

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: March 25, 2010
Time: 7:00 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
5. Continued Public Hearings
6. New Public Hearings

Case 664-AT-10 Petitioner: **Champaign County Zoning Administrator**
Request: **Amend the Champaign County Zoning Ordinance as follows:**
1. Delete paragraph 6.1.4 A.1.(c)
2. Revise paragraph 9.1.7E.1 to change the required number of
concurring votes needed for ZBA decisions from five to four
to make the Zoning Ordinance consistent with state law.

Case 665-AT-10 Petitioner: **Champaign County Zoning Administrator**
Request: **Amend the Champaign County Zoning Ordinance by revising
paragraph 4.3.3G. to increase the maximum fence height allowed
in side and rear yards from six feet to eight feet for fences in
Residential Zoning Districts and on residential lots in the AG-1
and Ag-2 Zoning Districts.**

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

7. Staff Report
8. Other Business
A. October 28, 2010, Meeting
9. Audience Participation with respect to matters other than cases pending before the Board
10. Adjournment

* Administrative Hearing. Cross Examination allowed.

CASE NO. 664-AT-10

Champaign County Department of **PLANNING & ZONING** PRELIMINARY MEMORANDUM

March 19, 2010

Petitioner: **Zoning Administrator**



Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

Brookens

Administrative Center Request:

1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Amend the Champaign County Zoning Ordinance as follows:

1. **Delete subparagraph 6.1.4 A.1.(c).**
2. **Revise subparagraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.**

BACKGROUND

The need for the amendment came about as follows:

- Regarding the deletion of paragraph 6.1.4 A.1.(c) of the proposed amendment:
 - Paragraph 6.1.4 M. establishes Standard Conditions for Shadow Flicker and requires that all areas subject to more than 30 hours of shadow flicker per year are to be provided with some form of mitigation.
 - This paragraph was revised by ELUC after the public hearing for Zoning Case 634-AT-08 Part A. However, Paragraph 6.1.4 A.1.(c) was not revised by ELUC and still requires land that is subject to more shadow flicker than authorized in 6.1.4 M. which receives no other mitigation to be part of the Special Use Permit Area.
 - The two paragraphs are inconsistent and paragraph 6.1.4 A.1.(c) is unnecessary and illogical, and should be deleted.
- Regarding the change to paragraph 9.1.7 E.1:
 - The Zoning Ordinance currently requires the concurring vote of five Zoning Board of Appeals (ZBA) members to pass a decision.
 - However, state law (55 ILCS 5/5-12011) establishes that decisions by a Board of Appeals only require the concurring vote of four Board members for boards of seven members.
 - This became an issue in Zoning Case 560-S-06 for the petitioner Hindu Temple and the State's Attorney determined that the County cannot require a greater number of affirmative votes than that required by state law.

ATTACHMENTS

- A Draft Proposed Change to Paragraph 6.1.4 A. 1.(c)
- B Draft Proposed Change to Paragraph 9.1.7 E.1.
- C Draft Finding of Fact for Case 664-AT-10

1. Delete Subparagraph 6.1.4 A.1.(c) as follows:

A. General Standard Conditions

1. The area of the WIND FARM County Board SPECIAL USE Permit must include the following minimum areas:
 - (a) All land that is a distance equal to 1.10 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of that WIND FARM TOWER.
 - (b) All land that will be exposed to a noise level greater than that authorized to Class A land under paragraph 6.1.4 I.
 - ~~(c) All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M. and for which other mitigation is not proposed.~~
 - ~~(d)~~ All necessary access lanes or driveways and any required new PRIVATE ACCESSWAYS. For purposes of determining the minimum area of the special use permit, access lanes or driveways shall be provided a minimum 40 feet wide area.
 - ~~(e)~~ All necessary WIND FARM ACCESSORY STRUCTURES including electrical distribution lines, transformers, common switching stations, and substations not under the ownership of a PUBLICLY REGULATED UTILITY. For purposes of determining the minimum area of the special use permit, underground cable installations shall be provided a minimum 40 feet wide area.
 - ~~(f)~~ All land that is within 1.50 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of each WIND FARM TOWER except any such land that is more than 1,320 feet from any existing public STREET right of way.
 - ~~(g)~~ All land area within 1,320 feet of a public STREET right of way that is also within 1,000 feet from the base of each WIND FARM TOWER except that in the case of WIND FARM TOWERS in compliance with the minimum STREET separation required by paragraph 6.1.4 C. 5. in which case land on the other side of the public STREET right of way does not have to be included in the SPECIAL USE Permit.

1. Revise Subparagraph 9.1.7 E.1. as follows:

(Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

The concurring vote of ~~five~~ four members of he BOARD shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any VARIANCE in the application of this ordinance or to effect any SPECIAL USE.

PRELIMINARY DRAFT

664-AT-10

**FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: *{RECOMMEND ENACTMENT / RECOMMEND DENIAL}*

Date: March 19, 2010

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance as follows:

1. Delete subparagraph 6.1.4 A.1.(c).
2. Revise subparagraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
 - A. Regarding the deletion of paragraph 6.1.4 A.1.(c) of the proposed amendment:
 - (1) Paragraph 6.1.4 M. establishes Standard Conditions for Shadow Flicker and requires that all areas subject to more than 30 hours of shadow flicker per year are to be provided with some form of mitigation.
 - (2) This Paragraph was revised by ELUC after the public hearing for Zoning Case 634-AT-08 Part A. However, Paragraph 6.1.4 A.1.(c) was not revised by ELUC and still requires land that is subject to more shadow flicker than authorized in 6.1.4 M. which receives no other mitigation to be part of the Special Use Permit Area.
 - (3) The two paragraphs are inconsistent and paragraph 6.1.4 A.1.(c) is unnecessary and illogical, and should be deleted.
 - B. Regarding the change to paragraph 9.1.7 E.1:
 - (1) The Zoning Ordinance currently requires the concurring vote of five Zoning Board of Appeals (ZBA) members to pass a decision.

