



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Jeff Engstrom, AICP, Planner II

DATE: March 18, 2011

SUBJECT: CCZBA-675-AT-10: A request by the Champaign County Zoning Administrator to amend the Champaign County Zoning Ordinance concerning Expansion of Non-Conforming Uses

Introduction & Background

The Champaign County Zoning Administrator is requesting a text amendment to the Champaign County Zoning Ordinance in Champaign County Case No. CCZBA-675-AT-10. The main purpose of this amendment is to allow for the limited expansion or reconstruction of nonconforming single-family residences.

The proposed Zoning Ordinance amendment is primarily intended to address zoning restrictions affecting Wilber Heights Subdivision, an unincorporated residential subdivision just outside and adjoining the City of Champaign. Wilber Heights was developed in the 1920's as a residential subdivision for workers at an adjacent foundry. Since Champaign County first adopted zoning Wilber Heights has been zoned Industrial. The Champaign County Zoning Ordinance has significant restrictions against repair and expansion of buildings with nonconforming uses. Currently, homeowners cannot upgrade or even make substantial repairs to their homes. This has severely limited property values. Rezoning the subdivision to Residential is viewed as encouraging adjacent incompatible residential and industrial land uses.

The proposed amendment is intended to allow for small expansions and remove the limits on the value of home repairs. The amendment would only apply to nonconforming single-family homes that existed as of October 10, 1973.

Specifically, the proposed County Zoning Ordinance amendment would include the following changes:

- Allow non-conforming single-family dwellings, built before October 10, 1973, to expand up to 1,500 square feet in floor area.
- Allow expansion of accessory buildings to the limits imposed by existing zoning.

- Nonconforming single-family structures may be relocated on the property. For example, a mobile home would be allowed to be relocated on a lot to make room for an addition.
- The definition of “ceases” would be amended to allow nonconforming uses to continue if vacant for seasonal vacations (up to 274 days) and when they are actively marketed for sale.
- New variances for nonconforming structures would be allowed for the first time. Applications would need to meet the variance criteria.
- Repairs and alterations to a nonconforming single-family structure will no longer be limited to 10% of the current replacement value.

The specific changes are detailed in the attached memo dated February 9, 2011.

Issues and Discussion

Although this draft County Zoning Ordinance amendment is intended to address a specific development, it is important to note that it would apply to all nonconforming residential properties throughout the unincorporated county. Consequently, the City of Urbana should review the proposed amendment as potentially affecting land uses surrounding Urbana.

City of Urbana Policies

Champaign County’s proposed Zoning Ordinance should be reviewed for consistency with the City of Urbana’s *2005 Comprehensive Plan*. Specifically, Urbana’s comprehensive plan includes the following pertinent goals and objectives:

Goal 17.0 Minimize incompatible land uses.

Objective 17.1 Establish logical locations for land use types and mixes, minimizing potentially incompatible interfaces, such as industrial uses near residential areas.

Objective 17.2 Where land use incompatibilities exist, promote development and design controls to minimize concerns.

Goal 21.0 Identify and address issues created by overlapping jurisdictions in the one-and-one-half mile Extraterritorial Jurisdictional area (ETJ).

Objective 21.1 Coordinate with Champaign County on issues of zoning and subdivision in the ETJ.

Objective 21.2 Work with other units of government to resolve issues of urban development in unincorporated areas.

The proposed changes appear to be generally consistent with these goals and objectives. The proposed Zoning Ordinance text amendment would provide relief to homeowners from strict compliance with the Zoning Ordinance without opening the door to creating or allowing new land use conflicts.

Zoning Impacts

City and County planning staff have discussed how the proposed amendment would affect Urbana. County staff is unaware of any nonconforming single-family homes within Urbana's one-and-one-half mile extra-territorial jurisdictional (ETJ) area. The majority of the area in the ETJ is zoned AG-2, which allows single-family homes by right. Exceptions such as Scottswood Subdivision and Carroll Addition are mostly zoned R-2, Single-Family Residence; R-3, Two-Family Residence; and R-5, Mobile Home Park. Carroll Addition includes a mix of Residential, Business, and Industrial zoning and uses, but Carroll Addition has few homes which are nonconforming uses. Regardless, should any nonconforming single-family homes, constructed before October 10, 1973, exist in the ETJ, their floor area could increase up to 1,500 square feet.

Given Urbana's set of circumstances, and the limited nature of the relief from the County's nonconforming zoning laws, in City staff's opinion the proposed County Zoning Ordinance text amendment would not create land use conflicts for the City of Urbana.

Summary of Staff Findings

1. Champaign County Zoning Case No. CCZBA 675-AT-10 would allow nonconforming single-family homes existing as of October, 1973 to expand up to a total of 1,500 square feet;
2. The proposed zoning ordinance text amendment would revise Subsections 8.2, 8.3, 8.4, 8.6 and 9.1 of the Champaign County Zoning Ordinance;
3. The proposed zoning ordinance text amendment is generally consistent with the City of Urbana's *2005 Comprehensive Plan's* goals and objectives;
4. The proposed text amendment would affect any nonconforming single-family homes constructed prior to October 1973, including any within the City's one-and-one-half mile extra-territorial jurisdictional (ETJ) area.

Options

In CCZBA Case No. 675-AT-10, the Plan Commission has the following options for recommendations to the City Council:

- a. Forward the plan case to the City Council with a recommendation to defeat a resolution of protest for the proposed text amendments;
- b. Forward the plan case to the City Council with a recommendation to defeat a resolution of protest, contingent upon some specific revision(s) to the proposed text amendments; or
- c. Forward the plan case to the City Council with a recommendation to adopt a resolution of protest for the proposed text amendments.

Staff Recommendation

Staff recommends that the Plan Commission forward this case to the City Council with a recommendation to **defeat a resolution of protest** for the proposed text amendment based upon the findings summarized above.

Exhibits: “Wilber Heights: Neighborhood Hangs on Against the Odds,” July 25, 2010
“Discussion Continues on Zoning Amendment to Help Wilber Heights Residents,” December 17, 2010.
Memorandum to the Champaign County ZBA, February 9, 2011.

cc: John Hall, Champaign County Zoning Administrator



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[Home](#) > Wilber Heights: Neighborhood hangs on against the odds

Wilber Heights: Neighborhood hangs on against the odds

By *The News-Gazette*
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By LIZ CLANCY LERNER/For The News-Gazette

Editor's note: This report is part of a joint project of The News-Gazette and the University of Illinois Department of Journalism, in an ongoing examination of poverty and its related issues in Champaign County. The project is funded by the Marajen Stevick Foundation, a News-Gazette foundation; a matching grant from the John S. and James L. Knight Foundation, a journalism foundation based in Miami; and contributions from the UI. The project also has a [website](#)^[1] for this and other material, including user-generated content. You can find an interactive map of Wilber Heights [on the site here](#)^[2].

It doesn't take much to get Tom Lemke fired up.

Just ask him about his neighborhood – a place he has called home for 63 years – and his frustration is evident.

"They say we're a slum – run down. That's the way we've always been treated," Lemke said as he takes a deep breath from his oxygen mask, a treatment for chronic bronchitis. "We have really been abused ... and we have really tried to take care of the area."

Lemke, 64, lives in Wilber Heights. It's a neighborhood where, according to Champaign County Planning and Zoning documents, homes "are not encouraged to survive."

Champaign County passed an ordinance in 1973 intending to turn the neighborhood into a strictly industrial region. The regulation prohibits the rebuilding of or substantial repair to any home.

However, almost 40 years later, houses and residents still remain.

In Wilber Heights, abandoned homes sit next to recycling plants, which sit next to trash-filled lots that are adjacent to mobile homes – all within 36 acres.

"This wasn't a properly thought-out thing in the first place and it's so complicated that it's difficult to resolve at any time," said John Hall, the Champaign County planning and zoning director.

It is so complicated that even the spelling of the neighborhood is controversial. Residents have always known it as "Wilbur" Heights, with a "u." County documents and a 1960 newspaper article deem the correct spelling "Wilber."

Clyde Forrest is a professor emeritus in planning and zoning at the University of Illinois and has known about the zoning issues in Wilber Heights for 30 years.

