

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: May 15, 2002

APPROVED

TIME: 7:30 p.m.

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

MEMBERS PRESENT: Darwin Fields, Anna Merritt, Joe Schoonover, Charles Warmbrunn

MEMBERS ABSENT Paul Armstrong, Herb Corten, Harvey Welch

STAFF PRESENT: Tim Ross, Senior Planner; Rob Kowalski, Planning Manager; Teri Andel, Secretary

OTHERS PRESENT: Sally Duncan, Jan Kalmer, Rob McClintock, Byron Ziska

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

The meeting was called to order at 7:30 p.m. The roll call was taken, and a quorum was declared present.

2. CHANGES TO THE AGENDA

Tim Ross recommended that the New Public Hearing be held prior to the Old Business.

3. APPROVAL OF MINUTES

March 20, 2002: Mr. Fields moved to approve this set of minutes. Mr. Warmbrunn seconded the motion. The March 20, 2002 minutes were approved by unanimous vote.

April 17, 2002: Mr. Warmbrunn moved to approve this set of minutes as corrected. Mr. Fields seconded the motion. The April 17, 2002 minutes were approved by unanimous vote.

4. COMMUNICATIONS

There were none.

***Note:** Chair Merritt swore in members of the audience who wished to testify during the public hearing.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

ZBA-02-MAJ-04: A request for a major variance filed by Jan Kalmer to establish a single-family residence on 724 South Broadway Avenue with a 6.3-foot reduction in the required fifteen-foot required front yard along Washington Street in Urbana's R-3, Single-and-Two-Family Residential Zoning District.

Tim Ross, Senior Planner, presented the staff report regarding this case. He gave a brief introduction and background including a description of the site and zoning of the subject site and surrounding properties. He discussed the requested variance and reviewed the criteria for a variance based on Section XI-3 of the Urbana Zoning Ordinance. He explained the options of the Zoning Board of Appeals. He noted that the staff recommendation was as follows:

Based on the findings outlined in the written staff report, and without the benefit of considering additional evidence that may be presented at this public hearing, staff recommended that the Urbana Zoning Board of Appeals recommend APPROVAL of this case as requested to the Urbana City Council.

Mr. Schoonover inquired as to whether the big tree in the front yard along Broadway or the two Maple trees on Washington would need to be removed to move the house? Mr. Ross replied that plans for how the house would be moved had not yet been finalized; and therefore, it had not been decided whether any of the big trees would need to be removed. However, the smaller trees and bushes near the house would have to be removed. Jan Kalmer, petitioner, added that the big tree in front on Broadway would not be touched.

Mr. Schoonover questioned whether or not the fence to the north or the picket fence to the south would need to be removed? Mr. Ross answered that the fence along the north side would remain. The picket fence would likely come down when the house is moved, but the petitioner plans to maintain fencing after the move of the house.

Mr. Warmbrunn asked if the house would sit 8.7 feet from the right-of-way line? Mr. Ross responded that the right-of-way line begins several feet behind the back of the curb; the house would sit 8.7 feet behind this line.

Jan Kalmer, petitioner, commented that the school needs the property at 201 East Washington Street. Many people have great value in seeing this house preserved. Many people have tried to move the house to other locations in town. It becomes cost prohibitive to move the house. One person found that the cost to take down one electric pole was around \$17,000.

Ms. Kalmer noted that she lives and owns the property at 723 South Broadway, which is just west of the proposed site. Her home has a legally non-conforming front-yard setback as well. She stated that it is less than the requested variance. Her home was built before the front-yard regulations were set in place. From that standpoint, the variance request would not markably change the visual feel of the area.

Ms. Kalmer mentioned that the house to be moved is beautiful with its detail and integrity. A lot of care has been taken in preserving this home. The Preservation and Conservation Association (PACA) is strongly behind trying to save the home. PACA has offered to give her financial assistance to help move the house.

