MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

DATE: September 18, 2019 APPROVED

TIME: 7:00 p.m.

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

MEMBERS PRESENT Joanne Chester, Matt Cho, Ashlee McLaughlin, Adam Rusch, Nancy

Uchtmann, Charles Warmbrunn, Harvey Welch

STAFF PRESENT Lorrie Pearson, Deputy Community Development Director / Planning

Manager; Kevin Garcia, Planner II; Marcus Ricci, Planner II; Lily

Wilcock, Planner I

OTHERS PRESENT Paul Debevec, Ann Dickey, Bob Freeman, Dan Gordon, Ryan

Millikan, Trent Shepard

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

Chair Welch called the meeting to order at 7:02 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 August 21, 2019, regular meeting were presented for approval. Mr. Rusch moved to approve the minutes as written. Ms. Uchtmann seconded the motion. The minutes were approved by unanimous voice vote as written.

4. COMMUNICATIONS

- Case Nos. ZBA-2019-C-03, ZBA-2019-MAJ-05, ZBA-2019-MAJ-06, ZBA-2019-MAJ-08, ZBA-2019-MAJ-09 and ZBA-2019-MAJ-10
 - Communications in Support from the following people:
 - Chong, Tracy
 - Grainger, Sarah
 - Hansen, Christopher
 - Merriam, Liana

- Communication in Opposition from the following people:
 - Cardman, Liz
 - Hunter, Kate

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

5. CONTINUED PUBLIC HEARINGS

ZBA-2019-C-03 – A request by Daniel Gordon for a Conditional Use Permit to allow a second principal structure containing a second dwelling unit at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-05 – A request by Daniel Gordon for a Major Variance to increase the maximum Floor Area Ratio from 0.4 to 0.51 at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-06 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach seven feet into the required ten-foot rear yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-08 – A request by Daniel Gordon for a Major Variance to allow a principal building to encroach four feet into the required five-foot side yard at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-09 – A request by Daniel Gordon for a Major Variance to reduce the required parking for two dwelling units from four spaces to two at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

ZBA-2019-MAJ-10 – A request by Daniel Gordon for a Major Variance to reduce the required lot width for establishing a duplex on a lot from 60 feet to 58 feet at 308 West California Avenue in the R-2, Single-Family Residential Zoning District.

Chair Welch re-opened the public hearing for each case simultaneously. Lily Wilcock, Planner I, presented an updated staff report. She stated the purpose for the proposed conditional use permit and major variance requests, which is to allow a second principal structure on the lot and to allow one apartment in the garage as a second dwelling. She noted the location, existing use, zoning and future land use designation of the subject property. She reviewed the timeline of modifications made to 308 West California Avenue by the previous owner, particularly the illegal transfer in 1992 of 6 feet of lot width to an adjacent parcel, the 2011 illegal construction of a mechanical enclosure, and the illegal conversion of the garage into 3 apartments without obtaining necessary city permits.

Ms. Wilcock explained the purpose for each request. She addressed the main concerns expressed by the public during the first public hearing on August 21, 2019. These included the following:

- Granting the conditional use permit and major variances would set a precedent Ms. Wilcock explained that granting a request for one case does not set a precedent that must be followed in other cases. She stated that all cases are different and must be judged on their own merit in relation to the zoning criteria in the City's Zoning Ordinance.
- Continuation of illegal modifications on the garage Ms. Wilcock assured the Zoning Board of Appeals and the public that the garage would need to be brought up to Building Code whether the conditional use permit and variances were approved or not.
- There is no compelling reason to grant approval Ms. Wilcock stated that the Zoning Board of Appeals must evaluate the variance and conditional use permit criteria to determine whether there are compelling reasons to grant the requests.

Ms. Wilcock noted the communications received and handed out prior to the start of the meeting. She reviewed the criteria that the Zoning Board of Appeals uses to make decisions for conditional use permit requests and for major and minor variance requests. She discussed the criteria and explained staff's analysis for each. Referring to Exhibit F, she talked about the options for partial approval of the proposed requests. She summarized staff findings, read the options, and presented staff's recommendation for each case.

