VILLAGE OF Linsdale Est. 1873

MEETING AGENDA

ZONING BOARD OF APPEALS WEDNESDAY, June 21, 2017 6:30 P.M.

MEMORIAL HALL - MEMORIAL BUILDING

(Tentative & Subject to Change)

- 1. CALL TO ORDER
- 2. ROLL CALL
- 3. APPROVAL OF MINUTES
 - a) Regular meeting of May 17, 2017
- 4. APPROVAL OF FINAL DECISION
 - a) V-05-17, 117 South Clay Street
- 5. RECEIPT OF APPEARANCES
- 6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE
- 7. PRE-HEARING AND AGENDA SETTING None
- 8. PUBLIC HEARINGS
 - a) APP-01-17, 444 East Fourth Street/435 Woodside Avenue
 - b) V-04-17, 435 Woodside Avenue
- 9. NEW BUSINESS
- 10. OTHER BUSINESS
- 11. ADJOURNMENT

The Village of Hinsdale is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities, are requested to contact Darrell Langlois, ADA Coordinator at 630-789-7014 or by TDD at 630-789-7022 promptly to allow the Village of Hinsdale to make reasonable accommodations for those persons.

www.villageofhinsdale.org



VILLAGE OF HINSDALE ZONING BOARD OF APPEALS MINUTES OF THE MEETING May 17, 2017

1. CALL TO ORDER

Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, May 17, 2017 at 6:32 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

Present: Members Marc Connelly, Gary Moberly, Keith Giltner, Joseph Alesia, Kathryn Engel, John Podliska and Chairman Bob Neiman

Absent: None

Also Present: Director of Community Development/Building Commissioner Robb McGinnis and Village Clerk Christine Bruton

3. APPROVAL OF MINUTES

a) Regular meeting of April 19, 2017

There were no changes or corrections made to the draft minutes; Member Moberly moved to approve the minutes of the regular meeting of April 19, 2017, as presented. Member Podliska seconded the motion.

AYES: Members Connelly, Moberly, Alesia, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: Members Engel and Giltner

ABSENT: None

Motion carried.

4. APPROVAL OF FINAL DECISION

a) V-02-17, 724 North York Road (Hinsdale Animal Hospital)

There were no changes or corrections made to the draft final decision; Member Engel moved to approve the final decision for V-02-17, 724 North York Road (Hinsdale Animal Hospital), as presented. Member Alesia seconded the motion.

AYES: Members Connelly, Moberly, Alesia, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: Member Giltner

Motion carried.

ABSENT: None

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46 47 b) V-03-17, 100 South Garfield Avenue (Hinsdale Middle School)

There were no changes or corrections made to the draft final decision; Member Moberly moved to approve the final decision for V-03-17, 100 South Garfield Avenue (Hinsdale Middle School), as presented. Member Podliska seconded the motion.

AYES: Members Connelly, Moberly, Alesia, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: Members Engel and Giltner

ABSENT: None

Motion carried.

- RECEIPT OF APPEARANCES All persons intending to speak during the public hearing were sworn in by the court reporter.
- 6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE None
- 7. PRE-HEARING AND AGENDA SETTING None
- 8. PUBLIC HEARINGS
 - a) V-04-17, 435 Woodside

Chairman Neiman opened the public hearing; he explained that the applicant has requested that the hearing be continued. The Board agreed to postpone the hearing.

Member Podliska moved to close the public hearing for V-04-17, 435 Woodside. Member Connelly seconded the motion.

AYES: Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and Chairman Neiman

NAYS: None ABSTAIN: None ABSENT: None

Motion carried.

b) V-05-17, 117 South Clay Street (A transcript of the following proceedings in on file)

Chairman Neiman opened the public hearing. Mr. North Chimienti, attorney representing the applicants, addressed the Board. Mr. Chimienti stated he assisted in preparing the application for the Fichters and will help them present their case to the Board. He began by stating there is one adjacent neighbor to the south of the subject property, 119 S. Clay, who although unable to attend the meeting this evening, has put her comments in writing for the Board's consideration. Mr. Chimienti distributed copies of the letter to the Board.

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Mr. Paul Fichter, homeowner, addressed the Board and stated that this issue with his garage has been stressful and difficult. He provided the Board some personal background, and how he and his wife came to purchase a 'starter home' in Hinsdale. They knew the home needed a lot of work, and this garage has been a two year project. He described the dilapidated and dangerous condition of the garage and driveway; cracked foundation, broken windows, side walls off sill plates, broken trusses, and an overhead door that wouldn't close. He said the driveway was equally bad, and unusable and an eyesore.

Mr. Fichter hired Danley Garage in 2015. Mr. David Krecek, present tonight, was the sales representative. When they came to the Village to get a permit, Village engineers informed them that the back of the property is located in a flood hazard area, and they would have to get a stormwater permit from the County. Danley assured him they could handle this, but eventually their permit expediter gave up. Mr. Fichter ultimately met with the County representative and hired an engineer to draw up civil plans. It took a full year, additional expense and many hours to finally get County approval. He said Assistant Village Engineer Al Diaz was instrumental in helping him with the County. Additionally, he was required to install a rain garden for compensatory storage. All of this before the garage was even started. He outlined the extensive costs associated with this project.

It wasn't until after the garage was built, that the engineer he hired to produce the as-built topography informed him that the garage was in the wrong location. He contacted Mr. Krecik who assured him they were working with the Village and would do anything they could to remedy the situation. Mr. Fichter assured the Board that he and his wife intended to comply with all Village requirements. They assumed once construction started Danley had done everything that should have been done. He said the letter of agreement with Danley stated a spot survey was required, and was in the contract and paid for. The Danley contract manager overlooked the need for the survey, and he was subsequently terminated.

Mr. Fichter told the Board the hardship in this case is if they are not allowed to keep the garage; he asked the Board to please understand they had nothing to do with these events, and to please grant the minimum variance, so they can move on with their lives. He noted there is no impact on neighbors, and the area aesthetic is improved.

Mr. David Krecik, former general contractor from Danley, addressed the Board. He began by stating this project was an epic disaster, and has never happened in any municipality before. He said he is personally and professionally embarrassed. Danley has done over 1,800 projects in this area. When Mr. Fichter approached the company, they knew it would be a challenge because of the flood area. The engineering required because of new stormwater regulations, was beyond their internal capabilities. In terms of the location of the garage, the contractor measured from the fence, not the lot line. He said he trusted the project manager, but he didn't order a spot survey. He explained that the sale of the company to Feldco put a lot of stress on crews to get the jobs done and on the books. Mr.

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Krecik said the company will be okay, but this will be hard on the Fichters. He said it will make little difference to move the garage the required 18", he is very sorry and asked the Board to please grant the variation.

Mr. Chimienti followed up stating he was a member of the Plan Commission in the early '90's, the current code was overhauled in 1989. He appreciates the task before the ZBA. He said that in the old Plan Commission days, they tried to help their neighbors, but be consistent with code and the needs of community. He believes the zoning code is a tool, not a weapon. He demonstrated what 18" looks like, and added that he thinks all can agree this is a de minimis degree of variation, but the issue in the minds of the Board is whether the applicant meets the necessary criteria for approval. He believes they have met the standards for granting an approval.

Chairman Neiman asked Mr. Chimienti if he would agree, the decision is should the ZBA follow the letter of law, and strictly apply criteria, or exercise to the extent the Board has equitable power to do so, the fair thing. The applicant is asking for a fair and equitable decision because this is a retroactive approval. Mr. Chimienti agreed, but added an argument could be made there is also constructive compliance with the letter of the law. He introduced the issue of hardship, what precedent might be set if the Board were to exercise their discretion, and whether the standard of self-creation was being met by this. He would like to address those areas. Chairman Neiman explained that the Board has been told by the Village Attorney that ZBA decisions are not precedential, and the Board is free to treat each property individually. No applicant can rely on a prior decision. Mr. Chimienti said he concurred with the Village Attorney's interpretation.

Mr. Chimienti said he concurred with the Village Attorney's interpretation. He also stated that nowhere in the code does it state that the Board is prohibited from granting approval after the structure is built.

Regarding hardship, nowhere in the code is it made expressly clear that the timing of the hardship is relevant to whether the hardship exists. believes if the hardship is not created by the applicant, it is not relevant. The code states carrying out the strict letter of the code should not create a hardship or practical difficulty. Mr. Fichter has described the difficulties and burdens of the construction of the garage, and alluded to future hardship. If it has been held in the past that the size of lot, or the location of a tree creates a hardship, do not the Fichters suffering and privation meet that Danley's made a mistake over which the Fichters had no control; they didn't create the hardship. If an electrician had been hired to repair the garage, and it burnt down, that would be no fault of the Fichters and the code allows them to rebuild the garage exactly where it had been, because of reasons beyond their control The Danley mistake was beyond He asked the Board to apply a rule of reason and their control. compassion, which is not prohibited by the code.

In summary, regarding precedence, he asked the Board to consider the combination of circumstances. There was no collusion with the contractor, no gain for either party, there are physical conditions unique to this lot, there are no health and safety issues, and the request is de mimimis. He

does not believe that all of these facts could ever be duplicated. Chairman Neiman suggested the problem is the nature of the retroactive request.

Mr. Chimienti agreed in principal that a retroactive approval may have unintended consequences. Chairman Neiman suggested that granting a retroactive approval may be special privilege. Mr. Chimienti agreed, but added that Danley is not the issue; whether they have insurance or deserve to be punished are non-issues. Paul and Allison Fichter are the issue. He hopes the Board will use compassion and discretion in this case, and consider the hardship of the whole matter before and after. He suggested the Board follow their heart. Member Podliska said following their heart is not at the discretion of the Board, they are charged to follow the code and determine if the variation can be granted under the code.

Mr. Chimienti reiterated that the code does not prohibit the Zoning Board from providing retroactive relief. With respect to denial of substantial rights, Member Alesia asked for examples of previous garage variation approvals. It was confirmed that those approvals have been made in the past, as well as retroactive approvals. Mr. Chimienti added detached garages create setback issues on smaller lots and often will trigger the need for relief to replace a non-conforming garage.

There were no further questions, Member Giltner moved to close the public hearing for V-05-17, 117 South Clay Street. Member Moberly seconded the motion.

AYES: Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and

Chairman Neiman NAYS: None ABSTAIN: None

ABSENT: None

Motion carried.

DELIBERATION

Chairman Neiman began discussion stating he is torn because the normal criteria are not necessarily met, and the Board would be required to deny, but if the Board has the authority to do the equitable thing, it might lead to another conclusion. To that end, he referenced Section 11-502(B), which he thought might allow the Board some flexibility. The appeal procedure is provided as a 'safeguard against arbitrary ill-considered or erroneous administrative decisions'. The reviewing body 'should give all proper deference to the spirit and intent embodied in the language of this code and the reasonable interpretations of that language by those charged with the administration of this code'.

Member Connelly remarked that had an application for the garage been submitted before construction, he thinks the criteria would have been met and the Board would have granted the request. Chairman Neiman agreed, but is still troubled by the message sent by retroactive approvals. The Board

- agreed, but noted that the ZBA has granted them in the past. Member Moberly 1 said he would like to punish the contractor, and protect the homeowner. He 2 commented that all cases are different, but to tear down this garage is 3 environmentally foolish. Danley won't notice, but it is too much for the 4 homeowners. 5
 - Member Podliska sited Section 11-503, which indicates no variation shall be granted except 'in accordance with each of the standards enumerated' in the code, 'unless the applicant shall establish that carrying out the strict letter provisions of this code create a particular hardship or a practical difficulty'.
- He noted that he could be persuaded on the matter of hardship, but council for 10 11 the applicant has conceded this is a special privilege. Discussion followed regarding the unique physical condition of the lot with respect to the floodplain. 12 Member Giltner believes this problem was the result of an unintentional 13 14

mistake, and when taken in totality, he will approve.

- Member Connelly noted that although not a standard in the code, the Board traditionally gives weight to neighbor input. There is positive input from the neighbor, and denying the application and causing further construction would be detrimental to the owners and the neighbors.
- 19 Member Alesia commented he could not be more sympathetic, but is bothered by the negligence of Danley in not getting the spot survey. 20
- 21 Member Podliska added the only reason this is before the Board is because of 22 the mistake, not because of some previous condition of the lot.
- 23 Chairman Neiman acknowledged the merit of strict construction of the law. The Board must be fair or follow the letter of the law. 24
 - Member Giltner asked Mr. McGinnis if since the Board approved the retroactive fence variation, there has been any sort of additional activity relative to fence ordinances. Mr. McGinnis said there has not, and further he cannot imagine anyone deliberately creating this type of situation because of the magnitude of the problem it creates.

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Member Giltner moved to approve the variation known as V-05-17, 117 South Clay Street. Member Connelly seconded the motion.

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AYES: Members Connelly, Moberly, Giltner, Engel and Chairman Neiman

NAYS: Members Alesia and Podliska

ABSTAIN: None 36 37 **ABSENT:** None

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Motion carried.

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9. NEW BUSINESS - None

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10. OTHER BUSINESS - None

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11. ADJOURNMENT

Zoning Board of Appeals Meeting of May 17, 2017 Page **7** of **7**

vvitn no further business before the Zoning Board of Appeals, Member Alesia					
made a motion to adjourn the meeting of the Zoning Board of Appeals o					
May 17, 2017. Member Engel seconded the motion.					
AYES: Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and					
Chairman Neiman					
NAYS: None					
ABSTAIN: None					
ABSENT: None					
Motion carried.					
Chairman Neiman declared the meeting adjourned at 8:08 p.m.					
Approved:					
Christine M. Bruton					
Village Clerk					

FINAL DECISION

VILLAGE OF HINSDALE ZONING BOARD OF APPEALS PETITION FOR VARIATION

Zoning Calendar:

V-05-17

Petitioner:

Alison & Paul Fichter

Meeting held:

Public Hearing was held on Wednesday, May 17, 2017 at 6:30 p.m. in Memorial Hall, in the Memorial Building, 19 East Chicago Avenue, Hinsdale, Illinois, pursuant to a notice published in The Hinsdalean on April 27, 2017.

Premises Affected:

Subject Property is commonly known as 117 S. Clay Street, Hinsdale, Illinois and is legally described as:

LOT 3 IN BLOCK 7 IN J. I. CASE'S ADDITION TO HINSDALE, BEING A SUBDIVISION OF PART OF NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 1872 AS DOCUMENT 15440, IN DUPAGE COUNTY, ILLINOIS

Subject:

In this application for variation, the applicant requests relief from the minimum side yard setback requirements set forth in section 3-110-D2 for the construction of a detached garage. The applicant is requesting a 1.5' reduction in the required interior side yard from 6.1' to 4.6'. It should be noted that the garage has already been constructed. No spotted survey was prepared or submitted for review prior to framing as is required, and the error was not brought to staffs attention until the final inspection was scheduled and the as-built survey was submitted.

Facts:

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the southeast corner of Clay Street and Hinsdale Avenue. The property has a frontage of approximately 46.65', a depth of approximately 170', and a total square footage of approximately 11,836. The maximum FAR is approximately 4,040 square feet, the maximum allowable building coverage is 25% or approximately 2,959 square feet, and the maximum allowable lot coverage is 50% or approximately 5,918 square feet.

Action of the	Board:	Members discussed the request and agreed that the standards for variation set forth in 11-503 (F) of the Hinsdale Zoning Code had been met. Some members cited the de minimis degree of the encroachment as their rationale while other members stated that that this was purely self-created and that Danley was acting as an agent for the owner. Other comments were made about whether the fact that this request was being made after-the-fact should have any bearing on the decision. In the end, the majority of members agreed that the request be approved. A motion to recommend approval was made by Member Giltner and seconded by Member Connelly.
AYES:		Members Connelly, Moberly, Giltner, Engel, Chairman Neiman
NAYS:		Members Alesia, Podliska
ABSTAIN:		None
ABSENT:		None
	THE H	INSDALE ZONING BOARD OF APPEALS
	_	Chairman Robert Neiman
Filed this	day of	with the office of the Building Commissioner





MEMORANDUM

DATE:

June 15, 2017

TO:

Chairman Neiman & Members of the Zoning Board of Appeals

CC:

Christine Bruton, Village Clerk

FROM:

Robert McGinnis, MCP

Director of Community Development/Building commissioner

RE:

Formal Appeal – APP-01-17; 444 E. Fourth Street/435 Woodside

In this application for appeal, the applicant is appealing a staff decision that where an existing house straddles the lot line between Lots of Record, the underlying individual Lots of Record cannot be broken out unless each resulting Lot meets all of the bulk zoning regulations set forth in section 3-110(C).

The applicant presently owns and occupies the home at 444 E. Fourth Street. The Zoning Lot the home is located on is comprised of three Lots of Record; one on Fourth Street and two on Woodside Avenue. The owners intention is to move the house from its current location on Fourth Street and place it onto the two Lots of Record on Woodside Avenue, and to then separately develop a second residence on Fourth Street.

Based on our interpretation of the Code, this is a single Lot due to the encroachment by the house, and the applicant is not permitted to break out any of the underlying Lots of Record unless each of the lots meets all of the bulk zoning regulations set forth in section 3-110(C) of the code.

This property is located in the R1 Residential Zoning District in the Village of Hinsdale and is located on the south side of 4th Street between Oak Street and County Line Road. The property is a through-lot and has a frontage of approximately 228', a depth of approximately 332.8', and a total square footage of approximately 53,888. The maximum FAR is .20 plus 2,000 or 12,777 square feet, the maximum Building Coverage is 25% or 13,472 square feet, and the maximum Total Lot Coverage is 50% or 26,944 square feet.

CC:

Kathleen Gargano, Village Manager

Zoning file APP-01-17

17W733 Butterfield Road, Unit F Oakbrook Terrace, IL 60181 (630) 833-3311 Fax: (630) 833-3511

Daniel Law Office, P.C.

June 15, 2017

Hon. Robert K. Neiman, Chair and
Keith Giltner, Vice Chair, Marc C. Connelly,
Kathryn Engel, Gary Moberly, John Podliska
and Joseph Alesia
VILLAGE OF HINSDALE ZONING BOARD OF APPEALS
19 East Chicago Avenue
Hinsdale, Illinois 60521

Re: 444 E. Fourth Street/435 Woodside Avenue, Hinsdale, DuPage County, Illinois Bousquette/Parker Appeal from Village Manager's Determination

Dear Mr. Neiman and Members of the Zoning Board of Appeals:

I represent Matt Bousquette, Kris Parker and Tracy Parker ("Applicants" unless referred to distinctly). Pursuant to 65 ILCS 5/11-13-12 and Section 11-502(A) of the Zoning Ordinance, Applicants appeal the June 8, 2017 determination and interpretation of the Village Manager for reasons described in the application and materials provided with this letter. Enclosed please find fifteen (15) collated sets comprised of the following materials:

- 1. The signed application for appeal;
- 2. Project Narrative Table of Contents and 34-Page Narrative;
- 3. ATTACHMENT A Village Manager Decision;
- 4. ATTACHMENT B Two surveys;
- 5. ATTACHMENT C May 31, 2017 Daniel to Village Correspondence/Exhibits;
- 6. ATTACHMENT D June 2, 2017 Email Supplement to Attachment C;
- 7. ATTACHMENT E Correspondence from Village Attorney (April 26);
- 8. ATTACHMENT F Correspondence from Village Attorney (May 8); and
- 9. ATTACHMENT G Site Plan Reflecting Woodside Avenue Zook House.

With delivery of this correspondence, I have also tendered a check in the amount of \$1,100.00. Please note the request to consider this appeal on June 21, 2017.

Yours very truly,

DANIEL LAW OFFICE, P.C.

Encls.

cc:

Lance C. Malina, Esq.

Michael A. Marrs, Esq.

Ms. Kathleen Gargano, Village Manager

Mark W. Daniel



19 E. Chicago Avenue, Hinsdale, IL 60521

APPLICATION FOR ZONING APPEAL

COMPLETE APPLICATION CONSISTS OF (10) COPIES (All materials to be collated)

FILING FEES: \$1,100.00

Name of Applicant(s): Matt Bousquette, Kris Parker, Tracy Parker

Address of Subject Property: <u>435 Woodside Ave. (444 E. 4th), Hinsdale</u> (if applicable)

If Applicant is not property owner, Applicant's relationship to property owner:

Matt Bousquette is the owner and applicant. Applicants Kris Parker and Tracy Parker have a contractual interest in purchasing the South Lot (on Woodside, PINs 09-12-221-006 and 09-12-221-009). They reside on the North Lot (444 East Fourth, PIN 09-12-221-008), intend to move the Zook House from the North Lot to the South Lot and subsequently reside therein.

FOR OFFICE USE ONLY

Date Received: (p	15/17	Zoning Calendar No.	APP-01-17
PAYMENT INFORMATION: C	Check#	Check Amount \$.	

SECTION I

1. Owner. Name, mailing address, telephone number and email address of owner:

Matt Bousquette, 448 East Fourth Street, Hinsdale, IL 60521

2. <u>Trustee Disclosure</u>. In the case of a land trust provide the name, address, telephone number and email address of all trustees and beneficiaries of the trust:

Not applicable.

3. <u>Applicant</u>. Name, address, telephone number and email address of applicant, if different from owner:

In addition to Owner:

Kris Parker and Tracy Parker, 444 East Fourth, Hinsdale, 60521

4. <u>Subject Property</u>, (if applicable) Address and legal description of the subject property, use separate sheet for legal description if necessary.

Woodside Avenue Permanent Index Nos. 09-12-221-006 and 09-12-221-009.

Related parcel is 444 East Fourth Street (PIN 09-12-221-008). Legals attached.

- 5. <u>Consultants</u>. Name and address of each professional consultant advising applicant with respect to this application:
 - a. Attorney: Mark W. Daniel, Daniel Law Office, P.C., 17W733 Butterfield Road, Suite F, Oakbrook Terrace, Illinois 60181 (630) 833-3311 mark@thedaniellawoffice.com
 - b. Engineer: <u>Jon Green, Engineering Resource Associates, Inc., 3S701 West</u>

 <u>Avenue, Ste 150, Warrenville, IL 60555 (630) 393-3060 jgreen@eraconsultants.com</u>
 - c. Architect: <u>Dennis Parsons, Parsons Architects, LLC, 28 Springlake Avenue, Hinsdale, IL 60521 630.567.8135 email@parsonsarchitects.com</u>
 - d. Planner: <u>Joseph Abel, Joseph H. Abel & Associates, L.L.C., 200 Forest Avenue, Glen Ellyn, IL 60137 (630) 207-4256</u> jlabel@ameritech.net

6.	Village Personnel. Name and address of any officer or employee of the Village with
an int	erest in the Owner, the Applicant, or the Subject Property, and the nature and
exten	t of that interest:
a	. NONE

b. ____

7. <u>Survey</u>. Submit with this application a recent survey, certified by a registered land surveyor, showing existing lot lines and dimensions, as well as all easements, all public and private rights-of-way, and all streets across and adjacent to the Subject Property. Attachment B.

Provide information responsive to Items 8-11 only if applicable:

8. <u>Existing Zoning</u>. Submit with this application a description or graphic representation of the existing zoning classification, use, and development of the Subject Property, and the adjacent area for at least 250 feet in all directions from the Subject Property.

The North Lot and the South Lot are situated in the R-1 zoning classification. All properties within 250 feet are classified R-1. The North Lot and the South Lot are comprised of lots subdivided in 1894 when there was no zoning ordinance. The North Lot was improved with the Zook House in 1929, under the terms of the amendatory Class AA regulations (January 8, 1929) and the 1929 Zoning Ordinance which classified the North Lot and the South Lot in the Class AA residence district. Property within 250 feet was similarly classified.

9. <u>Conformity</u>. Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.

Please see attached narrative dated June 13, 2017.

10. Zoning Standards. Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.

Please see attached narrative dated June 13, 2017.

11. <u>Successive Application</u>. In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code. <u>This is not a successive application</u>.

SECTION II

When applying for an appeal to the Hinsdale Zoning Board of Appeals, provide the data and information required in Section I, and in addition, the following:

1. <u>Action Appealed</u>. The specific order, decision, determination, or failure to act from which an appeal is sought: (Attach copy of any documents evidencing the action appealed.)

The interpretation by the Village Manager of the 1989 Hinsdale Ordinance, as amended, to determine that the North Lot and the South Lot are not independently capable of distinct development. See correspondence attached hereto as Attachment A-1. See narrative dated June 13, 2017.

2. <u>Facts</u>. The facts of the specific situation giving rise to the original order, decision, determination, or failure to act and to the appeal therefrom:

Following communications with Robert McGinnis and counsel for the Village (Attachment A-2), Matt Bousquette filed an application for variation (lot area) and reserved his right to seek an interpretation from the Village Manager concerning the existence of historic lots of record that comprise the South Lot. On May 10, 2017, Mr. Bousquette filed a request for interpretation from the Village Manager (Attachment A-3) in which Mr. and Mrs. Parker joined. On May 31, 2017, Mr. Bousquette and the Parkers filed additional supplemental information (Attachment A-4), including material from the Hinsdale Historical Society that were not available from the Village. The Village manager planned a meeting to address these materials in detail on this same date, but could not attend. Following additional communication (Attachment A-5), the Village Manager issued the correspondence appealed from (Attachment A-1). Please see attached narrative dated June 13, 2017.

3. Relief Sought. The precise relief sought:

Applicants for appeal seek a determination from the Zoning Board of Appeals that the North Lot is independently capable of redevelopment following the relocation or demolition of the existing Zook House located thereon to the South Lot which is independently capable of hosting the Zook House or a new home as its principal use. Applicants seek a determination that the South Lot is a historic lot of record governed by the minimum area and other requirements in Section 10-105 of the Zoning Ordinance and also a legal nonconforming lot of record. Applicants seek a determination that the North Lot is subject to the historic lot of record regulations in Section 10-105. Further, Applicant seeks a determination that the North Lot can be developed with an area of 30,000 square feet and the South Lot can be developed with an area of 20,000 square feet.

4. <u>Statement of Errors</u>. A statement of your position regarding each alleged error in the order, decision, determination, or failure to act being appealed and why the relief sought is justified and proper:

See attached narrative dated June 17, 2017. In general, the Village Manager erred in her interpretation of the 1989 Zoning Ordinance and its application to the North Lot and the South Lot by applying a nonexistent definition of "legal nonconforming lot of record." The definition in Section 12-206 of the Zoning Ordinance contemplates a three-part test. Quite clearly, the Village agrees that the first two prongs of the definition are met because the South Lot and the North Lot are lots that existed in an 1894 subdivision and the North Lot was developed in 1929 in accordance with the terms of the Zoning Ordinance and the North Lot and South Lot are situated in a residential district and meet the lot area and dimension standards of subsection 10-105A. The Village Manager erred in filtering the definition with a determination of "zoning lot" that is not allowed and is flawed on its own.

The sole issue seems to be whether the North Lot and the South Lot were "vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code." Applicants respectfully submit that the Zook House is a precode structure and that it is not authorized to be rebuild or replaced at its current location. The Village Manager believes that the Zook House is authorized to be rebuilt or replaced at its current location. She is incorrect because the North Lot was improved under 1929 zoning regulations that did not require a rear yard and she bases her interpretation on reasoning that the North Lot and the South Lot comprise a single "zoning lot" when the term "zoning lot" is not at all relevant to the determination of "legal nonconforming lots of record."

SECTION III

In addition to the data and information required pursuant to any application as herein set forth, every Applicant shall submit such other and additional data, information, or documentation as the Village Manager or any Board of Commission before which its application is pending may deem necessary or appropriate to a full and proper consideration and disposition of the particular application.

- 1. A copy of preliminary architectural and/or surveyor plans showing the floor plans, exterior elevations, and site plan needs to be submitted with each copy of the zoning petitions for the improvements. (Exhibit I to Attachment A-3, among others)
- 2. The architect or land surveyor needs to provide zoning information concerning the existing zoning; for example, building coverage, distance to property lines, and floor area ratio calculations and data on the plans or supplemental documents for the proposed improvements. (Attachment C)

SECTION IV

- Application Fee and Escrow. Every application must be accompanied by a nonrefundable application fee of \$500.00 plus an additional \$600.00 initial escrow amount.
 The applicant must also pay the costs of the court reporter's transcription fees and legal
 notices, which are deducted from the original escrow payment. A separate invoice will
 be sent if these expenses exceed the original escrow amount.
- 2. Additional Escrow Requests. Should the Village Manager at any time determine that the escrow account established in connection with any application is, or is likely to become, insufficient to pay the actual costs of processing such application, the Village Manager shall inform the Applicant of that fact and demand an additional deposit in an amount deemed by him or her to be sufficient to cover foreseeable additional costs. Unless and until such additional amount is deposited by the Applicant, the Village Manager may direct that processing of the application be suspended or terminated.
- 3. <u>Establishment of Lien</u>. The owner of the Subject Property, and if different, the Applicant, are jointly and severally liable for the payment of the application fee. By signing the applicant, the owner has agreed to pay said fee, and to consent to the filing and foreclosure of a lien against the Subject Property for the fee plus costs of collection, if the account is not settled within 30 days after the mailing of a demand for payment.

SECTION V

By signing below, the owner states that he/she consents to the filing of this application and that all information contained herein is true and correct to the best of his/her knowledge.

Name of Owner and Applicant: MATT BOUSQUETTTE

Signature of Owner and Applicant: _

Name of Applicant:

KRIS PARKER

TRACY PARKER

Signature of Applicant:

Date: June 13, 2017

LEGAL DESCRIPTIONS

The "North Lot" is comprised of territory with frontage on Fourth Street which has been assigned Permanent Index No. 09-12-221-008 and a common address of 444 East Fourth Street and is legally described as:

LOTS 1, 2, 3 AND 4, TOGETHER WITH THAT PART OF THE VACATED STREET LYING EAST OF AND ADJOINING SAID LOT 1 MEASURED 26.66 FEET ON NORTH AND 33.07 FEET ON SOUTH, IN THE RESUBDIVISION OF BLOCK 8 IN WILLIAM ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

The "South Lot" is comprised of territory with frontage on Woodside Avenue which has been assigned Permanent Index Nos. 09-12-221-006 and 09-12-221-009 and is legally described as:

LOTS 18 AND 19, TOGETHER WITH THAT PART OF THE VACATED STREET LYING EAST OF AND ADJOINING SAID LOT 19 MEASURED 33.07 FEET ON NORTH AND 33.68 FEET ON SOUTH, IN THE RESUBDIVISION OF BLOCK 8 IN WILLIAM ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

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17W733 Butterfield Road, Unit F Oakbrook Terrace, IL 60181 (630) 833-3311 Fax: (630) 833-3511

Daniel Law Office, P.C.

June 15, 2017

Re:

Hon. Robert K. Neiman, Chair and Keith Giltner, Vice Chair, Marc C. Connelly, Kathryn Engel, Gary Moberly, John Podliska and Joseph Alesia VILLAGE OF HINSDALE ZONING BOARD OF APPEALS

Ms. Kathleen Gargano, Village Manager VILLAGE OF HINSDALE 19 East Chicago Avenue Hinsdale, Illinois 60521

444 E. Fourth Street/435 Woodside Avenue, Hinsdale, DuPage County, Illinois Permanent Index Nos. 09-12-221-006, '221-008, '221-009 Bousquette/Parker Appeal from Village Manager's Determination

Dear Mr. Neiman and Members of the Zoning Board of Appeals:

I represent Matt Bousquette, Kris Parker and Tracy Parker ("Applicants" unless referred to distinctly). Pursuant to 65 ILCS 5/11-13-12 and Section 11-502(A) of the Zoning Ordinance, Applicants appeal the June 8, 2017 determination and interpretation of the Village Manager which rejected their request to allow the relocation of a home referred to herein as the "Zook House" from the "North Lot" (444 East Fourth Street) which may co-exist as a distinct lot containing a principal residence simultaneously with the "South Lot" (on Woodside Avenue) which can also host a residence because it qualifies as a legal nonconforming lot of record formed by a portion of the Oakwood Place right of way, Lot 18 and Lot 19 of the Resubdivision of Block 8 discussed below. The Parkers are the current residents of the Zook House and they intend to relocate the Zook House to the South Lot, which they will purchase from Mr. Bousquette. Mr. and Mrs. Parker have confirmed that the Zook House is readily capable of relocation to the South Lot (structurally and as shown in Attachment G) and that is the Applicants' present contractual and planning intention. There is no need for a zoning variation in this instance.

The finding that the North Lot and the South Lot are capable of serving as two independent lots is simple, follows the clear terms of the Zoning Ordinance and aligns with prior actions of the Zoning Board of Appeals in relation to historic lots of record and legal nonconforming lots of record. The Village Manager's decision disregards the 1989 Zoning Ordinance and definitions therein. The efforts of the Village Attorney and staff to buttress the Village Manager's position fall short simply because they engage in a "zoning lot" analysis rather than one pertaining to "lots of record" and, even in doing so, the zoning lot analysis is

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incomplete and ignores the definition of "zoning lot" as inclusive of partial lots of record. The imaginary distinction between accessory structures and principal structures has no actual or implied basis in the Zoning Ordinance.

At worst for the Applicants, if a small sliver of a portion of a wall of the house, a portion steps and an exterior storage area extend one to three feet onto the South Lot, this is merely a case involving an encroachment that is so readily explained by changes in survey methodology over time. The encroachment should be disregarded, but if the Zoning Board of Appeals insists that it is somehow relevant, it must ask why. The encroachment does not create the through lot or zoning lot claimed by the Village Manager. Moreover, the encroachment does not affect the determination of whether lots of record will become vacant after 1988.

The Zoning Board of Appeals should reverse the Village Manager's decision.

REQUEST FOR WAIVER OF 11-301(C)(1) TO ALLOW JUNE 21, 2017 HEARING

Pursuant to 65 ILCS 5/11-13-12 and Section 11-301(G), Applicants request that the Zoning Board of Appeals waive Section 11-301(C)(1) which requires the filing of an appeal not later than the fourth Friday prior to the requested hearing date. Applicants request a June 21, 2017 hearing on this appeal. This date has been previously set and noticed for the hearing on Applicants' alternative request for a variation from the lot area requirement in Case No. V-04-17. The necessity of the variation under the current proposal will be determined, in part, by the decision on the appeal. Prior to the continuance of the scheduled May 17, 2017 hearing on the variation, counsel for the Village and counsel for Applicants concurred that continuation of the hearing on the variation in order to permit the Village Manager to render an interpretation was an appropriate means through which the Zoning Board of Appeals might avoid a multiplicity of hearing nights concerning the same property when the requests have only modest differences. Applicants request the Zoning Board of Appeals to conduct the hearing on this appeal immediately prior to the June 21, 2017 variation hearing. The Zoning Board of Appeals should reverse the Village Manager's interpretation and proceeding on the variation should not be required.

APPLICANTS' STANDING

Applicants are aggrieved by the decision of the Village Manager. The Village Manager's decision prevents preservation of the Zook House through means that are readily available under the Zoning Ordinance. The Village Manager's decision also deprives Mr. Bousquette of his reasonable expectations under the vested rights that have applied to the North Lot and the South Lot since 1894 which survived construction of the Zook House in 1929 and the addition of land area to the North Lot and the South Lot following the 1975 vacation of Oakwood Place (a right of way that rendered the North Lot and the South Lot "corner lots"). Section 10-105 of the 1989

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Zoning Ordinance preserves Applicants' rights. Applicants have standing under Section 11-502(C) of the Zoning Ordinance and 65 ILCS 5/11-13-12.

In at least one appeal accepted by the Zoning Board of Appeals (735 and 739 Phillippa, Case No. AP-01-13) and at least one variance allowed by the Zoning Board of Appeals (26 East Sixth Street, Case No. V-01-17), the Zoning Board of Appeals has respected the rights of owners of legal nonconforming lots of record. Similar circumstances arise in this case: lots of record will be vacant after 1988 and capable of development. Yet, without any basis arising in the text of the Zoning Ordinance, staff and the Village Manager still refuse to apply the Zoning Ordinance as written. The refusal is highly problematic inasmuch as the Village Manager not only ignores the vested property rights and financial losses of Mr. Bousquette in pursuing the Parkers' preservation interests, but the determination also encourages the phasing out of a historic home in Hinsdale's Robbins Park Historic District and diminishes the benefits to the various taxing bodies from development of a reasonable nature. The interpretation at hand in this appeal leaves the Zoning Board of Appeals at risk of being inconsistent and possibly viewed by laypersons as a body that determines cases on grounds lying outside the 1989 Zoning Ordinance.

The Village Manager adopted a position concerning the North Lot and the South Lot that is irreconcilable with the decisions concerning 735/739 Phillippa Street and 26 East Sixth Street. The Village Manager's refusal to recognize the South Lot as capable of hosting a single family residence while the North Lot may host a new residence places the owner in a position from which he must decide whether to demolish the Zook House and proceed with the construction of two new residences or continue to suffer losses as he attempts a cooperative effort to relocate and preserve the Zook House. This is so even though no one at the Village has given the slightest indication that the Zook House should be demolished. Indeed, the Village's only stance is that it would like the Zook House preserved.

In violation of Section 12-206 of the Zoning Ordinance, the Village Manager failed to apply the meanings ascribed to the terms "zoning lot," "lot of record," "legal nonconforming lot of record" and "vacant." The Zoning Board of Appeals should reverse the interpretation of the Village Manager. To do anything otherwise leaves its prior determinations wholly inconsistent and there is no available codified means through which the decisions in AP-01-13, and V-01-17 could be viewed as lawful. AP-01-13 involved a direct appeal concerning a property that was not vacant at the time but which became vacant after the hearing by reason of removal of a fence and other improvements. V-01-17 involved staff interpretations to the effect that a legal nonconforming lot of record existed despite a patio and other structures that existed on a lot that was to become vacant later and the Zoning Board of Appeals granted a variation from the minimum lot area for a historic lot of record as a result. This case is no different than others where a structure is removed from a lot of record that then qualifies as vacant.

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The North Lot and the South Lot are protected as independent lots under the 1989 Zoning Ordinance. At a minimum, the North Lot will remain as a historic lot of record and a legal nonconforming lot of record, but Applicants plan for a lot area of 30,000 square feet. The lot was lawfully subdivided in 1894 (Attachment C, Exhibit A) and its full extent as an interior lot was defined in 1975 at which time the Village vacated Oakwood Place (Attachment C, Exhibit B) by crediting portions of the right of way to the North Lot and to the South Lot, among others. The Zook House was constructed on the North Lot in 1929. At the time, the Zoning Ordinance allowed structures on a lot with no rear yard. Thereafter, and for many decades, only a few families have been fortunate to live in this treasure of a home, and few changes were necessary due to the fact that it is larger than the average Hinsdale home. The Zook House is not presently compliant with Section 3-110 and Section 10-105 because, among other things, the Zoning Ordinance no longer allows homes without rear yards. Thus, Section 10-104(C) does not allow for reconstruction. The North Lot will become vacant on a date subsequent to 1988 and therefore qualifies as a legal nonconforming lot of record.

The South Lot will remain as a historic lot of record and a legal nonconforming lot of record. Applicants plan for a lot area of 20,353 square feet (14,000 square feet required). The South Lot was lawfully subdivided in 1894 (Attachment C, Exhibit A) and its full extent as an interior lot was defined in 1975 at which time the Village vacated Oakwood Place (Attachment C, Exhibit B), thereby increasing the size of the South Lot. The Zook House was constructed on the North Lot in 1929, but recent surveying standards and methodologies indicate that a small part of the Zook House may cross onto the South Lot (roughly twelve (12) square feet. Attachment B-1 is a survey that arose more than a century after the Resubdivision of Block 8. Attachment B-2 is an earlier survey reflecting a different line drawn for the north lot line of the South Lot—drawn forty years ago and more than seventy years after the Resubdivision of Block 8.

At the time of construction in 1929, the portion of the Zook House on the South Lot was not considered a principal building (the steps and shed isolated from the residence were accessory). The 1929 Zoning Ordinance allowed structures on a lot without a rear yard, so the South Lot was not required open space supporting construction of the Zook House. Section 10-104(C) does not allow for reconstruction because one cannot construct the existing improvements at their current location following voluntary demolition. In any event, the Zook House is being removed and the South Lot will become vacant on a date subsequent to 1988 and therefore qualifies as a legal nonconforming lot of record.

¹ The Village Manager's decision makes it unlikely that the Village will currently enter into a development agreement that includes preservation of the Zook House along Woodside Avenue (on the South Lot). With strong legal, factual and other support, one goal of the development agreement would be to insure 30,000 square feet of lot area on the North Lot and +/- 20,353 square feet on the South Lot. The area of a lot of record may be increased as long as the lot of record remains in compliance with Sections 3-110 and 10-105. Attachment G reflects the Zook House on the South Lot.

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CURRENT ZONING AND TREND OF DEVELOPMENT

The North Lot and the South Lot are situated in the Village's R-1 Single Family Residential District that covers an area primarily east of Garfield Avenue, along and south of First Street, west of Princeton Road (extended) and Harding Road, and north of 55th Street. The R-1 classification has existed in various forms: Class A in 1923-1929 and Class AA in 1929-1989. The amendment of the minimum lot area and various other requirements in the 1989 Zoning Ordinance rendered well in excess of ninety percent (90%) of the zoning lots and lots of record in the R-1 district non-conforming. Staff has previously provided sworn testimony that this resulted from copying Northbrook's ordinance.

Rather than recreate yet another survey of the failure of the Zoning Ordinance to reflect conditions in the R-1 district *unless* legal nonconforming lots of record and rights under Section 10-105 are sincerely respected, Applicants reviewed a list of individuals who recently signed a petition to oppose their variation request. They found that 90.5% of the 21 R-1 families represented on the petition do not have 30,000 square foot lots. The one R-4 family represented in the petition lives on a lot that falls short of the 10,000 square feet required for R-4 parcels. 54.5% of families named in the petition live on lots that are as small or smaller than the area proposed for the South Lot (20,353 square feet). (These figures increase if each signatory is counted.)

As a result of the near certainty that the Village will deal frequently with historic lots of record that do not meet the requirements in Section 3-110 of the Zoning Ordinance, historic lots of record, legal nonconforming lots of record and lots of record have always had substantial protection under the Village's zoning ordinances. Without this protection the Village would have utterly failed in its zoning and planning, and it is plainly up to the Zoning Board of Appeals to insure fair enforcement in light of the protections for historic lots of record or legal nonconforming lots of record benefit under Section 10-105. Whatever the cause of the hesitation of staff and the Village Manager to find historic lots of record in nearly every case, there is now a clear trend of causing financial loss to those who have vested rights protected by Section 10-105—except with respect to 26 East First Street which was viewed as a historic lot of record even though the Zoning Board of Appeals had to grant a variation to allow it to qualify.

Section 12-206 defines "lot of record" as follows:

Lot Of Record: A lot that is part of a subdivision, the plat of which has been recorded in the office of the DuPage County recorder of deeds or, if appropriate, the Cook County recorder of deeds, or a parcel of land separately described in a recorded deed.

At issue in this case is whether the South Lot is a "legal nonconforming lot of record" which is defined in the Zoning Ordinance as:

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Nonconforming Lot Of Record, Legal: A nonconforming lot of record that:

- A.1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation; and
- 2. Is located in a residential district and meets the minimum lot area and lot dimension standards of subsection 10-105A of this code, or is located in a district other than a residential district; and
- 3. Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code. . . .

Part B of the definition has no role in this case. The Village provides a definition for "Zoning Lot" that is distinct and materially different from the definition of both "Lot of Record" and "Legal Nonconforming Lot of Record":

Lot, Zoning: A tract of land consisting of one or more lots of record, or parts thereof, under single ownership or control, located entirely within a block and occupied by, or designated by its owner or developer at the time of filing for any zoning approval or building permit as a tract to be developed for, a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designed and arranged, or required under this code, to be used with such building or use. . . .

The definition of "Lot" recognizes that there are two types of "Lots" in Hinsdale because Lot is defined as follows: "See definitions of Lot Of Record and Lot, Zoning. Unless the context indicates otherwise, all references in this code to a 'lot'shall be deemed to mean a 'zoning lot'."

There is no disagreement concerning parts (A)(1) and (A)(2) but this appeal relates to the last component (part (A)(3)) of the definition of legal nonconforming lot of record in this case. The issue is whether the South Lot and the North Lot were "vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code." As a result, the following definitions of "vacant" and "precode structure" are relevant:

Vacant: Not developed with any building, structure, or paving or surfacing of the ground.

Precode Structure: Any building or structure, other than a sign, lawfully existing as of June 18, 1988, or the date of any subsequent amendment to the village's zoning regulations that renders such building or structure nonconforming, that:

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- A. Does not comply with all of the regulations of this code, or any such amendment to it, governing parking, loading, or bulk and space requirements for the zoning district in which such building or structure is located; or
- B. Is located on a lot that does not, or is so located on a lot as not to, comply with the area, dimension, yard, or setback requirements for the zoning district in which such building or structure is located; or
- C. Both subsections A and B of this definition. . . .

Part D is not relevant here.

The Zoning Board of Appeals is required to apply terms defined in Section 12-206 according to the meanings ascribed to them. The Village Manager, Village Attorney and staff all agree that the Zook House is a precode structure (Attachment D at 3), but they believe that something in Section 10-104(C) authorizes reconstruction of the Zook House at its current location. The flaws deriving from their use of a "zoning lot" analysis are addressed below.

Furthermore, Section 10-105 governs "legal nonconforming lots of record" in the R-1 classification by offering reduced requirements to these lots. In Section 10-105(A)(1), the Village adjusts the maximum elevations for principal structures set forth in Section 3-110. In Section 10-105(A)(2), the Village reduces the minimum lot area for the North Lot and the South Lot from 30,000 square feet to 14,000 square feet and the required lot width from 125 feet to 70 feet. In Section 10-105(A)(3), the Village reduces the required side yards.

Adherence to the definitions in the 1989 Zoning Ordinance is a mandate not only to the Village Manager and staff, but also to the Zoning Board of Appeals. Disregard of these definitions violates Section 12-206 and, in this case, causes a complete failure of the Section 10-105 safeguards that avoid a collapse of the R-1 district regulations in Section 3-110. Properly interpreted, the 1989 Zoning Ordinance plainly allows the North Lot and the South Lot to each independently host a single family residence. The Zoning Board of Appeals must correct the Village Manager and determine that, upon removal of the Zook House, the South Lot remains a legal nonconforming lot of record and the North Lot may independently host a second home.

SECTION 10-104(C) PROHIBITS REBUILDING OF THE PRECODE STRUCTURES

This is a case involving what is a purely voluntary effort to remove the Zook House from its present location. The voluntariness of the decision controls and Section 10-104(C)(1) states that there can be no reconstruction upon removal. As in the case of 739 Phillippa (precode home demolished in roughly 2006), the voluntary demolition prevented the house from being reconstructed (and a new home was built on 739 Phillippa). This is precisely why a structure

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protected as a precode structure has independent standing under Section 10-104 until the lots of record hosting the home gain protection from Section 10-105 during a demolition or relocation effort. Protection under 10-104 does not operate to the exclusion of benefits under Section 10-105 later because one may determine that it is time to demolish a home on a voluntary basis and, in that instance, reconstruction is not allowed.

The Village Manager correctly notes that Applicants' May 31, 2017 communication does not completely address the ability to rebuild all or part of the Zook House on the lot of record. At the time, there was no indication that staff relied so heavily on an incorrect definition of "zoning lot" and the misapprehension that the improvements could be reconstructed. Prior communication referred to a "lot" or a "zoning lot" or the "property," and but very rarely truly focused on the lots of record at issue or Section 12-206's definition of "legal nonconforming lot of record." The Village Manager generalizes the applicability of Section 10-104 and incorrectly claims that the operation of Section 10-104 bars application of Section 10-105. There is no such provision in the Zoning Ordinance and the contrary is true because when the lot becomes vacant, there is no precode structure regulated by Section 10-104. At 735/739 Phillippa the position of the house on the 735 portion of staff's claimed "zoning lot" violated the bulk regulations in Section 3-110 but the property received protection under Section 10-104 until such time as the fence, sprinklers and play set were removed and the Zoning Board of Appeals found that Section 10-105 applied.

At the May 31, 2017 meeting, it became very clear that staff and the Village Attorney were hinging their bets on the last thirteen words in part (A)(3) of the definition of legal nonconforming lot of record: "that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C." The authorization to rebuild must be under Section 10-104(C). The Village Manager's points in this regard are in conflict. She adopts the reasoning of Mr. Marrs, who finds that the Zook House is a precode structure (Attachment A at 2; Attachment E), but she also notes that Section 10-104 may not offer protection to the Zook House if her massive "zoning lot" theory is correct because she feels that the 1929 construction and the pre-1988 improvements may simply be compliant and on a very large zoning lot. (Attachment A, at 3) Compliance of these structures on a 50,000 square foot lot is a misguided assumption by the Village Manager. The entire 50,000 square foot zoning lot contains parking area deficiencies and it is not compliant as a large as-of-right tract. Three parking spaces are required. Two exist indoors and others exist in the parking area situated in the former Oakwood Place right of way. The code permits outdoor parking spaces on residential lots. While driveways older than 25 years are protected and may otherwise be located within one foot of the lot line, there is no provision in the Zoning Ordinance that allows for a parking area outside of the Zook House's two-car garage and in an area that violates the interior side yard requirement. Section 9-104(F)(2) states: "Off street parking spaces may be provided on surface lots, underground, under a building, or in parking structures. Parking lots, areas, and garages shall comply with the yard requirements made applicable to them by the regulations of the district in which they are located." Outdoor

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parking spaces must be located in compliance with the applicable yard regulations of Section 3-110. Section 9-104(F)(2)(a) requires a parking area to be located outside of a side yard and Section 12-206 defining parking area as "[a]ny land area, not located in a garage, designed and used for the parking of not more than four (4) vehicles." Without these noncompliant spaces, the Zook House has only two of three parking spaces. In total, the property requires 71-73 feet of total interior yard space. The minimum individual interior side yard required is 24 feet and the apparent side yard caused by the jog in the west lot line creates a west side yard not greater than 41 feet, so the east side yard needs to be 30 feet wide. At least two parking spaces (with curbs) that have existed since 1987 occupy space within 30 feet of the east lot line and there is no provision that protects them as allowable parking spaces under Section 3-110(I).

Under the facts of this case, Section 10-104(C)(1) prohibits the reconstruction of a home that the Village Attorney and Village Manager admit is a precode structure: "Voluntary Damage: In no event shall any demolition, damage, or destruction to such a structure caused by any means within the control of the owner be rebuilt, restored, or repaired except in conformity with all of the applicable district regulations other than minimum lot area and lot dimension regulations." Removal of a house is akin to demolition, and it is no less voluntary. Removal just happens to occur in fewer pieces. If an owner voluntarily causes damage to the house, or demolition, the Zook House cannot be rebuilt at its location on Lots 1-4 as a "zoning lot" or as a "legal nonconforming lot of record." There is no rear yard. Even if the "zoning lot" analysis applies (it does not) and one properly applies the meaning assigned in Section 12-106 (a tract of lots of record or parts thereof), Lots 1-4 and the part of Lot 19 on which a small portion may exist may cause a gain in lot area, but it still leaves the North Lot with an insufficient rear yard. Under the provisions relating to involuntary damage in Section 10-104(C)(2), rear yard horizontal extensions are not permitted, so there is no provision that permits the rotation of the house to bring the southwest corner closer to the lot line, to rotate the southeast corner north so the eastern portion of the rear yard has building mass in that part of the rear yard that presently has open space or to rebuild the lost floor space South of the line of Lot 19 at a location south of the east extension of the garage. These activities would be horizontal extensions in rear yard open spaces that are not presently occupied.

There is some calculation behind the Village Manager's efforts to engage in the giant leap from a small encroachment, if any, to the forfeiture of 17,000 additional square feet and the existence of a through lot. Even under these false assumptions, the structures on the North Lot cannot be replaced because the long driveway would be altered substantially and Section 10-104(F) protects only driveways that are 25 years or older if they remain in the same location. A variation from the requirement of a one-foot setback and an allowance for the existing off-site access route to Fourth Street would be required.

The definition of "zoning lot," even under circumstances most favorable to the Village Manager's position that the Zook House crosses the line of the Lot 19 portion of the South Lot,

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only permits the Village Manager to claim the partial lot of record and not the entirety of Lot 19. It is curious that the analysis of precode structure reconstruction is even necessary in this case inasmuch as there is already precedent to the effect that the Village analyzes authorization to rebuild according to Section 10-104(C)(1) when an owner wishes to demolish or relocate a home or a structure. The home at 739 Phillippa hosted a precode structure that that could not have been replaced under Section 10-104(C)(1) due its voluntary demolition after December 2005. The fact that the home could have been rebuilt under Section 10-104(C)(2) was not even addressed at hearing on the appeal. When voluntary demolition is an issue, Section 10-104(C)(1) applies, not Section 10-104(C)(2).

PLANNING FOR THE NORTH LOT AND THE SOUTH LOT

The Parkers wish to preserve the Zook House and Mr. Bousquette wants to allow this as long as there remains a division between Lots 1, 2, 3, and 4 (the North Lot), on one hand, and Lots 18 and 19 (the South Lot), on the other hand. Mr. Bousquette testified under oath that he intends to demolish the Zook House if the efforts with the Parkers to not come to fruition. He has already obtained review of the Historical Preservation Committee (during a meeting where one member of the committee was particularly harsh, was obviously misinformed on the status of the historic lots of record at issue and inclined to insert his own preferences). Mr. Bousquette will demolish the Zook House if the Village chooses not to allow its relocation to the South Lot while the North Lot remains available for a new residence.

Nevertheless, the Zoning Board of Appeals is requested to find that the South Lot comprises two lots of record that may be utilized under Section 10-105 for the construction of a new foundation for the Zook House and for the continuation of the Zook House on the South Lot while the North Lot becomes the subject of future single family development. The Table of Zoning Compliance provided in Attachment C, Exhibit D and Attachment G reflect that two individual homes (either two new homes or one new home and the Zook House) may exist with the North Lot comprised of 30,000 square feet and the South Lot comprised of +/-20,353 square feet.

