

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

DATE: May 21, 2008

APPROVED

TIME: 7:30 p.m.

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

MEMBERS PRESENT: Paul Armstrong, Herb Corten, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

MEMBERS EXCUSED: Anna Merritt, Joe Schoonover

STAFF PRESENT: Robert Myers, Planning Manager; Rebecca Bird, Planning Associate; Teri Andel, Planning Secretary

OTHERS PRESENT: Marc and Fran Ansel, Peter Baksa, Carolyn Baxley, Pat Cardenas, Joanne Chester, Claude and Susan Cole, Elizabeth Cronan, Paul Debevec, Ed and Sharon DeWan, Charles Dold, Audrey Fisher, Susan Frobish, Charlotte Hall, Katherine Hunter, Milorad Ketchens, Leslie McNeil, Evan and Lee Melhado, Georgia Morgan, Dannie Otto, Georgia Paquin, Esther Patt, Michael and Elizabeth Plewa, Steve Ross, Muriel Scheinman, Maruti Seth, Shirley Stillinger, Huseyin Schitoglu, Lisa Treul, and Roger Webber

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

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

NOTE: Mr. Corten moved that Paul Armstrong serve as Acting Chairperson in the absence of Chair Anna Merritt. Ms. Uchtmann seconded the motion. The Zoning Board of Appeals member approved the motion by unanimous voice vote.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

April 16, 2008 Special Meeting Minutes:

Mr. Warmbrunn moved that the Zoning Board of Appeals approve the minutes as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

April 16, 2008 Regular Meeting Minutes:

Mr. Warmbrunn moved that the Zoning Board of Appeals approve the minutes as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

4. WRITTEN COMMUNICATIONS

Regarding Case No. ZBA-08-C-01

- ◆ Letter from C. K. Gunsalus and Michael W. Walker
- ◆ E-mail from Willard Broom
- ◆ E-mail from Mark M. Clark
- ◆ E-mail from Maryly Crutcher
- ◆ E-mail from Jo and Doug Kibbee
- ◆ E-mail from Erik S. McDuffie
- ◆ E-mail from Lori Raetzman
- ◆ Photos of 802 West Iowa and of other properties on the block submitted by Roger Webber
- ◆ General Information Sheet submitted by Roger Webber
- ◆ Letter from Mike Mahoney submitted by Roger Webber
- ◆ Testimony of Charles N. Dold submitted by Charles Dold
- ◆ Letter from Phillip and Sonia Newmark submitted by Esther Patt
- ◆ Letter from Deborah K. Ghrist submitted by Esther Patt
- ◆ Petition Signed in Opposition submitted by Esther Patt
- ◆ Typographical Correction to Requirement No. 1 for a Conditional Use Permit submitted by City staff

5. CONTINUED PUBLIC HEARINGS

There were none.

Acting Chairperson Armstrong asked Robert Myers, Planning Manager, to explain some procedural issues to the public audience. Mr. Myers stated that the Zoning Board of Appeals is primarily an appeals body and is considered quasi-judicial, which means that it functions somewhat like a court. People who wish to testify are asked to be sworn in and are asked to keep their testimony to the matter at hand. They are asked to avoid making prejudicial statements about the case.

Acting Chair Armstrong announced that since there are several items on the agenda to be reviewed by the Zoning Board of Appeals and since there are several people who are present and might want to testify, each speaker will have a maximum of five minutes to give their testimony in order to allow everyone the opportunity to testify.

Acting Chair Armstrong swore in members of the audience indicating they may want to speak during the public hearing. He then summarized the procedures for public hearings.

6. NEW PUBLIC HEARINGS

ZBA-2008-C-01: A request filed by Illinois Properties for a Conditional Use Permit to allow a Duplex at 802 West Iowa Street in the R-2, Single-Family Zoning District.

Robert Myers, Planning Manager, presented this case to the Zoning Board of Appeals. He began by explaining the purpose of the request. He talked about the differences between the R-1, R-2, and R-3 zoning districts in how they prohibit or allow duplexes. He stated that there is currently a single-family house on the proposed site that was converted into a duplex in terms of occupancy without building code or zoning approval. This has resulted in past zoning, building and occupancy code violations.

He clarified the difference between how the Zoning Ordinance and the Building Code defines and treats duplexes. Under zoning, a duplex accommodates two households. These two households typically have two separate kitchens, and they are two housekeeping units. A household under the Zoning Ordinance is defined as a family plus no more than three unrelated individuals. In terms of building codes, a duplex has two units that are separated. They typically have two electric meters and two separate heating and cooling systems which are not shared. He gave examples of emergency situations resolved by properly separating duplex units per the building code.

He pointed out that there is a written petition in opposition of the proposed Conditional Use Permit signed by more than 40% of the adjacent property owners located within 250 feet of the proposed site. This means that for this application to be approved, a two-thirds majority vote of the Zoning Board of Appeals is required.

Mr. Myers discussed how the Downtown to Campus Plan relates to the proposed site. As a result of the Downtown to Campus Plan, many properties in the area, including the proposed site, were rezoned. The site was rezoned from R-4, Medium Density Multiple Family Residential Zoning District, to R-2, Single-Family Residential Zoning District. Records show that the City then notified the property owner of the rezoning and that the City recognized the use of the property as a single-family residence.

He spoke about the zoning and property maintenance violations that were cited on the property in 2000. The property owner abated the property maintenance and use violations by the next year. However, in 2005, City staff learned that the property was again being used as a duplex. In terms of occupancy, it was never converted to a duplex to meet the building code requirements. Since 2005, the City had tried unsuccessfully to gain compliance. As a result, the City in 2007 filed a complaint in Circuit Court. The judge gave the property owner two options: 1) use it as a single-family residence or 2) apply for a conditional use permit to allow the duplex use. If the conditional use permit is denied, then it must remain a single-family residence.

Mr. Myers reviewed the development regulations for a duplex in the R-2 Zoning District. He spoke about the parking requirements and showed photos of the driveway at the proposed location. A minimum of four off-street parking spaces are needed for a duplex. He pointed out that the driveway is shallow and doesn't meet the minimum length requirement in the Zoning Ordinance for a parking space. A large vehicle parked in front of the garage would extend into the right-of-way. Regarding the two additional parking spaces on the side of the driveway, he stated that typically cars should be able to back straight out onto the road or street; however in this situation it's not possible because the driveway is too narrow to allow backing straight out. So, it is City staff's opinion that although technically they could fit four cars on the property, in intensifying the use of a single-family home that has small yards, it is questionable whether or not they could reasonably fit four cars on the lot.

In terms of property maintenance, there are some things that could be improved. Neighbors have complained about the condition of the fence. If the Zoning Board of Appeals should decide to approve the proposed conditional use permit, it is the City staff's opinion that there should be conditions placed on the approval, one of which would be to repair the fence and abate any other obvious exterior maintenance violations.

He showed photos of the surrounding properties noting their existing land uses. He talked about how the Future Land Use Map from the 2005 Comprehensive Plan relates to the proposed conditional use permit request.

Mr. Myers reviewed the requirements for a conditional use permit according to Section VII-2 of the Urbana Zoning Ordinance. He noted that there is a typographical error on Page 5 of the written staff report, and he handed out a paper showing the correction. The first requirement should read as such, "*City staff finds that allowing an additional dwelling unit at this location, which is within walking distance of the University of Illinois campus, would be conducive to the public convenience. However, doing so would not reduce the amount of automobile traffic on Lincoln Avenue or the University campus.*"

He read the options of the Zoning Board of Appeals and presented staff's recommendation, which was as follows:

Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals deny the request as having insufficient space to intensify use of this property, as illustrated by having substandard parking and access as required by Article VIII of the Zoning Ordinance.

