

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

DATE: September 21, 2005

APPROVED

TIME: 7:30 p.m.

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

MEMBERS PRESENT: Paul Armstrong, Anna Merritt, Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn

MEMBERS ABSENT Herb Corten, Harvey Welch

STAFF PRESENT: Elizabeth Tyler, Director of Community Development Services; Matt Wempe, Planner I; Teri Andel, Secretary

OTHERS PRESENT: Dan and Tori Corkery, Steve Ross

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

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

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Chair Merritt suggested making the following changes to the minutes: 1) Page 1, under OTHERS PRESENT, change *Kin* to *Kim* and 2) Page 6, Paragraph 2, Last Sentence, change *Ordinance to Board of Appeals*. Mr. Armstrong moved to approve the minutes from the August 17, 2005 meeting as corrected. Ms. Uchtmann seconded the motion. The minutes were approved as corrected by unanimous vote.

NOTE: Chair Merritt swore in members of the audience who wanted to speak during the public hearing.

4. WRITTEN COMMUNICATIONS

- Email from Rich Cahill regarding Case Number ZBA-05-MIN-01
- big.small.all.champaign county. Flyer and FAQ sheet
- A Directory of Who's Who in Government

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

ZBA-05-MIN-01: A request to allow an 11% increase (from 15 feet to 16 feet, 8 inches) in the height of an accessory structure at 602 West High Street.

Matt Wempe, Planner I, presented the case to the Zoning Board of Appeals. He began by explaining the petitioners' need for the proposed minor variance to be able to construct a garage with a gambrel roof that would be approximately 16 feet, 8 inches to ensure architectural compatibility with their existing home. He briefly described the proposed site and its surrounding properties, noting their current zoning and land uses. He reviewed the variance criteria according to Section XI-3 of the Urbana Zoning Ordinance that pertained to this case. He read the options of the Zoning Board of Appeals and presented staff's recommendation, which was as follows:

Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Urbana Zoning Board of Appeals approve the minor variance request in ZBA Case No. ZBA-05-MIN-01, with the following condition:

- 1. That the accessory structure shall closely resemble the architectural style and look of the existing home, including a gambrel roof.*

Mr. Schoonover pointed out that the first page of the staff report states that the proposed new garage would replace an existing garage in the same location, but then on page three under the fifth variance criteria, it states that the proposed garage will be located approximately in the same location as the existing garage. Mr. Wempe noted that the proposed new garage would be larger than the existing garage; however, his understanding was that the new garage would be located in the same location as the existing garage, and it will access the same curb cut and driveway as the existing garage does.

Dan Corkery, petitioner, commented that the existing garage was one to two feet from the north property line, and the proposed new garage would be five feet from the property line. The new garage would have a bigger footprint.

Ms. Merritt inquired if the petitioner would still have the curve in their driveway. Mr. Corkery replied yes, however, they would have to pour new concrete, because the existing driveway was roughly 16 feet wide and the new garage would be about 24 feet wide.

Ms. Uchtmann asked if the petitioner would still meet the minimum side-yard requirements for green space. Mr. Corkery answered by saying yes. There was a setback along the north property line of five feet, which they planned to meet. Mr. Wempe mentioned that the required side-yard setback in the R-3 Zoning District was five feet. Mr. Corkery responded by saying that they planned to meet that requirement and were not planning to ask for a variance on the side-yard setback.

Mr. Schoonover moved that the Zoning Board of Appeals approve the minor variance request for ZBA Case No. ZBA-05-MIN-01 along with the condition recommended by staff. Mr. Armstrong seconded the motion. Roll call was as follows:

Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Armstrong	-	Yes			

The motion was passed by unanimous vote.

7. OLD BUSINESS

Review of the By-Laws

Ms. Tyler mentioned that staff had made some revisions to the by-laws as a result of comments and suggestions that were turned in from some of the Board members. She recommended that the Board members take a moment to look through the by-laws to see if staff caught what the members were trying to change.

Ms. Merritt questioned whether these should be called By-Laws or Rules of Procedure. Ms. Tyler felt that Rules of Procedure was a little broader than Rules of Conduct, because the Zoning Ordinance talks about procedures. Therefore, she believed that Rules of Procedure would be appropriate. Mr. Wempe mentioned that staff was in the process of updating the Zoning Ordinance, so any change in the title could be reflected in the Zoning Ordinance.

Ms. Tyler pointed out that there was one suggestion from the Board that was not included in the changes made to the Rules of Procedure. It was to review them on a bi-annual basis. The other boards and commissions review their by-laws/rules of procedure on an annual review. Staff believed that if they reviewed the Zoning Board of Appeal's Rules of Procedure on an annual review, then they would be able to review them at the same time as the other boards and commissions and would be easier to remember to review them. Ms. Merritt felt that this would be agreeable.

Mr. Warmbrunn suggested talking about "Continuances". He wanted to know if it would be possible for a member of the Board to request a continuance with the new language that was added. Ms. Tyler replied by saying that in Article IV, Section 2, Item 2 states that

“Continuances of new cases appearing for the first time on the agenda may be requested by staff or any interested party.” The Zoning Board would certainly be considered an extension of staff or an interested party.

