

ORDINANCE NO.: 1999-07-064

**AN ORDINANCE APPROVING A TEXT AMENDMENT TO THE ZONING
ORDINANCE OF THE CITY OF URBANA, ILLINOIS**

(Variance Procedures – Plan Case No. 1722-T-99)

WHEREAS, the City Council of the City of Urbana, Illinois, adopted Ordinance #9293-124 on June 21, 1993 which adopted the 1993 Comprehensive Amendment to the 1979 Zoning Ordinance of the City of Urbana which is also known as the Urbana Zoning Ordinance; and

WHEREAS, the Urbana Zoning Administrator has submitted a petition to amend the text of the Urbana Zoning Ordinance; and

WHEREAS, said petition was presented to the Urbana Plan Commission as Plan Case No. 1722-T-99; and

WHEREAS, after due publication in accordance with Section XI-7 of the Urbana Zoning Ordinance and with Chapter 65, Section 5/11-13-14 of the Illinois Compiled Statutes (65 ILCS 5/11-13-14), the Urbana Plan Commission held a public hearing to consider the proposed text amendment on June 24, 1999; and

WHEREAS, the Urbana Plan Commission voted at its regular meeting on June 24, 1999 to forward Plan Case No. 1722-T-99 and the proposed amendments to the Urbana City Council with a recommendation for approval of a portion of said proposed amendments; and

WHEREAS, after due and proper consideration, the Urbana City Council has deemed it to be in the best interests of the City of Urbana to amend the text of the Urbana Zoning Ordinance as recommended by the Urbana Plan Commission in Plan Case No. 1722-T-99, and as described herein.

NOW, THEREAFTER, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF URBANA, ILLINOIS, that the Zoning Ordinance of the City of Urbana, Illinois is hereby amended as follows:

Section 1. Delete Section XI-3 of Article XI-3 and replace it with the following language:

Section XI-3. Board of Zoning Appeals

The word “Board”, when used in this section, shall be construed to refer to the Urbana Board of Zoning Appeals, sometimes also known as and referred to herein as Zoning Board of Appeals.

A. Appointment and membership.

1. The Board of Zoning Appeals shall consists of seven (7) members, including the Chair, all of whom shall be residents of the City of Urbana. All members shall be appointed by the Mayor, subject to confirmation by the City Council.
2. The members of the Board serving on the effective date of this Ordinance are hereby appointed to the Board in the same capacity at the time the Ordinance becomes effective, for the term each respectively held. The successor to each member so appointed shall serve for a term of five (5) years.
3. The Chair of the Board shall be designated by the Mayor, with the consent of the City Council. The Chair, in his/her absence, the Acting Chair, may administer oaths and compel the attendance of witnesses.
4. The City Council shall have the power to remove any member of the Board for cause, after public hearing, held after at least ten (10) days notice to the member concerned of the charges against him/her.

B. Proceedings of the Board.

1. All meetings of the Board shall be held at the call of the Chair, or as determined by the rules of the Board, at such times and places within the City of Urbana as the Board may determine.
2. All meetings of the Board shall be held in a public place designated by the Board, and shall be open to the public, except as allowed by "An Act in Relation to Meetings" (Open Meetings Act), as approved on July 11, 1957, as subsequently amended. At any meeting of the Board or at any hearing held by the Board, any interested person may appear and be heard either in person or by an authorized agent or attorney.
3. The Board shall adopt rules necessary for the conduct of its affairs and consistent with the provision of this Ordinance and the laws of the State of Illinois; provided, however, that the concurring vote of at least four (4) members of the Board, or at least three (3) members if five (5) or fewer members of the Board are present, shall be necessary to:
 - a. Reverse any order, requirement, decision or determination of the Zoning Administrator;
 - b. Decide in favor of the applicant in any matter upon which it is required to pass under this Ordinance;
 - c. Permit any variance in the application of the regulations imposed by this Ordinance, as provided in Section XI-3-C.
4. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or indicating that the member was absent or failed to vote, and shall also keep records of all its official actions.
5. The presence of a majority of the members of the Board shall constitute a quorum at a meeting of the Board. No action shall be taken by the Board unless a quorum is present.
6. Every rule, regulation, amendment, order, requirement, decision or determination of the Board shall be signed by the Chair or Acting Chair, attested by the Secretary, filed in the Office of the Board. The minutes, files and records of the Board shall be open to inspection by the public at all reasonable times, in the Office of the Zoning Administrator.
7. In the performance of its duties, the Board may incur such expenditures as are authorized by the City Council.

8. The Director of the Department of Community Development Services, or his/her representative, shall serve as Secretary to the Board.
9. Except for the Board's recommendation on a major variance, no decision of the Board shall be subject to review, modification or reversal by the City Council or any City official, but shall be subject to judicial review pursuant to the provisions of the Illinois Administrative Review Act.

