MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: **October 15, 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, Anna Merritt, Joe Schoonover, Nancy Uchtmann, Charles Warmbrunn, Harvey Welch

MEMBERS EXCUSED There were none.

STAFF PRESENT Elizabeth Tyler, Director of Community Development Services Department; Robert Myers, Planning Manager; Lisa Karcher, Planner II; Rebecca Bird, CD Associate/Historic Preservation Planner; Teri Andel, Planning Secretary; Ron O'Neal, City Attorney

OTHERS PRESENT Brian Adams, Rich Cahill, Daniel Corkery, Tori Corkery, Scott Kunkel, Linda Lorenz, Georgia Morgan, Phillip Newmark, Michael Plewa, Steve Ross, Terrence Scudieri, Gail Taylor

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

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

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Mr. Warmbrunn moved that the Zoning Board of Appeals approve the minutes from the September 17, 2008 meeting as presented. Mr. Corten seconded the motion. The minutes were approved by unanimous voice vote.

4. WRITTEN COMMUNICATIONS

- Excerpt of a News-Gazette Listing of Building Permits regarding Case No. ZBA-2008-A-01
- E-mail from Fred & Louise Krauss regarding Case No. ZBA-2008-A-01
- E-mail from Betsey Cronan regarding Case No. ZBA-2008-A-01
- E-mail from Kate Hunter regarding Case No. ZBA-2008-A-01
- E-mail from Jo Kibbee regarding Case No. ZBA-2008-A-01
- E-mail from Robert Nemeth regarding Case No. ZBA-2008-A-01
- E-mail from Esther Patt regarding Case No. ZBA-2008-A-01
- E-mail from Joan Stolz regarding Case No. ZBA-2008-A-01
- E-mail from C. K. Gunsalus and Michael Walker regarding Case No. ZBA-2008-A-01
- Copy of Illinois State Statute 65 ILCS 5/11-13-12
- Copy of Affidavit of Glenn D. Beechy

Chair Merritt asked that anyone who might want to testify to please stand and raise their right hands. She then swore in members of the audience who wished to speak during either or both of the public hearings.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. NEW PUBLIC HEARINGS

ZBA-2008-MAJ-10: A major variance request by Phillip and Sonia Newmark to construct a detached accessory building less than 18 inches from the side-yard property line at 706 West Iowa Street in the R-2, Single-Family Residential Zoning District.

Lisa Karcher, Planner II, presented the staff report to the Zoning Board of Appeals. She began with a description of the proposed site and of the surrounding properties noting their current zoning, existing land uses and Comprehensive Plan designations. She talked about the purpose of the major variance request. She discussed the R-2 zoning regulations and presented a site plan to show the proximity of the garage to the west side-yard property line. She reviewed the criteria from Section XI-3 of the Urbana Zoning Ordinance that pertains to the proposed variance request. She read the options of the Zoning Board of Appeals and presented staff's recommendation.

Mr. Corten inquired as to whether there is a concrete floor in the existing garage. Ms. Karcher referred the question to the petitioner. She assumed that the petitioners would need to tear up the existing floor because they plan to expand the size of the structure. So, they would need to increase the floor as well.

Mr. Warmbrunn wondered if both the existing garage and shed would be torn down. Ms. Karcher said yes.

With no further questions for staff from the Zoning Board of Appeals members, Chair Merritt opened the hearing up for public input.

Phillip Newmark, petitioner, noted that when looking at Exhibit A, you can see that about 80% of the houses have garages on the property lines. These houses and garages were built before the 1950 R-2 Zoning Regulations went into affect. The lots are narrower than the current building codes require for an R-2 Zoning District. He feels it would completely change the character of the neighborhood to require property owners to move their garages over as they need to be replaced.

If they have to go through and replace every single one of these garages in the West Urbana Neighborhood and move them all 18 inches from the side-yard property line, then they would also be losing a massive amount of green space in the City of Urbana. He pointed out that he only plans to expand his garage by about one foot-five and a half inches, so he can preserve as much of his lawn as possible. If the City requires him to construct the garage 18 inches from the property line, then he feels that he will be losing an additional 18 inches of his usable yard space. This ends up being about 84 square feet of usable yard space that just disappears. Therefore, he does not feel it is unreasonable to rebuild the garage in its current location. Every one of his neighbors is in favor of what he is proposing. Frankly, he is surprised that the City has a problem with it, especially since the City of Urbana prides itself on being a green City.

Mr. Corten inquired if there was a concrete base in the existing garage. Mr. Newmark answered by saying that there is not a current base; however, there are concrete footings at the corners. The existing garage and shed are really unsound.

Mr. Schoonover questioned whether the roof would extend over onto the adjacent property. Mr. Newmark explained that he would like for the roof and the gutter to come to the property line. Ms. Karcher noted that City setback measurements for detached structures are from the eave of the structure to the property line, rather than from the wall to the property line.