Mr. Warmbrunn asked if staff had continued a case without the Zoning Board voting on it in the past. Ms. Tyler stated that it had happened before when a petitioner was unable to attend a meeting to share critical information or a change in circumstances had occurred at the last minute. Mr. Warmbrunn inquired if staff would still have this ability under the new language. He was in favor of staff having the ability or authority to grant a continuance without the Board voting on it. Ms. Tyler remarked that this was a good point, and staff needed to be able to do this some times.

Mr. Warmbrunn commented that Article I talks about the Zoning Board of Appeals' Attorney being consulted in cases where the powers of the Board are not clearly defined, or where legal questions are at issue. Obviously, the Board's Attorney was not usually in attendance of the meetings. So, should staff include language in the Rules of Procedure regarding the Board asking for a continuance under these circumstances? Mr. Armstrong remarked that they could write language into the Rules of Procedure that would cover all contingencies for continuances, but then they would be getting into a lot of specific language.

Mr. Warmbrunn went on to talk about quorums. He found that a quorum is a majority of the members appointed. However, if a member abstains or has a conflict of interest, then how is that Board member approached from a quorum standpoint? Ms. Merritt noted that this was in the Robert's Rules of Order, and the City basically follows Robert's Rules. Ms. Tyler added that with the Plan Commission, when they have a conflict of interest, that action does not affect the quorum established to conduct the meeting. The recusal would be considered as an abstention, and it shall not be counted as either an aye or nay vote. The abstaining member shall not be counted in determining the total number of votes required for approval of a matter before the Commission. Ms. Uchtmann suggested that staff include this in the Zoning Board of Appeal's Rules of Procedure. Ms. Tyler commented that staff can do this and maybe even include the request that any member abstaining remove themselves from the discussion and the table while the matter is resolved. This way the Zoning Board of Appeals could have the same clarity as the Plan Commission.

Ms. Uchtmann inquired as to what a simple majority was. Ms. Merritt explained that a simple majority was one more person than half of a quorum. It was all based on a quorum of those appointed.

Mr. Warmbrunn wondered if the procedures should be the same for every board and commission. Ms. Tyler replied that it was not necessary for all the boards and commissions to operate under the same Rules of Procedure. Staff had developed this particular section regarding conflict of interest for the Plan Commission through experience. If the Zoning Board believed it would be helpful to have it included in their Rules of Procedure, then staff can include that provision. Staff wanted to also match the public hearing process to be responsive to case laws. Otherwise, the Zoning Board of Appeals does different votes, swear people in, and make final

decisions, whereas, the Plan Commission does not do these things. The Plan Commission is always advisory.

Ms. Merritt questioned whether the Zoning Board of Appeals should spell out what conflicts of interest are in the Rules of Procedure. She personally did not think that they should define what conflicts of interest are. She believed that they should use their own judgment. However, if the other Zoning Board members felt differently, then it could be something that they discuss. Ms. Tyler responded by saying that the Plan Commission does list some of the scenarios for a member to abstain from the case. She read through the Plan Commission's list. She pointed out that conflicts of interest are usually financial interests or the appearance of a conflict of interest (close friend or relative to someone involved in the case). She noted that the Zoning Board of Appeals may want to add this to their Rules of Procedure.

Mr. Warmbrunn inquired about when people attempt to talk to the Board members prior to a case. Ms. Tyler stated that the Board members should encourage these people to come to the meeting or let you know in a way that they could share with each other so that it would become part of the evidence. Board members need to be careful when hearing someone out, but not engaging in the lobbying. Try not to offer any comments about the case.

In referring to Article III, Section 4, Ms. Uchtmann asked if this meant that public hearings could be held by less than a quorum. In response, Ms. Merritt gave an example. There was a meeting scheduled, and staff thought that there was going to be a quorum of the Zoning Board of Appeals present at the meeting. People arrived at the meeting, and a couple of the Board members did not show up resulting in them not having a quorum. So, what should they do? Should they pack up and go home or should they open the case and hear some of the people who took their time to attend the meeting and agree to have a continuance? Ms. Tyler pointed out that by opening the case, it would save some time and expense, because staff would not have to re-notice the meeting. Mr. Schoonover added that the Chair would let the public know up front that the case would not be voted upon at the first meeting, because there was not a quorum of members.

Mr. Warmbrunn presented a scenario where some of the Board members are present and have listened to testimony for a particular case for an hour and a half, then an absent member comes in late to the meeting. Would that member be qualified to sit down and be able to vote without hearing the previous testimony? He suggested that if the Zoning Board of Appeals did not have a quorum present at the beginning of a case, then they should continue the case right away. Ms. Tyler stated that they should give people a chance to speak if they would like, because someone (a petitioner, for example) might have traveled a long distance to attend the meeting.

Ms. Uchtmann inquired as to who the Secretary of the Board or his /her designee refers to in Article IV, Section 3, Item 2. Ms. Tyler replied that the Secretary of the Board currently was herself. His/her designee would refer to another staff person that she designates to send a written notice to the applicant.