Should the Zoning Board of Appeals instead decide to grant this variance, the following conditions for approval are recommended:

- 1. That the property shall meet all applicable standards and regulations of the Urbana Zoning Ordinance and Urbana Subdivision and Land Development Code.*

2. *That the property shall comply with applicable Building Codes (such as fire and utility separation), and that the petitioner shall obtain and comply with a Certificate of Occupancy for a duplex.*
3. *That the petitioner shall submit to the City a site plan illustrating that the property can meet all City parking and access requirements, and subject to approval by the Zoning Administrator and City Engineer.*
4. *That the garage shall be kept clear for use as one of the four required parking spaces.*
5. *That no more than two vehicles shall be allowed to park in accessory spaces west of the garage at any time.*
6. *That the petitioner shall abate any property maintenance violations, but minimally shall include repairing the fence along with west property line.*

Mr. Corten wondered if the Zoning Board of Appeals is to make the assumption that the tenants would be able to get one of any of the four vehicles out of the parking area without moving the other three. Mr. Myers responded that the tenants would easily enough be able to move the vehicle in the driveway by backing out. If a car in the garage needs to leave and a car were parked in the driveway, then they would need to have the owner of the vehicle in front of the garage move it so they could get out.

Mr. Warmbrunn asked how many duplexes were currently in any one of these areas, such as the Lincoln-Busey corridor. Mr. Myers said he did not know the answer, but that in walking around the block, he noted that north of the property and along the west side of Busey Avenue, which is a long block, he did not see indications of any duplexes.

Mr. Warmbrunn inquired as to how many of the people who signed the petition live in duplexes. Mr. Myers responded that he didn't know.

Mr. Warmbrunn asked if a duplex could be used as a transitional phase from the dorms and other high intense residential uses on Lincoln Avenue. Mr. Myers answered yes.

Mr. Warmbrunn questioned if the existing building were demolished and the owner came before the City for a conditional use permit to allow a duplex, the owner would still be required to provide four parking spaces, correct? Mr. Myers said yes.

Mr. Corten wondered if the owner lives in one of the units. Mr. Myers said he did not know. The applicant's representative is present in the audience and could answer this question.

Mr. Welch asked how many parking spaces would be required for a single-family residential use. Mr. Myers replied that there is not a maximum number of required parking spaces, but the minimum of two required parking spaces for single-family residential uses. Mr. Welch gave the scenario of a large family with five drivers and five cars. Practically, the cars would not fit, but

could not there be five cars allowed with a single-family use if they fit into the parking area? Mr. Myers said yes. If a family in a single-family house could fit five cars in the parking area, then they would be allowed to have five cars.

Mr. Welch wanted to clarify this, especially since there would be no physical changes to the outside of the existing building. Therefore, if the Zoning Board of Appeals denies the proposed conditional use permit to allow a duplex use, then they would be denying what is going on in the inside of the home. Mr. Myers responded that there would still be substandard parking whether it is approved or denied in that one of the two regular parking spaces (in the driveway) seems to extend into the street right-of-way. Mr. Welch said that this is the main thing he was trying to point out.

With no further questions from the Zoning Board of Appeals for City staff, Acting Chair Armstrong opened the hearing to public input.

Roger Webber, attorney for Peter Baksa (the petitioner), stated that he has not seen the protest petition. Aren't he and his client entitled to see the petition to give them a chance to respond to it? He stated that he did not need to see it at this moment, but would like a copy, if possible. Also, since they are the applicants, are they entitled to more than five minutes to speak? Acting Chair Armstrong replied that they have some leeway on the amount of time to testify.

Mr. Webber submitted additional documents which included photos taken by his investigator walking around the block without crossing any streets. The purpose of the photos is to show the character and the nature of the neighborhood. The photos show a number of houses that do not appear to be used as single-family residences. This suggests that what they are proposing is consistent with the way the neighborhood is being used already.

They agree in that there are no changes needed to the exterior of the building. They also feel that there are not any changes needed to be made to the interior as well. The property has been physically used as a duplex for about 20 years or more. There might be some requirements or modifications needed to bring the building up to code.

Mr. Corten asked about the exterior of the property in general, such as the bushes, trees, fence, etc. Mr. Webber replied that he could not commit for Mr. Baksa; however, he believes that Mr. Baksa is willing to intensify his efforts to maintain the property.

Mr. Corten wondered if Mr. Baksa currently lives there. Mr. Webber said no, not at this time. He did live on the property for a number of years when he first acquired it.

Mr. Corten inquired if Mr. Baksa lives in town. Mr. Webber stated that Mr. Baksa has a residence in Champaign, a residence in Chicago, and he spends some time down in Florida during the winter.

Mr. Webber talked about the statement by Mr. Myers that the City first learned of the conversion to a duplex in the year 2000. Mr. Baksa and he did not believe this to be accurate. Back in 1986, Craig Grant, who was the City's Building Safety Manager, was inside the property and

told Mr. Baksa that what he was doing with the property as a duplex was fine. However, in 1986, the property was still zoned R-4. The zoning changed in 1991 when the Downtown Campus Plan was put into place.

When Mr. Baksa purchased the property from a University professor. He lived in one unit for a number of years and continued renting the other unit to students. Apparently through the lawsuit that was mentioned, the professor who sold the property as a duplex never got a Certificate of Occupancy or any other document authorizing the property to be used as a duplex. So, he can understand why from the City looking at records, it appears that the property is a single-family residence. As a practical matter, Mr. Baksa bought a duplex; he used it as a duplex; the County Assessor has been taxing it as a duplex since at least 1992; and now since 2005, the City is saying that Mr. Baksa is not allowed to use the property as a duplex anymore because in 1991 the City changed the zoning.

Mr. Corten wondered if there were two furnaces in the building -- one for each unit. Mr. Webber said no there are not.

Mr. Webber talked about Mr. Baksa's background. He mentioned that Mr. Baksa had attended the University of Illinois and earned a degree in architecture and related fields. In 1993, he was granted the Heritage Award for his work in historic preservation in multiple cities, including the City of Urbana. He served as a volunteer working with City staff to develop the criteria for the MOR, Mixed Office-Residential Zoning District. He has been a visiting professor at the University of Illinois, teaching at the 500 course level. He served for a period of time as the President of the Champaign-Urbana Symphony. So, he is not an evil carpetbagger that he perceives some of the objectors have presented him to be.

He commented that in the mid 1990s, Mr. Baksa placed the proposed property with a holding company and turned over management to Ramshaw Realty, which is a large, professional management company in town. They believe that Ramshaw Realty did everything they could to maintain the property in compliance with the City's codes. The only longstanding issue that he is aware of is the occupancy and single-family versus duplex.

Around 2005, Mr. Baksa was advised by Ramshaw Realty about the City's findings that they were over-occupied. So, Mr. Baksa became actively involved in managing the property again, and he started taking steps to reduce the occupancy. He had existing leases and was not going to kick out tenants with valid leases. The house now complies with the occupancy requirements.

Mr. Corten asked what they believe the occupancy requirements are. Mr. Webber said that it would be no more than four unrelated people per unit.

Mr. Webber feels that the objections that were filed with the report seem to be primarily based on the idea that the owner converted the property into a duplex, flaunting the zoning regulations, and has only reduced the occupancy when faced with a lawsuit, when in fact Mr. Baksa bought what he believed was a duplex, used it as a duplex for 20 years, and now is told no more duplex.

