



Mitigation Plan — Commercial Nonconforming Use

WHAT IS A MITIGATION PLAN AND WHEN DO I NEED IT?

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A Mitigation Plan is a strategy developed by the property owner and approved by the Zoning Board of Appeals to mitigate or alleviate any existing or potential negative impacts of a nonconforming use on surrounding properties. Essentially, the Mitigation Plan is similar to a Special Use Permit where an owner receives special dispensation with regards to the operation of a business at a particular location, even though it would normally not be allowed by right. The Mitigation Plan would provide a timeline for

improvements to the property to be implemented and would also provide standards for operation of the use to remain on the property.

You may wish to pursue a Mitigation Plan for a nonresidential use if your property meets any of the following criteria:

- The property is no longer conforming to the Zoning Ordinance with regards to the use in the current zoning district.
- The use is rendered nonconforming by some

other change in the provisions for the use within the Zoning Ordinance.

- The property is annexed to the City and the use does not conform to the applicable regulations of the zoning district.

Most communities require nonresidential nonconforming uses to be closed at some point in the future. The Mitigation Plan would allow a business owner to remain indefinitely, as long as the requirements of the Mitigation Plan are met.

HOW DO I APPLY FOR A MITIGATION PLAN?

The Planning Department has an application form which you will need to complete. The form is provided in this application package. Before the application form is completed, it is recommended that the property owner meet with Planning Staff to discuss various aspects of the nonconforming use and the property owner's plans for the property. After the meeting is completed, the property owner should fill out the application

form which includes several questions regarding the use of the property and a set of five findings of fact which must be met to allow approval of the Mitigation Plan. For many nonconforming uses, additional documentation will be needed including site plans illustrating long-term plans for the use.

There are no application fees for a Mitigation Plan, but you will be billed directly by the News Gazette for advertisement of the legal

notice.

Planning Department Staff will work with you to negotiate an agreement for the Mitigation Plan. Once Staff has completed the drafting of a written agreement for the Mitigation Plan, a public hearing will be scheduled for the next available meeting of the Zoning Board of Appeals.

The Zoning Board of Appeals is regularly scheduled to meet on

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HOW DO I APPLY FOR A MITIGATION PLAN, (CONT'D.)

the third Thursday of each month. State law requires that a legal notice be

published in the newspaper 15 days prior to the public hearing. **You will be billed**

directly by the News-Gazette for advertisement of the public notice. Staff will also

send a notice by mail to all property owners within 250 feet of the subject property.

MITIGATION PLAN APPROVAL

The Zoning Board of Appeals will approve or defeat the proposed Mitigation Plan. Approval of the Mitigation Plan may also include additional conditions or requirements as are appropriate or necessary for the protection of the public health, safety, and welfare, and to satisfy the findings required for approving a Mitigation Plan. Such conditions may include, but are not limited to the following:

- Regulate the location, extent, and intensity of

certain aspects of the use as appropriate.

- Require additional landscaping or screening of such uses by means of fences, walls, and vegetation.
- Regulate vehicular access and the design and location of parking and loading areas and structures.
- Require conformance to health, safety, and sanitation requirements as necessary.

- Regulate signs and outdoor lighting to be more compatible with the surrounding neighborhood.
- Any other conditions deemed necessary to effect the purposes of the Zoning Ordinance.

As part of the approval of the request for a Mitigation Plan, the Board will complete a Certificate of Approval that contains a legal description and common address of the subject property; a statement for each finding summarizing how such finding has been

satisfied; any conditions, safeguards, or flexible standards imposed as a condition of approval; a list of mitigation measures not indicated on the site plan; and a time table for undertaking mitigation measures. Any exhibits, including the site plan, will be attached to the Mitigation Plan permit with a statement that approval is conditioned on the project being operated in accordance with such plans unless specific exceptions are stated in the Certificate of Approval.

MITIGATION PLAN AMENDMENTS—MINOR & MAJOR

The Mitigation Plan will control operations of the use. Minor amendments to the approved Mitigation Plan may be made to the Zoning Administrator (ZA) in writing. The ZA will review the request to determine if it qualifies as a minor amendment and if so, may approve the following:

- Flexibility that has been expressly provided for through the Certificate of Approval
- Minor changes that have not been specifically

identified as a major amendment.

Major amendments may only be made under the procedures that are applicable to the initial approval of a Mitigation Plan. Unless accounted for in the Certificate of Approval, the following are major amendments:

- A reduction in overall amount of usable open space.
- A reduction in off-street loading and parking

spaces by 10%.

