

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: November 18, 2020

APPROVED

TIME: 7:00 p.m.

PLACE: Zoom Webinar

MEMBERS ATTENDING REMOTELY: Joanne Chester, Ashlee McLaughlin, Adam Rusch, Charles Warmbrunn

MEMBER ATTENDING AT CITY BUILDING: Harvey Welch

MEMBERS ABSENT Matt Cho, Nancy Uchtmann

STAFF PRESENT Kevin Garcia, Principal Planner; Marcus Ricci, Planner II; Katherine Trotter, Planner I; Jason Liggett, UPTV Manager

OTHERS PRESENT Alan Craig, Anthony Donato, Ray Griest, Jake Myers, Karen Myers

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

Chair Welch called the meeting to order at 7:05 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 October 21, 2020 regular meeting were presented for approval. Chair Welch suggested a change to the minutes: Charles Warmbrunn was listed twice, and Harvey Welch was not listed. Mr. Rusch moved that the Zoning Board of Appeals approve the minutes with the correction that Harvey Welch is added to the attendance. Mr. Warmbrunn seconded the motion. Roll call on the motion was as follows:

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

The minutes of the October 21, 2020 regular meeting were approved with one correction by unanimous vote.

4. COMMUNICATIONS

ZBA CASE No. 2020-C-02

Communications received in Opposition:

- Email from Nathaniel Manzano
- Email from Bev Carver
- Email from Alan Craig

ZBA CASE No. 2020-C-03

Communications received:

- Email from Ray Griest

Kat Trotter summarized the communications for ZBA Case No. 2020-C-02, all in opposition of the requested conditional use permit. Marcus Ricci summarized the communication for ZBA Case No. 2020-C-03 at the end of his staff report.

Ms. Chester arrived to the meeting.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

ZBA-2020-C-02 – A request by Karen Myers for a conditional use permit to allow an owner-occupied bed and breakfast to operate at 2914 Susan Stone Drive in the R-2, Single-Family Residential Zoning District.

Chair Welch opened the public hearing for this case. Kat Trotter, Planner I, gave the staff report for the case. She began by stating the purpose of the proposed conditional use permit, which is to allow an owner-occupied bed and breakfast at 2914 Susan Stone Drive. She noted one additional condition to be added to the conditional use permit. She noted the location and zoning of the proposed site and the uses of nearby properties. She talked about the proposed owner-occupied bed and breakfast and showed photos of the property and of the floor plan. She reviewed the criteria for a conditional use permit from Section XI-3 of the Zoning Ordinance. She read the options of the Zoning Board of Appeals and presented City staff's recommendation for approval with the conditions expressed in the staff report.

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

Ms. McLaughlin asked about the letter to local homeowners that may have included incorrect information about the meeting. Ms. Trotter explained the the notification requirements, including a legal ad in the News-Gazette, a neighbor notice letter, and a public hearing sign. She stated that there were no errors in the information posted in the News-Gazette or on the public hearing sign, and that staff records did not have the incorrect URL link to the meeting information.

There being no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of her request.

Karen Myers, applicant, raised her hand to speak to the Zoning Board of Appeals. Chair Welch swore her in.

Ms. Myers thanked the Zoning Board of Appeals for hearing her case and expressed her willingness to comply with the conditions of the permit. She stated she was available to answer any questions.

Chair Welch asked if Ms. Myers had seen the letters of opposition to her request. She stated that she had seen the letter included in the staff report, regarding noise and parking/traffic. She stated that does not foresee any issues with noise and parking/traffic, and she anticipates one car at her house at a time.

Chair Welch invited those in support of the proposal to address the Zoning Board of Appeals. There were none.

Chair Welch invited those in opposition to the proposal to address the Zoning Board of Appeals.

Alan Craig raised his hand to speak, and Chair Welch swore him in. He stated that he received the neighbor notice and that the URL was incorrect. He stated his concern about incorrect notification and sufficient time for neighbors to voice their concern. He stated that he had done research on Airbnbs in other locations and that they do not have a positive effect on neighborhoods. He also expressed a concern about strangers in the neighborhood, increased traffic and parties at the proposed Airbnb.

Ms. McLaughlin asked Mr. Craig if the conditions applied to the permit reassure him that the Airbnb will not be a nuisance to his neighborhood. He stated that the conditions help immensely, but he is still concerned about the parking situation and a maximum of four guests allowed at a time. He also stated that if this is approved, it opens the gate for other Airbnbs in the neighborhood.

