

#### MEETING AGENDA

#### SPECIAL MEETING OF THE ZONING BOARD OF APPEALS THURSDAY, FEBRUARY 22, 2017 6:30 P.M.

#### MEMORIAL HALL - MEMORIAL BUILDING

(Tentative & Subject to Change)

- 1. CALL TO ORDER
- 2. ROLL CALL
- 3. APPROVAL OF MINUTES
  - a) Regular meeting of December 20, 2017
- 4. APPROVAL OF FINAL DECISION
  - a) V-09-17, 15 East Fifth Street
- 5. RECEIPT OF APPEARANCES
- 6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE
- 7. PRE-HEARING AND AGENDA SETTING
  - a) V-01-18, 415 South Vine Street
  - b) V-02-18, Monument Sign on Landscaped Median of Salt Creek Lane
  - c) V-03-18, 842 West Seventh Street
- 8. PUBLIC HEARINGS
  - a) APP-03-17, 504 S. Oak Street & 422 S. Oak Street
- 9. NEW BUSINESS
- **10.OLD BUSINESS**
- 11. ADJOURNMENT

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

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1 2 3 4 5		VILLAGE OF HINSDALE ZONING BOARD OF APPEALS MINUTES OF THE MEETING December 20, 2017
6 7 8 9	1.	CALL TO ORDER Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, December 20, 2017 at 6:33 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.
11 12 13 14	2.	ROLL CALL Present: Members Gary Moberly, Keith Giltner, Joseph Alesia, Kathryn Engel and Chairman Bob Neiman
15 16		Absent: Members Marc Connelly and John Podliska
17 18 19		Also Present: Director of Community Development/Building Commissioner Robb McGinnis and Village Clerk Christine Bruton
20 21 22 23 24	3.	APPROVAL OF MINUTES  a) Regular meeting of November 15, 2017 There were no changes or corrections to the draft minutes. Member Moberly moved to approve the draft minutes of November 15, 2017, as presented. Member Engel seconded the motion.
25 26 27 28 29 30		AYES: Members Moberly, Giltner, Alesia and Engel and Chairman Neiman NAYS: None ABSTAIN: None ABSENT: Members Connelly and Podliska
31 32		Motion carried.
33 34 35 36 37 38 39	4.	APPROVAL OF FINAL DECISION  a) V-07-17, 640 Mills Street  There were no changes or corrections to the Findings of Fact and recommendation to the Village Board. Member Engel moved to approve the Final Decision for V-07-17, 640 Mills Street, as presented. Member Giltner seconded the motion.
40 41 42 43		AYES: Members Moberly, Giltner, Alesia and Engel and Chairman Neiman NAYS: None ABSTAIN: None ABSENT: Members Connelly and Podliska
45 46		Motion carried.
47 48		b) V-08-17, 348 Canterbury Court There were no changes or corrections to the draft final decision. Member

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Engel moved to approve the draft final decision for V-08-17, 348 Canterbury Court, as presented. Member Giltner seconded the motion.

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AYES: Members Moberly, Giltner, Alesia and Engel and Chairman Neiman NAYS: None ABSTAIN: None

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**ABSENT:** Members Connelly and Podliska

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Motion carried.

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

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

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#### 7. PRE-HEARING AND AGENDA SETTING

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

Mr. Bob O'Donnell, attorney representing the applicant and Ms. Susan Overby representing the property owners and Bayitt Builders, addressed the Board. Mr. O'Donnell began stating this is an appeal of the Village Manager's zoning decision that this is not a single zoning lot. He contends that it is, having been used as such for more than 25 years, and because he believes it is a single zoning lot as defined in the code. Therefore, he concludes only a single family home can be constructed on those properties. The definition he is relying on states 'a tract of land consisting of one or more lots of record...and occupied by a principle building and its accessory buildings' is The 504 S. Oak Street property contains a building that is an accessory to the 422 S. Oak Street single family home. It is a coach house with an apartment. Under the zoning code, the use of the property as accessory is what can and does create a single zoning lot. Mr. McGinnis's memo establishes the 504 S. Oak Street use was accessory; the owner of the property at 422 Oak used the 504 Oak property for an accessory structure. Mr. O'Donnell directed the Board to look at the photographs; 422 S. Oak has a house, 504 S. Oak has a garage. They share a motor court, they share a sidewalk. There is a walkway from the swimming pool to the sport court. This matter was presented to the Village in 1993, the then Assistant Village Manager agreed with this position. Irrespective of pin numbers or tax bills, he correctly analyzed how the properties are used.

Chairman Neiman added that the 1993 drawings were amended to maintain the owner's ability to treat the property as two zoning lots.

Ms. Susan Overby, representing the owners of the property, believes this interpretation can lead to an absurd result. If an owner owns two properties next door to each other and used one property as a closet, and one as living space, that doesn't turn the properties into a single zoning lot. When the then owner submitted plans, and asked if he could make changes to 504 S. Oak to

 be a garage and a recreation room, and could this then at some future time be sold as a separate lot, the Village responded it could not. Therefore, he didn't do that, but submitted a different plan. Although these properties had been sold together over the years, they maintained their separate status. When her client bought the two lots, they thought they had two lots. The coach house maintains all the features of a single family home. Mr. Girsch's intention in 1994 was to maintain this status, and her client should not now be punished.

Chairman Neiman commented that since this matter turns on how the property was used, he suggested affidavits or sworn testimony be provided from the owners as to how they used the property.

Mr. Dugan, applicant, addressed the Board stating his is the home to the south of the subject properties; and faces the Bayitt Builder's property. He stated when he purchased his home in 2009, he was told the Oak Street property was one property. He is concerned for his property value and quality of life.

Ms. Overby explained the existing 'accessory' structure is over 2,000 sq. feet and has a four car garage; the proposed new building is larger, but not that much. The house at 422 S. Oak will remain, the single family home proposed for 504 S. Oak would require no variances. Ms. Overby clarified that in 1993 Mr. Girsch wanted to tear down and rebuild, the Village said that was ok, but that will make the properties one zoning lot. He resubmitted different plans which included a kitchenette, a bedroom and separate living area. The Village approved them as single family residences. They used it as a separate place to stay, paid separate taxes and utilities. The property has been conveyed together since that time.

Chairman Neiman reminded all parties that any further submissions to the Zoning Board should comply with the ZBA rules. There is no obligation to provide a submission.

Member Moberly asked Mr. McGinnis what the Village's position is today and why. Mr. McGinnis said the Village position is they are two zoning lots, based on the plans that were approved in 1994, wherein the owner tried to maintain the characteristics of a dwelling lot. He added that if this happened today, the Village would require consolidation.

The public hearing was set for the next scheduled meeting of the Zoning Board of Appeals on January 17, 2018.

#### 8. PUBLIC HEARINGS

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

Mr. Peter Coules, attorney representing the applicant, began stating there are five houses on this side of the street and the property was purchased from a bank sale. He provided a Google Earth document that illustrates the seclusion of the subject property and added the house cannot be seen from the street at all. The zoning relief requested is to reduce the front yard setback for this property from the required 39.5' feet to 28' feet, which is the setback of the other homes on this street. The neighbors had asked that there not be a garage at the front of the property; the proposed plans do not

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46 47 have that feature. The neighbors, Ms. Zavickas and Mr. Cohen are pleased with the new plans, and that concern is gone.

Chairman Neiman asked Mr. Coules to review the criteria necessary for approval for the record. Mr. Coules stated the hardship in this case is the location of the current home. People don't want new houses in their backyards, and moving it forward on the lot will allow enjoyment of all the homes on the roadway. He confirmed that this reduction in the front yard setback will bring the home parallel with the neighbors on both sides. The block will be uniform, other than the Victorian home on the corner lot. The character of the neighborhood will remain the same; there will be no other variances on the house, other than the setback. Area traffic will not be increased; one single family home is being replaced with another. believes everyone wants the existing house taken down; there has been illegal activity in house since it has been vacant. The unique physical condition of the lot, which is unusually long, means this is not self-created. To deny the variance, which would line the home up with the others in the neighborhood, would deny the owner their substantial rights. This is not special privilege, they are asking for nothing different than everyone else in the neighborhood enjoys. This variance will not alter the essential character of the neighborhood, does not impair light, there are no safety issues or increased potential of flooding, this is still a huge lot with a smaller house. Finally, there will be no additional taxing of public utilities.

Member Alesia moved to close the public hearing for V-09-17, 15 East Fifth Street. Member Moberly seconded the motion.

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

NAYS: None ABSTAIN: None

ABSENT: Members Connelly and Podliska

Motion carried.

#### DELIBERATIONS

Member Engel began deliberations stating that she believes the applicant has met the criteria necessary for approval. She added that she has driven by the property and the house can't be seen; this variation makes logical sense. Member Alesia commented a new home on the property would be an improvement. Members Moberly, Giltner and Chairman Neiman agreed the criteria for approval had been met.

Member Engel moved to approve the variation know as V-09-17, 15 East Fifth Street. Member Giltner seconded the motion.

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

NAYS: None ABSTAIN: None

ABSENT: Members Connelly and Podliska

Zoning Board of Appeals Meeting of December 20, 2017 Page 5 of 5

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Motion carried.

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#### 9. NEW BUSINESS

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a) Consideration of a recommendation of a text amendment to the Village Board of Trustees regarding zoning lots and legal non-conforming lots of record

Chairman Neiman introduced the item stating he talked with Mr. McGinnis prior to the meeting and it strikes him it would be helpful to review the matter in detail and to invite the village attorney assist. He added the Zoning Board is comprised of volunteers, and that staff has the expertise in this area, as there are public policy implications associated with this matter.

Mr. McGinnis explained staff does not have a recommendation at this time, but pointed out there have been inconsistent outcomes in the last few years which tie back to definitions in the code. Staff is struggling with the number of cases of late. He, too, is concerned about unintended consequences.

Member Moberly commented the simpler and cleaner the code, the better.

#### 10.OLD BUSINESS - None

#### 11. ADJOURNMENT

Village Clerk

With no further business before the Zoning Board of Appeals, Member Podliska made a motion to adjourn the meeting of the Zoning Board of Appeals of December 20, 2017. Member Engel seconded the motion. Voice vote taken, all in favor, motion carried.

Chairman Neiman declared the meeting adjourned at 7:50 p.m.

	Approved:	
Christine M. Bruton		

#### FINAL DECISION

#### VILLAGE OF HINSDALE ZONING BOARD OF APPEALS PETITION FOR VARIATION

**Zoning Calendar:** 

V-09-17

Petitioner:

Allison & Jason Hanson

Meeting held:

Public Hearing was held on Wednesday, December 20, 2017 at 6:30 p.m. in Memorial Hall, in the Memorial Building, 19 East Chicago Avenue, Hinsdale, Illinois, pursuant to a notice published in The Hinsdalean on November 23, 2017.

Premises Affected:

Subject Property is commonly known as 15 E. Fifth Street, Hinsdale, Illinois and is legally described as:

THE WEST 45 FEET OF THE EAST 100 FEET (EXCEPT THE NORTH 25 FEET THEREOF) OF LOT 3 IN BLOCK 11 OF TOWN OF HINSDALE, BEING A SUBDIVISION OF THE NORTHWEST ¼ (EXCEPT RAILROAD LANDS) OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 14, 1866 AS DOCUMENT 7738, IN DUPAGE COUNTY, ILLINOIS

Subject:

In this application for variation, the applicant requests relief from the minimum front yard setback requirements set forth in section 3-110D(1) for the construction of a new single family home. The applicant is requesting an 11' reduction in the required front yard setback from 39.25' to 28.4'.

Facts:

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the north side of Fifth Street between Washington and Garfield. The property has a frontage of approximately 44.66', a depth of approximately 206.84', and a total square footage of approximately 9,237. The maximum FAR is approximately 3,409 square feet, the maximum allowable building coverage is 25% or approximately 2,309 square feet, and the maximum allowable lot coverage is 60% or approximately 5,542 square feet.

Action of the Board:

Members discussed the request and agreed that the standards for variation set forth in 11-503 (F) of the Hinsdale Zoning Code had been met. Specifically cited

reasons included the abnormally large setback of the existing home as well as the existing and fairly consistent setbacks of other homes on the block.

A motion to recommend approval was made by Member Engel and seconded by Member Alesia.

<b>AYFS</b>			
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Members Moberly, Giltner, Alesia, Engel, Chairman Neiman

NAYS:

None

**ABSTAIN:** 

None

ABSENT:

Members Connelly, Podliska

THE HINSDALE ZONING BOARD OF APPEALS

Chairman Robert Neiman			
Filed this	day of	, with the office of the Buildin	g Commissioner

#### **MEMORANDUM**

TO: Chairman Neiman and Members of the Zoning Board of Appeals

FROM: Robert McGinnis MCP
Director of Community Development/Building Commissioner

DATE: January 10, 2018

RE: Zoning Variation – V-01-18; 415 S. Vine Street

In this application for variation, the applicant requests relief from the minimum front yard setback requirements set forth in section 3-110D(1) for the construction of a new single family home. The applicant is requesting an 11.4' reduction in the required front yard setback from 36.4' to 25'.

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the east side of Vine Street between Fourth and Fifth. The property has a frontage of approximately 90', a depth of approximately 101.8', and a total square footage of approximately 9,162. The maximum FAR is approximately 3,390 square feet, the maximum allowable building coverage is 25% or approximately 2,290 square feet, and the maximum allowable lot coverage is 60% or approximately 5,497 square feet.

cc: Kathleen A. Gargano, Village Manager Zoning file V-01-18

# VILLAGE OF HINSDALE APPLICATION FOR VARIATION

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

PILING PRES: SEE 9

NAME OF APPLICANT(S):	Howard Chang
ADDRESS OF SUBJECT PR	OPERTY: 415 S Vine St
TELEPHONE NUMBER(S):	30-909-9268

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

DATE OF APPLICATION:

January 5, 2018



## **SECTION I**

Please complete the following:

	Name, address, and telephone number of owner: First American Bank Land Trust FM08108721
	den Ave, No 200, Downers Grove, IL 60515. Tel 630-909-9268
	<u>e Disclosure</u> . In the case of a land trust the name, address, and telephone number of
	tees and beneficiaries of the trust: First American Bank Trustee: Rosanne DuPass Main St, West Dundee, IL 60118, tel. 847-403-8112
Benefic	iary: Howard Chang, 900 Ogden Ave, No 200, Downers Grove, IL 60515. Tel. 630-909-9268
	nt's interest in the subject property: Howard Chang, 900 Ogden Ave, No 200, s Grove, IL 60515. Tel 630-909-9268
	t <u>Property</u> . Address and legal description of the subject property: (Use separate sheet all description if necessary.)  Refer to attached legal description
Conqui	tanta. Name and address of each professional consultant advising applicant with
respect	tants. Name and address of each professional consultant advising applicant with to this application:
respect a. Atto	to this application:  mey: NA
respect a. Atto b. Eng	to this application:

<b>)</b> ,	village Personnel. Name and address of any officer or employee of the village with an
	interest in the Owner, the Applicant, or the Subject Property, and the nature and extent of that
	interest:
	a. None
	b.

Neighboring Owners. Submit with this application a list showing the name and address of each owner of (1) property within 250 lineal feet in all directions from the subject property; and (2) property located on the same frontage or frontages as the front lot line or corner side lot line of the subject property or on a frontage directly opposite any such frontage or on a frontage immediately adjoining or across an alley from any such frontage.

Refer to attached name and address of neighboring owners

After the Village has prepared the legal notice, the applicant/agent must mail by certified mail, "return receipt requested" to each property owner/ occupant. The applicant/agent must then fill out, sign, and notarize the "Certification of Proper Notice" form, returning that form and <u>all</u> certified mail receipts to the Village.

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

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

  R-4, all single family homes except the church across street
- 10. Conformity. Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.
  NA
- 11. <u>Zoning Standards</u>. Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.

  Refer to attached Memo
- 12. <u>Successive Application</u>. In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code.

  NA

### **SECTION II**

When applying for a variation from the provisions of the Zoning Ordinance, you must provide the data and information required above, and in addition, the following:

variation i		The specific provi	sions of the Zoi	inig Ordinai	ce nom win
Sec. 3-110	ulk, Space, And	Yard Requirements			
Sec D.1 Fro	ıt.			<del>-</del>	
feature or i	eatures of the	recise variation bei proposed use, cons additional space i	truction, or devel	-	_
Per sec. 3-1	10, Sec D.1, spe	ecifically, we want to s	set the new constru	ction home whe	ere the existing
setback is	n S Vine St. To	reduce the required	front setback from	average block	setback of 36
25', slightly r	nore than the exi	sting 24.7'.			
Ordinance (Attach	that would be separate	tatement of the min necessary to permi sheet if of the required front ya	t the proposed use additional	•	

- (a) Unique Physical Condition. The Subject Property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure of sign, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the Subject Property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current lot owner.
- (b) Not Self-Created. The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title and known to the owner prior to acquisition of the Subject Property, and existed at the time of the enactment of the provisions from which a variation is sought or was created by natural forces or was the result of governmental action, other than the adoption of this Code, for which no compensation was paid.
- (c) <u>Denied Substantial Rights</u>. The carrying out of the strict letter of the provision from which a variation is sought would deprive the owner of the Subject Property of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
- (d) Not Merely Special Privilege. The alleged hardship or difficulty is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely an inability to make more money from the use of the subject property; provided, however, that where the standards herein set out exist, the existence of an economic hardship shall not be a prerequisite to the grant of an authorized variation.
- (e) <u>Code and Plan Purposes</u>. The variation would not result in a use or development of the Subject Property that would not be in harmony with the general and specific purposes for which this Code and the provision from which a variation is sought were enacted or the general purpose and intent of the Official Comprehensive Plan.
- (f) <u>Essential Character of the Area</u>. The variation would not result in a use or development of the Subject Property that:
  - (1) Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use development, or value of property of improvements permitted in the vicinity; or
  - (2) Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or
  - (3) Would substantially increase congestion in the public streets due to traffic or parking; or

	(4)	Would unduly increase the danger of flood or fire; or				
	(5)	Would unduly tax public utilities and facilities in the area; or				
	(6)	Would endanger the public health or safety.				
(g)	the al	No Other Remedy. There is no means other than the requested variation by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Subject Project.  (Attach separate sheet if additional space is needed.)				
	There	is no means other than the requested variation by which the alleged hardship or difficulty can				
	be av	oided or remediated to a degree sufficient to permit a reasonable use of the subject property.				

#### SECTION III

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

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

Refer to attached preliminary architectural design and boundary and topographic survey

#### **SECTION IV**

- 1. <u>Application Fee and Escrow.</u> Every application must be accompanied by a non-refundable application fee of \$250.00 plus an additional \$600.00 initial escrow amount. The applicant must also pay the costs of the court reporter's transcription fees and legal notices for the variation request. A separate invoice will be sent if these expenses are not covered by the escrow that was paid with the original application fees.
- 2. Additional Escrow Requests. Should the Village Manager at any time determine that the escrow account established in connection with any application is, or is likely to become, insufficient to pay the actual costs of processing such application, the Village Manager shall inform the Applicant of that fact and demand an additional deposit in an amount deemed by him to be sufficient to cover foreseeable additional costs. Unless and until such additional amount is deposited by the Applicant, the Village Manager may direct that processing of the application shall be suspended or terminated.
- 3. <u>Establishment of Lien</u>. The owner of the Subject Property, and if different, the Applicant, are jointly and severally liable for the payment of the application fee. By signing the applicant, the owner has agreed to pay said fee, and to consent to the filing and foreclosure of a lien against the Subject Property for the fee plus costs of collection, if the account is not settled within 30 days after the mailing of a demand for payment.

#### **SECTION V**

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

Name of Owner:	Howard Chang	
Signature of Owner:	+6de	
Name of Applicant:	Howard Chang	
Signature of Applicant:	Hali	
	January 5, 2018	
Date:		

#### **EXHIBIT A**

#### PARCEL 1:

LOT 3 AND THE SOUTH 28 FEET OF LOT I OF KLEIN'S SUBDIVISION OF PART OF OUTLOT 3 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 1926 AS DOCUMENT 221973, IN DUPAGE COUNTY, ILLINOIS.

#### PARCEL 2:

THAT PART OF OUTLOT 3 OF THE TOWN OF HINSDALE, IN THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF VINE STREET, AS SHOWN ON PLAT OF KLEIN'S SUBDIVISION OF PART OF SAID OUTLOT 3; WEST OF THE WEST LINE OF LOT 3 IN KLEIN'S SUBDIVISION, AFORESAID; NORTH OF THE SOUTH LINE OF LOT 3, AFORESAID, EXTENDED WEST; AND SOUTH OF THE NORTH LINE OF LOT 3, AFORESAID, EXTENDED WEST, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 14, 1866 AS DOCUMENT 7738 IN DUPAGE COUNTY, ILLINOIS.

Address: 415 South Vine Street, Hinsdale, IL 60521

PIN: 09-12-113-007

# Name and Address of Neighboring Owners

(within 250 ft of 415 S Vine St)

Recorded Owner(s)	Address	Property Type
211 ENT LLC	211 W 4TH ST	SFH
CONNELLY, MARC C & ANNE T	212 W 4TH ST	SFH
MAKRIS, ANGELO & T TR	218 W 4TH ST	SFH
PAPPAS, EVAN P & PATTY A	224 W 4TH ST	SFH
MATALKA, FARIS & JAMIE L	305 W 4TH ST	SFH
DIOCESE OF JOLIET	306 W 4TH ST	Church
FINNEGAN, JAY & ERIN TR	313 W 4TH ST	SFH
CHICATO TITLE 8002360998	321 S VINE ST	SFH
JALIVAND, ABOLHASSAN&ETAL	324 S GRANT ST	SFH
JOHNS, WM & SHARON	406 S GRANT ST	SFH
WILSON, STEVEN & KATHLEEN	409 S VINE ST	SFH
HUDSON, ALEX & THERESA	410 S GRANT ST	SFH
CHUDOM, KYLE TR	416 S GRANT ST	SFH
VERDON, GARY L & M CHEKAL	420 S GRANT ST	SFH
WRIGHT, CLIFFORD & C	421 S VINE ST	SFH
MANION, ROBERT & SALLY	424 S GRANT ST	SFH
PIRCON TR, SUSAN	427 S VINE ST	SFH
ALESIA, JOSEPH M TR	428 S GRANT ST	SFH
ROHN, CHRISTOPHER & KARIN	429 S VINE ST	SFH
MATTHEWS, BYRON &JENNIFER	432 S GRANT ST	SFH
CHICAGO TR CO BEV-3S21	434 S VINE ST	SFH
SHEA JR TR, TERRANCE & S	435 S VINE ST	SFH
CROTTY, JAMES & KATHRYN	436 S GRANT ST	SFH
EVERETTE, MARK & LISA	439 S VINE ST	SFH
DI NOVI, FIORE & M	440 S GRANT ST	SFH
HARRIS BK HNSDL TR L-3187	440 S VINE ST	SFH

To:

Zoning Board of Appeal

From:

**Howard Chang** 

CC:

Robert McGinnis

Date:

January 5, 2018

Re:

Application for Variation – 415 S Vine St

#### Section I

#### No. 11

The proposed new construction home will satisfy, with the only sought variance in front yard setback, all other standards that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.

#### Section II

#### No. 5 Standards for Variation

- (a) This lot is R4, non-conforming, only 102' deep. It lined up perfectly together with the 3 lots up at the north end of the block, with a 25' or less front setback. The rest of lots (8 out of 11) to the south end of the block all have over 185' lot depth. These deep lots all have over 35' front setback. Figure 1 illustrates the existing front setback on this block. The unique physical condition of abnormally large lot depth disparity made it impossible for us to build a usable home with the average block setback. If we were to follow the 36.4' average block setback, it would push the house too close to the detached garage to meet the minimum required 10' setback between house and garage. If we change the garage to attached garage, it cannot be built before the required 25' setback line. Please see Figure 2 for illustration.
- (b) The aforesaid unique physical condition is historical and not the result of any action of the owner.
- (c) Using average block setback of 36.4' would push the new construction home too close to the detached garage, violating the min 10' setback between house and garage, also making it nearly impossible for vehicle to maneuver and creating a safety hazard. Building an attached garage would violate the 25' min setback line at backyard. These compelling hardships would deny the substantial right to use this lot.
- (d) Our request for variation should not be considered a special privilege. A 102' deep lot, located with similar neighbors, would have a much smaller calculated average block setback under normal circumstance. The striking blend of 3 short lots and 8 very deep lots on this block presented a unique hardship to follow the average block setback. We are not asking the board for special privilege to reduce the existing front setback. In fact, we are requesting a front 25' front setback, to be in line with and slightly more than the existing 24.7' setback.
- (e) Maintaining existing front setback in new construction will promote neighbor harmony in this particular situation. Not only our neighbors on the left and right have approximate 25' front setback, our neighbor across street, St. Issac Church, also maintains similar and smaller front setback.
- (f) None

Figure 1. Front Setback by House

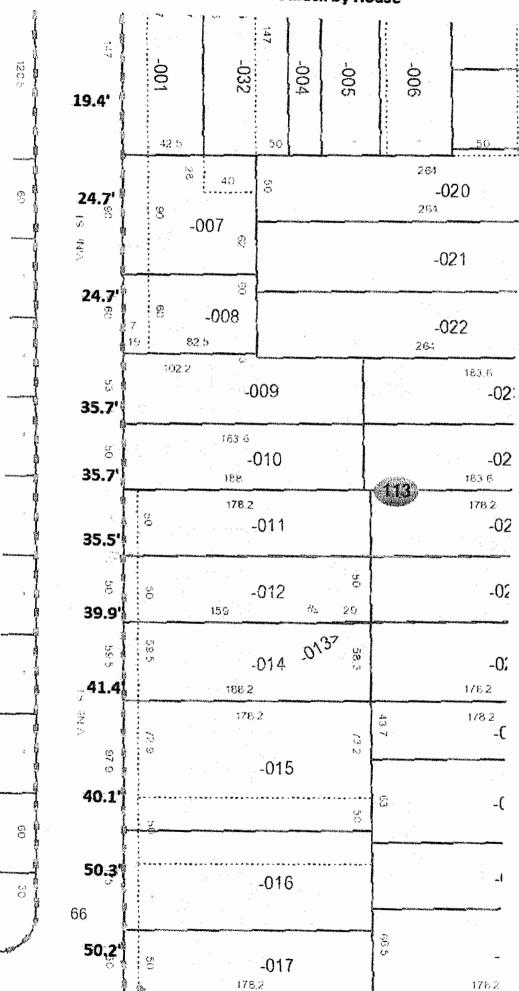
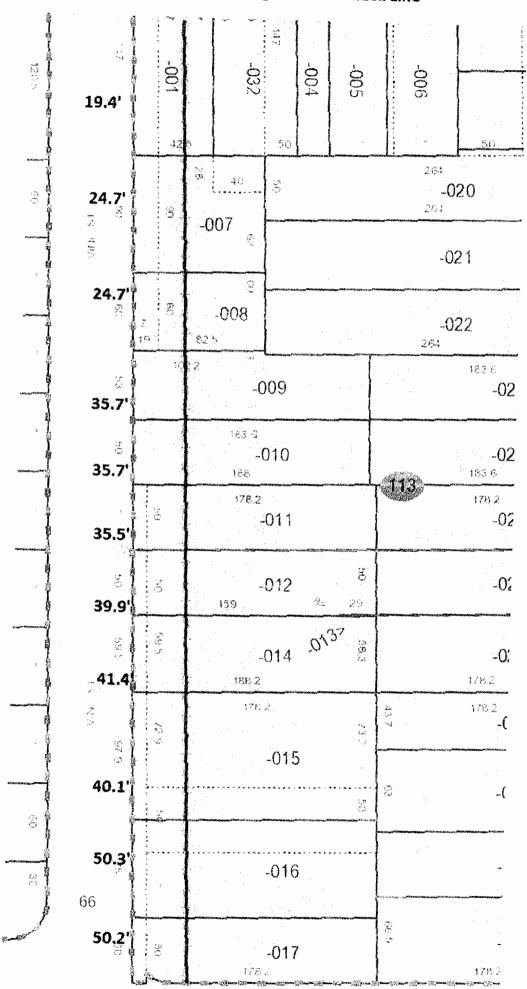


Figure 2. Average Block Setback Line





#### WARRANTY DEED IN TRUST



DUPAGE COUNTY RECORDER
DEC.03,2018 RHSP 12:41 PM
DEED 09-12-113-007
103 PAGES R2013-161730

20133482 AL 2013400994

This space for Recorder's use only

THIS INDENTURE WITNESSETH, that the Grantor, DANIEL O. HEAD III, of the County of DuPage and State of Illinois, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), in the hand paid, and of other good and valuable considerations, receipt of which is hereby duly acknowledged, Convey(s) and Warrant(s) unto FIRSTMERIT BANK, N.A., a national banking association under the laws of the United States of America, 1606 N. Harlem Avenue, Ethrwood Park, IL 60707, and duly authorized to accept and execute trusts within the State of Illinois, as Trustee under the provisions of a certain Trust Agreement, dated October 10, 2008, and known as Trust Number 08-10-8721 the following described real estate in the County of DuPage and State of Illinois, to wit:

#### PARCEL 1:

LOT 3 AND THE SOUTH 28 FEET OF LOT 1 OF KLEIN'S SUBDIVISION OF PART OF OUTLOT 3 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 1926 AS DOCUMENT 221973, IN DUPAGE COUNTY, ILLINOIS.

#### PARCEL 2:

THAT PART OF OUTLOT 3 OF THE TOWN OF HINSDALE, IN THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF VINE STREET, AS SHOWN ON PLAT OF KLEIN'S SUBDIVISION OF PART OF SAID OUTLOT 3; WEST OF THE WEST LINE OF LOT 3 IN KLEIN'S SUBDIVISION, AFORESAID, NORTH OF THE SOUTH LINE OF LOT 3, AFORESAID, EXTENDED WEST, AND SOUTH OF THE NORTH LINE OF LOT 3, AFORESAID, EXTENDED WEST, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 14, 1866 AS DOCUMENT 7738 IN DUPAGE COUNTY, ILLINOIS.

SUBJECT ONLY TO: General Real Estate Taxes not due and payable at the time of Closing; covenants, conditions and restrictions of record: and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate.

Property address: 415 South Vine Street, Hinsdale, IL 60521

PIN: 09-12-113-007

TO HAVE AND TO HOLD the said real estate with the appurtenances, upon the trusts, and for the uses and purposes herein and in said Trust Agreement set forth.

Full power and authority is hereby granted to said Trustee to improve, manage, protect and subdivide said real estate or any part thereof to dedicate parks, highways or alleys and to vacate any subdivision of part thereof, and to re-subdivide said real as often as desired, to contract to sell, to grant options to purchase, to sell on any terms to convey either with or without consideration, to convey said real estate or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said. Trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said real estate, or any part thereof, to lease said real estate, or any part thereof, from time to time, in possession or reversion, by leases to commence in pracsenti or in future, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the term of 198 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any

#### UNOFFICIAL COPY

time or times thereafter, to contract to make leases and to grant options to lease and option to renew leases and options to purchase the whole or any part of the reversion to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said real estate, or any part thereof, for other real or personal property, to grant casements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appuntenant to said real estate or any part thereof, and to deal with said real estate and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said Trustee, or any successor in trust, in relation to said real estate, or to whom said real estate or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said Trustee, or any successor in trust, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on said real estate, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the authority, necessity or expediency of any act of said Trustee, or be obliged or privileged to inquire into any of the terms of said Trust Agreement; and every deed, mortgage, lease or other instrument executed by said Trustee, or any successor in trust, in relation to said real estate shall be conclusive evidence in favor of every person (including the Registrar of Titles of said county) relying upon or claiming under any such conveyance lease or other instrument, (a) that at the same time of the delivery thereof the trust created by this Indenture and by said Trust Agreement was in full force and effect, (b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in said Trust Agreement or in all amendments thereof, if any, and binding upon all beneficiaries thereunder, (c) that said Trustee, or any successor in trust, was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument, and (d) if the conveyance is made to a successor or successors in trust, that such success or successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

This conveyance is made upon the express understanding that neither FirstMerit Bank, N.A., individually or as Trustee, nor its successor or successors in trust shall incur any personal liability or be subjected to any claim, judgement or decree for anything it or they or its or their agents or attorneys may do or omit to do in or about the said real estate or under the provisions of this Deed or said Trust Agreement or any amendment thereto, or for injury to person or property happening in or about said real estate, and any and all such liability being hereby expressly waived and released. Any contract, obligation or indebtedness incurred or entered into by the Trustee in connection with said real estate may be entered into by it in the name of the then beneficiaries under said Trust Agreement as their attorney-in-fact, hereby irrevocable appointed for such purposes, or at the election of the Trustee, in its own name, as Trustee of an express trust and not individually (and the Trustee shall have no obligation whatsoever with respect to any such contract, obligation or indebtedness except only so far as the trust property and funds in the actual possession of the Trustee shall be applicable for the payment and discharged thereof). All persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filling for record of this Deed.

The interest of each and every beneficiary hereunder and under said Trust Agreement and of all persons claiming under them or any of them shall be only in the earning, avails and proceeds from the sale or any other disposition of said real estate, and such interest is hereby declared to be personal property, and no beneficiary hereunder shall have any title or interest, legal or equitable, or in to said real estate as such, but only an interest in the earning, avails and proceeds thereof as aforesaid, the intention hereof being to vest in said FirstMerit Bank, N.A., the entire legal and equitable title in fee simple, in and to all of the real estate above described.

If the title to any of the above real estate is now or hereafter registered, the Registrar of Titles is hereby directed not to register or note in the certificate of title or duplicate thereof, or memorial, the words "in trust," or "upon condition" or "with limitations," or words of similar import, in accordance with the statute in such case made and provided, and said Trustee shall not be required to produce the said Agreement or a copy thereof, or any extracts therefrom, as evidence that any transfer, charge or other dealing involving the registered lands is in accordance with the true intent and meaning of the trust.

And the said grantor(s) hereby expressly waive(s) and release(s) any and all right or benefit under and by virtue of any and all statutes of the State of Illinois, providing for exemption of homesteads from sale on execution or otherwise.

	In Witness Whereof, the grantor(s) aforesaid has h	ercunto set their hand(s) and scal(s) this deed day of November,
2013.	(SEAL)	Daniel D. Heat III, (SEAL)
		DANIEL O. HEAD III Ity freame V. Conover by Susanne V. Conover, an Agent as agent
		as agent
		U

### **UNOFFICIAL COPY**

STATE OF ILLINOIS	
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COUNT OF DUPAGE

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, do certify that SUSANNE V. CONOVER, as agent for DANIEL O. HEAD III, personally known to me to be the same person(s) whose name(s) is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notary seal this

2200

day of November, 2

2013.

Notary Public

Mail recorded deed to: FirstMerit Bank, N.A. Trust Department 1606 N. Harlem Avenue Elmwood Park, IL 60707

This document prepared by: Joseph F. Vosicky, Jr. Law Offices of Joseph F. Vosicky, Jr. 53 West Jackson Blvd., Suite 1522 Chicago, IL 60604 Mail tax bills to: FirstMerit Bank Trust No. 08-10-8721 900 Ogden Avenuc, Suite 200 Downers Grove, IL 60515

MICHAEL GOODIN

Notary Public - Michigan

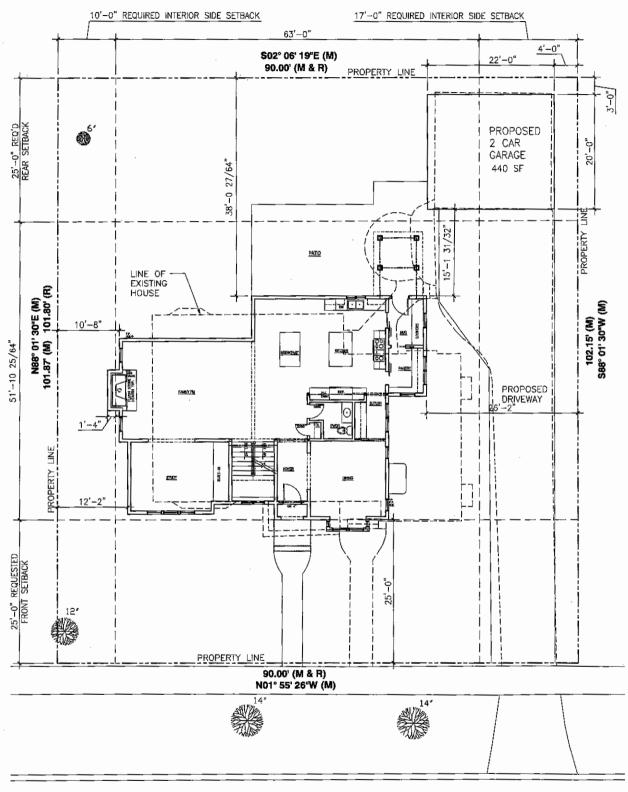
Ottawa County

My Commission Expires Mar 7, 2018

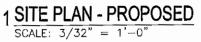
Acting in the County of OTTESSA







VINE STREET

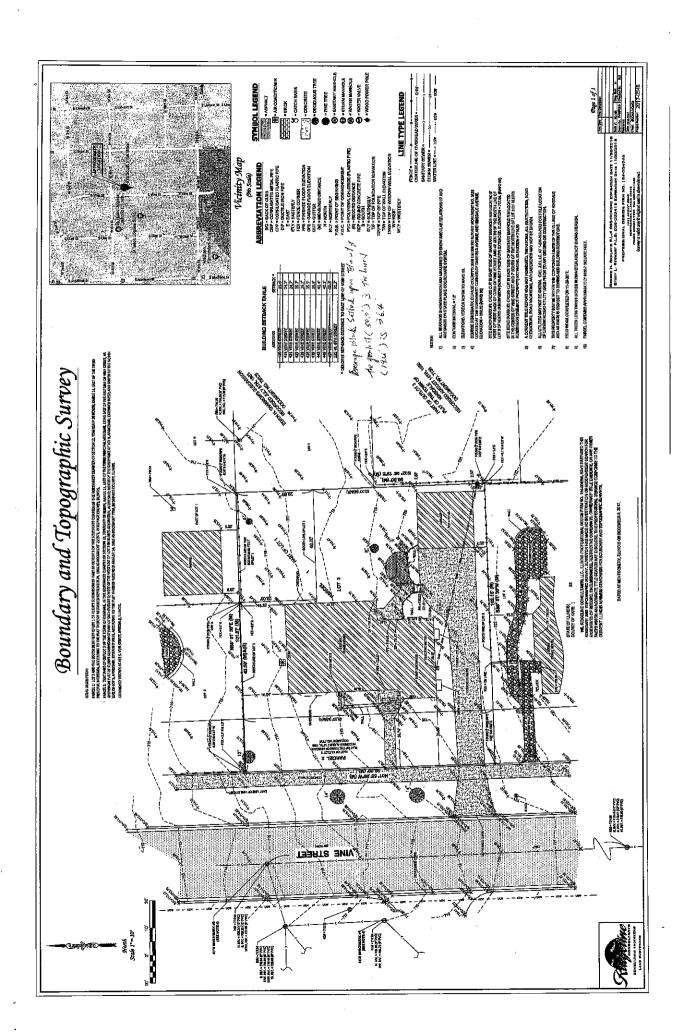




FRONT SETBACK REQUESTED

Project: 415 S VINE

3/32" = 1'-0"



#### **MEMORANDUM**

TO:

Chairman Neiman and Members of the Zoning Board of Appeals

FROM:

Robert McGinnis MCP

**Director of Community Development/Building Commissioner** 

DATE:

February 12, 2018

RE:

Zoning Variation - V-02-18 Monument Sign on Landscaped Median of Salt

Creek Lane

In this application for variation, the applicant requests several sign variations in conjunction with the Med Properties medical office campus. The sign package has been reviewed by the Plan Commission in terms of design and content, and as such, the relief being requested is for only the location and illumination of the sign and not the content, materials, etc. It should be noted that this request is being driven by the fact that the Code does not account for campus type signage or the unusual nature of the relationship between their buildings and the rest of the office park. As a result, the applicant is requesting variations from the following:

Section 9-106(G) (5) - to allow off premises identification signs.

Section 9-106(G) (5) – to allow illumination of off premises identification signs.

Section 9-106(J) (4) (d) - to allow a total square footage of 110 square feet, in lieu of the 100 square feet permitted for ground signs.

These properties are located in the O-3 Office District in the Village of Hinsdale and are located on the north side of Ogden Avenue between York Road and the Tri-State.

CC:

Kathleen A. Gargano, Village Manager

Zoning file V-02-18

Zoning Calendar No. V-02-18
-----------------------------

# VILLAGE OF HINSDALE APPLICATION FOR VARIATION

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

FILING FEES: RESIDENTIAL VARIATION <u>\$850.00</u>

NAME OF APPLICANT(S):	8 Salt Creek Campus, LLC
ADDRESS OF SUBJECT PRO	Landscaped middle of Salt Creek Lane OPERTY: North of Ogden Avenue
TELEPHONE NUMBER(S):	
If Applicant is not property owner	er, Applicant's relationship to property owner.
DATE OF APPLICATION:	January 30, 2018



## SECTION I

Please complete the following:

Owner Nam	e, address, and telephone number of owner: 8 Salt Creek Campus, LLC
40 Skokie	Boulevard, Suite 410, Northbrook, IL 60062, (847) 897-7310
	osure. In the case of a land trust the name, address, and telephone number of d beneficiaries of the trust:N/A
applicant's in	ame, address, and telephone number of applicant, if different from owner, and terest in the subject property: 8 Salt Creek Campus, LLC - Paul Kopeck Boulevard, Suite 410, Northbrook, IL 60062
	erty. Address and legal description of the subject property: (Use separate sheet See Attached.
Consultants. respect to this	Name and address of each professional consultant advising applicant with application:
a. Attornev:	Peter Coules, Jr., 15 Salt Creek Lane, Suite 312, Hinsdale, IL 60521
	Cardosi Kiper Design Group, 2437 South Western Avenue, Chicago, IL 60608
_	
d.	

5.	Village	Personnel. Name and address of any officer or employee of the Village with an
	interest i	n the Owner, the Applicant, or the Subject Property, and the nature and extent
	that inter	est:
	aN	N/A
	b	

7. Neighboring Owners. Submit with this application a list showing the name and address of each owner of (1) property within 250 lineal feet in all directions from the subject property; and (2) property located on the same frontage or frontages as the front lot line or corner side lot line of the subject property or on a frontage directly opposite any such frontage or on a frontage immediately adjoining or across an alley from any such frontage.

After the Village has prepared the legal notice, the applicant/agent must mail by certified mail, "return receipt requested" to each property owner/ occupant. The applicant/agent must then fill out, sign, and notarize the "Certification of Proper Notice" form, returning that form and <u>all</u> certified mail receipts to the Village.

- 8. <u>Survey</u>. Submit with this application a recent survey, certified by a registered land surveyor, showing existing lot lines and dimensions, as well as all easements, all public and private rights-of-way, and all streets across and adjacent to the Subject Property.
- 9. <u>Existing Zoning</u>. Submit with this application a description or graphic representation of the existing zoning classification, use, and development of the Subject Property, and the adjacent area for at least 250 feet in all directions from the Subject Property.
- 10. <u>Conformity</u>. Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.
- 11. Zoning Standards. Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.
- 12. <u>Successive Application</u>. In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code.

#### **SECTION II**

When applying for a variation from the provisions of the Zoning Ordinance, you must provide the data and information required above, and in addition, the following:

		or other inte e specific na		nave in the Sul ch interest.	oject Project	, date of a	equisition
Ordinance variation is	Provision. s sought:	The specif	ic provisi	ons of the Zo	oning Ordina	ance fror	n which a
	See attached.						
feature or f	eatures of th		ise, constr	g sought, the p uction, or deve needed.)			
S	ee attached.						
Ordinance (Attach				mum variation he proposed us additional			

- (a) Unique Physical Condition. The Subject Property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure of sign, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the Subject Property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current lot owner.
- (b) Not Self-Created. The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title and known to the owner prior to acquisition of the Subject Property, and existed at the time of the enactment of the provisions from which a variation is sought or was created by natural forces or was the result of governmental action, other than the adoption of this Code, for which no compensation was paid.
- (c) <u>Denied Substantial Rights</u>. The carrying out of the strict letter of the provision from which a variation is sought would deprive the owner of the Subject Property of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
- (d) Not Merely Special Privilege. The alleged hardship or difficulty is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely an inability to make more money from the use of the subject property; provided, however, that where the standards herein set out exist, the existence of an economic hardship shall not be a prerequisite to the grant of an authorized variation.
- (e) <u>Code and Plan Purposes</u>. The variation would not result in a use or development of the Subject Property that would not be in harmony with the general and specific purposes for which this Code and the provision from which a variation is sought were enacted or the general purpose and intent of the Official Comprehensive Plan.
- (f) <u>Essential Character of the Area</u>. The variation would not result in a use or development of the Subject Property that:
  - (1) Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use development, or value of property of improvements permitted in the vicinity; or
  - (2) Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or
  - (3) Would substantially increase congestion in the public streets due to traffic or parking; or

#### **SECTION III**

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

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

#### SECTION IV

- 1. <u>Application Fee and Escrow</u>. Every application must be accompanied by a non-refundable application fee of \$250.00 plus an additional \$600.00 initial escrow amount. The applicant must also pay the costs of the court reporter's transcription fees and legal notices for the variation request. A separate invoice will be sent if these expenses are not covered by the escrow that was paid with the original application fees.
- 2. Additional Escrow Requests. Should the Village Manager at any time determine that the escrow account established in connection with any application is, or is likely to become, insufficient to pay the actual costs of processing such application, the Village Manager shall inform the Applicant of that fact and demand an additional deposit in an amount deemed by him to be sufficient to cover foreseeable additional costs. Unless and until such additional amount is deposited by the Applicant, the Village Manager may direct that processing of the application shall be suspended or terminated.
- 3. <u>Establishment of Lien</u>. The owner of the Subject Property, and if different, the Applicant, are jointly and severally liable for the payment of the application fee. By signing the applicant, the owner has agreed to pay said fee, and to consent to the filing and foreclosure of a lien against the Subject Property for the fee plus costs of collection, if the account is not settled within 30 days after the mailing of a demand for payment.

#### SECTION V

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

Name of Owner:	8 Salt Creek Campus, LLC	
Signature of Owner:	Rome Hymne	
Name of Applicant:	8 Salt Creek Campus, LLC	
Signature of Applicant:	Doul Cymh	
Date:	1-30-18	

#### Section 1 (4)

#### Parcel 1:

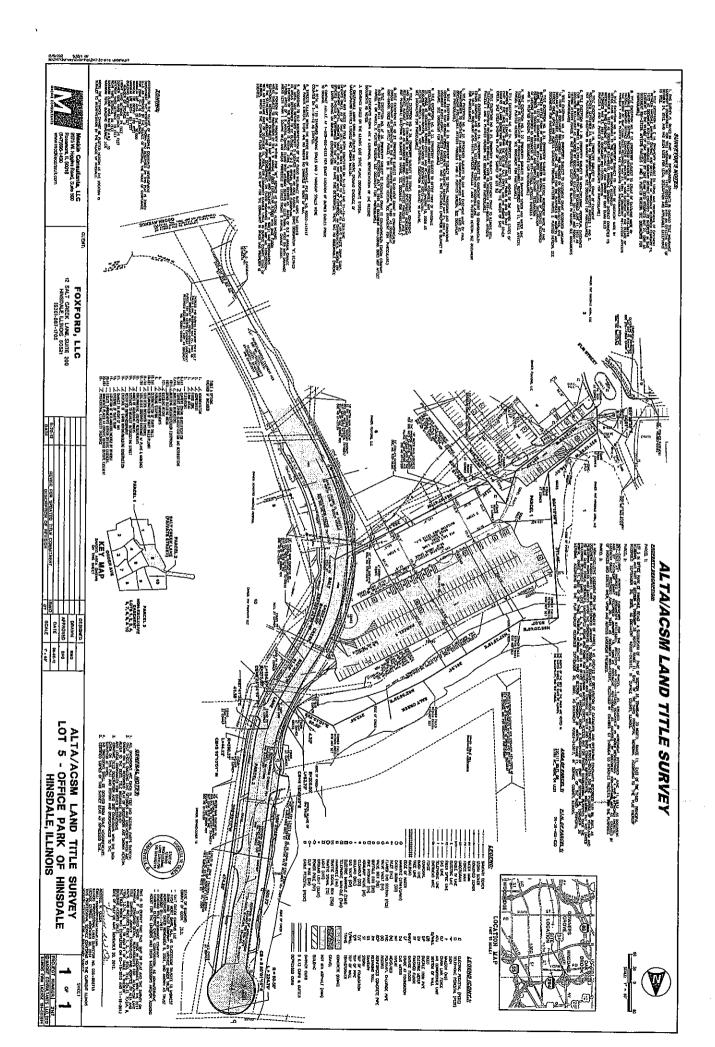
LOT 5 IN OFFICE PARK OF HINSDALE, BEING A SUBDIVISION OF PART OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 11, EAT OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEROF RECORDED SEPTEMBER 20M 2002, AS DOCUMENT R2002-243817, IN DUPAGE COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE, PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AGREEMENT RECORDED JUNE 11, 1973 AS DOCUMENT R73-33823 AS AMENDED BY DOCUMENTS R73-35331, R81-2365 AND R2001-197280, DESCRIBED IN RIDE DESCRIPTIONS 2, 4 AND 6 ATTACHED THERETO, AND BY EASEMENT GRANT RECORDED JANUARY 18M 1989 AS DOCUMENT SR89-006821 AS AMENDED BY DOCUMENT R89-072896 AND AS CREATED BY EASEMENT GRANT RECORDED JUNE 20, 1989 AS DOCUMENT R89-072897, DESCRIBED IN EXHIBITS C1 THROUGH C5 ATTACHED THERETO, FOR THE PURPOSES OF INGRESS AND EGRESS OVER, UPON AND ACROSS EASMENT PREMISES.

#### PARCEL 3:

A NON-EXCLUSIVE EASMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION OF EASEMENTS AND OPERATING COVENANTS RECORDED MAY 29, 2003, AS DOCUMENT R2003-200111, AND RE-RECORDED JANUARY 10, 2006 AS DOCUMENT R2006-005825 AND AMENDED BY R2012-024784 FOR THE PURPOSE OF VEHICULAR AND PEDESSTRIAN INGRESS AND EGRESS UPON THE ROADWAYS; RETENTIION, DETENTION AND DRAINAGE OF WATER AND OVER COMMON IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO THE CLOCK TOWER, SIDEWALKS, LANDSCAPED AREAS AND POND FOR PEDESTRIAN INGRESS, EGRESS ACCESS AND FOR PASSIVE RECREATIONAL PUPRPSES OVER THE FOLLOWING DESCRIBED LAND: LOTS 1,2,3,4,6,7,8,9, AND 10 IN OFFICE PARK OF HINSDALE BEING A SUBDIVISION OF PART OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLT THEREOF RECORDED SEPTEMBER 20, 2002, AS DOCUMENTS R2—2-243817, IN DUPAGE COUNTY, ILLINOIS.



### History

The requests for the variances of this sign are the same as in 2015, except the sign now is smaller (7'x6'or 6'x6' rather than 8'x6') than the one approved then. In 2015, the Applicant, MedProperties, LLC, submitted an application to the Hinsdale Plan Commission and the Zoning Board of Appeals for approval of a zoning variation for eight (8) signs. On April 15, 2015, the Zoning Board of Appeals entered a Final Decision and approved all eight (8) signs with conditions. The conditions were:

- 1) IDOT location and site line approval for Sign #1;
- 2) Square footage and number of signs on the recommendation of the Plan Commission review appropriate sign content; and
- 3) Approval from those properties which require access from Salt Creek Lane.

The matter was then presented to the Hinsdale Plan Commission, where seven (7) of the eight (8) signs were approved as it was, with the one (1) remaining sign [Sign #1] requiring to obtain input on the Illinois Department of Transportation ("IDOT") setback matter and from the Amita and Spinning Wheel Properties. As these matters took time and many steps were taken, our one (1) year from approval has lapsed for this sign. On June 10, 2015, the other seven (7) signs were approved by the Plan Commission on for Sign #1 to only say "Salt Creek Lane" until erected.

Since 2015, the Applicant has engaged in continued discussions with the Amita and Spinning Wheel Properties. The sign is necessary because when traveling from west to east one does not see Salt Creek Lane or the uses in the park until after they have passed the property. Further, there is not an easy place to turn around after you have passed Salt Creek Lane, as the expressway (I-294) is east of the property. Only Amita and Spinning Wheel Apartments and Offices have signs on the corner, as well as each have an additional one on Ogden (east of Salt Creek Lane), so an additional sign would allow more people to recognize the Immediate Care facility.

The Applicant has also contacted IDOT for approval of the setback and placement of the sign. The Applicant received a letter from IDOT verifying that the proposed sign location is outside of the IDOT right-of-way. Therefore, IDOT can neither approve nor disapprove of the sign or the location on Salt Creek Lane and such approval is solely within the purview of the Village of Hinsdale. IDOT only recommends that the sign be placed where it will not inhibit a vehicle's sight distance and that the sign have breakaway technology as IDOT requires for signs in its right-of-way. In line with these recommendations, IDOT did not recommend any changes to the proposed sign location.

Further, on February 15, 2017, the Office Park of Hinsdale Owners Association provided a letter to the Applicant and the Village of Hinsdale Board of Trustees indicating approval of the "construction, installation, placement, demolition of old monument, placement of the new signage and payment of demolition and payment of new signage installation, including specifically, installation of the subject monument sign, was approved by an affirmative vote of the majority of the board and members of the Association."

The proposed sign has thus recently received approval from the Plan Commission. As you can see, the Plan Commission has greatly vetted the sign and as requested the application is being brought before the Zoning Board of Appeals, as the previous approval was over a year ago and no longer valid.

### Section I #9

### EXISTING ZONING

The existing zoning for the Subject Property O-3 District. The Subject Property is a professional medical office building.

The Subject Property is surrounded by the O-3 Office District on all sides and is surrounded by various professional and medical office buildings. Further to the south of the site, the zoning is B3-3 District and there are various commercial uses fronting Ogden Avenue.

### Section I #10

### CONFORMITY

This approval is for a sign proposed for the landscaped middle of Salt Creek Lane north of Ogden Avenue. The proposed sign conforms to the surrounding area. The request for sign variations conforms with both the Village Official Comprehensive Plan and the Official Map, however, the sign will not be in conformity with the strict terms of the Zoning Code.

Per the Code, ground signage is limited to one (1) per lot, not to exceed fifty (50) sq. ft. per sign face and no taller than eight (8) feet. This sign requires variation approval to allow 1) off-premises signage, 2) illumination of off-premises signage, and 3) more than one (1) ground sign per lot.

Applicant believes that it is justified in seeking approval for a variation from the Village Zoning Code to allow for the proposed sign because there is no provision for campus-style signage in the Village Code. Additionally, Applicant believes that the development would benefit from additional signage so individuals may find different offices and buildings more easily.

### Section I #11

### ZONING STANDARDS

Compliance with the Zoning Ordinance is not possible and variations from the strict letter of the Zoning Code are required because the current relationship of the properties is a campus style.

### (a) Unique Physical Condition:

The Subject Property is exceptional because it is an additional building to the campus style buildings already existing with its own signage. The proposed signage is required to identify the different property.

### (b) Not Self-Created:

The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title.

### (c) Denied Substantial Rights:

Applicant believes that if it were required to carry out the strict letter of the Zoning Code, its rights for signage would be deprived.

### (d) Not Merely Special Privilege:

The ability to erect the proposed sign on the Subject Property is not a special privilege. Applicant has encountered a hardship in that it must be able to identify the building and new development.

### (e) Code and Plan Purposes:

The proposed signage for the Subject Property is in harmony with the general and specific purposes of this Zoning Code and the general purpose and intent of the Official Comprehensive Plan.

### (f) Essential Character of the Area:

- The proposed signage is not materially detrimental to the public welfare or materially injurious to the enjoyment, use development, or value of property of improvements permitted in the vicinity.
- 2) The proposed signage will not impair the supply of light and air to the properties and improvements in the vicinity.
- The proposed signage would not increase congestion in the public streets due to traffic or parking.
- 4) The proposed signage will not increase the danger of flood or fire.
- 5) The proposed signage will not impact public utilities or facilities in the area.
- 6) The proposed signage will not endanger the public health or safety.

### (g) No Other Remedy:

There are no means other than the requested variation by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient without allowing the proposed variations for the proposed signage.

### Section I #12

### SUCCESSIVE APPLICATION

### Section II #1

### See attached Deeds

### Section II #2

### ORDINANCE PROVISION

The specific provisions of the Zoning Code from which a variation is sought are as follows:

- 1. Section 9-106 (G) (5) Applicant requires a variation from this Section in order to allow an off-premises identification sign on the Subject Property.
- 2. Section 9-106 (J) (3) (d) Applicant requires a variation from this Section in order to allow an additional ground sign to the already seven (7) that exist on this lot.
- 3. Section 9-106 (G) (5) Applicant requires a variation from this Section in order to allow for illuminated signs.

### Section II #3

### VARIATION SOUGHT:

Applicant seeks a variance in accordance with Section II 503 (E) (I) (A), which allows the Zoning Board of Appeals to vary the provisions of the Code in order to reduce the dimension of any required yard, setback, or building spacing, and to allow structures and uses to be located in any required yard in addition to and to a greater degree than those authorized by applicable regulations.

Specifically, Applicant seeks:

- 1. A variation in order to allow off-premises identification signs on the Subject Properties
- 2. A variation in order to allow an eighth (8<sup>th</sup>) ground sign on the lot.
- 3. A variation in order to allow for illuminated signs.

### Section II #4

### MINIMUM VARIATION:

Applicant requires the following minimum variations in order to permit the proposed signs:

- 1. A variation in order to allow an off-premises identification sign on the Subject Property.
- 2. A variation in order to allow an eighth (8<sup>th</sup>) ground sign on the lot.
- 3. A variation in order to allow for an illuminated sign.

### Section II #5

STANDARDS FOR VARIATION:

SEE SECTION I #11

FRED BUCHOLZ
DUPAGE COUNTY RECORDER
DEC:11,2012 RHSP 11

DEC:11,2012 DEED DD4 PAGES RHSP 11:18 AM 06-86-405-019 R2012-175304

This space for Recorder's use only

TRUSTEE'S DEED

Grantee's address: 40 Skokie Boulevard, Suite 410, Northbrook, IL 60062------of Cook County, Illinois, the following described real estate in DuPage County, Illinois:

### SEE EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF

Property: See Exhibit A

Permanent Index Number: Sec Exhibit A

Together with the appurtenances attached hereto:

IN WITNESS WHEREOF, Grantor has caused its corporate seal to be hereunto affixed, and name to be signed by its Assistant Vice President-Trust Officer and attested by its Vice President this 29th day of November, 2012.

