



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Diane Marlin and City Council Members

FROM: Lorrie Pearson, AICP, Community Development Director
Lily Wilcock, Planner I

DATE: October 17, 2019

SUBJECT: **An Ordinance Approving A Major Variance for the Rear Yard** (308 West California/ZBA-2019-MAJ-06)
An Ordinance Approving A Major Variance for Lot Width (308 West California/ZBA-2019-MAJ-10)

Introduction

Dan Gordon requests two major variances to allow an existing garage to be used as a dwelling on his property at 308 West California Avenue. While a garage is considered an accessory structure and may be built up to 18 inches from the property line, a garage used as a dwelling is considered a second principal structure and must be placed outside of required yards. The garage is located seven feet into the required ten-foot rear yard, so a major variance is required to allow Mr. Gordon to use the garage as a dwelling. Also, a second dwelling unit on one lot requires a minimum 60-foot lot width. Mr. Gordon's lot is slightly less than 60 feet wide, so a second major variance is required to allow a second dwelling on the lot.

The ZBA discussed all of Mr. Gordon's requests at their August 21, 2019 meeting. A summary of the public hearing and discussion is presented below ("Public Input"). At that meeting, the ZBA continued all of the cases to the September 18, 2019 meeting. At the September 18, 2019 meeting, the ZBA approved a Conditional Use Permit to allow a second principal structure/second dwelling unit in the R-2 zoning district, a minor variance to allow three parking spaces rather than the required four, and a minor variance to allow a principal structure to encroach one foot into the required five-foot side yard. The ZBA denied a major variance request to increase the allowable floor area ratio from 0.40 to 0.51.

The ZBA voted to recommend that City Council approve two major variance requests. The board voted with five ayes and two nays to recommend approval of a major variance to allow a principal building to encroach seven feet into the required tenfoot rear yard (ZBA-2019-MAJ-06), and voted with six ayes and one nay to recommend approval of a major variance to reduce the required lot width for establishing a duplex from 60 feet to 58 feet (ZBA-2019-MAJ-10).

Background

Mr. Gordon recently purchased 308 West California Avenue, which contains a house and a garage. When Mr. Gordon contacted a plumber to make repairs to apartments in the garage, the plumber suggested that he talk to City staff. City staff informed Mr. Gordon that garages cannot contain apartments without proper zoning and building safety approvals, and scheduled an inspection. After the inspection, City staff concluded that the previous owner had converted the garage into three single-bedroom apartments without zoning or building safety approvals. At most, a lot in the R-2 district can have two dwelling units if a Conditional Use

Permit is granted. Mr. Gordon would like to reduce the number of apartments in the garage from three to one. To meet all building safety requirements, it will be expensive to remove two units and convert the garage into a single apartment, but Mr. Gordon is willing to work with Building Safety Division staff to make the necessary changes. He would continue to rent out the house on the lot.

City staff estimate that the garage was converted into three apartments in 2011. The City has issued no building, plumbing, or electrical permits for the garage since the original Certificate of Occupancy was issued in 1992. At that time, the garage met all zoning and building safety codes. The previous owners registered the house as a rental unit in 2010 under the rental registration program, but they did not register the garage apartments under the program.

If the requests are approved, the garage would contain one apartment, which would require periodic building inspections and a new Certificate of Occupancy. Since no complaints about illegal building activity in the garage and no complaints about the garage apartments themselves were ever filed with the City, staff had no knowledge of the conversion of the garage into apartments until Mr. Gordon contacted the City and the building was inspected.

Mr. Gordon seeks two major variances:

1. The first request would allow the garage to be used as a dwelling in its present location three feet from the rear property line.
2. The second request would allow a second dwelling to be established on a lot whose width is less than the required 60 feet¹.

Without the variances, the garage could remain, but it could not contain any apartments.²

All apartments in the garage were vacated by September 30, 2019, and on October 2, 2019, City staff inspected the garage to ensure the building is vacant. If the variances are granted, staff will work with Mr. Gordon to ensure that the renovation of the garage into a single apartment meets all building codes.

The applicant states in his letter to the Zoning Board of Appeals (Exhibit E) that the garage apartments were good for graduate students and were affordable. The area is close to Downtown Urbana and the University of Illinois campus, and it is walkable and bikeable, making it a convenient location for renters who may not own a car and who desire a quiet area to live in.

City staff have received no complaints about the existing apartments in the garage. In addition, no one testified at the public hearing that the garage apartments have been a nuisance, and none of the communications received have indicated that the apartments have been problematic or detrimental to the neighborhood. The proposal would remove three illegal, non-code-compliant apartments and replace them with one apartment that will meet building codes and, depending on which (if any) variances are granted, will comply with zoning regulations. The proposed use would then be legal and would not be unreasonably injurious or detrimental to the district or the public.

The R-2, Single-Family Residential zoning district does allow duplexes if a Conditional Use Permit is granted. Of the R-2 properties in the West Urbana Neighborhood, approximately 10% of the properties contain

¹ Urbana Zoning Ordinance Section VI-3. B.

² While Mr. Gordon could technically purchase additional lot width from a neighboring property owner and build a new dwelling on the lot using the current approvals from the ZBA, that scenario is infeasible as the both neighbor's driveway and house is too close to the property line.

legally nonconforming duplexes.¹ The essential character of the district is mostly single-family homes with a small, but not insignificant, number of duplexes (plus an even smaller number of older apartment buildings). An additional two-unit property should not have a significant impact on the character of the neighborhood. Since it appears that the previous owners were likely trying to hide the conversion of the garage from neighbors, the building has been kept to look like a garage on a single-family home lot.

The previous owner converted the garage into apartments and added a utility area on the east side of the building. The conversion created a dwelling that is too close to the rear and side lot line, has too much living space, is on too small of a lot, and has less parking than is required. The current owner seeks variances to address each of these zoning deficiencies. Of the five original major variance requests, it has been determined that two would only require minor variances. First, the applicant will need to remove the utility area that was built in the side yard whether the variances are approved or not. This will reduce the requested encroachment into the five-foot side yard from four feet to one foot. Second, the parking area is large enough for three parking spaces, so the variance request for parking is to reduce the required parking from four spaces to three. The remaining variance requests still require major variances.

The floor area ratio variance request was denied at the Zoning Board of Appeals meeting. This reduces the amount of living area in the garage apartment, and requires the owner to abide by the 0.40 maximum floor area ratio for the zoning district. The variances would allow the existing garage to be used as a dwelling, but with one less floor of the garage being used for living space.

Description of Site and Area

The lot at 308 West California Avenue is 6,670 square feet in area and 57.78 feet wide. It is north of Leal Elementary School, on California Avenue between Cedar Street and Birch Street. The property contains a single-family home, a two-story garage, a driveway, and a parking pad off the public alley to the rear of the house. Exhibit D contains a boundary survey that shows the configuration of the lot and provides precise locations of the property lines.

The following is a summary of zoning and land uses for the subject site and surrounding area:

Location	Zoning	Existing Land Use	Future Land Use
Site	R-2, Single-Family Residential	Single-Family Home	Residential
North	R-2, Single-Family Residential	Single-Family Home	Residential
South	CRE, Conservation-Recreation-Education	Leal Elementary School	Residential
East	R-2, Single-Family Residential	Duplex	Residential
West	R-2, Single-Family Residential	Single-Family Home	Residential

Discussion

Public Input

At the Zoning Board of Appeals (ZBA) meetings on August 21 and September 18, 2019, staff received fifteen letters: nine letters were opposed to the requests, five letters were in favor of the requests, and one letter was from the applicant to the ZBA (see Exhibit E). On August 21, staff recommended that ZBA hear

¹ West Urbana Neighborhood Legally Non-Conforming Uses Map.

the staff report, collect public input, and then continue the case to address any concerns or issues that were raised. On September 18, staff made a recommendation of partial approval and addressed some of the concerns received in public input below.

Below is a summary of some of the main issues expressed in comments received by staff in writing or stated at the public hearing and staff response in italics:

Several people expressed concern that granting the requests will set a precedent that will need to be followed in future cases.

The ZBA reviews each case on its own merits with respect to established criteria. Decisions are not made based on previous cases or the concept of “precedent.” All cases are different and all cases must be judged against the relevant criteria. Granting a request in one case does not set a precedent that must be followed in other cases, since all cases are unique.

There were concerns that if the requests are approved, illegal work on the garage would continue.

The structure will need to be brought up to code whether the requests are approved or denied.

There was concern that there is no compelling reason to grant approval.

The ZBA must evaluate the variance and conditional use criteria to determine whether there is a compelling reason to grant the requests or not.

Major Variance for the Rear Yard

The variance requests to reduce the required rear yard would allow the continued use of the garage as living space. One practical difficulty in using the garage as living space is that when the garage was built, it was considered an accessory structure. Accessory structures can be built up to 18 inches from side and rear property lines, so the garage initially conformed to the requirements of the Zoning Ordinance. Once the previous owner illegally converted the garage into apartments, it became an illegal second principal structure (illegal both because the use was not allowed and because it did not meet the required yards for principal structures). Since the garage is located within the required side and rear yards, it would be impractical to meet the yard requirements if the Conditional Use Permit is granted and the garage is allowed as a second principal structure.

Major Variance for Lot Width

While the Zoning Ordinance does not specifically define how to classify two dwelling units in two separate buildings on a single lot, it is most similar to a duplex (two dwelling units in one building). In the R-2 district, a duplex on a single lot requires a Conditional Use Permit (CUP).¹ The Zoning Ordinance’s description of the purpose of the R-2, single-family residential zoning district states, “R-2 District is also intended to provide for a limited-proportion of two-family dwellings.”

The lot at 308 West California Avenue was originally part of an alley and the adjacent lot. It was created when the area was platted in 1852. In 1909, the north-south Duck Alley was vacated and six feet went with 308 West California Avenue and another six feet went with 306 West California Avenue. In 1990, the former owner of 308 West California Avenue sold the western six feet of the lot to the owner of 310 West California Avenue without the City’s knowledge or approval. The transaction made 308 West California Avenue

¹ Per Section V-3.C. of the Zoning Ordinance, a second principal structure on a lot requires a CUP. Per Table V-1, a duplex is permitted in the R-2 zoning district with a CUP.

nonconforming: the front lot line is 57.78 feet, which is 2.22 feet less than the 60 feet required in the R-2 district and the 60 feet required to establish a duplex on the lot.¹

It is unlikely that Mr. Gordon could purchase 2.22 feet from an adjacent property owner to widen the lot to the required 60 feet because the buildings on the adjacent properties are very close to the property lines and such a sale would likely create nonconforming structures on those lots.

Major Variance Criteria

Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals to make findings based on variance criteria. The following is a review of the variance criteria for variances for the rear yard and lot width.

1. Are there special circumstances or special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance?

The lot is narrower than required due to six feet of lot width having being transferred to 310 West California Avenue in 1990, prior to the house being built at 308 West California Avenue. The City had no knowledge of the land transaction and, had it been aware, the transaction would not have been approved because it would have violated the Zoning Ordinance lot width requirements. The land transfer also reduced the amount of usable floor area that can be built on the lot, and the lot is narrower than the 60 feet required to establish a duplex on the lot. It isn't feasible to transfer 2.22 feet from either adjacent property to widen the lot to 60 feet.

Another practical difficulty is that when the garage was built, it was considered an accessory structure. Accessory structures can be built legally up to 18 inches from side and rear property lines, so the garage conformed to the requirements of the Zoning Ordinance. Once the previous owner illegally converted the garage into apartments, it became an illegal second principal structure (illegal both because the use was not allowed and because it did not meet the required yard setbacks for principal structures). Since the garage is already within the required side and rear yards, it would be impractical to meet the yard requirements. Exhibit D, Site Survey shows that the garage is closer than 18 inches from the property line because a small mechanical room was added when the garage was converted to apartments. This room will need to be removed regardless of the outcome of the variance requests.

2. The proposed variances will not serve as a special privilege because the variance requested is necessary due to special 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.

The rear yard variance relates to the garage's location on the lot and will not serve as a special privilege to the owner, as the garage was illegally converted to a dwelling by the previous owner. The applicant bought the property in this condition and is attempting to bring the property into compliance with building safety and zoning codes. The lot width variance is also not a special privilege, as the lot was illegally subdivided when a previous owner sold six feet of the property's width to the owners of 310 West California Avenue, creating the nonconforming lot width.

3. The variance request is not the result of a situation or condition having been knowingly or deliberately created by the Petitioner.

The applicant bought the property in its current condition, and believed that the property had all necessary approvals and inspections when the garage was converted to a dwelling (staff estimates the garage was converted in 2011). It is not unreasonable for the applicant to think that the units were legal since they

¹ Section VI-3. B. of the Zoning Ordinance.

have been in use for eight years; however, it is up to the purchaser of a property to confirm that all local, state, and federal regulations are being met prior to purchase to make sure that it meets code. If the previous owner had submitted building plans to city staff to convert the garage to a dwelling, it would then have been required to be built to meet building and zoning codes. The absence of permits indicates that the conversion was not legal, and could have been discovered by the applicant prior to purchasing the property. While Mr. Gordon did not directly create the situation he now seeks to rectify with the variance requests, he could have performed more due diligence before making the purchase.

4. The variances will not alter the essential character of the neighborhood.

The variances requests will not alter the essential character of the neighborhood. The garage was built in 1992 and has been used as a dwelling since at least 2011. There are no complaints on record about the garage, and none of the testimony at the public hearing on August 21st or the correspondence received has indicated that the existing apartments have been problematic. The essential character of the neighborhood is that it contains mostly single-family homes but also a fair amount of duplexes and some older apartment buildings. There are also numerous homes in the neighborhood on smaller lots, and more than half of the homes surrounding this property are rental units.

5. The variances will not cause a nuisance to the adjacent property.

There are no complaints on record about the garage or its tenants. If the variances are approved, the owner will have to make significant renovations to bring the building up to code, which should reduce the likelihood of the property becoming a nuisance.

6. The variances generally represent the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.

The variance requests generally represent the minimum deviation from the requirements of the Zoning Ordinance necessary to allow the continued operation of the garage as a dwelling. The applicant requests variances that are necessary to allow the structure to remain in place, with the exterior change required is removing the mechanical room addition.

Case Summary

1. The property is zoned R-2, Single-Family Residential.
2. Dan Gordon requested a Conditional Use Permit to allow a second principal structure in the R-2, Single-Family Residential zoning district. The Conditional Use Permit was granted with the condition that prior to occupancy, the garage will be inspected to ensure it meets all building code requirements for the establishment of a dwelling unit. The applicant will obtain a new Certificate of Occupancy for the garage structure.
3. Mr. Gordon also requests two major variances to allow a principal structure to encroach 7.1 feet into the required rear yard and to reduce the lot width required by 2.22 feet, which is 3.7% less than what is required.
4. The variances would allow the existing garage to be used as a dwelling, but with one less floor being used of the garage for living space.
5. The rear yard and lot width variances do not serve as a special privilege to the property owner, as there are special circumstances relating to the land, including that the garage was built to code but later converted into a dwelling without permits, and that part of the parcel was sold and recorded, without City approvals.

6. The property owner did not deliberately create this situation, as the previous property owner had converted the garage without proper permits into a dwelling and subdivided the lot without City approvals.
7. The rear yard and lot width variances will not alter the essential character of the neighborhood, as the garage was built in 1992 and has been used as a dwelling since at least 2011, and there are no complaints on record about the garage or any indication that the existing apartments have been problematic.
8. The rear yard and lot width variances will not create a nuisance, as there have been no complaints about the garage apartments or its tenants, and the owner will have to make significant renovations to bring the building up to code, which should reduce the likelihood of the property becoming a nuisance.
9. The rear yard and lot width variances represent the minimum deviation necessary from the zoning ordinance, as the variances would allow the garage to remain in place, with no exterior changes.

