

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

DATE: November 20, 2002
TIME: 7:30 p.m.
PLACE: Urbana City Building
400 S. Vine Street
Urbana, IL 61801

APPROVED

MEMBERS PRESENT: Paul Armstrong, Anna Merritt, Charles Warmbrunn, Harvey Welch

MEMBERS ABSENT Herb Corten, Darwin Fields, Joe Schoonover

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

OTHERS PRESENT: Gwen Byers, Keith Harris, Carl & Carol Malmgren, Warren Rittenhouse

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

The meeting was called to order at 7:34 p.m. The roll call was taken, and a quorum was declared present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

The minutes from September 18, 2002 will be presented at the next meeting.

4. WRITTEN COMMUNICATIONS

- ✓ **Rules of Procedure for the Zoning Board of Appeals**

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

ZBA-02-MAJ-9: A request for a major variance by Keith Harris for a two-foot reduction in the required five-foot side yard at 2922 East Rutherford Drive in Urbana's R-2, Single Family Residential Zoning District.

Tim Ross, Senior Planner, presented this case to the Zoning Board of Appeals. He introduced the case by giving a brief background of the subject property including a description and the zoning of the site. He discussed the variance criteria according to Section XI-3 of the Urbana Zoning Ordinance that pertained to this request for a major variance. He reviewed the options of the Zoning Board of Appeals and gave the staff recommendation, which 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 during the public hearing, staff recommended that the Zoning Board of Appeals recommend approval of this case as requested to the Urbana City Council with the condition that the setback reduction only apply to the existing house footprint, as indicated on the site plan.

Carl Malmgren, of 2906 Rutherford Drive, stated that he did not have any problems with this variance. However, he had a few questions. He wondered how this variance would affect future construction in the area. In other words, if this variance is passed, will other groups have a more readily available path to variances of the code? Ms. Merritt replied that this would not start a domino effect.

Mr. Malmgren then asked if this variance would only be related to the current structure, and if the petitioner wanted to add on within the area, would the petitioner need to come back and ask for a second variance? Mr. Ross stated that was correct. Staff recommended a condition that this variance request serve only to bring the existing house into compliance.

Lastly, Mr. Malmgren inquired as to whether there was any way to avoid this situation in the future? Ms. Merritt commented that the City of Urbana keeps trying. Mr. Ross added that this was an honest mistake. The regulations are presented clearly. There was full intention to comply with them. There just was not accurate data on where the property pin was located on the site. When staff discovers that there has been an error, then it needs to be corrected. Mr. Kowalski mentioned that the City of Urbana does not have the ability to determine property lines. Staff leaves that to a surveyor. If the City of Urbana did have that capability, then this might have been caught.

Mr. Warmbrunn moved that the Zoning Board of Appeals recommend approval of this case as requested to the Urbana City Council with the condition that the setback reduction only apply to the existing house footprint, as indicated on Exhibit G, Site Plan. Mr. Welch seconded the motion. The roll call was as follows:

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

The motion was approved by unanimous vote.

ZBA-02-MIN-4: Request by Bill Marshall to reduce the front-yard setback from twenty-five feet to nineteen feet at 2307 South Anderson Street. The subject property is located in Urbana’s R-3, Single and Two Family Residential Zoning District.

Michaela Bell, Planner, introduced this case to the Board. She began with a brief introduction and description of the site. She noted that the subject property was zoned R-3, Single and Two Family Residential. She explained that the requested variance comes as a result of a desire by the petitioner to enclose the existing front porch of the house to allow for the addition of a front foyer. Ms. Bell reviewed the variance criteria according to Section XI-3 of the Zoning Ordinance as it pertained to this minor variance request. She read the options of the Zoning Board of Appeals and stated the staff recommendation, which 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 during the public hearing, staff recommended that the Urbana Zoning Board of Appeals grant the variance for this case as requested.

Mr. Armstrong moved to grant this minor variance as requested assuming that this variance meets the criteria set forth in the sketch on the site plan. Mr. Welch seconded the motion. The roll call was as follows:

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

The motion was approved by unanimous vote.

