

# CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **January 6, 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 (December 16, 2010)
5. Continued Public Hearings

- Case 665-AT-10**    Petitioner: **Zoning Administrator**  
Request: **Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. as follows:**
- A. 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.**
  - B. Require fencing that is higher than four feet tall to be at least 50% transparent when located in the following areas:**
    - (1) In Residential Zoning Districts, all fencing that is in the front yard**
    - (2) On residential lots in the AG-1, AG-2, and CR Zoning Districts, only fencing between the dwelling and the driveway within 25 feet of the dwelling**
  - C. Increase the maximum allowed height of all fencing to allow up to three inches of ground clearance.**
- 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.**
- 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.**

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Case 675-AT-10 cont:

**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.**
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 dwelling 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 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 as follows:**
  - a. **Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 as 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 and any accessory structure 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 and any accessory structure 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.**

6. Staff Report

7. Other Business

- A. ZBA Agenda mailing protocols
- B. December, 2010 Monthly Report

8. Audience Participation with respect to matters other than cases pending before the Board

9. Adjournment

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# CASE NO. 665-AT-10

## SUPPLEMENTAL MEMORANDUM

December 30, 2010

Champaign  
County  
Department of



Petitioner: **Zoning Administrator**

Prepared by: **John Hall**  
Zoning Administrator

Request: **Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. as follows:**

- A. **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 less than five acres in area in the AG-1 and AG-2 Zoning Districts.**
- B. **Require fencing that is higher than four feet tall to be at least 50% transparent when located in the following areas:**
  - (1) **In Residential Zoning Districts, all fencing that is in the front yard.**
  - (2) **On residential lots less than five acres in area in the AG-1, AG-2, and CR Zoning Districts, only fencing between the dwelling and the driveway within 25 feet of the dwelling.**
- C. **Increase the maximum allowed height of all fencing to allow for up to three inches of ground clearance.**

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### *STATUS*

This case was continued from the December 16, 2010 public hearing. The minutes for this case are included separately.

Note that the description is different than it appears on the Agenda. An attempt has been made to revise the Draft Amendment as discussed at the December 16 meeting although that discussion was somewhat confusing. Note that this case was previously readvertised with the transparency requirement on April 28, 2010, and there is no need to readvertise at this time as was suggested in error at the last meeting. Also note that the portions deleted were corrected back to the September 10, 2010, version prior to deletion. The minutes from the December 16 meeting should be available for the Board's use at the meeting. Approval of the minutes is on the Agenda but approval of the minutes could be continued to the next meeting.

Revised fencing diagrams are also attached.

An updated municipal comparison table is attached that indicates that Champaign, Urbana, Rantoul, and St. Joseph all require transparent fencing (to some extent) in the front yard.

A Revised Finding of Fact is also attached.

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**ATTACHMENTS**

- A Excerpted minutes for Case 665-AT-10 from December 16, 2010, ZBA meeting
- B Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance to Larger Local Municipalities *REVISED 12/30/10* (with excerpt from Urbana fence code)
- C Revised Draft Amendment
- D Revised Fencing Diagrams
- E Revised Draft Finding of Fact

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Ms. Capel moved, seconded by Mr. Courson to approve the October 14, 2010, minutes as submitted.  
The motion carried by voice vote.

Mr. Courson moved, seconded by Mr. Palmgren to re-arrange the agenda and hear Case 675-AT-10, prior to Cases 665-AT-10 and 666-AT-10. The motion carried by voice vote.

6. Continued Public Hearing

Case 665-AT-10 Petitioner: **Zoning Administrator Request to amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3G, as follows: A. 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; and B. Require fencing that is higher than four feet tall to be at least 50% transparent when located in the following areas: (1) In Residential Zoning Districts, all fencing that is in the front yard; and (2) On residential lots in the AG-1, AG-2, and CR Zoning Districts, only fencing between the dwelling and the driveway within 25 feet of the dwelling. C. Increase the maximum allowed height of all fencing to allow up to three inches of ground clearance.**

Mr. Hall stated that on December 06, 2010, a third request was sent to the Sheriff regarding the Board’s questions about transparency for gates but to date no comments have been received. Mr. Hall stated that he would assume that since no response has been received from the Sheriff it would mean that he has no concerns related to this case. Mr. Hall stated that nothing has changed since the last time that the Board reviewed this case and a fence in a residential district would retain a 6 foot maximum height in the front yard but those portions over four feet high must be at least 50% transparent, and in the residential districts that is for the entire front yard. He said that on side and rear yards the maximum height is being increased to 8 feet with a provision that when there is a question about whether it is located in the front or side yard then the transparency requirement applies there also and for all of the fence heights 3 inches of extra height is being added to accommodate changes in topography. He said that any place where there is a limit of 6 feet or 8

1 feet the actual limit at any point in the fence is 6 foot 3 inches or 8 foot 3 inches. He said that residential lots  
2 in the AG districts that are less than five acres in area will retain a maximum fence height of six feet in the  
3 front yard but will add a requirement for 50% transparency when located along the driveway between the  
4 dwelling and the driveway visibility triangle within 25 feet of the dwelling. He said that what this means is  
5 that a fence along the driveway within 25 feet of the dwelling has to be 50% transparent over four feet in  
6 height and then in the side and rear yard the allowable maximum height is 8 feet. He said that if there is a  
7 question whether the fence is in the side or front yard then the transparency requirement kicks in, although  
8 that doesn't seem to be needed unless it is along the driveway. He said that on lots that are five acres or  
9 greater the only restriction on fencing is for the transparency requirement within 25 feet of the dwelling on  
10 the line of the driveway between the driveway and the dwelling. He said that in the CR district where there  
11 are currently no requirements for fencing the transparency requirement is being added within 25 feet of the  
12 dwelling. He said that there are no height limits in the CR district but within 25 feet of the dwelling along  
13 the side of the driveway between the driveway and the dwelling the transparency requirement applies. He  
14 said that in the business and industrial zoning districts the only change is to add the three inch clearance to  
15 the existing height limit of 8 feet. He said that he had hoped that this case would be ready for final action at  
16 tonight's public hearing but he does not believe that Item #G.2(c) is necessary therefore he would like to  
17 continue the case while staff verifies that. He said that it was only decided this afternoon that this case  
18 merited making the draft ordinance to make sure that everyone was on the same page.

19  
20 Mr. Knight stated that there could be a possibility that the fence could exist along the rear line of the front  
21 yard in the AG-1 and AG-2 Zoning Districts.

22  
23 Mr. Hall stated that the current approach is that the transparency requirement in the AG districts is only an  
24 issue when it is on the line of the driveway between the driveway and the dwelling and then only within 25  
25 feet of the dwelling therefore any fence that could be in the side yard is going to be further back on the  
26 property. He said that this issue is only relevant if the Board is still entertaining the transparency  
27 requirement.

28  
29 Mr. Courson stated that he is against the transparency requirement. He said that he does not believe that any

1 visibility restrictions should be placed on the fence in any zoning district.

2

3 Mr. Hall stated that if the Board is still entertaining the transparency requirement then he would request that  
4 the case be continued so that an illustration could be presented to the Board for review.

5

6 Mr. Thorsland asked Mr. Hall if Paragraph 4.3.3E. is the standard visibility requirement for fencing.

7

8 Mr. Hall stated yes. He noted that vegetation within the visibility triangle would have to be maintained  
9 within the visibility triangle.

10

11 Mr. Thorsland stated that if the Board pursued Mr. Courson's proposal and the Board retained Subparagraph  
12 4.3.3G 2(a) the front yard on lots five acres or less would have a six foot height requirement and the 50%  
13 transparency over four feet would be omitted. He said that the visibility triangle requirement will be  
14 maintained and the rear and side yards will remain at 8 feet 3 inches and the front yard would be 6 feet 3  
15 inches. He said that this would solve a lot of the problems with the transparency on lots which are less than  
16 five acres. He said that on some level he agrees with Mr. Courson in regards to the agricultural lots because  
17 enforcement would be pretty much impossible, even with the visibility triangle requirement.