- The change in location of any structure by more than 10' in any direction.
- An overall reduction in the area designated for landscaping treatment.
- A change in the circulation pattern that would reduce or increase access points, change access to another street, or increase projected traffic volumes.
- A delay in the deadline to

undertake any specific mitigation measure by more than 6 months (delays for landscape planting for seasonal conditions do not constitute a major amendment).

- A combination of 3 or more changes classified as minor amendments, not specifically allowed by the Certificate of Approval.



MITIGATION PLAN APPLICATION WORKSHEET

Please use this worksheet as a guide when filling out your Mitigation Plan Application. If applications are not complete, they will not be reviewed by Planning Staff. If you have additional questions not

SECTION AND INSTRUCTIONS	COMPLETE	NOT NEEDED
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1. APPLICANT & CONTACT INFORMATION

- Provide the full name, address, phone number, and email address for the applicant and primary contact person.

2. OWNER INFORMATION

- Provide the full name, address, phone number, and email address for the property and business owner.
- Please also check the box whether either owner is a Trust, Corporation, LLC, Not-for-Profit, or Partnership. If “yes” is checked, provide the following information for the applicable type of ownership:
 - For **trusts**, please disclose beneficial interest on bank or trust stationery. The disclosure should be of all beneficial owners, as well as anyone with the power of direction over the land trust. Provide full names, address, and phone number.
 - For **partnerships**, please provide full names, address, and phone number for all partners, and state whether they are general or limited.
 - For **limited liability corporations**, please provide full names, address, and phone number for all managers and members of the limited liability corporation.
 - For **corporations**, please provide full names, address, and phone number for all shareholders if the stock is *NOT* publicly held. If the stock is publicly held, please provide information for those persons owning or controlling 5% or more stock.
 - For **not-for-profit corporations**, please provide full names, address, and phone number for all members of the board (or controlling entity) and the manager (or head of the organization).

This information will not be needed because the owner or owners is/are individuals not requiring additional submissions.

3. PROPERTY INFORMATION

- Indicate the property address. This must be a valid street address.
- Indicate the Parcel ID Number. This number can be determined by contacting the Champaign County Assessor’s Office or by looking on your property tax bill.
- Indicate the property’s current zoning classification.
- Indicate the property’s current land use.
- Indicate the gross area of the property.
- Indicate the floor area of the structure.
- Indicate the hours of operation.

4. CONSULTANT INFORMATION

- Provide the type, name, firm name, address, phone number, and email address of any consultants. If additional consultants were used for this project, please indicate on a separate sheet by providing the same information. Indicate this sheet by titling the page “Additional Consultant Information”.

SECTION AND INSTRUCTIONS	COMPLETE	NOT NEEDED
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5. ADDITIONAL QUESTIONS

- A. Please indicate whether the property has been cited for any nuisance or zoning violations within the past 5 years.
- B. Please list the elements of the use and property that are not in compliance with the Zoning Ordinance.
- C. Please indicate whether the Mitigation Plan proposes any changes to the current operation, including site changes or changes to the use. If “Yes”, describe those changes in detail.

6. LEGAL DESCRIPTION OF PROPERTY

- Please include the complete property description as set forth in a deed, mortgage, or other similar legal document. If additional space is needed, please attach a separate sheet. Indicate this sheet by titling the page

7. APPLICANT SIGNATURE

- By signing this petition, you are certifying that you have read the application, have provided the necessary documentation as listed under the Application Checklist, and that you fully understand the information listed

8. FINDINGS OF FACT INSERT

- The applicant is required to respond to ALL five (5) questions listed on the insert. The reverse of the insert

CHAMPAIGN MUNICIPAL CODE

- This section contains applicable Code sections. Additional information can be found in the City of Champaign Municipal Code, Chapter 37, otherwise known as the Zoning Ordinance. This document can also be

ATTACHMENTS

- A. Please attach a copy of the deed or other proof of parcel ownership, that contains the owner’s name and a complete legal description of the subject property.
- B. Please attach all certified covenants, easements, or conditions which restrict the use of the subject parcel or restrict the structure or what may be placed on the subject parcel. This requirement applies to any covenants, easements, or conditions which are contained in the deed of the subject parcel, including those contained in the subdivision plat or owner’s certificate. Make sure to check either “I have attached these documents” or “There are no covenants, easements, or conditions that relate to this property”.
- C. Please attach a mitigation plan. Required elements are listed. The information can also be found in the Municipal Code, Chapter 37-660.