Ms. Uchtmann ask how large the overhang would be. Mr. Newmark stated that he has not actually looked at the plans.

Mr. Schoonover asked if Mr. Newmark planned to put gutters on the west side of the proposed garage so rainwater would not runoff onto the neighbor's property. Mr. Newmark said that they had not talked about doing this, but he would be willing to do so if it makes a difference to anyone.

Mr. Welch commented that these types of properties that have garages or other structures constructed on the property lines would have to be one of the City's concerns. We would certainly hope that as these properties pass on that all of the neighbors would always be able to get along, but there is no guarantee of that. There is also a problem with having a fence and then having part of the demarcation for property being part of the neighbor's garage. There could be a small opening between the two, in which a pet or small child may be able to get through. Mr. Newmark replied that garages in the neighborhood were typically built on the property lines because the lots are so narrow. It strikes him amazing that there is not a rule in place to allow property owners access to their garages on neighboring properties to perform maintenance when they do not get along. Since this rule does not exist, then maybe we should be talking about it.

Mr. Welch responded that this is the very reason the City does not allow fences or garages/sheds to be built on property lines to begin with.

Mr. Corten added that the City would not require that all of the garages be torn down unless the property owners want to rebuild them. Ms. Karcher stated that this is correct. These types of structures are currently considered to be non-conforming uses/structures. At the time these structures are torn down and replaced, the property owners would need to comply or come before the City for a variance request.

Michael Plewa, of 708 West Iowa Street, stated that he resides in the property immediately to the west of the proposed site. He disagrees with the City in that this is a major variance, which requires a two-thirds vote. A minor variance is recognized as having potential impact on only the immediate neighborhood and adjoining properties. A major variance has the possibility of altering the character of the neighborhood. He said that he supports the Newmark's request for the variance. He talked about when he and his wife wanted to install a fountain in their back yard. The City suggested that they erect a fence to keep people from walking through the back yard, tripping over the fountain and getting hurt. So, they had a survey of their property done and erected a fence six inches from the property line.

He discussed the history of the neighborhood and the R-2 Zoning District regulations. Exhibit A shows that most of the garages in the neighborhood are single-car garages. These are high quality homes that were built between 70 and 90 years ago. The lots were plotted 40 years prior to the current R-2 Zoning District regulations. The current R-2 regulation is based on a minimum of 60 feet in width. The lots in the neighborhood are 55 feet in width. So, in this situation, the City is trying to force a 60-foot regulation on a 55-foot wide lot. It is not that their properties are incompliant with the Zoning Ordinance. It is that the Zoning Ordinance doesn't conform with reality.

The requirement for a major variance is that the change would significantly alter the character of the neighborhood. He argues that the architectural character of their immediate neighborhood is that small detached garages located on the property line are associated with the fine older homes. He calculated that 22 of the 26 parcels have detached garages on the property lines. Enforcing the current R-2 regulations in this neighborhood would tremendously alter the character of the neighborhood. Eighteen hundred and fifty square feet would be consumed by the automobile if the City would make all of the property owners of the neighborhood shown on Exhibit A rebuild their garages to be 18 inches from the property lines.

Mr. Plewa talked about the difficulty of backing out of the existing garage. There is not much room to back the car out from the existing garage. If the Newmarks have to move the garage over 18 inches, then this will create a jog in the driveway, which will make it even more difficult to back out.

Easements, fire protection and water damage or water drainage are non existing problems in this area. For 70 years, there has been no difficulty in access amongst a large variety of neighbors. The City may be able to project what can happen in the future, but scientists like himself look at

what has come before and use that as their projection. The neighborhood has a remarkable unanimity of agreement.

He asked that the Zoning Board of Appeals approve the variance request and keep the conditions on their street. The American Planning Association recently recognized the West Urbana Neighborhood as one of the 10 best neighborhoods to live in the United States. This was awarded with garages built on property lines.

Mr. Corten stated that Mr. Plewa has come to the wrong group to make his complaint. He should have complained back when the R-2 regulations were created. Mr. Plewa replied that he was not here in 1950. He is not sure when the 60 foot minimum width rule was added. He is only trying to point out that five feet can make a difference. It allows you to have a little more wiggle room where to place detached garages. The lots in the neighborhood are only 55 feet wide, and the architects and the planners allowed garages to be built on the property lines back then to help conserve space, to make easy access and to put some distance between the houses and the garages, which was the style back then. Many of the garages in the neighborhood are nearing the end of their lifetimes, so he can see the City causing 1,000s of square feet in loss of green space.

Mr. Warmbrunn asked how they consider it a loss of 18 inches, when they gain 18 inches on the west side. Mr. Plewa stated that his neighbor will not be able to use the 18 inches on the west side. It will be 18 inches of wasted area that the Newmarks have no access to, and they will probably have to spray herbicide to keep the weeds and rats out. So the Newmarks will actually lose the utility of 84 square feet of their yard by moving the garage over 18 inches to meet City requirements.

