



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Lorrie Pearson, AICP, Community Development Services Director
Marcus Ricci, AICP, Planner II

DATE: January 9, 2020

SUBJECT: A Resolution of Protest Against a Proposed Text Amendment to the Champaign County Zoning Ordinance (CCZBA-948-AT-19 / Nonconforming Structure Preemptive Variance)

Introduction

The Champaign County Zoning Administrator (Zoning Administrator) requests an amendment to § 8.3.2. of the Champaign County Zoning Ordinance (Ordinance) to authorize a variance to rebuild a nonconforming structure before that structure is damaged.

This proposed text amendment is of minimal interest to the City of Urbana, because it will not significantly affect zoning and land use development decisions within the City's one-and-a-half-mile extraterritorial jurisdiction (ETJ). The City has subdivision and land development jurisdiction within the ETJ, while the County holds zoning jurisdiction in this area. The Champaign County Environmental Land Use Committee (ELUC) will hold its public hearings on this case at its January 9 and February 6, 2020, meetings. The Champaign County Board would hear this case at its February 20, 2020, meeting, at the earliest.

The City has the right to protest County text amendments by filing a protest by the date the case goes before the County Board. **On December 5, 2019, the Urbana Plan Commission recommended that City Council DEFEAT a resolution of protest of this case.** Under state law, a municipal protest of the proposed amendment would require three-quarters super-majority of affirmative votes for approval of the request at the County Board; otherwise, a simple majority would be required.

Background

According to the applicant, there have been numerous variance cases where Champaign County Planning and Zoning (P&Z) staff have discovered nonconforming structures on a property, which are unrelated to the original variance request, but would require their own variance to be rebuilt should they be destroyed by fire or a natural disaster (Exhibit A). P&Z staff believe that an applicant should have the option to request a variance to rebuild a nonconforming structure before it is destroyed. Preemptively granting a variance to rebuild a structure prior to its destruction would reduce the time to rebuild it by months, since variance cases may have to wait several meetings before they can be heard by the Champaign County Zoning Board of Appeals (CCZBA).

A recent example occurred at the January 17, 2019, meeting at which a CCZBA case was heard that included several required variances for a property. P&Z staff included a variance request for an existing nonconforming house, to be proactive in case it is damaged in the future. A CCZBA member stated they had a very strong reservation to hearing the nonconforming structure variance...

“...because the existing house is a lawful nonconforming structure that can continue to be used, and this Board does not have the legal authority to grant a variance to simply make a nonconforming structure conforming...Section 9.1.9 of the Champaign County Zoning Ordinance indicates that the Board is prohibited from granting variances for nonconforming structures except for those that are specifically provided for in Section 8, which provides for granting variances for expansions of nonconforming uses and provides for granting variances for the reconstruction of nonconforming uses that have been destroyed. The home is still there, so there is no provision in the Zoning Ordinance for granting a variance for an existing structure just because it is nonconforming. The Board is not authorized to erase the nonconforming status of existing structures; we can provide for their expansion and reconstruction, but the Board is not authorized to change their status and that is what Part B proposes to do and would be violating Section 9.1.9 of the Ordinance.”

Zoning Administrator John Hall responded that he seeks to reduce the “unintentional bad effects” of the Ordinance daily, that this lack of proactive planning is one of those bad effects, and that rebuilding a nonconforming structure is one of the most common variances requested. At its November 14, 2019, meeting, the CCZBA voted to forward the proposed amendment to the ELUC with a unanimous recommendation for approval, including the CCZBA member who had expressed concerns (five ayes, zero nays). These meeting memoranda can be found at http://www.co.champaign.il.us/CountyBoard/meetings_ZBA.php (see “2019 Meetings” for the September 26 Preliminary Memo and October 31 Supplemental Memo). If forwarded by the ELUC, the Champaign County Board would hear this case at its February 20, 2020, meeting, at the earliest.