What does he do? Just give up and surrender his investment or try to work to figure out a way to proceed?

At that time, Ramshaw Realty was told by City staff that the only way to have a duplex would be to apply for a conditional use permit. So, Mr. Baksa instructed Ramshaw Realty to pursue it. Ramshaw Realty was then told by City staff that they need not bother applying because it would not be approved.

In trying to analyze the standards, he also looked into what the courts do with Zoning Ordinances that restrict an owner's use of his/her property. He found three cases that specifically set out the standards which cities are suppose to look at. These three cases are as follows:

1. *Harris Trust & Savings Bank v. Duggan*, 95 Ill.2d 516

This case is about Harris Trust and Savings Bank purchasing a property that was zoned R-8 or High-Rise Buildings. While they were trying to go through the process of obtaining demolition permits to raze the existing structures to build a high rise, the City of Chicago granted a demolition permit and latter rescinded it. The City then changed the zoning to R-6, Medium Rise Apartment Buildings. Harris Trust and Savings Bank sued, and the Illinois Supreme Court announced a series of five or six factors that are to be considered when evaluating the validity of a Zoning Ordinance that restricts an owner's use of his property. Harris Trust and Savings Bank won the court case, and the City of Chicago paid them over a million dollars. They were also ordered to allow Harris Trust and Savings to do the demolition and build the high-rise building.

2. *Lambrecht v. County of Will*, 217 Ill.App. 3d 591

This case articulates in the most clear and definitive way the standards that the courts look at. Those standards are:

- A. *The Zoning Board of Appeals is to consider the existing uses and zoning of nearby properties.* He explained how this relates to the proposed case by stating that in the block there are nine lots zoned R-2 (Single-Family Residential), six lots are zoned R-6 (High Density Multiple Family Residential), five lots are zoned R-7 (University Residential), and one lot is zoned R-4 (Medium Density Multiple Family Residential). He spoke about the adjacent land uses and pointed out that these uses show that the use of the proposed property as a duplex fits in exactly with the Downtown to Campus Plan and the overall scheme of buffering. You go from a big high-density apartment building and rooming house down to two duplex uses and finally down to single-family residences.
- B. *The extent to which property values are diminished by the particular zoning restrictions.* He submitted a letter from Mike Mahoney, realtor for Prudential Snyder Real Estate, which discusses the difference in fair market value of a duplex and a single-family house. The letter states that a duplex is typically valued at one-and-a-half times a single-family house.

- C. *The extent to which the destruction of the property values of the plaintiff promotes the health, safety, morals or general welfare of the public.* He believes that the City would lower the value of the petitioner's property by about a third if it denies the Conditional Use Permit. The City would be getting a marginal, if any, real benefit to the health, safety, welfare and morals because as a practical matter on a lot where there is fraternity housing and high-density apartment buildings, is two or three additional people on the lot really going to have a significant impact on the health, safety, welfare and morals of the community? He also pointed out that in the written staff report, City staff stated that having a duplex here would be convenient because the property is close enough to campus for student renters to walk. Then staff contradicted themselves by saying that a duplex would not reduce the traffic and overall traffic congestion. If students have to live further out than they would drive to campus.
- D. *The relative gain to the public as compared to the hardship imposed upon the property owner.* He feels this is a restatement of the balancing of what the benefit is to the community, which he feels would be minimal, versus cutting the property value by a third.
- E. *The suitability of the subject property for the zoned purposes.* As he looked through the written staff report, seven out of the eight factors in the development regulations were met. The only one that has not been met is the rear-yard setback. Parking may be considered a debatable issue, but one that could be easily resolved by trimming back the shrubbery or widening the curb-cut. Either one of these or both of these could be imposed by the Zoning Board of Appeals in granting approval of the proposed conditional use permit.
- F. *The length of time that the property has been vacant as zoned considered in the context of land development.* He did not feel that this applied one way or the other to the proposed case because the property has not been vacant. It has been used as a duplex pretty much continuously for 20 plus years.
- G. *Any other considerations about the degree of care that the community has taken to plan its land use development and evidence of the community need for the proposed use.* The Downtown to Campus Plan suggests a high degree of care by the community, but he feels the proposed property and the use they are requesting meshes perfectly with the Downtown to Campus Plan. The duplex use is a very good use of housing as a transition.
3. *Blazer v. St. Clair County*, 209 Ill.App. 3d 928.

This case talks about the validity of a zoning ordinance in total when looking at a special use permit, variance or something of that nature.

Mr. Myers stated that he was surprised in Mr. Webber's presentation. Mr. Myers understood his argument to be that the property is being used as a duplex, and that by denying a conditional use permit for a duplex the City would be lowering his client's property values. He is surprised

because in the judge's court order, to which Illinois Properties stipulated and agreed, that [reading] "*The subject property is a single-family residence. It is properly zoned as a single-family residence and shall not be converted or modified in anyway or anything other than a single-family residence unless or until the property is granted a conditional use permit or otherwise legally rezoned by the City of Urbana.*" If the petitioner agreed with the judge that the property is a single-family residence, then how by denying the conditional use permit would the property's value be lowered?

Mr. Webber responded that there are two competing concepts there whether it is legally a duplex or whether it is practically a duplex. The City can say that a building that has separate entrances and any adjoining doors can be locked is not a duplex even if there are two kitchens and two complete sets of households, but as a practical matter that is a duplex. It is not legally a duplex until the City issues occupancy permits and other documentation that acknowledge its stature as a duplex. When there is a lawsuit pending and you have a choice of entering into an agreement that resolves the case with a fine and be given the opportunity to request from the City the legal stature to be placed on the property that you purchased the property believing it to be already, do you take that agreement and try to get the legal approval? Or do you roll the dice with the judge and run the risk of paying a daily fine for the last three years?

Ms. Uchtmann understood Mr. Myers' concern to be that for many years, the property owner has known that to have a conforming duplex, he must provide a separate heating/cooling system and a separate electrical system. Since the property owner refused to separate these two systems, then he knew that the property was considered by the City to be a single-family residence, because it did not meet the code for a duplex. Mr. Myers explained that there is a definition for duplex in terms of zoning and in terms of building code. Any duplex would need to comply with both definitions.

Mr. Webber stated that the building appears to be a duplex with separate entrances and a common door that can be locked from both sides. Also, Mr. Baksa was told by the previous owner that it is a duplex. What was he to do? Investigate whether it is really a duplex or not because there are not two furnaces? Mr. Corten answered by saying that when he received one bill for the electric/gas services and one bill from the water company, then he should have known it was a single-family residence. Mr. Webber argued that in the past there have been apartment buildings with 8, 10 or 20 units where utilities are included in the rent. There is one bill that gets sent to the landlord. Does that make it a single-family residence? So there are many factors that could lead one to believe that the proposed property is a duplex. Mr. Baksa believed it to be a duplex when he purchased it.

Peter Baksa, owner of 802 West Iowa Street, stated that he purchased the proposed property in the mid 1980s when he was attending the University of Illinois and was working on his Masters degree. He lived in the unit on the west side and rented out the unit on the east side. If you look at the floor plan, it is a duplex floor plan. The property is taxed by the County as being a duplex. He has been using it as a duplex. He said that he is willing to do any work that the Zoning Board of Appeals requests him to do in order to bring the property up to code. He turned management of the property over to Ramshaw Real Estate. They are directed to cooperate with the City, to

take care of the residents, and to take care of the property. There is funding available to make any necessary changes.