Mr. Plewa went on to say that these are smaller lots. The reason the original architects put these structures on the property lines was for the maximum efficiency in utility of the lots. By moving them over, property owners will lose that efficiency. His philosophy is that if something works, don't fix it. The architecture of the neighborhood has worked for 70 plus years. Mr. Corten commented that the Newmarks have chosen to fix the garage by rebuilding it, which requires them to follow new rules. Mr. Plewa said that is correct, but that this is the purpose for variances. He stated that it is not a major variance. The petitioner only wants to build a garage in the same location as the existing garage.

Mr. Welch wondered if the construction would be able to be done with removing Mr. Plewa's fence. Mr. Plewa said yes, because the fence is six inches from the property line. He noted that there is a concrete pad in the garage area of the structure, but not in the shed. So the concrete pad will have to be moved or replaced if the City does not approve the variance request.

Mr. Karcher clarified that Section 11-3 of the Zoning Ordinance outlines what is a minor and major variance. Minor variances for reductions in side-yard setbacks are specified as applications for a reduction no greater than 25% of the minimum. So, the reason the Newmark variance request becomes a major variance is because it is a 100% encroachment.

Dan Corkery, of 602 West High Street, talked about what might happen if the Newmarks would move the garage 18 inches to the east. The 18-inch strip would not be very usable, and it would not be very practical to perform maintenance. It would be difficult to use a ladder in an 18-inch strip. So the City may be creating a new set of problems by forcing the petitioner to comply with the regulations.

The Newmarks want to rebuild the garage to fit into the character of the neighborhood with driveway lining straight with the access to the garage. It is very difficult to maneuver a jog in the driveway, and you take the risk of damaging your car and home and neighboring property. So there are some implications and real day-to-day inconveniences created by what the City wants the Newmarks to do.

Mr. Corkery commented that using the side of a neighboring garage or shed as a boundary to an adjacent property is quite common. Mr. Welch did not question whether it is common. He did not believe it to be the preferred method of boundary demarcation. Mr. Corkery remarked that people have lived with these things for some time, the sun came up the next morning and there were really no great problems.

With no further questions or concerns from the public audience, Chair Merritt closed the public input portion of the hearing and opened it up for the Zoning Board of Appeals discussion and/or motion(s).

Mr. Myers responded to a statement made earlier about “all” the garages in the neighborhood being located on the property lines. No one can know this precisely by just looking at the properties. Are all of them on the property line, 10 inches from the property line, or 18 inches from the property line? It would take property surveys to determine that.

Second, in terms of the green space, although moving the garage 18 inches would not be a loss of green space in absolute terms, for use of the back yard, it would be a slight loss in usable space.

There are two types of encroachments with garages when they are placed right on the property line. The first one is typically an eave or a gutter -- above ground. The second is a below ground encroachment, such as a footing at the base of foundation walls. The City is sensitive about issuing building permits that allow encroachments on neighboring properties, either above or below ground.

The final observation is that there are other building codes that come into place. When you construct a building closer than X number of feet to the property line, then there a greater chance for communication of fire. This does not mean that you cannot build close to the property line. It just means that there is a heightened building code, such as installing fire wall protection, no windows, etc. So determining how close a garage can be located to a property line is part zoning, part values, and part technical building code requirements.

Ms. Uchtmann stated that if the garage roof was going to have an overhang of say 8 inches, then it seemed to her that the foundation would be 8 inches from the property line. Mr. Myers said

that most likely the footing would extend out slightly. It would be good to avoid an encroachment onto the neighbor's property.

Mr. Warmbrunn wondered how close a fence could be erected to a property line legally. Mr. Myers replied that you can build a fence all the way up to your property line as long as it is on your own property. Mr. Warmbrunn asked if it was possible for a person to erect a fence one inch from the property line so that his neighbor has 19 inches to get between the fence and his garage.

Ms. Uchtmann moved that the Zoning Board of Appeals forward Case No. ZBA-2008-MAJ-10 to the Urbana City Council with a recommendation for approval with the understanding that there would possibly be an eight inch overhang for a gutter/spout to control the water runoff. Mr. Schoonover seconded the motion.

Mr. Warmbrunn feels that the issue needs to be sent on to the City Council, because this is something that will come up every time one of the neighbors needs to replace their existing garage in this neighborhood. The City Council and City staff needs to look at this. He is in favor of the motion.

Mr. Schoonover agrees that the City has regulations for historic structures and for zoning and building codes. The problem is that the City did not take into account what already exists and what was already built.

Roll call on the motion was as follows:

Mr. Armstrong	-	No	Mr. Corten	-	No
Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Ms. Uchtmann	-	Yes	Mr. Warmbrunn	-	Yes
Mr. Welch	-	No			

The motion failed for lacking a two-thirds majority vote in favor.