18

19 Mr. Hall stated that perhaps a permit should be required.

20

21 Mr. Thorsland stated that it is possible but he is not sure if he is inclined to require a permit for a fence.

22

23 Mr. Courson stated that most people in the community would construct a fence without a permit because  
24 they do not realize that one is required.

25

26 Mr. Hall stated that the driveway visibility triangle is the one Zoning Ordinance requirement that has  
27 immediate life, safety effects.

28

29 Mr. Courson stated that he believes that there should be more requirements on visibility triangles in the rural

1 areas along the roads.

2

3 Mr. Thorsland stated that he agrees with Mr. Courson and he would like to see the AG-1, AG-2, and CR  
4 districts be consistent and enforce the visibility triangle requirement. He said that he would recommend the  
5 6 foot fence in the front yard on a lot that is five acres or less with no transparency requirement because the  
6 visibility triangle requirement is already being enforced. He said that the only difference between a lot that  
7 is less than five acres and a lot that is five acres or more is the 6 feet versus the 8 feet in the front yard. He  
8 said that this recommendation would simplify the amendment and staff's job.

9

10 Mr. Hall stated that currently a lot that is five acres or greater has no fence height requirement only the  
11 visibility triangle.

12

13 Mr. Thorsland stated in regards to CR Subparagraph 4.3.3G.3.(b) could also be removed.

14

15 Mr. Hall stated that lots which are five acres or greater in the AG districts and CR the only fencing  
16 requirement is for the visibility triangle.

17

18 Mr. Thorsland stated that the original goal was to simplify the fence ordinance. He said that he is  
19 comfortable in omitting 4.3.3G.3(b) and changing the AG districts to allow a six foot height in the front yard  
20 for fencing on lots which are less than five acres. He said that for lots which are five acres or greater there  
21 would be no fence height requirement but the visibility triangle requirement would be enforced.

22

23 Ms. Capel asked if CR lots would have requirements.

24

25 Mr. Thorsland stated that CR lots only have the visibility requirement. He said that all of Subparagraph  
26 4.3.3G.1 would remain the same and 4.3.3G.2 would be revised as follows: strike 4.3.3G. 2.b.(1)(b); and  
27 4.3.3G.2.b.(2)(c); and 4.3.3G.2.c; and 4.3.3G.3.b. He said that no reply has been received from the Sheriff  
28 regarding the gates.

29



1 Mr. Hall stated that Mr. Thorsland is correct in indicating that no reply has been received from the Sheriff  
2 regarding the gates but the Sheriff did reply about the transparency requirement.

3

4 Mr. Hall read Item 11.B(3) as follows: Champaign County Sheriff Dan Walsh, in an email to Zoning  
5 Administrator, John Hall, indicated he has the following concerns regarding fencing: (a) When responding to  
6 a call (or even on routine patrol) it is always beneficial to be able to see “more.”; and (b) Deputies will be  
7 safer when responding to calls if they can observe dangerous conditions or persons and plan their response  
8 and avenue of approach accordingly; and (c) Likewise, if on patrol a deputy can see a “bad situation” in a  
9 front/side yard or front porch or even inside the house they can take action without a call from a citizen; and  
10 (d) Access in an emergency response situation could also be problematic if there is a tall barrier and a locked  
11 gate; and (e) The Sheriff’s Department certainly respects a citizen’s right of privacy and to be able to do  
12 what they want with their own property; and (f) A solid barrier (fence or even vegetation in some cases)  
13 height of 3-4 feet seems to be very normal in ordinances (for front and/or side yards) including C-U and  
14 would reduce our concerns with regard to fencing.

15

16 Mr. Thorsland stated that on Page 7 of 13, Item #7.B.(2)(b) indicates that the City of Urbana allows fences  
17 up to eight feet tall in side and rear yards and allows fences to be eight feet tall in front yards where the front  
18 yard abuts a principal arterial street or a minor arterial street. He said that almost every street in the AG  
19 districts is an arterial street therefore perhaps the Board should give the Sheriff one last opportunity to  
20 comment.

21

22 Mr. Hall stated that within the City of Urbana ETJ not every section line road rises to a minor arterial street  
23 therefore he would not expect to see eight feet tall fences being allowed along every section line road. He  
24 said that he would never expect to see an eight foot tall fence in the front yard within the City of Champaign  
25 ETJ.

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27 Mr. Thorsland asked the Board if they had any thoughts regarding this case.

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29 Mr. Palmgren requested a five minute break.

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**Ms. Capel moved, seconded by Mr. Courson to recess the public hearing for a five minute break. The motion carried by voice vote.**

The meeting recessed at 7:45 p.m.  
The meeting resumed at 7:50 p.m.

Mr. Thorsland stated that the Board needs to either agree with omitting some of the proposed text or honoring, on some level, the e-mail from the Sheriff.

Mr. Hall stated that he does believe that the Sheriff's comments are very non-committal.

Mr. Courson stated that Item #11.B(3)(e) could be interpreted as having no restrictions at all. He said that he agrees with the Sheriff's comments in Item #11.B(3)(e) regarding the privacy rights of the property owner.

Mr. Thorsland suggested that a fence around a five acre parcel would be self-limiting anyway and most people would not do it due to the cost.

Mr. Courson agreed.

Ms. Capel stated that the fence would not necessarily have to encompass the entire five acres.

Mr. Thorsland stated that a thought would be to draw a 25 foot line from the dwelling and if the fence appears to come into that line on a lot that is less than five acres then the transparency requirement takes effect. He said that he believes that this will be a rare occasion but it is possible and staff could construct such text.

Mr. Hall stated that such text already exists.

1 Mr. Thorsland read Subparagraph 4.3.3G.2.c as follows: on lots five acres or greater in area, any portion of  
2 a fence over four feet in height must be at least 50% transparent when located along the driveway between  
3 the dwelling and the nearest point of the driveway visibility triangle as required by 4.3.3.F.2 within 25 feet of  
4 the dwelling. He said that this is on lots which are five acres or more therefore he is inclined to disregard  
5 this item.

6

7 Mr. Hall stated that any place where it discusses the transparency requirement the language about the nearest  
8 point of the driveway visibility has been included, which is very confusing.

9

10 Mr. Thorsland stated that for lots that are less than five acres perhaps it could state that any portion of a  
11 fence that is above four feet in height must be at least 50% transparent above four feet when located along  
12 the driveway within 25 feet of the dwelling.

13

14 Mr. Hall stated that this is the text that was included on the September 10, 2010, Supplemental  
15 Memorandum. He read the following text : Any portion of a fence over four feet in height must be at least  
16 50% transparent when located between the dwelling and the driveway within 25 feet of the dwelling. He  
17 said that this text was included on lots that are five acres or greater in area but at this point it appears that the  
18 Board desires to delete it for those lots.

19

20 Mr. Thorsland stated that the text should be deleted for lots which are five acres or greater because the size  
21 of the lot almost negates that from even being an issue.

22

23 Mr. Hall stated that in regards to residential lots in the AG and CR districts Subparagraph 4.3.3G.2(b) will  
24 be modified to indicate the text included in the September 10<sup>th</sup> memorandum and Subparagraphs  
25 4.3.3G.2(2)(c); and 4.3.3G.2.c; and 4.3.3G.3.b should be deleted.

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27 Mr. Thorsland stated that the case should be continued to give staff time to include the modifications in a  
28 version for review by the Board.

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1 Mr. Palmgren moved, seconded by Ms. Capel to continue Case 665-AT-10 to the January 6, 2011,  
2 meeting. The motion carried by voice vote.