7. OLD BUSINESS

Annual Review of By-Laws

Mr. Ross reviewed the following articles of the proposed by-laws and noted the changes made to each section.

- ✓ Title
- ✓ Article I: General Provisions
- ✓ Article II: Officers and Duties
- ✓ Article III: Meetings

Regarding the language used in Section 1, Ms. Merritt questioned whether the Board would prefer to keep the wording as it was rather than changing it to reflect the current scheduling of

regular meetings. By keeping the language as it was, it creates flexibility for the Board and staff to change the meeting times if needed. Mr. Ross responded that the City's legal staff clarified that it was up to the Zoning Board. Planning staff has tried to establish a regular meeting schedule to make it easier to setup the meetings.

Mr. Ross continued with his review of the following:

✓ Article IV: Order of Business

Mr. Warmbrunn inquired as to how the Zoning Board of Appeals would continue a case? Mr. Ross answered that typically the Chair would decide to continue the case barring objection from the rest of the Board, which is consistent with the other commissions. If the Zoning Board would prefer, the language could be changed. Mr. Warmbrunn asked what would happen if another Board member objected to the continuance? Mr. Ross replied that the language could be changed to say that a vote was required to continue a case. Mr. Armstrong commented that it already states "...at the discretion of the Board...", which implies that the Board would have to have a voice in it. If someone in the Board objected to the continuance, then it would be brought to a vote. Ms. Merritt noted that she would prefer to have a vote. Mr. Welch pointed out that Section 2 related to a continuance request by an applicant. He felt that additional wording should be added to clarify how a Zoning Board of Appeals member could continue the case. There should be a procedure stated in the bylaws.

Ms. Merritt noted that the Board more or less follows "Robert's Rules". In the list of "Robert's Rules", it is spelled out how a member would continue a case. It could be spelled out in the bylaws or the Zoning Board of Appeals could continue to follow "Robert's Rules". Mr. Ross stated that staff would be happy to work on adding some additional language to formalize how the Board would continue a case.

Ms. Merritt noted that there are two kinds of continuances, which are 1) ones brought up by the applicant and 2) ones brought up by one or more members of the Board. She suggested that both should be mentioned in the bylaws. Mr. Kowalski stated that staff would look into this further with the City's legal staff.

From Article XI, Section 3-B, Item #3 of the Urbana Zoning Ordinance, Ms. Merritt read the following, "The Board shall adopt rules necessary for the conduct of its affairs and consistent with the provision of this Ordinance and the laws of the State of Illinois; provided, however, that the concurring vote of at least four (4) members of the Board, or at least three (3) members if five (5) or fewer members of the Board are present...". Mr. Ross explained that this means that the Zoning Board of Appeals can change the bylaws as necessary in order to conduct public hearings; however, the rules must require that a majority of the quorum is necessary for a vote on appeals and variances.

Mr. Welch felt that there should be more than three members' approval required before a reversal of any order, requirement, decision, or determination of the Zoning Administrator could be made. Mr. Ross replied that a reversal refers to an appeal. Although it would not be ideal, four members of the seven appointed could legally approve the appeal. The Zoning Board of

Appeals does have that power as long as there is a majority of the quorum in favor of the appeal. It would be the decision of the Chair of the Zoning Board to decide if a vote should be taken.

Regarding Article IV, Section 3, Mr. Welch questioned whether the Board has the right to dismiss a case or request a continuance if the petitioner did not appear and opposition to a case did appear at the public hearing? Mr. Ross replied that when an applicant does not appear, then that presents grounds to dismiss the case. Mr. Kowalski added that the language appears in the bylaws because it might be likely that the Board may not get the information it needs to vote on a case if the applicant fails to appear. The Zoning Board of Appeals could keep continuing a case; however, if the petitioner/applicant never attends a public hearing to address the concerns of the Board, then there needs to be a mechanism to be able to dismiss the case. Mr. Welch thought that maybe even in the uncontested cases, the applicant should be required to appear at the public hearing. Ms. Merritt noted that staff encourages the petitioners/applicants to appear at the public hearings. Mr. Ross replied that it comes down to a judgment call on the behalf of the Zoning Board. If the Zoning Board does not have any questions regarding a case, then the Zoning Board would not have good enough reasoning not to act upon the case. It would be best for the Board to act on the case.

