

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

NOTICE OF REGULAR MEETING

Date: **February 3, 2011**
Time: **6:30 P.M.**
Place: **Lyle Shields Meeting Room**
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802

Note: NO ENTRANCE TO BUILDING FROM WASHINGTON STREET PARKING LOT AFTER 4:30 PM. Use Northeast parking lot via Lierman Ave., and enter building through Northeast door.

If you require special accommodations please notify the Department of Planning & Zoning at (217) 384-3708

EVERYONE MUST SIGN THE ATTENDANCE SHEET ANYONE GIVING TESTIMONY MUST SIGN THE WITNESS FORM

AGENDA

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Correspondence
4. Approval of Minutes (January 20, 2011)
5. Continued Public Hearings

Note: The full ZBA packet is now available on-line at: co.champaign.il.us.

Case 675-AT-10 Petitioner: **Champaign County Zoning Administrator**
Request: **Amend the Champaign County Zoning Ordinance as follows:**

Part A:

1. In the first four un-numbered paragraphs of Section 8 clarify that nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as authorized herein.
2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots may be used separately or conveyed to a different owner provided that a variance is granted.

Part B:

1. Revise paragraph 8.2.1 B. as follows:
 - a. Limit applicability to the total expansion since October 10, 1973.
 - b. Revise the limit on expansion of a nonconforming single family dwelling as follows:
 - (1) A nonconforming single family dwelling which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (2) A nonconforming single family dwelling which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater, and provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (3) Eliminate the limit on the amount of accessory buildings.
2. Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.
3. Revise subsection 8.2.2 to provide that nonconforming dwellings may be moved on the lot provided that a variance is granted.
4. In subsection 8.2.3 clarify "ceases".

Part C:

1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.
2. Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations and standards of the district provided that the new location is authorized by variance.

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Case 675-AT-10 cont:

Part D.

1. **Revise Subsection 8.4.1 and 8.4.2 as follows:**
 - a. **Authorize that a nonconforming single family dwelling may be expanded as authorized in subsection 8.2.1 provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
 - b. **Authorize that a nonconforming dwelling may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
 - c. **Authorize that expansion of a nonconforming dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction.**
2. **In Subsection 8.4.5 clarify “abandoned” and “discontinued”.**
3. **In Subsection 8.4.6 provide for replacement of nonconforming structure as already authorized in subsection 8.3.2.**

Part E.

1. **Revise Subsection 8.6 as follows:**
 - a. **Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.**
 - b. **Authorize that a nonconforming dwelling has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.**

Part F.

1. **In paragraph 9.1.2 C. require that for an Zoning Use Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses.**

Part G.

1. **In Section 3 revise the definitions of “NONCONFORMING LOT, STRUCTURE OR USE” AND “NONCONFORMING PREMISES” to only apply to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.**

6. New Public Hearings
7. Staff Report
8. Other Business
 - A. Review of ZBA Bylaws
9. Audience Participation with respect to matters other than cases pending before the Board
10. Adjournment

*** Administrative Hearing. Cross Examination allowed.**

1 **MINUTES OF REGULAR MEETING**

3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

4 1776 E. Washington Street

5 Urbana, IL 61801

7 **DATE:** January 20, 2011

PLACE: Lyle Shields Meeting Room

1776 East Washington Street

Urbana, IL 61802

10 **TIME:** 6:30 p.m.

11 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Roger Miller, Eric Thorsland, Paul
12 Palmgren

14 **MEMBERS ABSENT :** Melvin Schroeder

16 **STAFF PRESENT :** Connie Berry, John Hall

18 **OTHERS PRESENT :** Herb Schildt, Sherry Schildt

21 **1. Call to Order**

23 The meeting was called to order at 6:33 p.m.

25 **2. Roll Call and Declaration of Quorum**

27 The roll was called and a quorum declared present with one member absent.

29 **3. Correspondence**

31 None

33 **4. Approval of Minutes (December 16, 2010 and January 6, 2011)**

35 **Mr. Courson moved, seconded by Mr. Miller to approve the December 16, 2010 and January 6, 2011,**
36 **minutes as submitted. The motion carried by voice vote.**

38 **5. Continued Public Hearing**

40 **Case 665-AT-10 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning**
41 **Ordinance by revising paragraph 4.3.3G as follows: A. Increase the maximum fence height allowed in**
42 **side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on**
43 **residential lots less than five acres in area in the AG-1 and AG-2 Zoning Districts; and B. Require**
44 **fencing that is higher than four feet tall to be at least 50% transparent when located in the following**
45 **areas: (1) In Residential Zoning Districts, all fencing that is in the front yard; and (2) On residential**
46 **lots less than five acres in area in the AG Districts, only fencing between the dwelling and the**

1 driveway within 25 feet of the dwelling. C. Increase the maximum allowed height of all fencing to
2 allow up to three inches of ground clearance.

3
4 Mr. Hall stated that there are no new changes since the Supplemental Memorandum dated December 30,
5 2010. He said that revised fencing diagrams were attached to the memorandum illustrating the version that
6 the Board had discussed at the December 16, 2010, public hearing. He requested final action for Case 665-
7 AT-10, at tonight’s public hearing.

8
9 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
10 regarding Case 665-AT-10 and there was no one.

11
12 Mr. Thorsland closed the witness register.

13
14 Mr. Thorsland stated that January 20, 2011, should be added to the first paragraph on Page 1 of the Finding
15 of Fact.

16
17 Mr. Thorsland said he would entertain a motion to adopt the Finding of Fact for Case 665-AT-10.