Ms. Tyler mentioned another thing staff and the Plan Commission had done in hearing cases without a quorum was to have only the Chairperson come to the meeting. All the other members

would be informed to stay home. Staff discovered that there would not be a quorum at the last minute and did not have time to cancel the meeting, so the Chair would come to meeting place to inform people that the case would be continued.

Mr. Warmbrunn suggested that staff change Article III, Section 6, Item 1 to delete voice, so that it reads as such: *All decisions shall be made by roll call vote and shall require at least a majority of a quorum.* Ms. Merritt agreed.

Mr. Warmbrunn pointed out that they had not included any authorization or procedure for a protest requiring a 2/3 vote. Ms. Merritt remarked that this was a good point. This had come up in the past during a case; therefore, it should be included in the Rules of Procedure.

She went on to say that she had found it very helpful to read through the Rules of Procedure again. Reviewing them once a year was not a bad idea, because it gets the members back into thinking about what they are doing. It will also give new members an idea of what the Zoning Board of Appeals is trying to do.

She suggested a few changes. The first was to change the language in the Zoning Ordinance to reflect the language in the "Rules of Procedure", including the title. Another change was to delete the word "conduct" in Article 1, Section 1 of the Rules of Procedure, and replace it with a different word.

Ms. Uchtmann wanted to know if the Zoning Board of Appeals had an overall goal. What did they want for the City of Urbana? Ms. Merritt replied that the Plan Commission and the 2005 Comprehensive Plan addressed more of what the City wants to happen. The Zoning Board of Appeals applies rules that have been adopted to see whether waivers of these rules could be granted to applicants. Ms. Tyler added that the Zoning Board of Appeals reviews and decides the outcome of minor variances and conditional use permits. Decisions on major variances are recommended by the Zoning Board of Appeals to the City Council for final decision. The appeals cases are important because on a day-to-day basis, staff is administering the Zoning Ordinance. Therefore, there is a lot of interpretation, so there needs to be a body that can rule on appeal or to confirm these interpretations.

Ms. Merritt remarked that the Zoning Board of Appeals does not make the rules and is not involved in the visioning process of what the City will look like. The Zoning Board of Appeals is applying the rules that have been made by other bodies. Ms. Tyler stated that the changes that Mr. Wempe had talked about making to the Zoning Ordinance would be reviewed by the Plan Commission. The Plan Commission was a hearing body for Zoning Ordinance text and map. Their recommendation would be voted on by the City Council. It was important for the Zoning Board of Appeals to remember that when amendments to the Zoning Ordinance occur, the Zoning Board needs to apply them.

She went on to talk about the City Council Goals. The City Council has been talking about zoning, about professionally rewriting the Zoning Ordinance and about making changes to the sign regulations. As these changes work through the Plan Commission and City Council, staff

will keep the Zoning Board up-to-date on any changes that are made, because the Zoning Board will have very different regulations to deal with the variance requests.

Ms. Uchtmann recalled a comment made during a previous case about why the City has a Zoning Ordinance if the Zoning Board always grants waivers or variances. Mr. Armstrong stated that is what the Zoning Board of Appeals is about. Without variance or conditional use permit requests, there would be no need for the Zoning Board of Appeals. Almost every variance that the Board grants is contradictory to the Zoning Ordinance. The Zoning Board could take a position, based on principle and deny every case that comes before them that does not conform to the Zoning Ordinance or they could put themselves in an interpretive position. Some people agree with this, and some people disagree. The Zoning Board of Appeals has to look at the cases on an individual basis and weigh them in terms of whether they comply with the intent of the Zoning Ordinance. The spirit of the Zoning Ordinance was such that it was meant not to do harm to the neighborhood or to the other residents of the neighborhood. If the benefits of a particular project out weigh the disadvantages, then it seemed to be the condition under which the Zoning Board has granted variance requests.

Ms. Tyler stated that the Zoning Ordinance was written through a number of years. It has been amended quite a bit. It is almost a patchwork, and it is very difficult to administer. As a result, it is not necessarily a bad thing for the Zoning Board of Appeals to receive a lot of variance requests. It may just mean that the City needs to update or modify the Zoning Ordinance. As staff does amendments to the Zoning Ordinance, they need to look at the history of variances and make amendments, so that the regulations reflect what is reasonable. Ms. Merritt added that the way the Zoning Board can affect the policy is when they see a pattern of requests for waivers, then they can suggest that staff and the Plan Commission needs to review a certain area of the Zoning Ordinance.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Ms. Tyler reported on the following:

- **Next scheduled meeting** is set for October 19, 2005, and there will be at least one case for the Board to review.

Mr. Wempe reported on the following:

- **big.small.all.champaign county.** is a new visioning project of Champaign County Regional Planning Commission. He mentioned that there will be a series of public

dialogue sessions in early November. The intent was to get people representing every special interest group, minority, ethnic group, and geographic area in Champaign County to speak about what they would like Champaign County to be in thirty years. The City of Urbana will be hosting the first public dialogue session at Urbana Middle School on November 1, 2005. The time will be announced at a later date.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 8:41 p.m. by unanimous vote.

Respectfully submitted,

**Elizabeth Tyler, City Planner
Urbana Zoning Board of Appeals**