

VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE SPECIAL MEETING
FEBRUARY 22, 2017

1. CALL TO ORDER

Chairman Bob Neiman called the specially scheduled meeting of the Zoning Board of Appeals to order on Thursday, February 22, 2018 at 6:30 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

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

Absent: Members Marc Connelly and Joseph Alesia

Also Present: Village Attorney Michael Marrs, Director of Community Development/Building Commissioner Robb McGinnis, Village Clerk Christine Bruton and Court Reporter Kathy Bono

3. APPROVAL OF MINUTES

a) Regular meeting of December 20, 2017

Following corrections to the draft minutes, Member Engel moved to **approve the draft minutes of December 20, 2017, as amended.** Member Moberly seconded the motion.

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

NAYS: None

ABSTAIN: Member Podliska

ABSENT: Members Connelly and Alesia

Motion carried.

4. APPROVAL OF FINAL DECISION

a) V-09-17, 15 East Fifth Street

There were no changes or corrections to the draft final decision. Member Moberly moved to **approve the draft final decision for V-09-17, 15 East Fifth Street.** Member Giltner seconded the motion.

AYES: Members Moberly, Giltner, and Engel Chairman Neiman

NAYS: None

ABSTAIN: Member Podliska

ABSENT: Members Connelly and Alesia

Motion carried.

5. RECEIPT OF APPEARANCES - The court reporter administered the oath to those intending to speak.

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-01-18, 415 South Vine Street

Mr. Howard Chang, applicant and homeowner, and Mr. Patrick Plunkett, architect, addressed the Board. Mr. Plunkett stated they are asking for relief from the required front yard setback due to the depth of the lot in comparison with the majority of lots on the street. The hardship is with the lot in that if you correspond with average front yard setback, with a detached garage, it would be difficult to get in the garage if it is located behind the house. He referenced the attachments in the packet which illustrate the location of the other properties on the block. The code says the average setback is 36.4' feet; their request is to maintain the existing setback of approximately 25' feet. Mr. Chang added the house would have the same footprint as the existing home; if the new home was set 36' feet back, it would be so far back they could not meet the 10' foot requirement between house and garage. The patio would be over rear setback. They believe the approving criteria is met to approve this variance, and noted the majority of the block has twice the depth of the subject lot.

The Board had no additional questions. Chairman Neiman reminded them to be prepared to address each of the seven criteria for approval, and noted neighbor support would be helpful.

The public hearing was set for the next meeting of the Zoning Board of Appeals.

b) V-02-18, Monument Sign on Landscaped Median of Salt Creek Lane

Mr. Peter Coules, attorney representing the applicant, addressed the Board. He stated that in 2015 his client was before the Board requesting eight 8' x 6' foot signs which were approved. He described the signs and noted they received unanimous approval from the Plan Commission. However, it is now one year since the previous approval, so they have to come back. Mr. Coules confirmed that all three conditions previously set by the ZBA have been met. The public hearing was set for the next meeting of the Zoning Board of Appeals.

c) V-03-18, 842 West Seventh Street

Mr. John Behrendt with Roberts Design addressed the Board on behalf of the architect and the owners. His client is requesting a reduction of the required corner side yard setback, located at the southeast corner of Seventh and Jackson. Applying the prescribed zoning regulations, they would be left with a width of 24' to design the house. The hardship lies in the challenges of a 24' wide home. It is their intention to build a fully code compliant home, should the variance be granted.

Member Podliska asked Mr. Behrendt to address something in between what

1 they are asking for and what the code requires. Mr. Behrendt believes it
2 would still be difficult.
3 The public hearing was set for the next meeting of the Zoning Board of
4 Appeals.
5

6 **8. PUBLIC HEARINGS**

7 a) **APP-03-17, 504 S. Oak Street & 422 S. Oak Street**

8 Chairman Neiman opened the public hearing for APP-03-17, 504 S. Oak
9 Street & 422 S. Oak Street.

10 *Due to the complex nature of the proceedings, the transcript of the public*
11 *hearing is included as part of these minutes. (Exhibit A)*
12

13 The public hearing will be reopened at a date to be agreed upon by all
14 parties.
15

16 Member Giltner moved to **close the public hearing on APP-03-17, 504 S.**
17 **Oak Street & 422 S. Oak Street, to be reopened at a future date.** Member
18 Podliska seconded the motion.
19

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

21 **NAYS:** None

22 **ABSTAIN:** None

23 **ABSENT:** Members Connelly and Alesia
24

25 Motion carried.
26

27 **9. NEW BUSINESS – None**

28
29 **10. OLD BUSINESS – None**
30

31 **11. ADJOURNMENT**

32 With no further business before the Zoning Board of Appeals, Member Moberly
33 made a motion to **adjourn the meeting of the Zoning Board of Appeals of**
34 **February 22, 2017.** Member Giltner seconded the motion. Voice vote taken, all
35 in favor, motion carried.
36

37 Chairman Neiman declared the meeting adjourned at 8:35 p.m.
38
39

40
41 _____
42 Christine M. Bruton
Village Clerk

Approved: _____

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

BEFORE THE HINSDALE ZONING BOARD OF APPEALS

In the Matter of:)
)
)
422 and 504 South Oak)
Street, Case No. APP-03-17.)

REPORT OF PROCEEDINGS had of the
above-entitled matter before the Hinsdale Zoning
Board of Appeals, at 19 East Chicago Avenue,
Hinsdale, Illinois, on February 22, 2018, at the
hour of 6:30 p.m.

BOARD MEMBERS PRESENT:

MR. ROBERT NEIMAN, Chairman;
MR. GARY MOBERLY, Member;
MR. KEITH GILTNER, Member;
MR. JOHN F. PODLISKA, Member; and
MS. KATHRYN ENGEL, Member.

* * * * *

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|--|--|
| <div>1 ALSO PRESENT:</div> <div>2 MS. CHRISTINE BRUTON, Deputy Village Clerk;</div> <div>3 MR. ROBB MCGINNIS, Director of Community Development;</div> <div>4 MR. MICHAEL MARRS, Village Attorney;</div> <div>5 MR. ROBERT O'DONNELL, Attorney for Mr. & Mrs. Dugan;</div> <div>6 MS. NANCY DUGAN, Appellant;</div> <div>7 MS. SUSAN OVERBY, Attorney for Bayit Builders and Avra Properties.</div> <div>8</div> <div>9</div> <div>10</div> <div>11 (WHEREUPON, the oath was</div> <div>12 administered en masse.)</div> <div>13 CHAIRMAN NEIMAN: Public Hearing Appeal</div> <div>14 No. 03-17, 504 South Oak Street and 422 South</div> <div>15 Oak Street. Why don't both sets of attorneys</div> <div>16 step up initially. There's a couple preliminary</div> <div>17 matters that we should go over.</div> <div>18 First, I'd like to compliment both</div> <div>19 sets of attorneys for concise and to the point</div> <div>20 briefs. I found them enlightening and I went</div> <div>21 back and forth personally on who's going to</div> <div>22 prevail. I'm also interested in hearing the</div> | <div>4</div> <div>1 CHAIRMAN NEIMAN: Oh, sorry. It was</div> <div>2 all on one side. Forgive me.</div> <div>3 It's within our discretion whether</div> <div>4 to consider those late submissions. I think this</div> <div>5 is our first contested hearing under our new rules</div> <div>6 and I think it would be risky personally to start</div> <div>7 taking ourselves too seriously and say, oh, you</div> <div>8 missed the deadline, heaven forbid, but I'm open</div> <div>9 to suggestion from other board members.</div> <div>10 MR. MOBERLY: Well, I have already read</div> <div>11 it so I can't unread it. I was in my office</div> <div>12 when it came over the wire yesterday. I don't</div> <div>13 view that the realtors are -- really, as</div> <div>14 wonderful as realtors are, that it carries as</div> <div>15 much weight as much of the other information</div> <div>16 that we have. I understand the credentials and</div> <div>17 how wonderful both realtors are.</div> <div>18 CHAIRMAN NEIMAN: Anyone on the board</div> <div>19 have any objection to the submission?</div> <div>20 MR. PODLISKA: No.</div> <div>21 CHAIRMAN NEIMAN: Okay. And that ties</div> <div>22 into the standing argument, and I have read the</div> |
| <div>3</div> <div>1 village's point of view, but I wanted to thank</div> <div>2 both counsel for submitting what I thought were</div> <div>3 very good briefs.</div> <div>4 We have a couple other preliminary</div> <div>5 issues that I think we should take care of before</div> <div>6 the main event. There was an issue -- there</div> <div>7 were some emails in the last 24 hours about late</div> <div>8 submissions, and I don't know that we need</div> <div>9 argument from you. I thought the board members</div> <div>10 could just address that and if either of you</div> <div>11 have any comments as we go, feel free.</div> <div>12 Technically, all of this should</div> <div>13 have been submitted on time keeping with the</div> <div>14 briefing schedule set out in the rules. I think</div> <div>15 my view is as long as those were filed with the</div> <div>16 village and then distributed to us and sent to</div> <div>17 us via email; is that correct? They were first</div> <div>18 filed with the village, both of you submitted</div> <div>19 your late submissions to the village and to us;</div> <div>20 is that correct?</div> <div>21 MR. O'DONNELL: I don't think we had</div> <div>22 any late submissions.</div> | <div>5</div> <div>1 realtors' affidavits about is there going to be</div> <div>2 hardship and detriment to the Dugans or not.</div> <div>3 Let's look at the code on the issue of standing</div> <div>4 because I think it will be helpful.</div> <div>5 Parties entitled to appeal. This</div> <div>6 is 11-502.C, parties entitled to appeal. An</div> <div>7 application for appeal to the Zoning Board of</div> <div>8 Appeals may be filed by any person aggrieved or</div> <div>9 adversely affected by an order, decision,</div> <div>10 determination, or failure to act of the village</div> <div>11 manager acting pursuant to his or her authority</div> <div>12 and duties under the code.</div> <div>13 We have conflicting opinions by the</div> <div>14 realtors and by the Dugans. Any thoughts from</div> <div>15 the board members? I don't want to just</div> <div>16 influence everyone with my thought on the issue.</div> <div>17 MR. PODLISKA: I think there's an</div> <div>18 arguable case to be made that the Dugans may be</div> <div>19 affected by the outcome of this. I don't see an</div> <div>20 issue to try to resolve this as a standing issue</div> <div>21 rather than moving on to the merits.</div> <div>22 MR. MOBERLY: I agree with that.</div> |

1 Especially after I spent hours over the weekend.
 2 They better have standing or I just wasted a
 3 bunch of time reading this.

4 CHAIRMAN NEIMAN: If they don't have
 5 standing, they don't have standing and it would
 6 be -- well, actually, in appeals our decisions
 7 do have precedential --

8 MR. MOBERLY: Okay.

9 CHAIRMAN NEIMAN: So any thoughts?

06:55:20PM 10 MR. GILTNER: Is this the first time
 11 that we are considering standing? I mean, it's
 12 the fact that they have submitted their requests,
 13 it still has to come -- it's our decision?

14 CHAIRMAN NEIMAN: Yes. The builder's
 15 response brief raised a standing issue. The
 16 Dugans responded in a reply brief. We have
 17 conflicting affidavits on the issue of hardship
 18 and whether the Dugans will be adversely
 19 affected. Kathryn?

06:55:56PM 20 MS. ENGEL: I believe there's an
 21 argument for equitable consideration here and
 22 based on 11-502.B and the purpose of which it's

1 written, I don't see an issue going forward with
 2 it. I read both sides.

3 CHAIRMAN NEIMAN: Okay. So the
 4 consensus -- is it accurate to say the consensus
 5 of the board is that Dugans have made out a
 6 colorable claim that they have standing and that
 7 we should move forward with the substance of the
 8 objection?

