

# CASE NO. 675-AT-10

## SUPPLEMENTAL MEMORANDUM

January 6, 2011

Champaign  
County  
Department of

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**  
Zoning Administrator

### PLANNING & ZONING

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

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. <sup>(217) 381-3708</sup> 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 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*

A comparison of the zoning requirements for nonconformities in three similar Central Illinois counties is attached and summarized below.

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### **BASIC COMPARISON OF EXISTING COUNTY ORDINANCE TO OTHER COUNTIES**

The existing Champaign County Zoning Ordinance restrictions on nonconforming dwellings have been compared to the restrictions on nonconforming dwellings in other comparable counties. The comparison has included only McLean County, Peoria County, and Sangamon County so far. The comparison is documented in Attachment A and can be briefly summarized as follows:

**Reconstruction of nonconforming dwellings.** Champaign County does not currently allow nonconforming dwellings to be reconstructed. The other three counties reviewed all allow nonconforming dwellings to be reconstructed to some degree as follows:

- McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).
- Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).
- Sangamon County only allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).

**Repair and remodeling of nonconforming dwellings.** Champaign County currently limits the dollar value of remodeling authorized for nonconforming dwellings to no more than 10% in any one year. The other three counties reviewed do not limit the amount of repair authorized on nonconforming dwellings as follows:

- McLean County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note M3).
- Peoria County does not limit the value of remodeling for a nonconforming dwelling provided that a special use permit is granted (see note P4 in the table).
- Sangamon County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note S8).

**Expansion of nonconforming dwellings.** Champaign County currently limits the expansion of nonconforming dwellings to 25%. Two of the other three counties reviewed do not limit the amount of expansion as follows:

- McLean County does not limit the amount of expansion of a nonconforming dwelling provided that no additional dwelling or lodging unit results and does not require either a variance or a special use permit (see note M3). This is the least restrictive approach of the other counties reviewed.
- Peoria County requires a special use permit to allow a nonconforming dwelling to expand but there is no established limit on the expansion (see note P4 in the table).
- Sangamon County requires a variance to allow a nonconforming dwelling to expand and also limits the expansion to 25% of the area occupied on the effective date of the Ordinance or amendment (see note S3). This could be considered somewhat more restrictive than Champaign County because if the original dwelling was a small home (or

small mobile home) of no more than 800 square feet the 25% limit is comparable or less than the current Champaign County limit of 200 square feet and the variance requires a public hearing. However, for nonconforming dwellings that were originally larger than 800 square feet this will result in a greater square footage expansion than currently allowed by Champaign County.

**Prohibited Variances for Nonconformities.** The only nonconformity for which the Champaign County Zoning Ordinance authorizes a variance is a nonconforming structure. A variance is not permissible for any other nonconformity. None of the other three county ordinances appear to prohibit variances in this way but staff needs to verify that with each of the Zoning Administrators.

**Definition of Nonconforming.** The Champaign County Zoning Ordinance definition of “nonconforming” simply refers to anything which does not conform to the requirements of the Ordinance and thus refers to both nonconformities that existed on the effective date of the Ordinance as well as nonconformities that were improperly caused to occur afterwards. The discussion of nonconformities in Section 8 of the Ordinance can be misleading because the discussion of nonconforming lots of record is the only part of that Section that explicitly uses the modifier “of record”. McLean County uses a similar definition that has similar problems. Two of the counties reviewed (Peoria and Sangamon) define nonconforming so that it only refers to nonconformities that existed on the effective date of the Ordinance and in that way there is no confusion.

The Board may want to consider clarifying “nonconforming” as part of this amendment so that it only applies to nonconformities that existed on the effective date of the Ordinance (or relevant amendment). Clarification would make Section 8 very clear. And, in that scenario, any use, lot, or building that was created after the effective date of the Ordinance (or relevant amendment) that do not comply with the Ordinance could be referred to as “noncompliant”.

And, overall, the comparison illustrates the following:

1. The current Champaign County Zoning Ordinance requirements for nonconformities are more restrictive than McLean, Peoria, or Sangamon counties.
2. The McLean County ordinance will still be less restrictive than the proposed Champaign County ordinance based on the text amendment because McLean County does not limit the expansion of nonconforming dwellings.