"I wouldn't categorize it as a terrible slum," said Forrest. "But it's an area that's not going to attract first-class residential development."

Residential development isn't the goal of the ordinance, which is why it contains rules against maintaining and rebuilding homes ^[3] in Wilber Heights.

The restrictions

Lemke, a retired mechanic, and his wife Velma raised their three children in Wilber Heights. Their home is a well-maintained two-story structure, which at one time was the source of a lot of trouble for them.

Eleven years ago, a driver lost control of his car, crashing into the home's front porch and destroying it. Lemke was about to rebuild his porch when the Champaign County planning and zoning department told him he couldn't.

The zoning ordinance prohibits any resident in Wilber Heights from adding on or renovating more than 10 percent of a home's square footage. (The entire zoning ordinance is online here ^[4], an 853KB pdf.)

So if a fire were to burn down a house in Wilber Heights, the homeowner could not legally rebuild on his lot. And in Lemke's case, he could not legally replace his porch. So, following ordinance rules, he kept the renovation to 10 percent.

Three concrete steps now lead to the front door of his house. It's not what he wanted, but it is what the county demanded.

The restrictions also affect home prices, because residents cannot substantially improve their homes. According to a 1992 planning and zoning document from a former Champaign County zoning administrator, Frank DiNovo, "They are also unlikely to be able to realize a market value of their property very much greater than its current use value as a dwelling."

The size of the lots also prevents individuals from selling for much higher industrial property prices.

"Industrial property is typically worth five times more than residential, but the homeowners would have to sell at the same time. If they sold one at a time, that wouldn't happen," said Forrest. But lifelong residents are not likely to move at the same time.

Yet, commercial properties have not been selling as well as residential properties because – as with residential mortgages – loans for commercial properties have not been as available as they once were, said Fred McDonald, president of the Champaign County Association of Realtors.

While federal stimulus money has been used to help jump-start residential property sales, it's not been available for commercial property, McDonald said.

"Commercial (property) now is a bigger concern," he said.

Wilber Heights and the surrounding area has been a good draw for business with its proximity to Interstates 74, 57 and 72, said Matt Wavering, a real estate agent with Coldwell Banker Commercial Devonshire Realty.

Because of that transportation hub, the city has pushed for higher industrial use in the area, he said.

And as the area has developed into warehousing and industrial uses, property values have become low, Wavering said.

Houses in Wilber Heights have sold for less than \$50,000, he said.

Further, industrial property is the least valuable of commercial property, Wavering said.

Typically, industrial land in an industrial park will sell for between \$1.50 and \$2 a square foot compared to retail property, which can sell for up to \$15 a square foot, he said.

Wilber Heights and Market Street are the cutoff between retail and industrial property, Wavering said.

"On the industrial side, values are lower," he said.

If one of the area's rental properties stops generating rental income, then "the land becomes worth more than the house," Wavering said.

Housing for workers

Wilber Heights was developed as a single-family residential neighborhood in 1928, primarily to give workers from the Clifford-Jacobs Forging Company a place to live. Its main roads, Wallace, Wilber and Paul avenues, intersect First through Fifth streets and sit just east of Champaign's Market Place Mall.

When the area was built, there was no zoning in place outside the city limits. When the county zoning ordinance was approved, in 1973, Wilber Heights was split into two categories, both industrial.

The ordinance acknowledges that some buildings already in existence didn't match the zoning – they were "non-conforming uses."

"It is the intent of this ordinance to permit these non-conformities to continue until they are removed," the ordinance says. "It is further the intent of this ordinance that such non-conforming uses ... shall not be enlarged upon, expanded, or extended."

The area east of Fourth Street is zoned for heavy industry; the area west of Fourth, for light industry.

In 1982, while millions of dollars were being poured into construction of Market Place Mall, residents of Wilber Heights watched as the county ordinance stifled the neighborhood's growth and maintenance.

While no numbers are easily available, it is estimated that at its peak, Wilber Heights was home to close to 200 residents, many of them families.

Now there are about 60 residents, most of them senior citizens.

They have called the neighborhood home, raised their children there, and formed roots in Wilber Heights for over 60 years. A few, like Otto Pruett and his wife Iverna – both in their 80s – say they're too old to move, while others say they couldn't afford to do it.

None of the residents asked for the ordinance change, and none of 14 who were interviewed for this report recalled being told it was going to happen.

Lemke remembers feeling helpless when he first heard of the ordinance just after it was passed in 1973.

"We did not know (anything) about it until it was all said and done," he said.

He's not the only one who remembers it that way. With her husband Virgil, Susie Roderick raised her three sons in Wilber Heights. She said she never received notification of the zoning change, either.

"Wouldn't you think that something that important, we would have gotten something in the mail instead of a little thing in the newspaper?" said Roderick, who has lived in Wilber Heights for more than 50 years. "We didn't know anything about it."

John Hall said the county commission did all it was supposed to do at the time.

"At a bare minimum, the county is only required to put a notice in the paper," he said. Even now, some zoning matters require only a notice to be published in the newspaper, but others require everyone living within 250 feet of a proposed change to receive a formal notice individually by mail. He added that zoning staff will keep in touch with residents who ask to be notified of any proposed change in their zoning.

While he was not the director at the time of the change, Hall agrees that the current zoning in Wilber Heights is a problem.

"Right now our ordinance is causing properties to go into disrepair and that is counter to everything in a zoning ordinance," said Hall.

Effects of the zoning

The consequences of the zoning are obvious. It began as a slow, steady deterioration of the neighborhood that continues today.

Residents began moving out, industrial businesses began moving in, and houses that weren't sold were abandoned.

The core group in the neighborhood that remains deals with far more than ordinance-restricting maintenance and rebuilding.

Lemke said it also discourages county, city and township government from maintaining their roads and listening to their complaints.

Lemke believes the local governments see the neighborhood as a lost cause because "they think we'll be out of here soon anyway, why spend the time and money?"

Other residents echo his sentiment.

As part of a group interview, 12 residents gathered in Susie Roderick's back yard to discuss their concerns.

With sounds of forging equipment pounding in the background, residents started naming the struggles they face. But the noise from the surrounding industries was not on that list.

"The noise don't bother us. We're used to it," said Mike Roderick, who is Susie's son. He was raised in Wilber Heights and now owns a home a few houses away from where grew up.

"It don't bother us as much as those big semis that drop and tear up the road," he said.

Many of the trucks that Roderick speaks of go in and out of Clifford-Jacobs, the forging company that has been in the neighborhood since 1923, five years before the residents

began to build. But the addition of more industry, including a recycling company, concrete plant and portable toilet company, means more traffic.

Of the dozen intersections in the neighborhood, only a few contain stop signs.

Ken Mathis, the supervisor for Somer Township, said "By practice we don't place stop signs or speed limit signs."

He said, "it is an issue that should be discussed with the county sheriff's office."

Therein lies another major problem in Wilber Heights.

Who is responsible?

The majority of the roads in Wilber Heights are under Somer Township jurisdiction, while one of the roads is technically in the city of Champaign.

Lemke said when he has a problem, he gets "the run-around."

He said the township will say it's a county issue, the county will say it is a city issue, and back and forth it goes.

"If it takes a mediator to get between the city of Champaign and the county and the township to iron this out, then so be it," said Lemke.

Stan James is the Champaign County Board member who represents Wilber Heights. He has visited the neighborhood thinks the situation needs to be fixed.

"We owe this to these folks. We allowed this to occur in their neighborhood. We, the politicians, the one who make the decisions, are the one to blame," said James.

Though the issue has yet to be discussed at a county board meeting, James said he will continue to help find a solution.

What's next

Forrest was vocal in his concern over the ordinance change back in 1973, and today looks at the situation and sees three possibilities.

"They (the county) can regulate, they can tax and they can buy up land through eminent domain," he said. "The county could undertake a study to find the neighborhood blighted and could buy and clear the neighborhood and they could create a relocation plan, or they could do nothing."

There hasn't been much pressure to do anything in recent years.

"There are legally acceptable ways to deal with an area like this," said Forrest. "But I haven't heard of anything that is really pushing the county to specifically push this."