9 MR. PODLISKA: Yes.

06:56:42PM 10 MR. MOBERLY: Yes.

11 MS. ENGEL: Yes.

12 CHAIRMAN NEIMAN: Okay. Relatively easy.

13 Now, before we get started with the
 14 actual arguments, Kathryn correctly noted that
 15 the standard for appeals, which also addresses
 16 the burden of proof for the appellant, is stated
 17 in 11-502.B. Let's read that out loud to refresh
 18 our memory on that one.

19 The appeal procedure is provided as
 06:57:10PM 20 a safeguard against arbitrary, ill-considered,
 21 or erroneous administrative decisions. It is
 22 intended to avoid the need for resort to legal

1 action by establishing local procedures to
 2 review and correct administrative errors. It is
 3 not, however, intended as a means to subvert the
 4 clear purposes, meanings, or intents of the code
 5 or the rightful authority of the village manager
 6 to enforce the requirements of this code. To
 7 these ends, the reviewing body, that's us,
 8 should give all proper deference to the spirit
 9 and intent embodied in the language of this code
 10 and to the reasonable interpretations of that
 11 language by those charged with the administration
 12 of this code.

13 So that means that the Dugans who
 14 filed the appeal have the burden of convincing
 15 us that the village's decision was either
 16 arbitrary, ill-considered, or erroneous. And
 17 with that, I think the Dugans' counsel can begin
 18 their argument unless any of you have anything
 19 else preliminary.

06:57:46PM 20 MR. PODLISKA: Nothing.

21 MR. GILTNER: No.

22 MS. ENGEL: No.

1 MR. MOBERLY: No.

2 MR. O'DONNELL: Good evening,
 3 Mr. Chairman and Members of the Board. My name
 4 is Bob O'Donnell, and I represent the appellants
 5 here James and Nancy Dugan. What I'd like to do
 6 at the start is if you give me 45 seconds to set
 7 up the easel, get the computer in shape, and
 8 I'll move through my argument.

9 CHAIRMAN NEIMAN: We won't start the
 06:58:36PM 10 clock until your easel is set up.

11 MR. O'DONNELL: Thank you very much.
 12 We can start the clock now.

13 By the way, anything that I am
 14 using on the easel will also be on the screen so
 15 those that are behind the easel will still be
 16 able to see. And again, anything that we are
 17 using on the screen other than the code sections
 18 has also been previously submitted.

19 I do have hard copies of what I'm
 06:59:04PM 20 going to use by way of a presentation on the
 21 screen if you would like to have these available
 22 to you. I'll put them up here and leave it to

| | |
|--|---|
| <div>10</div> <div> <p>1 your discretion if you would like.</p> <p>2 What I'd like to do at the outset,</p> <p>3 and I'm really going to try not to repeat</p> <p>4 everything that's been written. I think I heard</p> <p>5 all of you say you have had the opportunity to</p> <p>6 and have taken advantage of the written submission</p> <p>7 to read it.</p> <p>8 But there are several code sections</p> <p>9 that I think are going to come into play this</p> <div>07 00 40PM</div> <p>10 evening that really need to be understood in the</p> <p>11 context of this application. The first is</p> <p>12 Section 10-104. And the issue with respect to</p> <p>13 that is the structure that is currently existing</p> <p>14 on the 504 property is not a precode structure.</p> <p>15 And the reason it is not a precode structure is</p> <p>16 it was voluntarily demolished by the Girschs in</p> <p>17 1993, 1994 and when it was rebuilt, it was not</p> <p>18 built in conformity with all of the code</p> <p>19 regulations with the exception of minimum lot</p> <div>07 01 25PM</div> <p>20 area and lot dimension regulations which is what</p> <p>21 10-104 states.</p> <p>22 In this instance, the structure as</p> </div> | <div>12</div> <div> <p>1 words, not demolished, although the structure</p> <p>2 was, for the most part, demolished and rebuilt,</p> <p>3 that south wall remained.</p> <p>4 Exhibit 6 to our original submittal</p> <p>5 shows the survey of the existing structure and</p> <p>6 it shows the dimension of that to be 5 feet 6</p> <p>7 inches that remain. So the nonconformity remains,</p> <p>8 it's not a precode structure.</p> <p>9 The second provision of the village</p> <div>07 03 34PM</div> <p>10 code that comes into play is Section 12-206 and</p> <p>11 this will establish that the lot, the 504 lot,</p> <p>12 would not be a legal nonconforming lot upon the</p> <p>13 demolition of the structure that exists and under</p> <p>14 Section 12-206 there are several requirements for</p> <p>15 a legal nonconforming lot, but one is it needs</p> <p>16 to be vacant on June 18, 1988. This clearly</p> <p>17 wasn't. The structure that was demolished by</p> <p>18 the Girschs existed on June 18, 1988, or became</p> <p>19 vacant thereafter by reason of demolition or</p> <div>07 04 20PM</div> <p>20 destruction of a precode structure.</p> <p>21 So here if the structure that</p> <p>22 exists on the 504 lot is demolished since it was</p> </div> |
| <div>11</div> <div> <p>1 it was upon demolition and rebuilt maintained</p> <p>2 the nonconformity with respect to the side yard</p> <p>3 setback. The wall facing the -- the south wall</p> <p>4 which faces the Dugans was existing at 5 feet 6</p> <p>5 inches and remained at 5 feet 6 inches and the</p> <p>6 code requires when a precode structure is</p> <p>7 voluntarily damaged or demolished as was the</p> <p>8 case here, it may be rebuilt as it was, but it</p> <p>9 must be rebuilt, restored, or repaired and be in</p> <div>07 02 20PM</div> <p>10 conformity with all of the applicable district</p> <p>11 regulations other than minimum lot area and lot</p> <p>12 dimension regulations and here it maintained a</p> <p>13 nonconformity with respect to side yard setback</p> <p>14 because it is not a precode structure.</p> <p>15 CHAIRMAN NEIMAN: Is that under 10-104.B?</p> <p>16 MR. O'DONNELL: 10-104.C.1.</p> <p>17 CHAIRMAN NEIMAN: Thank you.</p> <p>18 MR. O'DONNELL: And again, what I put</p> <p>19 up here you have in front of you. This is the</p> <div>07 02 50PM</div> <p>20 portion of the demolition plan submitted by the</p> <p>21 Girschs approved by the village, but it shows</p> <p>22 that that south wall was maintained. In other</p> </div> | <div>13</div> <div> <p>1 not a precode structure, it would not be vacant --</p> <p>2 considered vacant, and a legal nonconforming lot.</p> <p>3 It would simply be a nonconforming lot.</p> <p>4 The third code provision that</p> <p>5 becomes important for consideration is whether</p> <p>6 or not the structure that exists on the 504 lot</p> <p>7 by definition is an accessory structure. Under</p> <p>8 your code, candidly the only conclusion one can</p> <p>9 come to is that it is.</p> <div>07 03 08PM</div> <p>10 And the aerial photograph that I</p> <p>11 placed on the easel and is also contained in the</p> <p>12 packet and now on the screen, and what's</p> <p>13 important here is this particular aerial</p> <p>14 photograph shows in red the lot lines. So we</p> <p>15 can see what existed on both the 422, which</p> <p>16 contained the principal use we maintain and the</p> <p>17 504 lot which contained the accessory use.</p> <p>18 What's important to the code first</p> <p>19 and foremost is the use. So the question becomes</p> <div>07 03 45PM</div> <p>20 what is the use on the 422 property. It is a</p> <p>21 four-car garage with an accompanying two-bedroom</p> <p>22 apartment. Was that subordinate and serve --</p> </div> |

1 was it subordinate to serve the principal
2 structure. The answer is yes.

3 And keep in mind what the Girschs
4 did back in 1993, they demolished the existing
5 garage that accompanied the single-family home
6 on the 422 lot, they demolished the existing
7 garage that accompanied a single-family home on
8 the 504 lot and rebuilt what was the single-
9 family home into a four-car garage and an
10 apartment.

07 09 24PM

11 Well, a four-car garage with an
12 apartment or a coach house is -- and here I
13 think it's critical that we take into account
14 how the property sat one in relation to the
15 other. Where I'm pointing is the single-family
16 home on the 422 lot. The coach house is where
17 I'm now pointing.

18 Between those two properties and
19 straddling the property line is a very large and
20 significant motor court. That motor court served
21 singularly the single-family home on the 422
22 property. So the question becomes is a four-car

07 09 53PM

1 garage with a small apartment, i.e., a coach
2 house, an accessory use.

3 CHAIRMAN NEIMAN: Let me stop you there
4 for a moment.

5 MR. O'DONNELL: Certainly.

6 CHAIRMAN NEIMAN: The builder has made
7 an argument that the structure as remodeled meets
8 the definition of a single-family residence.

9 Merely because it has a garage beneath it and a
10 kitchen and bedrooms above it doesn't, in my
11 view, turn it into an apartment or even a coach
12 house. It has bedrooms, it has a kitchen.

07 07 36PM

13 Can you explain to us why it
14 doesn't meet the definition of a single-family
15 residence?

16 MR. O'DONNELL: Because it was never --
17 a certificate of occupancy was never granted as
18 a single-family residence. It was never used as
19 a single-family residence. It was used as an
20 accessory structure to the 422 single-family
21 residence and the code speaks to use. Doesn't
22 speak to what one intended.

07 09 04PM

1 So I would submit to you,
2 Mr. Chairman, that if we had a four-car garage
3 serving singularly the 422 single-family home
4 and a two-bedroom apartment for in-laws or a rec
5 room, which is what the Girschs originally
6 intended to install, or a large storage area or
7 anything else, it becomes a use that is accessory
8 to the main structure.

9 CHAIRMAN NEIMAN: And I understand that
10 argument and I appreciate it.

07 09 46PM

11 Is it a prerequisite under our code
12 for the building to be a single-family residence
13 to have received a certificate of occupancy?

14 MR. O'DONNELL: There is no requirement
15 that a certificate of occupancy be issued, but in
16 the first instance one would have to ask what is
17 that property's -- I would submit to you that
18 property's purpose from the time -- and I'm
19 talking about the 422 structure, from initial
20 design and intent, it was intended to be an
21 accessory use. And it was built as an accessory
22 use.

07 09 28PM

1 If one looks at the 1993 letter,
2 which at the outset I think caused consternation
3 amongst all and some confusion among some, the
4 village's response to the initial submittal by
5 Girsch, which called for the four-car garage
6 with a rec room as opposed to a four-car garage
7 with an apartment, the village's response, and
8 the village manager's response, was entirely
9 consistent with the code. He was told -- and if
10 I can fast forward, what the village manager
11 said, and I quote, "In summary, the zoning lot
12 appears to be large enough to allow your clients
13 to pursue their improvement plans. However, once
14 the coach house is accessory to the principal
15 structure, the property consists of one zoning
16 lot and cannot be subdivided in the future."

07 10 09PM

17 In other words, once the coach
18 house -- it was not limited to the coach house
19 as a garage plus an apartment, a garage plus a
20 rec room or a garage plus anything else. Once
21 it is accessory to the principal structure in
22 use, it becomes one zoning lot. And the code is

07 10 42PM

1 written emphasizing the use and what the village
2 manager responded to was consistent with the code.

3 Now, when the change was made, and
4 I think that's where we are -- I sense, Chairman
5 Neiman, that's where you are going. So the
6 Girschs changed. They came back and they came
7 back with an alternate plan. They didn't change
8 the structure, they changed the use from a four-
9 car garage to serve what? To serve the 422

07 11 20PM 10 single-family home and an apartment to serve
11 what? The single-family home.