Options

The City Council has the following options in case ZBA-2019-MAJ-06, the variance for the required rear yard:

1. Approve the Ordinance; or
2. Approve the Ordinance along with any conditions as are appropriate for the public health, safety, and welfare, and to carry out the purposes of the Zoning Ordinance; or
3. Deny the Ordinance.

The City Council has the following options in case ZBA-2019-MAJ-10, the variance for required lot width:

1. Approve the Ordinance; or
2. Approve the Ordinance along with any conditions as are appropriate for the public health, safety, and welfare, and to carry out the purposes of the Zoning Ordinance; or
3. Deny the Ordinance.

Staff Recommendation

At its September 18, 2019, meeting, the ZBA voted five ayes and two nays to forward Major Variance ZBA-2019-MAJ-06 to City Council with a recommendation to **APPROVE** the request. ZBA then voted six ayes and one nay to forward Major Variance ZBA-2019-MAJ-10 to City Council with a recommendation to **APPROVE** the request. City staff likewise recommends approval.

Exhibits: A: Location and Land Use Map
 B: Zoning Map
 C: Future Land Use Map
 D: Site Photos
 E: Site Survey (Berns, Clancy, and Associates)
 F: Correspondence
 G: Major Variance Application
 H: ZBA Meeting Minutes, September 18, 2019 – DRAFT

I: Approved ZBA Meeting Minutes, August 21, 2019

cc: Daniel Gordon, Owner/Applicant

ORDINANCE NO. Ordinance No.

AN ORDINANCE APPROVING A MAJOR VARIANCE FOR THE REAR YARD

(308 West California Avenue / ZBA Case No. ZBA-2019-MAJ-06)

WHEREAS, the Urbana Zoning Ordinance provides for a major variance procedure to permit the Zoning Board of Appeals and the Corporate Authorities to consider applications for a major variance where there is a special circumstance or condition with a parcel of land or a structure; and

WHEREAS, Daniel Gordon has submitted a petition for a major variance to allow a reduction in the required rear yard setback from ten feet to five feet on his property at 308 West California Avenue in the R-2, Single-Family Residential zoning district.

WHEREAS, the Zoning Board of Appeals held a public hearing on such petition at 7:00 p.m. on September 18, 2019, in ZBA Case No. 2019-MAJ-06; and

WHEREAS, in accordance with Urbana Zoning Ordinance Section XI-10, due and proper notice of such public hearing was given by publication in *The News-Gazette*, a newspaper having a general circulation within the City, on a date at least 15 days but no more than 30 days before the time of the public hearing, and by posting a sign containing such notice on the real property identified herein; and

WHEREAS, the Zoning Board of Appeals voted five (5) ayes and two (2) nays to forward the case to the Urbana City Council with a recommendation to approve the requested variance; and

WHEREAS, the City Council finds that the requested variance conforms with the major variance procedures in Article XI, Section XI-3(C)(2)(d) of the Urbana Zoning Ordinance; and

WHEREAS, the City Council has considered the variance criteria established in the Urbana Zoning Ordinance and has made the following findings of fact:

1. Daniel Gordon was granted a Condition Use Permit by the Zoning Board of Appeals to allow the existing garage to be used as a dwelling unit on his property at 308 West California Avenue, in the R-2, Single-Family Residential zoning district;
2. Mr. Gordon has also requested a major variance to allow a principal building to encroach seven feet into the required ten foot rear yard. The Zoning Board of Appeals recommended that City Council approve the major variance request;
3. The variance request would not serve as a special privilege to the property owner if granted, as there are special circumstances relating to the land such as location of the existing building;
4. The property owner did not deliberately create this situation, the previous owner had illegally converted the garage into a dwelling and illegally subdivided the lot;
5. The variance will not alter the essential character of the neighborhood, as the second principal structure already exists as a garage and will match homes and garages facing California Avenue;
6. The variance will not create a nuisance, as second principal structure garage already exists and is like other structures along the block, and there have been no complaints about the garage apartments or its tenants; and
7. The variance represents a minimum deviation from the zoning ordinance as the variances would allow the garage to remain in place, with no exterior changes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1.

In ZBA Case No. 2019-MAJ-06, the major variance requested by Daniel Gordon to allow for a principal building to encroach seven feet into the required ten foot rear yard in a residential zoning district is hereby approved in the manner proposed in the application.

The major variance described above shall only apply to the property more particularly described as follows:

Lot 21, except the West 6 feet thereof, of James S. Busey's Addition to the town, now city, of Urbana, as per Plat recorded in Deed Record "D" at Page 282 situated in Champaign County, Illinois.

Commonly known as 308 West California Avenue, Urbana, Illinois
P.I.N.: 92-21-17-182-014

Section 2.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code. Upon approval of this Ordinance, the City Clerk is directed to record a certified copy with the Champaign County Office of the Recorder of Deeds and transmit one copy of the recorded Ordinance to the petitioner.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Diane Wolfe Marlin, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Charles A. Smyth, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the _____ day of _____, 2019, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled “An Ordinance Approving a Major Variance (308 West California Avenue / ZBA-2019-MAJ-06)” which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, 2019, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____, 2019.

ORDINANCE NO. Ordinance No.

AN ORDINANCE APPROVING A MAJOR VARIANCE FOR LOT WIDTH

(308 West California Avenue / ZBA Case No. ZBA-2019-MAJ-10)

WHEREAS, the Urbana Zoning Ordinance provides for a major variance procedure to permit the Zoning Board of Appeals and the Corporate Authorities to consider applications for a major variance where there is a special circumstance or condition with a parcel of land or a structure; and

WHEREAS, Daniel Gordon has submitted a petition for a major variance to allow for a reduction in lot width from 60 feet to 57.78 feet on his property at 308 West California Avenue in the R-2, Single-Family Residential zoning district.

WHEREAS, the Zoning Board of Appeals held a public hearing on such petition at 7:00 p.m. on September 18, 2019, in ZBA Case No. 2019-MAJ-10; and

WHEREAS, in accordance with Urbana Zoning Ordinance Section XI-10, due and proper notice of such public hearing was given by publication in *The News-Gazette*, a newspaper having a general circulation within the City, on a date at least 15 days but no more than 30 days before the time of the public hearing, and by posting a sign containing such notice on the real property identified herein; and

WHEREAS, the Zoning Board of Appeals voted six (6) ayes and one (1) nays to forward the case to the Urbana City Council with a recommendation to approve the requested variance; and

WHEREAS, the City Council finds that the requested variance conforms with the major variance procedures in Article XI, Section XI-3(C)(2)(d) of the Urbana Zoning Ordinance; and

WHEREAS, the City Council has considered the variance criteria established in the Urbana Zoning Ordinance and has made the following findings of fact:

1. Daniel Gordon was granted a Condition Use Permit by the Zoning Board of Appeals to allow the existing garage to be used as a dwelling unit on his property at 308 West California Avenue, in the R-2, Single-Family Residential zoning district;
2. Mr. Gordon has also requested a major variance to allow for a reduction in lot width from 60 feet to 58 feet to establish a duplex density. The Zoning Board of Appeals recommended that City Council approve the major variance request;
3. The variance request would not serve as a special privilege to the property owner if granted, as there are special circumstances relating to the land such as location of nearby buildings and the previous owners sale of six feet from the lot;
4. The property owner did not deliberately create this situation, the previous owner had illegally converted the garage into a dwelling and illegally subdivided the lot;
5. The variance will not alter the essential character of the neighborhood, as the second principal structure already exists as a garage and will match homes and garages facing California Avenue;
6. The variance will not create a nuisance, as second principal structure garage already exists and is like other structures along the block, and there have been no complaints about the garage apartments or its tenants; and
7. The variance represents a minimum deviation from the zoning ordinance as the variances would allow the garage to remain in place, with no exterior changes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1.

In ZBA Case No. 2019-MAJ-10, the major variance requested by Daniel Gordon to allow for a reduction in lot width from 60 feet to 57.78 feet at 308 West California Avenue in the R-2 Single-Family Residential zoning district is hereby approved in the manner proposed in the application.

The major variance described above shall only apply to the property more particularly described as follows:

Lot 21, except the West 6 feet thereof, of James S. Busey's Addition to the town, now city, of Urbana, as per Plat recorded in Deed Record "D" at Page 282 situated in Champaign County, Illinois.

Commonly known as 308 W California, Urbana, Illinois
P.I.N.: 92-21-17-182-014

Section 2.

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This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

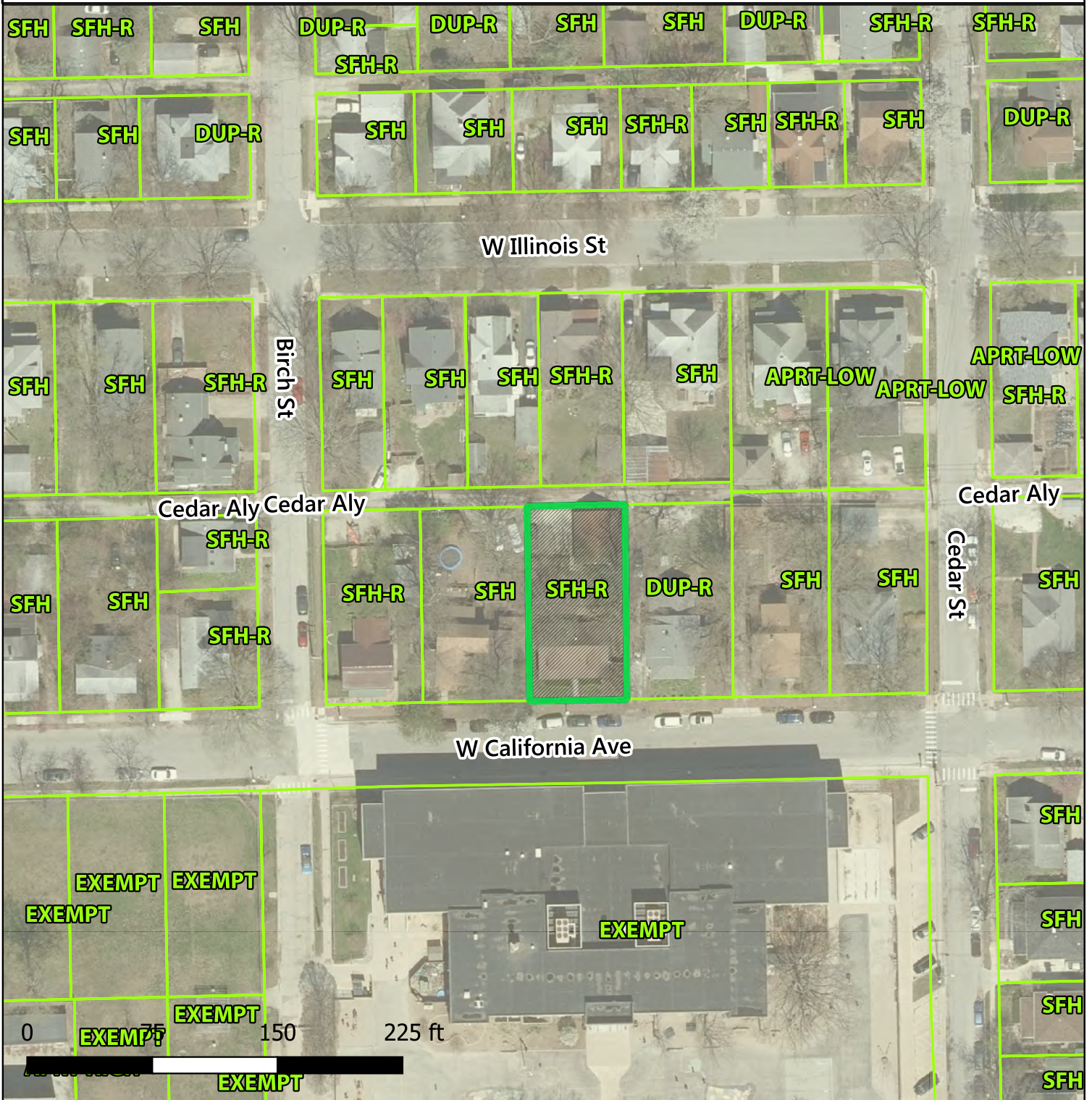
Diane Wolfe Marlin, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Charles A. Smyth, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the _____ day of _____, 2019, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled “An Ordinance Approving a Major Variance (308 West California Avenue / ZBA-2019-MAJ-10)” which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, 2019, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____, 2019.

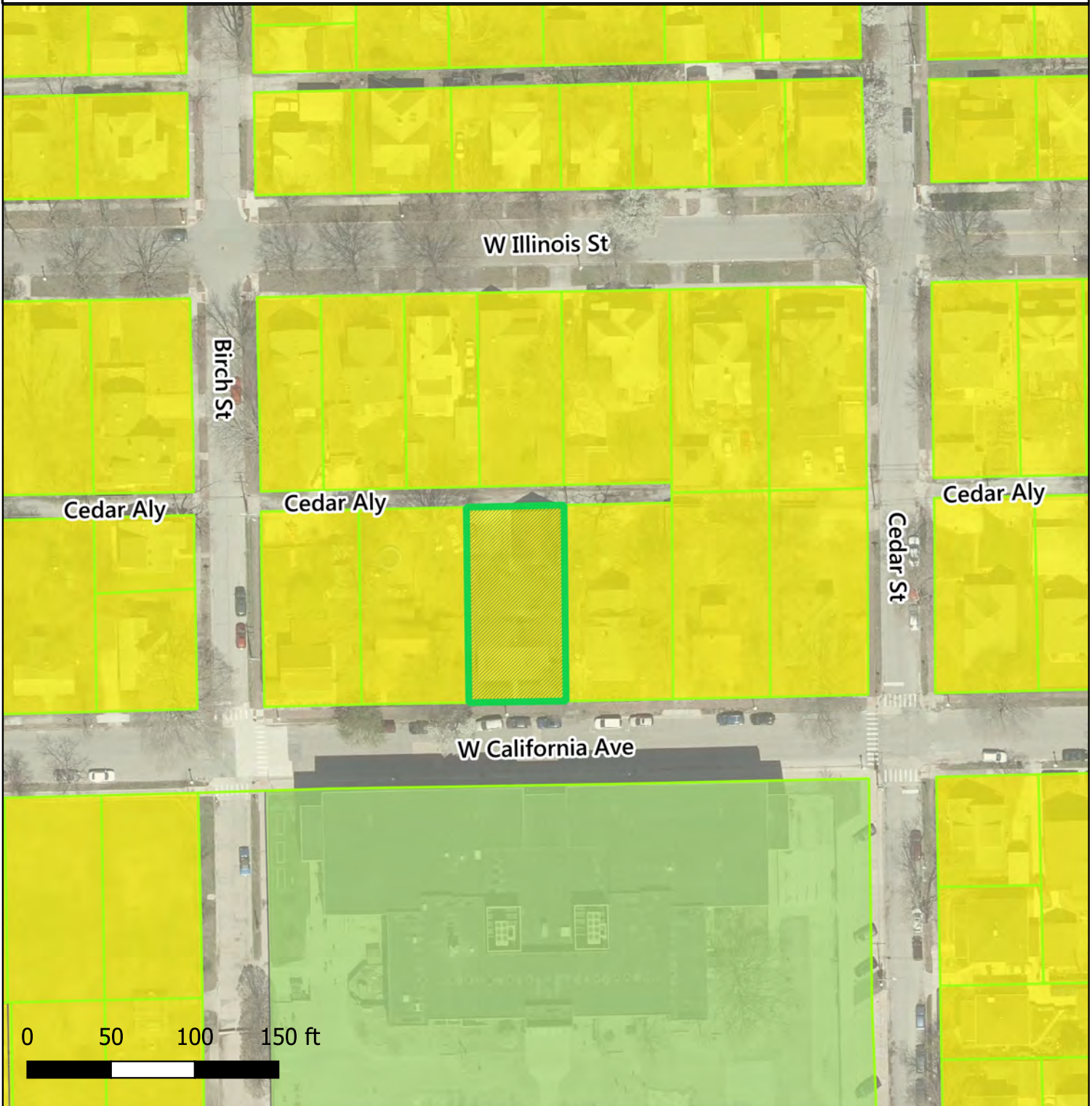
Exhibit A - Location & Existing Land Use Map