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

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9 Mr. Hall stated distributed a new Supplemental Memorandum dated December 16, 2010, to the Board for  
10 review. He said that the Supplemental Memorandum includes two new items of evidence for the Finding of  
11 Fact, regarding the adequacy of the legal ad for Case 666-AT-10, and the State's Attorney's determination  
12 regarding protest rights in a County Board Special Use Permit Case. He said that the text amendment Case  
13 634-AT-08, Part A was very specific in providing for County Board waivers for standard conditions and that  
14 all wind farm requirements are standard conditions. He said that in terms of legal notice it was made very  
15 clear and was very adequate. He said that within the same legal advertisement the changes to 6.1 were very  
16 explicit in making all standard conditions subject to waivers. He said that there is a separate attachment  
17 which is the reformat of Section 6.1 which indicates how 6.1 was amended during the text amendment and  
18 the proposed changes which are being proposed in Case 666-AT-10. He said that the text included in the  
19 handout is from the new Zoning Ordinance and not the Zoning Ordinance that is on the website. He said  
20 that the new version of Section 6 includes 6.1 Standards for Special Uses; and 6.1.1. Standard Conditions  
21 that May Apply to Specific Special Uses; and 6.1.2 Standard Conditions for All Special Uses; and 6.1.3  
22 Schedule of Requirements and Standard Conditions; and 6.1.4 Wind Farm County Board Special Use  
23 Permit. He said that most of the changes occurred in the wind farm text amendment and a copy of the legal  
24 advertisement is attached to the Supplemental Memorandum dated December 16, 2010. He said that also  
25 attached to the Supplemental Memorandum dated December 16, 2010, is an excerpt of the April 13, 2009,  
26 approved ELUC minutes which includes testimony on Page 10, Line 1, from John Hall indicating that the  
27 standard conditions are just special use permit special conditions therefore can be waived in any case or for  
28 any individual turbine, if the justification is there. He said that more importantly, whether or not staff  
29 included everything in the legal advertisements, the State's Attorney has determined that in regard to County

Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance<sup>1</sup> to Larger Local Municipalities  
 REVISED 12/2010 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 <sup>6</sup>	8 feet <sup>7</sup>
In or around a required front yard	6 feet	3 feet; or 6 feet <sup>2</sup> <b>T</b>	4, 6, or 8 feet <sup>3</sup> <b>T</b>	3.5 feet	3 feet <sup>4</sup> ; or 4 feet <sup>5</sup> <b>T</b>		3 feet <sup>8</sup> <b>T</b>

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. Fencing between 3 feet and 6 feet tall must be at least 50% transparent.
3. See par. 7-5 (a) and (b) of Urbana fencing ordinance (see attached)
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.

**T** = some degree of transparency required in front yard

**Sec. 7-4. Electrification prohibited.**

It shall be unlawful for any person within the city to maintain an electrified wire fence of any sort.

(Ord. No. 7677-87, § 4, 4-4-77)

**Sec. 7-5. Height and opacity limitations.**

(a) No fence within a required front yard, as such required front yard is defined in the zoning ordinance of the city, as amended, may be taller than four (4) feet measured from the ground at a point directly beneath the fence. Fences within a required front yard shall be no more than 50% opaque, allowing for the passage of light directly through the fence, except that on corner lots, fences behind the front face of the principal structure may be up to six (6) feet tall and solid. Where such a required front yard abuts a principal or minor arterial street, as designated by the comprehensive plan of the city, as amended, fences may be constructed as a rear or side yard fence pursuant to subsection (b) of this section. However, any fence constructed within ten feet of the intersection of public right-of-way and a driveway, shall be no more than 50% opaque, as shown in Figure 1. Any fence existing on March 1, 1989, which is not in compliance with this subsection (a), may continue to lawfully exist, and normal repairs to such fences are permissible where such repairs do not constitute a total fence replacement.

(b) No fence within a required side or rear yard, as such required side or rear yard is defined in the zoning ordinance of the City of Urbana, as amended, may be taller than eight (8) feet measured from the ground at a point directly beneath the fence.

(c) Where the ground at a point directly beneath the fence has been increased in elevation from its original elevation at the time of subdivision development through berming, retaining walls, fill or other measures and where such increased ground elevation has resulted in an increase in ground elevation above an adjoining lot anywhere within a required yard as defined by the Urbana Zoning Ordinance, the height of a fence shall be measured from the original ground elevation before installation of berming, retaining walls, fill or other measures as determined by the building official. The building official shall consult U.S. Geological Survey contour maps, city base map contours and recorded subdivision plat information in making such a determination. The building official's determination of original ground elevation at the time of subdivision development may be appealed to the building safety code board of appeals.

(d) The building official may grant a permit for the construction of a fence exceeding the height limits set forth in this section when:

(1) Demonstrated as necessary to secure property from trespass; or

(2) Used to protect adjacent residences and rights-of-way from a demonstrable hazard or nuisance; and

1. Revise Paragraph 4.3.3 G. to read as follows:

G. Fences

1. Fences in R Zoning Districts shall meet the following requirements:
  - a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.
  - b. Fences located in required FRONT YARDS shall meet the following additional requirements:
    - (1) A maximum of six feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5.; and
    - (2) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent.
  - c. Fences located in required SIDE and REAR YARDS shall meet the following additional requirements:
    - (1) A maximum of eight feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5; and provided that
    - (2) Any portion of fence that is not in a defined SIDE YARD nor a defined FRONT YARD shall have the same HEIGHT limit as if in a SIDE YARD; provided that
    - (3) Any portion of any fence that is between the DWELLING and the FRONT YARD and that is over four feet in HEIGHT must be at least 50% transparent for that portion of fence that is over four feet in HEIGHT.
2. Fences on residential lots in the AG and CR Zoning Districts shall meet the following requirements:
  - a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.
  - b. On lots less than five acres in area in the AG Zoning Districts the following additional requirements shall apply:
    - (1) Fences located in required FRONT YARDS shall meet the following requirements:
      - (a) ~~They shall not exceed~~ A maximum of six feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5. ; and
      - (b) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located between the DWELLING and the driveway within 25 feet of the dwelling.
    - (2) Fences located in required SIDE and REAR YARDS shall ~~meet the following requirements:~~
      - (a) ~~A maximum of~~ not exceed eight feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5; ~~and provided that~~
      - (b) ~~Any portion of fence that is not in a defined SIDE YARD nor a defined FRONT YARD shall~~ may have the same HEIGHT limit as if in a SIDE YARD; ~~provided that~~

