

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

**DATE:** May 15, 2019

**APPROVED**

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

**PLACE:** City Council Chambers, 400 South Vine Street, Urbana, IL 61801

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**MEMBERS PRESENT** Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Charles Warmbrunn, Harvey Welch

**MEMBERS ABSENT** Nancy Uchtmann

**STAFF PRESENT** Lorrie Pearson, Planning Manager; Lily Wilcock, Planner I

**OTHERS PRESENT** Kim Hubbard

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

Chair Welch called the meeting to order at 7:05 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 March 20, 2019, regular meeting were presented for approval. Ms. McLaughlin suggested an amendment to change the second “Members Present” at the top of Page 1 to “Members Absent”. She moved to approve the minutes as corrected. Mr. Cho seconded the motion. The minutes were approved by unanimous voice vote as corrected.

**4. COMMUNICATIONS**

There were none.

**5. CONTINUED PUBLIC HEARINGS**

There were none.

**NOTE:** Chair Welch swore in members of the audience who indicated that they might give testimony during a public hearing.

## 6. NEW PUBLIC HEARINGS

**ZBA-2019-C-01 – A request by Kim Hubbard for a Conditional Use Permit to allow a second principal structure at 812 South Race Street in the R-3, Single and Two-Family Residential Zoning District.**

**ZBA-2019-MAJ-01 – A request by Kim Hubbard for a Major Variance to allow a reduction from ten feet in the required rear yard setback to five feet at 812 South Race Street in the R-3, Single and Two-Family Residential Zoning District.**

Chair Welch opened the public hearings for these two cases to be heard at the same time since they were related to the same property. Lily Wilcock, Planner I, began by noting the conditions proposed for the Conditional Use Permit, including two additional conditions not mentioned in the written staff report. They were as follows:

1. That the proposed structure's location and construction generally conform to the attached site plan and specifications;
2. *New* – Prior to the issuance of a building permit, the owner/applicant will sign a deed restriction, to run with the land that will require the proposed structure may not be sold separately from the land and subdivided.
3. *New* – The proposed structure can be no taller than 25 feet from the grade of the property.

Ms. Wilcock presented the staff report to the Zoning Board of Appeals. She stated the purpose for the Conditional Use Permit and Major Variance requests, which is to build a second principal structure on a single lot within five feet of the rear property line. Using Exhibit A, she showed the location and existing land use of the subject property. She noted the zoning and future land use designations of the proposed site and of the surrounding areas. Referring to the Site Plan, she showed where the proposed garage would be constructed in relation to the existing garage and house. She reviewed the requirements for a Conditional Use Permit according to Section VII-2 of the Urbana Zoning Ordinance and the criteria for a variance in Section XI-3. She summarized City staff findings and read the options of the Zoning Board of Appeals for each case. She stated City staff's recommendation for each case including ALL conditions as mentioned at the beginning of the public hearing.

Lorrie Pearson, Planning Manager, pointed out that while a Conditional Use Permit would expire if the proposed structure was NOT constructed within a year, the major variance if approved would continue on forever more. She recommended that the Zoning Board of Appeals include at least Conditions #1 and #3 for the Major Variance as well.

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

Mr. Cho asked for more clarification on Condition #2 and wondered if it was within the scope of the Zoning Board of Appeals to require a deed restriction. Ms. Wilcock replied that City staff within Community Development Services does deed restrictions, especially when it involves grants. Many communities, especially along the West Coast, consider garage apartments to be accessory dwelling units and require deed restrictions to prevent the garage apartment from being sold as an individual structure or piece of land. She has seen Champaign County having properties like this that are then annexed into the City of Urbana and creates non-conforming

issues with the Urbana Zoning Ordinance. Requiring a deed restriction, it would be recorded by the Champaign County Recorder's Office and would show up in a title search when a proposed future buyer looks at purchasing the lot. Ms. Pearson added that Condition #2 is intended to require the owner to sign a deed restriction agreeing to not illegally subdivide the property. Because this condition is tied to the approval of a Conditional Use Permit, then it is within the purview of the Zoning Board of Appeals.

Mr. Rusch questioned if the Zoning Board does not include Condition #2 in the approval of the Conditional Use Permit, would the owner be allowed to sell the garage and apartment to an adjacent property owner in the future. Ms. Wilcock answered no. It would still be illegal to subdivide the property. Ms. Pearson explained that this would be a way to prevent City staff from having to enforce something that would already have been done versus prevent something that is illegal to do. Ms. Wilcock stated that by requiring a deed restriction it would be a big red flag for someone interested in purchasing the property to learn more about before purchasing it.

Mr. Rusch expressed concern about the City changing the rules about subdividing and this property then would not be allowed to because the owner signed a deed restriction. Ms. Pearson assured the Board members that City staff would work this into any future changes to accommodate for properties like this.

