



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Marcus Ricci, AICP, Planner II

DATE: November 29, 2019

SUBJECT: **CCZBA-948-AT-19:** Amend Section 8.3.2 to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

Introduction

The Champaign County Zoning Administrator (Zoning Administrator) is requesting amendments to § 8.3.2. of the Champaign County Zoning Ordinance (Ordinance) to authorize a variance to rebuild a nonconforming structure before that structure is damaged.

This proposed text amendment is of minimal interest to the City of Urbana because it will not significantly affect zoning and land use development decisions within the City's one-and-a-half mile extraterritorial jurisdictional (ETJ) area. The City has subdivision and land development jurisdiction within the ETJ, while the County holds zoning jurisdiction in this area, and it is important that there be consistency between these two jurisdictions where certain regulations may overlap. Land uses in the County affect the City of Urbana in several ways, including:

- Land uses in the county can potentially conflict with adjacent land uses in the city;
- Unincorporated portions of the county adjacent to the city will likely be annexed into the city. Existing land uses would also be incorporated as part of annexation; and
- Development patterns of areas annexed into the city will affect the city's ability to grow according to the shared vision provided in the 2005 Comprehensive Plan.

For these reasons, the City should examine the proposed text amendment to the Champaign County Zoning Ordinance to ensure compatibility with existing City ordinances. It is the Plan Commission's responsibility to review the proposed amendment to determine what impact it may have on the City, and to recommend to City Council whether or not to protest the proposed text amendment. Under state law, a municipal protest of the proposed amendment would require three-quarters super majority of affirmative votes for approval of the request at the County Board; otherwise, a simple majority would be required.

Background

According to materials provided by the applicant, numerous variance cases have resulted in Champaign Planning and Zoning (P&Z) Staff finding that there is also a nonconforming structure on the property that would require a variance to be rebuilt should it be destroyed (Exhibit A). P&Z Staff believe the option should be available to request a variance before a nonconforming structure

is destroyed, when there is another required zoning variance being requested. Granting a requested variance prior to destruction of the nonconforming structure could reduce the time between when a structure is destroyed and when it can be rebuilt by months, since variance cases may have to wait several ZBA meetings before they can be heard.

A recent example of this situation occurred at the January 17, 2019, Champaign County Zoning Board of Appeals (CCZBA) meeting at which a case was heard that included several required variances. P&Z Staff included a variance for an existing nonconforming house, to be proactive about the possibility of the structure being damaged in the future. A CCZBA member stated they had a very strong reservation to hearing the variance about the nonconforming structure “because the existing house is a lawful nonconforming structure that can continued to be used, and this Board does not have the legal authority to grant a variance to simply make a nonconforming structure conforming...Section 9.1.9 of the Champaign County Zoning Ordinance indicates that the Board is prohibited from granting variances for nonconforming structures except for those that are specifically provided for in Section 8, which provides for granting variances for expansions of nonconforming uses and provides for granting variances for the reconstruction of nonconforming uses that have been destroyed. The home is still there, so there is no provision in the Zoning Ordinance for granting a variance for an existing structure just because it is nonconforming. The Board is not authorized to erase the nonconforming status of existing structures; we can provide for their expansion and reconstruction, but the Board is not authorized to change their status and that is what Part B. proposes to do and would be violating Section 9.1.9 of the Ordinance.”

Zoning Administrator John Hall responded that he seeks to reduce the “unintentional bad effects” of the Ordinance daily, that this lack of proactive planning is one of those bad effects, and it is one of the most common variances requested. At its November 14, 2020, meeting, the CCZBA voted to forward the proposed amendment to the Champaign County Environmental Land Use Committee (ELUC) with a unanimous recommendation for approval, including the CCZBA member who had expressed concerns (five ayes, zero nays). These meeting memoranda can be found at http://www.co.champaign.il.us/CountyBoard/meetings_ZBA.php (see “2019 Meetings” for the September 26 Preliminary Memo and October 31 Supplemental Memo). If forwarded by the ELUC, the Champaign County Board would hear this case at its January 23, 2020, meeting, at the earliest.

