

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

DATE: August 20, 2014

APPROVED

TIME: 7:30 p.m.

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

MEMBERS PRESENT Joanne Chester, Ashlee McLaughlin, Nancy Uchtmann, Charles Warmbrunn

MEMBERS EXCUSED Paul Armstrong, Harvey Welch

STAFF PRESENT Jeff Engstrom, Interim Planning Manager; Max Mahalek, Planning Intern; Teri Andel, Planning Secretary

OTHERS PRESENT Tamara Chaplin, Randall Elliot, Michelle Kozlowski, Susan Kozlowski, Lauren Senoff, Bob Swisher, George Uricoechea

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

In the absence of Paul Armstrong, Charles Warmbrunn served as Acting Chairperson. He called the meeting to order at 7:35 p.m. Roll call was taken, and he declared that there was a quorum present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF THE MINUTES

The minutes from the July 16, 2014 regular meeting were presented for approval. Ms. Uchtmann recommended changing the word “treating” to “painting” on Page 3, Paragraph 5, Line 5. With no objection, a vote was taken and the minutes were approved by unanimous voice vote as amended.

4. COMMUNICATIONS

- Email from Andy Lenkaitis regarding Case No. ZBA-2014-C-03
- Email from Kate Hunter regarding Case No. ZBA-2014-C-03

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

5. CONTINUED PUBLIC HEARINGS

Case No. ZBA-2014-C-03: A request by Susan and Michelle Kozlowski for a Conditional Use Permit to establish a Daycare Facility at 211 West High Street in the R-2, Single-Family Residential Zoning District

Acting Chair Warmbrunn reopened this case. Jeff Engstrom, Interim Planning Manager, presented this case to the Zoning Board of Appeals. He began with a description of the subject property and stated the zoning, existing land use and future land use designation of the proposed site as well as that of the surrounding adjacent properties. He talked about the proposed daycare facility use noting the intended hours of operation and the total square feet that would be used in the home for the daycare. He, then, reviewed the Site Plan. He discussed the two types of day care according to the Urbana Zoning Ordinance and noted their differences. He also discussed how the regulations for a daycare facility in the Zoning Ordinance compare to the regulations required by the Department of Children and Family Services (DCF). He noted the conditional use permits that were previously approved for other daycare facilities in the City of Urbana since 1993. He talked about the development regulations and parking requirements for a daycare facility and reviewed the requirements for a conditional use permit according to Section VII-2 of the Urbana Zoning Ordinance. He read the options of the Zoning Board of Appeals and presented City staff's recommendation that if the Board should approve the request that they include six conditions as outlined in the written staff report. He mentioned that City staff received two communications regarding the proposed request.

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

Ms. Uchtmann asked for verification on which property Mr. Lenkaitis, who submitted an email in favor of the proposed request, owns. Mr. Engstrom stated that he owns 207 West High Street even though in his email he signed it as being the property owner of 209 West High Street. The owner of 209 West High Street is George Uricoechea.

Ms. McLaughlin stated that the concern seems to be mainly about the parking issue. What are the alternative options for this issue? Mr. Engstrom stated that City staff was looking at the area trying to see if there were any options for the petitioner to provide another drive for drop-offs and pick-ups. Without moving the electrical pole guide wire, they did not see any other options.

Ms. McLaughlin inquired about the visitor parking for the apartment complex nearby. Mr. Engstrom replied that he did not know what the number of visitor parking spaces are for the apartment complex; however, he was certain that there are enough parking spaces for the tenants. He added that in terms of number of trips per day on the street, the proposed daycare would be similar. Ms. McLaughlin wondered since the drop off times were so short, then how would they be able to compare the parking impact with another use. Mr. Engstrom stated that it is difficult to compare. He mentioned that he performed a survey back in April by counting the number of cars driving on the street and the result was one car about every three minutes.

Ms. Uchtmann asked how many parking spaces would be required for staff and where will the staff parking be located. Mr. Engstrom said that they would be required to have three parking

spaces for two staff, and it will be located in the driveway by the garage. Since the daycare staff is also the residents of the single-family home use, the shared driveway will only be used as much as a residential use.

Ms. Chester asked if the conditional use permit, if approved, would go with the applicant or the property. Mr. Engstrom replied the property. Ms. Chester questioned if someone else rents the property after the applicant moves out would they be allowed to open a daycare facility. Mr. Engstrom said yes as long as they abide by the conditions and the site plan. However, the applicants are looking at buying the property.