Chairman Armstrong asked if anyone in the audience, beginning in the front row, wished to speak about this case.

Muriel Scheinman, 907 South Busey Avenue, said that she lives next door to the proposed property. She has lived there since 1964 and has learned that high density and more people can have a negative impact on neighboring properties, and that zoning restrictions on occupancy are important. She expressed her concern with the owner's continued illegal over-occupancy under Urbana's zoning regulations. Since 2000, the City notified the property owner many times that the property had been rezoned in 1991 from R-4 to R-2 and was clearly a "single-family residence" and not a duplex and that a conditional use permit was required to allow a duplex to be established.

Over the years, the house has had insufficient parking spaces. Sometimes the vehicles block the sidewalk so pedestrians have to walk around them. The property has always been over occupied with anywhere from five to eight people living there at any one time. The City has documentation to verify this. Moreover she is concerned about the precedent this case will establish if the conditional use permit is granted.

Mr. Warmbrunn inquired as to whether the Zoning Board of Appeals is to be concerned with and take into consideration what happened in 1991. Or are they only to be concerned about 2008? Mr. Myers replied that the essential question is what should this building be in the future? Should it be a single-family residence or a duplex? Either way the property owner will need to comply with City code. Although the past has bearing as background information, he did not feel that it should determine how the Zoning Board of Appeals should decide.

Acting Chair Armstrong requested that the audience limit the amount of history they offer and mainly focus on the present condition of the duplex and its impact on the neighborhood.

Georgia Paquin, 1006 South Busey Avenue, lives within 250 feet the proposed property. She prefers to keep the use of the proposed site as single-family residential. When she purchased her house five years ago she understood the proposed property to be a single-family dwelling.

Joanne Chester, Cunningham Township Assessor, addressed the board. She clarified that when Mr. Webber stated that the petitioner pays duplex taxes on the property, he was referring to the Property Code. She recalled that it was changed from single-family residential to duplex in 1992. This coding is irrelevant to how her office assesses the property. The property has been assessed as a single-family house with one additional bathroom. She remembers seeing two permits for additions in 1987 and 1988 or 1989. The permit was for an addition to a single-family house. She explained that there is really no difference in the way that a single-family house and a duplex are assessed except for added fixtures. She believes that in this neighborhood, the highest and best use of property is a single-family residence. Contrary to what Mr. Webber testified, if you have two similar buildings in size, and one is a house and the other a duplex, the house will sell for a higher price.

Shirley Stillinger, 1003 South Busey Avenue, contacted the daughter of the previous owner, who was Professor Yapp, to find out how the house was used prior to Mr. Baksa purchasing it. Annette Yapp told her that she does not remember the house being used as a duplex. She remembered there only being one kitchen. There were two rooms, one at each end of the building, that were rented to students. The renters were not allowed to use the kitchen. So, to say that the property had been a duplex before and to use it as the reason for continuing to use it as a duplex would take a lot more proof. In looking around the neighborhood, the R-5 and R-7 zoned properties are along Lincoln Avenue. The single-family zoned residences begin on Busey Avenue and go east. Therefore she is opposed to the Zoning Board of Appeals granting the request for a conditional use permit.

Esther Patt, 706 South Coler Avenue, lives within three blocks of the proposed property. She pointed out that the Zoning Ordinance says that the R-2 Zoning District is also intended to provide for a limited portion of two-family dwellings. The real question before the Zoning Board of Appeals is how many single-family homes in this neighborhood are to be converted into duplexes. Regarding parking, if the proposed property is used as a single-family home and four people live in it, whether they are related or not, every owner of the vehicles in the driveway and garage live in the same household and will have access to each other's keys. If the proposed property is used as a duplex, then it means that the tenants live in two units and do not have access to each other's keys. Someone will have to move their car that is parked behind the garage in order for anyone else to be able to get out.

She continued that duplex means that no more than four unrelated people can live in each unit and no more than eight people living in the building at one time. On May 11, 2004, the Daily Illini advertised the property as such, "*802 Iowa, Urbana. Newly renovated architect's home. Group House. Jet spa, hot tub, Rent \$2,350.00*". This proves that the property owner was advertising the property as a group house and not as a duplex. In the fall of 2007, there was a flashy flyer inserted in every newspaper of the Daily Illini for one day. The flyer states, "*802 West Iowa, Urbana, Illinois. 2 or 6 person residence.*" What is a 6-person residence? It is an over-occupied single-family home. Today she went to Ramshaw Real Estate's website and found listed under Houses (not duplexes or apartments) was 802 West Iowa Street. She clicked on the link, and the website describes the property as having 4+ bedrooms. 4+ is the code word that property owners use to describe their rental properties to let larger groups know that they are willing to rent to the entire group even though it is illegal to rent to more than four unrelated people.

The one lawsuit that Mr. Webber did not mention that she feels is more relevant is the lawsuit filed by Howard Wakeland against the City of Urbana. He bought a property in 1998 located at 807 West Main Street. His property was also zoned R-4 when he bought it although the structure on it was a single-family home. The Downtown to Campus Plan down zoned his property along with many other properties, including 802 West Iowa Street, to R-2. Mr. Wakeland applied for a zoning map amendment, which was denied. He then filed a lawsuit against the City of Urbana. The Circuit Court ruled in favor of the City saying that the fact it was zoned R-4 in 1988 was irrelevant because cities have the right to down zone for the purpose of protecting single-family homes and neighborhoods. Mr. Wakeland was not happy with this

decision so he appealed it to the Appellate Court, and they ruled that the City and the Circuit Court were right.

She feels that the Zoning Board of Appeals should have some reason to grant a permit to change a single-family home to duplex other than because the petitioner wants it. There needs to be something special about the property to make it appropriate, especially when the Zoning Ordinance calls for a limited portion of two-family dwellings. As the petitioner's representative pointed out, there are already a lot more than just a few in the neighborhood. The Comprehensive Plan states that the City should "*preserve the uses in the Lincoln-Busey corridor as they now exist while precluding further encroachment of higher density buildings into this unique residential area*". Conversion to a duplex use will have two major negative impacts, which are 1) increasing population density, which means more vehicles and more noise and 2) it makes it more economical for people who want income property to purchase owner-occupied, single-family homes and turn them into rentals, which destabilizes the single-family nature of the neighborhood. She encouraged the Zoning Board of Appeals to deny the proposed conditional use permit.

Charles Dold, 708 South Busey Avenue, read a letter that he prepared in opposition of the proposed conditional use permit. The letter noted the quality of the neighborhood and about his family. In the letter, he stated that he and his wife are opposed to the proposed use.

Danny Otto, 405 West Illinois Street, wanted to point out three facts. First, it is the buyer's duty to know matters of public record. The zoning of the house was a matter of public record when Mr. Baksa purchased it. The down zoning and the repeated notifications of violations were also matters of public record. So ignorance of the house's legal status is no excuse. The second fact is the issue of density. The Comprehensive Plan states that changes should not result in increased density in the Lincoln-Busey corridor. The petitioner is asking to double the density on his property. Rental housing affects the character of the neighborhood. It is a matter of life. He also hopes that the Zoning Board of Appeals does not feel threatened by Mr. Webber's mention of the three lawsuits. If they do then there is no point in having a Zoning Ordinance and we might as all well quit.