Ms. Trotter clarified that parking will be provided on-site, and that is a condition of approval for the permit.

Mr. Craig then asked about any guests that people staying at the Airbnb have over, and if they would be able to park in the driveway, or if they would be parking in the street. Ms. Myers stated that she is not planning on allowing Airbnb guests to have guests over, and the maximum of four guests would apply to everyone. She also stated that she does not foresee accommodating more than one vehicle at a time.

Mr. Craig reiterated his concern about guests and parties at the Airbnb, and stated that he felt as if he were speaking for the neighborhood, as his neighbors could not attend the meeting.

Jake Myers, Ms. Myers's son, raised his hand to speak, and Chair Welch swore him in. He stated that his mother does not intend to allow parties, and the Airbnb listing would be sure to include that information. He also stated that if the Airbnb becomes a problem for the neighborhood, it would likely be a problem for Ms. Myers as well.

Mr. Craig stated that his letter included information about the depreciation of homes and when homes are listed, the owners are sometimes required to disclose that there are Airbnbs in the neighborhood. He stated that he would like the Zoning Board of Appeals to table this item until there is an opportunity for his neighbors to receive proper information about the case and meeting.

Mr. Rusch asked if the applicant would be willing to continue this case to the next Zoning Board of Appeals meeting to allow more time for public input. Ms. Myers agreed to continue the case and stated that she loves the neighborhood and would not want to do anything to make the neighborhood unsafe.

Mr. Rusch moved that the Zoning Board of Appeals continue Case No. ZBA-2020-C-02 to the December 16, 2020 meeting. Mr. Warmbrunn seconded the motion.

Mr. Craig requested that City staff distribute a revised neighbor notice. Mr. Garcia confirmed that additional letters would be sent out.

Chair Welch clarified to Mr. Craig that the conditional use permit for the Airbnb would not be a part of any sale of the home, and would terminate upon transfer of the property. Mr. Craig stated that the Board of Realtors sometimes requires homeowners to disclose locations of Airbnbs in the neighborhood, outside of their own home.

Chair Welch announced that the case was continued to December 16, 2020.

ZBA-2020-C-03 – A request by Anthony Donato for a conditional use permit to construct and operate multiple principal structures on a single parcel at 1806 Airport Road in the IN-1, Light Industrial/Office, Zoning District.

Chair Welch opened the public hearing for this case. Marcus Ricci, Planner II, gave the staff report for the case. He explained the purpose for the proposed conditional use permit, which is to allow for a data center complex, which includes three arrays of data centers, solar panels and ancillary electrical equipment. He stated the location, zoning, and future land use designation of the subject property as well as for the adjacent properties. He showed photos of the property, noting the drainage tile and swale running through the center of the property and the existing landscaping on the site. He also noted the nearby County zoning districts and land uses. He also noted that the applicants have made changes to the Site Plan to allow access to vehicles for construction without damaging the drainage tile. He mentioned that staff has recommended two additional conditions to the conditional use permit: *1) That the District Drainage tile be field-located prior to any construction or earth-moving activity, and 2) That the District Drainage tile easement be increased in width from thirty feet to fifty feet.* He reviewed the criteria for a conditional use permit from Section XI-3 of the Zoning Ordinance. He read the options of the Zoning Board of Appeals and presented City staff's recommendation for approval with the conditions expressed in the staff report, and the two additional conditions added by staff. He also summarized the communication received from Mr. Ray Griest expressing the concerns for the drainage tile, and formally requesting the condition for a fifty-foot easement.

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

Mr. Rusch asked what the current City regulations are for installation of solar arrays. Mr. Ricci stated that the electrical connections for the solar arrays must follow City electrical code, and Zoning treats solar arrays as mechanical units that support the operation of a principal use. He stated that mechanicals are required to be screened between the mechanical and public rights-of-way and residential districts. They are also limited to a maximum height of 15 feet.

Mr. Rusch also asked how these solar arrays compare to the size of the solar array at the Landscape Recycling Center. Mr. Ricci stated that that solar array required a special use permit because of the zoning designation of the site. He stated that the principal use in this case is the data center, and the solar array is an accessory use. Mr. Garcia clarified that Mr. Rusch was asking how these solar arrays compare to the size of the Landscape Recycling Center solar array. Mr. Ricci stated that the Landscape Recycling Center solar array is roughly 30 acres, and these solar arrays would be roughly 2/3 that size.