When asked what it would take to make progress, he said, "the neighbors coming together."

Ultimately, it is up to the county board to make changes. John Hall wants what is best for the residents and said he would be willing to change the wording in the current language on non-conforming uses to give residents the opportunity to renovate and rebuild their homes.

"Please note that the ordinance limits annual renovation to no more than 10 percent of the replacement value, but we only require permits for new construction and so we have no idea when someone is remodeling or renovating," Hall said in a recent e-mail.

He said he plans to propose a change to the ordinance at the August county board meeting.

He plans to let the residents know when this will happen so that "they can be a part of the discussion." Otherwise, "it's a waste of time" said Hall.

Between now and the August meeting, Hall said he is "still reviewing ordinances from similar counties to see what rules they have" and will ask the state's attorney what legally can be done.

Lemke is waiting for that day. He said he's sick of the strict rules and back and forth with the county and township. After 63 years, he's starting to think about living elsewhere – which means the county would be one home closer to getting its original wish.

[News](#) ^[5] [C-U Citizen Access](#) ^[6] [Politics and Government](#) ^[7] [Champaign](#) ^[8]
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- [1] <http://cu-citizenaccess.org/>
- [2] <http://cu-citizenaccess.org/feature/neighborhood-declines-and-county-zoning-blocks-any-hope-recovery>
- [3] <http://www.news-gazette.com/pdf/2010-07-23/zoning-ordinance-non-conforming-uses.html>
- [4] <http://www.co.champaign.il.us/pandz/forms/zoningord.pdf>
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Discussion continues on zoning amendments to help Wilber Heights residents

NEIGHBORHOODS, WILBER HEIGHTS, WILBUR HEIGHTS, ZONING ODINANCE - By pdempsey on Friday, December 17, 2010 - 17:09

Pam G. Dempsey — The Champaign County Zoning Board of Appeals took comments Thursday night on proposed changes to zoning ordinances that will give Wilber Heights residents more freedom to improve their homes.

Wilber Heights – a small neighborhood located on north Market Street behind Market Place Mall – is a mix of industrial and residential property. A nearly 40-year-old county ordinance zoned the area industrial, despite the heavy mix of residential property.

Because of the zoning, existing homes were deemed nonconforming, which prevented owners from making improvements to their properties beyond 10 percent of their replacement value annually. Owners also cannot replace, expand or rebuild their homes.

Since then, property values have declined, road conditions have been neglected and there's been an increase in abandoned property, residents have said.

If approved, the proposed changes would allow owners of any nonconforming dwelling to enlarge, expand, extend, replace, rebuild or relocate the dwelling.

Half a dozen Wilber Heights-area residents attended a public hearing on the proposed ordinance amendments, but only one spoke.

"I don't know why we can't rebuild," said Homer Kirby, 88, who has lived in Wilber Heights since 1947. "If you had a house burn down, what would you do? Where would we go? Things are getting pretty hard and I'm getting pretty old."

In September, the Champaign County Board directed Zoning Administrator John Hall to draft amendments to help residents in Wilber Heights improve their properties.

"Arguably, Champaign County has one of the **two** most restrictive zoning ordinances on nonconforming dwellings," Hall said Thursday. The restrictive ordinances are "leading to the degradation of the (Wilber Heights) neighborhood."

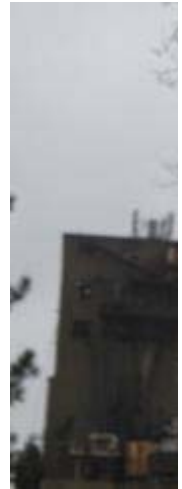
Hall told the zoning board of appeals that he proposed more amendments than requested by the county board in part to resolve issues that Wilber Heights resident Tom Lemke raised in prior conversations. Those amendments include:

- Allowing expansion up to a total 1,500 square footage for nonconforming dwellings that were 1,200 square feet or less on Oct. 10, 1973 – the date the zoning was changed for the Wilber Heights area.
- Allowing variances for the expansion of nonconforming dwellings too close to the property line. Variances are exceptions to the zoning ordinances that are considered on a case-by-case basis.
- Clearly defining the words "cease" and "abandoned" in the ordinance.

Hall also proposed an amendment to remove size limits on accessory buildings for those nonconforming dwellings. For example, residents would be able to expand their garages without a size limit, like the neighboring businesses are allowed to do now.

Thursday's public hearing is the first step in a process to amend the ordinance that could take several months.

"We want to give every ample opportunity to let concerns be known to the zoning board of appeals," Hall said earlier.



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This includes objections by local municipalities. If any municipality objects, a minimum of 21 county board members would need to approve the changes for the proposed amendments to take effect. Without objections, only 14 members would need to approve the changes.

Final action on the amendments could take place by April, Hall said.

The zoning board of appeals is set to discuss this issue next on Jan. 6.

Tags: [Neighborhoods](#), [Wilber Heights](#), [Wilbur Heights](#), [zoning ordinance](#)

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CASE NO. 675-AT-10

SUPPLEMENTAL MEMORANDUM

February 9, 2011

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**, Zoning Administrator

Champaign
County
Department of

**PLANNING &
ZONING**

Request: **Amend the Champaign County Zoning Ordinance as follows *:**

- Part A**
1. In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.
 2. Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance.
- Part B**
1. Revise 8.2.1 B. as follows:
 - a. Limit applicability to the total expansion since October 10, 1973;
 - b. Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4.
 - c. Eliminate the limit on the amount of accessory buildings.
 2. Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.
 3. Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.
 4. In 8.2.3 clarify "ceases".
- Part C**
1. Revise 8.3.1 to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.
 2. Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.
- Part D**
1. Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.
 2. In 8.4.5 clarify "abandoned" and "discontinued".
 3. In 8.4.6 provide for replacement of a SF dwelling that is a NC use.
- Part E**
- Revise 8.6 to authorize the following:
- a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1.
 - b. A SF dwelling that is a NC use has no limit on the value of repair or replacement.
 - c. Any structure that is NC may be granted a variance to authorize a higher value of repair.
- Part F**
- In 9.1.2 C. require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.
- Part G**
- Revise Section 3 Definitions so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

*** NOTE: the description of the Request has been simplified from the actual legal advertisement but there has been no change to the legal description.**

STATUS

This case was continued from the January 20, 2011, meeting.

Attachment A is a short guide to the parts of this amendment. Attachment B is the Revised Annotated Draft Ordinance with notes that review important considerations.

The Draft Finding of Fact is attached. The preliminary staff recommendations are all positive. The Summary Finding of Fact on page 14 summarizes the staff recommendations. This is somewhat different than previous text amendments but is intended to be the new standard if the Board finds it acceptable.

This case may be ready for final action.

ATTACHMENTS

- A A Guide to the Parts of Case 675-AT-10
- B Revised Annotated Draft Ordinance With Notes
- C Preliminary Draft Finding of Fact (included separately)

Amendment Part	Part of Zoning Ordinance Affected	Shortened Description	Degree of change - Direction of regulatory change	Type of approval req. (in Ordinance)
A.1.	First four paragraphs in Sec. 8	In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.	Minor - no reg. change	NONE
A.2.	8.1.2	Revise to authorize that NC lots may be used separately if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
* B.1.	8.2.1B.	Revise as follows: a. Limit applicability to the total expansion since October 10, 1973; b. Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4. c. Eliminate the limit on the amount of accessory buildings.	MAJOR - Relaxation	BY RIGHT or Discretionary (ZBA)
B.2.	8.2.1C.	Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.	MODERATE – Restriction	BY RIGHT
B.3	8.2.2	Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
B.4.	8.2.3	Revise to clarify "ceases"	Minor - no reg. change	BY RIGHT
C.1.	8.3.1	Revise to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
C.2.	8.3.3	Revise to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
* D.1.	8.4.1 & 8.4.2	Revise to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.	MAJOR - Relaxation	BY RIGHT
D.2.	8.4.5	Revise to clarify "abandoned" and "discontinued".	Minor - no reg. change	BY RIGHT
D.3.	8.4.6	Revise to provide for replacement of a SF dwelling that is a NC use.	MAJOR - Relaxation	BY RIGHT
* E.	8.6	Revise to authorize the following: a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1. b. A SF dwelling that is a NC use has no limit on the value of repair or replacement. c. Any structure that is NC may be granted a variance to authorize a higher value of repair.	MAJOR - Relaxation	BY RIGHT
F.	9.1.2 C.	Revise to require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.	Minor - no reg. change	BY RIGHT
G.	Sec. 3 Definitions	Revise so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment.	Minor - no reg. change	NONE
Notes				
* change specifically authorized by Committee of the Whole on 9/07/10				

Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part A

‡1. **In the first four ~~un-numbered~~ paragraphs of Section 8 clarify that nonconforming dwellings may be expanded as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

Notes: This change is really nothing more than Ordinance housekeeping and should have been done as part of 847-AT-93 Part C.