12 At no point did the village ever
13 say a four-car garage with an apartment is not
14 an accessory use or it does not become a zoning
15 lot. There was zero expression whatsoever from
16 the village in any way, shape, or form that said
17 that change converts what was going to be a
18 zoning lot to not being a zoning lot. That
19 never occurred.

07 11 58PM 20 CHAIRMAN NEIMAN: But the change didn't
21 mean that it was just a four-car garage and
22 storage anymore, it was a four-car garage below

1 with a kitchen and bedrooms above, which,
2 arguably, makes it a single-family residence on
3 a separate lot.

4 MR. O'DONNELL: I would suggest to you,
5 arguably could have, but that's not the way they
6 designed it and used it.

7 Let's keep in mind that motor court
8 exists straddling the property line. The motor
9 court clearly establishes that that garage is
10 going to be used for the 422 property. At no
11 point -- and we have the affidavit from Mr. Early,
12 a next-door neighbor, who acknowledged that
13 during the LaRocques' occupancy of the house, it
14 was used as Mr. LaRocque's office.

07 12 32PM 15 So whether we plug in to the void
16 in addition to the garage a rec room or an
17 apartment, or an office, it doesn't convert that
18 coach house to be accessory in use to the
19 principal structure and that's how your code is
07 13 10PM 20 written.

21 So to jump ahead to the village
22 attorney's analysis, which suggested the

1 capability of what a property may be used for,
2 well -- and there's nothing in the code that
3 suggests that one can disassemble a zoning lot
4 if the properties are capable of sustaining two
5 single-family homes, for example. There's
6 nothing in your code that suggests that analysis.

7 In fact -- and I'm jumping ahead
8 but we have hit the point, in fact, your code
9 screams otherwise. Section 1-102.B speaking
10 generally about the purposes of your zoning code
11 says, and I quote, "The purposes of this code
12 related to land use patterns R-2, provide for
13 the graceful elimination of nonconforming uses
14 that adversely affect the character and value of
15 permitted development."

16 More to the point, Section 10-101.A
17 says, and I quote, "The continued existence of
18 nonconformities is frequently inconsistent with
19 the purposes for which such districts are
07 14 24PM 20 established and thus the gradual elimination of
21 such nonconformities is generally desirable."

22 The zoning lot that exists as we

1 maintain on the 504 and 422 lots is a conforming
2 lot. If that zoning lot is allowed to be
3 disassembled, you have now created two
4 nonconformities as both lots will be nonconforming
5 lots. Both 422 and 504. The code suggests that
6 we should be going in the other direction to
7 eliminate nonconformities and to not create them.

8 Further to that point is if you
9 expanded your understanding or interpretation of
10 the zoning code to allow zoning lots to be
11 disassembled, if they were capable of containing
12 single-family homes given the number of zoning
13 lots, and I have heard village administrators
14 speculate as to how many zoning lots are out
15 there. I don't think anyone has a count but I
16 think everyone has acknowledged there are many.

17 So if we expand the analysis to
18 include what a property is capable of containing
19 or housing, we are actually inviting more
07 15 45PM 20 nonconformities as opposed to eliminating
21 nonconformities, which is the clear expression
22 of your code.

1 CHAIRMAN NEIMAN: We are on 15-minutes.
2 I think it's fair to -- is it the consensus that
3 a few more minutes for questions on his
4 presentation? Five more minutes.

5 MR. O'DONNELL: Okay. Thank you.

6 MR. MOBERLY: Should we ask questions
7 now or at the end?

8 CHAIRMAN NEIMAN: Whenever you want to
9 ask questions.

07 15 18PM 10 MR. MOBERLY: In December, I don't know
11 the exact date, December of 1994, a building
12 permit was issued for the 504 structure as a
13 single-family house. So they didn't build the
14 house without a permit. And the permit is in
15 all these things somewhere. It's showing it
16 just on the 1 75-foot lot and not on the entire
17 225-foot lot.

18 MR. O'DONNELL: Because they had a
19 demolition permit.

07 15 09PM 20 MR. MOBERLY: No, it was a building
21 permit to put the new structure up. That was a
22 permitted structure. It was permitted.

1 MR. O'DONNELL: Clearly the structure
2 was granted a permit. But my point is that the
3 structure that was granted a permit was to build
4 a four-car garage. You can call it anything but
5 it was a four-car garage to serve the 422
6 property. It was to be an accessory use to the
7 422 property.

8 In the creation of zoning lots, as
9 expressed in the code, focuses on use. If you
07 17 18PM 10 are getting some relief from the village to
11 build something and you are allowed to build
12 something, if you are using the properties as
13 one, which an accessory use -- keep in mind, an
14 accessory use is only permitted on a zoning lot.
15 It is not -- there's no temporary -- you can use
16 it as an accessory use for a while until you are
17 ready to use it as a single-family home.

18 So to your point, Chairman Moberly --

19 MR. MOBERLY: I'm not the chairman, he
20 is.

21 MR. O'DONNELL: I'm sorry, you aren't
22 the chairman. I don't mean to annoy you.

1 MR. MOBERLY: That's okay.

2 MR. O'DONNELL: But my point is to take
3 your -- they were granted a permit to build a
4 single-family home. Okay. So they take the
5 single-family home and they don't use it as a
6 single-family home, they use it as a use
7 accessory to the 422 property. They straddle
8 the property line with a very large motor court.
9 They build a sport court behind the four-car
07 19 22PM 10 garage which serves the 422 property. They use
11 the property as one property.

12 Whatever they were granted a permit
13 for and whatever they built, once you use the
14 property as an accessory use, that can only occur
15 on a zoning lot and you are only permitted to do
16 that to use two lots as one on a zoning lot.

17 So even if they intended at the
18 time they got the permit for a single-family
19 home, that's not the way they used it. That's
07 19 30PM 20 not the way Girsch used it. That's not the way
21 LaRocque used it. In fact, it was never used as
22 anything but accessory to 422 and that's what

1 your code speaks to, accessory use.

2 MR. GILTNER: So there's a statement in
3 the July 2017 memo from Michael Marrs, says, The
4 staff has confirmed that the revised plans for
5 504 South Oak were reviewed and approved by the
6 village as plans for a single-family residence
7 in 1994.

8 So you are suggesting they wouldn't
9 know what the use was at that time, right?

07 19 32PM 10 But then it says, Following the 1993
11 letter, the work shown on the revised plans then
12 appears to have been carried out and inspected
13 and approved by the village as a single-family
14 residence.

15 So that inspection, that is also
16 done right after it's built and they also
17 wouldn't know what the use is at that point.

18 MR. O'DONNELL: They would only know
19 what the use would be if somebody requested a
07 19 42PM 20 certificate of occupancy to occupy that structure
21 as a single-family home. The record does not
22 show that that was requested, let alone granted.

1 So to that point -- so let's -- I
2 would dispute that being a single-family home
3 but let's call it a single-family home.

4 MR. GILTNER: The village considered it
5 a single-family home.

6 MR. O'DONNELL: I agree. So you build
7 a four-car garage with a small apartment, it's a
8 single-family home. But you don't use it. You
9 don't intend to use it. You don't ask the

07 20 12PM 10 village if you can use it because that can only
11 come with a certificate of occupancy and for 24
12 years you don't use it as anything but accessory
13 to the 422 property.

14 I mean, we have to call it what it
15 is. It's an accessory use. I don't think that
16 can be disputed. And if it was an accessory use
17 for 24 years and 2 owners, then it can only occur
18 on a zoning lot and the creation of the zoning
19 lot was done by Girsch, how Girsch used it, it

07 20 43PM 20 was continued by LaRocque as LaRocque used it.

21 CHAIRMAN NEIMAN: If someone applied
22 for a certificate of occupancy today, do you

1 have an opinion on whether or not the village
2 would grant it?

3 MR. O'DONNELL: I can't speak to what
4 the village can do. I would say that once it
5 became a zoning lot because of the accessory
6 use, the correct answer under the code would be
7 that should be denied.

8 And in point of fact that's, in
9 essence, what the village manager did when she
10 first realized that. When the application
11 crossed the village manager's desk to apply for
12 a demolition permit on the garage for 422 she
13 said, wait a minute. 422 is a zoning lot in
14 conjunction with 504. So back up. Let's take a
15 look at what you intend to do. That is a zoning
16 lot.

17 So wasn't exactly the question you
18 posed, Mr. Chairman, but it was pretty close and
19 the village's reaction out of the box was no,
20 it's a zoning.

07 21 42PM 21 MR. PODLISKA: Mr. O'Donnell, let me
22 ask you about going back to 9-101.B requirement

1 No. 4. What is your position as to how the
2 requirements of 4 are met to make it an
3 accessory structure? It's not on the same
4 zoning lot as the residence; right?

5 MR. O'DONNELL: Sure it is. Because
6 zoning lot isn't the lot of record. The zoning
7 lot is -- the zoning lot as referred to here is
8 422, 504. That's the zoning lot.

9 MR. PODLISKA: Well, what troubles me
10 about that is that it sounds like a circuitous
11 argument. You are saying that it's an accessory
12 structure and therefore, it's one zoning lot.

13 MR. O'DONNELL: No. I'm saying it's an
14 accessory structure, therefore, it may only be
15 used on a zoning lot.

16 MR. PODLISKA: But does not this
17 provision seem to go the other way around, that
18 you have to show that it's on the same zoning
19 lot before it's an accessory structure?

07 23 10PM 20 MR. O'DONNELL: I put up on the screen
21 Section 12-206.

22 MR. PODLISKA: Do I have it in the

1 packet?

2 MR. O'DONNELL: Yes, you do. So 12-206
3 is important because this is the definition of a
4 zoning lot.

5 So a zoning lot is a tract of land
6 consisting of one or more lots of record. And
7 here the lots of record would be 504 and 422.
8 Or parts thereof, under single ownership or
9 control, located entirely within a block and
10 occupied by, or designated by its owner or a
11 developer at the time of filing for any zoning
12 approval or building permit as a tract of land
13 to be developed for a principal building and its
14 accessory buildings or -- so that speaks to if
15 you come in with an application that says I want
16 to take two lots of record. I want to build a
17 principal structure and an accessory use and we
18 are going to call it a zoning lot hereafter.

19 MR. PODLISKA: But if the property
20 owner wants to do it.

21 MR. O'DONNELL: That's right. Or --
22 and here's the second part of the definition. A

1 principal use, together with such open spaces
2 and yards are designed and arranged or required
3 under this code to be used with such building or
4 use.

5 So what we have here is two lots of
6 records, 504, 422. 504 has the accessory
7 structure in conjunction with 422. That creates.
8 That makes the two of those lots of record a
9 zoning lot.

07 24 40PM 10 MR. PODLIKA: So the first part of
11 this would be to accommodate the property owner
12 who wishes to add an accessory structure on his
13 property. And the second part of this would
14 impose that upon a property owner depending upon
15 how the use was done on the structures.

16 MR. O'DONNELL: Precisely. And here we
17 have the use of the structures of an accessory
18 structure, the 504 coach house, that was
19 designated, identified and used by the owner as
07 25 10PM 20 accessory to 422. The village does not permit
21 that unless you treat those two lots of record
22 as a single zoning lot.

1 CHAIRMAN NEIMAN: I want to go back to
2 9-101.B.2, which says, among other things, an
3 accessory structure or use is a structure or use
4 that is customarily found as an incident to such
5 principal structure or use.

6 In order to find the building that
7 you call a coach house, the four-car garage with
8 an apartment, is customarily found as an incident
9 to such principal structure or use, we necessarily
07 26 04PM 10 have to buy your argument that it's not a single-
11 family residence, it's not just a four-car garage,
12 it's -- well, we have to say it is just a four-car
13 garage and it's incident to the use of the other
14 property or it's not an accessory.