PRELIMINARY DRAFT

- (2) However, state law (55 ILCS 5/5-12011) establishes that decisions by a Board of Appeals only require the concurring vote of four Board members for boards of seven members.
 - (3) This became an issue in Zoning Case 560-S-06 for the petitioner Hindu Temple and the State's Attorney determined that the County cannot require a greater number of affirmative votes than that required by state law.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

GENERALLY REGARDING THE EXISTING ZONING REGULATIONS

4. Existing Zoning regulations regarding the separate parts of the proposed amendment are as follows:
- A. Requirements for the development of wind farms were added to the *Zoning Ordinance* in Ordinance No. 848 (Case 634-AT-09 Part A) on May 21, 2009. The relevant portions of that amendment are as follows:
 - (1) Paragraph 6.1.4 A.1. states:

The area of the WIND FARM County Board SPECIAL USE Permit must include the following minimum areas:

...
 - (c) All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M. and for which other mitigation is not proposed.
 - (2) Paragraph 6.1.4 M. states:

Standard Conditions for Shadow flicker

 1. The Applicant shall submit the results of a study on potential shadow flicker. The shadow flicker study shall identify the locations of both summer and winter shadow flicker that may be caused by the project with an expected duration of 30 hours or more per year.
 2. Shadow flicker that exceeds the above standards shall be mitigated by any means such as landscaping, awnings, or fencing.
- B. Subparagraph 9.1.7 E.1. states:

The concurring vote of five members of the BOARD shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass

under this ordinance or to effect any VARIANCE in the application of this ordinance or to effect any SPECIAL USE.

C. The following definitions from the *Zoning Ordinance* are especially relevant to this amendment (capitalized words are defined in the Ordinance):

(1) "BOARD" shall mean the Zoning Board of Appeals of the COUNTY

(2) "GOVERNING BODY" shall mean the County Board of Champaign County, Illinois.

SUMMARY OF THE PROPOSED AMENDMENT

5. The proposed amendment is summarized here as it will appear in the Zoning Ordinance, as follows:

A. The proposed deletion of subparagraph 6.1.4 A.1.(c) will appear as follows:

6.1.4 WIND FARM County Board SPECIAL USE Permit

A WIND FARM County Board SPECIAL USE Permit may only be authorized in the AG-1 Zoning District subject to the following standard conditions.

A. General Standard Conditions

1. The area of the WIND FARM County Board SPECIAL USE Permit must include the following minimum areas:

(a) All land that is a distance equal to 1.10 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of that WIND FARM TOWER.

(b) All land that will be exposed to a noise level greater than that authorized to Class A land under paragraph 6.1.4 I.

(c) ~~All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M, and for which other mitigation is not proposed.~~

(d) All necessary access lanes or driveways and any required new PRIVATE ACCESSWAYS. For purposes of determining the minimum area of the special use permit, access lanes or driveways shall be provided a minimum 40 feet wide area.

(e) All necessary WIND FARM ACCESSORY STRUCTURES including electrical distribution lines, transformers, common switching stations, and substations not under the ownership of a PUBLICLY REGULATED UTILITY. For purposes of determining the minimum area of the special use permit, underground cable installations shall be provided a minimum 40 feet wide area.

(f) All land that is within 1.50 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of each WIND

PRELIMINARY DRAFT

FARM TOWER except any such land that is more than 1,320 feet from any existing public STREET right of way.

- (g) All land area within 1,320 feet of a public STREET right of way that is also within 1,000 feet from the base of each WIND FARM TOWER except that in the case of WIND FARM TOWERS in compliance with the minimum STREET separation required by paragraph 6.1.4 C. 5. in which case land on the other side of the public STREET right of way does not have to be included in the SPECIAL USE Permit.

B. The change to subparagraph 9.1.7 E.1 will appear, as follows:

E. Decisions

- 1. The concurring vote of ~~five~~ four members of the BOARD shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any VARIANCE in the application of this ordinance or to effect any SPECIAL USE.

GENERALLY REGARDING RELEVANT LAND USE GOALS AND POLICIES

- 6. The *Land Use Goals and Policies* (LUGP) were adopted on November 29, 1977, and were the only guidance for amendments to the *Champaign County Zoning Ordinance* until the *Land Use Regulatory Policies- Rural Districts* were adopted on November 20, 2001, as part of the Rural Districts Phase of the Comprehensive Zoning Review (CZR) and subsequently revised on September 22, 2005. The relationship of the Land Use Goals and Policies to the Land Use Regulatory Policies is as follows:
 - A. Land Use Regulatory Policy 0.1.1 gives the Land Use Regulatory Policies dominance over the earlier Land Use Goals and Policies.
 - B. The Land Use Goals and Policies cannot be directly compared to the Land Use Regulatory Policies because the two sets of policies are so different. Some of the Land Use Regulatory Policies relate to specific types of land uses and relate to a particular chapter in the land use goals and policies and some of the Land Use Regulatory Policies relate to overall considerations and are similar to general land use goals and policies.

REGARDING SPECIFICALLY RELEVANT LAND USE GOALS AND POLICIES

- 7. There are goals and policies for agricultural, commercial, industrial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment.

REGARDING THE GENERAL LAND USE GOALS AND POLICIES

8. Regarding the General Land Use Goals and Policies:

A. Only the fifth General Land Use Goal appears to be relevant to the proposed amendment. The fifth General Land Use Goal is:

Establishment of processes of development to encourage the development of the types and uses of land that are in agreement with the Goals and Policies of this Land Use Plan

The proposed amendment appears to **ACHIEVE** the fifth General Land Use Goal because it will make the *Zoning Ordinance* more consistent and clear, as follows:

(a) Deletion of paragraph 6.1.4 A.1.(c) will make the Zoning Ordinance more internally consistent.

(b) The proposed change to paragraph 9.1.7 E.1. will make the Zoning Ordinance consistent with state statute.

D. None of the General Land Use Policies appear to be relevant to the proposed amendment.

DOCUMENTS OF RECORD

1. Memo to the Champaign County Board Committee of the Whole, dated, February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a proposed Zoning Ordinance text amendment clarifying standard conditions and clarifying wind farm shadow flicker requirements
2. Memo to the Champaign County Board Committee of the Whole, dated February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a Zoning Ordinance Text Amendment to make the Zoning Ordinance consistent with state law regarding the number of affirmative votes for a decision at the Zoning Board of Appeals
3. Application for Text Amendment from Zoning Administrator, dated March 3, 2010
4. Preliminary Memorandum for Case 664-AT-10, dated March 19, 2010, with attachments:
 - A Draft Proposed Change to Paragraph 6.1.4 A. 1.(c)
 - B Draft Proposed Change to Paragraph 9.1.7 E.1.
 - C Draft Finding of Fact for Case 664-AT-10

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 664-AT-10** should ***{BE ENACTED / NOT BE ENACTED}*** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Doug Bluhm, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

CASE NO. 665-AT-10

Champaign PRELIMINARY MEMORANDUM
County
March 19, 2010

Department of
Petitioner: **Zoning Administrator**



Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

Brookens
Administrative Center

1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Request: **Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. to increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots in the AG-1 and AG-2 Zoning Districts.**

BACKGROUND

The need for the amendment came about as follows:

- Zoning Case 590-AV-07 was an administrative variance to authorize a fence six feet, five inches in height in lieu of the normal maximum of six feet. In that case the petitioner testified that the extra height was needed to allow for clearance between the fence panels and the ground.
- In October 2007 and April 2008 the Zoning Board of Appeals (ZBA) heard variance cases regarding fence height in the City of Champaign one and one-half mile extraterritorial jurisdiction. In both of these cases the ZBA approved special conditions that allowed the petitioners to exceed the height limit by a small amount to provide for clearance between the fence panel and the ground.
- Later in 2008, the Department was approached by another person who desired to build an eight foot fence in the County's jurisdiction. At the time staff was contemplating this text amendment and so the Zoning Administrator approved the fence provided the petitioner was willing to abide by the outcome of this proposed text amendment or any variance that may be required.
- These cases revealed that the maximum fence height limit of six feet for lots in the R Zoning Districts and residential lots in the AG districts is more restrictive than most municipalities in the county, and that some fences may technically exceed the height limit by a small amount to allow for clearance between the fence panels and the ground.