**Attachment C Revised Draft Amendment**

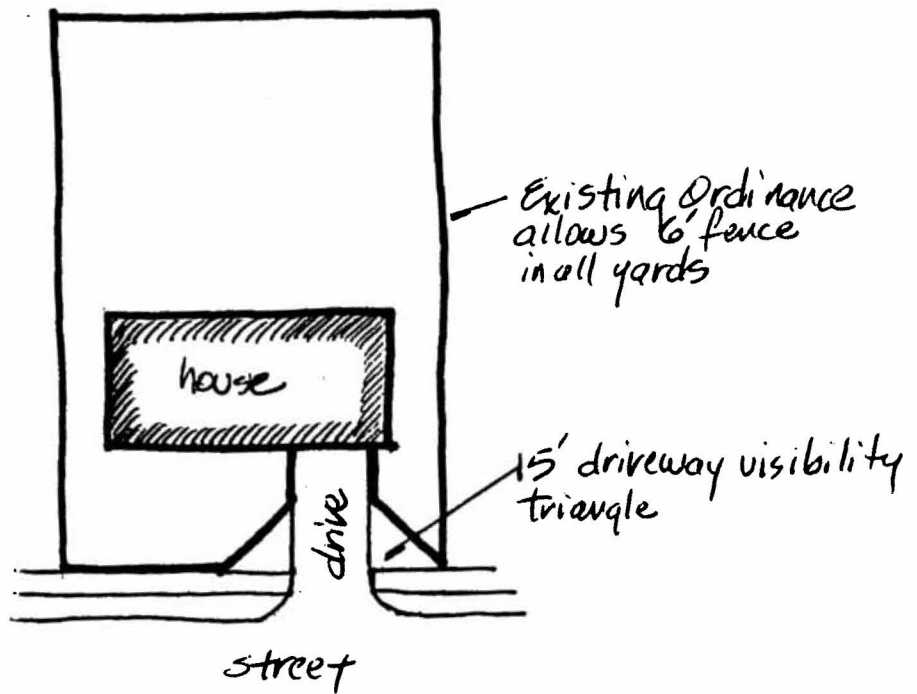
DECEMBER 30, 2010

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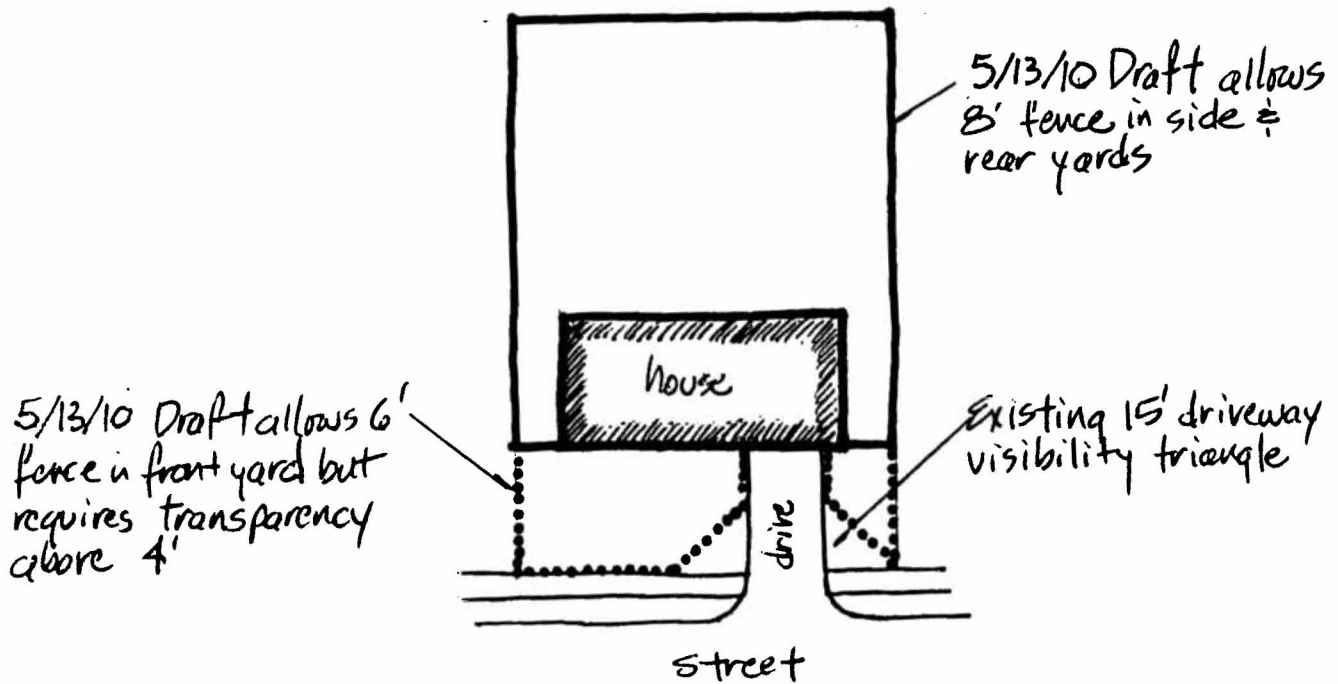
- ~~(c) Any portion of any fence that is between the DWELLING and the FRONT YARD and that is over four feet in HEIGHT must be at least 50% transparent for that portion of fence that is over four feet in HEIGHT.~~
- ~~e. On lots five acres or greater in area, any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located between the DWELLING and the driveway within 25 feet of the dwelling.~~
- 3. Fences on residential lots in the CR Zoning District shall meet the following requirements:

  - ~~a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.~~
  - ~~b. Any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located between the DWELLING and the driveway within 25 feet of the dwelling.~~
- 4. 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.5., except that any barbed wire security barrier 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.
- 5. The HEIGHT of fences shall be measured from the highest adjacent GRADE and may be in addition to up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence. No minimum clearance is required by this Ordinance, and further, the fence HEIGHT may be increased by any portion of the allowable three inches of clearance to GRADE that is not used as clearance.



