support of the proposed conditional use permit and major variance requests. He thanked the Zoning Board of Appeals and City staff for considering their requests. When they were considering buying the subject property, they were told things that led them to believe that the property would be economically viable. After purchasing the property, they discovered that those things were not true and accurate. Now, they are before the Zoning Board of Appeals to try to remedy the situation and make things right with the City for the safety of the people who live in the area.

Mr. Rusch asked if he had acquired the current leases for the dwelling units in the garage with purchasing the subject property. He asked if there are tenants still residing in the dwelling units in the garage and if they wish to continue to reside in the units. Mr. Gordon answered that there are tenants still residing in the garage units for another month and a half when their leases expire. After that point, he would no longer be allowed to lease out the units. No one is being displaced at this time.

Mr. Cho asked if he had discussed the possibility of purchasing two feet of land with the neighbor. Mr. Gordon stated that he received the Zoning Board of Appeals packet in the last 48 hours, so he has not had time to consider his options or talk with anyone about it.

Ms. Uchtmann questioned if he had a survey done to find the boundaries prior to purchasing the property. Mr. Gordon replied no. The Geographic Information System (GIS) maps showed that there was space.

Mr. Rusch asked who did the title work and who his attorney was on the sale of the property. Mr. Gordon stated that Andy Hatch is his attorney, and he is not sure who performed the title work.

Jonah Weisskopf approached the Zoning Board of Appeals to speak in favor of the proposed requests. He felt it was an incredulous back story and egregious transgression with the garage becoming three dwelling units with zero permits. However, he felt this property was an exception and that there are no other “under-the-nose” illegal three-unit garages in West Urbana. West Urbana is a vigilant community of people who watch out for this type of thing.

He questioned the relevance of the backstory though. The applicant owns the house and the garage, and he wants to have an apartment in the garage. Mr. Weisskopf felt that dwelling units in garages should be promoted and encouraged. There are multi-family buildings sprinkled throughout the area, and he encouraged the Zoning Board of Appeals to see the reality of the demographic as it exists in the immediate area. He said he believed that there is too much temptation for people to feel that the 200 block of West Indiana Avenue is what the 600 block of

West Illinois Street should look like or the 800 block of West Oregon is really the territory of what the 300 block of West Iowa Street should be. There are such differences between the amount of people, the amount of multi-family properties, the amount of renters, the amount of students that live in the 700 and 800 blocks. He believed that this should be taken into account. It should not be assumed that the R-2 Zoning District only has single-family homes. He said it is not the reality of the neighborhood when you look at how many of the single-family homes are actually multi-family buildings. They may be non-conforming, but they are legal. He sees this case as a single-family homeowner asking to be allowed to have an apartment in his garage.

Esther Patt approached the Zoning Board of Appeals to speak in opposition. She urged denial of the proposed requests because they do not meet the criteria for major variances as set forth in the Urbana Zoning Ordinance. There are no special circumstances relating to the land or structure that are not generally applicable in the district. Many properties in the R-2 Zoning District are not large enough to accommodate two habitable structures with sufficient off-street parking. The only thing that distinguishes the proposed property is that the previous owner illegally converted a garage into three rental units without any required approvals. This should not be considered a special circumstance or weigh in favor of the applicant's requests. Illegal activity should never be a justification for the City to grant waivers or variances.

She said that the applicant, being an owner of a limited liability corporation that buys rental properties, should have known that the dwelling units in the garage were illegal. She felt that if the City approves the proposed requests, then the City would be granting a privilege to a business that was willing to take a gamble in making a real estate acquisition without checking the zoning, code compliance, or to see if the property was even registered with the City's Rental Registration Program.

She talked about the criteria for a major variance. Specifically, if the variance would alter the essential character of the neighborhood and would not cause a nuisance to the adjacent properties. She believed that the precedent of allowing two principal structures and insufficient parking on one lot would increase the parking problem that already exists in the neighborhood. There are existing parking issues in the neighborhood that stem from single-family homes being converted into multi-family living units.

Regarding the "minimum deviation" criteria, she did not understand how asking for five major variances could be considered a "minimum deviation". If a property owner cannot build two habitable structures on one lot in the R-2 Zoning District without requiring waivers for parking, floor area ratio, minimum lot width, and side and rear yard setbacks, then the property should not have two habitable structures because they do not fit.

Paul Debevec approached the Zoning Board of Appeals to speak in opposition. He gave a short presentation on "counter-factuals" regarding the construction of the garage and the conversion of the garage to three dwelling units. He talked about the City's Rental Registration Program, and he noted that there are no rental inspections on file for the subject property.