The proposed amendment will increase the maximum height allowed to eight feet for fences in side and rear yards on lots in R Zoning Districts and residential lots less than five acres in the AG Districts. It also adds an allowance for three inches of clearance between the fence panels and the surface of the ground.

Note that the County's fence height limits do not, apparently, apply to residential lots in the AG Districts that are five acres or greater in area or lots in the CR District. The Department has never received a complaint regarding a situation like this nor has it received any request to build an unusually tall fence in the AG or CR Districts and so no changes are proposed at this time regarding fence height on residential lots in the AG Districts that are greater than five acres in area or in the CR District.

The inclusion of an allowance for clearance between fence panels and the surface of the ground was not included in the legal advertisement for this case because staff had not determined to include that portion of the amendment at that time. While this proposed change to the amendment does go somewhat beyond the legal advertisement, it is a minor change overall. It is at the Board's discretion whether this case should be continued and readvertised or whether they are comfortable with moving forward without readvertisement.

ATTACHMENTS

- A Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance to Larger Local Municipalities
- B Draft Proposed Change to Paragraph 4.3.3 G.
- C Draft Finding of Fact for Case 665-AT-10

Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance¹ to Larger Local Municipalities
 February 22, 2010 DRAFT

Parameter	Existing Champaign County	City of Champaign	City of Urbana	Village of Mahomet	Village of Rantoul	Village of Savoy	Village of St. Joseph
In or around side and rear yards	6 feet	8 feet	8 feet	7 feet	8 feet	6 feet ⁶	8 feet ⁷
In or around a required front yard	6 feet	3 feet; or 6 feet ²	6 feet 8 feet ³	3.5 feet	3 feet ⁴ ; or 4 feet ⁵		3 feet ⁸

1. Champaign County Zoning Ordinance limits fence height to six feet in Residential Districts and residential lots less than five acres in area in the AG Districts.
2. Must be chain link, wire mesh, or similar type of transparent fencing.
3. Where the front yard abuts a principal or minor arterial street.
4. For fences that are less than 70% open
5. For fences that are 70% or more open
6. Based on a phone call to Village staff. A search of the Savoy municipal code did not result in any fence height regulations.
7. The top two feet of construction must be more than 50% open
8. Fences in front yards are also required to be more than 50% open and chain link or wire mesh fences are not allowed.

1. Revise Paragraph 4.3.3 G. as follows:

(Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

G. Fences

1. Fences in R Zoning Districts and on residential lots less than five acres in the AG Districts shall not exceed the following height limits, not including any clearance authorized in subparagraph 4.3.3 G.3.: ~~six feet in HEIGHT and may be located in required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.~~
 - a. In required FRONT YARDS fences shall not exceed six feet in HEIGHT provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3 E. of this ordinance.
 - b. In required SIDE and REAR YARDS fences shall not exceed eight feet in HEIGHT.
2. Fences in B and I Zoning Districts shall not exceed eight feet in HEIGHT not including any clearance authorized in subparagraph 4.3.3 G.3., except that any barbed wire security barrier ~~which~~ may be up to an additional two feet in HEIGHT. Fences may be located in the required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
3. The height of fences shall be measured from the highest adjacent GRADE. There may be up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence panels.

PRELIMINARY DRAFT

665-AT-10

**FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: *{RECOMMEND ENACTMENT / RECOMMEND DENIAL}*

Date: March 19, 2010

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. to increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots in the AG-1 and AG-2 Zoning Districts.

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
 2. The need for the amendment came about as follows:
 - A. In October 2007 and April 2008 the Zoning Board of Appeals (ZBA) heard variance cases regarding fence height in the City of Champaign one and one-half mile extraterritorial jurisdiction.
 - B. Later in 2008, the Department was approached by another person who desired to build an eight foot fence in the County's jurisdiction. At the time staff was contemplating this text amendment and so the Zoning Administrator approved the fence provided the petitioner was willing to abide by the outcome of this proposed text amendment or any variance that may be required.
 - C. These cases revealed that the maximum fence height limit of six feet for lots in the R Zoning Districts and residential lots in the AG districts is more restrictive than most municipalities in the county.
 - D. Note that the County's fence height limits do not, apparently, apply to residential lots in the AG Districts that are five acres or greater in area or lots in the CR District. The Department has never received a complaint regarding a situation like this nor has it received any request to build an unusually tall fence in the AG or CR Districts.
-

PRELIMINARY DRAFT

3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

GENERALLY REGARDING THE EXISTING ZONING REGULATIONS

4. Existing Zoning regulations regarding the separate parts of the proposed amendment are as follows:
A. Maximum fence height for Residential Zoning Districts and residential lots less than five acres in area in the AG Districts are established in Subparagraph 4.3.3 G.1, as follows:

Fences in R Zoning DISTRICTS and on residential lots less than five acres in the AG DISTRICTS shall not exceed six feet in HEIGHT and may be located in required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.

- C. The following definitions from the *Zoning Ordinance* are especially relevant to this amendment (capitalized words are defined in the Ordinance):
(1) "BOARD" shall mean the Zoning Board of Appeals of the COUNTY
(2) "GOVERNING BODY" shall mean the County Board of Champaign County, Illinois.
(3) "HEIGHT" as applied to an enclosed or unenclosed STRUCTURE:

STRUCTURE, DETACHED: The vertical measurement from the average level of the surface of the ground immediately surrounding such STRUCTURE to the uppermost portion of such STRUCTURE.

STRUCTURE, ATTACHED: Where such STRUCTURE is attached to another STRUCTURE and is in direct contact with the surface of the ground, the vertical measurement from the average level of the surface of the ground immediately adjoining such STRUCTURE to the uppermost portion of such STRUCTURE shall be HEIGHT. Where such STRUCTURE is attached to another STRUCTURE and is not in direct contact with the surface of the ground, the vertical measurement from the lowest portion of such STRUCTURE to the uppermost portion shall be the HEIGHT.