Mr. Newmark inquired as to what he should do next. Mr. Myers said that he could apply for a building permit to construct the garage 18 inches from the property line in conformance with the zoning requirements.

ZBA-2008-A-01: An appeal of the Zoning Administrator's approval of plans for the adaptive reuse of an existing house at 601 West Green Street in the MOR, Mixed-Office Residential Zoning District.

Ron O'Neal, City Attorney, stated that it is very rare that he would appear before the Zoning Board of Appeals, but on occasion a legal issue arises that he feels he needs to be proactive and come before a board or commission on a very discrete legal issue. In that the proposed appeal has been filed in a certain manner, there is a procedural hurdle that would need to be overcome in his legal opinion for this body to hear this appeal.

He gave a brief timeline for the redevelopment proposal by JSM Development for 601 West Green Street. On January 28, 2008, Scott Kunkel applied for a site plan approval for renovations to the existing residence. The Zoning Administrator granted zoning approval with two administrative variances on February 28, 2008. On April 10, 2008, the Zoning Administrator granted two additional variances. All four of the variances were minor variances. On April 15, 2008 a building permit was issued, and on April 20, 2008 the building permit was published in the *News-Gazette*. Between the dates of May 12, 2008 and May 23, 2008, demolition work was performed at 601 West Green Street. During this time, Glen Beachey (the demolition foreman) spoke on several occasions about this matter with one of the appellants, Rich Cahill.

Gail Taylor interrupted Mr. O'Neal and asked if this is a court of law. Are we appellants? She stated that she is one of the petitioners, and this is not a court of law. She asked Mr. O'Neal to bring his language down to common folks' language and to call them petitioners. Mr. O'Neal asked Ms. Taylor not to interrupt his presentation. Mr. O'Neal then asked Chairperson Merritt to ask Ms. Taylor to sit and wait her turn to speak.

Mr. O'Neal continued speaking. He stated that on September 19, 2008, Mr. Cahill and Ms. Taylor filed an appeal. He stated that Mr. Cahill also had previously spoken with Mr. Kunkel at least twice somewhere around the end of April. The problem that Mr. O'Neal has procedurally is that the City Zoning Ordinance, as well as State Statute, provides that there be 45 days from a date of an incident complained of for a person to bring an appeal before the Zoning Board of Appeals. No matter which date from which you choose to start counting -- whether it be April 15th when the building permit was issued, April 20th when the building permit was published, or even May 23rd when the demolition phase was finished, and Mr. Cahill had already spoken with Mr. Kunkel and Mr. Beachey -- the 45 day period to file an appeal had expired prior to September 19, 2008. So the appeal was not timely filed.

He handed out copies of and then read State Statute 65ILCS5/11-13-12. After reading the state statute, he stated that he did not believe that the proposed appeal could even be heard. Without getting into the substance of issues of the appeal or whether it is correct or not, he informed the Zoning Board that Mr. Cahill and Ms. Taylor claim that they had not been notified of the construction taking place. In fact there was significant construction taking place, and Mr. Cahill was aware of it and had held conversations with Mr. Kunkel. Mr. Cahill even took salvageable materials from the project. Therefore one could say that the appellants were on notice. Once they had been noticed that the project had begun, they had 45 days to file an appeal. Since they did not file an appeal until September 19, 2008, after the 45 days had expired, he did not feel that this case could be heard by the Zoning Board of Appeals. In this particular instance he asked that the appeal be dismissed.

Mr. Warmbrunn questioned why this case was even put on the agenda. He reviewed all of the information that was sent to the board members. His only conclusion was that there was no notification to the petitioners. He did not see where the City staff had done anything wrong. If the timeline is correct, then it seems to him that this case should not have even been put on the agenda.

Mr. O'Neal responded that he is caught between a rock and a hard place. The Zoning Administrator made some administrative decisions within her powers granted to her by the Zoning Ordinance. City staff came and asked his opinion about whether or not the appeal should go forward. If he had said no, then the public's response would have been that the City is trying to defend its own decision. If he said yes, then it is in violation of the City's Zoning Ordinance and State Statute. So he advised City staff to allow the appeal to be filed so that this decision could come before the Zoning Board of Appeals and he could provide the board with his legal opinion so that the Zoning Board of Appeals could act properly in compliance with our procedure.

Mr. Warmbrunn wondered if the Board dismissed the case then would they not listen to any testimony. Mr. O'Neal said that is correct. If the Zoning Board of Appeals hears testimony, then they are holding a hearing and the 45 days does not mean anything.

Mr. Welch asked if the Zoning Board of Appeals did act upon the proposed appeal, would their decision be considered null and void. Mr. O'Neal replied yes. If the Zoning Board of Appeals held the public hearing and made a decision, he feels that the decision would be void because the appeal was not timely filed.