Ms. Chester commented that if the owner tried to see the garage/apartment, then she would be creating two lots that do not meet development regulation requirements, such as for open space or setbacks.

Mr. Cho felt uncomfortable with Condition #2. He had never seen it before and did not believe it was part of the Zoning Board of Appeals purview. It adds a lot more constraints than what the Zoning Board is able to vote on. Otherwise, he is in favor of the Conditional Use Permit and Major Variance requests.

Ms. Chester stated that in the past people have illegally subdivided parcels like this by recording a purchase of a portion of the property. Champaign County Recorder's Office will record any document without checking to see if it is legal or not legal. Then it becomes a real mess for people in the future. Mr. Cho asked how one would go about subdividing a property legally. Ms. Wilcock explained the procedure noting that there would be review by City staff and other entities looking for specific requirements to be met. If it meets the approval of the other public agencies and City staff, then it would be signed by the Director of Public Works, the Director of Community Development Services and the Zoning Administrator and recorded by the Champaign County Recorder's Office. However, sometimes, as Ms. Chester explained, people do not go through the proper method of subdividing and it becomes a mess.

Chair Welch noted that the Zoning Board of Appeals is an appeal body. They are being asked to approve a contractual issue between the applicant and the City of Urbana. This Board is free to add conditions to agreements as long as they are not illegal. The enforcement of the conditions is not the purview of the Board, but then the Board is not charged with enforcing any condition they place on decisions they make. If the applicant is comfortable with Condition #2, then he did not see anything wrong with requiring it.

Mr. Rusch expressed his concern about setting a precedent with the Zoning Board of Appeals requiring deed restrictions when it is already against the law to subdivide a property with a garage apartment. Mr. Cho added that the Zoning Board of Appeals has enforced homeowner's rights which are not part of the Zoning Ordinance, and he this was a precedent that he did not want to uphold that either as part of the Zoning Board of Appeals or that it was even within their skill.

Ms. Pearson reminded Chair Welch that the Board has entered a discussion and the audience has not had an opportunity to speak.

Chair Welch opened the hearing for public input.

Kim Hubbard, applicant, approached the Zoning Board of Appeals to answer any questions that Board members may have. There was none, so he closed the public input portion of the hearing and opened the hearing for discussion and/or motion(s) by the Zoning Board of Appeals.

Mr. Warmbrunn moved that the Zoning Board of Appeals approve Case No. ZBA-2019-C-01 as requested based on the findings outlined in the written staff memo with the following conditions:

1. That the proposed structure's location and construction generally conform to the attached site plan and specifications;
2. Prior to the issuance of a building permit, the owner/applicant will sign a deed restriction, to run with the land that will require the proposed structure may not be sold separately from the land and subdivided.
3. The proposed structure can be no taller than 25 feet from the grade of the property.

Ms. Chester seconded the motion.

Mr. Rusch moved to amend the motion to strike Condition #2. He felt this condition was unnecessary because it is already a law that the proposed lot cannot be subdivided. Mr. Cho seconded the motion to amend.

Ms. McLaughlin questioned what the additional burden would be to keep Condition #2. Mr. Rusch replied that the additional burden would be that there would be a deed agreement placed on the title for the lot. Mr. Cho expressed his opinion about whether the Zoning Board of Appeals had the right to impose restrictions on a homeowner.

Roll call on the motion to amend was as follows:

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

The motion failed.

Roll call on the motion regarding ZBA-2019-C-01 was as follows:

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

The motion passed by a vote of 5 to 1.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-01 to the Urbana City Council with a recommendation for approval including the following conditions:

1. That the proposed structure's location and construction generally conform to the attached site plan and specifications;
2. The proposed structure can be no taller than 25 feet from the grade of the property.

Mr. Cho seconded the motion. Roll call on the motion was as follows:

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

The motion passed by unanimous vote.

Ms. Wilcock noted that this case would be forwarded to City Council on June 3, 2019.

## **7. OLD BUSINESS**

There was none.

## **8. NEW BUSINESS**

There was none.

## **9. AUDIENCE PARTICIPATION**

There was none.

## **10. STAFF REPORT**

Ms. Pearson reported on the following:

- U-Haul Conditional Use Permit on Philo Road – U-Haul has completed the landscaping requirement and City staff will check back in September/October to see if all the plantings have survived.

Ms. Wilcock reported on the following:

- Bike with the Mayors on May 23, 2019 at 6:00 p.m.

**11. STUDY SESSION**

There was none.

**12. ADJOURNMENT OF MEETING**

Chair Welch adjourned the meeting at 7:51 p.m.

Respectfully submitted,

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Lorrie Pearson, AICP  
Planning Manager  
Secretary, Urbana Zoning Board of Appeals