Ms. Kalmer stated that she does not have all the information to know if it would be financially feasible to move the home, even if granted the variance. Getting the variance approved is the beginning of the process for moving the home. She has permission from the property owner of the site to purchase the home.

Mr. Schoonover asked if once the home was moved to 724 South Broadway would there be any problems with the softball field across the street? As a coach of a team who uses that field, he has seen players on other teams hit balls across the street and hit other houses close by. Ms. Kalmer stated that she has two daughters in high school. She likes the activities and the idea of kids being involved in something positive like sports.

Mr. Schoonover inquired as to whether Ms. Kalmer would move into the house once it is moved? Ms. Kalmer replied that she would most likely move into the house.

Rob McClintock, of 301 West Washington, stated that he has relatives who own a house down the street at 720 Broadway. Since his relatives live in South Carolina, it would be impractical for them to attend this meeting. They asked him to attend on their behalf. As far as his relatives are concerned, this is a viable idea, and they have no objections.

Mr. McClintock stated that there were several people who tried to move the house prior to Ms. Kalmer. The cost to move the house was prohibitive due to the power lines, the policing, and the moving of the trees. He definitely supports the moving of the house. He believes that the structure is sound and has many more years to serve as a home. Mr. McClintock also added that the existing house at 724 South Broadway has a nice porch, but that it was not necessary to save it, given the chance to save the house 201 East Washington.

Sally Duncan, of 302 West Washington, stated that her neighbor to the west was strongly considering moving the house to his property. His house sits quite far back on his lot, and it has afforded her and the neighbor on the other side of him a view of beautiful trees through the changing seasons. When he talked about moving this house to his property, it would have changed a lot. However, she believed that the house was really worth preserving.

Byron Ziska, of 108 East Washington, lives directly beside 724 South Broadway. Although he believed that the house should be preserved, he also felt that it would be too large for the lot at 724 South Broadway. He does not understand how the trees around the house could be saved.

Mr. Ziska added that there are property markers in the back that clearly show that the fence is over the property line on the other side.

Mr. McClintock asked Mr. Ziska for verification on which fence he was referring to? Mr. Ziska replied that he referring to the stockade fence between the house and the apartment buildings. Mr. McClintock asked if the variance request would be to the picket fence? Mr. Ross remarked that the requested variance is for a setback off of Washington Street for a line in back from the street.

Mr. Ziska suggested having an engineering survey done before the petitioner begins digging up the foundation. He added that the house to be moved is a very tall house. Mr. Kowalski stated that there is a maximum height requirement of thirty-five feet. The proposed house appears to be within those requirements. It is only two and a half stories high. If someone bought the lot after this house was moved, the new owner could then build a house the same height of this house.

Mr. Kowalski commented that it was unusual to get a request like this so far in advance; this is an unusual case. In the last year, there have been three different proposals to move this house. As a result, this house has gotten a lot of press and attention.

Mr. Schoonover asked if Mr. Ziska owns the house to the east? Mr. Ziska answered that was correct. His girlfriend lives in the house.

Mr. Warmbrunn inquired as to how much of the grassy area was the City's right-of-way? Mr. Ross was not sure. Mr. Warmbrunn asked if the picket fence would be rebuilt on the property line? He also asked if the trees were City trees? Mr. Ross replied that most of the trees are on private property.

Mr. Fields moved to forward this case to City Council with the recommendation for approval. Mr. Warmbrunn seconded the motion. The roll call was as follows:

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|---------------|---|-----|----------------|---|-----|
| Mr. Warmbrunn | - | Yes | Mr. Schoonover | - | Yes |
| Chair Merritt | - | Yes | Mr. Fields | - | Yes |

The motion was passed by a unanimous vote. Mr. Ross noted that this case would go before City Council on June 3, 2002.

7. OLD BUSINESS

Annual Review of By-Laws.

Chair Merritt remarked that these by-laws have not been reviewed since she joined the Zoning Board of Appeals. Therefore, she is excited to see the by-laws will be changed. There are some items in the by-laws that do not agree with the Zoning Ordinance.