The Zook House and all of the other structures and installations on the North Lot would be removed. With the North Lot becoming vacant (after 1988), the Zook House would be placed on the new foundation on the South Lot and at a location that meets the applicable requirements of Section 3-110 and Section 10-105(A). The South Lot meets the lot area and dimension requirements of Section 10-105(A). The South Lot and the Zook House and other improvements to the South Lot, such as a new driveway from its retained frontage on Woodside Avenue, will meet all of the requirements of Section 10-105(A) and the requirements of Section 3-110 that are not adjusted by Section 10-105(A). This work was intended to conclude in 2017.

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The North Lot will be vacant. The North Lot would retain its frontage along Fourth Street. The North Lot will be independently capable of single family residential development. The development of the North Lot would likely occur in 2018 because the Village's hesitation to recognize the terms of its Zoning Ordinance, allow a new home on the North Lot and treat the South Lot as capable of hosting the Zook House have significantly delayed efforts to conclude the relocation in 2017.

The Village Manager's decision is wholly inconsistent with this plan. It also violates the Zoning Ordinance and serves to deter the Parkers who are not only willing to relocate the Zook House and preserve it, but who are also capable of doing so for the long term.

SUMMARY OF THE VILLAGE MANAGER'S DECISION

Path to the June 8, 2017 Interpretation

On May 10, 2017, Mr. Bousquette asked the Village Manager to interpret the Zoning Ordinance in order to treat the North Lot as independently capable of redevelopment following removal of the Zook House to a compliant location on the South Lot which is independently capable of hosting the Zook House because the South Lot is a legal nonconforming lot of record. The Parkers joined in this request for an interpretation. Applicants provided an extensive explanation with historic exhibits on May 31, 2017.

On June 8, 2017, the Village Manager issued correspondence (Attachment A) in which she characterizes the request as an appeal from a staff decision. The claimed "staff decision" actually arose in March 2017 and April 2017. The correspondence prior to the May 10, 2017 request and the supplement thereto on May 31, 2017 will be addressed below where necessary. The Village Manager's recitation of communications omits electronic mail correspondence between Mark Daniel and Michael Marrs, copied to the Village Manager, which is provided with the application for appeal as Attachment D and dated June 2, 2017.

The Village Manager's Zoning Lot Analysis to Determine a Lot of Record Question

The Village Manager defines the "Property" as 444 East Fourth Street. She characterizes the "Property" as a through lot. (Attachment A, at 1) The Zoning Ordinance defines a through lot: "Lot, Through: A lot having frontages on two (2) nonintersecting streets." The above-quoted definition of "lot" refers to the definitions of "lot of record" and "zoning lot" and states that unless the context requires otherwise, a "lot" shall be deemed to refer to a "zoning lot." The Village Manager's very first step in addressing the circumstances heads in the wrong direction. She incorrectly considers whether in her view the North Lot and the South Lot comprise a single zoning lot. She then makes such a conclusion without defining the "zoning lot" according to its definition as a tract of lots of record or parts thereof. The Village Manager's disregard of not

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only the definition of "legal nonconforming lot of record" but also the definition of "zoning lot" cannot be ignored when considering her conclusion that the "Property" is a through lot.

The use of "zoning lot" in the context of the defined term "through lot" is incorrect because doing so ignores the clear separation between the term "lot of record" and the term "zoning lot." There is no language anywhere in the 1989 Zoning Ordinance that disqualifies lots of record that are adjacent and have frontage on two non-intersecting streets. Moreover, any adjacent lots under single ownership or control would constitute a "zoning lot" under this interpretation. Following this rationale, the Zoning Board of Appeals would have been powerless to allow the division of 735 and 739 Phillippa and to allow the division and variation related to 26 East Sixth Street.

Additionally, the placement of the Zook House on the North Lot did not lead the "Property" (or the North Lot and the South Lot) to become "occupied by, or designated by its owner or developer at the time of filing for any zoning approval or building permit as a tract to be developed for, a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designed and arranged, or required under this code, to be used with such building or use." It is entirely incomprehensible that construction of the Zook House in 1929, under the terms of the 1929 Zoning Ordinance, constitutes a designation of the "Property" as anything under the 1989 Zoning Ordinance (which is the "this code" referred to in the definition of "zoning lot"). The required lot area in 1929 was much less than 30,000 square feet and rear yards were not required when they built the Zook House.

The Village Manager's error in considering the "zoning lot" question in relation to the definition of "legal nonconforming lot of record" which omits any reference to the term "zoning lot" and refers only to "lots of record" is fatal to her interpretation and to the consideration given this matter by staff and the Village Attorney. The "Property" does not exist as one "zoning lot" because there has been no affirmative conduct by the owner of the "Property" to newly occupy or to designate the "Property" as a single tract for any purpose since the adoption of the 1989 Zoning Ordinance. Passive continuation of occupancy is not an act that elects zoning lot treatment of the "Property" or otherwise forfeits the treatment of the North Lot and the South Lot as distinct tracts. Quite differently from the matter at hand at 735 and 739 Phillippa, where a fence was installed to encompass both parcels as one after 739 Phillippa became vacant (post-2005), there has been nothing accomplished at the North Lot or the South Lot since 1988 that would lead to their treatment as a single tract and zoning lot the Village Manager defined as the "Property."

The error led the Village Manager to adopt the flawed reasoning by the Village Attorney in his April 26, 2017 correspondence and continuation of this error in correspondence dated May 8, 2017. The April 26, 2017 opinion of the Village Attorney relies on the assumption that merely allowing the 1929 Zook House to remain constitutes designation of the "Property" as a tract.

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Specifically, he writes "where a lot includes all or a portion of a precode primary structure. . . ." when this matter does not necessitate any conclusion to this effect. Section 12-206 that requires acts subsequent to the 1989 Zoning Ordinance to newly occupy or designate a tract as a zoning lot. Mr. Marrs concludes that the South Lot contains part of a precode structure and, therefore, cannot be treated as a lot that is distinct from the North Lot—again, despite the fact that the placement of the home occurred in 1929 and did not remotely occur in 1988 or later. Mr. Marrs similarly fails to use precise terminology in his communications (conflating the definition of "lot of record" and "zoning lot" through his use of "lot").

The Village Manager Misconstrues the "Zoning Lot"

As noted above, the analysis of the existence of a "zoning lot" is not part of the determination of a "historic lot" of record or a "legal nonconforming lot of record". However, if the Zoning Board of Appeals wishes to engage in the importation of a "zoning lot" analysis into a "legal nonconforming lot of record" determination using the question of whether Section 10-104(C) authorizes reconstruction or not from part (A)(3) of the definition, then it must understand that it needs an accurate description of the "zoning lot" at issue. Even applying the 1989 definition of "zoning lot" to the 1929 construction under the 1929 Zoning Ordinance, the plain conclusion is that the lots of record under the Zook House are Lots 1-4 in Block 8. If, and only if, a portion of the Zook House rests on another lot of record, that portion of the lot of record covered by the house becomes part of the "zoning lot" that is the North Lot and the remainder of the South Lot (the remainder of Lots 18 and 19) are unaffected.

The Village Attorney ignores that a "zoning lot" could include *only a part of a lot of record* and he utterly fails to explain how the possibility of a chargeable twelve (12) square foot encroachment onto the South Lot allows him to expand his conclusion as to the identity of a zoning lot by an additional 17,000 square feet. Even if the stairs and shed were considered principal buildings, the area remains *de minimis* in size. The Village Attorney omits any particular discussion of the lot of record affected by the possible encroachment of the Zook House. Doing so allows him to conclude that the other lot of record is undevelopable and then must be part of the claimed "through lot" as well. This incomplete reasoning cannot stand if Hinsdale values the protections offered by Section 10-105 and desire to enforce its R-1 regulatory scheme.

The Focus on Principal Structures vs. Accessory Structures Has No Codified Basis

The Village Manager tries desperately to distinguish circumstances at 26 East Sixth Street in adopting the Village Attorney's position that: "While a small portion of a patio² was

² The "small portion of a patio" was several times larger than the 12-24 square feet of the Zook House that may encroach onto the South Lot. Moreover, the "small portion of the patio" was not the only

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located on the vacant lot, staff was constrained from using that incursion to prevent the zoning lot split based on a 2013 ZBA decision holding that where one lot has only minor accessory structures/improvements on it, the single zoning lot could be divided and thereafter used for two separate residences."(Attachment E at 3) Neither the definition of the term "vacant" nor any portion of the definitions of "legal nonconforming lot of record" or "lot of record" distinguishes between accessory structures and principal structures or uses. The test, properly applied, is merely whether the lot of record becomes vacant after 1988.

In no uncertain terms has the Village applied an unwritten new law in finding that the possible extension of twelve square feet of the Zook House onto part of one of the lots of record comprising the South Lot cannot be treated in the same fashion as a fence on Phillippa or a patio, porch and flagpole on Sixth Street. While no one can dispute that the small area of the Zook House, comprised primarily of the exterior storage area and minimally of a small part of a thirteen-inch thick wall, includes a part of a wall of a principal structure, the discussion of the principal or accessory nature of the structures is not relevant to whether a lot of record becomes vacant, whether a lot was lawful when subdivided, whether the lot meets the terms of Section 10-105(A), whether the lot becomes vacant after 1988 or whether Section 10-104(C) authorizes reconstruction. No single provision of the code provides for differentiation between types of structures in a legal nonconforming lot of record circumstance. Even if Applicants conceded the issue that the nature of the structure matters under the Zoning Ordinance as written (and they do not), the only result would be to cause the North Lot to include an additional two dozen square feet (all of which is considered part of the principal structure today, but only half of which was considered a principal building in 1929) and the South Lot would lose this area. Still, the South Lot is much larger today than when originally platted, so the difference is meaningless. The South Lot is and will be well over the Section 10-105(A) minimum lot area and certainly survives if it must shed a few square feet.

Section 10-104 and Section 10-105 Intended to Preserve Planning Over 120 Years

The Village Attorney is incorrect in stating that the 1989 Zoning Ordinance included Section 10-104 and Section 10-105 reflect an intention "to essentially maintain the density of the Village as it existed in 1988." (Attachment at 3) The legislation that enables Hinsdale in its zoning authority lies in 65 ILCS 5/11-13-1 which states in relevant part:

In all ordinances passed under the authority of this Division 13, due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire municipality and the uses to which the property is devoted at the time of the enactment of such an ordinance. The

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powers conferred by this Division 13 shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted, but provisions may be made for the gradual elimination of uses, buildings and structures which are incompatible with the character of the districts in which they are made or located, including, without being limited thereto, provisions (a) for the elimination of such uses of unimproved lands or lot areas when the existing rights of the persons in possession thereof are terminated or when the uses to which they are devoted are discontinued; (b) for the elimination of uses to which such buildings and structures are devoted, if they are adaptable for permitted uses; and (c) for the elimination of such buildings and structures when they are destroyed or damaged in major part, or when they have reached the age fixed by the corporate authorities of the municipality as the normal useful life of such buildings or structures.

The essence of the above-quoted language was law in Illinois in 1988 and 1989. Hinsdale made key decisions concerning lots of record in the 1989 Zoning Ordinance when regulating its R-1 properties. Because over 90% of the R-1 parcels fell short, most of them far short, Hinsdale had to protect these parcels and it chose only to eliminate uses on lots of less than 14,000 square feet, for example. The provisions in Sections 10-104 and 10-105 were not intended to preserve prevailing densities in 1989, but rather to protect densities planned at various times extending as far back in time as the formation of the Village, but which could still be deemed "fit for Hinsdale" and that fitness is defined in Section 10-105(A) as to historic lots of record.

The Zoning Board of Appeals is aware that Hinsdale also elected to eradicate uses on R-4 lots of less than 7,000 square feet as a result of its experience with 26 East Sixth Street. In that case, if there was any intent to define density according to 1988 norms through the 1989 Zoning Ordinance, the Zoning Board of Appeals and staff, along with Mr. Marrs, ultimately chose not to recognize it in the final decision. Rather than require one house on land that included a lot that was primarily undeveloped since 1954, the Zoning Board of Appeals approved a variance not only from a requirement in Section 10-105, but also from the Section 12-206 definition of "legal nonconforming" lot of record. Clearly, the Village Attorney is incorrect in his suggestion of legislative intent behind Section 10-105.

In this matter, the provisions of Section 10-105 protect lots created through an 1894 subdivision. Section 10-104 has protected a home constructed in 1929 and improvements that occurred prior to 1988, but they will be removed. The snapshot from 1988 is also irrelevant because the 1989 Zoning Ordinance does not regulate the lots created in 1894 and the home constructed in 1929 according to the location and appearance of improvements on these lots in 1988. Rather, the 1989 Zoning Ordinance provides that the Village will respect lots of record from 1894 provided that the lots and development on these lots reasonably approaches 1989 Zoning Ordinance standards.

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Additional Flaws Arise from the Communications Adopted by the Village Manager

While the greatest flaw in the April 26, 2017 memorandum from the Village Attorney lies in applying his "zoning lot" rationale to conclude that the North Lot and the South Lot have been "historically used as a single zoning lot" (Attachment E at 3) and another meaningful error arises in relation to the unauthorized differentiation between principal and accessory structures, the Village Attorney also engages in other misstatements and misapprehensions.

The Village Attorney states that land identified as Permanent Index Number '-009 is not vacant because a part of the principal residence (as defined today) crosses the line between the North Lot and the '-009 portion of the South Lot. (Attachment E at 3, Attachment F) This results from a misreading of the 1989 Zoning Ordinance. Current vacancy is not relevant. The definition of "legal nonconforming lot of record" requires that the lot of record "[w]as vacant on June 18, 1988, or became vacant thereafter." Vacancy on the date of inquiry was also irrelevant when the owner of 735 and 739 Phillippa removed the fence following the Zoning Board of Appeals' concurrence in the appeal in that case. Vacancy this past March when the owner committed to removal of a patio and other installations that existed since at least 1954 at 26 East Sixth Street was not an issue at the time of the hearing, but one to be determined at any time following 1988. The Village Attorney's opinion, if continued beyond the Village Manager, leaves the Zoning Board of Appeals in the regrettable position of being plainly inconsistent with its approach to 735/739 Phillippa and not only inconsistent but also the apparent source of a special favor to the beneficiary of its decision on 26 East Sixth. Clearly, convenience in shifting gears in this case should not place the respected members of the Zoning Board of Appeals in such a light. The consistent tie in all three cases is that the lot of record became vacant. In this light, there is no inconsistency.

THE VILLAGE MANAGER'S ZONING LOT ANALYSIS BEGS FOR HISTORICAL ANALYSIS BUT SIMULTANEOUSLY IGNORES HISTORICAL FACT

In 2017, eighty-eight years following construction of the Zook House on the North Lot under entirely different regulatory conditions with different platting, surveying and permitting rules, the Village Manager, staff and the Village Attorney somehow conclude that there was an intent or to dedicate so much land to a single zoning lot. (Attachment E at 3) The statement is irrelevant because the owners of 26 East First Street and 735 Phillippa Street also used the "vacant" lot in each of those cases for the benefit of the homes at these addresses. The mere fact that the owners on Phillippa extended an irrigation system and play area as well as a fence around the two lots at issue did not abandon lots of record and replace them with a single zoning lot. There was no abandonment by the owners of 26 East Sixth despite their treatment of the two lots of record as a zoning lot for at least 63 years. Nothing at all provides that the treatment of land as a zoning lot abandons property rights in historic lots of record.

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The Village's ascertainment of intent is simply not credible. Suspicion that the Village's staff relied on this very assumption led Applicants' to review the last 123 years of available history involving the North Lot and the South Lot. This did not occur on the staff side and there is so little discussion of this factor in the Village Manager's decision that one would wonder whether she contests any of the history, or has the ability to do so. Despite a mandate that the building commissioner and his or her successors preserve these records, the Village does not have the building records for the construction of the Zook House in 1929. The Village reportedly does not have the 1923, 1929 or the 1935 Zoning Ordinances. Even though the 1935 Zoning Ordinance is substantially similar to the 1929 Zoning Ordinance, no prior version is available at Village Hall or at the Hinsdale Historical Society where a copy of the 1935 Zoning Ordinance was reviewed and excerpted in order to reflect the recently-enacted Class AA district regulations that applied to the North Lot and the Zook House. (See Attachment C, Exhibit F)

Staff and the Village Attorney completely ignore the effect of a compliant subdivision in 1894 when there were no zoning regulations. They know that issuance of a permit and allowance of occupancy are indicative of code compliance, but they ignore the ramifications of the construction and occupancy of the Zook House on the North Lot since 1929. They also turn a blind eye to the meaningful circumstance that the 1935 Zoning Ordinance did not require a rear yard and also allowed rear yard open space to be situated on other lots in the instance of the North Lot which then extended from street to street (from Fourth on one point, over a distance of 204 feet, to a right angle on Oakwood Place). (Attachment C, Exhbit A)

No speculation on intent is faithful without a serious consideration of past history. The Village Manager admits that acceptance of the explanations based on history could change her decision if it were not for the unwarranted distinction between principal and accessory structures (of course, she does not touch on her failure to properly determine the scope of the zoning lots she alleges are in play by including the "or part of thereof" component of the definition of "zoning lot"). It is possible that the Village Manger only admitted that history was relevant for the sake of advancing other flawed grounds for her determination.

With this in mind, the Zoning Board of Appeals is requested to review the detailed explanation of the history of Block 8, its 1894 resubdivision, and the 1929 zoning regulations as they became applicable to Class AA lots on January 8, 1929 according to the 1935 Zoning Ordinance. It must consider the particular lot dimensions set forth in the plat in existence at the time of construction of the Zook House, the limited permit submittal requirements, the occupancy of the Zook House thereafter, the 1969 Sailor Subdivision (by others of Lots 5-17) which occurred at a time when the North Lot lost lot depth to the South Lot (apparently due to modern surveying regulations and technology that was not available in 1894 or 1929).

The Zoning Board of Appeals is called upon not only to assess matters delegated to it according to the express terms of the Zoning Ordinance and without applying unwritten new

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laws and regulations, but also to apply its institutional knowledge. Hinsdale's most significant zoning district is the R-1 district that includes the Robbins Park Historic District. This territory has roots that date back to the 1870's. It has seen flawed assumptions about legislature intent, the locations of streets and sidewalks, and the identification of which streets actually intersect. The 1894 resubdivision of Block 8 in Robbins Park is significant because the plat led to a single identifiable area in Hinsdale's R-1 territory where lots of record are as small as many R-4 parcels. Over time, these individual lots were phased out according to terms set forth in the applicable zoning ordinance. The 1989 Zoning Ordinance does not phase out any R-1 lots under 14,000 square feet. The North Lot and the South Lot far exceed this minimum lot area. They are clearly intended to be protected under Section 10-105.

Curiously, the Village Attorney writes: "Together, the Property and Existing Residence are subject to the Precode Structure provisions of Section 10-104. Without further zoning relief, only a single residence is allowed by right on the Property." (Attachment E at 3) It Is not "a single residence" that matters under Section 1-104; rather, the residence that matters is "this very residence." "A single residence" is a use, but "this very residence" is the Zook House. Section 10-104(A) provides: "Any precode structure may be maintained, altered, enlarged, rebuilt, restored, and repaired so long as it remains otherwise lawful, subject to the restrictions in subsections B through E of this section and subsection 10-101D of this article." Section 10-104(C)(1) prohibits reconstruction of this residence following voluntary removal of the structure. Section 12-206 defines "precode structure" as follows:

Precode Structure: Any building or structure, other than a sign, lawfully existing as of June 18, 1988, or the date of any subsequent amendment to the village's zoning regulations that renders such building or structure nonconforming, that:

- A. Does not comply with all of the regulations of this code, or any such amendment to it, governing parking, loading, or bulk and space requirements for the zoning district in which such building or structure is located; or
- B. Is located on a lot that does not, or is so located on a lot as not to, comply with the area, dimension, yard, or setback requirements for the zoning district in which such building or structure is located; or
- C. Both subsections A and B of this definition. . . .

The patio on Sixth Street was in existence prior to 1988 and the 1989 Zoning Ordinance rendered the patio a precode structure because it violated setback regulations and existed on a lot of record in the absence of a principal use. The latter is true of the fence on Phillippa Street. In both cases, the structures were situated on lots that did not meet the requirements of the 1989 Zoning Ordinance. The lot hosting the patio was too small to constitute a lot of record that could be

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developed without the variation granted by the Zoning Board of Appeals earlier this year. Additionally, the Phillippa Street situation, like this one, involved two resulting lots that did not meet the lot area requirement under Section 3-110 (10,000 square feet) but which met the requirement under 10-105(A) (7,000 square feet).

In this case, the Zook House is a precode structure just as much as were the precode structures on Phillippa Street (a patio) and on Sixth Street (a home). The statement that the precode structure in this case is subject to Section 10-104 does not differentiate this case from Phillippa Street or from Sixth Street. Section 10-104 preserves existing structures in subsection (B) and addresses damage or destruction of a precode structure in a similar fashion (subsection (C)) as it applied to the fence on Phillippa and the patio on Sixth Street: in the event of voluntary removal, the structures cannot be rebuilt except in compliance with the 1989 Zoning Ordinance. Section 10-104 has no relevance to the determinations in the prior cases and no relevance to this case other than to allow the relocation of the Zook House to the South Lot in Section 10-104(E)("Moving: No precode structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved").

In the absence of any material action since 1988 to occupy or designate the North Lot and the South Lot as a single tract, the Zoning Board of Appeals must respect Applicants' rights and intentions to rely on the North Lot and the South Lot as distinct lots of record.

The Zoning Board of Appeals understood the definition of "vacant" and the attendant regulations for historical lots of record when it ruled on Phillippa Street and when it granted the Sixth Street variation.

On Phillippa Street, the Zoning Board of Appeals determined that a fence surrounding two legal nonconforming lots of record was insubstantial and did not serve to establish intent to abandon the less-improved of the two lots of record. The Phillippa Street decision arose in reliance on a commitment to remove the fence. (Attachment C, Exhibit K) On Sixth Street, the Zoning Board of Appeals approved a variation from the minimum area required for two historic lots of record in the R-4 district, the vacant lot of which contained a two patio areas, a flagpole area and landscape improvements that were accessory to the lot that was not vacant (Attachment C, Exhibit L).

Each decision supports the position that the substantiality of an improvement on the South Lot and the intentions of the owners of the South Lot are important components of the determination of whether a lot of record is "vacant." However, substantiality is a sliding scale test and entirely subjective. The "lot of record" test is <u>not at all</u> subjective. Importantly, the Zoning Board of Appeals engaged in interpretations of "vacant" that did not render the definition

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of "legal nonconforming lot of record" confiscatory or otherwise unconstitutional. It is possible that a zoning regulation might be written to allow the Zoning Board of Appeals to find that the use of the vacant lot is *de minimis* and that the owner to forfeit its status as a legal nonconforming lot of record. However, this is not the path required. The 1989 Zoning Ordinance clearly requires an answer to the question of vacancy after removal of the Zook House.

The blindness of the Village Manager, the Village Attorney and staff to the history in this case is more than a bit telling and portends continuing use of the protections offered to historic lots of record as a sword against landowners rather than as the intended shield. The recitation of activity on and regulation of the North Lot and the South Lot is critical. The claim that any of the South Lot is part of the North Lot in a situation where the structure is being removed requires historical research. It is irresponsible to reach a conclusion based only on the 1989 Zoning Ordinance when the Village Manager's misguided reliance on a "zoning lot" determination requires an assessment of how much land is part of the tract of lots of record or partial lots of record. Yet, even after being informed of the history since 1894 and 1929, the Village Manager ignores it. In a Village of 120 years old with multiple iterations of zoning regulation, the history of the Zook House and its regulation should have been taken into account – even if the Village Manager continues to insist on injecting "zoning lot" theory into the definition of a legal nonconforming lot of record.

THE 1894 RESUBDIVISION OF BLOCK 8

There can be no dispute that Lots 18-19 can be designated as a "lot of record" based on lots that are "part of a subdivision, the plat of which has been recorded in the office of the DuPage County recorder of deeds . . . or a parcel of land separately described in a recorded deed." The Resubdivision of Block 8 in William Robbins' Park Addition to Hinsdale, is a subdivision that was recorded in DuPage County as Document No. R1894-056775 on August 11, 1894. (See Attachment C, Exhibit A) The Resubdivision of Block 8 created Lots 1, 2, 3, and 4 which comprise the majority of the North Lot. It also created Lots 18 and 19 which comprise most of the South Lot.

Under the 1894 Resubdivision of Block 8, Lot 1 (the east side of the North Lot) and Lot 19 (the east side of the South Lot) were corner lots with frontage on a right of way that the Village vacated in 1975. Neither the North Lot nor the South Lot was the subject of any subdivision or independent transfer of land by deed after 1894. On March 18, 1975, the Village vacated the Oakwood Place right of way on the east side of the North Lot and the South Lot (R1975-024211). The North Lot and the South Lot, upon the vacation of the right of way, became interior lots. This occurred by operation of law and not through subdivision or deed. The Village and owners of Lot 1 and Lot 19 vacated the street and carefully assigned its territory to each lot that formerly abutted the street (Attachment C, Exhibit B, Pages 5-6).

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The Downers Grove Township Assessor treats PIN '008 (the North Lot) as well as PINs '006 and '009 (which will comprise the South Lot) as three distinct taxable parcels. The North Lot is assessed based on its value for land and its value for improvements to the land (the Zook House). The land within the South Lot is assessed based solely on land value and there is no value added to either '006 or '009 for improvements. The assessor's Property Report Cards are Group Exhibit C in Attachment C.

PRE-1929 VILLAGE CODE AND THE 1935 HINSDALE ZONING ORDINANCE

The following recitation serves as a reconstruction of the history of the North Lot and South Lot since 1894. Over a century ago, Chapter XXX of the Revised General Ordinances of the Village of Hinsdale did not change much during the decades it was in force. The 1895 Revised General Ordinances called for Village Board review and certification of a subdivision. (Attachment C, Exhibit E) The Resubdivision of Block 8 contains a certificate stating that the Village Board approved the plat on August 6, 1894. On August 7, 1894, the Village Clerk certified that "the owners of said Block 8 have duly complied with the Ordi[n]ances of said Village concerning the platting of lands." (Attachment C, Exhibit A)

There was no ordinance concerning zoning in Hinsdale until 1923. Under the 1923 Zoning Map, the North Lot and the South Lot initially carried the Class A residential classification. As noted above, it is believed that the Village no longer possess copies of the 1923, 1925 and 1929 zoning ordinances and they were not available prior to submittal of this correspondence. However, the April 16, 1935 zoning ordinance was titled the "Revised Zoning Ordinance of 1935" (Attachment C, Exhibit F, Sec. 1) and the last-adopted revision to the zoning ordinance was adopted prior to the construction of the Zook House and on February 26, 1929 (Attachment C, Exhibit F, Article II, Para. 3).

The Zoning Map adopted with the 1935 Zoning Ordinance classifies the North Lot and the South Lot within the Class AA residential zoning district. (Attachment C, Exhibit F, Page 1) The original passage of the regulations concerning Class AA lots occurred on January 8, 1929 (Attachment C, Exhibit F, Sec. 4) and it is believed that these regulations did not change because of Section 4's closing reference to Section 3-a of the 1929 Zoning Ordinance.

The 1935 Zoning Ordinance defined "lot" as "[l]and occupied or to be occupied by a building and accessory buildings and including the open spaces required under these regulations. A lot may be land so recorded on the Records of the Recorder of Deeds of DuPage County." (Attachment C, Exhibit F, Sec. 1) In 1929 and 1935, the North Lot was comprised of Lot 1-4 as recorded. Under this definition, the reference to open spaces ties to yards and required yards then included the front and side yards.

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The 1935 Zoning Ordinance defines a "rear yard" as "[a]n open unoccupied space (except for accessory buildings on the same lot with a building between the rear line of the building and the rear line of the lot, for the full width of the lot, except as modified by side yard restrictions." (Attachment C, Exhibit F, Sec. 1) In the AA Residence District, a rear yard created under the 1929 and 1935 regulations could be not less than 15% of the lot depth or ten (10) feet (but not more than 25 feet). (Attachment C, Exhibit F, Sec. 4) Not all zoning lots contained a rear yard because "[i]n the case of buildings and lots running from street to street, the requirements for a rear yard may be waived when such buildings comply with the percentage of lot occupancy by furnishing other open space in lieu of such required rear yard." (Attachment C, Exhibit F, Sec. 10) The building commissioner engaged in permit review based upon the submittal of a plat and a description of the construction (and additional requested information), and issued permits upon careful inspection and maintained these records (Attachment C, Exhibit F, Sec. 13). The building commissioner also issued certificates of occupancy (Attachment C, Exhibit F, Sec. 12). There was no process for variations, and the Zoning Board of Appeals had only those powers designated to it in Section 11. (Attachment C, Exhibit F) The ordained deference to the building commissioner left the rear yard as one that was not required by code.

HISTORY OF AND PLANS FOR THE NORTH LOT

In 1922, Ellen M. Crocker sold the North Lot to Marshall and Gertrude Keig. Records maintained by the Keigs reflect that they paid the purchase price by November 22, 1928. Architectural plans reflect that the Zook House was to be constructed on "Fourth Street between Oak & County Line Road, Hinsdale." (Attachment C, Exhibit I) There is no mention of construction planned for Woodside Avenue. Architectural plans bear revision dates of November 23, 1928, December 4, 1928, December 11, 1928, January 11, 1929 and February 15, 1929. (Attachment C, Exhibit I) Review of these plans and of information available at the Hinsdale Historical Society supports the conclusion that the last revision date was February 15, 1929 and construction proceeded in 1929.

The 1929 construction and later occupancy of the Zook House on the North Lot indicates that no zoning provision prohibited the creation of the North Lot on Lots 1, 2, 3 and 4 or prohibited the Zook House itself. (Section 12-206(A)(1) and 1935 Zoning Ordinance, Sections 12-13). At the time of construction, survey standards, preconstruction survey requirements and mid-construction review were nowhere near as detailed as they are today. The depth of the North Lot was 192.4 feet (taken from the west line of Lot 4) and each of the other subdivided lots had a lot depth of 185 feet (Lot 3), 169.5 feet (Lot 2) and 145.5 feet (Lot 1). (Attachment C, Exhibit I) (The mean distance between the front and rear lot lines (the definition of lot depth) is not relevant to this discussion because this correspondence addresses the placement of the home on the North Lot in reliance on the subdivided lot line distances that were platted at a greater length than reflected today (Compare Attachment C, Exhibit A to Attachments B-1 and B-2)). The area

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of the North Lot at the time of construction was nearly 30,000 square feet and the lot are covered by the Zook House was less than 3,000 square feet.

The Zook House readily satisfied the 35% lot coverage limit in Section 4 of the 1935 Zoning Ordinance (Attachment C, Exhibit F). The yards surrounding the house had an aggregate area of at least 26,000 square feet. The plans for the Zook House more than adequately provided other open space that would have allowed the building commissioner to waive the requirement of a rear yard. The North Lot did not qualify as a through lot (unless the South Lot was included), but qualifying as a through lot was not required in order to obtain a waiver of the rear yard. All that was required was that the Zook House be proposed for a collection of "lots running through from street to street." The North Lot was eligible for a waiver because the northwest corner of the North Lot was situated on Fourth Street and a line could be drawn from this corner to Oakwood Place, meeting Oakwood Place at a 90-degree angle after a distance of 204 feet measured between one street and another. (See Attachment C, Exhibit A)

If the Village intended that the rear yard waiver only be available when a home was constructed on a through lot, it would have used the term through lot. The intent behind the language in Section 10 of the 1935 Zoning Ordinance was to allow rear yard waivers on through lots and irregular corner lots. Hinsdale has a long history of special yard reductions on through lots and corner lots. Further, if the Village insists that the run "from street to street" must be taken from Fourth Street to Woodside Avenue, then the Village must deal with the use of the singular term "lot" in the definition of "through lot" in Section 1 and the use of the plural term "lots" in Section 10. This usage is inconsistent with an interpretation of the 1935 Zoning Ordinance and does not support a finding that the South Lot must have been included in the lot relied upon for the Zook House.

The use of the plural term "lots" indicates that the North Lot and the South Lot could have operated to run "from street to street" because there was no construction on the South Lot. Moreover, the indication in the definition of lot as the parcel containing the buildings, accessory buildings and all *required* yards is quite telling in this instance. The rear yard could have been waived by the building commissioner. Even if there was no waiver, the ability to obtain one indicates that the rear yard is not one of the required open spaces that must be on the same zoning lot as the structure. As a result, in the absence of a waiver, a required rear yard serving the North Lot could have been placed on the South Lot in compliance with the applicable provisions of the 1929 Zoning Ordinance and the 1935 Zoning Ordinance.

Under the 1935 Zoning Ordinance believed to be in effect in 1929, there was no requirement that the builder place the home on a plan or plat. Moreover, even if the home appeared on a plan or plat, the site work required attention to detail. Between the 1894 Resubdivision of Block 8 (Attachment C, Exhibit A) and Sailor's Resubdivision of Lots 5-17 of Block 8 (Attachment C, Exhibit J, R1969-01231), it is clearly evident that the transition from

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surveying requirements in 1894 and 1929 to those in the 1960's and today led to changes in the measures of the depth of the North Lot (and of the South Lot). The dimensions of the North Lot lost over two feet in depth and the dimensions of the South Lot gained much of this depth. The table below reflects measures of the various lot lines within the North Lot and the South Lot in 1894, according to the 1969 Sailor's Subdivision and according to the measure of lot lines reflected in the DuPage County GIS service:

LOT 1894 RESB LENGTH 1969 SAILOR'S LE		1969 SAILOR'S LENGTH	NGTH GIS LENGTH (POSTED)	
1E	120	NONE	118.2 (120)	
1W/2E	1W/2E 145.5 NONE		139.8 (145.54)	
2W/3E 168.5		NONE	168.9 (168.5)	
3W/4E	185	NONE	182.6 (185)	
4W/5E	192.4	190.5	190.5	
17E	150.2	152	153.5 (152)	
18W	150.2	152	153.5 (150.2)	
18E/19W	133.9	NONE	135 (133.9)	
19E	117.3	NONE	116.2 (117.3)	

Considering the circumstances in 1929, a builder would have measured and staked the lot line according to the distances reflected in the Resubdivision of Block 8 (and certainly would not have done so in reliance upon the dimensions in a 1969 plat created with different technology and under different rules for surveyors). Notably, the 1969 plat was the work of owners of other land. At no time has the owner of the North Lot and South Lot filed a different plat in the Office of the Recorder of Deeds for DuPage County.

The Village Manager and Village Attorney focus much on the Applicant's reliance on a survey that shows the very small encroachment. (Attachment B-1) The survey relied on the 1969 Sailor's subdivision to show the entirety of lots conveyed. Somehow, the Village approved a subdivision that had the effect of shortening the east side of Lot 5 in the 1894 plat.

Today, the North Lot is situated in the R-1 Single-Family Residential zoning district. With the addition of a portion of the former Oakwood Place right of way, the North Lot will easily meet the minimum lot area and other lot standards of Section 10-105(A) and Section 3-110. The North Lot continues to host a home with a footprint smaller than 3,000 square feet. According to the Downers Grove Township Assessor, the North Lot offers 3,954 square feet of living space. There is a 1,856 square foot basement and a 483 square foot garage. The North Lot should be vacant in a few months.

It is possible that, using surveys conducted by others that reflect the shorter lot depths for the North Lot and after an apparent change in Fourth Street since 1894 (affecting the east half of the North Lot), a small portion of the structure encroaches from the North Lot onto the South Lot. If there is an encroachment, the sliver of the Zook House that encroaches is such a small portion as to be considered *de minimis*. The encroachment is comprised solely of portions of an

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exterior stairwell (not a building under the 1935 Zoning Ordinance or the 1989 Zoning Ordinance), a storage area (an allowable accessory building under the 1935 Zoning Ordinance but part of the principal building under the 1989 Zoning Ordinance) and a very small portion (possibly a few square feet) of one thirteen inch stone wall enclosing the southeasternmost interior room of the principal building.

The North Lot contains a pre-code structure because it existed in 1988 (see Attachment C, Exhibits G and H) and the Zook House does not meet the rear yard requirements of the 1989 Zoning Ordinance. Section 10-101(A) states: "Any precode structure may be maintained, altered, enlarged, rebuilt, restored, and repaired so long as it remains otherwise lawful, subject to the restrictions in subsections B through E of this section and subsection 10-101D of this article." Under this provision, the Zook House has continued in existence since 1929 despite several revisions to the Zoning Ordinance. Section 10-104(F) protected the driveway serving the Zook House and limited other structures even if they were not situated wholly within the North Lot, but the location of outdoor required parking violates Section 9-104(F).

Following relocation of the Zook House from the North Lot, the North Lot would be a vacant zoning lot that meets the minimum lot area requirement of the 1989 Zoning Ordinance. The lot is of sufficient size and dimension under Section 3-110. Further, no act of subdivision is required in order to designate the North Lot as a zoning lot capable of development.

HISTORY OF AND PLANS FOR THE SOUTH LOT

From 1894 to the present, there has been no known principal structure or use on the South Lot. The South Lot consisted of Lot 18 and Lot 19 in the 1894 Resubdivision of Block 8 and this circumstance did not change until the east side of Lot 19 gained land as a legal result of the Village's vacation of the right of way. As noted above, the South Lot appears to have gained two feet in depth as a result of changes in surveying technique since 1894. (Compare Attachment C, Exhibit A to Attachment C, Exhibit J) Lot 18 and Lot 19 still comprise two historic lots of record. Mr. Bousquette and the Parkers have designated these two lots of record as the location for the relocated Zook House.

Section 10-104(E) requires that the relocated Zook House occur on a lot where the home meets the requirements of the Zoning Ordinance. Staff has reviewed the plan for relocation of the Zook House and staff agrees that the Zook House can be relocated to the South Lot in a fashion that complies with all applicable bulk regulations if it is viewed as a legal nonconforming lot of record. Section 10-104(E) requires the abandonment of two lots of record in favor of a single lot of record. ("No precode structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being

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moved") Section 10-104(E) of the Zoning Ordinance allows for the relocation of the Zook House as reflected in the Table of Zoning Compliance in Attachment C, Exhibit D.

A legal nonconforming lot of record can be developed under the regulations set forth in Section 10-105(A) and Section 3-110 of the Zoning Ordinance (the latter applies unless a provision otherwise appears in Section 10-105(A)). Section 12-206 defines "legal nonconforming lot of record" as follows:

Nonconforming Lot Of Record, Legal: A nonconforming lot of record that:

- A.1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation; and
- 2. Is located in a residential district and meets the minimum lot area and lot dimension standards of subsection 10-105A of this code, or is located in a district other than a residential district; and
- 3. Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code; or

COMPLIANT SUBDIVISION

The South Lot is comprised of two non-conforming lots of record (Lot 18 and Lot 19) created under the 1894 plat. The 1894 plat contains an attestation of the Village Clerk that the President and Board of Trustees of Hinsdale approved the plat and that the plat met all applicable ordinances. (Sec. 12-106(A)(1)) Chapter XXX, Sections 1-3 of the 1895 Village Code changed very little over the next few decades, and it is reasonable to assume that the code provisions Attachment C, Exhibit E were in effect at the time of the 1894 Resubdivision of Block 8. Further, the 1929 permitting for the Zook House indicates that the Zook House proceeded based on the 1894 plat and met the minimum lot area and the minimum lot dimension standards at the time. (See Attachment C, Exhibit F, Secs. 12-14)

The South Lot was not required to be a part of the lot supporting the Zook House in 1929 inasmuch as the North Lot extended from a point on Fourth Street to another point on the now-vacated Oakwood Place and was eligible for the rear lot waiver independent of anything tied to the South Lot. Additionally, there was nothing at all in the 1935 Zoning Ordinance that prohibited the South Lot from hosting the rear yard for the Zook House without becoming part of the lot occupied by the Zook House. Specifically, because the rear yard could be waived on lots

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connecting from street to street, the rear yard is not a yard that the Village required to be on the same lot as the Zook House.

The Village's first zoning ordinance (1923) was unavailable at the time of writing this letter, as were the 1925 and 1929 zoning ordinances. However, the 1935 Zoning Ordinance's AA Residence District regulations indicate that the Class AA classification and regulations arose for the first time on January 8, 1929 and the 1935 Ordinance (Exhibit F) must have been substantially similar to the 1929 ordinance in light of the following language that appears at the end of Section 4: "...[preserving rights of development for parcels smaller than one-third of an acre and 70 feet in frontage for lots created in plats recorded] prior to the original passage of this section, January 8, 1929, designated heretofore as "Section 3-a 'AA' Residence District Regulations." Section 1 of the 1935 Zoning Ordinance states: "This ordinance may be cited and referred to as the Revised Zoning Ordinance of 1935." As such, it is reasonable to expect substantial similarity to the 1929 regulation of zoning within the "AA" district and from a procedural perspective.

The 1935 Zoning Ordinance and the March 1932 Zoning Map attached to said ordinance classified the North Lot and the South Lot in the "AA Residence District" zoning classification. Amid several large tracts, one can clearly identify Lots 1, 2, 3 and 4 which are part of the North Lot as well as Lot 18 and Lot 19 which are the two historical lots of record that are part of the South Lot. The South Lot met the requirements of the 1929 and 1935 regulations.

CURRENT ZONING COMPLIANCE

The South Lot remains in a residential district. It exceeds the 14,000 square feet of lot area required by Section 10-105(A). The South Lot also meets the lot width and lot depth requirements under Section 10-105(A). (Sec. 12-106(A)(2)) The area of the South Lot exceeds 17,000 square feet and it will be over 20,000 square feet at the conclusion. The lot depth is 150-152 feet. The lot width is well over 70 feet (more than 125 feet).

Please see the Table of Compliance in Attachment C, Exhibit D. These figures will likely change slightly as the area of the South Lot is adjusted. The Table of Zoning Compliance is not to be relied upon for permitting review or inspection. Some measures were taken from recorded measures and not actual measures. Others relied on DuPage County GIS measurements. A surveyor should determine the final actual figures for compliance.

THE SOUTH LOT IS VACANT

The South Lot was vacant on June 18, 1988. (Sec. 12-106(A)(3)) The 1987 aerial imagery provided by the DuPage County GIS system reflects that the South Lot was vacant in 1987. (See Attachment C, Exhibit G) Google Earth aerial imagery reflects that the South Lot remained in a condition similar to that shown in 1987 and remained vacant on April 16, 1993.

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(See Attachment C, Group Exhibit H) The Village should have no building permit records for activity that indicates that any improvements occurred between 1987 and 1993 that would lead to any conclusion contrary to the existence of a vacant condition on June 18, 1988 (or after this date even considering the possible encroachment of the Zook House).

Section 12-206 of the Zoning Ordinance defines "vacant" as "[n]ot developed with any building, structure, or paving or surfacing of the ground." The definition of "building" refers to "structure" and the terms are defined interchangeably. "Structure" means "[a]nything constructed or erected, the use of which requires more or less permanent location on the ground, or anything attached to something having a permanent location on the ground, but not including paving or surfacing of the ground." A principal building is "[a] building in which is conducted the principal use or uses of the lot on which said building is situated." The 1935 zoning ordinance definition is also relevant because, as constructed, the shed was an accessory building in 1935 but became a principal building in 1989.

There has been some discussion about the encroachment of the very small portion of Zook House onto a portion of the South Lot and whether a finding that the South Lot has been vacant is possible. Mr. Bousquette disagrees with the hesitation that staff has on the matter of finding that the South Lot was vacant because roughly 12 square feet of improvements (2-3 of which are part of a thick stone wall) may exist on the South Lot.

With respect to 26 East Sixth Street, on March 15, 2017, the Zoning Board of Appeals recommended a variation from the minimum lot area required for a historic lot of record. In a fashion similar to the North Lot, the Hinsdale Zoning Map identifies 26 East Sixth Street as a distinct lot with an address next to at least one lot that has no address. At the time of a variation request, there existed a patio on the lot with no address. The patio was accessory to an existing home on the lot with the address of 26 East Sixth Street. The home on 26 East Sixth Street and the parcel with no address to the west are situated in the R-4 zoning district which requires a minimum lot area of 10,000 square feet and each parcel had a lot area 6,600 square feet or less. Each parcel offered the historical lot of record lot width but fell short of the required 70 feet of width in the R-4 regulations. The parcels were not independently capable of development unless they were viewed as legal nonconforming lots of record and as historic lots of record. Despite the existence of two patios (for a grill and a birdbath), a flag pole and landscape installations on the lot with no address, the Zoning Board of Appeals readily accepted that there was a legal nonconforming lot of record that could be developed. (See Attachment C, Exhibit L)

At 735 and 739 Phillippa Street, the Zoning Board of Appeals expressly found two historic lots of record in an R-4 zoning district. The ZBA accepted an appeal on the promise of removal of a fence surrounding the lots of record. The Applicant and ZBA did not address other improvements on 739 that served 735 such as raised garden beds and pathways. (See Attachment

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C, Exhibit K) Roughly similar circumstances existed at 121 East Fourth Street. (Attachment C, Exhibit M)

I note that, during the hearing on 26 East Sixth Street, staff drew a conclusion about a house straddling a lot line in the hearing concerning 26 East Sixth Street. I also note that the Village Attorney seems to have placed determinative importance on the circumstance that the Zook House may straddle the lot line. This is so even though the only relevant part of the principal structure that appears to straddle the line between the North Lot and the South Lot is a small stretch of a thirteen inch thick wall that was built in 1929 when the North Lot undeniably had a greater lot depth than shown today. The shed and the stairs were not principal buildings under the 1929 Zoning Ordinance. Nevertheless, it appears to me that everyone agrees that the extent and size of the encroachment is too small to notice.

The portion of the Zook House that is situated on the South Lot is comprised of a shed, stairwell and a short segment of a wall that, together, occupy a remarkably small 12 square foot area. The area amounts to 0.18% of the area of the Zook House, 0.06% of the area of the South Lot and less than 0.04% of the area of the North Lot. The greatest reach of the encroachment amounts to roughly 1.15% of the 152 foot lot depth of the South Lot. "Remarkably small" actually overstates the scale of the encroachment. (See Attachments B-1, B-2, C at Exhibit I)

Since 1929, and continuing through today, the encroachment has been comprised solely of (a) a series of exterior steps to the basement, (b) an exterior shed that had its own walls and was entirely divided from the main house from the ground up and (c) a portion of the 13-inch wall for a negligible stretch of the wall. Exterior steps are not a building. The shed is not part of the principal building by design and by use. The portion of the wall and its relationship to the lot line frankly cannot be determined with certainty.

The April 16, 1935 Zoning Ordinance (Exhibit F) defined building quite differently than today's 1989 Zoning Ordinance:

Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels; and when separated by division walls from the ground up, and without openings, each portion of such building shall be deemed a separate building.

The "AA Residence District" only permitted one principal building on a zoning lot, so it should come as no surprise that the shed cannot be classified as a second principal building. The shed, in reality, falls squarely within the definition of an accessory building under the April 16, 1935 ordinance ("[a] subordinate building or portion of a building. . . .). You cannot enter the building from the shed and the walls extend up from the ground to was originally was a slate roof. (See Attachment C, Group Exhibit I) There is complete separation from the main portion of the

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residence and the 1935 Zoning Ordinance treats the shed as a second building and one that is accessory.

The term "vacant," as defined in the 1989 Zoning Ordinance must be interpreted fairly. Inasmuch as Mr. Bousquette and Mr. and Mrs. Parker raise the determinations on Sixth Street, Fourth Street and Phillippa, they do so in recognition of the reasonable application of a provision in the 1989 Zoning Ordinance that would otherwise be viewed as draconian and confiscatory. The patio on Sixth Street and the fence on Phillippa both had a greater extent of encroachment from one historical lot of record onto another. 26 East Sixth Street involved a 100 square foot patio, a second patio and birdbath area and a flagpole on the vacant lot adjacent to 26 East Sixth Street (areas much larger than the 12 square feet we are dealing with in this instance). The fence enclosed a substantial area of two lots of record at 735 and 739 Phillippa. Various structures and improvements on 121 East Fourth Street existed since the post-1988 demolition of a home.

Of course, these are not the only instances where land underlying an accessory structure was viewed as still subdivided from land under the principal structure. However, they operate as three different types of circumstances in the recent past where lots of record with accessory structures and uses became separated from the lot of record hosting the principal building. This is not a situation that occurs only on lots of record inasmuch as, on January 7, 1969, the Village approved Sailor's Resubdivision of Lots 5-17 in Block 8. At the time of subdivision approval, Chanticleer Apartments, Inc. owned Lots 5-17 and Louise and Philip Clarke's principal residence existed on Lots 12-14, their driveway existed on Lots 9-11 and 14, and their garage existed on Lot 17. Following subdivision, the garage was on Lot 3 in Sailor's Resubdivision and the other improvements were on Lot 4. Lots 1, 2, and 3 had lot areas of 20,037.6 SF, 20,037.6 SF and 21,780 SF, respectively. The lot hosting the original home on the west half of the originally-subdivided Block 8 remained as Lot 4 with 48,787 SF.

If interpreted according to its express terms, the definition of vacant precludes a finding that the second lots of record on Fourth, Phillippa and on Sixth remained lots of record. The Zoning Board of Appeals (on Phillippa and Sixth) and the Village (on Fourth) have recognized that the lot of record determination must hinge not only on substantiality, but also on intention. After all, the rule enforced leads to forfeiture of a valuable right to construct on a lot with no variations and, in this case, forfeits my clients' rights to relocate a historic home to a new location so it can be preserved for decades to come. With this in mind, it seems quite clear that the encroachment onto the South Lot is *de minimis* and insubstantial.

THERE HAS BEEN NO INTENT TO ABANDON THE SOUTH LOT

In addressing intentions, all of us are left only with circumstances we can trace through maps, ordinance provisions, plans and plats. The encroachment at issue occurs only on Lot 19 of the Resubdivision of Block 8. It is impossible to discern intention to forfeit the South Lot for development by permitting twelve square feet of primarily accessory building improvements to

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cross the shared lot line between the North Lot and just one of the two lots of record that will comprise the South Lot.

The 1935 Zoning Ordinance (again, an ordinance that is substantially similar to the 1929 Zoning Ordinance in effect during permitting and certifying occupancy of the Zook House) belies any claim of intent. Under the April 16, 1935 Zoning Ordinance, Article I, Section 10 contained the following provision:

In the case of buildings upon lots running through from street to street the requirements for a rear yard *may be waived* when such buildings comply with the percentage of lot occupancy by furnishing other open space in lieu of such required rear yard.

There was no requirement of a hearing or ordinance or resolution. Further under Article I, Section 12, there could have been no occupancy of the Zook House until the building commission issued a certificate stating that the home complied with all ordinances, including the zoning ordinance. The building commissioner was assigned the duty to maintain all plats, plans and certificates of occupancy. These apparently do not exist.

Article I, Section 13, the 1935 Zoning Ordinance required that a building permit issue pursuant to an application that included a plat showing the dimension of the lot to be built upon and describing the size of the building to be erected. In an instance where a rear yard is waived for the Zook House, there would be no requirement for a rear yard and the home could be situated to the rear of the property. Section 4 continued the "AA Residence District" regulations from 1929 by requiring the garage to be located on the rear one-third of the property and not closer than 100 feet from the front lot line. Today, the garage is situated in the rear one-third of the North Lot and, not surprisingly, it is also nearly 90 feet from the street. (The ordinance required pre-existing lots to comply as nearly as possible, and there was no ordained variation process.)

Furthermore, the 1894 Resubdivision of Block 8 into 19 lots of record relied on four stones on the west half of Block 8, one stone on the east half and measurements for the remainder. Assuming there was no increase in cost of labor or materials, the \$35,000.00 spent in 1929 has a 2017 value well in excess of \$500,000.00 today. One of the top architects in the field participated in the design of the home. Hinsdale had an ordinance concerning plats, a building code and a zoning ordinance. The owner was not spending a small sum that could lead to passive supervision, and the resulting home is no indication of passivity on anyone's part.

However, platting processes in the 1890's were not perfect. Five stones and dimensions on an 1894 plat could prove difficult for any surveyor and if no back yard was required, there are two means through which planned proximity could have led to a possible 1-1.8 foot encroachment. The suggestion of platting problems in the 1890's is not raised lightly in this instance. The 1894 Resubdivision of Block 8 simply does not match the Sailors Resubdivision of

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Lots 5-17 in Block 8. Comparing Exhibit A to Exhibit J (both in Attachment C) and to DuPage County GIS lot line measurements available on the Internet, there is a variance in the plats that is greater than the alleged encroachment from the North Lot onto the South Lot. There is a jog in the rear lot lines that developed since 1894. The last relevant plat prior to Sailor's 1969 Resubdivision of Lot 5-17 was the 1894 Resubdivision of Block 8. The depth of the North Lot under the 1894 plat was at least two feet greater than in the 1969 Sailor's plat. In 1894, the South Lot was two or more feet shallower than in 1969.

Returning to 1935, it would be unreasonable to assume that no one would build a home without a rear yard or with the rear yard on another parcel. The building commissioner also had the power to waive the rear yard if he excluded Lot 1 from his review because corner lots were restricted to a maximum width of 50 feet under the AA regulations in the 1935 Zoning Ordinance, thereby allowing the building commissioner to treat the whole of the land from Fourth south to Woodside as passing from street to street. It is believed that none of the Zook House was constructed on Lot 1.