Mr. Rusch asked if the City of Urbana has any requirements for decommissioning solar panels when they reach their end of life. Mr. Ricci stated that the City does not have any decommissioning requirements, but for this project it should be a straightforward process to relocate or remove the solar panels from the concrete pads and stakes in the ground.

Ms. Chester asked if there is a second drainage tile that connects to the drainage tile on this site. Mr. Ricci stated that there is a drainage tile to the east that runs west to a connector drainage tile that connects to the District Drainage tile on the site. Ms. Chester asked if there was an existing easement for the second drainage tile. Mr. Ricci stated that there is not a recorded easement because it is a private drainage tile. Ms. Chester confirmed that the City would not be involved if there was an issue with the private drainage tile, and Mr. Ricci agreed.

Mr. Warmbrunn asked how deep the posts are driven into the ground to hold the solar panels. Mr. Ricci deferred to Mr. Donato, the applicant. Mr. Warmbrunn also asked if the fifty-foot easement would be taken from the center of the drainage tiles, leaving 25 feet of space on either side. Mr. Ricci confirmed that that is true.

There being no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant or the applicant's representative to speak.

Anthony Donato raised his hand to speak, and Chair Welch swore him in. He thanked Mr. Ricci for his presentation and for his help with the proposal. He stated that solar energy is growing rapidly in Illinois, and it represents energy efficiency and minimizes pollution. He stated he was available to answer any questions.

Mr. Rusch asked when the solar panels fail or reach their end of life, what is the cost to dispose of them properly? Mr. Donato stated that the solar panels would be disposed of correctly, regardless of cost. He also stated that there are logical means of upgrading solar panels, and these panels can be easily removed and replaced. Mr. Rusch asked how many solar panels would be on the site. Mr. Donato stated that there will be 9 megawatts of total energy, and 20,000 panels on the site. Mr. Rusch then asked if Mr. Donato had an estimated cost of recycling for each panel, rather than disposing of them in landfills. Mr. Donato stated that the panels themselves are \$150 each, but he is unaware of the specific cost of disposal per solar panel. Mr. Rusch then asked what would happen to the panels if the company were to go out of business, and what will

happen when the panels are failing in the future. Mr. Donato stated that the panels would still be operable even if the company goes out of business, and when the panels are failing they will be recycled of properly.

Mr. Warmbrunn asked how deep the posts for each panel would be in the ground. Mr. Donato stated that the posts would be driven between five and nine feet into the ground, and they are separated by thirty to forty feet. He stated that for this project, there are roughly 1,400 posts.

Ms. McLaughlin asked what the applicant's position was on widening the easement from thirty to fifty feet. Mr. Donato stated that he is willing to make sure that there is sufficient space for drainage swale equipment to turn around on the site, but that fifty feet of easement across the entire drainage swale would negatively impact the solar array layout. He mentioned that in some areas, a fifty-foot easement or greater would be possible, but not across the entire site.

Ms. McLaughlin asked if there had been a conversation between the applicant and the Drainage District.

Ray Griest, of the Drainage District, raised his hand to speak, and Chair Welch swore him in. Mr. Griest stated that the drainage tile has been in the ground for over 100 years and will require repair over time. He stated that repairing the drainage tile used to be done by hand, but now it requires backhoes and heavy machinery, and maneuvering that equipment requires a larger easement. He also asked about screening on-site and around the perimeter. Mr. Ricci stated that the solar panels are required to be screened along the west property line, where there are residential properties, and along Airport Road. Mr. Griest stated that landscaping and fencing cannot be planted or installed on top of the drainage tile, as they will restrict the surface flow of water and the roots will interfere with the tile. Mr. Donato stated that fencing will be installed along the west property line, but not across the drainage tile. He also stated that they have no plans to plant trees near the drainage swale.

Mr. Griest reiterated that in the narrow areas of the solar array layout, at least fifty feet is needed to maneuver large machinery. He also stated that the tile and the swale should be located before a final solar array layout is determined. Mr. Donato agreed that the drainage tile and swale will be located, and that, in much of the site, more than fifty feet of space will be left for the Drainage District to use.

