

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

DATE: July 20, 2011

APPROVED

TIME: 7:30 p.m.

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

MEMBERS PRESENT	Paul Armstrong, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch
MEMBERS EXCUSED	Stacy Harwood
STAFF PRESENT	Robert Myers, Planning Manager; Teri Andel, Planning Secretary
OTHERS PRESENT	Russ Dankert

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

Chair Armstrong called the meeting to order at 7:36 p.m. Roll call was taken, and a quorum was declared present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

The minutes from the May 25, 2011 Zoning Board of Appeals special meeting were presented for approval. Mr. Warmbrunn asked for a correction to Item 12 on page 4 to read, "*Acting Chair ~~Armstrong~~ Welch adjourned the meeting at 8:07 p.m.*" He then moved to approve the minutes as corrected. Mr. Welch seconded the motion. The minutes were approved by unanimous voice vote as amended.

4. WRITTEN COMMUNICATIONS

The following written communications were distributed at the meeting.

- Email from Katie Hunter regarding Case No. ZBA-2011-MAJ-02

- Email from Michael Plewa regarding Case No. ZBA-2011-MAJ-02
- Revised Sec. 2-4 of the *City Code. Public Meetings.*

Chair Armstrong swore in the audience member who wished to address the Zoning Board of Appeals regarding the public hearing during this meeting.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

Case No. ZBA-2011-MAJ-02: A request by Yuchen Lin for a major variance to exceed the Floor Area Ratio for a duplex to allow existing attic space to be finished and used as living space at 607 West High Street in the R-2, Single-Family Residential Zoning District.

Robert Myers, Planning Manager, presented this case to the Zoning Board of Appeals. He explained the nature of requested major variance and how Floor Area Ratio (FAR) is determined. He gave a brief history on the zoning and duplex use for the proposed site. He showed the changes that the applicant would like to be allowed to make to the second and third (attic) floors of the existing house. He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance that pertains to the proposed major variance.

He referred to the written communications that were received. The first one is a letter from the applicant outlining his reasons for the variance request. This letter was included in the packet of information. Also two emails from Katie Hunter and Michael Plewa, opposing the proposed variance, were distributed prior to the meeting. One concern expressed in the two later communications was that by allowing the proposed variance it could invite over-occupancy in the future. What is to prevent a future owner from converting the proposed dining room and study into two bedrooms to rent out? Although he also considered this issue for two reasons he believes it's not a real concern. First, even if the proposed dining room and study were converted into bedrooms in the future, it would still be a four-bedroom unit, which is allowed. The Zoning Ordinance would allow four unrelated people to rent the unit. Second, the owner's request to create a dining room and separate study is credible and reasonable. So it's unlikely that the proposed floor plan would invite over occupancy either now or in the future.

Mr. Myers presented the staff's recommendation noting the two conditions that are being suggested. He explained that because this is not a cut-and-dry case, staff included two sets of findings for the Zoning Board of Appeals' review: one set of findings supports the requested variance and a second set of findings not supporting the requested variance.

Ms. Uchtmann inquired as to what is the square footage of the duplex. Mr. Myers answered that each unit is now 1,023 square feet in area. The proposed finishing of the existing attic would add 435 square feet of living space.

Ms. Uchtmann asked about the lot size. Mr. Myers replied that the lot size is 4,772 square feet. It is a small lot, especially for a duplex.

Ms. Uchtmann wondered if the exterior staircase is counted as part of the footprint for the FAR calculation. Mr. Myers replied no. Ms. Uchtmann questioned whether the staircase is far enough away from the property line. Mr. Myers said he doesn't know off hand the distance from the property line; however, he is certain that the staircase is on the petitioner's property as indicated by the site plan.

Ms. Uchtmann stated that many people convert a third floor attic to living space without seeking permission from the City. She wondered why this case came to the attention of the City. Mr. Myers replied that the project is architect designed. The architect is seeking the proper permits. Mr. Myers also pointed out that part of the proposed work would correct at least one building code issue. Previous to the current owner, both dwellings were connected by a door. However, for both building code and occupancy code purposes, duplexes are supposed to be totally separated. The current owner hired the architect to bring the building up to code and to make the expansion, and the architect is trying to do it correctly.

Mr. Warmbrunn calculated the FAR to currently be .43. Is it non-conforming already? Mr. Myers stated that City staff calculated the FAR as just slightly under 0.4. If the proposed attic expansion is approved, then the FAR would definitely be over the 0.4. Mr. Warmbrunn stated that from the dimensions shown in the staff report, he figured the total attic space to be no more than 300 square feet, which is different than what the staff report claims of 435 square feet.

Mr. Warmbrunn asked what the permitted occupancy is based on. Is it based on the number of bedrooms in each unit? Mr. Myers answered that under the Zoning Ordinance definition of family, no more than four unrelated people could live in each unit. More specifically the definition is a family plus no more than three unrelated individuals. A family could be 10 people related by blood, marriage or adoption; or it could be one person. Given the real estate market in this neighborhood, within walking distance of the university, dwellings are often occupied by four unrelated individuals.

Mr. Warmbrunn asked whether legal non-conformities and any grandfathered aspects of properties were made known to buyers at the time of purchase. Mr. Myers said that if potential buyers contact the City prior to purchasing the properties, then City staff will inform them of known legal non-conformities and conditions on the properties. However, notice of specific non-conformities is not attached to deeds or recorded.

Mr. Warmbrunn noticed that Exhibit A shows that there is an apartment complex two doors to the east of the proposed site. How did this specific property become an apartment building with three to seven units? Mr. Myers said that he'd have to research this and report back.