In 1935, and presumably in 1929, "lot" was defined as "[l]and occupied or to be occupied by a building and accessory buildings and including the open spaces <u>required</u> under these regulations." As noted above, the open spaces required were the front and side yards and the percentage of the lot that was required to be open space; however, the rear yard was not required because the building commissioner could waive the rear yard requirement. Thus, in light of the ability to waive the Village assigned to the building commissioner, a rear yard was not required and the building commissioner could have determined that the rear yard did not have to be on the same lot. Thus, there are two very clear possibilities under the 1929 and 1935 zoning ordinances whereby a rear yard would not have been required: (a) waiver by the building commissioner; or (b) a building commissioner determination that, under the express terms of the ordinance, a rear yard is waivable and, therefore, not required to have been situated on the same zoning lot.

No provision of the 1935 Zoning Ordinance concerning the AA Residence District or lots in general operates to eliminate the future development potential of the South Lot as a result of any encroachment onto the South Lot of 12 square feet of the Zook House. The sole result of the encroachment is that the yard space of the South Lot occupied by items accessory to the North Lot cannot be counted as yard space on the South Lot. Further, with the Zook House being relocated, there is no attribution of any part of the South Lot to any purpose serving the North Lot.

IMPACT OF REQUESTED DETERMINATION

In May 2016, Mr. Bousquette attended the Village's Historic Preservation Tax Freeze Workshop. He presented the concept of relocating the Zook House to the Board of Trustees in June 2016. In December 2016, he was directed to attend the January 2017 Board of Trustees meeting before being redirected to the Village's Historical Preservation Committee in February

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2017. He was then informed that he should work through the Zoning Board of Appeals process, though the basis for this is a bit unclear. After incurring tens of thousands in costs getting to this point, in March 2017, he proceeded to the Historic Preservation Committee in order to obtain a review of the possibility of demolishing the Zook House (the Historic Preservation Committee's process is one that is merely advisory under Section 14-5-1(B) and 14-5-5(C)).

At no time during these costly processes was any one of my clients informed that the Village opposed the concept of preservation of the Zook House. The Historic Preservation Committee supports preservation of the Zook House. Indeed, the Zook House is a feature of the Robbins Park Addition to Hinsdale which is of historic significance. Over the years, the area has suffered the loss of older homes despite efforts to market the homes for resale in their restored and newly decorated condition (Third Street), in their one-of-a-kind architectural design (425 Woodside Avenue) or in their specially cared for condition (219 First Street). Allowing the relocation of the Zook House to the South Lot as a legal nonconforming lot of record offers immediate relief to the pressure the Village faces when attempting preservation, and it does so without disrupting planning in the area.

Within the immediate Woodside Avenue area, there are six lots. The South Lot would be larger than 424 Woodside Avenue, 440 Woodside Avenue, 445 Woodside Avenue and 455 Woodside Avenue. The South Lot, occasionally referred to as 435 Woodside Avenue, is planned for 20,353 square feet (it exists at just a bit more than 17,000 square feet). 425 Woodside Avenue is 21,501 square feet in area. The average lot size, excluding the South Lot, is 18,369 square feet, slightly larger than the South Lot in its existing condition and over 1,600 square feet smaller than the South Lot in its future condition. The South Lot is proposed on land that is presently only slightly below the average lot size. Following a deeded additional tract of land, the South Lot will be over 20,000 square feet in area and 9% larger than the average on the block, and similar in size to two of the lots created by the 1969 Sailor's subdivision.

The average size of a residence in this same block is also telling. Excluding the most recent new home, the average home size is 4,538 square feet. The home at 425 Woodside Avenue is 8,370 square feet (87% higher than the average) and this brings the average home size up to 5,596 square feet. The Zook Home, at 4,150 square feet will be 35% smaller than the average home on the block but still larger than most in Hinsdale.

These figures also speak volumes of the economics. A great deal of sacrifice has already gone into the effort to relocate and preserve the Zook House. However, the Village should readily conclude from past actions that economics can be a significant driver despite its best regulatory support of preservation. Relocation of the Zook Home avoids a repeat of the situation at 328 East Eighth Street and at 425 Woodside. In the 425 Woodside situation, the 3,441 square foot home arising from the Sailor's Resdubdivision in 1969 was demolished in favor of a home that is 8,370 square feet situated on a lot that is smaller than the South Lot.

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Only two (2) of the eleven (11) Fourth Street homes within the block between Oak Street and County Line Road meet the Village's minimum lot area requirement (441 East Fourth Street and 448 East Fourth Street). The average lot size of the ten homes, excluding the North Lot, is 23,486.3 square feet. Following a determination that the North Lot and the South Lot are independently treated as two zoning lots capable of hosting two single family homes, the North Lot will also meet the Village's minimum lot area requirement of 30,000 square feet and the average lot size for the area will not decrease.

A determination that the South Lot may independently host the Zook House while the North Lot is developed with new residential construction will not upset expectations in the area. Such a determination will not allow lots smaller than the average in the area. The determination will increase the number of lots that conform to the minimum lot area for R-1 zoning lots. Lastly, the Village will have faithfully interpreted its codes and simultaneously avoided the loss of an asset to the Robbins Park Addition Historic District and to the Village as a whole.

CONCLUSION

For the reasons stated above, Mr. Bousquette and Mr. and Mrs. Parker respectfully request that you reverse the Village Manager and determine that the North Lot is an existing lot of record that remains separate from the South Lot and that the South Lot qualifies as a legal nonconforming lot of record. To the extent that any encroachment over the lot line shared between the North Lot and the South Lot, the encroachment is insubstantial and certainly reflective more of the circumstances of the technology and regulations in play in 1929 than it is of any intention to treat the South Lot and the North Lot as one parcel.

While some may suggest that it is easier to simply pursue a variation than it is to obtain a well-justified determination by you, it is incumbent on all of us to recognize the past and apply the ordinances in play then and now properly. Thank you for your attention to this matter.

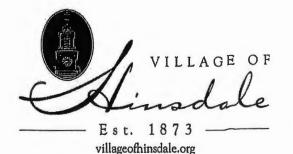
Yours very truly,

DANIEL LAW OFFICE, P.C.

Mark W. Daniel

cc: Lance C. Malina, Esq.
Michael A. Marrs, Esq.
Hon. Thomas M. Cauley, Mayor

Village Hall 19 East Chicago Avenue Hinsdale, Illinois 60521-3431 630-789-7000



Fire & Police Departments 121 Symonds Drive Hinsdale, Illinois 60521-3744 Fire 630-789-7060 Police 630-789-7070

June 8, 2017

Matthew C. Bousquette 448 E. 4th Street Hinsdale, Illinois 60521

RE: Appeal from Staff Decision – 444 E. Fourth Street Lot Split – Determination of Village Manager

Mr. Bousquette -

You, as the owner of real property located at 444 E. Fourth Street (the "Property"), have appealed to me the Village of Hinsdale's ("Village") staff decision denying a building permit relative to repositioning of the existing residence on the Property to a new location pursuant to Section 10-105 of the Village Code. The collective correspondence involved in the staff decision includes your original letter dated March 27, 2017, the Village Attorney's Zoning Opinion dated April 26, 2017, your subsequent response to the Village Attorney's Zoning Opinion dated April 28, 2017, and a May 8, 2017 email to you from Director of Community Development Robb McGinnis, attaching the further response of the Village Attorney, also dated May 8, 2017. Together, these documents comprise the "Staff Decision." I note that since your request to me to review the Staff Decision, your attorney Mark Daniel has submitted, on May 31, 2017, a 20-page letter, along with 13 exhibits comprised of an additional 65-plus pages of materials, in which he advances various arguments in support of your position (collectively, the "Daniel Submittal").

The Property: The Property is a through lot fronting on both Fourth Street and Woodside Avenue. The Property currently consists of three PINS consisting collectively of six (6) platted lots. There is currently a home (the "Existing Residence") located largely on PIN 09-12-221-008, which in the Staff Decision was referred to as the "Fourth Street PIN," but which, for ease of reference here, shall be described as in the Daniel Submittal as the "North Lot." What the Daniel Submittal terms the "South Lot" (previously referred to in the Staff Decision as the "Woodside PINS") is made up of PINS 09-12-221-006 and -009. Based on GIS photos and a survey previously provided by you, it appears that a small portion of the Existing Residence exists on PIN -009 in the South Lot.

The March 27, 2017 Letter: In your letter dated March 27, 2017, you expressed a desire to relocate the Existing Residence that is on the Property to the South Lot. Your March 27, 2017 Letter further stated that you seek to construct an additional residence (the "Second Residence") on the North Lot. You contend that PINS 09-12-221-006 and

009, when combined as what is termed in the Daniel Submittal as the South Lot, constitute a legal nonconforming lot of record, and that Section 10-105 of the Hinsdale Zoning Code ("Zoning Code") thus enables you to accomplish the relocation of the Existing Residence to the South Lot and erection of the Second Residence on the North Lot as of right.

The April 26, 2017 Zoning Opinion: In a detailed Zoning Opinion dated April 26, 2017 (the "April 26, 2017 Zoning Opinion"), Village Attorney Michael Marrs responded to your March 27, 2017 Letter. In the April 26, 2017 Zoning Opinion, the Village Attorney found that where a small portion of the Existing Residence has always existed on PIN -009, which makes up part of the South Lot, PIN -009 is not vacant as required by the definition of legal, nonconforming lot of record in the Zoning Code. PIN -006, which makes up, with PIN -009, the South Lot, while vacant, does not by itself meet the bulk requirements set forth in Section 10-105, and thus likewise fails to meet the definition of a legal, nonconforming lot under the Zoning Code. The Village Attorney concluded that together, the Property and Existing Residence are subject to the Precode Structure provisions of Section 10-104, and, without further zoning relief, only a single residence is allowed by right on the Property.

In the April 26 Zoning Opinion, the Village Attorney distinguished a recent division of property located at 26 E. Sixth, based on the fact that there, no portion of a precode structure was on the nonconforming lot sought to be broken off and built on. While a small portion of a patio was located on the vacant lot, staff was constrained from using that incursion to prevent the zoning lot split based on a 2013 ZBA decision (the "2013 ZBA Decision") involving property on Phillippa in which the Zoning Board of Appeals ("ZBA") authorized, upon the removal of some minor accessory structures/improvements from an otherwise vacant lot that was adjacent to a lot with a principal structure, the division of what staff deemed to be a single zoning lot for use as two separate residences (there had been a single-family residence on the otherwise vacant lot previously).

The April 28, 2017 Owner Response: In a response letter dated April 28, 2017 (the "April 28, 2017 Owner Response"), you argued that the April 26, 2017 Zoning Opinion failed to take into account the definition of the word "Vacant" in Section 12-206 of the Zoning Code. You stated that the definition treats paving, accessory structures, and buildings as equal, and that staff cannot therefore limit the 2013 ZBA decision to paving and accessory structures. You requested that the Village Attorney reconsider the April 26, 2017 Zoning Opinion.

The May 8, 2017 Village Response: In a short response drafted by the Village Attorney and dated May 8, 2017, forwarded to you in a May 8, 2017 email from Director of Community Development Robb McGinnis (collectively, the "May 8, 2017 Village Response"), the Village responded to your request for reconsideration by noting that the 2013 ZBA Decision was limited to the question of placement of accessory structures, as opposed to a principal building that straddled the lot line. Where paving is considered to be an even less significant incursion than a structure such as the fence at issue in the

2013 ZBA Decision, staff felt bound by the 2013 ZBA Decision in the 26 E. Sixth Street matter, but did not view the 2013 ZBA Decision as extending to cases where a principal structure spans a lot line.

The Daniel Submittal: In the Daniel Submittal received by the Village on May 31, attorney Mark Daniel, on your behalf, has used historical zoning codes and plats and surveying materials to argue that it is possible that there was never an intent to utilize the South Lot together with the North Lot as a unified site for the Existing Residence, and to argue that the incursion of the Existing Residence into the South Lot may be even less than shown on the survey you originally submitted. It is acknowledged in the Daniel Submittal that some small portion of the Existing Residence continues to encroach onto the South Lot, but that the encroachment should be viewed as no more significant than the encroachments at issue in other cases considered by the Village, including the 2013 ZBA Decision regarding Phillippa, the 26 E. Sixth Street matter, and a lot division on Fourth Street where a play fort and trampoline were located on an otherwise vacant lot.

I note that the Daniels Submittal does not address the finding set forth in the April 26 Zoning Opinion that if a precode structure is able to be rebuilt on a property, it is subject to Section 10-104 and an analysis under Section 10-105 of the Zoning Code relative to legal, nonconforming lots does not even apply. Further, if the North and South Lots are viewed together as constituting a single property based on the fact that the Existing Residence rests in part on each Lot, 10-104 may not even apply - it is simply a currently conforming residence on a big conforming lot that could be rebuilt as a single residence on the collective Property regardless of 10-104 and 10-105. It is only through acceptance of Mr. Daniel's assumptions and arguments that the South Lot was never intended to be regarded as part of the property used with the North Lot and Existing Residence, that we arrive at the 10-105 analysis that involves determining whether the South Lot is "vacant" or not and the ability to split the South Lot off as of right.

Even relying on the series of assumptions regarding the history of the Property. surveying, and intent that are set forth in the Daniel Submittal, a portion of the principal structure remains on the South Lot. Staff has never, to my knowledge, considered situations where a principal structure straddled two (2) lots to mean that one of them is vacant. A residence, regardless of whether it can be demolished or moved, is not a play fort, a trampoline, a fence, or a patio. While I acknowledge that the definition of "vacant" in the Zoning Code does not distinguish between paving, structures and principal buildings, the 2013 ZBA Decision regarding Phillippa, and the Sixth Street, and Fourth Street matters remain, from the perspective of the Village, distinguishable from a situation where the principal residence straddles the lot line. Notably, staff was very specific at the hearing on the 2013 ZBA Decision that the matter being decided there concerned accessory structures, and was very different than a situation where a principal structure straddled a lot line. I cannot therefore read the 2013 ZBA Decision as extending to situations where a principal structure sits on two lots, regardless of the extent of the incursion onto one of the lots. I have attached a copy of the final decision and transcript from the hearing on the 2013 ZBA Decision for your benefit. I note that four (4) members of the current ZBA were on the Board when the 2013 ZBA Decision was made, and are in a better position than either staff or myself to provide an opinion on the intent of the 2013 ZBA Decision.

Opinion: You have requested that I review the Staff Decision and reverse it. Based on my review of the Staff Decision, and the relevant provisions of the Village of Hinsdale Zoning Code, I conclude, for all of the reasons set forth in the April 26, 2017 Zoning Opinion, and the May 8, 2017, Village Response, that the Staff Decision is correct: you are not entitled, under either the Zoning Code as currently written, or the 2013 ZBA Opinion, to build a Second Residence on the Property as of right following relocation of the Existing Residence to the South Lot. In so finding, I adopt the reasoning set forth in the April 26, 2017 Zoning Opinion, and the May 8, 2017 Village Response, and my points in response to the Daniel Submittal set forth above.

You have a right to appeal my determination to the Zoning Board of Appeals by filing an application for appeal within forty five (45) days following this determination.

Issued this 8th day of June, 2017

Kathleen Gargano, Village Manager

Village of Hinsdale

Mark Daniel (via email)

CC:

STATE OF ILLINOIS)
) ss:
COUNTY OF DU PAGE)

BEFORE THE HINSDALE ZONING BOARD OF APPEALS

In the Matter of:
)
APP-01-13, 735 and 739
PHILLIPPA.
)

REPORT OF PROCEEDINGS had and testimony taken at the hearing of the above-entitled matter before the Hinsdale Zoning Board of Appeals, at 19 East Chicago Avenue, Hinsdale, Illinois, on May 15, 2013, at the hour of 7:30 p.m.

BOARD MEMBERS PRESENT:

MS. DEBRA BRASELTON, Chairman;

MR. MARC C. CONNELLY, Member;

MR. JOHN CALLAHAN, Member;

MR. ROBERT NEIMAN, Member; and

MR. GARY MOBERLY, Member.

* * * * *

	, 2		4
1	ALSO PRESENT:	1	739, is a legal nonconforming lot of record.
2	MR. MICHAEL MARRS, Village Attorney;	2	I presume you have this. It's the
_		3	cover sheet, but in any case, it's the village
3	MS. CHRISTINE BRUTON, Deputy Village	4	determination that each of the two lots was and
4	Clerk;	6	remains a legal nonconforming lot of record.
•	MR. ROBB McGINNIS, Director of	6	So to my mind of thinking, this
5	Community Development;	7	proceeding is largely what I'm arguing is
	A LA COMPANIA DE LA CALLA DEL CALLA DEL CALLA DE LA CA	8	that each of the two lots is a legal
6	MR. MATTHEW KLEIN, Attorney for Petitioner.	9	nonconforming lot of record. Because they are a
7	rescursor.	on next 10	legal nonconforming lot of record, a home can be
		11	placed on each of the two lots.
8	(WHEREUPON the oath was	12	Village disagrees because the .
9 10	administered en masse.) CHAIRMAN BRASELTON: We will open the	13	village is of the opinion that each of the two
11	public hearing on APP-01-13 735 and 739		lots are the two lots by obtaining the permit
12	Phillippa. Good evening.	14	for the fence well, let me give you what I'll
13	MR. KLEIN: Good evening. I'm Matthew	15	
14	Klein. I'm attorney for Dr. Barsky, who is the	16	mark as Exhibit No. 2, which are the definitions
15 16	owner of the property. This is an appeal from the village	17	from the ordinance that I'll be referring to.
17	determination that a new home could not be	18	It's indexed under N for nonconforming lot of
18	constructed on 739 North Phillippa, one of the	19	record, legal.
19	two properties that Dr. Bersky owns.	00:01:26 20	Again, once the property is legal
21	Dr. Barsky owned and lived at 735 North Phillippa prior to acquiring 739. At some	21	nonconforming lot of record, each of the two
22	point, 739, which was a rather rundown house	22	lots was created by a plat or deed recorded at a
1	3		5
1	became available, she acquired it, had it	1	time when the lot was legal as described.
2	demolished under a village permit. She put up a	2	That's item 1.
3	fence, landscaping and sprinkler system on the	3	2. Located in the residential
4	property, on the vacant lot; however, there was	4	district. The minimum lot area and dimension
-	no primary use on 739, the village required her	5	standards of the nonconformity section, 10-105A.
6	to get a permit for that action and define a	6	And that is on the that will be Exhibit.
6		7	No. 3. And I'll hand that out in a second.
7	zoning lot. Now there were two lots then, there	8	And they were vacant on June 18,
8		9	1988, or became vacant thereafter by demolition
9	are two lots now. The addition of the 739 to	00:08:06 10	or destruction of a precode structure. So
0:01:40 10	the 735 by the consistent application of the	11	MR. NEIMAN: Can you tell us why that
11	village rules could not have been allowed. They	12	your two lots, the two lots at Issue, doesn't
12	could not have been consolidated because	13	meet the definition of a single zoning lot under
13	consolidation of the north lot with the south	14	this definition?
14	lot would have resulted in the house becoming a	15	MR. KLEIN: A single zoning lot is
16	nonconforming use, which under the village	16	defined by the owner. For Mrs. Barsky
16	interpretation of the zoning ordinance is not	17	
17	permissible. You cannot create a nonconformity		Dr. Barsky put up a fence. The village required
18	by combining lots. So that's the first thing.	18	her to get a permit. In order for her to get a
19	The lots could not have been consolidated.	19	permit, they required it be a single zoning lot.
10 02:15 20	Village and Dave Cook's	00 05-5A 20	Zoning lots defined by
21	to the tables to your had	21	MR. NEIMAN: There's a definition of a
	determined that each of the two lots, 735 and	22 BONO, CSR 630-	zoning lot in the ordinance.

MR. KLEIN: Right. Zoning lots on the second page there: A tract of land consisting

of one or more lots of record, parts thereof,

4 single ownership, entirely within a block,

5 designated by its owner or developer at the time

6 of filing for any zoning approval or building

7 permit as a tract to be developed.

There's nothing in that section
that says by owner redefinition of what's there

a new zoning lot can't be created. Zoning is

11 not forever. You don't zone, you don't apply,

12 you don't get the permit, you don't freeze land

13 by municipal regulation forever. You do it for

14 a reasonable period of time. Look at the

15 ordinance.

22

16 Here I would suggest Mrs. Barsky

takes the fence out, which is the only accessory

18 use that's on the 739 lot. Village position is

19 that because there's an accessory use on that

000750 20 lot, the two lots became one zoning lot and that

21 zoning lot cannot be reversed.

I'm suggesting that that is

7

1 reversible by owner redefinition of what that

is. Take off the accessory use on 739, as was

3 done on the North Grant Street, I'm not sure of

4 the exact address on that, but previously on

5 North Grant Street, and I believe that was

distributed to you as well.

7 MR. MOBERLY: 554 and 558.

8 MR. KLEIN: Yes.

9 In that case there was a playhouse

on the second lot, the vacant lot. Required a

11 permit, was an accessory use, exact same thing

12 as the fence here. Came to zoning board,

13 totally different constituents on the zoning

14 board, different people, but still the same

15 zoning board and should be under the same

16 ordinance that resolved the previous situation.

17 Once the playhouse was removed, put

18 back on the lot with the home on it, no

19 accessory use of the vacant lot, two existing

zoning lots of record, same as here, two legal

21 nonconforming lots of record now, before now, we

22 take the requirement and the need for them being

1 treated as one zoning lot away and all of a

2 sudden you have two legal nonconforming lots of

3 record each of which can support a house and

4 there's no impediment of an accessory use on

5 one, house on one, accessory use on the other.

8 So I hope that's --

7 CHAIRMAN BRASELTON: There are two pin

B numbers.

9 MR, KLEIN: There are two pin numbers,

09.08-32 10 yes.

11 CHAIRMAN BRASELTON: And nothing

12 changes their character lots of record for two

13 separate.

14 MR, KLEIN: Right. There's been no

15 change, no consolidation as I said before.

16 They could not be consolidated,

17 made into one legally without making the

18 existing house a nonconforming structure. Not a

19 legal nonconforming structure, an illegal

nonconforming structure because of that change.

21 CHAIRMAN BRASELTON: But they could

22 apply, If they wanted to, to consolidate those

9

1 two lots and put a big house on both of those?

2 MR. KLEIN: You could but you would

3 have to demolish the existing new house in order

4 to be able to do that. A substantial portion of

5 It, a wall, the entirety of the wall. So that's

6 kind of the first two points.

7 So the second similar situation

8 came up previously and the village amended the

9 zoning ordinance Section 3-110I2, which is a

10 footnote to the table in the residential

11 category.

12 Actually before that, I'll give you

13 the legal nonconforming lot of record section,

14 which is Exhibit No. 3. I think we already

15 talked about this.

16 In this Section 10-105, legal

17 nonconforming lot of record basically says

18 notwithstanding any other provision of the code

19 a single family home could be built on a legal

monconforming lot of record.

21 I would suggest there's two legal

22 nonconforming lots of record, each of which in

KATHLEEN W. BONO, CSR 630-834-7779

10 1 10-105 the use for development, construction of a single family home. There's already one on the one lot. Similar situation, an analogous situation, not exactly the same. But when a through lot in northeast Hinsdale came up, and this was one lot, this was not a legal nonconforming lot of record, this was a lot that went all the way through the block, the village as a matter of consistency with how the lots and houses ran down the block said yes, you can divide that one lot into two lots to create two new legal nonconforming lots of record. And that's a footnote on the 3-110I2, which basically says you can divide down the center of the block a through lot to create two lots in conformity with the other lots on the block. I would suggest, respectfully, that the development of northeast Hinsdale and southwest Hinsdale, I don't have enough of these for everybody so if you would please share, these are pictures of the houses that go up and 11

Here I would suggest and the 1 village has recognized this is a constant legal nonconforming lot of record. These lots have put back as two permissible lots for construction of a home, legal nonconforming lots of record, homes built and the lots themselves would be in conformance with basically every other lot on the block. The homes would be consistent with the new homes that have been built. Because of the new homes being built on OF 30:100 the existing legal nonconforming lots of record, 11 there's virtually no likelihood and certainly no 12 reasonable probability of lots being combined in a way to create 10,000 foot lots and almost 14 every lot is 7,200 to 75 to 7,700 foot lots. 16 East side of Phillippa on this 17 block every lot is 60-foot wide, on the west side every lot is 62-foot lot. They are all nonconforming lots of records. Allowing a home 00:14:08 20 to be built on this basically agreeing that one can build a house on a legal nonconforming lot of record. And I'll agree if the requirement is 22 that the accessory uses that are created on 739

down Phillippa, the one block of it. As you go up and down the block, many new houses have been constructed on the existing legal nonconforming lots of record and every lot on that block is a legal nonconforming lot of record as It's basically with a few exceptions, every lot in northeast Hinsdale, every lot in southeast Hinsdale, very few --MR. MOBERLY: Southwest Hinsdale. 9 MR. KLEIN: Southwest Hinsdale, there 10:1224 10 are very few. Northeast Hinsdale too, there's very few 30,000 foot lots in southeast Hinsdale. 12 I don't know if it still exists, 13 but at one point there was a map that the previous village engineer had done of the 15 village that showed about 70 percent of the village was legal nonconforming lots of record. 17 What's the significance of that? 18

The key elements of zoning is that property

There's a great degree of similarity with the

owners are entitled to use their property.

property that surround them.

condition of that being a legal nonconforming lot of record, that a home may be built on, that is an acceptable requirement, that is an agreeable requirement, Mrs. Barsky would be willing to do that and that's consistent with what the ordinance would require. 9 In the absence of that, I would 00:1498 10 suggest that applying the ordinance to prevent her from using each of her two lots, admitted 11 legal nonconforming lots of record to have a 12 house on each lot, would be a taking of her 13 property and impermissible. 14 15 If you have any questions, I'll try and answer them. 16 17 MR. MARRS: Could I just suggest we 18 mark his various submissions? CHAIRMAN BRASELTON: I have. 19 00:16:20 20 MR. MARRS: Okay. MR. KLEIN: There's a color one that 21

be removed, that is, the fence be removed as a

22 Christine has.

CHAIRMAN BRASELTON: This is Exhibit No. 4, I guess. 3 MR. KLEIN: Again, I hope you agree with me that this is a lot like every other lot in southeast Hinsdale that a home may be built on. Northeast Hinsdale. Northeast Hinsdale. Correction. CHAIRMAN BRASELTON: Questions from the board? 00:15:54 10 Do you have other testimony to 11 present this evening? 12 MR. KLEIN: No. No. That covers it. 13 It's really argument. There really isn't any dispute over the facts at all. 14 15 CHAIRMAN BRASELTON: I see other people 16 in the room and I just want to make sure I give everyone a chance to talk. 17 18 MR. KLEIN: Two neighbors. 19 MR. NEIMAN: Do the neighbors have any 00:18:26 20 opposition to this? MEMBER OF THE AUDIENCE: No. Just want 21 to see what's going on.

15 MEMBER OF THE AUDIENCE: Not I. MR. KLEIN: I spoke with the neighbor immediately adjacent to the vacant lot and she preferred to have it vacant but she understood. MR. MOBERLY: Before we close the public hearing, Robb, is this a code issue or a staff decision issue? That's why I'm still a little confused. Again, not criticizing what happened 20 years ago, I don't care. Where is 10:10:55 10 It in the code or we have always done It that way? 12 MR. McGINNIS: We have struggled with 13 that a little bit ourselves. Staff doesn't have 14 a real strong position on this one way or the other. In fact, current staff has struggled with this for as long as we have been here 17 because it's fairly nebulous. 18 If I have the floor, I would offer 19 a little bit on just a history of the bulk regs 0.1794 20 and how I understand they came to be in place

A goal of most zoning codes history 1 on past practice here, history on current practice here, and then maybe some personal concerns with precedent and potential slipperyslope arguments. Hinsdale is fairly unique in that we have -- and to Matt's point -- we have two sets of bulk zoning regs. In most communities, they will set their bulk zoning regs to reflect the existing stock of lots and lot sizes. That 00:18:00 wasn't done here. We borrowed our code I think from Northbrook where the lot sizes tend to be a little bit bigger. 14 So what they did was they created another set of bulk zoning regs in 10-105 to accurately reflect the size of the lots here in 17 Hinsdale. 18 It's fairly unique for a community to let people build on nonconforming lots. In fact, we get calls from appraisers fairly 00.18:15 20 21 regularly that are scratching their heads trying to figure out whether a lot that they are doing

an appraisal on is buildable or not because under the code in 3-110 it wouldn't be. 3 You know the goal in most zoning codes is to slowly eliminate nonconforming lots and nonconforming uses and If you look at 10-101 of our code under purpose essentially says that -- I ran a copy for you and have it circled there. Certainly it says the continued existence of nonconformities is frequently 00:19:50 Inconsistent with the purposes for which such districts are established and thus, the gradual elimination of such nonconformities is generally desirable. And that's pretty typical from zoning code to zoning code from town to town. 14 15 It's my understanding that past practice here was pretty consistent on this 16 17 regard. I talked to Dan Schoenburg, who was 18 here for many, many years; Chuck Schmidt, who was building commissioner here for many, many 19 00:19:48 20 years, and it's my understanding that when

people purchased the lot next door and

demolished it, and again, there's no paper trail

21

here in Hinsdale.

- 1 that we have ever been able to find on this, but
- 2 when they came in with improvements on the
- 3 adjacent newly vacant lot, they were told when
- 4 that permit was issued, you are creating one
- 5 zoning lot. Once you create this zoning lot,
- 6 you give up rights to build on that vacant lot
- 7 down the road.
- 8 Again, there's no paper trail that
- 9 I have been able to find on that. But there
- 002022 10 have been other cases where people have come in
 - 11 with similar requests to Matt's and they have
 - 12 even done, you know, goofy things like straddled
 - 13 the lot line with the fence so the fence didn't
 - 14 actually touch. It was a fence on a vacant lot
 - 15 and then three inches away a fence on the lot
 - 16 with the fencible structure on it. So it would
 - 17 seem to support that position that was taken in
 - 18 the past, rightly or wrongly.
 - 19 Current practice, we wouldn't allow
- 0030072 20 this today. If someone came in with a similar
 - 21 circumstance, our position would be you can't
 - 22 have an accessory structure on a lot with no
 - 1
 - 1 principal structure. You either need to clean
 - up the record, consolidate the lot, or don't do
 - 3 anything with the vacant lot and you preserve
 - 4 your right then to build on that down the road.
 - 5 The concern I have with precedent
 - 6 and slippery slope is, staff has been unable to
 - 7 find anything in the code that would allow you
 - 8 to break out an underlying lot of record from a
 - 9 zoning lot and regardless of who establishes
- 10 that zoning lot, once it's created, it's
- 11 created.
 - 12 Now this is different than several
 - 13 underlying lots of record with a principal
 - 14 structure that straddles the lot line. That's a
 - 16 no brainer, it's one zoning lot, you can't
 - 16 demolish it and then build two or three homes on
 - 17 that, on those two underlying lots of record.
 - 18 There's already case law in Wheaton on that one.
 - 19 We had that challenge here way back.
- 1021:56 20 This situation is a little bit
 - 21 different in that you don't have a principal
 - 22 structure that ever straddled these lot lines.

- 1 You had a house on a nonconforming lot of record
- 2 and another house on a legal nonconforming lot
- 3 of record.
- 4 The struggle that we have had is if
- 5 by definition you have created one zoning lot,
- 6 and we have been unable to find anything in the
- 7 code that would support breaking one of those
- 8 underlying lots out.
- 9 CHAIRMAN BRASELTON: Isn't the double
- 10 negative it would be absent of something in the
 - 11 code perhaps dispositive?
 - 12 MR, McGINNIS: That's a question for
 - 13 Michael,
 - 14 CHAIRMAN BRASELTON: Okay.
 - 15 MR. MARRS: Yes. I mean, I would tend
 - 16 to agree with your assessment that if there's
 - 17 nothing here that that doesn't mean you can't.
 - 48 And just in terms of what Robb said
 - 19 about precedent, I guess I would caution you, I
- 102254 20 mean precedent is a concern, but if you feel
 - 21 that the code provisions support his argument,
 - 22 you shouldn't rule against him just because you
 - 21
 - 1 are concerned about other situations. The
 - 2 concerns about precedent would be more
 - 3 appropriately addressed through text amendments
 - 4 in the code.
 - 5 CHAIRMAN BRASELTON: Thank you.
 - 6 MR. McGINNIS: I would hate to over
 - 7 blow that. I don't know how many of these cases
 - 8 exist in town. I'd offer that as you drive
 - 9 through town if you see a vacant lot, the guy
- next door may well own that and the net result
 - 11 could well be more houses on more lots.
 - 12 MR. NEIMAN: Is it accurate to say
 - 13 though from what I understood, Robb, from what I
 - 14 understood you said earlier, since you would no
 - 15 longer allow this presently to occur, that
 - 16 whatever precedential effect our ruling on this
 - 17 particular lot might have, it would only apply
 - 18 to two legal nonconforming lots that exist today
 - 19 where there's a principal structure on the one
- and not a principal structure on the other
 - 21 because now because on a going forward basis
 - 22 you just wouldn't allow it?

	. 22	1	24
1			1 have no way of knowing.
2	MR. MOBERLY: There's two ranch houses		
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7		7	
8		8	
9		9	
00 2420 10	the house down, cleans it up. Are they still	1025HD 10	
11	would you allow that? People have property	11	MR. McGINNIS: Yes. Anything that
12	rights.	12	didn't need a permit. You know, a swing set,
13	MR. McGINNIS: Yes. And	13	anything that we don't regulate, they could do
14	MR. MOBERLY: Is the entire Issue the	14	to that vacant lot.
15	fence then?	15	MR. CALLAHAN: I guess what the concern
16	MR. McGINNIS: To answer that, we are a	16	is people can't accidentally now create unless
17	non-home rule community. We don't issue	17	they create one zoning lot.
18	transfer stamps here. We have no properties	18	MR. McGINNIS: I have had that argument
19	are bought and sold every day that we have no	19	come up. I have had attorneys call and say my
ORTHUS 20	record of. Until they come in for a permit for	002704 20	client inadvertently created a zoning lot by no
21	something, we are in a bit of a vacuum.	21	intention of his own. And I absolutely
22	So if you happen to buy the house	22	understand that argument. You can very easily
7	23		25
1	next door, you had a GC apply for a permit to	1	get stung by simply improving that vacant lot.
2	knock it down, I may never know that you own it.	2	MR. CALLAHAN: Let's say somebody buys
3	But when you come in for a permit for	3	the second lot, they teardown the house, they
4	improvement on that lot, that's the first time	4	put up a fence without any permit and would you
5	we know that the guy next door owns the lot and	5	give them the opportunity to say hey, by the
6	would caution that you would need to be careful	6	way, you just created a lot or take down the
7	that you didn't create one zoning lot. But by	7	fence?
8	making people clean up the record and	8	MR. McGINNIS: No. I'd make them take
9	consolidate If they wanted to make improvements	002744 10	down the fence,
1028/22 10	to that vacant lot, I think we have a fairly	11	MR. CALLAHAN: Okay. So they would have to keep the two lots no matter what?
11	good safeguard built in moving forward.	12	MR. McGINNIS: Right. I mean, they can
12	MR. CALLAHAN: How long has that been	13	choose to clean up the record, consolidate,
13	going on?	14	fence the whole thing in, but we then give
14	MR. McGINNIS: Seven years. Just over	15	people fair warning that once you have done
15	seven years. MR. KLEIN: She acquired the lot in	16	this, it's done. Because then if you went to
16	2000. I think she acquired the second one in	17	subdivide then down the road, it would need to
17	2004.	18	comply with 3-110 not 10-105.
18 19	MR. CALLAHAN: This situation is going	19	CHAIRMAN BRASELTON: Very complex.
ю28:03 20	to be slowly eliminated in the future.	00:28:10 20	Did you get to say everything?
21	MR. McGINNIS: I'm sure there's a	21	MR. McGINNIS: I'm all done.
21	I HALL I INCHESTITION A THE PARTY OF THE P	1	Charman

of 13 sheets

22

CHAIRMAN BRASELTON: I wanted to make

			28
' .	26	1	STATE OF ILLINOIS)
1	sure your comments were complete.) ss:
2	MR, McGINNIS: Yes.	2	COUNTY OF DU PAGE)
3	CHAIRMAN BRASELTON: Anybody questions?		WATER EDI W. DONO CONTROL
4	(No response.)	3	I, KATHLEEN W. BONO, Certified Shorthand Reporter, Notary Public in and for the
5	Thank you.	4 5	County DuPage, State of Illinois, do hereby
6	MR. KLEIN: Thank you.	6	certify that previous to the commencement of the
7	CHAIRMAN BRASELTON: Motion to close	7	examination and testimony of the various
8	the public hearing?	8	witnesses herein, they were duly sworn by me to
9	MR. CALLAHAN: So moved.	9	testify the truth in relation to the matters
00:26:44 10	MR, CONNELLY: Second.	10 11	pertaining hereto; that the testimony given by said witnesses was reduced to writing by means
11	CHAIRMAN BRASELTON: Roll call?	12	of shorthand and thereafter transcribed into
12	MS. BRUTON: Member Connelly?	13	typewritten form; and that the foregoing is a
13	MR. CONNELLY: Aye.	14	true, correct and complete transcript of my
14	MS. BRUTON: Member Moberly?	15	shorthand notes so taken aforesaid.
15	MR. MOBERLY: Yes.	16 17	IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my notarial
16	MS. BRUTON: Member Neiman?	18	seal this 20th day of May, A.D. 2013.
17	MR. NEIMAN: Yes.	19	Such aline addition, or they,
18	MS. BRUTON: Member Callahan?	20	And the second s
19	MR. CALLAHAN: Aye.		KATHLEEN W. BONO,
20	MS. BRUTON: Chairman Braselton?	21	C.S.R. No. 84-1423, Notary Public, DuPage County
21	CHAIRMAN BRASELTON: Yes.	22	237 South Wisconsin Avenue,
21	Public hearing is closed.		Addison, IL 60101-3837
- 24	27		
, 1	(WHICH, were all of the		
	proceedings had, evidence		
2	offered or received in the		
3	above entitled cause.)		
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FINAL DECISION

VILLAGE OF HINSDALE ZONING BOARD OF APPEALS PETITION FOR STAFF APPEAL

Zoning Calendar:

App 01-13

Petitioner:

Ruth Barsky

Meeting held:

A Public Hearing was held on Wednesday, May 15, 2013 at 7:30 p.m. in Memorial Hall, in the Memorial Building, 19 East Chicago Avenue, Hinsdale, Illinois, pursuant to a notice published in The Hinsdalean on March 7, 2013.

Premises Affected:

The Subject Property is commonly known as 735/739 Phillippa, Hinsdale, Illinois and is legally described as:

PARCEL 1:

LOT 7 IN BLOCK 5 IN JEFFERSON GARDENS SUBDIVISION, BEING A SUBDIVISION OF A PART OF THE WEST HALF OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN; RECORDED AUGUST 17, 1929 AS DOCUMENT NO. 10457275 IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 8 IN BLOCK 5 IN JEFFERSON GARDENS SUBDIVISION, BEING A SUBDIVISION OF A PART OF THE WEST HALF OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN; RECORDED AUGUST 17, 1929 AS DOCUMENT NO. 10457275 IN COOK COUNTY, ILLINOIS

Subject:

The Petitioner appeals a long standing staff position that a Zoning Lot is created by definition once someone purchases an abutting property, demolishes the structures on it, and uses that parcel for their own use and enjoyment as a yard or open space, thereby preventing future redevelopment of the abutting property for a separate principal use.

Facts:

This property is located in the R-4 single-family zoning district in the Village of Hinsdale and is located on the east side of Phillippa between Fuller and Bob-o-link Drive. Both lots are approximately 60'x 125' and are considered Legal Nonconforming Lots of Record.

The Petitioner purchased a lot adjacent to her single family home, demolished the existing residence on the adjacent lot, and then installed a fence enclosing both lots, as well as an irrigation system covering both lots. The Petitioner did not file a plat of consolidation or otherwise act to merge the two existing Legal

Legal Non-conforming Lot of Record whether there were structures on it or not, so long as various requirements in Section 10-105 were complied with. Section 10-105 of the Zoning Code provides that "notwithstanding the regulations imposed by any other provisions of this code, a single-family detached dwelling, and any permitted accessory structure, that complies with the regulations of [Section 10-105] may be erected, maintained, altered, enlarged, rebuilt, restored and repaired on a legal nonconforming lot of record." The Board found Section 10-105 dispositive.

Members stated that staff's current practice of requiring a formal consolidation in order to place accessory structures on an abutting lot would prevent the issue from recurring.

A motion in favor of Petitioner in her appeal from the staff decision was made by Member Callahan and seconded by Member Connelly.

AYES:

Connelly, Moberly, Neiman, Callahan, and Chairman Braselton

NAYS:

None

ABSTAIN:

None

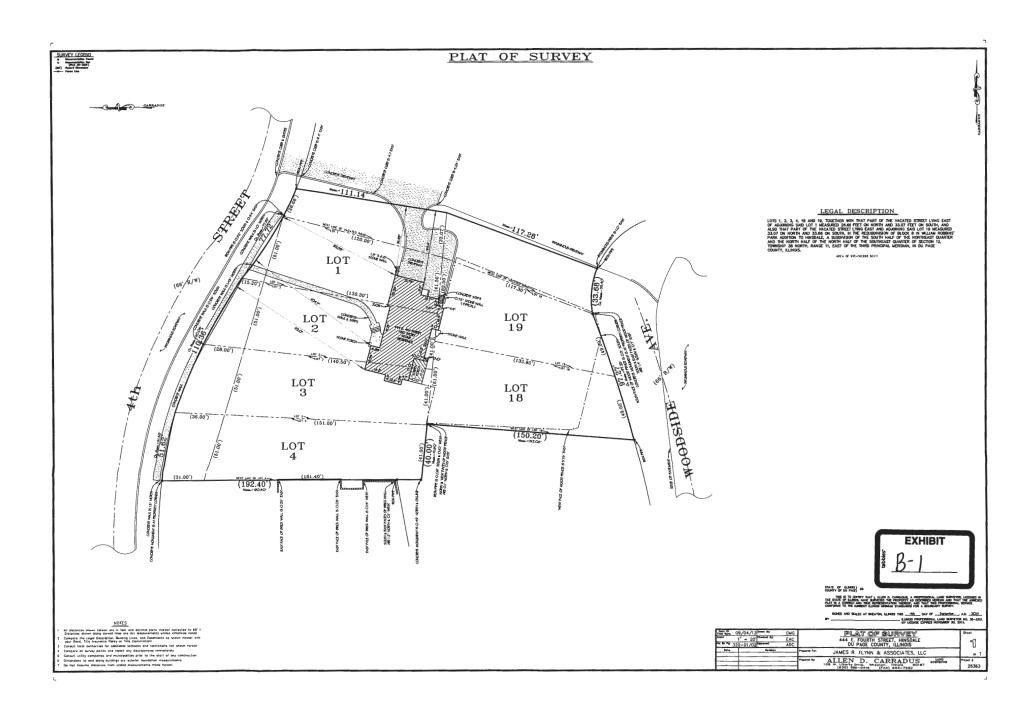
ABSENT:

Members Giltner, Biggert

THE HINSDALE ZONING BOARD OF APPEAL

Chairman Debra Braseitor

Filed this / Zday of July 20/3 with the office of the Building Commissioner.

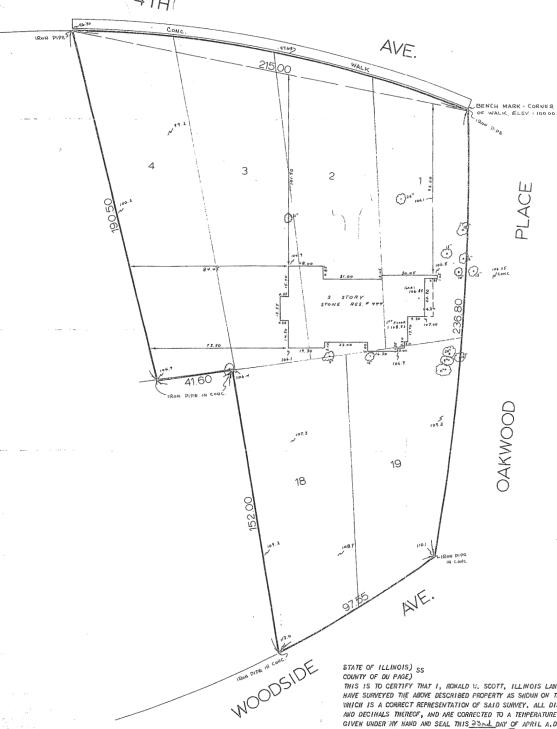


PLAT OF SURVEY OF

LOTS 1, 2, 3, 4, 18 AND 19 IN RESUBDIVISION OF BLOCK 8 IN WILLIAM ROBBIN'S PARK ADDITION TO HINSDALE, A SUB-DIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL HERIDIAN, IN DU PAGE COUNTY, ILL.

1"= 20' SCALE

4TH



STATE OF ILLINOIS) SS
COUNTY OF DU PAGE)
THIS IS TO CERTIFY THAT I, RONALD W. SCOTT, ILLINOIS LAND SURVEYOR NO. 1630,
HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AS SHOWN ON THE ANNEXED PLAT,
WHICH IS A CORRECT REPRESENTATION OF SAID SURVEY. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF, AND ARE CORRECTED TO A TEMPERATURE OF 68° FAHRENHEIT.

GIVEN UNDER MY MAND AND SEAL THIS 23 LDAY OF APRIL A.D. 1936.

Concld W. Crott

ILLINOIS LAND SURVEYOR NO. 1630

17W733 Butterfield Road, Unit F Oakbrook Terrace, IL 60181 (630) 833-3311 Fax: (630) 833-3511

Daniel Law Office, P.C.

May 31, 2017

Ms. Kathleen Gargano, Village Manager VILLAGE OF HINSDALE 19 East Chicago Avenue Hinsdale, Illinois 60521

Via Hand Delivery

Re: 444 E. Fourth Street/Woodside Drive, Hinsdale, DuPage County, Illinois

Permanent Index Nos. 09-12-221-006, '221-008, '221-009

Bousquette/Parker Relocation of Zook House

Dear Ms. Gargano:

As you are aware, I represent Matt Bousquette in relation to his request that you determine that the "North Lot" (described below) may co-exist (as a district zoning lot) with the "South Lot" (also described below) which qualifies as a legal nonconforming lot of record formed by a portion of the Oakwood Place right of way, Lot 18 and Lot 19 of the Resubdivision of Block 8 discussed below. Mr. Bousquette is working closely with the Parker family (Kris and Tracy, the current residents in the Zook Home on the North Lot). I also represent the Parkers. The Parkers are contract purchasers of the South Lot, described below, and Mr. Bousquette is the seller. This letter is provided on behalf of all three of them.

The Parkers' wish to preserve the Zook House and Mr. Bousquette wants to allow this as long as there remains a division between Lots 1, 2, 3, and 4 (the North Lot), on one hand, and Lots 18 and 19 (the South Lot), on the other hand. My clients have attended meetings and negotiated various Village processes, and he is working to first allow the Parkers to preserve the Zook House at a new location. Mr. Bousquette testified under oath that he intends to demolish the Zook House if the efforts with the Parkers to not come to fruition. In light of the sworn testimony, and your awareness of the provisions of the Hinsdale Code, I believe that it would be unproductive to apply for a demolition permit for the sole purpose of responding to false rumors to the effect that Mr. Bousquette will not demolish the Zook House if the Village chooses not to allow its relocation to the South Lot while the North Lot remains available for a new residence.

INTRODUCTION

Mr. Bousquette would like to sell the South Lot to the Parkers. The Parkers would like to move the Zook House from the North Lot to the South Lot. The Parkers are also interested in preserving the Zook House under the Hinsdale Code and they are aware of the regulations that apply to historically significant homes in Hinsdale. In addition to Mr. Bousquette's request for your determination that this is legal without further proceedings and his application for variation

Ms. Kathleen Gargano, Village Manager VILLAGE OF HINSDALE

May 31, 2017

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Bousquette/Parker Relocation of Zook House

(to the Zoning Board of Appeals), Mr. Bousquette and the Parkers are willing to consider a redevelopment agreement that provides for preservation of the Zook House and minimal contributions from the Village such as preparation of the Woodside Avenue right of way (tree removal and general grading to occur in the next few months) for a Village-installed sidewalk if and when the Village determines that a sidewalk is necessary. While the parties understand that the willingness to enter into an agreement does not control zoning determinations, I wanted to advise you of this so you would have no concern over the continuation of the Zook House once you make a determination and to suggest a heightened level of importance to your review of the following material inasmuch as I believe that the proper decision is to find the South Lot can be designated for relocation of the Zook House from the independent North Lot which can be separately improved with a new residence.

All of us are interested in a correct decision that can survive the test of an appeal. I am aware that at least one adverse lot of record determination (735 and 739 Phillippa Street) was reversed by the Zoning Board of Appeals. There have also been historic lot of record determinations relating to 26 East Sixth Street (2017) and 121 East Fourth Street (2014 or 2015). In each instance, the Zoning Board of Appeals (and staff) understood the definition of "vacant" and the attendant regulations for historical lots of record.

On Phillippa Street, the Zoning Board of Appeals determined that a fence surrounding two legal nonconforming lots of record was insubstantial and did not serve to establish intent to abandon the less-improved of the two lots of record. The Phillippa Street decision arose in reliance on a commitment to remove the fence. (See Exhibit K) On Sixth Street, the Zoning Board of Appeals approved a variation from the minimum area required for two historic lots of record in the R-4 district, the vacant lot of which contained a two patio areas, a flagpole area and landscape improvements that were accessory to the lot that was not vacant (Exhibit L). At 121 Fourth Street, a home was demolished and became a yard for the home to the east inasmuch as landscaping design, the location of recreation structures (trampoline and a fort) and other outdoor amenities are concerned. (Exhibit M)

Each decision supports the position that the substantiality of an improvement on the South Lot and the intentions of the owners of the South Lot are important components of the determination of whether a lot of record is "vacant." Importantly, staff and the Zoning Board of Appeals have engaged in interpretations of "vacant" that did not render the definition of "legal nonconforming lot of record" confiscatory or otherwise unconstitutional. Where the use of the vacant lot is *de minimis* and the owner does not intend to forfeit its status as a legal nonconforming lot of record, the vacant lot remains vacant and qualifies as a legal nonconforming lot of record.

If you find that the South Lot is a legal nonconforming lot of record, the regulations of the R-1 classification allow for relocation of the Zook House to the South Lot without zoning or

May 31, 2017

Page 3

Bousquette/Parker Relocation of Zook House

subdivision relief because the South Lot exceeds the 14,000 square foot minimum lot area requirement. Mr. Bousquette and the Parkers would move immediately into the permitting phase for site preparation and relocation of the Zook House. If you find that the South Lot cannot stand alone because Lot 18 and Lot 19 are not legal nonconforming lots of record, then a hearing before the Zoning Board of Appeals is required (the availability of which should not control your decision any more than the ability to enter into a development agreement). The South Lot does not meet the 30,000 square foot minimum required lot area under Section 3-110. This would cause a delay in site preparation and relocation efforts and, perhaps unnecessarily, place neighbors at odds with one another on a project that would lead to preservation of the Zook House when the alternative would be demolition.

Everyone appreciates your attention to this matter.

THE SUBJECT PROPERTY

This letter will use "North Lot" to describe the territory with frontage on Fourth Street which has been assigned Permanent Index No. 09-12-221-008 which is legally described as:

LOTS 1, 2, 3 AND 4, TOGETHER WITH THAT PART OF THE VACATED STREET LYING EAST OF AND ADJOINING SAID LOT 1 MEASURED 26.66 FEET ON NORTH AND 33.07 FEET ON SOUTH, IN THE RESUBDIVISION OF BLOCK 8 IN WILLIAM ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

"South Lot" describes the territory with frontage on Woodside Avenue which has been assigned Permanent Index Nos. 09-12-221-006 and 09-12-221-009 which is legally described as:

LOTS 18 AND 19, TOGETHER WITH THAT PART OF THE VACATED STREET LYING EAST OF AND ADJOINING SAID LOT 19 MEASURED 33.07 FEET ON NORTH AND 33.68 FEET ON SOUTH, IN THE RESUBDIVISION OF BLOCK 8 IN WILLIAM ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

Lot 1 of the North Lot and Lot 19 of the South Lot expanded in area as a result of the vacation of Oakwood Place. After various communications, Mr. Bousquette requested that you determine that the North Lot remains a single zoning lot and that the South Lot is two distinct historic lots of record that can be treated as a distinct zoning lot and historic lot of record from the North Lot.

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Bousquette/Parker Relocation of Zook House

The Subject Property has existed in its divided configuration (Lots 1-4 and Lots 18-19) since 1894 when the block surrounded by Oak Street, Fourth Avenue, Oakwood Place and Woodside Avenue was divided from its then-existing two large lots into nineteen (19) lots with platted lot depths as deep as 192.4 feet. From the inception of the zoning ordinance in 1923 to the present, the Village has assigned the Subject Property the A Residence District classification (1923 zoning ordinance), the AA Residence District classification (1929 zoning ordinance) and the R-1 Single-Family Detached Residence District classification (1989 zoning ordinance).

AUTHORITY AS THE ZONING ENFORCEMENT OFFICER

Your authority arises under Section 11-501(A) of the Hinsdale Zoning Ordinance. Please note that your decision under Section 11-501(A) pertains to a determination of lots of record that may comprise a zoning lot. The review of lots of record and the determination of zoning lots is not a use determination and does not violate limitations on your authority that appear in Section 11-501(E). The North Lot will host a new residential use and the South Lot will host the Zook House which will also be residential.