18
19 **Mr. Miller moved, seconded by Mr. Courson to adopt the Finding of Fact for Case 665-AT-10. The**
20 **motion carried by voice vote.**

21
22 Mr. Thorsland said he would entertain a motion to adopt the Summary of Evidence, Documents of Record
23 and Finding of Fact as amended.

24
25 **Mr. Miller moved, seconded by Ms. Capel to adopt the Summary of Evidence, Documents of Record**
26 **and Finding of Fact as amended. The motion carried by voice vote.**

27
28 Mr. Thorsland said he would entertain a motion to close the public hearing for Case 665-AT-10.

29
30 **Ms. Capel moved, seconded by Mr. Palmgren to close the public hearing for Case 665-AT-10. The**
31 **motion carried by voice vote.**

32
33 Mr. Thorsland informed the petitioner that one Board member was absent from tonight’s meeting therefore it
34 is at his discretion to either continue Case 665-AT-10 until a full Board is present or request that the present
35 Board move forward to the Final Determination. He informed the petitioner that four affirmative votes are
36 required for approval.

37
38 Mr. Hall requested that the present Board move forward to the Final Determination.

39
40 **Final Determination for Case 665-AT-10:**

41
42 **Ms. Capel moved, seconded by Mr. Palmgren that pursuant to the authority granted by Section 9.2 of**
43 **the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**

1 determines that the Zoning Ordinance Amendment requested in Case 665-AT-10 should BE
2 ENACTED by the County Board in the form attached hereto.

3

4 The roll was called:

5

6	Courson-no	Miller-yes	Palmgren-yes
7	Schroeder-absent	Capel-yes	Thorsland-yes

8

9 Mr. Hall stated that Case 665-AT-10 will be forwarded to the Committee of the Whole in February.

10

11 **Case 666-AT-10 Petitioner: Champaign County Zoning Administrator Request to amend the**
12 **Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11D.1. to clarify**
13 **that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in**
14 **either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

15

16 Mr. Hall stated that there are no new changes since the Supplemental Memorandum dated December 30,
17 2010. He said that the Board should add January 20, 2011, to the list of meeting dates included in the first
18 paragraph on Page 1 of the Finding of Fact.

19

20 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
21 regarding Case 666-AT-10 and there was no one.

22

23 Mr. Thorsland closed the witness register.

24

25 Mr. Hall stated that at the last meeting staff distributed an example of revised Subsection 6.1 to the Board for
26 review.

27

28 Mr. Miller asked Mr. Hall if he was requesting final action for Case 666-AT-10 at tonight's public hearing.

29

30 Mr. Hall stated yes.

31

32 Mr. Thorsland said he would entertain a motion to adopt the Summary of Evidence, Documents of Record
33 and Finding of Fact for Case 666-AT-10.

34

35 **Mr. Courson moved, seconded by Mr. Palmgren to adopt the Summary of Evidence, Documents of**
36 **Record and Finding of Fact as amended. The motion carried by voice vote.**

37

38 Mr. Thorsland said he would entertain a motion to close the public hearing for Case 666-AT-10.

39

40 **Ms. Capel moved, seconded by Mr. Courson to close the public hearing for Case 666-AT-10. The**
41 **motion carried by voice vote.**

42

43 Mr. Thorsland informed the petitioner that one Board member was absent from tonight's meeting therefore it

1 is at his discretion to either continue Case 666-AT-10 until a full Board is present or request that the present
2 Board move forward to the Final Determination. He informed the petitioner that four affirmative votes are
3 required for approval.

4
5 Mr. Hall requested that the present Board move forward to the Final Determination.

6
7 **Final Determination for Case 666-AT-10:**

8
9 **Mr. Miller moved, seconded by Ms. Capel that pursuant to the authority granted by Section 9.2 of the**
10 **Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**
11 **determines that the Zoning Ordinance Amendment requested in Case 666-AT-10 should BE**
12 **ENACTED by the County Board in the form attached hereto.**

13
14 The roll was called:

15			
16	Miller-yes	Palmgren-yes	Schroeder-absent
17	Capel-yes	Courson-yes	Thorsland-yes
18			

19 Mr. Hall stated that Case 666-AT-10 will be forwarded to the Committee of the Whole in February.

20
21 **6. New Public Hearings**

22
23 None

24
25 **7. Staff Report**

26 **A. December, 2010 Monthly Report**

27
28 Mr. Hall distributed the December, 2010 Monthly report to the Board for review. He noted that it appears
29 that December was a very slow month but in retrospect it was no slower than December, 2009. He said that
30 at the end of December, 2010 there were seven cases pending but two of those cases were cases that should
31 have been dropped from the docket. He said that one of those dropped cases was a case that was pending in
32 December, 2009. He said that there will probably be three record setting low years for zoning cases in a row.
33 He said that one new case was filed in January, 2011 therefore things are happening and if things go well at
34 the February Committee of the Whole meeting three new text amendment cases that will be coming before
35 the ZBA in the very near future.

36
37 **8. Other Business**

38
39 Mr. Thorsland stated that staff distributed a ZBA Member Contact List for review. He requested that the
40 Board verify the information and notify staff of any changes.