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

Mr. Warmbrunn asked if Partial Approval Option A [allowing a second-floor apartment and requiring conversion of the first floor to vehicle parking/storage] would result in five parking spaces. With Partial Approval Option B [allowing a first-floor apartment and requiring the conversion of the second floor to storage], the Zoning Board of Appeals would need to approve the parking variance because it would result in three parking spaces. Ms. Wilcock said that was correct. The parking spaces do not need to be used for parking. The owner would be required to provide four parking spaces if the parking variance is not granted.

Mr. Warmbrunn recalled at the previous meeting that the Board had asked how many bedrooms the one apartment unit in the garage would be allowed to have. Ms. Wilcock replied that it might be able to fit four bedrooms. She said that the Board could place a condition on the approval limiting the number of tenants for the one unit in the garage.

Ms. McLaughlin stated that the options for partial approval seemed more like choices for the applicant. The Zoning Board of Appeals would not be deciding upon which option, but rather on whether to approve or deny each request as written. Ms. Wilcock said that was correct.

Ms. McLaughlin asked why City staff recommends denial of the parking variance. Ms. Wilcock replied that it is to reduce the Floor Area Ratio (FAR) and to force the applicant to convert the first floor of the garage to parking. This seems to fit more into the character of the neighborhood and meet the criteria of the Zoning Ordinance.

Ms. Chester asked what the square footage of usable living space is on the second floor of the garage. Ms. Wilcock answered that the full size of the first floor is the living space that is used in the calculation of the FAR for the second floor. The living space of the second floor would be

calculated based on the building plan, which the applicant has not submitted. It is currently being used as an efficiency apartment with one room, a kitchen off to the side and a bathroom. The Floor Area Ratio (FAR) is 875 square feet per floor.

Ms. Wilcock stated that it has a foundation; however, Building Safety Division staff would need to inspect it to ensure that it meets the requirements for a dwelling unit. Other improvements would depend on what the Building Inspector finds when he inspects it. The property owner will be required to meet all building codes for a dwelling unit. Ms. Uchtmann asked if the property owner would need to request another variance if the foundation is found to be deficient. She said she was surprised that the Building Inspector had not weighed in already on the condition of the foundation. Ms. Wilcock said no, the property owner would not need a variance. Planning staff and the property owner have held many discussions with the Building Inspector throughout the process. Ms. McLaughlin felt that the condition of the foundation was not within the purview of the Zoning Board of Appeals and was irrelevant to these cases. Mr. Rusch added that the applicant previously made it clear that he wanted to seek zoning approval before proceeding with planning detailed improvements to bring the existing garage into compliance as a dwelling unit.

Ms. Chester inquired about the house. Ms. Wilcock replied that the house is classified as a single-family rental.

Mr. Warmbrunn wondered why the minor variances were still labelled as major variances. Ms. Wilcock responded that to avoid having to re-advertise the public hearing for these two cases in the News-Gazette, and sending out notices to the neighbors, they kept the case information the same. When the Zoning Board of Appeals makes motions on the minor variances, they will need to state the case numbers and note which cases are now minor variances.

With no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of his requests.

Dan Gordon, applicant, approached the Zoning Board of Appeals to answer questions.

Mr. Warmbrunn asked if Mr. Gordon had the opportunity to explore the option to purchase two feet from one of his neighbors. Mr. Gordon replied no, he had not pursued this option. He was informed that the property owner of 310 West California Avenue, who purchased six feet from the previous owner of 308 West California Avenue, had built something on that six feet so they would not be able to sell him two feet and still meet setback requirements. The property owner of 306 West California Avenue would not be able to sell him two feet because their driveway is located along the western property line.

Mr. Warmbrunn inquired if Mr. Gordon had looked into the possibility of demolishing the existing garage to build a second dwelling structure or to keep the existing garage and build another living unit. Mr. Gordon said no. These options are not something he would do. He would rather convert the existing garage back into a garage use. It would not be feasible to construct another living unit [in a new building]. Mr. Cho asked for clarification that the owner was only interested in Option A or Option B. Mr. Gordon said yes.

Mr. Gordon said that regarding Ms. Chester's questions about livable square footage of the second floor unit, there is only room for a one-bedroom unit. He explained that he was asking for approval of the proposed conditional use permit and variance requests prior to drawing up plans for improvements due to the expensive costs of hiring an architect.