Mr. Welch felt that it could create problems in the future. An applicant may feel that his/her case was not complex enough for them to appear at the public hearing, causing them not to show up. If the case were to be dismissed because the applicant did not appear, then the applicant may feel that he/she was treated unfairly, especially if another case was approved when the petitioner was not in attendance at the public hearing. He suggested either leaving this section out of the bylaws and use the absence of the applicant as a good reason to continue the case or move Section 3 to Article VI: Decisions. Mr. Ross stated that whether or not an applicant appears at the public hearing was not the most essential part of a case. It is whether the Zoning Board of Appeals has all the information they need to make a decision on the case. If the Board does not feel that they have all the information, then they may continue the case. Mr. Warmbrunn added that it presents a third way for the Board to deal with a case when the applicant does not appear. Mr. Welch suggested that staff confer with the City's legal staff to see where they think this section should appear in the bylaws.

Mr. Ross continued with the review of the following:

✓ Article V: Procedures at Hearings

Mr. Ross noted that upon speaking with Jack Waaler, City Attorney, he found that many of the bylaws for other commissions have been revised over the last year or so to reflect the decision of a court case in Lisle, which allowed objectors to cross-examine the applicants. Mr. Waaler requested some time to be able to take another look at whether or not the current procedure of public hearings is consistent with the Lisle decision. There may need to be another section added in to allow the Chair of the Board to permit cross-examination of the objector and applicant under certain circumstances.

Mr. Warmbrunn asked if the term "objectors" referred to the opponents? Could there be twenty-five people in opposition? Mr. Ross replied that was correct. The term "objectors" may need to

be changed to “opponents” in order to be consistent with the rest of the bylaws. It is at the discretion of the Chair of the Board to cut people off if their testimony is redundant. In other bylaws, there are time limits placed on each opponent to testify. A time limit could be added to the Zoning Board of Appeals bylaws if the Board desired.

Mr. Ross read the section regarding cross-examination from the Plan Commission’s bylaws. Mr. Welch commented that this could be a nightmare. He added that it would be a whole different mind set to the meetings if the public wanted to start availing themselves with cross-examination instead of addressing the Zoning Board of Appeals. Ms. Merritt noted that most people do not know about being able to cross-examine the petitioner. There should be a guideline for the Zoning Board of Appeals on how to conduct them. Mr. Kowalski added that Steps 8, 9, and 10 of Section 4 are usually only used when there are accusations or bold statements made.

Regarding Article V, Section 3, Mr. Warmbrunn suggested putting “and/or” in to allow the petitioner and/or his counsel to appear at a public hearing. Mr. Ross replied that Mr. Waaler had stated that the Zoning Board could make that change.

Ms. Merritt asked if “Robert’s Rules” should be mentioned in the bylaws. Mr. Ross felt that would be a good addition, since they are referenced as being the official rules in other bylaws. Ms. Merritt felt it would be best to keep the bylaws simple and to be clear about what, how, and why the Board is doing what they are doing.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Ross reported on the following:

- ✓ **Case #ZBA-02-MAJ-8 (Patrick Roberge of 705 West Michigan)** was approved by City Council.
- ✓ **2003 Schedule of Zoning Board of Appeals Meetings** was mailed to the Board along with their packet information for this hearing. Additional copies are available for the public upon request.
- ✓ **The next scheduled meeting** is set for December 18, 2002.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

November 20, 2002

The meeting was adjourned at 8:38 p.m.

Respectfully submitted,

Tim Ross, Senior Planner
Urbana Zoning Board of Appeals