Discussion

County Zoning

City staff reviewed the proposed text amendment to determine potential impacts to land within the City’s boundary and ETJ, and for potential impacts to the City’s ability to plan or manage development. **Staff does not anticipate a negative impact to the City or to the City’s ability to plan or manage growth or development.** Any variance granted by the County should be considered by the City if and when the land on which the nonconforming use is located is proposed to be annexed into the city. Below is a mark-up of the text of § 8.3.2. with additions underlined:

8.3.2 Should such STRUCTURE be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. The BOARD may authorize such a VARIANCE prior to such STRUCTURE incurring any damage or destruction.

Urbana 2005 Comprehensive Plan

By State law, the City has the ability to review zoning decisions within its ETJ for consistency with the City’s comprehensive plan. Therefore, Champaign County’s proposed Zoning Ordinance text amendment should be reviewed for consistency with the City of Urbana’s 2005 Comprehensive Plan, which includes the following pertinent goals and objectives:

Goal 15.0 Encourage compact, contiguous, and sustainable growth patterns.

Objective 15.5 Promote intergovernmental cooperation on development and growth issues.

Goal 21.0 Identify and address issues created by overlapping jurisdictions in the one-and-a-half mile Extraterritorial Jurisdictional area (ETJ).

Objectives 21.1 Coordinate with Champaign County on issues of zoning and subdivision in the ETJ.

21.2 Work with other units of government to resolve issues of urban development in unincorporated areas.

The proposed Ordinance text amendment to authorize a variance to rebuild a nonconforming structure before the structure is damaged is generally consistent with these City goals and objectives. It seeks to proactively plan for damage to nonconforming structures to minimize the time between the actual damage and the permitted rebuild date.

Impacts to City of Urbana Zoning

Staff does not anticipate a negative impact to the City or to the City’s ability to plan or manage growth or development. Within the City’s municipal boundaries, the proposed Ordinance text amendment does not directly affect the use of land, nor does it affect the City’s ability to manage growth and development. The City has peremptorily granted a variance for a situation that has not yet transpired. A recent example is Case ZBA-2019-MIN-01 in which a Minor Variance was granted to allow a future sign to encroach 2.5 feet into a 15-foot required front yard. This situation was created when the business sold a 2.5-foot strip of its front yard to the Illinois Department of Transportation, effectively making the existing, legally conforming, freestanding sign now nonconforming. The business owners wanted to be assured that the sign could be rebuilt in the same location if it was damaged beyond repair. On March 20, 2019, the Urbana Zoning Board of Appeals granted the requested peremptory Minor Variance.

Summary of Staff Findings

1. The Champaign County Zoning Administrator proposes an amendment to § 8.3.2. of the Champaign County Zoning Ordinance to authorize a variance to rebuild a nonconforming structure before that structure is damaged.
2. The proposed text amendment is generally compatible with the land use policy goals and objectives of the 2005 Urbana Comprehensive Plan, which promote natural resource preservation, contiguous growth, economic stability, and compatibility of land uses.
3. The proposed text amendment would not pose significant negative impacts to land uses or to the ability of the City to manage growth and development of land currently within the

City's ETJ. Additionally, the City has granted a similar preemptory Minor Variance for nonconforming structures.

Options

The Plan Commission has the following options in **CCZBA Case No. 948-AT-19**, a request to authorize a variance to rebuild a nonconforming structure before that structure is damaged. The Urbana Plan Commission may:

- a. Forward the plan case to the City Council with a recommendation to **defeat** a resolution of protest; or
- b. Forward the plan case to the City Council with a recommendation to **defeat** a resolution of protest, contingent upon specific provisions to be identified; or
- c. Forward the plan case to the City Council with a recommendation to **approve** a resolution of protest.

Staff Recommendation

Based upon the findings above, staff recommends that the Plan Commission forward to the City Council a recommendation to **defeat a resolution of protest** as presented.