Mr. Welch questioned if the people affected by a decision made by the Zoning Board of Appeals on the proposed appeal would be advised that they do not need to follow any of the recommendations that were made in that decision. Mr. O'Neal said that he would need to speak with the Zoning Administrator and the Mayor to determine what, if anything, he should do. Mr. Welch inquired if the petitioners would be able to file a new appeal if the Zoning Board of Appeals dismisses this case. Mr. O'Neal said no, because in this particular instance, the set of facts are the facts and the dates are the dates. The 45 day period to file an appeal has expired. If he is asking if there is some theoretical way to get around the City of Urbana's Zoning Ordinance and the Illinois State Law, then the answer is no.

Mr. Welch wondered if the petitioners feel they are aggrieved on some kind of continuing basis, is there anything else they can do? Mr. O'Neal did not believe so. In the proposed application to appeal, the appellants are really talking about the decision to even grant the minor variances. Those decisions have already been made. If they filed a new appeal, then it would be based on what they file the complaint on as to whether it would be forwarded or not.

Mr. Schoonover inquired as to when Mr. O'Neal was brought in for advisement. Mr. O'Neal answered that the case was brought to his attention around September 19, 2008 after the petitioners filed the appeal.

Ms. Uchtmann questioned if Mr. O'Neal was also concluding that there were no administrative errors made along the way. Mr. O'Neal stated that he does not feel there were any errors made. He has reviewed the Zoning Ordinance which grants the Zoning Administrator certain administrative powers to grant variances in adaptive reuse projects. He has looked at the site plans for 601 West Green Street. He has looked at the elevations and photographs and talked to the Zoning Administrator and the City staff extensively about this. He looked at the appeal to see what particular issues the appellants feel are incorrect. Substantially he does not feel that

there is any merit to the proposed appeal. What he takes from the appeal is that the appellants do not like the Zoning Administrator's decision, which is a completely different issue than whether the Zoning Administrator acted appropriately and according to the Urbana Zoning Ordinance.

Mr. Armstrong reviewed the information given to the Zoning Board of Appeals and found that the Urbana Zoning Ordinance does give the Zoning Administrator some latitude in making decisions in cases of adaptive reuse so that it could be more successfully encouraged. This case is unusual for the Zoning Board of Appeals because they usually review major and minor variances. The Board members review variance requests based on their merits and then make a decision. However, in this case the variance requests are coming before the Zoning Board of Appeal as a result of an appeal of the Zoning Administrator's decisions, which are based on the Administrator's latitude in making those decisions that ordinarily would come before the Zoning Board of Appeals. Mr. O'Neal stated that the reason the Zoning Ordinance grants the Zoning Administrator these powers is because it encourages adaptive reuse. If the City would have wanted a formal process, then there would be no need to grant the Zoning Administrator these administrative powers. Instead the Zoning Ordinance states the purpose of granting the Zoning Administrator administrative power to approve adaptive reuse projects. The Ordinance says very specifically what the Zoning Administrator may do.

Mr. O'Neal stated that the Zoning Administrator was completely in compliance. If you look at the Site Plan and the design of what will actually be done, every change that the Zoning Administrator approved corresponds to a particular section of the Zoning Ordinance that allowed her to make that decision. Whether or not anyone agrees with the Zoning Administrator having these powers or whether or not they feel the Zoning Ordinance is appropriate are completely different public policy issues. The issue that he believes this body would have to decide if the appeal would have been timely filed would be whether the Zoning Administrator followed the Zoning Ordinance and act appropriately. In his opinion, she did.

Mr. Corten moved that the Zoning Board of Appeals dismiss Case No. ZBA-2008-A-01 based on the recommendation of the City's Legal Counsel because it was not filed in a timely manner. Mr. Warmbrunn seconded the motion. Roll call on the motion was as follows:

Mr. Armstrong	-	Yes	Mr. Corten	-	Yes
Ms. Merritt	-	Yes	Mr. Schoonover	-	Yes
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Mr. Welch	-	Yes			

The motion to dismiss was approved by a vote of 6-1.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. STAFF REPORT

Mr. Myers reported on the following topics:

- Wyer Major Variance was approved by City Council.

Mr. Warmbrunn inquired if he had some objections to the language in the Zoning Ordinance about the Mixed Office Residential (MOR) Zoning District, then who would he direct his comments to. He would like City staff to re-examine the entire MOR district policy. Mr. Myers replied that he could direct comments to the City Attorney's office, to the Zoning Administrator and/or to the Mayor.

Mr. Warmbrunn asked for a definition of "adaptive reuse". Mr. Myers stated that in a larger context "adaptive reuse" essentially means reusing the same buildings and making minor changes. This does not include removing an existing building and replacing it with a new one.

Chair Merritt inquired if the discussion held during the previous case would trigger anything. In the past, the Zoning Board of Appeals members have held discussions that then resulted in other bodies in the City taking up the issues. Mr. Myers replied that one of the powers that the Zoning Board of Appeals has is to make a recommendation to City staff to examine parts of the City Code that they feel need to be reviewed.