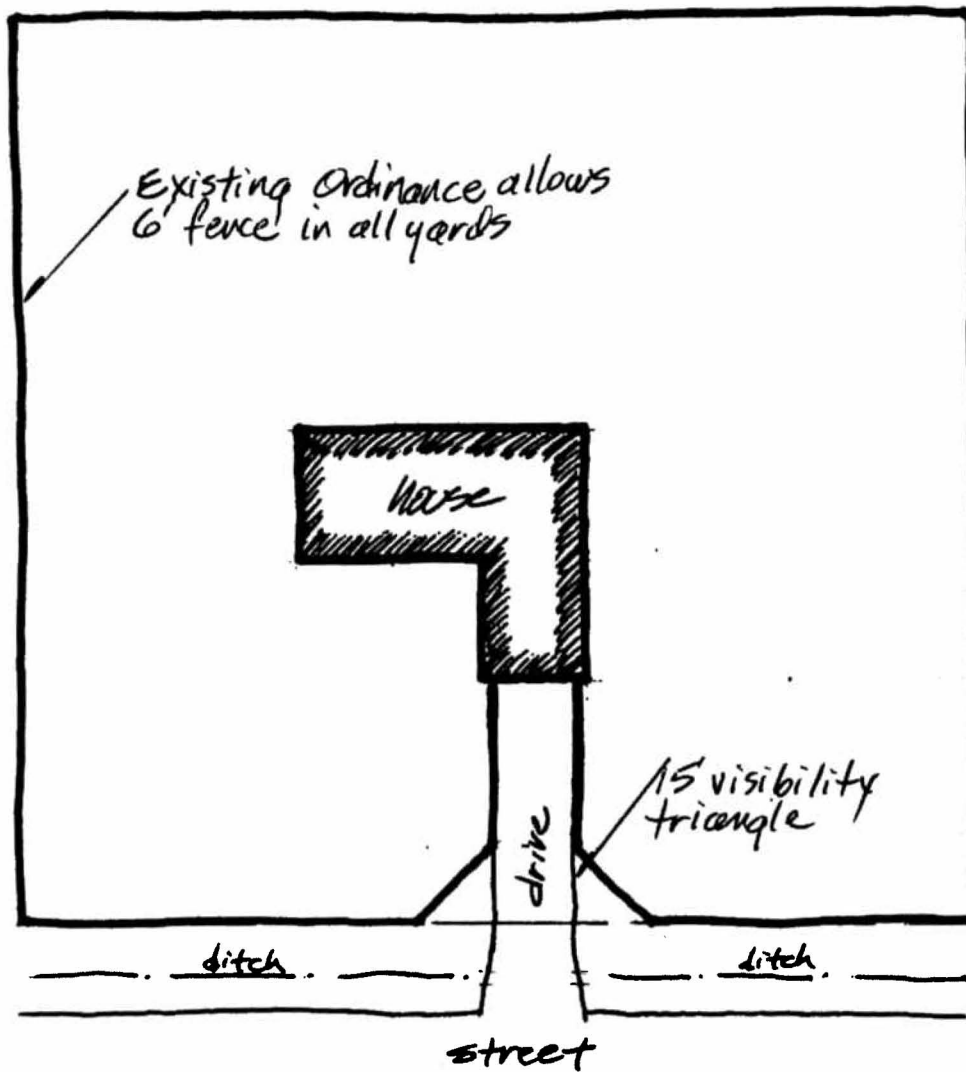


EXISTING- RESIDENTIAL DIST.S



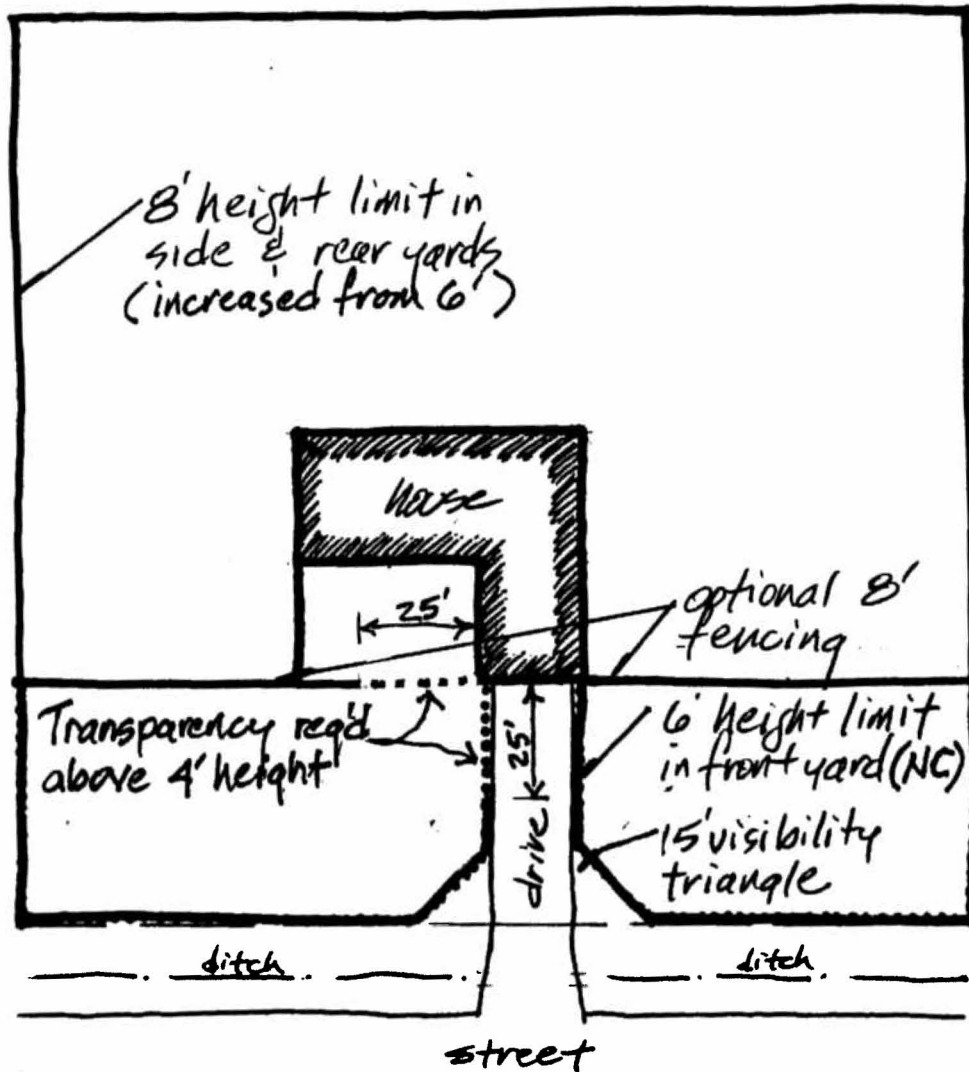
DRAFT- RESIDENTIAL DIST.S  
(UNCHANGED FROM 5/13/10)

A 12/30/10

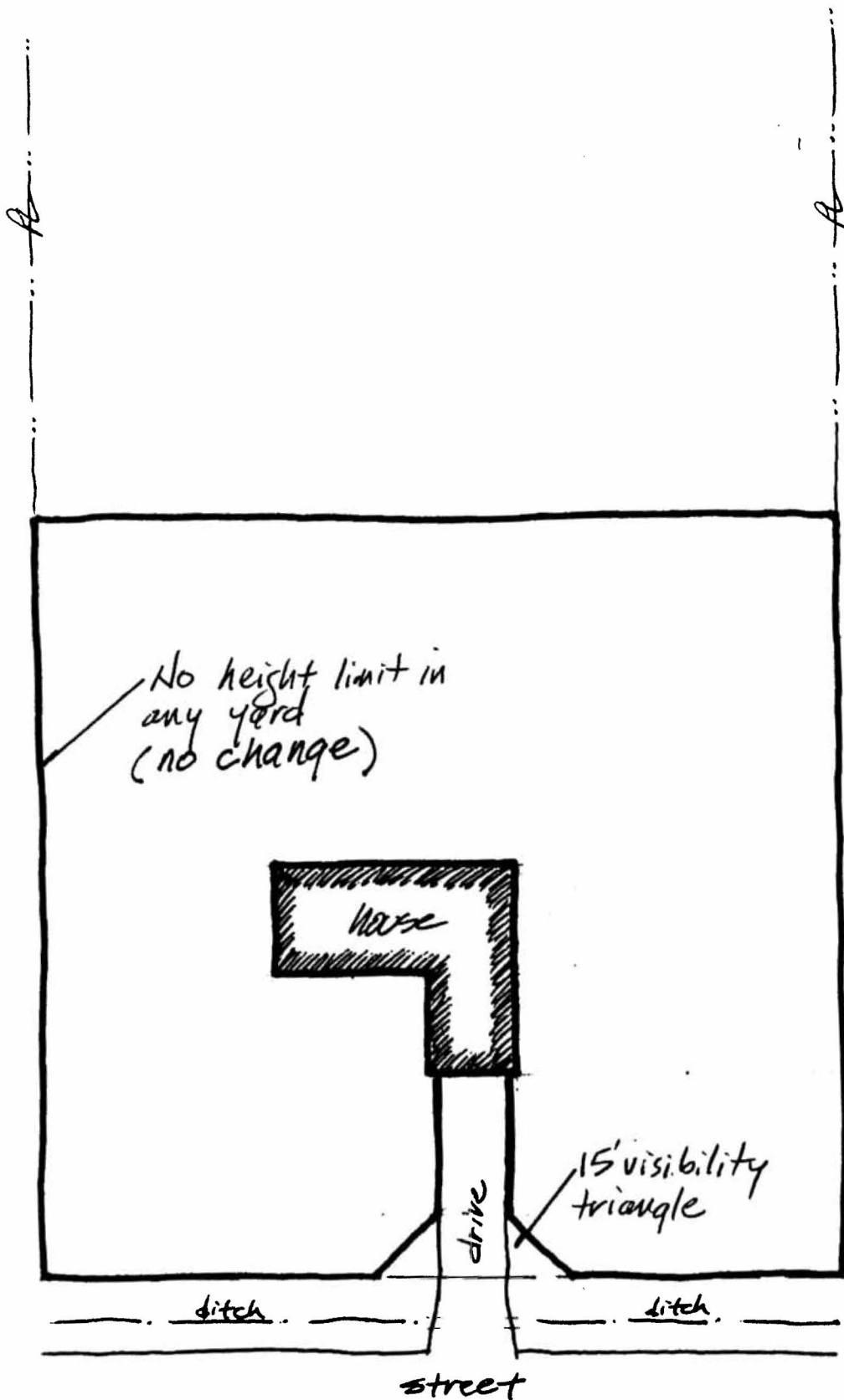


EXISTING - RESIDENTIAL LOT < 5 AC. in AG DISTRICTS

B



REV. DRAFT- RESIDENTIAL LOT 5 AC. in AGO DIST.