## ATTACHMENTS

- A Comparison Of Certain Existing Champaign County Zoning Ordinance Requirements For Nonconformities With Other Counties



## Comparison Of Certain Existing Champaign County Zoning Ordinance Requirements For Nonconformities With Other Counties

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Champaign County Zoning Ordinance Section & Requirement*		Comparison of the restrictions in other Illinois county zoning ordinances for nonconformities compared to Champaign County					
		McLean County <sup>M1</sup>	Peoria County <sup>P1</sup>	Sangamon County <sup>S1</sup>	Rock Island County	Macon County	Kankakee County
3.0	Definition of "NONCONFORMING LOT, STRUCTURE, or USE" <sup>C1</sup>	DISSIMILAR <sup>M2</sup>	DISSIMILAR <sup>P2</sup>	DISSIMILAR <sup>S2</sup>			
	<b>SECTION 8 NON-CONFORMITIES</b>						
8.1	<b>NONCONFORMING LOTS of Record</b>						
8.1.1	A DWELLING may be erected on any single LOT of record platted and recorded prior to October 10, 1973, provided that... even though not meeting the current dimensional, geometric, LOT ACCESS, or other requirements	SIMILAR	SIMILAR	NR			
B.	LOT AREA and width must be sufficient to provide lawful water supply and means of wastewater disposal (Note: no specific submittal required)	SIMILAR	NR	NR			
8.1.2	Once two or more contiguous LOTS or combinations of LOTS or portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS, or other requirements are brought common ownership the LOTS shall be considered a single LOT...	SIMILAR	SIMILAR	NR			
8.1.3	(nonconforming lot restrictions in zoning districts where two-family dwellings or multi-family dwellings are authorized by right- <i>NOT INCLUDED IN THIS COMPARISON OR IN THIS AMENDMENT</i>						
8.1.4	YARD regulations for single NONCONFORMING LOTS of Record <i>NOT INCLUDED IN THIS COMPARISON OR IN THIS AMENDMENT</i>						
8.2	<b>NONCONFORMING USES of land</b>						
8.2.1	NC Use of land allowed to continue subject to:	MORE <sup>M3</sup>	LESS <sup>P4</sup>	SIMILAR			
A.	no expansion except as follows:	MORE <sup>M3</sup>	LESS <sup>P4</sup>	LESS <sup>S3</sup>			
B.	NC SF Dwellings may expand by right if:	LESS <sup>M3</sup>	LESS <sup>P4</sup>	LESS <sup>S3</sup>			
	) not more than 200 SF	LESS <sup>M3</sup>	LESS <sup>P4</sup>	LESS <sup>S3</sup>			
	) new ACC BLDG or expansion of exist. ACC BLDG of 650 SF	NR	LESS <sup>P4</sup>				
C.	NC non-residential authorized in R-1 by right may expand by up to 25% but requires a variance	MORE <sup>M3</sup>	LESS <sup>P4</sup>	LESS <sup>S3</sup>			
8.2.2	NC Use cannot be moved on the lot	SIMILAR	LESS <sup>P4</sup>	LESS <sup>S3</sup>			
8.2.3	Right to NC Use lost if Use ceases for 180 consecutive days	SIMILAR	SIMILAR	SIMILAR <sup>S4</sup>			

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Champaign County Zoning Ordinance Section & Requirement*		Comparison of the restrictions in other Illinois county zoning ordinances for nonconformities compared to Champaign County					
		McLean County <sup>M1</sup>	Peoria County <sup>P1</sup>	Sangamon County <sup>S1</sup>	Rock Island County	Macon County	Kankakee County
<b>8.3</b>	<b>NONCONFORMING STRUCTURES</b>						
	NC structure can remain subject to:	<b>SIMILAR</b>	<b>LESS<sup>P4</sup></b>	<b>SIMILAR</b>			
8.3.1	Nonconformity cannot be increased	<b>SIMILAR</b>	<b>LESS<sup>P4</sup></b>	<b>SIMILAR</b>			
8.3.2	Reconstruction not allowed if damaged to more than 50% of replacement cost (replacement cost not defined term) unless authorized by variance	<b>SIMILAR<sup>M4</sup></b>	<b>LESS<sup>P4</sup></b>	<b>LESS<sup>S5</sup></b>			
8.3.3	If NC structure is relocated it shall conform to Ordinance	<b>SIMILAR</b>	<b>LESS<sup>P4</sup></b>	NR			
<b>8.4</b>	<b>NONCONFORMING USES of STRUCTURES</b>						
	NC Use of structure allowed to continue subject to:	<b>MORE<sup>M3</sup></b>	<b>SIMILAR</b>	<b>SIMILAR</b>			
8.4.1	Structure shall not be enlarged, extended, constructed, reconstructed, moved, or altered except to change to permitted use	<b>LESS<sup>M3</sup></b>	<b>LESS<sup>P4</sup></b>	<b>LESS<sup>S3</sup></b>			
8.4.2	NC use may be extended to any part of structure manifestly designed for such use but cannot extend outside of structure	<b>MORE<sup>M5</sup></b>	<b>LESS<sup>P4</sup></b>	<b>LESS<sup>S3</sup></b>			
8.4.3	One NC Use can be changed to another NC Use if granted by variance	<b>SIMILAR<sup>M4</sup></b>	<b>MORE<sup>P5</sup></b>	<b>SIMILAR<sup>S6</sup></b>			
8.4.4	If NC Use is superceded by conforming use it shall conform thereafter	<b>SIMILAR</b>	<b>SIMILAR</b>	NR			
8.4.5	Right to NC Use lost if Use ceases for 180 consecutive days or 540 days in 1,095 day period	<b>SIMILAR</b>	<b>SIMILAR</b>	<b>LESS<sup>S4</sup></b>			
8.4.6	NC status for premises ceases if structure destroyed or removed (Note: no minimum percent damage so 10% per year standard applies)	NR	NR	<b>LESS<sup>S7</sup></b>			
<b>8.5</b>	<b>NONCONFORMING SIGNS</b>						
	<i>NOT INCLUDED IN THIS COMPARISON; NO CHANGES PROPOSED IN THIS AMENDMENT</i>						