FIRSTMERIT BANK, N.A., successor trustee to Midwest Bank and Trust Company, as Trustee, as aforesaid, and not personally

Assistant Vice President/Trust Officer

Vice President

FRED BUCHOLZ

R2012-175304

DUPAGE COUNTY RECORDER

State of Illinois )
) SS.
County of Cook )

I, the undersigned. A Notary Public in and for said County, the State aforesaid DO HEREBY CERTIFY that Rosanne M. DuPass, Assistant Vice President-Trust Officer and Patricia E. Camaioni, Vice President of FIRSTMERIT BANK, N.A., a national banking association, Trustee, successor trustee to Midwest Bank and Trust Company as trustee, personally known to me to be the same persons, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said association, as Trustee for the uses and purposes, therein set forth and the said Vice President of said association did also then and there acknowledge that he/she as custodian of the corporate seal of said association to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said association, as Trustee for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 29th day of November, 2012

SEAL

OFFICIAL SEAL
RACHEL SOTOMAYOR
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/11/2015

MAIL RECORDED DEED TO: Salt Creek Campus, LLC 40 Skokie Blvd., Suite 410 Northbrook, IL 60062

This document prepared by Rosanne DuPass FirstMerit Bank, N.A. 1606 N. Harlem Avenue Elmwood Park, IL 60707 MAIL TAX BILLS TO: Salt Creek Campus, LLC 40 Skokie Blvd., Suite 410 Northbrook, IL 60062 State of Illinois )
) SS. ::

I, the undersigned. A Notary Public in and for said County, the State aforesaid DO HEREBY CERTIFY that Rosanne M. DuPass, Assistant Vice President-Trust Officer and Patricia E. Camaioni, Vice President of FIRSTMERIT BANK, N.A., a national banking association, Trustee, successor trustee to Midwest Bank and Trust Company as trustee, personally known to me to be the same persons, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said association, as Trustee for the uses and purposes, therein set forth and the said Vice President of said association did also then and there acknowledge that he/she as custodian of the corporate seal of said association did affix the said corporate seal of said association to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said association, as Trustee for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 29th day of November, 2012

. SEAL

OFFICIAL SEAL

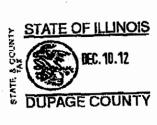
RACHEL SOTOMAYOR

HOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/11/2015

MAIL RECORDED DEED TO: Salt Creek Campus, LLC 40 Skokie Blvd., Suite 410 Northbrook, IL 60062

This document prepared by Rosanne DuPass FirstMerit Bank, N.A. 1606 N. Harlem Avenue Elmwood Park, IL 60707 MAIL TAX BILLS TO: Salt Creek Campus, LLC 40 Skokie Blvd., Suite 410 Northbrook, IL 60062







### EXHIBIT "A"

### LEGAL DESCRIPTION

IN OFFICE PARK OF HINSDALE, BEING A SUBDIVISION OF PART PARCEL 1: LOTS 4, 5 OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 2002, AS DOCUMENT R2002-243B17, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2: NON-EXCLUSIVE, PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AGREEMENT RECORDED JUNE 11, 1973 AS DOCUMENT R73-33823 AS AMENDED BY DOCUMENTS R73-35331, R81-2365 AND R2001-197280, DESCRIBED IN RIDER DESCRIPTIONS 2, 4 AND 6 ATTACHED THERETO, AND BY EASEMENT GRANT RECORDED JANUARY 18, 1989 AS DOCUMENT R89-006821 AS AMENDED BY DOCUMENT R89-072B96, AND AS CREATED BY EASEMENT GRANT RECORDED JUNE 20, 1989 AS DOCUMENT R89-072897, DESCRIBED IN EXHIBITS C1 THROUGH C5 ATTACHED THERETO, FOR THE PURPOSES OF INGRESS AND EGRESS OVER, UPON AND ACROSS EASEMENT PREMISES.

PARCEL-3: A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION OF EASEMENTS AND OPERATING COVENANTS RECORDED MAY 29, 2003, AS DOCUMENT R2003-200111, AND RE-RECORDED JANUARY 10, 2006 AS DOCUMENT RZ006-005825 AND AMENDED BY R2012-024784 FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UPON . THE ROADWAYS; RETENTION, DETENTION AND DRAINAGE OF WATER AND OVER COMMON IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO THE CLOCK TOWER, SIDEWALKS, LANDSCAPED AREAS AND POND FOR PEDESTRIAN INGRESS, EGRESS, ACCESS AND FOR PASSIVE RECREATIONAL PURPOSES OVER THE FOLLOWING DESCRIBED LAND: LOTS 1, 2, 3, 4, 6, 7, 8, 9 AND 10 IN OFFICE PARK OF HINSDALE, BEING A SUBDIVISION OF PART OF SECTION 36, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 2002, AS DOCUMENT R2002-243817, IN DU PAGE CDUNTY, ILLINOIS.

907 Elm sarret (Lot e) HINSDALE, IL
12 Balt hecklane (lots) HINSDALE, IL
60521

PINS: 09-01-207-009 06-26-905-019>(Lot-4)

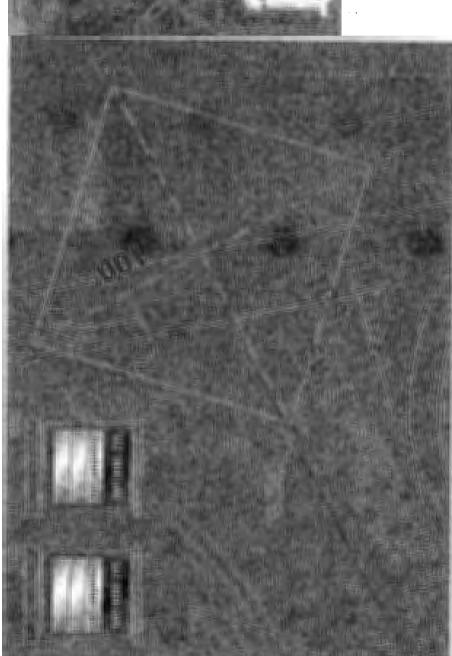
06-36-405-020 (Lots)



January 19, 2018 SUPPLEMENTAL

Salt Creek Lane Monument Sign Proposal





NOTE: All sign locations are to be sited with Med Properties on an on site walkthough and staked for final focations.

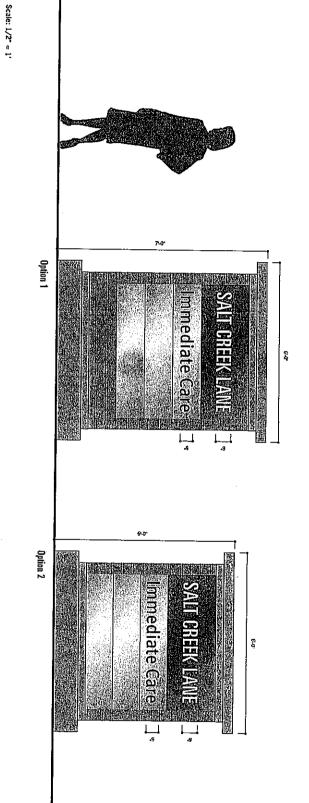


Med Properties Northbrook, IL 60062

Cardesi Kiper Design Group 2437 South Western Avenue Chicago, Illinois 60608

P 773.523.9300 F 773.523.9303 FWW.ck-dg.com

Phase 4.0 Construction Documents Salt Greek Medical Compus Hinsdole, Illinois

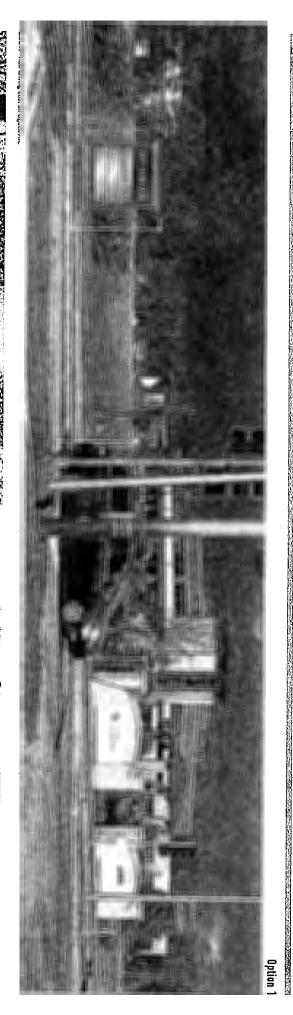


MedProperties Northbrook. IL 60062

Cardost Kiper Design Group 2437 South Western Avenue Chicago, Illinois 60608

P 773.523,9300 P 773.523,9305 www.ck-dp.com

Place 4.0 Construction Documents Salt Creek Medical Campus Unadale, Illinois



SIDE B - View driving west on Ogden Ave

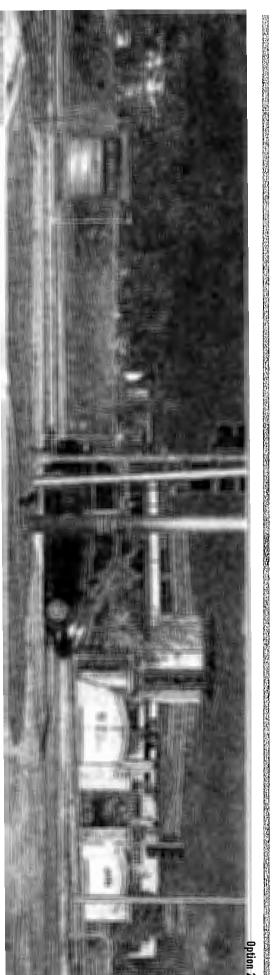


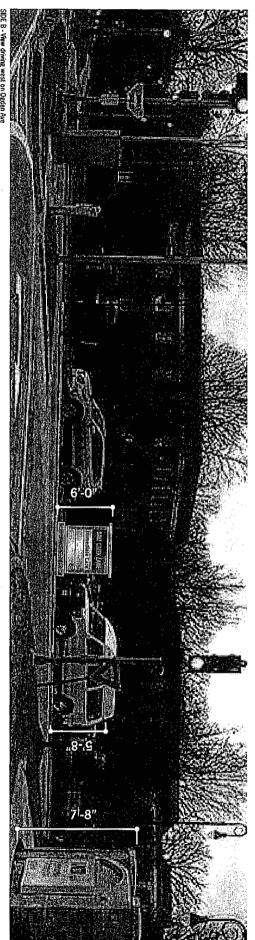
Med Properties

Cardosi Kiper Besign Group 2437 South Western Avenue Chicago, Illinois 60608

P 773.523.9300 F 773.523.9305 www.ck-dg.com

Phase 4.0 Countraction Documents Salt Crock Medical Campus Binsdale, Illinois







Med Properties

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Nurthbreak, 11, 60062

Cardasi Kiper Design Group 2437 South Western Avenue Chicago, Illinote 60608

P 773.523.9300 F 773.523.9305 www.rk-dp.com

Phase 4.0 Construction Documents Saft Creek Medical Campus Hinselato, Illinois

### **Construction Documents**

### Breakaway Sign Construction\*

- Aluminum sign structure with removable panels, No exposed fasteners. Sign construction to have appropriate interior breakaway structure.
- 2 Routed day/night LED illuminated push thru acrylic letters, flush with sign face. Allow for appropriate letter tracking for optimum illumination. Lettering appears black during the day and illuminates white at night.

Tenant Panel:

Font: Meta Office Book Paint: P1 MP18073 Pale Silver Metallic

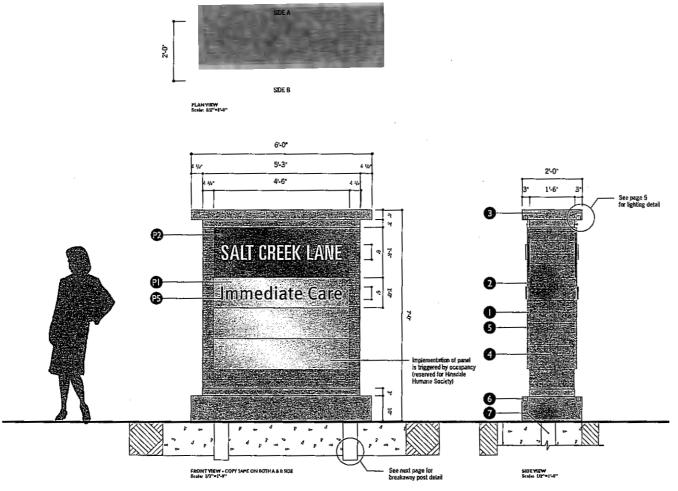
Salt Creek Lane Panel:

Font: Univers 59 Ultra Gondensed Paint: P2 MP18207 Slate Metallic

- 3 Simulated limestone cap with recessed light source to highlight
- Thin brick veneer over appropriate breakaway structure. Thin brick veneer to match existing site signage.
- 1" aluminum pan (P2) with illuminated push thru day/night acrylic letters 1/2" from pan face.
- 6 Simulated limestone base with recessed light source to highlight
- All foundations and footings to be adequate for IDOT approved breakaway designed poles (see detail on next page).

#### GENERAL NOTES

- A. Sign faces to have absolutely no "oil-eanning."
- B. Sign fabricator to repair any damage to landscaping during installation.
- C. Sign fabricator to field verify each location and provide elevations of each with grading shown,
- D. All drawings to be stamped and scaled by a licensed engineer.
- E. All signs to be readily accessible for bulb replacement.
- F. All signs to be controlled by a single astronomical time clock timer.
- G. Signs to be installed and connected to power provided by owner.
- H. Internally illuminated with LED.
- \* Sign Construction will be built with IDOT certified breakaway technology. It will be done pursuant to IDOT specifications even though not a requirement and just a suggestion. The IDOT certified Sign Contractor will certify/verify that the sign is being built to those specifications.



MedProperties

Med Properties 40 Skokio Boulevard, Suite 419 Northbrook, IL 60062

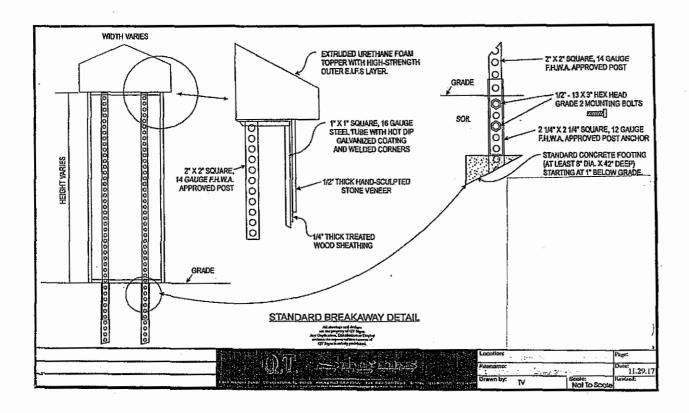
Cardoni Kiper Dealgn Group 2437 South Western Avenue Chicago, Illinois 60608

P 773.523.9308 F 773,523,9303 www.ck-dr.com

Phase 4.0 Construction Documents Salt Creek Medical Campus Minedate, Blinois

### **Breakaway Post Detail**

### Drawing & Narrative Provided by QT Signs



#### Breakaway Construction\*

The sign will be manufactured with an approved breakaway interior structure and IDOT approved breakaway poles.

This design to collapse under a 10 mph crash.

Gatorshield tubing 16 Gange

Telespar breakaway sign poles approved by F.H.W.A (Federal Highway Administration)

Standard metal mesh

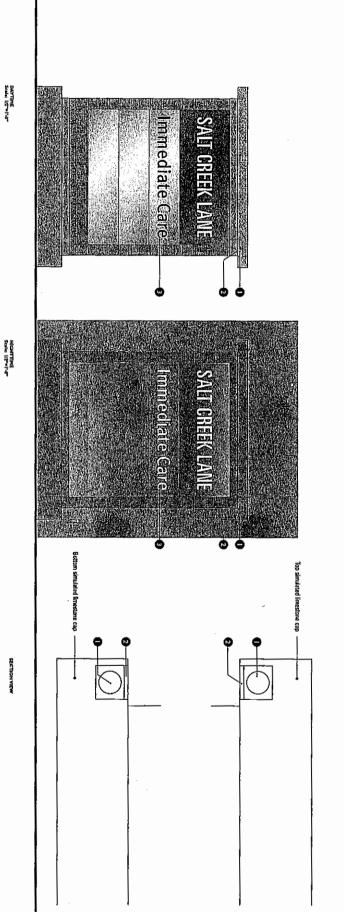
Thin brick veneer to match existing signs

Aluminum sign panels

Simulated limestone base and cap

\* Sign Construction will be built with IDOT certified breakaway technology. It will be done pursuant to IDOT specifications even though not a requirement and just a suggestion. The IDOT certified Sign Contractor will certify/verify that the sign is being built to those specifications.

- D LED lighting to be recessed into the top and bottom of simulated limestone caps and run the width and depth of the sign. LKD light source to wash the face of the brick.
- 2 Acrylic lens.
- Day/Night LED illuminated acrylic push thru fetters.
   Lettering appears black during the day and illuminates white at night.





MedProperties Northbrook, IL 60062

Cardoni Kiper Denign Group 2437 South Western Avenue Chicago. Illiuois 60608

P 773.523,9300 F 773.523.9305 Www.ck-dg.com

Phase 4.0 Construction Documents Satt Creek Medical Compus Uinsdale, Illinois

ARROW



META OFFICE BOOK

### ABCDEFGHIJKLMNOPQRSTUVWXYZ abdefghijklmnopqrstuvwxyz 1234567890

UNIVERS 59 ULTRA CONDENSED

ABCDEFGHIJKLMNOPORSTUVWXYZ abdefghijklmnopqrstuvwxyz 1234567890

#### COLORS





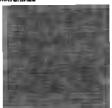


P1 MP18073 Pale Silver Motallic

ullic MP18207 State Metallic

Blac

#### MATERIALS





Thin brick veneer to match existing signs

\$imulated (imestone to match existing signs

### **MEMORANDUM**

TO:

Chairman Neiman and Members of the Zoning Board of Appeals

FROM:

Robert McGinnis MCP

**Director of Community Development/Building Commissioner** 

DATE:

February 13, 2018

RE:

Zoning Variation - V-03-18; 842 W. 7th Street

In this application for variation, the applicant requests relief from the minimum corner side yard requirements set forth in section 10-105 (A)(3) for the construction of a new single family home. The applicant is requesting an 7.52' reduction in the required corner side yard setback from 15' to 7.48'.

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the south side of 7<sup>th</sup> Street between Jackson and Stough. The property has a frontage of approximately 45', a depth of approximately 125', and a total square footage of approximately 5,625. The maximum FAR is approximately 2,800 square feet, the maximum allowable building coverage is 25% or approximately 1,406 square feet, and the maximum allowable lot coverage is 60% or approximately 3,375 square feet.

CC:

Kathleen A. Gargano, Village Manager

Zoning file V-03-18

# VILLAGE OF HINSDALE APPLICATION FOR VARIATION

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

FILING FEES: RESIDENTIAL VARIATION \$850.00

NAME OF APPLICANT(S):	Daniel J. Roberts - Roberts Design & Build
ADDRESS OF SUBJECT PROTECTION TELEPHONE NUMBER(S):	OPERTY: 842 West 7th Street, Hinsdale, IL 630-927-1325
If Applicant is not property own. Roberts Design & Build is the A	er, Applicant's relationship to property owner.  Architect for the Owner
DATE OF APPLICATION:	02/09/18
	CB Slists

### **SECTION I**

Please complete the following:

	closure. In the case of a land trust the name, address, and telephone number of
all trustees a	and beneficiaries of the trust:  No Trust
Applicant. I	Name, address, and <b>telephone number</b> of applicant, if different from owner, and
applicant's i	nterest in the subject property:  Daniel J. Roberts - Roberts Design & Build
4506 Rosly	n Road, Downers Grove, Illinois 60515
Subject Pror	perty. Address and legal description of the subject property: (Use separate sheet scription if necessary) 842 West 7th Street, Hinsdale, Illinois
Subject Prop for legal des Lots 96 and resubdivision	berty. Address and legal description of the subject property: (Use separate sheet scription if necessary.)  842 West 7th Street, Hinsdale, Illinois  195 (except the south 2 feet thereof) in S. T. Kimbell's resubdivision, being a con of Block 21 in Stough's Second Addition to Hinsdale, Being a Subdivision ion 11, Township 38 North, Range 11, East of the Third Principal Meridian, a Resubdivion recorded August 5, 1892 as Document 49378, In DuPage County
Subject Proposition of Subject Proposition of Section 1/2 of Section of Secti	842 West 7th Street, Hinsdale, Illinois 195 (except the south 2 feet thereof) in S. T. Kimbell's resubdivision, being a con of Block 21 in Stough's Second Addition to Hinsdale, Being a Subdivision ion 11, Township 38 North, Range 11, East of the Third Principal Meridian, a Resubdivion recorded August 5, 1892 as Document 49378, In DuPage County  Name and address of each professional consultant advising applicant with
Subject Property for legal destance Lots 96 and resubdivision 1/2 of Section the Plat of Consultants.	842 West 7th Street, Hinsdale, Illinois 195 (except the south 2 feet thereof) in S. T. Kimbell's resubdivision, being a con of Block 21 in Stough's Second Addition to Hinsdale, Being a Subdivision ion 11, Township 38 North, Range 11, East of the Third Principal Meridian, a Resubdivion recorded August 5, 1892 as Document 49378, In DuPage County  Name and address of each professional consultant advising applicant with is application:
Subject Proposition of Proposition In Subject Proposition In Items 1/2 of Section 1/2 of Section In Items 1/2 of Section In It	842 West 7th Street, Hinsdale, Illinois 195 (except the south 2 feet thereof) in S. T. Kimbell's resubdivision, being a con of Block 21 in Stough's Second Addition to Hinsdale, Being a Subdivision ion 11, Township 38 North, Range 11, East of the Third Principal Meridian, a Resubdivion recorded August 5, 1892 as Document 49378, In DuPage County  Name and address of each professional consultant advising applicant with is application:
Subject Proposition of legal des Lots 96 and resubdivision 1/2 of Section the Plat of Consultants respect to the Attorney b. Engineer	842 West 7th Street, Hinsdale, Illinois 195 (except the south 2 feet thereof) in S. T. Kimbell's resubdivision, being a con of Block 21 in Stough's Second Addition to Hinsdale, Being a Subdivision ion 11, Township 38 North, Range 11, East of the Third Principal Meridian, a Resubdivion recorded August 5, 1892 as Document 49378, In DuPage County  Name and address of each professional consultant advising applicant with is application:

6.	<u>Village Personnel</u> . Name and address of any officer or employee of the Village with an
	interest in the Owner, the Applicant, or the Subject Property, and the nature and extent of
	that interest:
	a
	b

7. Neighboring Owners. Submit with this application a list showing the name and address of each owner of (1) property within 250 lineal feet in all directions from the subject property; and (2) property located on the same frontage or frontages as the front lot line or corner side lot line of the subject property or on a frontage directly opposite any such frontage or on a frontage immediately adjoining or across an alley from any such frontage.

After the Village has prepared the legal notice, the applicant/agent must mail by certified mail, "return receipt requested" to each property owner/occupant. The applicant/agent must then fill out, sign, and notarize the "Certification of Proper Notice" form, returning that form and <u>all</u> certified mail receipts to the Village.

- 8. <u>Survey</u>. Submit with this application a recent survey, certified by a registered land surveyor, showing existing lot lines and dimensions, as well as all easements, all public and private rights-of-way, and all streets across and adjacent to the Subject Property.
- 9. <u>Existing Zoning</u>. Submit with this application a description or graphic representation of the existing zoning classification, use, and development of the Subject Property, and the adjacent area for at least 250 feet in all directions from the Subject Property.
- 10. <u>Conformity</u>. Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.
- 11. <u>Zoning Standards</u>. Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.
- 12. <u>Successive Application</u>. In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code.

### **SECTION II**

When applying for a variation from the provisions of the Zoning Ordinance, you must provide the data and information required above, and in addition, the following:

ordinance ariation is	<u>Provision</u> . The specific provisions of the Zoning Ordinance from which a sought:
Section 3-	110: Buil Space, and Yard Requirements. Item D Minimum Yards, item D, 2.,
for R-4 fr	on-conforming lots Section 10-=105: Legal Nonconforming Lots of Record, A, ont yard setback to be 15' or 30% of lot width whichever is greater which is 15'. It that side is less than 15' so 15' would be the corner side setback.
eature or for (Attach set)	eatures of the proposed use, construction, or development that require a variation: parate sheet if additional space is needed.)
corner side required zo is 7.48' fro functioning	parate sheet if additional space is needed.) on being sought is to keep an existing portion of the existing building and reduce setback to 7.48' which will be the same as it exists. All new construction will be oning setbacks. The second floor will extend only over that existing first floor are the property line. Due to the very narrow lot of 45', it is very difficult to make a floor plan. This will allow a more standard floor plan due to the hardship of the
corner side required zo is 7.48' from functioning narrow lot.  Minimum Vordinance to (Attach  The above	setback to 7.48' which will be the same as it exists. All new construction will be oning setbacks. The second floor will extend only over that existing first floor are the property line. Due to the very narrow lot of 45', it is very difficult to make a floor plan. This will allow a more standard floor plan due to the hardship of the floor plan. A statement of the minimum variation of the provisions of the Zoning that would be necessary to permit the proposed use, construction, or development: separate sheet if additional space is needed.) is the minimum variation required. We have tried design to reduce this setback a
corner side required zo is 7.48' from functioning narrow lot.  Minimum Vordinance (Attach	setback to 7.48' which will be the same as it exists. All new construction will be oning setbacks. The second floor will extend only over that existing first floor are the property line. Due to the very narrow lot of 45', it is very difficult to make a floor plan. This will allow a more standard floor plan due to the hardship of the floor plan. A statement of the minimum variation of the provisions of the Zoning that would be necessary to permit the proposed use, construction, or development: separate sheet if additional space is needed.) is the minimum variation required. We have tried design to reduce this setback a

specifically address the following requirements for the grant of a variation:

support the grant of the required variation. In addition to your general explanation, you must

(a) <u>Unique Physical Condition</u>. The Subject Property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure of sign, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the Subject Property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current lot owner.

. . . . .

- (b) Not Self-Created. The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title and known to the owner prior to acquisition of the Subject Property, and existed at the time of the enactment of the provisions from which a variation is sought or was created by natural forces or was the result of governmental action, other than the adoption of this Code, for which no compensation was paid.
- (c) <u>Denied Substantial Rights</u>. The carrying out of the strict letter of the provision from which a variation is sought would deprive the owner of the Subject Property of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
- (d) Not Merely Special Privilege. The alleged hardship or difficulty is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely an inability to make more money from the use of the subject property; provided, however, that where the standards herein set out exist, the existence of an economic hardship shall not be a prerequisite to the grant of an authorized variation.
- (e) <u>Code and Plan Purposes</u>. The variation would not result in a use or development of the Subject Property that would not be in harmony with the general and specific purposes for which this Code and the provision from which a variation is sought were enacted or the general purpose and intent of the Official Comprehensive Plan.
- (f) <u>Essential Character of the Area</u>. The variation would not result in a use or development of the Subject Property that:
  - (1) Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use development, or value of property of improvements permitted in the vicinity; or
  - (2) Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or
  - (3) Would substantially increase congestion in the public streets due to traffic or parking; or

- (4) Would unduly increase the danger of flood or fire; or
- (5) Would unduly tax public utilities and facilities in the area; or
- (6) Would endanger the public health or safety.
- (g) No Other Remedy. There is no means other than the requested variation by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Subject Project. (Attach separate sheet if additional space is needed.)

We have reviewed other floor plan designs at 24' wide and find they do not flow or function well. 24' is too narrow to allow 2 rooms in depth with corridor and circulation space.

We are aware that only a portion of the building will be improved by the variation but that helps greatly making the home work. Note that we are not asking for the entire north side to have a reduced corner setback, only the area of the exisiting residence by allowing us to keep that portion of the home and demolish the

balance.

. . . .

### **SECTION III**

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

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

### SECTION IV

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

### **SECTION V**

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

Name of Owner: Frank Spirovski
Signature of Owner: Frunk Spunki
Name of Applicant: Ruiel J. Fobers
Signature of Applicant:
Date: 2/9/18

Village of Hindsale Application for Appeal pg. 6

Spirovski Residence Variance Application 842 West 7<sup>th</sup> Street Hinsdale, Illinois

### SECTION I

### 1-9 See attached application.

### 10. Statement of Conformity:

The proposal for the variance conforms to all requirements of the code except for the variation request for the corner side yard setback. The required setback is 15' as the average setback is less than 15'. Our intention is to keep a portion of the remaining residence to remain 7.48' from the property line. All new construction will be within the setback and a second story will be over the existing remaining portion of the residence.

### 11. Zoning Standards:

The ordinance is requiring us to maintain the required corner front setback. We will maintain the required corner front setback on all new construction. The existing building will remain and we will build the second story over that existing portion of the building. All other new construction will meet all zoning requirements.

### **SECTION II**

- Title: See attached.
- Ordinance Provision. See attached application.
- 3 Variation Sought: See attached application.
- 4 Minimum Variation. See attached application.
- 5 Standards for Variation:

The character of the existing property is very narrow for a corner lot. There are a number of 47' corner lots in Hinsdale, but this lot is 45'. Even a 50' interior lot would allow a 35' wide house, this lot would only allow a 24' wide house. Since the existing home has been there for over 75 years, we are proposing to keep a portion of the home and work within the existing building line. All other construction would remain at the required zoning setbacks. This lot is also at the far west side of town, adjacent to route 83. There are no other lots on the west side of Jackson that would be affected by the variation.

- a. <u>Unique Physical Condition</u>: The unique physical condition of this lot is how narrow it is. Due to being a corner lot, it does not allow for a well designed floor plan since the 45' corner lot only allows for a 24' wide house. It also differs from other lots since it is adjacent to route 83 and there are no homes on the west side of the street.
- b. Not Self-Created: This lot is existing and has the hardship has not been created by the Owner or Applicant.
- c. <u>Denied Substantial Rights:</u> Corner lots are typically larger than interior lots because of the larger corner setbacks. A 50' interior lot would allow a 35' wide house. This lot only allows a 24' wide house. This is also a very small lot at 45' wide.

Spirovski Residence Variance Application 842 West 7<sup>th</sup> Street Hinsdale, Illinois

- d. <u>Not Merely Special Privilege:</u> The home is being designed for the Owner and a family. This is not being done for speculation or for profit. There are no special privileges that will be obtained through this variation. It is only to allow for a home that has standard function and width.
- e. <u>Code and Plan Purposes:</u> This variation would not change the purpose of the Code or harmony of the site and adjacent areas. It does not change the intent of the Official Comprehensive Plan for the community. The home will remain a single family residence and would be no closer to the street than it has been for over 75 years.
- f. <u>Essential Character of the Area:</u> The variation would not result in a use or development of the Subject Property that:
  - i. Would not be materially detrimental to the public welfare or materially injurious to the enjoyment, use development or value of the properties in the vicinity. This will remain a single family residence and only 1 portion the existing will be located at the same location as the existing home.
  - ii. This is on the north side of the home adjacent to 7<sup>th</sup> street and would not impair an adequate supply of light and air to other properties.
  - iii. This will not have an affect on congestion in the public streets.
  - iv. This will not cause flood or fire.
  - v. This will not unduly tax public utilities and facilities in the area.
  - vi. This will not endanger the public health or safety of others.
- g. No Other Remedy: See attached application.

### **SECTION III**

- 1. See attached architecture plans showing site plan, floor plans and exterior elevations. We have included 10 full size sets of plans and 10 half size.
- 2. See attached survey and Schedule of zoning requirements.

### **SECTION IV**

1-3 Owner will comply with agrees to pay all fees required for the variation.

### **SECTION V**

See application for Owner's Signatures.

		842 7TH STREET HINSDALE, ILLINOIS VILLAGE OF HINSDALE ZONING REQUIREMENTS		
гем:	DESCRIPTION:	REQUIREMENT:	ACTUAL:	NON CONFORMING
1	Maximum Elevation:	34' plus .75 foot for each foot of side yard provided in excess of 6'.	34'-0"	NONC
2	Maximum Lot Area and Dimensions:	7000	5,625.00	NONC
3	Min. Side Yard:	6' or 6' plust 10% of lot width in excess of 50' whichever is more.	6'	NONC
4	Corner Side Yard:	15' of 30% of lot width whichever is greater.	15' (AT NEW CONSTRUCTION) 7.48' (AT EXIST)	NONC
5	Total Side Yards:	30% of total lot width. = 13.5'	13.5'	NONC
6	Max. Height Accessory	15'	NOT APPLICABLE	
7	Maximum Elevation Accessory:	NA	NOT APPLICABLE	
8	Minum Front Yard	35'/Average of the setbacks of all lots on frontage, including the existing building, excluding the highest and lowest setbacks for building on developed lots. The min. front and corner setback are 20' (excluding non conforming above)	The Average requirement is 20.42' the actual is 22'-5"	
9	Side and rear setback for accessory	2' in the rear 20% of the lot or 6' infront of the rear 20%.	NOT APPLICABLE	
10	Rear yard setback for Primary Structure	25'	43'-11-1/2"	
11	Maximum Floor Area Ratio	2800 s.f.	2800 s.f.	
12	Maximum Building Coverage for principal	25% = 1406 s.f.	1406 s.f.	
13	Maximum Building Coverage for Accessory	10%	NOT APPLICABLE	
14	Maximum Lot Coverage	50% = 2812.50 s.f.	2390 s.f.	Non pervious

1 .

842 WEST 7TH STREET					
AVERAGE OF THE BLOCK FRONT YARD SETBACK					
ITEM:	ADDRESS:	JACKSON	7TH STREET		
1	702 S. Stough		14.48		
2	842 W. 7th Street	16.54	7.48		
3	705 S. Jackson Street	25.71			
4	711 S. Jackson Street	<del>13.00</del>			
5	71S S. Jackson Street	14.50			
6	721 S. Jackson Street	24.92			
7	725 S. Jackson Street	25.50			
8	729 S. Jackson Street	25.33			
9	733 S. Jackson Street	25.08			
10	737 S. Jackson Street	26.16			
11	741 S. Jackson Street	26,75			
12	843 W. 8th Street	<del>35.67</del>			
13					
14	Average:	20.42	10.98		
15	Minimum Required	20 <sup>1</sup>	15'		

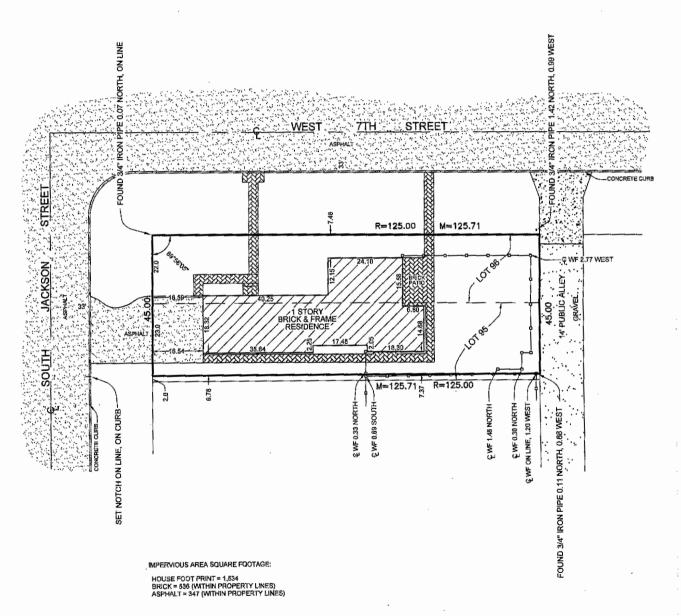


### SCHOMIG LAND SURVEYORS, LTD. PLAT OF SURVEY

909 EAST 31ST STREET LA GRANGE PARK, ILLINOIS 60526 SCHOMIG-SURVEYWESBOGLOBALNET WWW.LAND-SURVEY-NOW.CDM PHONE: 708-352-1452 FAX: 708-352-1454

LOTS 96 AND 95 (EXCEPT THE SOUTH 2 FEET THEREOF) IN S. T. KIMBELL'S RESUBDIVISION, BEING A RESUBDIVISION OF BLOCK 21 IN STOUGH'S SECOND ADDITION TO HINSDALE, BEING A SUBDIVISION IN THE EAST 1/2 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION RECORDED AUGUST 5, 1892 AS DOCUMENT 49378, IN DU PAGE COUNTY, ILLINOIS.

COMMON ADDRESS: 842 WEST 7TH STREET, HINSDALE.



THE CUSTOMER LISTED BELOW PROVIDED THE LEGAL DESCRIPTION SHOWN HEREON, WE DO NOT GUARANTEE THAT THIS IS THE CORRECT LEGAL DESCRIPTION FOR THE TRANSACTION INTENDED,

IMPORTANT: COMPARE LEGAL DESCRIPTION TO DEED OR TITLE POLICY AND REPORT ANY DISCREPANCY FOR CLARIFICATION OR CORRECTION IMMEDIATELY. JINLESS OTHERWISE NOTED, THIS PLAT DOES NOT SHOW BUILDING LINES OR OTHER RESTRICTIONS ESTABLISHED BY LOCAL ORDINANCES.

DO NOT SCALE OIMENSIONS FROM THIS PLAT; THE LOCATION OF SOME FEATURES MAY BE EXAGERATED FOR CLARITY. NO EXTRAPOLATIONS MAY BE MADE FROM THE INFORMATION SHOWN WITHOUT THE WRITTEN PERMISSION OF SCHOMIG LAND SURVEYORS LTD. ONLY PLATS WITH AN EMBOSSED SEAL ARE SPIFICIAL DOCUMENTS. FIELD WORK WAS COMPLETED PER SURVEY DATE ISTED BELOW. © COPYRIGHT, ALL RIGHTS RESERVED.

SURVEY DATE:

MARCH 9TH, 2017.

BUILDING LOCATED:

MARCH 9TH, 2017.

MPERVIOUS AREA ADDED: MARCH 16TH, 2017. MARIA SPIROVSKI DROERED BY:

YLAT NUMBER:

90NE60-1 & 171015 SCALE: 1" = 20"

### LEGEND

C.L.F. = CHAIN LINK FENCE = MEASURED DIMENSION = RECORDED DIMENSION R. W.F. = WOOD FENCE-= BUILDING LINE VINYL FENCE P.U.E. = PUBLIC UTILITY EASEMENT = IRON FENCE -X = DRAINAGE EASEMENT

SURVEY.

STATE OF ILLINDIS ) es.

Tursell

D.E.

SQUARE FEET. LOT AREA: 5,656

WE, SCHOMIG LAND SURVEYORS, LTD. AS AN ILLINOIS PROFESSIONAL DESIGN FIRM, LAND SURVEYOR CORPORATION, DO HEREDY CERTIFY THAT WE HAVE SURVEYED THE PROPERTY DESCRIBED HEREON.

DESCRIBED HEROV.

ALL DIMENSIONS ARE IN FEET AND DECIMAL PARTS OF A FOOT.

DIMENSIONS SHOWN ON BUILDINGS ARE TO THE OUTSIDE OF
BUILDINGS. THE BASIS OF BEARINDS, IF SHOWN AND UNLESS
OTHERWISE NOTEO, ARE ASSUMED AND SHOWN TO INDICATE
ANGULAR RELATIONSHIP OF LOT LINES.

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

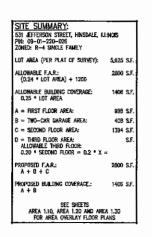
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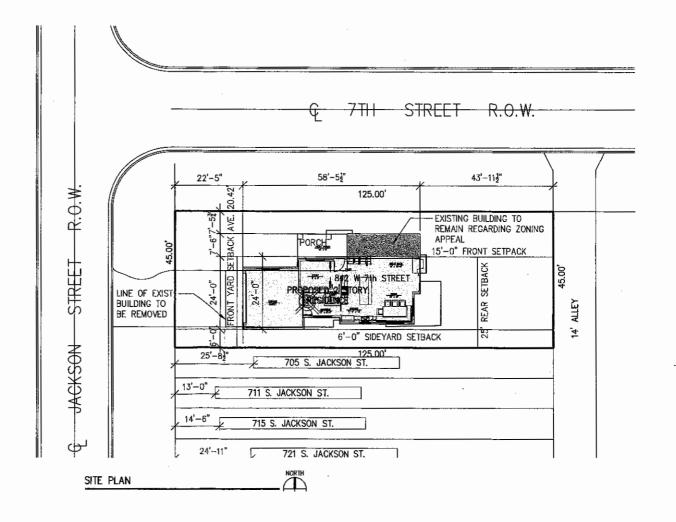
PROFESSIONAL ILLINOIS LAND SURVEYOR LICENSE # 035-002446

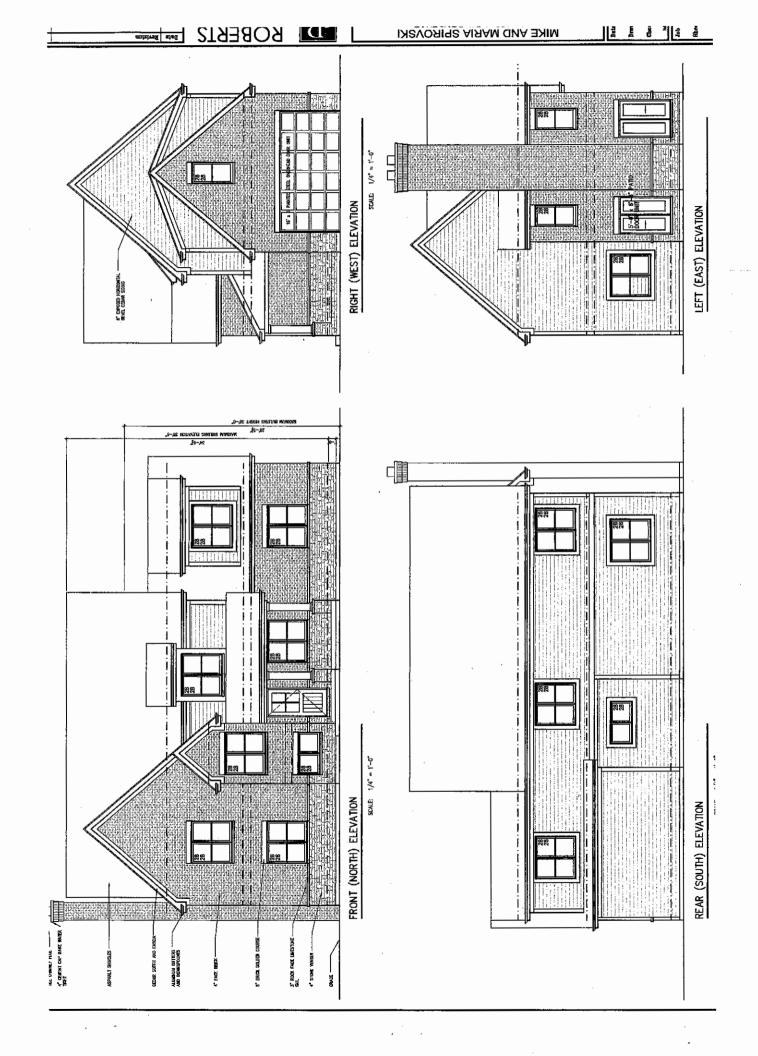
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## SPIROVSKI RESIDENCE

# 842 WEST 7TH STREET HINSDALE ILLINOIS



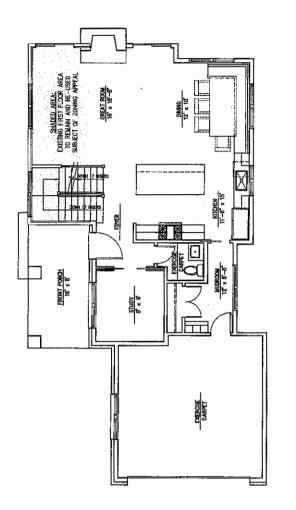


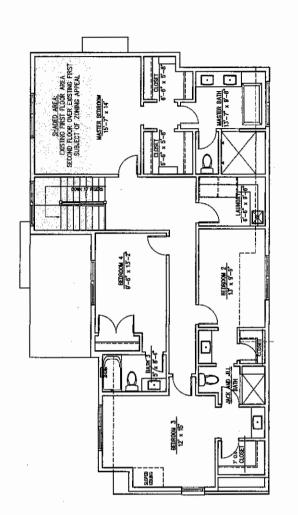


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SCALE

FIRST FLOOR PLAN





SECOND FLOOR PLAN

MAR E



### MEMORANDUM

DATE:

November 16, 2017

TO:

Chairman Neiman & Members of the Zoning Board of Appeals

CC:

Christine Bruton, Village Clerk

FROM:

Robert McGinnis, MCP

Director of Community Development/Building commissioner

RE:

Formal Appeal - APP-03-17; 504 & 422 S. Oak Street

In this application for appeal, the applicant is appealing a staff decision that 504 S. Oak Street is a single Zoning Lot eligible for development of a single family home and not part of the 422 S. Oak Street Zoning Lot.

The 504 S. Oak Street lot is improved with a single family home. It has its own address, its own utilities, and the requisite number of elements to be considered a Dwelling Unit by definition (kitchen, bedroom, bathroom, living space). The owner of the property at 422 S. Oak Street used it as a garage and coach house for several years. The owner then marketed and sold the property as two lots which were subsequently purchased by a builder. The builder has applied for a permit to redevelop the 504 S. Oak Street lot with a new single family home.

This property is located in the R1 Residential Zoning District in the Village of Hinsdale and is located on the west side of Oak Street between 4<sup>th</sup> Street and 6<sup>th</sup> Street. The 504 S. Oak Street lot has a frontage of approximately 78', a depth of approximately 332.5', and a total square footage of approximately 25,935. The maximum FAR is .20 plus 2,000 or 7,187 square feet, the maximum Building Coverage is 25% or 6,484 square feet, and the maximum Total Lot Coverage is 50% or 12,968 square feet. The 422 S. Oak Street lot has a frontage of approximately 122', a depth of approximately 270', and a total square footage of approximately 32,638. The maximum FAR is .20 plus 2,000 or 8,528 square feet, the maximum Building Coverage is 25% or 8,159 square feet, and the maximum Total Lot Coverage is 50% or 16,319 square feet.

CC:

Kathleen Gargano, Village Manager

Zoning file APP-03-17



19 E. Chicago Avenue, Hinsdale, IL 60521

## APPLICATION FOR ZONING APPEAL

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

FILING FEES: \$1,100.00

Name of Applicant(s): James and Nancy Dugan
Address of Subject Property: 504 S. Oak Street and 422 S. Oak Street (if applicable)
If Applicant is not property owner, Applicant's relationship to property owner:
_owner of adjacent property

FOR OFFICE USE ONLY
Date Received: 11 10 17 Zoning Calendar No. APP-63-17
PAYMENT INFORMATION: Check # Check Amount \$

## **SECTION I**

1. Owner. Name, mailing ac	dress, telephone number and email address of owner:
Avra Properties Fund II End-L	Jser, LLC
212 W. Van Buren Street, Su	ite 201
Chicago, IL 60607	
Phone: 312-588-1513	Email: arvydas@bayitbuilders.com
2. <u>Trustee Disclosure</u> . In the	case of a land trust provide the name, address, telephone
number and email address of a	all trustees and beneficiaries of the trust:
	, telephone number and email address of applicant, if
different from owner:	
James and Nancy Dugan	
540 S. Oak Street Hinsdale, IL 60521	·
Phone: 312-542-8944	Email: jim@ocaventures.com
4. Subject Property. (if applic	cable) Address and legal description of the subject
	or legal description if necessary.
504 S. Oak Street and 422	
See attached legal descripti	on
5. <u>Consultants</u> . Name and acwith respect to this application:	ddress of each professional consultant advising applicant
a. Attorney: Robert T. O'D	onnell and Hayleigh K. Herchenbach
b. Engineer:	

. pg. 2

6.	<u>Village Personnel</u> . Name and address of any officer or employee of the Village with
	an interest in the Owner, the Applicant, or the Subject Property, and the nature and
	extent of that interest:
	an/a
	b

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

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

- 8. <u>Existing Zoning</u>. Submit with this application a description or graphic representation of the existing zoning classification, use, and development of the Subject Property, and the adjacent area for at least 250 feet in all directions from the Subject Property. \*\*\*
- 9. <u>Conformity</u>. Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.
- 10. Zoning Standards. Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.
- 11. <u>Successive Application</u>. In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code.

\*\*\*See attached Exhibit 3.

## **SECTION II**

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

1.	<u>Action Appealed</u> . The specific order, decision, determination, or failure to act from which an appeal is sought: (Attach copy of any documents evidencing the action appealed.)					
	October 17, 2017 Zoning Interpretation of Village Manager Kathleen Gargano					
	stating that 504 S. Oak and 422 S. Oak "have had, and continue to have					
	independent single family principal structures on them" and thus do not constitute					
,	a single Zoning Lot as defined by the Zoning Code. A copy of the Interpretation					
	is attached as Exhibit .					
2.	<u>Facts</u> . The facts of the specific situation giving rise to the original order, decision, determination, or failure to act and to the appeal therefrom:					
	See attached Exhibit 1.					
0						
3.	Relief Sought. The precise relief sought:					
	Treat the properties as a single Zoning Lot under the Village Code on which					
	no more than one single-family residence may be built.					

4.	order, decision, determination, or failure to act being appealed and why the relie sought is justified and proper:				
	See attached Exhibit 2.				

## **SECTION III**

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

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

## **SECTION IV**

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

## **SECTION V**

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

Name of Owner:	
Signature of Owner:	
Name of Applicant:	James Dugan and Nancy Dugan
Signature of Applicant:	Robert To Jane , attorney for applicants
Date:11/10/17	

pg. 6

# EXHIBIT A LEGAL DESCRIPTIONS FOR 422 SOUTH OAK STREET AND 504 SOUTH OAK STREET, HINSDALE, IL

### PARCEL I:

- LOT 2 IN MCMANUS RESUBDIVISION OF LOT 1 AND THE SOUTH 101 FEET OF THE A, BAST 64.10 FEBT OF LOT 2 AND THE EAST 12.00 FEET OF LOT 2 (EXCEPT THE SOUTH 101 FEET THEREOF) IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, IN THE SOUTH HALF OF THE NORTHBAST QUARTER AND THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER (ACCORDING TO DOCUMENTNO. 14048 RECORDED JUNE 12, 1871 AND DOCUMENT 555319 RECORDED OCTOBER 2, 1948) IN SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DU PAGE COUNTY, ILLÉNOIS, EXCEPT THAT PART OFLOT 2 LYING WEST OF THE BAST LINE OF LOT 2 OF IACKSON'S RESUBDIVISION AFORESAID, EXTENDED SOUTHERLY OF MCMANUS RESUBDIVISION OF LOT I AND PART OF LOT 2 IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTH QUARTER OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, BAST OF THE THIRD PRINCIPAL MBRIDIAN, ACCORDING TO THE PLAT OF MCMANUS RESUBDIVISION AFORESAID, RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 5553 19, IN DU PAGE COUNTY, ILLINOIS
- B. THE EAST 3.00 FEET OF LOT 2 IN JACKSON'S RESUBDIVISION OF PART OF LOT 1 IN BLOCK 11 OF W. ROBBINS' PARK ADDITION TO HINSDALE IN THE NORTHEAST IN OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, BAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED OCTOBER 17, 1951 AS DOCUMENT NO. 637040 AND CORRECTED BY CORRECTION CERTIFICATE DATED NO VEMBER 1, 1951 AND RECORDED NOVEMBER 1, 1951 AS DOCUMENT NO. 638267, IN DU PAGE COUNTY, ILLINOIS
- C. THE EAST 17.00 FEET OF THAT PART OF LOT 2 LYING WEST OF THE EAST LINE OF LOT 2 OF JACKSON'S RESUBDIVISION, AS AFORESAID, EXTENDED SOUTHERLY OF MCMANUS RESUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/4 OF THE NORTHBAST 1/4 AND THE NORTH 1/4 OF THE SOUTHBAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, BAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID MCMANUS RESUBDIVISION AFORESAID, RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319, IN DU PAGE COUNTY, ILLINOIS

COMMONLY KNOWN AS: 422 SOUTH OAK STREET, HINSDALE, IL

P.I.N.: 09-12-225-017 01

PARCEL 2: LOT 3 IN MCMANUS RESUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL. MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319 IN DU PAGE COUNTY, ILLINOIS.

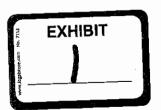
COMMONLY KNOWN AS: 504 SOUTH OAK STREET, HINSDALE, ILLINOIS

P.I.N.: 09-12-225-009

P:\dinalairsch\Salo of 422-504 Oak\documents\oirsh leads doc word

## Statement of Facts

- 1. Under §12-206 of the Village Zoning Code, a "zoning lot" is "a tract of land consisting of one or more lots of record, or parts thereof, under single ownership or control, located entirely within a block and occupied by, or designated by its owner or developer at the time of filling for any zoning approval or building permit as a tract to be developed for, a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designed and arranged, or required under this code, to be used with such building or use." (emphasis added)
- 2. Under §9-101 of the Village Zoning Code, an "accessory structure or use" is a structure or use that:
  - a. Is subordinate in extent and purpose to, and serves, a principal structure or use; and
  - b. Is customarily found as an incident to such principal structure or use; and
  - c. Contributes to the comfort, convenience, or necessity of those occupying, working at, or being served by such principal structure or use; and
  - d. Except as otherwise expressly authorized by the provisions of this code, is located on the same zoning lot as such principal structure or use; and
  - e. Is under the same ownership and control as such principal structure or use.
- 3. On June 25, 1993, Jerome Girsch, the beneficial owner of 422 S. Oak and 504 S. Oak, wrote a letter to the Village stating his intention to remove the detached garages on both properties and convert the existing coach house on the 504 property into an accessory building to his residence on 422 S. Oak, See Exhibits 5, 5a.
- 4. On August 11, 1993, the Village responded to a pre-plan review application submitted on behalf of Girsch. See Exhibit 6. The Village's response stated that the 504 coach house



"can be used as an accessory structure to the house at 422 S. Oak if and only if the two lots are combined into a single 'Zoning Lot' pursuant to" the Village's Zoning Code.

- 5. Girsch modified his original plans submitted to the Village and proceeded to convert the existing coach house on the 504 property into an accessory building to his residence on 422 S. Oak.
- 6. The detached garages on both the 504 and 422 lots were demolished. The former coach house on the 504 lot was demolished and reconstructed as a coach house with a four-car garage. See 1/21/94 Demolition Plans and Site Plan, attached as Exhibit 7.
- 7. The coach house was reduced from 2,264 square feet to 2,105 square feet. See Exhibit 7b.
- 8. The coach house built by Girsch contained a four-car garage, two bedrooms, a loft, one-and-a-half bathrooms, and a kitchenette/living/dining room. See Exhibit 7.
  - 9. The 2-car garage on 422 was demolished in 1994. See Exhibit 7c.
- 10. Between 1987 and 1998, a walkway was constructed on the western side of both lots between the swimming pool on 504 and the tennis courts/coach house on 422. See photographs from DuPage County Parcel Viewer, attached as Group Exhibit 8.
- 11. Each lot has its own driveway to Oak Street, but the two driveways share a common drive court towards the western side of both lots. See Group Exhibit 8.
- 12. On September 25, 2001, the Trust that owned the 422 S. Oak and 504 S. Oak lots conveyed both lots to John LaRocque and Janet LaRocque in a single deed. See Exhibit 9.
- 13. While it contained a kitchenette, bathroom, and bedrooms, the 504 coach house was never occupied as a single-family residence separate from the 422 residence. Instead, from the time it was built by Girsch in approximately 1995 until it was sold by Janet LaRocque in December 2016, the coach house served as an accessory structure to the principal residence on 422 S. Oak.

- 14. On December 30, 2016, Janet LaRocque conveyed both the 422 lot and the 504 lot to Avra Properties Fund II End-User, LLC ("Owner"). See Group Exhibit 10.
- 15. Owner, through its contractor, Bayit Builders, applied for a permit to construct a detached garage on the 422 lot on February 2, 2017. See Exhibit 11.
- 16. On March 22, 2017, the Village denied the permit because the application inaccurately depicted 422 S. Oak as a separate zoning lot from 504 S. Oak. The Village stated that, per the August 11, 1993 letter, the Village considered both properties to be one zoning lot. See Exhibit 12.
- 17. Bayit Builders appealed the permit denial, and on June 7, 2017, the Village Manager issued a Determination letter denying the appeal. See Exhibit 13.
- 18. The Village Manager's letter confirmed that the August 11, 1993 letter was written in response to Girsch's inquiry "whether the building on the 504 S. Oak PIN that was then being used as a principal residence could be remodeled and converted to use as an accessory structure to the principal residence on the 422 S. Oak PIN." See Exhibit 13 (emphasis added).
- 19. On July 3, 2017, Bayit Builders filed an application for zoning appeal of the Village Manager's June 7, 2017 determination.
- 20. On August 21, 2017, the Village Manager reversed her June 7, 2017 Determination.

  The reversal was based on a July 12, 2017 Memorandum to the Village Manager by Village Attorney

  Michael A. Marrs. See Exhibit 14.
- 21. The July 12, 2017 Memorandum stated that following receipt of the August 11, 1993 letter, Girsch revised the plans submitted for the pre-plan review application. See Exhibit 7. The "recreational room" was converted to a "living room/dining room", the first-floor "storage room" was converted to a "bedroom", kitchen and laundry appliances were added, and a third floor loft was added. See, Exhibits 5a, 7. The 4-car garage was not reduced from the original plans.

- 22. The July 12, 2017 Memorandum stated Girsch's revised coach house plans indicated the owner "took steps to maintain independent principal structures on each lot, presumably to ensure that the 504 S. Oak PIN and the 422 S. Oak PIN could continue to be regarded by the Village as separate principal residences and separate zoning lots." See Exhibit 14.
- 23. In fact, while Girsch revised the plans submitted to the Village, Girsch did not revise the proposed or actual use of the coach house. Regardless of how it was constructed and how the rooms within it were configured, throughout the period of Girsch's ownership and the subsequent ownership of both properties by the LaRocques, the coach house served as an accessory structure to the principal residence on 422 S. Oak. See Affidavit of Nancy Dugan, Exhibit 15.
- 24. On September 19, 2017, applicants James and Nancy Dugan submitted a Request for Interpretation to the Village Manager. The request asked the Village Manager to determine "whether 504 S. Oak Street and 422 S. Oak Street constitute one 'Zoning Lot' as defined under Section 12-206 of the Hinsdale Zoning Code because they are 'one or more lots of record . . . under single ownership or control, located entirely within a block and occupied by . . . a principal building and its accessory buildings." See Application for Interpretation, Exhibit 16.
- 25. On October 17, 2017, Village Manager Kathleen Gargano issued the Zoning Interpretation in response to the Dugans' request, which is hereby appealed from. See Exhibit 4. Ms. Gargano's Interpretation stated that "In order to constitute a single Zoning Lot under the Zoning Code, adjoining lots need not only to have been held in common ownership, but to also host a single principal building and its accessory structures." Ms. Gargano stated the two lots do not constitute a single Zoning Lot because "Village records indicate that both the 504 S. Oak PIN and the 422 S. Oak PIN have had, and continue to have, independent single family principal structures on them."

