

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

**DATE:** August 19, 2020

**APPROVED**

**TIME:** 7:00 p.m.

**PLACE:** Zoom Webinar

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<b>MEMBERS ATTENDING REMOTELY:</b>	Joanne Chester, Ashlee McLaughlin, Adam Rusch, Nancy Uchtmann, Charles Warmbrunn
<b>MEMBER ATTENDING AT CITY BUILDING:</b>	Harvey Welch
<b>MEMBERS ABSENT</b>	Matt Cho
<b>STAFF PRESENT</b>	Kevin Garcia, Principal Planner; Marcus Ricci, Planner II; Katherine Trotter, Planner I
<b>OTHERS PRESENT</b>	Fran Ansel, Fred Ansel, Dottie Davito, Jim Davito, Andrew Fell, Graham Houser, Heather Johnson, Avital Livny, Blake Weaver

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

Chair Welch called the meeting to order at 7:01 p.m. Roll call was taken, and he declared a quorum of the members present.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF THE MINUTES**

The minutes from the February 19, 2020 regular meeting were presented for approval. Ms. Uchtmann moved that the Zoning Board of Appeals approve the minutes as written. Mr. Rusch seconded the motion. Roll call was taken on the motion, and it was approved by unanimous vote.

**4. COMMUNICATIONS**

- Email from Avital Livny and Ben Miller regarding Case No. ZBA-2020-MAJ-02
- Email from Heather Johnson regarding Case No. ZBA-2020-MAJ-02

- Email from Laura K. Hastings regarding Case No. ZBA-2020-MAJ-03
- Email from Bill Scheidemantel regarding Case No. ZBA-2020-MAJ-03

## 5. CONTINUED PUBLIC HEARINGS

There were none.

## 6. NEW PUBLIC HEARINGS

### **ZBA-2020-C-01 – A request by the Masonic Lodge #157, represented by Mitch Duszynski, for a Conditional Use Permit to allow operation of a Lodge or Private Club at 312 West Elm Street in the MOR, Mixed-Office Residential Zoning District.**

Chair Welch opened the public hearing for this case. Marcus Ricci, Planner II, gave the staff report for the case. He began by noting the location of the proposed site and showing photos of the property. He noted the zoning and future land use designation of the proposed site. He reviewed the criteria for a Conditional Use Permit from Section VII-2 of the Zoning Ordinance. He read the options of the Zoning Board of Appeals and presented City staff's recommendation for approval.

Chair Welch asked if any members of the Zoning Board of Appeals had questions for City staff. There were none.

Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of his request.

Blake Weaver, representative for the applicant, raised his hand to speak to the Zoning Board of Appeals. Chair Welch swore in Mr. Weaver.

Mr. Weaver stated that between the application and the staff report, he felt the case was well covered, so he did not have a presentation for the Board members. However, he would answer any questions they may have.

Mr. Rusch asked about the status of the Masonic Lodge. Mr. Weaver replied that the Lodge used to be located in the City of Urbana before relocating to the City of Champaign. They shared a location with another use and the new owner of the former site decided that they needed the entire space for their use, so the Masonic Lodge in Urbana shared their Champaign location. The Urbana Masonic Lodge wants to move back to the City of Urbana. The opportunity arose to purchase the Saint Nicholas Antiochian Orthodox Church, so they signed a purchase contract contingent upon approval of the proposed Conditional Use Permit.

Ms. Uchtmann stated that the proposed use would be a nice reuse of the property.

Graham Houser raised his hand to speak to the Zoning Board of Appeals. Chair Welch swore in Mr. Houser.

Mr. Houser stated that he was a long time member of the Urbana Masonic Lodge and of the Masonic Fraternity. The reason the Lodge would like to purchase the building is because they want to come home to Urbana. The Lodge was chartered in 1854 as the Urbana Masonic Lodge. In 1979, they had to vacate the Tiernan building on Main Street, as Mr. Weaver had explained. They then housed with the Western Star of Champaign Lodge until recently. It is time for the Lodge to come home back to Urbana. He thanked the Zoning Board of Appeals for considering their application.

With there being no further input from the audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Ms. McLaughlin moved that the Zoning Board of Appeals approve Case No. ZBA-2020-C-01. Mr. Warmbrunn seconded the motion. Roll call on the motion was as follows:

Mr. Rusch	-	Yes	Ms. Uchtmann	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes
Ms. Chester	-	Yes	Ms. McLaughlin	-	Yes

The motion passed by unanimous vote.