15 MR. O'DONNELL: Mr. Chairman, I don't
16 think any of us would disagree that a four-car
17 garage which serves the single-family home on
18 the lot next door is accessory.

19 CHAIRMAN NEIMAN: Now you are getting
07 26 38PM 20 into the use.

21 MR. O'DONNELL: So does your code.
22 That's what your code speaks to is the use.

1 CHAIRMAN NEIMAN: But it says the
2 structure that you want us to say is an accessory
3 structure is customarily found as an incident to
4 such principal structure.

5 How would you address the argument
6 that a separate single-family residence that is
7 used as an accessory is customarily found as
8 incident to such principal structure or use?

9 I agree with you that it was used
07 27 22PM 10 that way by the last couple of owners, but it's
11 a separate -- arguably, it's a separate single-
12 family residence; the village thought so. And a
13 separate single-family residence is not
14 customarily found as an incident to another
15 principal structure; it's a separate single-
16 family residence.

17 MR. O'DONNELL: But with all due respect,
18 I think we are focusing on labels and not use.

19 A four-car garage which was
07 27 50PM 20 constructed adjacent to a large motor court that
21 straddles the two property lines which the four-
22 car garage served only the occupants of the

1 principal structure next door is by any
2 definition an accessory use.

3 Now, the whole name of a coach house
4 -- I mean, I do a considerable amount of work in
5 Lake Forest and coach houses candidly are a dime
6 a dozen. Now, many of the coach houses have
7 other uses.

8 But a coach house historically by
9 its name would have part of it to be a garage,
07 28 26PM 10 or even a stable, depending how far back in time
11 we go, and a residence area for people that work
12 on the property to live. We don't call that a
13 single-family home, we call that a coach house.
14 Why do we call it a coach house? Because it
15 serves as an accessory use to the principal
16 structure. That's exactly what happened here.

17 And let's keep in mind if this
18 single-family home was such an appropriate, if
19 you will, single-family home, the first time
07 28 56PM 20 anybody decided to contemplate that 504 property
21 as a separate lot, what are they doing? They
22 want to teardown completely and build a single-

1 family home not a four-car garage with a little
2 under 2,000-square foot apartment.

3 That, I would suggest, in the
4 village of Hinsdale, does not scream single-
5 family home.

6 So I know I'm well over my time so
7 I'm hesitant to go on unless there are more
8 questions.

9 MR. MOBERLY: I'll ask you one question.

07 29 32PM 10 You talked a fair amount about wanting to
11 eliminate nonconforming lots. Is the Dugans'
12 lot, isn't that also nonconforming to that R-1?
13 It's roughly 25,000-square feet.

14 MR. O'DONNELL: It may very well be but
15 it's a nonconforming lot.

16 MR. MOBERLY: But you were just going
17 on about how we need to eliminate nonconforming
18 lots, and yet your client lives in a house on a
19 nonconforming lot.

07 29 58PM 20 MR. O'DONNELL: You have legal
21 nonconformities and those also in the village
22 are somewhat a dime a dozen and they are allowed

1 to remain.

2 But what I'm suggesting here is the
3 existing lot, what I'm referring to as the
4 zoning lot, is a conforming lot. But my point
5 is -- and it's not my point, it's your code's
6 point -- is that whenever given the opportunity
7 to eliminate nonconformities, I think the intent
8 of the code is to do that not to create them and
9 what would happen here is we would take a
07 30 28PM 10 conforming lot and create two nonconforming
11 lots.

12 MR. MOBERLY: Let's just go back
13 30 years ago to 1988 just for fun. I picked a
14 date out of the air. That was two separate
15 single-family houses, I'm talking about 422 and
16 504, on two separate lots with two separate
17 owners on two separate pins. So they were.
18 There's been two-single family houses on that
19 space for many, many, many years.

07 30 56PM 20 MR. O'DONNELL: Okay.

21 MR. MOBERLY: So now you are saying it's
22 one giant lot and the village never consolidated

1 that lot and they asked the ZBA for a variance
2 to consolidate and we have actually taken the
3 opposite tactic a couple of times that you have
4 to get our permission to consolidate the lots
5 together.

6 MR. O'DONNELL: I think part of the
7 movement is, as I understand it, when these
8 issues are presented and a zoning lot is created
9 is to consolidate them legally at the time so we
07 31 24PM 10 don't get into these arguments. But be that as
11 it may, it didn't happen here.

12 But the point is in 1988, to carry
13 forth your example, we have two single-family
14 homes on two legal nonconforming lots, but an
15 owner decided to take those two properties and
16 say, I want to build my own estate using those
17 two properties. I want to have my principal
18 structure and I want to have my accessory
19 structure.

07 31 50PM 20 And in order to do that, I need to
21 do three things. I'm going to rip down the
22 garage on 422 because I'm going to put my garage

1 on 504. I'm going to rip down the existing
2 garage on 504. I'm going to take the former
3 single-family home, I'm going to level it, and
4 I'm going to build a new four-car garage for my
5 house next door and add initially a rec room and
6 then an apartment to it and use it thereafter
7 singularly to serve the occupants of the 422
8 property and that was done for 24 years. So
9 under your code, that created a zoning lot which
07 32 26PM 10 is not permitted to be unwound.

11 CHAIRMAN NEIMAN: We are at 32-minutes.
12 Any of the other board members have any
13 additional questions? We will certainly permit
14 more time for questions.

15 (No response.)

16 Thank you, Mr. O'Donnell.

17 MR. O'DONNELL: Thank you.

18 Mrs. Dugan is going to briefly
19 speak to some of the issues that affect her use
07 33 06PM 20 and enjoyment of her property as it may be
21 affected by this structure and that will be very
22 brief.

1 MRS. DUGAN: Hello, Board. My name is
2 Nancy Dugan and I will be brief.
3 When we moved in, we understood
4 that the LaRocques owned the coach house as well
5 as the home and that part of the premium we were
6 paying was to be next to this beautiful large
7 property just like there's a property that's
8 large on the other side, the former McGue home.

9 When the house was built in 1999,
07 33 43PM 10 which was after the coach house was built, it
11 was built primarily to enjoy that view. So if
12 you look at our house, the majority of the house
13 is facing the 504 and the 422 property.

14 If you will notice, the coach house
15 is only set back between about six and nine feet,
16 both the rebuilt wall and the new wall, and I
17 thought single-family homes had sight set back
18 rules or they don't.

19 And now, Bayit plans to build this
07 34 16PM 20 huge 7,500 foot home not where the coach house
21 is but basically right on top of our house. We
22 are going to lose all of our light on the second

1 floor. We will have no light on the first
2 floor. It's really a shame being I don't think
3 we would have bought the house if we had known
4 that this was going to be permitted in the future.

5 Also, Bayit said they were going to
6 keep all the trees but they are taking down all
7 the trees. And I know that's not part of the
8 decision, but it's very disappointing that they
9 are choosing to take down all of the trees that
07 34 46PM 10 border us.

11 And then finally, we did talk to
12 John Bohnen, who helped us about home values and
13 we are here forever, the builder is not here
14 forever, however, we do have four children. We
15 might need to take money out on the house to
16 help finance their education. I have four kids
17 that are going to be in school within six years
18 of each other in college and so just because we
19 are not going to leave the community, doesn't
07 35 16PM 20 mean that the value of our home is not very
21 important to us because we may some day need to
22 get money out of it to finance our kids'

1 education.

2 So I hope you keep this all in
3 mind. Was this house really built as a single-
4 family home? Check out where the walls are and
5 everything like that. And I appreciate your
6 time on this matter.

7 CHAIRMAN NEIMAN: Thank you.

8 MR. MARRS: I don't want to take too
9 much of the owner's time but I just did want to
07 35 50PM 10 briefly kind of summarize the village's position
11 and make a couple of points.

12 Just to quickly reiterate the
13 history of this matter, and you can kind of
14 follow it along, but I thought I'd go through it
15 briefly. I think it's important as you consider
16 these code provisions and how the village has
17 approached this, keep in mind they don't do
18 transfer inspections in Hinsdale. Their contact
19 with a particular property is driven by somebody
07 36 16PM 20 coming in and asking for permits and that's how
21 they facilitate learning about a particular
22 property and from their existing files.

1 All right. So that happened last
2 year when staff was approached by the current
3 owner with plans for work at 422 Oak and they
4 reviewed those plans and subsequently it was a
5 neighbor who brought this 1993 letter to the
6 village's attention and upon receiving that
7 letter and consulting with me, staff went to the
8 owner and said, I got an issue here because as
9 you guys know, the letter specifies that if you
07 37 02PM 10 -- it's a proposal from somebody asking if I do
11 this, what's the result? And the village's
12 response was you can do what you are proposing
13 but be mindful that if you do, it becomes one
14 zoning lot and you can't then sell it off as of
15 right.

16 So from the village's position
17 having seen that that clear statement was made,
18 we said, Bayit Builders, you have a problem
19 here. The builder then appealed that finding
07 37 28PM 20 and it was during the process of dealing with
21 that appeal, and delving kind of further into
22 village records, that it came to the light that

1 as a result of the letter, the property owner
 2 had then revised his plans in order, from the
 3 village's perspective, to protect his rights.
 4 Specifically, it was learned that
 5 the 1993 letter, and it wasn't entirely clear
 6 from the context of that letter alone, that it
 7 concerned plans for this four-car garage with
 8 just a rec room over it. And presumably as a
 9 result of that letter, the plan he subsequently
 10 submitted made sure he was including all of the
 11 elements necessary to maintain a single-family
 12 home on that 504 property. So instead of a rec
 13 room over a four-car garage, he designed a two-
 14 bedroom residence, kitchen, bathrooms, et cetera,
 15 still over a four-car garage.

07:38:02PM

16 Assuming that staff was consistent
 17 back then with the way they would approach it
 18 today, staff would not have approved those plans
 19 for an accessory structure because -- and it's
 20 even made clear in the 1993 letter, it says,
 21 Keep in mind that you can't have a dwelling unit
 22 in your proposed coach house. Okay. And it has

07:38:30PM

1 all the elements of a dwelling unit, of a single-
 2 family house. So the village accepted those
 3 plans, then inspected and approved the property as
 4 a single-family home.

5 Now, I saw when I was reviewing
 6 materials preparing for tonight that the
 7 neighbors' counsel had asserted there was no
 8 certificate of occupancy, but after conferring
 9 with Robb, he did provide me with one, so there
 10 is one, which I can provide.

07:38:12PM

11 MR. MOBERLY: Can you just tell us what
 12 it says?

13 MR. MARRS: Sure. It's an application
 14 for certificate of occupancy for a single-family
 15 residential home signed by the village for 504
 16 South Oak.

17 MR. O'DONNELL: Mr. Chairman, I have a
 18 real objection to this for two reasons. And I
 19 think they are important. One is yes, this is
 20 all coming in late, that's the obvious. But
 21 more important is, we submitted two separate
 22 Freedom of Information Act requests to the

07:38:34PM

1 village and this document, which would have been
 2 responsive to both, never appeared.

3 So I would object to this being
 4 brought into the hearing literally during the
 5 hearing, and coupled with the fact that we
 6 submitted two Freedom of Information Act
 7 requests for the village's entire file on this
 8 and this document never showed up. I haven't
 9 even seen it. If it's what counsel represents,
 10 it was clearly responsive.

07:40:06PM

11 CHAIRMAN NEIMAN: Nor have we and I
 12 don't think we can consider evidence referenced
 13 but not submitted is my gut reaction, but if you
 14 have the exhibit with you --

15 MR. MARRS: I understand. I wasn't a
 16 party to the FOIAs; I don't know what was
 17 disclosed. But I do know that counsel for the
 18 other side has it, so I assume it was given to
 19 everybody.