Ms. McLaughlin asked Mr. Griest what the difference is between a fifty-foot easement and fifty feet of space to work. Mr. Griest stated that there is an existing thirty-foot easement, but that is no longer sufficient for drainage tile repair. He is asking for more space to work, but not necessarily a legal document showing a fifty-foot easement. Ms. McLaughlin asked if the City has control over the easement, and what the legal differences are between an easement and just clearance to work. Mr. Ricci clarified that if a fifty-foot easement were to be established, it would be included as a condition of the conditional use permit. He stated that if an easement is not drawn up and recorded, the site plan could be drawn up to include the requested fifty feet of space between the tile and the solar panel equipment.

Ms. McLaughlin asked Mr. Griest if he is requesting a fifty-foot easement, twenty-five feet on each side measured from the center of the drainage tile. He stated yes, they are requesting a fifty-foot easement, measured from the center of the tile.

Mr. Warmbrunn asked Mr. Griest if the property has been farmed, and if crops are planted on top of the drainage swale using heavy machinery. Mr. Griest said yes, the property has been farmed for at least the last 40 years. Mr. Warmbrunn asked when the drainage tile last had to be repaired, and Mr. Griest stated he did not know. Mr. Warmbrunn then asked how deep the tile is in the ground, and Mr. Griest stated at the road the tile is three feet deep, but he is unsure of how deep the tile is on the rest of the site.

Chair Welch then invited those in support of the proposal to address the Zoning Board of Appeals. There were none.

Chair Welch invited those in opposition of the proposal to address the Zoning Board of Appeals. There were none.

Mr. Rusch asked staff if the discussed concerns regarding the easement were resolved in the recommended conditions. Mr. Ricci stated that the recommended conditions were to field locate the drainage tile and increase the easement from thirty to fifty feet, in benefit of the Drainage District.

Mr. Warmbrunn asked Mr. Donato if it would be possible for solar panels or posts to be removed or relocated to provide more room for the Drainage District to access the tile, if there were a break. Mr. Donato stated that it would be easy to move solar panels if the Drainage District needed to access a specific part of the site, however moving the posts would be more difficult. He also stated that the posts themselves would not be as close to the swale, and equipment would not traverse over the drainage swale. He stated that the solar panels themselves comply with the zoning regulations on the property, and a conditional use permit is required because there are multiple principal structures, the data centers, on one property.

Ms. McLaughlin asked if the thirty-foot easement, except for in the case of repairs, would be sufficient for the Drainage District if solar panels can be removed to create more space. Mr. Griest stated that proposed solar array layout needs to be able to be modified once the drainage tile is located. Mr. Ricci stated that the recommendation was written to provide flexibility for modifying the site plan to meet City regulations and the needs of the Drainage District. He stated that once the field tile is located, the site plan can be modified to move the solar panels away from the tile. He reiterated that the conditional use permit is concerned with the multiple principal structures - the data centers – on one lot.

Mr. Rusch asked if Mr. Donato proposed only one data center, would he be able to locate the same number of solar panels on the site by-right. Mr. Ricci answered yes, the conditional use permit is concerned with the number of principal structures permitted on one lot. He referenced a recent special use permit case of similar nature that considered a request to convert a dormitory building into a church and a rooming house. The special use permit dealt only with the church use; the rooming house was permitted by-right, so it did not need to be considered as part of the special use permit request. He stated in this case, the Zoning Board of Appeals should be concerned with the data centers, rather than the array of the solar panels.

Mr. Griest stated the importance of locating the tile and the swale before determining the solar panel array. Mr. Donato stated that the drainage tile is roughly 30 inches, the width of a single solar panel, and once it is located the solar arrays could be rearranged to accommodate the tile and swale. He also stated that the solar panels are linked together, so single solar panels cannot

be removed, an entire row would need to be removed. He stated that a fifty-foot easement should not be required for this conditional use permit before the drainage tile and swale are located. Mr. Griest conceded that the thirty-foot easement would be sufficient.

With there being no further input from the audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Ms. McLaughlin moved that the Zoning Board of Appeals approve Case No. ZBA-2020-C-03 as requested based on the findings outlined in the written staff report with the conditions that *1) Construction must be in general conformance with the attached site plan, pending the location of the drainage tile itself, and 2) That the drainage tile be field located prior to any construction or earth moving activity.* Mr. Warmbrunn seconded the motion.

