

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: December 18, 2002

APPROVED

TIME: 7:30 p.m.

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

MEMBERS PRESENT: Herb Corten, Darwin Fields, Anna Merritt, Joe Schoonover, Charles Warmbrunn, Harvey Welch

MEMBERS ABSENT Paul Armstrong

STAFF PRESENT: Tim Ross, Senior Planner; Michaela Bell, Planner; Teri Anel, Secretary; Jack Waaler, City Attorney

OTHERS PRESENT: Jerry Hughes, Pastor Andrew Rogers, Shirley Squire

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 the September 18, 2002 meeting were presented. Mr. Corten moved to approve the minutes as corrected. Mr. Schoonover seconded the motion. The minutes were then approved by unanimous vote as amended.

The minutes from the November 20, 2002 meeting were presented. Mr. Fields moved to approve the minutes as presented. Mr. Warmbrunn seconded the motion. Those minutes were approved by unanimous vote.

Chair Merritt swore in members of the public audience who were interested in speaking during the public portions of the hearings.

4. WRITTEN COMMUNICATIONS

- ✓ Letter from Scott & Jane Flewelling to Urbana City Council Board Members regarding case # ZBA-02-C-03.
- ✓ Addendum to staff memorandum for ZBA-02-MIN-5
- ✓ Draft Copy of the City of Urbana Rules of Procedure for the Zoning Board of Appeals

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

ZBA-02-C-03: A request by Jerry Hughes for a Conditional Use Permit to allow a school use in the Foursquare Church at 2101 East Washington Street, located in the R-3, Single and Two-Family Residential Zoning District.

Michaela Bell, Planner, presented this case to the Zoning Board of Appeals. She introduced the case by giving a brief background of the subject property including a description and zoning of the site. She reviewed the Conditional Use Permit criteria according to Section VII-2 of the Urbana Zoning Ordinance. Ms. Bell summarized staff findings and read the options of the Zoning Board of Appeals. She stated that staff recommended the following:

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

Mr. Corten asked if any of the students would be brought in by bus? Ms. Bell answered that the petitioner, Jerry Hughes, would be able to answer that question.

Mr. Fields inquired as to the reason why the person who called staff was opposed to this request. Ms. Bell replied that the caller was opposed to more children in the neighborhood.

Mr. Schoonover inquired as to how many children were currently enrolled in the Prairie School, which is located across the street from the Foursquare Church. Ms. Bell replied that she did not know how many children were enrolled at the Prairie School at the time.

Mr. Warmbrunn questioned if there would be an access to the school from the front entrance of the church or would staff anticipate that traffic would come into the parking lot and enter the school on the southeast side? Ms. Bell stated that staff anticipated that traffic would either use the access drive off of Easy Street or the Washington Street access drive in the northeast corner of the lot. Mr. Warmbrunn asked if traffic would be coming in the diagonal area on the northwest side off of Washington Street? Ms. Bell said that staff would not recommend that as being a pickup point for the proposed school. She went on to say that the church was planning to use the south portion of the building for classrooms. Therefore, it would be more sensible for the parents to enter the parking lot through the access drive off of Easy Street to pick up their children.

Mr. Warmbrunn wondered whether the Zoning Board should consider the number of students that would be attending the proposed school. Mr. Bell commented that it should be a concern of the Zoning Board of Appeals. She added that the petitioner had indicated to staff that if the enrollment were to exceed fifty students, they would need to find another place to have the school because of space constraints. Tim Ross, Senior Planner, noted that this concern would apply to the second criterion for a Conditional Use Permit according to Section VII-2 of the Urbana Zoning Ordinance, which is stated as follows: *That the proposed use is designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious to the public welfare.*

Mr. Welch believed that it would be unwise of the Zoning Board to suggest a cap in enrollment. Ms. Merritt mentioned that there were other government bodies that would deal with the number of students allowed to enroll in the proposed school. She stated that the Zoning Board of Appeals should be concerned with the size of the structure, access to the structure, and whether the use is appropriate in the proposed district. Mr. Schoonover responded that with the additional traffic of the school staff and students, there will be young children crossing the street and safety should be considered. Mr. Welch replied that would be a liability problem for the proposed school to resolve, and not a problem of the Zoning Board of Appeals. If the Zoning Board wanted to deal with safety issues, then they can deal with it in another way (i.e. by limiting the area where the children could be picked up or that the school must supply a crossing guard). Ms. Merritt added that there are regulations for schools that are set-up by the state.