07:40:33PM

20 Also, I would point out, the
 21 Freedom of Information Act and responses to that
 22 are not discovery; they are a separate matter

1 than this. So I do think it's relevant and you
 2 consider it but I understand your position.

3 At the end of the day, the village
 4 considered these to be single-family properties
 5 and even without a certificate of occupancy, I
 6 think that's obvious from the fact that they
 7 approved it and it's existed that way for these
 8 years.

9 Staff, they focus a lot on use.

07:41:22PM

10 And staff simply does not interpret the zoning
 11 lot definition as turning on use. I remind you
 12 again, we don't conduct transfer inspections.
 13 They don't have the resources or the capability
 14 to conduct a use analysis and get affidavits
 15 from neighbors and learn how a property has been
 16 used over the years.

17 The focus of the zoning lot
 18 definition is on the plans that are brought to
 19 the village, how somebody is presenting it. And
 20 that's exactly what happened in 1993. Somebody
 21 brought forth a plan that said, hey, I'm
 22 thinking of doing this. What's the result going

07:41:50PM

1 to be?

2 And the result was, the village
3 said, if you do that, you don't have a separate
4 independent lot anymore, you have a single
5 zoning lot. So they changed their plans.
6 There's no question about that. They changed
7 the plans. They created a single-family home in
8 order to protect their rights.

9 MR. PODLISKA: Should the homeowner
10 have gotten a certificate of zoning compliance?
11 I'm looking at 9-101.C.

12 CHAIRMAN NEIMAN: When required by
13 subsection 11-401.C of this code, a certificate
14 of zoning compliance evidencing a compliance of
15 the accessory use or structure, the provisions
16 of this code shall be obtained before any such
17 accessory use or structure exist.

18 MR. PODLISKA: So when he went back to
19 change the plan when he was told if you do it
20 this way, you are going to have a problem, and
21 we have all listened to how he went back and he
22 changed what he was going to do, once he made

1 that decision to do it a different way, was he
2 required then to present that and get a
3 certificate of zoning compliance to establish
4 that the new approach he was taking was going to
5 comply?

6 MR. MARRS: No. Because it's an existing
7 -- he's got an existing single-family home and he
8 made his inquiry, he got the answer that he
9 rejected and so then he went forward with keeping
10 it as an existing use and having it inspected
11 and approved as an existing single-family use.

12 CHAIRMAN NEIMAN: How do you address
13 the Dugans' argument that when they bought their
14 house, these two lots looked like one big lot
15 with an accessory structure and it was used that
16 way for years by prior owners and it's been used
17 that way ever since the Dugans bought the house
18 and initially even the village thought that was
19 correct and it was an accessory use and then
20 they found some more documents, the Dugans
21 couldn't have found those documents. They built
22 their house in a certain way and now if this new

1 house is allowed to be built, it takes away the
2 property value and how were they supposed to
3 know and isn't that unfair?

4 MR. MARRS: I don't know what the
5 answer is to that other than the fact that I
6 understand him referring to it as a coach house
7 but it's a fairly substantial structure. It has
8 a four-car garage, it looks like a house to me.

9 CHAIRMAN NEIMAN: How was it built so
10 close to the other lot line?

11 MR. MARRS: That's a question I think
12 Robb can answer.

13 CHAIRMAN NEIMAN: Please.

14 MR. MCGINNIS: It's a precode structure.
15 They demolished part of it. But the reality is
16 that structure existed and they did an extensive
17 renovation to it but they didn't demolish it.
18 That's why it's so close to that south lot line.

19 MR. MARRS: Right. So that's another
20 issue that I wanted to raise.

21 Subject to 10-104 it's not a
22 demolition, it's an alteration and an enlargement

1 which does not go to the subsection C that he
2 was saying. They have a right to alter that
3 existing precode structure. They have a right
4 to enlarge it, which is exactly what they did.

5 So they have maintained their rights
6 under 10-104. It was a single-family home. It
7 continues to be a single-family home from the
8 village's perspective. It's not an accessory
9 structure.

10 A single-family home is not
11 customarily found as an incident to a principal
12 single-family structure. And frankly, again,
13 would not have been approved by staff because we
14 don't let you just put a second single-family
15 home on your lot. It's two zoning lots with two
16 single-family homes.

17 An accessory structure must be
18 subordinate in extent and purpose. A single-
19 family home is simply not subordinate in extent
20 and purpose to a single-family home; they are
21 both principal structures.

22 And lastly, to his focus on the

1 word capable, I appreciate his argument on that,
 2 but I guess I wasn't anticipating as much
 3 scrutiny on that particular word. Maybe if I
 4 had it to do over, I would use a different
 5 phrase like able or authorize, but I did not
 6 mean it in the sense that he is suggesting that
 7 I meant it to be. It wasn't a reference to use,
 8 so much as it was a reference to authority under
 9 the statute.

07:45:54PM 10 MR. PODLISKA: Both of these lots right
 11 now are nonconforming, right?

12 MR. MARRS: Yes.

13 MR. PODLISKA: And if the builder takes
 14 down what we have been calling a coach house,
 15 unless it's a renovation, can he build a new
 16 structure on that site?

17 MR. MARRS: Yes. Under 10-104 you can
 18 rebuild even if you voluntarily demo it, subject
 19 to the lot area. You have to -- as long as you
 07:47:24PM 20 conform to all the setbacks and other
 21 requirements, you are allowed to do it except
 22 for lot area and lot size.

1 MR. PODLISKA: So even though the lot
 2 area, the dimensions are nonconforming, there
 3 can still be a new structure on it?

4 MR. MARRS: Right. As long as you can
 5 create a building pad that fits and meets the
 6 other aspects of 10-104.

7 MR. MCGINNIS: Just to be clear, 422
 8 may be a conforming lot on its own. I don't
 9 have the dimensions offhand but that's a pretty
 07:48:50PM 10 big lot. It may well be a conforming lot.

11 MR. PODLISKA: I'm looking at the
 12 letter from 1993, it looks like neither one of
 13 them conformed. 422 the lot width is 121
 14 instead of 125, and 504 is both -- the lot width
 15 is 78 feet instead of 125 and the lot area is
 16 way down, it's 25,291 instead of 30,000, but
 17 they can still build new structures on both of
 18 those properties, right?

19 MR. MARRS: Correct.

07:48:50PM 20 MR. PODLISKA: Thank you.

21 MR. MARRS: And in closing, what the
 22 owner never did was designate this property as a

1 principal building, an accessory building
 2 through zoning approvals or building permit
 3 request. They made an initial inquiry and they
 4 changed their plans. And that is not enough to
 5 create a zoning lot. So in the village's mind,
 6 this was a single-family home then and continues
 7 to be. There's been no change in the property
 8 since. They didn't take out the kitchen or get
 9 rid of the bedrooms. It's still a single-family
 07:49:05PM 10 home. It's had a continuous existence, having
 11 all the elements of a single-family home, and in
 12 that respect, the village, for its part, it did
 13 not see any basis to agree that a single zoning
 14 lot had been created. And with that, unless
 15 there's more questions.

16 MR. MOBERLY: I have one question. The
 17 brick motor court, or whatever that brick
 18 structure is, between -- that links both of
 19 these houses, we have held before where you
 07:49:42PM 20 build over the lot line, you combine.

21 What does the village consider that
 22 paver brick thing to be?

1 MR. MARRS: At the risk of upsetting
 2 everybody again, I was able to get documents
 3 from the village in that respect yesterday as
 4 well, and at the time the permits were issued
 5 for the sport court, they put a condition on
 6 there that they had to stay one foot off the lot
 7 line.

8 CHAIRMAN NEIMAN: Mr. O'Donnell, could
 9 you step up for a minute.

07:50:10PM 10 As a fellow litigator, I saw
 11 justifiable steam coming out of your ears, and
 12 let's see if we can clear up any issues on
 13 administrative review now rather than your going
 14 up on administrative review, or someone going up
 15 on administrative review, and having this
 16 inadvertent reference to evidence that's not in
 17 the record become reversible error.

18 We trust the village's counsel that
 19 he didn't know what was or wasn't submitted as
 07:50:50PM 20 far as the FOIA request. I think that we can,
 21 as judges and juries want to do, not consider
 22 those references to evidence not in the record

1 in making our decision.

2 The alternative, however, and I'd
3 like your view on it, and then I'd like the
4 board members' view on it, is to have those
5 documents produced to all parties, continue this
6 matter until next month so that Mr. O'Donnell
7 has a chance to consider that evidence not in
8 the record so that the record is fully developed
9 and then that issue couldn't possibly be
10 reversible error on administrative review.

07 51 36PM

11 Your view, Mr. O'Donnell?

12 MR. O'DONNELL: And I would want -- and
13 that's why we requested -- and one of the items
14 that we specifically requested is certificates
15 of occupancy. Because whether we all agree on
16 the issues, I think we knew what the issues were
17 and would be.

18 So I want this board to make a
19 decision on merits and I want to be able to
20 present our case similarly. So I'm much more in
21 favor of letting us have what we have asked for,
22 I don't know what all there is. It might be 2

07 52 03PM

1 documents, it might be 22 or 2,200, I have no
2 idea. But I would much prefer to take a look at
3 that material and then present it to you. If it
4 happens to be relevant and not play -- at least
5 at this point, not play litigation games about
6 what wasn't produced and what was requested, et
7 cetera.

8 CHAIRMAN NEIMAN: And the FOIA requests
9 were submitted far enough in advance that the
10 responsive materials should have all been
11 produced by now.

07 52 40PM

12 MR. O'DONNELL: Before we initially
13 submitted our -- obviously, we were looking for
14 the information upon which we could make a
15 determination whether to appeal.

16 MS. OVERBY: Susan Overby, on behalf of
17 Avra and Bayit.

18 We made an independent FOIA request
19 as well. I did not realize there's a
20 certificate of occupancy until I read your brief
21 and I located the certificate of occupancy as a
22 result of reading your brief. It's a one-page

07 53 10PM

1 document. I mean, I don't see why he can't look
2 at it now and we continue this hearing.

3 Alternatively, if the board does not
4 want to consider the evidence as not submitted,
5 then I would argue -- I suppose we could
6 continue this, but he simply just -- you cannot
7 consider the argument that there was not a
8 certificate of occupancy.

9 There's a fact. It's a fact.

10 There is a certificate of occupancy. We
11 received it as part of our FOIA request.

12 MR. O'DONNELL: With all due respect,
13 counsel can't have it both ways. Either we are
14 allowed to see whatever documents were requested
15 and adjust accordingly or, the new documents, if
16 you will, or not produced documents, can't be
17 considered. But counsel was saying that you
18 should consider the documents that weren't
19 produced and ignore the argument that we based
20 upon the documents not being available.

07 53 48PM

21 MS. OVERBY: No, that was not my
22 argument.

1 MR. O'DONNELL: Well, all I'm saying is
2 I'm perfectly willing to continue and deal with
3 the substance of whatever the record is.

4 CHAIRMAN NEIMAN: So Ms. Overby, you
5 are saying that the certificate of occupancy was
6 part of the village's FOIA response to your FOIA
7 request?

8 MS. OVERBY: Correct.

9 CHAIRMAN NEIMAN: And Mr. O'Donnell, you
10 are saying you submitted a FOIA request which
11 would have covered it and it wasn't and the
12 certificate of occupancy wasn't part of the
13 village's response to your FOIA request; is that
14 correct?