Mr. Rusch moved to amend the motion to have further discussion. He proposed adding a third condition: *that inoperable or decommissioned solar panels must be recycled in an environmentally friendly manner at a certified facility, and a fourth condition: that a decommissioning plan be coordinated with City staff to ensure that facilities are removed and properly disposed of after their useful life within 90 days after not being used, with provisions for removal of all structures and equipment, and a plan ensuring financial resources to fully decommission the site. The applicant shall submit a financial guarantee in the form of a bond in favor of the City of Urbana, for the amount of 125% of the cost to meet the requirements of the decommissioning plan.*

Ms. McLaughlin asked if the condition about locating the drainage tile is pertinent, considering that the conditional use permit is concerned with the multiple principal structures. Mr. Ricci clarified that the tile and the easement are relevant and germane to the data centers themselves, and that the tile should be located to ensure that it is not damaged.

Ms. McLaughlin asked if the proposed conditions should be discussed, and Mr. Garcia stated that there should be a second before there was further discussion. Mr. Liggett stated that there was already a motion and a second on the floor, and unless the motioner or seconder want to consider Mr. Rusch's amendment as a friendly amendment. Mr. Rusch stated that the proposed amendment can be seconded and discussed, or it can die from lack of a second. There was no second to Mr. Rusch's proposed amendment.

Chair Welch asked for any additional discussion. Mr. Rusch stated that he is comfortable with the conditions recommended by City staff to protect the drainage tile, and that he is confident Mr. Donato will ensure cooperation with the Drainage District. Mr. Garcia reiterated Mr. Griest's concern about screening interfering with the drainage tile, and that the Zoning Ordinance would require screening along Airport Road. He suggested a condition that would allow there to be no required screening along Airport Road.

Mr. Rusch moved that the proposed condition be added: that there shall be no required screening in areas where it is necessary for water flow to be protected. Ms. McLaughlin seconded the motion.

Chair Welch stated that the proposed condition would be an amendment to the motion. Roll call on the motion to amend was as follows:

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

The motion carried and was added to the motion by Ms. McLaughlin. Ms. McLaughlin restated the motion for clarity, *“The Zoning Board of Appeals approve with conditions a proposed conditional use permit, Case No. ZBA-2020-C-03, with the following conditions: 1) that the construction generally conforms to the site plan submitted in the application and shown as “Project Urbana, 1830 County Road 1800 N,” dated 10/21/2020, except where modified to meet City regulation and Drainage District and other easement requirements; 2) that the drainage district tile be field located prior to any construction or earth moving activity; and 3) that the required screening be waived in areas where the drainage swale must be protected.”*

Roll call on the motion was as follows:

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

The motion passed by a vote of 5 ayes to 0 nays.

7. OLD BUSINESS

Review of Annual Bylaws

Chair Welch opened this item on the agenda. Mr. Garcia summarized previous discussions about the Zoning Board of Appeals Bylaws. He stated the proposed change to Section III of the bylaws regarding attending meetings remotely, which allows members to attend a meeting remotely when a physical quorum is present. He stated the proposed change, striking Section IV, that states Zoning Board of Appeals meetings could be conducted with less than a quorum. He also suggested changing the word “biannual” to “once every two years” to avoid confusion.

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

Mr. Warmbrunn asked about the time limits for members of the public, considering the City Council guidelines for the general public input section and case-related testimony. Mr. Garcia stated that the City Council guidelines are specific to the audience participation section of a meeting, and that there are no time limits for public participation during cases. He stated that because the Zoning Board of Appeals is a quasi-judicial body, it would not be legal to limit anyone giving a testimony during a case, however the general public participation section can be limited.

Mr. Rusch stated that his understanding was that the Public Input Guidelines implemented by City Council are only in effect during online meetings, during the emergency order. Mr. Garcia stated that was not how he understood the guidelines, but that he would confirm. Mr. Liggett stated that it was his understanding that the Public Input Guidelines are only in effect during the emergency order.

Ms. McLaughlin asked if the Chair of the Zoning Board of Appeals has the power to extend the public input time limit. Mr. Liggett stated that the temporary rules require a vote of the board to extend the public input time limit.

Mr. Garcia stated that he would look into the questions raised about the Public Input Guidelines and time limits, and that the bylaws could be voted on at the December meeting. Chair Welch concurred. The board had no objections, so this item was continued to December 16, 2020.

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

Chair Welch adjourned the meeting at 9:11 p.m.

Respectfully submitted,

Kevin Garcia, AICP
Principal Planner
Secretary, Urbana Zoning Board of Appeals