Attachments: Exhibit A: Excerpt of Champaign County Planning & Zoning Preliminary Memorandum

Full County Memos available at http://www.co.champaign.il.us/CountyBoard/meetings_ZBA.php

cc: John Hall, Director, Champaign County Planning & Zoning
Susan Burgstrom, Planning, Champaign County Planning & Zoning

Exhibit A: Excerpt of Champaign County Planning & Zoning Preliminary Memorandum

Champaign County
Department of

**PLANNING &
ZONING**

CASE 948-AT-19
PRELIMINARY MEMORANDUM
September 19, 2019

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance by amending Section 8.3.2 to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

Location: Unincorporated Champaign County

Time Schedule for Development: As soon as possible

Prepared by: **Susan Burgstrom**, Senior Planner
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BACKGROUND

At its May 9, 2019 meeting, ELUC reviewed a memorandum dated May 1, 2019 regarding proposed changes to Zoning Ordinance Section 8.3: Nonconforming Structures – see Attachment B. The proposed change is to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

ELUC approved opening a ZBA public hearing for these amendments at its June 6, 2019 meeting.

REASONS FOR THE PROPOSED AMENDMENT

Section 8.3.2 currently requires a variance in order to reconstruct a nonconforming structure destroyed to an extent greater than 50% of its replacement cost. As Section 8.3.2 is written, a property owner would have to wait for a structure to be damaged or destroyed before they could apply for a variance to rebuild.

Numerous variance cases have resulted in P&Z Staff finding that there is also a nonconforming structure on the property that would require a variance should it be destroyed. P&Z Staff believe the option should be available to request the variance before a nonconforming structure is destroyed when there is another required zoning variance needed for the property. Allowing the variance prior to destruction could reduce the time between when a structure is destroyed and when it can be rebuilt by months, since variance cases may have to wait several ZBA meetings before they can be heard.

ADDITIONAL INFORMATION RELATED TO THE PROPOSED AMENDMENT

Section 9.1.9 B.4. of the Zoning Ordinance states, “At no time shall the BOARD, the Hearing Officer or the GOVERNING BODY grant a VARIANCE to waive compliance with regulations pertaining to NONCONFORMING LOTS, STRUCTURES, or USES, except as specifically authorized in Section 8.”

At the January 17, 2019 ZBA meeting, there was a case that included several required variances. P&Z Staff decided to include a variance for a nonconforming house to be proactive about the possibility of the structure being damaged in the future. Mr. DiNovo stated that he had a very strong reservation

Exhibit A: Excerpt of Champaign County Planning & Zoning Preliminary Memorandum

with respect to hearing the variance about the nonconforming structure “because the existing house is a lawful nonconforming structure that can continued to be used, and this Board does not have the legal authority to grant a variance to simply make a nonconforming structure conforming.” Further, Mr. DiNovo stated, “Section 9.1.9 of the Champaign County Zoning Ordinance indicates that the Board is prohibited from granting variances for nonconforming structures except for those that are specifically provided for in Section 8, which provides for granting variances for expansions of nonconforming uses and provides for granting variances for the reconstruction of nonconforming uses that have been destroyed. The home is still there, so there is no provision in the Zoning Ordinance for granting a variance for an existing structure just because it is nonconforming. The Board is not authorized to erase the nonconforming status of existing structures; we can provide for their expansion and reconstruction, but the Board is not authorized to change their status and that is what Part B. proposes to do and would be violating Section 9.1.9 of the Ordinance.”

The January 17, 2019 minutes state, “Mr. Hall stated he understands Mr. DiNovo’s point, but as the Zoning Administrator, he sees the Ordinance having unintentional bad effects, and every day he minimizes those as much as he possibly can, and this is another aspect of that, but this is a decision by this Board...Mr. Hall stated that this is one of the most common variances. He asked the Board to recall how many variances they have received with this part to it, so he would consider this a critical amendment. He said that he does not like doing text amendments because they always end up taking up more time than can be imagined, but this is something that is fundamental.”

Ultimately, the ZBA voted in favor of allowing the variance 5-0, with Mr. DiNovo voting in favor, but with strong reservations.

ATTACHMENTS

- A Legal advertisement
- B ELUC Memorandum dated May 1, 2019, with attachment:
 - Proposed Changes to Zoning Ordinance Other Than in Response to Municipal Concerns dated February 27, 2019
- C Preliminary Finding of Fact, Summary Finding of Fact, and Final Determination for Case 948-AT-19 dated September 26, 2019, with attachment:
 - Annotated version of proposed amendment