RELEVANT PROVISIONS OF THE 1989 HINSDALE ZONING ORDINANCE

The North Lot and the South Lot remain in the R-1 Single-Family Residential District. The R-1 classification is intended for larger lot single family residential use even though more than 90% of R-1 lots do not meet the 30,000 square foot minimum lot area mandate (this has been studied by my clients' land planner, Joseph Abel, and it has been confirmed by the Village previously). In light of Section 12-101(D) and the omission of planned developments from authorized special uses in Section 3-106, only one principal single-family residential structure may be constructed on a zoning lot. The determination should confirm that the North Lot and the South Lot exist as distinct zoning lots.

In relevant part, Section 12-206 defines "zoning lot" as follows:

Lot, Zoning: A tract of land consisting of one or more lots of record, or parts thereof, under single ownership or control, located entirely within a block and occupied by, or designated by its owner or developer at the time of filing for any zoning approval or building permit as a tract to be developed for, a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designed and arranged, or required under this code, to be used with such building or use. . . .

A "lot of record" is "[a] lot that is part of a subdivision, the plat of which has been recorded in the office of the DuPage County recorder of deeds . . . or a parcel of land separately described in a recorded deed." "Subdivision" is not defined, but the Village should concur that the

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Bousquette/Parker Relocation of Zook House

Resubdivision of Block 8 in William Robbins' Park Addition to Hinsdale, is a subdivision that was recorded in DuPage County as Document No. R1894-056775 on August 11, 1894. (See attached Exhibit A) The Resubdivision of Block 8 created Lots 1, 2, 3, and 4 which comprise the majority of the North Lot. It also created Lots 18 and 19 which comprise most of the South Lot.

Under the Resubdivision of Lot 8, Lot 1 (the east side of the North Lot) and Lot 19 (the east side of the South Lot) were corner lots with frontage on a right of way that the Village vacated. Neither the North Lot nor the South Lot was the subject of any later subdivision or independent transfer of land by deed. On March 18, 1975, the Village vacated the 66-foot wide Oakwood Place right of way on the east side of the North Lot and the South Lot (R1975-024211). The North Lot and the South Lot, upon the vacation of the right of way, became interior lots. This occurred by operation of law and not through subdivision or deed. The Village and owners of Lot 1 and Lot 19 vacated the street and assigned its territory to each lot that formerly abutted the street (Exhibit B, Pages 5-6).

The Downers Grove Township Assessor treats PIN '008 (the North Lot) as well as PINs '006 and '009 (which will comprise the South Lot) as three distinct taxable parcels. The North Lot is assessed based on its value for land and its value for improvements to the land (the Zook House). The land within the South Lot is assessed based solely on land value and there is no value added to either '006 or '009 for improvements. The assessor's Property Report Cards are attached as Group Exhibit C.

Certain relevant Section 12-206 definitions, such as "legal nonconforming lot of record" and "vacant," are addressed where relevant below.

PRE-1929 VILLAGE CODE AND THE 1935 HINSDALE ZONING ORDINANCE

Chapter XXX of the Revised General Ordinances of the Village of Hinsdale did not change much during the decades it was in force. The 1895 Revised General Ordinances called for Village Board review and certification of a subdivision. (See Exhibit E) The Resubdivision of Block 8 contains a certificate stating that the Village Board approved the plat on August 6, 1894. On August 7, 1894, the Village Clerk certified that "the owners of said Block 8 have duly complied with the Ordi[n]ances of said Village concerning the platting of lands." (Exhibit A)

There was no ordinance concerning zoning in Hinsdale until 1923. Under the 1923 Zoning Map, the North Lot and the South Lot initially carried the Class A residential classification. Copies of the 1923, 1925 and 1929 zoning ordinances were not available prior to submittal of this correspondence. However, the April 16, 1935 zoning ordinance was titled the "Revised Zoning Ordinance of 1935" (Exhibit F, Sec. 1) and the last-adopted revision to the zoning ordinance was adopted prior to the construction of the Zook House and on February 26, 1929 (Exhibit F, Article II, Para. 3).

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The Zoning Map adopted with the 1935 Zoning Ordinance classifies the North Lot and the South Lot within the Class AA residential zoning district. (Exhibit F, Page 1) The original passage of the regulations concerning Class AA lots occurred on January 8, 1929 (Exhibit F, Sec. 4) and it is believed that these regulations did not change because of Section 4's closing reference to Section 3-a of the 1929 Zoning Ordinance.

The 1935 Zoning Ordinance defined "lot" as "[l]and occupied or to be occupied by a building and accessory buildings and including the open spaces required under these regulations. A lot may be land so recorded on the Records of the Recorder of Deeds of DuPage County. . . . " (Exhibit F, Sec. 1) In 1929 and 1935, the North Lot was comprised of Lot 1-4 as recorded. Under this definition, the reference to open spaces ties to yards and required yards then included the front and side yards.

The 1935 Zoning Ordinance defines a "rear yard" as "[a]n open unoccupied space (except for accessory buildings on the same lot with a building between the rear line of the building and the rear line of the lot, for the full width of the lot, except as modified by side yard restrictions." (Exhibit F, Sec. 1) In the AA Residence District, a rear yard created under the 1929 and 1935 regulations could be not less than 15% of the lot depth or ten (10) feet (but not more than 25 feet). (Exhibit F, Sec. 4) Not all zoning lots contained a rear yard because: (a) "[i]n the case of buildings and lots running from street to street, the requirements for a rear yard may be waived when such buildings comply with the percentage of lot occupancy by furnishing other open space in lieu of such required rear yard." (Exhibit F, Sec. 10) The building commissioner engaged in permit review based upon the submittal of a plat and a description of the construction (and additional requested information), issued permits upon careful inspection and maintained these records (Exhibit F, Sec. 13) and the building commissioner also issued certificates of occupancy (Exhibit F, Sec. 12). There was no process for variations, and the Zoning Board of Appeals had only those powers designated to it in Section 11. (Exhibit F) The ordained deference to the building commissioner left the rear yard as one that was not required by code.

HISTORY OF AND PLANS FOR THE NORTH LOT

In 1922, Ellen M. Crocker sold the North Lot to Marshall and Gertrude Keig. Records maintained by the Keigs reflect that they paid the purchase price by November 22, 1928. Architectural plans reflect that the Zook House was to be constructed on "Fourth Street between Oak & County Line Road, Hinsdale." (Exhibit I) There is no mention of construction planned for Woodside Avenue. Architectural plans bear a revision dates of November 23, 1928, December 4, 1928, December 11, 1928, January 11, 1929 and February 15, 1929. (Exhibit I) Review of these plans and of information available at the Hinsdale Historical Society supports the conclusion that the last revision date was February 15, 1929 and construction proceeded in 1929.

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The 1929 construction and later occupancy of the Zook House on the North Lot indicates that no zoning provision prohibited the creation of the North Lot on Lots 1, 2, 3 and 4 or the prohibited the Zook House itself. (Section 12-206(A)(1) and 1935 Zoning Ordinance, Secs. 12-13). At the time of construction, survey standards, preconstruction survey requirements and mid-construction review were nowhere near as detailed as they are today. The depth of the North Lot was 192.4 feet (taken from the west line of Lot 4) and each of the other subdivided lots had a lot depth of 185 feet (Lot 3), 169.5 feet (Lot 2) and 145.5 feet (Lot 1). (Exhibit I) (The mean distance between the front and rear lot lines (the definition of lot depth) is not relevant to this discussion because this correspondence addresses the placement of the home on the North Lot in reliance on the subdivided lot line distances that were platted at a greater length than reflected today.) The area of the North Lot at the time of construction was approximately 30,000 square feet and the lot are covered by the Zook House was less than 3,000 square feet.

The Zook House readily satisfied the 35% lot coverage limit in Section 4 of the 1935 Zoning Ordinance (Exhibit F). The yards surrounding the house had an aggregate area of at least 26,000 square feet. The plans for the Zook House more than adequately provided other open space that would have allowed the building commissioner to waive the requirement of a rear yard. The North Lot did not qualify as a through lot (unless the South Lot was included), but qualifying as a through lot was not required in order to obtain a waiver of the rear yard. All that was required was that the Zook House be proposed for a collection of "lots running through from street to street." The North Lot was eligible for a waiver because the northwest corner of the North Lot was situated on Fourth Street and a line could be drawn from this corner to Oakwood Place, meeting Oakwood Place at a 90-degree angle after a distance of 204 feet measured between one street and another. (See Exhibit A)

If the Village intended that the rear yard waiver only be available when a home was constructed on a through lot, it would have used the term through lot. The intent behind the language in Section 10 of the 1935 Zoning Ordinance was to allow rear yard waivers on through lots and corner lots. Hinsdale has a long history of special yard reductions on through lots and corner lots. Further, if the Village insists that the run "from street to street" must be taken from Fourth Street to Woodside Avenue, then the Village must deal with the use of the singular term "lot" in the definition of "through lot" in Section 1 and the use of the plural term "lots" in Section 10. This usage is inconsistent with an interpretation of the 1935 Zoning Ordinance to find that the South Lot must have been included in the lot relied upon for the Zook House.

The use of the plural term "lots" indicates that the North Lot and the South Lot could have operated to run "from street to street" because there was no construction on the South Lot. Moreover, the indication in the definition of lot as the parcel containing the buildings, accessory buildings and all required yards is quite telling in this instance. The rear yard could have been waived by the building commissioner. Even if there was no waiver, the ability to obtain one indicated that the rear yard is not one of the required open spaces that must be on the same

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zoning lot as the structure. As a result, in the absence of a waiver, a required rear yard serving the North Lot could have been placed on the South Lot in compliance with the applicable provisions of the 1929 Zoning Ordinance and the 1935 Zoning Ordinance.

Under the 1935 Zoning Ordinance believed to be in effect in 1929, there was no requirement that the builder place the home on a plan or plat. Moreover, even if the home appeared on a plan or plat, the site work required attention to detail. Between the 1894 Resubdivision of Block 8 (Exhibit A) and Sailor's Resubdivision of Lots 5-17 of Block 8 (Exhibit J, R1969-01231), it is clearly evident that the transition from surveying requirements in 1894 and 1929 to those in 1969 led to changes in the measures of the depth of the North Lot (and of the South Lot). The dimensions of the North Lot lost over two feet in depth and the dimensions of the South Lot gained much of this depth. The table below reflects measures of the various lot lines within the North Lot and the South Lot in 1894, according to the 1969 Sailor's Subdivision and according to the DuPage County GIS service:

LOT	1894 RESB LENGTH	1969 SAILOR'S LENGTH	GIS LENGTH (POSTED)
1E	120	NONE	118.2 (120)
1W/2E	145.5	NONE	139.8 (145.54)
2W/3E	168.5	NONE	168.9 (168.5)
3W/4E	185	NONE	182.6 (185)
4W/5E	192.4	190.5	190.5
17E	150.2	152	153.5 (152)
18W	150.2	152	153.5 (150.2)
18E/19W	133.9	NONE	135 (133.9)
19E	117.3	NONE	116.2 (117.3)

Considering the circumstances in 1929, a builder would have measured and staked the lot line according to the distances reflected in the Resubdivision of Lot 8 (and certainly would not have done so in reliance upon the dimensions in a 1969 plat created with different technology and under different rules for surveyors). Notably, the 1969 plat was the work of owners of other land. At no time has the owner of the North Lot and South Lot filed a different plat in the Office of the Recorder of Deeds for DuPage County. Participation by the owner of the North Lot in the 1975 process related to the vacation of Oakwood Place related only to Lot 1 and Lot 19.

Today, the North Lot is situated in the R-1 Single-Family Residential zoning district. With the addition of a portion of the former Oakwood Place right of way, the North Lot will easily meet the minimum lot area and other lot standards of Section 10-105(A) and Section 3-110. The North Lot continues to host a home with a footprint smaller than 3,000 square feet. According to the Downers Grove Township Assessor, the North Lot offers 3,954 square feet of living space. There is a 1,856 square foot basement and a 483 square foot garage.

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It is possible that, using surveys conducted by others that reflect the shorter lot depths for the North Lot and after on an apparent change in Fourth Street since 1894 (affecting the east half of the North Lot), a small portion of the structure encroaches from the North Lot onto the South Lot. If there is an encroachment, the sliver of the Zook House that encroaches is such a small portion as to be considered *de minimis*. The encroachment is comprised solely of portions of an exterior stairwell (not a building under the 1935 Zoning Ordinance or the 1989 Zoning Ordinance), a storage area (an allowable accessory building under the 1935 Zoning Ordinance but part of the principal building under the 1989 Zoning Ordinance) and a very small portion (possibly a few square feet) of one thirteen inch stone wall enclosing the southeasternmost interior room of the principal building. The insubstantiality of the encroachment is so small that one could consider it a 1920's-era fluctuation (or even a mistake) relating to surveying, staking or survey interpretation and amounts to a few square feet of area inside an thirteen (13) inch thick exterior stone wall.

The North Lot still remains entirely comprised of Lots 1, 2, 3 and 4 from the 1894 resubdivision of Lot 8, none of which have changed in the last 123 years other than to see an increase in size of Lot 1 on the east due to the vacation of Oakwood Place (not by any act of subdivision). At the time of construction of the Zook House in 1929, the North Lot was designated by its owner or developer at the time of filing for a zoning approval and building permit as the tract to be developed with the structure that is the Zook House.

Section 12-206 defines precode structures:

Precode Structure: Any building or structure, other than a sign, lawfully existing as of June 18, 1988, or the date of any subsequent amendment to the village's zoning regulations that renders such building or structure nonconforming, that:

- A. Does not comply with all of the regulations of this code, or any such amendment to it, governing parking, loading, or bulk and space requirements for the zoning district in which such building or structure is located; or
- B. Is located on a lot that does not, or is so located on a lot as not to, comply with the area, dimension, yard, or setback requirements for the zoning district in which such building or structure is located; or
- C. Both subsections A and B of this definition; except
- D. Any building containing more than one dwelling unit in addition to the number permitted by the district regulations in the district where it is located shall be deemed to be a nonconforming use rather than a precode structure.

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The North Lot contains a pre-code structure because it existed in 1988 (see Exhibits G and H) and the Zook House does not meet the rear yard requirement of the 1989 Zoning Ordinance. Section 10-101(A) states: "Any precode structure may be maintained, altered, enlarged, rebuilt, restored, and repaired so long as it remains otherwise lawful, subject to the restrictions in subsections B through E of this section and subsection 10-101D of this article." Under this provision, the Zook House has continued in existence since 1929 despite several revisions to the Zoning Ordinance. Section 10-104(F) protected the driveway serving the Zook House and limited other structures even if they were not situated wholly within the North Lot.

The Parker family currently occupies the Zook House and has entered into agreements whereby the Parkers will acquire the South Lot and the Zook House. The Parkers will relocate the Zook House from the North Lot to the South Lot. The Parker family has indicated an intent and willingness to work with the Village to allow the Village to designate the Zook House as a historic structure. This relocation could be complete as early as this Fall, and designation efforts would initiate as soon as a Certificate of Zoning Compliance issues for the relocated house.

Following relocation of the Zook House from the North Lot, the North Lot would be a vacant zoning lot that meets the minimum lot area requirement of the 1989 Zoning Ordinance. The lot is of sufficient size and dimension under Section 3-110. Further, no act of subdivision is required in order to designate the North Lot as a zoning lot capable of development.

HISTORY OF AND PLANS FOR THE SOUTH LOT

From 1894 to the present, there has been no known principal structure or use on the South Lot. The South Lot consisted of Lot 18 and Lot 19 in the 1894 Resubdivision of Block 8 and this circumstance did not change until the east side of Lot 19 gained land as a legal result of the Village's vacation of the right of way. As noted above, the South Lot appears to have gained two feet in depth as a result of changes in surveying technique since 1894. (Compare Exhibit A to Exhibit J) Lot 18 and Lot 19 still comprise two historic lots of record. Mr. Bousquette and the Parkers have designated these two lots of record as the location for the relocated Zook House.

Section 10-104(E) requires that the relocated Zook House occur on a lot where the home meets the requirements of the Zoning Ordinance. Staff has reviewed the plan for relocation of the Zook House and staff agrees that the Zook House can be relocated to the South Lot in a fashion that complies with all applicable bulk regulations if it is viewed as a legal nonconforming lot of record. Section 10-104(E) requires the abandonment of two lots of record in favor of a single lot of record. ("No precode structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved") Section 10-104(E) of the Zoning Ordinance allow for the relocation of the Zook House as reflected in the Table of Zoning Compliance attached as Exhibit D.

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A legal nonconforming lot of record can be developed under the regulations set forth in Section 10-105(A) and Section 3-110 of the Zoning Ordinance (the latter applies unless a provision otherwise appears in Section 10-105(A)). Section 12-206 defines "legal nonconforming lot of record" as follows:

Nonconforming Lot Of Record, Legal: A nonconforming lot of record that:

- A.1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation; and
- 2. Is located in a residential district and meets the minimum lot area and lot dimension standards of subsection 10-105A of this code, or is located in a district other than a residential district; and
- 3. Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code; or
- B. Was created pursuant to section 3-110 of this code.

Except as authorized pursuant to section 3-110 of this code, a legal nonconforming lot of record cannot be created by the sale or transfer of property that results in the creation of a nonconforming lot of record or that increases the degree of nonconformity of any existing nonconforming lot of record.

Since there appears be a through lot at the northeast corner of Oak Street and Woodside Avenue, Section 3-110 is presently unavailable under these facts and this narrative focuses only on Section 12-206(B).

COMPLIANT SUBDIVISION

The South Lot is comprised of two non-conforming lots of record (Lot 18 and Lot 19) created under the 1894 plat. The 1894 plat contains an attestation of the Village Clerk that the President and Board of Trustees of Hinsdale approved the plat and that the plat met all applicable ordinances. (Sec. 12-106(A)(1)) Chapter XXX, Sections 1-3 of the 1895 Village Code changed very little over the next few decades, and it is reasonable to assume that the code provisions attached as Exhibit E were in effect at the time of the 1894 Resubdivision of Block 8. Further, the 1929 permitting for the Zook House indicates that the Zook House proceeded based on the

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1894 plat and met the minimum lot area and the minimum lot dimension standards at the time. (See Exhibit F, Secs. 12-14)

It is incorrect to instinctively conclude that any lot requires a rear yard and that the possible location of a tiny part of the Zook House on a mere fraction of a percentage of the South Lot justifies a conclusion that the Kieg family intended that the Zook House be contructed on Lots 1-4 and Lots 18-19. As noted above, the building commissioner had the ability to waive the rear yard requirement on lots that extended from street to street. The South Lot was not required to be a part of the lot supporting the Zook House in 1929 inasmuch as the North Lot extended from a point on Fourth Street to another point on the now-vacated Oakwood Place and was eligible for the rear lot waiver independent of anything tied to the South Lot. Additionally, there was nothing at all in the 1935 Zoning Ordinance that prohibited the South Lot from hosting the rear yard for the Zook House without becoming part of the lot occupied by the Zook House. Specifically, because the rear yard could be waived on lots connecting from street to street, the rear yard is not a yard that the Village required to be on the same lot as the Zook House.

The Village's first zoning ordinance (1923) was unavailable at the time of writing this letter, as were the 1925 and 1929 zoning ordinances. However, the 1935 Zoning Ordinance's AA Residence District regulations indicate that the Class AA classification and regulations arose for the first time on January 8, 1929 and the 1935 Ordinance (Exhibit F) must have been substantially similar to the 1929 ordinance in light of the following language that appears at the end of Section 4: "...[preserving rights of development for parcels smaller than one-third of an acre and 70 feet in frontage for lots created in plats recorded] prior to the original passage of this section, January 8, 1929, designated heretofore as "Section 3-a 'AA' Residence District Regulations." Section 1 of the 1935 Zoning Ordinance states: "This ordinance may be cited and referred to as the Revised Zoning Ordinance of 1935." As such, it is reasonable to expect substantial similarity to the 1929 regulation of zoning within the "AA" district and from a procedural perspective.

The 1935 Zoning Ordinance and the March 1932 Zoning Map attached to said ordinance classified the North Lot and the South Lot in the "AA Residence District" zoning classification. Amid several large tracts, one can clearly identify Lots 1, 2, 3 and 4 which are part of the North Lot as well as Lot 18 and Lot 19 which are the two historical lots of record that are part of the South Lot. The South Lot met the requirements of the 1929 and 1935 regulations.

CURRENT ZONING COMPLIANCE

The South Lot remains in a residential district. It exceeds the 14,000 square feet of lot area required by Section 10-105(A). The South Lot also meets the lot width and lot depth requirements under Section 10-105(A). (Sec. 12-106(A)(2)) The area of the South Lot exceeds

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17,000 square feet and it will be 20,000 square feet at the conclusion. The lot depth is 150-152 feet. The lot width is well over 70 feet (more than 125 feet).

Please see the Table of Compliance marked as Exhibit D. These figures will likely change slightly as the area of the South Lot is adjusted to a maximum of 20,000 square feet. The Table of Zoning Compliance is not to be relied upon for permitting review or inspection. Some measures taken from recorded measures and not actual measures. Others relied on DuPage County GIS measurements. A surveyor should determine the final actual figures for compliance.

THE SOUTH LOT IS VACANT

The South Lot was vacant on June 18, 1988. (Sec. 12-106(A)(3)) The 1987 aerial imagery provided by the DuPage County GIS system reflects that the South Lot was vacant in 1987. (See Exhibit G) Google Earth aerial imagery reflects that the South Lot remained in a condition similar to that shown in 1987 and remained vacant on April 16, 1993. (See Group Exhibit H) The Village should have no building permit records for activity that indicates that any improvements occurred between 1987 and 1993 that would lead to any conclusion contrary to the existence of a vacant condition on June 18, 1988.

Section 12-206 of the Zoning Ordinance defines "vacant" as "[n]ot developed with any building, structure, or paving or surfacing of the ground." The definition of "building" refers to "structure" and the terms are defined interchangeably. "Structure" means "[a]nything constructed or erected, the use of which requires more or less permanent location on the ground, or anything attached to something having a permanent location on the ground, but not including paving or surfacing of the ground." A principal building is "[a] building in which is conducted the principal use or uses of the lot on which said building is situated." The 1935 zoning ordinance definition is also relevant because, as constructed, the shed was an accessory building in 1935 but became a principal building in 1989.

There has been some discussion about the encroachment of the very small portion of Zook House onto a portion of the South Lot and whether a finding that the South Lot has been vacant is possible. Indeed, Mr. Bousquette seeks your interpretation because he disagrees with the hesitation that staff had on the matter of finding that the South Lot was vacant because roughly 12 square feet of improvements (2-3 of which are part of a thick stone wall) may exist on the South Lot.

With respect to 26 East Sixth Street, on March 15, 2017, the Zoning Board of Appeals recommended a variation from the minimum lot area required for a historic lot of record. In a fashion similar to the North Lot, the Hinsdale Zoning Map identifies 26 East Sixth Street as a distinct lot with an address next to at least one lot that has no address. At the time of a variation request, there existed a patio on the lot with no address. The patio was accessory to an existing

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home on the lot with the address of 26 East Sixth Street. The home on 26 East Sixth Street and the parcel with no address to the west are situated in the R-4 zoning district which requires a minimum lot area of 10,000 square feet and each parcel had a lot area 6,600 square feet or less. Each parcel offered the historical lot of record lot width but fell short of the required 70 feet of width in the R-4 regulations. The parcels were not independently capable of development unless they were viewed as legal nonconforming lots of record and as historic lots of record. Despite the existence of two patios (for a grill and a birdbath), a flag pole and landscape installations on the lot with no address, the Zoning Board of Appeals readily accepted that there was a legal nonconforming lot of record that could be developed. (Seek Exhibit L)

At 735 and 739 Phillippa Street, the Zoning Board of Appeals expressly found two historic lots of record in an R-4 zoning district. The ZBA accepted an appeal on the promise of removal of a fence surrounding the lots of record. The Applicant and ZBA did not address other improvements on 739 that served 735 such as raised garden beds and pathways. (See Exhibit K) Roughly similar circumstances existed at 121 East Fourth Street. (Exhibit M)

I note that, during the hearing on 26 East Sixth Street, staff drew a conclusion about a house straddling a lot line in the hearing concerning 26 East Sixth Street. I also note that Klein Thorpe & Jenkins seems to have placed determinative importance on the circumstance that the Zook House may straddle the lot line. This is so even though the only relevant part of the principal structure that appears to straddle the line between the North Lot and the South Lot is a small stretch of a thirteen inch thick wall that was built in 1929 when the North Lot undeniably had a greater lot depth than used today. The shed and the stairs were not principal buildings under the 1929 Zoning Ordinance. Nevertheless, it appears to me that everyone agrees that the extent and size of the encroachment is too small to notice.

The portion of the Zook House that is situated on the South Lot is comprised of a shed, stairwell and a short segment of a wall that, together, occupy a remarkably small 12 square foot area. The area amounts to 0.18% of the area of the Zook House, 0.06% of the area of the South Lot and less than 0.04% of the area of the North Lot. The greatest reach of the encroachment amounts to roughly 1.15% of the 152 foot lot depth of the South Lot. "Remarkably small" actually overstates the scale of the encroachment. (See Exhibit I)

Since 1929, and continuing through today, the encroachment has been comprised solely of (a) a series of exterior steps to the basement, (b) an exterior shed that had its own walls and was entirely divided from the main house from the ground up and (c) a portion of the 13-inch wall for a negligible stretch of the wall. Exterior steps are not a building. The shed is not part of the principal building by design and by use. The portion of the wall and its relationship to the lot line frankly cannot be determined with certainty.

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The April 16, 1935 Zoning Ordinance (Exhibit F) defined building quite differently than today's 1989 Zoning Ordinance:

Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels; and when separated by division walls from the ground up, and without openings, each portion of such building shall be deemed a separate building.

The "AA Residence District" only permitted one principal building on a zoning lot, so it should come as no surprise that the shed cannot be classified as a second principal building. The shed, in reality, falls squarely within the definition of an accessory building under the April 16, 1935 ordinance ("[a] subordinate building or portion of a building. . . .). You cannot enter the building from the shed and the walls extend up from the ground to was originally was a slate roof. (See Group Exhibit I) There is complete separation from the main portion of the residence and the 1935 Zoning Ordinance treats the shed as a second building and one that is accessory.

The term "vacant," as defined in the 1989 Zoning Ordinance must be interpreted fairly. Inasmuch as Mr. Bousquette and Mr. and Mrs. Parker raise the determinations on Sixth Street, Fourth Street and Phillippa, they do so in recognition of the reasonable application of a provision in the 1989 Zoning Ordinance that would otherwise be viewed as draconian and confiscatory. The patio on Sixth Street and the fence on Phillippa both had a greater extent of encroachment from one historical lot of record onto another. 26 East Sixth Street involved a 100 square foot patio, a second patio and birdbath area and a flagpole on the vacant lot adjacent to 26 East Sixth Street (areas much larger than the 12 square feet we are dealing with in this instance). The fence enclosed a substantial area of two lots of record at 735 and 739 Phillippa. Various structures and improvements on 121 East Fourth Street existed since the post-1988 demolition of a home.

Of course, these are not the only instances where land underlying an accessory structure was viewed as still subdivided from land under the principal structure. However, they operate as three different types of circumstances in the recent past where lots of record with accessory structures and uses became separated from the lot of record hosting the principal building. This is not a situation that occurs only on lots of record inasmuch as, on January 7, 1969, the Village approved Sailor's Resubdivision of Lots 5-17 in Block 8. At the time of subdivision approval, Chanticleer Apartments, Inc. owned Lots 5-17 and Louise and Philip Clarke's principal residence existed on Lots 12-14, their driveway existed on Lots 9-11 and 14, and their garage existed on Lot 17. Following subdivision, the garage was on Lot 3 in Sailor's Resubdivision and the other improvements were on Lot 4. Lots 1, 2, and 3 had lot areas of 20,037.6 SF, 20,037.6 SF and 21,780 SF, respectively. The lot hosting the original home on the west half of the originally-subdivided Block 8 remained as Lot 4 with 48,787 SF.

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If interpreted according to its express terms, the definition of vacant precludes a finding that the second lots of record on Fourth, Phillippa and on Sixth remained lots of record. The Zoning Board of Appeals (on Phillippa and Sixth) and the Village (on Fourth) have recognized that the lot of record determination must hinge not only on substantiality, but also on intention. After all, the rule enforced leads to forfeiture of a valuable right to construct on a lot with no variations and, in this case, forfeits my clients' rights to relocate a historic home to a new location so it can be preserved for decades to come. With this in mind, it seems quite clear that the encroachment onto the South Lot is *de minimis* and insubstantial.

THERE HAS BEEN NO INTENT TO ABANDON THE SOUTH LOT

In addressing intentions, all of us are left only with circumstances we can trace through maps, ordinance provisions, plans and plats. The encroachment at issue occurs only on Lot 19 of the Resubdivision of Block 8. It is impossible to discern intention to forfeit the South Lot for development by permitting twelve square feet of primarily accessory building improvements to cross the shared lot line between the North Lot and just one of the two lots of record that will comprise the South Lot.

Additionally, two provisions of the 1935 Zoning Ordinance (again, an ordinance that is substantially similar to the 1929 Zoning Ordinance in effect during permitting and certifying occupancy of the Zook House) belie any claim of intent. Under the April 16, 1935 Zoning Ordinance, Article I, Section 10 contained the following provision:

In the case of buildings upon lots running through from street to street the requirements for a rear yard may be waived when such buildings comply with the percentage of lot occupancy by furnishing other open space in lieu of such required rear yard.

There was no requirement of a hearing or ordinance or resolution. Further under Article I, Section 12, there could have been no occupancy of the Zook House until the building commission issued a certificate stating that the home complied with all ordinances, including the zoning ordinance. The building commissioner was assigned the duty to maintain all plats, plans and certificates of occupancy. These apparently do not exist.

Under Article I, Section 13, the 1935 Zoning Ordinance required that a building permit issue pursuant to an application that included a plat showing the dimension of the lot to be built upon and describing the size of the building to be erected. In an instance where a rear yard is waived for the Zook House, there would be no requirement for a rear yard and the home could be situated to the rear of the property. Section 4 continued the "AA Residence District" regulations from 1929 by requiring the garage to be located on the rear one-third of the property and not closer than 100 feet from the front lot line. Today, the garage is situated in the rear one-third of the North Lot and, not surprisingly, it is also nearly 90 feet from the street. (The ordinance

May 31, 2017

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Bousquette/Parker Relocation of Zook House

required pre-existing lots to comply as nearly as possible, and there was no ordained variation process.)

Furthermore, the 1894 Resubdivision of Block 8 into 19 lots of record relied on four stones on the west half of Block 8, one stone on the east half and measurements for the remainder. Assuming there was no increase in cost of labor or materials, the \$35,000.00 spent in 1929 has a 2017 value well in excess of \$500,000.00 today. One of the top architects in the field participated in the design of the home. Hinsdale had an ordinance concerning plats, a building code and a zoning ordinance. The owner was not spending a small sum that could lead to passive supervision and the resulting home is no indication of passivity on anyone's part.

However, platting processes in the 1890's were not perfect. Five stones and dimensions on an 1894 plat could prove difficult for any surveyor and if no back yard was required, there are two means through which planned proximity could have led to a possible 1-1.8 foot encroachment. The suggestion of platting problems in the 1890's is not raised lightly in this instance. The 1894 Resubdivision of Block 8 simply does not match the Sailors Resubdivision of Lots 5-17 in Block 8. Comparing Exhibit A to Exhibit J and to DuPage County GIS lot line measurements available on the Internet, there is a variance in the plats that is greater than the alleged encroachment from the North Lot onto the South Lot. There is a jog in the rear lot lines that developed since 1894. The last relevant plat prior to Sailor's 1969 Resubdivision of Lot 5-17 was the 1894 Resubdivision of Block 8. The depth of the North Lot under the 1894 plat was at least two feet greater than in the 1969 Sailor's plat. The South Lot was two or more feet shallower than in 1969.

Returning to 1935, it would be unreasonable to assume that no one would build a home without a rear yard or with the rear yard on another parcel. The building commissioner had the power to waive the rear yard if he excluded Lot 1 from his review because corner lots were restricted to a maximum width of 50 feet under the AA regulations in the 1935 Zoning Ordinance, thereby allowing the building commissioner to treat the whole of the land from Fourth south to Woodside as passing from street to street. It is believed that none of the Zook House was constructed on Lot 1.

In 1935, and presumably in 1929, "lot" was defined as "[l]and occupied or to be occupied by a building and accessory buildings and including the open spaces <u>required</u> under these regulations." As noted above, the open spaces required were the front and side yards and the percentage of the lot that was required to be open space; however, the rear yard was not required because the building commissioner could waive the rear yard requirement. Thus, in light of the ability to waive the Village assigned to the building commissioner, a rear yard was not required and the building commissioner could have determined that the rear yard did not have to be on the same lot. Thus, there are two very clear possibilities under the 1929 and 1935 zoning ordinances whereby a rear yard would not have been required: (a) waiver by the building commissioner; or

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Bousquette/Parker Relocation of Zook House

(b) a building commissioner determination that, under the express terms of the ordinance, a rear yard is waivable and, therefore, not required to have been situated on the same zoning lot.

No provision of the 1935 Zoning Ordinance concerning the AA Residence District or lots in general operates to eliminate the future development potential of the South Lot as a result of any encroachment onto the South Lot of 12 square feet of the Zook House. The sole result of the encroachment is that the yard space of the South Lot occupied by items accessory to the North Lot cannot be counted as yard space on the South Lot. Further, with the Zook House being relocated, there is no attribution of any part of the South Lot to any purpose serving the North Lot.

The circumstances in this case are similar to those in the Sixth Street and Phillippa Street matters (the encroachments onto 121 East Fourth Street were not as significant). The encroachments in this case are lesser by extent than in the other two cases and occupy less area than a fort and trampoline did on 121 East Fourth. Viewed as consistently as possible from one case to the next and with an eye towards constitutionality and avoiding a forfeiture, the best interpretation calls for a determination that the South Lot hosts a *de minimus* and insubstantial series of improvements that have benefitted the North Lot, but which have not done so to the extent of intentionally forfeiting the independent capability of the South Lot to be developed with a residential use at the same time the North Lot hosts a residential use.

IMPACT OF REQUESTED DETERMINATION

In May 2016, Mr. Bousquette attended the Village's Historic Preservation Tax Freeze Workshop. He presented the concept of relocating the Zook House to the Board of Trustees in June 2016. In December 2016, he was directed to attend the January 2017 Board of Trustees meeting before being redirected to the Village's Historical Preservation Committee in February 2017. He was then informed that he should work through the Zoning Board of Appeals process, though the basis for this is a bit unclear. After incurring tens of thousands in costs getting to this point, in March 2017, he proceeded to the Historic Preservation Committee in order to obtain a review of the possibility of demolishing the Zook House (the Historic Preservation Committee's process is one that is merely advisory under Section 14-5-1(B) and 14-5-5(C)).

At no time during these costly processes was any one of my clients informed that the Village opposed the concept of preservation of the Zook House. The Historic Preservation Committee supports preservation of the Zook House. Indeed, the Zook House is a feature of the Robbins Park Addition to Hinsdale which is of historic significance. Over the years, the area has suffered the loss of older homes despite efforts to market the homes for resale in their restored and newly decorated condition (Third Street), in their one-of-a-kind architectural design (425 Woodside Avenue) or in their specially cared for condition (219 First Street). Allowing the relocation of the Zook House to the South Lot as a legal nonconforming lot of record offers

May 31, 2017

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Bousquette/Parker Relocation of Zook House

immediate relief to the pressure the Village faces when attempting preservation, and it does so without disrupting planning in the area.

Within the immediate Woodside Avenue area, there are six lots. The South Lot would be larger than 424 Woodside Avenue, 440 Woodside Avenue, 445 Woodside Avenue and 455 Woodside Avenue. The South Lot, occasionally referred to as 435 Woodside Avenue, is planned for 20,000 square feet (it exists at just a bit more than 17,000 square feet). 425 Woodside Avenue is 21,501 square feet in area. The average lot size, excluding the South Lot, is 18,369 square feet, slightly larger than the South Lot in its existing condition and over 1,600 square feet smaller than the South Lot in its future condition. The South Lot is proposed on land that is presently only slightly below the average lot size. Following a deeded additional tract of land, the South Lot will be 20,000 square feet in area and 9% larger than the average on the block, 37 square feet smaller than two of the lots created by the 1969 Sailor's subdivision.

The average size of a residence in this same block is also telling. Excluding the most recent new home, the average home size is 4,538 square feet. The home at 425 Woodside Avenue is 8,370 square feet (87% higher than the average) and this brings the average home size up to 5,596 square feet. The Zook Home, at 4,150 square feet will be 35% smaller than the average home.

These figures also speak volumes of the economics. A great deal of sacrifice has already gone into the effort to relocate and preserve the Zook House. However, the Village should readily conclude from past actions that economics can be a significant driver despite its best regulatory support of preservation. Relocation of the Zook Home avoids a repeat of the situation at 328 East Eighth Street and at 425 Woodside. In the 425 Woodside situation, the 3,441 square foot home arising from the Sailor's Resdubdivision in 1969 was demolished in favor of a home that is 8,370 square feet situated on a lot that is 40% smaller than the South Lot.

Only two (2) of the eleven (11) Fourth Street homes within the block between Oak Street and County Line Road meet the Village's minimum lot area requirement (441 East Fourth Street and 448 East Fourth Street). The average lot size of the ten homes, excluding the North Lot, is 23,486.3 square feet. Following a determination that the North Lot and the South Lot are independently treated as two zoning lots capable of hosting two single family homes, the North Lot will also meet the Village's minimum lot area requirement of 30,000 square feet and the average lot size for the area will not decrease.

A determination that the South Lot may independently host the Zook House while the North Lot is developed with new residential construction will not upset expectations in the area. Such a determination will not allow lots smaller than the average in the area. The determination will increase the number of lots that conform to the minimum lot area for R-1 zoning lots. Lastly,

May 31, 2017

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Bousquette/Parker Relocation of Zook House

the Village will have faithfully interpreted its codes and simultaneously avoided the loss of an asset to the Robbins Park Addition Historic District and to the Village as a whole.

CONCLUSION

For the reasons stated above, Mr. Bousquette and Mr. and Mrs. Parker respectfully request that you determine that the North Lot is an existing lot of record that remains separate from the South Lot and that the South Lot qualifies as a legal nonconforming lot of record. To the extent that any encroachment over the lot line shared between the North Lot and the South Lot, the encroachment is insubstantial and certainly reflective more of the circumstances of the technology and regulations in play in 1929 than it is of any intention to treat the South Lot and the North Lot as one parcel.

While some may suggest that it is easier to simply pursue a variation than it is to obtain a well-justified determination by you, it is incumbent on all of us to recognize the past and apply the ordinances in play then and now properly. As you can tell from some of the above discussion, there are certain adjustments to which Mr. Bousquette has committed. These will leave the North Lot with 30,000 square feet and the South Lot with 20,000 square feet. It is entirely possible to accomplish these objectives under exceptions recited in the Plat Act for transfers among existing lots. With that said, the approach of obtaining your determination in this instance allows certainty in advance of these transfers and also permits the Village to see the immediate preservation returns on having the Zook House preserved on the South Lot.

Thank you for receiving this letter in person today. I look forward to hearing from you at your earliest convenience in light of the June 21, 2017, Zoning Board of Appeals meeting. I am available to speak with the Village Attorney and you if at all needed over the next few days.

Thank you for your attention to this matter.

Yours very truly,

DANIEL LAW OPFICE, P.C.

Mark W. Daniel

cc: Lance C. Malina, Esq. Michael A. Marrs, Esq.

Hon. Thomas M. Cauley, Mayor

EXHIBIT LIST

A – 1894 Resubdivision of Block 8

B-1975 Vacation of Oakwood Place

C—Assessor's Reports

D-Table of Compliance

E-1895/1912 Plat Regulations

F—1935 Zoning Ordinance Provisions

G-1980s Photo

H-1990s Photo

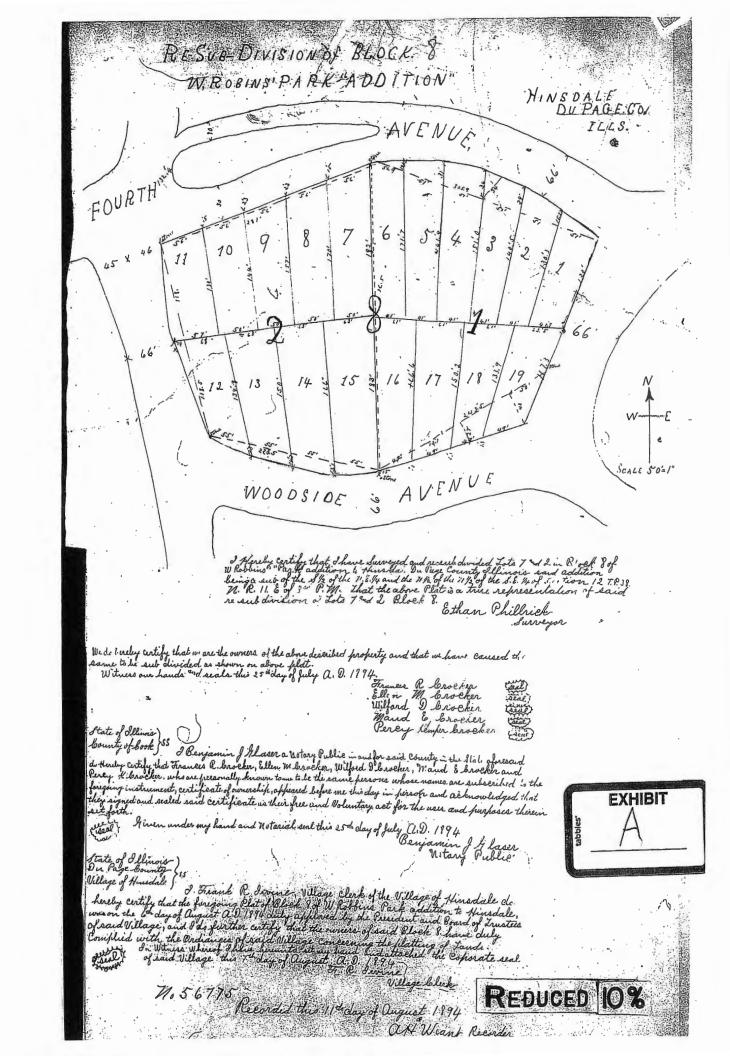
I-Zook House Plans

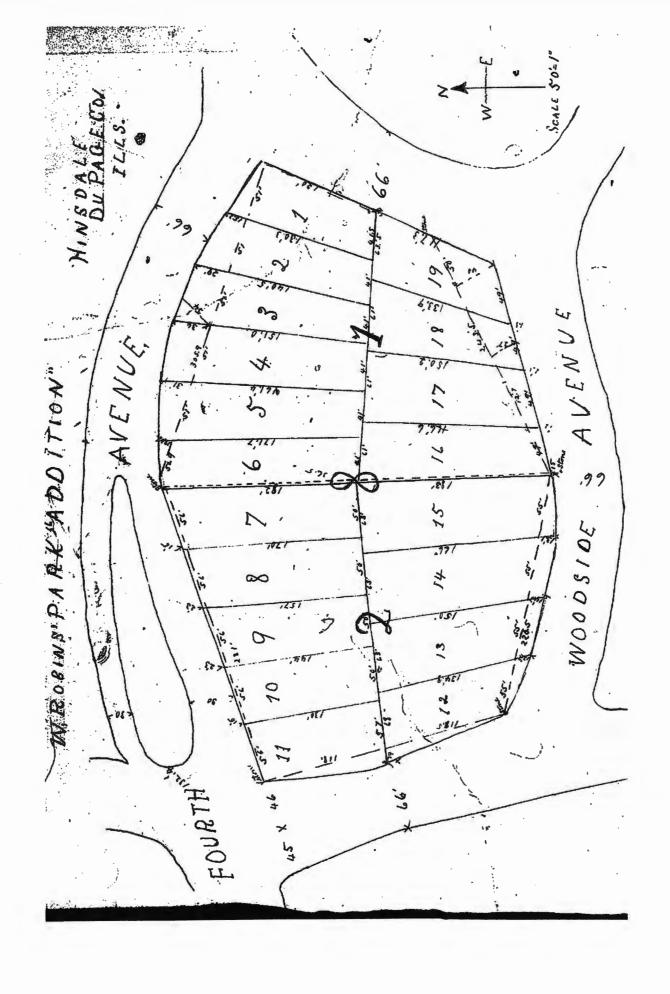
J—1969 Sailor's Resubdivision of Lots 5-17 of Block 8

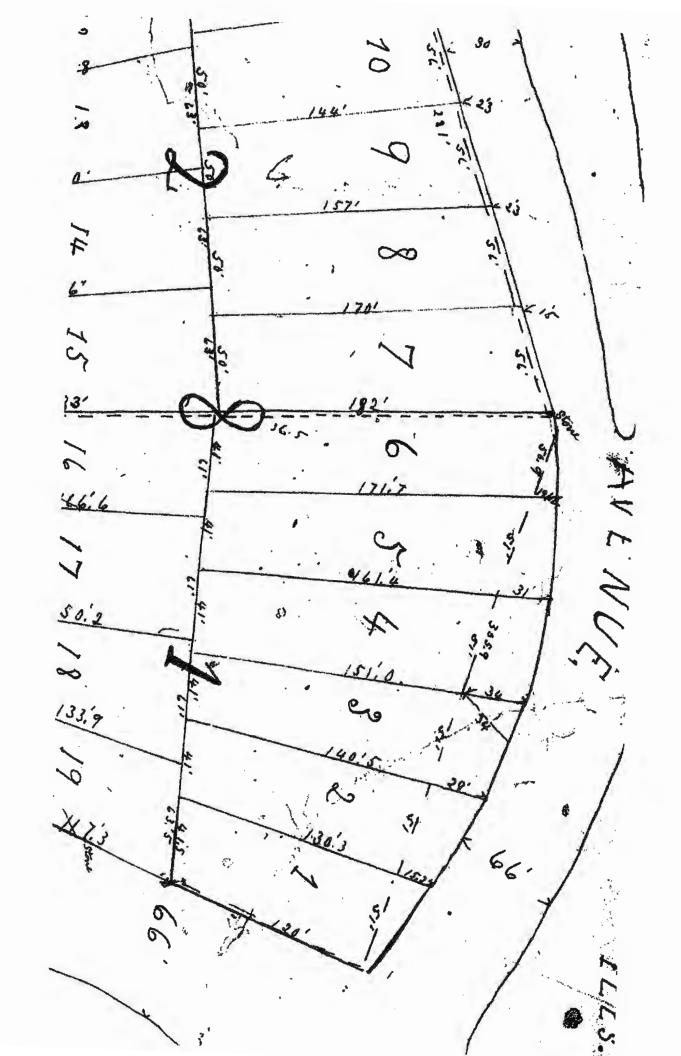
K-Phillippa Street Minutes

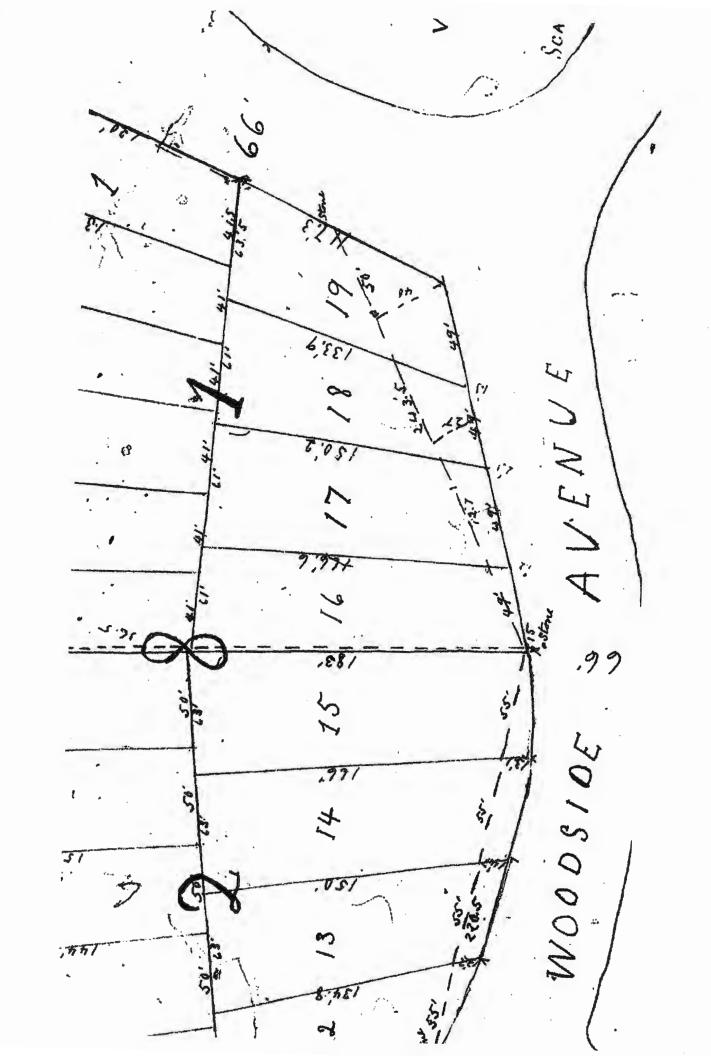
L—Sixth Street Minutes and Photos

M-121 Fourth Street









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HARGE DIJ PAGE CO. DIVISION

R75-24211

AN ORDINANCE VACATING A STREET

BE IT ORDAINED by the President and Board of Trustees of the Village of Hinsdale, DuPage and Cook Counties, Illinois, as follows:

SECTION 1: It is hereby determined that the public interest will be subserved by vacating that portion of the street hereinafter described.

SECTION 2: All of Oakwood Place lying south of Fourth Avenue and north of Woodside Avenue described as follows: Beginning at the stone at the northwest corner of Lot 2 in W. Robbins Park addition to Hinsdale, a subdivision situated in part of the east half of Section 12, Township 38 North, Range 11 East of the Third Principal Meridian according to the plat recorded as Document No. 14045 in Du Page County, Illinois. Thence southwesterly along the west line of said Lot 2, being a curvilinear line and having a chord distance of 100.91 feet, to the northwest corner of Lot 1, in Browns Resubdivision, in said part of Section 12, according to the plat recorded as Document No. 407270; theree northwesterly along a curve concave southwesterly, having a radius of 62.5 feet and the chord of which extends from said northwest corner of said Lot 1 to the scutheast corner of Lot 19, in the resubdivision of Block 8 in W. Robbins Park Addition to Hinsdale, situated in said part of Section 12, according to the plat recorded as Document No. 56775 a distance of 99.67 feet to said southeast corner of Lot 19, thence, northeasterly along the easterly

- 1 --

A delineation of the property described in this instrument appears in PLAT BOOK NO. 72 PAGE 187

A delineation of the property described in this instrument appears in PLAT BOOK NO. PAGE

EXHIBIT B

PAL:bf

R75-24211

line of Lots 19 and 1 in said resubdivision of Block 8, in W. Rothins Park Addition to Hinsdale, (being a curvilinear line) to the northeast corner of said Lot 1, in said resubdivision of Block 8. Thence southeasterly along a curve concave northerly, having a radius of 125.00 feet and the chord of which extends from said northeast corner of said Lot 1 to the northeast corner of Lot 2, in Owners Resubdivision of part of Block 9 in W. Robbins Park Addition to Hinsdale, situated in said part of the east half of Section 12 according to the plat recorded as Document No. 547307, a distance of 126.66 feet to the northeasterly corner of said Lot 2, in Owners Resubdivision; thence Southwesterly along the northwesterly line of said Lot 2, being a curvilinear line to the place of beginning, as shown on the plat hereto attached as Exhibit A and designated "Plat of Vacation" and the same hereby is vacated.

SECTION 3: This Ordinance shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this 18th day of March, 1975 , pursuant to a roll call vote as follows:

TRUSTEES HANLEY, REZEK, JOHNSON, GRAHAM, CRAMER AND PRESIDENT DICKEY

TRUSTEE NELSON PASSED. NAYS:

APPROVED by me this 18th day of March, 1975.

ATTEST:

- 2 -

R75-24211

PREPARED BY & MAIL TO:

DAVID G. RLMORE 823 Commerce Drive Oak Brook, Il 60501 5298029 CHARGE DUPAGE CO. DIVISION

COUNTY OF DUPAGE

AND COOK

R75- 24211

ETS HAY 29 PH IZ 15

CLERK'S CERTIFICATE

I, Ellen B. Mooney, Village Clerk of the Village of Hinsdale, in the Counties of Cook and DuPage and State of Illinois, do hereby certify that the attached is a true and correct copy of that certain ordinance now on file in my office entitled:

"AN ORDINANCE VACATING A STREET"

which said Ordinance was passed by the Board of Trustees of the Village of Hinsdale at a regular meeting held on the _____ day of __Narch____, 1975, at which meeting a quorum was present, and approved by the President of the Village of Hinsdale on the 18th day of March , 1975.