**ZBA-2020-MAJ-02 – A request by Andrew Fell, on behalf of Hao Jan Liu, for a Major Variance to allow construction of an Infill Residential Planned Unit Development on a site less than the minimum required one-half acre in size located at 1304 South Vine Street in the R-3, Single and Two-Family Residential Zoning District.**

Chair Welch opened the public hearing for this case. Marcus Ricci, Planner II, gave the staff report for the case. He began by explaining the purpose for the proposed major variance, which is to allow the applicant to apply for a Planned Unit Development (PUD) on a lot smaller than required for a PUD. He showed photos of the proposed site. He stated the zoning and future land use designation of the subject property as well as the zoning for the adjacent properties. He talked about the process for the proposed PUD and noted the communications received for the major variance case. He reviewed how the proposed major variance relates to the criteria from Section XI-3 of the Urbana Zoning Ordinance. He summarized staff findings and read the options of the Zoning Board of Appeals. He presented City staff’s recommendation for approval.

Chair Welch asked if any members of the Zoning Board of Appeals had questions for City staff.

Mr. Rusch asked if the lot size was at least half an acre, then the applicant would not be required to get approval of a major variance. The plans for the PUD would go straight to the Plan Commission for review? Mr. Ricci said that was correct. Mr. Rusch then stated that the Zoning Board of Appeals job is to determine if a lot that is 1,000 feet smaller than the half acre requirement for a PUD is suitable. Mr. Ricci said yes.

Ms. McLaughlin asked if the proposed variance was specific to the property located at 1304 South Vine Street or did it pertain to all properties zoned R-3? Mr. Ricci stated that the major variance request is only for 1304 South Vine Street. He pointed out that there is a difference between the standard minimum lot size variance and a minimum lot size variance for a PUD. If the applicant was not planning a PUD, then it would only be a minor variance.

Ms. Uchtmann googled “planned unit development” and read the definition that she found on Wikipedia. “A planned unit development as a regulatory process is a means of land regulations. It gives increased administrative discretion to the local professional planning staff while setting aside present land use regulations and rigid plat approval processes. A PUD has the potential to increase profits due to land efficiency, multiple land uses and increased residential densities.” Mr. Ricci replied that rather than referring to Wikipedia, the Board should refer to the Urbana Zoning Ordinance to see how the City of Urbana regulates PUDs. He believed that there is closer scrutiny by City staff and elected officials for planned unit developments and more transparency available to the general public, as the plans are reviewed at the Plan Commission and City Council; whereas, typically building plans are not reviewed at either body [for a by-right development]. Section XIII-3 of the Urbana Zoning Ordinance defines a planned unit development as a large, integrated development adhering to a detailed site plan and located on a contiguous tract of land that may include a mixture of residential, commercial and/or industrial uses. Zoning and development regulations may be varied in conformance with this section and the adopted Urbana Comprehensive Plan. So, while the point of a PUD is to allow some flexibility, it also asks for some provisions by the developer that the City would not normally be allowed to ask for.

Ms. Uchtmann recalled reading in the packet information that the applicant is proposing 14 units, which could mean 28 residents. Mr. Rusch pointed out that this information was in the packet; however, that is not for the Zoning Board of Appeals to discuss or review. The Plan Commission would review the details of the proposed development.

Ms. Chester asked for an example of a PUD. Mr. Garcia stated that one of the most recent PUDs was the reuse of the Zeta Tau Alpha House on the corner of Lincoln Avenue and Vermont Avenue. Because the property was zoned R-7, the owner was required to get approval of a planned unit development to allow a multiple residential use. Mr. Garcia stated that the planned unit development process requires greater scrutiny in exchange for some zoning flexibility, as Mr. Ricci had said.

Ms. Chester recalled another example of a PUD. The development where Lincoln School was located on the corner of Main Street and Clark Street. The redevelopment of the site was closely monitored by the City staff and the public.

Mr. Ricci mentioned the redevelopment of the Niros Gyros site [1007 W University Ave]. It is a planned unit development.

There being no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant or the applicant’s representative to speak.

Andrew Fell raised his hand to speak on behalf of the applicant. Chair Welch swore in Mr. Fell.

Mr. Fell stated that he would answer any questions that the Board may have. The applicant was asking the Zoning Board of Appeals for permission to ask the Plan Commission for permission to present their project to the City.

Avital Livny raised her hand to speak to the Zoning Board of Appeals. Chair Welch swore in Ms. Livny.

Ms. Livny stated that she lives across the street from the subject property. She noticed that the Zoning Board of Appeals has the option to add some terms and conditions to the approval of the major variance. She wondered why the Board was not considering adding terms and conditions. Chair Welch explained that terms and conditions are added at the time when a motion is made to approve or disapprove a variance.