- (4) "STRUCTURE" is anything CONSTRUCTED or erected with a fixed location on the surface of the ground or affixed to something having a fixed location on the surface of the ground. Among other things, STRUCTURES including BUILDINGS, walls, fences, billboards, and SIGNS.

SUMMARY OF THE PROPOSED AMENDMENT

5. The proposed amendment is summarized here as it will appear in the Zoning Ordinance, as follows: (Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

G. Fences

1. Fences in R Zoning Districts and on residential lots less than five acres in the AG Districts shall not exceed the following height limits, not including any clearance authorized in subparagraph 4.3.3 G.3.: ~~six feet in HEIGHT and may be located in required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.~~
 - a. In required FRONT YARDS fences shall not exceed six feet in HEIGHT provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3 E. of this ordinance.
 - b. In required SIDE and REAR YARDS fences shall not exceed eight feet in HEIGHT.
2. Fences in B and I Zoning Districts shall not exceed eight feet in HEIGHT not including any clearance authorized in subparagraph 4.3.3 G.3., except that any barbed wire security barrier ~~which~~ may be up to an additional two feet in HEIGHT. Fences may be located in the required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
3. The height of fences shall be measured from the highest adjacent GRADE. There may be up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence panels.

GENERALLY REGARDING RELEVANT LAND USE GOALS AND POLICIES

6. The *Land Use Goals and Policies* (LUGP) were adopted on November 29, 1977, and were the only guidance for amendments to the *Champaign County Zoning Ordinance* until the *Land Use Regulatory Policies- Rural Districts* were adopted on November 20, 2001, as part of the Rural Districts Phase of the Comprehensive Zoning Review (CZR) and subsequently revised on September 22, 2005. The relationship of the Land Use Goals and Policies to the Land Use Regulatory Policies is as follows:
 - A. Land Use Regulatory Policy 0.1.1 gives the Land Use Regulatory Policies dominance over the earlier Land Use Goals and Policies.
 - B. The Land Use Goals and Policies cannot be directly compared to the Land Use Regulatory Policies because the two sets of policies are so different. Some of the Land Use Regulatory Policies relate to specific types of land uses and relate to a particular chapter in the land use goals and policies and some of the Land Use Regulatory Policies relate to overall considerations and are similar to general land use goals and policies.
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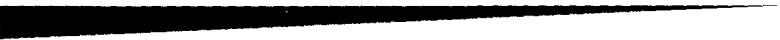
REGARDING SPECIFICALLY RELEVANT LAND USE GOALS AND POLICIES

7. There are goals and policies for agricultural, commercial, industrial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment.

REGARDING THE GENERAL LAND USE GOALS AND POLICIES

8. Regarding the General Land Use Goals and Policies:
- A. Regarding the General Land Use Goals, the First and Fourth General Land Use Goals appear to be relevant to the proposed amendment, as follows:
- (1) The First General Land Use Goal is:
- Promotion and protection of the health, safety, economy, convenience, appearance and general welfare of the County by guiding the overall environmental development of the County through the continuous comprehensive planning process.
- (2) The Fourth General Land Use Goal is:
- Arrangement of land use patterns designed to promote mutual compatibility.
- (3) The proposed amendment appears to *{ACHIEVE}* the First and Fourth General Land Use Goals because of the following:
- (a) The allowance for clearance between fence panels and the surface of the ground is intended to provide some flexibility for fence installers who must account for the natural fluctuations in the surface of the ground.
- (b) The proposed amendment will be consistent with the ordinances of the larger local municipalities, as reviewed in Item 8.B.
- B. Only the Second General Land Use Policy appears to be relevant to the proposed amendment. The Second General Land Use Policy states:
- The County Board, the Environmental and Land Use Committee and the Board of Appeals will establish communication and coordination processes among local units of government in order to address and resolve similar or overlapping development problems.

The proposed amendment appears to *{ACHIEVE}* the Second General Land Use Policy because a staff review of zoning and development ordinances of select municipalities from around the County found that all residential fence height limits were greater than six feet except for one, as follows:



- (1) The City of Champaign allows fences to be eight feet tall in side and rear yards, and does allow six feet fences in front yards so long as they are chain link, wire mesh, or a similar type of transparent fencing.
- (2) The City of Urbana allows fences up to eight feet tall in side and rear yards and allows fences to be eight feet tall in front yards where the front yard abuts a principal arterial street or a minor arterial street.
- (3) The Village of Mahomet allows fences up to seven feet tall in side and rear yards.
- (4) The Village of Rantoul allows fences up to eight feet tall in side and rear yards.
- (5) The Village of Savoy allows fences to be up to six feet tall in side and rear yards. Note that staff was unable to find a maximum fence height in the Savoy ordinances, but was advised of the fence height limit by Village staff.
- (6) The Village of St. Joseph allows fences up to eight feet in height in side and rear yards so long as the top two feet are more than 50% open construction.

DOCUMENTS OF RECORD

1. Memo to the Champaign County Board Committee of the Whole, dated, February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a proposed Zoning Ordinance text amendment changing fence height limits
2. Application for Text Amendment from Zoning Administrator, dated March 3, 2010
3. Preliminary Memorandum for Case 665-AT-10, dated March 19, 2010, with attachments:
 - A Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance to Larger Local Municipalities
 - B Draft Proposed Change to Paragraph 4.3.3 G.
 - C Draft Finding of Fact for Case 665-AT-10

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 665-AT-10** should ***{BE ENACTED / NOT BE ENACTED}*** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Doug Bluhm, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

CASE NO. 666-AT-10

Champaign PRELIMINARY MEMORANDUM
County
Department of

March 19, 2010

Petitioner: **Zoning Administrator**



Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

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

(217) 384-3708

Request: **Amend the Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11 D.1. to clarify that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

BACKGROUND

The need for the amendment came about as follows:

- Subsection 6.1 and Paragraph 9.1.11 D.1. define standard conditions and establish the ability of the ZBA and County Board to waive them based on certain findings.
- Comments were received during the public hearing for Zoning Case 658-AT-09 asserting that the more correct interpretation of these two parts of the Zoning Ordinance is that only standard conditions which have the same kind of requirements in Section 5.3 are subject to waiver.
- Those comments indicate that disagreement is likely and it would be best to eliminate any cause for disagreement or confusion.

The proposed amendment will clarify that any standard conditions which exceed the standards in Section 5.3 in either amount or kind of requirement are subject to waiver.

STANDARD CONDITIONS ESTABLISHED BY CASE 855-AT-93

When the Zoning Ordinance was adopted on October 10, 1973, Section 6.1 was the "Schedule of Area, Height, and Location Regulations for Specific SPECIAL USES." Zoning Case 855-AT-93 renumbered Section 6.1 to 6.1.3 and renamed it to the "Schedule of Requirements and Standard Conditions."