Mr. Warmbrunn believes that the Zoning Board should make a recommendation to have City staff look at the language of the MOR policy again. He could not find in the Zoning Ordinance where there is a requirement for public notification. Mr. Myers pointed out that the City Council approved this Ordinance several years ago with a provision that in the MOR Zoning District minor variances could be granted by the Zoning Administrator under certain circumstances. There are limitations on this however. The reason is to encourage adaptive reuse rather than to see existing buildings removed and replaced. When working on redevelopment projects in central Urbana, much of the time there is so many layers of difficulties for redevelopment that it can easily deter people investing in properties in the MOR Zoning District. Reusing existing buildings rather than replacing them with something totally different and out of scale is the vision for the MOR Zoning District.

Mr. Warmbrunn commented that the MOR Zoning District is such a small district. In the middle of the district we may be alright, but when we are talking about each side of it, it is potentially up against residential neighbors. He feels that it is incredibly difficult to believe that everyone needs to pick up a *News Gazette* and read the legal ads to find out that something is happening next door to them. It seems to be the only thing that the City is not encouraging the neighborhood to participate or comment.

He believes that what happened was perfectly legal. He could not find any reason why the City had to notify the neighbors. However, he feels the City should notify the neighbors if these types of projects are going to continue to happen. Chair Merritt agreed that this sort of thing has not happened before, and she certainly would not want future Zoning Board of Appeals members

to have this kind of thing happening all of the time. Mr. Myers mentioned that occasionally there are appeals, but they rarely happen.

Ms. Uchtmann questioned whether City staff would not consider the changes made to the front façade of 601 West Green Street to be major changes given the scope of them. Can there be an appeal to the Development Review Board? Was this case brought before the Board?

Mr. Myers commented that he would like to avoid holding the public hearing for the previous appeal's case since the Zoning Board of Appeals voted to dismiss the case. Chair Merritt agreed that they all need to keep this on a general issue and not discuss the previous case.

Mr. Warmbrunn suggested that the Board members should take the information home and read through it. The next time they meet, they could present their recommendations to City staff. To him, a lot of the process is flawed and does not seem to be very consistent. Ms. Uchtmann stated that she would be happy to make a motion to say that the Zoning Board of Appeals would like the MOR policy reviewed.

Elizabeth Tyler, Director of Community Development Services Department, stated that City staff has spent so much time working on the MOR Ordinance with the City Council and Plan Commission direction over the years. City staff has done two or three major revampings of the Ordinance, reconstituted the Development Review Board to a different kind of board, and encouraged the adaptive reuse of existing buildings. So, City staff is well aware that there are concerns, problems and sensitivity. Each project that is built on Green Street seems to come before the Zoning Board of Appeals as an appeal.

City staff has a very big workload on Zoning Ordinance fixes that are put forward to City staff by the City Council. There are sign regulations that are out of date and need to be updated. There is a request for design guidelines in the Historic East Urbana area. City staff has been working on an omnibus change to the Zoning Ordinance. So, the MOR Zoning District is just another area that City staff keeps trying to improve, because it keeps causing concern. However, she feels that the projects that have come out of the DRB process have been good projects that have been less intrusive than before changes were made.

This situation has not been a pleasant experience. There are more improvements that need to be made to the MOR Ordinance. So, City staff will add this to our list of issues that need to be reviewed again. Chair Merritt told the Board members that it is true that the MOR Ordinance has been reviewed several times, so she would like to see some specific ideas from the Board members to give to City staff.

10. AUDIENCE PARTICIPATION

Richard Cahill, of 307 South Orchard Street, talked about the timelines that Mr. O'Neal had mentioned in Case No. ZBA-2008-A-01. Because the application and variance requests did not go before the Development Review Board there was no public notice. He feels the 45 day period to file an appeal is totally irrelevant in Case No. ZBA-2008-A-01.

He mentioned that he has been very active in the Preservation and Conservation Association (PACA). He coordinated a lot of architectural salvage and has worked with Mr. Kunkel in the past with some major JSM projects including the co-ed theatre on campus, etc. Last April, he worked with Scott Kunkel on a redevelopment project on a church in Bloomington-Normal. He coordinated salvage with the church and Mr. Kunkel. When the spring semester ended, that is when the demolition of interior walls began on the property at 601 West Green Street. Although he did notice that demolition was occurring and he did talk with Mr. Kunkel, at no point did he ask to see any plans for 601 West Green Street, nor did Mr. Kunkel offer to share the plans with him. So, none of the May period to early June is a valid 45 day period. He pointed out that there were tenants still living in two of the units while demolition was going on.

By late August, Franzen Construction comes in to demolish the addition to the back and to demolish the front porch. This is also when the three mulberry trees were removed. On September 3, 2008, he asked Libby Tyler, Director of Community Development Services Department, if he could see plans of the redevelopment project. So to him the 45-day period to file an appeal began on September 3, 2008.