Case: ZBA-2019-C-03; ZBA-2019-MAJ-05; ZBA-2019-MAJ-06
 Subject: Gordon CUP and MAJ VAR
 Location: 308 W. California Ave.
 Petitioner: Dan Gordon



Exhibit B - Zoning Map

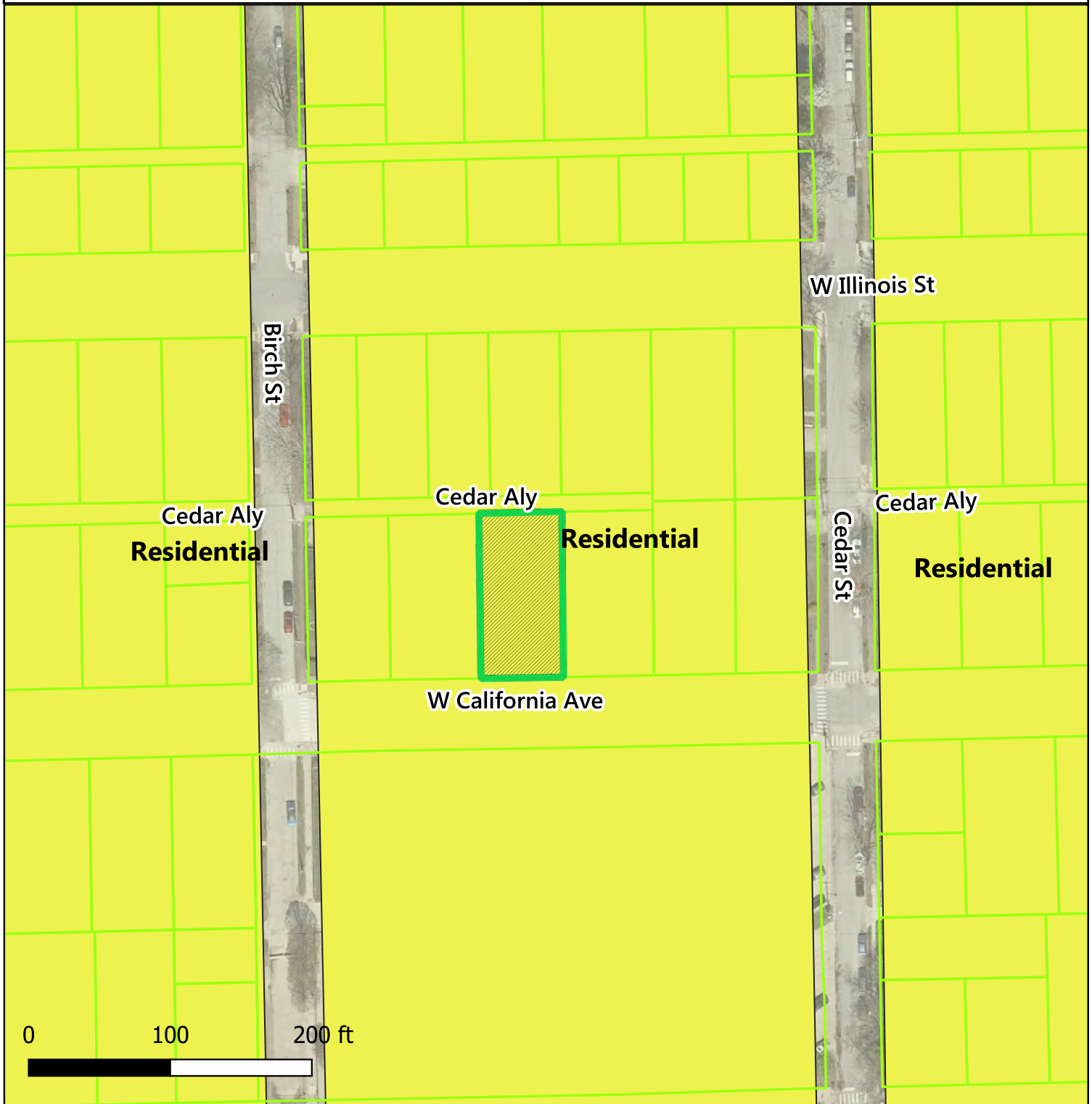


Case: ZBA-2019-C-03; ZBA-2019-MAJ-05; ZBA-2019-MAJ-06
Subject: Gordon CUP and MAJ VAR
Location: 308 W. California Ave.
Petitioner: Dan Gordon

Current Zoning
CRE
R-2



Exhibit C - Future Land Use Map



Case: ZBA-2019-C-03; ZBA-2019-MAJ-05; ZBA-2019-MAJ-06
Subject: Gordon CUP and MAJ VAR
Location: 308 W. California Ave.
Petitioner: Dan Gordon

 Residential



308 W California Avenue - View from Cedar Alley



308 W California Avenue - View from Backyard



308 W California Avenue - View from Cedar Alley



**COMMUNICATIONS RECEIVED for
CASE Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05 -06 -08 -09 and -10**

Communications as of Tuesday, September 24, 2019

From Daniel Gordon to ZBA

Gordon Daniel

Communications In SUPPORT

Magdalena Casper-Shipp

Chong Tracy

Grainger Sarah

Hansen Christopher

Merriam Liana

Communications in OPPOSITION

Shepard Trent

Kuo Ming

Plewa Michael

Katz-Downie Deborah

Mead Becky

Patt Esther

McGuire Mary Pat

Cardman Liz

Hunter Kate

Dear Lily,

Please share my letter with the ZBA and all others who are interested in this August 21st meeting about the property at 308 W California.

My name is Dan Gordon, I am a real estate broker and I represent the Owner RSGordon LLC. RSGordon is my brother, a 100% disabled Veteran from the United States Marines who requires 100% guardianship and care for his well being. This property at 308 W California and the proceeds it earns was purchased to help pay for that care. This is not a property that I profit from but rather a labor I choose out of love for my brother and a call to duty for those who served my country with honor. As a disabled veteran myself I know the struggles that come after military service and as a brother I feel obligated to do my best by him and his sacrifices he gave for our country.

When this property was purchased in February of this year, we were told this property, this rental, was on the Urbana registry for rentals by the owner/seller. This owner/seller lived at the property next door. They are the Hubler family and the husband was Professor Hubler of the U of I Physics department who passed away in 2018. It was his wife who sold me the property.

It was our suspicion that this property might have some code violations but we felt that with this being such a nice and newer building compared to the neighborhood and that the sellers were such upstanding members of our community that there shouldn't be a lot of issues. And if there were any issues, they could be brought up to code. We felt this property could be made into a great supporting piece to this neighborhood. It wasn't until we had to call a contractor to work on some plumbing that found that this property was not legal and needed special use permit and major variance work. Since then we have found that the old owner, the seller who also owns the house next door, illegally moved the property line to give their property more space leaving this property too small to meet compliance with the 60ft wide ordinance.

This garage unit, the building in question, was built long before we arrived here in the CU area and has been a rental for some time before we bought it. Once we purchased this property we have done our best to make this the nicest looking property on the block. Our yard is mowed on a scheduled basis, our flower beds and hedges are groomed and we even brought in a tree trimming company to clean up the branches that were touching the roof. We take much pride in our property. The students rent here because the house is nice, and clean, and quiet, and close enough to campus that one doesn't need a car but far enough away to stay clear of noisy undergrads. Our renters are mostly graduate students who come from all over the world, Italy, China, Mexico, even Chicago. They import their culture to us and export ours back to their home. They do it from this rental that is safe, clean, and affordable. It has always been my goal to build community. Creating well maintained affordable housing for students who come from all across this planet to attend the best university in the world is the business plan for this property.

I want to conclude by thanking you for giving me the opportunity to present my case for special use and for variances. It is not always easy working with government, both my brother and I know as we are both Disabled Veterans who have to deal with the VA all the time. The city staff I have worked with

here in Urbana have been beyond excellent and a joy to work with. I look forward to working together in the near future.

Best Regards

Dan Gordon

Manager RSGordon LLC.

Wilcock, Lily

From: Magdalena Casper-Shipp <magdalena.caspershipp@gmail.com>
Sent: Wednesday, August 21, 2019 1:32 PM
To: Wilcock, Lily
Subject: support of 308 W California variances

Hello

I would like to voice my support for altering the zoning of 308 W California to more accurately reflect the current use of the property. The overlaid r2 zoning designation on all of west Urbana creates the perception that it is a neighborhood of single family homes and allows residents who are against the idea of renters in their neighborhood to ignore the reality of multifamily dwellings legally existing with r2 designations.

The owner is doing the right thing by attempting to do work with permits through the city, and it should be noted that by requesting a single unit, the density of that property is being reduced by half.

If the variance is denied, multiunit existing buildings in west urbana that are grandfathered into r2 risk being unsellable or having major work done without permits. This would be a far less positive outcome than the legal existence of a single apartment in a garage where there used to be multiple apartments.

Thank you,

Magdalena Casper-Shipp

From: [Tracy Chong](#)
To: cho_matthew@hotmail.com; mclaughlin.ashlee@gmail.com; adam@rusch.me; [Wilcock, Lily](#); [Andel, Teri](#)
Subject: In support of 308 W. California garage as second residence
Date: Tuesday, September 17, 2019 12:24:27 AM

Dear Urbana Zoning Boards of Appeals Members,

I am writing to voice my support for approving the use of the garage at 308 W. California as a second residence. I've been following this case and feel compelled to speak out to make it known that the few people who have strongly voiced their opposition do not represent the entire neighborhood.

What makes our neighborhood so amazing is the diverse composition of residents- professionals, students, renters, landlords, home owners, families, single parents, friends/colleagues that live together ... all at different stages of life. We should continue to encourage this type of diversity by supporting efforts to provide different housing options as not everyone is looking to buy or stay in a big "single-family" house. Options like co-ops, apartments, duplexes, studios should be encouraged. Small apartments like the ones at 308 W. California is an example of a different housing option for someone who by choice or necessity is looking for a smaller living space that is affordable and at a great location.

From the reports, there have been no prior complaints to the city about the existing apartments in the garage by either tenants or the public, and there is no evidence that the apartments have been detrimental to the neighborhood. In addition, city staff reported that every tenant in the main house as well as the garage either bikes, walks, or uses public transportation to commute. This paints a very different picture from the fear mongering by the few people opposed to the apartments. I hope that the ZBA can come to an objective conclusion and not be swayed by a small but vocal minority who would like to preserve the status quo of the neighborhood.

It is concerning that there is a feeling of hostility coming from the few residents that is directed towards non-traditional family structures and anything that does not conform to a single-family unit. We should be striving for a more welcoming and inclusive neighborhood. Supporting projects like this that encourages more diverse residents is a step in the right direction.

Best regards,
Tracy Chong

Andel, Teri

Subject: FW: Garage Project at 308 W California

From: "Adam Rusch" <Adam@Rusch.me>
Date: Wed, Sep 18, 2019 at 9:18 AM -0500
Subject: Re: Garage Project at 308 W California
To: "Sarah Grainger" <stotgrainger@hotmail.com>
Cc: "cho_matthew@hotmail.com" <cho_matthew@hotmail.com>, "mclaughlin.ashlee@gmail.com" <mclaughlin.ashlee@gmail.com>, "Wilcock, Lily" <lawilcock@urbanaininois.us>

Sarah,

Thank you for your letter! We appreciate hearing your input.

I am CCing Lily Wilcock who will ensure that the other board members receive a copy of your letter.

Best,
Adam

Adam P. Rusch

On Sep 18, 2019, at 12:36 AM, Sarah Grainger <stotgrainger@hotmail.com> wrote:

Zoning Board of Appeals,

I'm writing in favor of the 308 W California garage project. I'm writing in favor of this project, but also to express some serious concerns I have in the way that such things are discussed at the ZBA meetings. My viewpoint comes from that of a student and renter who loves Urbana dearly. I watched the ZBA meeting on August 21st, and I found it really disturbing where some of the negative comments were coming from, and whom they're directed toward. What I saw was 5 (1 by email) late-age, white, and financially well-off people rail against the use of a structure that hasn't bothered anyone in 8 years, and that they didn't even know about the entire time. This structure provided housing for 3 people who needed a place to live, people who found the alternatives less acceptable. It served a community need, and still can.

We saw a representative from the tenant union speak about all of the imaginary problems that would arise. Imaginary because we haven't seen those problems in the current use. I find it very unsettling that this person claims to represent tenants, but is clearly speaking against their interests and seems to insult them in their choice of housing and lifestyle. I also find it perplexing that this person herself lives in a large multi-unit building within the same neighborhood, but somehow thinks that housing density is only a problem when someone else wants to have multiple units.

We saw an email from someone who owns multiple rental units just blocks away, including a large multi-unit building. I'm not sure why this person thinks his own business model should be allowed and competitors disallowed, except if he is simply trying to eliminate competition.

Then we have 3 other people who seem to be generally angry about anyone wanting to alter their neighborhood in any way, even though they are many blocks away and there is no way this will affect them at all. They seem to simply hate landlords and tenants in general.

How I read all of this: old wealthy angry white people don't want people who are different from them to live anywhere near them, or compete with their existing rental business.

Of the ZBA members, I ask this: when you hear from people like this and have opportunity to ask them questions, try some of these questions out:

"How is this in the interest of the tenants that you represent at the tenant union?"

"Why can you live in (or own) a multiunit building, but you think it is a terrible idea for anyone else?"

"How will this variance personally affect your life?"

"How might this variance affect other people's lives, like the ones who want to live there?"

"Where do you expect poorer people to live? Where do you expect students to live? If there should ever be a single parent with one child who wants to live in West Urbana, where might they live?"

"Why are all of you opposed to this project (and every project like it), from the same race, age, and class?"

These people complaining do not represent the vast majority of people who live here, or want to live here. Their interests appear selfish and perverse, and their motives are impure. I hope the board realizes that.

Thank you,
Sarah Grainger

(PS, I could only find email addresses for 3 of you. Please forward to the other members, if possible.)

Sent from [Outlook](#)

Wilcock, Lily

From: Christopher Hansen <chris.g.hansen@gmail.com>
Sent: Monday, September 16, 2019 1:36 AM
To: Wilcock, Lily
Subject: Fwd: 308 W California Garage Apartment

Urbana Zoning Board of Appeals Members,

I am writing in regards to the requested variances for 308 W California. I want to voice my opinion in favor of the proposal. I have lived within a few blocks of 308 W California for the past 17 years and feel that these types of projects are exactly what my area needs. We have a shortage of housing solutions for people who do not have large families, and having more small units like this will help round out the neighborhood nicely. I see no reason to conclude that approving such projects would cause any deleterious effects on my neighborhood, and I see no reason to think that the 300 block of W California needs to be exactly like the area several blocks south of it.