Zoning Case 855-AT-93 gave the ZBA the ability to grant waivers of the standard conditions that were moved to 6.1.3. In granting a waiver the Board is required to make two findings, as follows:

1. That such waiver is in accordance with the general purpose and intent of the Zoning Ordinance; and
2. That such waiver will not be injurious to the neighborhood, or to the public health, safety, and welfare.

These two findings are essentially the same as two of the required criteria for variances found in subparagraph 9.1.9 C.1.d. and 9.1.9 C.1.e. See the attached Finding of Fact for Case 855-AT-93 for more information.

ATTACHMENTS

- A Draft Proposed Change to Subsection 6.1 and subparagraph 9.1.11 D.1.
- B Approved Finding of Fact for Zoning Case 855-AT-93
- C Draft Finding of Fact for Case 666-AT-10

1. Revise Subsection 6.1 as follows:

(Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

The standards listed in this Subsection ~~for specific SPECIAL USES~~ which exceed the applicable DISTRICT standards in Section 5.3, in either amount or kind, and which are not specifically required under another COUNTY ordinance, state regulation, federal regulation, or other authoritative body having jurisdiction, to the extent that they exceed the standards of the DISTRICT, in either amount or kind, shall be considered standard conditions which the BOARD or GOVERNING BODY is authorized to waive upon application as provided in Section 9.1.11 on an individual basis.

2. Revise Paragraph 9.1.11. D.1. as follows:

Any other provision of this ordinance notwithstanding, the BOARD or GOVERNING BODY, in granting any SPECIAL USE, may waive upon application any standard or requirement for the specific SPECIAL USE enumerated in Section 6.1.3 ~~Schedule of Requirements and Standard Conditions~~ Standards for Special Uses, to the extent that they exceed the minimum standards of the DISTRICT, in either amount or kind, except for any state or federal regulation incorporated by reference, upon finding that such waiver is in accordance with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or to the public health, safety and welfare.

855-AT-93
FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals

Final Determination: Adoption Recommended

Date: September 2, 1993

Petitioner: Zoning Administrator

Petition: Part A (items b, d, g, i & j): Amend Sections 3 & 9.1, to establish authority and procedures for the Zoning Administrator administrative to grant variances up to 10% of the standard.

Part B (items a, c, e, f, g, h & i): Sections 3 & 9.1, to establish authority and procedures for a Zoning Hearing Officer to grant variances exceeding 10% and reserve authority for the Zoning Board of Appeals to grant variances exceeding 50% of the standard.

Part C (items a, f, i, l, n, o & p): Amend Sections 3, 8.3, 8.4, 8.5, 9.1 & 10.1, to revise, clarify and extend the authority of the Zoning Board of Appeals to grant variances.

Part D (items k & m): Amend Sections 6.1 and 9.1 to permit the Zoning Board of Appeals to grant waives of special standards for specific Special Uses to the extent they exceed applicable district standards.

Finding of Fact

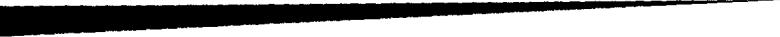
From the documents of record and the testimony and exhibits received at the public hearing which commenced on April 15, 1993 and concluded on September 2, 1993, the Zoning Board of Appeals of Champaign County finds that:

With respect to Part A that:

1. The State of Illinois authorized County Zoning Administrators to grant of variances of 10% or less of regulations affecting the location of structures and bulk requirements of the Zoning Ordinance in adopting P.A. 86-1028, effective February 5, 1990.
-

2. The Zoning Board of Appeals hears an average of 50 cases per year. Of this amount approximately 15 cases are variances.
3. The number of cases heard by the Zoning Board of Appeals has increased approximately 20% over the last three years and the number of variance cases has increased 50%.
4. The increased case load of the Zoning Board of Appeals has led to extended meeting times and delayed the completion of zoning cases.
5. The proposed amendment would permit the zoning administrator to handle approximately 27% of variances cases.
6. The relatively small magnitude of variances allowed to be decided by the Zoning Administrator make most such requests noncontroversial.
7. Provisions of the Illinois County Code provide that small variances to which neighbors object can be granted only by the Zoning Board of Appeals after a public meeting.

With respect to Part B that:

8. The State of Illinois authorized delegation of functions of the Zoning Board of Appeals to a Hearing Officer in adopting P.A. 86-962 effective January 1, 1990.
 9. The proposed amendment would delegate authority to grant variances greater than 10% and less than 50% to a hearing officer. This would divert approximately 54% of the variance cases heard the Zoning Board of Appeals.
 10. Decisions of the Hearing Officer would be appealable to the Zoning Board of Appeals. Such appeals are more informal and may be pursued without reliance on legal counsel.
 11. The Zoning Board of Appeals would retain exclusive authority to grant variances of relatively great magnitude and of qualitative provisions of the Zoning Ordinance.
 12. The variance authority of the Zoning Board of Appeals will still exclude use variances, procedural requirements, state and federal regulations incorporated into the ordinance by reference and all but certain specified variances affecting non-conformities.
 13. The amendment contains provisions to protect both petitioners' and neighbors' rights to procedural due process.
- 

With respect to Part C that:

14. The expansion of the Zoning Board of Appeals authority to grant variances will allow site specific relief to ensure protection of landowners' rights to substantive due process and help avoid unnecessary or undesirable zoning map or text amendments.

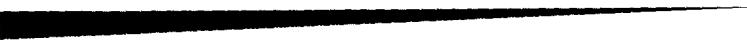
With respect to Part D that:

15. The ordinance contains special requirements for specific special uses that exceed the applicable requirements of the zoning district.
16. The rationale for these special standards for specific special uses is not well established.
17. The public hearing process for Special Use Permits provides for due process for all interested parties.
18. Permitting the Zoning Board of Appeals to waive special standards to the extent they exceed the applicable standards of the district will ease the review of Special Use cases and eliminate the filing of parallel variance cases.

With respect to Parts A - D inclusively that:

19. The amendments will provide a clearer and easier to understand format.
20. The criteria for granting variances are revised to provide greater clarity and eliminate redundancy.