I further certify that the vote on the question of the passage of the said Ordinance by the Board of Trustees of the Village of Hinsdale was taken by Ayes and Nays and recorded in the Journal of the Proceedings of the Board of Trustees of the Village of Hinsdale and that the result of said vote was as follows, to-wit:

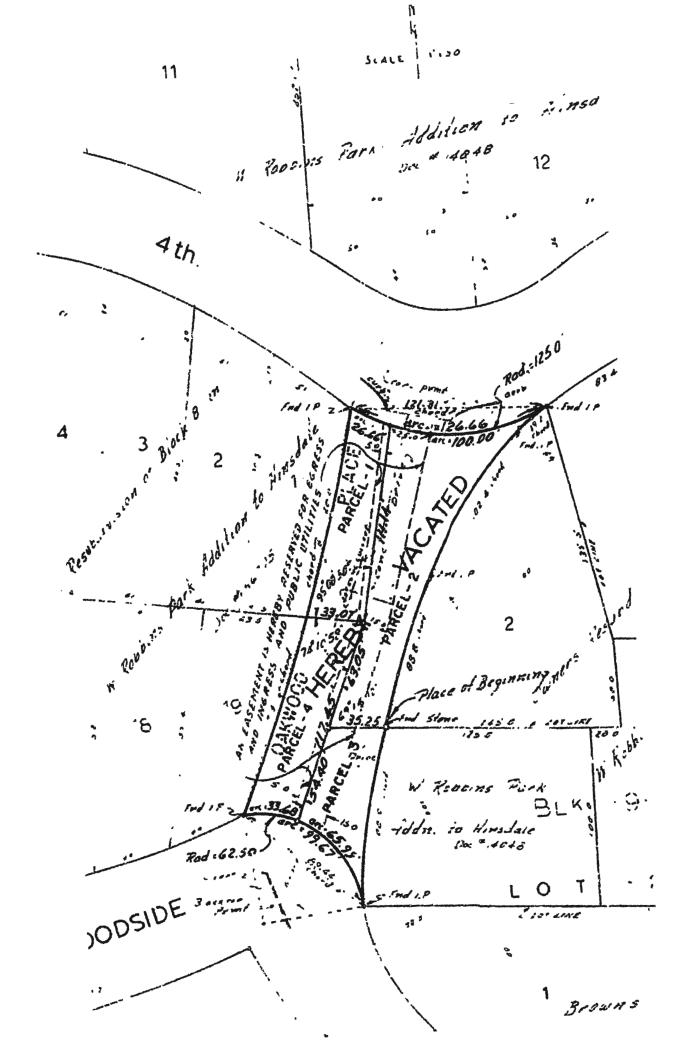
AYES: TRUSTEES HANLEY, REZEK, JOHNSON, GRAHAM, CRAMER AND PRESIDENT DICKEY PASSED: TRUSTEE NELSON NAYS: NONE I do further certify that the original Ordinance, of which the attached is a true copy, is entrusted in my care for safekeeping, and that I am the lawful

keeper of the same. IN WETHESS WHEREOF, I have hereunto set my hand and affixed the seal of

get of Binsdale this 19th day of March

Mile T. Honore Con HE A AM IS CORDY BUT HE PROFILE SOUTH IN THE SOUTH AND THE Book- 72 PAGE- 187 " Commercial Cont. 11, 1978. * Comme com O.C. 11, 1978 87 PL 11 . 60 . mo summe Untalized Off OF VACATION PUBLIC ROAD RIGHT OF WAY PLAT - 20 2 3 WOODSIDE

2000000 · COMBULTING ENGINEERS · . ARCHITECTS . COMPANY AND WIGHT GOWE



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PLAT GEORGE R. R. Recorder of Du Page Co. Wheeten, III	UDOLPH Deads Date 5/22-15
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DATE OF INSTRUMENT March 18 1915	Sec. 12. 1wp. 38' ang. 11
MAIL TO CT+T	
Copies Certified CHARGE Accompanying Papers Decation Designance	
R75- 24211	RECORDED DU PAGE COUNTY 1075 HAY 29 PH 12: 15
PAGE 181	Google P. Befl

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Downers Grove Township Assessor's Office

Office of the Assessor 4340 Prince Street, Downers Grove, IL 60515 www.dgtownship.com P (630) 719-6630 F (630) 719-6653

Residential Property Information

Parcel Information

Parcel Number 0912221008

Neighborhood HC1

Address

444 E 4TH ST

Hinsdale, IL 60521

Tax Information

Tax Rate

5.2907

Tax Amount

\$ 29,532.70

Property Information

SF Living Area 3,954

Construction Class

1.9

Exterior

Brick

Stories

2,1.5

Full Baths

4

Half Baths

0

Fixtures

0

Basement

F

Basement SF

1,856

Year Built

1922

Garage

483

Land

195.00x155.67x1.0(d); 15.00x118.00x.88(d)x.6(a); 12.00x189.00x1.08(d)x.60(a)

Assessment Information

Land

356,330

Building

201,870 558,200

Total Prorate

0

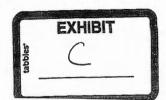
Sale Information (Most Recent)

Sale Date

9/1/2013

Sale Amount

\$ 2,200,000



Downers Grove Township Assessor's Office

Office of the Assessor
4340 Prince Street, Downers Grove, IL 60515 www.dgtownship.com P (630) 719-6630 F (630) 719-6653

Residential Property Information

Parcel Information

Parcel Number 0912221009

Neighborhood HCV

Address

WOODSIDE AV

HINSDALE, IL 60521

Tax Information

Tax Rate

5.2907

Tax Amount

\$ 6,444.62

Property Information

SF Living Area 0

Construction Class

Exterior

Stories

Full Baths

Half Baths

Fixtures

Basement

Basement SF

Dasement or

Year Built

Garage

Land

60.00x118.50x.88(d); 18.00x125.00x.92(d)x.60(a); 36.00x112.00x.86(d)x.30(a)

Assessment Information

Land

121,810

Building

0

0

Total

121,810

Prorate

0

Sale Information (Most Recent)

Sale Date

9/1/2013

Sale Amount

\$ 2,200,000

Downers Grove Township Assessor's Office

Office of the Assessor 4340 Prince Street, Downers Grove, IL 60515 www.dgtownship.com P (630) 719-6630 F (630) 719-6653

Residential Property Information

Parcel Information

Parcel Number 0912221006

Neighborhood HCV

Address

Woodside Av

hinsdale, IL 60521

Tax Information

Tax Rate

5.2907

Tax Amount

\$ 5,262.14

Property Information

SF Living Area 0

Construction Class

Exterior

Stories

Full Baths

Half Baths

Fixtures

Basement

Basement SF

Year Built

Garage

Land

49.00x140.60x.97(d); 12.00x131.00x.94(d)

Assessment Information

Land

99,460

Building

0

Total

99,460

Prorate

0

Sale Information (Most Recent)

Sale Date

9/1/2013

Sale Amount

\$ 2,200,000

TABLE OF COMPLIANCE 1929 AND PRESENT

Page 1 of 2

R-1 Subject	1929 Section	1929 Standard	N LOT 1929	2017 Section	2017 Standard	N LOT 2017	S LOT 2017
Max Princ Str Height	4	35	<35	3-110(A)(1) or 10-105(A)(1)(a)	No regulation	N/A	N/A
Max Stories	4	2.5	2	3-110(A)(1)(b)	3		2
Max Acc Height	1	12	Complied	3-110(A)(2)	15 feet		<15 feet
Max Princ Elev	None	No regulation	N/A	3-110(B)/10- 105(A)(1)(a)(i)	Varies based on yards or depends on HLR side yards		<35 feet (40 ft allowed)
Max Acc Elev	None	No regulation	N/A	10-105(A)(1)(b)	No regulation	N/A	N/A
Min Lot Area	None	No regulation	N/A	3-110(C)(1) or 10-105(A)(2)(a)	Min 30,000 SF or 14,000 HLR	30,000	17,333 SF 20,000 SF
Lot per D.U.	4	3 families per acre	1,2 w/maid	3-110(C)(2)	30,000 SF per	30,000	20,000
Lot Width	4 (frontage)	70 feet	204 feet	3-110(C)(3)(a) 10-105(A)(2)(b)	125' or 70'		+/- 126.8 feet
Lot Depth	None	No regulation	192.4 feet	3-110(C)(4)	125 feet	190.5'-192.4'	150'-152'
Front Yard	4 (setback)	35 feet or AVERAGING	92 feet	3-110(D)(1)	AVERAGING	>56.1*	>36.2*
Each Side*	4	10 feet	18' (East) & 68' (West)	3-110(D)(2) (b)(i) or 10- 105(A)(3)(b)(i)	[10' or 6'+10%(width less 50') or 10' or for HLR 6 feet plus 10 percent of lot width in excess of 50 feet, whichever is more]		#1: 13.68 #2: 24.95
Total Sides	None	No regulation	N/A	3-110(D)(2) (b)(ii)	30% of width up to, and including, 125' plus 35% of lot width in excess of 125'		38.628 feet
Rear	4 (waivable)	15% of depth, not to exceed 25 feet	0 feet; 66' if on So. Lot	3-110(D)(3)	50′		50'
Floor Area Rat	None	No regulation	N/A	3-110(E)	No regulation	N/A	N/A
Tot Bldg Covg	4	35% (corner)	+/- 10%	3-110(F)(1)	25%		3,006 of 5,000
Acc B Lot Covg	1	30% of rear	Complied	3-110(F)(2)	10%		<2,000 SF
Tot Lot Covg	None	No regulation	N/A	3-110(G)	50%		<10,000 SF



TABLE OF COMPLIANCE 1929 AND PRESENT

Page 2 of 2

*EXPLANATORY NOTES:

FRONT YARD AVERAGING FOR SOUTH LOT: (NOTE ALL MEASURES ARE ESTIMATES FROM COUNTY GIS. RELY ON HISTORIC/CURRENT SURVEYS.)

Lots: 6			
Eligible Lots: 5 (exclude vacant subje	ct)		
419 S Oak	15.2	DROP	
425 Woodside	42.1		
444 Woodside	N/A		
448 Woodside	119	DROP	
455 Woodside	33		
436 S County Line	33.5		
		36.2	
FRONT YARD AVERAGING FOR NORT	H LOT (NOTE ALL MEASURES A	RE ESTIMATES FROM COUNTY GIS. RELY ON HISTORIC/CURRENT SURV	/EYS.)
419 S Oak	166	DROP	
412 E Fourth	33.3		
420 E Fourth	25.5	DROP	
444 E Fourth	85		
448 E Fourth	41		
452 E Fourth	65		
		56.075	

EXHIBIT

Sec. 4. Any person, persons, film or corporation violating any office provisions of this dispter shall be fixed not less than ten deliars nor more than two hundred dollars for each and every offense.

CHAPTER XXX.

BLATTENG OF LAND.

1. Erwillun echespiling plats. 8. Fee and certificate of clark.
2. See and certificate of clark.

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CHAPTER XXXI

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1. Fediviers defined. 2. Biosuse. 8. Amount of Roense fee.

4. What license shall see forth, fo Benuty for cheating, our 6. Limination of license. Egg. 1. Buch person who shall, by sample or otherwise, sell or office for sale, burter or exchange at retail, any farm prodince, britter, milk, eggs, poulary, fish, or other goods, wa es or mendandise, travelling from place to place, in, apon or along the single of this village, shall be deemed a podiller, and shall, before engaging at said business, obtain a license as a peliller. Britthe provintons of this ordinance shall not be construed to thiply to mry person or persons relling vegetables, fauf, button, mithly eggs, or other produce of their own forms or premises, for to she perfelling of newspapers; norto the regular ordinary tends of mentions and storekeppers occupying established and portunacing the perfelling of newspapers; norto the regular ordinary tends of mentions and storekeppers occupying established and portunacing the construct of the taking orders and une colling the perfelling orders and the colling orders and the regular of their principals. The worls "permitted if hear warehouse of their piece of storage from which the store of storage from which the store of storage from which the storage is a warehouse or single may be replanished, but only such that allowed goods.

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REVISED ORDINARS

since here than two hundred dollars for each offense.

The first interpretation of the second offense in the specified point more than five dollars.

CHAPTER 51.

PLATS.

Philipproved by president and | 2. board of trustees.

Requisites of plats.

Certificate of clerk—fee for same.

PLAT TO BE APPROVED BY PRESIDENT AND BOARD OF TRUS-\$1. Any person or persons hereafter subdividing lands, blocks, lots or sub-lots, or any parts thereof, shall make a map or nat of such subdivision, and before recording the same in the remiler's office of Du Page County, as provided by law, shall submit the same, with a copy thereof, to the president and board of trustes for their approval, provided the said copy shall be left on file will the village clerk; and said map or plat shall not be effective. was the interests of the village are concerned, until it shall have the approved by the president and board of trustees, as aforesaid.

12. REQUISITES OF PLATS.] §2. No plat, map or subdivision To block, lot, sub-lot, or part thereof, or any piece or parcel of stall be approved by the president and board of trustees until or shall be properly certified by a surveyor and acknowledged more, as provided by the general laws of this state; and and owner shall make oath that he verily believes that he is in the of the property described in said plat.

COPPUTCATE OF CLERK—FEE FOR SAME.] \$3. Upon the of the man of plat as required by sections one and two of The payment to the village collector of a fee of five se of the village, the clerk of the village shall duly the value, the cerporate seal of the

ZONING MAP OF DU PAGE NO COOK

COUNTIES

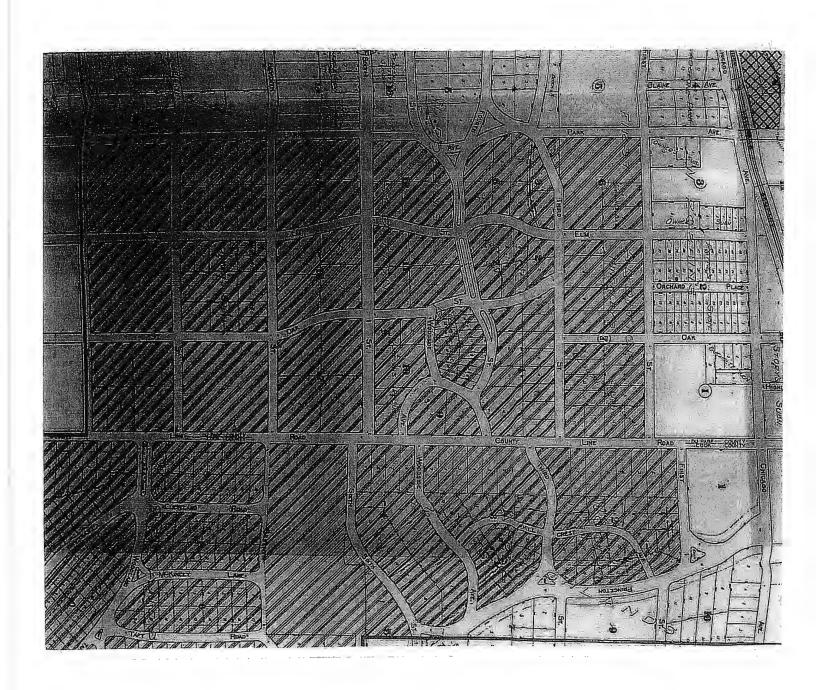
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BY THE VILLAGE OF HINSDALE

MARCH-1992

Hayony

CLASS AA



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1376. Height and Area Exceptions.
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Words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number, and words the plural number, and words "building" includes the word "structure"; the word "shall" is mandatory, and not directory. Any words not herein defined shall be construed as defined in The Municipal Code of Handate of 1935, passed and approved April 16, 1935, as the same may be amended from time to time.

This ordinates may be cited and referred to as the Revised Zoning Optionage of 1935.

Actessory Building: A subordinate building or northen of a main building bleated in and occupying not more than thinty per contain (30%), if the rear yard of the main building, whose use is incidental to that of the main building, and which does not exceed by the (12) test in hoghic

Afficience As qualific theremophisms and over thempy (20) feet

Approximate. A household pair in an apartment house, or appear the first floor in a bailding used in part for commercial numbers and unitable for occupancy by one or invite persons.

Availante littuses. A building used or intended to be used as a residence (to two (2) families living in separate aparaments.

Basement: A story partly under ground, which, unless sub-divided and used for tenant purposes, shall not be included as a story for purposes of height measurement.

Boarding House: A building or premises where meals are served for compensation for five (5) or more persons, but not exceeding twenty (20).

Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons animals or chattels; and when separated by division walls from the ground up, and without openings, each portion of such building shall be deemed a separate building

Building Area: The maximum horizontal projected area of a building and its accessory buildings, excluding open steps, ter-races, and cornices projecting not more than thirty (30) inches.

Business: The word "business" or the word "commerce" when used in this ordinance means the engaging in the purchase, sale, birter or exchange of goods, wares or merchandise, and the maintenance or operation of offices or recreational or amusement enterprises.

Commercial: See "Business."

Community Garage: A series of private garages located jointly on a common lot and having no public shop or service in connection therewith, with a total capacity for not more than four

Corner Lot: A lot situated at the junction of two or more streets and having a width not greater than fifty (50) feet.

Depth of Rear Yard: The mean horizontal distance between the rear line of the building and the center line of the alley, where an alley exists, otherwise the rear lot line.

Depth of Lot: The mean horizontal distance herween the from and near lot lines:

Districtz One or more sections of the Village of Hinsdale for which the regulations governing the height, area, and use of buildings and premises are the same.

Dwelling: See Single Family Dwelling.

Half Story: That portion of a building between the eavel and ridge lines of a sloping roof.

Height of Building: The vertical distance measured from the adequals level on its equivalent established grade opposite

Article L

The middle of the front of the building to the highest point of the roof for the roof for the dealt line for mintered roofs; and to the mean height level (between caves, and ridge) for gable and the roofs. Where a building is donted upon a terrice the height may be measured from the average ground level of the terrace at the building wall.

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thingue of Court or Yard: The vertical distance from the travel feed of such court or yard to the highest point of any midding wall.

Hotels A building as premises where higging is provided, without without meals, for more than twenty (20) persons.

fines Court: An open unoccupied space surrounded on all sides by walls, or by walls and a lot line.

Intensity of Use of Lot: That partion of the area of a lot which is occupied or which may be occupied under this ordinate, by buildings and their accessory buildings.

Length of Outer Courts, Title mean lightzontal distance between the open and glosed ends of the court.

Time of the Building. The line of the main body of the hulding including our parties and steeping porches but not in-duding open paralles one stony of less in height.

Lodging House: A building or premises who colodging is provided to the compensation for five (1) or more persons but not exceeding twenty (29).

Lob, Eard occupied or in his occupied by a building and accessivy buildings and including the open spaces required under these regulations. A lowney be had so recorded on the Records of the Records of the Records of Durage County or Cook County, Illinois, or in the office obtate Register of Tibles of Cook County.

Lot times: The three harriding a lot as difficed herein.

ones Come: "An open moosupica space on the same let with a halding, extending to said opening upon a processally

barren Garges. A gartief with a capacity for housing not more from top reales without all the one of which are to be the

property of the owner or occupant of the premises, and of which two only may be commercial vehicles.

Pablic Garage: Any premises used for the housing or care of more than four motor vehicles (excluding community garages) or where any such vehicles are empired for operation remained, or kept for remainemation line or sale, not including exhibition or show from for model care.

Private Stable: A stable with a capacity for age more than four (4) horses.

Public Stable: A stable with a capacity for more than four (4) thorses,

Rear Yard? An open unoccupied space (except for size-sory buildings) on the same for with a building between the rear-line of the building and the rear line of the lot, for the full width of the lot, except as modified by side part restrictions.

Set Back: The minimum horizontal distance between the front line of the building and the arcel line.

Side Yard: An open unoccupied space on the same lot with a building between the building and the side line of the lot and extending from the front line to the rear line of the lot except the rear twenty-five per cent. (25%) of the depth of the lot.

Single Family Dwellings: A detached building liaving account data in and occupied by one family only, including a garage with living quarters therein.

Story: That portion of a hullding included between the sur-fice of any floor and the surface of the floor next above it, so if there he no floor above it then the space between such floor and the ceiling next above it.

Structural Atterations: Any change in the supporting mem-bers of arbitriting-such as bearing walls or partitions, columns, bearins or griders, excepting such afterations as may be required for the sately of the brilling.

Perrate: A married or arribetal cartien embansament be-tween a brilding and its street front. The "height of the ter-race" still be the difference in elevation between the average sidwall, twel or its equivalent carableshed grade opposite the front of the middle of the building, and the average elevation of the terrate at the building wall.

Through Bote Adjor having its frame and reaching on dis-terant attacks

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LAF Rasidance Discute CAAP Residence Discitli Will Residence District UC Commercial Discribe DP Industrial Discribe

The Voltage of Hindsale is hereby divided monitor districts as alterated and the districts are interested in the productives of such districts are indexed upon the district are indexed upon the district are indexed into the product of the product of the indexed interests and other marked listing. As and hereby mede a pair of this ordinate. The said District Map and all the notations, retractes and other marked shown the constants and other marked shown the constants, retracted and other marked shown the soft individuals and other markets see their by said map were all infly magnified therein for greater purificult may in the destination of the boundaries of such district, retractic as hardy made to the legal description of the said state companion within each of such districts as set uptil in Section 1885 \$20 of this ordinates.

Execution in the provided.

(0) As building shall be exected or attend, nor shall any building or premises be used for any purpose other than as not induced in the District me which sook building or premises as be-

(2). No infiding shall be exected or attack to exceed in hoping the firm becomes this literature has been a witch such implement literated,

(3) No bidding chall be excited nor shall our COUNTY bidding be oftened, and require about, nor chall any open spaces spacebase or shallding be annealed upon or retricted in any moment except in conferrally ways she area regulations by? by assumption for the Disputes in which such binding is longered.

1669 (85) "A" Residence District Resolutions (USA) We building or premises shall be used and no building shall be

Breater errold or altered within start N. Restations Daried with the soft of the provided in this ordinare except to the or in the ordinare except to the ordinary or in the ordinare except to the ordinary or in the ordinare except to the ordinary or in the ordinary or ordinary the ordinary or in the ordinary or ordinary the ordinary or in the ordinary or ordinary the ordinary or ordinary the ordinary ordinary or ordinary or ordinary ordinary ordinary or ordinary ordinar

of Breeds of Du Rage County, Illinois, or in the office of the Recorder of Deeds or the Registrar of Titles of Cook Courty Illinois, at the date of the passage of this ordinance, having a witch of less than think (30) feet, the foregoing requirements a side yards may be reduced to a minimum width of three (3) feet,

onter width with cuter court shall have a width of not less than five and one-haff (2,2,2) inches wide for each foot of height of such court, nor be less than two and one-haff (2,2,2) inches and one-haff (2,2,2) inches wide for each foot of length of such that the conditions in the conditions of length of such that the conditions in t क्कातः शिकामः विदेह डिव्डिडवे क्षित्

Inner Court. An inner court shall have a width of not less flow of height of such court, nor shall its area be less than thic square of its required least dimension.

Intensity of Use of Lot. No building with its accessory buildings shall occupy in excess of twenty-five per cent (25%) of the area of an interior lot, not in excess of thirty-five per cent (35%), of the area of a comer lot. No dwelling or group of dwellings shall hereafter be exceed or altered to accommodate or make provision for more than six (6) families on any acre of land or make provision for more than a proportional number of families on any fractional part of an acre of land, except that a single family dwelling may be erected on any for having an area of less than one-sixth of an acre, provided that such a lot shall have been duly necorded prior to the passage of this ordinance.

1376. (§4) "AAA" Residence District Regnitations. Use: No building or piemises shall be used and no building shall be hereafter encired or altered within said "A.A." Residence District. unissiothemise provided in this ordinames, except for the necesseny use to which any one of the following places or estab-lishments may be put:

Single Family Dwelling, Clearing in Transpile,

Bionis of Truck Gendes,

and the negal accessory buildings located on the same lot, not throbling the condition of a business and methoding one private when the controlling one private stabile, or both, or a communicity gauge of the private stabile, or both, or a communicity gauge of the private stabile, or both, or a communicity gauge of the private field in the locate private of the part of the private (1977) of the locate business and not occupyfing over the part field has the and the part of the part thinks.

occupations engaged in by the escupants of a dwelling not involving the conduct of a business on the premises. Inding Ordinance

Height: No building bereafur created or allered shall exceed thirty-five (35) feet in height, or two and one-half (25).

Rear Yard: There shall be a rear yard having a depth of not less than fifteen (15) per cont of the depth of the lin, you yided such rear yard be not less than ten (10) feet, and need not exceed twenty-five (25) feet in depth.

Set-Back: There shall be a set-back of got less than thirty-has nitherto been maintained by buildings exerted on on-hall or union stream a uniform set-back or more of the frontage of the block, such uniform set-back shall be continued. Frontage of the block, such uniform set-back shall be continued. Frontage of the block, such uniform set-back shall be continued. Frontage of the block, such uniform set-back shall be streets: proxided that or senare into hallings shall be set-back on both streets: proxided, however, for lots or parcels of kind of separate ownership, recerded in the office of the Regards of Decade of Du Fuge Gracery or in the office of the Regards of Decade of Du Fuge Gracery or in the office of the passage of the confinence of the passage of the centennum. In the writing a valid of less than screen or the hard specified in this ordinance. Where measure hallings are on the brough lots, the set-back provisions of each street shall be

Side Yard. There shall be a gate yard on each side of the building having a width of not less than ten (10) leet. For lots or parcels of land of separate demarthip fully recorded in the office of the Recorder of Deeds of for Paye County or in the offices of the Recorder of Deeds or of the Repistent of Titles of Cook County. Ministry at the date of the parsings of this order names, having an area of less than one-hind of an age, the first going requirements for side yards may be reduced to a minimum writtle of six (6) feet.

Outer Count: An outer court shall have a wifth of not less than Eve (3) jeet, not less than two and one half 24 inches wide (ar each that a baght of such court, not be less than lwn and one half (29%) inches wife for each flot of length of such court

Loner Court. An inner court shall have a width of not take than each thou is a feet by the fact of inches wide for each thou of height of such court, nor shall its axea hartess than britan the square of its feethered least dimension. train the blood and

precision of the of Lot: No building with its accessory in excess of twenty-five per cent. (25%) buildings shall occupy in excess of twenty-five per cent. (25%) of the area of an investion lot, nor in excess of thinty-five per cent. (25%) of the area of an investion lot. No dwelling or group of (35%) of the area of an investigate be erected or altered to accomodate or awelling shall hereafter be erected or altered to accomodate or analy or make provision for more than a propoutional number of land, or make provision for more than a propoutional number of land, or make provision for more than a propoutional number of land, or make provision for more than a dwelling may be erected or that each parcel of land on which a dwelling may be erected or my feet except that a single family dwelling may be erected on any feet except that a single family dwelling may be erected on any area or having less than severty (70) feet street frontage, provided flat such lot or parcel of land shall have a feet of land shall have been duly recording in the office of the Recorder of Deeds of Dulbage County of in the office of the Recorder of Deeds of Dulbage County or in the office of the Recorder of Deeds of Ollubage of Title of Coek County. Illinois, prior to the original passage of this section. January 8, 1929, designated herefulfore as "Section 3-4 MA" Residence Distinct Regulations.

No building or premises shall be used and no building shall be hereafter erected or already within the said "B" Residence District, unless otherwise provided for in this ordinance, except for the necessary use to which any one of the places or establishments parmitted in the said "A" Residence District and any one of the following places or establishments may be put:

1. Finzale Club not used for botel purposes,
2. Boarding and Lodging House,
3. Institution of an educational, philanthropic or elemosynasy nature,
4. Nurseny and Creenbouse.
5. Hospingl.
6. Apartment house for notito exceed (2) families.

Height: No building hereafter erected or altered shall exceed thing-five (35) feet in height or two and one-half (2%) Stones. Rear Yards. There shall be a rear yard of not less than ten (19) per cent, of the depth of a corner lot, nor less than fifteen (15) per cent, of the depth of an interior lot, provided, however, such har yard need not exceed ten (10), and fifteen (15) feat

Set Back? There shall be a set-back of not less than thirty-five (35) feet except than on a street where a tuniform set-back has titther o been maintained by buildings enected on one-ball of

more of the Econsage of the block, and miform sechack shall be gontinued. Accessory buildings stall not be placed nearly faces time than the building of primary use. Zoning Ordinance

Side Yard: There shall be a sult yard on each side of the separate ownership duly recorded in the other of their 10 lest. For beaut of Deeds of Direge County, or in the other of the Recorder Deeds or of the Registra of Titles of County, the Recorder of the date of the Persisten of Titles of County, lilinois at the date of the passage of this ordinance bacing a width of less than thirty (36) feet, the foregoing requirements for outer parts. may be reduced (a a withman width of three (3) feet

Contex Counts. An outer count shall be not less than tive (5) feet, nor be less than two and enclud (2/2) tubles side to each toot of height of such count, nor be less than bee and one fall (225) suddles wide for enclusional length of such count from the closed end transf. Courte: An inner court shall have a mitte of not least than six (6) keet, not he less than two and one find 220, inches write for each foot of height of such oner, not shall us nea beloss than thride the square of its required last dinteration.

Intensity of Use of Lot. No building out its accessive buildings shall occupy in excess of thirty (M) per cent of the area of an interior lot. Firrided however thinkings used to the sury and greathers to be bounded however huidings used to the of 104 area regardless of its being a corner of merical for No dividings shall herafter for more fell, No families on any acce of land not restore the nearly fell per cent families on any acce of land not restore from recipit (E) and a preportional marked of families on a families of any families of any any of any

1972. (§6) "C" Commercial District Regulation, Use: No building or premises shall be used and no building shall be used and fire building shall be transfer erected or altered within the said "C" commercial bis traite, unless otherwise provided in this arithmer, respictor are provided in this arithmer, respictor and processory used to Which any one of the places or establishments processory used to Which any one of the places and any one of the places are graphishments deliberance places or establishments may be put.

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Amusement Blace

Raksing, amploying not more inantan (10), persons.

Article I.

15 Any kird of manufacturing establishment or place for the treatment of products clearly incidental to a retail business conducted on the premises.

Height: No building hereafter erected shall exceed thirty-five (3b) feet in height or two and one half (2%) stories.

Side Vard: A side yard, if provided, shall be not less than force (4) feet wide.

Outer Court. An outer court shall be not less than five (5) feet wide, not less than two (2) inches wide for each foot of length of such court from the closed end.

Inner Court: An inner court shall be not less than six (6) iter wide, nor shall its area be less than twice the square of its required less dimension.

Intensity of Use of Lot: A building with its accessory building to be used for commercial or industrial purposes may eromy all of the area of the lot. Building used wholly for residential purposes shall conform to the restrictions provided for such hardings in the "E" Commercial District.

1974 (§8) Exection or Alteration of Building or Engishing Fertures Ulterefor Prohibited where Building Designed for Buildingazed Use. No person from or corporation shall, as convector, sub-convector, or otherwise, ereal, after, repair or surpsish any fixture of fixtures for any building in the Village of Busicia which is designed to be used for any purposes other finance parameted under the provisions between in the distinct in which side bridding is located.

1875. (39) Non-Conforming USC: The lawful use of a premises examing to the time of the adoption of this ordinance, although such use does not conform to the provisions become use the contourned but it such non-conforming use is disconnected any times use in such premises shall be in conforming with previsions of the ordinance.

The positions of the ordinance.

The position of a Building existing at the same of the adaption of this produces may be continued, attribugh and use the adaption of the provision beyong and such use may be continued attribughous test may be continued attribughous the building, provided so simulated attributions, make in such a building shall in an exercise of the provision of the subject of the subject of the ordinance. It are such exercises the date of the massage of this ordinance, it are such and allocations are unless a discontinuing use of the subject of the same or higher classical and the provisions of this producance, and pro-

dianged, any then existing non-conforming use in such charged fighter that whenever a Use District shall be breatter district may be continued or changed to a use of a similar or the new use are compiled with Whenever a non-conforming use of a building has been changed to a higher classification, provided all other regulations governing use of a building has been changed to a higher classification or a conforming use, such use shall not therefore the changed to a logic provided in the changed to a higher classification.

Any building which has been damaged by fire or other causes may be repaired or rebuilt; such repairs and building to be in conformity with the building regulations of the Village of

When the boundary line of any use district divides a lot in a single ownership at the time of the adoption of this ordinance nothing herein shall be construed to prevent the extension of the use existing on either portion of such parcel of ground, to the entire parcel, but for a distance of not greater than ten

The Village Board may authorize in a residence district for a period of not more than one year from the date of such permit, a temporary building for commerce or industry incidental to the residential development.

The Village Board may, after public notice and hearing authorize in any location, a structure or premises to be used by a public service comporation or for public utility or municipal purposes which it deems reasonably necessary for the public SOUVENIONCE and welfare. Any right of way, station grounds or other premises located in any district and now used for rillroad Or tailway purposes shall be considered a non-conforming use that if such time as the said premises shall cease to be used for relificad or railway purposes, when the said premises shall con-

1376 (§10) Height and Area Exceptions; The foregraph acquirements in the height and area regulations shall be Subject to the following exceptions:

(i) That in the thirty-five (35) foot height districts public Of Semi-public brildings, hespitals, saminariums or schools may be exceeded to a height not exceeding forty-five (45) feet.

(2) Churches and temples, which have side vards on all sides and comply, with the area restrictions of the "A" Residence District may be erected provided they shall be in accordance with the height regulations of existing or hereafter adopted ordinances of the Village of Hinsdale.

(3) (Chimneys) cooling towers, elevator bulkheads, fire towers monuments, pent houses, stacks, stage towers, or scenery lofts tanks, water towers, ornamental towers and spires, wireless towers or necessary mechanical appuntenances may be created to a height in accordance with existing or hereafter adopted ordinances of the Village of thansdale;

(i) in the case of buildings upon lots running through from street to street the requirements for a rear ward may be waived with such buildings comply with the percentage of lot occupancy by turnishing office open space in lieu of such required

(2) In computing the depth of a rear yard or the width of a side yard or open court for any building where such yard or court opens on to an alley, one-half of such alley may be assumed to be a position of the yard or court.

(3) Every part of a required yard or count shall be open from its lawest point to the sky impostanted, except for the ordinary projections of sky lights above the bottom of such yard or count, and except for the projections of sills, belt courses, compact and organization the projections of sills, belt courses, compact and organization transfer more to exceed from (4) inches.

(ii) Chigh in little collect like excepts, interprett outside the very are large engles on a cause, inspections into a surprise and lightening aparting upon the rowers projecting into a surprise (for the (5) less of into a court not more than the and angles (for) iso, and the ordinary projections of changes and have may be permitted by the Englishing Commissions where the same are so placed as not to obstinice high and contribute.

(37) (35) Enter of Appeals I Creation and Membershii the definition of Appeals is instally established. The said for the 190 members to be appointed by the committee the form of burnings of said visit for the bold of burnings of said visit for the form of the President of the year, one for two years, and the great said of years and one for two years, and the great said of years and one for two years, and

ed and qualified, the successor to each member so appointed to serve for a period of five years, and until their respective successors are duly appointed and qualified. One of said members shall be designated by the President as Chairman of said Board. All of the members of said Board shall serve without compensa-Zoning Ordinance

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Meetings: Meetings of the Board shall be held at such times as the Board may determine. The Board shall adopt its own rules of procedure and keep a record of its pracedings showing the action of the Board and the vote of each member upon such

Appeal: Appeal from the rulings of the Building Commissioner concerning the enforcement of the provisions of this ordinance may be made to the Board of Appeals within such time as shall be prescribed by the Board by guperal rule. The appellant shall file with the Building Commissioner and with the Board of Appeals a notice of appeal specifying the grounds thereof. The Building Commissioner shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

Turisdiction:

(d) The Board shall, upon application, review the actions of the Building Commissioner in order to determine whether they are in accordance with the provisions of this ordinance.

The Board shall have the power to recommend to the Village Board such changes in the district boundaries or regulations as it may deem necessary or desirable, as more particularly set forth in Section 19 of this ordinance.

(3) The Board may from time to time adopt such rules and regulations as may be deemed necessary to early into effect the provisions of this ordinance.

(4) The Board shall have the power in call or any of the other village departments for assistance in the performance of its duries, and it shall be the duty of such other departments to pender such assistance as may be reasonably required.

1378. (§12) Occupancy Permits.] No land shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose what squeer until a certificate shall have been issued by the Building Commissioner, stating that the building complies with all the building and health laws and ordinance; and with the provisions of these regulations. No change of use shall be made in any

hullding or part thereof now or hereufter erected or altered that is not consistent with the provisions of these regulations. Nothing in this section shall prevent the continuance of the present occupancy or use of any existing huilding, except as may be necessary for safety of life and property.

Certificates for occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten (10) days after the erection or alteration of such buildings shall have been completed. A record of all certificates shall be kept on file in the office of the Building (Commissioner and cepies shall be funnished, on request, to any person having a proprietary or tenancy interest in the building affected.

No permit for excavation for or the erection of any building shall be issued before application has been made for certificate of occupancy and compliance. No building or premises may be occupied until such certificate shall have been issued.

shall be accompanied by a plat in duplicate, drawn to scale showing the actual dimensions of the lot to be built upon, the size of the building to be enected, said plat to be built upon, the size of the building to be enected, said plat to be prepared by and bear the scal of a competent Illinois surveyor and shall contain such other information as may be necessary to provide for the enforcement of these regulations. A careful record of such applications and plats shall be kept in the office of the Building Commissioner. No yard, court or other open space provided about any building for the purpose of complying with the grot-visions of these regulations shall again be used as a youd, count or other open space for another building

1380, (Si4)) Use Penatical No change shall be made in the use of a building wathout a permit having first been issued by the Building Commissioner and no pennit shall be issued to meke sien draige uness it is in gonformitty would the provisions of diffs ordinaried or amondments thereto herealiter duly snacted

of the public solow, health, correspiction, condition, prost-fields, and goneral well-of. In is not intended by the conditioner to uncertain with of phygiete of unital any ordinames, notes regit Exercises provided interferently adopted or ferued, myd notes and the restrates for preministic directoristics, achaptical on frequed, model more for their files, with any or alter prinavisions of ables or difference on whitch the bit actopical or festival prinavante to law nelating to the ace of bittaines or provided by the ace of this tast of the feet of the f 1880. (\$15) Interpretation, Pumpose and Confict, In an telepreting and applying the provisions of this orderes, they shall be fall to be the training that requirements for the promonen

Amilale I.

Zoning Ordinance

terfere with or abrogate or annul any cusements, covenants, or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon height of building or required larger open spaces than are imposed or required by such ordinances, rules, regulations or permits, or by ensements, covenants, or agreements, the pravisions of this ordinance, shall control.

1382. (§16) Wiolation, Penalty, Enforcement.] Any person, firm or corporation who violates, disobays, outles, neglects, or retuses to comply with or whe resists the enforcement of any of the provisions of this ordinance shall, upon conviction, be fixed not less than ten (10) dislines nor more than one hundred (100) dollars for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

The Building Commissioner is hereby designated and authorized to enforce this ordinance,

exists with respect to the boundities of the various districts as shown on the map becent attached, marked "Exhibit A" and hereby made a part of this ardinance, the following raids sind.

(a) The district boundaines are either structs or alleys archerass extremises shown and where the designations on the map accompanying and indice a part of this ordinance, indicating the various districts, are approximately branched by street or alley tings, such street or alley things, such street or alley thinks. न डाक्स क्षेत्रम्थ

strong or allays and where the property has been or they have affects or allays and where the property has been or they have affect he decided into blocks and fors, the district boundanies shall be construed to be left lines, and where the designations on the man accompanying and tusten part of this ordinance indicating the various districts are approximately bounded by lot lines, such its fines and it be consumed to be the boundary of such littings.

(c) Where the district foundaries are not shown by statets on alleys, or lover block lines the district boundaries shall be consumed to be the boundary lines of the saveral tracks and proceeds of real extra in the secret statement in the secondary lines of this ordinaries and parameters in the secondary statement and made a part of this ordinaries and parameters in the secondary statement.

1987. (S.S.) Vistairel Smotthiese destant or provision of the compression of the compress

to be invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Appeals may of its own motion or upon petition signed by one or more property owners of any district or portion thereof cause more property owners of any district by portion thereof cause more property owners of any district by portion thereof cause to be prepared a notice indicating changes proposed to be made in the boundaries of the termitory to be affected, which notite shall the boundaries of the termitory to be affected, which notite shall the boundaries of the termitory to be affected, which notite shall the proposed amendment, supplement or obtained will be accessible for examination by interested parties. Such public hearing shall be published at least time. Notice of such public hearing shall be published at least time. Notice of such prosted at least thirty (30) days in advance thereof in four public places within the Village of Elinsdale or it there is no such newspaper such notice shall be published at least thirty (30) days in advance thereof in four public places within the Village of Elinsdale at least thirty (30) days in advance thereof in four public places within the Village of Elinsdale at least thirty (30) days in advance thereof in four public places within the Village of Elinsdale at least thirty (30) per or introduced in the Board of the Village of Elinsdale. Whenever a written proposed amendment, supplement or change to be introduced in the Eorad of the Yill supplement or change signed by the owners of posed amendment, supplement or change signed by the owners of posed amendment, or the frontage immediately where the frontage immediately agelpanced and of the Yoposed to be altered, shall have been flied with the Board of the Yappelle went of the frontage directly opposed amendment supplement or change shall not be passed except by the event of two thinds of the membors of the Willage Envand

Several Districts, ""A" Residence District; Irot the pumpose of this ordinance, all the real estate situated within the pumpose of this ordinance, all the real estate situated within the Willage of Hinsdale and not hereinafter declared to be included within the District designated "AA" Residence District, "IB" Residence District, "IB" Residence District, "IB" Residence and the same is hereby declared to be included within shall be and the same is hereby declared to be included within the District designated by this ordinance "A" Residence District.

"AAAV" Residence District: For the purpose of this ordinance the following described real estate situated within the Village of Hinsdalle in the Counties of DalPage and Cook, in

idle f. Zoning Grilnarge

the State of Illinois, is boreby declared to be included within the district designated by this ordinance as "AA" Residence District.

trict:

That tract of land bounded on the West by Bark Avenue, on the North by Eirst Street on the East by Physician Knod Sixth Street and the Village Limits from Sixth Street and on the South by the Village Limits from Limits, otherwise described as follows:

Starting at the intersection of Paris Awarus and First Street, thence east along the central line of County Line East thanks or the central line of County Line East thanks north along the centre line of County Line East to the centre line of County Line East to the centre line of County Line East to the County Line East to the centre line of East Street lines of Foreschipt Street (First Street) for the centre line of East thanks Street (First Street) for the centre line of Engeright Street (First Street) for the centre line of Engeright Street (First Street) for the centre line of Engerical Kond, thanks Street of the Village to its intersection with Sixth Street, thence cent along the boundary line of the Village to its intersection with Village to its intersection with County Line (Other Street, thence cast along the boundary line of the Village of the Nilage of Territ Street, thence West along the boundary of the Village to the intersection with the South boundary of the Village to its intersection with Rine boundary of the Village to its intersection with Rine Street there west along the centre flue of the Village to its intersection with Rine Street there were along the South Back Awarus there north along the centre flue of the Village With Back Awarus there are north along the centre flue of Bark Awarus there are north along the centre flue of

"B" Residence District. For the purpose of this ordinance, the following described real estate similard within the Village of Hinsdale, is beenly declared to be included within the district designated by this ordinance as "B" Residence District.

hous one (D) to seven (Z) industrye in Black aight (S), in Mfred Walker's Audition to the Royn of Pilas

Hears' Subdivisional Leis one (b), inclusive, of Rimbell Hears' Subdivisional Leis one (b), two (2), three (5), tone (4), and the (5) of Broke nate (9) in Affect While ore and the community of the community of

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Ances These Milhion of Branchie, and also Lor fix (6)

Ances These Milhion (3D) feet of Lot seven (7) Bogers
and also west filter (3D) feet of Lot seven (7) Bogers
(8) Bughlotz Suidivision of Lots geven (7), sight (8).

ished four (6) Please finder flower of Full ashing.

Lots one (II), the (2) and the notth one hundred and the rotth of hundred and the (E), from (E) and the (S), from (E) and the (S) of Block times (C). Plac of the Rown of Pullersburg.

Tok agin (8), nine (9) and tan (10) and the south one hindred and anti-size (1152) terr of Lois alexan (dd), twike (d2), dinition (d3) and constant (d4), addition (0). The of the Texts of Fullashing.

Longing (II) and Ego (2) in Block one (II) of Glac-dule Subdivision of a pair of Block Gyo (2) in the Original Town of Full ashing, in Section Glace (III), Township thing-eight (38) Wonth, Range Glace (III), East of the Third Planage Mandren

Los one (19) in Assem (40) industrie in Black one (a)) Barai in Born of Bullindings

(b) Place the Town or Participants.

(c) Place the thought of the least line of Dorlary Country, and (ite most) line of Ogdan Avenue, there is sufficiently along sold upon the to the case time of Lorentz along sold upon the lower of the lines of Lorentz along sold upon the lower of the lines of the line

Du kiinginel Distillus. The die princises of this included ilic lithicing disember and asists stateout white the Willinge of Efficients for the seamond to be industry using the district Districted by this seamonds as "10" brought District

AND all Bilgelle spie ((5)). Adinocal Weallearle, vicilitatione (5).

Hipschile South dithe North one purpose in the project a (165) feet.

All of the County (2) County (3) mit make (9) South (3) feet (165) mit make (9) South (3) feet (165) mit make (9) South (3) feet (165) feet

motion (1972) South its measure as a manner of the control of the

location of buildings designed for specified uses and to regulate and limit the height and bulk of buildings hereafter erected, to regulate and firmt the intensity of the use of lot areas and regulate and determine the area of yards, courts and other open spaces within and surrounding such buildings, and to establish the boundaries of districts for the said pumposes within the termicity ameased to the Willage of Hinstalle by Ordinance passed and approved by the President and Board of Tenstees of said Willage May 7, 1923, and prescribing penalutes for the violation of its provisions, Passed and Approved November 5, 1923,

"An Ordinance to classify, regulate and restrict the locations of trades and industries and the location of buildings designed for specified uses and to regulate and limit the height and buildings hereafter crected, to regulate and limit the intensity of the use of lot areas and to regulate and determine the area of yards, courts and other open spaces within and surrounding sirch buildings, and to establish the boundaries of districts for the said purposes within the limits of centain remittory annexed to the Village of Hinsdale by Ordinances passed and approved by the President and Board of Trustees of said Village Manch 3, 1924, and May 6, 1924, respectively, and prescribing penaltries for the viola-tion of its provisions." Passed and approved February 3, 1925,

the locations of trades and industries and the location of buildings designed for specified uses and to aggulate and limit the height and built of fourtdings beneafter erected, to negulate and limit the intensity of the use of lot areas and to regulate and determine the use of solutions. such buildings, and to establish the boundants of disturbing the buildings, and to establish the boundants of disturbing the said printeness withing the limit is of remain temptory therein described hereto fore analysed to the Village of Hinschile, and presentating penaltites for the Wolation of the provisions, Passed and Approxed Rebition "Am Ordinance to classify, regulate and restmen

Articole II. & 1111.

Provided, however, that the repeal of said ordinances as figing or affecting in any manner wherevere the liability of any present, firm or desporation for any past or exciting which of any of the provisions of any of said ordinances as an anether, or may of the provisions of any of said ordinances as an anether, or may have accounted under said ordinances as an anether, or may have accounted under said ordinances and ill annihum thereto at the date of the passage of the ordinance, or from fally the prosecuting in every available manner may past or existing while from off any of the provisions of any of said ordinances as animal edge, and any present use or compution of any building or premises which may now constitute an existing vicinion, if any of as samended shall not be constituted as a some entirem, any of any such building or premises where terms of this ordinance. Zoning Ordinance

Arreiche DIT.

This ordinance shall be prured and published in limit form and shall be in effect from and after its passage, approvnt and pullification, Passed by the Board of Trusters of the Villige of Elizabilia

Appressed this 16th day of April, 1995:

Africation

Vallage President

SAMERE E REATEY,

ROBERT A. PEEF.

Vibrigo Clerk

CHRISTINIA TIE

If herely, consist that the foregoing is a time cup, at the Revised Revised Zoring Ordinance of 1945 passed for the Bosel of Uncertaint of the Society of Bringleic Himsis on the 16th disc of Sprill 1945, approved by the Willings Eresidant on April 16, 1948, and prisibility in book form is, authority of the fredillent and Brondl physician is book form is, authority of the fredillent and Brondl of Albuse of Sofi Williage.