Jerry Hughes, petitioner for the proposed school, addressed some of the previous questions. He noted that the children would be picked up in the parking lot only under supervision. Mr. Schoonover inquired as to whether the older students in 12th grade would be allowed to drive. Mr. Hughes responded that there would not be any 12th graders; however, the children who are older with driver's licenses would park in the parking lot. Mr. Schoonover inquired about a child who was sick; would he be able to leave early and drive home? Mr. Hughes answered that it was not written into the procedures for the school; however, the parents would be called, and the child would drive himself/herself home.

Ms. Merritt asked if the school would offer a K-12 program? Mr. Hughes replied that the proposed school does not anticipate anyone beyond ninth or tenth grade; nevertheless, the school would be prepared to offer an education program to older students.

Mr. Schoonover commented that Mr. Hughes had answered his question. He was concerned with older students driving in and out with little children walking to Prairie School, and that it will be in a residential neighborhood. Mr. Hughes replied that if the school staff saw older students driving around or loitering in the parking lot, then the proposed school would take away those students' driving privileges.

Mr. Hughes noted that at this time, parents would be dropping off and picking up their children. The church does not currently own a bus. However, in the future, the church/proposed school may acquire a bus to use on field trips, but it would not be used to pickup and drop off children on a daily basis. Mr. Corten had thought that the proposed school would draw in students from

outside walking distance from the school. Mr. Hughes replied that might be so, however, it would be the parents' responsibility to drive them to school.

Mr. Schoonover inquired as to whether the proposed school was planning to use any of the facilities or grounds of Prairie School? Mr. Hughes replied no; however, they were planning to use some of the Champaign County/Urbana Park District facilities. He had talked to the Urbana Park District about renting the gymnasium every Friday.

Mr. Warmbrunn questioned if the Fire Marshall had looked at the proposed plans and said that the proposed school could have "X" number of students? Mr. Hughes answered no. Ms. Bell noted that when she met with Mr. Hughes about the proposal, Steve Cochran, City Building Inspector, was there to assess the existing building layout. Mr. Cochran did not have any problems with exits or other safety concerns, number of restrooms, etc. Mr. Hughes believed that Mr. Cochran had told him that 50 students would be the maximum allowed due to the number of restroom facilities. Pastor Andrew Rogers, Senior Pastor for the Foursquare Church, commented that his understanding was that if they had more than 50 students, then they would have to install a fire alarm system.

Mr. Ross reminded the Zoning Board of Appeals that approval of this case was basically for the use of the school. Building safety and fire code would continue to be the concern of the City staff to enforce. If the number of students increased, then the City staff would continue to monitor and work with the proposed Faith Christian Academy.

Mr. Corten moved that the Zoning Board of Appeals grant the requested Conditional Use Permit without any additional conditions or requirements as they look at the public safety, health and welfare and carry out the purposes of the Zoning Board of Appeals. Mr. Fields seconded the motion. The roll call was as follows:

Mr. Fields	-	Yes	Ms. Merritt	-	Yes
Mr. Schoonover	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes	Mr. Corten	-	Yes

The motion was passed by unanimous vote.

ZBA-02-MIN-5: A request for a minor variance filed by Andrae's Harley Davidson for an increase in the maximum area of a freestanding sign from 50 square feet to 62 square feet at 2010 North Lincoln Avenue in the City's B-3, General Business Zoning District.

Tim Ross, Senior Planner, gave the staff report for this case. He talked about the previous sign variances for the new Andrae's Harley Davidson site at 2010 North Lincoln Avenue. He gave a description of the site and noted the zoning and land uses of the subject property and surrounding properties. He presented the addendum to the staff memorandum and discussed the intentions of the petitioner and noted that the petitioner indicated that the requested variance is necessary due to the auto-oriented scale of the general area and their desire to re-use the existing freestanding sign rather than installing multiple signs along different frontages. Mr. Ross reviewed the variance criteria according to Section IX-3 of the Urbana Zoning Ordinance that pertained to this

case. He read the options of the Zoning Board of Appeals. He stated that staff recommendation was as follows:

Based on the findings outlined in the written staff report and in the addendum to the staff memorandum for this case, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Urbana Zoning Board of Appeals grant the variance for this case as requested, with the condition that no more than two freestanding signs be constructed on the site. One of the two freestanding signs may be the sign approved in Ordinance No. 2001-06-055, or another sign that would be permitted under the terms of the Urbana Zoning Ordinance.