Common complaints about rentals deal with issues of parking, noise, garbage, and upkeep. I would like to point out that all of these issues are also regularly associated with owner-occupied properties, and that there are plenty of rental properties that have none of these issues. I do not think the ZBA should entertain theoretical and discriminatory arguments about problems that can be better settled by the city with suitable warnings and fines.

Regarding parking, multiple neighbors have reported no parking issues at all near 308 W California, and I have never observed a shortage in that area myself. People who want to live in this area often do not own cars and I see no reason to assume some percentage of renters must own cars.

Regarding weeds and garbage, all alleys can and do suffer from these problems. I have heard some opposed to the variances claim that the alley behind 308 W California is overgrown with weeds. I'm not sure what point is being made. Pretty much every alley in West Urbana has this issue, and I think the alley is more likely to be taken care of with an abutting residence there, not less likely.

Apparently, the 308 garage has been used as a rental for 7+ years without any complaints at all, which makes me think there haven't been any noise, garbage, or upkeep issues. I find it curious that some people are claiming some inevitable avalanche of problems even though there is already 7 years of data showing the opposite.

What really concerns me is the discriminatory tone of what turns out to be a tiny minority of people who are opposed to virtually any change in Urbana. I find most of the claims to be anti-renter, anti-landlord, anti-student, and offensive to anyone who does not align themselves in a traditional family structure.

As a younger homeowner, I am still very much in-touch with younger neighbors and would-be neighbors. This includes students, grad-students, post-docs, and other young working professionals. These groups are very poorly represented in local government, and I feel the ZBA needs to consider their interests, even if you don't hear from them directly. I feel comfortable claiming that these groups do not have very many good housing options in West Urbana, and that supporting more projects like this will be greatly to their benefit. This has long-term importance to my area because a small percentage of these tenants will become my future long-term neighbors. I want these people to find that housing in West Urbana is diverse and inclusive, and find opportunities in rental units here that may serve as a stepping-stone before they buy their own home.

Thank you,

Christopher Hansen

Andel, Teri

Subject: Variances for 308 W CaliforniaFrom: "**Liana Merriam**" <liana.merriam@gmail.com>

Date: Tue, Sep 17, 2019 at 11:09 PM -0500

Subject: Variances for 308 W California

To: "mclaughlin.ashlee@gmail.com" <mclaughlin.ashlee@gmail.com>, "Adam Rusch" <adam@rusch.me>, "Wilcock, Lily" <lawilcock@urbanaininois.us>, "cho_matthew@hotmail.com" <cho_matthew@hotmail.com>

Urbana Zoning Board of Appeals,

I am writing to express my support for the proposed variances to 308 West California, to allow for the use of the garage as a second living unit on the lot. I believe that the neighborhood is in need of such living spaces - there is a noticeable shortage of homes for individuals, couples, or small families in West Urbana. Not everyone seeks to live in a three, four, or five bedroom house with all the related upkeep and maintenance, nor does everyone want to live in a shared space. As a young, single, working professional, I view a one-bedroom apartment as the most sensible choice for myself. I desire my own private space, which eliminates rooming houses. I do not feel the need to purchase an entire house just for myself, and I have no interest in taking on the duty of landlady to find roommates, as well as the work that goes into maintaining a 100+ year old house. Spaces such as converted garages would be perfect for someone like myself, a single parent, a retired couple, a graduate student, or a small family trying to save for a larger home. I do not view the expansion of housing choices as a bad thing for the neighborhood, and I do not believe that more rentals necessarily means more noise, traffic, or neglected yards. Indeed, I have witnessed all of these at multiple owner-occupied residences. Urbana needs to have growth and change in order to bring in a variety of residents, rather than clinging to a single model of living arrangement.

Sincerely,

Liana Merriam

Wilcock, Lily

From: Trent Shepard <trent.shepard@gmail.com>
Sent: Monday, August 12, 2019 6:45 PM
To: Wilcock, Lily
Subject: 308 W California cases before the ZBA

Dear Lily,

Please share this message with members of the ZBA for their August 21 meeting as I will be out of town on the evening of the hearing.

I have looked through the basics of the request by the new property owner to receive 5 major variances and a conditional use permit for the currently illegal garage/apartments behind the house. I looked at the garage from the alley today.

My guess is that the whole garage was built without a permit. This process seems to work quite well in this neighborhood. I've seen two additions to houses without permits near me. Both were reported to the city and both were either ignored or allowed to remain by city staff. There's currently a structure under construction near me that now has a building permit, but didn't start out that way. The owner/landlord told another neighbor that he intends to live in what he now calls a tool shed when he comes to town. Enforcement of building permit ordinances seems to be lax in my neighborhood, and probably in all of Urbana.

This request is basically asking the city to accept what the previous owner of 308 W California constructed illegally. That immediate area already has problems with parking on unapproved surfaces, garbage lying in bags on the ground today, nuisance weeds and overgrown vegetation. Adding a second legal habitation on this property will not strengthen the already marginal nature of this block.

I think it's a stretch to believe that two off street parking spaces are enough for a good size house and an apartment. Will additional cars be parked on the back yard as at nearby properties, or pay \$130 for an annual street parking permit? My guess is the former.

This garage doesn't look like it has been modified from a garage only structure, so I'm guessing it was built the way it looks, then crammed with renters. If there were no permits for the construction of a garage that I'm guessing doesn't meet the setback requirements for a garage, my recommendation would be for demolition of the garage. The new owner should have been aware of all of the non-conforming uses and setback problems. If the garage had a building permit when it was constructed, it should be allowed to remain as a garage only and the apartment space in the structure used for storage or whatever non-residential use the owner chooses.

I live two blocks from this property and have been trying for years to make this into a nicer neighborhood by doing quality remodeling on my own house and rental properties, with building permits. I think it sets a bad precedent to give major variances for something that was illegal and is not a benefit to this neighborhood.

Trent Shepard
409 W Oregon St.

Wilcock, Lily

From: Ming Kuo <ming123@mac.com>
Sent: Sunday, August 18, 2019 12:42 PM
To: Wilcock, Lily
Subject: Fwd: [wuna-list] RE: ZBA-2019-C-03 Legal Ad

I'm writing to voice my strong objections to granting any variances in the 308 West California Avenue case. I objected to granting them prior to learning the information below simply because the zoning requirements were set for good reasons, and there is actually no compelling reasoning provided for any of them beyond, "these were here when I bought the property."

But my objections are made even stronger when it is clear the buyer most likely full well knew of the problems before the purchase and is attempting to hoodwink the neighbors/the City. The last thing we should do is reward this kind of behavior.

Thank,
Ming Kuo
504 West Vermont Avenue
Urbana, IL

Begin forwarded message:

From: "Plewa, Michael Jacob" <mplewa@illinois.edu>
Date: August 18, 2019 at 11:56:04 AM CDT
To: "wuna-list@googlegroups.com" <wuna-list@googlegroups.com>
Subject: [wuna-list] RE: ZBA-2019-C-03 Legal Ad
Reply-To: mplewa@illinois.edu

Dear WUNA Neighbors.

Zoning Board of Appeals Meeting August 21, 2019 - 7:00pm
Meeting Location: Urbana City Council Chambers

The 308 West California Avenue case is one in which Mr. Dan Gordon is requesting 5 major R-2 zoning variances for his property.

It is important to understand the difference between a minor variance and a major variance.

From the Urbana Zoning Board of Appeals (ZBA) website "A minor variance is recognized as having potential impact on the immediate neighborhood and adjoining properties; whereas, a *major variance is recognized as having potential impact on the larger area and may affect enforcement of the zoning ordinance elsewhere in the City.*"

Mr. Gordon is asking the ZBA and the City of Urbana to provide him with **5 major variances** in order for him to use his recent purchase as a rental in an R-2 zoned property. When first presented in the Background Section of the petition, one could reasonably believe that Mr. Gordon was an uninformed and perhaps naive purchaser who did not conduct rudimentary due diligence prior to the sale. One could easily assume that because of this lack of his due diligence, Mr. Gordon is appealing to the city for remedy by requesting 5 major zoning variances.

I checked the public records using Zillow and the agent for the purchase of the property was “Dan Gordon Selling Homes 24-7 Team, Champaign IL ” on March 4, 2019. Mr. Dan Gordon is the owner of the property.

Mr. Dan Gordon is a Realtor of “Dan Gordon Selling Homes 24-7 Team” and is a trained real estate professional. Before purchasing the 308 W. California property he must have known that the house and garage violated the Urbana R-2 zoning laws and that the property failed basic health and safety regulations. Yet in the Background Section of the petition for the variances, Mr. Gordon suggests that he realized the substandard health and safety hazards in a garage used as 3 apartments only after a plumber refused to work on the property. Is it common practice for anyone to rent garages to resident tenants that do not meet city codes? There is an ethical issue; as a licensed real estate agent in protecting the public good, he should have immediately reported these serious violations to the City. From the public record and in my opinion, it appears that he purchased the property and then tried to make repairs to the garage that may be construed to continue the illegal renting operation. Now Mr. Gordon is asking the ZBA to grant 5 major variances on his property. Mr. Gordon purchased a home that is listed as R-2; he has the opportunity to return the property to R-2 compliance without variances.

I recommend that all WUNA neighbors who have an interest in preserving the quality and safety of our neighborhood attend the August 21, 2019 Zoning Board of Appeals meeting and voice their concerns. Letters of opposition to the requested 5 major variances should be sent to:

Lily Wilcock

Planner I | Community Development | City of Urbana
lawilcock@urbanaininois.us | Phone Number (217)328-8284 | <https://www.urbanaininois.us/>

Sincerely,
Michael Plewa

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The opinions expressed on this unmoderated list do not necessarily reflect those of the Wuna Steering Committee. Please maintain a civil tone when posting or you risk removal from the list.

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August 19, 2019

Ms. Lily Wilcock, Planner I
Community Development, City of Urbana
lawilcock@urbanaininois.us

Dear Ms. Wilcock:

We write in opposition regarding the request to the Zoning Board of Appeals (ZBA) for a Conditional Use Permit to allow a garage structure to contain a second dwelling unit and the additional request for 5 major R-2 Zoning variances that Mr. Dan Gordon has petitioned for his newly acquired property at 308 West California Avenue, Urbana.

From the Urbana Zoning Board of Appeals (ZBA) website “A minor variance is recognized as having potential impact on the immediate neighborhood and adjoining properties; whereas, a *major variance is recognized as having potential impact on the larger area and may affect enforcement of the zoning ordinance elsewhere in the City.*”

The petition by Mr. Gordon for a Conditional Use Permit to allow a garage to be used as a duplex dwelling unit is unacceptable. We find no compelling public benefit to justify allowing a use that does not comply with the R-2 zoning standards for F.A.R., set-backs and parking. The worst part of this petition is that it requires 6 major R-2 zoning alterations. It is a precedent that allows a person to purchase property that was illegally used for residences and then rewards the owner by granting a Conditional Use Permit. Such a decision will have an adverse impact on the enforcement of the zoning ordinance throughout the City. If the ZBA agrees to this petition, how does the City justify restricting other current and future property owners? Precedent alone, and the impact on zoning enforcement throughout Urbana, should demand an outright denial of the Conditional Use Permit and the requested 5 major variances.

Specifically, the special circumstances that are associated with this lot is that the previous owner illegally installed 3 apartments in a garage without zoning and health and safety approvals. Mr. Gordon purchased the lot. The idea that Mr. Gordon did not know of this illegal use is preposterous. Mr. Gordon contracted a plumber to make *repairs* to the illegal garage apartments. Mr. Dan Gordon is a Realtor of “Dan Gordon Selling Homes 24-7 Team” and is a trained real estate professional. Before purchasing a property he must have known that the house and garage violated the Urbana R-2 zoning laws and that the property failed basic health and safety regulations. However, as described in the Background Section of the City Staff report, he engaged a plumber to make *repairs* to the garage apartments. The plumber refused and Mr. Gordon applied to the ZBA for remedy to secure his investment and profit. This scenario does not meet the requirement of a special practical difficulty as defined by the Major Variance Criteria Section XI-3 of the Urbana Zoning Ordinance.

Again the concern of an adverse precedent is highlighted in another section of the Zoning Ordinance. As City Staff stated, "The proposed variances will not serve as a special privilege because the variance requested is necessary due to special 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." How can this petition not be viewed as a special privilege? The request for the Conditional Use Permit and the 5 major variances should be denied.

In addition, City Staff stated in their review of this case that, "The variance request is not the result of a situation or condition having been knowingly or deliberately created by the Petitioner." Mr. Gordon, as a Realtor, must have known that the 3 apartments in the garage were illegal. He should have conducted due diligence in making his purchase. The fact that he hired a plumber to make plumbing *repairs* in the garage implies that he planned to continue the use of the illegal garage apartments to rent to tenants. Thus the variance request is an attempt to recover profitability from his purchase and install a duplex by the use of a Conditional Use Permit and 5 major variances. This is a petition that was deliberately created by the Petitioner in his attempt to repair the garage apartments. Again this approval would be the foundation of an adverse precedent that would "*affect enforcement of the zoning ordinance elsewhere in the City.*"

The Conditional Use Permit would substantially alter the essential character of the WUNA neighborhood (see the West Urbana tab in the City of Urbana website). With the Conditional Use Permit Mr. Gordon would be able to rent to 8 individuals; this additional density would be not only a density problem but also a parking problem in an area across the street from Leal School. The Conditional Use Permit and 5 major variances should be rejected.

City Staff also stated in their report that, "The variances generally represent the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request." The Conditional Use Permit and the 5 major variances would be a significant departure from the regulations codified in R-2 zoning. The request for the Conditional Use Permit and 5 major variances must be denied. Mr. Gordon purchased a home that is listed as R-2 zoning; he has the opportunity to return the property to R-2 compliance.

Sincerely,

Michael J. Plewa
Elizabeth Wagner Plewa
708 W. Iowa St., Urbana, IL

Wilcock, Lily

From: Katz-Downie, Deborah S <dkatzdow@illinois.edu>
Sent: Tuesday, August 20, 2019 11:05 PM
To: Wilcock, Lily
Cc: Deborah Katz-Downie
Subject: ZBA request for 308 W California

Dear Ms. Wilcock,

I will be brief. The property 308 W California Avenue is listed as R-2, Single Family Home. The previous owner converted the garage to a dwelling that does not meet the R2 requirements, and is therefore an illegal dwelling. Mr. Gordon recently purchased 308 W California and as the new owner, Mr. Gordon is asking the ZBA to grant 5 major variances on his property in order to make the illegally converted garage satisfy the requirements of a duplex on the property so that he can rent the garage to tenants.

The Urbana Zoning Board of Appeals (ZBA) states on its website that “A minor variance is recognized as having potential impact on the immediate neighborhood and adjoining properties; whereas, a major variance is recognized as having potential impact on the larger area and may affect enforcement of the zoning ordinance elsewhere in the City.”

Mr. Gordon has a right to rent his house on 308 W California for income purposes as long as he is within the R2 Zoning laws. I strongly oppose his request of 5 major variances in order to rent the illegally converted garage as a dwelling because it will set a precedent and greatly affect the City of Urbana's response to future requests for major variances such that potentially anyone with a structure other than a house on their property can make a duplex on their property so they can rent it.