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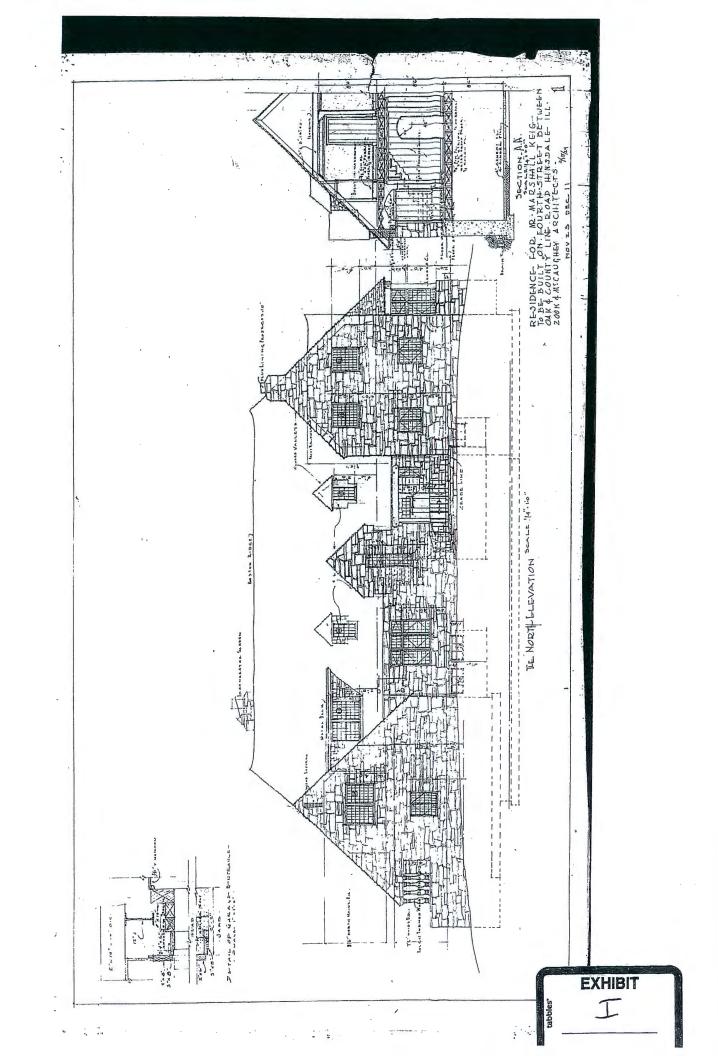


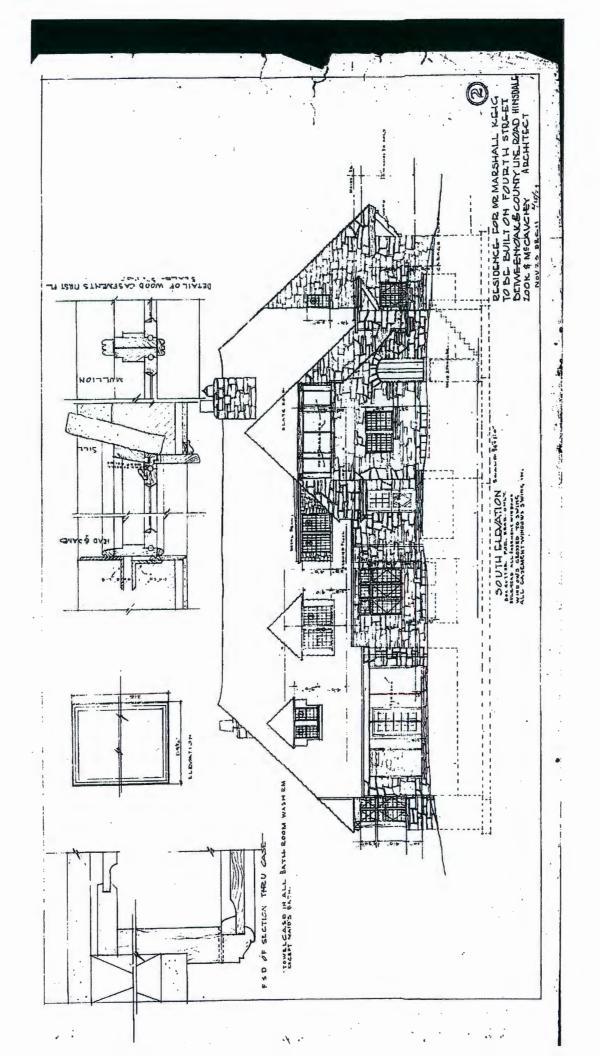
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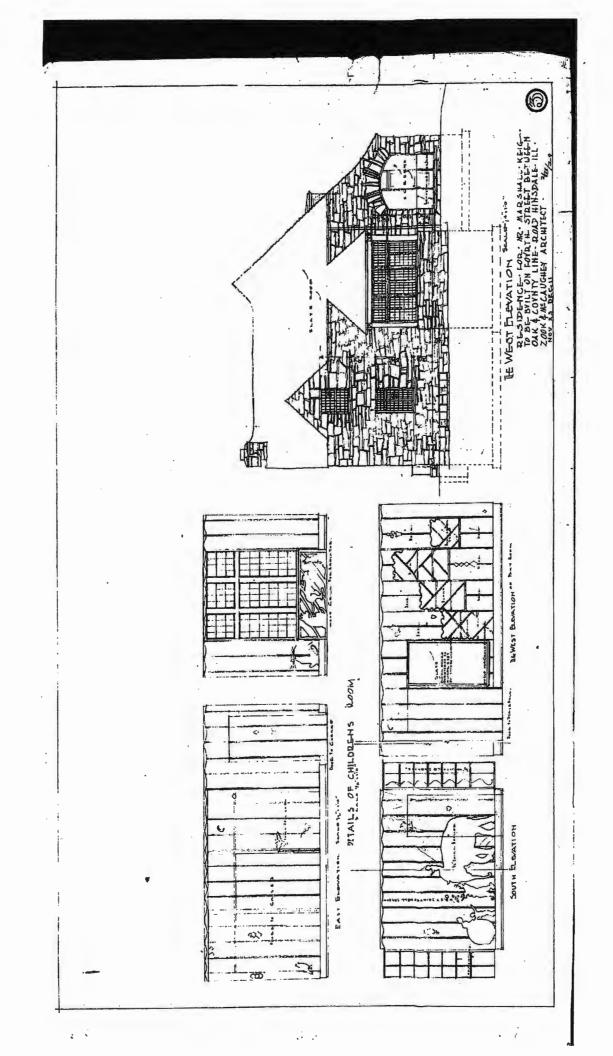
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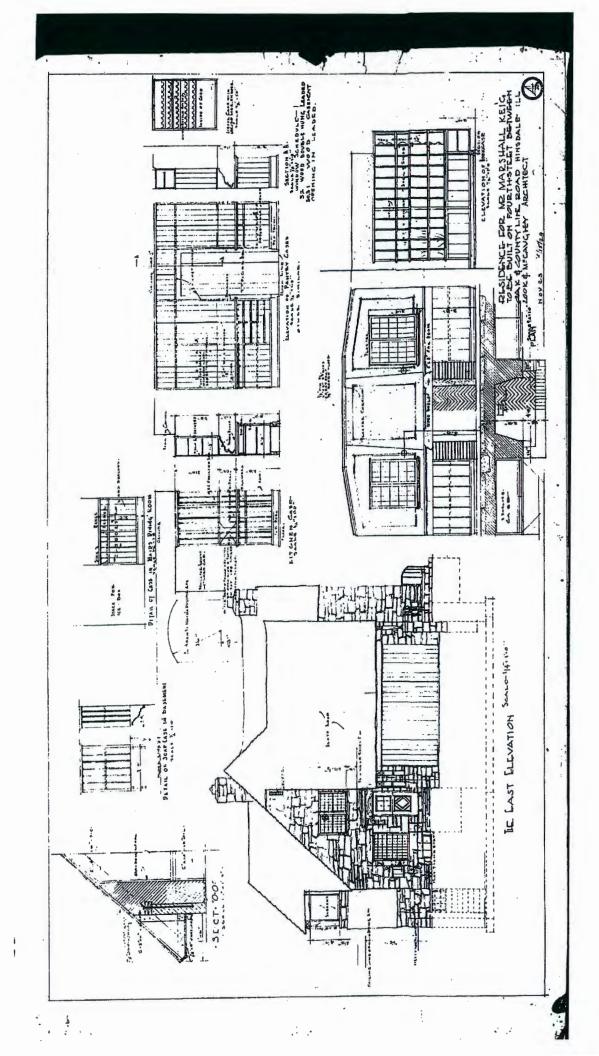
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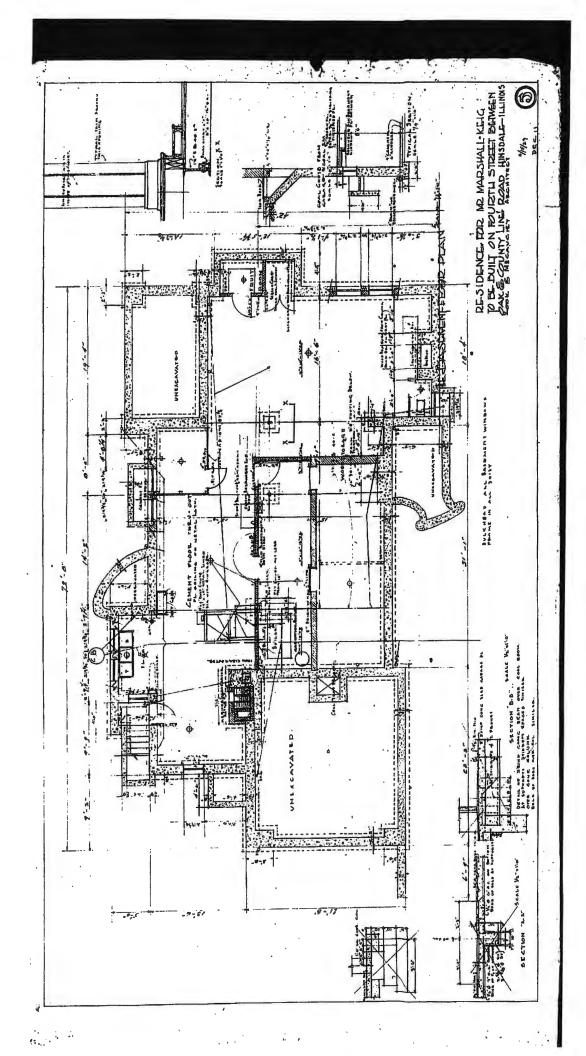
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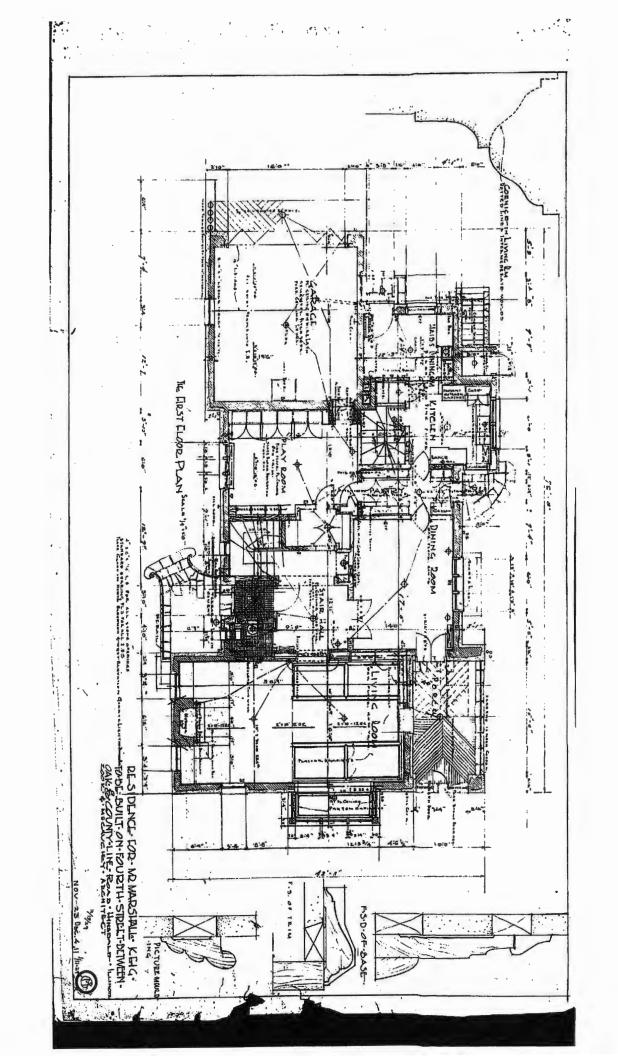


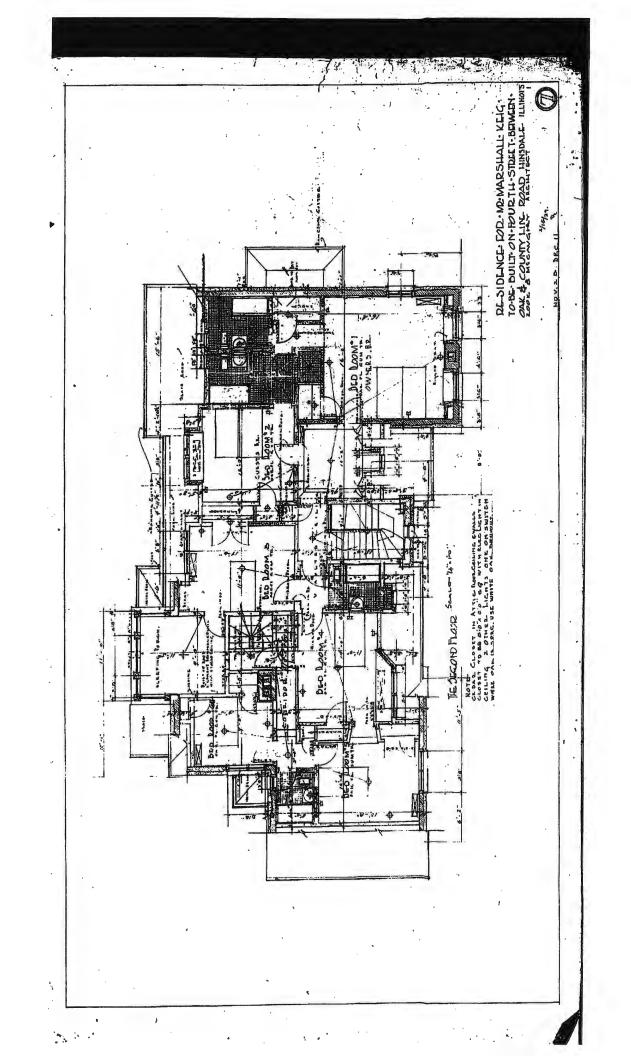


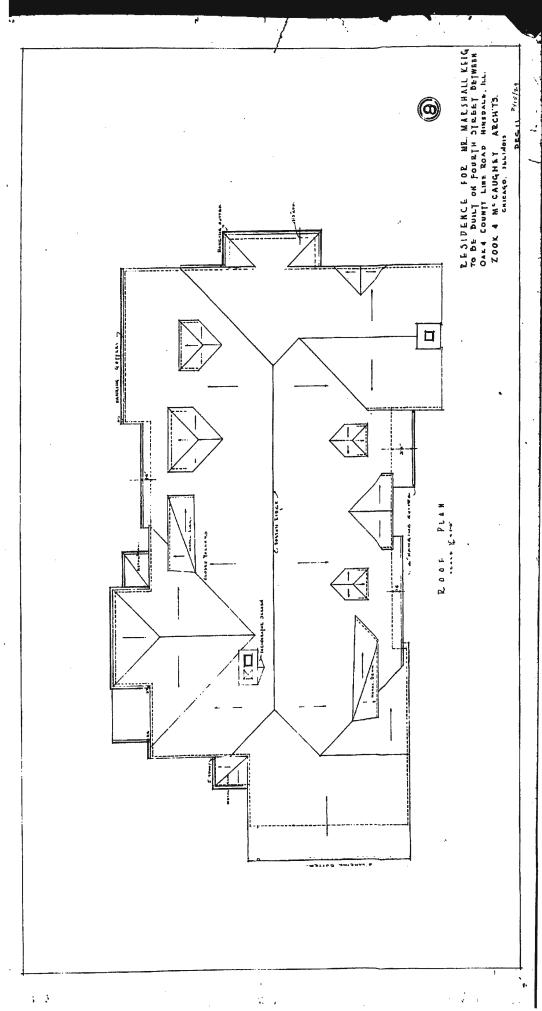


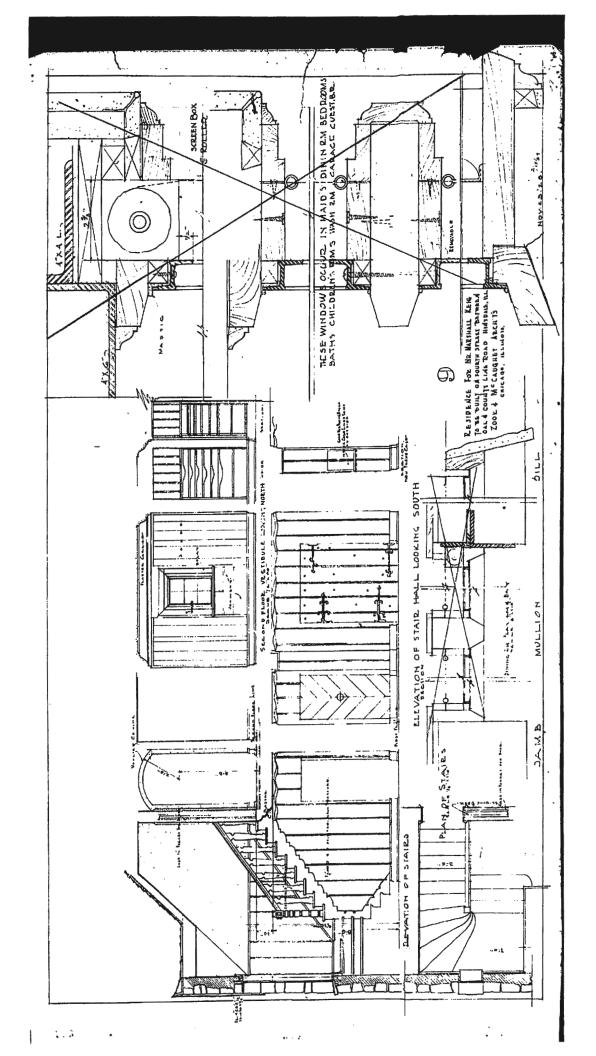


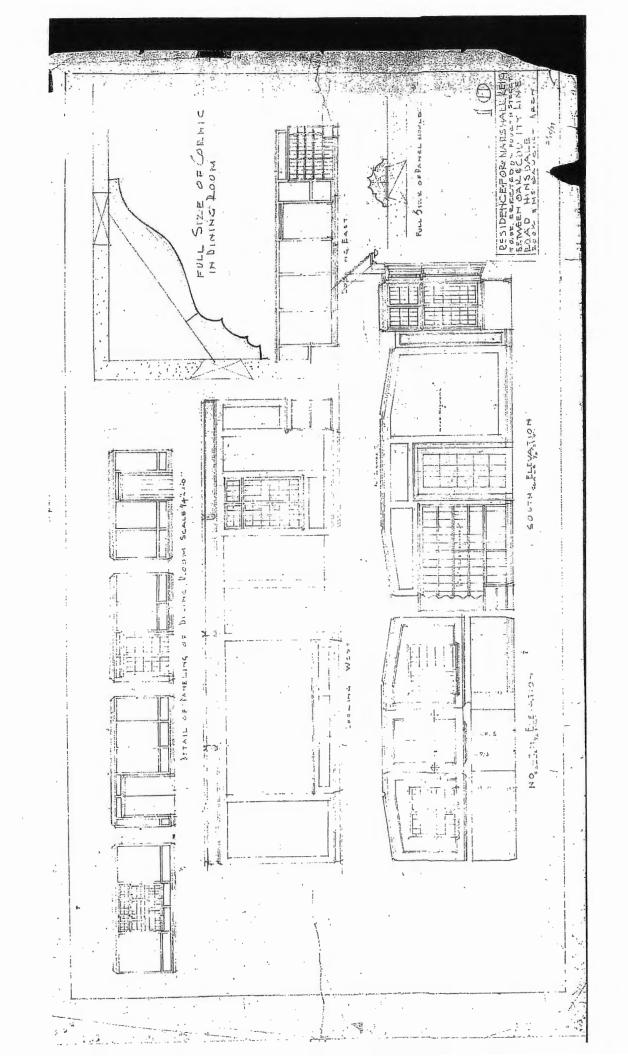


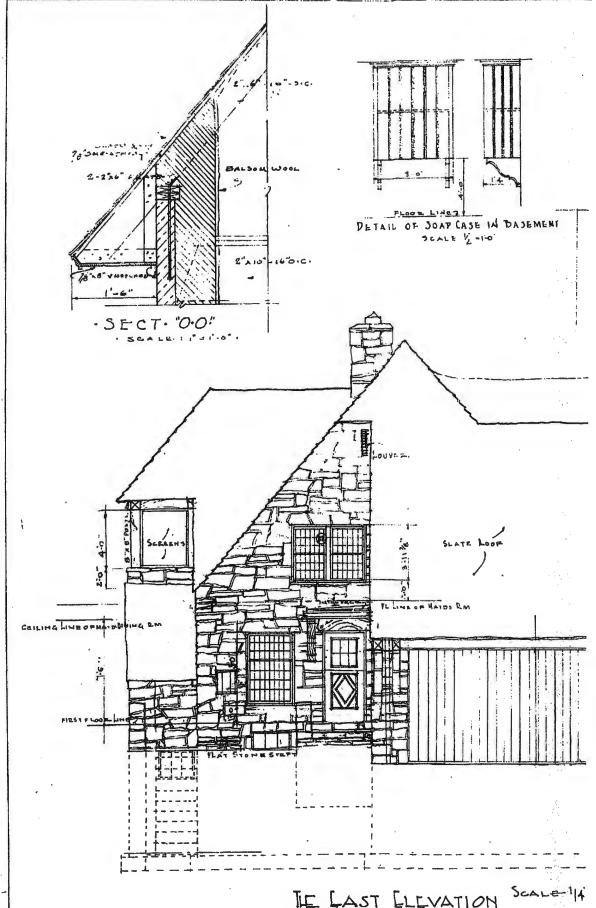




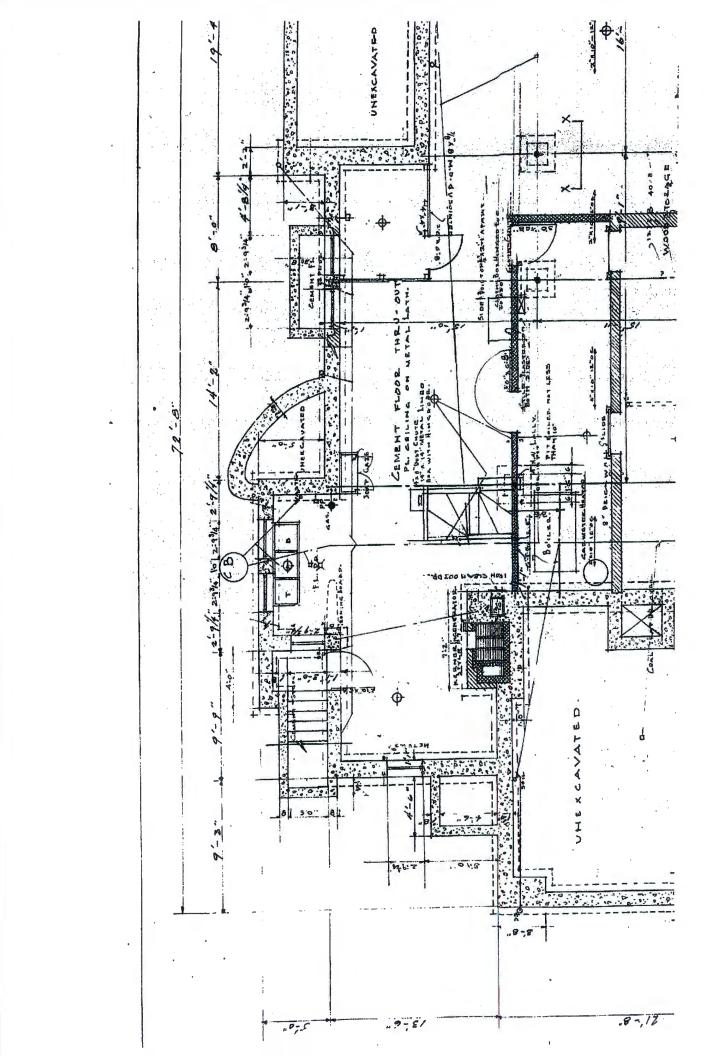


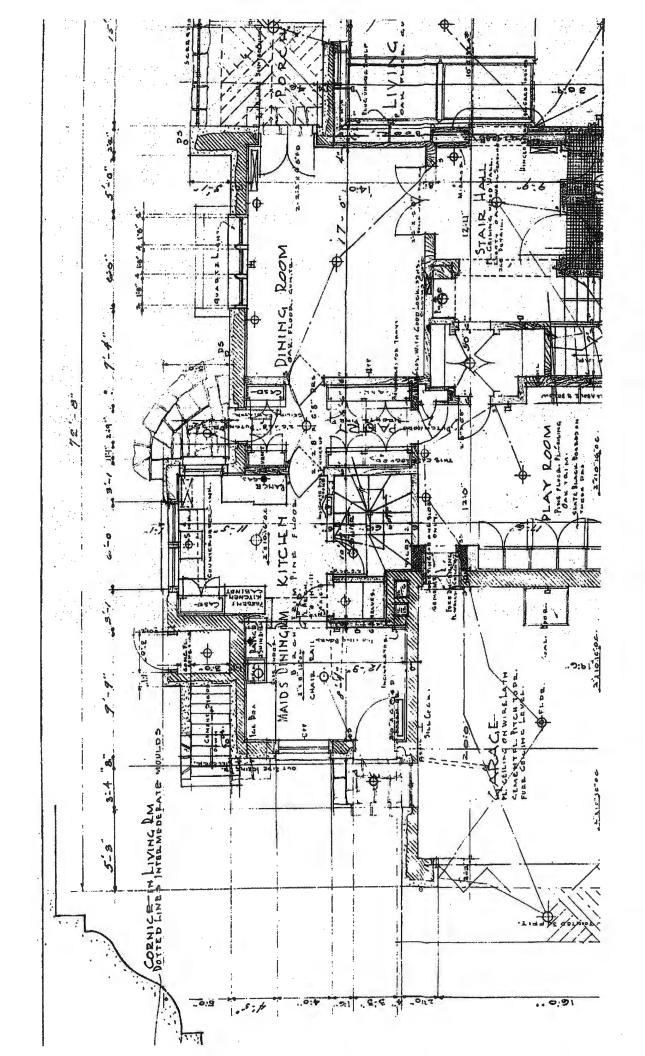


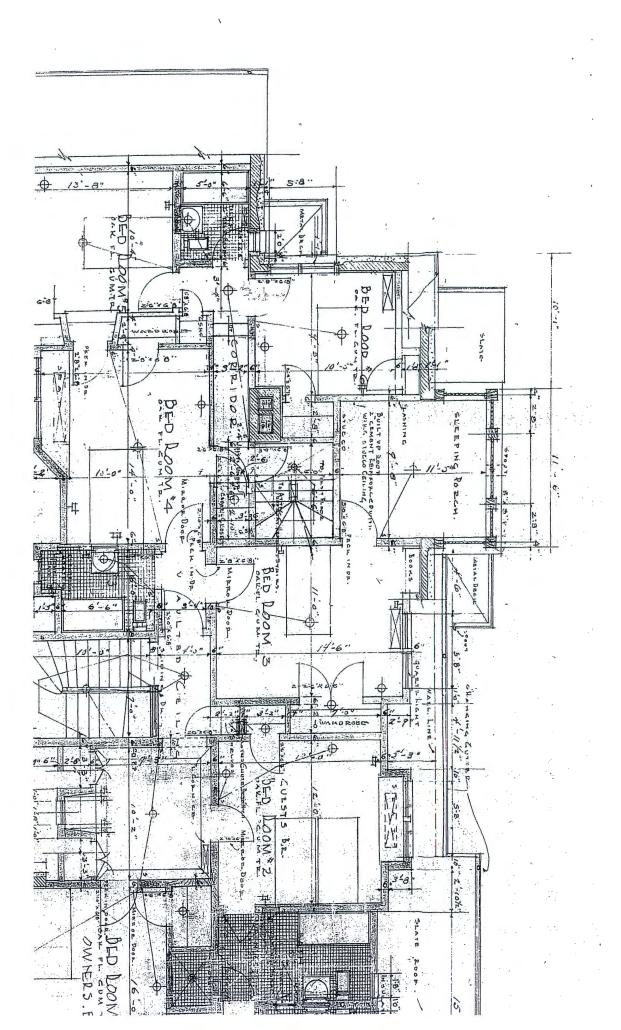




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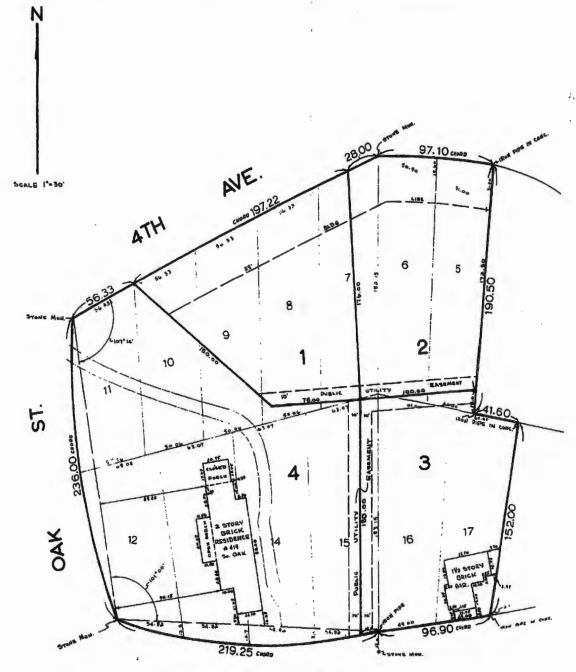


SAILORS RESUB.

OF

LOTS 5 THROUGH 17 IN THE RESUBDIVISION OF BLOCK 8 IN WILLIAM ROBBIN'S PARK ABOITION TO MINSOALE, A SUBDIVISION OF THE SOUTH HALF OF THE MORTHEAST QUARTER AND THE MORTH MALF OF THE MORTH HALF OF THE SOUTHEAST QUARTER AND THE MORTH FOR THIRD PRINCIPAL MERIDIAN, IN OU PAGE COUNTY, ILLINOIS.

Book 56 Page 71



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WOODSIDE

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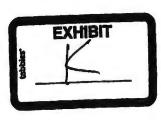
WOODSIDE AVE.

VILLAGE COLLECTOR'S CENTIFICATE	
STATE OF ILLIMOIS) 33	
1. Section & State Control for the Village of Hissorie, do nemery centify that there are no delinburat or undad current or forfelted special assessments or any defensed installments thereof, that have not been appointed against the tract of land	
DATED AT HE ARRESTO PLAT.	
DATED AT , HINSDALE THIS 70 DAY OF TRANSPORT A.D. 1966:	
9	
STATE OF ILLINOIS) 55	
COUNTY OF DU PARE) THIS IS TO CERTIFY THAT THE UNDERSTONED ARE THE ONNERS OF THE LAND MERCHAND. IN THE	
ARRESTED PLAT, AND THAT THEY MAYE CAUSED THE SAME TO BE SURVEYED AND SUBDIVIDED AS	
INDICATED THEREON, FOR THE USES AND PURPOSES THEREIN SET FONTH, AND OD HEREBY ACCORDAGEDGE AND ADDPT THE SAME UNDER THE STYLE AND TITLE THEREON INDICATED.	
DATED THIS TO DAY OF THE PARTY A.D. 1969	
Chanticles rate Inc.	
Lingenia J. Sandor OB	
HOTAGY CENTIFICATE	
STATE OF ILLHOIS) 55	
COUNTY OF OIL PAGE)	
AFORESAID, OD MERCHY CERTIFY THAT LIEVENIA J. SAILOR	
PERSONALLY RUCHIN TO HE TO BE THE SAME PERSONS WINGSE MANES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SUCH CHIEFS, APPEARED BEFORE HE THIS DAY IN PERSON AND	
ACCORDILEDGED THAT THEY SIGNED AND OCLIVERED THE ANDEXED PLAT AS THEIR OWN FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES THEREIN SET FORTH.	
GIVEN LINGER HY HAND AND NOTHINAL SEAL THIS 24 DAY OF TOTAL	
MH IN SOALE ILLINOIS.	
NOTHE PUBLIC	
COUNTY CLERK'S CERTIFICATE	
STATE OF ILLINOIS) SS COUNTY ON DO PAGE?	
I TE HI I MALE POPULATE COUNTY CLERK OF DU PAGE COUNTY, ILLINOIS, DC HEREBY	
CERTIFF THAT THERE ARE NO CELINOUENT GENERAL TAXES, NO UNPAID CURRENT GENERAL TAXES, NO UNPAID FORFEITED TAXES AND NO RESERVABLE TAX SALES AGAINST ANY UF THE LAND IN-	
CLUDED IN THE ANNEXED PLAT. I FURTHER CERTIFY THAT I HAVE RECLIVED ALL STATUTORY FEES IN CONNECTION WITH THE	
MINERED PLAT.	
GIVEN CHOER MY HAND AND SEAL OF THE COUNTY COURT AT WHEATON OLL INDIS THIS E DAY	
or Monay A.O. 1969.	•
COUNTY CLERK	

VILLAGE SOURD CERTIFICATE STATE OF ILLINOIS SS COMMIT OF SU PAGE)	
APPROVED BY THE PRESIDENT AND BOARD OF TRUSTED DAY OF LA LACKETY A.D. PRESI PROSITE LACKETY A.D. PRESIDENT ALTERSY. LICENSTRUCK S. THEOLOGY VILLAGE CLERK	Marton Dillion President
PLAN COMMISSION CERTIFICATE STATE OF HLLINOIS) SS COUNTY OF DU PAGE)	4
APPROVED BY THE PLAN CONNISSION OF THE VILLAGE.	E OF HIMSONE, THIS 4 DAY OF COMME
Artesto Milane	ENALISMAN .
SANITARY DISTRICT CERTIFICATI STATE OF ILLINOIS) SS COUNTY OF DU PARE)	
CERTIFY THAT THERE ARE NO DELINOUENT OR UNPA	THE MATTER DISTRICT, OD HEREB ID CHARBUT OR FORFELTED SPECIAL ASSESSMENTS, NYE NOT BEEN APPORTIONED AGAINST THE TRACT OF
DATED AT- LUNE RIEGE, ILLINOIS, THIS	724 DAY OF 34 11 22 A.D. 1960.
	COLLECTION AT ALL A SECOND
SURVINOR'S CERTIFICATE STATE OF ILLINOIS) SS COUNTY OF DU PAGE; SS	
THIS IS TO CERTIFY THAT I, ROMALD W. SCOTT, SURVEYED AND SURDIVIDED THE ABOVE DESCRIBED WHICH IS A CORRECT REPRESENTATION OF SAID SE IN FERT AND DECINALS TREMEDY, AND ARE CORREC	PROPERTY AS SHOWN ON THE AMMERIED PLAT, MIVEY AND SUBDIVISION, ALL DISTANCES ARE
I FURTHER CERTIFY THAT THE ABOVE DESCRIBED F OF THE VILLAGE OF MINSOALE, ALSO THAT SAID F OF ART SURFACE DRAIN OR WATERCOURSE SERVING	MOPERTY IS NOT SETUATED WITHIN 500 FEET
GIVEN UNDER MY HAND AND SEAL THIS ZOND DAY	F OCTOBER A.D. 1968.
	TLLINOIS LAND SURVEYOR NO. 1630

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1		VILLAGE OF HINSDALE
2		ZONING BOARD OF APPEALS
3		MINUTES OF THE MEETING
4		Wednesday, May 15, 2013
5		The state of the s
6	1.	CALL TO ORDER
7		Chairman Debra Braselton called the regularly scheduled meeting of the
8		Zoning Board of Appeals to order on Wednesday, May 15, 2013 at 7:32 p.m.
9		in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue,
10		Hinsdale, Illinois.
11		
12	2.	ROLL CALL
13		Present: Chairman Debra Braselton, Members Marc Connelly, Gary
14		Moberly, Bob Neiman and John Callahan
15		Moderny, 200 Morman and Control Canadan
16		Absent: Members Keith Giltner and Rody Biggert
17		Transmit Windle House and Though Differs
18		Also Present: Village Attorney Michael Marrs, Director of Community
19		Development/Building Commissioner Robb McGinnis, Village Clerk
20		Christine Bruton, Court Reporter Kathy Bono
21		Ontionne Bruson, Court Reporter Rathy Bono
22	2	APPROVAL OF MINUTES - April 17, 2013
23	v.	There being no changes or corrections to the draft minutes, Member
24		Moberly moved to approve the minutes of the Meeting of April 17,
25		2013. Member Connelly seconded the motion.
26		2016. Member Conners seconded the monon.
27		AYES: Members Connelly, Moberly, Neiman and Chairman Braselton
28		NAYS: None
29		ABSTAIN: Member Callahan
30		ABSENT: Members Biggert and Giltner
31		ADDEM 1: Members Diggert and Chivner
32		Motion carried.
33		Motion Carried.
34	4	APPROVAL OF FINAL DECISION - None
35	**	AII ROVAL OF FINING DECIDION NOR
36	5	RECEIPT OF APPEARANCES
37	0.	All persons intending to testify in the public hearing were sworn in by the
38		court reporter.
39		TO MED TO POST TO A STATE OF THE STATE OF TH
40	G	RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS
41	••	TO MAKE PUBLIC COMMENT OF A GENERAL NATURE - None
42		
43	7.	PRE-HEARING AND AGENDA SETTING - None
44	••	



8. PUBLIC HEARINGS

a) APP-01-13, 785 and 789 Phillippa

Mr. Matthew Kline, attorney for the homeowner, addressed the Board explaining that this case is an appeal of a determination by the Village that a new home cannot be constructed on 739 Phillippa. The homeowner, Dr. Ruth Barski lived in the residence at 735 Phillippa, acquired the property at 739 Phillippa, put up a fence, installed landscaping and a sprinkling system thereby creating one zoning lot, according to Village staff. However, he asserts that it was two lots then and is two lots now. The lots could not be consolidated, because it would have resulted in the house being non-conforming, and code states you cannot create a non-conforming lot. Individually, each of these lots is a legal non-conforming lot of record. He distributed Exhibit 1, a memo from Mr. Robert McGinnis, Director of Community Development which states the Village is of the opinion that by obtaining the fence permit for the two lots, one zoning lot is created.

Mr. Klein offers Exhibit II, which illustrates that each lot was created by a plat or deed. Member Neiman asked why this isn't a single zoning lot. Mr. Klein explained this single zoning lot was defined by the owner when she got a permit for a fence. He suggests she takes out the fence, only an accessory use, and redefine the property. He pointed out that on a Grant Street property a playhouse was removed and moved to the home lot, therefore there was no accessory structure, and the ZBA agreed at that time there were two legal non-conforming lots again. Chairman Braselton confirmed two pin numbers still exist.

Mr. Klein suggests that many houses on Phillippa are legal non-conforming lots. He believes that reverting these two to their original non-conformity would make homes built on these properties consistent with almost every other house on the block. To leave the lot 'double' would make it substantially larger than all other lots in the block. Dr. Barski would take out the fence; denying her the right to do this would be taking her rights away from her. Mr. Klein pointed out that there are three neighbors present tonight that have no objection to the proposal.

Member Moberly asked if this is a code or staff issue. Mr. McGinnis explained that this is not in the code with specificity and staff struggles with this issue regularly. He provided background information regarding bulk regulations in Hinsdale and explained that most towns don't allow building on non-conforming lots, a goal of most zoning codes is to slowly eliminate non-conforming lots and uses. Past practice was consistent on this zoning lot issue; he spoke with former and long time Village building department director Mr. Dan Schoenburg and building commissioner Mr. Charles Schmidt, who confirmed if people purchased

Zoning Board of Appeals Meeting of May 15, 2013 Page 8 of 4

> and demolished a house, when they came in to alter or improve that property they were told they were creating one zoning lot. Since 2005, current practice is different, a resident can't have an accessory structure without consolidating. He believes by definition, this is one zoning lot, but the code doesn't support breaking it out. Village Attorney Michael Marrs cautioned with respect to precedent, that if the Board feels the code provisions support Mr. Klein's argument, they shouldn't rule against this applicant because of future situations. The concerns about precedent would be more appropriately addressed through text amendments to the code. Mr. McGinnis cautioned this could result in more houses on more lots. He further stated that as we are a non-home rule community, properties are bought and sold and we have no record until a permit is applied for and at that time the applicant would be cautioned they were making one zoning lot. Member Callahan said this will be slowly eliminated over time, but after 2005 no permit would have been issued without consolidation. It was noted that a resident could put in a hedge or a swing set and unintentionally create one zoning lot by improving it.

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Member Callahan moved to close the public hearing on APP-01-13, 785 and 789 Phillippa. Member Connelly seconded the motion.

21 22

AYES: Members Connelly, Moberly, Neiman, Callahan and Chairman

23 24

25

26

Braselton
NAYS: None

ABSTAIN: None

ABSENT: Members Giltner and Biggert

27 28 29

Motion carried.

30 31

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DELIBERATION

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Member Moberly argues against the Village policy because it seems arbitrary to him. Member Neiman commented that in his opinion the language in §10 105 is dispositive; when he reads the language, it says it's ok notwithstanding any other section of the code. Further, given that Mr. McGinnis's office addresses this issue every day, and they have no strong view on the matter, it leads him to believe this Board should approve. Member Callahan agrees, there is no record of this policy and he believes the benefit of doubt should go to the homeowner.

40

Member Callahan moved to approve the appeal know as APP-01-13, 735 and 739 Phillippa. Member Connelly seconded the motion.

42 43 Zoning Board of Appeals Meeting of May 15, 2013 Page 4 of 4

T	Ales: Members Connelly, Moderly, Neiman, Callanan and Chairman		
2	Braselton		
3	NAYS: None		
4	ABSTAIN: None		
5	ABSENT: Members Giltner and Biggert		
6			
7	Motion carried.		
8			
9	9. NEW BUSINESS - None		
10			
11	10. UNFINISHED BUSINESS – None		
12			
13	11. ADJOURNMENT		
14	With no further business before the Zoning Board of Appeals, Member		
15			
16	of Appeals of May 15, 2013. Member Moberly seconded the motion.		
17			
18	AYES: Members Connelly, Moberly, Neiman, Callahan and Chairman		
19	Braselton		
20	NAYS: None		
21	ABSTAIN: None		
22	ABSENT: Members Giltner and Biggert		
23			
24	Motion carried.		
25			
26	Chairman Braselton declared the meeting adjourned at 8:07 p.m.		
27			
28			
29	Approved:		
30	Christine M. Bruton		
31	Village Clerk		
32			
33			
34			

1		VILLAGE OF HINSDALE			
2		ZONING BOARD OF APPEALS			
3		MINUTES OF THE MEETING			
4 5 6		March 15, 2017			
5					
6	1.	CALL TO ORDER			
7		Chairman Bob Neiman called the regularly scheduled meeting of the Zoning			
8	Board of Appeals to order on Wednesday, March 15, 2017 at 6:34 p.m. ir				
9		Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale,			
10		Illinois.			
11					
12	2.	ROLL CALL			
13		Present: Members Gary Moberly, Marc Connelly, Keith Giltner, Joseph Alesia,			
14		John Podliska, Kathryn Engel and Chairman Bob Neiman			
15		John Founska, Rathryn Engorand Onanman Bob Remain			
16		Absent: None			
17					
18		Also Present: Village Manager Kathleen Gargano, Assistant Village			
19		Manager/Director of Public Safety Brad Bloom, Director of Community			
20		Development/Building Commissioner Robb McGinnis and Village Clerk			
21		Christine Bruton			
		Chilatine Bruton			
22	2	APPROVAL OF MINUTES			
23	э.				
24		a) Regular meeting of December 21, 2016			
25		There being no changes or corrections to the draft minutes, Member Giltner			
26		moved to approve the minutes of the regular meeting of December 21,			
27		2016, as presented. Member Engel seconded the motion.			
28		ANDO Monte at Mahanka Olikaan Alasia and Obsimaan Mainaa			
29		AYES: Members Moberly, Giltner, Alesia and Chairman Neiman			
30		NAYS: None			
31		ABSTAIN: Members Connelly, Engel and Podliska			
32		ABSENT: None			
33					
34		Motion carried.			
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36		b) Regular meeting of January 18, 2017			
37		There being no changes or corrections to the draft minutes, Member			
38		Podliska moved to approve the minutes of the regular meeting of			
39		January 18, 2017, as presented. Member Giltner seconded the motion.			
40					
41		AYES: Members Moberly, Giltner, Podliska and Chairman Neiman			
42		NAYS: None			
43		ABSTAIN: Members Connelly, Alesia and Engel			
44		ABSENT: None			
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46		Motion carried.			
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c) Regular meeting of February 15, 2017

There being no changes or corrections to the draft minutes, Member Engel moved to approve the minutes of the regular meeting of February 15, 2017, as presented. Member Alesia seconded the motion.

AYES: Members Moberly, Alesia, Engel, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: Members Connelly and Giltner

ABSENT: None

Motion carried.

4. APPROVAL OF FINAL DECISION

a) V-05-16, 631 S. Garfield Street

Corrections were made to the draft final decision. Member Podliska moved to approve the Final Decision for V-05-16, 631 S. Garfield Street, as amended. Member Giltner seconded the motion.

AYES: Members Moberly, Giltner, Engel, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: Members Connelly and Alesia

ABSENT: None

Motion carried.

5. **RECEIPT OF APPEARANCES** – All persons intending to speak during the public hearing were sworn in by the court reporter.

6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE – None

7. PRE-HEARING AND AGENDA SETTING

a) V-03-17, 100 South Garfield Avenue (Hinsdale Middle School)

Village Manager Kathleen A. Gargano addressed the Board as joint applicant with the Hinsdale Middle School. She explained this application relates to the building of a parking deck. She explained the school passed a referendum for a new school, and the construction of a surface parking lot might be a community opportunity to relieve congestion in the central business district. She noted a Chicago Metropolitan Agency for Planning (CMAP) study which indicated the Village is at 100% capacity in terms of parking. The school agreed to work together with the Village to solve the parking problem, to which there has been no public opposition to the construction; the only opposition was to building too small a structure. Part of the impetus to move forward is due to the design of the school, which will exacerbate an existing problem because an additional 50 spaces will be lost.

47 lost

Mr. Brian Kronewitter, architect for the Middle School project, briefly

reviewed the six requested variances, which include a reduction in the front yard setback, the interior side yard setback, an increase in floor area ratio (FAR), occupying more than 35% of the side yard with a permanent structure, allowing off-street parking in the required front yard, and reduction of minimum perimeter landscape buffer.

Chairman Neiman commented that while this is a unique situation, the necessity for six variations is problematic and the applicant should be prepared to explain why all of these are required, and no other design would eliminate or reduce the number or severity. Member Connelly noted that two of the six items are recommendations for approval only. Director of Community Development Robb McGinnis said based on the improvements, three of these will be reduced. Ms. Gargano said every effort will be made to minimize the requests. Mr. Weise, representing the school, provided some detail regarding the landscape materials to be used surrounding the parking deck.

The public hearing was set for April 19, 2017.

b) V-04-17, 435 Woodside

Mr. Matthew Bousquette, property owner, addressed the Board. clarified that 435 Woodside would be the new address, he resides at 448 E. 4th Street. Also present was Mr. Kris Parker, current resident of the Zook house located at 444 E. 4th Street. Mr. Bousquette explained these addresses encompass six lots, or a little over two acres. These lots are slightly larger than the others on the block. He described the 400 block of Woodside, and the current homes on the block. The lot they want to build on is the second largest, and the same as the other homes on the block, except the one right next door. The Zook house is a 4,100' square foot home. To the best of his knowledge, there are no lots in the R-1 area of this size that have never been built on before. Additionally, 90% of the existing homes in the R-1 do not conform to the 30,000' square foot requirement. The lot and the house fit with character of the neighborhood: he would like to save the house. The lot where the Zook house would be is the second largest on the block; resulting in three houses on two acres. He explained that he has been working on this for eight months, and it is becoming financially difficult; he is looking for an expeditious way to resolve this.

Mr. Parker added when people see the facts, they are in favor of this request. He believes the home is part of Hinsdale's look, feel and heritage. Mr. Parker is under contract to buy the home, contingent on being able to move it.

The public hearing was set for April 19, 2017.

c) V-02-17, 724 North York Road (Hinsdale Animal Hospital)

Mr. Mike Mathys, architect, Dr. Tony Kremer, owner, and Mr. Tim Burke, management company representative, addressed the Board. Mr. Mathys explained the project originally started as a redevelopment of the existing building, but the Village Board, while receptive to the location, encouraged them to demolish and rebuild. They are working with a slightly smaller

Zoning Board of Appeals Meeting of March 15, 2017 Page 4 of 6

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footprint than the existing building. The setback on York Road would be the same, the building would be a brick and stone style, with a tower feature. Dr. Kremer commented he is under contract with the current owner, pending approvals. It was noted the property was re-zoned B-1 by the current owner, but the surrounding area is O-2. Discussion followed regarding the tower.

Chairman Neiman is concerned there are so many variations requested, especially so when the existing building is being torn down, creating a 'blank slate'. He asked the applicant to address whether the issues are self-created; could the architecture be changed to eliminate or reduce the scope of the variances requested, and bring it closer to what is permitted.

Dr. Kremer said they are working on trying to redevelop the business, however, they know they need this square footage. Mr. Mathys explained the lot is misshapen, and partly unusable, which has created the need for a variance. There are issues with the lot width, and providing the proper parking. If the property was still zoned O-2, as the surrounding area, a couple of the variances, including FAR relief would not be necessary. It was noted they plan to eliminate existing on-street parking, thereby improving the look of York Road.

The public hearing was set for April 19, 2017.

8. PUBLIC HEARINGS

a) V-01-17, 26 East Sixth Street

Mr. Bob O'Donnell, attorney representing Janice MacLeod, independent executor of Mr. Vincent Petrovsky's estate, addressed the Board stating they are seeking a single variation from the minimum lot area requirement in the R-4 zoning district for a property which currently does not have an address. Section 3-110-C of the Village code states the minimum lot size for a lot in the R-4 district is 10,000' square feet; however Section 10-105-A addressed the use of nonconforming lots of record for use as a single-family home. If this variation is granted, the new lot would be used for a single-family home. A legal nonconforming lot of record must have a minimum lot area of 7,000' square feet. The subject lot is 400' square feet less than the minimum required. However, Section 11-503 of the code permits a variation of up to 10% of the required lot area, and as such is within the Board's authority to grant.

The lot is currently vacant, and the hardship in this case is the lot will not be buildable. The anomaly in the code is that if there were an existing single family home on the lot before 1981, a variation would not be required to tear down and rebuild. The unique physical condition is the property was platted in 1888, well before the code was adopted, it does not appear a home was ever constructed on the property. The problem is not self-created as these lots were platted separately a century before the code was adopted. The owner's substantial right is denied; they should have the right to sell the lot like any other lot in the area with a home on it. Those can be sold and redeveloped as a matter of right.

Discussion followed regarding the value in Hinsdale of a 13,000' square foot lot. Mr. O'Donnell stated there is more value in two separate lots; the

Zoning Board of Appeals Meeting of March 15, 2017 Page 5 of 6

 owner will suffer significant diminution by virtue of the fact there is no house on the lot. He also reiterated that the second lot would not be buildable; additionally this would be the only 13,000' square foot lot in a neighborhood of 7,000' square foot lots. He believes the essential character of the area would be negatively affected by the combining of the two lots. He pointed out that the contract purchaser of the lot intends to build a code compliant home on the property.

Mr. O'Donnell stated the ability to construct a home on a platted lot is not a special privilege, given all the other activity in the recent past in this area. Granting this is in the spirit of the code, and consistent with what has occurred in the district. There is no other remedy, other than a variation, to use this lot for a single-family home. It is an atypical situation that requires the property owner to come before the Board simply because there is no house on the lot.

Member Podliska asked what efforts were made to reach out to neighbors for input. Mr. Luke Stifflear addressed the Board stating he has a contract to purchase the property. He also noted for full disclosure, that he is a Trustee on the Village Board. He sent out 36 notices to all the neighbors on February 28th, but there has been no response. He did not knock on the doors. (Mr. Stifflear was sworn in for prior testimony.)

Mr. McGinnis clarified there are lots of record all over town that do not meet the bulk regulations. When the code was adopted, a town of legal nonconforming lots was created. He noted that if a home straddles underlying lots it creates one zoning lot. There is no record of any improvement on this lot; therefore this is not a zoning lot of record.

Ms. Maureen Walsh of 25 S. Ulm Place, was sworn in. She expressed concerns about density and drainage. She is the resident behind the property in question, and hates to see the homes get smooshed together, so she opposes this request. Chairman Neiman explained the drainage issues would be addressed during the permitting process. Ms. Walsh stated she doesn't have drainage problems, but her neighbor does.

Member Connelly moved to close the public hearing for V-01-17, 26 East Sixth Street. Member Alesia seconded the motion.

AYES: Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and Chairman Neiman

NAYS: None ABSTAIN: None ABSENT: None

Motion carried.

DELIBERATIONS

Member Podliska began deliberations stating he is satisfied with the discussion regarding the character of neighborhood if there was one big house; he is convinced the character would be adversely affected. Chairman Neiman agreed;

Zoning Board of Appeals Meeting of March 15, 2017 Page 6 of 6

it was a good suggestion to combine the lots, but no one wants one big house in the middle of the block towering over all the others. Member Moberly stated he is convinced by the building activity in the area, Member Connelly believes all the necessary criteria for approval have been met. Chairman Neiman added the manner in which Mr. O'Donnell addressed the criteria was compelling, especially with the exhibits of like homes and like sized lots.

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Member Podliska moved to approve the variation request known as V-01-17, 26 East Sixth Street. Member Engel seconded the motion.

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- 11 AYES: Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and
- 12 Chairman Neiman
- 13 NAYS: None
- 14 ABSTAIN: None
- 15 ABSENT: None

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Motion carried.

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9. NEW BUSINESS - None

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10. OTHER BUSINESS - None

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11. ADJOURNMENT

With no further business before the Zoning Board of Appeals, Member Engel made a motion to adjourn the meeting of the Zoning Board of Appeals of March 15, 2017. Member Giltner seconded the motion.

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AYES: Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and

29 Chairman Neiman

NAYS: None ABSTAIN: None ABSENT: None

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Motion carried.

Village Clerk

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Chairman Neiman declared the meeting adjourned at 8:15 p.m.

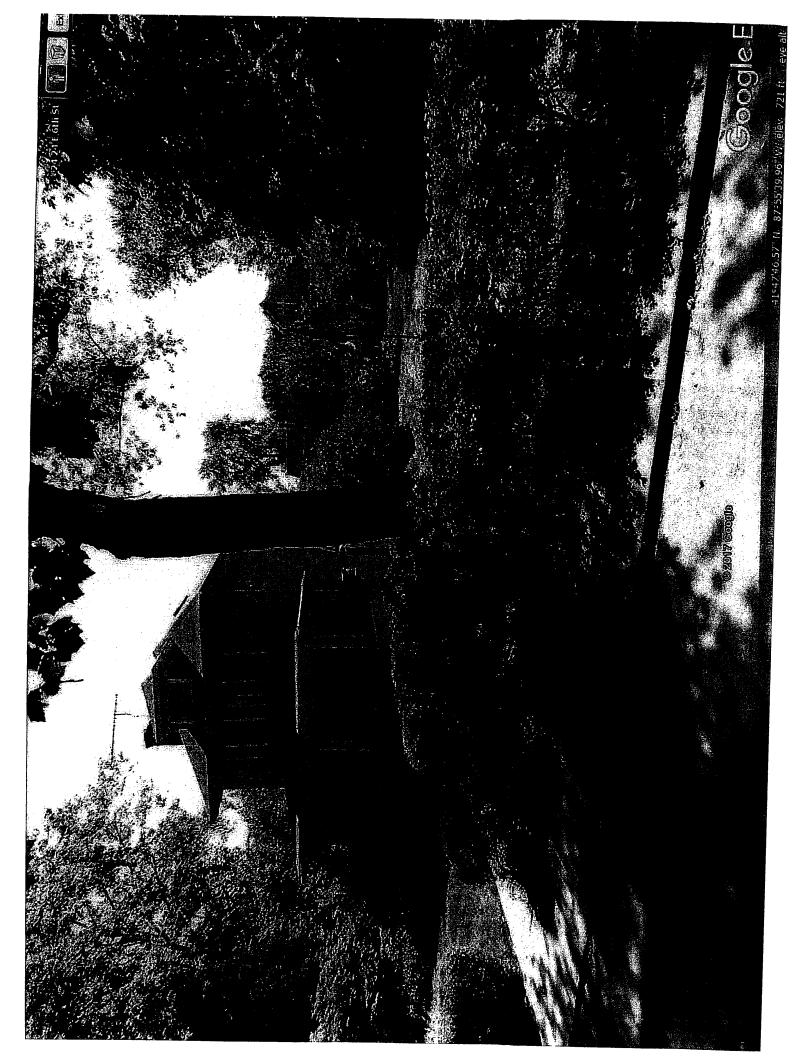
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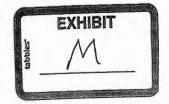
	Approved:
Christine M. Bruton	

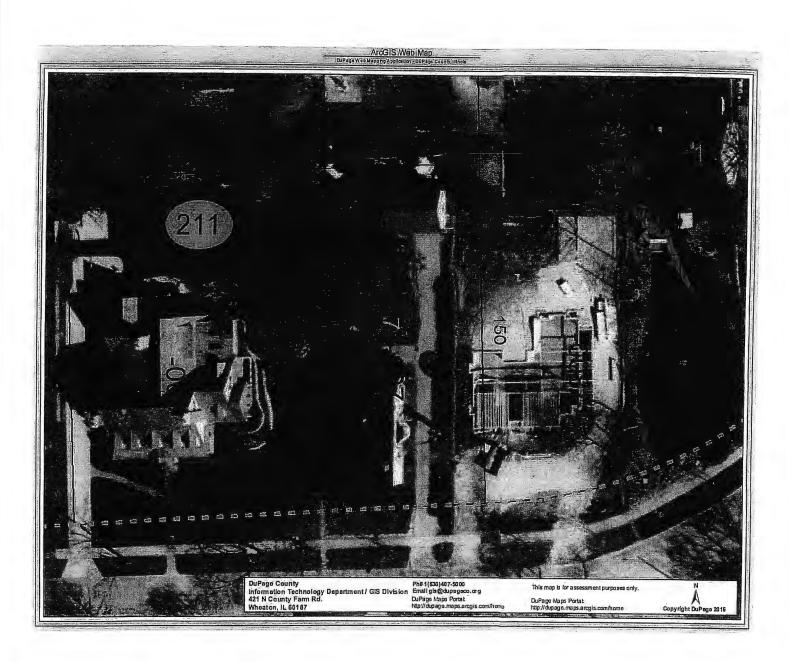
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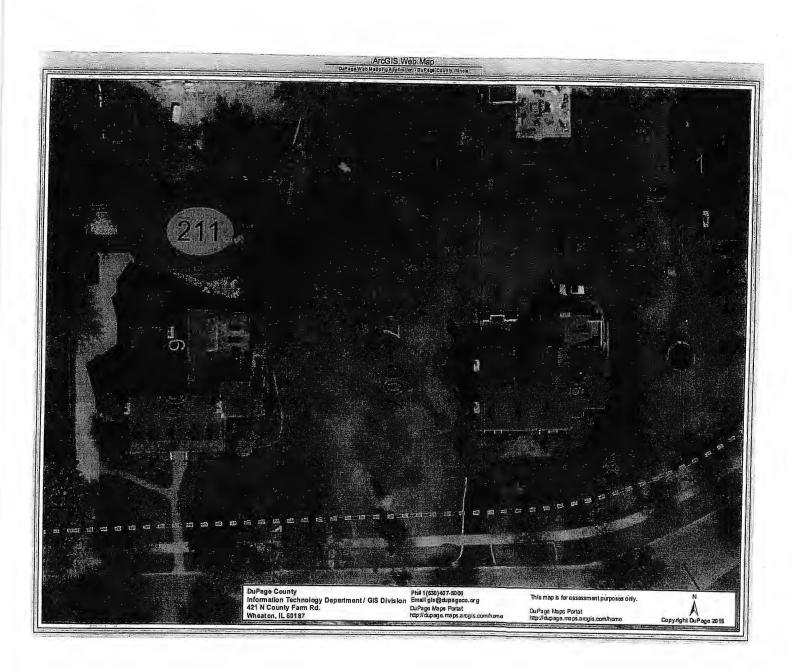


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7. 127 E 4th St



Mark Daniel <mark@thedaniellawoffice.com>

Gargano Letter

Mark Daniel <mark@thedaniellawoffice.com>

Fri, Jun 2, 2017 at 1:04 PM

To: "Michael A. Marrs" <mamarrs@ktjlaw.com>, "kgargano@villageofhinsdale.org" <kgargano@villageofhinsdale.org>

Cc: "Lance C. Malina" <LCMalina@ktjlaw.com>

Michael,

Since Kathleen was not at the meeting (as hoped) and her determination is requested, I am sending this to her and asking that she append this to her materials and to her consideration. I am requesting that she not respond. Prior to sending this, I deleted all prior emails from below this email.