Ms. Chester explained that when the garage was constructed in 1992, it met the setback requirements at that time. A permit was issued for the construction of the garage while the house

was being constructed. Mr. Rusch added that every garage along California Avenue is located close to their property lines. Mr. Debevec showed a picture of the outside of the garage and said, "This is a garage."

Michael Plewa approached the Zoning Board of Appeals to speak in opposition. He said the subject property is zoned R-2, Single-Family Residential. He stated that a major variance is important in that it is recognized as having an impact on a large area and may affect enforcement of the Zoning Ordinance throughout the City. The issue is simple in that Mr. Gordon is asking for a Conditional Use Permit for a newly purchased property at 308 West California Avenue along with five major variances to have a duplex on a sub-sized lot. This would allow eight unrelated individuals to reside on the sub-sized lot. Granting the applicant's request would serve as an adverse precedent, which would allow a person to purchase a property that was illegally used for residences and then reward the new owner by granting a Conditional Use Permit. He said that precedent alone should demand an outright denial of each request.

Mr. Plewa believed that Mr. Gordon, being a trained real estate professional, conducted due diligence and knew that the house and garage violated the Urbana laws. Now he wants to protect his investment by asking for relief from the City that will have an adverse effect on the enforcement of the Zoning Ordinance elsewhere in the City. The Zoning Board of Appeals has a duty to protect the quality of the West Urbana Neighborhood and protect property values of current owners throughout the region.

He quoted from the letter submitted by Trent Shepard to the Zoning Board of Appeals regarding this case. He stated that the Zoning Board of Appeals must recognize that citizens are becoming alarmed about the lack of consistent enforcement of zoning laws in the West Urbana area. He asked the Board members to reject Mr. Gordon's requests.

Mr. Gordon re-approached the Zoning Board of Appeals to rebut. He stated that he is a real estate professional; however, he had not mastered it yet.

Mr. Cho asked about the feasibility of demolishing the existing garage and rebuilding it. Mr. Gordon replied that he did not know if that would be cost effective. He has not inquired about the fees to connect to the electrical, water and sanitary yet.

Mr. Cho asked if Mr. Gordon would consider minimizing the amount of living area. Mr. Rusch restated the question to ask if Mr. Gordon was willing to seek approval if only for one dwelling unit in the garage. Mr. Gordon said that he needed to move through the steps and this was the next step. After this step, he planned to find out what the cost would be to connect the water, sanitary and electrical to see if it would be reasonable to do.

Tacey Miller approached the Zoning Board of Appeals to speak in opposition. She stated that most people in business are trained to trust but verify. Therefore, she said she found it hard to believe that the applicant was not aware of the illegal status of the three dwelling units in the garage. There are 14 houses on her block, of which only four houses are single-family use. The other houses have been converted to multiple units for rental use. She said there are many for rent signs posted all year long, so there is not a lack of available housing in West Urbana. She

asked the Zoning Board of Appeals to deny the applicant's requests. She felt that approving them would only set a precedent.

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

Mr. Cho inquired about the meaning of the language in the written staff memo, "living space from the garage will need to be removed". Ms. Wilcock explained that if the Conditional Use Permit request was approved but the Major Variance for the reduction in the FAR was denied, then the applicant would need to remove some of the space in the garage used for apartments. There are two options to do this. One option would be to remove the room upstairs and convert it back to attic/storage space, which is not included in the FAR formula. The second option would be to turn the first floor back into car parking, which is also not included in the FAR formula, and would eliminate the need for a parking variance.

Ms. McLaughlin asked for clarification in that the applicant is only seeking approval for one dwelling unit in the garage. Ms. Wilcock said yes. According to the Zoning Ordinance, four people could live in the one unit; however, the Building Code would only allow much less depending on the number of bedrooms.

Ms. McLaughlin asked if there had been any complaints about the subject property prior to this case. Ms. Wilcock said no complaints have been received from tenants or from other residents in the neighborhood. Mr. Rusch stated that he lived a half-block away and knew there was a dwelling unit in the garage; however, he did not know that there were three dwelling units.

Ms. Uchtmann stated that it appeared there were no inspections performed on the rental units. Ms. Wilcock responded that the house had not been inspected. The City's Rental Registration Program listed the subject property as due for a systematic inspection in April 2019, which is the same time that the applicant came to the City to speak with staff about getting permits to make improvements.

Ms. Uchtmann inquired about the options of the Zoning Board of Appeals. Would it be possible to deny the requests at this meeting rather than continuing the cases to a future meeting? Acting Chair Warmbrunn said yes.