## Statement of Errors

Both the Village Attorney's July 12, 2017 Memorandum and the Village Manager's October 17, 2017 Interpretation erred in emphasizing the *appearance* of the properties at 504 S. Oak and 422 S. Oak to determine they do not constitute a single Zoning Lot. The Village Attorney stated that a review of the plans submitted by Girsch in 1993 and the plans actually permitted by the Village to be constructed in 1994 revealed that the Girsches "took steps to maintain independent principal structures on each lot." See Exhibit 14. The Village Manager's interpretation states that "Village records indicate that both the 504 S. Oak PIN and the 422 S. Oak PIN have had, and continue to have, independent single family principal structures on them". See Exhibit 4.

However, the Zoning Code places no import on the *appearance* of a structure to determine whether it is accessory to a principal structure. See \$9-101 of the Zoning Code. Rather, the Village's criteria for determining whether a structure is accessory to a principal structure depend on a) the location and ownership of the accessory structure, and b) how the accessory structure is *used*. See \$9-101 of the Zoning Code.

This is why the Village's August 11, 1993 letter to Girsch's architect stated the coach house "can be used as an accessory structure to the house at 422 S. Oak if and only if the two lots are combined into a single 'Zoning Lot.'" See Exhibit 6 (emphasis added). Similarly, the Village Manager's June 7, 2017 letter denying Bayit Builders' permit appeal identified that since Girsch's modifications to the coach house in 1993, "the coach house accessory structure on the 504 S. Oak PIN began serving as an accessory structure to the 422 S. Oak PIN." See Exhibit 13, p. 2. The Village changed its position when it discovered Girsch altered his modifications to the coach house in 1993/1994.

Girsch's alterations to the 1993 plans for the coach house changed the *appearance* of the coach house. Instead of a garage with a recreational room above it, the coach house was modified to



be a garage with a recreational room, two bedrooms, a laundry room, and a kitchenette. See, Exhibits 5a, 7. Arguably, the coach house could have served as a separate residence. Notably, the 4-car garage was not reduced from the original plans, so the "separate residence" would have been a 2-bedroom, 2-bathroom unit with a loft, a kitchen/living room/dining room, and . . . a 4-car garage!

But the Village Code does not identify a structure by either its appearance or its "potential" use. Rather, whether a structure is principal or accessory in nature depends on its actual use. See, \$9-101. Here, the coach house on the 504 lot was clearly used as an accessory structure to the owners of the 422 lot. For one thing, it shared a driveway with the principal residence. In 1994, the detached garage on the 422 lot was demolished. See Exhibit 7c. At the same time, the coach house on the 504 lot was reconstructed with a 4-car garage. No garage was subsequently built on the 422 lot.

Girsch may have changed the proposed plans in 1993, but he did not change the proposed use of the coach house and garage. After changing the coach house plans to create this apparent "single family residence" on the 504 lot, Girsch did not rent or sell the "residence" but instead continued to use it as accessory to his own residence on the 422 lot. And when he sold the two lots to the LaRocques in 2001, they did the same.

The coach house on the 504 lot:

- a. was subordinate in extent and purpose to, and served, the principal residence on the 422 lot; and
- b. a coach house is customarily found as an incident to a principal residence; and
- c. the coach house contributed to the comfort, convenience, or necessity of those occupying the principal residence; and
- d. was under the same ownership and control as the principal residence on the 504 lot since at least the Girsch's purchase of the coach house in 1993.

Therefore, by definition, the coach house served as an accessory structure to the principal residence on the 422 lot. See \$9-101 of the Zoning Code. Because the 422 lot and 504 lot were occupied by a principal residence and its accessory structure, under single ownership, and located entirely within the same block, the two lots are deemed one Zoning Lot under the Zoning Code. See \$12-206. This is the position taken by the Village both in the August 11, 1993 letter, in the Village Manager's June 7, 2017 Determination. See Exhibits 6, 13. The fact that Girsch changed his plans in 1994 to alter the appearance of the coach house does not change this position. Under the Zoning Code, the facts that make a building an accessory structure are how it is used.

For these reasons, the Village Manager's October 17, 2017 Interpretation was incorrect and the properties at 504 S. Oak and 422 S. Oak should be determined by the Village to be a unified Zoning Lot.

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

The Subject Properties are in the R-1 District and are surrounded by R-1 uses for at least 250 feet in all directions. On April 29, 1993, the then owner of the 422 S. Oak Street lot purchased the 504 S. Oak Street lot next door. In 1994-95, the owner demolished the garage on the 422 lot, developed the 504 lot with a coach house (with attached garage), and thereafter used the garage and coach house on the 504 lot as an accessory use to the residence on the 422 lot. On September 25, 2001, the 422 and 504 properties were transferred on a single deed to a new owner, who resided in the single-family residence on the 422 lot and continued to use the garage and coach house on the 504 lot as an accessory use to the residence on the 422 lot until the two lots were sold on December 30, 2016.



elibergank, dieseron inc.

October 17, 2017

Mr and Mrs. James and Nancy Dugan 540 St Oak Street Hinsdale, Illinois 60521

Re: Zoning Interpretation – 422/504 S. Oak Street, Hinsdale, Illinois

Dear Mr. and Mrs. Dugan -

The Village is in receipt of your Application for Interpretation concerning the properties located at 422 & 504 S. Oak Street. Section 11-501 of the Hinsdale Zoning Code ("Zoning Code") provides that the Village Manager, subject to the procedures, standards, and limitations of that Section, may render interpretations of the provisions of the Zoning Code and of any rule or regulation issued pursuant to it.

Your application requests my interpretation of whether the 422 and 504 S. Oak Street lots comprise a single "Zoning Lot" as defined in Section 12-206 of the Zoning Code. Section 12-206 of the Zoning Code defines a Zoning Lot as follows:

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

The property located at 504 S. Oak Street has a PIN of 09-12-225-009, (the "504 S. Oak PIN"), and the property located at 422 S. Oak Street has a PIN of 09-12-225-017 (the "422 S. Oak PIN"). As you know, Village records regarding the two PINS were the subject of an extensive review by staff and the Village Attorney earlier this year. That review showed there was an inquiry in 1993 by the then-Owner of the two PINS regarding the possibility of converting the principal structure on the 504 S. Oak PIN to an accessory structure for the benefit of the principal structure on the 422 S. Oak PIN. That plan would have resulted in the creation of a single Zoning Lot. The then-Owner did not carry out that plan, however, and instead submitted the sed plans that maintained a principal structure on the 504 S. Oak PIN. Those plans were several and approved by the Village as plans for a single-family principal residence in 1994 were subsequently carried out by the Owner.

In order to constitute a single Zoning Lot under the Zoning Code, adjoining lots need not only to have been held in common ownership, but to also host a single principal building and its accessory structures. As Village records indicate that both the 504 S. Oak PIN and the 422 S. Oak PIN have had, and continue to have, independent single family principal structures on them, my interpretation is that the two lots do not collectively constitute a single Zoning Lot as defined in the Zoning Code.

Issued this 18th day of October, 2017

athleen Gargano, Village Manager

Village of Hinsdale

June 25, 1993

Mr. Bohdan Proczko
Assistant Village Manager and
Director of Public Works
Village of Hinsdale
19 East Chicago Avenue
Hinsdale, IL 60521

Dear Mr. Proczko:

I am the owner of the single family residence located at 422 South Oak Street. I have recently purchased the property to the south commonly known as 504 South Oak Street. The 504 property contains a two-story residential building which was originally constructed as the coachhouse for my residence.

My goal is to convert the 504 coachhouse into a 4-car garage with a second floor recreation room while, at the same time, removing the two separate garages that now reside on these properties. The coachhouse would then be an accessory building to my residence. My desire is that the two properties remain separate so that I have options available as to how the parcels could be dealt with in the future.

My architect, Mr. Michael Realmuto and my construction manager, Mr. Charles Ettner met with your Building Commissioner, Mr. Charles Schmidt and subsequently reported to me that the 504 property was non-conforming. I would be very appreciative if you would review this situation and allow me to keep these properties separate. I understand that the interpretations here are fairly complex and might, in fact, need to be reviewed by the Village Attorney. If this is the case, I would be prepared to reimburse the Village the fee up to \$1,500 for this review.

I appreciate your consideration in this matter. Please advise me at your earliest convenience how to proceed.

Best regards

Jerome D. Girsch

EXHIBIT 5

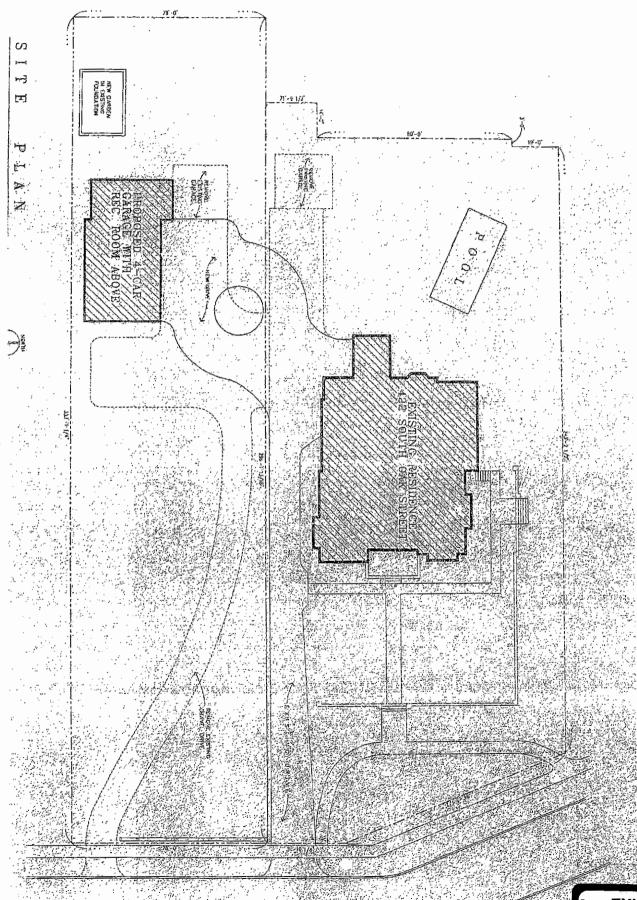
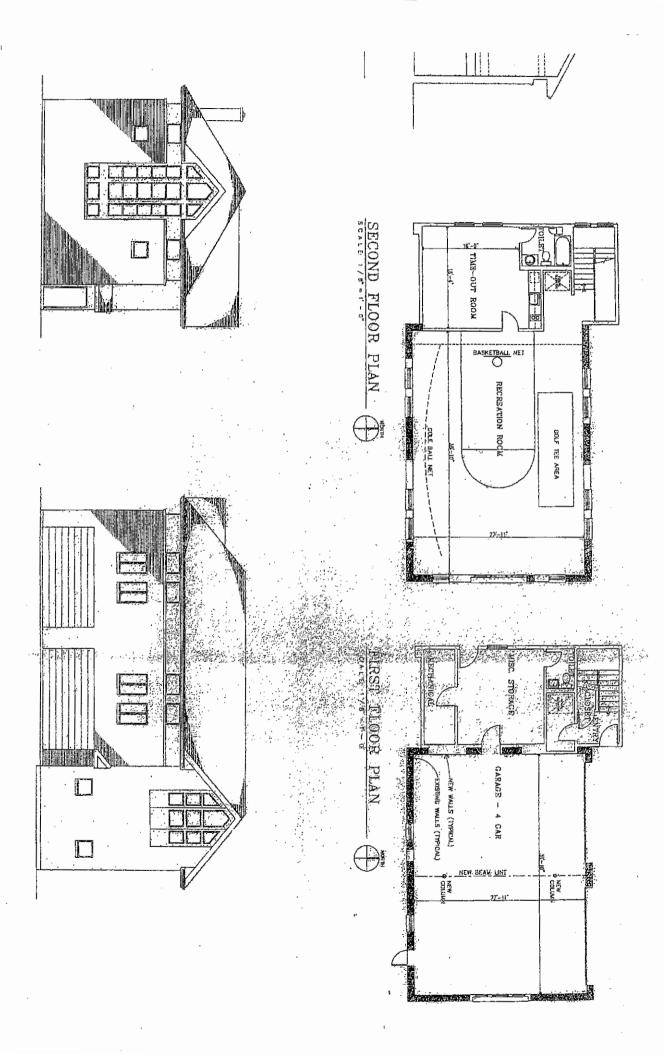


EXHIBIT 5a



078



## VILLAGE OF HINSDALE

FOUNDED IN 1873

POLICE DEPARTMENT 789-7070 FIRE DEPARTMENT 789-7060 19 EAST CHICAGO AVENUE HINSDALE, ILLINOIS 60521-3489 • (708) 789-7000 TRUSTEE
Affan R. Bar
Kevan Conn
Cerol B. GoddaPaul J. Kessenu
Menhew M. Kle
William E. Whitney.

VILLAGE PRESIDEN

Joyce E. Skor

August 11, 1993

Mr. Michael J. Realmuto
Realmuto, Steffen & Loftus Ltd.
6355 North Broadway Suite 30
Chicago, Illinois 60660 1418

RE: Girsch Residence, 422 S. Oak St., Hinsdale, IL

Dear Mr. Realmuto:

The Village is in receipt of your letters of July 22, 1993, along with the pre-plan review application, the plats of survey and preliminary plans. Your letter asks several questions which I have summarized as follows:

- 1. Can the existing garages on both properties be demolished?
- 2. Can the original coach house at 504 S. Oak, which is now used as a principal residence, be remodelled to be a 4 car garage with a rec room on the second floor and used as an accessory structure to the existing residence at 422 S. Oak?
- 3. At some future time, following completion of this work, can 504 S. Oak be sold as a separate lot with the coach house used as a principal residence?

## The short answers are:

- 1. Yes the garages can be demolished.
- The coach house can be remodelled provided that the remodelling does not create any new nonconformities or increase any existing nonconformities. It can be used as an accessory structure to the house at 422 S. Oak if and only if the two lots are combined into a single "Zoning Lot" pursuant to Sections 12-206L and 12-101D of the Zoning Code. A separate principal dwelling unit would not be permitted on the second floor of the coach house.



EXHIBIT

Mr. Michael J. Realmuto RE: Girsch Residence August 11, 1993

> Upon completion of the proposed project the property would consist of one Zoning Lot, as that term is defined in Subsection 12-206L of the Zoning Code and the lot at 504 S. Oak could not then be sold off as a separate lot.

Pursuant to the 1989 Zoning Code, an applicant for any zoning approval or building permit must designate a "Zoning Lot" to be used as the basis for review of his or her application. A Zoning Lot may consist of one or more Lots of Record. Thus, you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to he used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future. Subsection 12-101C of the Code provides:

...no...zoning lot, now or hereafter existing, shall be...divided...except in compliance with the regulations of this Code. Without limiting the foregoing, any such activity that would...create any parcel of land that could not be developed in compliance with this Code shall be prohibited.

Because the combined lots at 422 and 504 S. Oak would not have either sufficient area or width to create two new Zoning Lots that comply with the Code's lot area and width requirement, this Subsection would prohibit any future division of the new Zoning Lot into two separate Zoning Lots.

The properties at 422 and 504 S. Oak St. are currently zoned in the R-1 Single Family Residence District. The minimum requirements for lots in the R-1 District are:

Total Lot Area	٠.		30,000 sq. ft.
Lot Width			125 ft.
Lot Depth			125 ft.

The properties currently have the following dimensions:

			422	S. Oak	, A <sup>17</sup> ( , 18	504 S.	Oak
_			· · · · · ·			ا مارور (مارور)	Jane 1960 i
	Lot Are	ea	32,7	81 sq. ft.	V.	25,291.	8 sq. ft.
	Vidth Depth		121 206	15 ft.		78 ft. 333.1 f	
TO! I	chin .	Sec. 35. 25. 25. 25.	470	יוז עו	100	222.1	

Both the residence at 422 S. Oak and the coach house at 504 S. Oak are Pre-code Structures under Subsection 12-206P of the Zoning Code. They were lawfully existing on June 18, 1988, and they are each located on a Lot of Record that does not meet the requirements

Mr. Michael J. Realmuto RE: Girsch Residence August 11, 1993

of the 1989 Zoning Code. However, upon completion of the plans, as submitted with the pre-plan review, the Girsch property would consist of one Zoning Lot that would meet the Code's lot area and lot width requirements. The property could not thereafter be resubdivided unless each resulting lot complied with the minimum R-1 District requirements.

Your clients may proceed with this project provided that all other zoning regulations and building requirements are met but be advised that the existing home at 504 S. Oak St. would become an accessory structure. No changes could be made to that structure that would create any new nonconformities or increase any existing nonconformities.

With one lot consisting of 58,073.4 sq. ft. the following would apply:

Front Yard - the average of the front setbacks of the properties on either side of the subject site, (i.e., 320 E. Fourth St. & 329 E. Sixth St.)

Rear Yard - 50 feet

Side Yards - both side yards must total at least 30 feet with no one side yard being less than 10 feet. (The coach house is currently set 5.5 feet off of the lot line. It would be allowed to remain but could not be expanded except in compliance with applicable regulations.)

FAR - 3 plus 800 sq. ft. or 18,222 sq. ft. of building space. (Floor Area Ratio)

Maximum Building Coverage:

Principal and Accessory Buildings - 25% or 14,518 sq. ft.

Accessory Buildings Only - 10% or 5,807 sq. ft.

Please note that the maximum permitted height of an accessory building is 15 feet, as height is defined pursuant to Section 12-206H of the Zoning Code. The conch house probably exceeds this limitation. However, it could be remodelled so long as new and existing nonconformities were not created or expanded.

In summary, the zoning lot appears to be large enough to allow your clients to pursue their improvement plans. However, once the coach house is accessory to the principal structure the property consists of one zoning lot and cannot be subdivided in the future. Please note

that no separate dwelling units would be permitted in the coach house.

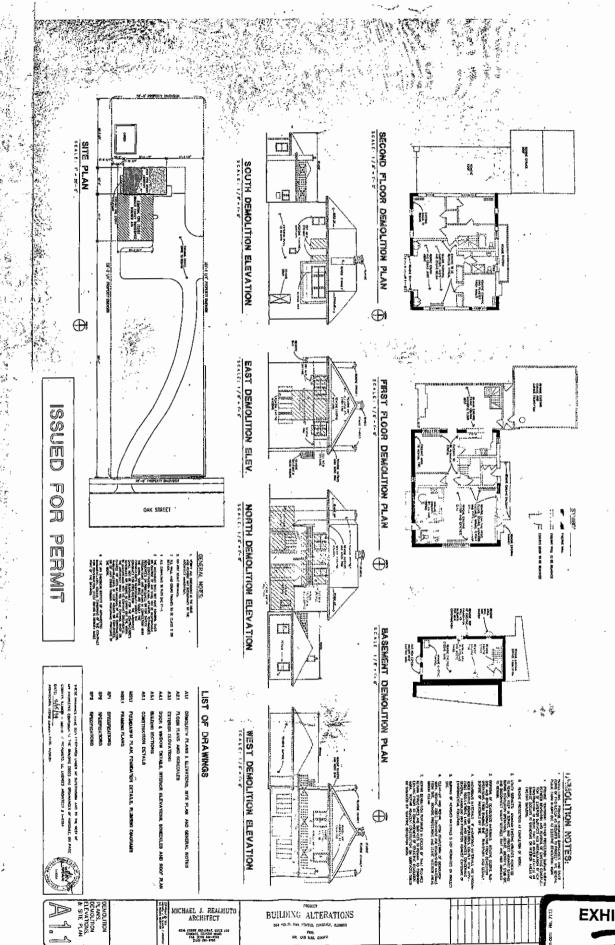
This review is based on the information submitted with the pre-plan application form. Any changes in the plans when submitted for permit or inaccuracies in the documents received to date may result in a revision to this review. If you have any questions do not hesitate to contact the undersigned.

Sincerely.

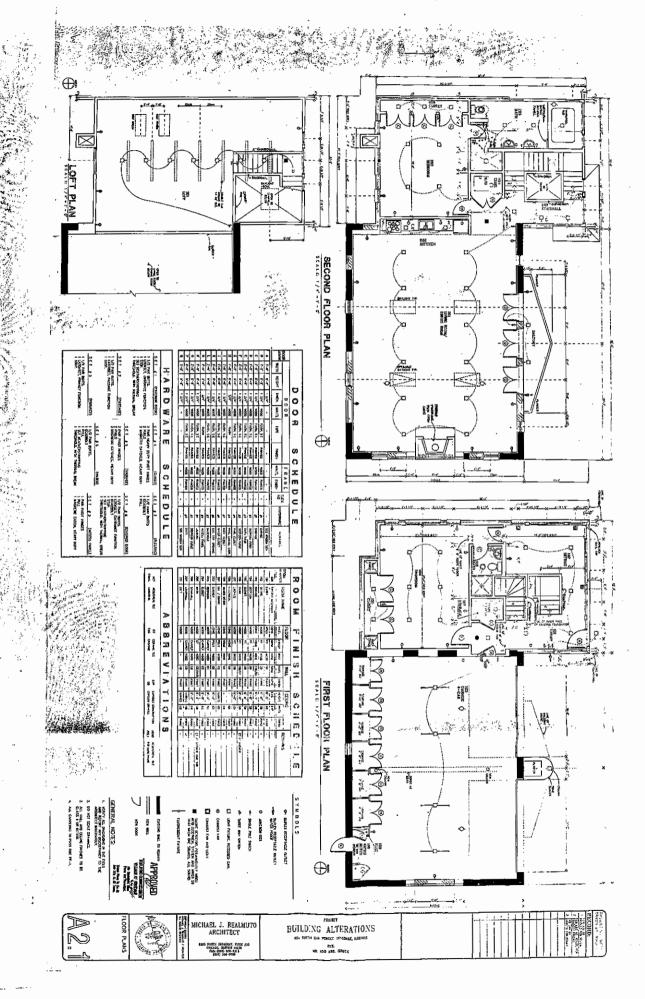
Bohdan J. Proczko

Assistant Village Manager/ Director of Public Services

cc: Charles McMahon Charles Schmidt Clifford L. Weaver Pre-plan Review File



EXHIBIT



Michael J. Realmuto / Architect 6355 North Broadway, Suite #30 Chicago, Illinois 60660 (312) 338-9700

FAX: 338-9316

March 1, 1994

Village of Hinsdale 19 East Chicago Avenue Hinsdale, Illinois 60521-1418

Re: Per

Permit Application 504 South Oak Street

To whom it may concern:

As requested, the following is information regarding proposed construction of the captioned permit application:

The existing attached frame garage and attached single story previous addition will be demolished. The existing basement under the previous single story addition will remain and be incorporated into the new addition.

The existing original masonry structure will be gutted, including removal of existing floors, interior partitions and portions of the existing roof.

The footprint of the existing building is 2,264 square feet.

Removal of the existing frame attached garage will reduce the footprint of the existing building by 546 square feet. This would leave a retained footprint of 1,718 square feet.

The proposed addition would add 393 square feet to the retained footprint. The total building footprint with the proposed addition would be 2,105 square feet.

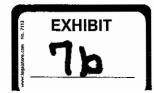
Total area of the site disturbed by the proposed construction is 742 square feet.

Trucks and construction equipment will utilized the existing gravel driveway.

Should there be any additional questions, please do not hesitate to contact my office. Thank You for your consideration.

Sincerely,

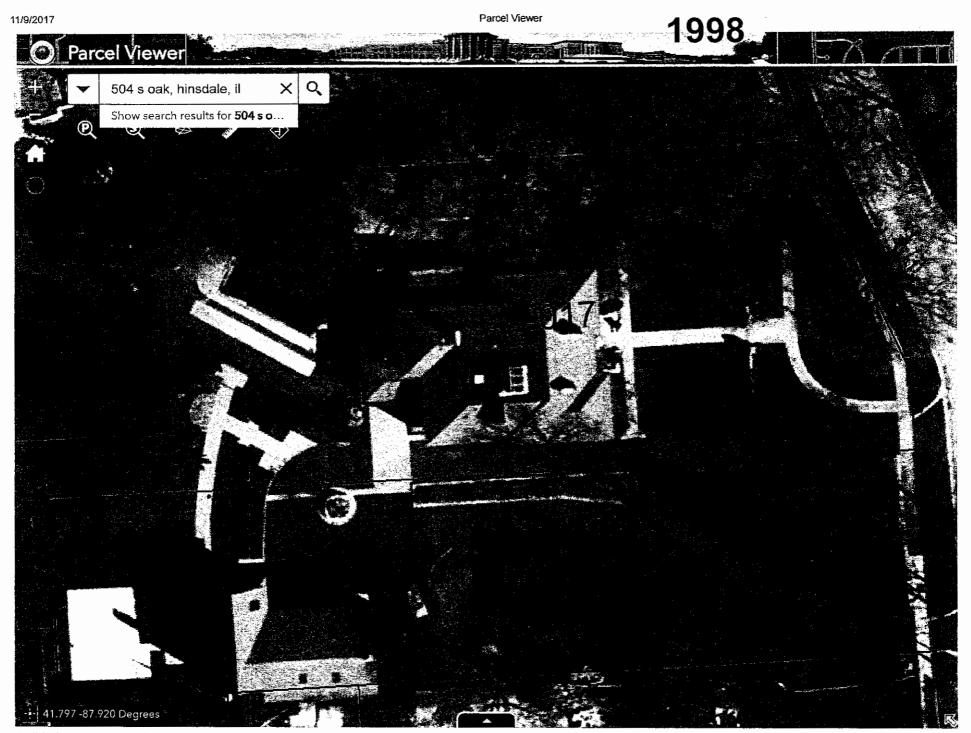
Michael J. Realmuto, AIA, CSI



ILLAGE OF HINSDALE, ILLINOIS		- •	
BUILDING, PERMIT	Number	B9403100	
Coning District	Dates	3/28/94	
DuPage County ( for Cook County ( )			
owner: A state of the stat	granted permission	COLLECTOR'S STAMP	
Contractor A A A A			
Erect	ruction way : ation	PAYMENT REC D  MAR 2 8 1994  VILLAGE OF HIRSDALE BUILDING DEPT.	
his permit is granted upon the express condition that said owner occifications; and that all general and detail work connected with rict compliance with the ordinances of the Village of Hinsdale a se violation of the same.	such erection, alteration or repa	ir, as the case may be, shall be done in	
Bond Deposit Information Amount of Bond: \$	Philad	g Commissioner	
Cash Receipt No.	Ву:	Deputy	
92			

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11/9/2017

Parcel Viewer



http://gis.dupageco.org/parcelviewer/





# TRUSTEE'S DEED TRUST TO TRUST

## THE ABOVE SPACE FOR RECORDER'S USE ONLY

	THIS INDENTURE, made this 29thday of April 1993, between HARRIS BANK HINSDALE, a corporation organized and existing under the Laws of the United States of America, as Trustee under the provisions of a deed or deeds in trust, duly recorded and delivered to said company in pursuance of a trust agreement dated the 22nd day of July 1980, and known as Trust Number L-243, party of the first part, and Harris Bank Hinsdale u/t/a L-1143 dated 11-19-85		
	party of the second part whose address is 50 S. Lincoln St.  Hinsdale, IL 60522 WINNESSETH, that said party of the first part, in consideration of the sum of Ten and no/100———————————————————————————————————		
	Lot 3 in McManus Resubdivision in the Northeast 1/4 of Section 12, Township 38 North, Range 11, East of the Third Principal Meridian according to the plat thereof recorded October 2, 1948 as Document 555319 in DuPage County, Illinois.		
	STATE OF ILLINOIS REAL ESTATE TRANSFER TAX REAL ESTATE TRANSFER TAX RELIGIOSON REVENUE 7 8 7. 5 0		
	\$1#09-12-225-009  Ongether with the tenements and appurenances thereunto belonging. To MANATO TO HOLD the same upon and party of the second part, and to the proper use, benefit, and behoof forever of said party of the second part. COMMON address: 504 8. Oak Street, Hinsdale, IL 60321	This space for affixing riders : Vd OC	
	THIS CONVEYANCE IS MADE PURSUANT TO DIRECTION AND WITH AUTHORITY TO CONVEY DIRECTLY TO THE TRUST GRANTEE NAMED HEREIN. THE TERMS AND CONDITIONS APPEARING ON THE REVERSE SIDE OF THIS INSTRUMENT ARE MADE A PART HEREOF.	This space DAd DE	R93-
	This deed in executed pursuant to and in the exercise of the power and authority granted to and vested in said trustee by the terms of said deed or deeds in trust delivered to said trustee in pursuance of the unstagement above mentioned. This deed is made subject to the lives of every trust deed or mongage (if any there be) of record in said county given to secure the payment of money, and remaining unreleased at the date of the delivery hereof.  IN WITNESS WHEREOF, said party of the first part has caused in corporate seal to be hereto affixed, and has caused in name to be signed to these presents by its AVP / Trust Officer and attested by its  Officer	ORDER E BOUN	0865
no	Harris Bank Hinsdale As Trustee as aforesaid,	\$ d';	5
War.	AVP/Land Trust Officer  Attest: Kama Officer  Officer	94	93 MA
AFF	STATE OF ILLINOIS. COUNTY OF DuPage SS  I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named AVP/Land  Officer Unapple Dank HineDale	Variables (Variables)	Y i, AH IO:
TO THE PARTY OF	acting instrument as such AVP / Land Trust Officer and Trust Offic	Document Number	. 30
1	Given under my hand and Notarial Seal this, 29th day of April 1993 Notary Public		
]	HARRIS BANK HINSDALE  TRUST DEPARTMENT  TO FFICIAL SEAL" Sandra Vesely  Notation To be so to a fillinois DEMISSION OF FICIAL SEAL" Sandra Vesely  Notation To be so to a fillinois DEMISSION OF FICIAL SEAL" Sandra Vesely  Notation To be so to a fillinois DEMISSION OF FICIAL SEAL" Sandra Vesely  Notation To be so to a fillinois DEMISSION OF FICIAL SEAL" Sandra Vesely	bills to	: 54h
1	HARRIS BANK HINSDALE  TRUST DEPARTMENT  SO SOUTH LINCOLN STREET  HINSDALE, ILLINOIS 60522  THIS INSTRUMENT WAS PREPARED BY:  LUNCOLN  Sendra Vessly	Oak	
1	Sandra Vesely	W, ye	

0 S. Lincoln St. • Hinadale, IL 60522 • (312) 920-7000 • Me

STHIBIT OF THE PROPERTY OF THE

INSTRUCTIONS
RECORDER'S OFFICE BOX NUMBER
TRUSTEE'S DEED [Recorder's] — Non-Joint Tenancy

Full power and authority is hereby granted to said Trustee to improve, manage, protect and subdivide said real estate or any part thereof, to dedicate parks, streets, highways or alleys, to vacate any subdivision or part thereof, and to resubdivide said real estate as often as desired, to contract to sell, to grant options to purchase, to sell on any terms, to convey either with or without consideration, to convey said real estate or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said Trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said real estate, or any part thereof, to lease said real estate, or any part thereof, from time to time, in possession or reversion, by leases to commence in praesenti or in future, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the terms of 198 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter, to contract to make leases and to grant options to lease and options to renew leases and options to purchase the whole or any part of the reversion and to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said real estate, or any part thereof, for other real or personal property, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said real estate or any part thereof, and to deal with said real estate and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said Trustee, or any successor in trust, in relation to said real estate, or to whom said real estate or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said Trustee, or any successor in trust, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on said real estate, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the authority, necessity or expediency of any act of said Trustee, or be obliged or privileged to inquire into any of the terms of said Trust Agreement; and every deed, trust deed, mortgage, lease or other instrument executed by said Trustee, or any successor in trust, in relation to said real estate shall be conclusive evidence in favor of every person (including the Registrer of Titles of seld county) relying upon or claiming under any such conveyance, lease or other instrument, (a) that at the time of the delivery thereof the trust created by this Indenture and by said Trust Agreement was in full force and effect, (b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in said Trust Agreement or in all amendments thereof, if any, and binding upon all beneficiaries thereunder, (c) that said Trustee, or any successor in trust, was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor or successors in trust, that such successor or successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

This conveyance is made upon the express understanding and condition that neither Grantee, individually or as 🙃 Trustee, nor its successor or successors in trust shall incur any personal liability or be subjected to any claim, judgment or decree for anything it or they or its or their agents or attorneys may do or omit to do in or about the said real estate or under the provisions of this Deed or said Trust Agreement or any amendment thereto, or for injury to person or property happening in or about said real estate, any and all such liability being hereby expressly waived and released. 🛭 😄 Any contract, obligation or indebtedness incurred or entered into by the Trustee in connection with said real estate may 🤝 be entered into by it in the name of the then beneficiaries under said Trust Agreement as their attorney-in-fact, hereby 🗬 irrevocably appointed for such purposes, or at the election of the Trustee, in its own name, as Trustee of an express trust and not individually (and the Trustee shall have no obligation whatsoever with respect to any such contract, obligation or indebtedness except only so far as the trust property and funds in the actual possession of the Trustea shall be applicable for the psyment and discharge thereoff. All persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filing for record of this Deed.

The interest of each and every beneficiary hereunder and under said Trust Agreement and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or any other disposition of said real estate, and such interest is hereby declared to be personal property, and no beneficiary hereunder shall have any title or interest, legal or equitable, in or to said real estate as such, but only an interest in earnings, avails and proceeds thereof as aforesaid, the intention hereof being to vest in said Grantee the entire legal and equitable title in fee simple, in and to all of the real estate above described.

If the title to any of the above real estate is now or hereafter registered, the Registrar of Titles is hereby directed not to register or note in the certificate of title or duplicate thereof, or memorial, the words "in trust," or "upon condition," or "with limitations," or words of similar import, in accordance with the statute in such case made and provided.

TRUST	EE'S	DEED
. 0	llinois	`

THIS INDENTURE, made this day of how ben, 20 16, between Janet M. LaRocque, as trustee(s) under the \*Janet/W./I/aRocayle Religiously Trust dated the 1st/day of Whytember 12006/grantor(s), and

\*provisions of a declaration of trust dared November 1, 2006 and known as the Janet M.Lakocque \*\*AVR/A Properties Fund II End-User, LLC Revocable Trust

(NAME OF GRANTEE)



DUPAGE COUNTY RECORDER JAN.18,2017 12:26 PM DEED \$40.00 09-12-225-017

grantee(s), a Limited Liability Company organized and existing under and by virtue of the laws of the State of Illinois having its principal office at the following address 212 W. Van Buren St., Suite 201, Chicago, IL 60607, WITNESSETH, That grantor(s), in consideration of the sum of Ten (\$10.00) Dollars, receipt whereof is hereby acknowledged, and in pursuance of the power and authority vested in the grantor(s) as said trustee(s) and of every other power and authority the grantor(s) hereunto enabling, do(es) hereby convey and warrants unto the grantee(s), in fee simple the following described real estate, situated in the County of DuPage and State of Illinois, to wit:

### SEE ATTACHED LEGAL DESCRIPTION AS EXHIBIT A

Permanent Index No.(s):

09-12-225-017

Property Address:

422 S. Oak St., Hinsdale, IL 60521

Together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

REOF, the grantor(s) as trustee(s) as aforesaid, has executed this deed on the day and year first written above.

COUNTY OF

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Janet M. LaRocque, personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person and individually and jointly acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act as such trustee(s), for the uses and purposes therein set forth.

Given under my hand and official seal, this

Notary Public

My commission expires  $\lambda$ 

COUNTY - ILLINOIS TRANSFER STAMPS

Exempt Under Provision of Paragraph, Section 4,

Real Estate Transfer Act

FRED BUCHOLZ

Date:

Signature:

Prepared by:

MAIL TO:

Anselmo Lindberg Oliver LLC 1771 W. Diehl Ste 120

REMIER STILE, 1000 IORIE BLVD. #136, OAK BROOK, IL 60523

Naperville, IL 60563

-Mail To:

Dana R. White

CATHY A BISCEGLIE Notary Public - State of Illinois My Commission Expires Aug 9, 20

Burke, Warren, MacKay & Serritella,

OFFICIAL SEAL CATHY A BISCEGLIE Notary Public - State of Illinois

330 N. Wabash Avenue, 21st Floor

Chicago, IL 60611

SEND SUBSEQUENT TAX BILLS TO:

AVRA Properties Fund II End-User, LLC, 212 W. Van Buren St., Suite 201, Chicago, IL 60607

#### EXHIBIT "A"

File No.: 2016-05417-1-PT

#### PROPERTY DESCRIPTION

The land referred to in this commitment is described as follows:

LOT 2 IN MC MANUS RESUBDIVISION OF LOT 1 AND THE SOUTH 101 FEET OF THE EAST 64.10 FEET OF LOT 2 AND THE EAST 12.00 FEET OF LOT 2 (EXCEPT THE SOUTH 101 FEET THEREOF) IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, IN THE SOUTH 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 (ACCORDING TO DOCUMENT NO. 14048 RECORDED JUNE 12, 1871 AND DOCUMENT 555319 RECORDED OCTOBER 2, 1948) IN SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART OF LOT 2 LYING WEST OF THE EAST LINE OF LOT 2 OF JACKSON'S RESUBDIVISION AFORESAID, EXTENDED SOUTHERLY OF MC MANUS RESUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF MC MANUS RESUBDIVISION AFORESAID, RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319, IN DUPAGE COUNTY, ILLINOIS.

THE EAST 3.00 FEET OF LOT 2 IN JACKSON'S RESUBDIVISION OF PART OF LOT 2 IN BLOCK 11 OF W. ROBBINS' PARK ADDITION TO HINSDALE IN THE NORTHEAST 1/4 OF SECTION 12. TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED OCTOBER 17, 1951 AS DOCUMENT NO. 637040 AND CORRECTED BY CORRECTION CERTIFICATE DATED NOVEMBER 1, 1951 AND RECORDED NOVEMBER 1, 1951 AS DOCUMENT NO. 638267, IN DUPAGE COUNTY, ILLINOIS.

THE EAST 17.00 FEET OF THAT PART OF LOT 2 LYING WEST OF THE EAST LINE OF LOT 2 OF JACKSON'S RESUBDIVISION, AS AFORESAID, EXTENDED SOUTHERLY OF MCMANUS RESUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN. ACCORDING TO THE PLAT OF SAID MCMANUS RESUBDIVISION AFORESAID, RECORDED OCTOBER 2. 1948 AS DOCUMENT NO. 555319, IN DUPAGE COUNTY, ILLINOIS.

Property Address: 422 S. Oak St., Hinsdale, IL 60521

09-12-225-009

REAL ESTATE TRANSFER TAX 693 STATE OF ILLINOIS GE COUNT

0375000 FP326681

2016-05417-1-PT

Commitment (Exhibit A)

TRUSTEE'S	DEED
(Illinois	)

II use to Line			
2016.05417 1009 anh			
THIS INDENTURE, made this 30th day of	f		
Oprombe . 2016, between Janet M. LaRocque.	,		
as trustee(s) under the Nanet/MI/I/aRocque/Reyocable	ا/د		
Twist dated the 1st flay of November 2006, grantor(s), and provisions of a declaration of trust dat	i		
provisions of a declaration of trust dat lovember 1, 2006 and known as the Janet M	eç		
//////////////////////////////////////	e		
. Revocab	1		
Avra Properties Fund NT**	- 1		

(NAME OF GRANTEE) \*\* End-User, LLC



**DUPAGE COUNTY RECORDER** 

JAN.18.2017 DEED

RHSP \$40.00 09-12-225-009

12:26 PM

002 PAGES

R2017 — 006238

grantee(s), a Limited Liability Company organized and existing under and by virtue of the laws of the State of Illinois having its principal office at the following address 212 W. Van Buren St., Suite 201, Chicago, IL 60607, WITNESSETH, That grantor(s), in consideration of the sum of Ten (\$10.00) Dollars, receipt whereof is hereby acknowledged, and in pursuance of the power and authority vested in the grantor(s) as said trustee(s) and of every other power and authority the grantor(s) hereunto enabling, do(es) hereby convey and warrants unto the grantee(s), in fee simple the following described real estate, situated in the County of DuPage and State of Illinois, to wit:

#### SEE ATTACHED LEGAL DESCRIPTION AS EXHIBIT A

Permanent Index No.(s):

09-12-225-009

Property Address:

504 S. Oak St., Hinsdale, IL 60521

Together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

, the granter(s), as trustee(s) as aforesaid, has executed this deed on the day and year first written above.

STATE OF X COUNTY OF 1 )U

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Janet M. LaRocque, personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person and individually and jointly acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act as such trustee(s), for the uses and purposes therein set forth.

Notary Public

My commission expires.

COUNTY - ILLINOIS TRANSFER STAMPS

Exempt Under Provision of Paragraph , Section 4,

Real Estate Transfer Act

Date:

Signature:

Prepared by:

Anselmo Lindberg Oliver LLC 1771 W. Diehl Ste 120 Naperville, IL 60563

-Mail To:

Dana R. White

Burke, Warren, MacKay & Serritella,

OFFICIAL SEAL CATHY A BISCEGLIE Notary Public - State of Illinois

My Commission Expires Aug 9, 2017

330 N. Wabash Avenue, 21st Floor Chicago, IL 60611

MAIL TO!

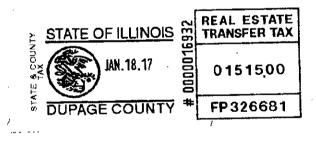
PREMIER TITLE, 1000 IORIE BLVD. #136, OAK BROOK, IL 60523

#### SEND SUBSEQUENT TAX BILLS TO:

AVRA Properties Fund II End-User, LLC, 212 W. Van Buren St., Suite 201, Chicago, IL 60607

#### EXHIBIT A

LOT 3 IN MC MANUS RESUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319, IN DUPAGE COUNTY, ILLINOIS.



1515,00

DETACHED CARRAGE

# Village of Hinsdale

Community Development Department 19 E. Chicago Avenue, Hinsdale, IL 60521

# PERMIT APPLICATION

THIS CONSOLIDATED PERMIT APPLICATION MAKES FILING FOR MULTIPLE PERMITS MORE EFFICIENT AND HELPS TO MINIMIZE DUPLICITY. AS A RESULT THERE MAY BE ITEMS THAT DO NOT APPLY TO YOUR SPECIFIC PROJECT. COMPLETE ONLY THOSE SECTIONS THAT APPLY.

... 1-21-17

Date Reco	117-02	· _	it Fee	
Check here if home is o	older than 50 year	'S """	Fee/LOC	
	awode)	pont (office use only)		
	Name of the last of	STREET GIRLS GRILLY		
	General in	FORMATION		
Site Address: Zoning D		Zoning Dis	trict:	
422 S OAK HINSdale			· · · · · · · · · · · · · · · · · · ·	
PIN# 19-12-225-017		Lot Dimens		
Legal Owner's Name & Maili	ng Address		t's Name & Address (il not owner)	
212 W Van Biren 201 C	Varcens April 7	7/7/4/1	Buildous	
Phone: 3/2 588 /497	rusuge cocor	Dinguis 7/19	an Buren Chica School 7 1-903 5500 oc 620 464 9319	
Fax: Nob-559.5116			.559 5116	
E-mail: avvida (0 bayit)	Willer scom		mesabayot builders can	
Estimated Value of Construc			gn Required: yes >2 mo	
	******			
\$E	lect type of	CONSTRUCT	ION	
residential new o	residential a		residential remodel à	
accessory structure	deck/patio/ou		driveway/flatwork/walks	
(garago, shed, cabana) 🛭	Require Electric	-	DAsphalt D Concrete D	
	Require Plumbir		Decorative a	
FENCE a	swimming Poo		underground irrigation	
Height	Hot Tuba Ing		(complete plumbing section)	
Corner Lot - Yes - No	Above Ground c		Heads in ROW o Yes No d (N)	
Structure Type	(complete plum)		yes, complete Hold Harmless)	
Location	electric section			
	lumbing or E		<del></del>	
electric only: 0		PLUMBING ON	1	
DESCRIPTION OF THE PROPERTY OF	mercial o		Total Fixture Units	
o Overhead o Underground			Water Meter Size	
ampsc	rcuits Gas Line		RPZ	
Commercial - Select Type				
	ommercial new o   Commercial Additon   Commercial Remodel		1	
(Fire Prevention Will Apply)  COMMERCIAL OCCUPANCY	(Fire Prevention Will Apply)  COMMERCIAL INTERIOR		(Fire Prevention Will Apply)	
Units Floors	Demo only d		(Alarm, Sprinkler & Hood &	
Name of Business or New Tenant	was made and the first of the		Duct Systems)	
			- und alludarmat	

EXHIBIT

# ARCHITECT/CONTRACTORS AND SUB-CONTRACTOR INFORMATION : Complete Applicable Contractor Information (Please Print Clearly)

ARCHITECT/ENGINEER	NAME: N//	PHONE
(if applicable)	Address	CELL
State License		FAX
NO.		e-mail
	(no p.o. box)	
CONTRACTOR/INSTALLER	MAMERICAL BUILDING	PHONE(212) 5/55 (5/67)
LLC # 10 Citil Hire	ADDRESS: 211 WUN RUEN YU	GBLL#//2/21/24/43/4
Driver's Lic #	Chicago H. lollo07	FAX / State Visite Will.
(provide if not a LLC)	) (NO P.O. BOX)	comail teleno de onice de la confection
ELECTRICIAN	NAME: AIR POLICE CONT.	PHONE
License #	ADDRESS: TO THIN TYPEVEN	CELL: 773 TALLERS
\$5,000 Surety Bond on	Fla Cortue Village 400000	FAX
FILE	(No p.o. box)	email an intercel time
		Gr Galaci corn
PLUMBER	NAMEST DECIMENTATION OF THE CONTROLS	PHONE 16 4 15 14 14 14
State License & Permit	ADDRESS: 18 VILICIACE XLI	CELL:
BOND UUSTS	- H ( WOOLES !! COLTY	PAX (636 Sign) UNIVER
<b># 055</b> ∞	(no p.o. box )	ement is topolis accounted
FIRE	name:	PHONE
Sprinkler/Suppression	ADDRESS:	CELL
		FAX
	(no p.o. box)	email
fire Alarm Contractor	NAME:	PHONE
	Address:	CELL
		FAX
	(NO P.O. BOX)	email

UNDER PENALTY OF INTENTIONAL MISREPRESENTATION AND/OR PERJURY, I declare that I have examined and/or made this application and it is true and correct to the best of my knowledge and belief. I agree to construct said improvement in compliance with all provisions of the applicable ordinances. I further certify that all easements, deed restrictions, or other encumbrances restricting the use of the property are shown on the site plans submitted with this application. I have been given authorization from the property owner to obtain this permit. I realize that the information that I have affirmed hereon forms a basis for the issuance of the permit herein applied for and approval of plans in connection therewith shall not be construed to permit any construction upon said premises or use thereof in violation of any applicable ordinance or to excuse the owner or his or her successors in title from complying therewith.

I understand that by applying for this permit, I am consenting to the inspection of this property and to the entry onto the property by inspectors of the authority having jurisdiction for the purpose of performing the necessary inspections during normal business hours for the duration of the permit.

applicant's signature

/2/20/20/6 DATE

TITLE

SIGNATURE - DATE

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



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

August 3, 2017

Bayit Builders LLC 212 West Van Buren #201 Chicago, IL 60607

RE: 422 South Oak Street - Detached Garage Plan Review

Dear Sir or Madam:

After reviewing the plans submitted for the above-mentioned property, the following corrections need to be made before the permit can be issued:

- I. Enclosed are Benes Engineering's review comments.
- Provide clean civil drawings without detached garage removal from scope of work language. In other words, the original submission from March, not the previously approved civil for the removal of pool in May.
- 3. Provide dimensions of the existing SFR on the civil drawing or a legible plat of survey. Building coverage compliance cannot be confirmed at this time.

At this time we would ask that you submit revised drawings to this office. If revised drawings are not submitted within ninety (90) days, your application and drawings will be returned, and a new application may be submitted at your convenience.

If you have any questions regarding this letter, please feel free to contact this office at (630) 789-7030 or email tryan@villageofhinsdale.org

Respectfully, Timothy S. Ryan C.B.O. Deputy Building Commissioner Village of Hinsdale Village Hall 19 East Chicago Avenue Hinsdale, Illinois 60521-3431 630-789-7000



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

# DEPARTMENT OF COMMUNITY DEVELOPMENT

FAX # 630.789.7016

# **FACSIMILE TRANSMISSION SHEET**

DATE: 8,3.17

The following pages are for:

NAME: BATIT BUILDERS, LLC

**COMPANY:** 

ADDRESS:

FAX NO: (866)559-5116

RE: 422 S. OAK - DETACHED GARAGE PLAN REVIEW
P17-6422

ORIGINAL IS BRING MAILED

Total number of pages 3, including cover sheet

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL 630,789.7030 AS SOON AS POSSIBLE.

FROM: Joyce Kacmarcik - Plan Reviewer



# JAMES J. BENES AND ASSOCIATES, INC.

950 Warrenville Road = Suite 101 = Lisle, Illinois = 60532 Tel. (630) 719-7570 = Fax (630) 719-7589

#### MEMORANDUM

Date:

July 31, 2017

To:

Mr. Daniel Deeter, P.E.

Village Engineer Village of Hinsdale

From:

Jeffery C. Ziegler

Daniel H. Schoenberg, PE

Vice President

Project Engineer

Řе:

Stormwater Management Review

422 South Oak Street Project No. 1209.557

As requested, we have reviewed the Site Plan for new driveway and a detached garage for a single family residence at the address identified above. The Site Plan was prepared by Gabriel group Inc. dated May 15, 2017. It was attached to your correspondence of July 24, 2017. We understand the Village Forester will evaluate tree protection measures. The impervious cover is as follows:

Pre-construction 17,600 sf Proposed 15,350 sf Net increase (decrease) (2,250) sf

The Proposed Site Plan DOES NOT COMPLY with the Village of Hinsdale Stormwater and Flood Plain Ordinance and has been stamped "RETURNED FOR CORRECTION". The site DOES NOT include a Special Management Area (regulatory flood plain and riparian area). The following comments have been added to the plans:

- 1. The plans have extraneous markings. Submit clean plans.
- Clarify the removals of this application. There is now a tandem driveway with the property to the south. Will the future driveways be separated? If not, Board approval will be needed per Village Code.
- 3. It appears the impervious totals do not count paver sections of the driveways. Are they pervious pavers? Submit a detail. Permeable pavers count toward lot coverage per Village Code
- 4. The area disturbed is sufficient to require a storm water management permit application. Provide all documents including soil erosion control.
- 5. Site management features including storage, access, portapolty and parking per Section 9-1-7 of the Village Code should be added.

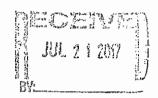
We are returning two marked up plans. Please call if you have any questions.

This paperwork originally handed in 2/20/2017)

# VILLAGE OF HINSDALE

COMMUNITY DEVELOPMENT DEPARTMENT 19 East Chicago Avenue Hinsdale, Illinois 60521-3489

630,789,7030



## **Application for Certificate of Zoning Compliance**

You must complete all portions of this application. If you think certain information is not applicable, then write "N/A." If you need additional space, then attach separate sheets to this form.

Applicant's name:	Bayit Builders LLC		
Owner's name (if differen	: Avra Properties		
Property address:	422 South Oak Street		
Property legal description	n: [attach to this form]		
Present zoning classification: R-1, Single Family Residential			
Square footage of proper	ty: <u>30861</u>		
Lot area per dwelling:			
Lot dimensions:	<u>127</u> x <u>243</u>		
Current use of property:	Single Family Residence		
Proposed use:	Single-family detached dwelling Other: New Detached Garage		
Approval sought:	☑ Building Permit ☐ Variation ☐ Special Use Permit ☐ Planned Development ☐ Site Plan ☐ Exterior Appearance ☐ Design Review ☐ Other:		
Brief description of request and proposal:			
Adding new detached garage to property. No Garage exists at property now. SFR to remain as is			
Plans & Specifications:	: [submit with this form]		
F	Provided: Required by Code:		
Yards:			
front: interior side(s)	existing exist / 36.6 /		

Provided:	Required by Code:	
corner side		
rear	existing	50
Setbacks (businesses an	d offices):	
front: interior side(s)		
corner side	· · · · · · · · · · · · · · · · · · ·	
rear		
others:		<u> </u>
Ogden Ave. Center: York Rd. Center:		
Forest Preserve:		-
Building heights:		
principal building(s):	existing	30
accessory building(s):	14.10'	15
Maximum Elevations:		
principal building(s):	existing	30
accessory building(s):	14 10'	15
Dwelling unit size(s):		
Total building coverage:		****
Total lot coverage:		16318.9
Floor area ratio:	8478	8527.50
Accessory building(s):	Garage - 643 SF F	AR
Spacing between building	s:[depict on attached	plans]
principal building(s):	40.4	
accessory building(s):	12.4 10	
Number of off-street park Number of loading spaces	ing spaces required: s required: 0	<u>0</u> –
Statement of applicant:	1	
I swear/affirm that the inf	ormation provided in	this form is true and complete. I
		evant information from this form could
be a basis for denial or revo	cation of the Certificat	te of Zoning Compliance.
By: Congas auch	$\mathcal{L}$	
Applicant's signatur	e Mari	AND.
Arvydas Laucius -	(MC)	APERWORK
Applicant's printed i	name //	2/2011

, 20<u>17</u> .

Dated: <u>7/20</u>

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



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

March 22, 2017

Bayit Builders, LLC 212 W. Van Buren #201 Chicago, IL 60607

RE: 422 S. Oak Street – Denied Review for Pool demolition, New Detached Garage and Site Revisions P17-6025

Dear Sir:

The submittal received for the permit review inaccurately depicts 422 S. Oak as a separate zoning property from 504 S. Oak.

Per the letter from the Village Manager dated August 11, 1993 the Village of Hinsdale considers this one zoning lot. This zoning lot (422 S. Oak and Coach House on 504 S. Oak) may only be reviewed as one zoning lot.

Provide submittal for the entire zoning lot for review or withdraw permit application.

If you have any questions regarding this letter, please feel free to contact Mr. Robert McGinnis, Community Development Director at (630) 789-7030.

Respectfully.

Joyce Kacmarcik Village of Hinsdale

Plan Reviewer



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



Fire & Police Departments 121 Symonds Drive Hinsdale, Illinois 60521-3744 Fire 630-789-7060 Police 630-769-7070

June 7, 2017

Peter Coules, Jr. 15 Salt Creek Lane, Suite 312 Hinsdale, Illinois 60521

RE: Appeal from Staff Decision - 422 S. Oak Street - Determination of Village Manager

Mr. Coules -

You, on behalf of your client, Bayit Builders, LLC ("Bayit Builders"), have appealed to me the denial by Village staff of a permit sought by Bayit Builders for work on 422 S. Oak Street. A copy of your appeal letter dated April 27, 2017 (the "Appeal Letter"), which attaches the Village's March 22, 2017, denial letter (the "Denial Letter") as <a href="Exhibit "A" is attached hereto as <a href="Exhibit 1.">Exhibit "A"</a> is attached hereto as <a href="Exhibit 1.">Exhibit "A"</a>.

#### Background

The Property: The property that is the subject of your appeal consists of two (2) lots of record: 09-12-225-009, with a common address of 504 S. Oak Street (the '504 S. Oak PIN") and 09-12-225-017, with a common address of 422 S. Oak Street (the "422 S. Oak PIN") (collectively, the "Property"). It appears that prior to 1993, the 504 S. Oak PIN and 422 S. Oak PIN were separately owned, improved with a single-family residence on each, and functioning as two (2) separate zoning lots.

The 1993 Letter: In 1993, the common Owner of both the 504 S. Oak PIN and 422 S. Oak PIN sought guidance from the Village as to, among other things, whether the building on the 504 S. Oak PIN that was then being used as a principal residence could be remodeled and converted to use as an accessory structure to the principal residence on the 422 S. Oak PIN. The Village, in a letter dated August 11, 1993 (the "1993 Letter"), answered that the principal residence on the 504 S. Oak PIN could be remodeled and thereafter used as an accessory structure to the principal residence to the 422 S. Oak PIN if, and only if, the two (2) PINS were combined into a single Zoning Lot. Specifically, the 1993 Letter stated "you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to be used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future."

**Project Completion:** Plans subsequently filed with the Village indicate that the modifications proposed in the 1993 Letter were subsequently carried out by the Owner, after which the Village, pursuant to the notice provided to the Owner in the 1993 Letter, regarded the two (2)

PINS as a single Zoning Lot. It now appears that at some time subsequent, an illegal kitchen was added. No kitchen was shown on the plans approved by the Village.

**Purchase by Bayit Builders:** Bayit Builders purchased the Property in or around January of 2017 with the intention of remodeling the principal residence house on the 422 S. Oak PIN and demolishing the accessory coach house structure on the 504 S. Oak PIN and constructing a principal residence in its place. Bayit Builders have stated that the properties were marketed as two separate lots, that they did as much due diligence as they could have, and that they had no way of knowing that the Village had determined that this was one Zoning Lot.

#### OPINION

You have raised various issues relative to the denial of Bayit Builder's building permit, which you contend shows that the Village has continued, despite the 1993 Letter, to treat the 422 S. Oak and 504 S. Oak PINS as separate lots over the last twenty (20) plus years.

You assert in your Appeal Letter that the 1993 Letter from the Village referenced in the Denial Letter as a basis for the denial "merely states that the Village would require" the owner to combine the two lots into a single zoning lot in order to complete his requested work on the property. You assert that this showed the Village regarded the 422 S. Oak PIN and 504 S. Oak PIN to be two (2) separate lots at the time. That is true, but only up until that point, as the 1993 Letter further states that "you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to be used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future." (emphasis added). At another point in the 1993 Letter, staff noted that "[u]pon completion of the proposed project the property would consist of one Zoning Lot, as that term is defined in Subsection 12-206L of the Zoning Code and the lot at 504 S. Oak could not then be sold off as a separate lot." The 1993 Letter clearly states that the Village would treat the Property as a single, undivided Zoning Lot going forward.

Assertion No. 1: The first numbered assertion in your Appeal Letter states that the 504 S. 0ak Street PIN has always been treated as a single-family residence by the Village. I disagree. According to Village records, the structure on the 504 S. Oak PIN currently serves as the coach house for the principal structure located on the 422 S. Oak PIN. While I do agree that prior to 1993, what is now the coach house accessory structure on the 504 S. Oak PIN was regarded as a separate single-family residence and was held in ownership separate from the 422 S. Oak PIN. Since the modifications made in 1993 (the "1993 Modifications"), however, the coach house accessory structure on the 504 S. Oak PIN began serving as an accessory structure to the 422 S. Oak PIN. Following the 1993 Modifications the Property would, as noted in the 1993 Letter, be regarded by the Village as a unified whole.