07 54 00PM

15 MR. O'DONNELL: Absolutely.

16 MS. OVERBY: My position is I did not
17 include the certificate of occupancy in my brief,
18 however, when I read his brief, I re-reviewed
19 all of the documents again and I discovered it's
20 a one-page document.

07 55 06PM

21 I find it difficult to believe that
22 it wasn't -- I mean, my understanding the way

1 that the village responds to FOIA requests is
2 that they simply print out all of the scanned
3 documents for the properties at issue. Maybe it
4 was a copying error. But my suggestion is it's
5 a one-page document, can you review it now? I
6 have copies for everyone.

7 MR. O'DONNELL: I thought I heard, and
8 I'll be corrected, but I thought I heard the
9 village attorney made reference to another
10 document that he was able to find yesterday and
11 I think that's what prompted you, Mr. Chairman,
12 to react.

13 CHAIRMAN NEIMAN: I saw the steam
14 coming out of your ears.

15 MR. O'DONNELL: That was probably pretty
16 evident. My only suggestion is I thought I
17 heard reference to what might be more documents.

18 MR. MARRS: That's correct. The
19 village is not trying to play gotcha.

20 MR. O'DONNELL: No, no.

21 CHAIRMAN NEIMAN: You are not to blame
22 here.

1 Ms. Overby, let me ask you a
2 question.

3 MS. OVERBY: Sure.

4 CHAIRMAN NEIMAN: If I were in your
5 shoes, but I'm not, I would be concerned that not
6 giving Mr. O'Donnell a chance to re-review the
7 FOIA request, the response to the FOIA request,
8 to see if he in fact received the certificate of
9 occupancy and any other documents that were
10 referred to this evening, would hand Mr. O'Donnell
11 a reversible error on administrative review and
12 then the case goes up and your client spends
13 however much money and wastes more time before
14 you start breaking ground if the ultimate
15 decisions will allow you to break ground.

16 MS. OVERBY: I'm in a difficult position
17 because obviously from my client's perspective
18 every day that passes is a day that we are not
19 moving forward on this project. But I absolutely
20 take your point that I don't want to put a time
21 bomb in this proceeding such that there's
22 reversible error. So if he feels he needs more

1 time to review the FOIA request, I can
2 understand that inclination.

3 CHAIRMAN NEIMAN: I have a suggestion
4 for everybody, and then I'll be quiet and let
5 the other board members speak.

6 It seems to me that what might be
7 the most efficient way to proceed is to allow
8 Mr. O'Donnell and the village to go back and
9 review what the village produced to Mr. O'Donnell.

10 If the documents that village's
11 counsel referred to this evening were part of
12 that response to the FOIA request, then we can
13 make our decision without any further hearing
14 because Mr. O'Donnell then would have had all of
15 those documents all along and he didn't focus on
16 them because no one was focusing on them and
17 then no further argument would be needed.

18 If, however, they weren't produced,
19 then I think we have to continue the hearing to
20 allow everybody to argue what those documents
21 showed and how they influenced the case.

22 Does that make sense to both sides?

1 MS. OVERBY: That makes sense to me.

2 MR. MARRS: Yes.

3 MR. O'DONNELL: Are you suggesting that
4 be done tonight?

5 CHAIRMAN NEIMAN: Oh, no. What I'm
6 suggesting is you and the village review the
7 documents in the next week. You confer with
8 each other to see if the documents that were
9 referenced were produced.

10 If they were produced, then we need
11 not have any further argument and when we
12 reconvene next month, we will have the
13 deliberations on the case without any further
14 argument.

15 If, however, those documents weren't
16 produced, then both sides will be allowed a
17 limited amount of time, famous last words, to --
18 at next month to address how those documents
19 only should influence our decision.

20 Is that fair, Mr. O'Donnell?

21 MR. O'DONNELL: It is.

22 CHAIRMAN NEIMAN: Board members?

1 MR. MARRS: Does that mean Ms. Overby
2 is going to get an opportunity --

3 CHAIRMAN NEIMAN: Oh, yes. Ms. Overby
4 will present her case this evening in case we
5 don't reopen anything.

6 MS. OVERBY: Okay.

7 MR. O'DONNELL: Could I just ask, the
8 certificate of occupancy, can I actually see it?

9 CHAIRMAN NEIMAN: I think that's fair.

08 00 08PM 10 To the extent that there are -- we
11 could call a special meeting if it's necessary
12 to either do just our deliberations or to reopen
13 the hearing, but let's see how quickly -- it seems
14 to me -- let's first see how quickly Mr. O'Donnell
15 and the village can figure out what was and wasn't
16 included in the FOIA request.

17 If everything was included in the
18 FOIA request, then we can have a special meeting
19 just for deliberations or we can wait until next
08 00 44PM 20 month. And similarly, if the documents weren't
21 included, we can call a special meeting or wait
22 until the next month.

1 Let's just make sure everybody is
2 literally on the same page first and then Chris
3 will circulate an email about whether the
4 parties' preference is a special meeting before
5 next month's meeting and if the board members
6 are available, terrific, and if we are not, or
7 if the consensus of the parties is that no
8 special meeting is necessary, it can wait until
9 next month, then we will wait until next month.
08 01 16PM 10 Okay.

11 MR. PODLISKA: To make sure everybody
12 gets on the same page, it might be helpful too
13 to have counsel for both sides match up what they
14 got from the village to make sure that everybody
15 is working from the same set of documents. I
16 think in the end that's going to make it easier.

17 CHAIRMAN NEIMAN: Does the village
18 Bates stamp documents to their response to FOIA
19 requests?

08 01 46PM 20 MS. BRUTON: Not the individual piece
21 of paper but the bulk of the communication would
22 have a date when it was responded to.

1 CHAIRMAN NEIMAN: Okay.

2 Ms. Overby?

3 MS. OVERBY: So again, my name is Susan
4 Overby, and I represent Bayit Builders and Avra,
5 which is the owner of 504 South Oak.

6 A lot of ground has already been
7 covered. I just wanted to speak on a couple of
8 points.

9 First of all, I understand that the
08 02 32PM 10 board has determined, at least for purposes of
11 this hearing, that the Dugans do have standing
12 to appeal the village's decision but for the
13 record, I just wanted to reiterate that it's our
14 position that they don't have standing and that
15 they have not shown that they will be aggrieved
16 by the proposed building of a single-family
17 structure, an additional new single-family
18 structure at 504 South Oak.

19 We have heard a little bit about the
08 03 02PM 20 history of 504 South Oak. From at least 1948
21 until 1993, 504 South Oak was a single-family
22 structure that was owned by separate owners from

1 the people who own 422 South Oak. So to the
2 extent there's been argument that 504 South Oak
3 was always a coach house to 422 South Oak, the
4 recorded history of that property does not bear
5 that out.

6 In 1993, Jerome Girsch purchased
7 504 South Oak. He decided he wanted to make some
8 modifications to that property. Again, I take
9 issue with the notion that the building was ever
08 03 48PM 10 demolished. It was altered but it was not torn
11 to the ground.

12 He submitted his plans in 1993 to
13 the village. The village said, if you proceed
14 with these plans, you are going to have a single
15 zoning lot. That was exactly the opposite of
16 what Mr. Girsch wanted to do and we presented an
17 affidavit from Mr. Girsch that explained his
18 intention.

19 When the village made its original
08 04 16PM 20 determination with respect to my clients'
21 application to teardown the garage at 422 South
22 Oak, it was based on this 1993 letter and it

1 took some time to find the other plans that were
2 eventually executed.

3 And what happened was that I
4 personally went to village hall and I found those
5 plans and those plans were saved in a separate
6 microfiche for preplan reviews. They were not
7 scanned into the file. Nevertheless, anyone
8 could have gone down to the village hall and
9 looked at that microfiche and determine that the

08 05 30PM 10 intention was -- Mr. Girsch's intention was that
11 504 South Oak remain a single-family residence.

12 The Dugans have made a valiant
13 attempt to argue that the code says that mere
14 use of a structure can convert it into a single
15 zoning lot. I don't think that that is what the
16 code says. I don't think that the Dugans can
17 point to any specific portion of the code, or
18 even reading two portions of the code together,
19 to say that I could purchase my next-door
08 05 36PM 20 neighbors' house and because I used it to host
21 guests or as a closet or to store all of my
22 cars, that somehow I created a single zoning lot

1 with those two single-family residences.

2 To the extent that the current
3 structure at 504 South Oak is nonconforming, as
4 the village has pointed out, it's a precode
5 structure and as a precode structure, the
6 closeness to the property line was permissible.

7 The fact that it was maintained as
8 a -- that nonconformity was maintained does not
9 somehow convert, as the Dugans have argued, a
08 05 38PM 10 precode structure or precode lot into a

11 nonconforming lot. It was simply rebuilt and
12 that portion that was nonconforming was
13 maintained.

14 CHAIRMAN NEIMAN: Let me ask you a
15 question.

16 MS. OVERBY: Sure.

17 CHAIRMAN NEIMAN: I agree in theory that
18 anybody could have researched the microfiche and
19 found that it used to be a single-family residence
08 05 40PM 20 and was used that way before Mr. Girsch did the
21 remodeling and after that it met the technical
22 qualifications of the single-family residence,

1 but from the Dugans' perspective, when they
2 bought their property, people don't go and
3 research and microfiche what the next-door
4 neighbors did. It looked like one compound, a
5 big house with a small car garage and who was to
6 know that it was a single-family residence and
7 they relied on that when they bought the house.
8 How do you respond to that?

9 MS. OVERBY: Well, I would like to
08 07 26PM 10 point out my client, when it purchased 504 South
11 Oak, relied on the assurances of the village
12 manager that this was a lot that could be built
13 on and we paid over a million dollars to
14 purchase this lot.

15 If the Dugans prevail today, the
16 structure at 504 South Oak may only be used as
17 an accessory structure to 422 South Oak. If two
18 separate purchasers had purchased those
19 properties, if someone else had bought 422 and a
08 08 00PM 20 third party bought 504, that would mean if the
21 Dugans prevail, that they could use that
22 property for no purpose because it could only be

1 used as an accessory structure. That is an
2 absurd result.

3 It is unfortunate that the Dugans
4 believed that a building was not going to be
5 built, that it was always going to stay the same.

6 I live in Clarendon Hills. The
7 house next door to me is a tiny ranch house.
8 It's just been sold. They are going to build a
9 giant house next door to me. One entire side of
08 08 36PM 10 my house is going to be looking into that house.

11 That's what happens when you live in villages
12 that has buildings next to them. You buy some
13 shades and you put up some bushes.

14 And I understand that you are not
15 considering the standing argument and your
16 realtors -- Mr. Moberly has pointed out realtors
17 will say all different kinds of things, but the
18 sales history of 540 South Oak does not bear out
19 that they paid a premium for those views. The
08 08 40PM 20 house was on the market for 485 days and it sold
21 for 85 percent less than asking, which is lower
22 than average.

1 MR. MOBERLY: 85 percent of asking.

2 MS. OVERBY: Of asking. So there's not
3 evidence that they paid a premium for that.

4 While I commiserate with the sense
5 that they are not happy that their views might
6 change, but that's what happens when you live in
7 a village. And the zoning code, part of the
8 goals of the zoning code when it was enacted in
9 1989, were to maintain the current level of
10 property level that we had at that time.

08:09:48PM

11 At that time in 1989, 504 South Oak
12 was a single-family home and all we are asking
13 is that it remain a single-family home as the
14 village has perceived it since 1948, at least as
15 far as then.