Mr. Rusch moved that the Zoning Board of Appeals continue Case Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05, ZBA-2019-MAJ-06, ZBA-2019-MAJ-08, ZBA-2019-MAJ-09 and ZBA-2019-MAJ-10 to the September 18, 2019 regular meeting of the Board. Mr. Cho seconded the motion.

Mr. Rusch discussed his motion. He found it shocking that the previous owner was able to convert the garage into three dwelling units in the middle of West Urbana. He agreed with the public that the Zoning Board of Appeals should not approve the requests based on the fact that the garage was used as rental dwelling units. Instead, the Board should consider this as an applicant asking for approval to turn the garage into one living unit. He believed that the applicant/owners did not know about the illegal status until after the sale. To believe that the

applicant was evil enough to know about the illegal status also would mean that he was stupid enough to hire a professional plumber who was unwilling to do the work “under the table”.

Regarding the variance requests, he said parking is not an issue. Many people who live in this neighborhood do not own vehicles. They walk or ride a bicycle. There is a bus stop two blocks from the subject property, and it is a very short walk to Urbana’s downtown bus depot. If someone does need parking, there is never a shortage on Cedar or Birch Street, where a resident here would likely park.

Mr. Rusch said the major variance request for a reduction in the lot width is a result of the previous sale of the western six feet of the lot to the owner of 310 West California Avenue. He wondered if purchasing a portion of the property at 306 West California Avenue would be an option, as this would eliminate or reduce the major variance request for lot width.

He said the Zoning Board of Appeals recently reviewed and approved a separate case to allow a garage apartment two months prior to this meeting. If the Board is going to continue to consider garages to be converted into living units, then he did not see the major variance requests for encroachment into the rear and side yards to be an issue. On this block, every garage is along the alley.

Ms. Chester commented that she was the Cunningham Township Assessor when the house and the garage were constructed. They were pleased to see a single-family home built in a part of the neighborhood that was fragile. There was an even mix of rental and single-family homes.

She wondered if she had missed the signs indicating the garage had been converted to a dwelling unit. The fact that the garage door was left on is an indication to her that the previous owner was trying to hide something. An old 2008 assessor’s photo did not show any additional windows. She was appalled that they were running the wiring and water from the house. She felt that this was the worst egregious thing she had seen done to a property. She believed that none of the requests should be granted, and that the garage should be converted back into a garage. She agreed to continue the cases to the next meeting.

Ms. Uchtmann stated that given the facts, the history and the public input, she did not favor continuing the proposed cases. She felt it would be poor use of City staff time. City staff had already put in multiple hours for these cases.

Ms. McLaughlin said she understood that people are upset about past infractions and that there are all of these violations. However, what is before them today is not to continue those violations, but instead is something completely different. Therefore, she felt the Board should consider the cases and remedies as they are presented and not punish the current owner for what was done in the past.

Mr. Cho agreed with Ms. McLaughlin’s statement. He believed that the last four options on Exhibit F should be considered. He felt that there is a compromise within these options. If the applicant can purchase two feet from the owner of 306 West California Avenue, it would eliminate three of the major variance requests. When looking at the lot width, the request is for

two feet. The Zoning Board of Appeals has approved similar requests multiple times in the past, so he is okay with granting this request.

Regarding the rear and side yard encroachments, Mr. Cho said they would be a little more generous than what the Zoning Board of Appeals usually considers. This is something that the Board would need to consider.

Mr. Cho said that given the number of requests the Board has considered for accessory dwelling units or in-law units, there is a history of additional housing being allowed. He felt that the Board needed to focus some time on accessory dwelling unit type policy or a study session. This is something that you see in more progressive communities. With the City of Urbana being a progressive community, we should be open to learning more about accessory dwelling units. He was in favor of continuing the cases to the next meeting and giving them more thought.

Acting Chair Warmbrunn noted that all of the input during this meeting was recorded and will be part of the continued public hearing. People will be allowed to speak again at the next meeting if the cases are continued.

Roll call on the motion was as follows:

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

The motion was approved by a vote of 5-1. The cases were continued to the September 18, 2019 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

Ms. Uchtmann inquired about the permitting requirements for sheds. Mr. Garcia responded that he would check with the City's Building Safety Division to learn the requirements and report back to the Board. Ms. Uchtmann stated that she would like a study session or to learn more information about this.

12. ADJOURNMENT OF MEETING

Acting Chair Warmbrunn adjourned the meeting at 8:40 p.m.

Respectfully submitted,

Lorrie Pearson, AICP
Deputy Community Development Director / Planning Manager
Secretary, Urbana Zoning Board of Appeals