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Part A (continued)

‡2. ~~Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots nonconforming lots may be used separately or conveyed to a different owner provided that a variance is granted. if authorized by variance.~~

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: The Committee of the Whole did not authorize this change. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights.

Nonconforming lots of record are far more widespread than are single family dwellings that are nonconforming uses. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may to some small degree reduce the amount of best prime farmland that would otherwise be converted for development. The ability to use nonconforming lots separately make also make it easier to redevelop areas like Wilber Heights.

The Zoning Board of Appeals (ZBA) has in some instances authorized variances to allow nonconforming lots to be used separately. Two such related cases were 334-V-02 and 335-V-02 which were on property located in Penfield. The minimum lot area required in those cases in which public water was available but there was no public sewer was 20,000 square feet. Case 334-V-02 was for a proposed lot with 13,260 square feet of area (a 34% variance) and Case 335-V-02 was for a proposed lot of 17,160 square feet in area (a 14% variance) that already had a dwelling and a septic system. A handout from those cases illustrating the distribution of zoning lot sizes in Penfield was distributed at the December 16, 2010, public hearing for this case. As reviewed in the Summary of Evidence for Case 334-V-02, 50% of the 86 other properties in Penfield were smaller than the smallest proposed lot. In those cases the Board contacted the Champaign County Health Department who advised that lot size probably was not critical in Penfield given that most of the soils there were not suitable for septic systems; and a Class I Aerobic Treatment Plant was would probably be the only feasible wastewater treatment option; and a public official in the township had previously agreed to maintain a tile to serve as an outlet for a Class I Aerobic Treatment Plant. The variances were approved.

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Part A. 2. (continued)

Paragraph 9.1.9 C. of the Zoning Ordinance requires that no variance can be approved unless the ZBA finds that the variance complies with six criteria and one of those criteria is the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

The Ordinance could even be further amended to require special findings for any variance for the separate use of nonconforming lots of record but even if that is not required the existing criteria related to public health, safety, or welfare will still require that the ZBA address the public health concerns.

The Supplemental Memorandum of 1/06/11 included a table that compared the existing Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). The existing Champaign County requirements are the most restrictive because McLean and Peoria have similar regulations regarding nonconforming lots but neither county prohibits this kind of variance and Sangamon County apparently has no similar requirement.

*This change should **HELP ACHIEVE** Goal 3 Prosperity and the goals and policies for both urban land use (policy 5.1.2) and agriculture (policy 4.1.4) in the Land Resource Management Plan (LRMP).*

(end of Part A)

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Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. **Limit applicability to the total expansion since October 10, 1973.**
- b. **Revise Increase the limit on expansion of a nonconforming single family dwelling that is a nonconforming use of land as follows:**

~~(1) — A nonconforming single family dwelling that is a nonconforming use that is a nonconforming use which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~

~~(2) — A nonconforming single family dwelling that is a nonconforming use which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~

~~(3) Eliminate the limit on the amount of accessory buildings.~~

B. ANONCONFORMING-SINGLE FAMILY DWELLINGS that is a NONCONFORMING USE of land may be expanded by ~~no more than 200 square feet and by construction of no more than one new ACCESSORY BUILDING or addition to an existing ACCESSORY BUILDING~~ provided that the total area of such ACCESSORY BUILDING is not more than 650 square feet. as follows:

1. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.

* 2. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.

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Part B. 1. (continued)

3. Expansion of existing or construction of any new ACCESSORY BUILDING or STRUCTURE shall conform to the regulations and standards for the DISTRICT in which it is located.

Notes: As reviewed in the Preliminary Memorandum, the Committee of the Whole authorized increasing this limit to "200 square feet or 25% of building floor area, whichever is greater" at their meeting on 9/07/10. Following that meeting the Zoning Administrator had a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. One of the items discussed was that many of the original homes in Wilber Heights were 10' by 50' mobile homes for which a 200 square feet addition is a very small improvement. Based on that discussion the Zoning Administrator increased the expansion to allow any single family dwelling that is a nonconforming use to expand up to 1,500 square feet in building area but a variance is required if "...there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4."

The Committee of the Whole did not authorize increasing the allowable expansion to a total of 1,500 square feet and that change is much less restrictive than what the Committee authorized.

The Committee of the Whole also did not authorize that the limit on expansion applies relative to what existed on October 10, 1973, and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke in which both agreed that the limits in the Ordinance should be as clearly stated as possible. This clarification is consistent with all of the documentation of Case 847-AT-93 Part C in which expansion of single family dwellings that are nonconforming uses was first added to the Ordinance.

The Committee of the Whole also did not authorize adding the requirement for a variance in such instances (even when the addition is only 200 square feet) and that change is more restrictive than the current Ordinance.

The Committee of the Whole also did not authorize eliminating the limit on expansion of accessory buildings and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke. In the case of Wilber Heights it is not clear why there should be any limit on accessory buildings or structures other than what is already required for the zoning district.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to the expansion of single family dwellings that are nonconforming uses, that Memorandum states the following:

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Part B. 1. (continued)

- *McLean County is the least restrictive with no limits on expansion of existing nonconforming dwellings and requires no discretionary review.*
- *Peoria County also has no limit on expansion but does require a special use permit to allow a nonconforming dwelling to expand.*
- *Sangamon County limits the amount of expansion to no more than 25% of the area occupied on the effective date of the Ordinance or amendment which is similar to what is proposed here for Champaign County but Sangamon County also requires a variance (discretionary approval) by their Zoning Board of Appeals (ZBA). The Sangamon County regulations are more restrictive than what is proposed for Champaign County.*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

2. Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.

- C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: This is identical to part of the change proposed in paragraph B for single family dwellings that are nonconforming uses and is consistent with the documentation of Case 847-AT-93 Part C in which expansion of these kind of nonconforming uses was first added to the Ordinance.

The Committee of the Whole did not authorize this change but it is consistent with the intent of the Ordinance and adds an important clarification that could otherwise lead to disagreements.

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Part B (continued)

‡3. **Revise subsection 8.2.2 to provide that nonconforming a single family dwelling that is a nonconforming use may be moved ~~on the lot provided that a variance is granted if authorized by variance.~~**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

Notes: The Committee of the Whole did not authorize this change but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses. In areas like Wilber Heights it is reasonable to assume that in some instances it might be better to relocate the dwelling to a different part of the property as part of any reconstruction. The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account and that could facilitate better neighbor relations improvements in the neighborhood.

The last sentence makes it clear that expansion authorized in subsection 8.2.1 should not be considered "relocation".

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to the expansion of single family dwellings that are nonconforming uses, the table indicates that the existing Champaign County regulations may be the most restrictive, as follows:

- *McLean County is similar to Champaign County except that McLean County apparently does not prohibit variances from this requirement.*
- *Peoria County apparently authorizes this by means of a special use permit.*
- *Sangamon County apparently has no similar provision and also does not prohibit variances in regards to nonconformities.*

*Because this change could facilitate better neighbor relations between residential and non-residential uses in areas like Wilber Heights, it will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Part B (continued)

4. In Subsection 8.2.3 clarify “ceases”.

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

Notes: The Committee of the Whole did not authorize and this change adds no new requirement or change from current practice. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. This change adds an important clarification that could otherwise lead to disagreements.