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Champaign County Zoning Ordinance Section & Requirement*		Comparison of the restrictions in other Illinois county zoning ordinances for nonconformities compared to Champaign County					
		McLean County <sup>M1</sup>	Peoria County <sup>P1</sup>	Sangamon County <sup>S1</sup>	Rock Island County	Macon County	Kankakee County
<b>8.6</b>	<b>REPAIRS OR MAINTENANCE</b>						
	Repair or replacement of NC structure or structure used for NC use limited to no more than 10% replacement value in 365 consecutive days and no increase in volume	LESS <sup>M3</sup>	LESS <sup>P4</sup>	LESS <sup>S8</sup>			
	Strengthening or restoring to safe condition allowed if declared unsafe by official	SIMILAR	SIMILAR	SIMILAR			
9.1.9 B.4.	Prohibited variance for non-conformities unless specifically authorized	NR	NR	NR			

**Legend**

- SIMILAR** = identical or nearly identical to the restrictions in the Champaign County Zoning Ordinance
- MORE** = generally more restrictive where indicated; see footnotes for details
- LESS** = generally less restrictive where indicated; see footnote for details
- NA** = not authorized
- NR** = not required

**Notes**

\* descriptions of Champaign County Zoning Ordinance requirements are only approximate and have been modified to fit into table. See the actual Zoning Ordinance for an accurate description.

C1. The Champaign County Zoning Ordinance definition of “nonconforming” states as follows:  
NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE which does not conform to the regulations and standards of the DISTRICT in which it is located.

NONCONFORMING PREMISES: A NONCONFORMING LOT with a NONCONFORMING STRUCTURE located on it.

- M1. The McLean County Zoning Ordinance provisions for nonconformities are in Article 4 of the Ordinance.
- M2. The McLean County Zoning Ordinance defines “nonconformity” as a nonconforming lot, nonconforming use, nonconforming sign, or nonconforming structure. Note that “nonconforming” is not defined.
- M3. Par. 406.1 B. states “The preexisting legal nonconforming status of uses to which buildings and structures are devoted may continue for five years from January 1, 2003.” and apparently establishes that continuation of a nonconforming use after December 31, 2007, is a violation. **HOWEVER**, par. 406.11. provides that any structure devoted to a nonconforming residential use in a business or industrial district may be remodeled, extended, expanded, and enlarged provided that no greater number of dwellings or lodging units results. There is no mention of accessory buildings or structures related to the nonconforming residential use. This is more restrictive than Champaign County in regards to nonconforming nonresidential and less restrictive in regards to nonconforming residential.