C. *Powers and duties of the Board.* The Board shall have the power and duty to hear and decide:

1. On all matters specifically referred to it by the provisions of this Ordinance, including the review and approval or disapproval of requests for conditional uses, as specified in Sections VII-2 and VII-3 of this Ordinance.
2. On requests for variances or variations from the terms of this Ordinance.
 - a. *Authorization.* The Board is authorized to grant a minor variance and, in accordance with Section F.4-b., below, recommend approval of a minor variance to the City Council. Under no circumstances shall the Board grant a variance to allow a use not permitted either by right or by special use permit or by conditional use permit under the terms of this Ordinance in the district involved, or any use expressly or implicitly prohibited by the terms of this Ordinance in the district involved, except in the case of an appeal regarding the decision of the Zoning Administrator, pursuant to Section XI-1-B.
 - b. *Minor variances:* After the Board considers the finding of fact, the Board shall have the authority to grant variations for the following purposes only and not other:
 - (1) To permit a variance of the depth of a required front or rear yard or the width of a required side yard except that the variance shall not operate to reduce the required yards by greater than twenty-five (25) percent of the requirements.
 - (2) To permit the creation of a new lot with less lot area than required except that the variance shall not operate to reduce the required lot area by greater than ten (10) percent.
 - (3) To permit the creation of a new lot with less lot width than required except that the variance shall not operate to reduce the required lot width by greater than fifteen (15) percent.
 - (4) To permit a five (5) percent increase in the required floor area ratio (FAR) and a five (5) percent decrease in the required open space ratio (OSR).
 - (5) To permit up to a twenty-five (25) percent decrease in the number of parking spaces required.
 - (6) To permit the Zoning Administrator to approve a building permit or Certificate of Occupancy allowing the substitution of one nonconforming use for another in accordance with Section X-3.
 - (7) To permit accessory off-street parking in a location other than the zoning lot of the principal use, as provided in Sections VIII-3-B and V-3-E.
 - (8) To permit the postponement of the termination of a nonconforming use of land, as required by Section X-6, for a period not to exceed five (5) years.

(9) To allow a sign to exceed the maximum height or area, as provided in Sections IX-4, IX-5 and IX-6 by no more than fifteen (15) percent of the specified requirement, in keeping with the legislative intent specified in Section IX-1.

(10) To grant a variance from the provisions of paragraph B of Section X-9 entitled "Nonconforming Signs", so as to permit change, alteration, re-establishment or more than routine maintenance of a nonconforming outdoor advertising sign structure where such change, alteration, re-establishment or maintenance shall not increase the size of the outdoor advertising sign structure, make it radiate or reflect more light, or otherwise make it visually more objectionable. No such variance granted by the Board of Zoning Appeals shall in any way postpone the time for removal of the nonconforming outdoor advertising sign structure as provided in Section X-9-C, beyond the time when the original outdoor advertising sign structure which was permitted to be changed, altered, re-established or maintained hereunder would have been required to be removed.

c. *Variance Criteria*

Commentary: A variance is a safety valve which relieves the pressure created when a particular application of the Zoning Ordinance produces consequences that are harsher than needed to achieve the desired planning for the community. Although variances are intended to allow a means of avoiding unreasonable results, variances should not be "easy" to obtain. Granting a variance is a matter of grace; refusal is not a denial of a legal right.

(1) A minor variance is recognized as having potential impact on only the immediate neighborhood and adjoining properties, whereas, a major variance is recognized as having potential impact on the area larger than the immediate neighborhood or one that may affect enforcement of the zoning ordinance elsewhere in the City.

Commentary: The Zoning Ordinance recognizes that the potential impact of a major variance is likely to be much greater than the impact of a minor variance. For this reason, minor variances are delegated to the Board of Zoning Appeals. Although minor variance requests also deserve close examination, because the potential impact is less, they may be granted by meeting less stringent standards than a major variance would require.

(2) In either a minor or major variance the Board and/or the City Council must make specific findings of fact that are specific to the property or the variance in question by describing the special circumstances or special practical difficulties that exist in carrying out the strict application of the ordinance and why, if granted, the variance will serve the public interest, or will not unreasonably hinder and impair the public interest.

Commentary: The Ordinance seeks to bring forth the detailed analysis and description of how application of the Ordinance to the parcel involved produces an undesirable result which requires the granting of a variance, and equally important, an explanation of the effect the granting of the variance will have on the public interest. The unique circumstances must relate to the particular property for which relief is sought, not the owner's personal situation, alone. A variance should be granted only where the petitioner's situation is unique, where it does not threaten the Comprehensive Plan, is not detrimental to the over all planning for the community and will not violate the spirit of the Zoning Ordinance.