Discussion

County Zoning

City staff reviewed the proposed text amendment to determine potential impacts to land within the City’s boundary and ETJ, and for potential impacts to the City’s ability to plan or manage development. **Staff does not anticipate a negative impact to the City or to the City’s ability to plan or manage growth or development.** Any variance granted by the County should be considered by the City if and when the land on which the nonconforming use is located is proposed to be annexed into the City. Below is a mark-up of the text of § 8.3.2. with additions underlined:

8.3.2 Should such STRUCTURE be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. The BOARD may authorize such a VARIANCE prior to such STRUCTURE incurring any damage or destruction.

Urbana 2005 Comprehensive Plan

By State law, the City has the ability to review zoning decisions within its ETJ for consistency with the City’s comprehensive plan. Therefore, Champaign County’s proposed Zoning Ordinance text amendment should be reviewed for consistency with the City of Urbana’s 2005 Comprehensive Plan, which includes the following pertinent goals and objectives:

Goal 15.0 Encourage compact, contiguous, and sustainable growth patterns.

Objective 15.5 Promote intergovernmental cooperation on development and growth issues.

Goal 21.0 Identify and address issues created by overlapping jurisdictions in the one-and-a-half-mile Extraterritorial Jurisdictional area (ETJ).

Objectives 21.1 Coordinate with Champaign County on issues of zoning and subdivision in the ETJ.

21.2 Work with other units of government to resolve issues of urban development in unincorporated areas.

The proposed Ordinance text amendment to authorize a variance to rebuild a nonconforming structure before the structure is damaged is generally consistent with these City goals and objectives. It seeks to proactively plan for damage to nonconforming structures to minimize the time between the actual damage and the permitted rebuild date.

Impacts to City of Urbana Zoning

Staff does not anticipate a negative impact to the City or to the City’s ability to plan or manage growth or development. Within the City’s municipal boundaries, the proposed text amendment does not directly affect the use of land, nor does it affect the City’s ability to manage growth and development. If the County grants a preemptive variance for a nonconforming structure that is subsequently annexed into the City, that variance no longer applies, as the land is no longer under the County’s zoning authority. If the corporate authorities believe that the preemptive variance is beneficial to the City, they may issue a variance to allow its continuation as part of an Annexation Agreement, should it even need a variance under the City’s Zoning Ordinance.

Plan Commission

The Plan Commission discussed the proposed text amendment at its December 5, 2019, regular meeting (Exhibit D). The most salient points of the public hearing are briefly summarized here. Marcus Ricci, Planner II, confirmed that, if the text amendment is approved, a property owner in the County could apply for a preemptive nonconforming structure variance by itself, with no other requested variances. Mr. Ricci stated that, in Urbana, there is no time limit for variances, and variances transfer to subsequent owners; variances issued by the County likely follow the same rules. Plan Commissioner Lew Hopkins asked what would happen if a nonconforming structure with a preemptive reconstruction variance from the County were annexed. Mr. Ricci replied that the City could elect to issue a similar preemptive reconstruction variance, or could require it to be brought up to current zoning code [if it is destroyed]. **The Plan Commission voted unanimously (eight ayes, zero nays) to recommend DEFEATING A RESOLUTION OF PROTEST for CCZBA Case No. 948-AT-19.**

Summary of Staff Findings

1. The Champaign County Zoning Administrator proposes an amendment to § 8.3.2. of the Champaign County Zoning Ordinance to authorize a variance to rebuild a nonconforming structure before that structure is damaged.
2. The proposed text amendment is generally compatible with the land use policy goals and objectives of the 2005 Urbana Comprehensive Plan, which promote natural resource preservation, contiguous growth, economic stability, and compatibility of land uses.
3. The proposed text amendment would not pose significant negative impacts to land uses or to the ability of the City to manage growth and development of land currently within the City's ETJ. If County land is subsequently annexed, the County variance no longer applies and the City can choose to issue a similar variance as part of an Annexation Agreement. Additionally, the City has already granted a preemptive variance for a nonconforming structure.

Options

City Council has the following options in **CCZBA Case No. 948-AT-19**, a request to amend the Champaign County Zoning Ordinance to authorize a variance to rebuild a nonconforming structure before that structure is damaged:

- a. **Defeat** a resolution of protest; or
- b. **Defeat** a resolution of protest, contingent upon specific provisions to be identified; or
- c. **Approve** a resolution of protest.