Gail Taylor, of 307 South Orchard Street, stated that she has a problem with the City Attorney asserting power over the Zoning Board of Appeals and over the members of the audience. He was using language that one would expect to hear in a court room and not in a public hearing with citizens who serve on a board.

She mentioned that Jack Waaler, former City Attorney, suggested that they file an application for zoning appeal and allow the Zoning Board of Appeals to decide when the 45 day period to file an appeal began. Instead the Zoning Board of Appeals members allowed themselves to be railroaded by the City Attorney. However, she is happy to see that the Zoning Board of Appeals is recommending a review of the MOR Ordinance to the City Council.

Ms. Taylor stated that Mr. Cahill had talked to Ms. Tyler on September 3, 2008 prior to the start of the Historic Preservation meeting about the redevelopment project at 601 West Green Street. She gave him copies of the plans for the redevelopment project. He called with questions the following day. After speaking with Ms. Tyler, she began expressing concerns about the way Ms. Tyler granted variances because there was no notification to adjacent property owners and no signs placed in the yard at 601 West Green Street.

Ms. Tyler had told her that Mr. Cahill and herself should speak to the developer of the project. The developer told her that they needed to speak to the City, so they felt like they were pushed in between the City and the developer. As the adjacent property owner, she sees this power relationship as the City being number one. The City is partnered with JSM Development (the developer), who the citizens should not make mad, according to Charlie Smyth, Council person for Ward 1 in the City of Urbana, because JSM is a commercial developer in Urbana. Then there are the citizens.

Ms. Taylor stated that Ms. Tyler mentioned over the phone that she was aware that Mr. Cahill and Ms. Taylor lived in the MOR Zoning District, but that she was not aware that they lived adjacent to 601 West Green Street. This is not true because it is written on the plans that were

submitted by JSM that Richard Cahill is the owner of the property adjacent to the site to be redeveloped.

Ms. Taylor stated that Ms. Tyler also stated that she represents the interest of the City, which Ms. Taylor felt was a way for Ms. Tyler to minimize any concerns that she brought to Ms. Tyler as a citizen. By Ms. Tyler saying this, it also set the tone of the conversation in terms of establishing a power relationship between the two of them. During her conversation over the phone with Ms. Tyler, she stated that the actions to approve the plans were those that favored the interest of commercial developers over private homeowners. It is a business interest.

Ms. Taylor also expressed her concern about the way that staff had handled the approval of two sets of variances. JSM submitted plans along with two variance requests which Ms. Tyler approved in February of 2008. Something happened that caused JSM to go back and look at their plans again and come back to the City requesting two additional variances which Ms. Tyler approved as well. Why were there two sets of variances instead of just one at the very beginning of the process?

She and Mr. Cahill have expressed concerns about the design of the parking area in terms of living on a street where there is a lot of pedestrian traffic. There are little kids in the neighborhood and people going to church on Sunday. It is a high traffic area, and yet there is no consideration being given to the new parking area.

Ms. Taylor mentioned that when she spoke with Mr. Kunkel about a six-foot high plastic fence, he had stated that JSM wanted to take down her fence to install their own fence. So, there was going to be no conversation in terms of them taking down her fence that is six inches into her property. They just assumed that they could do this.

Another important issue is that when speaking with City staff, Ms. Tyler had said that she would talk to the City Attorney about how to advise the petitioners to proceed and then get back with her. Ms. Tyler never called her back. So, Ms. Taylor called and spoke with Jack Waaler in the City's Legal Department about how to proceed with their appeal.

She found it interesting that the City Attorney attended this meeting and gave the presentation for Case No. ZBA-2008-A-01. Why didn't Ms. Tyler, Mr. Myers or Ms. Bird give the presentation? To her this is a gross overstatement of power. This is a test case, and it could go to civil trial if they wanted to. She and Mr. Cahill want to make the MOR Zoning District a better place for everyone. It is a family area.

Mr. Corten commented that there are students and other types of people living in the area as well. Ms. Taylor replied that it has not historically been that way. Mr. Corten remarked that it will not remain the same. Ms. Taylor stated that they know this, but the thing is that there were no public notices. People came to this meeting thinking that they were going to have an opportunity to talk and present their points of view as opposed to having just one point of view for the Zoning Board of Appeals to base their decision on. They feel that there were administrative issues that misled them to believe that they had the right to file an appeal.