Note that compared to previous versions of the Draft Amendment, this version has been revised so that posting a sign on the front property line is not the only means of actively marketing a property for sale or rent. However, this change makes it clear that there must be some verifiable means of proof that the property is being marketed in order to protect the nonconforming rights. In this revised version this change adds no new requirement or change from current practice.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). All three counties have requirements that are similar to Champaign County's Sec. 8.3 but none of those counties prohibit variances from those requirements.

(end of Part B)

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Part C

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: The Committee of the Whole did not authorize this change but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses.

Section 8.3 establishes the regulations for “nonconforming structures” which are structures that do not meet some regulation or standard related to the structure itself rather than what the structure may be used for. Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures.

It seems reasonable to give the ZBA the authority to approve this kind of variance since in the future single family dwellings that are nonconforming uses may be rebuilt. This authority may be of particular importance in areas like Wilber Heights with small lots and a mixture of residential and industrial uses. Under such conditions it might be better to relocate the dwelling to a different part of the property as part of any reconstruction and given the small nonconforming lot sizes and narrow lot widths it may be impossible to relocate without increasing nonconformity.

The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement the table indicates the following:

- *All three counties have requirements similar to Champaign County except that none of those counties appear to prohibit variances from the requirement.*
- *Additionally, Peoria County authorizes that a nonconforming structure may be allowed to continue or expand if authorized by special use permit.*

*The flexibility provided by this change would make it possible to improve the overall environment in areas like Wilber Heights which would benefit both residential and non-residential uses and thus it will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Part C (continued)

‡2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations ~~and standards of the district~~ provided that the new location is if authorized by variance.**

8.3.3 Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: The Committee of the Whole did not authorize this change.

The background and justification for this change are similar to those for #C.1. above. The comparison to other Illinois counties is also similar except that Sangamon County apparently has no similar requirement and none of those counties prohibit variances from this requirement.

(end of Part C)

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Part D

‡1. Revise Subsections 8.4.1 and 8.4.2 as follows:

- a. ~~Authorize that a nonconforming single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1, provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~
- b. ~~Authorize that a nonconforming single family dwelling that is a nonconforming use may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~
- e. ~~Authorize that expansion of a nonconforming single family dwelling that is a nonconforming use as authorized in subsection 8.2.1 may occur at the same time as reconstruction. to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.~~

***8.4.1** No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:

A. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be enlarged, constructed, reconstructed, moved, or ALTERED without changing the USE to a permitted USE and may also be enlarged or moved without changing the USE as otherwise herein provided.

B. As otherwise herein provided for structures used for other than A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE).

8.4.2 Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.

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Part D. 1. (continued)

Notes: *As reviewed in the Preliminary Memorandum to this case, the Committee of the Whole authorized changing subsection 8.4.1. The change proposed here is somewhat different in format but the intention is the same. The change to 8.4.2 is necessary for consistency with subsection 8.2 since that subsection authorizes expansion which is literally “extending a use to occupy land outside of the structure”.*

Subsection 8.4 establishes the regulations for structures that are used for nonconforming uses whereas subsection 8.2 establishes the regulations for the nonconforming use of land. A single family dwelling that is a nonconforming use can be both (1) a nonconforming use of land and also (2) a structure that is used for a nonconforming use. The regulations by which a single family dwelling that is a nonconforming use can be enlarged, constructed, reconstructed, moved, or altered without changing the use are proposed in subsection 8.2 and subsection 8.6 and should not be repeated here but simply referenced. The proposed text is somewhat vague but that is purposefully done so as not to make unintentional changes.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement the Memorandum and table make clear that the existing Champaign County requirement is the most restrictive because each of the other three counties all allow nonconforming dwellings to be reconstructed to some degree as follows:

- *McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).*
- *Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).*
- *Sangamon County only allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Part D. (continued)

2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.

8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

Notes: The Committee of the Whole did not authorize this change and this change adds no new requirement or change from current practice.

This change is nearly identical to the change proposed in Part B. 4 and the background and justification for this change are similar to those.

3. In Subsection 8.4.6 provide for replacement of a ~~noneonforming~~ single family dwelling that is a nonconforming use.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

Notes: The Committee of the Whole did not authorize and this but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses.

The Zoning Ordinance defines “premises” as a lot or tract of land and any structure located thereon. In areas like Wilber Heights many properties consist of nonconforming lot(s) of record and a nonconforming structure. If this change is not made the rights to the nonconforming use would be lost during the effort to reconstruct the dwelling as authorized in subsection 8.2.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement, the table indicates that all three counties are less restrictive than the current Champaign County regulations, as follows:

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part D. (continued)

- *Sangamon County allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).*
- *McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).*
- *Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).*

(end of Part D)

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Part E

‡1. **Revise Subsection 8.6 to authorize as the following:**

- a. ~~Authorize that a nonconforming single family dwelling that is a nonconforming use may be expanded~~ as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.
- b. ~~Authorize that a nonconforming single family dwelling that is a nonconforming use has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.~~
- c. Any structure that is nonconforming may be granted a variance to authorize a higher value of repair or replacement including for bearing walls or other structural features.

***8.6 Repairs or Maintenance**

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

A. As otherwise herein provided; and

B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.

C. On any STRUCTURE that is NONCONFORMING a VARIANCE may be granted by the BOARD to authorize a higher value of repair or replacement including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

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FEBRUARY 9, 2011

Part E. (continued)

Notes: *As reviewed in the Preliminary Memorandum to this case, the Committee of the Whole authorized changing subsection 8.6. The change proposed here in paragraphs A and B are somewhat different in format but the intention is the same.*

The change in paragraph C. is actually consistent with the current provisions of the Ordinance. Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures but for some reason this limitation on repair has always applied. The limit on repair of nonconforming structures contradicts subsection 8.3.2 which has always given the ZBA the ability to grant a variance to rebuild a nonconforming structure.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this comparison the Memorandum and table make clear that the existing Champaign County requirement is the most restrictive because none of the other counties limit the amount of repair authorized on nonconforming dwellings, as follows:

- *McLean County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note M3).*
- *Peoria County does not limit the value of remodeling for a nonconforming dwelling provided that a special use permit is granted (see note P4 in the table).*
- *Sangamon County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note S8).*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

(end of Part E)

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part F

‡1. ~~In paragraph 9.1.2 C. require that for any Zoning Use Permit authorizing construction as authorized in Section 8 on a single family dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses. to provide a notice of nonconforming zoning on any permit for a single family dwelling in a district in which a single family dwelling is not an authorized principal use.~~

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.

Notes: The Committee of the Whole did not authorize and the only requirement that this change adds is on the County Zoning Administrator.

This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. This change adds an important notice to permits for additions, expansions, or reconstruction of a single family dwelling that is a nonconforming use. The notice is intended to make the homeowner aware of the nonconformities in the zoning so that the chance for future problems or surprises is reduced.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). No other county had a similar requirement to this.

(end of Part F)

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part G

- ‡1. In Section 3 ~~revise the definitions of “NONCONFORMING LOT, STRUCTURE or USE” and “NONCONFORMING PREMISES” to only apply~~ Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.

Notes: The Committee of the Whole did not authorize this change and this change adds no new requirement.

This change is consistent with the approved changes.

The Supplemental Memorandum of 1/06/11 reviewed a comparison of the ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). Sangamon and Peoria counties have definitions that are similar to the proposed but McLean uses a definition similar to the existing ordinance.