EXISTING - RESIDENTIAL LOT  $\geq$  5AC. in AG, CR DIST. <sup>any lot in</sup>  
(REVISED DRAFT)

**REVISED DRAFT DECEMBER 30, 2010**

**665-AT-10**

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

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

Date: January 6, 2011

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. as follows:

- A. 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 less than five acres in area in the AG-1 and AG-2 Zoning Districts.
- B. Require fencing that is higher than four feet tall to be at least 50% transparent when located in the following areas:
  - (1) In Residential Zoning Districts, all fencing that is in the front yard.
  - (2) On residential lots less than five acres in the ~~AG-1, AG-2, and CR~~ Zoning Districts, only fencing between the dwelling and the driveway within 25 feet of the dwelling.
- C. Increase the maximum allowed height of all fencing to allow for up to three inches of ground clearance.

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**FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010; May 13, 2010; May 27, 2010; July 15, 2010; September 16, 2010; October 14, 2010; December 16, 2010; and January 6, 2011**, 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.

Underline text indicates evidence to be added.

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ITEM 2. CONTINUED

- 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.
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.
  - 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) "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.

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.

ITEM 3.B.(3) CONTINUED

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:

G. Fences

1. Fences in R Zoning Districts shall meet the following requirements:
  - a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.
  - b. Fences located in required FRONT YARDS shall meet the following additional requirements:
    - (1) A maximum of six feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5.; and
    - (2) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent.
  - c. Fences located in required SIDE and REAR YARDS shall meet the following additional requirements:
    - (1) A maximum of eight feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5; and provided that
    - (2) Any portion of fence that is not in a defined SIDE YARD nor a defined FRONT YARD shall have the same HEIGHT limit as if in a SIDE YARD; provided that

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

ITEM 5. CONTINUED

- (3) Any portion of any fence that is between the DWELLING and the FRONT YARD and that is over four feet in HEIGHT must be at least 50% transparent for that portion of fence that is over four feet in HEIGHT.
2. Fences on residential lots in the AG and CR Zoning Districts shall meet the following requirements:
    - a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.
    - b. On lots less than five acres in area in the AG Districts the following additional requirements shall apply:
      - (1) Fences located in required FRONT YARDS shall meet the following requirements:
        - (a) They shall not exceed six feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5.; and
        - (b) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located between the DWELLING and the driveway within 25 feet of the dwelling.
      - (2) Fences located in required SIDE and REAR YARDS shall ~~meet the following requirements:~~
        - (a) ~~A maximum of not exceed~~ eight feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5.; ~~and provided that~~
        - (b) ~~Any portion of fence that is not in a defined SIDE YARD nor a defined FRONT YARD shall~~ may have the same HEIGHT limit as ~~if in a SIDE YARD; provided that~~
        - (c) ~~Any portion of any fence that is between the DWELLING and the FRONT YARD and that is over four feet in HEIGHT must be at least 50% transparent for that portion of fence that is over four feet in HEIGHT.~~
    - c. ~~On lots five acres or greater in area, any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located along the driveway between the DWELLING and the nearest point of the driveway visibility triangle as required by 4.3.3 F.2 within 25 feet of the dwelling.~~

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.



ITEM 5. CONTINUED

- ~~3. Fences on residential lots in the CR Zoning District shall meet the following requirements:~~
- ~~a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.~~
  - ~~b. Any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located along the driveway between the DWELLING and the nearest point of the driveway visibility triangle as required by 4.3.3 F.2 within 25 feet of the dwelling.~~
4. 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.5., except that any barbed wire security barrier 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.
5. The HEIGHT of fences shall be measured from the highest adjacent GRADE and may be in addition to up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence. No minimum clearance is required by this Ordinance, and further, the fence HEIGHT may be increased by any portion of the allowable three inches of clearance to GRADE that is not used as clearance.

**GENERALLY REGARDING THE LRMP GOALS, OBJECTIVES, AND POLICIES**

6. The *Champaign County Land Resource Management Plan (LRMP)* was adopted by the County Board on April 22, 2010. The LRMP Goals, Objectives, and Policies were drafted through an inclusive and public process that produced a set of ten goals, 42 objectives, and 100 policies, which are currently the only guidance for amendments to the *Champaign County Zoning Ordinance*, as follows:
- A. The Purpose Statement of the LRMP Goals, Objectives, and Policies is as follows:

“It is the purpose of this plan to encourage municipalities and the County to protect the land, air, water, natural resources and environment of the County and to encourage the use of such resources in a manner which is socially and economically desirable. The Goals, Objectives and Policies necessary to achieve this purpose are as follows:”
  - B. The LRMP defines Goals, Objectives, and Policies as follows:
    - (1) Goal: an ideal future condition to which the community aspires
    - (2) Objective: a tangible, measurable outcome leading to the achievement of a goal

Underline text indicates evidence to be added.  
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ITEM 6.B. CONTINUED

- (3) Policy: a statement of actions or requirements judged to be necessary to achieve goals and objectives
  
- C. The Background given with the LRMP Goals, Objectives, and Policies further states, “Three documents, the *County Land Use Goals and Policies* adopted in 1977, and two sets of *Land Use Regulatory Policies*, dated 2001 and 2005, were built upon, updated, and consolidated into the LRMP Goals, Objectives and Policies.”
  
- D. LRMP Objective 1.1 is entitled “Guidance on Land Resource Management Decisions”, and states, “Champaign County will consult the LRMP that formally establishes County land resource management policies and serves as an important source of guidance for the making of County land resource management decisions.”
  
- E. Goal 1 of the LRMP is relevant to the review of the LRMP Goals, Objectives, and Policies in land use decisions (see Item 6.D. above), but is otherwise not relevant to the proposed amendment.

**REGARDING LRMP GOAL 2 GOVERNMENTAL COORDINATION**

- 7. LRMP Goal 2 is entitled “Governmental Coordination” and is relevant to the proposed amendment because the proposed amendment will make Champaign County fence regulations more similar to local municipal fence regulations. Goal 2 states, “Champaign County will collaboratively formulate land resource and development policy with other units of government in areas of overlapping land use planning jurisdiction.”

The proposed amendment *{ACHIEVES}* Goal 2 because of the following:

- A. Goal 2 includes two subsidiary Objectives. Objective 2.2 does not appear to be relevant to the proposed amendment.
  
- B. Objective 2.1 is entitled “Local and Regional Coordination,” and states, “Champaign County will coordinate land resource management planning with all County jurisdictions and, to the extent possible, in the larger region.”

The proposed amendment *{ACHIEVES}* Objective 2.1 because of the following:

- (1) Objective 2.1 includes three subsidiary Policies. None of the Policies appear to be relevant to the proposed amendment.

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

ITEM 7.B. CONTINUED

- (2) Regarding municipal ~~ordinances for municipalities~~ fencing requirements in Champaign County:
- (a) 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~~ but any fencing in a front yard that is taller than three feet in height must be chain link, wire mesh, or a similar type of transparent fencing.
  - (b) 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 and requires all fencing within a required front yard to be no more than 50% opaque.
  - (c) The Village of Mahomet allows fences up to seven feet tall in side and rear yards and no more than 3.5 feet tall with no transparency requirement in front yards.
  - (d) The Village of Rantoul allows fences up to eight feet tall in side and rear yards and in front yards fencing may be 3 feet tall provided less than 70% open or up to 4 feet tall with 70% or more open.
  - (e) 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.
  - (f) 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 and up to three feet in height and more than 50% open in front yards.
- (3) Increasing the allowable fence height will provide landowners in the unincorporated area as much freedom in regards to fencing as property owners in municipalities.

**REGARDING LRMP GOAL 3 PROSPERITY**

8. LRMP Goal 3 is entitled “Prosperity” and does not appear to be relevant to the proposed amendment.

**REGARDING LRMP GOAL 4 AGRICULTURE**

9. LRMP Goal 4 is entitled “Agriculture” and does not appear to be relevant to the proposed amendment.

**REGARDING LRMP GOAL 5 URBAN LAND USE**

10. LRMP Goal 5 is entitled “Urban Land Use” and does not appear to be relevant to the proposed amendment.

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

REGARDING LRMP GOAL 6 PUBLIC HEALTH AND SAFETY

11. LRMP Goal 6 is entitled “Public Health and Public Safety” and is relevant to the proposed amendment because the changes to fence transparency affect public safety. Goal 6 states, “Champaign County will ensure protection of the public health and public safety in land resource management decisions.”