Georgia Morgan, 804 West Nevada Street, urged the Zoning Board of Appeals to deny the request. To grant it would be contrary to the intent of the Downtown to Campus Plan and the Comprehensive Plan. The property is zoned R-2, Single-Family Residential. It is in a very stable residential area. Many of the owner-occupied homes have been occupied by their present owners for decades. Converting 802 West Iowa Street increases its contribution to neighborhood density and automobile traffic by 100%. Although it is convenient to walk to campus from this area, the tenants will still have cars even if they are students because it is inconvenient to walk to places like the grocery store. This location is not suitable for a duplex use. Again she urged the Zoning Board of Appeals to deny the request.

Michael Plewa, 708 West Iowa Street, mentioned that he lives about a block away from the proposed property. He has noticed the property several times because of the noise and of the parking. The property has been out of compliance for decades even after the City brought it to the owner's attention. It is out of compliance with the Downtown to Campus Plan or the 2005

Comprehensive Plan. He spoke about the award that the West Urbana Neighborhood received from the American Planning Society for being one of ten best neighborhoods to live in the nation. That recognition is due to the efforts of the people in the audience and in the neighborhood. He mentioned that he walks back and forth to work. The students do not walk back and forth. Look at the streets today when school is out; and then, look at the streets in September. There is a big difference. It is the job of the Zoning Board of Appeals to protect the reputation of the West Urbana Neighborhood. Does the Zoning Board of Appeals want to be the instrument that continues these types of honors or do they want to be the instrument that removes these honors? So he strongly appealed that the Zoning Board of Appeals reject the request.

Susan Frobish, 809 West Delaware Avenue, stated that she is a realtor. She showed an illustration of the intersection of West Iowa Street and South Busey Avenue. There are already more multi-family properties than single-family properties in this area. She stated that she has listed for sale the property located on the southeast corner of the intersection of West Iowa Street and South Busey Avenue. She has had three families looking for a large house to purchase. Each family walked away because they were afraid of what was happening in the immediate area with all of the multi-family housing. If the house she has for sale would be located one block east it would probably be a \$500,000 home. The proposed duplex is hurting the ability to sell the house on the adjacent corner and hurting its property value. She asked the Zoning Board of Appeals to deny this application.

Mr. Corten asked if she believes that the property at 802 West Iowa Street is not well maintained because it is not owner-occupied. Ms. Frobish replied that in this case, yes. The exterior of the building needs paint. The fence is falling apart. The bushes are overgrown. The tenants are parking on non-approved surfaces. Parking on the street during the school year is impossible because of the students. During the summer there are not as many vehicles parked on the street. If the petitioner would fix the house up as a single-family house, it would be worth much more than its value is as an income property. She noted that before Mr. Baksa purchased the home, it was advertised for sale under single-family home rather than as a duplex.

Mr. Myers asked what the address is of the property for sale. Ms. Frobish replied 1002 South Busey Avenue. Mr. Myers inquired how she knew the reason the potential buyers did not purchase 1002 S. Busey because of 802 W Iowa. Ms. Frobish answered that the clients she showed the house to said they were afraid to live there because they thought it might be noisy because of the students living across the street.

Lee Melhado, of 612 West Ohio Street, commented that she either walks or rides her bicycle past the proposed site almost every day. For the last 10 to 15 years, repair on the existing structure is one of the worst in the whole neighborhood. There is trash in the yard. The maintenance of the lawn and the bushes is very poor. The fence appears to be falling over. They do not shovel the snow on the sidewalks which causes neighbors to have to walk on the street. She is amused by the fact that because Mr. Baksa has been illegally using the proposed property as a duplex for a long time, then that is his reason for why he should continue to use it as a duplex. Therefore, she strongly urged the Zoning Board of Appeals to deny the request.

Lisa Treul, 714 West Iowa Street, stated that she believes and trusts in the wisdom of the Comprehensive Plan. It gives her the trust that the value of her single-family home will not decrease. She is saddened to hear that her neighbors at 1002 South Busey Avenue are having a difficult time selling their home. She then read a letter from one of her neighbors, Debbie Ghrist, who lives at 1002 South Busey Avenue. Ms. Treul commented that if everyone gets granted a conditional use permit for a duplex, then let's throw out the zoning because what is the point of it. Her family has purchased three homes in the area on the trust and promise of the zoning. Duplexes are allowed on the granting of a conditional use permit, not just because someone wanted it because it would bring more income to a property.

She said that the proposed use is not designed and to be operated so that it does not have an injurious and detrimental effect on the district. The duplex next door to her property was built by the family that built her home. They built it for their mother and her caregiver many years ago and it is grandfathered in. It is a different situation to grandfather a duplex in versus granting a conditional use permit. It is not respectful of how she reads the Comprehensive Plan. So she asked the Zoning Board of Appeals to deny the request.

Ms. Treul also submitted two letters opposing the request, the one she read from Debbie Ghrist and one from Phillip and Sonia Newmark. She also submitted a petition in opposition signed by 45 neighbors.

Kate Hunter, 510 West Oregon Street, stated that she grew up in the City of Urbana and has seen a lot of change in the town. Most of her concerns have already been addressed by previous speakers. Many of the problems that they face in the neighborhood now are because there was a period of time in Urbana where zoning was totally disregarded. No one paid attention, and she feels that we are paying the consequences now. She feels it is time to draw the line, go back and look at what the City has decided and stick to it.

Carolyn Baxley, 510 West Main Street, spoke as a former Urbana Plan Commission member. She was on the Plan Commission at the time when the Downtown to Campus Plan was drafted. At the time, the West Urbana Neighborhood was studied intensely, and it was very clear that the neighborhood, especially along the Lincoln-Busey corridor and adjacent blocks, were on the brink of collapse. It was rapidly being converted from single-family homes to rental housing that were being poorly maintained. Single-family property owners in the area were desperate. They came to the City and begged us to do something about it. The City came up with the Downtown to Campus Plan and felt it was fair to everyone.

So now the Zoning Board needs to uphold the Zoning Ordinance and the Comprehensive Plan. To do that the Board will need to deny the proposed request. City staff has done a great job of making their recommendations and have given the Zoning Board the reasons why they need to deny the request, and she asked that the Zoning Board follow the City staff's recommendations.

Mr. Corten stated that this neighborhood is in transition and will continue to be in transition over the next 50 years because the University of Illinois continues to grow. As the University continues to grow this will continue to be a problem. He wondered if this was taken into consideration by the Plan Commission when they originally reviewed the Downtown to Campus

Plan. Ms. Baxley replied that the Comprehensive Plan gets reviewed every so often. Since the Downtown to Campus Plan, she believes the area east of Lincoln Avenue is sacrosanct. This area is our most vital and historic neighborhood. Mr. Corten stated that he agrees with this at the moment. However, 50 years ago this was not a problem. In another 50 years he believes that the University of Illinois will have taken over a lot of the property that we are talking about. Ms. Baxley remarked that she did not agree.

Mr. Welch commented that this is a valid question. The point that Mr. Corten is making is that the very location is what causes the problem. When studying the Downtown to Campus Area prior to adopting the plan, there was a desire to balance and be fair to everyone, and this is part of what he believes is driving the proposed request because what is proposed is allowed if a conditional use permit is approved. It is not prohibited. So in balancing this, the neighborhood has the competing interests of someone's desire to make money, which is allowed.

As Mr. Corten said it is a valid concern when the population of the University of Illinois was considerably smaller 20 years ago. The University campus butts up to the West Urbana neighborhood. It is an issue because the location drives the problem. Ms. Baxley said it is an issue but the Zoning Board of Appeals should be governed by the Comprehensive Plan. Mr. Welch replied that the Zoning Board never said that they would not use the Comprehensive Plan to guide them in their decision.