(end of Part G)

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PRELIMINARY DRAFT

675-AT-10

**FINDING OF FACT
AND FINAL DETERMINATION
of**

Champaign County Zoning Board of Appeals

Final Determination: **{RECOMMEND ENACTMENT / RECOMMEND DENIAL}**

Date: **February 17, 2011**

Petitioner: **Zoning Administrator**

Request:

Amend the Champaign County Zoning Ordinance as follows*:

- Part A**
- 1. In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.**
 - 2. Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance.**
- Part B**
- 1. Revise 8.2.1 B. as follows:**
 - a. Limit applicability to the total expansion since October 10, 1973;**
 - b. Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4.**
 - c. Eliminate the limit on the amount of accessory buildings.**
 - 2. Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.**
 - 3. Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.**
 - 4. In 8.2.3 clarify "ceases".**
- Part C**
- 1. Revise 8.3.1 to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.**
 - 2. Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.**
- Part D**
- 1. Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.**
 - 2. In 8.4.5 clarify "abandoned" and "discontinued".**
 - 3. In 8.4.6 provide for replacement of a SF dwelling that is a NC use.**
- Part E**
- Revise 8.6 to authorize the following:**
- a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1.**
 - b. A SF dwelling that is a NC use has no limit on the value of repair or replacement.**
 - c. Any structure that is NC may be granted a variance to authorize a higher value of repair.**
- Part F**
- In 9.1.2 C. require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.**
- Part G**
- Revise Section 3 Definitions so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.**

*** NOTE: the description of the Request has been simplified from the actual legal advertisement.**

PRELIMINARY DRAFT FINDING OF FACT

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 16, 2010; January 6, 2011; January 20, 2011; and February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
 - A. The Wilber Heights neighborhood is an area of approximately 36 acres located in Section 31 of Somer Township.
 - B. Wilber Heights is characterized by highly intermixed residential, commercial, and industrial land uses. The area was developed as a single family residence development in 1928 in what was then a semi-rural location.
 - C. Under the City of Champaign's 1961 zoning ordinance existing single family residences were made nonconforming but mobile homes were permitted in the City's industrial classifications.
 - D. The County zoned the western three-quarters of the area I-1 Light Industry and the eastern quarter I-2 Heavy Industry in 1973 following the pattern established by the City of Champaign.
 - E. The County's decision to zone the area industrial extended the nonconforming status of the residential uses in Wilbur Heights. Nonconforming uses may not be expanded or relocated on a lot. Consequently homeowners in Wilber Heights may not add to their residences or construct accessory buildings. The intent of these restrictions on nonconforming uses is to discourage their survival so that sooner or later they will be abandoned and the land converted to more appropriate conforming land uses.
 - F. The zoning of the Wilber Heights neighborhood was reconsidered in a rezoning case filed in 1977 (Case 236-AM-77). That case sought to rezone the entire neighborhood to R-2 Single Family Residence. The rezoning was denied due to its impact on the numerous commercial and industrial uses in the neighborhood by rendering them nonconforming.
 - G. Despite being made nonconforming almost 40 years ago many residential uses survive in Wilber Heights. Abandonment and conversion of these nonconformities is proceeding very slowly. This is likely due to the poor condition of infrastructure in the area, the lack of sanitary sewer, and the very small size of the residential lots. This area is entirely surrounded by land, developed or zoned for intense commercial or industrial use.

Item 2 (continued)

- H. A front page article appeared in the Sunday, July 25, 2010, edition of *The News Gazette* regarding Wilber Heights and the problems that the Champaign County Zoning Ordinance has caused for the residents.
 - I. ELUC discussed Wilber Heights in August of 1992, however, two important zoning problems were not mentioned in the staff memo to ELUC from August 6, 1992. These two problems were the focus of the News Gazette article, as follows:
 - (1) The prohibition on reconstruction of a dwelling that is a nonconforming use; and
 - (2) The annual limit on ordinary repairs to no more than 10% of the current replacement value for a dwelling that is a nonconforming use.
 - K. At their September 7, 2010, meeting the Champaign County Committee of the Whole authorized a text amendment to the Champaign County Zoning Ordinance that would remove the limit on annual maintenance and authorize reconstruction of single family dwellings that are nonconforming uses.
 - J. The proposed amendment will change the Zoning Ordinance requirement for any SINGLE FAMILY DWELLING which is a NONCONFORMING USE and not just those in Wilber Heights.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

SUMMARY OF THE PROPOSED AMENDMENT

- 4. The proposed amendment is attached to the Finding of Fact as it will appear in the Zoning Ordinance.

GENERALLY REGARDING THE LRMP GOALS, OBJECTIVES, AND POLICIES

- 5. The *Champaign County Land Resource Management Plan* (LRMP) was adopted by the County Board on April 22, 2010. The LRMP Goals, Objectives, and Policies were drafted through an inclusive and public process that produced a set of ten goals, 42 objectives, and 100 policies, which are currently the only guidance for amendments to the *Champaign County Zoning Ordinance*, as follows:
 - A. The Purpose Statement of the LRMP Goals, Objectives, and Policies is as follows:
 - “It is the purpose of this plan to encourage municipalities and the County to protect the land, air, water, natural resources and environment of the County and to encourage the use of such resources in a manner which is socially

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Item 5 (continued)

and economically desirable. The Goals, Objectives and Policies necessary to achieve this purpose are as follows:"

- B. The LRMP defines Goals, Objectives, and Polices as follows:
 - (1) Goal: an ideal future condition to which the community aspires
 - (2) Objective: a tangible, measurable outcome leading to the achievement of a goal
 - (3) Policy: a statement of actions or requirements judged to be necessary to achieve goals and objectives
- C. The Background given with the LRMP Goals, Objectives, and Policies further states, "Three documents, the *County Land Use Goals and Policies* adopted in 1977, and two sets of *Land Use Regulatory Policies*, dated 2001 and 2005, were built upon, updated, and consolidated into the LRMP Goals, Objectives and Policies."

REGARDING LRMP GOALS

6. LRMP Goal 1 is entitled "Planning and Public Involvement" and states that "Champaign County will attain a system of land resource management planning build on broad public involvement that supports effective decision making by the County." The proposed amendment appears to **HELP ACHIEVE** * Goal 1 for the following reason:

- A. The only objective under Goal 1 that is related to the proposed amendment is Objective 1.1 that is entitled "Guidance on Land Resource Management Decisions", and states, "Champaign County will consult the LRMP that formally establishes County land resource management policies and serves as an important source of guidance for the making of County land resource management decisions."

The proposed amendment appears to **HELP ACHIEVE** * objective 1.1.

7. LRMP Goal 2 is entitled "Governmental Coordination" and states "Champaign County will collaboratively formulate land resource and development policy with other units of government in areas of overlapping land use planning jurisdiction." Goal 2 is relevant to the proposed amendment to the extent that municipalities with comprehensive plans are able to protest any proposed amendment to the Zoning Ordinance and those protests must either be defeated by a supermajority of the County Board or alternatively the County Board and protesting municipality find a compromise that has no municipal protest and that is acceptable to a simple majority of the County Board. Any disagreements over land use policy must be settled by elected bodies and those bodies can only be heard late in the text amendment process.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

Item 7 (continued)

It is assumed that any disagreements that arise over the proposed text amendment will be settled through what amounts to a collaborative process and at this time the proposed amendment appears to provisionally warrant a **HELP ACHIEVE** for goal 2.

8. LRMP Goal 3 is entitled “Prosperity” and states “Champaign County will encourage economic growth and development to ensure prosperity for its residents and the region.” Goal 3 has three objectives and no policies. The proposed amendment appears to **HELP ACHIEVE** * Goal 3 for the following reasons:

A. Regarding the Wilber Heights neighborhood specifically:

- (1) The industrial designation for Wilber Heights was apparently consistent with Champaign City zoning because at the time the City zoning ordinance apparently authorized mobile homes in industrial zoning districts.
- (2) As documented in Zoning Case 236-AM-77 in which Wilber Heights was proposed to be rezoned to the R-2 Single Family Residence District and which ultimately failed, retaining the industrial zoning designation for Wilber Heights was intended to protect existing businesses and that is directly related to the general goal of prosperity.

B. Regarding all areas similar to Wilber Heights in which single family dwellings are nonconforming uses:

- (1) There are likely many reasons why areas like Wilber Heights have not been converted to all industrial or business uses. Small nonconforming lots of record are typically found in such areas and small lot sizes generally make redevelopment very difficult because while property owners can theoretically sell their properties for industrial development it generally requires many multiple lots to provide an adequate area for a modern business or industrial use. At the August 13, 1992, Environment and Land Use Committee meeting the Champaign County Zoning Administrator stated the following in regard to Wilber Heights in particular:

The area was platted into small residential lots but individual properties are usually too small to be used for permitted commercial or industrial uses so this keeps people from selling their individual property for these uses, and realizing the full value of their property unless someone was able to assemble a number of these parcels to offer for commercial or industrial use.