41
42 Mr. Hall distributed the current docket to the Board for review. He said there is a variance case scheduled
43 for the February 17, 2011, public hearing and normally the Board would not schedule a variance as the only

1 case for a public hearing. He said that it may be necessary to continue Case 675-AT-10 to the February 17th
 2 meeting but he is hoping that this is not the case. He said that the question arises if the Board should
 3 schedule an entire ZBA meeting for one variance case. He said that the variance for Case 678-V-10 is for an
 4 existing building that was built without a permit and the Board may require an entire meeting or a substantial
 5 portion of the meeting for that case. He said that another variance case is scheduled for the March 10th
 6 public hearing which also has a whole meeting to itself and has a similar situation as Case 678-V-10. He
 7 asked if the Board believes that a variance case, which involves an existing building that was constructed
 8 without a permit, justifies one entire meeting for that case only or would the Board prefer to combine the two
 9 variance cases into one meeting. He said that a three hour meeting would be a full meeting for two such
 10 cases and the hearings for both cases would probably have to be cut short in order to give both cases
 11 adequate time at the meeting.

12
 13 Mr. Courson asked Mr. Hall if Case 677-V-10 involves the same location as a previous case with the
 14 petitioner.

15
 16 Mr. Hall stated yes.

17
 18 Mr. Courson stated that he would like to hear Case 677-V-10 and Case 678-V-10 on separate meeting dates.

19
 20 Mr. Hall stated that the cases could be combined to the same night although one of the cases will probably
 21 only be opened and continued to a later date. He said that the facts between the two cases are very different
 22 and there is a lawsuit against the builder for Case 678-V-10.

23
 24 Mr. Thorsland stated that he agrees with Mr. Courson in regards to hearing Case 677-V-10 and Case 678-V-
 25 10 on separate meeting dates.

26
 27 Mr. Palmgren stated that he would be absent from the February 3, 2011, meeting.

28
 29 Mr. Miller stated that he would be absent from the February 17, 2011, meeting.

30
 31 **9. Audience Participation with respect to matters other than cases pending before the Board**

32
 33 None

34
 35 **10. Adjournment**

36
 37 **Ms. Capel moved, seconded by Mr. Palmgren to adjourn the meeting. The motion carried by voice**
 38 **vote.**

39
 40 The meeting adjourned at 7:03 p.m.

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Respectfully submitted

Secretary of Zoning Board of Appeals

CASE NO. 675-AT-10

SUPPLEMENTAL MEMORANDUM

January 26, 2011

Champaign
County
Department of

**PLANNING &
ZONING**

Brookens

Administrative Center

1776 E. Washington Street

Urbana, Illinois 61802

(217) 384-3708

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**, Zoning Administrator

Request: **Amend the Champaign County Zoning Ordinance as follows:**

Part A

1. In the first four un-numbered paragraphs of Section 8 clarify that nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as authorized herein.
2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots may be used separately or conveyed to a different owner provided that a variance is granted.

Part B 1. Revise paragraph 8.2.1 B. as follows:

Limit applicability to the total expansion since October 10, 1973.

b. Revise the limit on expansion of a nonconforming single family dwelling as follows:

A nonconforming single family dwelling which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.

- (2) A nonconforming single family dwelling which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.

(3) Eliminate the limit on the amount of accessory buildings.

2. Revise par. 8.2.1 C. so that the limit on expansion applies to the total expansion since Oct. 10, 1973.

3. Revise subsection 8.2.2 to provide that nonconforming dwellings may be moved on the lot as authorized in subsection 8.4.1.

4. In Subsection 8.2.3 clarify "ceases".

Part C 1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.

2. Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations and standards of the district provided that the new location is authorized by variance.

Part D 1. Revise Subsection 8.4.1 and 8.4.2 as follows:

- a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1. provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
- b. Authorize that a nonconforming dwelling may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
- c. Authorize that expansion of a nonconforming dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction.

2. In Subsection 8.4.5 clarify "abandoned" and "discontinued".

3. In Subsection 8.4.6 provide for replacement of nonconforming single family dwelling.

Part E 1. Revise Subsection 8.6 as follows:

- a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.
- b. Authorize that a nonconforming dwelling has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.

Part F 1. In paragraph 9.1.2 C. require that for any Zoning Use Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses.

Part G 1. In Section 3 revise the definitions of "NONCONFORMING LOT, STRUCTURE or USE" and "NONCONFORMING PREMISES" to only apply to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

STATUS

The case has been readvertised and revised as indicated in Attachment A. A Draft Finding of Fact will be available at the meeting.

ATTACHMENTS

A Revised Annotated Draft Ordinance

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

Part A

- 1. In the first four un-numbered paragraphs of Section 8 clarify that nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

- 2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots may be used separately or conveyed to a different owner provided that a variance is granted.**

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. Limit applicability to the total expansion since October 10, 1973.
- b. Revise the limit on expansion of a nonconforming single family dwelling as follows:
 - (1) A nonconforming single family dwelling which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (2) A nonconforming single family dwelling which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (3) Eliminate the limit on the amount of accessory buildings.

B. ~~ANONCONFORMING SINGLE FAMILY DWELLINGS~~ which is a NONCONFORMING USE of land may be expanded by no more than 200 square feet and by construction of no more than one new ACCESSORY BUILDING or addition to an existing ACCESSORY BUILDING provided that the total area of such ACCESSORY BUILDING is not more than 650 square feet. as follows:

- 1. A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
- 2. A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
- 3. Expansion of existing or construction of any new ACCESSORY BUILDING shall conform to the regulations and standards for the DISTRICT in which it is located.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

2. **Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.**

C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

3. **Revise subsection 8.2.2 to provide that nonconforming dwellings may be moved on the lot provided that a variance is granted.**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

4. **In Subsection 8.2.3 clarify "ceases".**

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 275 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by the posting of a sign on the front LOT LINE of the property, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

Part C

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations and standards of the district provided that the new location is authorized by variance.**

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

- 8.3.3** Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Part D

1. Revise Subsections 8.4.1 and 8.4.2 as follows:

- a. **Authorize that a nonconforming single family dwelling may be expanded as authorized in subsection 8.2.1. provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
- b. **Authorize that a nonconforming single family dwelling may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
- c. **Authorize that expansion of a nonconforming single family dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction.**

***8.4.1** No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:

A. A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be enlarged, constructed, reconstructed, moved, or ALTERED without changing the USE as otherwise herein provided.