Ms. Chester mentioned that she drove by the subject property on the way to the meeting, and it is a very narrow street. Mr. Engstrom agreed. He noted that there is only parking allowed on one side of the street.

Chair Warmbrunn inquired as to if the Zoning Board denies the proposed request, would the applicants be allowed to continue with their current daycare business under the Home Occupation Permit. Mr. Engstrom replied yes. However, they would only be able to have up to five children rather than the 12 children they are requesting permission for. City staff is recommending that if the Zoning Board allows the conditional use permit, that they place a condition allowing no more than 7 children. Ms. McLaughlin stated that her understanding is that the additional 4 or 5 children would be before and after school. Mr. Warmbrunn responded that it does not make a difference if a child is full-time or part-time. Mr. Engstrom said that is correct because it would still result in the same number of drop-offs and pick-ups.

Mr. Warmbrunn asked if the bathroom was included in the total square feet for the sleeping area. Mr. Engstrom replied that the drawing is out of scale, but that would be a good question for the applicant.

With no further questions for City staff, Acting Chair Warmbrunn opened the hearing up for public input.

Susan Kozlowski and Michelle Kozlowski, applicants, approached the Zoning Board of Appeals.

Ms. Susan Kozlowski talked about the before and after school clients and noted that they currently do not have any before school children. They have one parent who would like the Kozlowski's to watch her two sons after school two days a week. She explained that her daughter, Michelle, would pick the boys up from school and walk them to the daycare. The only traffic would be when the boys' Mom picks them up after she gets off work.

She mentioned that there would be less traffic than anticipated because they have families with more than one child. While each child would be counted as one of the children allowed, the number of drop-offs and pick-ups would be less.

She stated that when it comes to DCF ruling, no matter what, an at home daycare cannot have more than 5 children under 30 months in age. It is also true that only so many can be under 14 months old.

She recently was informed during a surprise visit that DCF changed her total number of children allowed from 7 during the day and 4 after school to 8 during the day and 3 after school because her granddaughter who resides there just had a birthday. The owner's children are included in the total number of children allowed.

She has letters in support of the proposed daycare facility including one from her landlord. There are also letters from families that are or have been clients of theirs.

With regards to the drawing of the layout of the first floor where the daycare use would occupy, she stated that the drawing is not to scale. The bathroom is not counted in the square footage of the sleeping room. However, the measurements are correct. The DCF representative, who just performed a surprise visit, also measured the rooms to verify that they are correct.

She previously ran a daycare for 6-1/2 years in a different location in the City of Urbana without knowing they needed zoning permission. She had previously asked DCF and the Child Care Resource Center (CCRC) if they knew of any other procedures or regulations, and they did not know that the City had its own regulations.

She mentioned that this is the only income for their family of four. They keep their rates low because they know that there are financial struggles and want to help other families out. She went to school and earned a degree in Early Childhood Development and Early Education. She does this as a living as well as to make a difference with children.

They have talked with their neighbor, Mr. Uricoechea, who lives at 209 West High Street to assure him that there would not be a negative impact on him from the daycare business. There was one incident when a parent parked in the driveway rather than on the street, but assured him it would not happen again.

They are trying to comply with all of the code requirements. Although they have more to do, they have made lots of improvements to the property. Their first priority was to make the inside of the home safe for the daycare children.

Ms. Uchtmann asked if they had operated a daycare at this location for 6-1/2 years. Ms. Kozlowski said no. They rented a different place for several years when out of the blue the landlord announced that he was selling the property. Then, they moved into another place and lived there for a short period of time because it did not work out for them or for the daycare business.

Acting Chair Warmbrunn inquired the applicant to describe how children would get from their parked vehicles on Cedar Street inside to the daycare when it is the middle of winter and snowing outside. Ms. Susan Kozlowski explained that the parents would park on Cedar Street and put their flashers on. There is a gate in the fence going from the backyard to Cedar Street. Her and her daughter will even get the children from the cars if need be.

George Uricoechea, of 209 West High Street, lives next door east of the Kozlowskis' daycare. He admitted that in the beginning he was unsure about the proposition of a daycare being located next to his home. The Kozlowski's have done a wonderful job. They are very kind and easy to talk to and work with. So, he endorsed the support of the daycare facility request.

Ms. McLaughlin wondered if he had been impacted by any parking issues as of yet. Mr. Uricochea replied no.