Mr. Ross mentioned that there are a few changes that staff would like to make. Those changes are as follows:

1. Article II. Section 1: There is supposed to be an Acting Chairman. Currently, when Chair Merritt has been absent from a meeting in the past, the members of the Zoning Board of Appeals have elected an Acting Chairman.

In regards to this item, Chair Merritt felt it was worded loosely enough that the Zoning Board of Appeals had been following this by-law.

2. Article I. Section 2: Mr. Warmbrunn had suggested at the previous Zoning Board of Appeals meeting to change the word "pecuniary" to a more commonly used word. Mr. Ross said there should not be a problem with using another word.
3. Article III. Section 2: Mr. Ross stated that there was a comment regarding the following phrase, "upon the request of two (2) or more members". The point was made that for a public hearing, there must be a public notice, which takes a couple of weeks. Therefore, a special meeting could not be called to hold a public hearing. However, there could be a special meeting where the Board needed to address another matter that was not a public hearing.

Chair Merritt stated that she had questioned this before and was informed that this was worded in the by-laws for special circumstances that one cannot foresee.

Mr. Warmbrunn felt that it was fine that the Chairperson could call a meeting anytime. Mr. Ross added that for an action on a public hearing case to occur, there must be a quorum present at the meeting. Mr. Warmbrunn felt that it should either read as, "four (4) or more members" or drop Article III. Section 2. from the by-laws altogether. He stated that the Zoning Board previously never had regular scheduled meetings, but now, they do.

Chair Merritt mentioned that a special meeting would typically be called in the situation where two members are unhappy about something. Those two members have the right to call a meeting even if the other members do not want to meet.

Mr. Warmbrunn suggested that it should say "quorum" instead of two or four, in case some members leave the Zoning Board. Mr. Kowalski felt that this by-law was trying to avoid a situation where the members of the Board want to meet and the Chairperson does not. This serves as a mechanism for keeping the Chairperson from having the sole power.

Mr. Warmbrunn inquired as to if there were two members that were unhappy with the Chairperson, what could they do? Chair Merritt answered that the members could hold a meeting to discuss the Chairperson and make a decision to go to the Mayor to get rid of the Chairperson. Mr. Warmbrunn asked if the Mayor appointed the Chairperson? Chair Merritt replied that was correct.

Mr. Warmbrunn mentioned that in Article III. Section 3. states that "*All meetings shall be open to the public as provided by State Law*". He asked if that meant that all Zoning Board meetings

should have a fifteen-day notice for the public? Mr. Ross replied that the meeting itself does not need a notice. Public hearings are what require a fifteen-day public notice.

Mr. Warmbrunn asked if a quorum would be required to hold a special meeting? Mr. Kowalski answered by saying that a quorum is required to take action; however, a quorum is not necessary for the Zoning Board to meet and discuss a case. Mr. Schoonover stated that a quorum would still be needed to discuss the case. Without a quorum, it would be an automatic continuance.

Mr. Warmbrunn asked if staff wanted to continue a case and the Zoning Board wanted to finish the case up, then could the Zoning Board pull rank and finish the case? Mr. Schoonover replied that not everyone would agree all the time. As long as there is a quorum, which is needed before the meeting even starts, then the Zoning Board could finish the case and take action on it. Mr. Kowalski noted that the Zoning Board could open a case without a quorum. A quorum is needed to take action on a case. Without a quorum, the case would be continued to the next meeting.