B. As otherwise herein provided for structures other than A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE).

8.4.2 Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.

2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by the posting of a sign on the front LOT LINE of the property, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

3. In Subsection 8.4.6 provide for replacement of nonconforming single family dwelling.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

Part E

1. Revise Subsection 8.6 as follows:

- a. **Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.**
- b. **Authorize that a nonconforming dwelling has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.**

***8.6 Repairs or Maintenance**

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

- A. As otherwise herein provided; and
- B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

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Part F

1. In paragraph 9.1.2 C. require that for any Zoning Use Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses.

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.
-

Part G

1. In Section 3 revise the definitions of “NONCONFORMING LOT, STRUCTURE or USE” and “NONCONFORMING PREMISES” to only apply to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

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BY-LAWS

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

As Amended August 25, 2005

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ARTICLE 1 - AUTHORITY

1.1 The authority to establish the Zoning Board of Appeals is set forth under the *Illinois Counties Code*, Chapter 55, Section 5/5-12007 *et seq*, herein referred to as the County Enabling Legislation. Powers and duties are delegated to the Zoning Board of Appeals by the Champaign County Board, herein referred to as the Governing Body, pursuant to Section 9.1.6(B) of the Champaign County Zoning Ordinance, Resolution Number 971, dated September 11, 1973 and as amended, in accordance with the County Enabling Legislation.

ARTICLE 2 - GENERAL PROVISIONS

2.1 These rules are supplementary to the provisions of the Champaign County Zoning Ordinance as they relate to procedures of the Zoning Board of Appeals. If there is a conflict between these rules and the Zoning Ordinance, the Zoning Ordinance shall prevail.

2.2 Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Ordinance, including the Zoning Map, which authority is granted to the Governing Body, except as provided in Section 4.1.6 of the Zoning Ordinance.

2.3 The State’s Attorney shall be consulted regarding questions of law. The Zoning Administrator shall be consulted regarding provisional interpretations of the Zoning Ordinance.

2.4 The Office of the Zoning Board of Appeals shall be located in The Champaign County Department of Planning and Zoning.

ARTICLE 3 - APPOINTMENT AND TERMS OF MEMBERS

- 3.1 Appointment of the Zoning Board of Appeals shall be as provided for by the Governing Body pursuant to Section 9.1.6(A) of the Zoning Ordinance.
- 3.2 Applications for appointment to the Zoning Board of Appeals may be submitted to the Office of the Champaign County Board, 1776 East Washington Street, Urbana Illinois, 61802, on forms provided by the Office of the County Board.
- 3.3 For each meeting attended, members shall be compensated in a manner established by the Governing Body.
- 3.4 The Governing Body shall have the power to remove any member of the Board for cause only after a public hearing. Such hearing shall be held no less than 10 days after the member concerned has been given written notice of the charges against him or her. The Chairperson may make a recommendation to the Governing Body for removal of a Zoning Board member due to malfeasance, misfeasance, or nonfeasance generally, and in particular:
- a) Failure to disclose any conflict of interest pursuant to Section 7.8 herein;
 - b) Failure to disclose any substantial or material *ex-parte* communications at the earliest opportunity subsequent to any such communications pursuant to Section 5.8 herein;
 - c) Failure to attend two meetings within a period of one year, without recorded consent of the Chairperson; or
 - d) Repeated or excessive tardiness, as determined by the Chairperson.
- 3.5 Upon death, removal for cause, or resignation of a Board member, the Secretary shall promptly notify the Governing Body that a vacancy exists. If a member becomes incapacitated permanently or for what appears likely to be a protracted period, or moves from the jurisdiction, or becomes for any other reason no longer qualified to serve, and does not resign, the Chairperson shall promptly notify the Governing Body. The Chairperson may also request that the Governing Body declare that member's seat vacant.

ARTICLE 4 - CHAIRPERSON

- 4.1 All proceedings and administrative functions of the Board shall be directed by a Chairperson, who shall preside over all meetings of the Board and shall otherwise supervise the affairs of the Board as outlined in Section 4.3 herein.
- 4.2 The Governing Body shall designate the Chairperson pursuant to Section 9.1.6(A)3 of the Zoning Ordinance. In the event of death, removal for cause, or resignation of the Chairperson, successor(s) shall also be named by the Governing Body. Upon vacancy of the Chairperson, the Board may vote to recommend a current serving member to the Governing Body for appointment as Chairperson of the Zoning Board.
- 4.3 If present and able, the Chairperson shall supervise the affairs of the Board and shall:
- a) preside at all hearings and meetings of the Board;
 - b) assure and maintain proper order and decorum of the Board, staff, and the public in all proceedings of the Board;

Article 4 – continued

- c) decide all points of procedure or order in accordance with these and other applicable rules;
 - d) provide for the oath or affirmation to be administered to all witnesses in cases before the Board pursuant to Section 6.6 herein; and shall
 - e) take such actions and exercise such powers as are specifically outlined herein.
- 4.4 The Board shall elect from among its members an Acting Chairperson to serve at any meeting where the Chairperson is absent or is otherwise unable to supervise the affairs of the Board. An Acting Chairperson, in the absence or disability of the Chairperson, shall perform all duties and exercise all powers of the Chairperson.