## Comparison Of Certain Existing Champaign County Zoning Ordinance Requirements For Nonconformities With Other Counties

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Champaign County Zoning Ordinance Section & Requirement*	Comparison of the restrictions in other Illinois county zoning ordinances for nonconformities compared to Champaign County					
	McLean County <sup>M1</sup>	Peoria County <sup>P1</sup>	Sangamon County <sup>S1</sup>	Rock Island County	Macon County	Kankakee County
M4.	The McLean County Zoning Ordinance does not appear to prohibit any kind of variance. If that is the case, it should perhaps be considered "less" restrictive than the Champaign County Ordinance in regards to any nonconformity. Staff needs to confirm that understanding with the McLean County Zoning Administrator.					
M5.	Par. 406.3 B. prohibits expansion of a nonconforming use to any portion of the floor area that was not occupied by the nonconforming use on the effective date of the regulations.					
P1.	The Peoria County Zoning Ordinance provisions for nonconformities are in Article 8 of the Ordinance.					
P2.	<p>The Peoria County Zoning Ordinance defines "nonconformity" as something that does not comply with the regulations or any amendment and only existing on the effective date of the regulations as in the following definitions:</p> <p><i>Nonconforming building or structure:</i> Any building or structure lawfully existing on the effective date of these regulations, or any amendment thereto, rendering such building or structure nonconforming, which does not comply with all of the standards of these regulations or any amendment thereto.</p> <p><i>Nonconforming use:</i> Any use lawfully being made of any land, building, or structure on the effective date of these regulations or any amendment thereto rendering such use nonconforming, which does not comply with all of these regulations or any amendment thereto.</p> <p><i>Nonconforming vacant lot:</i> Any lot of record which does not contain a use or building and which does not meet the minimum area or width requirements established in these regulations or any amendment thereto.</p>					
P3.	The Peoria County Zoning Ordinance does not appear to prohibit any kind of variance. If that is the case, it should perhaps be considered "less" restrictive than the Champaign County Ordinance in regards to any nonconformity. Staff needs to confirm that understanding with the Peoria County Zoning Administrator.					
P4.	Par. 24-8-1E. of the Peoria County Zoning Ordinance provides that a nonconforming use or structure may be deemed to be in conformity and allowed to continue and to expand as a lawful use or structure by the issuance of a special use permit.					
P5.	The Peoria County Zoning Ordinance does not authorize changing one nonconforming use to another.					
S1.	The Sangamon County Zoning Ordinance requirements for nonconformities can be found in Chapter 17.06 Applicability of Regulations; Chapter 17.56 Nonconforming Buildings; and Chapter 17.64 Nonconforming Uses.					
S2.	The Sangamon County Zoning Ordinance uses a definition of "nonconforming use" that is similar to Peoria County. However, the Sangamon County Zoning Ordinance also uses the term "noncomplying" in regards to buildings or structures that the Peoria County Ordinance would define as "nonconforming"					
S3.	Sec. 17.64.030 of the Sangamon County Zoning Ordinance provides that a non-conforming use may expand by up to 25% of the area it occupied on the effective date of the Ordinance if authorized by variance. This could be considered somewhat more restrictive than Champaign County because if the original dwelling was a small home (or small mobile home) of no more than 800 square feet the 25% limit is comparable or less than the current Champaign County limit of 200 square feet and the variance requires a public hearing. However, for nonconforming dwellings that were originally larger than 800 square feet this will result in a greater square footage increase than currently allowed by Champaign County.					
S4.	Sec. 17.64.040 of the Sangamon County Zoning Ordinance provides that the rights to nonconforming use of a building expire if the use is discontinued for a period of 6 months except in cases incurred due to a catastrophe when applicable to owner occupied single family and duplex residential dwellings occupied prior to the adoption of the Sangamon County Zoning Ordinance."					
S5.	Sec. 17.56.020 of the Sangamon County Zoning Ordinance provides that reconstruction of "noncomplying buildings" shall not occur if destroyed or					



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Champaign County Zoning Ordinance Section & Requirement*	Comparison of the restrictions in other Illinois county zoning ordinances for nonconformities compared to Champaign County					
	McLean County <sup>M1</sup>	Peoria County <sup>P1</sup>	Sangamon County <sup>S1</sup>	Rock Island County	Macon County	Kankakee County
S6.	damaged by any means to <u>more than 75%</u> of its value except in cases incurred due to a catastrophe when applicable to owner occupied single family and duplex residential dwellings occupied prior to the adoption of the Sangamon County Zoning Ordinance.					
S6.	Sec. 17.64.030 of the Sangamon County Zoning Ordinance provides that one non-conforming use may be changed to another if authorized by variance. This is similar to subsec. 8.4.3 of the Champaign County Ordinance.					
S7.	Sec. 17.64.060 of the Sangamon County Zoning Ordinance provides that the rights to nonconforming use of a building expire when the building is destroyed or damaged by any means "...to the extent of more than 60 percent of its value..." except in cases incurred due to a catastrophe when applicable to owner occupied single family and duplex residential dwellings occupied prior to the adoption of the Sangamon County Zoning Ordinance."					
S8.	Sec. 17.64.070 B.3. of the Sangamon County Zoning Ordinance provides as follows: "...in any district, a building containing residential non-conforming uses may be altered in any way to improve interior livability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building."					