Trent Shepard approached the Zoning Board of Appeals to speak. He said he remembered when the house was constructed but did not remember when the garage was converted and illegally expanded. The 300 block of California Avenue is a mix of owner occupied and rental properties. The properties that he recalled becoming duplexes were in houses that had been divided up into two living units. He said he believed that garages converted into dwelling units, grandfathered in or approved by a conditional use permit, are rare. He did not believe that there should be this process to clear up an illegal mess to allow a rental unit. By granting approval of the proposed conditional use permit and variance requests, the City would only be rewarding illegal activity, which is a bad idea.

Ms. Chester recalled that from 1974 to 2010 there were many garages that had been converted into apartments. Over the years, many of them were demolished and thus have disappeared. The proposed garage seems newer. She said the proposed situation is a very uncommon thing.

Ms. Uchtmann wondered how many property owners between Race Street and Lincoln Avenue would want to convert their garages into apartments. Ms. Chester said that because most of the properties in this area are small, narrow lots, most garages are single-car garages. Mr. Rusch stated that the case is for the existing garage at 308 West California Avenue, not for other garages in other areas.

Paul Debevec approached the Zoning Board of Appeals to speak. He gave a short presentation called, "308 West California Avenue – A Garage is a Garage is a Garage". He talked about the following:

- ZBA Scoreboard "The Zoning Board of Appeals approves everything."
- "Precedent" He doubted that the City considers two similar cases differently. He talked about the definition of precedent.
- The alleyways of West Urbana he showed photos of garages located along alleyways that he believes have been converted into dwelling units.
- Affordable Rentals are Plentiful and Vacant He showed that the website CivicDashboard shows Urbana's current vacancy rate is 20.36%. He also showed a map of rental listings for the north part of West Urbana on Zillow. He showed charts of the number of bedroom units available and of the prices per bedroom.
- How was 308 West California Avenue Missed? It is located in Zone 3 of the Systematic Rental Inspection. The inspection happened in March 2007, and the conversion was done in 2010. Other inspections were done to neighboring properties but not to 308 West California Avenue.
- Similar Circumstances Example 510 West Oregon Street This property was granted a variance to allow a living space to be constructed above the garage; however, it could not be used as a dwelling space because plumbing was not allowed. The proposed cases would set a precedent.

Ms. Uchtmann asked about the garages that Mr. Debevec showed that he believed had been converted into dwelling units. She asked if City staff had checked into these properties to see if they were approved and comply with building requirements? Mr. Garcia said no. The City has not had the staff resources to check them at this time. Ms. Chester stated that the brick carriage garage had obtained permits. She believed some of the other garage conversions had occurred before 1955 and were grandfathered in.

Mr. Cho asked if the Board was allowed to speculate on the future economics of rentals and future appetite for converting garages in making a decision. Mr. Garcia said that the Board members should base their decisions on the criteria for a conditional use permit and for the variance requests.

With no further comments or questions from public 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. Garcia clarified that staff had checked the rental vacancy rates on the CivicDashboard website. He said CivicDashboard states that they obtain information from the American Community Survey (ACS). However, the ACS actually reports a 9.8% rental vacancy rate as of 2017, not 20.36% as reported on CivicDashboard. Mr. Cho asked if the Board members should consider the vacancy rate when making a decision. Mr. Garcia said no.

Ms. McLaughlin moved that the Zoning Board of Appeal approve Case No. ZBA-2019-C-03. Mr. Warmbrunn seconded the motion.

Roll call on the motion was as follows:

Ms. Chester	-	No	Mr. Cho	-	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 2.

Mr. Rusch moved that the Zoning Board of Appeals deny Case No. ZBA-2019-MAJ-05. Ms. Uchtmann seconded the motion.

Roll call on the motion was as follows:

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

The motion passed by a vote of 6 to 1.

Mr. Rusch moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-06 to City Council with a recommendation for approval. Ms. McLaughlin seconded the motion.

Roll call on the motion was as follows:

Ms. Chester	-	No	Mr. Cho	-	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 2. Mr. Garcia noted that this case would be forwarded to City Council on October 7, 2019.

Mr. Warmbrunn moved that the Zoning Board of Appeals approve Case No. ZBA-2019-MAJ-08 as a minor variance. 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
Ms. Uchtmann	-	No	Mr. Warmbrunn	-	Yes
Ms. Welch	-	Yes			

The motion passed by a vote of 6 to 1.