ARTICLE 5 - MEETINGS

- 5.1 No less than two regular meetings shall be held each month at a place authorized in Section 9.2.1(E) of the Zoning Ordinance, except under the following circumstances:
- a) the Chairperson determines that cancellation of a regular meeting is appropriate under Section 5.2 herein; or
 - b) the Secretary determines that the cancellation of a regular meeting is appropriate under Section 5.3 herein; or
 - c) the regular meeting falls of a designated County Holiday, in which case the Board shall vote as to whether such a meeting shall proceed as scheduled, be cancelled, or be rescheduled.
- 5.2 Regular meetings may be canceled by the Chairperson, or with the oral approval of a quorum of the Board. Meetings may be cancelled when there are no cases pending, or in the event that the requirements of these By-laws or the Zoning Ordinance prevent the Board from conducting any business, or in the event of hazardous or inclement weather. In the event of hazardous or inclement weather, the Champaign County Sheriff's Department may be consulted as to road conditions and other factors which may affect transportation to and from the meeting place. Upon cancellation, the Secretary shall make a reasonable attempt to notify the members of the Board, the petitioners, and other interested parties.
- 5.3 In the event that after all publications of scheduled public hearings pursuant to Sections 5.5 and 6.2 have been made, but prior to the scheduled meeting of the Board, all petitioners of all scheduled hearings have requested continuances or withdrawn their cases, the Secretary shall have the authority to cancel the scheduled meeting of the Board. Upon making the decision to cancel a scheduled meeting of the Board, the Secretary shall make a reasonable attempt to notify the members of the Board and all other interested parties of record, and shall post the meeting place with a notice of cancellation.
- 5.4 Special meetings may be called only with the oral approval of no less than a quorum of the Board, provided that no less than 24 hours notice is given to each member, and provided that all notice requirements have been met pursuant to Section 5.4 herein.
- 5.5 All meetings shall be open to the public, noticed, and posted in accordance with the *Illinois Open Meetings Act*, (5 ILCS 120/1.01 *et seq.*).

**Zoning Board of Appeals By-laws
As Amended August 25, 2005**

Article 5 – continued

- 5.6 A quorum shall consist of four members for any regular or special meeting, and is required for any decision, determination, or official action by the Board.
- 5.7 Any meeting of more than two Board members where matters pending before the Board would be discussed, including but not limited to visits to subject properties, shall be prohibited except as properly noticed and posted in accordance with the *Illinois Open Meetings Act*, (5 ILCS 120/1.01 *et seq.*).
- 5.8 **Communications.**
- a) Communications regarding any pending item before the Board with any individual outside of the public hearing, including communications with any other Board member, or any member of the Governing Body, or any employee of Champaign County, except for purely procedural matters or legal subjects specifically approved by the State’s Attorney’s Office, are considered *ex-parte* communications.
 - b) If a member of the Board has participated in a substantial or material *ex-parte* communication, that member shall disclose the following information to the Board at the earliest public hearing subsequent to any such communication:
 - 1) the person or persons with whom the Board member has spoken;
 - 2) the circumstances under which the communication(s) took place;
 - 3) the general content of the communication(s); and
 - 4) any response given to the person or persons by the Board member.
- 5.9 Public hearings shall not be held by less than a quorum of the Board. Public hearings may be conducted by a bare quorum, however, all hearings shall then be continued, and shall not be closed other than at a meeting where at least five Board members are present.
- 5.10 Meetings of the Board shall proceed as follows:
- a) Introduction and Explanatory Comments by the Chairperson
 - b) Announcement of Witness Register requirement for persons wishing to testify to any agenda item
 - c) Roll call and declaration of quorum
 - d) Correction and approval of minutes of previous meeting(s)
 - e) Communications
 - f) Continued Public Hearings
 - g) New Public Hearings
 - h) Other Business
 - i) Staff Report
 - j) Audience Participation with respect to matters other than cases pending before the Board
 - k) Adjournment
- 5.11 All regular meetings of the Board shall begin at 6:30 p.m. Central Standard Time, or at 7:00 p.m. Central Daylight Savings Time, whichever applies. All meetings of the Board shall last no more than 3 hours unless the Board shall vote to extend the meeting to a specified time.

ARTICLE 6 - PROCEDURE

- 6.1** Applications shall be docketed on a first come-first serve basis, strictly based upon receipt of a completed application and its required fee. In no case shall an application be docketed for a public hearing before the Board if the application is received less than 22 days in advance of the hearing date. In the event that four cases are docketed for a meeting of the Board, no additional cases shall be docketed for that meeting without prior approval of the Chairperson.
- 6.2** The Secretary shall provide notice of the general location of the subject property, a brief statement of the nature of the petition, and the date, time, and place of the first scheduled public hearing for the petition. In addition to all statutorily required notices pursuant to the County Enabling Legislation, notice shall also be mailed by regular U.S. Mail no less than 15 days but no more than 30 days prior to the date of the first public hearing as follows:
- a) Notice of all petitions shall be provided to:
 - 1) the petitioner(s), applicant(s), or appellant(s) and their representative or counsel;
 - 2) the lot owner(s) of record of all property within 250 feet in each direction of the subject property. The lot owners of record shall be identified as those appearing in the authentic tax records of Champaign County. The measurements of right-of-way(s) for public streets, alleyways, and other public ways shall be excluded in calculating the 250 foot notification distance. In the event that the subject property is part of a larger tract, such 250 foot distance shall be calculated from the exterior boundaries of the larger tract;
 - b) In addition to the notices required above, in the case of Map Amendments and Special Use Permits, notice shall also be provided to:
 - 1) the clerk of any zoned municipality with corporate limits within one and one-half miles of the subject site;
 - 2) the planning staff or planning consultant for any municipality with corporate limits within one and one-half miles of the subject site;
 - 3) the Supervisor of the Township within which the subject site is located;
 - 4) no less than one commissioner of the drainage district within which the subject site is located, if applicable;
 - 5) any provider of public sanitary sewer or public water service, if applicable; and
 - 6) the Chief of the Fire Protection District within which the subject site is located, if applicable.
- 6.3** The Board shall decide all matters presented during administrative proceedings and proposed amendments in accordance with Sections 9.1.7 and 9.2 of the Zoning Ordinance.
- 6.4** At the time of the public hearing before the Board, the Petitioner may appear in his or her own behalf, or he or she may be represented by counsel or agent.
- 6.5** In the event that parties other than the petitioner retain counsel or other agent to represent them at a hearing before the Board, then such representative shall state that he or she has been so retained, by whom, and shall also disclose the extent of their authorization.
- 6.6** All witnesses shall swear or affirm in written form on the Witness Register to the truthfulness of their oral or written testimony and any exhibits they submit. The Witness Register shall contain the witnesses(s) printed name, signature, and address, and shall be confirmed and signed by the Chairperson of the Board.