Recommendation

At its December 5, 2019, meeting, the Urbana Plan Commission voted eight ayes to zero nays to forward Case **CCZBA 948-AT-19 (Nonconforming Structure Preemptive Variance) to City Council with a recommendation to DEFEAT a resolution of protest**. Staff concur with the Plan Commission's recommendations.

Attachments: Exhibit A: Excerpt of Champaign County Planning & Zoning Preliminary Memorandum

Exhibit B: Minutes of December 5, 2019, Plan Commission Meeting – DRAFT

Full County Memos available at http://www.co.champaign.il.us/CountyBoard/meetings_ZBA.php

cc: John Hall, Director, Champaign County Planning & Zoning
Susan Burgstrom, Planning, Champaign County Planning & Zoning

RESOLUTION NO. 2020-01-006R

**A RESOLUTION OF PROTEST AGAINST A PROPOSED TEXT AMENDMENT TO
THE CHAMPAIGN COUNTY ZONING ORDINANCE**

(CCZBA-948-AT-19 / Nonconforming Structure Preemptive Variance)

WHEREAS, the Champaign County Zoning Administrator is requesting a text amendment to the Champaign County Zoning Ordinance in Champaign County Case No. 948-AT-19 to address nonconforming structures in the unincorporated areas of Champaign County. This amendment authorizes the County to grant a variance to rebuild a nonconforming structure before that structure is damaged; and

WHEREAS, the proposed text amendment has been submitted to the City of Urbana for review and is being considered by the City of Urbana under the name of “CCZBA-948-AT-19”; and

WHEREAS, pursuant to the provisions of State of Illinois Compiled Statutes 55 ILCS 5/5-12014 that states in cases of any proposed zoning amendment where the land affected lies within one-and-one-half (1-1/2) miles of the limits of a zoned municipality, the corporate authorities of the zoned municipality may by resolution issue written protest against the proposed text amendment; and

WHEREAS, the proposed text amendment is compatible with the Goals and Objectives and Future Land Use Map of the 2005 City of Urbana Comprehensive Plan; and

WHEREAS, the Urbana Plan Commission met on December 5, 2019, to consider the proposed text amendment and voted with eight ayes and zero nays to forward to the City Council a recommendation to defeat a resolution of protest; and

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed text amendment is not in the best interest of the City of Urbana.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The City Council finds and determines that the facts contained in the above recitations are true.

Section 2. That the Urbana City Council hereby resolves that the City of Urbana, pursuant to the provisions of 55 ILCS 5/5-12014, does hereby DEFEAT a Resolution of Protest against the proposed text amendment as presented in CCZBA-948-AT-19.

PASSED BY THE CITY COUNCIL this _____ day of _____, 2020.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this _____ day of _____, 2020.

Diane Wolfe Marlin, Mayor

Exhibit A: Excerpt of Champaign County Planning & Zoning Preliminary Memorandum

Champaign County
Department of

**PLANNING &
ZONING**

CASE 948-AT-19
PRELIMINARY MEMORANDUM
September 19, 2019

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance by amending Section 8.3.2 to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

Location: Unincorporated Champaign County

Time Schedule for Development: As soon as possible

Prepared by: **Susan Burgstrom**, Senior Planner
John Hall, Zoning Administrator

Brookens Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

zoningdept@co.champaign.il.us

www.co.champaign.il.us/zoning

BACKGROUND

At its May 9, 2019 meeting, ELUC reviewed a memorandum dated May 1, 2019 regarding proposed changes to Zoning Ordinance Section 8.3: Nonconforming Structures – see Attachment B. The proposed change is to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

ELUC approved opening a ZBA public hearing for these amendments at its June 6, 2019 meeting.

REASONS FOR THE PROPOSED AMENDMENT

Section 8.3.2 currently requires a variance in order to reconstruct a nonconforming structure destroyed to an extent greater than 50% of its replacement cost. As Section 8.3.2 is written, a property owner would have to wait for a structure to be damaged or destroyed before they could apply for a variance to rebuild.