Tamara Chaplin, of 209 West California Street, expressed her concerns about there being no drive-in drop-off/pick-up area with regards to safety and traffic congestion. She also expressed her concern about the conditional use permit being for the property and not the applicant. Although the Kozlowski's seem to be responsible, caring people, the next people who might rent the subject property may not be as considerate and have the best interest of the neighborhood at heart. She recommended postponing this hearing until after the Kozlowski's purchase the subject property.

Lauren Senoff, of 308 West Illinois Street, felt moved to hear that the intent and integrity of the petitioners is sincere. She is opposed to the increase in the number of children allowed. Illinois Street is a speedway so when someone turns the corner there is very little room. She expressed concern that once they change the ordinance, the City would not be quick to change it back if problems arise.

With no further input, Acting Chair Warmbrunn closed the public input portion of the hearing. He, then, opened the hearing for additional comments from City staff.

Mr. Engstrom suggested that the Zoning Board of Appeals could limit the number of trips rather than limiting the number of children. Mr. Warmbrunn asked how it would be monitored, and Mr. Engstrom replied the same way the City would enforce the limit on the number of children allowed, which would be from neighbors calling in complaints. Ms. Kozlowski stated that it would be feasible; however, she did not feel that it would be much different than counting heads. If their request is denied and they are only allowed to have five children, then they will not be buying the property because they will not be able to afford it.

Discussion ensued between the Board members of limiting the number of children versus limiting the number of trips. Ms. Chester stated that the concern is with the number of children. The use of the properties in the neighborhood and the fragility of the block affect the property values. When something delicately shifts the balance of the block, then it can change the character of the area.

Ms. Kozlowski wondered how a daycare with a limited amount of children would differ from a large family. There are a few houses already on the block that house multiple students. Students use to rent the house that she currently lives in and left it in bad shape when they moved out. Would it not be better to have a family who is trying to operate a home business than to have students? Ms. Chester replied that the Kozlowski's request for an increase in children takes the use to a higher level than just a home business.

Ms. Uchtmann asked if approving the proposed conditional use permit request would open up applications for other day care facilities in the neighborhood. Mr. Engstrom replied that the DCF and other agencies do not let daycare owners know of the City's zoning requirements. The City is not able to constantly look up all the daycare business to make sure that they have the right approvals. If City staff becomes aware of them, then we will ask them to go through the process.

Ms. McLaughlin moved that the Zoning Board of Appeals approve the proposed case subject to the conditions as presented by City staff.

Ms. Uchtmann raised a question about the condition that “No more than seven children shall be allowed on-site at any one time.” Does this mean that they could have more children than seven? If two children leave, then two more could come later? Mr. Engstrom said yes. The condition places a limit on the number of children at one time rather than the total number of children registered by business. The intent of the City Engineer was to limit the number of drop-offs and pick-ups to no more than seven per day. Somehow it was translated into the condition that there be “No more than seven children shall be allowed on-site at any one time.”

The motion failed due to lack of a second.

Ms. Chester stated that she did not feel that they should talk about drop-offs and pick-ups. It should be based on the number of registered children allowed. Discussion followed on how to word a motion.

Acting Chair Warmbrunn asked Ms. Uchtmann to take over as Acting Chair. She agreed.

Mr. Warmbrunn then moved that the Zoning Board of Appeals approve Case No. ZBA-2014-C-03 with the following conditions: 1) No more than a total of seven children or dependent adults including those of the proprietor during all or part of a day of a commercial nature of a type commonly called day nurseries, nursery schools or private kindergartens which provide essential personal care, protection, supervision and training of preschool or school-aged children or dependent adults; and Conditions 2-6 as recommended in the written staff report.

Ms. McLaughlin commented that this would only allow the applicant to have five children in addition to the two children that reside in the house. Mr. Engstrom said that is correct, which is not the intent of the City Engineer.

The motion failed due to lack of a second.

Mr. Warmbrunn resumed the role of Acting Chairperson.

Ms. McLaughlin moved that the Zoning Board of Appeals approve Case No. ZBA-2014-C-03 subject to the following conditions: 1) No more than seven children shall be at the daycare facility on a given day (not including dependents of the occupants); and Conditions 2-6 as recommended in the written staff report. Ms. Uchtmann seconded the motion.

Ms. McLaughlin stated that she based her motion on the City Engineer’s intent for the number of trips.

Roll call was taken and was as follows:

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

The motion failed by a 2-2 vote.

Mr. Engstrom asked that the Board articulate the reasons for denying the request.

Ms. Chester stated that the proposed use is designed, located and proposed to be operated so that it would be detrimental to the zoning district in which it is located due to the potential for excessive street parking and loading. The proposed use would not preserve the essential character of the zoning district in which it would be located. Ms. Uchtmann added that the proposed use could potentially change the character of the neighborhood.