The proposed amendment *{ACHIEVES}* Goal 6 because of the following:

- A. Goal 6 includes four subsidiary Objectives. Objectives 6.2, 6.3, and 6.4 do not appear to be relevant to the proposed amendment.
- B. Objective 6.1 is entitled “Protect Public Health and Safety” and states, “Champaign County will seek to ensure that development in unincorporated areas of the County does not endanger public health or safety.”

The proposed amendment *{ACHIEVES}* Objective 6.1 because of the following:

- (1) Objective 6.1 includes four subsidiary Policies. None of the Policies appear to be relevant to the proposed amendment.
- (2) The proposed amendment requires ~~an amount of~~ fencing that is located in required front yards to be at least 50% transparent, depending on the zoning district, as follows:
- (a) In Residential zoning districts all fencing that is located in the front yard that is over four feet in height is required to meet the transparency requirement.
- (b) On lots less than five acres in area in the ~~AG-1, AG-2, and CR zoning~~ districts fencing in the front yard is only required to meet a transparency requirement if it is located between the DWELLING and the driveway within 25 feet of the dwelling.
- (3) Champaign County Sheriff Dan Walsh, in an email to Zoning Administrator, John Hall, indicated he has the following concerns regarding fencing:
- (a) When responding to a call (or even on routine patrol) it is always beneficial to be able to see “more.”
- (b) Deputies will be safer when responding to calls if they can observe dangerous conditions or persons and plan their response and avenue of approach accordingly.
- (c) Likewise, if on patrol a deputy can see a “bad situation” in a front/side yard or front porch or even inside the house they can take action without a call from a citizen.

Underline text indicates evidence to be added.

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ITEM 11.B. CONTINUED

- (d) Access in an emergency response situation could also be problematic if there is a tall barrier and a locked gate.
  - (e) The Sheriff's Department certainly respects a citizen's right of privacy and to be able to do what they want with their own property.
  - (f) A solid barrier (fence or even vegetation in some cases) height of 3-4 ft. seems to be very normal in ordinances (for front and/or side yards) including C-U and would reduce our concerns with regard to fencing.
- (4) Preliminary comments from a township plan commission were received on May 12, 2010, which indicated requiring all of the front yard fencing to be transparent above four feet is too restrictive, and will in fact detract too much from privacy; reduce residential property owner's ability to deal with any agricultural spray drift; and could also be a safety problem by allowing too much visibility of children in the yard, and suggested requiring transparency only for fencing directly in front of the house.
- (5) In an email received on May 12, 2010, Sheriff Dan Walsh indicated that Lt. Jones, who runs the Sheriff's department patrols, considered that requiring transparency for fencing directly in front of the house would be adequate.
- (6) No transparency requirement is recommended for lots five acres or larger in the AG District and on any size lot in the CR District for the following reasons:
- (a) Maximum fence heights are not currently regulated in these areas and any new requirement for transparency in front yards would be very difficult to enforce.
  - (b) Because of the larger lot sizes and typically greater setbacks in these areas any transparency requirement would provide very little benefit to public safety personnel.
  - (c) Fire protection districts already have protocols in place to provide access when gates are locked and the same protocols can provide access for law enforcement.

**REGARDING LRMP GOAL 7 TRANSPORTATION**

12. LRMP Goal 7 is entitled "Transportation" and does not appear to be relevant to the proposed amendment.

Underline text indicates evidence to be added.  
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**REGARDING LRMP GOAL 8 NATURAL RESOURCES**

13. LRMP Goal 8 is entitled “Natural Resources” and does not appear to be relevant to the proposed amendment.

**REGARDING LRMP GOAL 9 ENERGY CONSERVATION**

14. LRMP Goal 9 is entitled “Energy Conservation” and does not appear to be relevant to the proposed amendment.

**REGARDING LRMP GOAL 10 CULTURAL AMENITIES**

15. LRMP Goal 10 is entitled “Cultural Amenities” and does not appear to be relevant to the proposed amendment.

**REGARDING OTHER RELEVANT EVIDENCE**

16. Regarding other relevant evidence:
- 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. 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.
  - C. Regarding the economic soundness of the proposed amendment:
    - (1) The proposed three-inch ground clearance is reasonable in regards to pre-manufactured fence panels for the following reasons:
      - (a) Pre-manufactured fence panels are available in standard six-foot high panels.
      - (b) 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.
      - (c) 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.
    - (2) The proposed three-inch ground clearance is reasonable in regards to custom made fence panels for the following reasons:
      - (a) Eight-foot high fences are generally custom built.
      - (b) Eight feet is a standard increment of length for lumber.

Underline text indicates evidence to be added.

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ITEM 16.C. (2) CONTINUED

- (c) 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.
- (d) 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.

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.

**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
4. Supplemental Memorandum for Case 665-AT-10, dated March 25, 2010
5. Supplemental Memorandum for Case 665-AT-10, dated May 7, 2010, with attachments:
  - A Revised Draft Proposed Change to Paragraph 4.3.3 G.
  - B Revised Draft Summary of Evidence for Zoning Case 665-AT-10
6. Supplemental Memorandum for Case 665-AT-10, dated May 13, 2010, with attachments:
  - A Revised Draft Proposed Change to Paragraph 4.3.3 G.
  - B Alternative Revised Draft Proposed Change to Paragraph 4.3.3 G.
7. Staff Fence Diagrams A, B, C, D, E handed out on May 13, 2010
8. Alternative Fence Diagrams C, E handed out on May 13, 2010
9. Supplemental Memorandum for Case 665-AT-10, dated May 21, 2010, with attachments:
  - A Revised Draft Proposed Change to Paragraph 4.3.3 G.
  - B Alternative Revised Draft Proposed Change to Paragraph 4.3.3 G.
  - C Revised Finding of Fact for Case 665-AT-10
10. Supplemental Memorandum for Case 665-AT-10, dated May 27, 2010, with attachments:
  - A Illustration of Revised Alternative Transparency Requirement for AG and CR Districts
  - B Ordinance Text Describing Alternative Transparency Requirement for AG and CR Districts
11. Supplemental Memorandum for Case 665-AT-10, dated July 9, 2010
12. Supplemental Memorandum for Case 665-AT-10, dated September 10, 2010, with attachment:
  - A Revised Draft Ordinance

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.



13. Supplemental Memorandum for Case 665-AT-10, dated September 10 (should be 16), 2010, with attachment:
  - A Revised Draft Finding of Fact for Case 665-AT-10
14. Supplemental Memorandum for Case 665-AT-10 dated October 8, 2010
15. Revised Draft Finding of Fact and Final Determination for Case 665-AT-10, dated October 14, 2010
16. Supplemental Memorandum for Case 665-AT-10 dated December 10, 2010
17. Handout titled "Proposed Amendment to Paragraph 4.3.3 G." dated December 16, 2010
18. Supplemental Memorandum for Case 665-AT-10 dated December 30, 2010, with attachments:
  - A Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance to Larger Local Municipalities *REVISED 12/30/10* (with excerpt from Urbana fence code)
  - B Revised Draft Amendment
  - C Revised Fencing Diagrams

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**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

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Champaign  
County  
Department of



## CASE NO. 666-AT-10

SUPPLEMENTAL MEMORANDUM

December 30, 2010

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**  
Zoning Administrator

**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.**

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### *STATUS*

This case was continued from the December 16, 2010, meeting because the petitioner requested that a vote not be taken until a full Board was present.

The attached Finding of Fact was approved at that meeting but it has subsequently been updated to reflect the current memorandum and the January 6, 2010, meeting date and corrections have been made to the Documents of Record. The Finding of Fact should be approved again.