Ms. Baxley remarked that it seems that the Zoning Board of Appeals is playing devil's advocate. Mr. Welch responded that it is part of their role because the members of the Zoning Board of Appeals should not come to the meeting with their minds already made up.

Ms. Baxley reiterated that the Zoning Board of Appeals needs to follow the recommendation of the Comprehensive Plan. Mr. Welch stated that the Comprehensive Plan may say that the area is designated to be single-family residential, but that does not prohibit what is being proposed. Ms. Baxley commented that as Ms. Frobish stated what is at stake here is a balance. There are already a lot of other properties in the area that are still causing pressure on this very fragile area. If the City allows another property of that nature then it creates even more pressure.

She pointed out that there is nowhere to park on the streets now. Heaven help the single-family owners if they have a guest come over because there is no where to park. So if the tenants at the proposed duplex cannot park all of their vehicles in the driveway then they will have to park on the street. The neighborhood is already under pressure as it has been for years.

Mr. Welch stated that it will continue to be under pressure. Ms. Baxley noted that the Comprehensive Plan is trying to reverse it though. Mr. Welch replied that it left a loop hole that the Zoning Board of Appeals has to look at. They cannot just say no. They need to have a reason. Ms. Baxley commented that City staff has given the Zoning Board the reason to deny the case. She urged the Zoning Board to look at the reasons and to listen to the City staff.

Huseyin Schitoglu, 805 West Michigan Avenue, mentioned that he has lived in the West Michigan Avenue area for 20 years. When he first moved there, the area was zoned R-2. It never occurred to him that there would be a discussion about this being a transitional or buffer

area. It did not occur to him to think this would be possible because there were families living to the left and right of his property. When he sees single-family homes converted to boarding or rooming houses, he is saddened. These homes are not well maintained. By approving the request for a duplex, it does not help the character of the neighborhood. So he urged the Zoning Board of Appeals to deny this petition.

Glenn Berman, 611 West Washington Street, stated that he worked for the City of Urbana for approximately 25 years. He was involved in a number of discussions and meetings that involved the University of Illinois and their expansion plans and their continued absorption of tax producing property for the City. Although he did not believe that there were any explicit formal agreements in place, he recalled that there are meeting minutes and memoranda where the University clearly agreed that Lincoln Avenue is the line in the sand. They agreed to not expand east of Lincoln Avenue. If they keep this agreement, then the only thing that can change the West Urbana neighborhood would be land use changes. So he did not share Mr. Corten's vision into the future that there will be a tidal wave that cannot be dammed that will slowly eat away at the neighborhood. He believes the only thing that can compromise the neighborhood is the Zoning Board of Appeals interpretation of the Comprehensive Plan.

Paul Debevec, 708 West California Avenue, stated that when he looks at Urbana and Champaign, he notices that the most dramatic change in regards of housing of graduate and under-graduate students are the extremely large apartment buildings that are being constructed. In fact there are a considerable number of rental properties located on his block. Three of them currently have "for rent" signs on them. The question of which direction properties will be going is a very open matter. Somebody is going to occupy those 10, 15 and 20-story buildings, which have wonderful amenities.

The other matter is the question about the appropriateness of granting a conditional use permit simply to make more money from a property. He tried to research if there is a document that actually describes the basis on which the Zoning Board of Appeals makes a decision. He could not find one. Many cities have such a document, and some of them speak to some part of the Illinois code. Many of those communities have in their Zoning of Appeals manuals/documents a phrase that reads as such, "*the purpose of the variance cannot be granted solely/exclusively on the desire to make money off a property*". So in fact, this should not be the Urbana Zoning Board of Appeals consideration. What should be their consideration is the rezoning of 1991 from R-4 to R-2 and the 2005 Comprehensive Plan.

Audrey Fisher, 902 South Orchard Street, expressed her concern about balance in the area. She has an understanding of the Lincoln-Busey corridor as being high density on Lincoln Avenue with the buffering away from it on Busey Avenue facing into the lower density residential neighborhood. The proposed corner is of concern because it already has a rooming house located on it. Her fear is that the next block is so long that if the 800 Block starts becoming the transitional zone instead of the Lincoln-Busey corridor for high density to single-family residential, then that includes half of the neighborhood that the residents are trying to protect. Our country was founded on certain rights. It seems like in the last few years it has been very popular to see it as a right that making the most money out of an opportunity is your right regardless of environmental and social costs. She mentioned that she is life-long resident of the

City of Urbana, and one thing she likes is the sense of balance. Being able to preserve this jewel of a neighborhood, close and walkable to the University of Illinois, for people who appreciate the bikeable, walkable location and be able to enjoy the family atmosphere is very special, and she hopes it will be preserved. She is concerned about the weight of adding in a new duplex, not a grandfathered duplex at the proposed location facing in towards the single-family neighborhood.

With no one else wishing to speak on this case, Acting Chairperson Armstrong asked if the petitioner would like to respond or clarify anything.

Mr. Webber said that one of the great things about this country is people's rights to use properties. He agrees with all of what Ms. Fisher said, except there is a factor that is not completely explained. One of the things about this country is that if someone owns property, then it is their property. A property owner can do with their property as he/she sees fit unless the governmental body that controls zoning has a very good reason to restrict the property owner's right. The fact that neighbors do not like what a property owner wants to do with his/her property is not enough. If the neighbors can actually prove that the use will actually decrease their property values, then that is one of the six factors that the Zoning Board of Appeals is to considered. If you are going to limit Mr. Baksa's property rights, then there needs to be valid reasons that bear on the overall plan.

With no further comments or questions from the public audience, Acting Chair Armstrong closed the public input portion of the hearing. He then opened the hearing up for discussion and motion(s) by the Zoning Board of Appeals.

Mr. Corten moved that the Zoning Board of Appeals deny Case Number ZBA-2008-C-01. He feels the City needs to keep slowing down the rate at which these properties change. We need to keep it under control at this point so that people continue to live in the area.

Acting Chair Armstrong suggested that they include a reason as part of the motion. Ms. Uchtmann suggested that one reason is because a duplex use will diminish the surrounding property values of the surrounding single-family homes.

Mr. Corten added to his motion that the reason for denying the proposed case is to follow the recommendations in the Downtown to Campus Plan. Acting Chair Armstrong asked if he meant that by denying the proposed case it would keep the property within conformance of the redevelopment plan for the area. Mr. Corten agreed. Ms. Uchtmann seconded the motion.

Mr. Warmbrunn asked if Mr. Corten's motion to deny the proposed case included City staff's reasons, which are because of the insufficient space to intensify the use of the property and because of the substandard parking and access. Mr. Corten replied that parking is one of the big reasons, and also because the number of students in the area is making it less attractive to single-families that live in the area. He would like to slow this whole process down as much as possible.

Mr. Welch recommended that they rephrase the motion to say, “The Zoning Board of Appeals denies Case Number ZBA-2008-C-01 based on the fact that the proposed development, while consistent with the 2005 Comprehensive Plan, is in the opinion of the Zoning Board of Appeals not appropriate at this particular site, because it would over-intensify the use of an already over-built site.” Mr. Corten, as the motion maker, and Ms. Uchtmann, as the seconder, agreed with Mr. Welch’s suggested rewording of the motion.

With no further discussion or comments, a roll call vote on the motion was taken and was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion to deny was approved by unanimous vote.