Mr. Welch asked if Ms. Taylor thought that the Zoning Board of Appeals had the power to review administrative decisions that do not particularly involve zoning. In other words, the Zoning Board of Appeals does not have the authority to second guess someone's decision unless that mechanism is established. It is the City Attorney's opinion that if the City followed the proper procedures, then what the Zoning Board of Appeals would have decided would have been null and void, and it would be just venting. Ms. Taylor did not believe that this is just venting. All kinds of mixed signals were sent. Mr. Waaler recommended that they file an appeal and come before the Zoning Board of Appeals. This is what they had to do to go to the next step of remedy. They already knew that they were in a no-win situation. Mr. Welch replied that if they feel like they have been cut out of a voice, it is not something that the Zoning Board of Appeals can remedy. Right way or wrong way, the Zoning Administrator exercised the discretion given to her, and the Zoning Board of Appeals is not allowed to review it because it is not a zoning issue.

Chair Merritt stated that in effect, the Zoning Board of Appeals is wasting Ms. Taylor's time by allowing her to talk, because it will not result in anything. Ms. Taylor responded by saying that she did not feel it was a waste of time. Regardless of what the Zoning Board of Appeals heard from the City Attorney, they need to give people a chance to talk. It upset her that the City Attorney handled the appeals case but not the Newmark variance request. Mr. Armstrong stated that the appeals case is a highly unusual situation.

Ms. Taylor asked when does this happen. Mr. Armstrong explained that the Zoning Administrator only has power to approve minor redevelopment plans and variances in the MOR Zoning District. Ms. Taylor questioned why the Zoning Board of Appeals is even in existence then. Chair Merritt commented that the Zoning Board of Appeals makes a lot of decisions. She agreed that the MOR Zoning District is an unusual area. The City of Urbana has made an effort to recognize the fact that it is an unusual area.

Mr. Armstrong stated that the Zoning Board of Appeals has gone on record as raising their concerns about the MOR Ordinance language. The Ordinance must be re-examined in terms of these procedural issues. Additionally, there may be other issues about what the future of the MOR Zoning District is; for example, is the MOR Ordinance and Zoning District working in conjunction with the original intentions or not, is it successful or unsuccessful, etc. All of these issues should be re-examined periodically anyway. Because she lives in the MOR Zoning District, she has the most vested interest in the neighborhood. So she can articulate her concerns to the City Council and go before the Plan Commission.

Dan Corkery, of 602 West High Street, stated that Mr. O'Neal asserted something as a fact that he feels is hearsay. Mr. O'Neal asserted that Mr. Cahill was notified by Mr. Kunkel or Glen Beachey of the redevelopment plans during their conversations. He really was not notified because they did not exchange the kind of information that would warrant notification.

There was not a legal ad posted. There was an editorial item under Building Permits that was run on Sundays. Editorial items printed in the newspaper are at the discretion of the *News-Gazette*. Therefore, it would not constitute legal notification. Mr. O'Neal gave this an air of authority, and it did not have the authority that anyone would think it would.

He is thrilled that the Zoning Board of Appeals wants to come up with something that will be forwarded on to the City Council. He realizes that there has been a lot of work done to the MOR Ordinance, but there is still clearly a flaw in it, and it has to do with getting the public involved on a variance. The most irritating things about adaptive reuse has really very little to do with the building. It has to do with the parking lot. The idea of a parking lot with vehicles' headlights pointing 15 feet from someone's living room is just not right.

Chair Merritt swore in Steve Ross, of 609 West Green Street.

Mr. Ross recommended some changes to the MOR Ordinance. Because this is the first time we have gone through the adaptive reuse process, we are just now noticing some holes in the Ordinance. He knows that there was a lot of effort involved in revising the MOR Ordinance, because he attended many of the hearings. There are two things lacking, which are as follows: 1) Definition of the word "substantial" and 2) lack of notification.

The word "substantial" is used in the MOR Ordinance. If it is not a substantial change, then the Zoning Administrator has the ability to make certain minor variances. We need to define what we mean by substantial.

When the Zoning Administrator reviews redevelopment plans for adaptive reuse of existing buildings, there is no requirement for notification. This is the only place where neighbors would not be notified of variances, and this is an open invitation for trouble.

Linda Lorenz, of 409 West High Street, read an e-mail written and submitted by Betsey Cronan who could not attend. Afterwards she stated that she has attended many City Council and Historic Preservation Commission meetings and has invested a great deal of volunteer time in doing house history research and in getting petitions signed to bring before the Zoning Board of Appeals. The bottom line is that the neighborhood is under attack in terms of the changes that are going on. There are more and more landlords and students.

She mentioned that she lives across the street from an apartment building. She hears doors slamming, bottles and cans landing on the parking lot and kids screaming and hollering at 3:00 a.m. Now, Mr. Cahill and Ms. Taylor are going to live next door to a horrid parking lot. The parking lot will decrease the value of their property. This will change not only their property value but the character of the neighborhood as well. This is the biggest issue of all.

The property owners in the area want to be notified so they can come to City staff and say something before it is a done deal. They live in the neighborhood because they love their old houses and maintain them and because they want to walk or ride their bicycles to the University of Illinois campus.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 9:50 p.m.

Respectfully submitted,

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Robert Myers, AICP, Secretary
Urbana Zoning Board of Appeals