(3) In determining whether or not a variance should be granted, the body considering the variance shall:
(1) first determine, based on the evidence presented, whether there are special circumstances or

special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance; and (2) consider the following additional guiding factors:

Commentary: If application of the ordinance produces too many undesirable results, a text amendment should be considered rather than granting repeated variances. The extent of the difficulty created by the zoning regulation must be weighed: is the burden only upon the applicant's property thereby making a variance possibly appropriate, or does the burden also exist on other properties in the locality indicating that the proper relief would be an amendment to the ordinance? (This does not mean the variance request before the Zoning Board of Appeals should be denied until a text amendment is granted.) The proper order of analysis would be to first analyze the circumstances to determine if the problem presented is caused by something unique about the parcel concerned, e.g., an odd-shaped parcel. When this threshold is passed, then apply the other factors to determine if, on balance, a variance should be granted. The analysis should focus on balancing the harm, if any, to the public good intended to be served by the requirements sought to be waived against the benefit to the Petitioner if they are waived. In so doing, utilize the factors set forth below:

- (a) The proposed variance will not serve as a special privilege because the variance requested is necessary due to special conditions and circumstances relating to the land or structure involved or to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district;

Commentary: The intent of this criterion is to avoid application of the Ordinance that would result in depriving the petitioner of rights commonly enjoyed by other lands or structures in the same district while not awarding the petitioner special privileges. To grant a variance improperly is really singling out a particular parcel for unmerited special treatment. For example, the presence of a nonconforming use or the cost of compliance alone does not justify a variance or the fact that the property owner began work on the proposed use without a permit does not justify a variance. Note that the cost of compliance may be a consideration in conjunction with other factors that would justify a variance.

- (b) The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner;

Commentary: The intent is to acknowledge that the Petitioner may face a situation that he/she did not knowingly create in order to circumvent the City Ordinances.

- (c) The variance will not alter the essential character of the neighborhood;
- (d) The variance will not cause a nuisance to adjacent property;
- (e) The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.

Commentary: While the minimum deviation is generally the best for all, there may be circumstances where the minimum deviation is not the best solution.

d. Major Variance Procedures

- (1) Apart from and in addition to the variances specified in Section XI-3-C (2)(c) above, the Board shall consider major variances that are consistent with the intent of this Ordinance. Said variances will be forwarded to the City Council only if the Board recommends their approval by a two-thirds vote of the members present and voting. If two-thirds of the

Board does not reach a favorable recommendation, the variance is denied and the Board's findings will be the final administrative decision on such variance. The City Council shall have the authority to grant or deny major variance requests that the Board forwards in conformance with the procedures outlined below.

- (2) The Administrative Secretary to the Board shall prepare a decision sheet that states the Board's findings of fact and decision concerning the requested major variance for the Board Chair's signature. If the Board's decision is to forward the variance to the City Council with a recommendation for approval, the Administrative Secretary of the Board shall forward to the Urbana City Council the Board's decision sheet, the variance application, relevant case information, the names and addresses of all persons appearing before the Board and summaries of their testimony.
- (3) After receiving the findings and recommendations of the Zoning Board of Appeals, the Council shall consider and decide whether or not to grant the major variance. If the Council decides to grant the major variance requested, it shall do so by adopting an ordinance reciting the findings of fact which support their decision and setting forth any conditions the Council deems necessary or desirable. The Council may take additional testimony or other evidence regarding the requested major variance.
- (4) The Council must approve or deny the variance request within one hundred twenty (120) days of the date of the Board meeting at which the Board first recommends approval of the variance to the City Council. Failure of the Council to approve or deny the variance within these aforesaid one hundred twenty (120) days shall be deemed the same as Council approval.
- (5) The consideration of a major variance shall not preclude the Board from granting a lesser, minor variance on the same case if it is within their authority to do so as outlined in Section XI-3-C (2)(c) above, if such minor variance is in substantial conformance with the intent of the major variance requested and is supported by the Board's findings. If such minor variance is then granted in the manner set forth above, City Council approval is not required.
- (6) The Urbana Zoning Administrator shall notify the petitioner in writing of the City Council's decision regarding a major variance request. If the Council approved the variance, the Zoning Administrator shall forward a copy of the ordinance approving the variance to the petitioner and record a copy of the ordinance with the Champaign County Recorder's Office.
- (7) The major variance shall be subject to Section XI-11 entitled "protest procedures."

e. *Conditions.*

In granting a variance, the Board or City Council may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under the provisions of this Ordinance.