Article 6 – continued

- 6.7 Order of Evidence.** Evidence shall be presented in the following order unless altered by the Chairperson or by Motion:
- a) Announcement by the Chairperson that all testimony is given under oath or affirmation pursuant to the signing of the Witness Register for each agenda item;
 - b) The Petitioner or representative shall make a statement outlining the nature of his or her request prior to introducing evidence. The Chairperson or Staff may give restatement of the case if the presentation of the Petitioner or the representative needs clarification;
 - c) The Petitioner or representative presents evidence, subject to Rule 6.8;
 - d) Staff presents and summarizes any distributed memorandum, materials or reports;
 - e) Parties other than the Petitioner present evidence, subject to Rule 6.8;
 - f) The Petitioner or representative presents rebuttal evidence, subject to Rule 6.8, but may not introduce new evidence;
 - g) At the discretion of the Board, further surrebuttal evidence may be presented by parties other than the Petitioner. However, the Petitioner shall always have the final opportunity to present evidence, subject to Rule 6.7(h);
 - h) Questions, comments, requests, or continuance by the Staff or Board.
- 6.8 Inquiry of Witness.**
- a) Each witness' testimony shall proceed in the following manner:
 - 1) The witness may present oral testimony, and tender any documents to the Board;
 - 2) Staff may then ask questions of the witness;
 - 3) In an administrative case, the Chair shall then invite and allow the Petitioner or representative to then ask questions of the witness;
 - 4) In an administrative case, the Chair shall then invite and allow other members of the public to then ask questions of the witness;
 - 5) Any of the above persons may then ask follow-up questions of the witness, but those other than the Board and Staff may address only those matters addressed in earlier questions of this witness or in response to such questioning.
 - b) For purposes of these rules, an "administrative case" is a Special Use permit case, a Variance case, a conditional Rezoning case, or any matter combined in the same hearing with one of these cases.
 - c) At any point during the course of a public hearing, the Chairperson, Board members, or Staff may ask questions of any party to bring out pertinent facts, and may make appropriate comments pertinent to the case.
 - d) If, at any point during a meeting, a witness is unable or unwilling to respond to a question, the Chair shall make note of this in the minutes of the meeting, unless the question has been deemed improper, pursuant to Rule 6.9(b) or (c).
 - e) The Board may place limitations on the right of cross-examination, which may include, but shall not be limited to, the following:
 - 1) Requesting that groups who are associated with the same affected property or organization to select one representative who alone shall be entitled to cross-examine adverse witnesses.
 - 2) Requiring those represented in the matter by licensed attorneys who are also present at the meeting to exercise the right of cross examination only through the attorney.

Article 6 – continued

- 3) Restricting the class of those who may be cross-examined to witnesses who have offered testimony that includes factual allegations that are relevant and material to deciding the issues before the Board.

6.9 *Admissibility.*

- a) The Board shall consider competent and material evidence as necessary for a full and fair presentation of the issues presented.
 - 1) The Board shall not be bound by the strict rules of evidence. However, the Board shall not consider hearsay inadmissible in a court of law, if this hearsay is uncorroborated, more than once-removed, or otherwise unreliable.
 - 2) Testimony shall be limited to factual statements and qualified expert or relevant lay opinion and shall not relate to personalities or conjecture.
 - 3) Testimony or other evidence may be excluded if it is irrelevant, immaterial, incompetent, or repetitious.
 - 4) Failure strictly to enforce these Rules, or to reject matters which may be irrelevant or immaterial shall not affect the validity of the hearing.
- b) A question, documentary materials, or testimony presented by any witness may be barred by the Chair if:
 - 1) It relates only to a matter of personal taste;
 - 2) It is an argumentative or rhetorical question, or seeks testimony or evidence in violation of Rule 6.9(a); or
 - 3) It is beyond the scope of allowable questions under Rule 6.8(a)(5), above.
- c) Any person present at the meeting may request that the Chairperson rule on the admissibility of specific evidence or the permissibility of a question, which ruling may, upon motion by any person present, be overruled by a majority of Board members present but not abstaining.
- d) Procedural errors which do not materially affect the rights of the parties shall be disregarded and shall not affect the validity of the proceeding.

6.10 Any party appearing before the Board may submit a list of persons favoring or opposing the application. Such list will be received by the Board, although it contains nothing more than a brief statement of the position of the persons favoring or opposing the application together with the signature and address of the persons subscribing to such statement. The Board shall determine the weight to be given to such evidence.