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PRELIMINARY DRAFT FINDING OF FACT

Item 8.B. (continued)

- (2) Over time the effect of the Zoning Ordinance regulations regarding nonconforming uses has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in areas similar to Wilber Heights. The overall effect has been to lessen prosperity.
 - C. The proposed amendment is intended to eliminate the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning- no new residences can be constructed and existing residences can have only limited expansion. Considered in that context, parts B, C, D, and E of the proposed amendment **HELP ACHIEVE** *Goal 3.
 - D. It may also be that the provisions of Part A.2. of the proposed amendment that authorizes that nonconforming lots of record may be used separately if authorized by variance, will also **HELP ACHIEVE** *the Goal for Prosperity by making redevelopment of areas like Wilber Heights easier.
9. LRMP Goal 4 is entitled "Agriculture" and states, "Champaign County will protect the long term viability of agriculture in Champaign County and its land resource base." The proposed amendment appears to **HELP ACHIEVE** * Goal 4 for the following reasons:
- A. Part A.2. of the proposed amendment authorizes that nonconforming lots of record may be used separately if authorized by variance. The greatest concentrations of nonconforming lots of record are in the unincorporated areas surrounding the larger municipalities and within existing unincorporated settlements such as Dewey, Penfield, Seymour, etc. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may in some small degree reduce the amount of best prime farmland that would otherwise be converted for development. In regards to Agriculture this amendment should **HELP ACHIEVE*** the following policy:
 - (1) Policy 4.1.4 that states as follows:

The County will guarantee landowners of one or more lawfully created lots that are recorded and lawfully conveyed and are considered a good zoning lot (ie, a lot that meets County zoning requirements in effect at the time the lot is created) the by right development allowance to establish a single family dwelling or non-agricultural land use on each such lot, provided that current public health, safety, and transportation standards are met.

Item 9.A. (continued)

- (2) Public health and safety concerns are reviewed under item 11 of this Finding of Fact. That discussion finds that these concerns are adequately addressed by the proposed amendment.

10. LRMP Goal 5 is entitled “Urban Land Use” and states, “Champaign County will encourage urban development that is compact and contiguous to existing cities, villages, and existing unincorporated settlements.” The proposed amendment appears to **HELP ACHIEVE** * Goal 5 for the following reasons:

A. Urban land is defined in the Appendix of Volume 2 of the LRMP as land within the County that is either within municipal corporate limits or unincorporated land that is designated for future urban land use on an adopted municipal comprehensive plan, adopted intergovernmental plan or special area plan and served by or located within the service area of a public sanitary sewer system.

B. Part A.2. of the proposed amendment authorizes that nonconforming lots of record may be used separately if authorized by variance. The greatest concentrations of nonconforming lots of record are in the unincorporated areas surrounding the larger municipalities and within existing unincorporated settlements such as Dewey, Penfield, Seymour, etc. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may in some small degree reduce the amount of best prime farmland that would otherwise be converted for development. In regards to Urban Land Use this amendment should **HELP ACHIEVE*** the following policy:

- (1) Policy 5.1.2 that states as follows:
 - a. The County will encourage that only compact and contiguous discretionary development occur within or adjacent to existing villages that have not yet adopted a municipal comprehensive plan.
 - b. The County will require that only compact and contiguous discretionary development occur within or adjacent to existing unincorporated settlements.

11. LRMP Goal 6 is entitled “Public Health and Safety” and states “Champaign County will ensure protection of the public health and public safety in land resource management decisions.” The proposed amendment appears to **HELP ACHIEVE** * Goal 6 for the following reasons:

A. Policy 6.1.2 of the LRMP states that the County will ensure that the proposed wastewater disposal and treatment systems of discretionary development will not endanger public health, create nuisance conditions for adjacent uses, or negatively impact surface or groundwater quality.

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PRELIMINARY DRAFT FINDING OF FACT

Item 11.A. (continued)

The proposed amendment appears to **HELP ACHIEVE** * policy 6.1.2 for the following reasons:

- (1) Part B1 of the proposed amendment allows very small single family dwellings that are nonconforming uses to be expanded so as to provide a more modern home but a variance is required if "...there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4."
- (2) Most areas like Wilber Heights are not served by a sanitary sewer and development of the property must provide for an adequate septic system particularly if there is more than one principal use on the property.
- (3) Requiring a variance allows the Zoning Board of Appeals (ZBA) to make sure that building expansion does not result in a septic problem that could have been avoided.

12. LRMP Goal 7 is entitled "Transportation" and states "Champaign County will coordinate land use decisions in the unincorporated area with the existing and planned transportation infrastructure and services." Goal 7 is **NOT RELEVANT*** to the proposed amendment because it does not address transportation infrastructure nor should the proposed amendment create any problems for existing transportation infrastructure.
13. LRMP Goal 8 is entitled "Natural Resources" and states, "Champaign County will strive to conserve and enhance the County's landscape and natural resources and ensure their sustainable use." Goal 8 is **NOT RELEVANT*** to the proposed amendment because the proposed amendment does not address natural areas or natural resources nor should it lead to the decline of County's landscape and natural resources.
14. LRMP Goal 9 is entitled "Energy Conservation" and states "Champaign County will encourage energy conservation, efficiency, and the use of renewable energy sources." The proposed amendment appears to **HELP ACHIEVE** * Goal 9 for the following reasons:
 - A. Objective 9.3 of the LRMP states the County will encourage land use and transportation planning policies that maximize energy conservation and efficiency. The proposed amendment appears to **HELP ACHIEVE** * objective 9.3 for the following reasons:
 - (1) Part D of the proposed amendment eliminates the prohibition in section 8.4 on replacement of a single family dwelling that is a nonconforming use thus making it possible to replace an older energy inefficient home with a newer more energy efficient home.

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Item 14. A. (continued)

- (2) Part E of the proposed amendment eliminates the limit on repair in section 8.6 so that there are no limits on repair of a single family dwelling that is a nonconforming use thus making it possible to upgrade an older energy inefficient home with energy efficient remodeling unconstrained by the Zoning Ordinance.

15. LRMP Goal 10 is entitled “Cultural Amenities” and states “Champaign County will promote the development and preservation of cultural amenities that contribute to a high quality of life for its citizens.” Goal 10 is **NOT RELEVANT*** to the proposed amendment because the proposed amendment only relates to existing non-conforming structures and properties.

REGARDING THE PURPOSE OF THE ZONING ORDINANCE

16. The proposed amendment appears to **HELP ACHIEVE *** the purpose of the Zoning Ordinance as established in Section 2 of the Ordinance for the following reasons:

- A. Paragraph 2.0 (b) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to conserve the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY.
 - (1) As reviewed in Finding of Fact item 8, the likely effect of the original and existing Zoning Ordinance regulations regarding single family dwellings that are NONCONFORMING USES has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in the area.
 - (2) The Champaign County Zoning Ordinance does not have to be so restrictive regarding repair and replacement of single family dwellings that are NONCONFORMING USES. Relevant considerations are the following:
 - (a) There is nothing in the Illinois Compiled Statutes that requires a county zoning ordinance to be so restrictive in terms of single family dwellings that are NONCONFORMING USES.
 - (b) It is difficult to generalize from Illinois case law but at this time there is no obvious reason in Illinois case law for a county zoning ordinance to be so restrictive in terms of single family dwellings that are NONCONFORMING USES.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Item 16. A. (continued)

- (c) The Zoning Administrator compared the existing Champaign County Zoning Ordinance restrictions on single family dwellings that are **NONCONFORMING USES** to the restrictions on nonconforming dwellings in three comparable Illinois counties (McLean County, Peoria County, and Sangamon County) in the Supplemental Memorandum dated January 26, 2011. The comparison revealed the following:
- i. The other three counties all allow nonconforming dwellings to be reconstructed to some degree whereas Champaign County does not.
 - ii. The other three counties do not limit the amount of annual repair authorized on nonconforming dwellings although Peoria County does require a Special Use Permit and Champaign County limits the annual repair to no more than 10% of the replacement value.
 - iii. Two of the counties (McLean and Peoria) have no limit on the expansion of nonconforming dwellings unlike Champaign County which currently limits the expansion to 200 square feet. Sangamon County requires a variance to allow a nonconforming dwelling to expand and also limits the expansion to 25% of the area occupied on the effective date of the Ordinance or amendment. Sangamon County could be considered somewhat more restrictive than Champaign County because if the original dwelling was a small home (or small mobile home) of no more than 800 square feet the 25% limit is comparable or less than the current Champaign County limit of 200 square feet and the variance requires a public hearing. However, for nonconforming dwellings that were originally larger than 800 square feet this will result in a greater square footage expansion than currently allowed by Champaign County.