Assertion No. 2: You assert that the fact that the coach house accessory structure on the 422 S. Oak PIN and principal structure on the 504 S. Oak PIN have been metered separately shows that the Village has consistently treated the Property as two (2) separate lots. The fact that the 422 S. Oak PIN and 504 S. Oak PIN have been separately metered for utility purposes has no impact on their Zoning status. It is likely that they were metered separately prior to the 1993 Modifications and consolidation into a single Zoning Lot in 1993, and there was no reason from a staff perspective that they could not continue to be metered separately thereafter.

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Assertion No. 3: You next detail the title history of the Property as proof that the two (2) PINS have been owned and transferred as separate lots in the past. The title history of the two PINs prior to 1993 has no impact on their current zoning status, as the Village acknowledges that they were used as separate single-family residences prior to the 1993 Modifications. It was in 1993 that they became a single Zoning Lot. See the 1993 Letter. Nor do I find the use of two (2) PINS and two (2) addresses in the September 25, 2011 Deed conveying both Properties from the Harris Trust and Savings Bank to John and Janet Larocque to be persuasive. There is no question that the two (2) properties had and have separate PINs, and, due to their previous use at one point in time, have and continue to have separate assigned addresses. It is common and proper to convey a single unified zoning lot with multiple underlying PINs in a single deed.

Assertion No. 4: You next assert that the failure of the Village Planner to mention the 422 S. Oak PIN in his pre-plan review letter relative to the 504 S. Oak PIN dated May 27, 2016 (the "Pre-Plan Review Letter") is evidence that the Village regards the Property as two (2) separate lots. That review was based on a single-page application from the owner accompanied by a Plat of Survey showing only the 504 S. Oak PIN. Staff performed a standard pre-plan review based on that submittal. Staff does not, nor is it obligated to, do historical research on each Plat submitted for review. Further, as noted in the Pre-Plan Review Letter:

This analysis is based solely on the information you have provided to the Village with your request for a pre-plan review. If any of the information regarding the property that is the subject of this review is determined to be different from what you provided, or if any relevant additional information is discovered during the Village's regular building and zoning review, then the analysis provided herein, or any part of it, may change. The Village reserves the right to correct any errors in this review prior to the issuance of a building permit.

This review does not create any obligation on the Village to issue any kind of permit to you or any right in you to any such permit. You must properly prepare and file with the Village the appropriate applications before the Village will begin consideration of whether a permit should be issued.

The Pre-Plan Review Letter created no rights in the Owner and no obligations on the part of the Village. I note that the Pre-Plan Review Letter and accompanying application from the then-Owner were not included in the Exhibits you submitted. I have attached copies here as **Exhibit** 2.

Assertion No. 5: In an unnumbered sentence on page 7 of your Appeal Letter, you assert that the lots have always contained separate PINS and were always taxed as improved properties with a single family residence. I agree that the lots have always had separate PINS. The treatment of the Property by Cook County as improved properties with single-family residences on them has nothing to do with the Village's Zoning. The previous owner could have had the tax treatment of the 504 S. Oak PIN adjusted following the 1993 Modifications, but either failed to or chose not to.

Finding and Decision: I do not agree that the Village has continuously treated the PINS as two separate lots for zoning purposes as you assert. The 1993 Letter emphatically states otherwise, and no subsequent actions or statements of the Village since that time show an intent to treat the Property other than as a single unified Zoning Lot. I agree with staff's Denial Letter. The Properties may only be reviewed together as a single unified Zoning Lot and the building permit was therefore properly denied.

Pursuant to Section 9-1-14(C) of the Village Code, you have a right to appeal my determination to the Zoning Board of Appeals by filing an application for appeal within thirty (30) days following this determination.

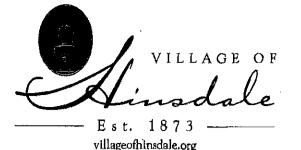
Issued this 7th day of June, 2017

Sorbleen la Gargans

Kathleen Gargano, Village Manager

Village of Hinsdale

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



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

August 21, 2017

Peter Coules, Jr. 15 Salt Creek Lane, Suite 312 Hinsdale, Illinois 60521

RE: Reversal of Staff Decision - 422 S. Oak Street - Determination of Village Manager

Mr. Coules -

As you are aware, you, on behalf of your client, Bayit Builders, LLC ("Bayit Builders"), appealed to me the denial by Village staff of a permit sought by Bayit Builders for work on 422 S. Oak Street. I subsequently issued a Denial Letter dated June 7, 2017 (the "June 7, 2017 Denial") in which I upheld the staff denial and held that the collective lots at 422 S. Oak and 504 S. Oak (collectively, the "Property") should be treated as a single zoning lot. You then formally sought review by the Village's Zoning Board of Appeals of my June 7, 2017 Denial, in an application for Zoning Appeal received by the Village on July 3, 2017.

I subsequently received a memo from the Village Attorney, dated July 12, 2017, recommending that I withdraw my June 7, 2017 Denial and issue the requested permits for 422 S. Oak, based on the discovery by the Village of additional materials related to the Property in Village files, and based on a review of those materials by the Village Attorney and staff. A copy of the Village Attorney's July 12, 2017 memo is attached for your reference. You were then notified by Robb McGinnis, Director of Community Development, in an email sent July 12, 2017, that the Village had reversed its position, and the appeal was therefore unnecessary. In order to close our file on this matter, I am sending you this letter formally stating my finding that, based on the information currently available to me, the properties at 504 S. Oak and 422 S. Oak are considered by the Village to be separate lots with principal structures that are capable of being separately maintained, altered, enlarged, rebuilt, restored and repaired in conformance with the requirements of Section 10-104 of the Village's Zoning Ordinance. My June 7, 2017 Denial is withdrawn, and your appeal of my previous denial is moot.

Issued this 21st day of August, 2017

Kathleen A. Gargano, Village Manager

Village of Hinsdale





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#### **MEMORANDUM**

To:

Kathleen Gargano, Village Manager (via email only)

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

From:

Michael A. Marrs

Date: Re: July 12, 2017 422/504 S. Oak Appeal and Issues

I have reviewed the Application for Appeal filed by Pete Coules on behalf of Bayit Builders, LLC, related to property located at 504 S. Oak Street with a PIN of 09-12-225-009, (the "504 S. Oak PIN"), and at 422 S. Oak Street, with a PIN of 09-12-225-017 (the "422 S. Oak PIN") (collectively, the "Property"). The Application for Appeal requests review by the Zoning Board of Appeals of the Village Manager's June 7, 2017 decision to uphold a staff finding that the Property should be treated as a single zoning lot (the "June 7, 2017 Denial").

As you will recall, the Village has acknowledged that prior to 1993, the 504 S. Oak PIN and 422 S. Oak PIN were separately owned, improved with a single-family residence on each, and functioning as two (2) separate zoning lots. As you will further recall, the Village, earlier this year, denied a building permit for certain work on the 422 S. Oak Street PIN based on a letter sent by the Village to the then-Owner of the Property dated August 11, 1993 (the "1993 Letter"). The 1993 Letter was in response to an inquiry regarding whether the building on the 504 S. Oak PIN then being used as a principal residence could be remodeled and converted to use as an accessory structure to the principal residence on the 422 S. Oak PIN. In the 1993 Letter, the Village answered that the principal residence on the 504 S. Oak PIN could be remodeled and thereafter used as an accessory structure to the principal residence to the 422 S. Oak PIN if, and only if, the two (2) PINS were combined into a single Zoning Lot. Specifically, the 1993 Letter stated "you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to be used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future."

In the Village Manager's June 7, 2017 Denial, she notes that "[p]lans subsequently filed with the Village indicate that the modifications proposed in the 1993 Letter were subsequently carried out" by the then-Owners, and that the Village had thereafter regarded the two (2) PINS as a single Zoning Lot.

Subsequent to the June 7, 2017, Denial, the Village has discovered additional materials in Village files related to the 1993 Letter, including the plans which prompted the 1993 Letter. Those plans show proposed redevelopment of the 504 S. Oak PIN with only a four-car garage and recreation room above (the "Coach House Plans"). A comparison of the Coach House Plans to plans submitted by the then-Owner subsequent to the 1993 Letter show a marked difference. It now appears that following the receipt of the 1993 Letter, new plans (the "Revised Plans") were created that included multiple bedrooms, a living room, a kitchen, a dining room and loft living space. It appears then, that following the receipt of the 1993 Letter, the then-Owner did not proceed with the modifications shown in the Coach House Plans that would have resulted in the creation of a single zoning lot, but instead took steps to maintain independent principal structures on each lot, presumably to ensure that the 504 S. Oak PIN and 422 S. Oak

PIN could continue to be regarding by the Village as separate principal residences and separate zoning lots. Staff has confirmed that the Revised Plans for 504 S. Oak were reviewed and approved by the Village as plans for a single-family residence in 1994, following the 1993 Letter. The work shown on the Revised Plans then appears to have been carried out, and inspected and approved by the Village as a single-family residence.

The discovery of the Coach House Plans as what prompted the 1993 Letter, along with the comparison of those Plans to the Revised Plans and accompanying Village approvals, casts this matter in a new light. Accordingly, I believe the 1993 Letter can no longer serve as the basis for finding that the single zoning lot exists and for denial of a permit. The 504 S. Oak PlN and 422 S. Oak PlN appear to have continued to be used, and should be considered by the Village as, separate lots with structures that are capable of being separately maintained, altered, enlarged, rebuilt, restored and repaired in conformance with the requirements of Section 10-104 of the Village's Zoning Ordinance. It is my recommendation that the previous denial be withdrawn, and the requested building permits for 422 S. Oak be issued, so long as the requests otherwise comply with Village building codes and the Zoning Ordinance.

cc: Lance C. Malina

#### AFFIDAVIT OF NANCY DUGAN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, Nancy Dugan, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

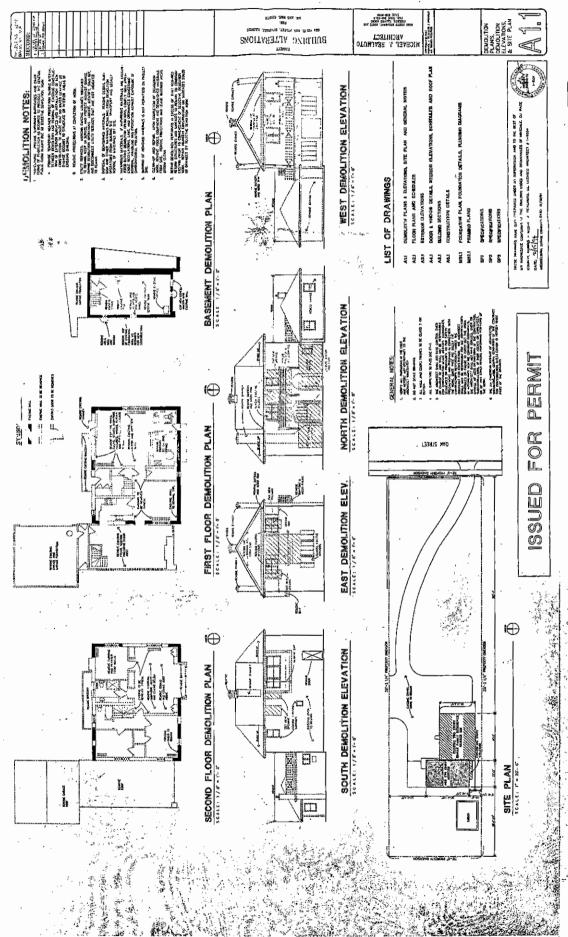
- My name is Nancy Dugan.
- I currently reside at 540 S. Oak Street, Hinsdale, IL, where I have lived since 2009.
   This affidavit is made upon my personal knowledge.
- 3. My home is next door to the coach house at 504 S. Oak Street. From the time I moved in until December 2016, on information and belief, the properties at 504 S. Oak Street and 422 S. Oak Street were under common ownership.
- 4. When I moved into 540 S. Oak, John and Janet LaRocque resided at the principal residence on 422 S. Oak Street. Though their principal residence was two lots away from mine, I considered the LaRocques my next-door neighbors.
- 5. The lot immediately north of my home, 504 S. Oak, contained a coach house, sport court, garage, and driveway that were used by the LaRocques, who resided at the 422 S. Oak principal residence.
- 6. In the 7 years I resided next to the LaRocques, I never witnessed any other individual or family residing at the coach house on the 504 lot. Occasionally I witnessed what appeared to be guests of the LaRocques temporarily staying at the coach house.
- 7. The only vehicles I saw use either the 422 or the 504 driveway on a regular basis were those I knew or believed to be owned by the LaRocques.



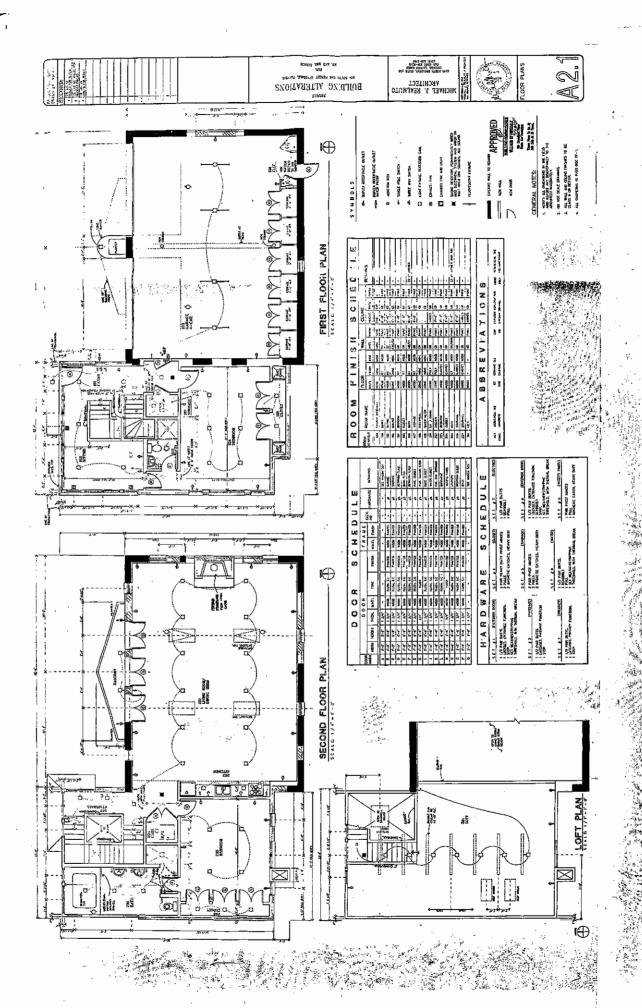
8. I visited the coach house in 2016. Inside, I observed the room on the first floor next to the garage is a kitchen where the "sitting" room is depicted in the 1994 plans permitted by the Village of Hinsdale (attached to this Affidavit as Exhibit A).

FURTHER AFFIANT SAYETH NAUGHT

Nancy Dugan









# VILLAGE OF HINSDALE COMMUNITY DEVELOPMENT DEPARTMENT

# APPLICATION FOR INTERPRETATION

#### **REVIEW CRITERIA:**

Pursuant to the procedures, standards, and limitations of Section 11-501 of the Village of Hinsdale Zoning Code, the Village Manager may render interpretations, including use interpretations, of the provisions of the Code and of any rule or regulation issued pursuant to it.

Applications for interpretations may be filed by any person having an interest in the circumstances giving rise to the need for an interpretation; provided, however, that interpretations shall not be sought by any person based solely on hypothetical facts or where the interpretation would have no effect other than as an advisory opinion.

Name of Individual Making	the Request: Jan	nes and Nancy	Dugan	
Address: 540 S. Oak Stree	t			
Phone: (312) 542-8944				
Date: September 13, 2017				
Signature:			,	
Interpretation Requested	: Whether 504 S.	Oak Street and	d 422 S. Oak Stree	et constitute one
"Zoning Lot" as defined und	der Section 12-20	6 of the Hinsda	ale Zoning Code b	ecause they are
"one or more lots of record	under single	ownership or c	ontrol, located enti	irely within a
block and occupied by	a principal buildi	ng and its acce	essory buildings."	
OFFICE USE ONLY t has been determined that y or use interpretations as set details of your request.	-	•		
	Date:	, 20		E EXHIBIT
/illage Manager				ll street
		1		



## **MEMORANDUM**

DATE:

February 8, 2018

TO:

Chairman Neiman and members of the Zoning Board of Appeals

CC:

Robb McGinnis, Director of Community Development

FROM:

Christine Bruton, Village Clerk

RE:

APP-03-17, Supplemental Materials

The following documents have been submitted regarding APP-03-17, 504 & 422 S. Oak Street, James & Nancy Dugan:

1/3/18 – AVRA Properties Fund II End—User, LLC and Bayit Buildiers, LLC's response in Opposition to James & Nancy Dugans' Application for Zoning Appeal

1/17/18 – letter from Burke, Warren, MacKay & Serritella, Susan Overbey and the Affidavit of Jerome D. Girsch, including exhibits

2/6/18 – supplemental brief – Dugan's reply to AVRA Properties/Bayit Builders' response to Dugans Application for Zoning Appeal

2/7/18 – letter from Burke, Warren, MacKay & Serritella, Susan Overbey and attached correspondence

# AVRA PROPERTIES FUND II END-USER, LLC AND BAYIT BUILDERS, LLC'S RESPONSE IN OPPOSITION TO JAMES AND NANCY DUGANS' APPLICATION FOR ZONING APPEAL

The property owner of 504 S. Oak Street Hinsdale, Illinois 60521, Avra Properties Fund II End-User, LLC ("Avra") and its builder Bayit Builders, LLC ("Bayit"), by and through their undersigned counsel, hereby submit their opposition to James and Nancy Dugans' (the "Dugans") Application for Zoning Appeal, Zoning Calendar No. APP-03-17, and in support of which state as follows:

# **INTRODUCTION**

The Village Manager's October 17, 2017 Zoning Interpretation states that 504 S. Oak Street and 422 S. Oak Street "have had, and continue to have independent single family principal structures on them" and thus do not constitute a single zoning lot as defined by the Zoning Code (the "Code"). The Dugans seek to overturn the Village Manager's Interpretation and seek a finding by the Zoning Board of Appeals ("ZBA") that 504 S. Oak and 422 S. Oak constitute a "single Zoning Lot under the Village Code on which no more than one single-family residence may be built." (Dugan Appeal, Sec. II, ¶3.)

The Dugans have the burden of showing the Village's Zoning Interpretation is incorrect and they have not, and cannot, meet that burden. The Dugans' appeal should be denied because: (1) they admit they will not be "aggrieved" or "adversely affected" by the building of a new single-family residence at 504 S.

Oak; (2) the October 17, 2017 Zoning Interpretation is correct, 504 S. Oak is, and has always been, a single family principal structure and does not constitute a single zoning lot with 422 S. Oak; and (3) even if the use of 504 S. Oak from 1993 forward converted it into a single zoning lot with 422 S. Oak (which it did not) there is no Code provision preventing the division such a zoning lot, and the "2013 ZBA Decision" set a precedent that a single zoning lot can be divided and thereafter used for two separate single-family residences ("SFRs").

# **FACTUAL BACKGROUND**

According to the National Register of Historic Places 504 S. Oak was built in 1940, and does not have an architectural style, while 422 S. Oak was built in 1904 in the Prairie style. (Ex. A.) Title records reflect that from at least 1948 to 1993, 422 S. Oak and 504 S. Oak were owned by different owners. Title records also reflect that each time the properties have been conveyed, they have been conveyed by separate deeds. Likewise, the properties have two different PINs and all metered services to the properties are for the two separate addresses.

In 1993, Jerome Girsch, who already owned 422 S. Oak, purchased 504 S. Oak. On June 25, 1993, Girsch sent a letter to the Village requesting approval to convert 504 S. Oak "into a 4-car garage with a second floor recreation room while, at the same time, removing two separate garages that now reside on the property."

<sup>&</sup>lt;sup>1</sup> The voluminous title records are a matter of public record, and can be produced upon request.

(Ex B.) Girsch's June 25, 1993 letter explicitly stated: "My desire is that the two properties remain separate so that I have options available as to how the parcels could be dealt with in the future." (Id., emphasis added.) The Village wrote Girsch on July 1, 1993, requesting he submit a pre-plan review. (Ex. C.) On July 22, 1993, Girsch's architect, submitted an application for pre-plan review. (Ex. D.)

On August 11, 1993, the Village stated that if Girsch proceeded with the 1993 plans (which were for a recreation room with no bedrooms), the two separate lots would be combined and treated as a single unified zoning lot. (Ex. E.) Based on this letter from the Village, Girsch *did not complete* the planned modifications submitted by his architect on July 22, 1993. Instead, Girsch submitted new plans for review and approval by the Village in 1994, which were significantly different than those initially submitted in 1993. (Ex. F.) The 1994 plans provided for multiple bedrooms, a kitchen, a living room and dining room, and loft living space. The 1994 plans show a clear intent *not* to complete the renovations which the Village indicated would result in the combining of the two separate lots or to treat it as an accessory structure to 422 S. Oak, but rather to renovate 504 S. Oak as a separate SFR.

The Village approved the 1994 plans and issued a building permit for only 504 S. Oak, which again was referred to as a SFR in the plans and did not list a single zoning lot consisting of 504 and 422 S. Oak. (Ex. F.) The Village only

counted the dimensions of 504 S. Oak (the property and home) when doing the calculations for the setbacks and the like for the 1994 remodeling. The Village later inspected and approved the work at 504 S. Oak as a SFR.

On or about July 1, 2009, James and Nancy Dugan purchased 540 S. Oak Street, Hinsdale, Illinois, which is adjacent to 504 S. Oak. Avra, purchased 422 S. Oak and 504 S. Oak in January 2017, with the intention of having Bayit remodel the interior of 422 S. Oak and build a new home at 504 S. Oak. The two properties were listed for sale and marketed as two separate, single family residences, and the listings did not refer to one another. (Ex. G.) The purchase price of 504 S. Oak was \$1,010,000. Separate title policies were issued for 504 S. Oak and 422 S. Oak. While Avra purchased both properties, they could have been purchased by two separate owners. The Google Maps Satellite image attached hereto shows the properties as they exist today. (Ex. H.)

On March 22, 2017, the Village denied Bayit's building permit requests for 422 S. Oak, because the Village considered 422 S. Oak and 504 S. Oak a single zoning lot, based on the August 21, 1993 letter to Girsch. (Ex. 12 to Dugan Appeal.) Bayit appealed the permit denial, and on June 7, 2017, the Village Manager issued a Determination letter denying the appeal, again based on the August 21, 1993 to Girsch. (Ex. 13 to Dugan Appeal.) On July 3, 2017, Bayit filed an application for zoning appeal of the Village Manager's June 7, 2017

determination. On August 21, 2017, the Village Manager reversed her June 7, 2017 Determination, based on a July 12, 2017 Memorandum to the Village Manager by Village Attorney Michael A. Marrs, and stated that:

504 S. Oak and 422 S. Oak are considered by the Village to be separate lots with principal structures that are capable of being separately maintained, altered, rebuilt, restored and repaired in conformance with the requirements of Section 10-104 of the Village's Zoning Ordinance.

(Ex. I.) Specifically, the Village Attorney based his recommendation for reversal on the fact that Girsch did not go through with the original 1993 plans, stating:

Following the receipt of the 1993 Letter, the then-Owner did not proceed with the modifications shown in the Coach House Plans that would have resulted in the creation of a single zoning lot, but instead took steps to maintain independent principal structure on each lot, presumably to ensure that the 504 S. Oak PIN and the 422 S. Oak PIN could continue to be regarded by the Village as separate principal residences and separate zoning lots. Staff has confirmed that the Revised Plans for 504 S. Oak were reviewed and approved by the Village as plans for a single-family residence in 1994, following the 1993 Letter. The work shown on the Revised Plans then appears to have been carried out, and inspected and approved by the Village as a single-family residence.

(Id.).

On September 30, 2017, Bayit submitted its Application for Certificate of Appropriateness for the planned demolition of the current structure and the building of a new single-family home at 504 S. Oak to the Village Historic Preservation Committee ("HPC"). (Ex. J.) The HPC held a public hearing on the application for Certificate of Appropriateness on November 8, 2017, and the HPC granted Bayit's Application, "with the condition that the house must be moved

back a minimum of 20 feet" from the plans presented to the HPC. (*Id.*, Minutes at 41-42.) No one from the public objected to Bayit's Application. (*Id.*) At the hearing, Committee Member Williams noted, with respect to the current home at 422 S. Oak, that "I do not think there is any, other than this brick, historical styling left...[s]o from that point of view, I don't think there is any reason to keep it." (*Id.*, 18:19-19:3.)

Bayit's current plans for the new single-family home at 422 S. Oak are attached, and reflect that the home will be set back 92 feet from the street, in keeping with the HPC's approval. (Ex. K.) The current home at 422 S. Oak is set back 206 feet and 37 inches at its closest point to Oak Street. (*Id.*) The average setback on the block is 68.5. (Ex. J. Minutes 8:3-4.) The Dugans' home appears to be set back only 50 feet from Oak Street. (Ex. K.)

# **ARGUMENT**

# I. The Dugans Do Not Have Standing to Appeal

At the pre-hearing review of this appeal, the Dugans appeared and admitted they did not plan to move, were not trying to sell their property, that they were not financially motivated to appeal, and that they did not believe the planned development of 504 S. Oak impacts the value of their home. The Dugans therefore do not have standing to appeal, because they have not shown they will be "aggrieved or adversely affected," as required by Section 11-502(C), by the

Village's determination that 504 S. Oak is a separate lot with a principal structure capable of being rebuilt pursuant to Section 10-104 of the Village's Zoning Ordinance. The Dugans have presented no evidence that the planned development at 504 S. Oak will aggrieve or adversely affect them.

Rather, the proposed new home at 504 S. Oak is a beautiful Plunkett home, to be built by Bayit which has built other high-quality new homes in Hinsdale, such as 435 Quincy, 531 First, and 809 Clay. The proposed new home at 504 S. Oak been approved by the HPC, while the same committee noted that there was not any "reason to keep" the current home there. The proposed new home at 504 S. Oak will be set back from Oak Street much further than the block average (and much further back than the Dugans' home), maintaining much of the park-like front yard area currently at 504 S. Oak, and the proposed plans make efforts to preserve many of the trees on the property to provide privacy screening between 504 S. Oak and the Dugans' home. (Ex. K.) Moreover, the larger property at 504 S. Oak will provide additional tax revenue for the Village.

Conversely, Avra and Bayit have already been damaged by the continued delays on construction at 504 S. Oak, which should have been completely rebuilt at this point, in the form of preferred returns to fund investors, taxes, and other carrying costs. Avra was an unsuspecting purchaser of 504 S. Oak, which was marketed and sold as a SFR and had no way of knowing until after purchase of the

property at over \$1,000,000 that it would face this pitched zoning battle, which seeks to prevent any single-family use of the property. The fact that Avra also purchased and is remodeling 422 S. Oak should not alter the ZBA's analysis of this matter. If another purchaser bought 504 S. Oak, and the Dugans' prevailed, they would be completely unable to use their property for any use, because it would necessarily be an accessory structure to 422 S. Oak – a property they did not buy. If the ZBA determines that 504 S. Oak can only be used as an accessory structure to 422 S. Oak, Avra and Bayit will be forced to pursue costly and time-consuming litigation to vindicate their property rights – and attempt to recoup their investment – as to 504 S. Oak. Accordingly, because the Dugans have not, and cannot show, they are aggrieved or adversely affected by the October 17, 2017 Zoning Interpretation, their appeal should be denied.

# II. The October 17, 2017 Zoning Interpretation Is Correct, and the Dugans Have Not Met Their Burden

Avra and Bayit agree with the Village's position that based on the actions of the then-owner in 1994 to remodel 504 S. Oak, it maintained its status as a SFR and did not become a single zoning lot with 422. S. Oak. The Dugans have not met their burden to show otherwise. As the Village Attorney noted in his July 12, 2017 Memorandum, comparison of the original plans submitted in 1993 and the plans executed in 1994 "show a marked difference." (Ex. I.) In particular, the 1993 plans "show proposed redevelopment of the 504 S. Oak PIN with only a four-

car garage and recreation room above" while the plans actually executed in 1994 "included multiple bedrooms, a living room, a kitchen, a dining room and a loft living space." (*Id.*) As the Village Attorney pointed out, the then-owner "took steps to maintain independent principal structures on each lot" and relied on the Village's guidance, and subsequent approval of the completed 1994 remodel as a SFR, to reach his stated goal of "keeping the two properties separate." (*Id.*)

The Dugans argue that the mere use of the 504 S. Oak as an "accessory structure" created a single zoning lot, despite the 1993 owner's careful attempt to retain two principal structures on each lot. However, nothing in the Code supports this conclusion – there is no provision of the code that states that a single-family home structure that contains all of the characteristics of a single-family home (bedrooms, bathrooms, a kitchen and common living space), can be converted to an accessory structure by mere dint of its use. Section 9-101 of the Code defines an accessory structure as follows:

An "accessory structure or use" is a structure that:

- 1. Is subordinate in extent and purpose to, and serves, a principal structure or use; and
- 2. Is customarily found as an incident to such principal structure or use; and
- 3. Contributes to the comfort, convenience, or necessity of those occupying, working at, or being served by such principal structure or use; and
- 4. Except as otherwise expressly authorized by the provisions of this code, is located on the same zoning lot as such principal structure or use; and
  - 5. Is under the same ownership and control as such principal structure or use.

(emphasis added). The Dugans argue that this definition somehow proves their point that the mere use of a SFR, without more, can transform it into an accessory structure. To the contrary, Section 9-101(1) explicitly states that an accessory structure must be "subordinate in extent and purpose to, and serves, the principal residence." The Dugans present no evidence that 504 S. Oak was "subordinate in extent" to 422 S. Oak; while it may be smaller than 422 S. Oak, it still exceeds 2,000 square feet and as described above contains all the necessary elements of a SFR.

Likewise, Section 9-101(4) provides that an accessory structure must be in the same zoning lot as the principal structure. Here, in 1993, when the alleged "accessory use" began, the Village explicitly stated that 504 S. Oak and 422 S. Oak were separate zoning lots, and that 504 S. Oak could be converted to an accessory structure per the original 1993 plans if a single zoning lot was created via a zoning application. As the Village has noted, *this did not occur*, instead Girsch remodeled 504 S. Oak to maintain all the characteristics of a SFR, did not apply for permits under a single zoning lot, and the Village inspected and approved the remodel as a SFR. Indeed, if the mere use of a SFR could convert that structure to an accessory structure under a single zoning lot, without any changes to the actual characteristics of the property itself, that would mean a Hinsdale resident could buy his neighbor's home, use it only as a guest house or for storage, and then never

be able to sell the property for redevelopment or use as an SFR, which would be an absurd result. Because the Village has already correctly determined that 504 S. Oak is a single and separate zoning lot, and the Dugans have not met their burden to overcome this determination, the appeal should be denied.

# III. Even if 504 S. Oak and 422 S. Oak Are a Single Zoning Lot, The "2013 ZBA Decision" Permits Division of Single Zoning Lots

Even if the use of 504 S. Oak converted it into a single zoning lot with 422 S. Oak (which it did not), the "2013 ZBA Decision" permits the division of a single zoning lot to be used as two separate residences. Specifically, in 2013, APP-01-13, 735 and 739 Phillippa, the owner of 735 Phillippa acquired the property at 739 Phillippa, put up a fence, installed landscaping and a sprinkling system "thereby creating one zoning lot," which the Village initially determined could not be split and redeveloped as a SFR. (Ex. L.) The owner appealed and the ZBA granted the appeal, holding that the single zoning lot could be split and that 739 Phillippa could be redeveloped as a SFR. The Village's attorney has acknowledged that the Village "staff has not identified a Code provision that affirmatively prohibits single zoning lots that are made up of two or more legal, nonconforming lots of record from being separately built under Section 10-105." (Ex. M.) Here, the Village has characterized 504 S. Oak as a Section 10-104 "precode structure," but there is likewise no provision in the code that prohibits a single zoning lot containing

"precode structures" from being separated. Moreover, allowing 504 S. Oak to be maintained as a SFR meets at least the following the purposes of the Code to:

- 2. Establish a rational pattern of land uses and encourage the most appropriate use of individual parcels of land in the Village; and
- 3. Encourage compatibility between different land uses; and
- 4. Encourage and promote detached single family homes as the principal land use in the Village; and
- 5. Limit the bulk and density of new and existing structures to preserve the existing scale of development in the Village.

Section 1-102(B)(2-5). Therefore, even if 504 and 422 S. Oak are considered a single zoning lot, there is no code provision preventing separation of that zoning lot, and there is precedent that a single zoning lot can be separated and redeveloped.

# **CONCLUSION**

For the foregoing reasons, the Dugans' Zoning Appeal should be denied.

Dated:

January 3, 2017

Respectfully submitted,

Avra Properties Fund II End-User, LLC and Bayit Builders, LLC

Bv

One of their attorneys

Aaron H. Stanton (astanton@burkelaw.com)
Susan J. Miller Overbey (soverbey@burkelaw.com)
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, 21st Floor
Chicago, Illinois 60611-3607
Telephone: (312) 840-7000

## TABLE OF AUTHORITIES

Hinsdale Zoning Code Section 1-102(B)(2-5)	12
Hinsdale Zoning Code Section 9-101	9, 10
Hinsdale Zoning Code Section 10-104	5, 7, 11
Hinsdale Zoning Code Section 10-105	11
Hinsdale Zoning Code Section 11-502(C)	6

NPS Form 10-900-a (8-86)

OMB No. 1024-0018

## United States Department of the Interior National Park Service

## National Register of Historic Places Continuation Sheet

Section number 7 Page 15

#### Robbins Park Historic District Hinsdale, DuPage County, IL

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FOUNDED IN 1873

POLICE DEPARTMENT 789-7070 FIRE DEPARTMENT 769-706) 121 N. M. SYMONDS DRIVE

HINSDALE, ILLINOIS 60521-3489 • (708) 789-7000

VILLAGE PRESIDE: JOVER E SNU

July 1, 1993

Mr. Jerome D. Girsch 422 South Oak Street Hinsdale, IL 60521 Dear Mr. Girsch:

Thank you for your letter of June 25 / 1993 concerning your goals for 422 South Oak Street and 504 South Oak Street.

In order for the Village to be able to respond appropriately and correctly, please complete the enclosed pre-plan review form and return it with the appropriate fee, plats of the properties, any drawings, plans or other supporting documentation. A response would follow approximately 14 days after receipt of this information. Please address these documents to my attention.

If you have any questions, do not hesitate to contact me.

Sincerely

Bondan J. Proczko
Assistant Village Manager/
Director of Public Services

BJP/dfp

Enclosure

REALMURO, STEFFEN & LOFTIFS, LTD Architects, Blanners

6355 N. Broadway, Suite #30. Chicago, Illimois 60660 (312) 338-9700 RAX/338-9316

July 22 1993

Mr. Bohdan Proczko Assistanii Village Manager and Director of Public Works Village of Flinsdale 19-East Chicago Avenue Hinsdale III. 60521

Re Gresch Residence 422 South Oak Street

Dear Mr. Proczko

Pursuant to your fully it letter enclosed please and an application for pre-plan resessable application review fee, 2 plats of survey, and prefumnary plans (1.5).

Should you have any questions regarding this application, please do not hesitate to eat.

Sincerely,

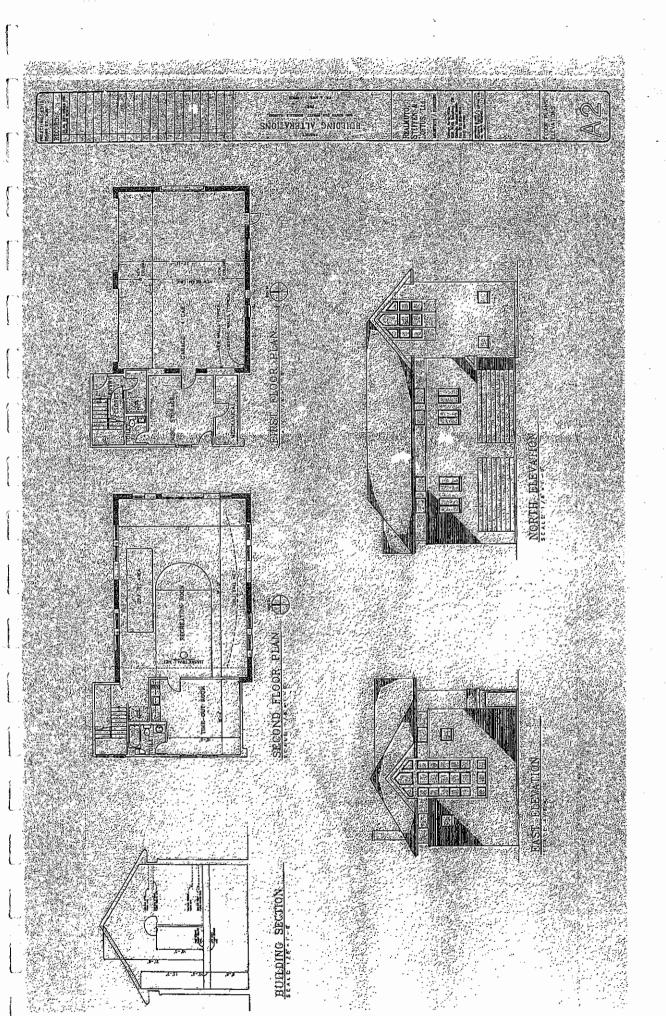
Michael J. Realmuto, AIA, CSI
As Agent for Linda and Jerry Girsch

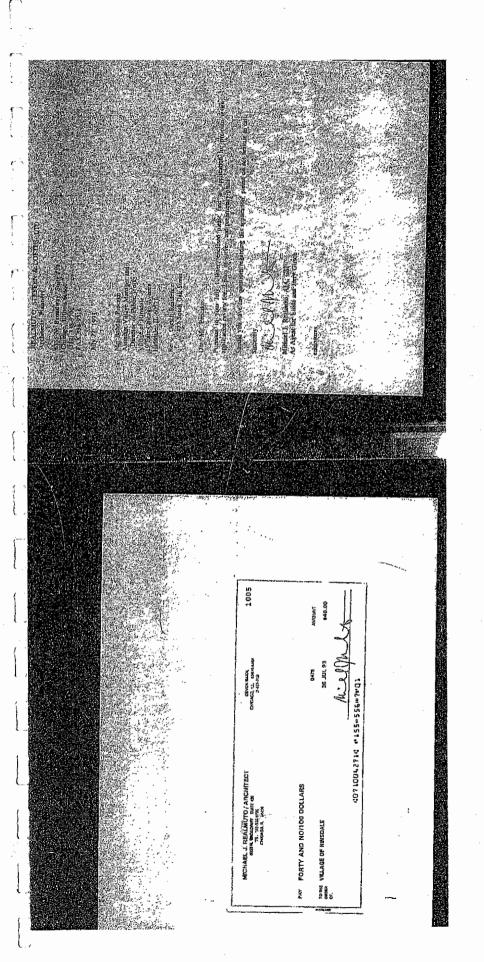
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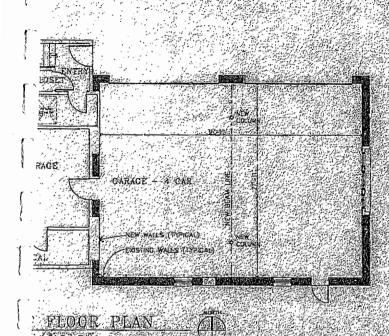
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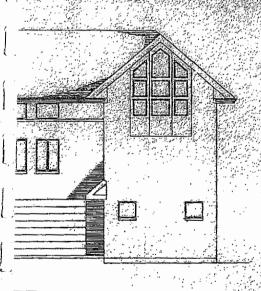
## APPEICATION FOR PRE-PLAN REVIEW

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Please Check Applicable Blank
I am interested in zoning information concerning a possible addition to the still listed above.
Lain interested in zoning information concerning the demolition and rebuilding of the site listed above.
I am interested in information not listed above. Please explain. 1SEE AN WOOL
Date Application Received
A Pre-Plan Review is done exclusively with the information provides by the applicant. The Village of Hillselfs exclusively interests any typographical errors which appear on a Pre-Plan Review any time following: the dealer through an additional the Talage of the Plance of the Planc
responsible for any incorrect information on a Pre-Plan Review which is cossed by a Normal discussion includes a New York for the preparation of said review.
Only an original Piet of Survey is acceptable for a Pre-Plan Review. If an original Plat of Someras and security, the state of the applicable Village staff whether a copy of said plat is sufficient for the completion of the review.
A fee of \$40 must accompany this completed application.
I hereby schooledge that I have read this application and stated that it is correct and agree to vowaphy with all the Williage of Filmstale Ordinance and State of Illinois Laws regulating building construction and use.
AL O OM. A
Signature of Property Owner of Authorized Agent:
Please print name/title: MICHAEL J. REALMUTO / ARCH SECT



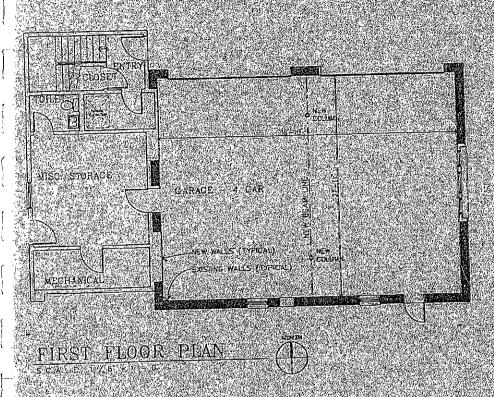






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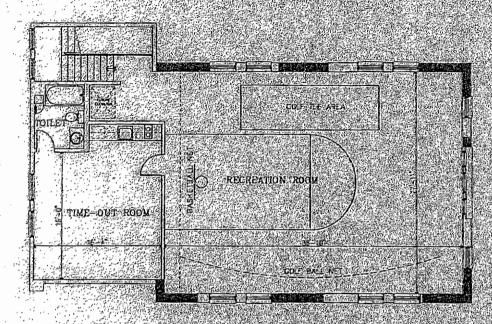
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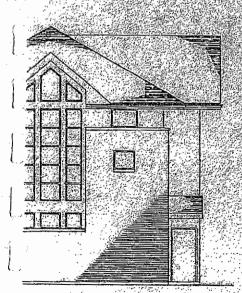
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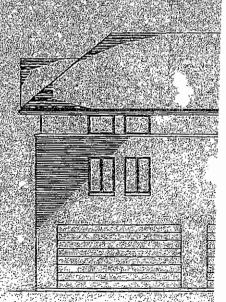


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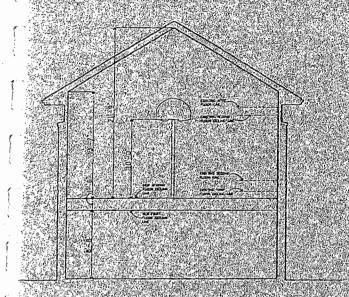
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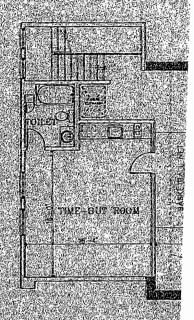
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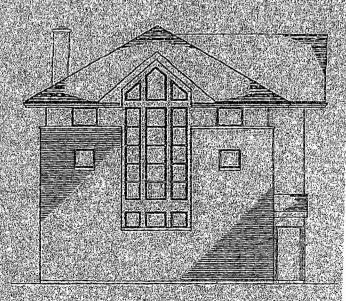
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BUILDING SECTION



SECOND FLOOR



EAST ELEVATION

078



#### VILLAGE OF HINSDALE

FOUNDED IN 1873

FORCE DEPARTMENT 789-7070 FOR DEPARTMENT 789-7060 19 EAST CHICAGO AVENUE HINSDALE, ILLINOIS 60521-3489 • (708) 789-7000THUSTEF Alon R. Bur Kenn Conde Card L. Godden Parl J. Keisun Harter M. Kle Wizen E. Wetney. .

VOLLAGE PRESIDEN

:August, 11; 1993

Mr. Michael I. Realmulo Realmuto, Steffen & Loftus Ltd. 6355 North Broadway Suite 30 Chicago, Illinois 60560 418

REi-Girsch Residence, 422 S. Oak St., Hinsdale, IL

Dear Mr. Realmuto:

The Village is in receipt of your letters of July 22, 1993, along with the pre-plan review application, the plans of survey and preliminary plans. Your letter asks several questions which I have summarized as follows:

- I. Can the existing garages on both properties be demolished?
- Can the original coach house at 504 S. Oak, which is now used as a principal
  residence, be remodelled to be a 4 car garage with a rec room on the second
  floor and used as an accessory structure to the existing residence at 422 S.
  Onk?
- 3. At some future time, following completion of this work, can 504 S. Oak be sold as a separate lot with the coach house used as a principal residence?

The short answers are

Yes the garages can be demolished

The rouch house can be remodelled provided that the remodelling does not create any newmonconformities or increase any existing nonconformities. It can be used as an accessory structure to the house at 422 S. Oak if and only if the two lots are combined into a single "Zoning Lot" pursuant to Sections 12-206L and 12-101D of the Zoning Code. A separate principal dwelling unit would not be permitted on the second floor of the coach house.

 Upon completion of the proposed project the property would consist of one Zoning Lot, as that term is defined in Subsection 12-206L of the Zoning Code and the lot at 504 S. Oak could not then be sold off as a separate lot.

Pursuant to the 1989 Zoning Code, an applicant for any zoning approval or building permit must designate a "Zoning Lot" to be used as the basis for review of his or her application: A Zoning Lot may consist of one or more Lots of Record. Thus, you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to be used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future. Subsection 12-101C of the Code provides:

...no...zoning lot, now or hereafter existing, shall be ...divided...except in compliance with the regulations of this Code. Without limiting the foregoing any such activity that would ...create any parcel of land that could not be developed in compliance with this Code shall be probibited.

Because the combined lots at 422 and 504 S. Oak would not have either sufficient area or width to create two new Zoning Lots that comply with the Code's lot area and width requirement, this Subsection would prohibit any future division of the new Zoning Lot into two separate Zoning Lots.

The properties at 422 and 504 S. Oak St. are currently zoned in the R-1 Single Family Residence District. The minimum requirements for lots in the R-1 District are:

Total Lot Area				30,000 sq. fi
Lot Width	·			125.ft.
Lot Depth .	٠,٠	٠	•	· 125 ft.

The properties currently have the following dimensions:

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Both the residence at 422 S. Cale and the coach house at 504 S. Oak are Pre-cade Structures, under Subsection 12-206 for the Zoning Code. They were lawfully existing on June 18, 1988, and they are each located on a Lot of Record that does not meet the requirements.

of the 1989 Zoning Code. However, upon completion of the plans, as submitted with the pre-plan review, the Girsch property would consist of one Zoning Lot that would meet the Gode's lot orea and lot width requirements. The property could not thereafter be resubdivided unless each resulting lot complied with the minimum R-1 District requirements,

Your clients may proceed with this project provided that all other zoning regulations and building requirements are met but be advised that the existing home at 504 S. Oak St. would. become an accessory structure. No changes could be made to that structure that would create any new nonconformities or increase any existing nonconformities.

With one lot consisting of 58,073.4 sq. ft. the following would apply:

Front Yard : the average of the front setbacks of the properties on either side of the subject site, (i.e., 320 E. Fourth St. & 329 E. Sixth St.)

both side yards must total at least 30 feet with no one side yard being less than 10 feet. (The coach house is currently set 5.5 feet off of the for line. It would be allowed to remain but could not be expanded except in compliance with applicable regulations.)

FAR . 3 plus 800 sq. ft. or 18,222 sq. ft. of building space. (Floor Area Ratio)

Maximum Building Coverage: Principal mid Accessory Buildings - 25% or 14,518-sq.

Accessory, Buildings Only-10% or 5,807 sq. ft:

Please note that the maximum permitted height of an accessory building is 15 feet, as height is defined pursuant to Section 12-286H of the Zoning Code. The conch house probably exceeds, this limitation. However, it could be remodelled so long as new and existing nonconformities were not created or expanded.

In summary, the Zoning for appears to be large enough to allow your elients to pursue their improvement plans. However, once the coach house is accessory to the principal structure the property consists of one zoning long and cannot be subdivided in the inture. Please note

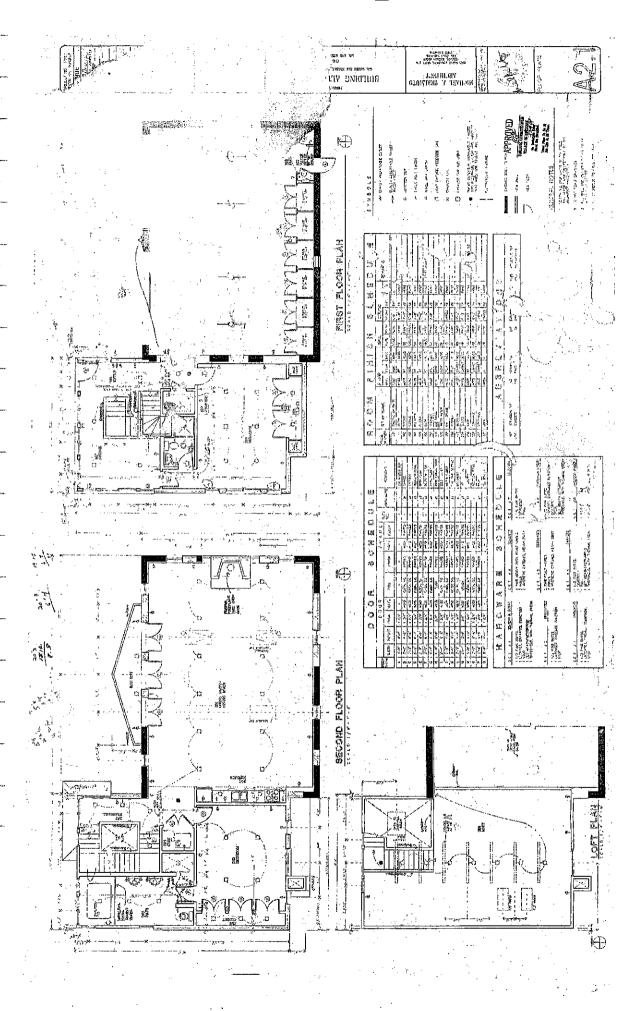
that no separate dwelling units would be permitted in the coach house

This review is based on the information submitted with the pre-plan application form. Any changes in the plans when submitted for permit or inaccuracies in the document received to date may result in a revision to this review. If you have any questions do not he state to contact the undersigned.

Sincerely,

Bolidon J. Frocko Assistant Village Manager/ Director of Public Services

Charles McMahon Charles Schmidt Clifford L. Weaver Pre-plan Review File-

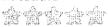


REHTO ELECTRICAL FLECTRICAL AIR CONDITIONING PLUMBING PARTY TO FORM THE BUILDING ONLY. AOT SI TIMRES BIHT Rad FINAL APPROVAL .9.1 STYCKU CH DHADIT Ę. LZ ETHOLE ON 121101-00 9.69 -ዩ-,|▼ DESCRIPTION OF WORK Contract Hoor Johnson HOON SONEY ABOUT MONEY . 0/, L-,09 11-L-2 HAVE THE WATER AND VENTATION ECHEBULES COMPHEN ASSIS יודע שייטינ: 9300 AL STYCSHIH WOMEN on CHICAGO I-9554 0017-66F (S/E) or at From 455 & OVK EIREET. HUSENEY GIRSCH 1416.52E D CERT I BROADWAY BUTE 30 **עובור ד שבעואחנ** 1/1 + 500 M.L.O 16-fo 131 844 W.F.OD 15/10 - 15/1 DEVINOUS DA 15 100 ETH (CT UN in the state of th STORE S MAI 1886 VILLAGE OF HINSDALE APPLICATION FOR BUILDING PERMIT

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MY RATING



Inquire About This Property customercare@KoenigRubloff.com 866.795.1010

MY NOTES

Sold Price:

\$1,010,000

Sold Date:01/13/2017

504 S Oak Street Hinsdale, JL 60521

County: Du Page

Beds: 3 Baths: 2 Full #: 09388077 Status: Sold



Last Updated: 1/3/2018 12:29 PM

#### Description for 504 S Oak Street Hinsdale, IL 60521

CONTEMPORARY  $\sim$  THREE STORY WITH 4 CAR ATTACHED GARAGE AND A SPORTS COURT. ALL ON A 78 X 333 LOT. . FIRST FLOOR BEDROOM, SECOND FLOOR HAS GREAT ROOM AND ONE BEDROOM, THIRD FLOOR HAS BEDROOM LOFT.

Listing Information

Last Update: 1/3/2018 12:29 PM

Property Type: Single Family, Contemporary, 3 Story

Bedrooms: 3 Total Rooms: 5 Bathrooms: 2 Full

Construction: Brick Exterior

Garage: Yes-4 spaces

Stories: 3

Year Built: 1986

Stories: 3

Town/Range/Sec: DOWNERS GR//

Foundation: Concrete Foundation Water: Lake Michigan

Sewer: Public Sewer

School Information

Elementary: OAK ELEMENTARY SCHOOL

Middle:

HINSDALE MIDDLE SCHOOL

High: HINSDALE CENTRAL HIGH SCHOOL

Room Information

Main Floor

Bedroom: 21X14

Upper Floor

Master Bedroom: 18X15 Bedroom: 34X23 Kitchen: 12X06 Great Room: 40X29

Bathrooms

Full Baths: 2

Additional Room Information Kitchen: Galley Kitchen

Interior Features

Appliances: Range-Oven, Microwave, Dishwasher,

Refrigerator, Washer, Dryer

Flooring: Hardwood, Other, Carpet Cooling: Central Air Heating: Gas Heat

Basement: Partial Fireplaces: 1 Exterior / Lot Features

Parking: 4 Garage Spaces,

Exterior: Brick

Lot Dimensions: 78 X 333

Fence: Fenced Yard

Additional Exterior/Lot Features: Asphalt, Curbs & gutters

Financial Considerations

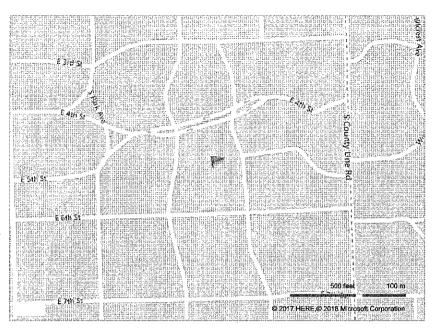
Tax/Property ID: 0912225009

Tax Amount: \$27,496 Tax Year: 2015

Listing Price History

There is currently no listing history data available.

#### **Driving Directions**



Agent-Entered Driving Directions: Garfield to 6th, east to Oak

Resignative Courtesy: Ginny Stewart - Village Sotheby's International Realty

#### Broker' Reciprocity

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MY RATING



Inquire About This Property customercare@KoenigRubloff.com 866,795,1010

MY NOTES

Sold Price

\$2,500,000

Sold Date:01/13/2017

422 S Oak Street Hinsdale, IL 60521

County: Du Page

Beds: 6

Baths: 7 Full

Sq ft: 6,700 (approx)

#: 09388131

Status: Sold



Last Updated: 1/3/2018 12:23 PM

#### Description for 422 S Oak Street Hinsdale, IL 60521

There are few classic homes more compelling. There are few locations more choice. Huge rooms loaded with nich details and stunning views on nearly an acre; 14 rooms, 6 bedrooms 7 baths and 8 massive fireplaces each being a work of art, now add a front add back staircase-all these elements speak of a personal style unhampered by the need to create a statement. Stained glass windows, an oversized skylight, a study with a full bath on the 1st floor, a stunning De Julio kitchen with large island and a convenient butler's pantry. Rich wood paneled living room, wainscoted dining room, large foyer, as well as a parlor, sunny family room and a rarely available finished lower level. The patina of this original home with its awesome room sizes, incredible outdoor patios and entertaining areas is a perfect setting for many fond memories. Updated and pristine!

Listing Information

Last Update: 1/3/2018 12:23 PM

Property Type: Single Family, Traditional, 3 Story

Bedrooms: 6

Bathrooms: 7 Full

Total Rooms: 13

Square Feet: 6,700 (approx)

Year Built: 1910

Stories: 3

Construction: Brick Exterior

Town/Range/Sec: DOWNERS GR// Foundation: Concrete Foundation

Water: Lake Michigan Sewer: Public Sewer

School Information

Elementary: OAK ELEMENTARY SCHOOL

Middle:

HINSDALE MIDDLE SCHOOL

High: HINSDALE CENTRAL HIGH SCHOOL

Room Information

Main Floor

Dining Room: 25X17
Family Room: 36X16
Kitchen: 18X15
Living Room: 33X20
Library: 16X13
Foyer: 23X18

Upper Floor

Master Bedroom: 24X18

Bedroom: 19X14 Bedroom: 21X20 Bedroom: 19X14 Bedroom: 16X14 Bedroom: 12X11

**Bathrooms** 

Full Baths: 7

Additional Room Information

Rooms: Library Kitchen: Breakfast Bar

Bath Description: Whirlpool Bath, Dual Sinks

Interior Features

Exterior / Lot Features

Appliances: Double Oven, Microwave, Dishwasher, Freezer,

Washer, Dryer, Central Vacuum

Flooring: Hardwood, Ceramic Tile, Carpet, Stone

Cooling: Central Air

Heating: Gas Heat, Radiant, Forced Air, Zone

Basement: Full

Fireplaces: 8, Wood-burning Security: Security System,

Parking: 3 Parking Spaces,

Exterior: Brick

Lot Dimensions: 128X243X128X296

Fence: Fenced Yard

Additional Exterior/Lot Features: Landscaped

Professionally, Asphalt, Dimensions to Center of Road,

Curbs & gutters

Financial Considerations

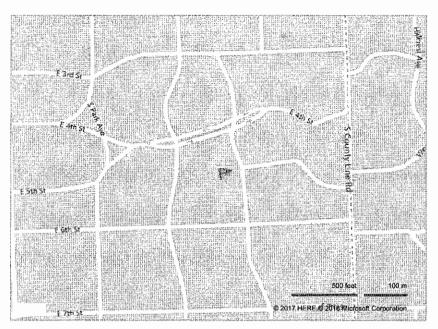
Tax/Property ID: 0912225017

**Tax Amount:** \$57,176 **Tax Year:** 2015

Listing Price History

There is currently no listing history data available.

#### **Driving Directions**



Agent-Entered Driving Directions: Sixth Street to Oak then South to home

Resemble Courtesy: Ginny Stewart - Village Sotheby's International Realty



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MRED DMCA Notice

Information is deemed reliable but is not guaranteed.

#### LUUJIE MELU

## Google Maps



Imagery @2018 Google, Map data @2018 Google 20 ft ... ......