Acting Chair Armstrong proposed a short recess prior to moving on to the next case. With approval of the members of the Zoning Board of Appeals, the meeting recessed at 10:06 p.m. The meeting was re-convened at 10:19 p.m.

ZBA-2008-MAJ-06: A request by Steve Bantz for a major variance to allow vehicles to back out onto a public street at 202 North Coler Avenue in the City’s R-4, Medium Density Multiple Family Residential Zoning District.

ZBA-2008-MAJ-08: A request by Steve Bantz for a major variance to allow parking to encroach 100% into the required front yard at 202 North Coler Avenue in the City’s R-4, Medium Density Multiple-Family Residential Zoning District.

Acting Chair Armstrong stated that City staff would present both of these cases at the same time since they were regarding the same property. However, the Zoning Board would vote on the two cases separately.

Robert Myers, Planning Manager, began his presentation by noting the zoning of the proposed property, which is R-4, Medium-Density Multiple Family Residential Zoning District. Apartments are allowed by right but must comply with all development requirements. In this case there are currently five units on the property, and the property owner is trying to bring one of the units into compliance. The proposed two major variance requests are to allow parking in a required front yard and to allow vehicles to back out onto a public street. The Zoning Ordinance allows both of these for a single-family home or duplex but not for apartments.

He pointed out that if the Zoning Board of Appeals were to deny these two cases, it would not change the fact that there are five units, and there would still be a demand for parking for the proposed property. The property has no rear or side yard areas so parking can’t be accommodated there. So where are tenants to park? Their options are to park in the street, off-site, or on-site. Although there is a concrete pad in front, it is located in the required front-yard setback. If the property were a single-family or duplex residence, then the residents would be

allowed by right to park in a driveway in the front-yard setback, but because it is an apartment building, the tenants are not allowed to do so..

Mr. Myers mentioned a previous variance approved for this property which allowed them to park two cars off-site elsewhere. The lease for these two off-site parking spaces is expired, and now the petitioner is applying for a separate variance to allow parking on the existing concrete pad in the front-yard setback. If the request is denied, then the petitioner would need to either block off the parking pad or put up some sort of physical barrier to prevent people from parking there.

He reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance pertaining to these two cases. He noted that the petitioner was not present at the meeting; however, there are people in the audience who wished to speak.

Mr. Warmbrunn inquired if the garage existed in 1984. Mr. Myers answered yes. Mr. Warmbrunn stated that it seems that the illegally-converted garage is the main problem here. There never was enough on-site parking at this location. It has always been a problem. He wondered if cars parked on the street across Coler Avenue would be a problem for tenants being able to back straight out. Mr. Myers said that may be a possibility.

Mr. Warmbrunn questioned whether the petitioner has ever come before the City asking for permission to park somewhere else. Mr. Myers said that the previously approved variance request granted the tenants permission to park off-site.

Mr. Warmbrunn asked how wide the driveway and concrete pad are in total feet. Is there the required 22-foot length per parking space? Mr. Myers said that he did not know the length of each stall. If the Zoning Board of Appeals feels that they need this information, then they could continue the case until a future date and City staff would supply this information. Acting Chair Armstrong pointed out that Exhibit E: Proposed Parking Plan indicates that there is 26 feet from the sidewalk to the garage. Presumably there is enough depth to park vehicles. Mr. Corten noticed that it did not show the width of the driveway and concrete pad though.

Mr. Welch wondered if City staff expected the petitioner to not attend the meeting. City staff said no, it was not expected. Mr. Warmbrunn asked if City staff knew whether the petitioner had been there but left due to the lateness of the hour. Mr. Myers answered that he looked earlier but did not see the petitioner in the audience.

Ms. Uchtmann questioned if the parking pad was illegal. Was there a permit issued for the pad? Mr. Myers responded that the concrete pad is not illegal. Until recently the City has not required a permit to pour a concrete pad, for parking or otherwise.

Danny Otto, 405 West Illinois, opposes this request. He feels that the Zoning Board of Appeals needs to take a look at what was done in 1984. The petitioner had asked for a variance to get an occupancy permit for four units. The only way to do this was to lease off-site parking spaces, because it was a condition of the variance. No one was in place to enforce whether the petitioner maintained these leases. This is a matter of public record, and the petitioner in the proposed case is assumed to know that. So right now the property owner is out of compliance. One could now

argue that this is a single-family residence. City staff presented this property as being apartments. It is true that the zoning would allow more density, but the apartments in question are on the north side and the east side, where the tenants cannot see the amount of parking in front of their building. All of the homes across the street are currently zoned single-family residences look out and see a parking lot. The City has been promising to help upgrade these neighborhoods. We simply cannot turn front yards into parking lots. The owners of rental properties must simply learn to deal with parking in the neighborhood.

Although City staff recommended approval of the proposed major variance requests, he urged the Zoning Board of Appeals to deny both requests. He reviewed the variance criteria and gave his opinion about each one, which is as follows:

1. The special circumstances were there in 1984. That is why in 1984 the Zoning Board of Appeals granted the variance request with the condition that the owner must find off-site parking spaces.
2. The property is out of compliance. Everything mentioned in the written staff report was true in 1984 so the owner needs to follow what was determined in 1984.
3. Variances go to the property, not to the petitioner. Therefore, one could say that the petitioner did create the problem; albeit, the petitioner is the land owner. The petitioner did create the problem when they converted it to a four-unit building.
4. It is a question of judgment whether front-yard parking will alter the character of the neighborhood. He feels that it does.
5. He feels it is a nuisance to see a parking lot in front of the apartment building.

He believes this would set a bad precedent. The answer to the petitioner is to either convert the garage back to its intended use or provide 2 leased parking spaces.

Steve Ross, of 609 West Green Street, spoke against the request. He stated that Mr. Otto had already expressed many of his points and concerns. One additional comment is that the special privilege is due to the illegal conversion of the garage into an additional apartment unit. This, along with the petitioner not continuing to lease the two off-site parking spaces, are the real reasons for the parking problems. He urged the Zoning Board of Appeals to deny the two requests because it would set a bad precedent. He is worried about land owners closer to his neighborhood wanting to get variances for the same reason.

With no further questions or comments, Acting Chair Armstrong closed the public input portion of the hearing. He opened the hearing up for discussion and motion(s) by the Zoning Board of Appeals.

Ms. Uchtmann moved that the Zoning Board of Appeals deny Case No. ZBA-2008-MAJ-08 because the Zoning Board of Appeals wants to uphold the previous variance requirement as set forth in 1984. Mr. Corten seconded the motion.

Mr. Welch proposed that absent knowing why the petitioner was not present at the meeting that the Zoning Board of Appeals should table the vote. They would not be giving the petitioner either approval or disapproval. The petitioner cannot do anything legally unless the Zoning

Board of Appeals and then the City Council approve the variance requests. After being renoticed, if the petitioner does not appear, then he would not have a problem voting. He feels that if they do not know why the petitioner is not present, then they should afford the petitioner another opportunity to have his voice heard. Mr. Corten agreed with Mr. Welch.

Ms. Uchtmann commented that the petitioner has already stated his reasons in the written petition/application. Mr. Welch said yes, but the Zoning Board of Appeals affords as part of the process an opportunity for the petitioner to appear. He does not see any harm in tabling the vote, especially since the petitioner did not inform City staff that they would not be appearing.