Documents of Record

1. Memorandum to Champaign County Board Environment and Land Use Committee dated February 2, 1993.
 2. Preliminary Memorandum dated April 15, 1993.
 3. Summary Memorandum dated May 28, 1993.
 4. Letter to Frank DiNovo from Assistant States Attorney, Susan Piette dated July 12, 1993.
 5. Supplementary Memorandum dated July 30, 1993.
 6. Draft Amendments dated April 15, May 30, June 25, July 30, and September 1, 1993.
- 

Determination

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Text Amendment proposed in Case 855-AT-93 as set forth in the Draft dated September 1, 1993 which is attached hereto should be acted upon by the Champaign County Board as follows:

1. Part A including all relevant parts of items b, d, g, i and j should be adopted;
2. Part B including all relevant parts of items a, c, e, f, g, h and i should be adopted;
3. Part C including all relevant parts of items a, f, i, l, n, o and p should be adopted; and
4. Part D including all relevant parts of items k and m should be adopted.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

ATTEST:

SIGNED:

Secretary to the Zoning Board of Appeals

Richard D. Parnell, Chairman
Champaign County Zoning Board of Appeals

DATE: _____

PRELIMINARY DRAFT

666-AT-10

**FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: *{RECOMMEND ENACTMENT / RECOMMEND DENIAL}*

Date: March 19, 2010

Petitioner: Zoning Administrator

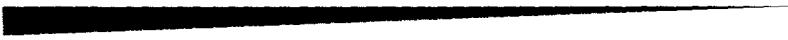
Request: Amend the Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11 D.1. to clarify that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
 - A. Subsection 6.1 and Paragraph 9.1.11 D.1. define standard conditions and establish the ability of the ZBA and County Board to waive them based on certain findings.
 - B. Comments were received during the public hearing for Zoning Case 658-AT-09 asserting that the more correct interpretation of these two parts of the Zoning Ordinance is that only standard conditions which have the same kind of requirements in Section 5.3 are subject to waiver.
 - C. Those comments indicate that disagreement is likely and it would be best to eliminate any cause for disagreement or confusion.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

GENERALLY REGARDING THE EXISTING ZONING REGULATIONS

4. Existing Zoning regulations regarding the proposed amendment are as follows:
 - A. Subsection 6.1 and Subparagraph 9.1.11 D.1. establish standard conditions and their being subject to waiver as follows:
 - (1) Subsection 6.1 states:
- 

PRELIMINARY DRAFT

The standards listed for specific SPECIAL USES which exceed the applicable DISTRICT standards in Section 5.3 and which are not specifically required under another COUNTY ordinance, state regulation, federal regulation, or other authoritative body having jurisdiction, to the extent that they exceed the standards of the DISTRICT, shall be considered standard conditions which the BOARD is authorized to waive upon application as provided in Section 9.1.11 on an individual basis.

- (2) Subparagraph 9.1.11 D.1. states:

An other provision of this ordinance notwithstanding, the BOARD, in granting any SPECIAL USE, may waive upon application any standard or requirement for the specific SPECIAL USE enumerated in Section 6.1.3 Schedule of Requirements and Standard Conditions, to the extent that they exceed the minimum standards of the DISTRICT, except for any state or federal regulation incorporated by reference, upon finding that such waiver is in accordance with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or to the public health, safety and welfare.

- B. The following definitions from the *Zoning Ordinance* are especially relevant to this amendment (capitalized words are defined in the Ordinance):
- (1) "BOARD" shall mean the Zoning Board of Appeals of the COUNTY
 - (2) "GOVERNING BODY" shall mean the County Board of Champaign County, Illinois.
 - (3) "SPECIAL CONDITION" is a condition for the establishment of the SPECIAL USE.

SUMMARY OF THE PROPOSED AMENDMENT

5. The proposed amendment is summarized here as it will appear in the Zoning Ordinance, as follows (Underline and ~~strikeout~~ text indicate changes from the current Ordinance):
- A. Revised Subsection 6.1 will appear as follows:

6.1 Standard for SPECIAL USES

The standards listed in this Subsection ~~for specific SPECIAL USES~~ which exceed the applicable DISTRICT standards in Section 5.3, in either amount or kind, and which are not specifically required under another COUNTY ordinance, state regulation, federal regulation, or other authoritative body having jurisdiction, to the extent that they exceed the standards of the DISTRICT, in either amount or kind, shall be considered standard conditions which the BOARD or GOVERNING BODY is authorized to waive upon application as provided in Section 9.1.11 on an individual basis.

B. Revised Subsection 9.1.11 D.1 will appear as follows:

1. Any other provision of this ordinance notwithstanding, the BOARD or GOVERNING BODY, in granting any SPECIAL USE, may waive upon application any standard or requirement for the specific SPECIAL USE enumerated in Section 6.1.3 ~~Schedule of Requirements and Standard Conditions~~ Standards for Special Uses, to the extent that they exceed the minimum standards of the DISTRICT, in either amount or kind, except for any state or federal regulation incorporated by reference, upon finding that such waiver is in accordance with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or to the public health, safety and welfare.

GENERALLY REGARDING RELEVANT LAND USE GOALS AND POLICIES

6. The *Land Use Goals and Policies* (LUGP) were adopted on November 29, 1977, and were the only guidance for amendments to the *Champaign County Zoning Ordinance* until the *Land Use Regulatory Policies- Rural Districts* were adopted on November 20, 2001, as part of the Rural Districts Phase of the Comprehensive Zoning Review (CZR) and subsequently revised on September 22, 2005. The relationship of the Land Use Goals and Policies to the Land Use Regulatory Policies is as follows:
 - A. Land Use Regulatory Policy 0.1.1 gives the Land Use Regulatory Policies dominance over the earlier Land Use Goals and Policies.
 - B. The Land Use Goals and Policies cannot be directly compared to the Land Use Regulatory Policies because the two sets of policies are so different. Some of the Land Use Regulatory Policies relate to specific types of land uses and relate to a particular chapter in the land use goals and policies and some of the Land Use Regulatory Policies relate to overall considerations and are similar to general land use goals and policies.

REGARDING SPECIFICALLY RELEVANT LAND USE GOALS AND POLICIES

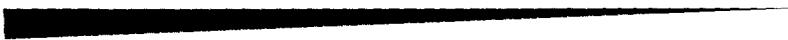
7. There are goals and policies for agricultural, commercial, industrial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment.