Mr. Rusch moved that the Zoning Board of Appeals approve Case No. ZBA-2019-MAJ-09 as a minor variance. Mr. Cho seconded the motion.

Ms. Uchtmann asked how many bedrooms were in the principal dwelling structure. Mr. Garcia replied that there are four bedrooms. Ms. Uchtmann questioned how many parking spaces were required for those four bedrooms. Mr. Garcia explained that because the principal dwelling structure is classified as a single-family house rental, it requires two spaces. If the garage is allowed to be a second dwelling unit, it would be classified as a single-family rental and require two parking spaces. The proposed minor variance would reduce the required number of parking spaces from four to three spaces.

Roll call on the motion was as follows:

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

The motion passed by a vote of 5 to 2.

Mr. Warmbrunn moved that the Zoning Board of Appeals forward Case No. ZBA-2019-MAJ-10 to the City Council with a recommendation for approval. Ms. McLaughlin seconded the motion.

Ms. Uchtmann asked if approving the proposed variance would be recommending that the garage be used as a living space. Mr. Garcia said essentially yes, because the owner would not be allowed to establish a second dwelling on the lot without the proposed variance. Ms. Uchtmann said she felt the Zoning Board of Appeals Board needed to keep in mind as they are voting what zoning was designed for and what the similar circumstances could be. She did not feel that the Board would be upholding the zoning. Mr. Rusch commented that the purpose of the Zoning Board of Appeals is that when special circumstances arise, the ZBA works with the petitioners and looks at the cases that come before them and decide whether the variances are reasonable for the needs of the community.

Ms. Uchtmann stated that she does not believe the applicant did due diligence before purchasing the subject property in recognizing the potential problems he was buying into. She said he should have looked into whether permits had been issued for the garage conversion and checked to see if the structures complied with the City's codes.

Ms. McLaughlin commented that she felt an increase in cases could mean a reflection in the changing needs of the community. It is not necessarily a bad thing. We have seen single-family neighborhoods, particularly in desirable parts of the community with good access to walking and biking, maybe should be available to more people and should not be restricted in ways that they currently are. She said the Board considers each case as it comes before them. The rental units on the subject property have been occupied, so the location is desirable, and there have been no complaints. The only reason people have come out to complain is because they just learned that it exists. The current property owner is trying to bring the property into compliance, so that is what the applicant, City staff and the Zoning Board of Appeals are working jointly to do.

Chair Welch stated that this is the Zoning Board of Appeals, meaning that it is the Board members' job to decide cases before them based on their merits. If the Board approves cases, it simply means that they are allowing some deviation from the zoning. If that was not desired, then there would not be a Zoning Board of Appeals and the zoning in place would be governing. Zoning Ordinances, like many other written laws, often times get passed by circumstances. In his profession, some people want the Constitution to remain unchanged as it was originally written back in 1790s, and other people believe it should change to reflect current circumstances and conditions. Many times this happens with zoning. He noticed in the written communications that were presented during the previous meeting that many of them expressed desire for uniformity. While it is always a good thing, it should never be an absolute, because often times it leads to rigid circumstances and conditions. We have to balance all of the issues to allow the desire for compliance but to also allow meaningful deviations from the strict dictates of the Zoning Ordinance. The proposed case is not a situation where something new is being put into place. The existing garage was already there when the existing owner purchased it. He is surprised that there is not a desire to radically change the appearance of the outside of the garage.

Roll call on the motion was as follows:

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

The motion was passed by a vote of 6 to 1. Mr. Garcia noted that this case would be forwarded to City Council on October 7, 2019.

6. NEW PUBLIC HEARINGS

ZBA-2019-MAJ-11 – A request by Robert Freeman, on behalf of First United Methodist Church, for a Major Variance to construct an electronic display at 304 South Race Street in the B-4, Central Business District.

Chair Welch opened the public hearing for this case. Marcus Ricci, Planner II, presented the staff report for the case. He began by stating the purpose for the proposed variance, which is to allow the applicant to upgrade the 70-year-old existing sign to a new, electronic sign. He noted the zoning of the subject property and talked about the design of the proposed sign. He reviewed how the variance criteria from Section XI-3 of the Urbana Zoning Ordinance relates to the proposed request. He summarized City staff findings and read the options of the Zoning Board of Appeals. He presented City staff's recommendation for approval with the following conditions:

- 1. The proposed electronic display's location and size generally conform to the site plan and specifications.
- 2. The electronic display is monochrome (single-color).