16 I think to the extent that the
17 village takes the view, which I do not think is
18 supported by any reading of the code, that use
19 alone can convert two separate zoning lots into
20 a single zoning lot, I think there needs to be
21 an effort made that that becomes a matter of
22 public record so that the unsuspecting buyer is

08:10:28PM

1 not placed in a situation where they can
2 purchase a property for over a million dollars,
3 doing all possible due diligence, with a letter
4 from the village saying that they could build,
5 and then be in a position where they cannot build,
6 or God forbid if two people had purchased, if
7 the Dugans prevailed, that they can only use
8 their house as a coach house to the neighbor
9 where they don't own that house.

08:11:08PM

10 I don't have anything further. If
11 there are any questions, I'd be happy to answer.

12 CHAIRMAN NEIMAN: Any questions?

13 (No response.)

14 Thank you.

15 So we will -- I guess, the correct
16 thing to do is say that we are going to close
17 the public hearing pending the outcome of a
18 comparison of what the village produced to
19 Mr. O'Donnell and what Mr. O'Donnell received.

08:12:00PM

20 Mr. O'Donnell, if you could review
21 those documents, if the village could review the
22 documents it produced to Mr. O'Donnell to see if

1 the documents that were referred to were in fact
2 produced. If they weren't in fact produced and
3 they were covered by Mr. O'Donnell's FOIA
4 request, then the village should produce them
5 immediately. If they were in fact produced,
6 then obviously nothing else has to be produced.

7 But if Mr. O'Donnell -- and
8 Mr. McGinnis, if you could coordinate on that in
9 the next few days, figure that out.

08:12:38PM

10 MR. MCGINNIS: Sure.

11 CHAIRMAN NEIMAN: And then, Chris, you
12 will let me know and then you and I will speak
13 further about what communication we will send to
14 the respective parties about what actually
15 occurred and what that means for whether we are
16 going to reopen the hearing or whether to allow
17 both parties to argue about the import of the
18 documents that Mr. O'Donnell hadn't received, or
19 alternatively, that we need no further public
20 hearing because Mr. O'Donnell did, in fact,
21 receive those documents and that we can then
22 proceed to deliberations without further hearing.

08:13:08PM

1 And as part of that communication,
2 Chris, I'll ask that you ask the parties whether
3 their preference is that we call a special
4 meeting to deliberate or reopen the hearing and
5 then deliberate, depending on the results of the
6 FOIA comparison. And if the consensus of the
7 parties is they want that hearing sooner rather
8 than later, we will poll all of the members and
9 see if there's an available date earlier than

08:14:04PM

10 next month. If there is, we will do it. If
11 not, we will do it next month.

12 Did that make any sense at all?

13 MR. O'DONNELL: It did, and I have a
14 question. I want you to know that I read your
15 rules, Mr. Chairman, and your rules provide that
16 I get a five-minute reply.

17 CHAIRMAN NEIMAN: Yes, they do.

18 MR. O'DONNELL: My question is: Do you
19 want me to do that today or wait until the next
20 time?

08:14:22PM

21 CHAIRMAN NEIMAN: Oh, no, you should do
22 it now.

1 MR. O'DONNELL: Okay.

2 MR. MOBERLY: I would not be opposed --
3 if we wait four weeks, you can do you reply now,
4 but if we reconvene in four weeks, a lot is going
5 to happen. I wouldn't mind a brief summary.

6 CHAIRMAN NEIMAN: But we might not
7 reopen and Mr. O'Donnell is entitled to his five
8 minutes.

9 MR. MOBERLY: Okay.

DB 14 42PM 10 MR. O'DONNELL: I just want to make a
11 couple of points. The first one has to do with
12 the application of 10-104 as to whether or not
13 we are talking about a precode structure here.

14 And let me actually address it
15 backwards, if you will, as how it was addressed.
16 The village attorney was asked a question by one
17 of the members, I candidly don't recall who, as
18 to well, how are they going to be able to fit --
19 the structure that exists now is nonconforming,
DB 15 12PM 20 how are they going to be able to build a new
21 home and I think it was you, Mr. Podliska.

22 MR. PODLISKA: Yes, it was.

1 MR. O'DONNELL: And the answer was:
2 Well, the existing structure is a precode
3 structure and Section 10-104 says that you can
4 demolish it and rebuild it but when you rebuild
5 it, you have to rebuild it in conformity to all
6 of the applicable regulations except those that
7 really don't control, which would be lot area
8 and lot dimensions. I couldn't agree more.
9 That was already done. That was my point with
DB 15 48PM 10 respect to what Girsch did.

11 Back in 1993 when Girsch demolished
12 -- and we have the demolition plans as an
13 exhibit, so there's no doubt that he demolished
14 much of the structure. I never said all. Much
15 of the structure. And he got a demolition
16 permit; he was able to rebuild.

17 If he was going to rebuild as a
18 precode structure, he would have to comply with
19 all applicable regulations of that district
DB 16 20PM 20 except for minimum lot area and lot dimension
21 regulations, which is exactly the correct answer
22 that the village attorney provided.

1 But, when he rebuilt, he rebuilt
2 with another nonconformity. The minimum side
3 yard setback was not complied with because he
4 maintained that existing wall. The code is clear
5 that when you rebuild a precode structure and you
6 can maintain precode structure status if you
7 comply with all requirements of that district
8 except for minimum lot area and lot dimension
9 regulations.

DB 17 02PM 10 CHAIRMAN NEIMAN: Why can't they
11 teardown that building now and rebuild a new
12 house that doesn't need any variation?

13 MR. O'DONNELL: It's not a precode
14 structure. That's the problem. Because they
15 lost precode structure status when Girsch
16 rebuilt with an existing nonconformity. It's
17 not a precode structure.

18 What it is is a nonconforming lot.
19 So any argument that's based on -- premised on
DB 17 30PM 20 the structure that's there to be demolished and
21 replaced as being a precode structure, it's not.
22 That was what Girsch took down and replaced but

1 he maintained the nonconformity, it loses its
2 status as a precode structure.
3 And actually, we have a letter from
4 the village in May of 2016, which says just that
5 when there was an inquiry made by a neighbor, an
6 area resident. And they were asked about in a
7 preplan review and the response from the village
8 talking about the 504 lot, quote, "The property
9 is a nonconforming interior lot." No precode
DB 18 10PM 10 structure. It's not a legal nonconforming lot
11 because it lost precode structure status when
12 Girsch rebuilt and maintained a nonconformity.

13 CHAIRMAN NEIMAN: How would you respond
14 to the builder's argument that they did their
15 due diligence, the village told them that it was
16 two separate lots and they could build a new
17 house on one of the lots and they relied in good
18 faith on what the village told them and they
19 spent money and there's kind of a detrimental
DB 18 48PM 20 reliance argument and how would you remedy their
21 loss?

22 MR. O'DONNELL: No doubt they had

1 bought two lots, but they bought a property, a
2 single property in a single purchase, and that
3 property had a single-family home on one lot and
4 --

5 CHAIRMAN NEIMAN: But they are two
6 different --

7 MR. O'DONNELL: One purchase.

8 CHAIRMAN NEIMAN: Yes, but two separate
9 pins.

08 19 18PM 10 MS. DUGAN: We have two pins on our
11 property.

12 MR. O'DONNELL: Two separate pins.

13 CHAIRMAN NEIMAN: But you can convey
14 two different properties in one deed.

15 MR. O'DONNELL: Yes. Of course.

16 CHAIRMAN NEIMAN: Okay. So how are
17 they to know it wasn't one property when the
18 village told them otherwise?

19 MR. O'DONNELL: Well, they clearly knew
08 19 40PM 20 it wasn't used as one property. They knew it
21 was used as one.

22 CHAIRMAN NEIMAN: Okay. But my

1 question was: How do you remedy their damage?
2 If they relied in good faith on what the village
3 told them they would be able to do and they
4 spent money to buy one lot and then the other,
5 keeping in mind that their intent was to build a
6 new house, and now if we say no, you can't do
7 it, what's their remedy? And why would they be
8 held responsible for what the village -- for not
9 knowing what the village told them they could
08 20 20PM 10 do?

11 MR. O'DONNELL: Well, first, one can
12 always make the inquiry before you purchase,
13 particularly when your intention is to develop
14 both as single-family homes. So you certainly
15 can perform that due diligence by making that
16 inquiry before you buy.

17 CHAIRMAN NEIMAN: I understood
18 Ms. Overby's argument to say that they did do
19 that and the village said sure, go ahead.

08 20 42PM 20 MR. O'DONNELL: Well, I don't think
21 that's what occurred. Because what occurred on
22 May 27, 2016, they submitted a single page

1 application for a review, preplan review only
2 for the 504 lot. And the village's response to
3 that was -- well, they did not identify the
4 single-family home, they just submitted a request
5 for 504. The village's response was looks like
6 a single-family lot. But we, the village,
7 reserve the right to change if more information
8 becomes available.

9 Then they turn around and submit it
08 21 22PM 10 for a demolition permit for the garage on 422.
11 That's when the village realized, wait a minute,
12 we are talking about a zoning lot. So when the
13 village -- and it's not incumbent on the village
14 to advise a perspective purchaser on what they
15 should or should not purchase and whether or not
16 they can do what they intend to do. That's
17 typically what due diligence is for. And
18 typically when a developer -- typically when a
19 developer purchases a piece of property, they
08 21 50PM 20 take advantage of a period of time to find out
21 if there's an opportunity to do what they intend
22 before they close.

1 So, candidly, having represented
2 any number of developers, if a developer didn't
3 take advantage of the opportunity to find out
4 from the community what it is they were buying
5 and whether or not their plan could be executed,
6 or even possible to execute, I don't think that's
7 the responsibility of a neighbor. I don't think
8 that's the responsibility of the village.

9 Because here when the village was
08 22 20PM 10 presented with requests and they -- well, first --
11 and I'm not suggesting anybody was misleading
12 anybody, but the initial request out of the box
13 from Bayit Builders was to show only a single
14 page application and a survey of the 504 lot
15 only not showing the 422 lot.

16 It was the village when they finally
17 got the application to demolish the garage at
18 422 that said, wait a minute. Now we, the
19 village, see what's going on. You are looking
08 22 52PM 20 to put a garage on 422 because your garage is on
21 504. That's a zoning lot.

22 So I would suggest to you if the

1 submission at the outset said look, this is what
2 we are buying, the whole thing, both lots. From
3 what the village's reaction was when they became
4 aware of that 422 was part of this equation, the
5 village instantly said zoning lot, you can't do
6 it.

7 So I think the responsibility lies
8 with the purchaser here. I don't think it
9 relies with the village and it certainly doesn't
10 lie with the neighbor.

08:23:30PM

11 CHAIRMAN NEIMAN: Any other questions
12 of Mr. O'Donnell?

13 MR. PODLISKA: Yes. On this
14 demolition, you refer to the demolition but the
15 village said that was merely a remodel. So when
16 we are looking at 10-104, if it's demolished,
17 then it has to be rebuilt to code except for
18 minimum lot area and lot dimension regulations.

08:23:54PM

19 But I'm looking at the letter that
20 the village sent on August 11, 1993, where it
21 says, The coach house can be remodeled provided
22 that the remodeling does not create any new

1 nonconformities or increase any existing
2 nonconformities.

3 That means that when he remodeled,
4 the fact that it's too close to the lot line,
5 he's not required to comply with that provision
6 of the code, right, he's only remodeling. He
7 can't make the nonconformity worse but he isn't.

8 MR. O'DONNELL: Here, what 10-104 --
9 I'll answer your question in two parts because
10 there's a two-part answer.

08:24:28PM

11 The code Section 10-104 refers to
12 any demolition. Doesn't say you have to
13 demolish the entire property, it talks about any
14 demolition.