Ms. Livny stated that her issue, and that of some of her neighbors, is the size of the proposed development on the small lot. She asked, can the size of the lot support the type of building that they have in mind with regards to parking, etc.?

Ms. Uchtmann asked what kind of terms and conditions could the Zoning Board of Appeals place on the variance. Mr. Garcia explained that this is uncharted territory for the Planning staff. They had consulted with the City's Legal Division to see if the applicant could ask for a variance to allow a PUD on a smaller lot. With a regular variance request, there is an existing building or site plan or something tangible that the Board members can look at. However, in this case they are only considering the concept of whether to allow a PUD on a lot that is 8% smaller than the Zoning Ordinance requires. The Zoning Board of Appeals could place conditions on the variance that the proposed development must meet the height and development regulations of a similar zoning district.

Ms. Uchtmann asked if it would be okay for the Board to place a condition that the proposed development must meet the setback requirements. Mr. Ricci reminded the Board that the purpose of a PUD is to allow more flexible development in exchange for amenities to be provided by the developer, which is all reviewed by the Plan Commission. So, he feels the concern to place terms or conditions is premature, because no one has an idea of what the project will be.

Mr. Fell stated that he did not want to discourage the Board members from placing conditions on the variance, but he felt that the Board placing conditions on the PUD would be pointless. He will be applying for approval of a PUD. Any conditions that the Zoning Board of Appeals places on the variance that are not conducive to his client developing the lot, he will ask the Plan Commission to waive or adjust. Part of the PUD process is to ask for a give and take of the restrictions on the lot.

Mr. Rusch asked if the City Council would make the final determination on the PUD application. Mr. Ricci answered saying that both the major variance request and the future planned unit development request would go to City Council for final determination. Any conditions place by

the Zoning Board of Appeals on the major variance case would be reviewed as well, and the City Council would decide if they are conducive to the future PUD. Mr. Garcia added that rather than have the Zoning Board of Appeals try to anticipate what the neighborhood might want to see on the proposed site, the PUD process will allow the neighborhood to attend the public hearing at the Plan Commission meeting and specify what their concerns are.

Ms. McLaughlin stated that she understands this is a residential parcel and that some people would be critical of a more intense or higher density use. However, at this stage, given the property and its location, a PUD does seem like an option worth exploring. She echoed what Mr. Garcia said in that it is premature to consider specific conditions. She felt comfortable with ceding control over those questions to the other committees who are responsible to deal with those questions. She would be in favor of moving the major variance forward to City Council.

Mr. Welch agreed with Ms. McLaughlin, and he felt that she did a great job of summarizing that without knowing how the applicant intends to develop the site, the Zoning Board of Appeals is just dealing with a piece of land. Mr. Fell said that was correct.

Jim and Dottie Davito raised their hands to speak to the Zoning Board of Appeals. Chair Welch swore them in.

Ms. Davito stated that they own 1308 South Vine Street, which is south of the proposed site. They live at the corner of Pennsylvania Avenue and Vine Street. They are concerned about the future redevelopment of the lot. Fourteen units are a lot of the size of the lot at 1304 South Vine Street. They want redevelopment of the property to occur because it has not been well maintained; however the proposed PUD would be too much for the neighborhood. Mr. Davito added that they were also concerned about noise and whether the proposed development would have balconies. They felt that there should be a privacy fence constructed along the south and east sides of the property. He hoped that the neighbor's concerns are not kicked to the side in exchange for amenities and pluses that the developer proposes.

Ms. Uchtmann felt that a large development at 1304 South Vine Street would change the character of the neighborhood.

Heather Johnson raised her hand to speak. Chair Welch swore in Ms. Johnson.

Ms. Johnson stated that she looked forward to seeing the property being redeveloped and to see the development designed by Mr. Fell. She is also concerned about the noise and the density on the corner. She agreed with the comments made by the Davitos.

Ms. Johnson asked if this would set a precedent for another PUD asking for a variance on a lot smaller than required. Chair Welch replied saying that the Zoning Board of Appeals is not a legal body, so "precedent" is a loaded word. The Board has to consider each case that comes before them on the facts and circumstances of that particular case. Previous decisions are guidance but do not carry the same effect as a precedent does in a legal situation in terms of being binding. Mr. Garcia encouraged Ms. Johnson to stay to the end of the meeting because he had prepared a staff report to present on "precedent" in relation to zoning cases.

With there being no further input from the audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2020-MAJ-02 to the City Council with a recommendation for approval as requested based on the findings outlined in the written staff report. Ms. McLaughlin seconded the motion. Roll call on the motion was as follows:

Ms. Chester	-	Yes	Ms. McLaughlin	-	Yes
Mr. Rusch	-	Yes	Ms. Uchtmann	-	No
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes

The motion passed by a vote of 5 to 1. Mr. Garcia noted that Case No. ZBA-2020-MAJ-02 would be forwarded to the City Council on Tuesday, September 8, 2020.