Mr. Schoonover asked if the petitioner would go with no more than two signs, would she still have the option of putting up the highway sign? Mr. Ross replied no. Staff was recommending a total allowance of two signs, one of which could be the highway-oriented sign. Rather than restrict the petitioner to just one sign (combining all three of the allowances into the one request), staff was recommending that one additional sign be available (combining two signs into one).

Mr. Corten commented that the Zoning Board of Appeals has allowed more area than the required maximum in the Zoning Ordinance in all sign cases. He asked if the Zoning Board of Appeals was taking the attitude that they are being conservative and trying to hold it down, and then backing off and letting people come up with their best designs. Or are they taking the attitude that they are kind of a cushy, soft board that will allow anything to happen? Mr. Ross replied that signage is a difficult issue for a variance, because typically the Board would not easily relate signage to one of the first two criterion, which relates to how the property functions. It is more a judgment of what the petitioners feel their needs are. Typically, the requests that the Board gets are to combine part of their signage allowance on a fewer number of signs rather than use their entire allowance on a greater number of individual signs. For those reasons, staff and the Board have recommended approval when it is appropriate at the location.

Mr. Warmbrunn moved that the Urbana Zoning Board of Appeals grant the variance for this case as requested with the condition that no more than two freestanding signs be constructed on the site. One of the two freestanding signs may be the sign approved in Ordinance No. 2001-06-055 or any other sign that would be permitted under the terms of the Urbana Zoning Ordinance. Mr. Fields seconded the motion. The roll call was as follows:

Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes
Mr. Corten	-	Yes	Mr. Fields	-	Yes

The motion was approved by unanimous vote.

7. OLD BUSINESS

Discussion of Lisle court case and Review of the By-Laws

Mr. Ross noted that the part of the Urbana Zoning Board of Appeal's bylaws that specifically would relate to the Lisle case is found in Article V. Staff added a provision to allow some cross-examination by interested parties of the petitioner. Although the Zoning Board felt that this might cause some pandemonium, staff came up with a couple of ways to handle this. The first way would be for any interested parties would have to submit questions to the Chair in advance, and the Chair would serve as a moderator.

The second way, which is what staff preferred, would be that any interested party should approach the microphone and state their name and the nature of their question. The Chair would allow the question, assuming that the question was deemed relevant to the case. The petitioner would then have the option of answering the question or if they choose not to answer, then it would be noted in the minutes that the petitioner did not have an answer.

In any case, the Chair would have the discretion to limit the cross-examination to people who have a verifiable interest in the case. This is something that staff is reviewing for the bylaws of the other commissions.

Mr. Corten stated that it appeared staff was using the Chair to control the public hearing. Mr. Ross replied that sometimes it does come down to the Chair using his/her authority to control situations. Mr. Corten inquired as to whether other commissions have had problems where the situation got out of hand? Mr. Ross answered that there have been moments when people have made bold statements, and sometimes they are in the form of a question. He agreed that the Zoning Board is an excellent board in hearing people out and making sure that their questions were at least posed to the petitioner. If the different Boards and Commissions did not function that way, then there could be more of a problem where people felt that they did not get a chance to be heard. Ms. Merritt commented that the Zoning Board of Appeals could afford to be more lenient and allow people to voice their concerns, because they do not have a problem with having long meetings.

Jack Waaler, City Attorney, remarked about how interesting the Lisle court case was. He commented that the Lisle case was decided by the Illinois Supreme Court in October 2002. We have been waiting for about two years for the Supreme Court's decision, because the Appellate Court decision was two years earlier. The case is difficult to draw any clear guidance from that City Attorneys all over the state are studying it and coming up with different opinions. With respect to the Urbana Zoning Board of Appeals, it seemed to him fairly clear that this Board should be allowing some degree of cross-examination. He felt it was important to note that the people who went to court in the Lisle case were the people who lived right next door and the people right across the street. So, of course, they had a very obvious interest in the case. The Supreme Court opinion pointed out that their close proximity.