- (3) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the January 6, 2011, public hearing as follows:
- (a) He said that the value of the properties in the neighborhood is going down because the homes and accessory buildings cannot be rebuilt or expanded.
 - (b) He said that no one is going to purchase property in Wilber Heights if they are not able to rebuild a structure that is destroyed.

B. Paragraph 2.0 (e) of the Ordinance states that one purpose of the zoning regulations and standards have been adopted and established to promote the public health, safety, comfort, morals, and general welfare.

- (1) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the December 16, 2010, public hearing as follows:

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

Item 16. B. (continued)

- (a) He asked the Board what they were supposed to do if their house was destroyed by fire and they were not allowed to rebuild it.
 - (2) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the January 6, 2011, public hearing as follows:
 - (a) He said that the property owners in the neighborhood are in a no-win situation and it has been this way for years.
 - (3) As reviewed in Finding of Fact item 8, the likely effect of the original and existing Zoning Ordinance regulations regarding single family dwellings that are **NONCONFORMING USES** has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in the area. The combined effects of less allowable maintenance and no possible replacement can be that buildings fall into a permanent state of disrepair.
 - (4) The proposed amendment will eliminated the limit on repair of single family dwellings that are **NONCONFORMING USES** and also allow complete replacement of single family dwellings that are **NONCONFORMING USES**.
- C. Paragraph 2.0 (j) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to divide the entire County into districts of such number, shape, area, and such different classes according to the use of land, buildings, and structures, intensity of the use of lot area, area of open spaces, and other classification as may be deemed best suited to carry out the purpose of the ordinance.
- The proposed amendment will not change the status quo in that areas like Wilber Heights will retain their non-residential designation and new non-residential land uses can continue to be established.
- D. Paragraph 2.0 (k) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to fix regulations and standards to which buildings, structures, or uses therein shall conform.
- The proposed amendment will not change the status quo and areas like Wilber Heights will retain their non-residential designation with specific regulations and standards but it will change parts of the Ordinance that have resulted in long standing problems for owners of single family dwellings that are **NONCONFORMING USES**

PRELIMINARY DRAFT FINDING OF FACT

Item 16. (continued)

- E. Paragraph 2.0 (l) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prohibit uses, buildings, or structures incompatible with the character of such districts.

The proposed amendment will not change the status quo and areas like Wilber Heights will retain their non-residential designation and the establishment of additional dwellings will continue to be prohibited.

The proposed amendment will change parts of the Ordinance that have resulted in long standing problems for owners of single family dwellings that are **NONCONFORMING USES**.

- F. Paragraph 2.0 (m) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

The proposed amendment will lawfully establish new regulations that are less restrictive than the current regulations but it will still prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

DOCUMENTS OF RECORD

1. Memo to Champaign County Board Committee of the Whole dated August 30, 2010
2. Application for Text Amendment from Zoning Administrator, dated March 11, 2010
3. Preliminary Memorandum for Case 675-AT-10 with attachments:
 - A Memo to Champaign County Board Committee of the Whole dated August 30, 2010 (included separately) with attachments
 - B Section 8 of Champaign County Zoning Ordinance (included separately)
 - C Paragraph 9.1.9 B of the Champaign County Zoning Ordinance
 - D Excerpted Definitions from Zoning Ordinance
 - E Proposed Draft Amendment
4. Handout at the December 16, 2010, public hearing from Cases 334-V-02 and 335-V-02 illustrating the distribution of zoning lot sizes in Penfield
5. Supplemental Memorandum for Case 675-AT-10 dated December 30, 2010, with attachment:
 - A Revised Draft Amendment
6. Supplemental Memorandum for Case 675-AT-10 dated January 6, 2011, with attachment:
 - A Comparison Of Certain Existing Champaign County Zoning Ordinance Requirements For Nonconformities With Other Counties
7. Supplemental Memorandum for Case 675-AT-10 dated January 26, 2011, with attachment:
 - A Revised Annotated Draft Ordinance
8. Supplemental Memorandum for Case 675-AT-10 dated February 10, 2011, with attachments:
 - A A Guide to the Parts of Case 675-AT-10
 - B Revised Annotated Draft Ordinance With Notes
 - C Preliminary Draft Finding of Fact (included separately)

PRELIMINARY DRAFT FINDING OF FACT

SUMMARY FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 16, 2010; January 6, 2011; January 20, 2011; and February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE*** the Land Resource Management Plan because:
 - A. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE*** the following LRMP goals:
 - Goal 1 Planning and Public Involvement
 - Goal 2 Governmental Coordination (provisional)
 - Goal 3 Prosperity
 - Goal 4 Agriculture
 - Goal 5 Urban Land Use
 - Goal 6 Public Health and Public Safety.
 - B. The proposed Zoning Ordinance text amendment **WILL NOT IMPEDE *** the achievement of other LRMP goals.
2. The proposed text amendment **WILL IMPROVE*** the Zoning Ordinance because it will:
 - A. **HELP ACHIEVE*** the purpose of the Zoning Ordinance.
 - B. **CORRECT ERRORS*** in the text of the Zoning Ordinance.
 - C. **RELAX UNREASONABLE REQUIREMENTS*** of the Zoning Ordinance.
 - D. **PROVIDE FLEXIBILITY*** in the Zoning Ordinance for land owners in Champaign County.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Case 675-AT-10
Page 15 of 21

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 675-AT-10** should ***{BE ENACTED / NOT BE ENACTED}*** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Eric Thorsland, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Part A

- 1. In the first four paragraphs of Section 8 clarify that nonconforming dwellings may be expanded as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

- 2. Revise subsection 8.1.2 to authorize that nonconforming lots may be used separately if authorized by variance.**

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Part B

1. **Revise paragraph 8.2.1 B. as follows:**
 - a. **Limit applicability to the total expansion since October 10, 1973.**
 - b. **Increase the limit on expansion of a single family dwelling that is a nonconforming use of land provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
 - c. **Eliminate the limit on the amount of accessory buildings.**

- B. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land may be expanded as follows:
 1. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.

 2. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.

 3. Expansion of existing or construction of any new ACCESSORY BUILDING or STRUCTURE shall conform to the regulations and standards for the DISTRICT in which it is located.

2. **Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.**
 - C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

3. **Revise subsection 8.2.2 to provide that a single family dwelling that is a nonconforming use may be moved if authorized by variance.**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

4. **In Subsection 8.2.3 clarify “ceases”.**

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

Part C

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations if authorized by variance.**

8.3.3 Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Part D

1. Revise Subsections 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.

8.4.1 No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:

A. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be constructed, reconstructed, or ALTERED without changing the USE to a permitted USE and may also be enlarged or moved without changing the USE as otherwise herein provided.

B. As otherwise herein provided for structures used for other than A SINGLE FAMILY DWELLING.

8.4.2 Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.

2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.

8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

3. In Subsection 8.4.6 provide for replacement of a single family dwelling that is a nonconforming use.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Part E

1. **Revise Subsection 8.6 to authorize the following:**
 - a. **a single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.**
 - b. **a single family dwelling that is a nonconforming use has no limit on the value of repair or replacement.**
 - c. **Any structure that is nonconforming may be granted a variance to authorize a higher value of repair or replacement .**

8.6 Repairs or Maintenance

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

- A. As otherwise herein provided; and
- B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.
- C. On any STRUCTURE that is NONCONFORMING a VARIANCE may be granted by the BOARD to authorize a higher value of repair or replacement including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Part F

1. **In paragraph 9.1.2 C. require the Zoning Administrator to provide a notice of nonconforming zoning on any permit for a single family dwelling in a district in which a single family dwelling is not an authorized principal use.**

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.

Part G

1. **In Section 3 revise Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.**

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.