NOTICE TO APPLICANTS

- This section provides information that applicants and other interested parties should be aware of, including Zoning Board of Appeals meeting times and legal notice publication requirements.

OWNER AUTHORIZATION FORM

- If the applicant is *NOT* the owner of the property, please have the owner or owners’ agent sign the appropriate section and have the signatures notarized to authorize said applicant to process the application.
- Please refer to the specific sections on the application form for information required.
- Please refer to the opposite side of this form for additional submission requirements if owner is *NOT* and

This section is not needed if the applicant is the owner of the property.

Please fully review the application and make sure that any and all applicable documentation has been made and all supplemental materials are attached prior to submission to the City of Champaign Planning Department. Incomplete applications will not be reviewed by Planning Staff.

WHAT HAPPENS AT THE ZBA PUBLIC HEARING?

The public hearing before the Zoning Board of Appeals (ZBA) is a quasi-judicial proceeding. It is not a trial, but there are some similarities. The ZBA is a little less formal. Staff will outline the ZBA procedures so you will know what to expect and can properly prepare for the meeting.

Hearing Procedure

- The Chair of the Board will call the meeting to order and proceed with roll call and minutes from the past meeting. The next item on a regular meeting agenda is the public hearings, which is where the Board will hear the requests for variation (including Mitigation Plans) in order. You should receive an agenda in the mail before your meeting which will let you know when your case will be called.
- When the Chair calls your case, all persons wishing to testify for your case will need to be sworn in. In order to save time, all persons wishing to testify for a case will be sworn in at once. In some instances, the Chair will swear in all the people testifying for all the cases at once. The swearing in has the

same legal effect as it would in a regular trial and persons making false statements under oath are subject to prosecution for perjury.

- After the Chair has called the case, City Staff will be asked to summarize the technical aspects of the Mitigation Plan request. City Staff will then make its recommendation as part of their presentation.
- The Chair will then ask you if you have additional comments. This is your opportunity to present facts pertinent to the case that were not previously made by Staff. It is not necessary for you to comment at this time, but if you so choose, please keep any statements to a maximum of 5 minutes. This is also the proper time for any professional you may have to make their presentation.
- The Chair will then ask, in order, for all other persons in favor of the Mitigation Plan, and then the opposed, to make their presentation to the Board.
- The Board asks that in order to save time, the initial presentations of both the applicant and the City be limited to 15 minutes, and that other interested persons limit their presentations to 3 minutes.
- Following initial presentation, the Board, City Staff, and applicant may ask questions about the initial presentation or the proposed Mitigation Plan. As this is not a regular trial, this is not a cross-examination, and the Board operates on parliamentary procedure. What this means is that questions are directed through the Board, rather than directly between applicant and Staff.
- During the hearing, the Board will sometimes “suspend the rules”. This means that the Board members will discuss the proposed Mitigation Plan among themselves informally, and temporarily would like to limit input from Staff and the applicant. Their conversations, while under “suspension” are still a part of the official recorded record.
- The Board will then “reinstate the rules” and formally vote on the approval of the

Mitigation Plan.

- Sometimes the course of the public hearing will lead the Board to conclude that more information is needed before they can decide to approve a Mitigation Plan. When this happens, they will ask you if you would like to request a continuance to another meeting in order for you to obtain the added information for the Board to consider. When a meeting is continued, the new meeting time and date will be decided and announced at the current meeting.

It should be extremely rare that the ZBA could not establish some form of mitigation that would be acceptable to the applicant.

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WHAT HAPPENS AT THE ZBA PUBLIC HEARING?

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If this did occur, the applicant may elect one of the following options:

- Resubmit a new application and plan.
- Appeal to City Council. If City Council disapproves the Mitigation Plan, then the application will be referred back to ZBA to determine a termination date for the nonconforming use.
- In any one case, only 3 proposed Mitigation Plans may be submitted. If none of these plans are approved by ZBA or City Council, then a date for termination of the nonconforming use must be established.
- Such termination date will be based on the severity of the impacts, the expected economic life of the structure, the market value of the investment, and any other relevant factors. In no case will the termination date be longer than 10 years.

Failure to Reapply for or Comply with the Mitigation Plan

Failure to comply with the Mitigation Plan will constitute a zoning violation and will be subject to zoning enforcement action.