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



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

August 21, 2017

Peter Coules, Jr. 15 Salt Creek Lane, Suite 312 Hinsdale, Illinois 60521

RE: Reversal of Staff Decision - 422 S. Oak Street - Determination of Village Manager

Mr. Coules -

As you are aware, you, on behalf of your client, Bayit Builders, LLC ("Bayit Builders"), appealed to me the denial by Village staff of a permit sought by Bayit Builders for work on 422 S. Oak Street. I subsequently issued a Denial Letter dated June 7, 2017 (the "June 7, 2017 Denial") in which I upheld the staff denial and held that the collective lots at 422 S. Oak and 504 S. Oak (collectively, the "Property") should be treated as a single zoning lot. You then formally sought review by the Village's Zoning Board of Appeals of my June 7, 2017 Denial, in an application for Zoning Appeal received by the Village on July 3, 2017.

I subsequently received a memo from the Village Attorney, dated July 12, 2017, recommending that I withdraw my June 7, 2017 Denial and issue the requested permits for 422 S. Oak, based on the discovery by the Village of additional materials related to the Property in Village files, and based on a review of those materials by the Village Attorney and staff. A copy of the Village Attorney's July 12, 2017 memo is attached for your reference. You were then notified by Robb McGinnis, Director of Community Development, in an email sent July 12, 2017, that the Village had reversed its position, and the appeal was therefore unnecessary. In order to close our file on this matter, I am sending you this letter formally stating my finding that, based on the information currently available to me, the properties at 504 S. Oak and 422 S. Oak are considered by the Village to be separate lots with principal structures that are capable of being separately maintained, altered, enlarged, rebuilt, restored and repaired in conformance with the requirements of Section 10-104 of the Village's Zoning Ordinance. My June 7, 2017 Denial is withdrawn, and your appeal of my previous denial is moot.

Issued this 21st day of August, 2017

Kathleen A. Gargano, Village Manager

Village of Hinsdale



20 N. Wacker Drive, Ste 1660 Chicago, Illinois 60606-2903 T 312 984 6400 F 312 984 6444

DD 312 984 6419 mamarrs@ktjlaw.com15010 S. Ravinia Avenue, Ste 10 Orland Park, Illinois 60462-5353 T 708 349 3888 F 708 349 1506

www.ktilaw.com

#### **MEMORANDUM**

To:

Kathleen Gargano, Village Manager (via email only)

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

From: Date:

Michael A. Marrs July 12, 2017

Re:

422/504 S. Oak Appeal and Issues

I have reviewed the Application for Appeal filed by Pete Coules on behalf of Bayit Builders, LLC, related to property located at 504 S. Oak Street with a PIN of 09-12-225-009, (the "504 S. Oak PIN"), and at 422 S. Oak Street, with a PIN of 09-12-225-017 (the "422 S. Oak PIN") (collectively, the "Property"). The Application for Appeal requests review by the Zoning Board of Appeals of the Village Manager's June 7, 2017 decision to uphold a staff finding that the Property should be treated as a single zoning lot (the "June 7, 2017 Denial").

As you will recall, the Village has acknowledged that prior to 1993, the 504 S. Oak PIN and 422 S. Oak PIN were separately owned, improved with a single-family residence on each, and functioning as two (2) separate zoning lots. As you will further recall, the Village, earlier this year, denied a building permit for certain work on the 422 S. Oak Street PIN based on a letter sent by the Village to the then-Owner of the Property dated August 11, 1993 (the "1993 Letter"). The 1993 Letter was in response to an inquiry regarding whether the building on the 504 S. Oak PIN then being used as a principal residence could be remodeled and converted to use as an accessory structure to the principal residence on the 422 S. Oak PIN. In the 1993 Letter, the Village answered that the principal residence on the 504 S. Oak PIN could be remodeled and thereafter used as an accessory structure to the principal residence to the 422 S. Oak PIN if, and only if, the two (2) PINS were combined into a single Zoning Lot. Specifically, the 1993 Letter stated "you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to be used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future."

In the Village Manager's June 7, 2017 Denial, she notes that "[p]lans subsequently filed with the Village indicate that the modifications proposed in the 1993 Letter were subsequently carned out" by the then-Owners, and that the Village had thereafter regarded the two (2) PINS as a single Zoning Lot.

Subsequent to the June 7, 2017, Denial, the Village has discovered additional materials in Village files related to the 1993 Letter, including the plans which prompted the 1993 Letter. Those plans show proposed redevelopment of the 504 S. Oak PIN with only a four-car garage and recreation room above (the "Coach House Plans"). A comparison of the Coach House Plans to plans submitted by the then-Owner subsequent to the 1993 Letter show a marked difference. It now appears that following the receipt of the 1993 Letter, new plans (the "Revised Plans") were created that included multiple bedrooms, a living room, a kitchen, a dining room and loft living space. It appears then, that following the receipt of the 1993 Letter, the then-Owner did not proceed with the modifications shown in the Coach House Plans that would have resulted in the creation of a single zoning lot, but instead took steps to maintain independent principal structures on each lot, presumably to ensure that the 504 S. Oak PIN and 422 S. Oak

PIN could continue to be regarding by the Village as separate principal residences and separate zoning lots. Staff has confirmed that the Revised Plans for 504 S. Oak were reviewed and approved by the Village as plans for a single-family residence in 1994, following the 1993 Letter. The work shown on the Revised Plans then appears to have been carried out, and inspected and approved by the Village as a single-family residence.

The discovery of the Coach House Plans as what prompted the 1993 Letter, along with the comparison of those Plans to the Revised Plans and accompanying Village approvals, casts this matter in a new light. Accordingly, I believe the 1993 Letter can no longer serve as the basis for finding that the single zoning lot exists and for denial of a permit. The 504 S. Oak PIN and 422 S. Oak PIN appear to have continued to be used, and should be considered by the Village as, separate lots with structures that are capable of being separately maintained, altered, enlarged, rebuilt, restored and repaired in conformance with the requirements of Section 10-104 of the Village's Zoning Ordinance. It is my recommendation that the previous denial be withdrawn, and the requested building permits for 422 S. Oak be issued, so long as the requests otherwise comply with Village building codes and the Zoning Ordinance.

: Lance C. Malina



#### **MEETING AGENDA**

# MEETING OF THE HISTORIC PRESERVATION COMMISSION Wednesday, December 13, 2017 6:00 P.M.

#### **MEMORIAL HALL - MEMORIAL BUILDING**

(Tentative & Subject to Change)

- 1. CALL TO ORDER
- 2. MINUTES Review and approval of the minutes from the November 8, 2017, meeting.

#### 3. PUBLIC HEARING - CERTIFICATE OF APPROPRIATENESS

a) Case HPC-11-2017 – 420 E. Third Street - Request for Certificate of Appropriateness to Construct a new home on a vacant lot in the Robbins Park Historic District.

#### 4. PUBLIC HEARING - WITHDRAWAL OF LOCAL LANDMARK DESIGNATION

a) Case HPC-10-2017 – 244 E. First Street - Request to withdraw the local landmark designation for the home in the Robbins Park Historic District.

#### 5. SIGNAGE IN THE HISTORIC DOWNTOWN DISTRICT

- a) Case A-41-2017 90 W. First St. Altamura (Pizza) Wall Sign application in the Historic Downtown District.
- b) Case A-43-2017 42 S. Washington St, 2<sup>nd</sup> FL.– Zouzias & Zouzias CPA Projecting Sign in the Historic Downtown District

#### 6. DISCUSSION

- a) Update letter (11.30.17) regarding the Hinsdale Historical Society for Historic Tours App
- b) 2018 HPC Meeting Schedule

#### 7. ADJOURNMENT

The Village of Hinsdale is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend any meetings and who require certain accommodations in order to allow them to observe and/or participate in these meetings, or who have questions regarding accessibility of the meetings or the facilities, are requested to contact Darrell Langlois, ADA Coordinator at 630.789-7014 or by TDD at 789-7022 promptly to allow the Village of Hinsdale to make reasonable accommodations for those persons. website: www.villageofhinsdale.org

Approved

## MINUTES VILLAGE OF HINSDALE HISTORIC PRESERVATION COMMISSION

November 8, 2017

Memorial Hall – Memorial Building, 19 East Chicago Avenue, Hinsdale 6:00 P.M.

Chairman Bohnen called the meeting of the Historic Preservation Commission (HPC) to order at 6:00 p.m. on November 8, 2017, in Memorial Hall in the Memorial Building, 19 East Chicago Avenue, Hinsdale IL.

Present:

Chairman Bohnen, Commissioner Prisby, Commissioner Weinberger,

and Commissioner Williams

Absent:

Commissioner D'Arco, Commissioner Gonzalez and Commissioner

Willett

Also Present:

Applicant for Case HPC-08-2017 and HPC-09-2017

#### Minutes

Chairman Bohnen introduced the minutes from the October 11, 2017, meeting and asked for any questions. The HPC reviewed and **unanimously approved**, **4-0** (2 absent) the minutes from the October 11, 2017, meeting, after requesting a few minor changes to Attachment 1 (HPC-06-17 transcript) of the minutes.

#### Public Hearing - Certificate of Appropriateness

Case HPC-08-2017 - 107 S. Park Ave. - Request for Certificate of Appropriateness to Demolish the Existing Home and construct a new home in the Robbins Park Historic District.

The homeowner presented to the HPC, the history and dilapidated condition of the house at 107 S. Park Avenue. It was explained that repairing the home would cost approximately 60% of building a new home. The applicant also stated that they've lived in the home for 25 years, and will continue to live at the subject property in their new home.

The HPC had no issues with the request and complimented the design of the new home. However, some HPC commissioners expressed general concern for all the demo requests in the Robbins Park District.

Please refer to Attachment 1, for the transcript for Public Hearing Case HPC-08-2017

A motion to approve the application for Certificate of Appropriateness, as submitted, was unanimously approved, 4-0 (2 absent)

STATE	$^{ m OF}$	ILL	INOIS	)	
				)	ss:
COUNTY	OF	DU '	PAGE	)	

BEFORE THE VILLAGE OF HINSDALE HISTORIC PRESERVATION COMMISSION

IN 7	ГНЕ	MAT	TER	OF:	)
CASE	e no	). F	IPC-0	9-2017	)
504	SOU	тн	OAK	STREET	)

REPORT OF PROCEEDINGS had and testimony taken at the Public Hearing of the Certificate of Appropriateness in the above-entitled matter before the Hinsdale Historic Preservation Commission, at 19 East Chicago Avenue, Hinsdale, Illinois, on the 8th day of November, 2017, at the hour of 6:20 p.m.

#### BOARD MEMBERS PRESENT:

MR. JOHN BOHNEN, Chairman;

MS. SANDRA WILLIAMS, Member;

MS. SHANNON WEINBERGER, Member;

MR. JAMES PRISBY, Member.

	-	2		4
	1	ALSO PRESENT:	1	MS. WILLIAMS: And this is not the same
	2	MR. CHAN YU, Village Planner;	] 2	owner as 422 South Oak?
	3	MR. JAMES DOHERTY, Project Manager.		MR. DOHERTY: It is.
	4		4	MS. WILLIAMS: It is the same owner.
	5		,	MR. DOHERTY: We own both properties,
	6	CHAIRMAN BOHNEN: This is the public		yes. And we are rehabbing 422.
	7	hearing of Case HPC-09-2017 for 504 South Oak	7	MS. WILLIAMS: You are?
	8	Street, again requesting a Certificate of	] 8	MR. DOHERTY: Yes.
	9	Appropriateness to demolish the existing home	٩	MS. WILLIAMS: Oh.
D6:18:25PM	10	and construct a new home in the Robbins Park	06:20:47PM 1(	CHAIRMAN BOHNEN: 422 South Oak?
	11	Historic District.	11	MS. WILLIAMS: Right next door.
	12	Representing that property would be	12	CHAIRMAN BOHNEN: The numbers don't run
ĺ	13	Mr. Doherty?	13	quite right but so
ĺ	14	MR. DOHERTY: Yes.	14	MR. PRISBY: James, one of the things
	15	CHAIRMAN BOHNEN: Would you be kind	15	that Sandy Williams had brought up earlier
	16	enough to be sworn in, please.	16	tonight before the meeting was, maybe in the
	17	MR. DOHERTY: Yes.	17	future for the village, we would kind of like to
	18	CHAIRMAN BOHNEN: And state your name	18	start seeing where the setbacks are of the
	19	for the record.	19	neighboring houses.
05:19:36PM	20	MR. DOHERTY: James Doherty.	06:21:16PM <b>2</b> (	MR. DOHERTY: Okay.
	21	(Mr. Doherty sworn.)	21	MR. PRISBY: And I will get to that in
	22	MR. DOHERTY: Good evening, guys.	22	a second. Clearly the house that's on this
		3		5
	1	CHAIRMAN BOHNEN: Good evening,	1	property right now is set way back, it's the old
ŀ	2	Mr. Doherty.	2	coach house, it's in the middle of the lot. And
	3	MR. DOHERTY: Hello again.	3	now we are going to be building something
	4	MR. PRISBY: Again.	4	significantly forward from that position
	5	MR. DOHERTY: I'm here to, I'll keep it		adjacent.
	6	pretty simple, I'm here to request a vote for	•	MR. DOHERTY: Yes. Pretty similar to
	7	the demolition of 504 South Oak.	1 7	the home to the south of us. They are
	8	MS. WILLIAMS: And are you the	8	significantly forward, we will be behind those.
	9	contractor or the owner of or		
06:20:08PM	10	MR. DOHERTY: I'm the project manager	06:21:43PM 10	
	11	and I'm representing Bayit Builders.	11	•
	12	MS. WILLIAMS: And who is the owner of	12	
	13	the property?	13	
	14	MR. DOHERTY: His name is Manuel	14	
	15	Gliksberg. He owns both Avra Properties and	1:	•
	16	that's a parent company of Bayit Builders.	10	
	17	CHAIRMAN BOHNEN: So this is a spec	17	
	18	home?	18	
	19	MR. DOHERTY: Yes.	19	
05:20:31PM		CHAIRMAN BOHNEN: That you are	06:22:05PM 20	
-	21	proposing for the property?	2	, , , , , , , , , , , , , , , , , , , ,
1	22	MR, DOHERTY: Yes.	22	having a house in the middle of the block,

F				
		6		8
	1	especially when it's been remodeled to the	1	CHAIRMAN BOHNEN: It's a Lil Putian
	2	extent that one has. I also don't want	2	set.
	3	something to be so far forward to the houses in	3	MR. YU: The average front yard setback
	4	front of it that it just destroys that beautiful	4	is at 68.5.
	5	block especially coming up that hill. I want to	5	MR. PRISBY: Now, as part of that, does
	6	make sure that this house is situated on that	6	it also list every house on that block? A lot
	7	property	7	of times they will do that as well.
	8	MR. DOHERTY: Is there a site plan	8	MS. WILLIAMS: The problem is there are
	9	provided?	9	only two houses.
06:22:	30РМ 10	MR. PRISBY: There is, but it doesn't	00:24:11PM 10	CHAIRMAN BOHNEN: They wouldn't be
1	11	show the neighbors' property.	11	bothered by the Early's house by 4th.
	12	MR. DOHERTY: Okay.	12	MR. PRISBY: Right.
	13	MR. PRISBY: We had the same thing with	13	MR. BOHNEN: And you wouldn't be
i	14	the last one that was in here, showed the corner	14	bothered by the house on 6th because of the
ı	15	lot. But a lot of times the survey would show	15	tennis court.
1	16	the house next door at some level and neither	16	MR. PRISBY: Right.
	17	one of these tonight has.	17	MR. BOHNEN: Where your concern is
	18	MS. WILLIAMS: Jim, the old plat of	18	going to be you have got 422, the existing house
	19	survey that was included seems to show that the	19	now, is 111 we are saying, this house is being
06:22:4	47PM <b>20</b>	house at 422 is 111 feet back.	06:24:27PM <b>20</b>	proposed at
	21	MR. PRISBY: This one?	21	MR. DOHERTY: 78.
<u> </u> _	22	MS. WILLIAMS: The little one. Yes.	22	CHAIRMAN BOHNEN: 78. And it's the
		7		9
1	1	Doesn't that look like 111 to you? Past the	1	house to the south that you are concerned about?
	2	retaining wall. It's hard to see. But it's a	2	MR. PRISBY: Right, I'm just wondering
	3	three digit number so I'm going with 111. And	3	what that is.
	4	the new house has 78, is that correct, I think?	4	CHAIRMAN BOHNEN: And you are saying
.	5	MR. DOHERTY: That sounds right.	5	that's less than 78, it's forward of where you
	6	CHAIRMAN BOHNEN: And we don't know the	6	are?
	7	setback of the one to the south, the next house,	7	MR. DOHERTY: Yes. Yes.
	8	the existing house?	8	MR. PRISBY: How significantly?
1	9	MR. PRISBY: Yes.	9	That's, I'm just trying to get a good
08:23:		MS. WILLIAMS: Not that I see.	08:24:46PM 10	CHAIRMAN BOHNEN: Not a lot you can do
	11	MR. DOHERTY: It's a lot less than 78.	11	about it.
	12	It might be half that distance.	12	MR. PRISBY: I have
	13	MR. PRISBY: Jim, do you have anything	13	CHAIRMAN BOHNEN: You have a minimum of
	14	blockwise? Or do you have that information	14	35, right?
	15	handy?	15	MR. PRISBY: Yes.
	16	MS. WILLIAMS: That was included on the	16	CHAIRMAN BOHNEN: Correct?
	17	plan, and I think it was 68; is that right?	17	MR. PRISBY: I know.
	18	It's on the plan. I didn't bring my big set.	18	MS. WILLIAMS: The average of the block
	19	CHAIRMAN BOHNEN: There wasn't a big	19	was 68.
06:23;		set for this.	ре:24:58РМ 20	CHAIRMAN BOHNEN: I understand. I
	21	MS. WILLIAMS: Okay. Well, then maybe	21	understand what you are saying. But you are not
	22	it's on here.	22	advocating the move 504 farther forward, are

		10		12
	1	you?	1	CHAIRMAN BOHNEN: And I'm looking at a
	2	MR. PRISBY: No. No. No.	2	shake shingle house with a cedar shake roof?
	3	MS. WILLIAMS: No. If anything, to move	3	MR. DOHERTY: Yes.
	4	it back.	4	CHAIRMAN BOHNEN: And various gambrel
	5	CHAIRMAN BOHNEN: So you are living	5	facades?
	6	with whatever the one	6	MR. DOHERTY: Yes. There may be a
	7	MR. PRISBY: I'm almost advocating I	7	shiplap cedar siding also.
	8	would like to see it farther back but I want	8	MR. PRISBY: Frank will want to know
	9	to be reasonable if appropriate here. So	9	what color it is.
06:25:20P/		this could be fine, I would kind of like to see	DE27:11PM 10	MR. DOHERTY: Guess. White.
06:25:20P/		-	11 11	MS. WEINBERGER: White.
	11	that in my head here, knowing how far the house on the south is set back.	12	MR. DOHERTY: Actually it's going to be
	12 13	CHAIRMAN BOHNEN: And this lot is quite	13	a really light gray. You may not be able to
		·		tell the difference between them, but it will be
	14	deep?	14	
	15	MR. PRISBY: Yes.	15 16	a light gray.  MS. WILLIAMS: But the intention is
	16	CHAIRMAN BOHNEN: So you have the	17	then to sell this home?
	17	latitude of moving it back if you wished?	18	MR. DOHERTY: Correct.
	18	MR. PRISBY: Potentially.	19	MR. PRISBY: I just can't read the
1	19	CHAIRMAN BOHNEN: In theory.	06:27:35PM 20	numbers on this set.
06:26:39PN		MR. PRISBY: Just bringing it up,	06:27:35PM 20	CHAIRMAN BOHNEN: For what it's worth,
	21 22	right? I think it's important.  MS. WILLIAMS: That's why I thought it	21	we encourage applicants to bring a larger set of
	~~	MS. WILLIAMS. HIGES WHY I HIGHGILL		we efficultage applicants to bring a larger set of
<u> </u>				
		11	1	13
	1	11 would be helpful when we get these if we do have	1 2	13 drawings in for these old eyes.
	1 2	would be helpful when we get these if we do have not just the average of the block but the houses	2	13 drawings in for these old eyes. MR. PRISBY: The setback that you are
	1 2 3	would be helpful when we get these if we do have not just the average of the block but the houses on either side.	3	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part
	1 2 3 4	would be helpful when we get these if we do have not just the average of the block but the houses on either side.  MR. YU: Like an aerial?	2 3 4	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part of a set, the last two sheets?
	1 2 3 4 5	would be helpful when we get these if we do have not just the average of the block but the houses on either side.  MR. YU: Like an aerial?  MS. WEINBERGER: Yes, a Google map like	2 3 4 5	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part of a set, the last two sheets?  CHAIRMAN BOHNEN: Yes.
	1 2 3 4 5 6	would be helpful when we get these if we do have not just the average of the block but the houses on either side.  MR. YU: Like an aerial?  MS. WEINBERGER: Yes, a Google map like we did last time.	2 3 4 5 6	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part of a set, the last two sheets?  CHAIRMAN BOHNEN: Yes.  MR. PRISBY: It does have the
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06.28:1073	1 2 3 4 5 6 7 8 9 10 11	would be helpful when we get these if we do have not just the average of the block but the houses on either side.  MR. YU: Like an aerial?  MS. WEINBERGER: Yes, a Google map like we did last time.  MR. YU: If you want, I can try to just use the laptop right now on Google Maps if you want to take a look.  MR. BOHNEN: Anyone else have something they want to add?	2 3 4 5 6 7 8 9 0c20:227% 10	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part of a set, the last two sheets?  CHAIRMAN BOHNEN: Yes.  MR. PRISBY: It does have the topographical information. It does show the neighbor's house in relation to the new house on the very last sheet submitted here, this sheet.  CHAIRMAN BOHNEN: Okay.  MR. PRISBY: It does show the profile outline of the house to the south. And when I kind of compare the two, because you can see
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Od:28:10P9	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	would be helpful when we get these if we do have not just the average of the block but the houses on either side.  MR. YU: Like an aerial?  MS. WEINBERGER: Yes, a Google map like we did last time.  MR. YU: If you want, I can try to just use the laptop right now on Google Maps if you want to take a look.  MR. BOHNEN: Anyone else have something they want to add?  MS. WILLIAMS: So 1 or 4 or, I'm sorry, I'm looking at this. 422 is also being renovated.  MR. DOHERTY: Yes.  MS. WILLIAMS: Anything to the exterior of that?  MR. DOHERTY: Paint only.	2 3 4 5 6 7 8 9 00:28:229% 10 11 12 13 14 15 16 17	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part of a set, the last two sheets?  CHAIRMAN BOHNEN: Yes.  MR. PRISBY: It does have the topographical information. It does show the neighbor's house in relation to the new house on the very last sheet submitted here, this sheet.  CHAIRMAN BOHNEN: Okay.  MR. PRISBY: It does show the profile outline of the house to the south. And when I kind of compare the two, because you can see both houses on this last sheet you have, fine.  All right?  CHAIRMAN BOHNEN: All right.  MR. PRISBY: I'm fine with that.  CHAIRMAN BOHNEN: Because this is a
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***************************************	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	would be helpful when we get these if we do have not just the average of the block but the houses on either side.  MR. YU: Like an aerial?  MS. WEINBERGER: Yes, a Google map like we did last time.  MR. YU: If you want, I can try to just use the laptop right now on Google Maps if you want to take a look.  MR. BOHNEN: Anyone else have something they want to add?  MS. WILLIAMS: So 1 or 4 or, I'm sorry, I'm looking at this. 422 is also being renovated.  MR. DOHERTY: Yes.  MS. WILLIAMS: Anything to the exterior of that?  MR. DOHERTY: Paint only.  MS. WILLIAMS: What?  MR. DOHERTY: Paint.	2 3 4 5 6 7 8 9 00:28:22FM 10 11 12 13 14 15 16 17 18 19 00:28:43FM 20	drawings in for these old eyes.  MR. PRISBY: The setback that you are proposing according to my eyes, there is a part of a set, the last two sheets?  CHAIRMAN BOHNEN: Yes.  MR. PRISBY: It does have the topographical information. It does show the neighbor's house in relation to the new house on the very last sheet submitted here, this sheet.  CHAIRMAN BOHNEN: Okay.  MR. PRISBY: It does show the profile outline of the house to the south. And when I kind of compare the two, because you can see both houses on this last sheet you have, fine.  All right?  CHAIRMAN BOHNEN: All right.  MR. PRISBY: I'm fine with that.  CHAIRMAN BOHNEN: Because this is a long house.  MR. PRISBY: It is a long house. I'm

		I	
	14		. 16
1	CHAIRMAN BOHNEN: No, this one that's	1	question. Again, we are building to max the
2	being proposed to be built is a long house.	2	code.
3	MR. DOHERTY: Yes, it is.	3	MR. PRISBY: It's also not my money.
4	MR. PRISBY: The house itself is	4	CHAIRMAN BOHNEN: Mr. Doherty hopes
5	actually longer when you look at this plan. The	5	somebody has got the money.
6	backs almost line up, which I also get concerned	6	MR. DOHERTY: I think they do.
7	about. I mean I hate looking out the back of my	7	Otherwise, I don't think we would be here
8	house and seeing another 25 feet of my	8	always.
9	neighbors', which happens, by the way.	9	CHAIRMAN BOHNEN: Okay.
06:28:08PM 10	CHAIRMAN BOHNEN: I understand.	06:31:01PM 10	MR. PRISBY: Sandy, Shannon?
11	MR. PRISBY: This looks almost like	11	CHAIRMAN BOHNEN: Any further
12	they are lining up the back of the house and	12	questions?
13	still maintaining the streetscape. So to me,	13	MS. WEINBERGER: No.
14	it's a win in both cases.	14	MR. PRISBY: Better not be white.
15	Did you guys find that on the last	15	CHAIRMAN BOHNEN: Are you sufficiently
16	page?	16	comfortable with what's going to be built so we
17	MS. WEINBERGER: I think so.	17	can just get a
18	MS. WILLIAMS: Yes.	18	MR. PRISBY: I am but I think they are
19	MR. PRISBY: It says sheet 204, bottom	19	still debating this a little bit.
DE:29:28PM 20	right.	08:31:38PM <b>20</b>	MS. WILLIAMS: I would just love to see
21	Although I can't read the number,	21	it pushed back a little further on the lot
22	the setback to that corner of that house is	22	but
	15		17
1	significantly less than the proposal of the new.	1	MR. PRISBY: How far are you thinking,
1 2	significantly less than the proposal of the new.  MS. WILLIAMS: Oh, yes. This is 50,	2	MR. PRISBY: How far are you thinking, Sandy?
	significantly less than the proposal of the new.  MS. WILLIAMS: Oh, yes. This is 50, too. 50. Well, the lot is 331 feet deep?	2 3	MR. PRISBY: How far are you thinking, Sandy?  MS. WILLIAMS: I don't know.
2	significantly less than the proposal of the new.  MS. WILLIAMS: Oh, yes. This is 50, too. 50. Well, the lot is 331 feet deep?  CHAIRMAN BOHNEN: Right.	2	MR. PRISBY: How far are you thinking, Sandy?  MS. WILLIAMS: I don't know.  And Chan, you had indicated in your
2 3 4 5	significantly less than the proposal of the new.  MS. WILLIAMS: Oh, yes. This is 50, too. 50. Well, the lot is 331 feet deep?  CHAIRMAN BOHNEN: Right.  MS. WILLIAMS: There is ample room to	2 3 4 5	MR. PRISBY: How far are you thinking, Sandy?  MS. WILLIAMS: I don't know.  And Chan, you had indicated in your analysis and I don't know where the
2 3 4 5	significantly less than the proposal of the new.  MS. WILLIAMS: Oh, yes. This is 50, too. 50. Well, the lot is 331 feet deep?  CHAIRMAN BOHNEN: Right.  MS. WILLIAMS: There is ample room to move it back.	2 3 4 5 6	MR. PRISBY: How far are you thinking, Sandy?  MS. WILLIAMS: I don't know.  And Chan, you had indicated in your analysis and I don't know where the information came from that the existing home
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	And the second s		
١.	18	'	20
1	, ,	1	yes.
2	·	2	MR. BOHNEN: Streetscape is one thing.
3	, ,, ,, ,,,	3	I think you have to consider also how it lines
4	are some problems.	4	up to the houses to the north and south in terms
5	•	5	of living.
6	time continually watching them all go down, I,	6	MS. WILLIAMS: Yes.
7	I	7	MR. BOHNEN: So you are not looking
8	MR. PRISBY: I'm with you.	8	from bedroom window into bedroom window and that
9	CHAIRMAN BOHNEN: We are putting	9	sort of thing. I don't know how that matches
06:33:41PM 10	ourselves out of business. Well, our Village	D8:35:50PM 10	up,
11	has not taken a staunch stand on preservation,	11	MR. PRISBY: To the house to the south,
12	, <b>,,,,</b>	12	you have the driveway.
13	teardown phenomenon; and we are reaping the	13	MS. WILLIAMS: Now you are going to be
14	results of that. If you were in Lake Forest or	14	bedroom window to bedroom window on both sides
15	places like that, it would be a totally	15	it looks like.
16	different subject. But we are where we are at	16	CHAIRMAN BOHNEN: Well, you have got a
17	this juncture so that's the way it is.	17	choice. You could make a formal request that
18	MS. WILLIAMS: While I love where this	18	they take a look at this and try and reposition
19	current home stands, I do not think there is	19	the house. You could vote to give them their
06:34:21PM <b>20</b>	any, other than this brick, historical material	06:36:21PM <b>20</b>	Certificate on the condition that they do that,
21	or styling left.	21	or you can just vote to give them their
22	MS. WEINBERGER: Anything.	22	Certificate or not.
	19		21
1	MS. WILLIAMS: So from that point of	1	MS. WILLIAMS: Well, what does the rest
2	MS. WILLIAMS: So from that point of view, I don't think there is any reason to keep	2	MS. WILLIAMS: Well, what does the rest of the Commission think?
3	MS. WILLIAMS: So from that point of view, I don't think there is any reason to keep it. But as I say, I love its position. And I	1	MS. WILLIAMS: Well, what does the rest of the Commission think?  MR. PRISBY: Go ahead, Shannon.
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2 3 4 5 6 7 8 9 083483FM 10 11 12 13 14 15 16 17 18 19 083611FM 20	MS. WILLIAMS: So from that point of view, I don't think there is any reason to keep it. But as I say, I love its position. And I certainly understand why if you were going to tear it down, build a new home, you wouldn't put it back that far; but I would have just liked to have seen a compromise.  MR. DOHERTY: We actually have it moved further back than is required because we want to have a nicer landscape package in front.  MS. WILLIAMS: I noticed that.  MR. DOHERTY: We purposefully put it there.  MR. PRISBY: Sandy, how far do you think they should go farther back?  MS. WILLIAMS: I don't know. Like I say, I don't know. I don't know.  MR. PRISBY: Would you like it more in line with the house to the north that they currently planned? I mean it looks like it's	2 3 4 5 6 7 8 9 0x37:0PM 10 11 12 13 14 15 16 17 18 19 0x37:0PM 20	MS. WILLIAMS: Well, what does the rest of the Commission think?  MR. PRISBY: Go ahead, Shannon.  MS. WEINBERGER: It's hard. It's hard.  I would like to see, I would like to see it.  It's hard to look down above and not have these other two houses really in line to really understand how they are lining up, so it's hard.  MR. PRISBY: Sandy, I also see your point that 422 is the historically significant house at that location. And by building this house even what it looks like maybe 15 to 20 feet in front of that really almost I wouldn't say obstructs but does affect the view.  MS. WEINBERGER: Especially when you look at how it originally looked. Yes.  MS. WILLIAMS: We have a photo that we were looking at from the historical society. It was probably taken around 1920, and it shows the original house and the coach house. It's the
2 3 4 5 6 7 8 9 083488FM 10 11 12 13 14 15 16 17 18 19	MS. WILLIAMS: So from that point of view, I don't think there is any reason to keep it. But as I say, I love its position. And I certainly understand why if you were going to tear it down, build a new home, you wouldn't put it back that far; but I would have just liked to have seen a compromise.  MR. DOHERTY: We actually have it moved further back than is required because we want to have a nicer landscape package in front.  MS. WILLIAMS: I noticed that.  MR. DOHERTY: We purposefully put it there.  MR. PRISBY: Sandy, how far do you think they should go farther back?  MS. WILLIAMS: I don't know. Like I say, I don't know. I don't know.  MR. PRISBY: Would you like it more in line with the house to the north that they	2 3 4 5 6 7 8 9 0637730PM 10 11 12 13 14 15 16 17 18 19	MS. WILLIAMS: Well, what does the rest of the Commission think?  MR. PRISBY: Go ahead, Shannon.  MS. WEINBERGER: It's hard. It's hard.  I would like to see, I would like to see it.  It's hard to look down above and not have these other two houses really in line to really understand how they are lining up, so it's hard.  MR. PRISBY: Sandy, I also see your point that 422 is the historically significant house at that location. And by building this house even what it looks like maybe 15 to 20 feet in front of that really almost I wouldn't say obstructs but does affect the view.  MS. WEINBERGER: Especially when you look at how it originally looked. Yes.  MS. WILLIAMS: We have a photo that we were looking at from the historical society. It was probably taken around 1920, and it shows the

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,	22		MC WEINPEDCED: Voc
1	estates in Hinsdale looked like when it was	1	MS. WEINBERGER: Yes.  MR. BOHNEN: And now all the sudden
2	built in 1904. And we once upon a time had many	2	it's going to be `I mean even where the house
3	of them. And, obviously, the lots, side lots,	3	
4	are sold off, and new homes are built.	4	to the south is they used to have a cape code set way back where the Foxes lived in. All
5	So that's one reason probably why I	5	
6	still like the position of it set back because	6	right. And in my world, the Foxes' house wasn't
7	you do have a sense of what that estate once	7	even there. They lopped off
8	was; so that's also where I'm coming from. And	8	MS. WEINBERGER: Yes.
9	you wouldn't want anything to diminish 422.	9	MR. BOHNEN: the part of 329 East
ов:38:39РМ 10	MS. WEINBERGER: No.	D8:40:37PM 10	6th Street to make that lot. So years ago there
11	MR. PRISBY: I agree with that.	11	were two houses on this whole block, 422 and
12	CHAIRMAN BOHNEN: So	12	329. So now we are talking about one, two
13	MS. WILLIAMS: So	13	five houses on that block. So by any stretch of
14	MR. BOHNEN: Would you feel more	14	the imagination the streetscape has changed.
15	comfortable if they present us with a plat where	15	So you have one chance now to try and strike a
16	you could see different setbacks proposed on it?	16	compromise so that 422 retains some of its
17	MS. WILLIAMS: Well, I honestly think	17	original feel.
18	you can see from this sheet how they line up.	18	And it appears that you have some
19	CHAIRMAN BOHNEN: All right.	19	real concern about that, and it could be
ов:39:20РМ 20	MS. WILLIAMS: So I'm	06:41:10PM 20	addressed in the amount of front yard setback.
21	CHAIRMAN BOHNEN: So you can	21	Chan?
22	guesstimate how many more feet you would want to	22	MR. YU: I just looked at a Google
			35
	23		25
1	see the 504 home recede?	1	image on my phone and saw that. Sometimes it's
2	see the 504 home recede?  MS. WILLIAMS: Those measurements were	2	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would
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3 4	see the 504 home recede?  MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from	2 3 4	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.
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2 . 3 . 4 . 5 . 6 . 7 . 8 . 9	see the 504 home recede?  MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying	2 3 4 5 6 7 8 9	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this
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2 3 4 5 6 7 8 9 0038479M 10 11 12	see the 504 home recede?  MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying to do is to minimize the diminishment of the grandeur of 422.  MS. WEINBERGER: Correct.	2 3 4 5 6 7 8 9 06-5225994 10 11 12 13	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this and extends and goes this way?  You draw this straight back, right?  You can see that instead of 7 feet that might be
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2 3 4 5 6 7 8 9 0038A7PM 10 11 12 13 14 15	see the 504 home recede?  MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying to do is to minimize the diminishment of the grandeur of 422.  MS. WEINBERGER: Correct.  CHAIRMAN BOHNEN: Okay. And anything that's going to be built to the south of it is	2 3 4 5 6 7 8 9 00-132509M 10 11 12 13 14 15	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this and extends and goes this way?  You draw this straight back, right?  You can see that instead of 7 feet that might be a couple more, it looks like it's 10. So the wall, so the face of this, this stone wall, not
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2 3 4 5 6 7 8 9 0038-3794 10 11 12 13 14 15 16 17	see the 504 home recede?  MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying to do is to minimize the diminishment of the grandeur of 422.  MS. WEINBERGER: Correct.  CHAIRMAN BOHNEN: Okay. And anything that's going to be built to the south of it is going to diminish it, that's just a fact of life. So we are just trying to find a	2 3 4 5 6 7 8 9 00-132500M 10 11 12 13 14 15 16 17	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this and extends and goes this way?  You draw this straight back, right?  You can see that instead of 7 feet that might be a couple more, it looks like it's 10. So the wall, so the face of this, this stone wall, not the house, the wall itself  MS. WILLIAMS: Right. Right.
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2 3 4 5 6 7 8 9 003BATPM 10 11 12 13 14 15 16 17 18 19	MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying to do is to minimize the diminishment of the grandeur of 422.  MS. WEINBERGER: Correct.  CHAIRMAN BOHNEN: Okay. And anything that's going to be built to the south of it is going to diminish it, that's just a fact of life. So we are just trying to find a compromise so you still have the nature of what 422 is.	2 3 4 5 6 7 8 9 00-1325994 10 11 12 13 14 15 16 17 18 19	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this and extends and goes this way?  You draw this straight back, right?  You can see that instead of 7 feet that might be a couple more, it looks like it's 10. So the wall, so the face of this, this stone wall, not the house, the wall itself  MS. WILLIAMS: Right. Right.  MR. PRISBY: So we are that much further, figure another 10 feet to there. So
2 3 4 5 6 7 8 9 00:39-47PM 10 11 12 13 14 15 16 17 18 19 00:49-10PM 20	MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying to do is to minimize the diminishment of the grandeur of 422.  MS. WEINBERGER: Correct.  CHAIRMAN BOHNEN: Okay. And anything that's going to be built to the south of it is going to diminish it, that's just a fact of life. So we are just trying to find a compromise so you still have the nature of what 422 is.  Even looking across the street at	2 3 4 5 6 7 8 9 004322999M 10 11 12 13 14 15 16 17 18 19 06433489M 20	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this and extends and goes this way?  You draw this straight back, right?  You can see that instead of 7 feet that might be a couple more, it looks like it's 10. So the wall, so the face of this, this stone wall, not the house, the wall itself  MS. WILLIAMS: Right. Right.  MR. PRISBY: So we are that much further, figure another 10 feet to there. So you probably from the front of the house to the
2 3 4 5 6 7 8 9 00:38/47PM 10 11 12 13 14 15 16 17 18 19	MS. WILLIAMS: Those measurements were on there but  CHAIRMAN BOHNEN: Can you do it from looking on an aerial view like this, or do you have to go on the streetscape itself? I think that's the question.  MS. WILLIAMS: Well, probably either.  What are you suggesting?  MR. BOHNEN: Well, what you are trying to do is to minimize the diminishment of the grandeur of 422.  MS. WEINBERGER: Correct.  CHAIRMAN BOHNEN: Okay. And anything that's going to be built to the south of it is going to diminish it, that's just a fact of life. So we are just trying to find a compromise so you still have the nature of what 422 is.	2 3 4 5 6 7 8 9 00-1325994 10 11 12 13 14 15 16 17 18 19	image on my phone and saw that. Sometimes it's not clear, but this one looks clear. So would you like me to  MR. BOHNEN: That would be great.  Thank you.  MS. WILLIAMS: Sure.  MR. YU: (Indicating.)  MR. DOHERTY: If you look at this, these are the retaining walls that are out at the gardens. Do you see how that jibes on this and extends and goes this way?  You draw this straight back, right?  You can see that instead of 7 feet that might be a couple more, it looks like it's 10. So the wall, so the face of this, this stone wall, not the house, the wall itself  MS. WILLIAMS: Right. Right.  MR. PRISBY: So we are that much further, figure another 10 feet to there. So

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1	MS. WILLIAMS: So	1	leaving some open space to enjoy 422. I don't
2	CHAIRMAN BOHNEN: Mr. Doherty, are you	2	know if you moved this back 20 feet how it
3	retaining the stone walls that are in front of	3	stacks up, again, with window views out of the
4	422?	4	new proposed house to the neighbors to the north
5	MR. DOHERTY: Yes.	5	and south, that's always a consideration.
6	MS. WILLIAMS: So it's about 20 feet?	6	MS. WILLIAMS: Well, it helps.
7	MR. PRISBY: It's about 20 feet from	7	CHAIRMAN BOHNEN: You don't know that.
	what I can tell.		
8 9	CHAIRMAN BOHNEN: And what is the back	8	MS. WILLIAMS: You can see on this same sheet 2 and 4 where the other two houses are.
40		9	
06:44:16PM 10	yard right now if you take the rear of the house	06:45:30Рм 10	And if you did move it back 20 feet, I mean, any
11	to the rear of the lot?	11	amount you set it back would help that situation
12	MR. PRISBY: You can hold onto that.	12	on either side.
13	MS. WILLIAMS: Well, it's huge.	13	CHAIRMAN BOHNEN: Okay. It appears
14	CHAIRMAN BOHNEN: There has to be, it's	14	that there is some consensus on respotting the
15	330 feet deep. Substantial.	15	footprint of the house?
16	MS. WILLIAMS: Yes. It's on one of	16	MS. WILLIAMS: Yes, I think so.
17	these because I saw it earlier.	17	CHAIRMAN BOHNEN: And there is,
18	MR. PRISBY: It's 333 on the total.	18	obviously, some different considerations on
19	MS. WILLIAMS: Yes. It's over 170.	19	where that should actually be; and I don't think
06:44:51PM 20	MR. PRISBY: The total lot is 333.	06:47:08PM <b>20</b>	I'm hearing anybody have enough confidence in
21	MS. WILLIAMS: Right.	21	naming a number at this point. But you know
22	MR. PRISBY: And then the house itself	22	MS. WILLIAMS: Jim, preliminarily
,	27		29
1	was I just had this in my	1	look
2	was I just had this in my MS. WILLIAMS: It's 170 feet according	2	look CHAIRMAN BOHNEN: At least 20 feet.
3	was I just had this in my MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's	2	look CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at
2 3 4	was I just had this in my MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window.	2 3 4	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes.
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2 3 4 5 6	was I just had this in my MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window. CHAIRMAN BOHNEN: From the end of the bay window to the rear of the lot.	2 3 4 5 6	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes. MR. PRISBY: As I look at the site plan on the cover sheet
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2 3 4 5 6 7 8 9 0044523PM 10 11 12 13 14 15 16	was I just had this in my  MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window.  CHAIRMAN BOHNEN: From the end of the bay window to the rear of the lot.  MS. WILLIAMS: Yes. It's on the site plan, the very first page, from the bay window all the way to the back it's 170.  CHAIRMAN BOHNEN: All right.  MS. WILLIAMS: So they have plenty of room to move it back 20 feet.  CHAIRMAN BOHNEN: Right. It's just by any stretch in southeast Hinsdale a 78-foot wide lot is a narrow lot. Okay.  MS. WILLIAMS: Absolutely.	2 3 4 5 6 7 8 9 004757FM 10 11 12 13 14 15 16	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes. MR. PRISBY: As I look at the site plan on the cover sheet MS. WILLIAMS: Yes. MR. PRISBY: I think there is significant depth on the lot. MR. DOHERTY: There is, yes. MR. PRISBY: We are not crunching down to a next-to-nothing left rear yard here. There is plenty of space left. MS. WILLIAMS: Yes, there is. It's very large, yes. MR. PRISBY: James, I have to say from
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2 3 4 5 6 7 8 9 00448232PM 10 11 12 13 14 15 16 17 18	was I just had this in my  MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window.  CHAIRMAN BOHNEN: From the end of the bay window to the rear of the lot.  MS. WILLIAMS: Yes. It's on the site plan, the very first page, from the bay window all the way to the back it's 170.  CHAIRMAN BOHNEN: All right.  MS. WILLIAMS: So they have plenty of room to move it back 20 feet.  CHAIRMAN BOHNEN: Right. It's just by any stretch in southeast Hinsdale a 78-foot wide lot is a narrow lot. Okay.  MS. WILLIAMS: Absolutely.  CHAIRMAN BOHNEN: It's a nonconforming lot, 78 feet deep. You have a long, narrow	2 3 4 5 6 7 8 9 6 11 12 13 14 15 16 17 18	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes. MR. PRISBY: As I look at the site plan on the cover sheet MS. WILLIAMS: Yes. MR. PRISBY: I think there is significant depth on the lot. MR. DOHERTY: There is, yes. MR. PRISBY: We are not crunching down to a next-to-nothing left rear yard here. There is plenty of space left. MS. WILLIAMS: Yes, there is. It's very large, yes. MR. PRISBY: James, I have to say from my standpoint, to move the house back some distance, which we can still discuss, I think
2 3 4 5 6 7 8 9 00ANSSZPPM 10 11 12 13 14 15 16 17 18 19	was I just had this in my  MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window.  CHAIRMAN BOHNEN: From the end of the bay window to the rear of the lot.  MS. WILLIAMS: Yes. It's on the site plan, the very first page, from the bay window all the way to the back it's 170.  CHAIRMAN BOHNEN: All right.  MS. WILLIAMS: So they have plenty of room to move it back 20 feet.  CHAIRMAN BOHNEN: Right. It's just by any stretch in southeast Hinsdale a 78-foot wide lot is a narrow lot. Okay.  MS. WILLIAMS: Absolutely.  CHAIRMAN BOHNEN: It's a nonconforming lot, 78 feet deep. You have a long, narrow house and a long, narrow lot. And you want to	2 3 4 5 6 7 8 9 08-07-37/94 10 11 12 13 14 15 16 17 18 19	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes. MR. PRISBY: As I look at the site plan on the cover sheet MS. WILLIAMS: Yes. MR. PRISBY: I think there is significant depth on the lot. MR. DOHERTY: There is, yes. MR. PRISBY: We are not crunching down to a next-to-nothing left rear yard here. There is plenty of space left. MS. WILLIAMS: Yes, there is. It's very large, yes. MR. PRISBY: James, I have to say from my standpoint, to move the house back some distance, which we can still discuss, I think it's a reasonable request for streetscape for
2 3 4 5 6 7 8 9 0944523PM 10 11 12 13 14 15 16 17 18 19 094650PM 20	was I just had this in my  MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window.  CHAIRMAN BOHNEN: From the end of the bay window to the rear of the lot.  MS. WILLIAMS: Yes. It's on the site plan, the very first page, from the bay window all the way to the back it's 170.  CHAIRMAN BOHNEN: All right.  MS. WILLIAMS: So they have plenty of room to move it back 20 feet.  CHAIRMAN BOHNEN: Right. It's just by any stretch in southeast Hinsdale a 78-foot wide lot is a narrow lot. Okay.  MS. WILLIAMS: Absolutely.  CHAIRMAN BOHNEN: It's a nonconforming lot, 78 feet deep. You have a long, narrow house and a long, narrow lot. And you want to do everything you can do to minimize that feel.	2 3 4 5 6 7 8 9 004757FM 10 11 12 13 14 15 16 17 18 19	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes. MR. PRISBY: As I look at the site plan on the cover sheet MS. WILLIAMS: Yes. MR. PRISBY: I think there is significant depth on the lot. MR. DOHERTY: There is, yes. MR. PRISBY: We are not crunching down to a next-to-nothing left rear yard here. There is plenty of space left. MS. WILLIAMS: Yes, there is. It's very large, yes. MR. PRISBY: James, I have to say from my standpoint, to move the house back some distance, which we can still discuss, I think it's a reasonable request for streetscape for this part of town.
2 3 4 5 6 7 8 9 00ANSSZPPM 10 11 12 13 14 15 16 17 18 19	was I just had this in my  MS. WILLIAMS: It's 170 feet according to this plan, and it looks like No. It's 170 feet from the end of the bay window.  CHAIRMAN BOHNEN: From the end of the bay window to the rear of the lot.  MS. WILLIAMS: Yes. It's on the site plan, the very first page, from the bay window all the way to the back it's 170.  CHAIRMAN BOHNEN: All right.  MS. WILLIAMS: So they have plenty of room to move it back 20 feet.  CHAIRMAN BOHNEN: Right. It's just by any stretch in southeast Hinsdale a 78-foot wide lot is a narrow lot. Okay.  MS. WILLIAMS: Absolutely.  CHAIRMAN BOHNEN: It's a nonconforming lot, 78 feet deep. You have a long, narrow house and a long, narrow lot. And you want to	2 3 4 5 6 7 8 9 08-07-37/94 10 11 12 13 14 15 16 17 18 19	CHAIRMAN BOHNEN: At least 20 feet. MS. WILLIAMS: Look, reasonable at 20 feet, yes. MR. PRISBY: As I look at the site plan on the cover sheet MS. WILLIAMS: Yes. MR. PRISBY: I think there is significant depth on the lot. MR. DOHERTY: There is, yes. MR. PRISBY: We are not crunching down to a next-to-nothing left rear yard here. There is plenty of space left. MS. WILLIAMS: Yes, there is. It's very large, yes. MR. PRISBY: James, I have to say from my standpoint, to move the house back some distance, which we can still discuss, I think it's a reasonable request for streetscape for

	30		32
1	not trying to hold anybody up. I think I was	1	here at this level?
2	comfortable as submitted maybe 15 minutes ago.	2	Mr. Doherty, do you have any
3	I think Sandy has a great point, especially with	3	problem right off the cuff I mean I'm not
4	the historic nature of the house at 422. I	4	going to hold you to it if the house were
5	would like to see it pushed back 20 feet	5	positioned back 20 feet, does that cause you any
6	probably at a minimum.	6	problem?
7	MR. DOHERTY: Yes.	7	MR. DOHERTY: Not at the moment, no.
8	MR. PRISBY: Beyond that, Sandy, I'm	8	CHAIRMAN BOHNEN: So it's something
9	not sure if it makes much sense because with the	9	that's a reasonable request to look at?
об:48:31РМ 10	other house sticking so far forward And I'm	06:50:16PM 10	MR. DOHERTY: Yes.
11	not worried about it necessarily from both	11	CHAIRMAN BOHNEN: Okay. So we have one
12	sides, I'm most concerned about the approach	12	of two ways to proceed. We can either not give
13	from the northeast; and I think that helps	13	the Certificate and have Mr. Doherty reappear
14	immensely. And that would be 20 feet, as we are	14	before us with relocating the house on the lot,
15	talking about it, that would then be to the	15	or you can give him a Certificate with the
16	porch. So you would have another 7 feet of	16	conditions that they relocate the house back a
17	porch beyond that before you get to the real	17	minimum of 20 feet, and you want to see the
18	mass of the house.	18	final positioning before the permit is issued;
19	MS. WILLIAMS: Yes. And yet still a	19	is that correct?
06:49:01PM <b>20</b>	150-foot deep back yard.	06:50:49PM <b>20</b>	MR. YU: If you decide to continue
21	MR. PRISBY: Yes.	21	this, yes.
22	Do you have any idea what you are	22	MR. PRISBY: Are we talking about
	31		33
1	planning on putting back there, Jim, as far as a	1	continuing it, or are we trying to give them
2	rear yard? Are you guys thinking any special	2	approval?
3	patios, outdoor kitchens, whatnot?	3	CHAIRMAN BOHNEN: That's your choice as
4	MR. DOHERTY: Outdoor	4	I understand it. You can move him along with a
5	MS. WILLIAMS: Well, there was a sports	5	scout's honor, although Mr. Doherty one time
6	court back there before. The pad is still hard	6	prior to coming to see us
7	because I wandered around. It's gone but the	7	MR. PRISBY: That is correct.
8	concrete is still there.	8	MR. DOHERTY: Sorry about that.
9	MR. DOHERTY: Just a rear patio, Jim.	9	MR. BOHNEN: broke a promise,
06:49;31PM 10	MR. PRISBY: Okay, just for now?	00:51:17PM 10	Mr. Doherty.
11	MR. DOHERTY: Yes. I think the plan	11	MR. DOHERTY: What was the promise?
12	shows a fireplace.	12	CHAIRMAN BOHNEN: That you were going
13	MR. PRISBY: Okay.	13	to consult with our architects before you went
14	MR, DOHERTY: So	14	forward.
15	MR. PRISBY: Are those legal, fire	15	MR. DOHERTY: They were supposed to
16	pits?	16	reach out to me.
17	MR. DOHERTY: Fire pits aren't.	17	CHAIRMAN BOHNEN: Ah. Well, I guess we
18	Fireplaces, maybe.	18	will have to table that discussion so we can
19	MR. PRISBY: Whoever buys the house	19	talk to the individuals involved.
D8:49:52PM <b>20</b>	would customize it, whatever they want. It's	06:51:33PM <b>20</b>	MR. DOHERTY: Yes. I actually welcome
21 22	only money.  CHAIRMAN BOHNEN: How can we proceed	21 22	it.  CHAIRMAN BOHNEN: Well, then you will

	34		36
1	have no trouble welcoming it now.	1	decision in December.
2	MR. DOHERTY: No trouble.	2	MR. DOHERTY: That will push me into
3	MR. BOHNEN: Right. Now, okay, so	3	spring. The only thing with pushing this home
4	MR. PRISBY: I don't want to hold him	4	10 to 20 feet back, the only cost that adds to
5	up from demo'ing the house.	5	us is the length of the driveway.
6	MS. WEINBERGER: What is the process	6	MS. WILLIAMS: Right.
7	with conditions? Do we say "with conditions"	7	MR. DOHERTY: So our landscaping will
8	and then do we just cross our fingers and hope	8	either be in the front yard or the back yard
9	it happens? What is the process?	9	regardless. The only thing costwise, like I
,	CHAIRMAN BOHNEN: We are advisory.	05:53:47PM 10	said, is 20 feet of driveway.
100:52:02PM 10	MS. WEINBERGER: Correct.	11	MS. WILLIAMS: I want you to be held to
12	CHAIRMAN BOHNEN: We can ask	12	that so because sometimes things happen and the
13	Mr. Doherty on good faith if we gave him a	13	plans are wrong and then
14	Certificate with the conditions that they	14	MR. PRISBY: Can we approve it with the
15	reexamine the setbacks with the good faith	15	conditions that it must be back at least
16	Mr. Doherty would come in and talk to us and	16	20 feet?
17	show us a different spotting of the house, and	17	CHAIRMAN BOHNEN: That can be your
18	he would proceed with what he is doing.	18	approval.
19	MS. WILLIAMS: How long does it take to	19	MR. DOHERTY: I'm okay with that.
DESZ:27PM 20	get a demolition permit, a couple of weeks?	DB:54:07PM 20	MS. WILLIAMS: Okay. Yes, that would
21	MR, DOHERTY: Yes. We are submitted	21	work.
22	but we are not approved as of yet, so there	22	CHAIRMAN BOHNEN: And then he could
	- The state of the		
	35	ı	. 37
1	35 still is a final review.	1	move along, and you have your conditions in.
1 2	35 still is a final review.  MR. PRISBY: It would take about a week	1 2	move along, and you have your conditions in.
	still is a final review.  MR. PRISBY: It would take about a week		move along, and you have your conditions in.  MS. WILLIAMS: Right.
2	still is a final review.	2 3	move along, and you have your conditions in.
3	still is a final review.  MR. PRISBY: It would take about a week to go through.	2 3 4	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with
3	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot	2 3 4	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with
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2 3 4 5 6 7 8 9 0882557M 10	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can	2 3 4 5 6 7 8 9 08-54-25PM 10	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.
2 3 4 5 6 7 8 9 0832557M 10 11	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?	2 3 4 5 6 7 8 9 08-5423PM 10 11	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant
2 3 4 5 6 7 8 9 00.5225750 10 11 12 13	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.	2 3 4 5 6 7 8 9 08-94-25PM 10 11 12 13	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you
2 3 4 5 6 7 8 9 0832559M 10 11 12 13	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.  CHAIRMAN BOHNEN: And he's on scout's	2 3 4 5 6 7 8 9 08-54-25PM 10 11 12 13	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you over maximum height or maximum elevation with
2 3 4 5 6 7 8 9 0052252700 10 11 12 13 14 15	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.  CHAIRMAN BOHNEN: And he's on scout's honor that he's going to live up to the	2 3 4 5 6 7 8 9 08-94-25PM 10 11 12 13 14 15	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you over maximum height or maximum elevation with the four new corners you would have to do on the
2 3 4 5 6 7 8 9 00532577M 10 11 12 13 14 15 16	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.  CHAIRMAN BOHNEN: And he's on scout's honor that he's going to live up to the condition?	2 3 4 5 6 7 8 9 00.55423574. 10 11 12 13 14 15 16	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you over maximum height or maximum elevation with the four new corners you would have to do on the existing grade?
2 3 4 5 6 7 8 9 083235791 10 11 12 13 14 15 16 17	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.  CHAIRMAN BOHNEN: And he's on scout's honor that he's going to live up to the condition?  MR. YU: That's right because per the  Code it's not binding, it's advisory only.  CHAIRMAN BOHNEN: Correct.	2 3 4 5 6 7 8 9 0x5425PM 10 11 12 13 14 15 16 17	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you over maximum height or maximum elevation with the four new corners you would have to do on the existing grade?  MR. DOHERTY: We did push the house already further back and we had to drop our roof line.
2 3 4 5 6 7 8 9 0832379W 10 11 12 13 14 15 16 17 18	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.  CHAIRMAN BOHNEN: And he's on scout's honor that he's going to live up to the condition?  MR. YU: That's right because per the  Code it's not binding, it's advisory only.  CHAIRMAN BOHNEN: Correct.  MS. WILLIAMS: I think I would like to	2 3 4 5 6 7 8 9 00.55423574. 10 11 12 13 14 15 16 17 18	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you over maximum height or maximum elevation with the four new corners you would have to do on the existing grade?  MR. DOHERTY: We did push the house already further back and we had to drop our roof
2 3 4 5 6 7 8 9 0832327M 10 11 12 13 14 15 16 17 18 19	still is a final review.  MR. PRISBY: It would take about a week to go through.  MR. YU: Well, the thing is we cannot issue them a demo permit without a decision for the Certificate of Appropriateness.  MR. DOHERTY: Without a vote.  MR. BOHNEN: We can give him a  Certificate with conditions?  MR. YU: Yes.  CHAIRMAN BOHNEN: And then you can issue his permit?  MR. YU: Correct.  CHAIRMAN BOHNEN: And he's on scout's honor that he's going to live up to the condition?  MR. YU: That's right because per the  Code it's not binding, it's advisory only.  CHAIRMAN BOHNEN: Correct.	2 3 4 5 6 7 8 9 08-54225PM 10 11 12 13 14 15 16 17 18 19	move along, and you have your conditions in.  MS. WILLIAMS: Right.  MR. DOHERTY: As long as it's okay with the building department, it will be okay with us.  CHAIRMAN BOHNEN: I can't think of any reason why the building department would object to that.  MR. PRISBY: Not that I can think of.  CHAIRMAN BOHNEN: Usually the other way around.  MR. PRISBY: Is there a significant enough zoning, grading, that it would put you over maximum height or maximum elevation with the four new corners you would have to do on the existing grade?  MR. DOHERTY: We did push the house already further back and we had to drop our roof line.