6.11 Any evidence that any party wishes to have considered by the Board must be presented prior to the closing of the public hearing. The Board may request any relevant information or evidence from any party only prior to the closing of the public hearing. If a public hearing has been closed, but the Board has not taken its final vote on the matter, and any party wishes to have the public hearing re-opened, it may be re-opened only upon the majority vote of those Board members present and not abstaining from the final vote.

6.12 The public hearing shall remain open to allow for oral and/or written testimony, and until the Board votes to close the public hearing pursuant to Section 8.2 herein. Further oral or written testimony shall not be accepted after the public hearing has been closed.

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Article 6 – continued

- 6.13 In the event that the petitioner fails to appear either in person or by agent, the case shall be deemed dismissed unless the Board shall vote otherwise. In such cases, the Petitioner shall be furnished with written notice of the dismissal by the Secretary of the Board. A petitioner may reactivate a dismissed case only upon filing a new petition and upon payment of the fee specified in Section 9.3.3(A)4 of the Zoning Ordinance. Such reactivated cases shall be noticed in the usual manner pursuant to Section 6.2 herein.

ARTICLE 7 - FORM AND CHARACTER OF MOTIONS AND DECISIONS

- 7.1 The Board shall conduct all votes in public session. Voting *in absentia* is not permitted.
- 7.2 The form and character of motions shall conform to those specified in the Appendix - Champaign County Zoning Board of Appeals Rules of Order, a copy of which is attached hereto, provided that all motions and decisions shall conform to applicable Illinois Law. In the event that the Rules of Order contained in the attached Appendix are not applicable to the question at hand, *Roberts Rules of Order, Newly Revised*, shall apply.
- 7.3 The Chairperson shall not make any motion, except as provided in Section 8.5 herein.
- 7.4 A second shall be required prior to the Board's voting on any motion, except as provided in Section 8.5 herein. A second shall not be construed as an indication of how the member offering the second intends to vote.
- 7.5 The Chairperson may second any motion, provided that he or she has not offered the motion pursuant to Section 8.5 herein. Alternately, the Chairperson may declare a motion dead for lack of second only after three requests to entertain a second to the motion have been offered.
- 7.6 Where a motion to disapprove an item other than a Final Determination of the Board has been defeated, a member of the Board who initially voted with the prevailing side of that motion, except the Chairperson, may offer a motion to reconsider the question.
- 7.7 In the event of a tie vote, the motion shall be defeated.
- 7.8 Any member who becomes aware that he or she has a potential conflict of interest regarding a petition shall notify the Chairperson at the earliest opportunity. If it is determined that the member does have a direct conflict of interest, or prejudice sufficient to impair their ability to fairly weigh evidence, such member shall not participate in the public hearing or discussion at any meeting that relates to that particular matter, nor shall the member vote on the matter.
- 7.9 On any matter before the Board, any member declining to vote for any reason shall announce their intent to abstain and the reason for doing so before the public hearing is closed.
- 7.10 An abstention shall not be counted in the determination of a motion, but shall be recorded.
- 7.11 Upon the request of any member of the Board, a roll call vote shall be taken in lieu of a voice vote.

Article 7 – continued

- 7.12 Votes on Final Determination with respect to any matter before the Board shall be by roll call vote and in accordance with Article 8.
- 7.13 All roll call votes shall be taken by the Recording Secretary in varied order, except that the Chairperson shall vote last.

ARTICLE 8 FINAL DETERMINATIONS

- 8.1 The Board shall vote on the petition only as it was filed or subsequently amended by the Petitioner, except in the case of amendments to the text of the Zoning Ordinance.
- 8.2 Upon submission of all evidence, the Board shall consider the following motions prior to closing the public hearing:
- a) to amend, correct, add or delete points of evidence from the Summary of Evidence and Documents of Record;
 - b) to consider approval of the Summary of Evidence and Documents of Record, either as submitted or as amended;
 - c) to consider any waivers of standard conditions for specific Special Use Permits contained in Section 6.1.3 of the Zoning Ordinance. Said waivers may be approved individually or en masse by the affirmative vote of a majority of those members voting on the issue, and shall be incorporated into the Findings of Fact with the reason for granting each waiver described;
 - d) to consider any conditions proposed by Staff or the Board. Said conditions may be adopted either individually or en masse, but shall be incorporated into the Findings of Fact, with the purpose of each condition described;
 - e) to consider any proposed Findings of Fact as required by Sections 9.1.9(D) of the Zoning Ordinance for variance criteria or 9.1.11(C) of the Zoning Ordinance for special use permit criteria, whichever is applicable. Said Findings of Fact may be adopted individually or en masse; and
 - f) to close the public hearing.
- 8.3 Upon review of the full public record and due deliberation by the Board, any of its members other than the Chairperson, except as provided in Section 8.5 herein, may make a motion for Final Determination. The motion may include direction in the form of approval, approval with specified conditions, or denial.
- 8.4 No Final Determination shall be made at a meeting where less than four board members are present. A concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to grant any Variance or Special Use Permit under the terms of the Ordinance, or to recommend any amendment of the Zoning Map or Ordinance Text to the Governing Body.
- 8.5 In the event of a final determination where the Chairperson has requested a motion three times, the Chairperson shall make a Motion to Approve, which need not be seconded prior to the Board voting on the motion.