I do hope that the City can stand firm to uphold our current laws. It is clear that the illegally converted garage at 308 W California is not the only illegal dwelling being rented in the City of Urbana, however, the task at hand is to consider only 308 W California and the fact that 5 major variances are being requested that will greatly affect how the City reviews future requests for major variances.

Thank you,

Deborah Katz-Downie 209 W Delaware Avenue.

Wilcock, Lily

From: Becky Mead <beckymead@ameritech.net>
Sent: Wednesday, August 21, 2019 3:30 PM
To: Wilcock, Lily
Subject: 308 California

Dear Ms. Wilcock,

I just wanted to voice my opinion that the Zoning Board should reject the petition for five major variances at 308 California. Generally, I think that bringing a structure up to code is a positive proposition, but I don't think it is in the best interest of the neighborhood to grandfather in this particular zoning violation. The realtor who bought the property couldn't have been surprised it was in violation and shouldn't be rewarded by bending the zoning rules to what was illegally established. The zoning is intended to preserve the nature of the neighborhood, exceptions and variances should be few and far between.

Becky Mead
607 W. Michigan Ave.
Urbana, IL 61801

New Communication

DATE: August 21, 2019

TO: Zoning Board of Appeals

FR: Esther Patt – 706 S. Coler Av

RE: Requests for a Conditional Use Permit and 5 Major Variances for 308 W. California

I urge denial of the request for a conditional use permit and five major variances for 308 W. California because the request does not meet the criteria for major variances set forth in the Zoning Ordinance.

There are no special circumstances relating to the land or structure which are not generally applicable in the district. Many properties in the R-2 district are not large enough to accommodate two habitable structures with sufficient off-street parking. That makes sense since R-2 is intended for one single housing unit on each lot.

The only thing that distinguishes this property is that the previous owner illegally converted a garage into 3 rental units without any required approvals. That fact should not be considered a special circumstance or weigh in favor of the Petitioner's request.

The illegal use can easily be remedied by vacating the garage structure.

The Petitioner is a real estate professional who should have known before purchasing the property, whether the three rental units in the garage complied with building codes, zoning laws and rental registration. They do not.

When the Petitioner bought the property he was taking a chance that he would not be able to use the garage as living space. If you grant the variances to protect his investment, that would constitute a special privilege and bad public policy.

The major variance criteria include that the variances would not alter the essential character of the neighborhood and would not cause a nuisance to the adjacent properties. This is where precedent really comes into play.

Any one property with 2 habitable structures and insufficient parking, by itself, will not cause a nuisance. But if even 3 houses on a block convert to duplex with no parking for the extra housing units, that does create the nuisance of insufficient parking for the residents of that block and their guests.

If you say yes to this request, I can't imagine what basis you would have for denying any other request for variances.

The single family character of the R-2 neighborhood would be altered if many single family properties convert to duplex or 2-structure rentals.

Criterion number 6 is “the variances generally represent the minimum deviation from requirements of the Zoning Ordinance.”

Five major variances cannot be construed as a "minimum deviation." If the proposed project had met lot width and F.A.R. requirements but the Petitioner needed the set-back variances in order to accommodate the additional parking, that would be a minimum deviation.

If a property owner cannot build two habitable structures on one lot in the R-2 district without waivers for parking, and floor area ratio, and minimum lot width, and side and backyard set-backs the property should not have two habitable structures because they just don't fit.

Wilcock, Lily

From: Mary Pat McGuire <mpmcguire00@gmail.com>
Sent: Tuesday, August 27, 2019 10:06 AM
To: ! Wu, Maryalice; Wilcock, Lily
Cc: Plewa, Michael Jacob
Subject: ZBA case involving the R2 property and major variances requested

Dear Maryalice and Lily,

Hello. Maryalice I'm sorry that we did not talk much during the last week's meeting. (I had just returned from a research trip, was very tired and headed home after hearing the statements.) I'm writing to you as our City Council person, and to Lily (hello!), as the Planner heading this case for the City with a question about the case, but please do let me know if there is another person (perhaps on the Plan Commission) who I should reach out to. Certainly please feel free to forward this email to the Chair of Zoning Board - whose email is currently unavailable on the City of Urbana website. Thank you.

I have been giving the ZBA case (#C-03, and the MAJs 5-10) some thought as it seems to be a small case but one that has potentially deeper implications regarding zoning enforcement of R2 properties and the passing of major variances in the future. After hearing both sides (although the case presents a lot of gray too), I think the statements that Michael Plewa raised (summarized in his email below) provide a clear determination of this particular case - and I was astounded when the ZBA moved to continue discussion. ZBA members Chester and Uchtman demonstrated the most knowledge of processes and procedures for the City of Urbana and its zoning laws and procedures, which in this case warrant a denial of the case given its extreme violation of existing law (and the intent of the law). Other ZBA members seem to be applying their "softer" reasoning to the case, and through this voice proposed to continue the case.

To that end (continuing the case), my question is one of process: When a ZBA case is continued, what are ZBA board members and Planning staff doing to study this case further? Are there study sessions being undertaken by the ZBA between the two public hearings? What evidence will be presented to consider the case further? Will we hear arguments from ZBA members who see benefits in granting such major variances? Will information be shared publicly prior to the next hearing so that we can come informed as well?

Thank you for any information you can share with us,
 Mary Pat

P.s. I'm cc'ing Michael Plewa to this as well, since he agreed to allow me to forward his note below.

Mary Pat McGuire, PLA, ASLA
 804 W Nevada Street

----- Forwarded message -----

From: Plewa, Michael Jacob <mplewa@illinois.edu>
Date: Sun, Aug 25, 2019 at 2:29 PM
Subject: RE: [wuna-list] garages as apartments
To: chris.g.hansen@gmail.com <chris.g.hansen@gmail.com>, urbanahouse@gmail.com <urbanahouse@gmail.com>
Cc: Esther Patt <estherpatt@hotmail.com>, WUNA <wuna-list@googlegroups.com>

Dear Esther and Christopher, and WUNA neighbors,

I agree with Esther's comments which are based on an lifetime of public service and a deep understanding of landlord/tenant issues in Urbana and Champaign.

I suggest that the arguments about "energy" and housing products are irrelevant to the issues before the ZBA. The issue at hand is whether an unscrupulous owner can illegally violate zoning laws, possibly commit tax fraud, disregard the permitting process for the State and City (electrical connections, sewage and plumbing); have a purchaser buy a clearly illegal use property and then have the ZBA and the City provide a financial remedy by an outrageous number of major variances. This approach undermines the law and, I contend, encourages a contempt for the zoning laws and their uniform enforcement. The reason we have safe, diverse housing products is that we have established zoning laws. It is an insult to reason to believe that the current owner, a real estate agent, did not know that the garage was illegally converted and used when he executed the purchase. The illegal apartments had a garage door that served as a disguise. The past county assessor and current member of the ZBA stated that this was the worst case of zoning law violation she has seen in her career. The current owner purchased a property zoned as R-2 and can use it as rental property within the confines of the current law.

Laws are required for civil society; their uniform enforcement is a requirement for equal justice.

From comments at the last meeting it appears to me that the ZBA is going to allow the request for the zoning variances and I consider this unwise. Commercial owners of residents seem to be given a preference for major variances. The City is deficient in identifying illegal property use violations and is deficient in enforcing its own laws. This is a serious defect in our City's operation and the City Council should address the problem.

The vacancy rate in Urbana is 20.4% http://www.civicedashboards.com/city/urbana-il-16000US1777005/rental_vacancy_rate . It is insane to grant 5 major variances to our lax zoning laws and bend to the wishes of corporate landlords to further increase the vacancy rate. Soon these same individuals will ask for public support in reduced property taxes to remedy their lower rates of profit https://www.news-gazette.com/news/tom-kacich-many-apartments-vacant-so-why-build-more/article_8c9b4cdb-b6db-5a23-9645-2298a3e70d1b.html

Sincerely,

Michael Plewa

From: [E.R. Cardman](#)
To: [Andel, Teri](#); [Pearson, Lorrie](#); [Wilcock, Lily](#)
Cc: [cho_matthew@hotmail.com](#); [mclaughlin.ashlee@gmail.com](#); [adam@rusch.me](#); [! Wu, Maryalice](#)
Subject: For Distribution to All Members of the ZBA re: Case on 308 W California
Date: Monday, September 16, 2019 2:13:46 PM

To the Zoning Board of Appeals

Re: Granting major and minor variances for 308 W California.

The News Gazette reports that new “...[apartments will go up at the same time other Campustown apartment complexes seek reductions in their property tax assessments because of high vacancy rates.](#)”

How ironic. Does that make any sense???

No, it does not. I request you deny all variances for 308 W California. ***West Urbana does not need one more rental unit.***

There are conflicting visions for the future of West Urbana. One vision advocates a high-density rental population and considers legalization of an illegally converted garage at 308 W. California a plus. Another vision advocates preservation of what has largely been a single-family residential neighborhood for decades and says ‘no’ to converting a single-family residence to a duplex.

As a 35-plus year residents of West Urbana, I’m in the second camp. It’s been an incredible gift to live in a family-friendly neighborhood where kids could walk to school; where parents working on campus could bike or walk to work, yet easily be home in the event of a family emergency. It’s been a gift to effortlessly enjoy the amenities of downtown and campus. Nowhere else in Urbana or Champaign can families enjoy such a lifestyle.

The case going before the ZBA is symptomatic of much deeper issues. The issues and misperceptions, which I outline below, are complex and don’t lend themselves to a short email. However, I ask that you consider them before making your final decision, which should be, in sum:

West Urbana does not need one more rental unit.

BACKGROUND

Contrary to those who think high density offers a sustainable vision for the City, I believe such a vision will move West Urbana towards the likes of the area just north of Campustown, from Green to University. Initially a single-family residential area, over the decades this area has seen single-family homes replaced by high-density housing. These apartments were once ‘new and appealing.’ However, today, what was ‘new’ is now ‘old,’ especially as increasing numbers of students favor higher-end rentals.

Loss of the neighborhood’s character is evident. Within the boundaries of WUNA, roughly 100

single-family homes and duplexes have been razed since I moved here 35 years ago. [Documentation available.] Most are in the 700-800 corridor and/or north of Elm. Most have become higher density residences or parking lots. Within a narrower scope, over two dozen homes near me have permanently flipped from owner-occupied to rental. It's been a tipping point that has altered the spirit of a once family-friendly neighborhood.

West Urbana does not need one more rental unit.

MISGUIDED ASSUMPTIONS

Some people have expressed faith in traditional economic theories. However, as the adage goes, "What you see depends on where you sit." From where I sit, I see the following fallacies and contradictions:

#1: Landlords will be incentivized to maintain grandfathered-properties because of the potential of income loss if downzoned to R2. Not near me. These older properties, run by malign neglect, barely satisfy criteria to pass rental inspection. Some of these grandfathered properties – supposedly such a fine investment – have been up for sale for months with no takers. Some are so poorly maintained that they do not even qualify for Section 8 housing. These properties have attracted the unemployed and life-stressed under-employed. Today I wouldn't want a child of mine to walk to Leal and en route, witnessing, as I do daily, problems of alcoholism, drug use and abuse, drug dealing, registered sex offenders and domestic fights, etc. ***West Urbana does not need one more rental unit.***

#2: Well-maintained properties will enjoy an increase in rental occupancy. A counter-point is a neighboring property to mine which had major work done after new ownership. Yet, it stood vacant for the entire academic year 2018-2019. To earn some income, the owner ran it as an Airbnb, which ironically prompted the first major clearing of brush and debris on the property in all the years we've lived here. Perhaps Airbnb-ers are more demanding of quality than the decades of previous renters. Other nearby properties have "For Sale" signs, as well as "For Rent August 2019" signs. Do you doubt anecdotal evidence? Check [Zillow](#) and you'll find numerous apartments and homes available for immediate rent within West Urbana. So much for a lively market. Maybe the older house, well-maintained or not, is no longer a viable rental option for many. ***West Urbana does not need one more rental unit.***

#3: More properties enliven the rental market: I know of local landlords with smaller-scale rental businesses who are experiencing a downturn in their ability to rent older houses and apartment buildings. Meanwhile, out-of-state developers and investors are capable of cutting the smaller guy out of the market – offering steep discounts for renters of their under-occupied, higher-end rental units. This may benefit the consumer, but it does displace local players. Should Urbana give advantage to these outsiders, or support those with a vested interest in our local community? Again, take a look at Zillow and you'll note that ***West Urbana does not need one more rental unit.***

VALUES OF A HEALTHY RESIDENTIAL BALANCE

Those wanting to retain the benefits of a single-family neighborhood aren't necessarily myopically

selfish. In the opinion for the 1974: Supreme Court “*Belle Terre v. Boraas.*” Justice Douglas wrote:

“The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds. **A quiet place, where yards are wide, people few and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.** The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out **zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.**” [Village of Belle Terre v. Boraas, 416 U.S. 1,9 (1974)]

Yes, change is inevitable. But what kind of change can we all support that is of benefit to all? Is moving this area of ‘quiet seclusion and clean air’ to Stonecreek at the edges of town an overall benefit to Urbana? Or rather, is the retention of a family neighborhood with green space near campus a plus? I believe the answer to the latter question is ‘yes.’ **West Urbana does not need one more rental unit.**

A certain amount of transiency among the residency is invigorating. But once an area flips towards excessive transiency, it leads to a certain instability vis-à-vis a population which cares about its public schools, its public parks, its public libraries, etc. etc. The greater the transiency, the greater the number of owners and renters who care little about local issues. Do you think high-density housing with lots of nice local shops are a vision for West Urbana? Then why has the MOR been an abysmal failure? Developers want high density. They don’t care about high-quality of life. They don’t care about installing solar panels; investing in geothermal energy; insuring that all their units have the best of Star Energy appliances. **West Urbana does not need one more rental unit.**

My neighborhood has changed a lot in 35 years. And not for the better. As high-density has moved in, families have moved out. For that matter, I haven’t seen many, if any, families moving into these high-density properties. So I ask you, members of the ZBA , what should West Urbana become? More like the area north of Campustown? – furthered incrementally by each decision you and Plan Commission make? Or should there be a comprehensive vision for West Urbana to become a neighborhood where families and renters make a concerted effort to preserve and reinvigorate a unique residential and family-friendly neighborhood near the largest employer in town? Let’s aim high for the latter. After all, if we homeowners had wanted to live near sterile, high-density structures with cement back yards, we would have moved to downtown Chicago.

I say ‘no’ to legalization of an illegal garage apartment at 308 W. California.

West Urbana does not need one more rental unit.

Liz Cardman
708 W California

DATE: September 15, 2019

TO: Zoning Board of Appeals

FROM: Kate Hunter - 510 W. Oregon

RE: Case #s ZBA-2019-C-3/MAJ-05/MAJ-06/MAJ-08/MAJ-09/MAJ-10 - requests for conditional use permit and major variances for 308 W. California

I am writing to ask that all of the variances in the above cases be denied by the ZBA. Despite the justifications which have been put forth, there are concerns that this case is being rushed through the process without close examination of the Zoning Ordinance and the criteria for granting major variances.

The R-2 district is designed to protect the majority single family use of the district. Allowing this many variances in order to make a previously illegally converted non-conforming property into a legally conforming property makes no sense. In essence it make a special case for a property for which there is no justification for that status. Mr. Gordon, a real estate agent, would have to have been aware of the illegal status when he purchased 308 W. California.

Despite the stated claims by the ZBA that a case such as this one does not set a precedent for future variance requests, it does change the map for that particular block. Since requests such as this one are often in part justified according the status of adjacent properties, there is certainly a possibility that owners of nearby properties would be able to petition to allow duplex use similar to this one, thus changing the nature of this particular R-2 area.