6. NEW PUBLIC HEARINGS

Case No. ZBA-2014-MAJ-05: A request by Robert and Betty Swisher for a major variance to construct a home addition in alignment with the exterior wall of an existing house that will encroach up to nine feet, 11 inches into the required rear yard at 807 South Cottage Grove Avenue in the R-3, Single and Two-Family Residential Zoning District.

Chair Armstrong opened this public hearing. Max Mahalek, Planning Intern, presented this case to the Zoning Board of Appeals. He gave a brief background of the proposed site. He explained the purpose for the proposed variance request and noted the zoning, existing land use and future land use designations of the proposed site as well as for the surrounding adjacent properties. He discussed the proposed expansion in detail. He reviewed the variance criteria according to Section XI-3 of the Urbana Zoning Ordinance. He read the options of the Zoning Board of Appeals and presented the City staff recommendation for approval with conditions.

Acting Chair Warmbrunn asked if the Zoning Board of Appeals members had any questions for City staff. There were none, so he opened the hearing up for public input.

Bob Swisher, applicant, and Randall Elliot, General Contractor, approached the Zoning Board of Appeals.

Mr. Swisher talked about how the proposed expansion would be a space for his wife to primarily read and sew. He talked about their plans and the process they have followed. He stated that they would like to be able to put windows in on the west side, because his wife had already purchased the windows.

Mr. Elliot talked more about the process. He did not believe that the proposed expansion would disturb the neighborhood; rather instead, it will improve the existing house.

Ms. Uchtmann asked for clarification on what the actual size of the expansion would be. Mr. Elliot answered that it would be 24'2" x 10'8". They want to keep the roof overhang 1" less than the property line.

Ms. Uchtmann inquired why City staff is requesting no windows be allowed on the west side. Mr. Elliot replied that the fire code states that windows can be no closer than three feet from the property line. Mr. Swisher added that without the windows there will be no natural light in the room. There are already three windows along the west wall of the house, so what would be the harm of allowing three more windows?

Mr. Warmbrunn questioned where the water would go because he did not see any gutters in the proposal. Would the water run off onto the neighboring property? Do they plan to line the roofline of the proposed expansion with the roofline of the existing part of the house on the west side? Mr. Elliott said yes, that is how the plans are drawn. Mr. Swisher added that they had a driveway constructed between the subject property and the property they own on the west side. There is an incline for natural drain off from rainfall. The house next door drains off into the driveway out onto Washington Street. His sump pump goes south through his property to the neighboring driveway. So, there will be no gutters.

There were no further comments or questions from the public, so Acting Chair Warmbrunn closed the public input portion of the hearing and opened it up for discussion and/or additional questions for City staff.

Ms. McLaughlin questioned if the Zoning Board of Appeals could override the fire codes with regards to allowing windows. Mr. Engstrom said no. There is a Building Safety Code Board of Appeals that would consider a request to allow windows on the west wall.

Mr. Warmbrunn asked about City staff’s thoughts with regards to the rainwater draining onto the neighboring property. What if the Swishers did not own the neighboring property? Mr. Engstrom stated that it is a concern; however, it sounds like there is an existing swale. One way to deal with it might be to create a drainage easement. The Zoning Board of Appeals could add this as a condition of approval for the proposed variance.

Mr. Warmbrunn questioned if the drainage easement would be included if the Swishers decided to sale the adjoining property to the west. Mr. Engstrom said yes.

Acting Chair Warmbrunn entertained a motion. Ms. McLaughlin moved that the Zoning Board of Appeals forward Case No. ZBA-2014-MAJ-05 to the City Council with a recommendation for approval including the conditions as recommended by City staff and with the condition that the petitioners provide an easement to clarify that drainage from the subject property addition will fall on the property to the west. Ms. Uchtmann seconded the motion. Roll call was as follows:

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

The motion passed by unanimous vote. The motion will be forwarded to the City Council.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Jeff Engstrom reported on the following:

- Case No. ZBA-2014-MAJ-04 regarding an air conditioning unit be allowed to encroach into the side-yard setback at 211 West Vermont Avenue was approved by the City Council.
- Max Mahalek, Planning Intern, will be returning back to school and will not be around as much. We appreciate all of his help over the summer.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Armstrong adjourned the meeting at 9:23 p.m.

Respectfully submitted,

Jeff Engstrom, AICP
Interim Planning Manager
Secretary, Urbana Zoning Board of Appeals