Mr. Warmbrunn felt that the Legal staff should be present to represent the City of Urbana at some of the meetings. Chair Merritt commented that legal representatives were at every meeting in the past. It cost a lot of money. It was decided to leave it up to staff to determine when legal counsel for the City of Urbana should attend the meetings. Mr. Ross noted that Paul Cole was the attorney for the Zoning Board of Appeals. Mr. Kowalski commented that he did not know why there had to be an outside attorney to represent the Zoning Board of Appeals. It may be a legal issue. The issue of having the City Attorney present at all the Plan Commission and Historic Preservation meetings has been raised lately. Chair Merritt commented that the Plan Commission was a bit controversial at times. Mr. Kowalski noted that if staff felt that a lawsuit could likely follow a case action, then staff would request the City Attorney to attend the meeting. Chair Merritt commented that was the reason for the decision to stop having Paul Cole attend every Zoning Board of Appeals meeting. Staff usually has a pretty good feel for when a case may be dicey, and the Zoning Board is comfortable leaving it up to the staff to decide when the attorney should be requested to attend the meeting.

Mr. Warmbrunn made reference to Article IV. Section 2. Item 1., which states as follows: *New Cases – First time on agenda, continuances may be granted upon request.* He asked if anyone could request a continuance? Mr. Schoonover asked if a member of the audience could ask for a continuance? Mr. Ross replied yes. Mr. Warmbrunn did not think that the Zoning Board could ask for a continuance. Ms. Merritt remarked that the Zoning Board could table a case. Mr. Kowalski mentioned that these were good questions, and that the by-law should be clearer about who can request a continuance. Mr. Warmbrunn added that would be a good idea, so that someone with a good lawyer could not use this as an excuse to continue a case. Ms. Merritt stated that in the description of Section 2, it also states: *.....continuances may be granted at the discretion of the Board in any case for good cause shown.....*

Mr. Warmbrunn questioned if a majority vote was required to continue a case? Mr. Ross replied that with other commissions, a continuance is not done that formally. The Chair usually states that a case has been continued. Mr. Kowalski added that an applicant has to ask for a continuance in writing to the Chair. There are times when the staff feels that they have not had

enough time to prepare the case for the public hearing, then staff could recommend a continuance.

Mr. Ross mentioned that in Article IV. Section 1. the *Old Business* was mistakenly put before the *New Public Hearings*. Old Business should actually go after any New Public Hearings. Ms. Merritt asked for an example of New Business? Mr. Warmbrunn responded that the by-laws were considered New Business at the last meeting. Mr. Ross added that New Business could be any presentation of a new document from staff of importance to the Zoning Board.

Ms. Merritt questioned why *Audience Participation* was on the agenda? Mr. Ross answered that it was a catch-all for people who wanted to say something not related to any of the cases. Mr. Kowalski added that the other commissions have this item on their agenda as well.

Mr. Warmbrunn referred to Article V. Section 4., Item 10., which states as follows: *Rebuttal by objector*. He asked if there were fifteen people in opposition of a case, then would all fifteen people get a chance for rebuttal? Mr. Kowalski commented that the applicant should have a final chance to address all comments. Ms. Merritt questioned if Item 10 should be deleted? Mr. Warmbrunn felt that would be a good idea. Ms. Merritt agreed. Mr. Kowalski mentioned that this might have been written with the understanding that the opposition would be represented by one person. Staff will check with the Plan Commission by-laws to see if Item 10 is included. Ms. Merritt then asked if staff wanted to give the objector or the applicant the last word? Mr. Ross stated that everyone should have a chance to speak. The objectors should not be cut off if the applicant provided new information at the end. However, there should be a limit as to how far this process goes on.

Mr. Warmbrunn suggested that if Article V. Section 3. could read as follows: *The applicant may appear in his/her own behalf; and/or be represented by counsel or an agent*.

Mr. Warmbrunn referred to Article IV. Section 3. Item 1., which states as follows: *The Chairman may entertain a motion to dismiss a case for want of prosecution*. He would like to see the wording changed where it could be better understood.

Mr. Ross noted that staff would check with legal counsel on some of these concerns and come back to the Zoning Board with another draft. If any Board members have any other comments or concerns, please let staff know.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Ross gave the staff report on the following:

- ✓ *Next scheduled meeting* may be cancelled if there are no applications turned in by May 29, 2002.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Tim Ross, Senior Planner
Urbana Zoning Board of Appeals