Denial of the requested variances could, instead, have a positive effect in setting precedent for enforcement of the often neglected Zoning Ordinance.



Application for Variance

ZONING BOARD OF APPEALS

The application fee must accompany the application when submitted for processing. Please refer to the City's website at <http://www.urbanaininois.us/fees> for the current fee associated with this application. **The Applicant is also responsible for paying the cost of legal publication fees.** Estimated costs for these fees usually run between \$75.00 and \$225.00. The applicant will be billed separately by the News-Gazette.

DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY

Date Request Filed 06-18-2019 **ZBA-2019-MAJ-05 2nd structure in rear yard**
ZBA Case No.
ZBA-2019-MAJ-06 Increase in FAR
 Fee Paid - Check No. 1145 Amount \$200.00 Date 06-17-2019

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

A VARIATION is requested in conformity with the powers vested in the Zoning Board of Appeals to permit the following variation (*Describe the extent of the Variation Requested*)

A principal structure in the rear yard on the property described below, and in conformity with the plans described on this variance request.

1. APPLICANT CONTACT INFORMATION

Name of Applicant(s): Daniel Gordon Phone: 217-493-5956
 Address (street/city/state/zip code): 709 W Church st, Savoy IL 61874
 Email Address: dangordon.hi@gmail.com
 Property interest of Applicant(s) (Owner, Contract Buyer, etc.): Manager

2. OWNER INFORMATION

Name of Owner(s): RSGordon LLC Phone: 217-493-5956
 Address (street/city/state/zip code): 709 W Church St, Savoy IL 61874
 Email Address: dangordon.hi@gmail.com

Is this property owned by a Land Trust? Yes No
 If yes, please attach a list of all individuals holding an interest in said Trust.

3. PROPERTY INFORMATION

Location of Subject Site: 308 W California
 PIN # of Location: 922117182014
 Lot Size: 57.75x115.5

Current Zoning Designation: **R-2**

Current Land Use (*vacant, residence, grocery, factory, etc*): **Residence**

Proposed Land Use: **Duplex**

Legal Description (*If additional space is needed, please submit on separate sheet of paper*):

LOT 21 EXCEPT THE WEST 6 FEET THEREOF, OF JAMES S. BUSEY'S ADDITION TO THE TOWN, NOW CITY, OF URBANA, AS PER PLAT RECORDED IN DEED RECORD "D" AT PAGE 282 SITUATED IN CHAMPAIGN COUNTY ILLINOIS

4. CONSULTANT INFORMATION

Name of Architect(s): Phone:

Address (*street/city/state/zip code*):

Email Address:

Name of Engineers(s): Phone:

Address (*street/city/state/zip code*):

Email Address:

Name of Surveyor(s): Phone:

Address (*street/city/state/zip code*):

Email Address:

Name of Professional Site Planner(s): Phone:

Address (*street/city/state/zip code*):

Email Address:

Name of Attorney(s): Phone:

Address (*street/city/state/zip code*):

Email Address:

5. REASONS FOR VARIATION

Identify and explain any special circumstances or practical difficulties in carrying out the strict application of the Zoning Ordinance with respect to the subject parcel.

Creates high quality safe living for students or other renter

Explain how the variance is necessary due to special conditions relating to the land or structure involved which are not generally applicable to other property in the same district.

For a very long time, this property has been operating with several dwelling units, Higher than allowed but the tenants have been quiet and there have been no complaints from tenants or neighbors

Explain how the variance is not the result of a situation or condition that was knowingly or deliberately created by you (the Petitioner).

The structure is not conforming in the rear yard of R-2, and therefor there is an application for a major variance. The structure was built prior to purchase, When I attempted to make a repair the city informed me that this was not a non-conforming property but rather not legal. I would like to decrease the amount of units and go down to two dwelling units on one lot

Explain why the variance will not alter the essential character of the neighborhood.
this neighborhood has held a long history of have mulitple dwelling structures on one lot. The character of this neighborhood includes safe, clean structures that are built with exceptional quality that comes with using local building codes and permits.

Explain why the variance will not cause a nuisance to adjacent property.

The current structure has been being used as multiple dwellings and there have been no complaints by neighbors and tenants to my knowledge.

Does the variance represent the minimum deviation necessary from the requirements of the Zoning Ordinance? Explain.

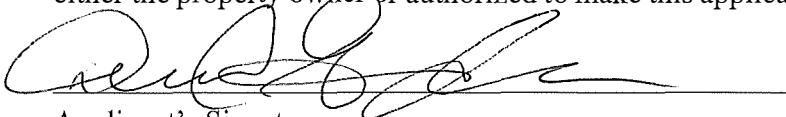
The variance represents the garae apartment llocation that already exists. I would like to maintain the location of the garage because relocating it would be costly and expensive and would require removing a tree or at least cutting into the roots of the nearest tree which might kill the tree. The movement of the garage might also cover the sewer line.

NOTE: If additional space is needed to accurately answer any question, please attach extra pages to the application.

By submitting this application, you are granting permission for City staff to post on the property a temporary yard sign announcing the public hearing to be held for your request.

CERTIFICATION BY THE APPLICANT

I certify all the information contained in this application form or any attachment(s), document(s) or plan(s) submitted herewith are true to the best of my knowledge and belief, and that I am either the property owner or authorized to make this application on the owner's behalf.


Applicant's Signature

6-11-19
Date

PLEASE RETURN THIS FORM ONCE COMPLETED TO:

City of Urbana
Community Development Department Services
Planning Division
400 South Vine Street, Urbana, IL 61801
Phone: (217) 384-2440
Fax: (217) 384-2367

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

DATE: September 18, 2019

DRAFT

TIME: 7:00 p.m.

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

MEMBERS PRESENT Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

STAFF PRESENT Lorrie Pearson, Deputy Community Development Director / Planning Manager; Kevin Garcia, Planner II; Marcus Ricci, Planner II; Lily Wilcock, Planner I

OTHERS PRESENT Paul Debevec, Ann Dickey, Bob Freeman, Dan Gordon, Ryan Millikan, Trent Shepard

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

Chair Welch called the meeting to order at 7:02 p.m. Roll call was taken, and he declared a quorum of the members present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF THE MINUTES

The minutes from the August 21, 2019, regular meeting were presented for approval. Mr. Rusch moved to approve the minutes as written. Ms. Uchtmann seconded the motion. The minutes were approved by unanimous voice vote as written.

4. COMMUNICATIONS

- Case Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05, ZBA-2019-MAJ-06, ZBA-2019-MAJ-08, ZBA-2019-MAJ-09 and ZBA-2019-MAJ-10
 - Communications in Support from the following people:
 - Chong, Tracy
 - Grainger, Sarah
 - Hansen, Christopher
 - Merriam, Liana

- Communication in Opposition from the following people:
 - Cardman, Liz
 - Hunter, Kate

NOTE: Chair Welch swore in members of the audience who indicated that they might give testimony during a public hearing.

5. CONTINUED PUBLIC HEARINGS

ZBA-2019-C-03 – A request by Daniel Gordon for a Conditional Use Permit to allow a second principal structure containing a second dwelling unit at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-05 – A request by Daniel Gordon for a Major Variance to increase the maximum Floor Area Ratio from 0.4 to 0.51 at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-06 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach seven feet into the required ten-foot rear yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-08 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach four feet into the required five-foot side yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-09 – A request by Daniel Gordon for a Major Variance to reduce the required parking for two dwelling units from four spaces to two at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-10 – A request by Daniel Gordon for a Major Variance to reduce the required lot width for establishing a duplex on a lot from 60 feet to 58 feet at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

Chair Welch re-opened the public hearing for each case simultaneously. Lily Wilcock, Planner I, presented an updated staff report. She stated the purpose for the proposed conditional use permit and major variance requests, which is to allow a second principal structure on the lot and to allow one apartment in the garage as a second dwelling. She noted the location, existing use, zoning and future land use designation of the subject property. She reviewed the timeline of modifications made to 308 West California Avenue by the previous owner, particularly the illegal transfer in 1992 of 6 feet of lot width to an adjacent parcel, the 2011 illegal construction of a mechanical enclosure, and the illegal conversion of the garage into 3 apartments without obtaining necessary city permits.

Ms. Wilcock explained the purpose for each request. She addressed the main concerns expressed by the public during the first public hearing on August 21, 2019. These included the following:

- *Granting the conditional use permit and major variances would set a precedent* – Ms. Wilcock explained that granting a request for one case does not set a precedent that must be followed in other cases. She stated that all cases are different and must be judged on their own merit in relation to the zoning criteria in the City’s Zoning Ordinance.
- *Continuation of illegal modifications on the garage* – Ms. Wilcock assured the Zoning Board of Appeals and the public that the garage would need to be brought up to Building Code whether the conditional use permit and variances were approved or not.
- *There is no compelling reason to grant approval* – Ms. Wilcock stated that the Zoning Board of Appeals must evaluate the variance and conditional use permit criteria to determine whether there are compelling reasons to grant the requests.

Ms. Wilcock noted the communications received and handed out prior to the start of the meeting. She reviewed the criteria that the Zoning Board of Appeals uses to make decisions for conditional use permit requests and for major and minor variance requests. She discussed the criteria and explained staff’s analysis for each. Referring to Exhibit F, she talked about the options for partial approval of the proposed requests. She summarized staff findings, read the options, and presented staff’s recommendation for each case.

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

Mr. Warmbrunn asked if Partial Approval Option A [allowing a second-floor apartment and requiring conversion of the first floor to vehicle parking/storage] would result in five parking spaces. With Partial Approval Option B [allowing a first-floor apartment and requiring the conversion of the second floor to storage], the Zoning Board of Appeals would need to approve the parking variance because it would result in three parking spaces. Ms. Wilcock said that was correct. The parking spaces do not need to be used for parking. The owner would be required to provide four parking spaces if the parking variance is not granted.

Mr. Warmbrunn recalled at the previous meeting that the Board had asked how many bedrooms the one apartment unit in the garage would be allowed to have. Ms. Wilcock replied that it might be able to fit four bedrooms. She said that the Board could place a condition on the approval limiting the number of tenants for the one unit in the garage.

Ms. McLaughlin stated that the options for partial approval seemed more like choices for the applicant. The Zoning Board of Appeals would not be deciding upon which option, but rather on whether to approve or deny each request as written. Ms. Wilcock said that was correct.

Ms. McLaughlin asked why City staff recommends denial of the parking variance. Ms. Wilcock replied that it is to reduce the Floor Area Ratio (FAR) and to force the applicant to convert the first floor of the garage to parking. This seems to fit more into the character of the neighborhood and meet the criteria of the Zoning Ordinance.

Ms. Chester asked what the square footage of usable living space is on the second floor of the garage. Ms. Wilcock answered that the full size of the first floor is the living space that is used in the calculation of the FAR for the second floor. The living space of the second floor would be

calculated based on the building plan, which the applicant has not submitted. It is currently being used as an efficiency apartment with one room, a kitchen off to the side and a bathroom. The Floor Area Ratio (FAR) is 875 square feet per floor.

Ms. Chester asked what would have to be done to the garage to make it a legal dwelling unit. Ms. Wilcock stated that it has a foundation; however, Building Safety Division staff would need to inspect it to ensure that it meets the requirements for a dwelling unit. Other improvements would depend on what the Building Inspector finds when he inspects it. The property owner will be required to meet all building codes for a dwelling unit. Ms. Uchtmann asked if the property owner would need to request another variance if the foundation is found to be deficient. She said she was surprised that the Building Inspector had not weighed in already on the condition of the foundation. Ms. Wilcock said no, the property owner would not need a variance. Planning staff and the property owner have held many discussions with the Building Inspector throughout the process. Ms. McLaughlin felt that the condition of the foundation was not within the purview of the Zoning Board of Appeals and was irrelevant to these cases. Mr. Rusch added that the applicant previously made it clear that he wanted to seek zoning approval before proceeding with planning detailed improvements to bring the existing garage into compliance as a dwelling unit.

Ms. Chester inquired about the house. Ms. Wilcock replied that the house is classified as a single-family rental.

Mr. Warmbrunn wondered why the minor variances were still labelled as major variances. Ms. Wilcock responded that to avoid having to re-advertise the public hearing for these two cases in the News-Gazette, and sending out notices to the neighbors, they kept the case information the same. When the Zoning Board of Appeals makes motions on the minor variances, they will need to state the case numbers and note which cases are now minor variances.

With no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of his requests.

Dan Gordon, applicant, approached the Zoning Board of Appeals to answer questions.

Mr. Warmbrunn asked if Mr. Gordon had the opportunity to explore the option to purchase two feet from one of his neighbors. Mr. Gordon replied no, he had not pursued this option. He was informed that the property owner of 310 West California Avenue, who purchased six feet from the previous owner of 308 West California Avenue, had built something on that six feet so they would not be able to sell him two feet and still meet setback requirements. The property owner of 306 West California Avenue would not be able to sell him two feet because their driveway is located along the western property line.

Mr. Warmbrunn inquired if Mr. Gordon had looked into the possibility of demolishing the existing garage to build a second dwelling structure or to keep the existing garage and build another living unit. Mr. Gordon said no. These options are not something he would do. He would rather convert the existing garage back into a garage use. It would not be feasible to construct another living unit [in a new building]. Mr. Cho asked for clarification that the owner was only interested in Option A or Option B. Mr. Gordon said yes.

Mr. Gordon said that regarding Ms. Chester's questions about livable square footage of the second floor unit, there is only room for a one-bedroom unit. He explained that he was asking for approval of the proposed conditional use permit and variance requests prior to drawing up plans for improvements due to the expensive costs of hiring an architect.

Trent Shepard approached the Zoning Board of Appeals to speak. He said he remembered when the house was constructed but did not remember when the garage was converted and illegally expanded. The 300 block of California Avenue is a mix of owner occupied and rental properties. The properties that he recalled becoming duplexes were in houses that had been divided up into two living units. He said he believed that garages converted into dwelling units, grandfathered in or approved by a conditional use permit, are rare. He did not believe that there should be this process to clear up an illegal mess to allow a rental unit. By granting approval of the proposed conditional use permit and variance requests, the City would only be rewarding illegal activity, which is a bad idea.

Ms. Chester recalled that from 1974 to 2010 there were many garages that had been converted into apartments. Over the years, many of them were demolished and thus have disappeared. The proposed garage seems newer. She said the proposed situation is a very uncommon thing.

Ms. Uchtmann wondered how many property owners between Race Street and Lincoln Avenue would want to convert their garages into apartments. Ms. Chester said that because most of the properties in this area are small, narrow lots, most garages are single-car garages. Mr. Rusch stated that the case is for the existing garage at 308 West California Avenue, not for other garages in other areas.

Paul Debevec approached the Zoning Board of Appeals to speak. He gave a short presentation called, "308 West California Avenue – A Garage is a Garage is a Garage". He talked about the following:

- ZBA Scoreboard – "The Zoning Board of Appeals approves everything."
- "Precedent" – He doubted that the City considers two similar cases differently. He talked about the definition of precedent.
- The alleyways of West Urbana – he showed photos of garages located along alleyways that he believes have been converted into dwelling units.
- Affordable Rentals are Plentiful and Vacant – He showed that the website CivicDashboard shows Urbana's current vacancy rate is 20.36%. He also showed a map of rental listings for the north part of West Urbana on Zillow. He showed charts of the number of bedroom units available and of the prices per bedroom.
- How was 308 West California Avenue Missed? – It is located in Zone 3 of the Systematic Rental Inspection. The inspection happened in March 2007, and the conversion was done in 2010. Other inspections were done to neighboring properties but not to 308 West California Avenue.
- Similar Circumstances Example – 510 West Oregon Street – This property was granted a variance to allow a living space to be constructed above the garage; however, it could not be used as a dwelling space because plumbing was not allowed. The proposed cases would set a precedent.