REGARDING THE GENERAL LAND USE GOALS AND POLICIES

8. Regarding the General Land Use Goals and Policies:
 - A. Only the fifth General Land Use Goal appears to be relevant to the proposed amendment. The fifth General Land Use Goal is:

Establishment of processes of development to encourage the development of the types and uses of land that are in agreement with the Goals and Policies of this Land Use Plan

The proposed amendment appears to *{ACHIEVE}* the fifth General Land Use Goal because of the following:



PRELIMINARY DRAFT

- (1) When the Zoning Ordinance was adopted on October 10, 1973, Section 6.1 was the “Schedule of Area, Height, and Location Regulations for Specific SPECIAL USES.”
- (2) Zoning Case 855-AT-93 renumbered Section 6.1 to 6.1.3, renamed it to the “Schedule of Requirements and Standard Conditions,” and granted the Zoning Board of Appeals the power to waive standard conditions for Special Uses. In that case the ZBA made several relevant findings, as follows:
 - (a) Item 17 in the Finding of Fact for Case 855-AT-93 states, “The public hearing process for Special Use Permits provides for due process for all interested parties.”
 - (b) Item 18 in the Finding of Fact for Case 855-AT-93 states, “Permitting the Zoning Board of Appeals to waive special standards to the extent they exceed the applicable standards of the district will ease the review of Special Use cases and eliminate the filing of parallel variance cases.”
- (2) In granting a waiver the Board is required to make two findings, as follows:
 - (a) That such waiver is in accordance with the general purpose and intent of the Zoning Ordinance; and
 - (b) That such waiver will not be injurious to the neighborhood, or to the public health, safety, and welfare.
 - (c) These two findings are essentially the same as two of the required criteria for variances found in subparagraph 9.1.9 C.1.d. and 9.1.9 C.1.e.
- (3) Regarding petitioners’ ability to seek relief from unreasonable requirements of the Zoning Ordinance:
 - (a) If the Board’s ability to grant waivers was reduced to only those standard conditions with equivalent requirements in Section 5.3, as suggested by comments received during Zoning Case 658-AT-09, all other standard conditions would still be subject to variance, and a petitioner’s ability to seek relief from unreasonable standard conditions would be largely unchanged.
 - (b) However, in a Special Use Permit case where variances from multiple standard conditions were required, a petitioner would be required to pay Zoning Case Filing Fees for the Special Use Permit and for the parallel Variance case. Time spent in the public hearing for that case would also increase as the ZBA and County Board would be required to consider the Special Use Permit and all required Variances separately.
 - (c) In the case of County Board Special Use Permits for wind farms, state statute gives the County Board the right to approve certain variances if they so choose.

- (3) Regarding the intent of Subsection 6.1 and subparagraph 9.1.11 D.1:
 - (a) Subsection 6.1 and subparagraph 9.1.11 D.1. grant the ZBA and County Board the ability to grant waivers of standard conditions which, "...are not specifically required under another COUNTY ordinance, state regulation, federal regulation, or other authoritative body having jurisdiction..."
 - (b) Section 5.3 of the Zoning Ordinance is entitled "Schedule of Area, Height, and Placement Regulations by District," and establishes requirements for minimum lot area, maximum lot area (for lots in the CR, AG-1, and AG-2 Zoning Districts), minimum average lot width, maximum height of principal and accessory structures (in feet and stories), front setback from street centerlines, front yard, side yard, rear yard, and maximum lot coverage.
 - (c) Other COUNTY ordinances, state regulations, federal regulations, and other authoritative bodies having jurisdiction do not, in general, enact requirements regarding area, height, and placement of structures.
 - (d) The clause quoted in Item 8.A.(3)(a) above is unnecessary if the intent of Subsection 6.1 and subparagraph 9.1.11 D.1 was to grant the ZBA and County Board the ability to grant waivers of only those standard conditions with equivalent requirements in Section 5.3.
 - (4) The practice of the Zoning Board of Appeals in the 17 years since Zoning Case 855-AT-93 was adopted has been to view all standard conditions as subject to waiver.
- D. None of the General Land Use Policies appear to be relevant to the proposed amendment.

DOCUMENTS OF RECORD

1. Memo to the Champaign County Board Committee of the Whole, dated, February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a proposed Zoning Ordinance text amendment clarifying standard conditions and clarifying wind farm shadow flicker requirements
2. Application for Text Amendment from Zoning Administrator, dated March 3, 2010
3. Preliminary Memorandum for Case 666-AT-10, dated March 19, 2010, with attachments:
 - A Draft Proposed Change to Subsection 6.1 and subparagraph 9.1.11 D.1.
 - B Approved Finding of Fact for Zoning Case 855-AT-93
 - C Draft Finding of Fact for Case 666-AT-10

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 666-AT-10** should ***{BE ENACTED / NOT BE ENACTED}*** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Doug Bluhm, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

ZONING BOARD OF APPEALS
MARCH 25, 2010

DOCUMENTS DISTRUBUTED TO THE ZONING
BOARD OF APPEALS AT THE MEETING

Contents:

1. Supplemental Memorandum for Case 664-AT-10 dated March 25, 2010
2. Supplemental Memorandum for Case 665-AT-10 dated March 25, 2010
3. Supplemental Memorandum for Case 666-AT-10 dated March 25, 2010
4. Supplemental Evidence submitted by John Hall
5. Written Comments submitted by Herb Schildt, dated March 25, 2010

CASE NO. 664-AT-10

Champaign County
Department of
Petitioner: **Zoning Administrator**

SUPPLEMENTAL MEMORANDUM

March 25, 2010



Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

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

(217) 384-3708

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

1. **Delete paragraph 6.1.4 A.1.(c).**
2. **Revise paragraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.**

STATUS

This is the first meeting for this case. Since the mailing staff has added new information to the Finding of Fact regarding the Second Industrial Land Use Goal and the Land Use Regulatory Policies.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as revised Item 7 on page 4 of 7, as follows:
(Underline and ~~strikeout~~ text indicate changes from the Preliminary Draft)

7. Regarding Land Use Goals and Policies for specific categories of land uses:
 - A. There are goals and policies for agricultural, commercial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment, except for the Second Industrial Land Use Goal.
 - B. The Second Industrial Land Use Goal appears to be relevant to the proposed amendment. The Second Industrial Land Use Goal is:

Location and design of industrial development in a manner compatible with nearby non-industrial uses.

The proposed amendment appears to ~~ACHIEVE~~ the Second Industrial Land Use Goal because it will make clear that a wind farm developer is required to provide mitigation for shadow flicker for land that receives more than 30 hours of shadow flicker in a given year.

2. The following should be added as new Item 9. on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant to the proposed amendment.

CASE NO. 665-AT-10

Champaign County Department of
SUPPLEMENTAL MEMORANDUM
March 25, 2010
Petitioner: **Zoning Administrator**



Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

Brookens
Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802
(217) 384-3708

Request: Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. to increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots in the AG-1 and AG-2 Zoning Districts.

STATUS

This is the first meeting for this case. Since the mailing staff has prepared additional information for the Finding of Fact.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as new Items 9, 10, 11, and 12 on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant.
10. Increasing the allowable fence height will provide landowners in the unincorporated area as much freedom in regards to fencing as property owners in municipalities.
11. Increasing the allowable fence height to eight feet will reduce the need for variances which will reduce the costs of the County's zoning program.
12. Regarding the economic soundness of the proposed amendment:
 - A. The proposed three-inch ground clearance is reasonable in regards to pre-manufactured fence panels for the following reasons:
 - (1) Pre-manufactured fence panels are available in standard six-foot high panels.
 - (2) Adding the proposed three inch clearance to ground means that standard six-foot high pre-manufactured fence panels can be installed above the surface of the ground without the need to cut off any of the fence panel.
 - (3) Three inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest point of a ground surface that could vary by as much as two inches.
 - B. The proposed three-inch ground clearance is reasonable in regards to custom made fence panels for the following reasons:
 - (1) Eight-foot high fences are generally custom built.