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

Ms. McLaughlin asked if the color would impact the brightness of the sign display. Mr. Ricci explained that Condition 2 is suggested as an option to reduce potential concerns or minimize the impact of the changes in the sign.

Mr. Rusch asked what the typical requirements are for an electronic sign. Mr. Ricci stated that the main requirements for any electronic display are as follows:

- Messages must be displayed for a minimum of three minutes before changing.
- A display can only be 3 foot-candles brighter than the ambient light levels and must have auto-dimming technology built in.
- The electronic display must be less than half of the area of the total sign.

With no further questions for City staff, Chair Welch opened the hearing for public input. He invited the applicant to speak on behalf of his request.

Reverend Robert Freeman approached the Zoning Board of Appeals to speak on behalf of the First United Methodist Church. He talked about the church's relationship with the community and stated that they need a better-looking sign. He encouraged the Zoning Board of Appeals to approve their request.

Ms. McLaughlin asked how Reverend Freeman felt about Condition 2 limiting the display to monochrome only. Reverend Freeman replied that the church was fine with this condition, as they do not want the sign to be a big distraction to motorists or to take away from the hotel once it is operational again. Mr. Ricci added that he would have the City's Legal Division review the wording to ensure that it did not violate any First Amendment rights.

Mr. Rusch wondered if the church would be approving all messages that would be displayed on the proposed sign. Reverend Freeman explained that the Church's Board of Trustees would have to agree to any message being displayed.

Reverend Freeman invited everyone to take a tour of the church to see how great of a structure it is.

With no further comments or questions from public 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-2019-MAJ-11 to the City Council with a recommendation for approval including the condition that *the proposed electronic display's location and size generally conform to the site plan and specifications*. Ms. Uchtmann seconded the motion.

Roll call on the motion was as follows:

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

The motion passed by unanimous vote. Kevin Garcia, Planner II, noted that this case would be forwarded to City Council on October 7, 2019.

ZBA-2019-MIN-03 – A request by Ryan Millikan for a Minor Variance to allow a garage to encroach 2.375 feet into the required 10-foot rear yard at 304 East Kerr Avenue in the R-3, Single- and Two-Family Residential District.

Chair Welch opened the public hearing for the case. Kevin Garcia, Planner II, presented the staff report for this case. He began by explaining the purpose of the proposed minor variance. He noted that the rear yard was to the west of the existing garage. He showed an illustration of the existing house and the proposed addition and noted how much the proposed addition would

encroach into the rear yard setback. He said that City staff believed that the proposed variance request met the variance criteria from Section XI-3 of the Urbana Zoning Ordinance. He presented staff's recommendation for approval with the added condition that *the building addition be constructed in general conformance with the site plans that were presented*. He noted that the applicant and the architect were present at the meeting to answer questions or address any concerns.

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

Ms. Uchtmann noticed the proposed connection from the garage to the hallway in the house on the second floor. She asked if the unfinished attic would become a living space. Mr. Garcia stated that if it were to become a living space, the owner would need to apply for the required building permits and the plans would have to be reviewed for building and zoning code compliance.

With no further questions for City staff, Chair Welch opened the hearing for public input. There was none, so he 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 approve Case No. ZBA-2019-MIN-03 as requested with the condition that *the building addition be constructed in general conformance* with the site plans presented in the staff memo. Ms. Uchtmann seconded the motion.

Roll call on the motion was as follows:

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

The motion was approved unanimously.

7. OLD BUSINESS

There was none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Lorrie Pearson, Deputy Community Development Director / Planning Manager, announced that effective October 17, 2019, she will become the Director of Community Development Services Department. This means that she will not be attending as many meetings of the Zoning Board of Appeals; however, she will still attend as needed. Kevin Garcia, Planner II, will begin serving as Secretary for this Board.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Welch adjourned the meeting at 9:02 p.m.

Respectfully submitted,

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Lorrie Pearson, AICP Deputy Community Development Director / Planning Manager Secretary, Urbana Zoning Board of Appeals