Ms. Uchtmann asked about the garages that Mr. Debevec showed that he believed had been converted into dwelling units. She asked if City staff had checked into these properties to see if they were approved and comply with building requirements? Mr. Garcia said no. The City has not had the staff resources to check them at this time. Ms. Chester stated that the brick carriage garage had obtained permits. She believed some of the other garage conversions had occurred before 1955 and were grandfathered in.

Mr. Cho asked if the Board was allowed to speculate on the future economics of rentals and future appetite for converting garages in making a decision. Mr. Garcia said that the Board members should base their decisions on the criteria for a conditional use permit and for the variance requests.

With no further comments or questions from public audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Mr. Garcia clarified that staff had checked the rental vacancy rates on the CivicDashboard website. He said CivicDashboard states that they obtain information from the American Community Survey (ACS). However, the ACS actually reports a 9.8% rental vacancy rate as of 2017, not 20.36% as reported on CivicDashboard. Mr. Cho asked if the Board members should consider the vacancy rate when making a decision. Mr. Garcia said no.

Ms. McLaughlin moved that the Zoning Board of Appeal approve Case No. ZBA-2019-C-03. Mr. Warmbrunn seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	No	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion passed by a vote of 5 to 2.

Mr. Rusch moved that the Zoning Board of Appeals deny Case No. ZBA-2019-MAJ-05. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion passed by a vote of 6 to 1.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-06 to City Council with a recommendation for approval. Ms. McLaughlin seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	No	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion passed by a vote of 5 to 2. Mr. Garcia noted that this case would be forwarded to City Council on October 7, 2019.

Mr. Warmbrunn moved that the Zoning Board of Appeals approve Case No. ZBA-2019-MAJ-08 as a minor variance. Mr. Cho seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Ms. Welch	-	Yes			

The motion passed by a vote of 6 to 1.

Mr. Rusch moved that the Zoning Board of Appeals approve Case No. ZBA-2019-MAJ-09 as a minor variance. Mr. Cho seconded the motion.

Ms. Uchtmann asked how many bedrooms were in the principal dwelling structure. Mr. Garcia replied that there are four bedrooms. Ms. Uchtmann questioned how many parking spaces were required for those four bedrooms. Mr. Garcia explained that because the principal dwelling structure is classified as a single-family house rental, it requires two spaces. If the garage is allowed to be a second dwelling unit, it would be classified as a single-family rental and require two parking spaces. The proposed minor variance would reduce the required number of parking spaces from four to three spaces.

Roll call on the motion was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	No
Mr. Welch	-	Yes			

The motion passed by a vote of 5 to 2.

Mr. Warmbrunn moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-10 to the City Council with a recommendation for approval. Ms. McLaughlin seconded the motion.

Ms. Uchtmann asked if approving the proposed variance would be recommending that the garage be used as a living space. Mr. Garcia said essentially yes, because the owner would

not be allowed to establish a second dwelling on the lot without the proposed variance. Ms. Uchtmann said she felt the Zoning Board of Appeals Board needed to keep in mind as they are voting what zoning was designed for and what the similar circumstances could be. She did not feel that the Board would be upholding the zoning. Mr. Rusch commented that the purpose of the Zoning Board of Appeals is that when special circumstances arise, the ZBA works with the petitioners and looks at the cases that come before them and decide whether the variances are reasonable for the needs of the community.

Ms. Uchtmann stated that she does not believe the applicant did due diligence before purchasing the subject property in recognizing the potential problems he was buying into. She said he should have looked into whether permits had been issued for the garage conversion and checked to see if the structures complied with the City's codes.

Ms. McLaughlin commented that she felt an increase in cases could mean a reflection in the changing needs of the community. It is not necessarily a bad thing. We have seen single-family neighborhoods, particularly in desirable parts of the community with good access to walking and biking, maybe should be available to more people and should not be restricted in ways that they currently are. She said the Board considers each case as it comes before them. The rental units on the subject property have been occupied, so the location is desirable, and there have been no complaints. The only reason people have come out to complain is because they just learned that it exists. The current property owner is trying to bring the property into compliance, so that is what the applicant, City staff and the Zoning Board of Appeals are working jointly to do.

Chair Welch stated that this is the Zoning Board of Appeals, meaning that it is the Board members' job to decide cases before them based on their merits. If the Board approves cases, it simply means that they are allowing some deviation from the zoning. If that was not desired, then there would not be a Zoning Board of Appeals and the zoning in place would be governing. Zoning Ordinances, like many other written laws, often times get passed by circumstances. In his profession, some people want the Constitution to remain unchanged as it was originally written back in 1790s, and other people believe it should change to reflect current circumstances and conditions. Many times this happens with zoning. He noticed in the written communications that were presented during the previous meeting that many of them expressed desire for uniformity. While it is always a good thing, it should never be an absolute, because often times it leads to rigid circumstances and conditions. We have to balance all of the issues to allow the desire for compliance but to also allow meaningful deviations from the strict dictates of the Zoning Ordinance. The proposed case is not a situation where something new is being put into place. The existing garage was already there when the existing owner purchased it. He is surprised that there is not a desire to radically change the appearance of the outside of the garage.

Roll call on the motion was as follows:

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

Mr. Welch - Yes

The motion was passed by a vote of 6 to 1. Mr. Garcia noted that this case would be forwarded to City Council on October 7, 2019.

6. NEW PUBLIC HEARINGS

ZBA-2019-MAJ-11 – A request by Robert Freeman, on behalf of First United Methodist Church, for a Major Variance to construct an electronic display at 304 South Race Street in the B-4, Central Business District.

Chair Welch opened the public hearing for this case. Marcus Ricci, Planner II, presented the staff report for the case. He began by stating the purpose for the proposed variance, which is to allow the applicant to upgrade the 70-year-old existing sign to a new, electronic sign. He noted the zoning of the subject property and talked about the design of the proposed sign. He reviewed how the variance criteria from Section XI-3 of the Urbana Zoning Ordinance relates to the proposed request. He summarized City staff findings and read the options of the Zoning Board of Appeals. He presented City staff's recommendation for approval with the following conditions:

1. The proposed electronic display's location and size generally conform to the site plan and specifications.
2. The electronic display is monochrome (single-color).

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

Ms. McLaughlin asked if the color would impact the brightness of the sign display. Mr. Ricci explained that Condition 2 is suggested as an option to reduce potential concerns or minimize the impact of the changes in the sign.

Mr. Rusch asked what the typical requirements are for an electronic sign. Mr. Ricci stated that the main requirements for any electronic display are as follows:

- Messages must be displayed for a minimum of three minutes before changing.
- A display can only be 3 foot-candles brighter than the ambient light levels and must have auto-dimming technology built in.
- The electronic display must be less than half of the area of the total sign.

With no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of his request.

Reverend Robert Freeman approached the Zoning Board of Appeals to speak on behalf of the First United Methodist Church. He talked about the church's relationship with the community and stated that they need a better-looking sign. He encouraged the Zoning Board of Appeals to approve their request.

Ms. McLaughlin asked how Reverend Freeman felt about Condition 2 limiting the display to monochrome only. Reverend Freeman replied that the church was fine with this condition, as they do not want the sign to be a big distraction to motorists or to take away from the hotel once it is operational again. Mr. Ricci added that he would have the City's Legal Division review the wording to ensure that it did not violate any First Amendment rights.

Mr. Rusch wondered if the church would be approving all messages that would be displayed on the proposed sign. Reverend Freeman explained that the Church's Board of Trustees would have to agree to any message being displayed.

Reverend Freeman invited everyone to take a tour of the church to see how great of a structure it is.

With no further comments or questions from public audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-11 to the City Council with a recommendation for approval including the condition that *the proposed electronic display's location and size generally conform to the site plan and specifications*. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion passed by unanimous vote. Kevin Garcia, Planner II, noted that this case would be forwarded to City Council on October 7, 2019.

ZBA-2019-MIN-03 – A request by Ryan Millikan for a Minor Variance to allow a garage to encroach 2.375 feet into the required 10-foot rear yard at 304 East Kerr Avenue in the R-3, Single- and Two-Family Residential District.

Chair Welch opened the public hearing for the case. Kevin Garcia, Planner II, presented the staff report for this case. He began by explaining the purpose of the proposed minor variance. He noted that the rear yard was to the west of the existing garage. He showed an illustration of the existing house and the proposed addition and noted how much the proposed addition would encroach into the rear yard setback. He said that City staff believed that the proposed variance request met the variance criteria from Section XI-3 of the Urbana Zoning Ordinance. He presented staff's recommendation for approval with the added condition that *the building addition be constructed in general conformance with the site plans that were presented*. He noted that the applicant and the architect were present at the meeting to answer questions or address any concerns.

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

Ms. Uchtmann noticed the proposed connection from the garage to the hallway in the house on the second floor. She asked if the unfinished attic would become a living space. Mr. Garcia stated that if it were to become a living space, the owner would need to apply for the required building permits and the plans would have to be reviewed for building and zoning code compliance.

With no further questions for City staff, Chair Welch opened the hearing for public input. There was none, so he closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Mr. Rusch moved that the Zoning Board of Appeals approve Case No. ZBA-2019-MIN-03 as requested with the condition that *the building addition be constructed in general conformance with the site plans presented in the staff memo*. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	Yes	Mr. Cho	-	Yes
Ms. McLaughlin	-	Yes	Mr. Rusch	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion was approved unanimously.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Lorrie Pearson, Deputy Community Development Director / Planning Manager, announced that effective October 17, 2019, she will become the Director of Community Development Services Department. This means that she will not be attending as many meetings of the Zoning Board of Appeals; however, she will still attend as needed. Kevin Garcia, Planner II, will begin serving as Secretary for this Board.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Acting Chair Warmbrunn adjourned the meeting at 9:02 p.m.

Respectfully submitted,

Lorrie Pearson, AICP
Deputy Community Development Director / Planning Manager
Secretary, Urbana Zoning Board of Appeals

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

DATE: August 21, 2019

APPROVED

TIME: 7:00 p.m.

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

MEMBERS PRESENT Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Nancy Uchtmann, Charles Warmbrunn

MEMBERS ABSENT Harvey Welch

STAFF PRESENT John Schneider, Director of Community Development Services; Kevin Garcia, Planner II; Marcus Ricci, Planner II; Lily Wilcock, Planner I; Curt Borman, Assistant City Attorney

OTHERS PRESENT Paul Debevec, Ann Dickey, Kara Dudek, Bobbi Gordon, Daniel Gordon, Mary Pat McGuire, Tacey Miller, Esther Patt, Elizabeth Plewa, Michael Plewa, Jonah Weisskopf

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

Mr. Warmbrunn called the meeting to order at 7:00 p.m.

Mr. Rusch nominated Mr. Warmbrunn to serve as Acting Chair for this meeting in the absence of Chair Welch. Ms. Uchtmann seconded the motion. The nomination was approved by unanimous voice vote.

Roll call was taken, and Mr. Warmbrunn declared a quorum of the members present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF THE MINUTES

The minutes from the July 17, 2019, regular meeting were presented for approval. Mr. Rusch moved to approve the minutes as written. Ms. Uchtmann seconded the motion. The minutes were approved by unanimous voice vote as written.

4. COMMUNICATIONS

- Regarding Case Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05, ZBA-2019-MAJ-06, ZBA-2019-MAJ-08, ZBA-2019-MAJ-09 and ZBA-2019-MAJ-10
 - Letter in Support from Dan Gordon, Applicant
 - Packet of Correspondence from the following people:
 - Email from Trent Shepard
 - Email from Ming Juo
 - Letter from Elizabeth and Michael Plewa
 - Email from Deborah Katz-Downie
 - Email from Becky Mead
 - Email from Magdalena Casper-Shipp
 - Letter in Opposition from Esther Patt
 - Presentation by Michael Plewa

NOTE: Mr. Cho entered the meeting.

5. CONTINUED PUBLIC HEARINGS

There were none.

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

6. NEW PUBLIC HEARINGS

ZBA-2019-MAJ-07 – A request by Derek Liebert, on behalf of the Urbana Park District, for a Major Variance to expand the existing parking lot up to 16 feet into the 25-foot required front yard at Leal Park, located at 303 West University Avenue in the CRE, Conservation-Recreation-Education Zoning District.

Acting Chair Warmbrunn opened the public hearing for this case. Marcus Ricci, Planner II, presented the staff report for the case. He began by explaining the purpose for the proposed Major Variance request, which is to consolidate visitor and staff parking by expanding the existing parking lot eastward to add eight parking spaces. He described the location of the subject property noting the surrounding land uses and current zoning. He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance as they pertained to the case. He read the options of the Zoning Board of Appeals and presented City staff's recommendation for approval with the condition that *the proposed parking lot expansion shall generally conform to the attached site plan and specifications.*

Acting Chair Warmbrunn asked if any members of the Zoning Board of Appeals had questions for City staff. There were none, so he opened the hearing for public input. He invited the applicant's representative to speak on behalf of the proposed request.

Kara Dudek, of the Urbana Park District, spoke in favor of the proposed request. She stated that the Park District’s philosophy is “green over grey” meaning that they do not like to have pavement or surfaces that affect stormwater runoff. She discussed the need for the expansion of parking and the location of the expansion. The Urbana Park District intends to buffer the parking lot from University Avenue by planting shrubs, grasses and flowering plants.

Ms. Uchtmann inquired if the pavement would be pervious concrete or asphalt. Ms. Dudek explained that any stormwater runoff would tie into the existing storm sewer. They also try to mitigate some of the stormwater by adding plants to soak it up as opposed to only having turf grass.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-07 to the City Council with a recommendation for approval based on the findings in the written staff memorandum and with the following condition: *the proposed parking lot expansion shall generally conform to the attached site plan and specifications.* Ms. McLaughlin seconded the motion. Roll call on the motion was as follows:

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

The motion passed by unanimous vote. Kevin Garcia, Planner II, noted that this case would be forwarded to City Council on September 3, 2019.

ZBA-2019-C-03 – A request by Daniel Gordon for a Conditional Use Permit to allow a second principal structure containing a second dwelling unit at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-05 – A request by Daniel Gordon for a Major Variance to increase the maximum Floor Area Ratio from 0.4 to 0.51 at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-06 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach seven feet into the required ten-foot rear yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-08 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach four feet into the required five-foot side yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-09 – A request by Daniel Gordon for a Major Variance to reduce the required parking for two dwelling units from four spaces to two at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-10 – A request by Daniel Gordon for a Major Variance to reduce the required lot width for establishing a duplex on a lot from 60 feet to 58 feet at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

Acting Chair Warmbrunn opened the public hearing for each case simultaneously. Lily Wilcock, Planner I, presented the staff report for these cases. She began by noting the history of the use and modification of the property prior to the applicant acquiring the property. She described the subject property and surrounding area by noting the existing land uses and zoning. She reviewed the dwelling unit and parking space configuration of the lot, noting that there is space for three vehicles, not two as stated in the staff memo. The Urbana Zoning Ordinance requires two parking spaces per dwelling unit. She reviewed the past modifications of the lot and recent boundary survey performed by Berns, Clancy and Associates. She talked about the platting timeline of the subject property and the illegal addition to the garage and the violations it created regarding the Floor Area Ratio (FAR), rear yard and side yard setbacks. She reviewed each variance request individually and pointed out the public correspondence/comments received. She stated that City staff requests that the Zoning Board of Appeals hear public input and then continue all of the proposed cases to the next regular Zoning Board of Appeals meeting on Wednesday, September 18, 2019.