- (2) Eight feet is a standard increment of length for lumber.
- (3) Adding the proposed three-inch clearance to ground means that custom made eight-foot high fencing can be installed above the surface of the ground without the need to cut off and waste so much of the lumber.
- (4) Three inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest point of a ground surface that could vary by as much as two inches.

CASE NO. 666-AT-10

Champaign
County
Department of

SUPPLEMENTAL MEMORANDUM

March 25, 2010

Petitioner: **Zoning Administrator**



Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

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

(217) 384-3708

Request: **Amend the Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11 D.1. to clarify that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

STATUS

This is the first meeting for this case. Since the mailing staff has prepared new information for the Finding of Fact.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as new Item 8.A.(7) on page 5 of 7, as follows:

- (7) Easing the review of special use permit cases and eliminating the filing of parallel variance cases will help keep the costs of the County zoning program lower than it would be otherwise and reduce the application costs to applicants and leave applicants more freedom and flexibility in developing their special use.

2. The following should be added as new Item 9. on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant.

1. A special use permit is not required by statute to have standards. Standards are a convenience for both the County and the special use applicant.
2. Whether or not a special use permit has standards that are subject to a variance or standard conditions that are subject to a waiver, applicants can in either case make a request for something less than is otherwise required in the Ordinance.
3. A special use should always be in accordance with the general purpose and intent of the ordinance and should never be injurious to the neighborhood or to the public health, safety, and welfare whether or not that special use permit has standards that are subject to a variance or standard conditions that are subject to a waiver in either case the special use. ~~in either case the special use.~~
4. Maintaining standard conditions that are subject to a waiver rather than standards that are subject to a variance should result in quicker and easier public hearings at the Zoning Board of Appeals (and County Board when relevant); lower overall costs of the zoning program; and lower application costs for special use permit applicants.

March 25, 2010

My name is Herb Schildt. Tonight I am expressing the opinions of myself and my wife.

I strongly recommend that you **do not** adopt Case 666-AT-10 because it will make all of the regulations contained in the wind farm amendment (Section 6.1.4) subject to waiver. It is clear to me that, as the zoning code is currently written, the wind farm regulations cannot be waived. Therefore, adopting this amendment will cause a very significant change to the zoning code, and I oppose it.

As you know, I believe that the wind farm amendment adopted last year is seriously flawed. I also have a problem with the substantial changes made to the amendment after the close of ZBA hearings. Furthermore, I am troubled that the legal notice for the wind farm amendment included an overlay district, but this requirement was not part of the final amendment.

That said, the wind farm regulations provide at least a baseline of protection for the residents of the county. They also set expectations about where a wind farm can or cannot be located. These minimum standards should not be subject to waiver. And, as the zoning code is currently written, they are not subject to waiver. This is as it should be. No changes to the zoning code in this regard are needed.

It is useful to point out why I believe that the wind farm provisions are not currently subject to waiver. Section 9.1.11.D.1 defines situations in which a standard condition for a special use permit can be waived. It specifically refers to the special uses enumerated in Section 6.1.3. Quoting a portion of section 9.1.11.D.1, it says:

"Any other provision of this ordinance notwithstanding, the BOARD or GOVERNING BODY, in granting any SPECIAL USE, may waive upon application any standard or requirement for the specific SPECIAL USE enumerated in Section 6.1.3 Schedule of Requirements and Standard Conditions, to the extent that they exceed the minimum standards of the DISTRICT . . ."

As the ordinance is currently written, Section 6.1.3 contains a table that depicts a schedule of standard conditions for specific types of special uses. This table **does not**, however, include wind farms. Wind farms are handled separately by Section 6.1.4. Therefore, the ordinance specifically exempts wind farm standard conditions from waiver. I see no ambiguity here. In the current ordinance, the wind farm regulations cannot be waived.

Furthermore, the types of conditions that can be waived for the special uses in Section 6.1.3 are listed in the table in Section 5.3. It includes such things as minimum lot size and average width, maximum height, required yards, and maximum lot coverage. It has nothing to say about the vast majority of the provisions in the wind farm ordinance.

In my view, the law is clear: the wind farm regulations define the minimum standards that pertain to wind farms, and these standards can't be waived. Attempting to make the wind farm regulations subject to waiver, as the proposed amendment seeks to do, will result in a fundamental alteration in the meaning of the zoning code. Make no mistake, this is not a small or clerical change. It makes a radical change in the meaning of the ordinance.

The wind farm rules are important because they deal with important things, such as setbacks, turbine height, noise, damage to farmland, electromagnetic interference, impact on wildlife, decommissioning, site reclamation, liability, shadow flicker -- the list goes on. Making these regulations subject to waiver simply puts it all up for grabs again.

It is my strong belief that making the wind farm requirements subject to waiver will have a profoundly negative effect on property values because no one will be able to know where a wind farm might be built, what setbacks will be used, what the noise limits are, the impact of shadow flicker -- again, the list goes on. If all of these conditions are subject to change, who will know where they stand? I believe that this uncertainty will fundamentally destabilize property values throughout Newcomb Township where I live, and throughout the county in general.

Furthermore, if the wind farm regulations become subject to waiver, landowners who want turbines will no longer be assured of the protections that the current ordinance offers. These protections include reclamation, decommissioning, and farm land damage mitigation, among others. It is important that these protections remain requirements. They provide critical safeguards for landowners who will have turbines -- especially those who have already signed leases. These protections must not be subject to waiver.

As I see it, having a fixed set of minimum standards is beneficial to all landowners, whether a landowner will be hosting a turbine or not. Look, it's not about whether you like wind turbines or don't like wind turbines. It's about providing a baseline of protection for all, and about maintaining continuity in the zoning code.

Therefore, I recommend that you reject Case 666-AT-10. This will leave the zoning ordinance as it currently stands, and thus prevent a major change to the law. Simply put, this text amendment is not needed.

However, if you choose to move forward with Case 666-AT-10, it must, at minimum, be changed to explicitly exempt the wind farm regulations from waiver. This would mean that the reference to Section 6.1.3 must remain in paragraph 9.1.11.D.1, and Section 6.1 could begin something like this:

Except for the provisions specified in Section 6.1.4, the standards listed in this Subsection ...

Doing this will keep the ordinance unchanged as it relates to wind farms.