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### **ATTACHMENT**

A Finding of Fact As Approved on December 16, 2010 (with updates & corrections)

*AS APPROVED ON DECEMBER 16, 2010 (WITH UPDATES & CORRECTIONS)*

666-AT-10

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

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

Date: January 6, 2011

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.

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**FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010; July 15, 2010; September 16, 2010; October 14, 2010; December 16, 2010; and January 6, 2011**, 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 Zoning Case 634-AT-08 Part A (adding wind farm requirements), item 15 of the amendment gave the County Board the authority to waive any standard condition and since site reclamation is a necessary component of wind farm decommissioning, item 13 made the necessary change to allow the County Board to waive site reclamation.
  - B. 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.
  - C. 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.
  - D. Those comments indicate that disagreement is likely and it would be best to eliminate any cause for disagreement or confusion.

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

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:
- 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:

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.

ITEM 5. CONTINUED

**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 THE LRMP GOALS, OBJECTIVES, AND POLICIES**

6. The *Champaign County Land Resource Management Plan* (LRMP) was adopted by the County Board on April 22, 2010. The LRMP Goals, Objectives, and Policies were drafted through an inclusive and public process that produced a set of ten goals, 42 objectives, and 100 policies, which are currently the only guidance for amendments to the *Champaign County Zoning Ordinance*, as follows:
- A. The Purpose Statement of the LRMP Goals, Objectives, and Policies is as follows:

“It is the purpose of this plan to encourage municipalities and the County to protect the land, air, water, natural resources and environment of the County and to encourage the use of such resources in a manner which is socially and economically desirable. The Goals, Objectives and Policies necessary to achieve this purpose are as follows:”

- B. The LRMP defines Goals, Objectives, and Policies as follows:
- (1) Goal: an ideal future condition to which the community aspires
  - (2) Objective: a tangible, measurable outcome leading to the achievement of a goal

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

ITEM 6. CONTINUED

- (3) Policy: a statement of actions or requirements judged to be necessary to achieve goals and objectives
- C. The Background given with the LRMP Goals, Objectives, and Policies further states, “Three documents, the *County Land Use Goals and Policies* adopted in 1977, and two sets of *Land Use Regulatory Policies*, dated 2001 and 2005, were built upon, updated, and consolidated into the LRMP Goals, Objectives and Policies.”
- D. LRMP Objective 1.1 is entitled “Guidance on Land Resource Management Decisions”, and states, “Champaign County will consult the LRMP that formally establishes County land resource management policies and serves as an important source of guidance for the making of County land resource management decisions.”
- E. Goal 1 of the LRMP is relevant to the review of the LRMP Goals, Objectives, and Policies in land use decisions (see Item 6.D. above), but is otherwise not relevant to the proposed amendment.

**REGARDING OTHER GOALS**

7. LRMP Goal 2 is entitled “Governmental Coordination” and does not appear to be relevant to the proposed amendment.
8. LRMP Goal 3 is entitled “Prosperity” and does not appear to be relevant to the proposed amendment.
9. LRMP Goal 4 is entitled “Agriculture” and does not appear to be relevant to the proposed amendment.
10. LRMP Goal 5 is entitled “Urban Land Use” and does not appear to be relevant to the proposed amendment.
11. LRMP Goal 6 is entitled “Public Health and Public Safety” and does not appear to be relevant to the proposed amendment.
12. LRMP Goal 7 is entitled “Transportation” and does not appear to be relevant to the proposed amendment.
13. LRMP Goal 8 is entitled “Natural Resources” and does not appear to be relevant to the proposed amendment.
14. LRMP Goal 9 is entitled “Energy Conservation” and does not appear to be relevant to the proposed amendment.

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.

15. LRMP Goal 10 is entitled “Cultural Amenities” and does not appear to be relevant to the proposed amendment.

**REGARDING OTHER RELEVANT EVIDENCE**

16. Regarding other relevant evidence:
- A. 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.”
  - B. 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:
    - (1) 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.”
    - (2) 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.”
  - C. 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.
    - (3) 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.
  - D. Regarding petitioners’ ability to seek relief from unreasonable requirements of the Zoning Ordinance:
    - (1) 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.

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.



ITEM 16.D. CONTINUED

- (2) 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.
  - (3) 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.
  - (4) The State's Attorney has determined that in regard to County Board Special Use Permits, waivers of standard conditions are subject to protest by affected townships with plan commissions.
- E. Regarding the intent of Subsection 6.1 and subparagraph 9.1.11 D.1:
- (1) 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..."
  - (2) 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.
  - (3) 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.
  - (4) The clause quoted in Item 16.E.(1) 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.
- F. 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.
- G. 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.

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.

**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
4. Supplemental Memorandum for Case 666-AT-10, dated March 25, 2010
5. Written statement submitted by Herb Schildt on March 25, 2010
6. Supplemental Memorandum for Case 666-AT-10, dated July 9, 2010
7. Supplemental Memorandum for Case 666-AT-10, dated July 9, 2010, (should be September 16, 2010) with attachment:
  - A Letter from Herbert Schildt, Chairman of the Newcomb Township Plan Commission, dated September 13, 2010
8. Supplemental Memorandum for Case 666-AT-10, dated October 8, 2010
9. Supplemental Memorandum for Case 666-AT-10, dated October 14, 2010, with attachment:
  - A Revised Draft Finding of Fact and Final Determination for Case 666-AT-10
10. Supplemental Memorandum for Case 666-AT-10, dated December 10, 2010
11. Supplemental Memorandum for Case 666-AT-10, dated December 16, 2010, with attachments:
  - A Draft Proposed Change to Subsection 6.1 and subparagraph 9.1.11 D.1.
  - B Legal advertisement for Case 634-AT-08
  - C Reformatted Section 6.1 (included separately)
  - D Excerpt of the approved minutes for the April 13, 2009, ELUC meeting regarding Case 634-AT-08
12. Supplemental Memorandum for Case 666-AT-10, dated December 30, 2010, with attachments:
  - A Finding of Fact As Approved on December 16, 2010 (with updates & corrections)

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

**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:

Eric Thorsland, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

Underline text indicates evidence to be added.  
~~Strikeout~~ text indicates evidence to be removed.



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

## **CASE NO. 675-AT-10**

SUPPLEMENTAL MEMORANDUM

December 30, 2010

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:**
  - 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.**
- 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 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 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 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**

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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.

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*STATUS*

The proposed amendment has been modified principally to explicitly provide for reconstruction of garages that are accessory to dwellings that are nonconforming uses. All new text is indicated with double underlining (==) so set it off from text that was proposed previously.

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**ATTACHMENTS**

- A Revised Draft Amendment

**Attachment A Annotated Draft Ordinance**  
**DECEMBER 30, 2010**

**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.

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\* indicates change specifically authorized by COW 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 proposed to be added

Attachment A Annotated Draft Ordinance  
DECEMBER 30, 2010

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 change specifically authorized by COW 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 proposed to be added

**Attachment A Annotated Draft Ordinance**  
**DECEMBER 30, 2010**

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 as ~~authorized in subsection 8.4.1.~~ 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.

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.

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**Part C**

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged 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.**

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.

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\* indicates change specifically authorized by COW 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 proposed to be added



**Attachment A Annotated Draft Ordinance**  
**DECEMBER 30, 2010**

**Part D**

**1. Revise Subsection 8.4.1 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 otherwise herein provided follows:

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

B. As otherwise herein provided.

**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.

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

**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.

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**Attachment A Annotated Draft Ordinance**  
**DECEMBER 30, 2010**

**2B 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.

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**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).

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.

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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.**

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\* indicates change specifically authorized by COW 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 proposed to be added

**Attachment A Annotated Draft Ordinance**  
**DECEMBER 30, 2010**

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 disproved 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.

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\* indicates change specifically authorized by COW on 8/30/10  
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