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

Ms. Chester asked if the existing dwelling units in the garage were connected to the sanitary sewer. Ms. Wilcock was uncertain. Mr. Rusch noted that he used to live in the immediate area and the sanitary sewer connector is located in the alley.

Mr. Rusch inquired about the electrical wiring. If it were wired from the house, then it would be a major code violation, correct? Ms. Wilcock said yes, and it would need to be fixed if the proposed conditional use and variances are approved.

Ms. Uchtmann asked how many tenants lived at the subject property. Ms. Wilcock said that there were four tenants living in the house and three tenants living in studio/efficiency apartments in the garage.

Ms. Wilcock read the options of the Zoning Board of Appeals and reiterated that City staff would like the Zoning Board of Appeals to hear public input and then continue all six cases to the September 18, 2019 regular meeting. Acting Chair Warmbrunn confirmed that the Board would listen to public input and then decide whether to continue or to move forward with the proposed cases.

Mr. Cho noticed in Exhibit F that the last entry says, “*Owner will need to buy two feet from a neighboring property owner.*” He asked if the option to buy two feet from the neighboring property owner had been agreed upon. Ms. Wilcock said no. This would be an option if the Conditional Use Permit is approved and if the Major Variance (ZBA-2019-MAJ-10) is denied. The applicant would need two additional feet to be able to have a second principal building on their lot. The only neighboring property that this would be possible is 306 West California

Avenue; however, the property owner of 306 West California Avenue would have to be amicable and a shared driveway would have to be established.

With no further questions for City staff, Acting Chair Warmbrunn opened the hearing for public input. He invited the applicant to speak on behalf of his requests.

Dan Gordon, representing RSGordon LLC, approached the Zoning Board of Appeals to speak in support of the proposed conditional use permit and major variance requests. He thanked the Zoning Board of Appeals and City staff for considering their requests. When they were considering buying the subject property, they were told things that led them to believe that the property would be economically viable. After purchasing the property, they discovered that those things were not true and accurate. Now, they are before the Zoning Board of Appeals to try to remedy the situation and make things right with the City for the safety of the people who live in the area.

Mr. Rusch asked if he had acquired the current leases for the dwelling units in the garage with purchasing the subject property. He asked if there are tenants still residing in the dwelling units in the garage and if they wish to continue to reside in the units. Mr. Gordon answered that there are tenants still residing in the garage units for another month and a half when their leases expire. After that point, he would no longer be allowed to lease out the units. No one is being displaced at this time.

Mr. Cho asked if he had discussed the possibility of purchasing two feet of land with the neighbor. Mr. Gordon stated that he received the Zoning Board of Appeals packet in the last 48 hours, so he has not had time to consider his options or talk with anyone about it.

Ms. Uchtmann questioned if he had a survey done to find the boundaries prior to purchasing the property. Mr. Gordon replied no. The Geographic Information System (GIS) maps showed that there was space.

Mr. Rusch asked who did the title work and who his attorney was on the sale of the property. Mr. Gordon stated that Andy Hatch is his attorney, and he is not sure who performed the title work.

Jonah Weisskopf approached the Zoning Board of Appeals to speak in favor of the proposed requests. He felt it was an incredulous back story and egregious transgression with the garage becoming three dwelling units with zero permits. However, he felt this property was an exception and that there are no other “under-the-nose” illegal three-unit garages in West Urbana. West Urbana is a vigilant community of people who watch out for this type of thing.

He questioned the relevance of the backstory though. The applicant owns the house and the garage, and he wants to have an apartment in the garage. Mr. Weisskopf felt that dwelling units in garages should be promoted and encouraged. There are multi-family buildings sprinkled throughout the area, and he encouraged the Zoning Board of Appeals to see the reality of the demographic as it exists in the immediate area. He said he believed that there is too much temptation for people to feel that the 200 block of West Indiana Avenue is what the 600 block of

West Illinois Street should look like or the 800 block of West Oregon is really the territory of what the 300 block of West Iowa Street should be. There are such differences between the amount of people, the amount of multi-family properties, the amount of renters, the amount of students that live in the 700 and 800 blocks. He believed that this should be taken into account. It should not be assumed that the R-2 Zoning District only has single-family homes. He said it is not the reality of the neighborhood when you look at how many of the single-family homes are actually multi-family buildings. They may be non-conforming, but they are legal. He sees this case as a single-family homeowner asking to be allowed to have an apartment in his garage.

Esther Patt approached the Zoning Board of Appeals to speak in opposition. She urged denial of the proposed requests because they do not meet the criteria for major variances as set forth in the Urbana Zoning Ordinance. There are no special circumstances relating to the land or structure that are not generally applicable in the district. Many properties in the R-2 Zoning District are not large enough to accommodate two habitable structures with sufficient off-street parking. The only thing that distinguishes the proposed property is that the previous owner illegally converted a garage into three rental units without any required approvals. This should not be considered a special circumstance or weigh in favor of the applicant's requests. Illegal activity should never be a justification for the City to grant waivers or variances.

She said that the applicant, being an owner of a limited liability corporation that buys rental properties, should have known that the dwelling units in the garage were illegal. She felt that if the City approves the proposed requests, then the City would be granting a privilege to a business that was willing to take a gamble in making a real estate acquisition without checking the zoning, code compliance, or to see if the property was even registered with the City's Rental Registration Program.

She talked about the criteria for a major variance. Specifically, if the variance would alter the essential character of the neighborhood and would not cause a nuisance to the adjacent properties. She believed that the precedent of allowing two principal structures and insufficient parking on one lot would increase the parking problem that already exists in the neighborhood. There are existing parking issues in the neighborhood that stem from single-family homes being converted into multi-family living units.

Regarding the "minimum deviation" criteria, she did not understand how asking for five major variances could be considered a "minimum deviation". If a property owner cannot build two habitable structures on one lot in the R-2 Zoning District without requiring waivers for parking, floor area ratio, minimum lot width, and side and rear yard setbacks, then the property should not have two habitable structures because they do not fit.

Paul Debevec approached the Zoning Board of Appeals to speak in opposition. He gave a short presentation on "counter-factuals" regarding the construction of the garage and the conversion of the garage to three dwelling units. He talked about the City's Rental Registration Program, and he noted that there are no rental inspections on file for the subject property.

Ms. Chester explained that when the garage was constructed in 1992, it met the setback requirements at that time. A permit was issued for the construction of the garage while the house

was being constructed. Mr. Rusch added that every garage along California Avenue is located close to their property lines. Mr. Debevec showed a picture of the outside of the garage and said, "This is a garage."

Michael Plewa approached the Zoning Board of Appeals to speak in opposition. He said the subject property is zoned R-2, Single-Family Residential. He stated that a major variance is important in that it is recognized as having an impact on a large area and may affect enforcement of the Zoning Ordinance throughout the City. The issue is simple in that Mr. Gordon is asking for a Conditional Use Permit for a newly purchased property at 308 West California Avenue along with five major variances to have a duplex on a sub-sized lot. This would allow eight unrelated individuals to reside on the sub-sized lot. Granting the applicant's request would serve as an adverse precedent, which would allow a person to purchase a property that was illegally used for residences and then reward the new owner by granting a Conditional Use Permit. He said that precedent alone should demand an outright denial of each request.

Mr. Plewa believed that Mr. Gordon, being a trained real estate professional, conducted due diligence and knew that the house and garage violated the Urbana laws. Now he wants to protect his investment by asking for relief from the City that will have an adverse effect on the enforcement of the Zoning Ordinance elsewhere in the City. The Zoning Board of Appeals has a duty to protect the quality of the West Urbana Neighborhood and protect property values of current owners throughout the region.

He quoted from the letter submitted by Trent Shepard to the Zoning Board of Appeals regarding this case. He stated that the Zoning Board of Appeals must recognize that citizens are becoming alarmed about the lack of consistent enforcement of zoning laws in the West Urbana area. He asked the Board members to reject Mr. Gordon's requests.

Mr. Gordon re-approached the Zoning Board of Appeals to rebut. He stated that he is a real estate professional; however, he had not mastered it yet.

Mr. Cho asked about the feasibility of demolishing the existing garage and rebuilding it. Mr. Gordon replied that he did not know if that would be cost effective. He has not inquired about the fees to connect to the electrical, water and sanitary yet.

Mr. Cho asked if Mr. Gordon would consider minimizing the amount of living area. Mr. Rusch restated the question to ask if Mr. Gordon was willing to seek approval if only for one dwelling unit in the garage. Mr. Gordon said that he needed to move through the steps and this was the next step. After this step, he planned to find out what the cost would be to connect the water, sanitary and electrical to see if it would be reasonable to do.

Tacey Miller approached the Zoning Board of Appeals to speak in opposition. She stated that most people in business are trained to trust but verify. Therefore, she said she found it hard to believe that the applicant was not aware of the illegal status of the three dwelling units in the garage. There are 14 houses on her block, of which only four houses are single-family use. The other houses have been converted to multiple units for rental use. She said there are many for rent signs posted all year long, so there is not a lack of available housing in West Urbana. She

asked the Zoning Board of Appeals to deny the applicant's requests. She felt that approving them would only set a precedent.

With no further comments or questions from public audience, Acting Chair Warmbrunn closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Mr. Cho inquired about the meaning of the language in the written staff memo, "living space from the garage will need to be removed". Ms. Wilcock explained that if the Conditional Use Permit request was approved but the Major Variance for the reduction in the FAR was denied, then the applicant would need to remove some of the space in the garage used for apartments. There are two options to do this. One option would be to remove the room upstairs and convert it back to attic/storage space, which is not included in the FAR formula. The second option would be to turn the first floor back into car parking, which is also not included in the FAR formula, and would eliminate the need for a parking variance.

Ms. McLaughlin asked for clarification in that the applicant is only seeking approval for one dwelling unit in the garage. Ms. Wilcock said yes. According to the Zoning Ordinance, four people could live in the one unit; however, the Building Code would only allow much less depending on the number of bedrooms.

Ms. McLaughlin asked if there had been any complaints about the subject property prior to this case. Ms. Wilcock said no complaints have been received from tenants or from other residents in the neighborhood. Mr. Rusch stated that he lived a half-block away and knew there was a dwelling unit in the garage; however, he did not know that there were three dwelling units.

Ms. Uchtmann stated that it appeared there were no inspections performed on the rental units. Ms. Wilcock responded that the house had not been inspected. The City's Rental Registration Program listed the subject property as due for a systematic inspection in April 2019, which is the same time that the applicant came to the City to speak with staff about getting permits to make improvements.

Ms. Uchtmann inquired about the options of the Zoning Board of Appeals. Would it be possible to deny the requests at this meeting rather than continuing the cases to a future meeting? Acting Chair Warmbrunn said yes.

Mr. Rusch moved that the Zoning Board of Appeals continue Case Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05, ZBA-2019-MAJ-06, ZBA-2019-MAJ-08, ZBA-2019-MAJ-09 and ZBA-2019-MAJ-10 to the September 18, 2019 regular meeting of the Board. Mr. Cho seconded the motion.

Mr. Rusch discussed his motion. He found it shocking that the previous owner was able to convert the garage into three dwelling units in the middle of West Urbana. He agreed with the public that the Zoning Board of Appeals should not approve the requests based on the fact that the garage was used as rental dwelling units. Instead, the Board should consider this as an applicant asking for approval to turn the garage into one living unit. He believed that the applicant/owners did not know about the illegal status until after the sale. To believe that the

applicant was evil enough to know about the illegal status also would mean that he was stupid enough to hire a professional plumber who was unwilling to do the work “under the table”.

Regarding the variance requests, he said parking is not an issue. Many people who live in this neighborhood do not own vehicles. They walk or ride a bicycle. There is a bus stop two blocks from the subject property, and it is a very short walk to Urbana’s downtown bus depot. If someone does need parking, there is never a shortage on Cedar or Birch Street, where a resident here would likely park.

Mr. Rusch said the major variance request for a reduction in the lot width is a result of the previous sale of the western six feet of the lot to the owner of 310 West California Avenue. He wondered if purchasing a portion of the property at 306 West California Avenue would be an option, as this would eliminate or reduce the major variance request for lot width.

He said the Zoning Board of Appeals recently reviewed and approved a separate case to allow a garage apartment two months prior to this meeting. If the Board is going to continue to consider garages to be converted into living units, then he did not see the major variance requests for encroachment into the rear and side yards to be an issue. On this block, every garage is along the alley.

Ms. Chester commented that she was the Cunningham Township Assessor when the house and the garage were constructed. They were pleased to see a single-family home built in a part of the neighborhood that was fragile. There was an even mix of rental and single-family homes.

She wondered if she had missed the signs indicating the garage had been converted to a dwelling unit. The fact that the garage door was left on is an indication to her that the previous owner was trying to hide something. An old 2008 assessor’s photo did not show any additional windows. She was appalled that they were running the wiring and water from the house. She felt that this was the worst egregious thing she had seen done to a property. She believed that none of the requests should be granted, and that the garage should be converted back into a garage. She agreed to continue the cases to the next meeting.

Ms. Uchtmann stated that given the facts, the history and the public input, she did not favor continuing the proposed cases. She felt it would be poor use of City staff time. City staff had already put in multiple hours for these cases.

Ms. McLaughlin said she understood that people are upset about past infractions and that there are all of these violations. However, what is before them today is not to continue those violations, but instead is something completely different. Therefore, she felt the Board should consider the cases and remedies as they are presented and not punish the current owner for what was done in the past.

Mr. Cho agreed with Ms. McLaughlin’s statement. He believed that the last four options on Exhibit F should be considered. He felt that there is a compromise within these options. If the applicant can purchase two feet from the owner of 306 West California Avenue, it would eliminate three of the major variance requests. When looking at the lot width, the request is for

two feet. The Zoning Board of Appeals has approved similar requests multiple times in the past, so he is okay with granting this request.

Regarding the rear and side yard encroachments, Mr. Cho said they would be a little more generous than what the Zoning Board of Appeals usually considers. This is something that the Board would need to consider.

Mr. Cho said that given the number of requests the Board has considered for accessory dwelling units or in-law units, there is a history of additional housing being allowed. He felt that the Board needed to focus some time on accessory dwelling unit type policy or a study session. This is something that you see in more progressive communities. With the City of Urbana being a progressive community, we should be open to learning more about accessory dwelling units. He was in favor of continuing the cases to the next meeting and giving them more thought.

Acting Chair Warmbrunn noted that all of the input during this meeting was recorded and will be part of the continued public hearing. People will be allowed to speak again at the next meeting if the cases are continued.

Roll call on the motion was as follows:

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

The motion was approved by a vote of 5-1. The cases were continued to the September 18, 2019 meeting.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

There was none.

11. STUDY SESSION

Ms. Uchtmann inquired about the permitting requirements for sheds. Mr. Garcia responded that he would check with the City's Building Safety Division to learn the requirements and report back to the Board. Ms. Uchtmann stated that she would like a study session or to learn more information about this.

12. ADJOURNMENT OF MEETING

Acting Chair Warmbrunn adjourned the meeting at 8:40 p.m.

Respectfully submitted,

Lorrie Pearson, AICP
Deputy Community Development Director / Planning Manager
Secretary, Urbana Zoning Board of Appeals