Mr. Warmbrunn wondered if the property owner could convert the duplex back to a single-family home in order to have more room for his family. Mr. Myers said yes.

Mr. Warmbrunn questioned whether the City has ever approved a non-conforming variance or conditional use for a property that is already non-conforming. He commented that seemingly everything about the property is conforming except maybe Open Space Ratio (OSR). The lot size is too small for a duplex, but it has a non-conforming duplex use. Now because we want to have an owner-occupied single family as part of the duplex, we want to increase the duplex on the same small lot. This seems like overkill but it is what they are presented with. Mr. Myers replied that there have been other cases where legally nonconforming properties have applied for and received variances. In this case, the property owner is asking for permission to expand his living space into the existing attic so the exterior of the building will not be changing any.

Mr. Warmbrunn asked if there is a garage or basement on the property. Mr. Myers said no garage but we should ask the applicant's architect whether there's a basement.

Ms. Uchtmann asked if the exterior stairway was added since the petitioner purchased the home. Mr. Myers was not sure when the stairway was built. Ms. Uchtmann commented that if every rental property owner built an exterior stairway then it would cause the whole neighborhood to take on a different look. Mr. Myers added that City staff determined that an additional stairway would not be required to the attic as a consequence of the variance.

Mr. Welch believes that the main point is that there will not be any change to the outside of the building. The purpose of FAR, according to Mr. Myers' presentation, is to keep people from building too far upward and outward, but in this case neither would happen as a result of this variance. The comments made in the written communications are simply speculations about what might happen in the future. He does not think that the Zoning Board can link their decision to what might happen. They have to decide on what is being proposed now. He believes the property owner is making a definite commitment that the second floor and attic will not be easily rented out because the layout takes on the look of a home rather than a rental.

Mr. Armstrong wondered if the property owner converted the house back to a single-family home, would he be allowed to convert the attic into livable space by right. Mr. Myers stated that in that case the owner would still need a variance for FAR in order to extend living space into the attic.

Mr. Armstrong inquired as to what would happen if the property owner used the attic as livable space without improving it. Mr. Myers answered that people use attic space for storage all of the time and sometimes finish the floors and walls for storage. City staff does not count this as floor area because it's not heated or cooled or have other utilities.

With no further questions for City staff, Chair Armstrong opened the hearing to public input.

Russ Dankert, MSA Professional Services, introduced himself as the architect for this project. After being hired to design improvements to the building, he reviewed everything right away including parking requirements, etc. He first determined that the duplex is a non-conforming use for the R-2, Single-Family Residential Zoning District. City staff's research found that conversion to a duplex was approved by the City in 1970. He mentioned that is also when the

original exterior stairway was constructed. They recently replaced some of it with sturdier materials to make it safer.

He noted that the total new area in the attic would be 435 square feet because it includes two dormer windows. Part of the project would also reinforce roof rafters which are really bent. It will be done to a point where there will be more head room, and they can count this space as living space. The property owner, Yuchen Lin, wants to move the two bedrooms into the attic space and turn the existing bedrooms into a dining room and a den. He believes that Mr. Lin will use the space as he intends to in the plans. He pointed out that there is an interior staircase that goes all the way up to the attic. The only thing separating the two units there is a paper wall. This is definitely a code violation that they intend to correct as part of the proposed project.

Mr. Warmbrunn asked if Mr. Dankert felt comfortable with his calculation of 435 square feet. Mr. Dankert said yes. He calculated it three times to make sure it is correct.

Mr. Myers asked Mr. Dankert to clarify whether the existing attic dormers would be expanded or changed as a result of this variance. Mr. Dankert answered the windows which are falling out would be replaced with egress windows. The dormer roofs and walls will not change. There is also a place on the interior that he calls a “head knocker” that would be corrected.

With no other public input, Chair Armstrong closed the public input portion of the hearing and opened it for the Zoning Board of Appeals discussion and/or motion(s).

Mr. Welch moved that the Zoning Board of Appeals forward Case No. ZBA-2011-MAJ-02 to the City Council with a recommendation for approval as presented in the written staff report including the recommended conditions supporting the variance. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Ms. Uchtmann	-	Yes	Mr. Armstrong	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes

The motion was approved by unanimous vote.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Warmbrunn referred to a handout that the Zoning Board of Appeals received titled “Sec. 2-4. Public Meetings.” He asked if the Zoning Board of Appeals was a quasi-judicial board. Mr. Myers replied yes. The Zoning Board of Appeals serves like a court in some cases so the rules are more stringent than with other boards and commissions.

Mr. Warmbrunn stated that in holding public hearings and taking public input, the Zoning Board in the past has always allowed people to speak as long as necessary. Should they change this to meet the Provision #3 on the handout? Mr. Myers said that the best thing is to follow the adopted rules of procedure which lays out how long people have to speak. The Chair has a certain latitude, and he should gauge at the beginning of the public hearing by how many people are in the audience in order to let everyone have time to speak. If there are not very many people in the audience, then there is no harm in letting people testify as longer. However, if the audience is full and people want to speak for twenty minutes each, then there would not be time to let everyone speak who wanted to, and that would be unfair. Another thing to consider is allowing time for people to cross-examine or ask questions of expert witnesses.

Mr. Myers reported on the following:

- Tatman’s Variance for 806 and 810 East Perkins Road was approved by the City Council as recommended by the Zoning Board of Appeals. Mr. Myers understands that the petitioner has applied for building permits to make the necessary changes to the two buildings.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Armstrong adjourned the meeting at 8:34 p.m.

Respectfully submitted,

Robert Myers, AICP, Secretary
Urbana Zoning Board of Appeals