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**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

ABSENT: None

Motion carried.

1 **b) V-03-17, 100 South Garfield Avenue (Hinsdale Middle School)**

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

6
7 **AYES:** Members Connelly, Moberly, Alesia, Podliska and Chairman Neiman

8 **NAYS:** None

9 **ABSTAIN:** Members Engel and Giltner

10 **ABSENT:** None

11
12 Motion carried.

13
14 **5. RECEIPT OF APPEARANCES** - All persons intending to speak during the
15 public hearing were sworn in by the court reporter.

16
17 **6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO**
18 **MAKE PUBLIC COMMENT OF A GENERAL NATURE** – None

19
20 **7. PRE-HEARING AND AGENDA SETTING** – None

21
22 **8. PUBLIC HEARINGS**

23 **a) V-04-17, 435 Woodside**

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

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

29
30 **AYES:** Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and
31 Chairman Neiman

32 **NAYS:** None

33 **ABSTAIN:** None

34 **ABSENT:** None

35
36 Motion carried.

37
38 **b) V-05-17, 117 South Clay Street** (*A transcript of the following proceedings*
39 *in on file*)

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

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

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

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

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

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

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

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

14 Chairman Neiman asked Mr. Chimienti if he would agree, the decision is
15 should the ZBA follow the letter of law, and strictly apply criteria, or
16 exercise to the extent the Board has equitable power to do so, the fair
17 thing. The applicant is asking for a fair and equitable decision because this
18 is a retroactive approval. Mr. Chimienti agreed, but added an argument
19 could be made there is also constructive compliance with the letter of the
20 law. He introduced the issue of hardship, what precedent might be set if
21 the Board were to exercise their discretion, and whether the standard of
22 self-creation was being met by this. He would like to address those areas.

23 Chairman Neiman explained that the Board has been told by the Village
24 Attorney that ZBA decisions are not precedential, and the Board is free to
25 treat each property individually. No applicant can rely on a prior decision.
26 Mr. Chimienti said he concurred with the Village Attorney's interpretation.
27 He also stated that nowhere in the code does it state that the Board is
28 prohibited from granting approval after the structure is built.

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

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

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

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

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

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

23
24 **AYES:** Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and
25 Chairman Neiman

26 **NAYS:** None

27 **ABSTAIN:** None

28 **ABSENT:** None

29
30 Motion carried.

31 32 **DELIBERATION**

33
34 Chairman Neiman began discussion stating he is torn because the normal
35 criteria are not necessarily met, and the Board would be required to deny, but
36 if the Board has the authority to do the equitable thing, it might lead to another
37 conclusion. To that end, he referenced Section 11-502(B), which he thought
38 might allow the Board some flexibility. The appeal procedure is provided as a
39 'safeguard against arbitrary ill-considered or erroneous administrative
40 decisions'. The reviewing body 'should give all proper deference to the spirit
41 and intent embodied in the language of this code and the reasonable
42 interpretations of that language by those charged with the administration of
43 this code'.

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

1 agreed, but noted that the ZBA has granted them in the past. Member Moberly
2 said he would like to punish the contractor, and protect the homeowner. He
3 commented that all cases are different, but to tear down this garage is
4 environmentally foolish. Danley won't notice, but it is too much for the
5 homeowners.

6 Member Podliska cited Section 11-503, which indicates no variation shall be
7 granted except 'in accordance with each of the standards enumerated' in the
8 code, 'unless the applicant shall establish that carrying out the strict letter
9 provisions of this code create a particular hardship or a practical difficulty'.

10 He noted that he could be persuaded on the matter of hardship, but counsel
11 for the applicant has conceded this is a special privilege. Discussion followed
12 regarding the unique physical condition of the lot with respect to the floodplain.

13 Member Giltner believes this problem was the result of an unintentional
14 mistake, and when taken in totality, he will approve.

15 Member Connelly noted that although not a standard in the code, the Board
16 traditionally gives weight to neighbor input. There is positive input from the
17 neighbor, and denying the application and causing further construction would
18 be detrimental to the owners and the neighbors.

19 Member Alesia commented he could not be more sympathetic, but is bothered
20 by the negligence of Danley in not getting the spot survey.

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.
24 The Board must be fair or follow the letter of the law.

25 Member Giltner asked Mr. McGinnis if since the Board approved the
26 retroactive fence variation, there has been any sort of additional activity
27 relative to fence ordinances. Mr. McGinnis said there has not, and further he
28 cannot imagine anyone deliberately creating this type of situation because of
29 the magnitude of the problem it creates.

30
31 Member Giltner moved **to approve the variation known as V-05-17, 117**
32 **South Clay Street.** Member Connelly seconded the motion.

33
34 **AYES:** Members Connelly, Moberly, Giltner, Engel and Chairman Neiman

35 **NAYS:** Members Alesia and Podliska

36 **ABSTAIN:** None

37 **ABSENT:** None

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39 Motion carried.

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41 **9. NEW BUSINESS** – None

42
43 **10. OTHER BUSINESS** – None

44
45 **11. ADJOURNMENT**

1 With no further business before the Zoning Board of Appeals, Member Alesia
2 made a motion to **adjourn the meeting of the Zoning Board of Appeals of**
3 **May 17, 2017.** Member Engel seconded the motion.

4
5 **AYES:** Members Connelly, Moberly, Giltner, Alesia, Engel, Podliska and
6 Chairman Neiman

7 **NAYS:** None

8 **ABSTAIN:** None

9 **ABSENT:** None

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11 Motion carried.

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13
14 Chairman Neiman declared the meeting adjourned at 8:08 p.m.

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17 _____
18 Christine M. Bruton
19 Village Clerk

Approved: _____

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