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As Amended August 25, 2005**

Article 8 – continued

- 8.6 In the case of a final determination, a Motion to Approve which fails either by failure to receive a second or by failure to receive the required number of affirmative votes shall be deemed a denial and shall be dispositive of the issue.
- 8.7 Also in the case of a final determination, an initial Motion to Deny which fails shall not be deemed dispositive, and an alternate motion shall be made.
- 8.8 The Summary of Evidence and the Findings of Fact and Record of Decision of the case shall be acknowledged as to accuracy by the Secretary and the Chairperson, and shall be part of the public record of the Board.
- 8.9 Notice of the decision of the Board, including the Findings of Fact and Record of Decision, shall be given by the Secretary to the Petitioner and any other parties that have requested such notice, as soon as reasonably possible after the decision is reached.
- 8.10 All decisions or determinations made by the Zoning Board of Appeals shall be final, and shall not be reconsidered other than in accordance with Section 9.7 herein.

ARTICLE 9 - REQUEST TO WITHDRAW, AMEND, CONTINUE, OR REHEAR APPLICATIONS

- 9.1 Upon written request from the applicant or authorized agent, a petition or an appeal may be withdrawn at any time prior to the Board's making its final determination on the case.
- 9.2 The Board may consider a request to amend a petition or an appeal prior to or during the course of the public hearing on the issue. In the event that the request to amend is denied, the cause for such denial being stated in the motion, the hearing and decision on the case as it was originally proposed shall proceed.
- 9.3 If the request to amend the petition or appeal is granted, or if a text amendment has been altered, the Board shall determine whether there is a substantial or material difference between the case as it was described in the public notice and the case as amended such as to render the notice insufficient. In such case, new public notice shall be required before the hearing of the case may proceed, with fees for such notice paid by the applicant pursuant to Section 9.3.3(B)6 of the Zoning Ordinance.
- 9.4 The Board shall also determine whether the nature of the amendment is such as to require re-examination by counsel or staff members having made reports on the original application or appeal. If referral for re-examination is found necessary, the Board may proceed with the hearing, or may continue it to a specified time, and shall not make a final determination on the case until it has considered any revised staff reports that result from the amendment to the petition.
- 9.5 The Board may, upon majority vote of those members present, continue a public hearing in order to receive additional information from staff, the petitioner, other agencies, technical experts, or other interested parties. A request from the applicant or any other interested party to continue the public hearing may be permitted only for good cause. In the event of such continuances, further

Article 9 – continued

publication of such action need not be made.

- 9.6 In all cases, continuances shall be made to a date certain. The Board shall not grant a request for a continuance for more than 100 days from the date the continuance is requested. The Board shall not grant more than one request for a continuance except in the following instances:
- a) a continuance initiated by the Board for purpose of receiving additional information from staff, the petitioner, other agencies, technical experts, or other interested parties;
 - b) a continuance due to the absence of two or more Board members;
 - c) a continuance due to a bona fide illness or incapacity of the petitioner, the petitioner=s representatives, or other interested party; or
 - d) a continuance due to faulty public or mail notice.
- e) In all cases, continuances shall be made to a date certain. The Board shall not grant a request for a continuance for more than 100 days from the date the continuance is requested.
- 9.7 No matter previously decided by the Board may be reconsidered unless upon submission of a new petition, the Board finds that the petition or the circumstances of a particular case have changed significantly, or unless a period of no less than one year has passed.

ARTICLE 10 - RECORDS

- 10.1 A file of materials and decisions relating to each case shall be kept as part of the records of the Board by the Secretary in the Office of the Zoning Board of Appeals.
- 10.2 All records of the Board shall be public records. Such records shall be maintained in accordance with the *Illinois Public Records Act*, (50 ILCS 205/1 *et seq.*), and shall be made available to the public pursuant to the provisions of the *Illinois Freedom of Information Act*, (5 ILCS 140/01 *et seq.*).
- 10.3 The Zoning Administrator, or the Zoning Administrator’s representative, shall serve as Secretary to the Board pursuant to Section 9.1.7(F) of the Zoning Ordinance.
- 10.4 The Secretary to the Board shall perform or supervise all clerical work of the Board and shall:
- a) maintain the case docket, case log, and all case files;
 - b) set the agenda for the meetings of the Board pursuant to Section 6.1 herein;
 - c) cause to be published all required legal publications pursuant to the County Enabling Legislation;
 - d) send out all other notices pursuant to Section 6.2 herein;
 - e) furnish the Board with all pertinent information and memorandum regarding items before the Board;
 - f) attend all Board meetings and hearings;
 - g) summarize the testimony of those appearing before the Board;
 - h) record and maintain permanent minutes of the Board’s proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact;
 - i) maintain the audio tapes of the Board’s proceedings for a period of no less than one year after the date of each hearing of the Board;
 - j) make a record of examinations and official actions;
 - k) record the names and mailing addresses of all persons appearing before the Board; and

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- l) conduct the routine correspondence of the Board and such other correspondence as directed by the Board.

ARTICLE 11 - SEPARABILITY

- 11.1 Should any Article or Section of the By-Laws of the Champaign County Zoning Board of Appeals be found to be illegal, the remaining articles and sections shall remain in effect.

ARTICLE 12 - AMENDMENTS

- 12.1 These rules may be amended by the affirmative vote of five members of the Board.
- 12.2 The proposed amendment must be presented at a regular or special meeting preceding the meeting at which the vote is taken.
- 12.3 These rules may be suspended for cause upon affirmative vote of five members, unless such rule is required by state statute or the Zoning Ordinance.

* * *

The foregoing rules and regulations are hereby adopted by the Zoning Board of Appeals of Champaign County.

SIGNED:

Debra Griest
Champaign County Zoning Board of Appeals

ATTEST:

Secretary
Champaign County Zoning Board of Appeals

DATE: _____