15 MR. PODLISKA: But it has to be a
16 demolition not a remodel.

17 MR. O'DONNELL: Well, let's take a look
18 at the next document that I just put up on the
19 screen. We have a demolition plan, the approved
20 demolition plan that Girsch received back in
21 1993. So he applied to demolish and the village
22 granted permission to demolish and rebuild.

08:24:48PM

1 CHAIRMAN NEIMAN: Wait, wait, wait.
2 How did he apply to demolish anything when it
3 was a remodel all along? There were parts of
4 the structure that was there that were going to
5 remain.

6 MR. O'DONNELL: Because he was taking
7 down so much of the property. We can see here
8 what he took down. He was demolishing most of
9 the structure.

08:25:20PM

10 CHAIRMAN NEIMAN: Okay. You are
11 referring to it as a demolition because a lot of
12 the structure was being torn down, but you can
13 see that not all of it was being torn down;
14 correct?

15 MR. O'DONNELL: Absolutely. Because he
16 maintained the nonconformity of the existing
17 south wall.

18 CHAIRMAN NEIMAN: How much of a
19 structure has to be demolished before it's
20 technically a demolition under that section of
21 the code?

08:25:50PM

22 MR. O'DONNELL: Well, that section of

1 the code refers to any demolition and it's up to
2 each municipality. Obviously, the village
3 determines the extent of demolition that
4 requires a permit to do so. But here, clearly
5 there was a requirement for a demolition permit
6 which was applied for and received. So there
7 was a demolition.

8 The point with respect to the
9 rebuild, if I can get to the second part of my
10 answer, is that's fine that they rebuilt it.

08:26:16PM

11 There's no objection to that. But the fact that
12 they rebuilt it and maintained a nonconformity
13 other than lot area or lot dimensions took it
14 out of the category of a precode structure.

15 MR. PODLISKA: I understand what you are
16 saying, but that depends upon you are defining
17 this as a demolition whereas the village is
18 calling it a remodel. And the village in their
19 letter is saying as long as it's only a remodel,
20 that nonconformity can continue, just don't make
21 it any worse. That's what this letter says from
22 '93; right?

08:26:42PM

1 MR. O'DONNELL: I disagree because it's
2 clear that what Girsch was doing in his own
3 plan. The plans are part of the record. His
4 own plans reflect a demolition and rebuild.

5 MR. PODLISKA: Your position is the
6 village is wrong on that; right?

7 MR. O'DONNELL: Not at all wrong. I
8 think the village at the time was correct, that
9 the demolition was obviously permitted. The
10 rebuild -- call it rebuild, remodel, put
11 something else there, it doesn't really matter.
12 It fits the definition under 10-104.

13 In order for that additional
14 construction to be done and maintain status as a
15 precode structure, it had to eliminate all
16 nonconformities except for two. It maintained
17 an existing nonconformity. So there's no
18 problem with what the village did but it lost
19 its status as a precode structure.

20 MR. PODLISKA: I don't think that's what
21 this letter from the village in '93 is saying.

22 MR. O'DONNELL: The village in 1993

1 made no comment whatsoever with respect to
2 whether or not the status of the precode
3 structure was being maintained or not.

4 MR. PODLISKA: Well, they are saying that
5 it's okay to remodel provided the remodeling
6 does not create any new nonconformities or
7 increase any existing nonconformities; right?

8 MR. O'DONNELL: That's correct. And
9 that's allowed to be done. But in order to be a
10 precode structure, which is elevated status, if
11 you will, under your zoning code, you can maintain
12 an existing nonconformity and it becomes a
13 nonconforming lot. That's what the village did.
14 But the status of a precode structure because
15 there are special rights granted or conferred on
16 properties with precode structures. My only
17 point is that special status was lost when they
18 maintained the nonconformity of the side yard
19 setback.

20 MR. PODLISKA: But did I understand you
21 to say that as a result, today they cannot build
22 a new structure on that property?

1 MR. O'DONNELL: My point is way before
2 that. My point is they can't build a new
3 structure on their property and use it other
4 than accessory to the 422 property. In other
5 words, they can't spinoff, if you will, or
6 divide the zoning lot because again --

7 MR. PODLISKA: I understand. But if
8 you lose on that point, that it is two separate
9 properties, your argument is even if it's two
10 separate properties, you can't build on this
11 property because you have lost your ability to
12 construct as long as it complies with everything
13 else other than width and area.

14 MR. O'DONNELL: To be fair, our case is
15 premised on the 422 and the 504 properties being
16 considered as a zoning lot.

17 If we lose on that and that's
18 considered simply a nonconforming lot, well then
19 it can be built on and there are requirements
20 for construction on a nonconforming lot.

21 My only point would be as a further
22 limitation is you can't consider that any longer

1 as a precode structure, so kind of the
2 additional rights one gets on a property with a
3 precode structure would be lost. There are
4 still rights that are available to be built on a
5 nonconforming lot.

6 MR. PODLISKA: I got it. Thank you.

7 MR. O'DONNELL: Okay. If I wasn't
8 clear, I apologize.

9 CHAIRMAN NEIMAN: Thank you,
10 Mr. O'Donnell.

11 Is there a motion to do what I said
12 before? Let me be more specific.

13 Is there a motion to close the
14 Public Hearing subject to reopening along the
15 lines that I talked about before?

16 MR. GILTNER: So moved.

17 MR. PODLISKA: Second.

18 CHAIRMAN NEIMAN: Roll call?

19 MS. BRUTON: Member Moberly?

20 MR. MOBERLY: Yes.

21 MS. BRUTON: Member Giltner?

22 MR. GILTNER: Yes.

1 MS. BRUTON: Member Engel?
 2 MS. ENGEL: Yes.
 3 MS. BRUTON: Member Podliska?
 4 MR. PODLISKA: Yes.
 5 MS. BRUTON: Chairman Neiman?
 6 CHAIRMAN NEIMAN: Yes.
 7 So both parties should know that
 8 both of their attorneys and the village counsel
 9 did a really good job tonight because these were
 10 really good legal arguments on both sides. I
 11 can go either way on this and I think this is in
 12 part based on the skill of all the counsel and
 13 partly based on the fact that we passed some
 14 rules saying focus your arguments in writing and
 15 don't just dump on us. So both sides should be,
 16 in my view, very pleased.
 17 This isn't the first time sitting
 18 in any of these chairs that I thought boy, I
 19 better understand how difficult a job real
 20 judges have doing this job. So thank you to
 21 everybody, and we will let you know what's
 22 happening.

08 31 26PM

08 32 04PM

08 32 04PM

1 MR. MARRS: Could I make one comment
 2 before you close?
 3 CHAIRMAN NEIMAN: Yes.
 4 MR. MARRS: I just want to make sure,
 5 typically when we would continue a public
 6 hearing, we would do it to a date certain but in
 7 this case, the notice only went to the parties
 8 here; correct?
 9 MR. MCGINNIS: Correct. Under appeal
 10 there's no mailing requirements.
 11 MR. MARRS: So if everyone here present
 12 understands that they will be communicated to
 13 all of us.
 14 MS. OVERBY: There won't be any open
 15 meetings issues with that?
 16 MR. PODLISKA: We can continue it to a
 17 date certain subject to amending it later on if
 18 we choose to.
 19 CHAIRMAN NEIMAN: Why don't we continue
 20 it until next month and if there's another -- if
 21 the parties want us to expedite whatever
 22 additional hearing or deliberations are needed,

08 32 32PM

08 32 56PM

08 32 56PM

1 then we will. I suspect, Chris, we would have
 2 to publish notice of that hearing to comply with
 3 open meetings. I know this is an appeal but --
 4 MS. BRUTON: We do a legal notice which
 5 needs to be done between 15 and 30 days before
 6 the hearing so that doesn't really give you a
 7 lot of wiggle room.
 8 MR. MARRS: But not for an appeal. We
 9 don't publish for an appeal.
 10 MS. BRUTON: Yes, we publish a legal
 11 notice.
 12 CHAIRMAN NEIMAN: We will continue it
 13 to next month's meeting and if the parties want
 14 us to expedite the matter and have an earlier
 15 deliberation or deliberation and hearing.
 16 MS. BRUTON: If it's a deliberation, if
 17 we are not having a public hearing, so I don't
 18 think you would need to publish.
 19 CHAIRMAN NEIMAN: Okay. Right. So if
 20 we only need deliberation and the parties want
 21 that deliberation expedited, then no public
 22 notice would be required and if we can figure

08 33 39PM

08 34 08PM

1 out a date that's convenient for everybody, we
 2 will do it. If we have to reopen the hearing,
 3 then we have to do it with sufficient lead time
 4 for the village to issue the public notice to
 5 comply with the Open Meetings Act. We will try
 6 to do it that way and if we can coordinate all
 7 that, we will and if we can't, it will be next
 8 month.
 9 MS. OVERBY: I need to ask one
 10 clarifying question. If we find that the FOIAs
 11 were not -- the records were not included in
 12 Ms. Dugan's FOIA request, is the contemplation
 13 that there would be further argument or do you
 14 want more written submissions?
 15 CHAIRMAN NEIMAN: Is your question if
 16 the Dugans' FOIA request didn't request those
 17 documents?
 18 MS. OVERBY: No. I'm sorry if I
 19 misspoke.
 20 If it turns out that the Dugans'
 21 attorney did not receive the documents that I
 22 received or that were referred to by the

08 34 40PM

08 35 06PM

1 village's attorney, is the idea then we have a
 2 hearing, do you want more writing on it?
 3 CHAIRMAN NEIMAN: No. We will have a
 4 hearing limited to the import of the documents
 5 that Mr. O'Donnell did not receive. We are not
 6 reopening the entire hearing. It will be a very
 7 short reopening of the hearing limited to the
 8 import of those specific documents nothing else.
 9 We had the hearing.

08:35:40PM 10 MS. OVERBY: We will receive notice of
 11 whatever those documents are?

12 CHAIRMAN NEIMAN: Of course.

13 MS. OVERBY: Okay.

14 CHAIRMAN NEIMAN: Thank you, everybody.

15 MR. MOBERLY: Motion to adjourn.

16 MR. GILTNER: Second.

17 CHAIRMAN NEIMAN: Roll call, please?

18 MS. BRUTON: Member Moberly?

19 MR. MOBERLY: Yes.

08:38:10PM 20 MS. BRUTON: Member Giltner?

21 MR. GILTNER: Yes.

22 MS. BRUTON: Member Engel?

1 MS. ENGEL: Yes.

2 MS. BRUTON: Member Podliska?

3 MR. PODLISKA: Yes.

4 MS. BRUTON: Chairman Neiman?

5 CHAIRMAN NEIMAN: Yes.

6 (WHICH, said Public Hearing
 7 was continued to March 21,
 8 2018 at 6:30 p.m.)
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1 STATE OF ILLINOIS)

) ss:

2 COUNTY OF DU PAGE)

3 I, KATHLEEN W. BONO, Certified
 4 Shorthand Reporter, Notary Public in and for the
 5 County DuPage, State of Illinois, do hereby
 6 certify that previous to the commencement of the
 7 examination and testimony of the various
 8 witnesses herein, they were duly sworn by me to
 9 testify the truth in relation to the matters
 10 pertaining hereto; that the testimony given by
 11 said witnesses was reduced to writing by means
 12 of shorthand and thereafter transcribed into
 13 typewritten form; and that the foregoing is a
 14 true, correct and complete transcript of my
 15 shorthand notes so taken aforesaid.

16 IN TESTIMONY WHEREOF I have
 17 hereunto set my hand and affixed my notarial
 18 seal this 14th day of March, A.D. 2018.
 19

20 KATHLEEN W. BONO,
 C.S.R. No. 84-1423,
 Notary Public, DuPage County
 21 237 South Wisconsin Avenue,
 Addison, IL 60101-3837
 22

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