**ZBA-2020-MAJ-03 – A request by Fran and Marc Ansel for a Major Variance to allow a garage to encroach 14.5 feet into the required 15-foot front yard at 102 West Pennsylvania Avenue in the R-2, Single-Family Residential Zoning District.**

Chair Welch opened the public hearing for this case. Katherine Trotter, Planner I, gave the staff report for the case. She began by explaining the purpose for the proposed major variance, which is to allow the applicants to construct a new garage. She stated the location of the proposed site and showed an aerial photo of the property, indicating where the Bald Cyprus tree is located that the applicants wish to protect. She showed additional site photos and the site plan. She reviewed the criteria for a major variance from Section XI-3 of the Urbana Zoning Ordinance. She read the options of the Zoning Board of Appeals and presented City staff’s recommendation for approval with the following condition: *That the garage generally conforms to the site plan in Exhibit C of the written staff report.* She noted that the applicants were available to answer questions.

Chair Welch asked if any members of the Zoning Board of Appeals had questions for City staff. There were none.

Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of his request.

Marc and Fran Ansel, applicants, raised their hands to speak to the Zoning Board of Appeals. Chair Welch swore in Mr. and Mrs. Ansel.

Mr. Ansel stated that they received approval for a major variance in 2008 to rebuild their existing garage; however, they were unable to build and are now requesting approval of the same variance as before. The additional five feet of space does not affect the major variance request. They are available to answer any questions from the Board.

With there being no further input from the audience, Chair Welch closed the public input portion of the hearing and opened the hearing for discussion and/or motions by the Zoning Board of Appeals.

Ms. Uchtmann moved that the Zoning Board of Appeals forward Case No. ZBA-2020-MAJ-03 to the Urbana City Council with a recommendation for approval with the following condition: *That the garage generally conforms to the site plan in Exhibit C of the written staff report.* Ms. McLaughlin seconded the motion. Roll call on the motion was as follows:

Mr. Rusch	-	Yes	Ms. Uchtmann	-	Yes
Mr. Warmbrunn	-	Yes	Mr. Welch	-	Yes
Ms. Chester	-	Yes	Ms. McLaughlin	-	Yes

The motion passed by unanimous vote. Mr. Garcia noted that Case No. ZBA-2020-MAJ-03 would be forwarded to the Urbana City Council on Tuesday, September 8, 2020.

**7. OLD BUSINESS**

**Review of Annual Bylaws**

Chair Welch opened this item on the agenda. Mr. Garcia stated that the original review of the bylaws occurred in February, 2020. He had not spoken with the City’s Legal Division about the concerns that the Board had expressed at that meeting; and as a result he requested that this item be deferred to next regular meeting of the Urbana Zoning Board of Appeals. Chair Welch continued this item as requested.

**8. NEW BUSINESS**

There was none.

**9. AUDIENCE PARTICIPATION**

There was none.

**10. STAFF REPORT**

Mr. Garcia reported on the following:

- Principal Planner – He stated that he was promoted to Principal Planner, which is a new position that fills the gap of a Planning Manager (Lorrie Pearson had vacated when she was promoted to Community Development Director).

Mr. Ricci reported on the following:

- Kat Trotter – She was promoted to Planner I from Associate Planner.



## 11. STUDY SESSION

### Discussion on Precedent in ZBA Cases

Chair Welch opened this item on the agenda. Mr. Garcia stated that the Planning staff discussed this with the City's Legal staff and all came to the agreement that there is no such thing as "precedence" that is set or that must be followed in Zoning Board of Appeals cases. While sometimes, staff refers to previous cases when discussing a current case, the Zoning Board of Appeals is required to base all of their findings on the facts presented in the case at hand. Every case is different. If the Board did base their decision on evidence not in the record for the current case, it would deprive the applicant of his/her right to dispute the Board's findings, which could lead to legal challenges of the Board's decisions.

"Findings, therefore, must never be based on facts from another case or on the notion of "precedence". The Board has the power to deal freely with each new case, regardless of how it may have addressed a similar case in the past." "The board members should not be concerned that making a decision in one case binds them through some notion of "precedence" to deciding future similar cases."

## 12. ADJOURNMENT OF MEETING

Chair Welch adjourned the meeting at 8:33 p.m.

Respectfully submitted,

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Kevin Garcia, AICP  
Principal Planner  
Secretary, Urbana Zoning Board of Appeals