	38		40
1	it down, Jim, as it is.	1	MR. DOHERTY: Yes.
2	MR. PRISBY: I don't think there is	2	MR. PRISBY: Not the maximum elevation.
3	enough slope that where we are talking about	3	So as they go back, if one corner is suddenly is
4	going back to make that a significant issue.	4	up on a mound, it changes the calculations by
5	CHAIRMAN BOHNEN: I don't think it	5	3 inches, you have got to change the whole roof
6	would be an issue	6	line.
7	MR. PRISBY: I think it's on	7	MR. DOHERTY: Which we have done
8	CHAIRMAN BOHNEN: at that point is	8	aiready.
9	my recollection.	9	MR. PRISBY: Right. Which I know is
06:55:D4PM 10	MR. YU: He still has to, regardless,	06:56:44PM 10	kind of a pain in the butt. But where we are
11	the building department will pick up on anything	11	talking about pushing it back there is not
12	that isn't Code compliant.	12	enough grade change at that point that I don't
13	MR. PRISBY: But if they push that	13	think you will have an issue.
14	house back 20 feet, and you take the four	14	MR. DOHERTY: It's almost at a point
15	corners of the plan, proposed plan, sea level	15	where the grade starts changing to go back
16	elevations, and average those out, he's only got	16	towards Elm.
17	30 feet to the main of the roof. And for this	17	MR. PRISBY: Right. There is also the
18	size house we have a, what, do you get about 38,	18	possibility it may help you, but at that point
19	39 to the maximum elevation?	19	that wouldn't change it.
08:55:29PM <b>20</b>	MR. DOHERTY: 33.	06:57:03PM <b>20</b>	MR. DOHERTY: Like I say, if it's okay
21	MR. PRISBY: 33, the peak, plus a	21	with the building department, it won't really
- 22	1-foot credit.	22	affect us.
	39		41
1	39 MR. DOHERTY: That's from grade, Jim, I	1	41 MR. PRISBY: That's the only thing I
1 2		1 2	
	MR. DOHERTY: That's from grade, Jim, I	_	MR. PRISBY: That's the only thing I
2	MR. DOHERTY: That's from grade, Jim, I believe.	2	MR. PRISBY: That's the only thing I can think of by moving the house back that I run
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2 3 4	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be	2 3 4	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I
2 3 4 5	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like	2 3 4 5	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.
2 3 4 5 6	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.	2 3 4 5 6	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with
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2 3 4 5 6 7 8 9 065453794 10	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum	2 3 4 5 6 7 8 9 0007333791 10	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?
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2 3 4 5 6 7 8 9 0034339M 10 11 12 13	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.	2 3 4 5 6 7 8 9 0007-3394 10 11 12 13	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a
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2 3 4 5 6 7 8 9 0636337M 10 11 12 13 14 15	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.  MR. YU: 34 feet plus 27.5 feet for every foot of side yard divided	2 3 4 5 6 7 8 9 0827-33PM 10 11 12 13 14 15	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a motion, please, to approve the Certificate of Appropriateness with a condition that the house
2 3 4 5 6 7 8 9 0053455791 10 11 12 13 14 15 16	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.  MR. YU: 34 feet plus 27.5 feet for every foot of side yard divided  MR. PRISBY: Which creates, because you	2 3 4 5 6 7 8 9 0007/33PM 10 11 12 13 14 15 16	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a motion, please, to approve the Certificate of Appropriateness with a condition that the house must be moved back a minimum 20 feet from the
2 3 4 5 6 7 8 9 000000000000000000000000000000000	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.  MR. YU: 34 feet plus 27.5 feet for every foot of side yard divided  MR. PRISBY: Which creates, because you are not at 6 feet.	2 3 4 5 6 7 8 9 0007-33744 10 11 12 13 14 15 16 17	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a motion, please, to approve the Certificate of Appropriateness with a condition that the house must be moved back a minimum 20 feet from the street.
2 3 4 5 6 7 8 9 0053455PM 10 11 12 13 14 15 16 17 18	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.  MR. YU: 34 feet plus 27.5 feet for every foot of side yard divided  MR. PRISBY: Which creates, because you are not at 6 feet.  MR. YU: Okay. So 37.35.	2 3 4 5 6 7 8 9 0007/33PM 10 11 12 13 14 15 16 17 18	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a motion, please, to approve the Certificate of Appropriateness with a condition that the house must be moved back a minimum 20 feet from the street.  MS. WILLIAMS: So moved.
2 3 4 5 6 7 8 9 00345337M 10 11 12 13 14 15 16 17 18 19	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.  MR. YU: 34 feet plus 27.5 feet for every foot of side yard divided  MR. PRISBY: Which creates, because you are not at 6 feet.  MR. YU: Okay. So 37.35.  MR. PRISBY: Okay. I wasn't that far	2 3 4 5 6 7 8 9 00037333741 10 11 12 13 14 15 16 17 18 19	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a motion, please, to approve the Certificate of Appropriateness with a condition that the house must be moved back a minimum 20 feet from the street.  MS. WILLIAMS: So moved.  MR. BOHNEN: Second?
2 3 4 5 6 7 8 9 0055535PM 10 11 12 13 14 15 16 17 18 19 0055121PM 20	MR. DOHERTY: That's from grade, Jim, I believe.  MR. PRISBY: To the top of the roof, R-4 is a minimum of 35.5. So it's got to be like  MR. DOHERTY: 605 Garfield was 35.  MR. PRISBY: Right.  MR. DOHERTY: But for some reason this max is 30 feet.  MR. PRISBY: Yes, 30 feet. And right now maximum, or what's allowed, is maximum building height is 30 feet? What about maximum elevation? That starts at 37 in an R-1.  MR. YU: 34 feet plus 27.5 feet for every foot of side yard divided  MR. PRISBY: Which creates, because you are not at 6 feet.  MR. YU: Okay. So 37.35.  MR. PRISBY: Okay. I wasn't that far off, so not bad. But that 30 feet, that's	2 3 4 5 6 7 8 9 0057-33PM 10 11 12 13 14 15 16 17 18 19	MR. PRISBY: That's the only thing I can think of by moving the house back that I run across that might become an issue. But other than that, I don't think it's a big issue, I really don't.  So I think we could approve it with the condition that the house will be moved back.  MS. WILLIAMS: "It must be."  MS. WEINBERGER: "It must."  MR. PRISBY: A minimum of 20 feet from where it is currently planned. Good with that?  MS. WILLIAMS: Good.  CHAIRMAN BOHNEN: Will you give me a motion, please, to approve the Certificate of Appropriateness with a condition that the house must be moved back a minimum 20 feet from the street.  MS. WILLIAMS: So moved.  MR. BOHNEN: Second?  MR. PRISBY: I will second, yes.

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            MS. WEINBERGER: Aye.
 1
 2
            MR. PRISBY: Aye.
 3
            CHAIRMAN BOHNEN: Aye.
                   Motion carries.
            MR. DOHERTY: Thank you. Have a good
    night.
 7
            CHAIRMAN BOHNEN: You, too. Okay.
    That closes the hearing for HPC-09-2017.
 9
10
                (Which were all the proceedings had
11
              in the above-entitled cause.)
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                                             43
 1 STATE OF ILLINOIS )
                ) ss.
 2 COUNTY OF DU PAGE )
 3
 4
          I, JANICE H. HEINEMANN, CSR, RDR, CRR,
    do hereby certify that I am a court reporter
    doing business in the State of Illinois, that I
 7
    reported in shorthand the testimony given at the
    hearing of said cause, and that the foregoing is
    a true and correct transcript of my shorthand
10
    notes so taken as aforesaid.
11
12
13
             Janice H. Heinemann CSR, RDR, CRR
14
             License No 084-001391
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4	4th [2] - 8:13, 15:12	approval [2] - 33:4,	28:2, 28:9, 28:15,	26:4, 26:11, 26:16,
1	[2] 0.10, 10.12	36:20	28:19, 29:4, 32:2,	27:7, 27:12, 27:15,
1 [1] - 11:14	5	approve [3] - 36:16,	32:10, 32:13, 33:5,	27:19, 28:2, 28:9,
1-foot [1] - 39:2		41:8, 41:16	33:11, 33:14, 33:19,	28:15, 28:19, 29:4,
<b>10</b> [3] - 25:16, 25:21,	5 [1] - 17:18	approved [1] - 35:2	34:2, 34:5, 34:12,	32:2, 32:10, 32:13,
36:6	<b>50</b> [2] - 15:4, 15:5	architects [1] - 33:15	34:14, 35:10, 35:13,	33:5, 33:14, 33:19,
<b>111</b> [4] - 6:22, 7:3, 7:5,	<b>50</b> 4 [2] - 10:2, 23:3	area [1] - 24:1	35:16, 35:21, 36:19,	34:2, 34:12, 34:14,
8:21		attachment [1] - 17:18	37:2, 37:8, 37:12,	35:13, 35:16, 35:21,
<b>15</b> [2] - 21:14, 30:4	6	average [4] - 8:5,	38:7, 38:10, 41:15,	36:19, 37:2, 37:8,
150-foot [1] - 30:22	6 [1] - 39:19	9:20, 11:4, 38:18	41:21, 42:1, 42:5,	37:12, 38:7, 38:10,
<b>170</b> [4] - 26:21, 27:4,	605 [1] - 39:8	aye [1] - 42:2	42:9	41:15, 42:1, 42:5,
27:6, 27:11	<b>68</b> [2] - 7:19, 9:21	Aye [3] - 42:3, 42:4,	bothered [2] - 8:13,	42:9
<b>190</b> 4 [2] - 17:10, 22:4	<b>68.5</b> [1] - 8:6	42:5	8:16	chan [1] - 25:1
<b>1920</b> [1] - 21:21	6th [2] - 8:16, 24:12		bottom [1] ~ 14:21	Chan [1] - 17:6
<b>1940</b> [1] - 17:9		В	brick [2] - 17:14,	chance [1] - 24:17
<b>1994</b> [1] - <b>1</b> 7:13	7		18:22	change [4] - 40:1,
		backs [1] - 14:8	brickwork [1] - 17:11	40:7, 40:14, 40:21
2	7 [2] - 25:15, 30:18	bad [1] - 39:22	bring [2] - 7:20, 13:2	changed [1] - 24:16
2 [1] - 28:11	78 [6] - 7:6, 7:13, 9:1,	based [1] - 17:19	bringing [1] - 10:22	changes [1] - 40:6
20 [20] - 20:2, 21:14,	9:2, 9:7, 27:20	bay [3] - 27:6, 27:8,	broke [1] - 33:11	changing [1] - 40:17
26:1, 26:8, 26:9,	78-foot [1] - 27:16	27:10	brought [1] - 4:17	choice [2] - 20:19,
27:14, 28:4, 28:12,		beautiful [1] - 6:6   become [1] - 41:5	build [1] - 19:7	33:5
29:4, 29:6, 30:7,	A	bedroom [4] - 20:10,	building [10] - 5:5,	circulation [1] - 15:20
30:16, 32: <b>7</b> , 32:19,	able [1] - 12:15	20:16	16:3, 17:12, 21:13,	Clark [1] - 24:1
36:6, 36:12, 36:18,	above-entitled [1] -	beginning [1] - 18:14	22:1, 37:6, 37:9, 38:13, 39:14, 41:1	clear [2] - 25:4
38:16, 41:12, 41:18	42:13	behind [1] - 5:10	built [7] - 14:4, 16:18,	clearly [1] - 5:2
<b>204</b> [1] - 14:21	Absolutely [1] - 27:18	better [1] - 16:16	17:9, 17:10, 22:4,	closer [1] - 5:14 closes [1] - 42:10
<b>25</b> [1] - 14:10	according [2] - 13:5,	between [2] - 12:16,	22:6, 23:17	coach [2] - 5:4, 21:22
<b>27.5</b> [1] - 39:16	27:4	15:12	business [1] - 18:12	code [2] - 16:4, 24:6
	add [1] - 11:13	beyond [2] - 30:10,	butt [1] - 40:12	Code [2] - 35:20,
3	added [1] - 17:14	30:19	buys [1] - 31:21	38:14
<b>3</b> [1] - 40:7	address [1] - 5:16	big [6] - 5:22, 6:1,		color [1] - 12:11
30 [5] - 38:19, 39:11,	addressed [1] - 24:22	7:20, 7:21, 22:2,	l c	comfortable [3] -
39:12, 39:14, 39:22	adds [1] - 36:6 adjacent [1] - 5:7	41:6	calculations [1] - 40:6	16:18, 22:17, 30:4
<b>329</b> [2] - 24:11, 24:14	advisory [2] - 34:12,	binding [1] - 35:20	cannot [1] - 35:6	coming [3] - 6:7,
<b>33</b> [2] - 38:22, 39:1	35:20	bit [1] - 16:21	cape [1] - 24:6	22:10, 33:8
330 [1] - 26:17	advocating [2] - 10:2,	block [7] - 6:2, 6:7,	cape [1] - 24.6	Commission [1] -
331 [1] - 15:5	10:9	8:8, 9:20, 11:4,	cases [1] - 14:16	21:4
<b>333</b> [2] - 26:20, 26:22	aerial [2] - 11:6, 23:7	24:13, 24:15	cedar [2] - 12:4, 12:9	compare [1] - 13:15
34 [1] - 39:16	affect [2] - 21:16, 41:2	blockwise [1] - 7:16 BOHNEN [89] - 4:12,	certainly [1] - 19:6	compliant [1] - 38:14
<b>35</b> [2] - 9:16, 39:8	afterwards [1] - 15:19	4:14, 7:8, 7:21, 8:3,	Certificate [9] - 20:22,	compromise [3] -
<b>35.5</b> [1] - 39:6	ago [2] - 24:12, 30:4	8:12, 8:15, 8:19, 9:2,	21:2, 32:15, 32:17,	19:9, 23:20, 24:18
37 [1] - 39:15	agree [1] - 22:13	9:6, 9:12, 9:15, 9:18,	34:16, 35:8, 35:11,	concern [2] - 8:19,
<b>37.35</b> [1] - 39:20	ahead [1] - 21:5	9:22, 10:7, 10:15,	36:1, 41:16	24:21
<b>38</b> [1] - 38:20	allowed [1] - 39:13	10:18, 10:21, 11:12,	CHAIRMAN [75] -	concerned [5] - 5:21,
39 [1] - 38:21	almost [6] - 10:9,	12:3, 12:6, 13:1,	4:12, 4:14, 7:8, 7:21,	9:3, 14:1, 14:8, 30:14
3rd [1] - 15:12	14:8, 14:13, 18:2,	13:7, 13:12, 13:18,	8:3, 8:12, 9:2, 9:6,	concrete [1] - 31:10
1	21:15, 40:16	13:20, 14:3, 14:12,	9:12, 9:15, 9:18,	condition [4] - 20:22,
4	amount [2] - 24:22,	15:6, 15: <del>9</del> , 15:16,	9:22, 10:7, 10:15,	35:18, 41:9, 41:17
4 [2] - 11:14, 28:11	28:13	16:2, 16:6, 16:11,	10:18, 10:21, 12:3,	conditions [7] - 32:18,
40 [1] - 20:1	ample [1] - 15:7	16:13, 16:17, 17:21,	12:6, 13:1, 13:7,	34:9, 34:16, 35:11,
<b>422</b> [17] - 4:4, 4:8,	analysis [1] - 17:7	18:11, 20:4, 20:9,	13:12, 13:18, 13:20,	36:17, 37:3
4:12, 5:13, 5:14,	applicants [1] - 13:2	20:18, 22:14, 22:16,	14:3, 14:12, 15:6,	confidence [1] - 28:22
6:22, 8:20, 11:15,	approach [1] - 30:14	22:21, 23:1, 23:6,	15:9, 15:16, 16:2, 16:6, 16:11, 16:13,	consensus [1] - 28:16
21:12, 22:11, 23:14,	appropriate [1] -	23:12, 23:16, 24:4,	16:17, 17:21, 18:11,	consider [2] - 5:21,
23:21, 24:13, 24:18,	10:11	24:11, 25:6, 26:4, 26:11, 26:16, 27:7,	20:18, 22:14, 22:21,	20:5
26:6, 28:3, 30:6 4 <b>42</b> [1] - 5:13	Appropriateness [2] - 35:8, 41:17	27:12, 27:15, 27:19,	23:1, 23:6, 23:16,	consideration [1] -
772 [ij - 0, io	00.0, 41.17		, , , , , , , , , , , , , , , , , , , ,	28:7

considerations [1] -28:20 consult [1] - 33:15 continually [1] - 18:8 continue [1] - 32:22 continuing [1] - 33:3 corner [3] - 6:16, 15:2, 40:5 corners [2] - 37:17, 38:17 correct [9] - 7:6, 9:18, 12:20, 23:15, 32:21, 33:9, 34:13, 35:15, 35:21 cost [1] - 36:6 costwise [1] - 36:11 couple [2] - 25:16, 34:22 court [2] - 8:17, 31:8 cover [1] - 29:8 created [1] - 17:19 creates [1] - 39:18 credit [1] - 39:2 cross [1] - 34:10 crunching [1] - 29:13 cuff [1] - 32:5 current [1] - 18:21 customize [1] - 31:22

### D

deal [1] - 5:22 debating [1] - 16:21 December [1] - 36:3 decide [1] - 32:22 decision [2] - 35:7, 36:3 deep [5] - 10:16, 15:5, 26:17, 27:20, 30:22 deeper [2] - 15:19, 15:22 demo [1] - 35:7 demo'ing [1] - 34:7 demolition [1] - 34:22 department [4] - 37:6, 37:9, 38:13, 41:1 depth [1] - 29:11 destroys [1] - 6:6 difference [1] - 12:16 different [4] - 18:18, 22:18, 28:20, 34:19 digit [1] - 7:5 diminish [2] - 22:11, 23:18 diminishment [1] -23:13 discuss [1] - 29:20 discussion [1] - 33:20 distance [2] - 7:14, 29:20

divided [1] - 39:17 doherty [1] - 32:4 DOHERTY [60] - 4:2, 4:5, 4:7, 4:10, 4:22, 5:8, 5:13, 5:19, 6:10, 6:14, 7:7, 7:13, 9:1, 9:9, 11:17, 11:20, 11:22, 12:5, 12:8, 12:12, 12:14, 12:20, 14:5, 16:8, 19:10, 19:14, 25:10, 26:7, 29:12, 30:1, 30:9, 31:6, 31:11, 31:13, 31:16, 31:19, 32:9, 32:12, 33:10, 33:13, 33:17, 33:22, 34:4, 35:1, 35:9, 36:4, 36:9, 36:21, 37:5, 37:19, 38:2, 38:22, 39:3, 39:8, 39:10, 40:3, 40:9, 40:16, 40:22, 42:7 Doherty [7] - 16:6, 26:4, 32:15, 33:7, 33:12, 34:15, 34:18 done [1] - 40:9 door [2] - 4:13, 6:18 down [5] - 18:8, 19:7, 21:8, 29:13, 38:3 draw [1] - 25:14 drawings [1] - 13:3 drive [1] - 15:21 driveway [3] - 20:14, 36:7, 36:12 drop [1] - 37:20

### Ε

Early's [1] - 8:13 East [1] - 24:11 either [6] - 5:11, 11:5, 23:10, 28:14, 32:14, 36:10 elevation [4] - 37:16, 38:21, 39:15, 40:4 elevations [1] - 38:18 Elm [1] - 40:18 encourage [1] - 13:2 end [2] - 27:6, 27:7 enjoy [1] - 28:3 entitled [1] - 42:13 especially [4] - 6:3, 6:7, 21:17, 30:5 estate [1] - 22:9 estates [1] - 22:3 existing [8] - 7:10, 8:20, 17:8, 17:11, 17:14, 37:18 extends [1] - 25:13 extent [1] - 6:4

exterior [1] - 11:18 eyes [2] - 13:3, 13:5

### F

facades [1] - 12:7 face [1] - 25:17 fact [2] - 22:1, 23:18 faith [2] - 34:15, 34:17 fan [1] - 6:1 FAR [1] - 15:17 far [9] - 5:18, 6:5, 10:13, 17:3, 19:8, 19:16, 30:12, 31:3, 39:21 favor [1] - 42:1 feet [40] - 6:22, 14:10, 15:5, 20:1, 20:2, 21:15, 23:2, 25:15, 25:21, 26:1, 26:8, 26:9, 26:17, 27:4, 27:6, 27:14, 27:20, 28:4, 28:12, 29:4, 29:6, 30:7, 30:16, 30:18, 32:7, 32:19, 36:6, 36:12, 36:18, 38:16, 38:19, 39:11, 39:12, 39:14, 39:16, 39:19, 39:22, 41:12, 41:18 figure [1] - 25:21

figure [1] - 25:21 final [2] - 32:20, 35:3 fine [3] - 10:12, 13:16, 13:19 fingers [1] - 34:10

fire [2] - 31:17, 31:19 fireplace [1] - 31:14 fireplaces [1] - 31:20 first [1] - 27:10 five [1] - 24:15 foot [1] - 39:17 footprint [2] - 22:1, 28:17 forced [1] - 40:1

Forest [4] - 18:16 forgot [4] - 5:16 formal [4] - 20:19 forward [8] - 5:6, 5:10, 6:5, 9:7, 10:2, 26:2, 30:12, 33:16 four [2] - 37:17, 38:16

Foxes [1] - 24:7 Foxes [1] - 24:8 frank [1] - 12:10 front [9] - 6:6, 8:5,

19:12, 21:15, 24:22, 25:22, 26:1, 26:5, 36:10

future [1] - 4:19

### G

gambrel [1] - 12:6 gardens [1] - 25:12 Garfield [1] - 39:8 God [1] - 15:16 Google [3] - 11:7, 11:10, 25:2 grade [4] - 37:18, 39:3, 40:14, 40:17 grading [1] - 37:15 Granaki [1] - 17:21 grandeur [1] - 23:14 grant [1] - 36:1 gray [2] - 12:15, 12:17 great [2] - 25:6, 30:5 guess [2] - 12:12, 33:19 guesstimate [1] - 23:2 guys [3] - 14:17, 17:16, 31:4

### Н

half [1] - 7:14 handy [1] - 7:17 hard [7] - 7:4, 18:7, 21:6, 21:8, 21:10, 31:8 hate [1] - 14:9 head [1] - 10:13 hearing [2] ~ 28:22, 42:10 height [3] - 37:16, 39:14, 40:2 held [1] - 36:13 help [2] - 28:13, 40:20 helpful [1] - 11:3 helps [2] - 28:8, 30:15 hill [1] - 6:7 Hinsdale [2] - 22:3, 27:16 Historic [1] - 17:19 historic [1] - 30:6 historical [2] - 18:22, 21:20 historically [1] - 21:12 hold [4] - 26:14, 30:3, 32:6, 34:6 home [9] - 5:9, 5:15, 12:2, 12:19, 17:8, 18:21, 19:7, 23:3, 36:5 homes [1] - 22:6 honestly [1] - 22:19 honor [2] - 33:7, 35:17 hope [1] - 34:10 hopes [1] - 16:6 house [67] - 5:2, 5:4,

7:6, 7:9, 7:10, 8:8, 8:13, 8:16, 8:20, 8:21, 9:3, 10:13, 12:4, 13:10, 13:14, 13:21, 13:22, 14:1, 14:4, 14:6, 14:10, 14:14, 15:2, 15:21, 16:1, 17:11, 17:13, 19:21, 20:13, 20:21, 21:13, 21:14, 21:22, 24:1, 24:5, 24:8, 25:18, 25:22, 26:1, 26:2, 26:12, 27:2, 27:21, 28:6, 28:17, 29:19, 30:6, 30:12, 30:20, 31:21, 32:6, 32:16, 32:18, 34:7, 34:19, 37:19, 38:16, 38:20, 41:4, 41:9, 41:17 houses [13] - 4:21, 5:11, 6:5, 8:11, 11:4, 13:16, 15:10, 15:19, 20:6, 21:9, 24:13, 24:15, 28:11 HPC -09-2017 [1] -

huge [1] - 26:15

42:10

idea [1] - 31:2 illustrates [1] - 22:2 image [1] - 25:3 imagination [1] -24:16 immensely [1] - 30:16 important [1] - 11:1 impressive [1] - 15:22 inches [1] - 40:7 included [2] - 6:21, 7:18 indicated [1] - 17:6 Indicating [1] - 25:9 individuals [1] - 33:21 information [4] - 7:16, 13:9, 17:8, 17:17 instead [1] - 25:15 intention [1] - 12:18 involved [1] - 33:21 issue [7] - 35:7, 35:14, 38:6, 38:8, 40:15, 41:5, 41:6 issued [1] - 32:20 itself [4] - 14:6, 23:8, 25:18, 27:2

### J

James [2] - 4:16, 29:18

6:2, 6:8, 6:18, 6:22,

jibes [1] - 25:12 Jim [7] - 6:20, 7:15, 29:2, 31:3, 31:11, 38:3, 39:3 job [1] - 18:4 juncture [1] - 18:19

### Κ

keep [2] - 18:3, 19:4 kind [4] - 4:19, 10:12, 13:15. 40:12 kitchens [1] - 31:5 knowing [1] - 10:13

### L

Lake [1] - 18:16 landscape [1] - 19:12 landscaping [1] - 36:9 laptop [1] - 11:10 large [1] - 29:17 larger [1] - 13:2 last [6] - 6:16, 11:8, 13:6, 13:11, 13:16, 14:17 latitude [1] - 10:19 least [3] - 20:2, 29:4, 36:17 leaving [1] - 28:3 left [3] - 19:1, 29:14, 29:15 legal [1] - 31:17 length [1] - 36:7 less [4] - 7:13, 9:7, 15:3, 15:22 level [3] - 6:18, 32:3, 38:17 life [1] - 23:19 light [2] - 12:15, 12:17 Lil [1] - 8:3 line [6] - 14:8, 19:21, 21:9, 22:20, 37:21, 40:8 lines [1] - 20:5 lining [2] - 14:14, 21:10 list [1] - 8:8 live [1] - 35:17 lived [1] - 24:7 living [2] - 10:7, 20:7 location [1] ~ 21:13 look [11] - 7:3, 11:11, 14:7, 20:20, 21:8, 21:18, 25:10, 29:3, 29:5, 29:7, 32:11 looked [3] - 21:18, 22:3, 25:2 looking [7] - 11:15, 12:3, 14:9, 20:9,

21:20, 23:7, 23:22 looks [7] - 14:13, 19:22, 20:17, 21:14, 25:4, 25:16, 27:5 lopped [1] - 24:9 love [3] - 16:22, 18:20, 19:5

### М

main [4] - 17:10, 17:12, 26:2, 38:19 maintaining [1] -14:15 map [1] - 11:7 Maps [1] - 11:10 mass [1] - 30:20 matches [2] - 17:12, 20:11 material [1] - 18:22 max [2] - 16:3, 39:11 maximize [1] - 15:17 maximum [7] - 37:16, 38:21, 39:13, 39:14, mean [7] - 14:9, 15:12, 19:22, 24:5, 28:12, 30:2, 32:5 meaning [1] - 14:1 measurements [1] -23:4 meeting [1] - 4:18 mention [1] - 28:2 middle [2] - 5:4, 6:2 might [3] - 7:14, 25:15, 41:5 mind [1] - 18:3 minimize [2] - 23:13, 27:22 minimum [6] - 9:15, 30:8, 32:19, 39:6, 41:12, 41:18 minutes [1] - 30:4 moment [1] - 32:9 money [3] - 16:5, 16:7, 32:1 month [1] - 36:2 most [1] - 30:14 motion [1] - 41:16 Motion [1] - 42:6 mound [1] - 40:6 move [8] ~ 10:2, 10:5, 15:8, 27:14, 28:12, 29:19, 33:6, 37:3 moved [5] ~ 19:10, 28:4, 41:9, 41:18, 41:20 moving [2] - 10:19, 41:4

MR [177] - 4:2, 4:5,

4:7, 4:10, 4:16, 4:22, 5:1, 5:8, 5:11, 5:13, 5:17, 5:19, 5:20, 6:10, 6:12, 6:14, 6:15, 7:1, 7:7, 7:11, 7:13, 7:15, 8:5, 8:7, 8:14, 8:15, 8:18, 8:19, 9:1, 9:4, 9:9, 9:10, 9:14, 9:17, 9:19, 10:4, 10:9, 10:17, 10:20, 10:22, 11:6, 11:9, 11:12, 11:17, 11:20, 11:22, 12:5, 12:8, 12:10, 12:12, 12:14, 12:20, 12:21, 13:4, 13:8, 13:13, 13:19, 13:22, 14:5, 14:6, 14:13, 14:21, 15:13, 15:18, 16:5, 16:8, 16:12, 16:16, 16:20, 17:3, 17:16, 17:22, 18:10, 19:10, 19:14, 19:16, 19:20, 20:4, 20:9, 20:13, 21:5, 21:11, 22:13, 22:16, 23:12, 24:4, 24:11, 25:2, 25:6, 25:9, 25:10, 25:20, 26:7, 26:9, 26:14, 26:20, 26:22, 27:2, 29:7, 29:10, 29:12, 29:13, 29:18, 30:1, 30:2, 30:9, 30:10, 31:1, 31:6, 31:11, 31:12, 31:13, 31:15, 31:16, 31:17, 31:19, 31:21, 32:9, 32:12, 32:22, 33:2, 33:9, 33:10, 33:11, 33:13, 33:17, 33:22, 34:4, 34:5, 34:6, 35:1, 35:4, 35:6, 35:9, 35:10, 35:12, 35:15, 35:19, 36:4, 36:9, 36:16, 36:21, 37:5, 37:11, 37:14, 37:19, 37:22, 38:2, 38:4, 38:9, 38:12, 38:15, 38:22, 39:1, 39:3, 39:5, 39:8, 39:9, 39:10, 39:12, 39:16, 39:18, 39:20, 39:21, 40:3, 40:4, 40:9, 40:11, 40:16, 40:19, 40:22, 41:3, 41:12, 41:21, 41:22,

42:4, 42:7

MS [87] - 4:3, 4:6, 4:9,

4:11, 4:13, 6:20, 7:2,

7:12, 7:18, 8:1, 8:10,

9:20, 10:5, 11:2,

11:7, 11:14, 11:18, 11:21, 12:1, 12:13, 12:18, 14:19, 14:20, 15:4, 15:7, 16:15, 16:22, 17:5, 18:2, 18:7, 18:20, 19:2, 19:3, 19:13, 19:18, 20:2, 20:8, 20:15, 21:3, 21:6, 21:17, 21:19, 22:12, 22:15, 22:19, 22:22, 23:4, 23:10, 23:15, 24:3, 24:10, 25:8, 25:19, 26:3, 26:8, 26:15, 26:18, 26:21, 27:1, 27:4, 27:9, 27:13, 27:18, 28:1, 28:8, 28:10, 28:18, 29:2, 29:5, 29:9, 29:16, 30:21, 31:7, 34:8, 34:13, 34:21, 35:22, 36:8, 36:13, 36:22, 37:4, 41:10, 41:11, 41:14, 41:20, 42:2, must [4] - 36:17, 41:10, 41:11, 41:18

Ν naming [1] - 29:1 narrow [3] - 27:17, 27:20, 27:21 narrower [1] - 15:22 National [1] - 17:18 nature [2] - 23:20, 30:6 necessarily [1] -30:13 neighbor 's [1] - 13:10 neighboring [1] - 4:21 neighbors [1] - 28:6 neighbors '[2] ~ 6:13, 14:11 new [8] ~ 5:21, 7:6, 13:10, 15:3, 19:7, 22:6, 28:6, 37:17 next [5] - 4:13, 6:18, 7:9, 29:14, 36:1 next-to-nothing [1] -29:14 nicer [1] - 19:12 night [1] - 42:8 nonconforming [1] -27:19 north [3] - 19:21, 20:6, 28:6 northeast [1] - 30:15 noted [1] - 24:2 nothing [1] - 29:14

noticed [1] - 19:13 number [3] - 7:5, 15:1, 29:1 numbers [3] - 4:14, 5:17, 12:22

### 0

Oak [4] - 4:4, 4:12, 5:14 object [1] - 37:9 obstructs [1] - 21:16 Obviously [1] - 15:14 obviously [2] - 22:5, 28:20 old [3] - 5:3, 6:20, 13:3 once [2] - 22:4, 22:9 one [21] - 4:16, 6:4, 6:16, 6:19, 7:1, 7:2, 7:9, 10:8, 14:2, 14:3, 15:11, 20:4, 22:2, 22:7, 24:14, 24:17, 25:4, 26:18, 32:13, 33:7, 40:5 open [1] - 28:3 openness [1] - 24:2 original [2] - 21:22, 24:19 originally [1] - 21:18 otherwise [1] - 16:9 ourselves [1] - 18:12 outdoor [2] - 31:5, 31:6 outline [1] - 13:14 overly [1] - 14:1 own [1] - 4:7 owner [2] - 4:4, 4:6

package [1] - 19:12 pad [1] - 31:8 page [2] - 14:18, 27:10 pain [1] - 40:12 paint [2] - 11:20, 11:22 part [5] - 5:20, 8:7, 13:5, 24:11, 29:22 past [1] - 7:3 patched [1] - 17:15 patio [1] - 31:11 patios [1] - 31:5 peak [1] - 39:1 per [1] - 35:19 perfectly [1] - 17:12 permit [4] - 32:20, 34:22, 35:7, 35:14 personally [1] - 6:1 phenomenon [1] -18:15

phone [1] - 25:3 photo [1] - 21:19 pick [1] - 38:13 pitch [1] - 40:2 pits [2] - 31:18, 31:19 Places [1] - 17:19 places [1] - 18:17 plan [11] - 6:10, 7:19, 7:20, 14:7, 27:5, 27:10, 29:7, 31:13, 36:2, 38:17 planned [2] - 19:22, 41:13 planning [1] - 31:3 plans [2] - 17:13, 36:15 plat [2] - 6:20, 22:17 plenty [2] - 27:13, 29:15 plus [2] - 39:1, 39:16 point [8] - 19:3, 21:12, 29:1, 30:5, 38:10, 40:14, 40:16, 40:20 porch [2] - 30:18, 30:19 position [3] - 5:6, 19:5, 22:8 positioned [1] - 32:7 positioning [1] - 32:20 possibility [1] - 40:20 potentially [1] - 10:20 preliminarily [1] - 29:2 present [1] - 22:17 preservation [1] -18:13 pretty [1] - 5:8 PRISBY [88] - 4:16, 5:1, 5:11, 5:17, 5:20, 6:12, 6:15, 7:1, 7:11, 7:15, 8:7, 8:14, 8:18, 9:4, 9:10, 9:14, 9:17, 9:19, 10:4, 10:9, 10:17, 10:20, 10:22, 12:10, 12:21, 13:4, 13:8, 13:13, 13:19, 13:22, 14:6, 14:13, 14:21, 15:13, 15:18, 16:5, 16:12, 16:16, 16:20, 17:3, 18:10, 19:16, 19:20, 20:13, 21:5, 21:11, 22:13, 25:20, 26:9, 26:14, 26:20, 26:22, 27:2, 29:7, 29:10, 29:13, 29:18, 30:2, 30:10, 31:1, 31:12, 31:15, 31:17, 31:21, 33:2, 33:9, 34:6, 35:4, 36:16, 37:11, 37:14, 37:22, 38:4, 38:9,

38:15, 39:1, 39:5, 39:9, 39:12, 39:18, 39:21, 40:4, 40:11, 40:19, 41:3, 41:12, 41:22, 42:4 problem [3] - 8:10, 32:5, 32:8 problems [2] - 15:19, 18:6 proceed [3] - 32:2, 32:14, 34:20 proceedings [1] process [2] - 34:8, 34:11 profile [1] - 13:13 promise [2] - 33:11, 33:13 properties [1] - 4:7 property [4] - 4:1, 5:3, 6:9, 6:13 proposal [1] - 15:3 proposed [5] - 8:22, 14:4, 22:18, 28:6, 38:17 proposing [2] - 4:1, provided [1] - 6:11 purposefully [1] -19:14 push [3] - 36:4, 37:19, 38:15 pushed [2] - 17:1, 30:7 pushing [2] - 36:5, 40:13 put [3] - 19:7, 19:14, 37:15 Putian [1] - 8:3 putting [2] - 18:11,

### Q

questions [1] - 16:14 quite [2] - 4:15, 10:15

# R

R-1[1] - 39:15 R-4[1] - 39:6 reach [1] - 33:18 read [2] - 12:21, 15:1 real [2] - 24:21, 30:19 really [8] - 6:1, 12:15, 21:9, 21:15, 30:2, 41:1, 41:7 reaping [1] - 18:15 reappear [1] - 32:15 rear [6] - 26:12, 26:13, 27:8, 29:14, 31:4,

31:11 reason [4] - 19:4, 22:7, 37:9, 39:10 reasonable [4] -10:11, 29:5, 29:21, 32:11 recede [1] - 23:3 recollection [1] -38:11 reexamine [1] - 34:17 regardless [2] - 36:11, 38:12 Register [1] - 17:18 rehabbing [1] - 4:8 relation [1] - 13:10 relocate [1] - 32:18 relocating [1] - 32:16 remarkable [2] - 12:1, 18:4 remodeled [1] - 6:3 renovated [1] - 11:16 reposition [1] - 20:20 request [3] - 20:19, 29:21, 32:11 required [1] - 19:11 respotting [1] - 28:16 rest [1] - 21:3 results [1] - 18:16 retaining [3] - 7:4, 25:11, 26:5 retains [1] - 24:18 review [1] - 35:3 Robbins [1] - 17:20 roof [7] - 12:4, 15:20, 37:20, 38:19, 39:5, 40:1, 40:7 room [2] - 15:7, 27:14 run [2] - 4:14, 41:4

### S

Sandy [6] - 4:17, 17:4,

sandy [1] - 16:12

19:16, 21:11, 30:5, 30:10 saw [2] - 25:3, 26:19 scout's [2] - 33:7, 35:16 sea [1] - 38:17 Second [1] - 41:21 second [2] - 5:2, 41:22 see [20] - 7:4, 7:12, 10:10, 10:12, 13:15, 15:21, 16:22, 21:7, 21:11, 22:18, 22:20, 23:3, 25:12, 25:15, 28:10, 30:7, 32:19, 33:8, 36:2 seeing [2] - 4:20,

14:10 sell [3] - 12:19, 15:14, 15:17 sense [2] - 22:9, 30:11 set [11] - 5:3, 7:20. 7:22, 8:4, 10:14. 12:22, 13:2, 13:6, 22:8, 24:7, 28:13 setback [5] - 7:9, 8:5, 13:4, 15:2, 24:22 setbacks [4] - 4:20, 22:18, 24:1, 34:17 shake [2] - 12:4 Shannon [2] - 16:12, 21:5 sheet [8] - 13:11, 13:16, 14:21, 17:19, 22:20, 28:11, 29:8 sheets [1] - 13:6 shingle [1] - 12:4 shiplap [1] - 12:9 shorter [1] - 16:1 show [6] ~ 6:13, 6:17, 6:21, 13:9, 13:13, 34:19 showed [1] - 6:16 shows [2] - 21:21, 31:14 side [5] - 5:12, 11:5, 22:5, 28:14, 39:17 sides [2] - 20:16, 30:14 siding [1] - 12:9 significant [4] - 21:12, 29:11, 37:14, 38:6 significantly [4] - 5:6, 5:10, 9:10, 15:3 similar [1] - 5:8 site [4] - 6:10, 27:9, 29:7, 36:2 situated [1] - 6:8 situation [1] - 28:13 size [1] - 38:20 slope [1] - 38:5 society [1] - 21:20 sold [1] - 22:6 sometimes [2] - 25:3, 36:14 sorry [2] - 11:14, 33:10 sort [1] - 20:11 sounds [1] - 7:7

southeast [1] - 27:16 space [2] - 28:3, 29:15 special [1] - 31:4 speculate [1] - 5:19 sports [1] - 31:7 spotting [1] - 34:19 spring [1] - 36:5 squeezing [1] - 38:2 stacks [1] - 28:5 stand [1] - 18:13 standpoint [1] - 29:19 stands [1] - 18:21 start [1] - 4:20 starts [2] - 39:15, 40:17 staunch [1] - 18:13 sticking [1] - 30:12 still [12] - 14:15, 16:21, 17:11, 22:2, 22:8, 23:20, 29:20, 30:21, 31:8, 31:10, 35:3, 38:12 stone [2] - 25:17, 26:5 straight [1] - 25:14 Street [3] - 5:14, 15:12, 24:12 street [2] - 23:22, 41:19 streetscape [6] - 5:22, 14:15, 20:4, 23:8, 24:16, 29:21 stretch [2] - 24:15, 27:16 strike [1] - 24:17 structure [1] - 17:10 stuff [1] - 5:21 styling [1] - 19:1 subject [1] - 18:18 submitted [3] - 13:11, 30:4, 35:1 substantial [1] - 26:17 sudden [1] - 24:4 suddenly [1] - 40:5 sufficiently [1] - 16:17 suggesting [1] - 23:11 supposed [1] - 33:17 survey [4] - 6:17, 6:21, 17:21, 18:5

### Т

table [1] - 33:20 tear [1] - 19:7 teardown [1] - 18:15 tennis [1] - 8:17 terms [1] - 20:6 theory [1] - 10:21 thinking [2] - 17:3, 31:4 three [1] - 7:5

source [1] - 18:1

5:14

South [3] - 4:4, 4:12,

south [13] - 5:9, 5:15,

13:14, 14:2, 15:11,

20:6, 20:13, 23:17,

7:9, 9:3, 10:14,

24:6, 28:7

tonight [2] - 4:18, 6:19 top [1] - 39:5 topographical [1] -13:9 total [2] - 26:20, 26:22 totally [1] - 18:17 tough [1] - 15:17 tougher [2] - 15:14, 15:15 towards [1] - 40:18 town [1] - 29:22 trouble [2] - 34:3, 34:4 try [3] - 11:9, 20:20, 24:17 trying [6] - 9:11, 15:17, 23:12, 23:19, 30:3, 33:3 two [8] - 8:11, 13:6, 13:15, 21:9, 24:13, 24:14, 28:11, 32:14

### U

up [16] - 4:17, 6:7, 10:22, 14:8, 14:14, 15:21, 20:6, 20:12, 21:10, 22:20, 28:5, 30:3, 34:7, 35:17, 38:13, 40:6

### V

various [1] - 12:6 view [3] - 19:4, 21:16, 23:7 views [1] - 28:5 Village [1] - 18:12 village [1] - 4:19 vote [3] - 20:21, 21:1, 35:9

### W

wall [4] - 7:4, 25:17, 25:18 walls [3] - 25:11, 26:2, 26:5 wandered [1] - 31:9 Washington [1] -15:11 watching [1] - 18:8 ways [1] - 32:14 week [1] - 35:4 weeks [1] - 34:22 WEINBERGER [16] -11:7, 12:13, 14:19, 16:15, 18:7, 19:2, 21:6, 21:17, 22:12, 23:15, 24:3, 24:10, 34:8, 34:13, 41:11, 42:3

welcome [1] - 33:22 welcoming [1] - 34:3 whatnot [1] - 31:5 white [3] - 12:12, 12:13, 16:16 whole [3] - 15:13, 24:13, 40:7 wide [1] - 27:16 wider [1] - 16:1 WILLIAMS [71] - 4:3. 4:6, 4:9, 4:11, 4:13, 6:20, 7:2, 7:12, 7:18, 8:1, 8:10, 9:20, 10:5, 11:2, 11:14, 11:18, 11:21, 12:1, 12:18, 14:20, 15:4, 15:7, 16:22, 17:5, 18:2, 18:20, 19:3, 19:13, 19:18, 20:2, 20:8, 20:15, 21:3, 21:19, 22:15, 22:19, 22:22, 23:4, 23:10, 25:8, 25:19, 26:3, 26:8, 26:15, 26:18, 26:21, 27:1, 27:4, 27:9, 27:13, 27:18, 28:1, 28:8, 28:10, 28:18, 29:2, 29:5, 29:9, 29:16, 30:21, 31:7, 34:21, 35:22, 36:8, 36:13, 36:22, 37:4, 41:10, 41:14, 41:20, 42:2 Williams [1] - 4:17 win [1] - 14:16 window [8] - 20:10, 20:16, 27:6, 27:8, 27:10, 28:5 windshield [1] - 18:5 wished [1] - 10:19 wondering [1] - 9:4 world [1] - 24:8 worried [1] - 30:13 worth [1] - 13:1

### Υ

yard [9] - 8:5, 24:22, 26:12, 29:14, 30:22, 31:4, 36:10, 39:17 years [1] - 24:12 YU [15] - 8:5, 11:6, 11:9, 17:16, 17:22, 25:2, 25:9, 32:22, 35:6, 35:12, 35:15, 35:19, 38:12, 39:16, 39:20

### Ζ

zoning [1] - 37:15



### **MEETING AGENDA**

# HISTORIC PRESERVATION COMMISSION Wednesday, November 8, 2017 6:00 P.M.

### MEMORIAL HALL - MEMORIAL BUILDING

(Tentative & Subject to Change)

- 1. CALL TO ORDER
- 2. MINUTES Review and approval of the minutes from the October 11, 2017, meeting.
- 3. PUBLIC HEARING CERTIFICATE OF APPROPRIATENESS
  - a) Case HPC-08-2017 107 S. Park Ave. Request for Certificate of Appropriateness to Demolish the Existing Home and construct a new home in the Robbins Park Historic District.
  - b) Case HPC-09-2017 504 S. Oak St. Request for Certificate of Appropriateness to Demolish the Existing Home and construct a new home in the Robbins Park Historic District.

### 4. DISCUSSION

- a) 304 S. Lincoln Street Case HPC-04-2016 (approved on November 9, 2016)
- b) Update letter regarding the Hinsdale Historical Society for Historic Tours App
- 5. ADJOURNMENT

The Village of Hinsdale is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend any meetings and who require certain accommodations in order to allow them to observe and/or participate in these meetings, or who have questions regarding accessibility of the meetings or the facilities, are requested to contact Darrell Langlois, ADA Coordinator at 630.789-7014 or by TDD at 789-7022 promptly to allow the Village of Hinsdale to make reasonable accommodations for those persons. website: www.villageofhinsdale.org



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### MEMORANDUM

DATE:

November 8, 2017

TO:

Chairman Bohnen and Historic Preservation Commissioners

CC:

Kathleen A. Gargano, Village Manager

Robb McGinnis, Director of Community Development/Building Commissioner

FROM:

Chan Yu, Village Planner

RE:

504 S. Oak Street - Application for Certificate of Appropriateness to Demolish a Home in

the Robbins Park Historic District to Construct a New Home - H-09-2017

### Summary

The Village of Hinsdale has received an application from Bayit Builders, LLC, on behalf of the property owner, Avra Properties, requesting approval for a Certificate of Appropriateness to demolish an existing home in the Robbins Park Historic District to construct a new house at 504 S. Oak Street. Per the Village Code, no permits shall be issued for demolition of any structure located in a designated historic district without the rendering of a final decision by the Historic Preservation Commission (HPC) on an application for a Certificate of Appropriateness.

### Request and Analysis

The subject property is located on an interior lot in the Robbins Park Historic District. The existing home was constructed in 1940, with no particular historic category per the National Register of Historic Places, and a noncontributing structure to the Robbins Park Historic District. The applicant would like to seek the right to obtain a demolition permit to construct a new Code compliant single family house (attached). The subject property is located in the R-1 Single Family Residential District and borders the same to the north, east, south and west. Per the submitted site plan, it is a legal nonconforming R-1 lot that is 25,894 SF in area.

### **Process**

Pursuant to Title 14, Section 14-5-1: (B) Historic District: No alteration shall be allowed to, and no permits shall be issued for, the alteration, demolition, signage, or any other physical modifications of the exterior architectural appearance of any structure, building, site, or area located in a designated historic district without the rendering of a final decision by the HPC on an application for a certificate of appropriateness. The final decision of the commission shall be advisory only.

The Title 14, Section 14-5-2 (A) General Standards and (B) Design Standards to review can be found on Attachment 4.



# **MEMORANDUM**

### Attachments:

Attachment 1 – Application for Certificate of Appropriateness and Exhibits (packet)

Attachment 2 - Zoning Map and Project Location

Attachment 3 - Robbins Park Historic District Map

Attachment 4 - Title 14, Section 14-5-2: Criteria (A) and (B)

Attachment 5 – National Register of Historic Places Sheet for the subject property (highlighted)

# VILLAGE OF HINSDALE HISTORIC PRESERVATION COMMISSION APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

The undersigned (the "Applicant") hereby makes application pursuant to Title XIV of the Village Code of Hinsdale, as amended, for a Certificate of Appropriateness for the building, structure or site described below. The Applicant certifies to the Village of Hinsdale that the following facts are true and correct:

	ress of Property under review: 504 S OAK
Prop	perty Identification Number: 09-12-235-009
i.	GENERAL INFORMATION
1.	Applicants Name: Bayit Builders Address: 212 W Van Buven Chucago 60607 Telephone Number: 312-588 1497
2.	Owner of Record (if different from applicant): Avra Properties  Address: Alaw Van Buren
	Telephone Number: <u>708 90ろ5600</u>
3.	Others involved in project (include, name, address and telephone number):  Architect: Plunkett Architect3  19 N Grant Hin5daw 630-189-8100
	Attorney:
	Builder:
	Engineer: Gabriel Group - PO Box 5374, Oak Brook (630-772-939)
I. SIT	E INFORMATION
1.	Describe the existing conditions of the property: Single Family Residence Will IN 1993/94.
2.	Property Designation:
	Listed on the National Register of Historic Places? YESNO
	Listed as a Local Designated Landmark? YESNO
	Located in a Designated Historic District?YESNO

	Description of work proposed. (Please submit a description of the proposed alterations and/or additions. Attach additional sheets, and photographs, as necessary).
	Removal of existing structure. Build new single family residence per plans
•	Successive Applications. Has all or any part of the property been the subject of another application for a Certificate of Appropriateness under Title XIV of the Village Code of Hinsdale within the last two years?  NoYes  If yes, state the date of the formal hearing and a statement explaining any relevant evidence supporting, the reasons why the Applicant believes the Village should consider this application at this time, pursuant to Section 14-3-10 of the Village Code.
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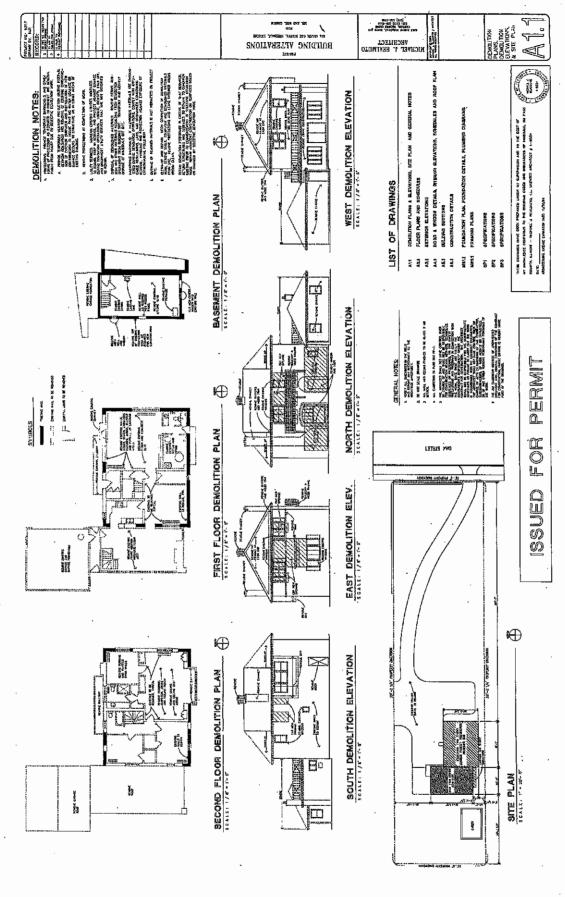
## CERTIFICATION

My Commission Expires 08/24/2021

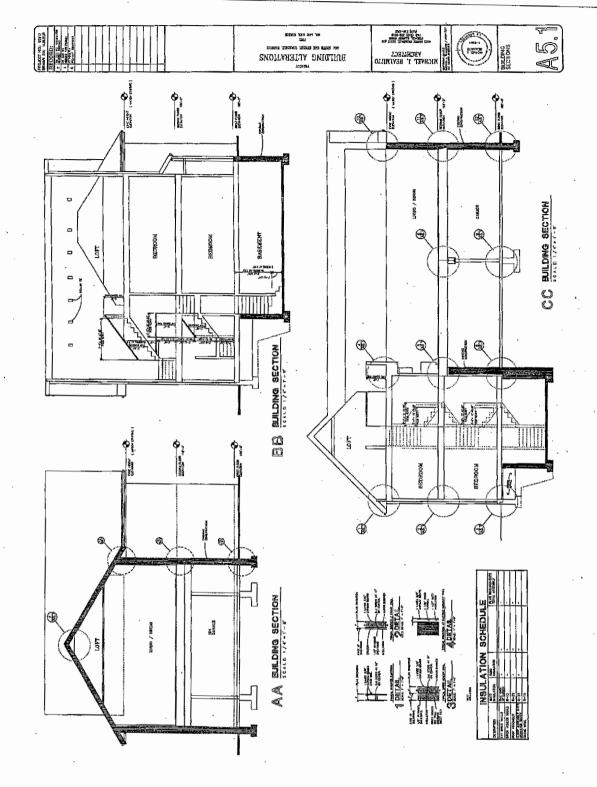
The Applicant hereby acknowledges and agrees that:

- A. The statements contained in this application are true and correct to the best of the Applicant's knowledge and belief;
- B. The Applicant will provide the Village with all additional information, as required, prior to the consideration of, or action on, this application;
- C. The Applicant shall make the property that is the subject of this application available for inspection by the Village at reasonable times;
- D. If any information provided in this application changes or becomes incomplete or inapplicable for any reason following submission of this application, the Applicant shall submit a supplemental application or other acceptable written statement containing the new or corrected information as soon as practicable but not less than ten days following the change, and that failure to do so shall be grounds for denial of the application; and
- E. If the Applicant fails to provide any of the requested information, or any other requested information by the Boards, Commissions, and/or Staff, then the applicant will not be considered.