I was fairly clear in our meeting. I pointed out that you and Robb have been addressing whether the home can be rebuilt based on your six lot theory that the lot of record includes Lots 1-4 and 18-19. I pointed out the definition of legal nonconforming lot of record and its reliance on lot of record. Neither definition mentions zoning lot. The only way you can apply the code as written is to use the defined terms and find that Lots 1-4 comprise the North Lot and are capable of development and Lot 18-19 can be developed under the legal nonconforming lot of record definition without injecting an unwritten "zoning lot interpretation" that you have previously wherein you assumed that the only practical conclusion is the all six lots were one zoning lot.

I also explained in detail that the only way to avoid different treatment of projects such a Phillippa or Sixth Street is to stick to the lot of record question and not venture into injecting a view that all six lots must be a zoning lot into the equation.

Lot Of Record: A lot that is part of a subdivision, the plat of which has been recorded in the office of the DuPage County recorder of deeds or, if appropriate, the Cook County recorder of deeds, or a parcel of land separately described in a recorded deed.

Nonconforming Lot Of Record: A lot of record that does not comply with the lot requirements for any use permitted in the district in which it is located.

Nonconforming Lot Of Record, Legal: A nonconforming lot of record that:

- A.1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation; and
- 2. Is located in a residential district and meets the minimum lot area and lot dimension standards of subsection 10-105A of this code, or is located in a district other than a residential district; and
- 3. Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code; or [B is not relevant]

We all agree that A(1) and A(2) are satisfied. We all agree that the South Lot was either vacant or would become so after June 18, 1988. Robb's SOLE question arose under "by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code" if we are not treating the South Lot as vacant on June 18, 1988 and treating the act of moving the Zook House as the South Lot becoming vacant later. The Zook House cannot be built on the north lot because of the lot requirements that require it be placed further north of its current location. Rear yards are NOT adjusted by Section 10-105. Robb has concluded that we can rebuild the house under 10-104C, but this hinges on using all six lots (1-4 and 18-19, all six lots comprising the zoning lot for Robb's purposes). We cannot do so using 1-4 which is the lot of record.

Before I left the meeting, Robb clearly stated that he understood that a "zoning lot" theory did not apply here, so the question is not whether the house can be rebuilt on a zoning lot comprised of all six lots. It is a matter of asking whether the home can be rebuilt where it is on Lots 1-4 and the answer to that is no. That home has to be in a different location or smaller, period.

I've also said that looking at this from what you said was a "practical view" puts the Village in the position of assuming that all lots were required to have a rear yard. This is not so and only one of three options in 1929 and 1935. There could have been a waiver and the approval of the plans indicate that either (a) a waiver of the rear yard was granted, or (b) the

building commissioner determined that a rear yard, if not waived, was not a required yard because the ordinance did not require it in all instances, particularly when, on a lot with 19 subdivided parcels one 2800-3000 SF footprint home is surrounded by 26000 of more than adequate other open space.

I've asked you and Lance for a conference call if you need further clarification. However, my hope is that you have FULLY and accurately communicated this to Kathleen Gargano. If Kathleen sticks to the terminology used, then she should focus on lots of record (three exist), the south two of which will be the site of the relocated home. If she accepts your prior assumptions that you can import a discussion of zoning lots and say that the since the zoning lot is comprised of six lots, there cannot be two developable lots, you are altering the definition of "legal nonconforming lot of record" and "nonconforming lot of record." Doing so is no different than you and Robb importing a non-existent distinction between accessory and principal structures that can be removed to caused a lot of record to become vacant after 1988.

I am asking that you assist Kathleen in making the right decision based on the information that is now available. This is not a situation where defending you or Robb should be an issue now that we have so much additional information, including the information related to the GIS.

Please let me know when we should expect the determination inasmuch as we have a June 21 date to keep an eye on,

Thanks again for the focus on this. This is a remarkably significant step in the preservation of the house.

Mark W. Daniel DANIEL LAW OFFICE, P.C. 17W733 Butterfield Road Unit F Oakbrook Terrace, Illinois 60181 (630) 833-3311 Fax: (630) 833-3511 mark@thedaniellawoffice.com



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www.ktilaw.com

MEMORANDUM

To:

Robb McGinnis, Director of Community Development (via email only)

From: Date:

Michael A. Marrs April 26, 2017

Re:

Zoning Opinion - 444 E. Fourth Street - Ability to Build a Second Residence

Following Relocation of Existing House

You have informed me that the Property Owner of 444 E. Fourth Street (the "Owner") has recently inquired as to his ability to build an additional residence on the property as of right following relocation of the existing residence to a different location on the property. In response, the Village has asked me to offer my opinion on his request and his best option for zoning relief to accomplish his goals regarding use of his property.

BACKGROUND: As background, the property at 444 E. Fourth Street (the "Property") is a through lot fronting on both Fourth Street and Woodside Avenue. The Property currently consists of three lots of record. There is currently a home (the "Existing Residence") located on two of the lots of record (PINS 008 and 009), while the other lot of record is adjacent and vacant (006). In a letter dated March 27, 2017, the Owner expresses his desire to relocate the Existing Residence that is on the Property to the southerly two lots of record, which is comprised of PINS 006 and 009 (collectively, the "Woodside PINS"). He then seeks to construct an additional residence (the "Second Residence") on the remaining lot of record (the "Fourth Street PIN"), which is comprised of PIN 008. The Owner contends that PINS 006 and 009, when combined, constitute a legal nonconforming lot of record, and that Section 10-105 of the Zoning Code thus enables him to accomplish the relocation of the Existing Residence to the Woodside PINS and erection of the Second Residence on the Fourth Street PIN as of right.

RELEVANT CODE PROVISIONS: The following Zoning Code provisions are relevant to this Opinion.

Section 3-110 (Bulk, Space, and Yard Requirements) of the Zoning Code sets forth bulk, space and yard requirements for all four (4) of the single-family residential zoning districts in the Village. Section 3-110, in its "exceptions and explanatory notes" section, refers readers to Section 10-105 of the Zoning Code for lot requirements with respect to "legal, nonconforming lots of record."

Section 10-104 (Precode Structures) generally allows precode structures to be maintained, altered, enlarged, rebuilt, restored and repaired so long as they remain otherwise lawful, allows maintenance, repair, alteration and enlargement of such structures so long as no new nonconformities are created, allows vertical extensions of precode structures in required front or rear yards, and allows, under certain circumstances, horizontal and vertical extensions in required side yards, etc.

Similarly, Section 10-105 (Legal Nonconforming Lots of Record) sets forth an alternative set of lot standards applicable to legal, nonconforming lots within the Village. The standards are an alternative to those set forth in Section 3-110, and relate to maximum elevation, front, back and side yard requirements, total lot area, and lot width and depth. Not all nonconforming lots of record are legal nonconforming lots of record, however, as defined by the Zoning Code.

The terms "Nonconforming Lot of Record" and "Legal, Nonconforming Lot of Record" are defined in Section 12-206 of the Zoning Code, as follows:

Nonconforming Lot Of Record: A lot of record that does not comply with the lot requirements for any use permitted in the district in which it is located.

Nonconforming Lot Of Record, Legal: A nonconforming lot of record that:

- A.1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation; and
- 2. Is located in a residential district and meets the minimum lot area and lot dimension standards of subsection 10-105A of this code, or is located in a district other than a residential district; and
- 3. Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection 10-104C of this code; or
- B. Was created pursuant to section 3-110 of this code.

Except as authorized pursuant to section <u>3-110</u> of this code, a legal nonconforming lot of record cannot be created by the sale or transfer of property that results in the creation of a nonconforming lot of record or that increases the degree of nonconformity of any existing nonconforming lot of record.

Finally, Section 12-201.C. of the Zoning Code provides the following general prohibition:

No structure, no use of any structure or land, and no lot of record or zoning lot, now or hereafter existing, shall hereafter be established, enlarged, extended, altered, moved, divided, or maintained in any manner, except as authorized by the provisions of this code and except in compliance with the regulations of this code. Without limiting the foregoing, any such activity that would cause any existing structure not to comply with this code or that would create any parcel of land that could not be developed in compliance with this code shall be prohibited.

ANALYSIS: Sections 10-104 (Precode Structures) and 10-105 (Legal Nonconforming Lots of Record) of the Zoning Code are acknowledgments that many structures and lots within the Village predate current zoning requirements, resulting in structures and lots that are not in conformity with the current Zoning Code.

Where a lot includes all or a portion of a precode primary structure, the provisions of Section 10-104 allow the continued viable use of those lots. Where a nonconforming lot is of sufficient size

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under 10-105, was vacant in 1988, or became vacant thereafter under circumstances which somehow prevented the rebuilding or replacement of the previous precode structure, it is a LEGAL nonconforming lot and is eligible for development under Section 10-105. A lot may be subject to either Section 10-104, or Section 10-105. Based on the vacancy requirement in the definition of a legal, nonconforming lot, where a nonconforming lot contains all or a portion of a precode structure, the lot is governed by the precode structure provisions in 10-104, rather than the legal, nonconforming lot of record provisions in 10-105.

Collectively, Sections 10-104 and 10-105 demonstrate an intent to essentially maintain the density of the Village as it existed in 1988. If a precode structure exists on a lot, you can generally continue to utilize the lot for that single-family residential purpose, regardless of its size, under Section 10-104. If you have a lot that appears to have been platted for development, but has never been developed, you can do so under Section 10-105, if certain minimum lot area and dimension and other standards are met. Consistent with the overall scheme of maintaining existing density, the demolition, destruction, or other disposition of a precode structure on a lot made up of multiple lots of record and historically used as a single zoning lot would not cause a property to move from 10-104 to 10-105, except in circumstances where, for whatever reason, 10-104 would prevent the precode structure from being rebuilt or replaced. Instead, the owner retains the right to rebuild a single dwelling on the zoning lot. Similarly consistent with the overall scheme created by the Zoning Code is the Village's position that once a lot or collection of lots of record are used as a single zoning lot, they may not thereafter be divided and broken out as multiple lots as of right.

The existing through lot has a precode structure on it. The structure currently sits on PINs 008 and 009. PIN 006 is vacant but has unquestionably been used, along with PINS 008 and 009, as part of a single zoning lot.

Contrary to the Owner's assertion, PINS 006 or 009 do not, together, constitute a legal nonconforming lot of record. The Owner's assertion does not take into account the definition of legal nonconforming lot set forth in the Village's Zoning Code. Owner maintains that there has never been a structure on 009. He subsequently acknowledges, however, that a small corner of the existing residence has always been on PIN 009. PIN 009 is not vacant, and is not, therefore, a legal nonconforming lot as defined in the Zoning Code. PIN 006, while vacant, does not meet the bulk requirements set forth in Section 10-105, and likewise fails to meet the definition of a legal, nonconforming lot under the Zoning Code. Together, the Property and Existing Residence are subject to the Precode Structure provisions of Section 10-104. Without further zoning relief, only a single residence is allowed by right on the Property.

The Owner has also asked staff how the situation at the Property is different than a recent division of property located at 26 E. 6th. The 26 E. 6th situation is distinguishable based on the fact that there, no portion of a precode structure was on the nonconforming lot sought to be broken off and built on. While a small portion of a patio was located on the vacant lot, staff was constrained from using that incursion to prevent the zoning lot split based on a 2013 ZBA decision holding that where one lot has only minor accessory structures/improvements on it, the single zoning lot could be divided and thereafter used for two separate residences.

OPTIONS: It is my understanding that the Owner is presently pursuing zoning relief in the form of a proposed subdivision of the Property with an accompanying variation for lot size set forth in Section 3-110. That, in my opinion, is an appropriate course of action to achieving his desired result of a relocating the Existing Residence and building the Second Residence.

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Other options the Owner could pursue include pursuing an appeal to the Village Manager/ZBA regarding this opinion, or seeking text amendments to the existing provisions of the Zoning Code that would afford him the relief he seeks. However, maintaining his present course of action seems to me to be the most straightforward approach to achieving his goals.

cc: Kathleen Gargano, Village Manager (via email) Lance Malina (via email)

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MEMORANDUM

To:

Robb McGinnis, Director of Community Development (via email only)

From:

Michael A. Marrs

Date:

May 8, 2017

Re:

Response - Zoning Opinion - 444 E. Fourth Street - Ability to Build a Second

Residence Following Relocation of Existing House

You have submitted to me the response of the Property Owner of 444 E. Fourth Street (the "Owner"), dated April 28, 2017, to my Zoning Opinion dated April 26, 2017 ("Zoning Opinion"), as to his ability to build an additional residence on the property as of right following relocation of the existing residence to a different location on the property.

The Property Owner's April 28, 2017 Response (the "Response") notes that the definition of "Vacant" in the Village of Hinsdale Zoning Code is "[n]ot developed with any building, structure, or paving or surfacing of the ground." The Property Owner contends that the definition of Vacant gives equal importance to the existence of a patio as it does to the existence of a building or structure, and that the only proper interpretation that can therefore be applied to the 2013 ZBA Decision referenced in my Zoning Opinion is that the existence of a non-substantial portion of a "building, structure or paving or surfacing of the ground" shall not preclude a property from being deemed vacant for purposes of Section 12-206.

I disagree. At issue in the 2013 ZBA Appeal was placement of accessory structures on an otherwise vacant lot with no principal structure on it, and whether the presence of those accessory structures created a single zoning lot with the lot next door that could not thereafter be broken up. The ZBA concluded that the presence of such accessory structures did not preclude an owner from building on the lot using Section 10-105 of the Zoning Code under the circumstances present there. Staff does not consider paving to be a structure for zoning purposes, and it is therefore regarded by staff as an even less significant incursion than an accessory structure. Staff therefore felt bound to follow the 2013 ZBA decision when considering a division where one lot had only paving on it. The ability to break up a zoning lot where a principal structure straddles the lot line between nonconforming lots is an altogether different issue that was NOT before the ZBA in 2013. The 2013 ZBA Opinion does not, therefore, control the outcome of the 444 E. Fourth Street matter.

CC:

Kathleen Gargano, Village Manager (via email) Lance Malina (via email) m:h

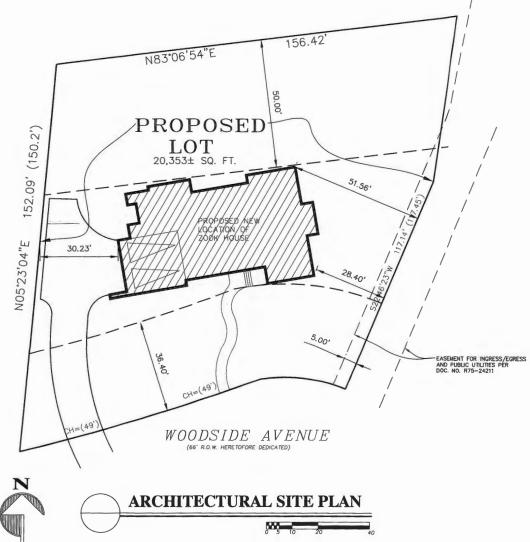
SETBACK DATA TABLE

WOODSIDE ADDRESS: 419 WOODSIDE AVENUE 425 WOODSIDE AVENUE 435 WOODSIDE AVENUE 436 WOODSIDE AVENUE Average:

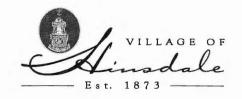
19.66' (EXCLUDED) 36.96' 40.36' (EXCLUDED) 35.84' 36.40'

SITE DATA

LOT AREA 20,353± SQ. FT. ALLOWABLE FAR 6070 SQ. FT. EXIST FAR APPROX. 5000 SQ. FT.







MEMORANDUM

DATE:

June 9, 2017

TO:

Chairman Neiman & Members of the Zoning Board

CC:

Kathleen A. Gargano

Robb McGinnis

FROM:

Christine M. Bruton, Village Clerk

RE:

APP-01-17, 444 E. Fourth Street/435 Woodside

Attached please find supplemental materials relative to the above named Appeal:

1. Letter from Mr. Matthew C. Bousquette to Village Manager Kathleen A. Gargano Re: Appeal of the Staff Zoning Opinion concerning 444 E. 4th Street

 Letter from Mr. Matthew C. Bousquette to Building Commissioner Robert McGinnis dated March 27, 2017 Re: Attempt to Preserve the Zook House Located at 444 E. 4th Street with exhibits

3. Letter from Mr. Matthew C. Bousquette to Building Commissioner Robert McGinnis dated April 28, 2017 Re: Response to the Zoning Opinion from Michael A. Marrs, Esq. concerning 444 E. 4th Street

4. Preliminary Plat

Thank you.

Matthew C. Bousquette

448 E. 4th Street Hinsdale, IL 60521

Kathleen A. Gargano Village Manager Village of Hinsdale 19 East Chicago Avenue Hinsdale, IL 60521-3489

Re: Appeal of the Staff Zoning Opinion concerning 444 E. 4th Street

Dear Ms. Gargano:

Please consider this my appeal of the administrative decision made as outlined in the May 8, 2017 letter from Mr. McGinnis Director of Community Development for the Village of Hinsdale and Mr. Marrs the Village Attorney regarding the splitting of 444 E. 4th street.

You have been previously copied on all the correspondence involved in this matter, including my original letter dated March 27, 2013; the response from the Village attorney dated April 26,201; my responsive letter dated April 28, 2013, and the reply letter from the Village attorney dated May 8, 2013.

Please review the opinion of the Village Attorney and consider his failure to address all of the issues raised in my last responsive letter. Specifically, his latest Memorandum fails to address the underlying rational for the 2013 ZBA decision.

The May 8th Memorandum improperly concludes that that case was distinguishable from my situation based on the fact it involved an "accessory structure." The Village Attorney then stopped his analysis of that ZBA decision based on that sole distinguishing fact. However, his opinion failed to recognize that the Village Code does not make any reference to such a distinction for an "accessory structure." Thus, the Village Attorney's analysis failed to examine the underlying rationale for that 2013 ZBA decision. A complete analysis of that decision reveals that the only logical rational for the 2013 ZBA decision is that the structure involved in that case was a non- substantial intrusion on the lot at issue and therefore should not preclude the splitting of the parcel.

Further, this is also the only rationale that can properly explain the ZBA's recent decision regarding its approval of the splitting of 26 E. 6th street. The Village Attorney's responsive letter fails to fully examine my prior citation of the splitting of 26 E. 6th Street. In that case, John Bohnen, on behalf of a Village trustee, was granted the right to split that lot despite the existence of a surface covering (i.e., a patio) on that lot. The Village Code expressly includes reference to ground surface coverings as being a basis for considering a lot not "vacant" for purposes of Section 10-105 of the Village Code. The only explanation that can be ascribed to that recent situation, which is consistent with the prior 2013 ZBA decision, is that in the 26 E. 6th Street decision the ZBA also determined that the patio was a "nonsubstantial" intrusion on that subject lot. The Village Attorney failed to address the fact that the Village Code expressly includes a reference to ground coverings. Thus, contrary to the Village Attorney's opinion, that "Staff does not consider paving to be a structure for zoning purposes." such a conclusion is expressly prohibited by Section 12-206 of the Village Code which provides the following definition:

"Vacant: Not developed with any building, structure, or paving or surfacing of the ground." (emphasis added)

Contrary to the Village Attorney's opinion, paving or surfacing of the ground is expressly placed on the same level of importance as a building structure. Thus, Staff may not blithely ignore the express provisions of the Village Code and dismiss the existence of a patio as asserted by the Village Attorney. The only possible rational, ethical and legal conclusion is that Staff concluded that the existence of a patio in the 26 E. 6th Street situation was that it was a non-substantial structure that should not prevent the splitting of the lot. This "non-substantial" standard is consistent with the prior 2013 ZBA decision. I specifically note that the Code places the existence of any building structure on the same level of importance as that of ground surfacing. The Village Attorney ignores this clear provision of the Code.

When the proper standard is applied in my case, it is apparent that the small sliver of the Zook home which comprises less than two one thousandths of one-percent of my lot of record should be considered a non-substantial intrusion on the lot and thus should not preclude the lot from being considered "vacant." Thus, my lot in question should be considered "a legal non-conforming lot of record and I should be permitted to split my property at 444 East 4th Street.

The Staff decision in my situation is arbitrary and capricious and in direct contradiction to the rationale of the prior ZBA decisions referenced above. The contradictory conclusion in my case, coupled with the personal attacks leveled against me by Village personnel at my original appearance before the Historical Preservation Committee compel the conclusion that the denial of my request constitutes a violation of the equal protection of the law. I request that you review my submission to split my lot at 444 E. 4th Street and reverse the Staff decision in this matter.

Matthe C Super

Matthew C. Bousquette

Matthew C. Bousquette

448 East Fourth Street Hinsdale, IL 60521



March 27, 2017

Robert McGinnes Building Commissioner Village of Hinsdale 19 East Chicago Avenue Hinsdale, IL 60521-3489

Re: Attempt to Preserve the Zook House Located at 444 E. 4th St.

Dear Rob:

I am sending this letter in furtherance of my efforts to preserve the Zook house that I own located at 444 E. 4th Street. As you are aware from my discussions with various individuals within the Village building department, I seek to reposition the existing Zook house and place it on the southerly two underlying lots of record that compromise a portion of 444 E. 4th Street. My position is that I should be granted a building permit to accomplish this repositioning pursuant to the provisions of Section 10-105 of the Village Code of Hinsdale relating to the use of legal nonconforming lots of record.

As background information, my property located at 444 E. 4th Street consists of six underlying lots of record. As shown on the enclosed Plat of Survey, these include: Lots 1-4 facing Fourth Street and Lots 18-19 facing Woodside Avenue. There are three Pins: 1) Lots 1-4 comprise Pin 008; 2) Lot 18 is Pin 006 and Lot 19 is Pin 009. There is additional land adjacent to Lot 1 and Lot 19 which was the result of the abandonment of the former road known as Woodside Place which was split and deeded to 444 and 448 E Fourth Street. Lot 18/006 is 49 ft. x150x61x134 and is approximately 8,461 sq. ft. Lot 19/009 is 82.5 x 117 x 96.5 x 134 and is approximately 10,251 sq. ft. Together, the two lots comprise approximately 18,712 sq.ft. (not including the additional land from the abandoned Woodside Place.)

All Lots 1-4 plus Lots 18-19 are Plated on the Village and Downers Grove Assessor's Maps. It is my position that Lots 18-19 (Pins 006 and 009) (facing Woodside) are both underlying legal lots of record. It appears there has never been a structure on 006 or 009 as far back as 40 years. The existing Zook house rests on Lots 1-3 (Pin 008). Additionally, there exists

a small corner portion of the existing Zook home that rests on a portion of the northern edge of Lot 19 (Pin 009). Approximately 1-3 feet of the southeast corner of the back of the Zook home rests on lot 009, compromising an estimated 15-25 sq.ft. of the Zookhouse.

The Village's prior verbal commentary has raised the issue of whether this small incursion may preclude lot 19 (Pin 009) from being considered "a legal nonconforming lot of record" under Section 10-105 of the Village Code. The issue discussed was whether the existence of this small incursion on lot 19 (Pin 009) made Lots 1- 3 (on which the vast bulk of the Zook house resides) plus Lot 19 one zoning lot. My review of the Village Code indicates that nothing in the Code supports such a restrictive interpretation as to what constitutes "a legal nonconforming lot of record."

The Village Code, Section 10-105 provides that structures may be built on "a legal non-conforming lot of record" as long as they meet the stated elevation, lot size, and setback requirements The applicable section is set forth below:

Sec. 10-105:Legal Nonconforming Lots Of Record:

A. Authority To Use For Single-Family Detached Dwellings In Residential Districts: In any residential district, notwithstanding the regulations imposed by any other provisions of this code, a single-family detached dwelling, and any permitted accessory structure, that complies with the regulations of this subsection may be erected, maintained, altered, enlarged, rebuilt, restored, and repaired on a legal nonconforming lot of record. [emphasis added] Construction of such dwelling, and any accessory structure, shall comply with all the regulations applicable to such dwellings and accessory structures in the zoning district in which the lot in question is located, except that the following requirements shall apply in place of requirements otherwise applicable: [The Village Code then proceeds to set forth tables setting forth the elevation, lot size and setback requirements for legal nonconforming lots].

This is the only section of the Code that references the phrase "a legal non-conforming lot of record." The Code does not specify any requirements for a "legal non-conforming lot of record." My contention is that the combination of the two lots 18 and 19 should be considered "a legal non-conforming lot of record" and that I should be able to reposition the Zook house onto this combined lot under the provisions of Section 10-105. The proposed repositioning of the Zook house onto this combined lot complies with all of the stated elevation, lot size and setback requirements set forth in Section 10-105. The combined Lots 18 and 19 exceed the minimal lot size requirements (i.e., 14,000 sq. ft.) under Section 10-105 for legal non-conforming lots since the combined lots comprise approximately 18,712 sq. The Zook house consists of approximately 4,150 sq. ft. and would easily fit within the setback requirements contained in Section 10-105.

Thus, since the repositioning of the Zook house onto lots 18 and 19 comply with the specified Code requirements, the only issue is whether Lots 18 and 19 comprise "a legal nonconforming lot of record" within the meaning of Section 10-105. Accordingly, we must look

at the Illinois rules for statutory interpretation as set forth by the Illinois Supreme Court to ascertain the meaning and limitations of the term "a legal nonconforming lot of record."

As often noted, the fundamental goal of statutory interpretation in Illinois is "to ascertain and give effect to the intent of the legislature." *People v. Eppinger*, 2013 IL 114121, ¶ 21. Illinoiscourts accomplishes that objective through the use of several tools. First, the Court looks to the "plain and ordinary meaning" of the words of the statute. *Id. See also People v. Lloyd*, 2013 IL 113510, ¶ 25. An important qualification to this primary rule is that individual words should not be taken out of context and, therefore, a court must consider "the statute in its entirety." *Eppinger*, 2013 IL 114121, ¶ 21. Bearing in mind the whole-statute principle, the Court further tells us that no part of the text should be "rendered meaningless or superfluous." *Lloyd*, 2013 IL 113510, ¶ 25. With these principles in mind, once a court arrives at the plain meaning of the statute, it must give effect to the text as written because that is how the legislature would have wanted it.

Thus, as applicable to the current situation, we need to ascertain the intent of the Village of Hinsdale in drafting Section 10-105. First, as directed by the courts, we must look to the "plain and ordinary meaning" of the words of Section 10-105. Section 10-105 provides, in part:

"In any residential district, notwithstanding the regulations imposed by any other provisions of this code, a single-family detached dwelling, and any permitted accessory structure, that complies with the regulations of this subsection may be erected, maintained, altered, enlarged, rebuilt, restored, and repaired on a legal nonconforming lot of record." [emphasis added]

The Code does not define, nor does it place any limitation on, what may constitute "a legal nonconforming lot of record. Thus, any interpretation of the Code requires that it be interpreted according to an analysis of its "plain and ordinary meaning." The plain and ordinary interpretation of this phrase must be viewed as meaning that lots 18 and 19 are legal lots of record since, as in the ordinary course of determining lots of record, these lots have been recorded and set forth on the Village and Downers Grove Assessor's Maps.

Further, these lots should be considered legal lots of record since this would be in conformity with the expressed intent of the Village of Hinsdale as set forth on Section -102 of the Village Code. As set forth below, Section 1-102 entitled "Authority and Purpose" states the intent of the Village Zoning Code:

- B. Land use patterns. The purposes of this Code related to land use patterns are to:
- 1. Implement and foster the goals and policies of the Village's Official Comprehensive Plan; and
- 2. Establish a rational pattern of land uses and encourage the most appropriate use of individual parcels of land in the Village; and

- 3. Encourage compatibility between different land uses; and
- 4. Encourage and promote detached single family homes as the principal land use in the Village; and
- 5. Limit the bulk and density of new and existing structures to preserve the existing scale of development in the Village; and
- 6. Provide for the gradual elimination of non-conforming uses that adversely affect the character and value of permitted development; and
- Protect the scale and character of the existing residential, business, commercial, and office development areas of the Village from the encroachment of incompatible uses; and
- 8. Encourage and enhance the preservation of natural resources, aesthetic amenities, and natural features; and
- Secure adequate natural light, clean air, privacy, a safe environment, and convenience of access to property; and
- 10. Promote and protect the public health, safety, morals, and the general welfare of the Village.

In the current situation, the intent of the drafters of Section 10-105 to permit construction on legal nonconforming lots of record would further the express intent of the Village. Allowing the repositioning of the Zook house onto Lots 18 and 19 would further the stated goal of encouraging and promoting the building of single family homes as the principal land use in Hinsdale; it would limit the bulk and density of new structures on the subject land parcel; and it would protect the scale and character of the existing residential area. In this regard, it must be noted that the average lot size on Woodside Avenue (excluding the subject lots 18 and 19) is 18,369 sq. ft. Thus, the new lot 18 and 19 would be appropriate and slightly larger than the average size lot on the street. The average home size on Woodside (excluding the overly large new spec home built at 425 Woodside) is 4,538 sq. ft. The Zook house is approximately 4,150 sq. ft. The neighboring large spec home at 425 Woodside is a massive 8,370 sq. ft. – the largest on the street. When the large spec home at 425 is included, the new average size on the street is 5,596 sq. ft. According, the repositioning of the Zook home onto Lots 18 and 19 fulfills the stated intent of the Village Code to maintain the scale and character of the neighborhood.

The Code also expressly states:

Overall purpose. The overall purpose of this Code is to maintain Hinsdale as one of the nation's finest residential suburbs by preserving and enhancing its historic character as a community comprised principally of well-maintained single family residential neighborhoods and small, thriving business areas oriented to serve the day-to-day needs of local residents.

Unquestionably, the repositioning (and thus preservation) of the Zook home furthers this stated goal of maintaining the historic nature of Hinsdale.

In contrast, should the Village deny my request to consider Lots 18 and 19 as a separate legal nonconforming lot of record, that would mean that the current entirety of the combination of lots that comprise 444 E. 4th Street – totaling approximately 53,000 sq. ft. - could possibly be utilized (under the standards set forth in the Code) to build one huge, massive mansion that could be up to 15,000 sq. ft. This would be three times the average size (5,598 sq. ft) of the existing houses on 4th Street! This would clearly not be consistent with the stated intent of the Village to protect the existing scale and character of the neighborhood, as expressed in the Code.

Further, the express language of the Village Code does not contain nor imply any limitation that would negate Lot 19 from being an underlying legal lot of record merely because approximately 15-20 sq. ft. of the existing Zook house is currently located on the lot. In this regard, it must be noted that the Village Code expressly contemplates that structures may already exist on legal non-conforming lots of record. Specifically, the Village Code states:

...a single-family detached dwelling, and any permitted accessory structure, that complies with the regulations of this subsection may be erected, **maintained**, **altered**, **enlarged**, **rebuilt**, **restored**, **and repaired** on a legal nonconforming lot of record. (emphasis added)

By use of the terms "maintained, altered, enlarged, rebuilt, restored, and repaired" the Village Code expressly envisions that existing structures may already be located on legal non-conforming lots of record. Thus, the existence of 15-20 sq. ft. of the Zook house on Lot 19 (that will be maintained, altered, enlarged, rebuilt, restored and/or repaired as part of the repositioning of the Zook house) cannot be considered as somehow, inexplicably, negating Lot 19 from being a legal nonconforming lot of record for some unknown and contradictory reason not stated in the Village Code. Additionally, no limitation exists in the Village Code that precludes Lot 19 from being deemed an underlying lot of record merely because the Zook house is currently located on more than one underlying lot of record. Such a limitation does not exist in the Village Code and it would be an improper interpretation of the Village Code to add such an unstated limitation in violation of the "plain meaning rule" required by Illinois courts.

Thus, the division of 444 4th Street to permit the use of Lots 18 and 19 as legal nonconforming lots should be permitted to further the plain meaning and express intent of the Village Code.

I am enclosing copies of the Plat of Survey – one with and one without the inclusion of the current location of the existing Zook house.

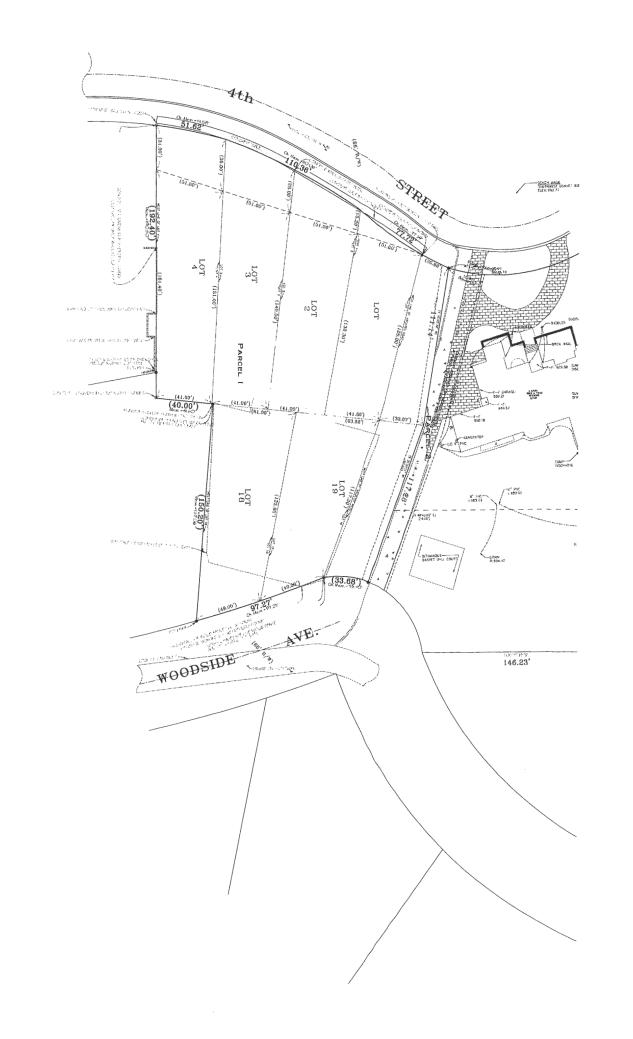
Please review and discuss the foregoing issues and advise me of the Village's determination in this matter at your earliest convenience. I am, of course, available to respond to any questions or comments you may have in this matter.

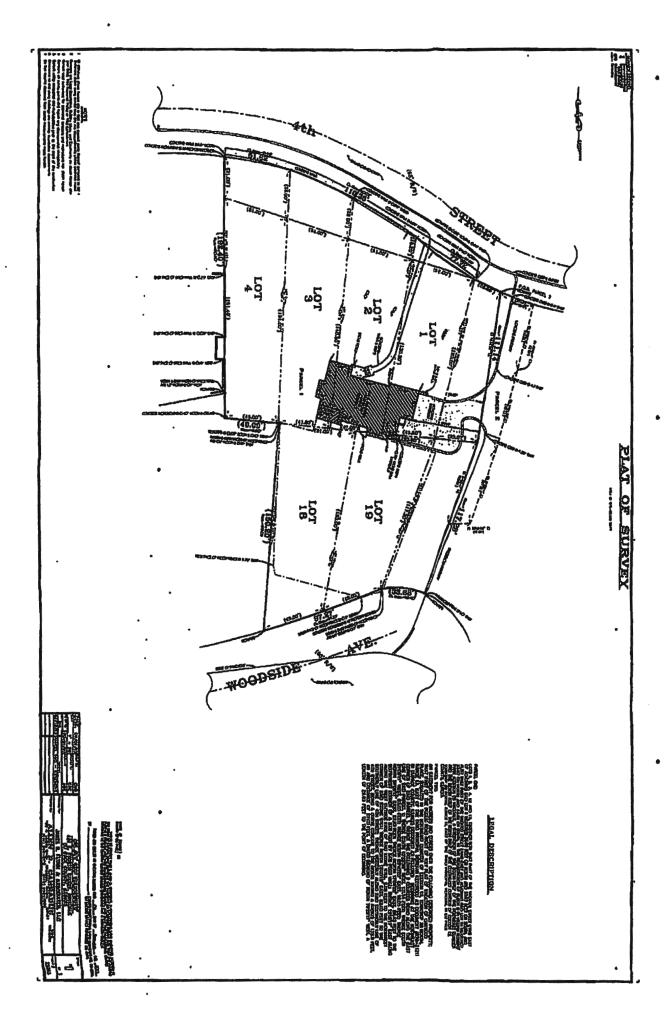
Thank you for all of your time and effort in considering this matter.

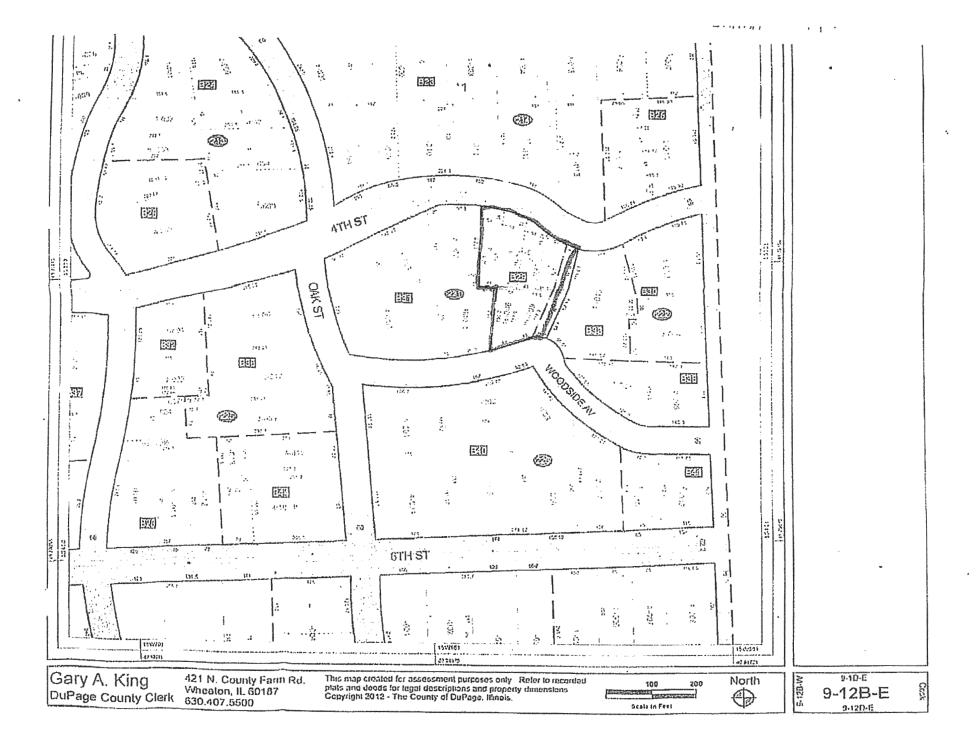
Very truly yours,

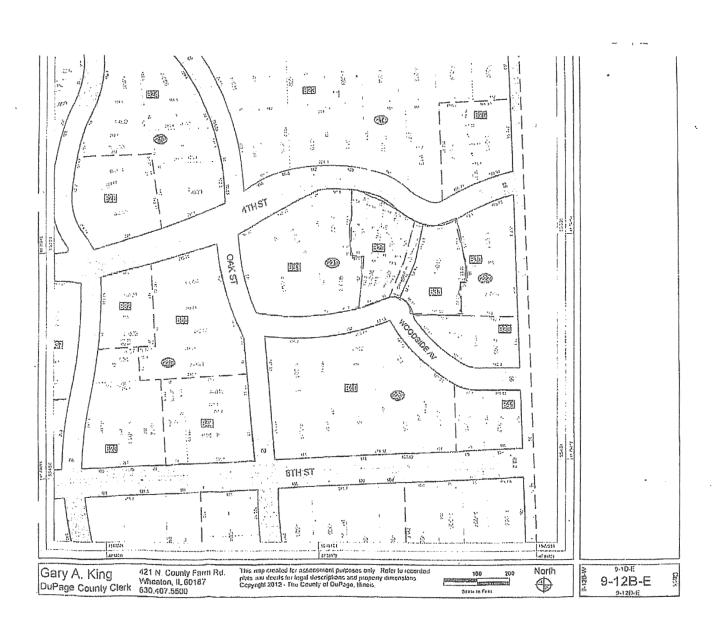
Matthew C. Bousquette

matthe C Syrt



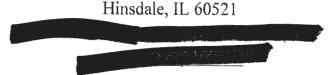






Matthew C. Bousquette

448 East Fourth Street Hinsdale, IL 60521



April 28, 2017

Robert McGinnis
Building Commissioner
Village of Hinsdale
19 East Chicago Avenue
Hinsdale, IL 60521-3489

Re: Response to the Zoning Opinion from Michael A. Marrs, Esq. concerning 444 E. 4th Street

Dear Rob:

A review of the Memorandum Zoning Opinion dated April 26, 2017 from the Village's attorney, Michael A. Mar, Esq. highlights the failure of the Opinion to address and apply the express provisions of Section 12-206 which defines the term "Vacant." Specifically, Section 12-206 provides the following definition:

"Vacant: Not developed with any building, structure, or paving or surfacing of the ground." (emphasis added)

The Opinion Memorandum is based on an assertion that since a small sliver of the rear side of the existing Zook house is located on the otherwise vacant PIN 009, that lot should not be considered "vacant" pursuant to the Village Code. The Memorandum Opinion cites the provisions of Section 12-206 which defines a "Non-Conforming Lot of Record, Legal" as a lot that "was vacant on June 18, 1988" The Memorandum Opinion then asserts that since the lot is not vacant because of the sliver of the Zook house that rests on PIN 009, the lot cannot be considered a legal non-conforming lot under Section 10-105.

The Memorandum Opinion then attempts to distinguish the current condition at 444 E Fourth St. – where a small sliver of the existing Zook house rests on PIN 009, from the recent division of property allowed by the Village at 26 E. 6th Street. The Memorandum Opinion asserts that in that situation no portion of a structure existed on the lot. However, the Memorandum Opinion expressly admits that "a patio" existed on the lot at 26 E. 6th Street. Despite the existence of that patio the Village permitted the lot to be deemed a legal non-conforming lot of record under Section 10-105, even though the lot was not "vacant" under the express definition of the term "vacant" in Section 12-206. To support this decision by the Village, the Memorandum Opinion asserts that the Village properly allowed the lot split based on a 2013 ZBA decision holding that "where one lot has only minor accessory structures/ improvements on it the single zoning lot could be divided and thereafter used for two separate structures." In other words, the Memorandum Opinion asserts that a patio on a lot is only a minor structure/improvement that should not prohibit the splitting of a lot under section 10-105.

This interpretation fails to recognize the express provisions of Section 12-206 which gives **equal** importance to the existence of a patio as it does to the existence of a building or structure when determining whether a lot is "vacant." Again, Section 12-206 states:

"Vacant: Not developed with any building, structure, or paving or surfacing of the ground." (emphasis added)

Accordingly, the 2013 ZBA decision cannot be interpreted to mean that the existence of a patio on a lot is of lesser or different importance from the existence of a portion of a structure on a lot, when determining if the lot is "vacant." The Village Code expressly equates the importance of both a portion of a structure and a patio. Thus, the only proper interpretation that can be applied to the 2013 ZBA decision is that the existence of a non-substantial portion of a "building, structure or paving or surfacing of the ground" shall not prelude the subject property from being deemed "vacant" for purposes of Section 12-206.

When this proper interpretation is applied to the situation at 444 E. 4th Street, it becomes apparent that only a non-substantial portion of the existing Zook house is located on PIN 009. Specifically, the portion of the Zook house that rests at an angle on PIN 009 is shaped as a small triangle that is approximately 16' long and increases from the apex at zero and widens to 2' wide at its' widest point. This small triangle portion consists of a total of only approximately 16 square feet. And approximately two-thirds of these 16 square feet is comprised of an outdoor gardening shed attached to the house.

Moreover, it must be recognized that PIN 009 consists of approximately 10,251 square feet. Thus, these 16 square feet of the Zook house resting on PIN 009 comprise less than 0.00156 % of PIN 009. **THAT'S LESS THAN TWO ONE-THOUSANDTHS of PIN 009**. This most certainly must be considered a non-substantial portion of PIN 009.

Thus, when an application of the Village's 2013 ZBA decision is made with a required examination of Section 12-206's definition of the term "vacant," PIN 009 should be considered "vacant" for purposes of Section 12-206.

Any other interpretation would subject the Village to a claim that it acted arbitrarily and capriciously in denying my request to have PIN 009 deemed a legal nonconforming lot, while granting similar requests for Village officials under comparable circumstances. Specifically, denying my request while allowing the splitting of the lot at 26 E. 6th Street - despite the existence of a "paving or surfacing of the ground" -would raise serious ethical and legal questions as to whether the Village gave preferential treatment to the purchaser and his real estate agent/ representative in granting the lot split. As you are aware these two individuals are, respectively, a Village trustee and the head of The Village Historical Preservation Committee.

Accordingly, I request that the Village have its attorney reconsider his Opinion set forth in his Memorandum Opinion due to the failure to properly analyze the effect of Section 12-206, and its' express definition of "vacant," in conjunction with the Village's 2013 ZBA decision and the ZBA's recent grant of a lot split at 26 E. 6th Street. Such a properanalysis reveals that the small sliver of the

Zook house that rests on PIN 009 must be considered a non-substantial portion of a structure that should not preclude PINO 009 from being deemed a "vacant" lot under Section 12-206 and that PIN 009 should be deemed a legal non-conforming lot under the provisions of Section 10-105.

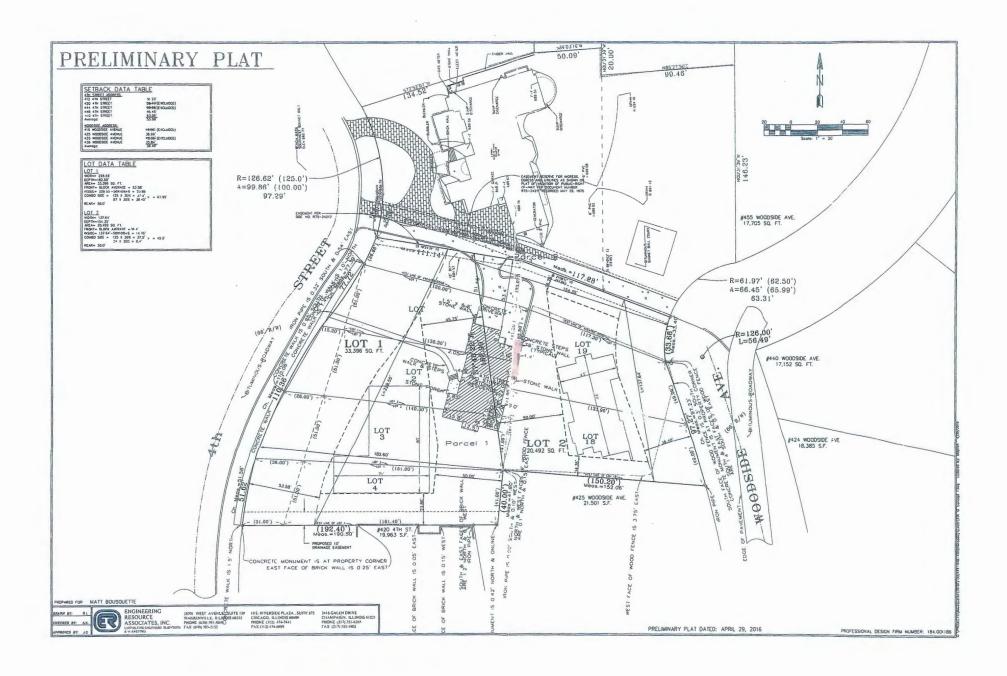
Please review and discuss the foregoing issues with the Village's attorney and advise me of the Village's determination in this matter at your earliest convenience. I am, of course, available to respond to any questions or comments you may have in this matter.

Given the incomplete analysis which took one month, I am hopeful that the Village attorney will prioritize the response to this analysis.

Thank you for all of your time and effort in considering this matter.

Mertitu C Sourgen XI

Matthew C. Bousquette



Sb



MEMORANDUM

DATE:

March 9, 2017

TO:

Chairman Neiman & Members of the Zoning Board of Appeals

CC:

Christine Bruton, Village Clerk

FROM:

Robert McGinnis, MCP

Director of Community Development/Building commissioner

RE:

Zoning Variation – V-04-17; 444 E. 4th Street

In this application for variation, the applicant requests relief from the Minimum Lot Area set forth in section 3-110(E) in order to subdivide the property and create a buildable lot on Woodside Avenue. The specific request is for 9,508 square feet of relief. As the Zoning Board of Appeals has the authority to grant only up to a 10% reduction in lot area under the provisions set forth in section 11-503(E)(1)(c), the request will need to move on to the Board of Trustees as a recommendation.

This property is located in the R1 Residential Zoning District in the Village of Hinsdale and is located on the south side of 4th Street between Oak Street and County Line Road. The property is a through-lot and has a frontage of approximately 228', a depth of approximately 332.8', and a total square footage of approximately 53,888. The maximum FAR is .20 plus 2,000 or 12,777 square feet, the maximum Building Coverage is 25% or 13,472 square feet, and the maximum Total Lot Coverage is 50% or 26,944 square feet.

CC:

Kathleen Gargano, Village Manager

Zoning file V-04-17

VILLAGE OF HINSDALE APPLICATION FOR VARIATION

COMPLETE APPLICATION CONSISTS OF TEN (10) COPIES (All materials to be collated)

FILING FEES: RESIDENTIAL VARIATION \$850.00

NAME OF APPLICANT(S):	MATTHEW BOUSEVETTE
ADDRESS OF SUBJECT PR	OPERTY: 435 WOODSIDE
TELEPHONE NUMBER(S):_	
If Applicant is not property own	ner, Applicant's relationship to property owner.
DATE OF APPLICATION:	3/6/2017

SECTION I

Please complete the following:

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<u>Village Personnel</u> . Name and address of any officer or employee of the Village with an	
interest in the Owner, the Applicant, or the Subject Property, and the nature and extent of	
that interest:	
a	
b	
Neighboring Owners. Submit with this application a list showing the name and address of each owner of (1) property within 250 lineal feet in all directions from the subject property; and (2) property located on the same frontage or frontages as the front lot line or corner side lot line of the subject property or on a frontage directly opposite any such frontage or on a frontage immediately adjoining or across an alley from any such frontage.	Ex H 1 합니
After the Village has prepared the legal notice, the applicant/agent must mail by certified mail, "return receipt requested" to each property owner/ occupant. The applicant/agent must then fill out, sign, and notarize the "Certification of Proper Notice" form, returning that form and <u>all</u> certified mail receipts to the Village.	EX A Col
Survey. Submit with this application a recent survey, certified by a registered land surveyor, showing existing lot lines and dimensions, as well as all easements, all public and private rights-of-way, and all streets across and adjacent to the Subject Property. $E \times H \setminus V$	E,
Existing Zoning. Submit with this application a description or graphic representation of the existing zoning classification, use, and development of the Subject Property, and the adjacent area for at least 250 feet in all directions from the Subject Property. ε_{XYYY}	ii D
Conformity. Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.	T E
Zoning Standards. Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.	ir F
Successive Application. In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code. N A	

SECTION II

When applying for a variation from the provisions of the Zoning Ordinance, you must provide the data and information required above, and in addition, the following:

Title. Evidence of title or other interest you have in the Subject Project, date of acquisition

1.