f. *Procedure on request for variation.*

- (1) A written application for a variance shall be submitted to the Secretary of the Board, presenting evidence regarding the variance request and relative to the findings of fact outlined in Section XI-3-C (2)(b).
- (2) Each application for a variance shall be accompanied by a fee to be paid by the applicant, as provided in Section XI-8 of this Article.
- (3) Applicants for any proposed variance shall include the necessary information specified in Section XI-10 so that notification requirements for a public hearing as specified in Section XI-10 of the Urbana Zoning Ordinance can be satisfied.
- (4) The Board shall hold a public hearing to consider a variance.
- (5) The Board may, by majority vote, postpone, continue, or adjourn from time to time any public hearing. In the event of such postponement or adjournment, another public notice regarding the variance need not be published.

g. Appeals.

The following shall govern for all appeals from any order, requirement, decision or determination made by the Zoning Administrator under this Ordinance. Any such appeal may be taken to the Board by any person aggrieved thereby, or by any officer, department, board or bureau of the City, and shall be considered according to the following procedures.

- (1) The appeal shall be taken by filing a notice of appeal with the Secretary of the Board. The notice of appeal shall describe the order, requirement, decision or determination appealed from and shall specify the grounds for the appeal. The appeal shall be taken within such time limits as prescribed by the State Zoning Act (presently 65 ILCS 5\11-13-12).
- (2) The Secretary of the Board shall, upon receipt of the notice of appeal, obtain from the Zoning Administrator all the documents and files which constitute the record upon which the action appealed from was taken.
- (3) The Chair shall fix a reasonable time, not more than thirty (30) days in the future, for the hearing on the appeal, and inform the Secretary of the time and place that the hearing shall be held. The Secretary shall give due notice of the hearing in writing to the appellant, to the Zoning Administrator, to the members of the Board, and to any other person directly interested in the outcome of the appeal.
- (4) At least fifteen (15) days, but not more than thirty (30) days, notice of the time and place of the hearing on the appeal shall be published in a newspaper of general circulation in the City of Urbana. The notice of such hearing shall contain the address and location of the property involved in the appeal, if any, and a brief description of the issue being appealed.

- (5) The hearing shall be held in accordance with the procedures established by the Board, and the Board shall decide the appeal within a reasonable time after the hearing; provided, however, that a hearing may be postponed or continued, or a decision postponed, as may be necessary, in the judgement of the Board, in order to give a case adequate consideration.
- (6) The Board shall not, by its decision on an appeal, permit a variation in the application of this Ordinance; provided, however, that this shall not limit an appeal and a request for a variance from going forward simultaneously.
- (7) Upon the filing of an appeal, no further permits of any kind shall be issued by the City of Urbana with respect to the parcel of land or improvements to which the matter appealed from relates, nor shall the City commence any actions at law against the person who filed the appeal for matters involved in such appeal, until the Board of Zoning Appeals renders its decision; provided, however, that if, in the opinion of the Zoning Administrator, delay incident to a hearing before the Board would constitute an imminent danger to life or property, the City may file a complaint for equitable relief or extraordinary legal relief. If an appeal is taken from the issuance of any permit, the permittee may pursue his efforts under such permit at his own risk.

Section 2. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities. This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Chapter 65, Section 1-2-4 of the Illinois Compiled Statutes (65 ILCS 5/1-2-4).

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a super-majority of the Members of the City Council of the City of Urbana, Illinois, at a regular meeting of said Council.


PASSED by the City Council this 6th day of July, 1999.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman

NAYS:

ABSTAINED:

APPROVED by the Mayor this 7th day of July, 1999.

 Phyllis D. Clark
Phyllis D. Clark, City Clerk

Paul Satterthwaite
Paul Satterthwaite, Mayor



CERTIFICATE OF PUBLICATION IN PAMPHLET FORM



I, PHYLLIS D. CLARK, certify that I am the duly elected and acting
Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the 6th day of July, 1999, the
Corporate Authorities of the City of Urbana passed and approved Ordinance
No. 1999-07-064, entitled:

**"AN ORDINANCE APPROVING A TEXT AMENDMENT TO
THE ZONING ORDINANCE OF THE CITY OF URBANA,
ILLINOIS (VARIANCE PROCEDURES - PLAN CASE
NO. 1722-T-99) "**

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 1999-07-064 was
prepared, and a copy of such Ordinance was posted in the Urbana City Building
commencing on the 8th day of July, 1999, and continuing
for at least ten (10) days thereafter. Copies of said Ordinance were also available for
public inspection upon request at the Office of the City Clerk.

Dated at Urbana, Illinois, this 8th day of July,
1999.



Phyllis D. Clark
City Clerk
by *Robert J. Roberts*
Deputy Clerk