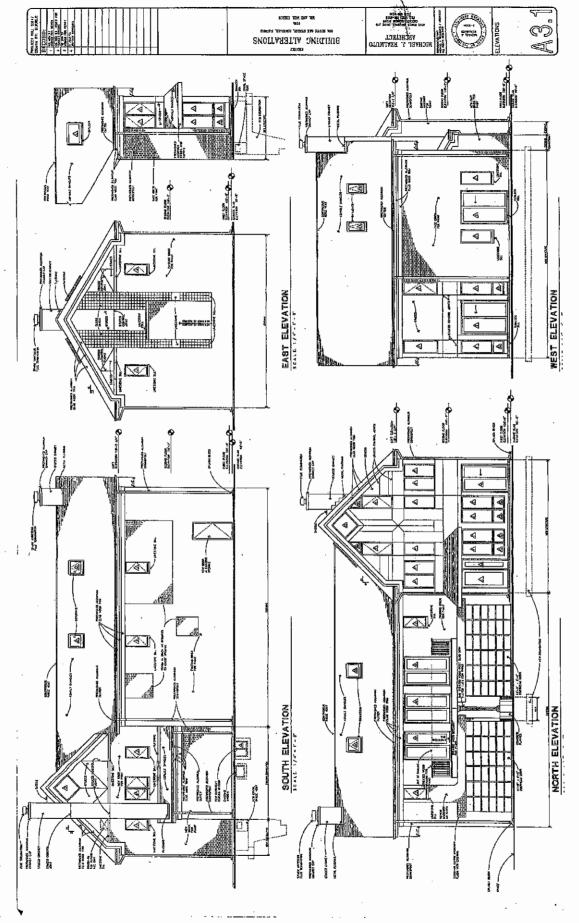
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Signature of Applicant	Signature of Applicant
CORPORATION	
Signature of Applicant's President	Signature of Applicant's Secretary
□ PARTNERSHIP	
Signature of Applicant	Signature of Applicant
Signature of Applicant	Signature of Applicant
LAND TRUST	OTHER
Signature	Signature of Authorized Officer
SUBSCRIBED AND SWORN to before me this 304 day of	
Eptember , 2017.	Notary Public
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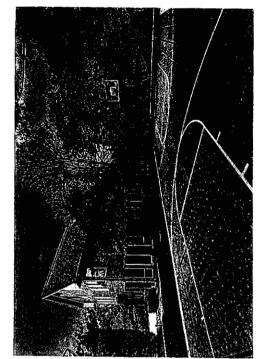


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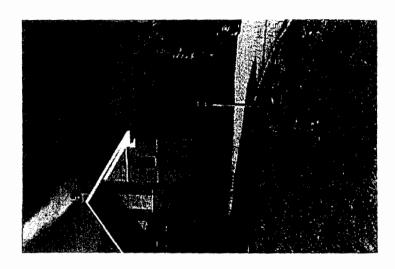


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FROM BACKYARD SPORTS COURT



VIEW FROM DAKSTREET HOUSE FRONT



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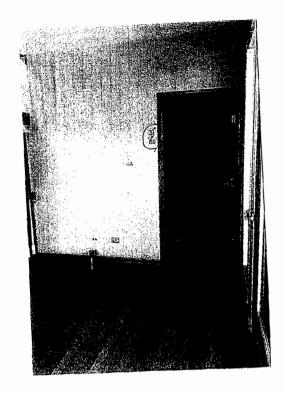
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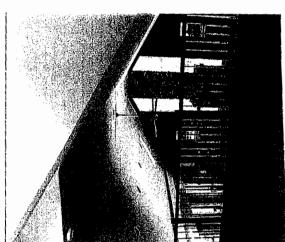
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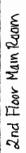


BATH ON FIRST FLOOR TO BEDROOM



2nd FLOOR BEDROOM

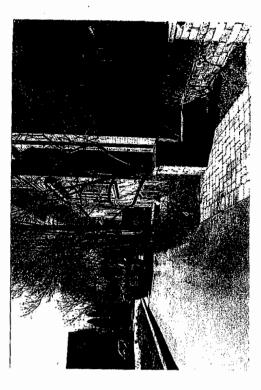




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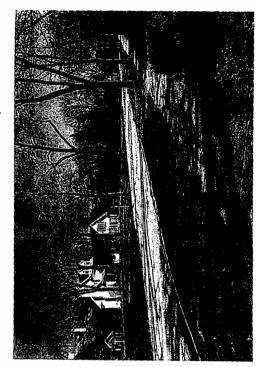
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STREET VIEW (TO SOUTH & FRANT)



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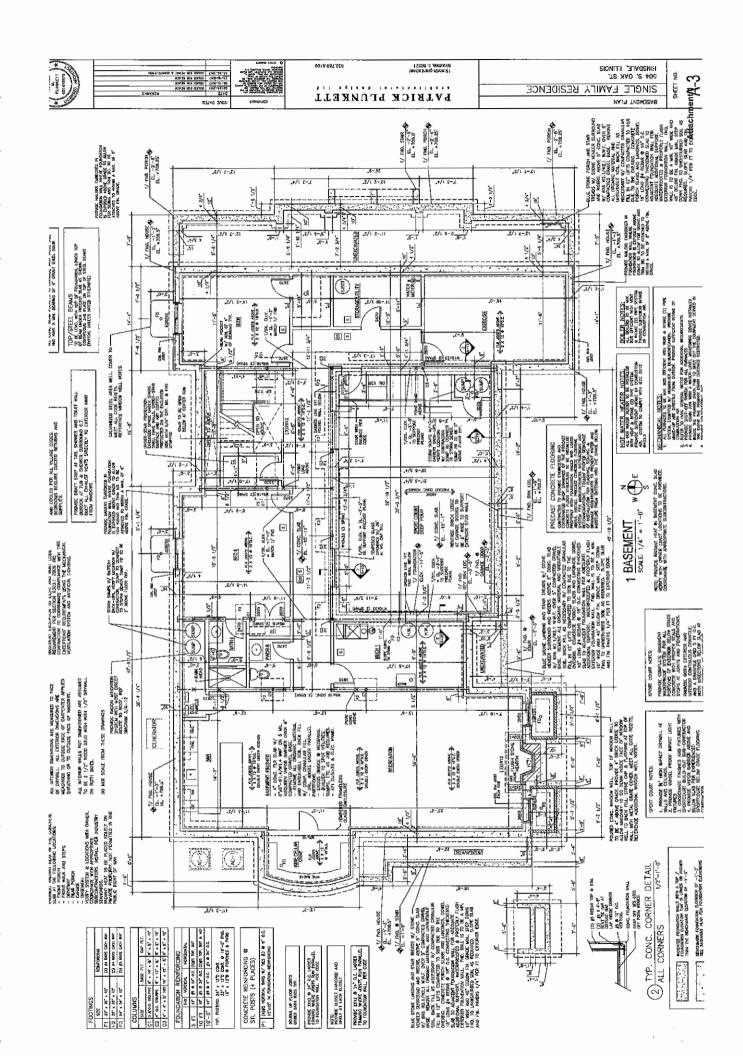
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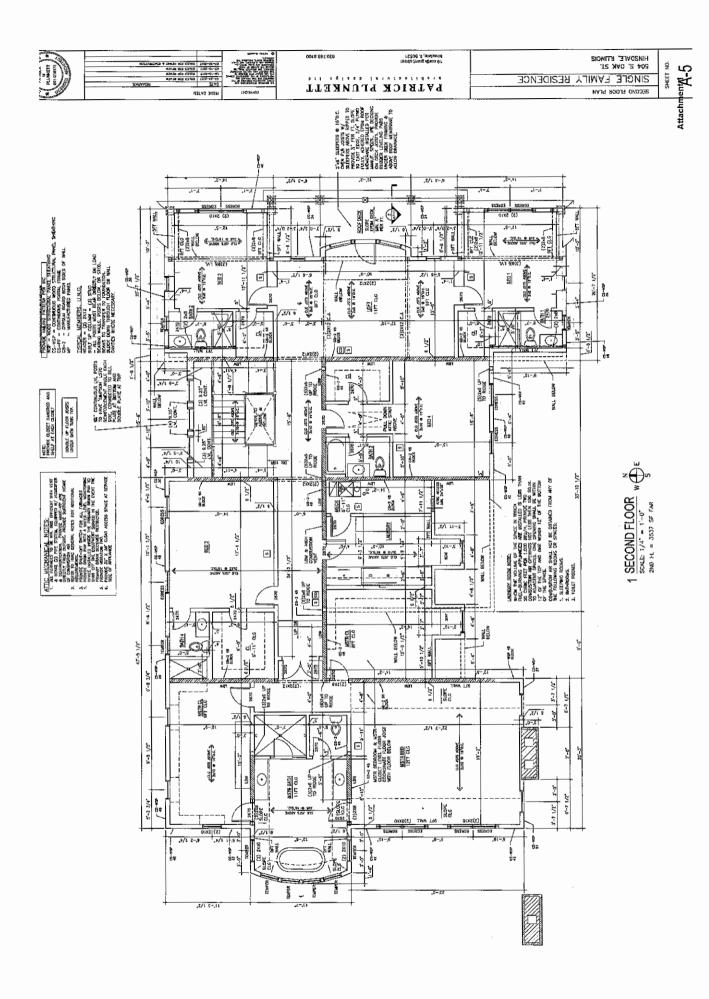
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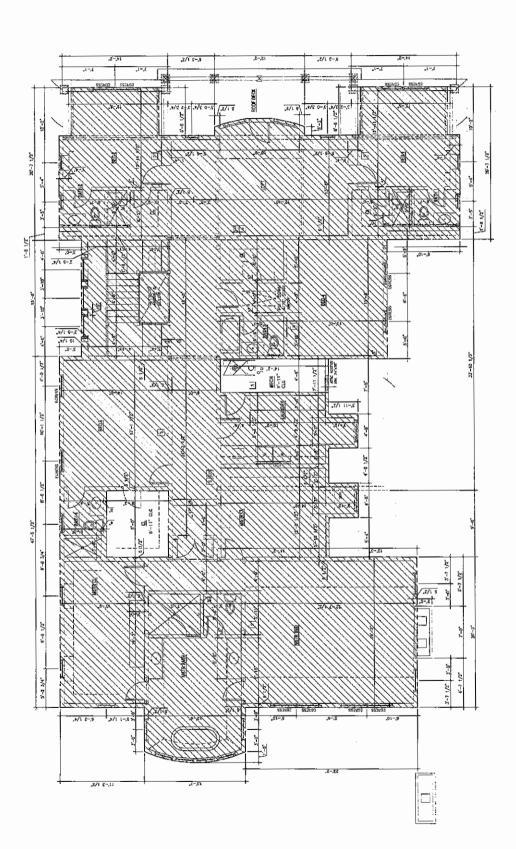


MAX. FLOOR AREA 3,639 SF = FIRST FLR 3,537 SF = SECOND FLR 7,176 SF = FAR TOTAL

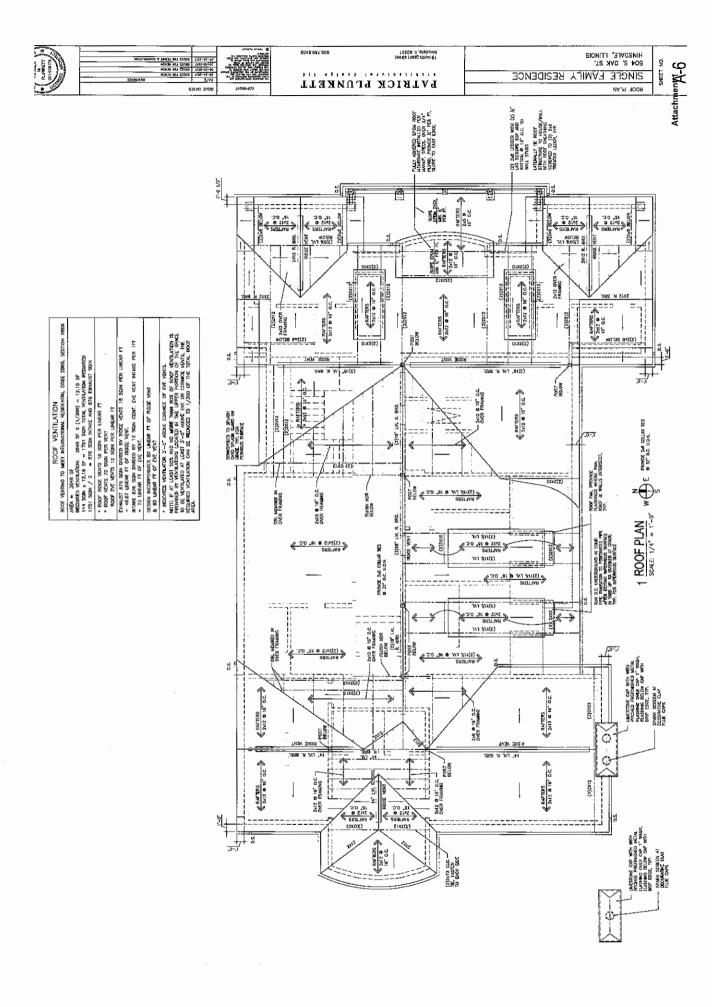


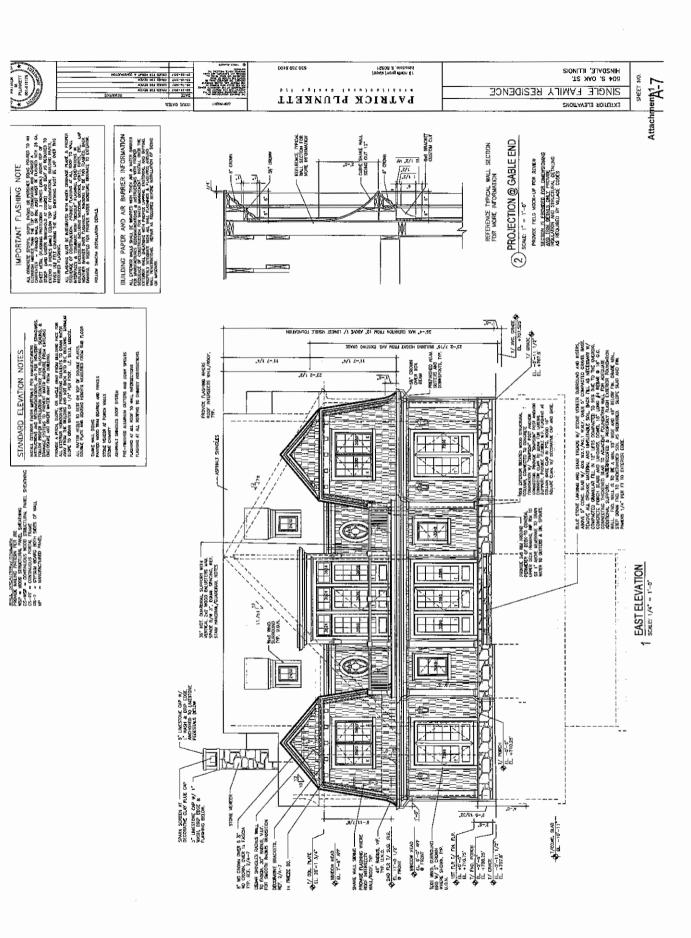
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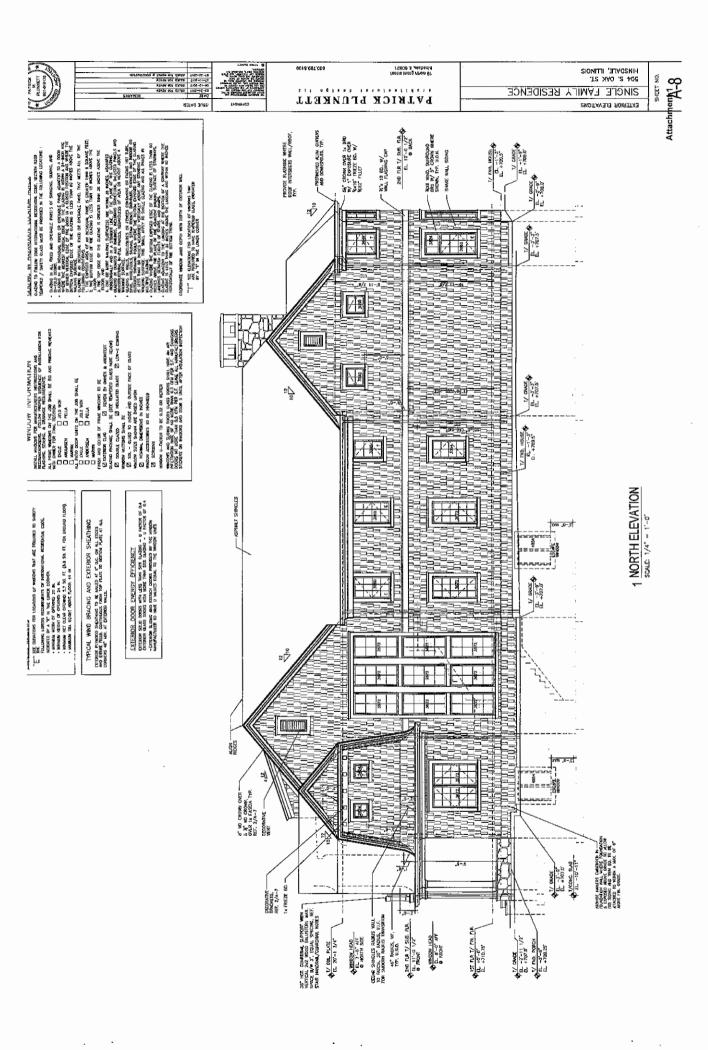
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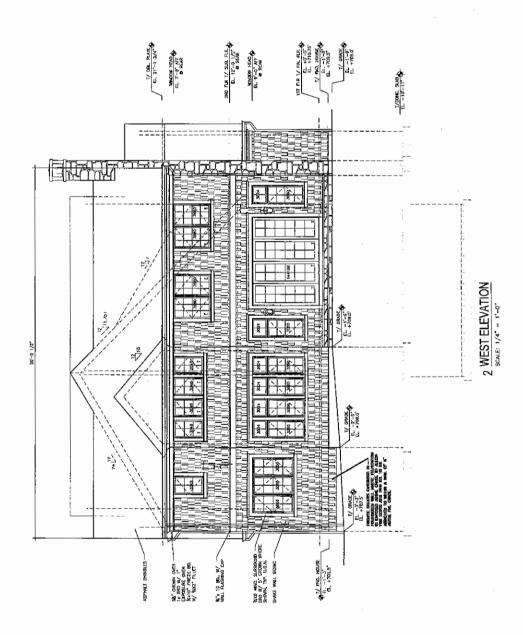


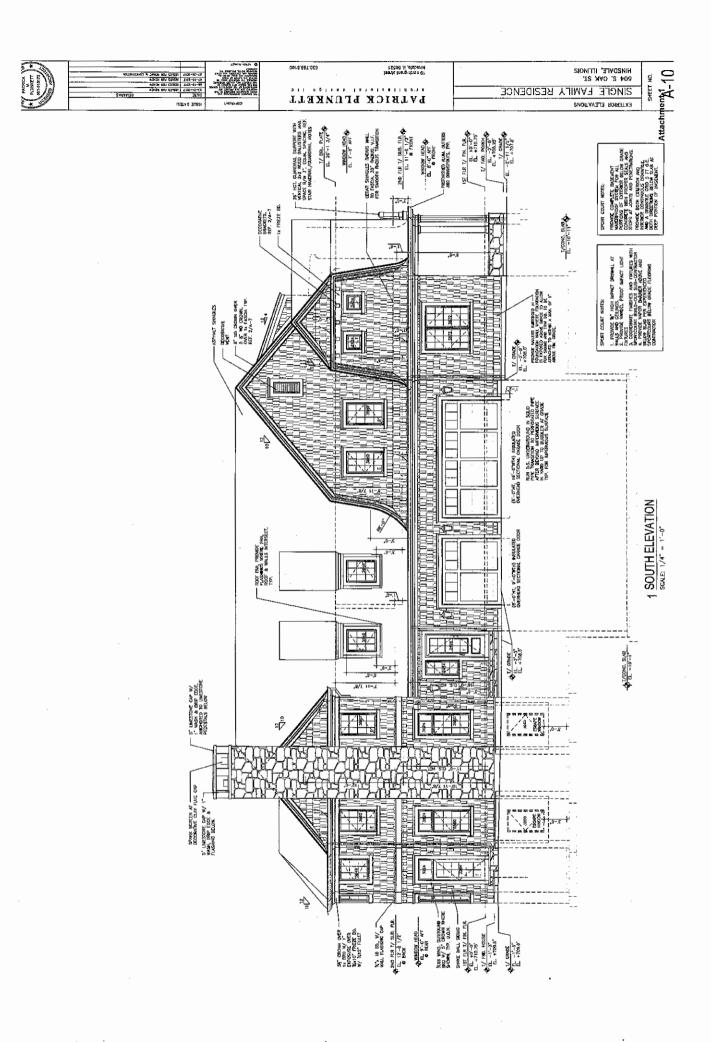


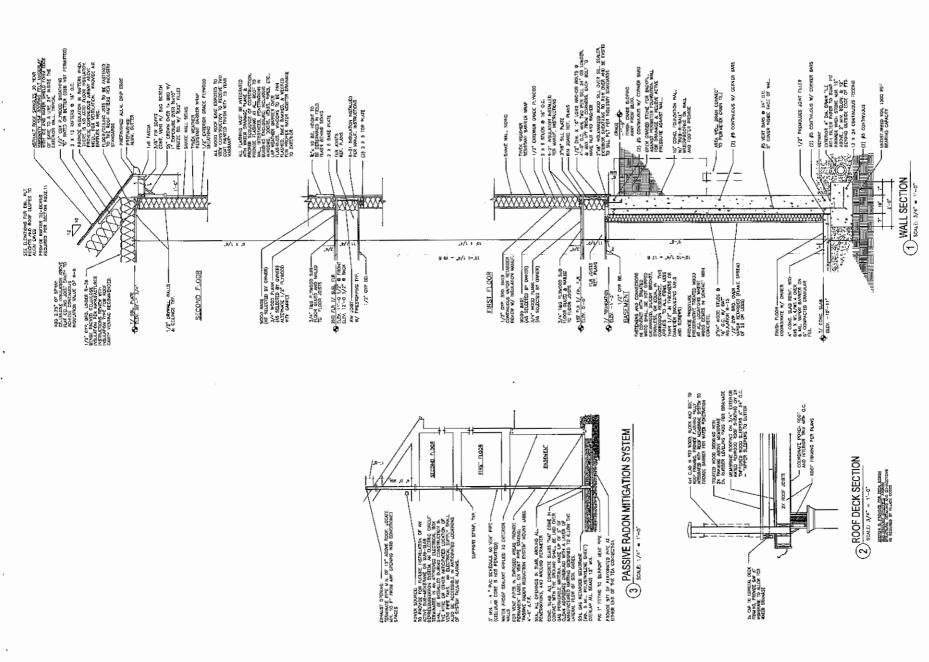


EXTERIOR ELEVATIONS

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SECTIONS & RADON MINGATION DIAGRAM
SINGLE FAMILY RESIDENCE 504 S. DAK ST, HINSDALE, ILLINOIS

PATRICK PLUNKETT

19 nouth grant street hinsdale, II. 86521

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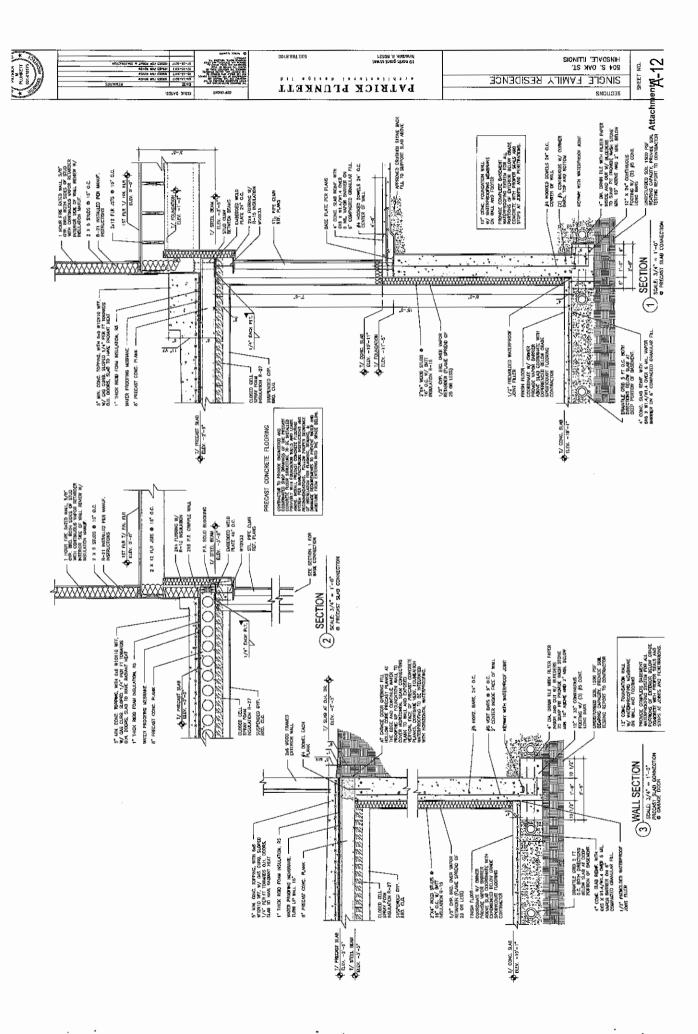
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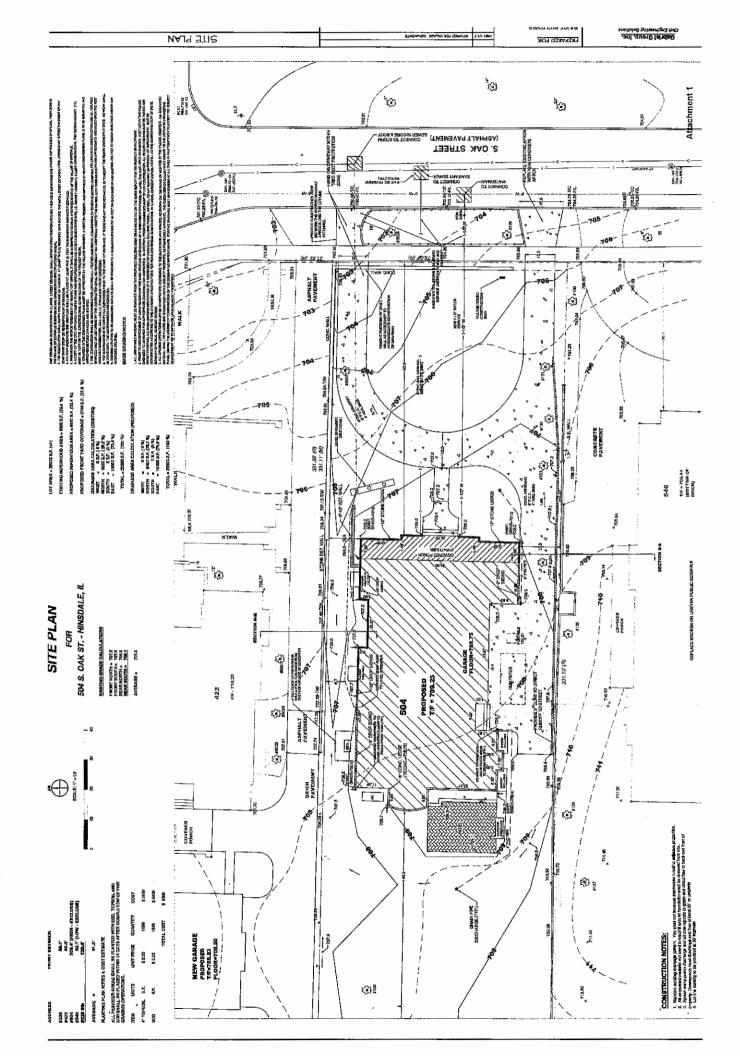
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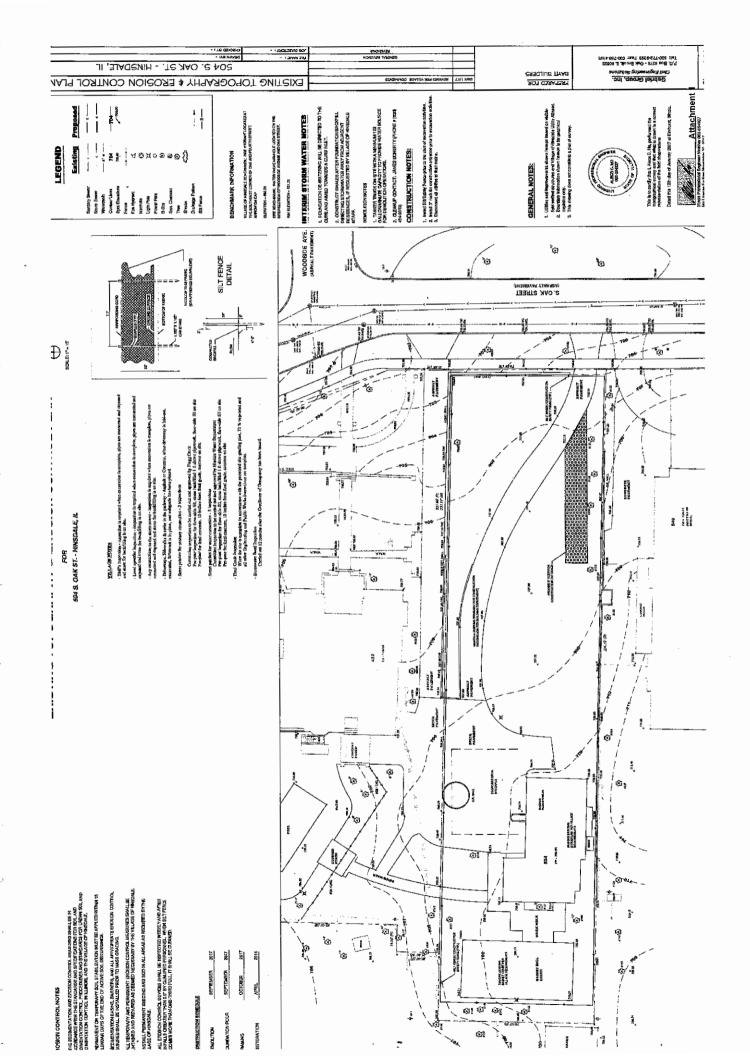
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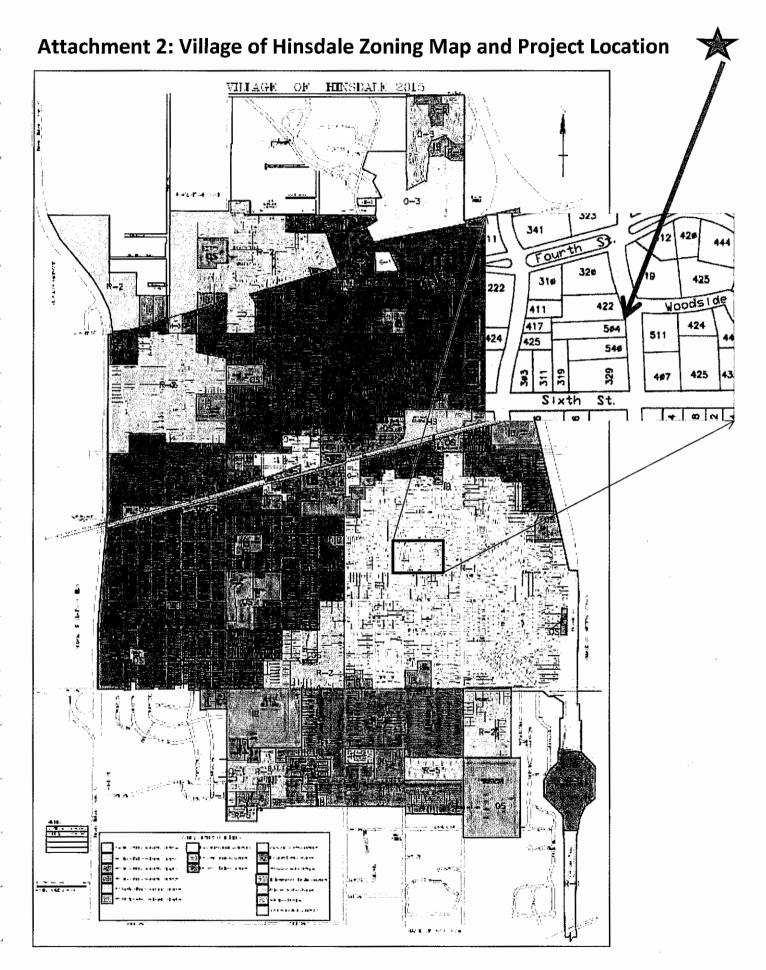
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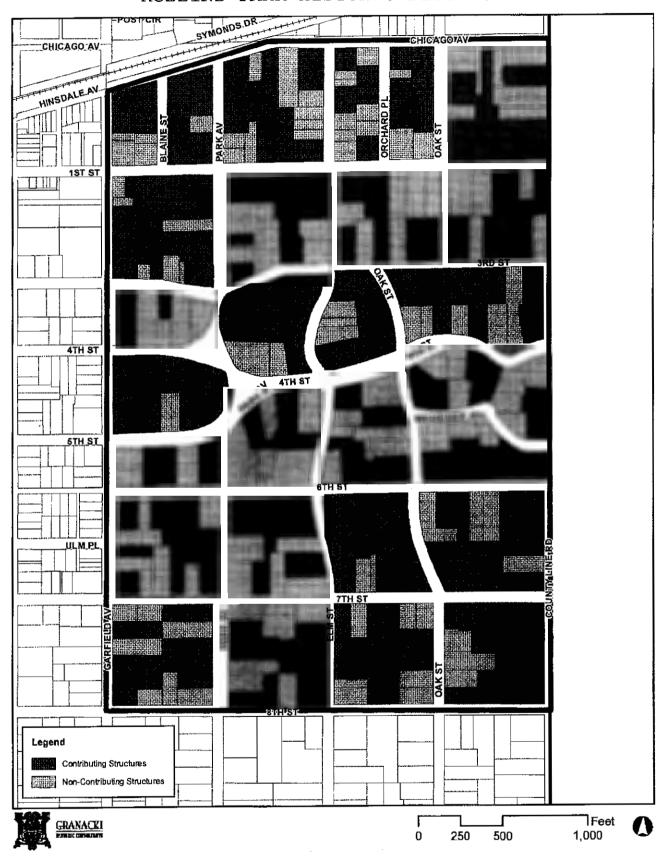








# ROBBINS PARK HISTORIC DISTRICT



#### Attachment 4

## CERTIFICATE OF APPROPRIATENESS

## 14-5-2: CRITERIA:

All applications for a certificate of appropriateness shall conform to the applicable standards in this section.

#### A. General Standards:

- 1. Alterations that do not affect any essential architectural or historic features of a structure or building as viewed from a public or private street ordinarily should be permitted.
- The distinguishing original qualities or character of a structure, building, or site and its environment should not be destroyed. No alteration or demolition of any historic material or distinctive architectural feature should be permitted except when necessary to assure an economically viable use of a site.
- All structures, buildings, sites, and areas should be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance than the true age of the property are discouraged.
- 4. Changes that may have taken place in the course of time are evidence of the history and development of a structure, building, or site and its environment. These changes may have acquired significance in their own right, and this significance should be recognized and respected when dealing with a specific architectural period.
- Distinctive stylistic features or examples of skilled craftsmanship that characterize a structure, building, site, or area should ordinarily be maintained and preserved.
- 6. Deteriorated architectural features should be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- The surface cleaning of structures and buildings should be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the structures and buildings should be avoided.
- 8. New structures or buildings, or alterations to sites should not be discouraged when such structures or alterations do not destroy significant historical or architectural features and are compatible with the size, scale, color, material, and character of the site, neighborhood, or environment.
- Whenever possible, new structures or buildings, or alterations to the existing conditions of sites should be done in such a manner that, if such new structures or alterations were to be removed in the future, the essential form and integrity of the original structure, building, site, or area would be unimpaired.
- Any permitted alteration or demolition should promote the purposes of this Title and general welfare
  of the Village and its residents.

11. Demolition should not be permitted if a structure, building, or site is economically viable in its present condition or could be economically viable after completion of appropriate alterations, even if demolition would permit a more profitable use of such site.

#### B. Design Standards:

- Height: The height of a landmark after alteration should be compatible with the height of the original landmark. The height of a structure or building and adjacent open spaces after any proposed alteration or construction within an historic district should be compatible with the style and character of the structure or building and with surrounding structures and buildings in an historic district.
- 2. Relationship Between Mass And Open Space: The relationship between a landmark and adjacent open spaces after its alteration should be compatible with such relationship prior to such alteration. The relationship between a structure or building and adjacent open spaces after alteration within an historic district should be compatible with the relationship between surrounding structures, buildings and adjacent open spaces within such historic district.
- 3. Relationship Among Height, Width And Scale: The relationship among the height, width, and scale of a landmark after alteration should be compatible with such relationship prior to such alteration. The relationship among height, width, and scale of a structure or building after an alteration within an historic district should be compatible with the relationship among height, width, and scale of surrounding structures and buildings within such historic district.
- 4. Directional Expression: The directional expressions of a landmark after alteration, whether its vertical or horizontal positioning, should be compatible with the directional expression of the original landmark. The directional expression of a structure or building after alteration within an historic district should be compatible with the directional expression of surrounding structures and buildings within such historic district.
- 5. Roof Shape: The roof shape of a landmark after alteration should be compatible with the roof shape of the original landmark. The roof shape of a structure, building, or object after alteration within an historic district should be compatible with the roof shape of surrounding structures and buildings within such historic district.
- 6. Architectural Details, General Designs, Materials, Textures, And Colors: The architectural details, general design, materials, textures, and colors of a landmark after alteration should be compatible with the architectural details, general design, materials, textures, and colors of the original landmark. The architectural details, general design, materials, textures, and colors of a structure or building after alteration within an historic district should be compatible with the architectural details, general design, materials, textures, and colors of surrounding structures and buildings within such historic district.
- 7. Landscape And Appurtenances: The landscape and appurtenances, including without limitation signs, fences, accessory structures, and pavings, of a landmark after alteration should be compatible with the landscape and appurtenances of the original landmark. The landscape and appurtenances of a structure or building after alteration within an historic district should be compatible with the landscape and appurtenances of surrounding structures and buildings within such historic district.
- 8. Construction: New construction in an historic district should be compatible with the architectural styles, design standards and streetscapes within such historic districts.

NPS Form 10-900-a (8-86)

OMB Na. 1024-0018

# United States Department of the Interior National Park Service

# National Register of Historic Places Continuation Sheet

Section number 7 Page 15

# Robbins Park Historic District Hinsdale, DuPage County, IL

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14	s	OAK	Colonial Revival	c. 1910	1,3 9000000000000000000000000000000000000	c	NC		2 10 10 10 10 10 10 10 10 10 10 10 10 10	detached garage
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23	S	OAK	Prairie .	c. 1915	Conover, Isabel S. House	c	-	State of the state	**************************************	
24	5	OAK	Colonial Revival	c. <b>191</b> 5		С	NC			detached garage
30	S	OAK	Craftsman Bungalow	c. 1920	388	c	C		The state of the s	detached garage
31	s	OAK	Neo-Traditional	1997	and the latest and th	NC	-	Mifflin Assoc., R. A. (RAM)	Hallmark Homes of Hinsdale	A Special Control of the Control of
35	s	OAK	Craftsman	c. 1910		С	-			
36	s	OAK	Renaissance Revival	1928	Jaedecke, C.P. House	С	-	Wilkins, S. W.	Droos, A.	
136	s	OAK	Craftsman	1912	Barfield, William G. House	С	-	Barfield, William Gibson		
316	5	OAK	Colonial Revival	c. 1895	Hildebrand, Lewis K. House	c	c			detached garage
327	s	OAK	Neo-Traditional	2005- 06	ALCO CONTRACTOR OF THE PROPERTY OF THE PROPERT	NC	-			12
419	5	OAK	Classical Revival	c. 1910- 11	Hicks, Ernest H. House	С	_			
422	S	OAK	Prairie	1904	Brown, Charles A. House	С	_	Zimmerman, William Carbys		
504	s	OAK	No style (altered)	c. 1940		NC	-	Marie I		
511	S	OAK	No style	c. 1925		NC	NC			Detached garage
540	5	OAK	Neo-Traditional	1998		NC	-	Kang, Sinsuk	Peyton, Alan R.	
510	s	OAK	Ranch	1952	Framburg, Mr. & Mrs. Stanley	c	С	Stade, Charles	Wendell, A. W. & Son	Shed

Wednesday, November 1, 2017

Hinsdale Historical Society and Historic Preservation Committee's partnership. Mobile Tours App: Historical Tourist: Hinsdale Edition

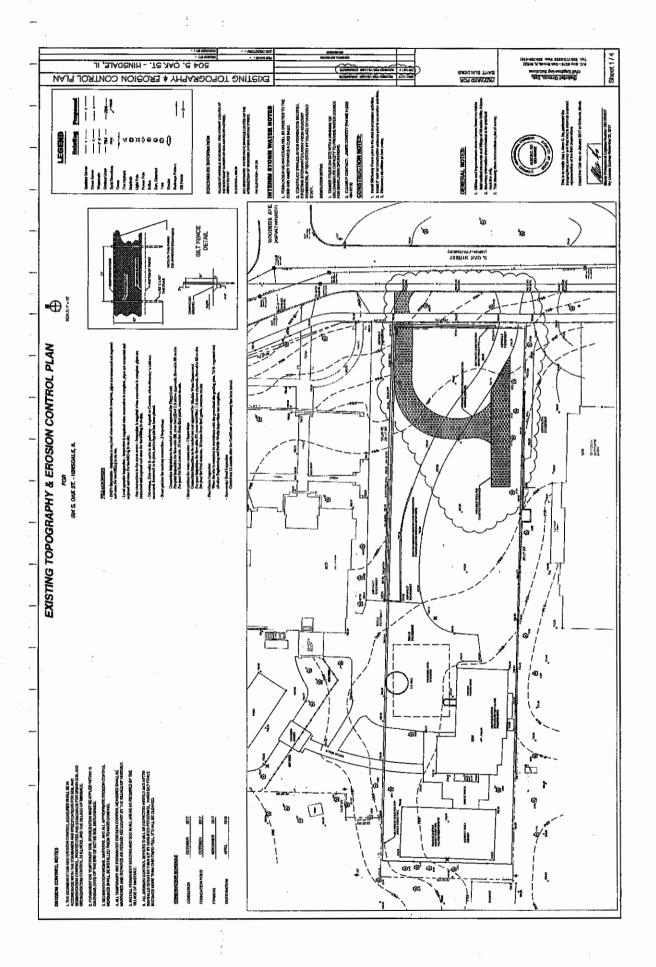
October 2017 Update

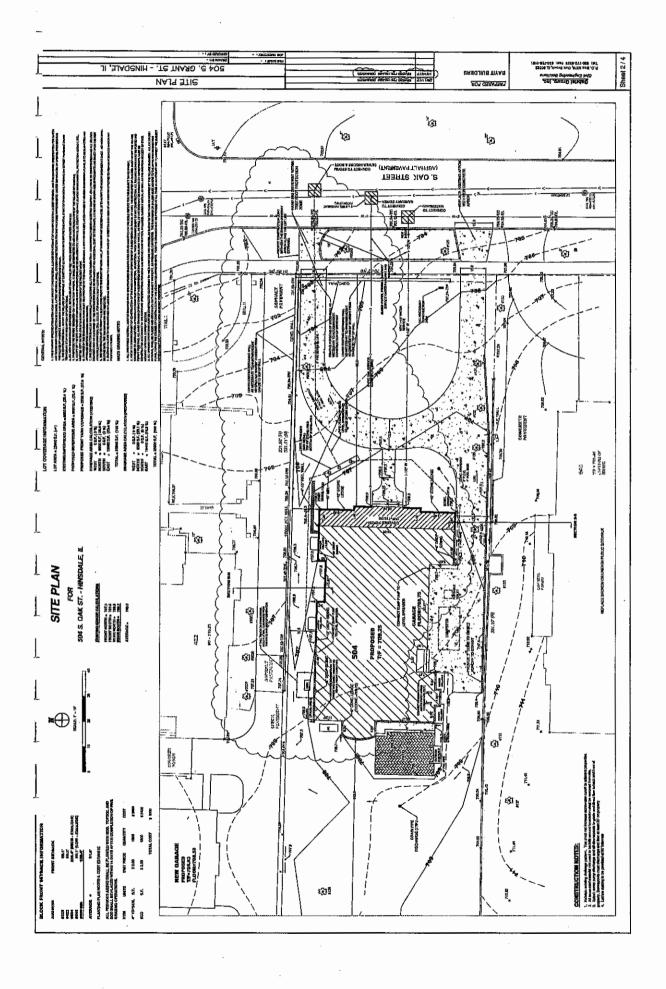
The ad hoc app workgroup at the Society continue to make substantial progress on the app testing and development.

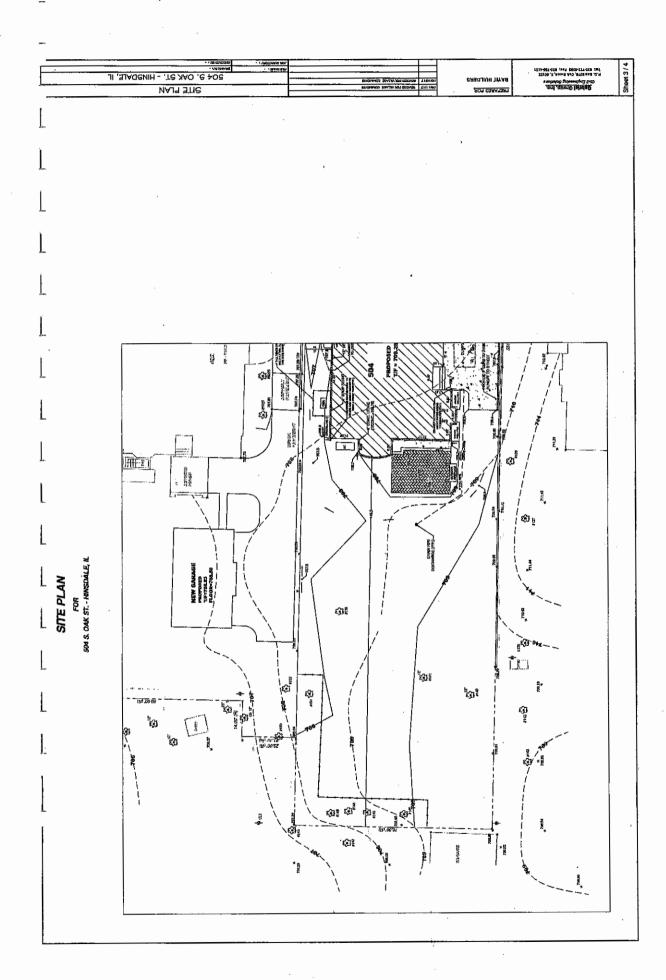
The Downtown Tour has: complete information uploaded, been developed into the Round 1 prototype and undergone its first full review. Next steps are to work with the MYTOURS vendor to address the minor cosmetic issues in the app presentation (eg. extra white space in some areas), identify a few new photographs about the: society, zook home and studio, volunteering and donating and then testing the touring functionality.

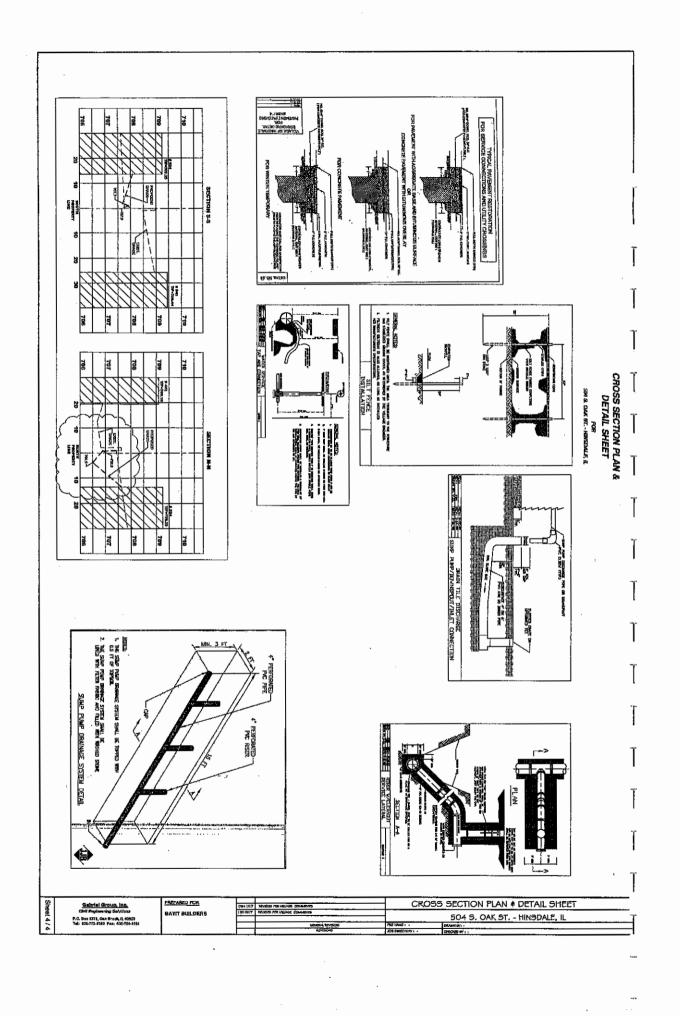
The South and North Tours are nearly ready for submission to the vendor to "publish" those tours in the app prototype. The narratives have been written, reviewed, and edited. Photographs have been chosen and captioned. Next steps are to: load the photos, submit the tour information to MYTOURS to publish in the app, review these tour features and layout in the app prototype, identify and rectify any cosmetic changes and test the touring functionality.

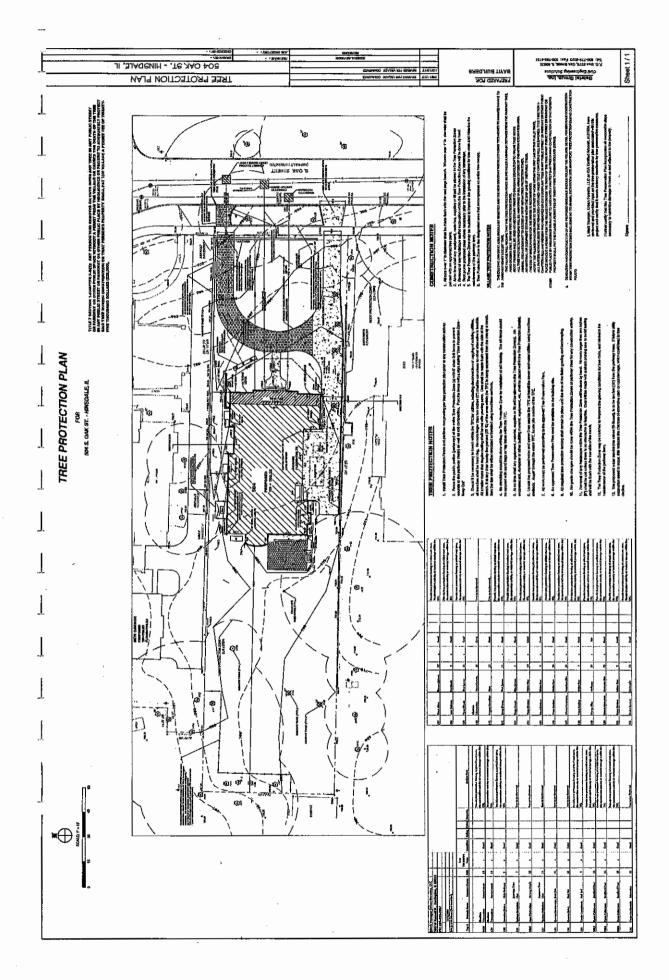
As a reminder, we welcome the help of any interested Commissioners who would like to be involved in the launch planning or testing the tour functionality of the prototype this fall and winter. Please send Society board member, Karen Dunn Lopez and email if you are interested at kdunnlopz@gmail.com.











1		VILLAGE OF HINSDALE
2		ZONING BOARD OF APPEALS
3		MINUTES OF THE MEETING
4		Wednesday, May 15, 2013
5		
6	1.	CALL TO ORDER
7		Chairman Debra Braselton called the regularly scheduled meeting of the
8		Zoning Board of Appeals to order on Wednesday, May 15, 2013 at 7:32 p.m.
9		in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue,
10		Hinsdale, Illinois.
11		Timbudio, Timolo.
12	2	ROLL CALL
13	4.	Present: Chairman Debra Braselton, Members Marc Connelly, Gary
$\frac{13}{14}$		Moberly, Bob Neiman and John Callahan
15		Moderly, bod Nelman and John Cananan
		Absort Mombors Weith Ciltury and Dady Diggort
16		Absent: Members Keith Giltner and Rody Biggert
17		Alex Decreeds Village Address on Michael Masses Discourse C. C.
18		Also Present: Village Attorney Michael Marrs, Director of Community
19		Development/Building Commissioner Robb McGinnis, Village Clerk
20		Christine Bruton, Court Reporter Kathy Bono
21		ADDDOXYAL OF MINYIMDS A CLASS COAC
22		APPROVAL OF MINUTES – April 17, 2013
23		There being no changes or corrections to the draft minutes, Member
24		Moberly moved to approve the minutes of the Meeting of April 17,
25		2013. Member Connelly seconded the motion.
26		
27		AYES: Members Connelly, Moberly, Neiman and Chairman Braselton
28		NAYS: None
29		ABSTAIN: Member Callahan
30		ABSENT: Members Biggert and Giltner
31		
3.2		Motion carried.
33		
34	4.	APPROVAL OF FINAL DECISION – None
35		
36	5.	RECEIPT OF APPEARANCES
37		All persons intending to testify in the public hearing were sworn in by the
38		court reporter.
39		
40	6.	RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS
41		TO MAKE PUBLIC COMMENT OF A GENERAL NATURE - None
42		
43	7.	PRE-HEARING AND AGENDA SETTING - None

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## 8. PUBLIC HEARINGS

a) APP-01-13, 735 and 739 Phillippa

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

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

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

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

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

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Member Callahan moved to close the public hearing on APP-01-13, 735 and 739 Phillippa. Member Connelly seconded the motion.

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

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NAYS: None ABSTAIN: None

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ABSENT: Members Giltner and Biggert

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Motion carried.

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#### DELIBERATION

Member Moberly argues against the Village policy because it seems

36 37 38 arbitrary to him. Member Neiman commented that in his opinion the language in §10 105 is dispositive; when he reads the language, it says it's ok notwithstanding any other section of the code. Further, given that Mr. McGinnis's office addresses this issue every day, and they have no strong view on the matter, it leads him to believe this Board should approve. Member Callahan agrees, there is no record of this policy and he believes the benefit of doubt should go to the homeowner.

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

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

34

1	AYES: Members Connelly, Moberly, Neiman, Callahan and Chairman
2	Braselton
3	NAYS: None
4	ABSTAIN: None
5	ABSENT: Members Giltner and Biggert
6	
7	Motion carried.
8	
9	9. NEW BUSINESS – None
10	
11	10. UNFINISHED BUSINESS – None
12	
13	11. ADJOURNMENT
14	With no further business before the Zoning Board of Appeals, Member
15	Callahan made a motion to adjourn the meeting of the Zoning Board
16	of Appeals of May 15, 2013. Member Moberly seconded the motion.
17	ANTONIO DE 1 O 11 DE 1 1 DE 1 O 11 DE 1
18	AYES: Members Connelly, Moberly, Neiman, Callahan and Chairman
19	Braselton
20	NAYS: None
21	ABSTAIN: None
22 23	ABSENT: Members Giltner and Biggert
23 24	Motion carried.
25	Motion Carried.
26	Chairman Braselton declared the meeting adjourned at 8:07 p.m.
27	Chairman Braseroon acciared the meeting adjourned at 0.07 p.m.
28	
29	Approved:
30	Christine M. Bruton
31	Village Clerk
32	
3.3	



## MEMORANDUM

DATE:

February 11, 2016

TO:

Chairman Neiman and Members of the Zoning Board of Appeals

FROM:

Robert McGinnis, Community Development Director/Building Commissioner

RE:

Legal Nonconforming Lots of Record

At the last Zoning Board of Appeals meeting of November 15, 2017, Chairman Neiman asked staff what could be done to prevent some of the recent cases involving a seemingly buildable lot from requiring zoning relief in order to be developed.

Generally, the root cause for most of these requests is tied to the definitions contained in 12-206. They are specifically "Nonconforming Lot of Record, Legal" and "Zoning Lot". Staff has historically taken the position that once a Zoning Lot is created, the only way to allow an underlying Lot of Record to be broken out and developed is if each of the individual lots meets all of the bulk zoning standards set forth in 3-110 of the code rather than under the standards set forth in 10-105. Attached is a memo from the village attorney that provides additional detail on this.

The Zoning Board of Appeals is authorized to initiate changes and amendments to the Code under 11-102(K). If the members agree that the existing language needs to be amended in order to deal with these types of cases, they simply need to direct staff to work with the village attorney and draft a Text Amendment for review. If, on the other hand, the members are comfortable hearing these types of cases and feel that the existing language is adequate, staff will continue to interpret the code as we have and bring these isolated cases forward for consideration as they arise.



20 N. Wacker Drive, Ste 1660 Chicago, Illinois 60606-2903 T 312 984 6400 F 312 984 6444

DD 312 984 6419 mamarrs@ktilaw.com 15010 S. Ravinia Avenue, Sie 10 Orland Park, Illinois 60462-5353 T 708 349 3888 F 708 349 1506

www.ktilaw.com

#### CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

#### **MEMORANDUM**

To:

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

From: Date:

Michael A. Marrs April 18, 2017

Re:

Zoning Opinion - Legal Non-Conforming Lots of Record

**QUESTION:** In what circumstances does Section 10-105 of the Zoning Code of the Village of Hinsdale ("Zoning Code") allow development of nonconforming lots of record within the Village of Hinsdale (the "Village")?

**BACKGROUND:** The Village was largely platted prior to the enactment of the current Zoning Code, and, in some cases, prior to the existence of any zoning code. The Village's current Zoning Code was adopted in 1991.

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

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

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

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

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

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

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

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

Similarly, Section 10-105 sets forth an alternative set of lot standards applicable to legal, nonconforming lots within the Village. The standards are an alternative to those set forth in Section 3-110, and relate to maximum elevation, front, back and side yard requirements, total lot area, and lot width and depth. This alternative set of standards, by the plain language of Section 10-105, allows single-family detached dwellings to be erected, maintained, altered, enlarged, rebuilt, restored, and repaired on legal, nonconforming lots in any residential zoning district. Section 10-105 states that the ability to take the foregoing actions on legal, nonconforming lots of record applies "notwithstanding the regulations imposed by any other provisions of [the Zoning Code]."

Also relevant to this discussion and analysis are "Zoning Lots," which are defined in the Zoning Code as "[a] tract of land consisting of one or more lots of record, or parts thereof, under single ownership or control, located entirely within a block and occupied by, or designated by its owner or developer at the time of filling for any zoning approval or building permit as a tract to be developed for, a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designed and arranged, or required under this code, to be used with such building or use." Zoning Code, §12-206.

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

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

Staff has historically informed property owners that once they utilize multiple lots of record as a single zoning lot, the lots of record will be regarded as a single lot, which may not thereafter be treated as multiple lots of record which can be separately built on under Section 10-105. In more recent years, staff has taken the additional step of asking owners to consolidate their multiple lots of record where permits are sought for use of the lots as a single zoning lot. Despite taking that step, staff has not identified a Code provision that affirmatively prohibits single zoning lots

that are made up of two or more legal, nonconforming lots of record from being separately built on under Section 10-105.

In 2013, staff's longstanding interpretation that two nonconforming lots of record that were combined into a single zoning lot could not be redivided for use as two residential lots was the subject of an appeal to the ZBA. The properties at issue consisted of two adjacent lots of record, both of which had houses on them at one time. The owner of one of the homes bought the house next door and demolished it. Two years later, the owner sought to sell the now vacant adjacent lot. Staff held that because the owner had, among other things, fenced both lots and installed a sprinkler system over both lots, a single, undividable zoning lot had been created. Following an appeal to the ZBA, the ZBA overturned staff's decision, holding that where one of the lots had only minor accessory structures on it, the single zoning lot could be divided and thereafter be used for two separate residences (the "2013 ZBA Decision").

ANSWER: I was asked by staff to review the above Zoning Code provisions, as well as the 2013 ZBA Decision, and historical files related to several properties with pending requests affected by the above provisions, in order to provide guidance relative to the ability of owners to use legal, nonconforming lots of record for separate residential uses pursuant to Section 10-105, even where they are currently being used as a single zoning lot. After conducting a thorough review of all of the foregoing, I conclude that in cases where a legal, nonconforming lot of record, as defined in the Zoning Code, is found to exist, it may be used for separate residential development of a single-family home.

ANALYSIS: While the collection of Zoning Code sections and background materials is complex as a whole, in the end, the reasoning is simple. Section 10-105 indicates that it applies, "notwithstanding the regulations imposed by any other provisions of [the Zoning Code]." That plain language indicates an intent to allow single-family detached dwellings, and any permitted accessory structure, that comply with the regulations set forth in Section 10-105, to be erected, maintained, altered, enlarged, rebuilt, restored, and repaired on legal, nonconforming lots of record, regardless of what any other provision of the Zoning Code may say. That, by extension, means that even if another provision of the Zoning Code explicitly stated that Zoning Lots, once established, could not thereafter be split in a way that would allow the underlying legal, nonconforming lots of record to be used for separate residences, Section 10-105 would control in cases where it applied. Regardless, no such explicit prohibition on the division of Zoning Lots has been identified.

Not all nonconforming lots of record are legal nonconforming lots of record, however, as defined by the Zoning Code. As Section 10-105 applies only to LEGAL, nonconforming lots of record, the ability to utilize a nonconforming lot of record for a single-family dwelling is necessarily qualified by the definition of legal, nonconforming lots set forth in Section 12-206. A legal, nonconforming lot of record is one that is platted, meets the minimum lot area and lot dimension standards of 10-105.A., is located in a residential zoning district, and was either vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode primary structure not authorized to be rebuilt or replaced pursuant to subsection 10-104.C. of the Zoning Code. Zoning Code, §12-206.¹ Based on the vacancy requirement in the definition, where a nonconforming lot contains all or a portion of a precode structure then, the lot is

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<sup>&</sup>lt;sup>1</sup> A legal, nonconforming lot may also be created through division of a through lot pursuant to subsection 1.2. in Section 3-110 if certain prerequisites are met. This narrow category of legal, nonconforming lots is not relevant to the discussion here.

governed by the precode structure provisions in 10-104, rather than the legal, nonconforming lot of record provisions in 10-105.

There are many nonconforming lots within the Village. As noted previously, Sections 10-104 and 10-105 appear to have been included in the Zoning Code to address those nonconformities. Where a lot includes all or a portion of a precode primary structure, the provisions of Section 10-104 allow the continued viable use of those lots. Where a lot is of sufficient size under 10-105, was vacant in 1988, or became vacant thereafter under circumstances which somehow prevented the rebuilding of the previous precode structure, it is eligible for development under Section 10-105.