The Supreme Court also pointed out and emphasized that they were ruling only that it was the Special Use part of the case that resulted in their decision that cross-examination had to be permitted. Thus, we have a very narrow ruling in the case, but the Supreme Court's logic laid out the situation that applies to this Board. They said that when the body that is hearing the case is making a determination about the rights of respective parties based on disputed facts, that is an administrative or an adjudicative hearing and cross-examination must be permitted. That is for the most part what the Zoning Board of Appeals does, especially in a case requesting a variance

and in many cases a Conditional Use Permit. Therefore, he advised Mr. Ross and Ms. Bell that particularly with regard to Zoning Board of Appeals cases, we ought to be allowing for cross-examination. That does not mean that we have to sit here and listen to lawyers all night. The Chair does have the right to the following options: 1) limit the time for cross-examination, 2) ask the people to register in advance if they wanted to cross-examine, and/or 3) restrict the cross-examination to subject matter.

Mr. Ross discussed the issues of “continuances” and “failure of applicant to appear”. He noted that he added some language to the bylaws that would hopefully clarify these more.

Mr. Ross stated that Mr. Waaler and he wished to reiterate that the meetings are to be run at the discretion of the Zoning Board of Appeals. So, the Zoning Board can always continue a case if the Zoning Board members felt that they were not prepared to act on it. If the petitioner, staff, or someone else requests a continuance from the Zoning Board, then the Zoning Board would grant or deny the continuance. Whether an individual member of the Board wants to continue a hearing to another date is basically the Board functioning in its capacity to move or not move on a case. For that reason, he did not separate them into two different kinds of continuances.

Mr. Ross continued by talking about “failure to appear”. Regardless of whether the applicant is present at the hearing, the most important thing is that the information be presented to the Board. If the Board does not feel that they have enough information, then they can continue, and they do have grounds to dismiss the case if there has been no accommodation to try to continue the case by the petitioner. Ms. Merritt added that it was at the discretion of the Board or the Chair may entertain a motion to dismiss a case.

Mr. Warmbrunn asked if special meetings now needed to be advertised in the paper? Mr. Ross stated that there was some language in the bylaws about a twenty-four hour notice. He could not find any similar language in the bylaws for other commissions, so he made the step of tying it to the notification requirements. Ms. Merritt added that there needed to be notification for any special meetings. Mr. Waaler noted that a special meeting would require 48 hours notice of media under the Open Meetings Act unless there is some sort of emergency. Ms. Merritt questioned if the 48-hour notice was stated in the Urbana Zoning Ordinance? If it is, then the Zoning Board does not need to restate it in their bylaws. Mr. Ross replied that the sections being referred to relate to the notification requirements for public hearings.

Mr. Warmbrunn asked what kind of meeting could be held as a special meeting? Can a meeting be held without a public hearing? Mr. Ross replied that a meeting could be held by two or more members outside of a regular meeting to discuss, for example, the bylaws. Although there does not have to be a public hearing, the meeting would be subject to the Open Meetings Act. Mr. Waaler commented that all meetings have to be open to the public, but that does not mean that all meetings have to be public hearings.

Ms. Merritt questioned whether the Board wanted to read the bylaws over again at home before voting on them? Mr. Warmbrunn asked if staff wanted to present these in writing at this meeting and vote on the bylaws at the next meeting? Mr. Ross replied that although it would be possible for the Board to vote on the bylaws at this meeting, he would recommend that the Board give the bylaws their full consideration by waiting until the next meeting to proceed. The Board would

be in a position to vote at the next meeting. Ms. Merritt mentioned that the Board should plan to vote on the bylaws at the next meeting unless a member has more questions.

Mr. Waaler stated that he did not understand on page four what the Board's intention was in regards to new cases and a request for a continuance. It seemed like it was only a partial sentence. He suggested leaving the wording as it was before crossing out "continuances may be granted upon request".

Mr. Ross mentioned that he tried to accommodate everyone's comments and included a section on Robert's Rules. Also, he added a portion that states that the bylaws will be reviewed annually.

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-9 (2922 East Rutherford Drive) was approved by City Council.
- ✓ B-1 Zoning District Text Amendment will be proposed by staff in the future.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 8:43 p.m.

Respectfully submitted,

Tim Ross, Senior Planner
Urbana Zoning Board of Appeals