Ms. Uchtmann removed her motion from the table. Mr. Welch, then, moved that the Zoning Board of Appeals continue this case to the next meeting to allow the petitioner an opportunity to appear and speak in favor of their two major variance requests (Case No. ZBA-2008-MAJ-06 and Case No. ZBA-2008-MAJ-08). Mr. Corten seconded the motion. The Zoning Board of Appeals approved the motion by unanimous voice vote.

Mr. Myers announced that the next Zoning Board of Appeals meeting is scheduled for June 11, 2008.

ZBA-2008-MAJ-07: A request by Marc and Fran Ansel for a major variance to reduce the required front-yard setback to allow for the construction of a garage at 102 West Pennsylvania Avenue in the R-2, Single-Family Residential Zoning District.

Rebecca Bird presented this case to the Zoning Board of Appeals. The petitioners are requesting the variance so that in replacing a deteriorating garage, a large Bald Cypress tree located close to the existing garage will be protected. Ms. Bird presented site photographs to the Commission.

Ms. Bird explained that Bald Cypress trees are uncommon this far north. The City Arborist has examined the tree and reported that it is one of the most significant trees in the neighborhood, if not in the community. The petitioners' own arborist states that it is one of the oldest and tallest Bald Cypress trees in Champaign County.

She reviewed the location of the existing garage as well as the location of the proposed replacement garage. The petitioners would like to move the garage three feet to help protect the tree. They are also planning to pour the concrete pad for the new garage over the existing concrete pad in order to minimize digging and root damage.

To both avoid the tree and construct a standard-sized garage, the petitioners plan to extend the new garage closer to Broadway Avenue than the existing garage. At 82 feet, the right-of-way for Broadway Avenue is unusually wide. Sixty feet is the standard right-of-way width for new streets. This additional right-of-way provides additional setback distance between the street and the homes not found on other streets.

Ms. Bird reviewed the variance criteria from Section XI-3 of the Urbana Zoning Ordinance. She then read the options of the Zoning Board of Appeals and presented staff's recommendation, which is as follows:

Based on the analysis and findings presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommends that the Zoning Board of Appeals forward major variance Case No. ZBA-2008-MAJ-07 to the Urbana City Council with a recommendation for approval with the following conditions:

- 1. The garage shall be constructed in general conformance to the site plan layout submitted as part of the application.*
- 2. The existing garage foundation shall be re-used and incorporated into the new foundation. The Building Safety Division will work with the petitioners to accomplish this.*
- 3. The petitioners shall work with their professional arborist or with the City Arborist to ensure damage to the tree is minimized.*

Mr. Corten asked for clarification on Condition #2. Ms. Bird replied that the petitioners have agreed to reuse the existing garage foundation which shows their commitment to preserve the tree. The Building Safety Division told the petitioners that they could use the existing pad, pour concrete above it to get the eight inches required for the footing, and then slope the driveway up to the garage.

The Acting Chairman provided an opportunity for the petitioners to present any information.

Marc Ansel, petitioner, stated that he and his wife had taken their time in filling out the application to ensure that it contained everything they wanted. They have worked closely with City staff. He felt that what City staff had presented to the Zoning Board of Appeals represents pretty much how he and his wife feel. They would love to preserve the tree but they are cornered in with the space available to them. Given the large setback that Broadway Avenue has and the fact that their lot is a corner lot, they have to deal with two front-yard setbacks. If they are going to save the tree they have no choice but to build the new garage a few feet closer Broadway Avenue.

Mr. Corten noticed that the front property line is right by the edge of the proposed new garage. The driveway will be in the right-of-way, which is owned by the City. Will this cause any problems with City codes? Mr. Ansel stated that they plan to use the same driveway that already exists and that driveways typically cross City property.

Ms. Bird pointed out that from the street it appears as if there is a deep setback. However, both the existing and new garages are very close to the property lines.

The Chairman asked if anyone else in the audience wished to speak on this case, either for or against. No one did so.

Mr. Warmbrunn moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-07 to the Urbana City Council with a recommendation for approval along with the three conditions outlined in the written staff report. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion was approved by unanimous vote.

ZBA-2008-MIN-01: A request by Maruti Gagan Management, LLC for a minor variance to erect a freestanding sign of 80 square feet in area rather than the maximum 75 square feet allowed by Table IX-1 of the Urbana Zoning Ordinance at 1708 South Philo Road in the B-3, General Business Zoning District.

Robert Myers, Planning Manager, presented this case to the Zoning Board of Appeals. He noted the location for the proposed sign, which is at the old Centure Bank location. He stated the purpose of the minor variance, which is to erect a freestanding sign of 80 square feet in area. The Zoning Ordinance allows a 75 square foot sign. There are two elements to the proposed sign. One element is the round “Burger King” logo, which is proposed to be 8 feet in diameter. The second element is a lower portion, which is a rectangular reader board that is 24 feet in area. He explained that if you take these two elements separately and add their areas, they equal less than the 75 square feet that would be allowed by right. In this case, the Zoning Ordinance measures the gap/air space between these two elements.

The issue is that the applicant is applying for a franchise from the corporate Burger King. They do not have an infinite number of sizes of logo signs. They have an 8 foot diameter and a 5 foot diameter. Burger King will not agree to the franchise with a 5-foot logo sign. If the reader board is smaller, then they cannot offer meaningful messages because the lettering can only be so small.

Mr. Myers reviewed the variance criteria from Section XI-3.C.2 of the Urbana Zoning Ordinance. He presented staff’s 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 recommends that the Urbana Zoning Board of Appeals approve the proposed minor variance with the following conditions:

- 1. That the sign shall substantially conform in geometry to the drawing submitted with the application.*
- 2. That the sign shall not exceed 81 square feet in area as measured by the Urbana Zoning Ordinance.*

Ms. Uchtmann wondered what the total height of the sign would be. Mr. Myers replied that the total height would be 25 feet above grade.

Mr. Corten inquired as to how the proposed sign would compare with McDonalds across the street. Mr. Myers stated that based on scaling from a photograph, the McDonalds sign is approximately 30 feet tall. Mr. Welch commented that he believes the Chinese restaurant sign next door to McDonalds is even taller.

Mr. Warmbrunn asked if the reader board is subject to the three-minute rule. Mr. Myers said yes. Mr. Warmbrunn questioned whether the petitioner would be able to get a complete sentence that is understandable on the reader board for three minutes. Mr. Myers replied yes.

With no further questions for the City staff, Acting Chair Armstrong opened the public hearing up for input from the audience.

Maruti Seth, petitioner, approached the Zoning Board of Appeals to answer any questions that the Zoning Board of Appeals may have. He mentioned that he owns a franchise of Burger King stores in Danville, Rantoul and Tuscola.

Mr. Corten commented that Mr. Seth would be filling in some area that the City of Urbana is attempting to redevelop. Mr. Seth replied that he is trying. He feels it will be a good site for a Burger King development with all of the apartment buildings behind it and a new Walgreen's store down the street.

With no further comments or questions from the audience, Acting Chair Armstrong closed the public input portion of the meeting. He opened it up for discussion and a motion by the Zoning Board of Appeals.

Mr. Corten moved that the Zoning Board of Appeals approve Case No. ZBA-2008-MIN-01 including the two conditions as recommended by the City staff. Ms. Uchtmann seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion was approved by unanimous vote.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Myers reported on the following topics:

- ◆ The Special Zoning Board of Appeals Meeting is scheduled for June 11, 2008 at 7:30 p.m. in the City Council Chambers.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 11:12 p.m.

Respectfully submitted,

Robert Myers, AICP, Secretary
Urbana Zoning Board of Appeals