(of such interest, and the specific nature of such interest.
	Ordinance Provision. The specific provisions of the Zoning Ordinance from whariation is sought:
-	ZONENG Codes 3-110(c)(i) AND 10-105
-	
_	
,	Variation Sought. The precise variation being sought, the purpose therefor, and the sp
1	feature or features of the proposed use, construction, or development that require a vari
	(Attach separate sheet if additional space is needed.)
	TO REDUCE TOTAL REQUIRED 10+ AREA FROM
	30,000 sq. ft. to 20,092 sq. ft. After which
	a code compliant existing Fook Home at 444 E
•	Fourth at will be Re-positioned on the lot. No
•	other variances would be needed ore sought
-	WIN CHANGES WELLE WE WEEKED TE STORY
]	Minimum Variation. A statement of the minimum variation of the provisions of the Z
	Ordinance that would be necessary to permit the proposed use, construction, or develop
	(Attach separate sheet if additional space is need
	a 9,908 sq. ft VARIANCE 75 SOUGht.
•	beoking ZBA Recommendation AND TRUSTEE
:	VERNING CONTRIEVOR TOUR HOURS INVOICE

5. <u>Standards for Variation</u>. A statement of the characteristics of Subject Property that prevent compliance with the provisions of the Zoning Ordinance and the specific facts you believe support the grant of the required variation. In addition to your general explanation, you must specifically address the following requirements for the grant of a variation:

- (a) Unique Physical Condition. The Subject Property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure of sign, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the Subject Property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current lot owner.
- (b) Not Self-Created. The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title and known to the owner prior to acquisition of the Subject Property, and existed at the time of the enactment of the provisions from which a variation is sought or was created by natural forces or was the result of governmental action, other than the adoption of this Code, for which no compensation was paid.
- (c) <u>Denied Substantial Rights</u>. The carrying out of the strict letter of the provision from which a variation is sought would deprive the owner of the Subject Property of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
- (d) Not Merely Special Privilege. The alleged hardship or difficulty is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely an inability to make more money from the use of the subject property; provided, however, that where the standards herein set out exist, the existence of an economic hardship shall not be a prerequisite to the grant of an authorized variation.
- (e) <u>Code and Plan Purposes</u>. The variation would not result in a use or development of the Subject Property that would not be in harmony with the general and specific purposes for which this Code and the provision from which a variation is sought were enacted or the general purpose and intent of the Official Comprehensive Plan.
- (f) <u>Essential Character of the Area</u>. The variation would not result in a use or development of the Subject Property that:
 - (1) Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use development, or value of property of improvements permitted in the vicinity; or
 - (2) Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or
 - (3) Would substantially increase congestion in the public streets due to traffic or parking; or

	(4)	Would unduly increase the danger of flood or fire; or					
	(5)	Would unduly tax public utilities and facilities in the area; or					
	(6)	Would endanger the public health or safety.					
(g)	the a perm (Atta	No Other Remedy. There is no means other than the requested variation by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Subject Project. (Attach separate sheet if additional space is needed.)					
	<u> </u>						

SECTION III

In addition to the data and information required pursuant to any application as herein set forth, every Applicant shall submit such other and additional data, information, or documentation as the Village Manager or any Board of Commission before which its application is pending may deem necessary or appropriate to a full and proper consideration and disposition of the particular application.

- A copy of preliminary architectural and/or surveyor plans showing the floor plans, exterior elevations, and site plan needs to be submitted with each copy of the zoning petitions for the improvements.
- 2. The architect or land surveyor needs to provide zoning information concerning the existing zoning; for example, building coverage, distance to property lines, and floor area ratio calculations and data on the plans or supplemental documents for the proposed improvements.

SECTION IV

- 1. <u>Application Fee and Escrow.</u> Every application must be accompanied by a non-refundable application fee of \$250.00 plus an additional \$600.00 initial escrow amount. The applicant must also pay the costs of the court reporter's transcription fees and legal notices for the variation request. A separate invoice will be sent if these expenses are not covered by the escrow that was paid with the original application fees.
- 2. Additional Escrow Requests. Should the Village Manager at any time determine that the escrow account established in connection with any application is, or is likely to become, insufficient to pay the actual costs of processing such application, the Village Manager shall inform the Applicant of that fact and demand an additional deposit in an amount deemed by him to be sufficient to cover foreseeable additional costs. Unless and until such additional amount is deposited by the Applicant, the Village Manager may direct that processing of the application shall be suspended or terminated.
- 3. <u>Establishment of Lien</u>. The owner of the Subject Property, and if different, the Applicant, are jointly and severally liable for the payment of the application fee. By signing the applicant, the owner has agreed to pay said fee, and to consent to the filing and foreclosure of a lien against the Subject Property for the fee plus costs of collection, if the account is not settled within 30 days after the mailing of a demand for payment.

SECTION V

The owner states that he/she consents to the filing of this application and that all information contained herein is true and correct to the best of his/her knowledge.

Name of Owner:	MATTHEW BOUSQUETTO
Signature of Owner:	mathew c Bougust
Name of Applicant:	
Signature of Applicant:	
Date:	3/2/2017

Exhibit A

Legal Description

435 Woodside/444 E Fourth St

Lots 1,2,3,4,18 and 19, together with that part of the Vacant Street lying East of and adjoining said Lot 1 measured 28.66 feet on North and 3.07 feet on south, and also that part of the vacated street lying East and adjoining said lot 19 measured 33.07 on North and 33.66 on South, in the resubdivision of the South ½ of the Northeast ¼ and the North ½ of the North ½ of the Southeast ¼ of Section 12, Township 8 North Range 11, East of the third principal meridian in Dupage County Illinois

EYHIBIT \$

DuPageMaps - Parcel Report

User Request Date: Monday, March 6, 2017

Copyright 2017 - The County of Dupage, Illinois



DuPage County IT - GIS Department 421 N. County Farm Rd Wheaton, IL 60187 USA Ph# (630) 407-5000 www.dupageco.org

PIN	0912214003
Bill Name	CODE, ANDREW W
Property Number	406
Property Street Direction	E
Property Street Name	SRD ST
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912214004
Bill Name	CODE, ANDREW TR
Property Number	420
Property Street Direction	E
Property Street Name	3RD ST
Property Apartment	•
Property City	HINSDALE
Property Zip	60521
PIN	0912214008
Bill Name	PETERSON TR, ROBT & DEBRA
Property Number	
Property Street Direction	S
Property Street Name	OAKST
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912214009
Bill Name	CHILLO, MICHAEL & J
Property Number	411
Property Street Direction	E
Property Street Name	4THST
Property Apartment	
Property City	HINSDALE

PIN	0912214010
Bill Name	GERAMI, GERALD & E
Property Number	419
Property Street Direction	E
Property Street Name: 2000	4TH ST
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912214011
Bill Name	FLAHERTY, MICHAEL & LINDA
Property Number	425
Property Street Direction	E
Property Street Name Property Apartment	4TH ST
Property City	HINSDALE
Property Zip	60521
PIN	0912214012
BIII Name	SCALES, JOHN & KAREN
Property Number	435
Property Street Direction Property Street Name	E 4THIST
Property Apartment	Section and administration of the section of the contract and administration and the section of the section and the section an
Property City	HINSDALE
Property Zip	60521
PIN	0912214013
Bill Name	NAPLETON, PAUL & K
Property Number	441
Property Street Direction	E
Property Street Name	4TH ST
Property Apartment	HINSDALE
Property City	60521
Property Zip	00321
PIN	0912214017
Bill Name	DAZE, ERIC & GUYLAINE 445
Property Number Property Street Direction	E
Property Street/Name	4TH-ST
Property Apartment	PRODUCE
Property City	HINSDALE
Property Zip	60521

PIN 1985	0912214018
Bill Name	CICERO 7215 & 1ST IL 7224
Property Number	330
Property Street Direction	S
Property Street Name 💛 👢	COUNTY LINE RD
Property Apartment	- 2 A
Property City	HINSDALE
Property Zip	60521
PIN	0912221001
Bill Name	THORSNESS, WILLIAM W TR
Property Number	412
Property Street Direction	E
Property Street Name Property Apartment	4TH ST
Property City	HINSDALE
Property Zip	60521
PIN	0912221002
Bill Name	NERAD, JERRY & ANN TR
Property/Number	420
Property Street Direction	E
Property Street Name	4TH ST
Property Apartment Property City	HINSDALE
Property Zip	60521
PIN	0912221004
Bill Name	HALEAS, PETER J
Property Number	419
Property Street Direction	S
Property Street Name	OAK ST
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912221005
Bill Name	HOLMES, KEVIN & JOY
Property Number	425
Property Street Direction	
Property Street Name	WOODSIDE AVE
Property Apartment	
Property city	HINSDALE
Property Zip	60521

PIN	, 1
(6600525 538689605551 (ACTOO) 75055 55 52 52 52 52	0912221006
Bill Name Property Number	BOUSQUETTE, MATTHEW C 444
Property Street Direction	E
Property Street Name	4TH ST
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912221008
Bill Name	BOUSQUETTE, MATTHEW C
Property Number	444
Property Street Direction	E
Property Street Name	4TH ST.
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912221009
BIII Name	BOUSQUETTE, MATTHEW C
Property Number	444
Property Street Direction	E
Property Street Name	4TH ST
Property Apartment Property City	HINSDALE
Property Zip	60521
Property Zip	00021
PIN Bill Name	(0912222003
Property Number	BENSON, DONALD & JOAN 455
Property Street Direction	-00
Property Street Name	WOODSIDE AVE
Property Apartment	
Property City	HINSDALE
Property Zip	60521
PIN	0912222004
Bill Name	AUERBACH, DARLENE M
Property Number	420
Property Street Direction	S
Property Street Name	COUNTY LINE RD
Property Apartment	
Property City	HINSDALE
Property Zip	60521

PRINCE DE L'ANDRE DE L	LIADDIOONI
PIN	0912222005

Bill Name HARRISON TR, MARK & G

Property Number 436

Property Street Direction S

Property Street Name COUNTY LINE RD

Property Apartment

Property City HINSDALE

Property Zip 60521

PIN 0912222009

BIII Name WRIGHT, SHEILA & PETER TR

Property Number 452

Property Street Direction E

Property Street Name 4TH ST

Property Apartment

Property City HINSDALE

Property Zip 60521

PIN 0912222010

BIII Name BOUSQUETTE, MATTHEW C

Property Number 448

Property Street Direction E

Property Street Name 4TH ST

Property Apartment

Property City HINSDALE

Property Zip 60521

PIN 0912226002

Bill Name REEDY, MARY M

Property Number 424

Property Street Direction E

Property Street Name WOODSIDE AVE

Property Apartment

Property City HINSDALE

Property Zip 60521

PIN 0912226003

BIII Name YERLIOGLU, BEN E

Property Number 44

Property Street Direction

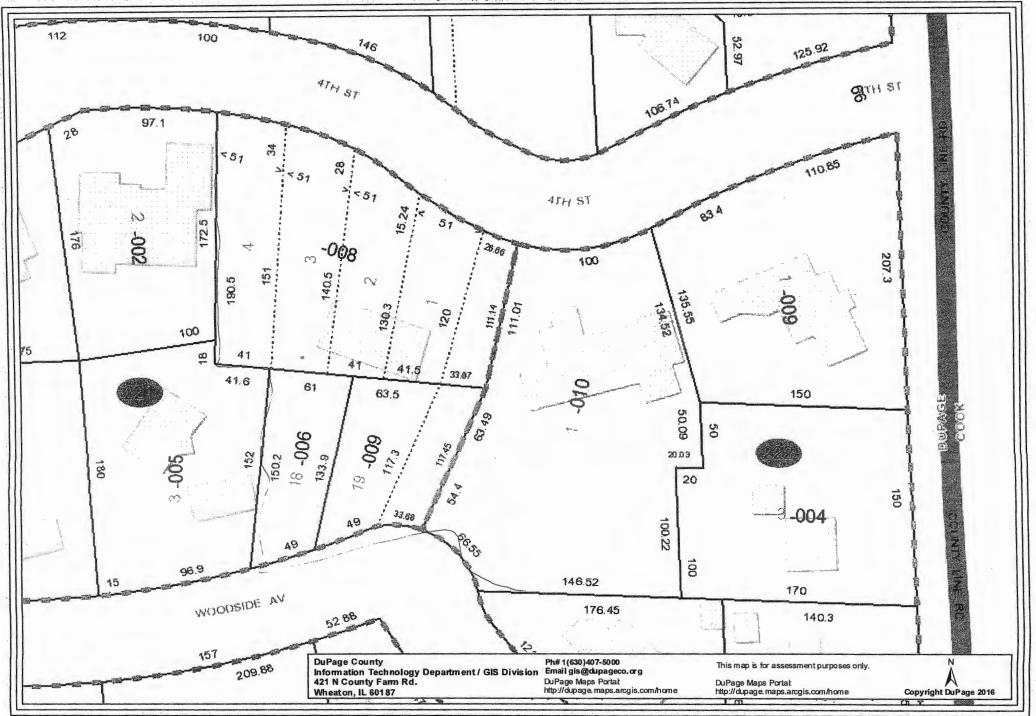
Property Street Name WOODSIDE AVE

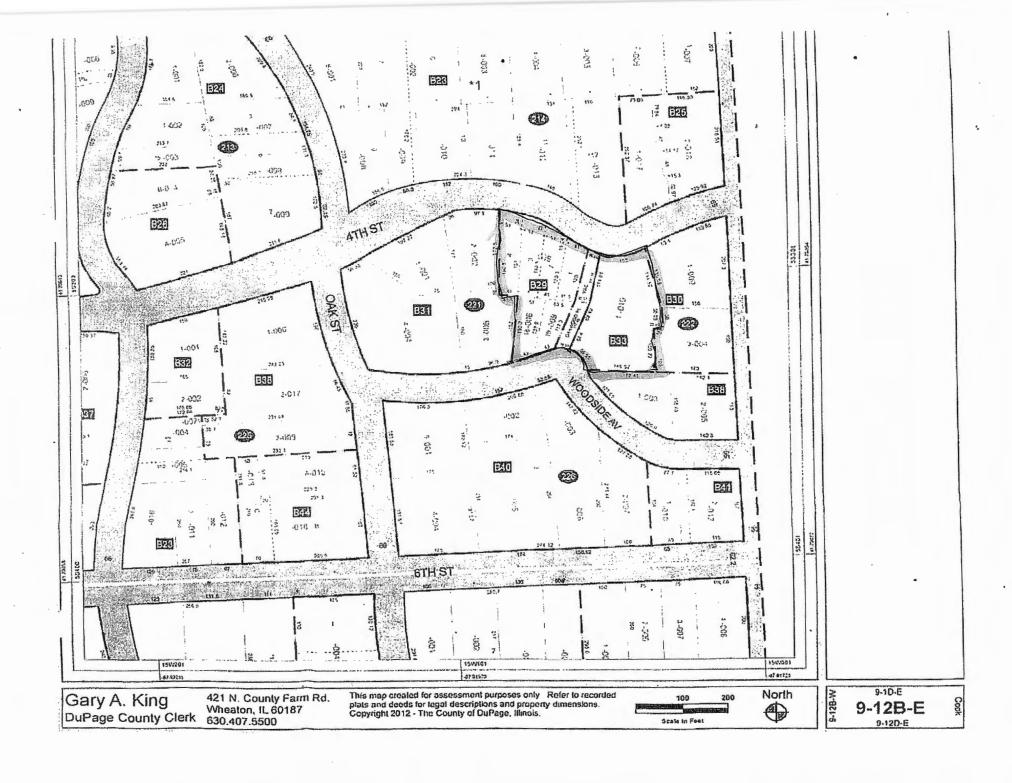
Property Apartment

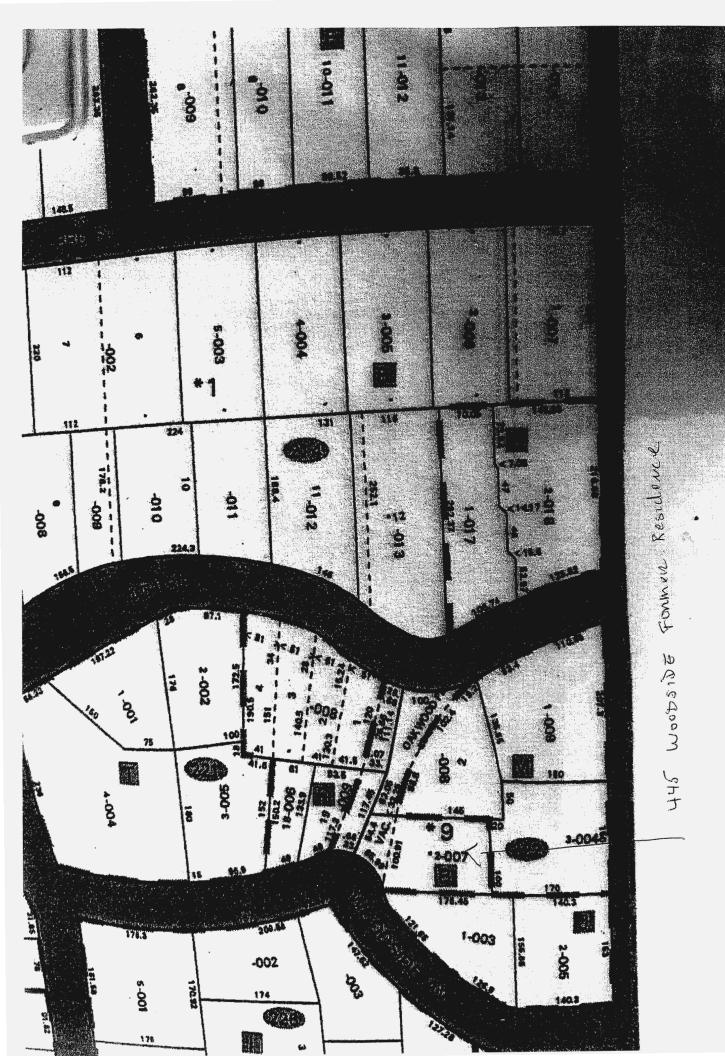
Property City HINSDALE

Property Zip 60521

ArcGIS Web Map
DuPage Web Mapping Application - DuPage County, Illinois









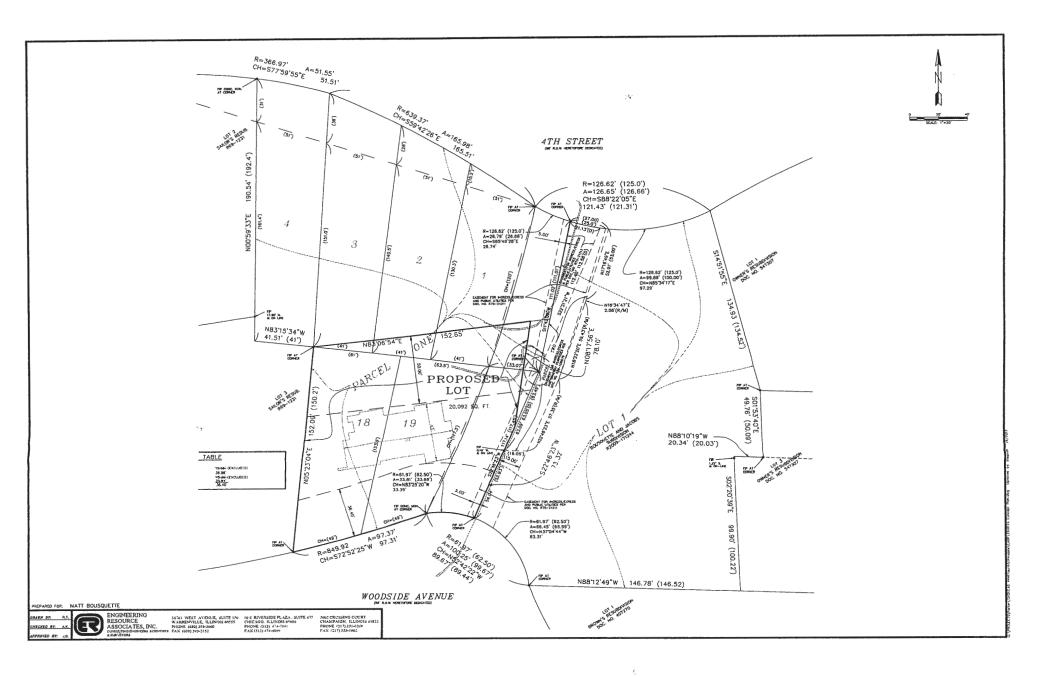


Exhibit D

Existing Zoning

Property is zoned R-1 Single Family District

Hinsdale Zoning Code Section 3-101:

Four (4) zoning districts are provided for single-family residential development. The single-family residential districts blend, in combination with the multiple-family residential districts described in article IV of this code, to provide a reasonable range of opportunity for the development and preservation of housing types consistent with the existing residential character of the village.

The single-family districts provide for a limited range of housing densities consistent with the village's established residential neighborhoods. The R-1 and R-2 districts allow for lower density residential use and large lot sizes. The R-3 and R-4 districts allow for somewhat higher density residential use and smaller lot sizes.

Taken as a whole, the single-family district regulations are intended to perpetuate the existing high quality residential character of the village by preserving established neighborhoods and encouraging new residential development consistent with the overall character of the village. Only service uses that are compatible with the single-family residential character of each zoning district are allowed in addition to the permitted residential uses. (1991 Code)

Exhibit E

Conformity

The subject property is: 152.09 X 152.65 X 78.10 X 73.32 X 33.68 X 97.37 ft. The lot is irregular but the list of dimensions above represent the dimension string of each piece of the proposed property lines starting at southwest corner of the lot and proceeding counter-clockwise all the way around the proposed lot. The lot area of the proposed lot is 20,092 square feet.

According to Section 3-110-c-1 of the Village Zoning Code, Legal, Nonconforming Lots of Record shall have a minimum lot area of 30,000sq ft. for the R-1 District. (It should be noted that in the study commissioned by the Village less than 9% of lots in the R-1 District meet this requirement).

The current proposed lot consists of two legal lots of record (Lot 18/19) -both with their own tax PINs. The two lots are sq. ft. and sq. ft.
respectively. They measure 84 x 15x94x116 and 48 x 152x61x135. The plan
would be to combine the two lots and add an additional sq. ft. from 444 E
Fourth St. The resultant lot at 443 Woodside (expected address) would be
20,093 sq. ft. The lot would be 9,907 short of The subject property is:
152.09 X 152.65 X 78.10 X 73.32 X 33.68 X 97.37 ft. The lot is irregular but
the required minimum lot size in the R-1 District. The Code grants the Board
of Trustees that Authority, but not the Zoning Board (Section 11-503(E)(1c)
only allows for a variance of up to 10%--000sq ft.). However, the Applicant
petitions for the ZBA concurrence prior to proposing to the Board of
Trustees.

The variance requested proposed should be approved for the following reasons:

- 1) It will allow for the repositioning and preservation of one of the few remaining homes in Hinsdale designed by Harold Zook.
- 2) The proposed lot size of 20,091 sq. ft. would make it the second largest lot on Woodside and 10% larger than the average lot on the block.
- 3) The historical street density would not be increased as the adjacent lot 445 Woodside included a two story home which was demolished and will not be built upon in the future should this request be granted.
- 4) The Zook home is approximately 4100 sq. ft. in size and it would make it the smallest home on the block by approximately 25%.

Exhibit F

Standard for Variation

The proposed lot would conform in width and depth to the regulations. The street frontage on Woodside would be over 135 feet. The overall lot would have sq. foot area of 20,092. The current Lots 18 and 19 facing Woodside are vacant lots of 8,461 sq. ft. and 10,251 sp. ft. respectively. Combined they would have 18,712 sq ft before the additional sq ft from 444 Fourth St. To our knowledge, these lots have never had an address or a home on them and thus, legal non-conforming lots we simply seek to make larger to accommodate an existing Zook home. The lot requested is larger than all but one on the block and is larger than the majority of the homes in the R-1 District.

Unique Physical Conditions-- The Property was originally subdivided well before the current code was adopted.

Not Self-Created--The unique condition of the lots- 8,461 sq. ft. and 10,251 sq. ft. (less than 30,000Sq ft. lot area) existed at the time of the enactment of the provisions from which this variation is sought. The Existing Zook home was built in 1929 in its current location on its oversized (53,000 sq. foot lot).

Denied Substantial Rights-- If not granted, the Zook home would not be able to be relocated to the lot and the owner would not be able to construct a home on the property. This would deprive the owner from rights enjoyed by every single property owner on the block-- all of whom have smaller lots and larger homes. There are no conforming lots to the R-1 District on the street ($125 \times 150 + 30,000 \text{ sq. ft.}$).

Not Merely Special Privilege--the ability to reposition the Zook home in a single family R-1 district most of the lots are smaller and the homes larger is not a special privilege. The average lot size on the block on Woodside is 18,369 sq. The proposed lot at 20,092 sq. ft would be almost 10% larger.

Code and Plan Purposes.—The requested variance is in the general spirit of the code allowing the construction of Single Family homes in Residential Districts. It would allow the placement of a home 25% smaller in sq. footage than the average of the block on the second largest lot on the block.

Essential Character of the Area: The granting of the variance would not result in use or development of the property that:

Would be materially detrimental to the public welfare or enjoyment, or the value of property of improvements permitted in the area

Would materially impair the adequate supply of light and air to the properties and improvements in the vicinity. (It should be noted that the structure would be 50% of the size of the neighbor to the north on the same sized lot. The neighbor to the south is now—and will remain a vacant parcel after the demolition of the existing home. Thus there would be no density increase between the two parcels.

Would substantially increase congestion in the public streets due to traffic or parking

Would unduly increase the danger of flood or fire

Would unduly tax public utilities and facilities in the area

Would endanger the public health and safety.

The requested variation would not have a negative impact on any aspect of the questions outlined in (f) 1-6. The repositioning of the Zook home on Woodside would be: 1) Consistent with the lot size of the block; 2) Small for the home size on the block; 3) Not increase density as 445 Woodside (adjacent lot) two story home was demolished and will not be rebuilt in this plan; 4) Allows the preservation of a home many call guintessential Hinsdale.

Exhibit G

No Other Remedy

This request for a Woodside lot represents an attempt to save an 89 year-old Zook House. The house is in excellent condition. It was maintained beautifully by all previous owners, most notably, Al and Lila Self. Mrs. Self was very active in the Hinsdale Preservation society and worked extensively to document the history of all the Zook homes in the village, not just her own.

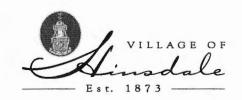
At this point, her former residence, and the Parker's currently, faces the potential of demolition. Simply put, the mortgage and taxes on this property are dramatically inconsistent with a home of this size. To be clear, someone that can afford the costs associated with the large lot will undoubtedly want a much bigger home in return. This will mean tearing down the Zook home in order to build a larger one. This is unpalatable to the owner because he has a fondness for this Zook house, and because he lives next door and does not want to see a house built on that lot that would dwarf those around it and dramatically change the character of the neighborhood.

The current zoning regulations would allow a home of approximately 15,000 sq feet could be built on Woodside/4th St. The home would be 3 times the size of the average sq foot home on either Woodside or Fourth St. For perspective the home under construction at 328 8th St. is on a small lot than the combined lots of Fourth/Woodside.

If the zoning variance is allowed, it will provide for a lot on Woodside that is still larger than average on Woodside, where the Zook house can be re-located and preserved, and where the ratio of yard to home will actually be superior to those surrounding it. The proposed rezoning also allows the Parkers to maintain their residence in the home without being forced to move. The proposed rezoning also improves the look and feel of Woodside. It accomplishes all of these positive things without any substantial negative repercussions. The proposed rezoning doesn't even create a very actionable precedent to be concerned about because the circumstances here are so unique (preserving a Zook House by creating a smaller-than-conforming lot where the new lot is still larger than average for the neighborhood).

We'll also show that we have the support of the immediate neighbors, the broader neighborhood, the preservation society, and village at large, and that we've thought of all levels of detail even improving the overall drainage situation for the residents in this area between Woodside and 4th Street. Understanding that variances are typically hard to grant, we feel this one should be anything but difficult with all we have to gain/preserve as a community and how little we have to lose, however if there's anything else you'd like to see before the public hearing, please let us know. In the meantime, we hope you will all take the opportunity to stop by and visit the home and proposed lot.

86



MEMORANDUM

DATE:

June 16, 2017

TO:

Chairman Neiman & the Members of the ZBA

CC:

Kathleen A. Gargano

Robb McGinnis

FROM:

Christine M. Bruton, Village Clerk

RE:

Resident Input - V-04-17, 435 Woodside

The following individuals have contacted the Village and asked that their letter or email be forwarded to the Zoning Board of Appeals for consideration. Some of these communications may have already been forwarded to you in previous packets.

May 16, 2017 - Mark & Georgia Harrison

May 17, 2017 - Donna & Andrew Brickman

June 15, 2017 - Doug Laux

June 15, 2017 - Nancy Dugan

June 16, 2017 - Jay Moody

June 16, 2017 - Ben & Molly Bradley

June 16, 2017 - Kevin & Joy Holmes (revised)

Thank you.

Date: May 16, 2017

To: Robert K. Neiman, Zoning Board of Appeals Chair

Village of Hinsdale Zoning Board of Appeals

Re: Case V-04-17 – 435 Woodside

Mr. Neiman and members of the Board:

I wanted to drop you a note to voice our opposition to the variance being requested in case V-04-17 – 435 Woodside. We have lived at the NW corner of County Line and Woodside for almost 20 years. As you know, Woodside is a very narrow, winding street. The splitting of 444 E. 4th Street and facing another house onto Woodside would adversely affect the character of the street and could potentially pose a danger with added traffic flow to such a narrow road.

While I realize that lots have been split in other parts of Hinsdale, we are not aware of any such variances in this part of the community. If I am not mistaken, this particular residential district within Hinsdale is the most restrictive, so as to preserve its character. It is for this reason alone that we oppose the variance request.

A very dangerous precedent would be set by allowing this lot to be split. A precedent that I am convinced would be sighted numerous times in the coming months and years as builders would likely seize the opportunity to by one house and replace it with two, destroying the character of this part of the village while doubling their profits.

I have not spoken to one person in the neighborhood that is in support of this request. Please help preserve the integrity of village by denying the request.

Respectfully

Mark and Georgia Harrison 436 S. County Line Rd

Christine Bruton

From: Donna Brickman

Sent: Wednesday, May 17, 2017 5:28 PM

To: Christine Bruton

Cc: Andrew Brickman; Joy Holmes; Kevin Holmes; Georgia Harrison

Subject: Opposition to splitting 444 E. 4th/ 435 Woodside

We are writing to express our strong opposition to splitting the lot at 444 E. 4th Street/435 Woodside Ave

This lot was purchased as one lot for 2.2 million dollars and has not been listed to sell as ONE lot. All information online has been recently removed in regards to 444 E. 4th Street.

We live at 439 E. 6th Street, a Zook home that was renovated in 1997. Our property has a drive way that goes from 6th Street to Woodside. The rear of our lot has almost 200 ft on Woodside and is within 250 ft of the lot in question.

It has been stated by Matt Bousquette, under oath, that "all the neighbors are in favor of" this lot being split. This is not a true statement. We have a petition with 23 names of neighbors that are against this split. The following names are neighbors on Woodside between Oak and County Line who are strongly against this.

- Mark and Georgia Harrison, 436 S. County Line (corner of County Line and Woodside)
- Don and Joni Benson, 455 Woodside (to the east of the lot in question)
- Mark Pusinelli, 453 E. 6th Street (corner of County Line and Woodside)
- Donna and Andrew Brickman, 439 E 6th Street (rear of lot sits on Woodside)
- Joy and Kevin Holmes, 425 Woodside (lot to the west of lot in question)

We moved to southeast Hinsdale (R-1 district) from 25 E. 5th Street because we wanted a house with a large lot. We also were attracted to the house being a renovated, Zook home. If the house in question is not renovated, it will not survive. Old homes that are not renovated do not sell and get torn down.

If the house can be marketed properly and listed as one lot, it will find a buyer to renovate it. All at once or over time. A driveway should be approved to be put on 4th Street, and the garage moved to the west side of the lot.

The following homes in the area are Zook homes with renovations and large lots to complement the property.

- 46 S. County Line Rd
- 430 E. 3rd Street
- 405 E. 7th Street
- 439 E. 6th Street

As of our knowledge, there has never been a split lot allowed in the R-1 district. Do not ruin our district and allow the village to be bullied and split this lot. There are lots of developers looking at your important decision on what you decide to do with this lot.

Sincerely,

Donna and Andrew Brickman

Christine Bruton

From:

Robert McGinnis*

Sent:

Thursday, June 15, 2017 11:44 AM

To: Cc: Doug Laux Christine Bruton

Subject:

RE: Parker Zoning Request

Doug,

Thank you for your comments. We will be sure to include them in the packet.

Regards,

Robert McGinnis, MCP

Village of Hinsdale

Director of Community Development/

Building Commissioner Office 630-789-7036

Fax 630-789-7016

rmcginnis@villageofhinsdale.org

From: Doug Laux [

Sent: Thursday, June 15, 2017 11:41 AM

To: Robert McGinnis

Subject: Parker Zoning Request

Dear Chairman Neiman and Members of the Board,

I am writing to you, since I am unable to attend next week's meeting, to express my support for the variance request to allow creation of a 20,092 square foot lot at 435 Woodside in order to relocate and preserve the Zook designed home currently located at 444 E. Fourth Street. The size of the proposed new lot is certainly in keeping with the R1 district, in which I also reside. As you know the village has gone the extra mile in the past to preserve a Zook home as evidenced by the home that was relocated to KLM a few years back, and this opportunity would similarly enhance our community and retain some of our important history, but without any cost to the village. Therefore, I urge the Board to take this wonderful opportunity to preserve this great example of Zook's work. I appreciate that the Parkers are willing to dedicate their resources to this project. In short, this initiative is great for Southeast Hinsdale, and I hope the Village will approve the requested variance for the Parkers to complete this project.

Thank you,

Doug Laux 321 S. County Line Rd. Hinsdale, IL 60521

Christine Bruton

From: nancy dugan

Sent: Thursday, June 15, 2017 9:20 PM

To: Zoning Board of Appeals

Cc: Robert McGinnis

Subject: Letter opposing Variance request of 444 E 4th St. V-04-17

Attachments: 444 E. 4th St variance letter.pages.zip

Dear Zoning Board,

Kindly review my letter opposing the Variance request submitted by Matt Bosquette regarding 444 E 4th St, Hinsdale IL.

I believe the case number is V-04-17

Gratefully,

Nancy Dugan

Nancy Dugan 540 S. Oak Street Hinsdale, IL 60521

RE: 444 East Fourth Street, Opposing Request for Variation

3

Zoning Board of Appeals:

My name is Nancy Dugan, I live at 540 S. Oak which is one block away from the subject property. For the record, I am against the proposed sub-division of 444 E. Fourth St. (the "Property"). Granting this variance would set a bad precedent and would spur many requests from other residents to sub-divide their lots against the rules of our Code, all under the guise of preserving older homes. Granting this request does not meet the standards established by the Code and it does not meet the spirit of the Code.

I have learned that Mr. Bousquette (the "Applicant") appeared in front of the Board of Trustees on June 7th, 2016. At the June Board meeting Mr. Bousquette stated he did not want a very large home built next to his primary residence and by subdividing the lot, it would decrease the FAR for any home which may be built next to his. At the June 2016 meeting, the Board of Trustees told the Applicant that it was not in favor of the subdivision.

The information presented by the Applicant at the March 15th 2017 preliminary ZBA hearing was very confusing. The Applicant was including his primary residence in calculation of carrying costs, frontage on 4th street, frontage on Woodside and total square footage. Mr. Bosquette's primary residence should not be included in these calculations, rather only the lot he is looking to subdivide should be considered. Please allow me to simplify what I believe occurred and what is being requested.

- In 2013, Mr. Bosquette purchased the Zook home which is located on lots 8, 6, and 9 for \$2.2 million. Together these lots are approximately 54K sq. ft. The Zook House is situated on all three lots. According to our Zoning Code, these lots have been substantially consolidated and from a zoning perspective is viewed as one lot as the house sits on all three lots (8, 6, and 9).
- The Applicant wants to pick the house up and move it entirely on to lots 6 and
 And then subdivide the 54K sq. ft. Zoning lot into a 20K sq. ft. lot on
 Woodside and a 34 sq. ft. lot on 4th Street. This does not meet our Code. In

order to subdivide lots in the R1 District a minimum lot size of 30K sq. ft. is required.

As a homeowner in the Neighborhood, I have rights which the Village Zoning Code protects, certain of those rights pertain to maintaining a maximum density within the neighborhood. It is this Boards responsibility to protect my rights by not granting this variance. While individuals may be sympathetic to preserving the Zook home, the standards for granting Variances has no mention of preservation. Please understand, the Applicants motives appear to be self-interest, both from desire to have a smaller home constructed next to his primary residence and to capture a financial windfall - a special privilege not afforded other residents or homeowners and a special privilege not due to Mr. Bousquette.

By subdividing the lot the Applicant will achieve a financial windfall. For illustration, Mr. Bousquette purchased the entire lot in 2013 for \$2.20 million. He has the 30K sq. ft. lot with no home fronting 4th street currently listed for \$1.95mm. Plus the sale of 20,492 sq. ft. lot on Woodside, even with no home on it, would easily capture in excess of \$1.00 mm netting Mr. Bousquette well over half a million dollar profit - all at the expense of the neighbors and the community. Furthermore, it would set a terrible precedence whereby residents with older homes would be motivated to maximize their financial interest by subdividing their lots.

Most importantly, this Variance should not be granted because there are other actions the Applicant can take to achieve his desired outcome (preserve the Zook home and or minimize the size of a potential new home on the 54K sq. ft. lot). These alternative actions will preserve the integrity of the Code and Variance process. For example,

- As owner, Mr. Bousquette can deed restrict the 54k sq. ft. lot next to his primary residence limiting the size of any future home and then sell the Property, or
- 2. He could Landmark the Zook Home which would restrict any demolition and then sell the property

Lastly, the Applicant does not meet ANY of the 8 standards required for granting a variance as outlined in Section 11-503 of the Zoning Code

- 1. <u>Hardship</u> There is no hardship, the Applicant can sell the property now and relieve himself of all financial costs.
- 2. <u>Unique physical condition</u> the total lot is not unique, it is similar to Mr. Bousquette' primary residence directly next door with similar characteristics as it fronts 4th street and goes through to Woodside.
- 3. <u>Not Self-Created</u> the act of subdividing creates the variance request. This is clearly a self-created situation.

- 4. <u>Denied Substantial Rights</u> The applicant is not being denied any substantial rights. As the property currently stands, the owner can:
 - Sell the Property
 - Landmark the house to preserve it
 - Tear the house down and deed restrict the property to restrict the size of any home that may be built next to his primary residence
 - Tear the house down and build a Code compliant home
- 5. <u>Not merely Special Privilege</u> -granting this variation would create a very unique special privilege to the Applicant. It would create a financial windfall for him. Furthermore, Mr. Bousquette is looking for a Special Privilege to minimize the size of the home which can be constructed next to his primary residence.
- 6. <u>Code and Plan Purpose</u> absolutely not consistent with the Code. Our Code is intended to maintain a certain level of density, to protect neighbor's rights This variation would increase the density beyond the plan purpose and would be out of sync with all of southwest Hinsdale.
- 7. <u>Essential Character of the Area</u> the 20,000 sq. ft lot is not consistent with the character of Southeast Hinsdale. Interesting to note, Mr. Bousquette's primary residence is very similar to the lot he is trying to subdivide as it fronts on 4th street and goes to the back of Woodside. This subject lot is approximately 54,000 sq. ft. Mr. Bousquette's primary residence is only 25% smaller than the lot the Applicant wants to subdivide.
- 8. <u>No other Remedy</u> There are multiple alternative courses of action to satisfy the Applicant's desired outcome: specifically, landmark the Zook house and sell the Property, deed restrict the lot to minimize the size of any future home and then sell the Property.

Lastly, if this Variance request is granted it will create a terrible precedent motivating developers to purchase existing homes on one zoning lot, tear the existing house down and then subdivide the lots into two lots of record. By precedence and fairness, you would be required to treat all Applicants equitably. This would forever change the landscape of South East Hinsdale to a much more dense community.

Thank you for your contribution to our community and maintaining the Code of our Village.

Respectfully,

Nancy Dugan

Christine Bruton

From: Robert McGinnis

Sent: Friday, June 16, 2017 11:00 AM

To: Jay Moody
Cc: Christine Bruton

Subject: RE: Zook home relocation

Jay,

Thank you for your email, we will be sure to include it in the packet.

Regards,

Robert McGinnis, MCP
Village of Hinsdale
Director of Community Development/
Building Commissioner
Office 630-789-7036
Fax 630-789-7016
rmcginnis@villageofhinsdale.org

----Original Message-----

From: Jay Moody

Sent: Friday, June 16, 2017 10:23 AM

To: Robert McGinnis

Cc: Kris Parker; Tracy Parker; Amy Niederpruem

Subject: Zook home relocation

Hi Rob, please see below note. Thank you. Jay

Dear Chairman Neiman and Members of the Board,

Realizing your time is precious, i wanted to voice some quick thoughts and support for Kris and Tracy Parker and their quest to preserve and protect the history and heritage of this town.

I feel that too often in Hinsdale, grandeur takes precedence over character and the path to teardown has grown too efficient. And as the older homes are demolished, so too is the history and character that makes Hinsdale special.

My great grandparents built their house in Hinsdale in 1924 and I treasure that its keepers and guardians have maintained, cared for, and updated it for 93 years. Tonight, I drove by it with my own children and told them that's where their grandmother's daddy lived when he was their age. The wheels were turning in cute bewilderment as they asked about life nearly a century ago.

I applaud the Parkers' efforts to save a landmark- surely a large and expensive endeavor. It's my observation that the proposed solution is congruent with appropriate lot sizes and setbacks on both 4th Street and Woodside and I encourage you to give special consideration to preserving this beautiful Zook house.

Please make teardowns of older historically important homes harder to achieve and give those willing to find a solut	tion
the latitude to do so.	

Thank you.

Jay Moody 18 E. Hickory St.

Christine Bruton

From:

Robert McGinnis

Sent:

Friday, June 16, 2017 7:45 AM

To:

Ben Bradley

Cc:

Christine Bruton

Subject:

RE: 444 E 4th - Letter of Support

Ben,

Thank you for your email. We will be sure to include it in the packet.

Regards,

Robert McGinnis, MCP

Village of Hinsdale

Director of Community Development/

Building Commissioner Office 630-789-7036

Fax 630-789-7016

rmcginnis@villageofhinsdale.org

From: Ben Bradley

Sent: Thursday, June 15, 2017 6:47 PM

To: Robert McGinnis

Subject: 444 E 4th - Letter of Support

Dear Chairman Neiman and Members of the Board,

History. Beauty. Family. Those are the things that brought us to Hinsdale 7 years ago. Those are the reasons I'm writing to express my support for the Parker Family's plan to subdivide the lot at 444 E. 4th Street.

The Parker's desire to save a Zook home should be commended and supported by the Village. While concerns about subdividing a lot are legitimate and understandable, the reality is 20,000 square feet is a large lot size that would be in keeping with other homes in the area. We're not talking about wedging a "McMansion" into a neighborhood of historic homes. The Zook home IS the historic home and it fits beautifully into the neighborhood.

I hope you'll agree that saving this historic home by a family that's committed to Hinsdale is a worthwhile endeavor.

All the best,

Ben & Molly Bradley 233 N. County Line Road, Hinsdale Date: Jun16, 2017

To: Robert K. Neiman, Zoning Board of Appeals Chair

Village of Hinsdale Zoning Board of Appeals

Robert McGinnis, Director of Community Development/Building Commissioner

From: Kevin and Joy Holmes, 425 Woodside Avenue, Hinsdale

RE: Case V-04-17 – 435 Woodside

Dear Chairman Neiman and Members of the Board:

We wanted to write the board to address our opposition to the variance request being sought in Case V-04-17-435 Woodside.

My name is Kevin Holmes and I reside with my wife, Joy, and our 3 children ages 6, 4 and 1 at 425 Woodside Avenue (so our lot sits directly to the west of this new proposed lot). To give you a little background, we moved into a newly constructed house in early May, 2016. During our initial walk-through we fell in love with not only the home, but the neighborhood and areas immediately surrounding the property. The large lot sizes in the Robins Park Historical District and the abundant tree coverage (especially in the back of 444 E. 4th Street lot) provided a feel that is hard to find in Hinsdale. The idea of raising our family in this area excited us so we bought the house and moved in. This excitement changed a short 8 months later when we received the certified letter informing us of the applicant's plans.

Our main objection to the proposal is that 444 E. 4th Street is in the R-1 zoning district and according to the Village of Hinsdale's Zoning Section 3-101: Purposes "The single-family district provide for a limited range of housing densities consistent with the village's established residential neighborhoods. The R-1 and R-2 district allows for lower density residential use and larger lot sizes. The R-3 and R-4 districts allow for somewhat higher density residential use and smaller lot sizes". So, the zoning codes specifically state that the R-1 district's primary focus should be on preserving lower density residential use and larger lot sizes. Further, when evaluating special requests, Section 2-102: Interpretation of district sequence B. "Special Rule" implicitly states that the R-1 District "shall be deemed to be the most restrictive residential district". If allowed, the new size of the lot on Woodside Ave would be 20,092 square ft. According to Section 3-110: Bulk, Space and Yard Requirements the minimum lot area in the R-1 zone is 30,000 square ft. This variance request is proposing the size of the new lot to be 2/3rd the minimum which is required according to the zoning code. This request is by no means a small concession to the zoning code. Allowing these lots to be split would go against the R-1 District's primary stated purpose according to the village's zoning codes. To my knowledge, there has not been a single request for a variance related to the lot size in the R-1 zoning district approved in the past 10 years. We don't believe a variance request of this magnitude should be the first. Approving this variance request would go against the Village's code as well as the clearly stated objective of the R-1 district while also set a dangerous precedent for future lot size variance requests.

This alone should be reason for the Zoning Board to reject this variation request. However, the application for variation requires the applicant to provide details explaining what prevents the subject property from complying with the provisions of the Zoning Ordinance and specifically explain the facts

they believe support the grant of the required variation. We would like to address these in our opposition and give further justification for the zoning board to reject this request.

Standards for Variation:

(a) Unique Physical Condition.

In the variation request the applicant points out that all the other lots on Woodside are less than the required 30,000 square feet and that granting this request the new 435 Woodside address would be the 2nd largest lot on the block. While this is true he fails to point out several of the other lots on the block and their dimensions (although they don't have Woodside addresses their driveways are accessed via Woodside). The home at 419 S. Oak (north/west corner of Oak and Woodside) sits on a lot that is 49,000 square feet. The home at 511 S. Oak (south/west corner of Oak and Woodside) is on a lot over 30,000 square feet. The applicants other house at 447 E. 4th is also on this block and is roughly 40,000 square feet. In fact, there are several lots greater than 40,000 square feet in the immediate area of the subject property (exhibit 1). All of these homes illustrate that the current size of the 444 E. 4th street lot by no means presents a unique physical condition to other properties on the block nor the R-1 district.

(b) Not Self-Created

The Zook home was built on the subject property in 1929. The applicant purchased the property less than 4 years ago. The applicant contends that the Zook house has a unique physical characteristic in that it was built on an "oversized lot" for the size of the house. If that is true it's hard to believe that the applicant didn't realize this prior to purchasing the property in late 2013.

(c) Denied Substantial Rights

According to Rob McGinnis there have been no variance requests for a reduction in lot size in the R-1 district that he is aware of. The denial of this request would by no means deprive the applicant of any rights commonly enjoyed be owners of other lots subject to the same provisions. Contrary, the approval of this request would give the applicant a right not enjoyed by any owner in the R-1 district previously and would set a dangerous precedent for future requests.

(d) Not Merely Special Privilege

The main justification the applicant argues for in this variance request is that the approval would allow for the preservation of the Zook home. If the variance request were to be approved it would be due largely because of the existing Zook home on the subjected property. This by definition would constitute a special privilege not available to other owners in the area. The standards for the variation request specifically states that the hardship or difficulty should not merely be the inability to make more money from the use of the subjected property. This is not a request because of any hardship, it is a variation request specifically to maximize financial gain.

(e) Code and Plan Purposes

The Village's Comprehensive Plan for the R-1 district is for large lot size and low density. This plan was set forth to guide the future and long-range goals of the village. This variance request goes against this stated plan. The applicant argues that currently 90% of the homes in the R-1 don't comply with the required 30,000 minimum lot size requirement set forth in the zoning codes and

that should be reason for the board to approve the request. However, the composition of the R-1 district has not dramatically changed since the zoning codes were introduced. So one might assumed when these codes were being written the potential for splitting lots was the very reason the codes required this minimum lot size for a new lot. If the applicant believes this minimum is too onerous he should move to have the zoning codes and the comprehensive plan changed for the R-1 district.

(f) Essential Character of the Area

If approved, this request would adversely affect the enjoyment our family currently experiences at our home. Further, this variance request would add to the congestion on an already narrow/small street. Although the applicant states that there was a house at 445 Woodside Avenue he fails to point out that this house was torn down over 20 years ago. No one who currently lives on Woodside Avenue would have experienced what the impact on traffic and congestion there would have been with the addition of this additional address. It would also have a negative impact on the look and feel of Woodside Avenue as it most certainly will require the removal of several mature trees that currently line the back half and sides of 444 E. 4th street.

(g) No Other Remedy

In his response, the applicant states, in part, "Simply put, the mortgage and taxes on this property are dramatically inconsistent with a home of this size. To be clear, someone that can afford the costs associated with the large lot will undoubtedly want a much bigger home in return. This will mean tearing down the Zook home in order to build a larger one. This is unpalatable to the owner because he has a fondness for this Zook house, and because he lives next door and does not want to see a house built on that lot that would dwarf those around it and dramatically change the character of the neighborhood." According to the records, the applicant purchased the current 444th 4th street property (the entire area comprised of lots 1, 2, 3, 4, 18, 19) in September of 2013. He lived in the house while his neighboring property was getting renovated and moved out sometime in the spring of 2016. The MLS history of the current home and lot were never put back on the market to sell "as is". There has only been an attempt to sell the lots as 2 separate properties. During the pre-hearing on March 15, the applicant even stated "I have been at this since May". If the applicant was truly interested in the preservation of the Zook home and character of the neighborhood as opposed to the profit he would achieve from the lot division wouldn't he have given an honest attempt to sell the lot as is? If he were worried about the buyer tearing down the Zook house he could have applied for landmark status to prevent that from ever happening. If the carrying costs of such an action were detrimental why not start that process while he was still living in the house? He knew he was eventually going to move out of the house and into his property next door. There are certainly remedies available other than the sub-division of the lot, they just have not been pursued by the applicant.

The demolition of the Zook house would be an unfortunate should the request be denied and the applicant choose to sell the home to a developer. The preservation of historic homes is rightly a priority of the Village of Hinsdale. The village enacted a program to help preserve Zook homes by giving significant tax advantages to people who purchase historic homes and rehab them to bring them more in line with today's standards. There are serval examples of this program being utilized specifically with other Zook homes- 430 E. 3rd St and recently 46 S. County Line Rd to name a couple. This could be

another beautiful example of this program which is why it is so disheartening that the applicant has chosen not to pursue it. If the applicant truly has a fondness for the Zook house and is interested in preserving the character of the neighborhood shouldn't he attempt to sell the home to someone who will take advantage of this program? The village's incentives for historic home preservation comes in the form of tax relief not by approving lot size variance requests. Additionally, the approval of this variance request does not ensure the preservation of the Zook house. Once the lot is divided there is nothing stopping the current or subsequent owners from demolishing the home and building another home in its place on this new lot. Not to mention the possibility the historic home gets damaged in the transition to the proposed lot.

The idea of my family (with our small children) and the neighbors living through what will surely be several years of construction seems like an unnecessary burden. Woodside Avenue is a short/narrow street with limited sidewalks and is not designed for high traffic. Adding a construction project and another residence to this small block doesn't seem fair to the current residence of Woodside Avenue. Towards this point, please find a list of over 20 signatures from our neighbors and fellow residents of the R-1 zoning district who are also adamantly against the proposed variance request (Exhibit 2). This list includes the residence at 455 Woodside Avenue (the closest neighbor to the east of the new proposed lot), the residence at 425 Woodside Avenue (the bordering neighbor to the west of the new proposed lot), 419 S. Oak (corner of Oak and Woodside) along with several of our neighbors on the block.

In closing we'd like to emphasize a final point- last year we moved our family from our home at 532 Walker Road, a home and a neighborhood we very much enjoyed, to the Robins Park Historical District because we wanted a larger lot and more space. We chose 425 Woodside specifically because we liked the house and loved having the views from the east side of the house which look out onto the back half of the neighboring lot. Splitting the 444 E. 4th Street lot and adding a home directly to our east goes against the very reason we moved to this area. And, as stated above, goes against the intention of The Robins Park Historical District's purpose and codes.

We are thankful that there is a process required when one wishes to make changes which do not comply with the village codes. We are also grateful that there is a Zoning Board in charge of hearing and deciding on these requests. Some of the previous requests the Zoning Board has heard are cases where the subject property has been under ownership of the applicant or the applicant's family for many years (often times before the zoning codes were even introduced). In these cases, there is a hardship created because the new zoning codes were introduced and without any action from the owner their properties were now subjected to these new codes. This is not the case in this request. The applicant purchased the subjected property less than 4 years ago- over 30 years after these codes were introduced. The applicant seems to be requesting that the Zoning Board approve his request because he owns an old house on a large lot in the R-1 district. The reality is there are many old homes on large lots in the R-1 district and if this request is approved it will set a terrible precedent which will surely open the door to many more requests to divide these existing lots. We, along with our neighbors in the R-1 district, hope the Zoning Board chooses not to establish this precedent and votes against this variance request.

Thank you in advance for your time and attention to this matter.

Sincerely-

Kevin and Joy Holmes

Exhibit 1



Exhibit 2

The citizens of the Village of Hinsdale, pelition to maintain the current stated purpose of the R-1 Zening District which is to allow for lower density and larger for sizes.

The R-1 Zoning District of Hinadala and specifically the Robbins Park Historical District 15 a much desired area in Hinadale largely because of the lot sizes and the village requirement. The following people of Hinadale petition against the proposal to divide the lot at 444 E. 4" Street into two lots and the creation of a new lot which does not meet the minimum R-1 zoning requirement of 30,000 square feet.

We suggest that the Hinsdale Zoning Board of Appeal deny the request to split 444 E. 4" Street (V-04-17, 435 Woodside).

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