Numerous variance cases have resulted in P&Z Staff finding that there is also a nonconforming structure on the property that would require a variance should it be destroyed. P&Z Staff believe the option should be available to request the variance before a nonconforming structure is destroyed when there is another required zoning variance needed for the property. Allowing the variance prior to destruction could reduce the time between when a structure is destroyed and when it can be rebuilt by months, since variance cases may have to wait several ZBA meetings before they can be heard.

ADDITIONAL INFORMATION RELATED TO THE PROPOSED AMENDMENT

Section 9.1.9 B.4. of the Zoning Ordinance states, “At no time shall the BOARD, the Hearing Officer or the GOVERNING BODY grant a VARIANCE to waive compliance with regulations pertaining to NONCONFORMING LOTS, STRUCTURES, or USES, except as specifically authorized in Section 8.”

At the January 17, 2019 ZBA meeting, there was a case that included several required variances. P&Z Staff decided to include a variance for a nonconforming house to be proactive about the possibility of the structure being damaged in the future. Mr. DiNovo stated that he had a very strong reservation

Exhibit A: Excerpt of Champaign County Planning & Zoning Preliminary Memorandum

with respect to hearing the variance about the nonconforming structure “because the existing house is a lawful nonconforming structure that can continued to be used, and this Board does not have the legal authority to grant a variance to simply make a nonconforming structure conforming.” Further, Mr. DiNovo stated, “Section 9.1.9 of the Champaign County Zoning Ordinance indicates that the Board is prohibited from granting variances for nonconforming structures except for those that are specifically provided for in Section 8, which provides for granting variances for expansions of nonconforming uses and provides for granting variances for the reconstruction of nonconforming uses that have been destroyed. The home is still there, so there is no provision in the Zoning Ordinance for granting a variance for an existing structure just because it is nonconforming. The Board is not authorized to erase the nonconforming status of existing structures; we can provide for their expansion and reconstruction, but the Board is not authorized to change their status and that is what Part B. proposes to do and would be violating Section 9.1.9 of the Ordinance.”

The January 17, 2019 minutes state, “Mr. Hall stated he understands Mr. DiNovo’s point, but as the Zoning Administrator, he sees the Ordinance having unintentional bad effects, and every day he minimizes those as much as he possibly can, and this is another aspect of that, but this is a decision by this Board...Mr. Hall stated that this is one of the most common variances. He asked the Board to recall how many variances they have received with this part to it, so he would consider this a critical amendment. He said that he does not like doing text amendments because they always end up taking up more time than can be imagined, but this is something that is fundamental.”

Ultimately, the ZBA voted in favor of allowing the variance 5-0, with Mr. DiNovo voting in favor, but with strong reservations.

ATTACHMENTS

- A Legal advertisement
- B ELUC Memorandum dated May 1, 2019, with attachment:
 - Proposed Changes to Zoning Ordinance Other Than in Response to Municipal Concerns dated February 27, 2019
- C Preliminary Finding of Fact, Summary Finding of Fact, and Final Determination for Case 948-AT-19 dated September 26, 2019, with attachment:
 - Annotated version of proposed amendment

Exhibit B: Plan Commission Meeting Minutes December 5, 2019

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: December 5, 2019

TIME: 7:00 P.M.

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

MEMBERS PRESENT: Barry Ackerson, Dustin Allred, Jane Billman, Andrew Fell, Tyler Fitch, Lew Hopkins, Jonah Weisskopf, Chenxi Yu

STAFF PRESENT: Kevin Garcia, Planner II; Marcus Ricci, Planner II

OTHERS PRESENT: Jahnisi A., Karen Fresco, Carlin Hastings, Rolf Hudall, Malik Jackson, Michael Kilcullen, Andrew Koteris, Samantha Lenocho, Michael Mirrs, Nicole Mormando, Alice Novak, Maximo Pita, Charley Rasmussen, Eric Ziegler

COMMUNICATIONS

- Email from Susan Burgstrom regarding the splitting of CCZBA-947-AT-19 into two cases, CCZBA-947-AT-19 and CCZBA-971-AT-19.

