

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: **October 17, 2018**

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, Harvey Welch

STAFF PRESENT Kevin Garcia, Planner II; Lily Wilcock, Planner I; Teri Andel, Administrative Assistant II

OTHERS PRESENT Andrew Fell

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

Chair Welch called the meeting to order at 7:04 p.m. Roll call was taken, and he declared a quorum of the members present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF THE MINUTES

The minutes from the September 19, 2018, regular meeting were presented for approval. Ms. Uchtmann moved to approve the minutes as written. Ms. Chester seconded the motion. The minutes were approved by unanimous voice vote as written.

4. COMMUNICATIONS

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

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

5. CONTINUED PUBLIC HEARINGS

There were none.

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

6. NEW PUBLIC HEARINGS

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

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

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

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

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

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

2. The southern driveway must be removed and replaced with a new barrier curb and streetscaping to match the existing streetscape on Broadway Avenue. The driveway may be partially closed if an access drive is installed that meets the standards of the Zoning Ordinance and City Code.
3. Wheel stops must be installed in all parking spaces that abut the public sidewalk, except for the two spaces referenced in Condition 1.
4. All standard parking spaces must be striped to be 18 feet, 6 inches deep, and all compact parking spaces are striped to be at least 15 feet, 6 inches deep.

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

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

Mr. Rusch asked if the City Attorney was ordering or suggesting that the Zoning Board of Appeals to not discuss or review the non-conforming use. Mr. Garcia responded that it is the advice of the City Attorney to only discuss the variance request, because there is an appeal process for a property owner to appeal a decision of a non-conforming use. The issue of non-conforming use is not before the Zoning Board of Appeals at this meeting.

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

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

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

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

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

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

Ms. Uchtmann questioned where the owner could post a sign stating "Compact Car". Mr. Garcia showed where a sign could be located using Exhibit F (Site Photos). Mr. Rusch clarified that

only the two left northern parking spaces would be for compact cars and the two right northern parking spaces would be for bicycle or motorcycle parking only. Mr. Garcia said that was correct.

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

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

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

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

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

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

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

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

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

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

Mr. Warmbrunn stated that the Zoning Board of Appeals has tried to be friendly to businesses in the past. The Board appreciates businesses doing what they are supposed to do. The letter to Matt Cho from J. Patrick Bolger, City of Urbana Building Inspector, dated April 20, 2018 clearly states for Mr. Cho to contact him when he had a plan in place for the parking striping, but he did not do that. As a result, the Zoning Board now had to decide whether they want to follow staff's recommendation to give the applicant as many parking spaces as safely possible.

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

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

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

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

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

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

Mr. Rusch asked if these four parking spaces were part of the original plan that was approved by the City when the applicant first purchased the property. Mr. Garcia stated that the Approved Site Plan is Exhibit D in the packet of information. It states "Existing Concrete to Remain". It does not have striping indicating parking spaces. Had it been striped, the City would have made sure it was compliant with City code.

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

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

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

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

1. Only the requests pertaining to the two southernmost parking spaces adjacent to the northeastern part of the building are granted. Those spaces, with the dimensions

specified in Exhibit G, are allowed to back directly onto Broadway Avenue and must be signed to indicate that they are for employees only and for compact cars only.

2. Wheel stops must be installed in all parking spaces that abut the public sidewalk, except for the two spaces in the potential driveway, if the owner chooses to keep the driveway.

Mr. Rusch seconded the motion.

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

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

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

Ms. Uchtmann seconded the motion.

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

Ms. McLaughlin withdrew her motion.

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

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

Ms. McLaughlin seconded the motion.

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

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

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

Roll call on the motion was as follows:

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

The motion failed.

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

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

Mr. Rusch seconded the motion.

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

Roll call on the motion was as follows:

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

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

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

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Kevin Garcia reported on the following:

- Lily Wilcock is the new Planner I for the City of Urbana.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Welch adjourned the meeting at 8:23 p.m.

Respectfully submitted,

Lorrie Pearson, AICP
Planning Manager
Secretary, Urbana Zoning Board of Appeals