NEW BUSINESS

CCZBA-948-AT-19 – A request by the Champaign County Zoning Administrator to amend Section 8.3.2 to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

Chair Fitch opened this case. Marcus Ricci, Planner II, presented the staff report to the Plan Commission. He explained the reason for the proposed text amendment.

Mr. Fell stated that most property owners discover that their property is non-conforming after something happens and they want to rebuild. Mr. Ricci replied that the language is written for when a non-conformity is identified when the owner applies for other variances.

Mr. Hopkins commented that there is no language in the proposed text amendment prohibiting a property owner from proactively seeking a variance in the event something should happen to

Exhibit B: Plan Commission Meeting Minutes December 5, 2019

their property. He could see a property owner asking for this type of variance to be able to pay a lower insurance premium because the variance would allow the non-conformity to continue should it need to rebuild. Mr. Ricci said that was correct.

Mr. Weisskopf asked if there was another way of solving the problem...maybe by amending the percentage of damage to a property to allow them to rebuild. Mr. Ricci said that Champaign County could amend the percentage, but then there would be some property that is damaged just above the new percentage and the owner would need to request a variance to rebuild.

Mr. Weisskopf asked for clarification that more than 50% of the properties in West Urbana have non-conforming structures. Mr. Ricci said that was correct. He pointed out that the proposed text amendment does not cover non-conforming uses; only non-conforming structures.

Chair Fitch opened the case for public input.

Michael Kilcullen approached the Plan Commission to speak. He asked if there would be a time limit on a variance for this nature. Can the variance be sold or transferred with the property? The unintended consequences have not been thought of yet so he encouraged the Plan Commission members to think about them before making a decision about this case.

Another issue is that part of the idea of allowing variances for non-conforming structures to be rebuilt becomes a non-conformity due to change of laws or standards. We want new structures to conform to the new laws and rules over time, so giving a preemptive variance could create many problems.

Whoever creates the non-conformity, such as the Illinois Department of Transportation using eminent domain to acquire land to widen the streets, should compensate or give the property owner money to use to rebuild should something ever happen to their property. It should not come from insurance or from the public or taxpayer.

He stated that he believed variances of this nature were not necessary because something that has become non-conforming may likely become conforming again in the future when the laws or regulations change. We should wait until the moment when the variance is needed.

Chair Fitch closed the public input portion and asked if any of the Plan Commission members had additional questions for City staff.

Mr. Ackerson asked if a variance of this nature could be passed down to future owners of a property. Mr. Ricci responded that he was not an expert in the language in the Champaign County Zoning Ordinance. He noted that the proposed type of variances would be granted by the Champaign County Zoning Board of Appeals. Should a property be annexed into the City of Urbana, the City would not be required to honor the variance; however, the variance could be negotiated as part of an annexation agreement between the property owner and the City of Urbana.

Mr. Hopkins wondered what would happen if the City of Urbana annexes a property with a structure that was built while the property was located in Champaign County jurisdiction and the

Exhibit B: Plan Commission Meeting Minutes December 5, 2019

property does not meet the City's regulations. Does the property annex into the City as a non-conforming property? Mr. Ricci said yes.

Mr. Hopkins asked if the City has the ability to grant variances with time limitations. Mr. Ricci said no.

Chair Fitch opened the case for Plan Commission discussion and/or motion(s).

Mr. Ackerson stated that if this was a City text amendment, then he would have more discussion and concerns. It gave him qualms to think that a variance could be granted for an indefinite period of time for something that is already non-conforming. Since it is a County text amendment, he did not see it directly affecting the City.

Mr. Ackerson moved that the Plan Commission forward Case No. CCZBA-948-AT-19 to the City Council with a recommendation to defeat a resolution of protest. Mr. Hopkins seconded the motion. Roll call on the motion was as follows:

Mr. Ackerson	-	Yes	Mr. Allred	-	Yes
Ms. Billman	-	Yes	Mr. Fell	-	Yes
Mr. Fitch	-	Yes	Mr. Hopkins	-	Yes
Mr. Weisskopf	-	Yes	Ms. Yu	-	Yes

The motion passed by unanimous vote.

Mr. Garcia noted that this case would be forwarded to the City Council on December 16, 2019.