The scheme created by the Code has an inherent order to it that essentially maintains the current density of the Village. If a precode structure exists on a lot, you can generally continue to utilize the lot for that single-family residential purpose, regardless of its size. If you have a lot that appears to have been platted for development, but has never been developed, you can do so, if certain minimum lot area and dimension and other standards are met. Consistent with this scheme, it is my opinion that demolition, destruction, or other disposition of a precode structure on a lot made up of multiple lots of record and historically used as a single zoning lot would not cause a property to move from 10-104 to 10-105, except in circumstances where, for whatever reason, 10-104 would prevent the precode structure from being rebuilt. Instead, the owner retains the right to rebuild a single dwelling on the zoning lot. Also consistent with the overall scheme created by the Code is staff's historical position that once a lot or collection of lots of record are used as a single zoning lot, they may not thereafter be broken out as multiple lots as of right. The 2013 ZBA Decision arguably created an exception to that rule for instances where the only use of an adjacent lot was for placement of an accessory structure.

In order to demonstrate how Section 10-104 and 10-105 apply in practice, let's look at some specific examples:

Example 1: If you have a vacant nonconforming lot of record, and it meets Section 10-105 area and dimension standards for the residential zoning district in which it is located, and the nonconforming lot was vacant in 1988, you have the right to build a single-family home on it in conformance with Section 10-105. Thereafter, you have the right to maintain, alter, enlarge, rebuild, restore and repair that house, so long as you continue to comply with the bulk standards set forth in Section 10-105.

Example 2: If you have a vacant nonconforming tot of record that was vacant in 1988, but does NOT meet Section 10-105 area and dimension standards, you cannot build on it without additional zoning relief, because it is NOT a LEGAL nonconforming Lot of Record (A.2. of definition not met).

Example 3: You have two (2) vacant nonconforming lots of record that meet Section 10-105 area and dimension standards, but which had a precode structure spanning them in 1988. The precode structure on the lot was subsequently demolished. You generally would have the right to rebuild that structure under Section 10-104, in which case you do not have the right to build a new structure on each of the individual nonconforming lots, as they are NOT LEGAL nonconforming Lots of Record (A.3. of definition not met).

Example 4: You have a nonconforming lot of record with a house on it. You buy the lot next door, and tear down the adjacent house. Two years later, you seek to sell the lot next door. The adjacent lot does NOT meet Section 10-105 area and dimension standards and was NOT

vacant in 1988. You can still sell the adjacent lot for redevelopment, because the right to rebuild the precode structure on the adjacent nonconforming lot still exists under Section 10-104.

There are numerous other permutations of the above that may exist, and it is impractical to go through them all. The purpose of the examples is to help to see how I believe Sections 10-104 and 10-105 were meant to apply to certain situations.

This opinion is based on my review of the sources I have cited herein. If new information from Village files that may impact the interpretations made here becomes available, I am happy to further analyze and discuss these issues, and, if necessary based on the additional information, to make amendments to this opinion.

POSSIBLE TEXT AMENDMENTS: I have discussed with staff possible text amendments to the Zoning Code that would help to clarify and expand on the above, including amendments to explicitly prohibit the reuse of properties made up of more than one lot of record for multiple single-family uses as of right once they have been used as a single zoning lot, regardless of whether a particular lot of record making up part of that zoning lot has on it a principal structure, an accessory structure or structures, or no structures at all.

If you have further questions on this matter, please contact me.

cc: Kathleen Gargano, Village Manager (via email)
Tim Ryan, Deputy Building Commissioner (via email)
Chan Yu, Village Planner (via email)
Lance Malina (via email)

# Chapter 1 TITLE AND PURPOSES

#### Sec. 1-101:Title:

This document shall be known, and may be referred to, as the HINSDALE ZONING CODE.

#### Sec. 1-102:Authority and purposes:

This Code is adopted pursuant to the authority granted to the Village by the Illinois Municipal Code for the following purposes.

- A. Overall purpose. The overall purpose of this Code is to maintain Hinsdale as one of the nation's finest residential suburbs by preserving and enhancing its historic character as a community comprised principally of well-maintained single family residential neighborhoods and small, thriving business areas oriented to serve the day-to-day needs of local residents.
- B. Land use patterns. The purposes of this Code related to land use patterns are to:
  - 1. Implement and foster the goals and policies of the Village's Official Comprehensive Plan; and
  - 2. Establish a rational pattern of land uses and encourage the most appropriate use of individual parcels of land in the Village; and
  - Encourage compatibility between different land uses; and
  - 4. Encourage and promote detached single family homes as the principal land use in the Village; and
  - 5. Limit the bulk and density of new and existing structures to preserve the existing scale of development in the Village; and
  - Provide for the gradual elimination of non-conforming uses that adversely affect the character and value of permitted development; and
  - Protect the scale and character of the existing residential, business, commercial, and office development areas of the Village from the encroachment of incompatible uses; and
  - 8. Encourage and enhance the preservation of natural resources, aesthetic amenities, and natural features; and
  - 9. Secure adequate natural light, clean air, privacy, a safe environment, and convenience of access to property; and
  - 10. Promote and protect the public health, safety, morals, and the general welfare of the Village.
- C. Public infrastructure. The purposes of this Code related to public infrastructure are to:
  - Facilitate the most efficient use of existing and planned public facilities and utilities; and
  - 2. Protect existing public facilities and utilities from being overloaded due to excess development; and
  - 3. Protect and enhance a pattern of interconnected streets and highways that is unified, integrated, safe, effective, and efficient; and
  - 4. Protect residential streets from degradation by non-residential traffic; and
  - Reduce congestion and promote safety on streets and highways by limiting traffic generation through the control of land use intensity; and
  - 6. Avoid or lessen the hazards of flooding and storm water accumulation and run-off; and
  - 7. Establish and regulate set-back lines along streets and highways, property lines, and storm flood water runoff channels or basins.
- D. Justifiable expectations and taxable value. The purposes of this Code related to justifiable expectations and taxable value are to:

- Protect and respect the justifiable reliance of existing residents, businesspeople, and taxpayers on the continuation of existing, established land use patterns; and
- 2. Protect and enhance the taxable value of land and buildings.
- E. Administration. The purposes of this Code related to administration are to:
  - 1. Define the powers and duties of administrative officers and bodies necessary to administer this Code; and
  - 2. Establish procedures for the efficient and effective use of the provisions of this Code; and
  - 3. Establish standards for the review of applications filed pursuant to this Code; and
  - 4. Prescribe penalties for the violation of the provisions of this Code.

## Sec. 9-101:Accessory Structures And Uses:

- A. Authorization: Subject to the limitations of this section, accessory structures and uses are permitted in any zoning district in connection with any principal use lawfully existing within such district.
- B. Definition: An "accessory structure or use" is a structure or use that:
  - 1. Is subordinate in extent and purpose to, and serves, a principal structure or use; and
  - 2. Is customarily found as an incident to such principal structure or use; and
  - Contributes to the comfort, convenience, or necessity of those occupying, working at, or being served by such principal structure or use; and
  - Except as otherwise expressly authorized by the provisions of this code, is located on the same zoning lot as such principal structure or use; and
  - 5. Is under the same ownership and control as such principal structure or use.
- C. Certificate Of Zoning Compliance Required: When required by subsection <u>11-401</u>C of this code, a certificate of zoning compliance evidencing the compliance of the accessory use or structure with the provisions of this code shall be obtained before any such accessory use or structure is established or constructed.
- D. Special Regulations Applicable To Particular Accessory Structures And Uses:
  - 1. Storage: Except as otherwise expressly permitted by this code, outdoor storage shall not be allowed as an accessory use. When so permitted, such storage shall be screened as required by subsection <u>9-107C</u> of this article. Accessory storage structures, other than garages, shall not exceed one hundred twenty (120) square feet in gross floor area if accessory to a residential use nor ten percent (10%) of either the floor area or the volume of the principal structure if accessory to any other type of principal structure.
  - 2. Residential Recreational Facilities: Residential recreational facilities shall be limited to use by the occupants of the principal residential use and their guests and shall not be illuminated by lighting fixtures exceeding fifteen feet (15') in height. See subsection 9-107E of this article for landscaping and screening requirements applicable to such facilities.
  - Accessory Parking In Single-Family Residential Districts: Except when approved as part of a special use permit application, parking lots shall not be permitted as an accessory use in any single-family residential district.
  - 4. Off Street Storage Of Vehicles In Residential Districts: The following provisions shall govern the off street storage of all vehicles in all residential districts:
    - (a) Storage Defined: For purposes of this subsection D4, the term "storage" shall mean the parking of a vehicle for a continuous period of longer than twenty four (24) hours.

- (b) Classification Of Vehicles: For purposes of this code, every vehicle shall be categorized within one of the following three (3) classifications:
  - (i) Class I Vehicle: A vehicle that does not exceed twenty feet (20') in length, seven feet (7') in width, or eight feet (8') in height.
  - (ii) Class II Vehicle: A vehicle that is not a class I vehicle and that does not exceed thirty feet (30') in length, eight feet (8') in width, or eleven feet (11') in height.
  - (iii)Class III Vehicle: A vehicle that is neither a class I vehicle nor a class II vehicle.
  - In addition, for purposes of this code, every vehicle also shall be categorized within one of the following two (2) additional classifications:
  - (iv) First Division Vehicle: Every vehicle that is not a second division vehicle.
  - (v) Second Division Vehicle: A vehicle that is designed to carry more than ten (10) persons, or is designed or used for living quarters, or is designed for pulling or carrying freight, cargo, or implements of husbandry, or is operated for the purpose of transporting property or ten (10) or more persons in furtherance of any commercial or industrial enterprise, or is a first division vehicle that has been remodeled for use as, and is being used as, a second division vehicle.
- (c) Storage Of Vehicles In Garages: Any number of class I, class II, or class III vehicles may be stored in a garage in a residential district provided that said garage complies with all applicable provisions of this code and provided further that class III vehicles shall be stored only in a completely enclosed garage.
- (d)Storage Of Vehicles In Parking Lots: Any number of class I or class II vehicles may be stored in lawfully existing parking lots in any multiple-family residential district (or any such lot approved as part of a special use permit application); provided, however, that no vehicle shall be stored so as to reduce the availability of off street parking spaces below the minimum number of spaces required pursuant to subsection 9-104F of this article. No class III vehicle shall be stored in any parking lot in a residential district. For purposes of this subsection D4(d), a common parking area provided pursuant to subsection 9-104B2(b) of this article shall be treated as a parking lot.
- (e) Storage Of Vehicles In Parking Areas: Vehicles may be stored in parking areas only in compliance with the provisions of subsection D4(f) of this section and only in the following locations on a lot in a residential district:
  - (i) Class I Vehicle: Anywhere on the lot, including any required yard.
  - (ii) Class II Vehicle: Anywhere on the lot, including the required side and rear yards, but excluding the required front and corner side yards.
  - (iii) Class III Vehicle: Nowhere on the lot.
- (f) General Regulations And Standards: The following standards and regulations shall apply to the storage of vehicles in parking lots and parking areas on a lot in a residential district:
  - (i) Distance From Lot Line, Public Sidewalk: No class II or III vehicles shall be stored within three feet (3') of any lot line or any vehicular or pedestrian right of way.
  - (ii)Surface: No motorized vehicle shall be stored except on an all weather stone, gravel, asphaltic, or cement pavement surface.
  - (iii)Screening: See section <u>9-107</u> of this article for landscaping and screening requirements applicable to the storage of class II vehicles on a lot in a residential district.
  - (iv)Permanent Location Prohibited: No vehicle shall have its wheels removed or be affixed to the ground so as to prevent its ready removal.

- (v) Residential Use Prohibited: No vehicle shall be used for living, sleeping, or housekeeping purposes.
- (vi) Utility Hookups: No vehicle shall be connected to any public utility except for required servicing.
- (vii) Unsafe Conditions: No vehicle shall be parked or stored so as to create a dangerous or unsafe condition. The ground under or surrounding the location wherein a vehicle is stored shall be free of noxious weeds, debris, and combustible material.
- (viii)Commercial Identification Prohibited: Not more than one vehicle with any exterior marking in excess of one square foot in area, measured as provided in subsection <u>9-106</u>D11 of this article, identifying or advertising a commercial enterprise shall be stored in any parking area on any lot in a residential district nor shall any such vehicle be stored in any required front or corner side yard.
- (g) Temporary Storage: Notwithstanding any other provision of this subsection D4, any vehicle may be stored at any location on a lot in a residential district for a temporary period not to exceed seventy two (72) hours; provided, however, that, unless authorized by the village manager based on special circumstances, no more than one such temporary period shall occur in any seven (7) day period. No certificate of zoning compliance shall be required for such temporary storage.
- 4.1Parking Of Second Division Motor Vehicles In Residential Districts: No second division vehicle shall be parked on or in any lot, parking lot, or parking area in any residential district at any time, except only as follows:
  - (a)The vehicle is parked in a completely enclosed garage or other building; or
  - (b) The vehicle currently is necessary for the rendering of services currently being provided to a residence in the immediate area where the vehicle is parked; or
  - (c)The vehicle is parked for a specific temporary period of time pursuant to the prior express approval of the Hinsdale police department.
- 5. Storage Of Inoperable Vehicles: No vehicle incapable of being driven or used for the purpose or use for which it was designed, other than a vehicle awaiting timely repair at an automotive repair shop, gasoline service station, or new or used car dealer, shall be stored in any parking lot or parking area in the village.
- 6. Antennas With Surface Areas Of Ten Square Feet Or Less: Antennas and antenna support structures having a combined surface area not greater than ten (10) square feet, and no single dimension exceeding twelve feet (12'), shall be permitted as an accessory use. See subsection <u>9-107</u>F of this article for landscaping and screening requirements applicable to ground mounted antennas.
- 7. Antennas, Other Than Amateur Radio Facilities, With Surface Areas Exceeding Ten Square Feet: Except for amateur radio facilities permitted pursuant to subsection D8 of this section, antennas and antenna support structures having a combined surface area greater than ten (10) square feet, or having any single dimension exceeding twelve feet (12'), shall be permitted as an accessory use only in compliance with the following regulations:
  - (a) Number Limited: No more than one such antenna and antenna support structure may be located on any zoning lot.
  - (b) Height Limited: No such antenna and antenna support structure shall exceed fifteen feet (15') in height when associated with a public utility station, or twelve feet (12') in height when associated with any other use, unless such antenna and antenna support structure is attached to a building pursuant to subsection D7(c) of this section.
  - (c) Attachment To Buildings Limited: No such antenna or antenna support structure shall be attached to a principal or accessory structure unless all of the following conditions are satisfied:
    - (i) Size: The antenna and its support structure shall not exceed fifteen (15) square feet in area or twelve feet (12') in any dimension.
    - (ii) Height: The antenna and its support structure shall not extend more than three feet (3') above the highest point of the building on which it is mounted or the maximum permissible building height, whichever is less.
  - (iii) Mounting: The antenna and its support structure shall not be attached or mounted upon any building appurtenance, such as a chimney. The antenna and its support structure shall not be mounted or attached to the front of any principal building or to

the side of any building facing a street, including any portion of the building roof facing any street. The antenna and its support structure shall be designed to withstand a wind force of eighty (80) miles per hour without the use of supporting guy wires

- (iv)Color: The antenna and its support structure shall be a color that blends with the roof or building side on which it is mounted.
- (v) Grounding: The antenna and its support structure shall be bonded to a grounding rod.
- (vi)Other Standards: The antenna and its support structure shall satisfy such other design and construction standards as the building commissioner reasonably determines are necessary to ensure safe construction and maintenance of the antenna and its support structure.
- (d) Setback From Street: No such antenna or its support structure shall be erected or maintained closer to any street than the wall of the principal building to which it is accessory that is nearest to such street.
- (e) Guy Wires Restricted: No guy or other support wires shall be used in connection with such antenna or its support structure except when used to anchor the antenna or support structure to an existing building to which such antenna or support structure is attached.
- (f)Screening: See subsection <u>9-107</u>F of this article for landscaping and screening requirements applicable to ground mounted antennas.
- (g) Village Antennas And Antenna Support Structures: The provisions of subsections D7(a), D7(b), D7(c)(ii), D7(c)(ii), and D7(c)(iii) of this section shall not apply to antennas or antenna support structures erected by the village for municipal purposes.
- 8. Amateur Radio Facilities With Surface Area Exceeding Ten Square Feet: Any antenna and antenna support structure having a combined surface area greater than ten (10) square feet or having any single dimension exceeding twelve feet (12') that is capable of transmitting as well as receiving signals and is licensed by the federal communications commission as an amateur radio facility must satisfy each of the following conditions:
  - (a) Number Limited. No more than one such antenna support structure with a surface area greater than ten (10) square feet or any single dimension exceeding twelve feet (12') may be located on any zoning lot.
  - (b) Height Limited: No such antenna support structure shall, if ground mounted, exceed sixty five feet (65') in height or, if attached to a building pursuant to subsection D7(c) of this section, the height therein specified.
  - (c) Attachment To Buildings Limited: No such antenna or its support structure shall be attached to a principal or accessory structure unless all of the following conditions are satisfied:
    - (i) Height: The antenna and its support structure shall not extend more than twenty feet (20') above the highest point of the building on which it is mounted.
    - (ii) Mounting: The antenna and its support structure shall not be attached to or mounted upon any building appurtenance, such as a chimney. The antenna and its support structure shall not be mounted or attached to the front of any principal building or to the side of any building facing a street, including any portion of the building roof facing any street. The antenna and its support structure shall be designed to withstand a wind force of eighty (80) miles per hour without the use of supporting guywires.
    - (iii) Grounding: The antenna and its support structure shall be bonded to a grounding rod.
    - (iv)Other Standards: The antenna support structure shall satisfy such other design and construction standards as the village manager reasonably determines are necessary to ensure safe construction and maintenance of the antenna and its support structure.
  - (d) Setback From Street: No such antenna or its support structure shall be erected or maintained closer to any street than the wall of the principal building to which it is accessory that is nearest to such street.

- (e) Setbacks From Adjacent Buildings: No such antenna or its support structure shall be located in any required side yard or nearer than one-half (1/2) the height of the antenna and support structure to any habitable building on any adjacent property.
- 9. Exterior Lighting: Any permitted accessory lighting fixtures shall be so designed, arranged, and operated as to prevent glare and direct rays of light from being cast onto any adjacent public or private property or street and so as not to produce excessive sky reflected glare. Except for streetlights, no exterior light in or adjacent to any residential district shall be so designed, arranged, or operated to produce an intensity of light exceeding one-half (1/2) foot-candle at any residential lot line.
- 10. Uses Subject To Special Restrictions: When the district regulations of this code require compliance with any procedures or standards with respect to a specific use, such use shall not be established as an accessory use except in compliance with those procedures and standards.
- E. Use, Bulk, Space, And Yard Regulations: Except as expressly provided otherwise in this section, every accessory structure and use shall comply with the use, bulk, space, and yard regulations made applicable to them by the regulations of the district in which they are located.
- F. Use Limitation: No accessory structure or use shall be constructed, established, or maintained on any lot prior to the substantial completion of construction of the principal structure to which it is accessory. (Ord. 94-36, § 2, 8-2-1994; Ord. O2001-27, § 2, 6-5-2001; Ord. O2004-17, §§ 2, 3, 4-6-2004)

#### Sec. 10-104:Precode Structures:

- A. Authority To Continue: Any precode structure may be maintained, altered, enlarged, rebuilt, restored, and repaired so long as it remains otherwise lawful, subject to the restrictions in subsections B through E of this section and subsection <u>10-101</u>D of this article.
- B. Maintenance, Repair, Alteration, And Enlargement: Any precode structure may be maintained, repaired, altered or enlarged; provided, however, that except as hereinafter expressly provided, no such maintenance, repair, alteration, or enlargement shall either create any new parking, loading, yard, bulk or space nonconformity or increase the degree of any parking, loading, yard, bulk, or space nonconformity of all or any part of such structure as it existed on the effective date of this code. Notwithstanding the preceding sentence:
  - Front And Rear Yard Vertical Extensions: Any portion of a precode structure that is nonconforming with respect to a required front
    or rear yard may be extended vertically within its existing perimeter walls but may not be extended horizontally; and
  - 2. Side Yard Vertical Extensions: Any portion of a precode structure that is nonconforming with respect to a required side yard may be extended vertically within its existing perimeter walls; provided, however, that no such extension shall be allowed within ten feet (10') of any side lot line in the R-1 and R-2 districts or within six feet (6') of any side lot line in the R-3 and R-4 districts; and
  - 3. Side Yard Horizontal Extensions: Any portion of a precode structure that is nonconforming with respect to a required side yard may be extended horizontally between the required front and rear yard lines at a distance from the side lot line equal to the greater of: a) the minimum existing distance between said side lot line and said nonconforming portion or b) ten feet (10') in the R-1 and R-2 districts or six feet (6') in the R-3 and R-4 districts; and
  - 4. Roof Elevation Extensions: Any portion of a precode structure that is nonconforming with respect to the permitted maximum elevation may be extended horizontally at an elevation in excess of said permitted maximum elevation; provided, however, that the top of the roof of such extension shall not exceed the top of the precode structure.
  - 5. Roof Height Extensions: Any portion of precode structure located on a conforming lot in a single-family residential district that is nonconforming with respect to the permitted maximum height and that is a precode structure solely due to the nonconforming height of the structure may be extended: a) horizontally at a height in excess of said permitted maximum height but not in excess of the roofline of the existing structure or b) horizontally and vertically at a height in excess of the permitted maximum height but not in excess of the height of the structure as of the date of initial occupancy of the original structure, provided, however, that such extension shall not be permitted where the height of the structure as of the date of initial occupancy of the original structure exceeded the maximum height authorized by law; and, in either case, such extension shall not extend more than twenty four inches (24") beyond the exterior face of the exterior walls of said existing structure.
  - 6. Certain Garages Accessory To Certain Precode Detached Dwellings: Notwithstanding the applicable maximum floor area and building coverage regulations and notwithstanding the limitations set in subsection C1 of this section, a detached garage accessory to, and on the same zoning lot as, a precode single-family detached dwelling structure may be demolished and replaced with a new detached garage if, but only if, all of the following conditions and standards are met: a) the dwelling was

constructed prior to 1950, b) the dwelling does not have an attached garage, and c) the replacement garage does not exceed a total floor area of four hundred forty (440) square feet.

For the purposes of this subsection B, any vertical or horizontal extension of a precode structure in violation of subsection B5 of this section shall be construed to increase the degree of an existing nonconformity. For purposes of this subsection B, the provisions of subsection D of this section shall, where applicable, be applied in determining the existence and extent of any side yard nonconformity.

- C. Damage Or Destruction: Any precode structure that is demolished, damaged, or destroyed by any means, whether or not within the control of the owner thereof, may be rebuilt, restored, or repaired; provided, however, that:
  - Voluntary Damage: In no event shall any demolition, damage, or destruction to such a structure caused by any means within the
    control of the owner be rebuilt, restored, or repaired except in conformity with all of the applicable district regulations other than
    minimum lot area and lot dimension regulations.
  - 2. Involuntary Damage: In no event shall any damage or destruction to such a structure caused by any means not within the control of the owner be rebuilt, restored, or repaired so as to create any new parking, loading, yard, bulk, or space nonconformity or to increase the degree of any parking, loading, yard, bulk, or space nonconformity existing prior to such damage or destruction. For the purposes of this subsection C2, any vertical or horizontal extension of a structure in violation of the yard, bulk, or space regulations applicable in the district in which such structure is located shall be construed to increase the degree of an existing nonconformity, except that:
    - (a) Front And Rear Yard Vertical Extensions: Any portion of a precode structure that was, prior to such damage or destruction, nonconforming with respect to a required front or rear yard may be extended vertically within its existing perimeter walls but may not be extended horizontally; and
    - (b) Side Yard Vertical Extensions: Any portion of a precode structure that was, prior to such damage or destruction, nonconforming with respect to a required side yard may be extended vertically within its existing perimeter walls; provided, however, that no such extension shall be allowed within ten feet (10') of any side lot line in the R-1 and R-2 districts or within six feet (6') of any side lot line in the R-3 and R-4 districts; and
    - (c) Side Yard Horizontal Extensions: Any portion of a precode structure that was, prior to such damage or destruction, nonconforming with respect to a required side yard may be extended horizontally between the required front and rear yard lines at a distance from the side lot line equal to at least: 1) the minimum existing distance between said side lot line and said nonconforming portion as it existed prior to such damage or destruction and 2) ten feet (10') in the R-1 and R-2 districts or six feet (6') in the R-3 and R-4 districts.

For purposes of this subsection C, the provisions of subsection D of this section shall, where applicable, be applied in determining the minimum yards required and the existence and extent of any side yard nonconformity.

- D. Special Yard Regulations: Whenever any precode structure is located on a lot that does not comply with the lot area or lot width regulations of the district in which it is located, such structure may be maintained, altered, enlarged, rebuilt, restored, and repaired subject to the side yard regulations for such district as stated in subsection 10-105A of this article rather than the side yard regulations otherwise applicable in such district.
- E. Moving: No precode structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
- F. Driveways: A driveway that has been in existence in excess of twenty five (25) years may be reconstructed in its present location. (Ord. 92-43, § 5, 10-6-1992; Ord. 95-10, §§ 4C, D, 3-21-1995; Ord. 95-15, § 2D, 4-24-1995; Ord. 98-21, § 2, 5-5-1998; Ord. 99-6, § 3, 3-2-1999; Ord. O2003-5, § 2, 3-4-2003; Ord. O2007-16, § 3, 2-20-2007)

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

A. Authority To Use For Single-Family Detached Dwellings In Residential Districts: In any residential district, notwithstanding the regulations imposed by any other provisions of this code, a single-family detached dwelling, and any permitted accessory structure, that complies with the regulations of this subsection may be erected, maintained, altered, enlarged, rebuilt, restored, and repaired on a legal nonconforming lot of record. Construction of such dwelling, and any accessory structure, shall comply with all the

regulations applicable to such dwellings and accessory structures in the zoning district in which the lot in question is located, except that the following requirements shall apply in place of requirements otherwise applicable:

#### 1. Maximum Elevation:

		AND THE PARTY OF T	Fig. 1. 200 (1971)	R-1	R-2	R-3	R-4	R-5	R-6
(a)	a) Principal structures						-		ot cable
	(i)	Smallest side yard or less	provided of 14 feet		5 foot for each foot more than 14 fo				lot cable
	(ii) Smallest side yard provided of more than 14 feet and not more than 24 feet			40 feet plus 20 percent of the difference between the smallest side yard provided and 14 feet				11	lot cable
	(iii) Smallest side yard of more than 24 feet		42 feet plus 10 percent of the difference between the smallest side yard provided and 24 feet, but not to exceed 44 feet				lot cable		
(b)	Accessory structures			Not app	blicable	Not app	olicable		lot icable

#### 2. Minimum Lot Area And Dimensions:

				R-1	R-2	R-3	R-4	
(a)	Total lot	area (squar	e feet)	14,000	14,000	10,000	7,000	THE RESERVE
(b)	Lot widt	h (feet):						
	(i)	Interior lot		70	70	50	50	
	(ii)	Corner lot		80	80	50	50	
(c)	Lot depth (feet)			125	125	125	100	

#### 3. Minimum Side Yards (Feet):

	*******	essue (	HIMBERSON		R-1	R-2	R-3	R-4	R-5, R-6
							-		
(a	)	Con	ner lo	t:					

ر. دروند ام

							,		
	(i)	Interi		10 feet	10 feet	6 feet	6 feet	6 feet	
		side		or 6 feet plus 10 per	cent of lot width in ex	cess of 50 feet, whiche	ever is more		
	(ii)	Comer side		35 feet or 30 percent of lot width, whichever is less	35 feet or 30 percent of lot width, whichever is less	15 feet or 30 percent of lot width, whichever is greater	15 feet or 30 percent of lot width, whichever is greater	of lot width	30 percent h, r is greater
(b)	Interior lot:								
	(i)	Minin per y	- 1	10 feet	10 feet	6 feet	6 feet	6 feet	
				or 6 feet plus 10 per	cent of lot width in ex	cess of 50 feet, whiche	ever is more		
	(ii) Minimum 30 percent of lot width up to, and including, 125 feet plus 35 percent of lot width in excess of 125 feet			20 feet or percent of whichever	f frontage,				

B. Authority To Use For Permitted Uses In Nonresidential Districts: A legal nonconforming lot of record located in any district other than a residential district may be developed for any use permitted or specially permitted in the district in which it is located if, but only if, the development of such lot meets all requirements of the district in which it is located, including floor area ratio, coverage, and yard and setback requirements, except lot area, width, and depth requirements. (Ord. 92-43, § 6, 10-6-1992; Ord. 95-10, § 4B, 3-21-1995; Ord. 95-15, § 2C, 4-24-1995; Ord. 99-6, §§ 4A, B, 3-2-1999)

#### Sec. 11-502:Appeals:

- A. Authority. The Zoning Board of Appeals shall hear and decide appeals from, and review orders, decisions, determinations, or the failure to act, of the Village Manager acting pursuant to his or her authority and duties under this Code and to that end the Zoning Board of Appeals shall have the same powers and be subject to the same standards and limitations as the village manager with respect to any order, decision, or determination being appealed.
- B. Purpose: The appeal procedure is provided as a safeguard against arbitrary, ill considered, or erroneous administrative decisions. It is intended to avoid the need for resort to legal action by establishing local procedures to review and correct administrative errors. It is not, however, intended as a means to subvert the clear purposes, meanings, or intents of this code or the rightful authority of the village manager to enforce the requirements of this code. To these ends, the reviewing body should give all proper deference to the spirit and intent embodied in the language of this code and to the reasonable interpretations of that language by those charged with the administration of this code.
- C. Parties Entitled To Appeal: An application for appeal to the zoning board of appeals may be filed by any person aggrieved or adversely affected by an order, decision, determination, or failure to act of the village manager acting pursuant to his or her authority and duties under this code.

#### D. Procedure:

- Application: An application for appeal to the zoning board of appeals shall be filed not later than forty five (45) days following the
  action being appealed and in accordance with the requirements of section <u>11-301</u> of this article.
- Action By Village Manager: Upon receipt of a properly completed application for an appeal, the village manager shall forthwith transmit to the zoning board of appeals the application together with all papers constituting the record upon which the action appealed from was taken.
- 3. Public Hearing: A public hearing shall be set, noticed, and conducted by the zoning board of appeals in accordance with section 11-303 of this article.
- 4. Action By Zoning Board Of Appeals: Within thirty (30) days following the close of the public hearing, the zoning board of appeals shall render a decision on the appeal in the manner and form specified in subsection 11-102H of this article. Such decision may reverse, affirm, or modify, in whole or in part, the action appealed from and may include such order or determination as, in the opinion of the board of appeals, is proper to be made in the premises. The failure of the board of appeals to act within such thirty (30) days, or such further time to which the applicant may agree, shall be deemed to be a decision denying the appeal.
- E. Stay Of Proceedings: An application for appeal properly filed pursuant to subsection D of this section shall stay all proceedings in the furtherance of the action appealed from, unless the village manager certifies to the zoning board of appeals after the application for appeal has been filed with the manager that, by reason of facts stated in the certificate, a stay would, in the manager's opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed other than by a restraining order, which may be granted by the board of appeals or by the circuit court on application, upon reasonable written notice to the manager and on due cause shown.
- F. Right To Grant Variation In Deciding Appeals: In any case where the application for appeal is accompanied by an application for variation in accordance with section <u>11-503</u> of this part, the zoning board of appeals shall have the authority to grant, as part of the relief, a variation, but only in strict compliance with each provision of said section <u>11-503</u> of this part.
- G. Conditions And Limitations On Rights Granted By Appeal: In any case where this code imposes conditions and limitations upon any right, any such right granted by the zoning board of appeals on appeal shall be subject to such conditions and limitations in the same manner and to the same extent as if secured without the necessity of an appeal. (1991 Code)

## BURKE, WARREN, MACKAY & SERRITELLA, P.C.

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SUSAN J. MILLER OVERBEY DIRECT DIAL NUMBER (312) 840-7051 Soverbey@burkelaw.com

January 17, 2018

#### VIA FEDERAL EXPRESS

Village of Hinsdale Zoning Board of Appeals 19 E. Chicago Avenue Hinsdale, Illinois 60521

Re:

504 Oak Street, Hinsdale, Illinois

Zoning Board of Appeals Calendar No. App-03-17

Ladies and Gentlemen:

On January 3, 2018, Avra Properties Fund II End-User, LLC ("Avra") and Bayit Builders, LLC ("Bayit") submitted their Response in Opposition to James and Nancy Dugans' Application for Zoning Appeal in the above referenced Appeal.

In further support of said Response, Avra and Bayit hereby submit the Affidavit of Jerome D. Girsch. Enclosed please find ten copies of said Affidavit, together with its exhibits.

Sincerely,

Susan J. Miller Overbey

SJMO/bd Enclosures

cc: Robert O'Donnell (w/encl.)

#### AFFIDAVIT OF JEROME D. GIRSCH

- I, Jerome D. Girsch, under penalty of perjury, do hereby depose and state as follows:
- 1. I am over the age of eighteen and competent to testify to the following facts of my own personal knowledge.
  - 2. In 1993, I owned 422 S. Oak Street, Hinsdale, Illinois 60521 ("422 S. Oak").
  - 3. In 1993, I purchased 504 S. Oak Street, Hinsdale, Illinois 60521 ("504 S. Oak").
- 4. On June 25, 1993, I sent a letter to the Village of Hinsdale requesting approval to convert 504 S. Oak "into a 4-car garage with a second floor recreation room while, at the same time, removing two separate garages that now reside on the property." I also stated in the letter that "[m]y desire is that the two properties remain separate so that I have options available as to how the parcels could be dealt with in the future" and offered to pay up to \$1,500 of the Village's attorney's fees to assist in reviewing the issue. (A copy of the letter is attached hereto as Ex 1.)
- 5. After submitting my initial plans to the Village of Hinsdale in 1993 to convert 504 S. Oak into a garage with a recreation room above it, the Village of Hinsdale informed me, by letter dated August 11, 1993, that if I proceeded with my original 1993 plans 504 S. Oak and 422 S. Oak would be combined and treated as a single unified zoning lot that could not be separated. (A copy of the August 11, 1993 letter is attached hereto as Exhibit 2.)
- 6. I took significant steps, including spending additional money on the project, to change my plans for the remodeling of 504 S. Oak so that it would not be combined with 422 S. Oak into a single zoning lot. Specifically, when I remodeled 504 S. Oak in 1994, it had bedrooms, a kitchen, a dining room, and other living areas consistent with a single-family structure.

- 7. It was always my belief, based on my understanding of the Village of Hinsdale's requirements and its correspondence with me on this matter, that by changing the plans and maintaining the features of a single-family residence at 504 S. Oak, that 504 S. Oak and 422 S. Oak would not be combined into a single zoning lot.
- 8. At all times my intention was for 504 S. Oak to retain its status as a single-family structure and to avoid combining 504 S. Oak into the same zoning lot as 422 S. Oak.
- 9. I never intended that my use of 504 S. Oak would convert it into a combined zoning lot with 422 S. Oak.

Further Affiant Sayeth Not.

Jerome D. Girsch

Dated: 1/8/2018

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, Jerome D. Girsch, hereby certifies that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Jerome D. Girsch

# EXHIBIT 1

June 25, 1993

Mr. Bohdan Proczko
Assistant Village Manager and
Director of Public Works
Village of Hinsdale
19 East Chicago Avenue
Hinsdale, IL 60521

Dear Mr. Proczko:

I am the owner of the single family residence located at 422 South Oak Street. I have recently purchased the property to the south commonly known as 504 South Oak Street. The 504 property contains a two-story residential building which was originally constructed as the coachhouse for my residence.

My goal is to convert the 504 coachhouse into a 4-car garage with a second floor recreation room while, at the same time, removing the two separate garages that now reside or these properties. The coachhouse would then be an accessory building to my residence. My desire is that the two properties remain separate so that I have options available as to how the parcels could be dealt with in the future.

My architect, Mr. Michael Realmuto and my construction manager, Mr. Charles Ettner met with your Building Commissioner, Mr. Charles Schmidt and subsequently reported to me that the 504 property was non-conforming. I would be very appreciative if you would review this situation and allow me to keep these properties separate. I understand that the interpretations here are fairly consoler and might, in fact, need to be reviewed by the Village. Attorney M this is the case, I would be prepared to reimburse the Village, the fee up to \$1,500 for this review.

I appreciate your consideration in this matter. Please advise me at your earliest convenience how to proceed.

Ben region!

Jerome D. Girsch

777

# EXHIBIT 2

078



#### VILLAGE OF HINSDALE

FOUNDED IN 1873

19 EAST CHROAGO AVENUE HINSDALE, ELLINOIS 60521-3489 • (708) 789-7000 VILLAGE PRESIDEN-Jayce E. Shor TRUSTEF ABUR R Bur Kawa Conn Carol B. Godda Pagi J. Kesana

POLK'S DEPARTMENT 789-7070 FIRE DEPARTMENT 789-7060 121 N. M. SYMONDS DRIVE

August 11, 1993

Mr. Michael J. Realmuto
Realmuto, Steffen & Loftus Ltd.
6355 North Broadway Suite 30
Chicago, Illinois 60660 4118

RE: Girsch Residence, 422 S. Oal Et., Hinsdale, IL

Dear Mr. Realmuto:

The Village is in receipt of your letters of July 22, 1993, along with the pre-plan review application, the plans of survey and preliminary plans. Your letter asks several questions which I have summarized as follows:

- Can the existing garages on both properties be demolished?
- 2. Can the original coach house at 504 S. Oak, which is now used as a principal residence, be remodelled to be a 4 car garage with a rec room on the second floor and used as an accessory structure to the existing residence at 422 S. Oak?
- 3. At some future time, following completion of this work, can 504 S. Oak be sold as a separate lot with the coach house used as a principal residence?

#### The short answers are:

- 1. Yes the garages can be demolished.
- The coach house can be remodelled provided that the remodelling does not create any new nonconformities or increase any existing nonconformities. It can be used as an accessory structure to the house at 422 S. Oak if and only if the two lots are combined into a single "Zoning Lot" pursuant to Sections 12-2061, and 12-101D of the Zoning Code. A separate principal dwelling unit would not be permitted on the second floor of the coach house.

Mr. Michael J. Realmuto RE: Girsch Residence August 11, 1993

> Upon completion of the proposed project the property would consist of one Zoning Lot, as that term is defined in Subsection 12-206L of the Zoning Code and the lot at 504 S. Oak could not then be sold off as a separate lot.

Pursuant to the 1989 Zoning Code, an applicant for any zoning approval or building permit must designate a "Zoning Lot" to be used as the basis for review of his or her application. A Zoning Lot may consist of one or more Lots of Record. Thus, you may combine the two Lots of Record at 422 and 504 S. Oak into a single Zoning Lot for purposes of allowing the coach house at 504 to be used as an accessory structure to the residence at 422. However, once you combine the two Lots of Record into a single Zoning Lot, you will not be able to separate them in the future. Subsection 12-101C of the Code provides:

...no...zoning lot, now or hereafter existing, shall be...divided...except in compliance with the regulations of this Code. Without limiting the foregoing, any such activity that would...create any parcel of land that could not be developed in compliance with this Code shall be prohibited.

Because the combined loss at 422 and 504 S. Oak would not have either sufficient area or width to create two new Zoning Lots that comply with the Code's lot area and width requirement, this Subsection would prohibit any future division of the new Zoning Lot into two separate Zoning Lots.

The properties at 422 and 504 S. Oak St. are currently zoned in the R-1 Single Family Residence District. The minimum requirements for lots in the R-1 District are:

Total Lot	Area .	, .	. 5%	30,000 sq;	it
Lot Width	i			125. ft.	
Lot Depth	1 ).	-:		125 ft.	

The properties currently have the following dimensions:

			240.0
	422 S	. Cak	504 S. Oak
		9 6	The state of the s
Total Lot Area	32,78	sq./ft.)	25,291.8 sq. ft.
Lot Width	121 fi	· * * * * *	78 ft.
Lot Depth	296.1	5 ft. 🦿 🛴 🦠	333.1 ft.

Both the residence at 422 S. Oak and the coach house at 504 S. Oak are Pre-code Structures under Subsection 12-2061 of the Zoning Code. They were lawfully existing on June 18, 1988, and they are each located on a Lot of Record that does not meet the requirements

Mr. Michael J. Realmuto RE: Girsch Residence August 11, 1993

of the 1989 Zoning Code. However, upon completion of the plans, as submitted with the pre-plan review, the Girsch property would consist of one Zoning Lot that would meet the Code's lot area and lot width requirements. The property could not thereafter be resubdivided unless each resulting lot complied with the minimum R-1 District requirements.

Your clients may proceed with this project provided that all other zoning regulations and building requirements are met but be advised that the existing home at 504 S. Oak St. would become an accessory structure. No changes could be made to that structure that would create any new nonconformities or increase any existing nonconformities.

With one lot consisting of \$8,073.4 sq. ft. the following would apply:

Front Yard the average of the front setbacks of the properties on either side of the subject site, (i.e., 320 E. Fourth St. & 329 E. Sixth St.)

Rear Yard - 50 feet

Side Yards - both side yards must total at least 30 feet with no one side yard being less than 10 feet. (The coach house is currently set 5.5 feet off of the lot line. It would be allowed to remain but could not be expanded except in compliance with applicable regulations.)

FAR - 3 plus 800 so, it, or 18,222 so, ft. of building space. (Floor Area Ratio)

Maximum Builing Coverage: Principal and Accessory Buildings - 25% or 14,518 sq. ft

Accessory Buildings Only - 10% or 5,807 sq. ft.

Please note that the maximum permitted height of an accessory building is 15 feet, as height is defined pursuant to Section 12-200H of the Zoning Code. The conch house probably exceeds this limitation. However, it could be remodelled so long as new and existing nonconformities were not created or expanded.

In summary, the zoning for appears to be large enough to allow your clients to pursue their improvement plans. However, once the coach house is accessory to the principal structure the property consists of one zoning lot and cannot be subdivided in the future. Please note

that no separate dwelling units would be permitted in the coach house

This review is based on the information submitted with the pre-plan application form. Any changes in the plans when submitted for permit or inaccuracies in the documents received to date may result in a revision to this review. If you have any questions do not hesitate to contact the undersigned.

Sincerely.

Bohdan J. Proczko
Assistant Village Managor/
Director of Public Services

Charles McMahon Charles Schimidt Clifford L. Wesver Pre-plan Review File

#### VILLAGE OF HINSDALE ZONING BOARD OF APPEALS ZONING CALENDAR NO. APP-03-17

# DUGANS' REPLY TO AVRA PROPERTIES/BAYIT BUILDERS' RESPONSE TO DUGANS' APPLICATION FOR ZONING APPEAL

I. The Creation of the Zoning Lot in 1994 Is Not Controlled by What Girsch Intended to Do; It Is Controlled by What He Actually Did

Girsch's intent may have been to preserve the ability of the 504 and 422 lots to be developed as separate zoning lots, while still building an accessory structure on the 504 lot and using it as accessory to his residence on the 422 lot. However, the Code does not provide for Girsch to have his cake and eat it too, whether he intended to or not. The fact that Girsch changed the interior configuration of his proposed coach house following his receipt of the Village's 1993 letter to substitute a galley kitchen, a loft, and two bedrooms for the recreation room, does not change the fact that he built a structure that was accessory to the 422 home, and therefore combined the two lots into one zoning lot.

The Village's 1993 letter informed Girsch that, if he tore down the two garages on both the 504 and 422 properties, demolished the current coach house, and built a four-car garage with a recreation room above it on the 504 property, he would combine the two properties into a single zoning lot. The Village's 1993 letter did not inform him that if he tore down the two garages, demolished the coach house, and built a four-car garage to serve the 422 property but changed the recreation room above the garage to a two-bedroom apartment, he would *not* create a single zoning lot.

Based upon the Village's Plan Reviewer's March 22, 2017 letter, and the Village Manager's June 7, 2017 letter, attached to the Dugans' application for appeal as Exhibits 12 and 13, respectively, despite what Girsch intended to do in 1994, since that time, the Village has clearly and correctly identified the 504 and 422 properties as a single zoning lot. The Village Manager recently changed her position based upon the Village Attorney's July 12, 2017 Memorandum. Exhibit I to Bayit Brief. However, the Village Attorney erroneously concluded the 504 and 422 lots were not a single zoning lot because they were "separate lots that are capable of being separately maintained, altered, enlarged, rebuilt, restored and repaired in conformance with the requirements of Section 10-104 of the Village's Zoning Ordinance" (emphasis added). First of all, the Code places no merit on whether a lot is "capable" of being separately maintained, etc., and the Village Attorney makes no effort to explain that rationale. The Code's definition of an accessory structure does not mention the word "capable" when determining whether a structure is accessory to another—it is concerned solely with how it is used. §9-101.B. Second, as explained below, the garage/coach house on the 504 lot, which was constructed in 1994, is not a \$10-104 Pre-code Structure.

Bayit parrots the Village Attorney in placing much emphasis on the "marked difference" between the plans Girsch initially submitted to the Village for pre-plan review and the coach house that was eventually built, *i.e.*, the change from a rec room above the garage to a two-bedroom apartment above the garage. In highlighting this difference, both the Village Attorney and Bayit fail to address the fact that the most

essential and accessory characteristic of the coach house—that is, the four-car garage—did not change! Bayit argues the Code does not state "that a single-family home structure that contains all of the characteristics of a single-family home (bedrooms, bathrooms, a kitchen and common living space), can be converted to an accessory structure by mere dint of its use." Bayit Brief, p. 9. Again, while Bayit lists many of the dwelling-like characteristics of the coach house, it neglects to mention the four-car garage. Contrary to Bayit's assertion, a coach house fits each of the criteria contained in \$9-101's definition of an accessory use. So, for that matter, does a four-car garage.

Girsch did not convert the single family home at 504 to an accessory structure merely by using it as such. In 1992, Girsch demolished the single family home at 504 and built a four-car garage with an apartment above in its place. See, Exhibit 1, 2/15/94 plans issued for permit. Girsch built an accessory structure, and then proceeded to use it as accessory to his residence at 422 S. Oak. When the LaRocques moved into the Girsch compound at 422/504 S. Oak, they continued to do the same. See, Affidavit of Robert Early, attached as Exhibit 2. John LaRocque used the second floor of the garage/coach house as his home office, a use accessory to his home at 422 S. Oak. See, Exhibit 2.

Contrary to the express provisions of the Village's Code, Bayit asserts the ZBA should determine whether the 504 property is accessory to the 422 property not by how Girsch built and used the properties, but by how he intended the Village to perceive its potential use. Unsurprisingly, however, the Code's definition of

"accessory structure" makes absolutely no reference to the owner's intent to conceal a structure's accessory nature in determining whether a structure is, indeed, accessory to another. See, \$9-101.B.

Bayit argues the Village inspected and approved the building Girsch built as a single-family residence. However, the Village's file contains no evidence of that alleged approval. The file contains no certificate of occupancy issued by the Village when Girsch finished construction of the garage/coach house in 1994. And, years later, when Bayit submitted its application, Village affirmed its position that the coach house on 504 and the residence on 422 were part of the same zoning lot. See, Exhibits 12 and 13 to Dugans' application for appeal.

Bayit's argument regarding a potential "absurd result" from the Zoning Code's definition of an accessory use has no place here, because Bayit's hypothesis is not what Girsch did. See, Bayit Brief, pp. 10-11. Girsch did not just use the house next door as a guest house or storage. He demolished the garages on both the 422 and 504 properties. He demolished some portions, and gutted other portions, of the 504 coach house. He built a four-car garage on the 504 property to serve the principal residence at 422. And he added a two-bedroom apartment with a galley kitchen and a loft above the garage. To assert the two-bedroom apartment above a four-car garage would pass as a single-family home in Hinsdale is absurd, indeed. The entire two-bedroom, two-bathroom apartment is 2,875 square feet. See, Exhibit 3, 504 S. Oak listing on

Realtor.com. Underneath this 2,875 square foot apartment is a 1,084 square foot four-car garage. See, Exhibit D to Bayit Brief.

Even more absurd is Bayit's attempt to assert that it is an "unsuspecting purchaser" of the 504 S. Oak property, which shows either complete disingenuousness or an astoundingly lackadaisical attitude towards due diligence in its purchase of the properties. Either way, it does not save Bayit from the consequences of Girsch's actions, because a purchaser of property in Illinois is charged with constructive knowledge of the current zoning ordinances in effect at the time of its purchase. Blankenship v. Kane County, 85 Ill. App. 3d 621, 623 (2d Dist. 1980). Even the most unsophisticated buyer seeking to purchase a residence in Hinsdale would recognize upon a visit to the property that the 2,875 sq. ft. four-car garage/two-bedroom apartment on the 504 property shared a driveway with the 6,700 sq. ft., six-bedroom residence next door. Such a fact would put the prospective purchaser on notice that the garage might not exist as a single-family residence independent of the 504 property, and a consultation with the Village or at least an examination of its Zoning Code would be warranted before purchasing the property with expectations it could in fact be redeveloped with a single-family residence, simply because it was marketed as such. See, Application of Cty. Treasurer & Ex-Officio Cty. Collector of Cook Cty. v. Edelen, 30 Ill. App. 3d 235, 240 (1st Dist. 1975) ("A purchaser having notice of facts which would put a prudent man on inquiry is chargeable with knowledge of other facts he might have discovered by diligent inquiry.") Moreover, a simple inquiry on the County

Recorder of Deeds website would inform the purchaser, as Bayit no doubt knew, that the 504 and 422 property were owned by the same person—in fact, that person had received title to both properties on a single deed. See, Exhibit 4, October 12, 2001 Deed to John and Janet LaRocque.

#### II. The Code Does Not Permit the Division of the 504/422 S. Oak Zoning Lot into Two Single Zoning Lots

Bayit concludes that since the Village Attorney has drafted an argument that a single zoning lot consisting of two legal, nonconforming lots of record may be divisible into two individual buildable lots (notwithstanding the express provisions in the Code to the contrary), then Bayit should be able to do the same with a single zoning lot allegedly "containing 'precode structures". But the Village Attorney's memo does not address whether a single zoning lot can be divided if it contains a "precode structure," as Bayit argues, incorrectly, the 504 S. Oak house is. Instead, the Village Attorney discusses §10-105 legal, nonconforming lots of record. Section 10-105 states that a legal, nonconforming lot of record may be used for the construction of a single-family home "notwithstanding the regulations imposed by any other provisions of this code." The Village Attorney argues this magic language enables a zoning lot created from the combination of two legal, nonconforming lots of record to be split into two, separately developable zoning lots, even if another provision of the Code existed to prohibit the division of a zoning lot into two lots that do not comply with Code requirements. Exhibit M to Bayit Brief, p. 3.

The Code does, in fact, contain a provision that explicitly prohibits a single zoning lot from being separated into lots that are not in compliance with the Village's Code. That provision was cited in the 1993 letter and exists in the same form in the Code today. See, Exhibit E to Bayit Brief, p. 2; \$12-101C of the Zoning Code ("No... zoning lot, now or hereafter existing, shall hereafter be... divided, except as authorized by the provisions of this code and except in compliance with the regulations of this code.") However, the Village Attorney takes the position in his memo that the magic language in \$10-105 enables an owner of a single, Codecompliant zoning lot to divide that lot into two nonconforming lots, and then build upon those lots as though they were in existence prior to the Code's enactment. This is directly contrary to one of the stated purposes of the Code, which is to "provide for the gradual elimination of non-conforming uses that adversely affect the character and value of permitted development." Code, \$1-102.B.

But Bayit does not argue that 504 and 422 are legal, nonconforming lots of record—nor can it, because a legal, nonconforming lot must be vacant prior to the enactment of the code, or become vacant by demolition of a pre-code structure that is not authorized to be rebuilt pursuant to \$10-104.C. Lot 504 is not a vacant lot, nor does it contain a pre-code structure.

The Village's 1993 letter to Girsch identified the coach house then in existence on the 504 lot as a "Pre-code Structure" under the 1989 Zoning Code, because that coach house was built prior to June 18, 1988. Exhibit E to Bayit Brief, p. 2; see also,

\$12-206 of Zoning Code, "Precode Structure." A pre-code structure may be rebuilt so long as it remains otherwise lawful. \$10-104.A. However, if a pre-code structure is demolished, damaged or destroyed by any means "within the control of the owner", the structure may not be rebuilt, restored, or repaired except in conformity with all applicable zoning regulations other than minimum lot area and lot dimension regulations. \$10-104.C.

In 1994, Girsch demolished the pre-code structure and built a four-car garage/coach house in its place. See, Exhibit 1. The coach house on 504 was built in 1994, i.e., after the adoption of the Code. The coach house built in 1994 is between 5 feet -7 feet from the south lot line, in violation of the Code's requirement that a lot in the R-1 district have a minimum side yard setback of 10 feet. \$3-110. See, Exhibit 5, 1994 Survey of 504 S. Oak; see also, Exhibit B to Exhibit 6. Because it is not in conformance with all applicable zoning regulations, under \$10-104.C., the coach house on the 504 S. Oak lot is not a pre-code structure. Therefore, the Village Attorney's memorandum has absolutely no bearing on Bayit's predicament. Under the plain language of the Code, the 504/422 zoning lot cannot be divided.

#### III. Dugans Have Standing to Appeal

A. Dugans Did Not Present All of Their Evidence at the Pre-Hearing Review

Bayit declares the Dugans made certain statements at the pre-hearing review

before the ZBA on December 20, 2017, and concludes from these alleged statements
the Dugans do not have standing to pursue this appeal. Yet that is not an appropriate

conclusion to reach before the Dugans have even presented their appeal to the ZBA. All the Dugans have done is appear before the ZBA for a pre-hearing review. The Dugans did not present all of their evidence or attempt to make their full case before the ZBA, as that was not the procedural stage of the appeal. Instead, at that time, in accordance with Village procedure, the Dugans summarized their position and the ZBA made comments and requested provide additional information. The Dugans will present their evidence at the hearing and Bayit's anticipatory assertions that they will not be able to do so must have no bearing on the ZBA's decision.

B. Construction of the Proposed Bayit Home Will Substantially Affect the Dugans' Use and Enjoyment of Their Property.

The proposed structure on the 504 lot will interfere with the Dugans' use and enjoyment of their home. The Dugans purchased their home in 2009. See, Affidavit of Nancy Dugan, attached as Exhibit 6, ¶2. At that time and since, the 422/504 property was used as a single-family home, with an accessory coach house. See, Exhibit 6, ¶6; see also, Exhibit 2, ¶6, 14. The coach house was used as a garage for the vehicles used by the occupants of the house on the 422 lot, and as a home office for John LaRocque. Exhibit 6, ¶7; Exhibit 2, ¶13, 14. At no time was the coach house used as a single family home. Exhibit 15 to Application for Appeal, ¶5-7; Exhibit 2, ¶14.

The coach house is located on the west side, or rear, of the 504 lot and the entire building is set farther back from Oak Street than the Dugans' home. Exhibit 6, ¶¶ 11-12, Exs. A and C. The primary living areas of the Dugan home face north,

towards the 504 lot. Exhibit 6, ¶¶10-13. Since the Dugans moved in, their view of the 504 lot has been of its open space. Exhibit 6, ¶¶ 12-13.

The new structure proposed by Bayit builders will be more than twice as large as the coach house current located on the 504 S. Oak lot. Exhibit J to Bayit Brief, Site Plan, A-1. Instead of being located in the rear of the 504 lot, the single-family home will be located directly north of the Dugans' home. Exhibit E to Exhibit 6. The construction of the new structure will require the removal of all trees on the 504 lot to the north of the Dugans' home. Exhibit K to Bayit Brief. The construction of the new structure will impose a drastic change in the use of the 504 lot, from accessory to the 422 lot, to use as a separate, single-family residence. This change will have a severe impact on the Dugans' use and enjoyment of their home.

C. The Proposed Bayit Home Will Also Adversely Affect the Fair Market Value of the Dugans' Property.

Moreover, if the 2,875 square foot garage located in the rear of the lot next door to the Dugans' home is torn down and replaced with a 7,176 square foot residence directly north of their own front door, the fair market value of the Dugans' property value will suffer. See, Exhibit 7a and 7b, before and after visuals showing the Dugan home next to the current coach house, compared with the Dugan home next to the proposed Bayit home per the plans. The construction of the home proposed by Bayit will adversely affect the fair market value of the Dugans' home. See, Affidavit of John Bohnen, attached as Exhibit 8.

#### B. The Dugans Have Standing Under Both the Village Code and Illinois Administrative Review Law

Having shown that the Village's decision to permit construction of a single-family residence on a lot of record that has been part of a single zoning lot for the past 24 years will have an impact on the value of their home, the Dugans are certainly "aggrieved or adversely affected" by the Village's decision, and likewise satisfy the State of Illinois' requirements for standing under the Administrative Review Law.

While the Administrative Review Law does not explicitly define what parties can be plaintiffs in a judicial challenge to an administrative decision, there is considerable case law on the subject of the standing required to bring such an action. In order to have standing to bring an administrative review action, a plaintiff must have been a party of record to the administrative proceeding and must have a certain individual right, duty, or privilege that is or will be adversely affected by the administrative decision. Board of Education of Roxana Community School District No. 1 v. Pollution Control Board, 2013 IL 115473; Winston v. Zoning Board of Appeals of Peoria County, 407 Ill. 588 (1950).

The Dugans' right to protect their property value is recognized as a basis for standing by Illinois courts. See, e.g., People ex rel. Klaeren v. Vill. of Lisle, 316 Ill. App. 3d 770, 783 (2d Dist. 2000), aff'd, 202 Ill. 2d 164 (2002) ("The desires of neighboring property owners alone cannot justify a zoning restriction, but the preservation of property values is one purpose of zoning ordinances, and the diminution of property

values in a neighborhood is one factor that should be considered before a change in zoning.")

D. Bayit Is Not the Only Party with Judicial Recourse to Enforce Its Rights.

Bayit's thinly veiled threat of a lawsuit if the ZBA does not rule in Bayit's favor should likewise be ignored. The Dugans are just as likely to pursue litigation to enforce their own property rights. Therefore, the ZBA should weigh all the evidence in the light of the provisions of the Village's Zoning Code and ensure the decision it makes is the right one.

#### IV. Conclusion

Girsch's construction of the accessory structure on the 504 property in 1994 and use of the accessory structure to serve the 422 residence combined the two properties into one zoning lot. See, Exhibit E to Bayit Brief, p. 3; \$9-101.B. of Zoning Code; \$12-206 of Zoning Code, "Lot, Zoning." That zoning lot consists of 58,073.4 square feet, and is not divisible into two, separately developable lots in the R-1 Single Family Residence District. See, Exhibit E to Bayit Brief, pp. 2-3; \$3-110 of Zoning Code. Division of the zoning lot into two R-1 lots would not be in compliance with the Code's regulations, and therefore, under \$12-101C of the Code, it cannot be done.

Robert T. O'Donnell (ARDC# 3124931) Hayleigh K. Herchenbach (ARDC# 6327026) O'Donnell Haddad LLC

14044 Petronella Drive, Suite 1 Libertyville, Illinois 60048

rodonnell@och-law.com

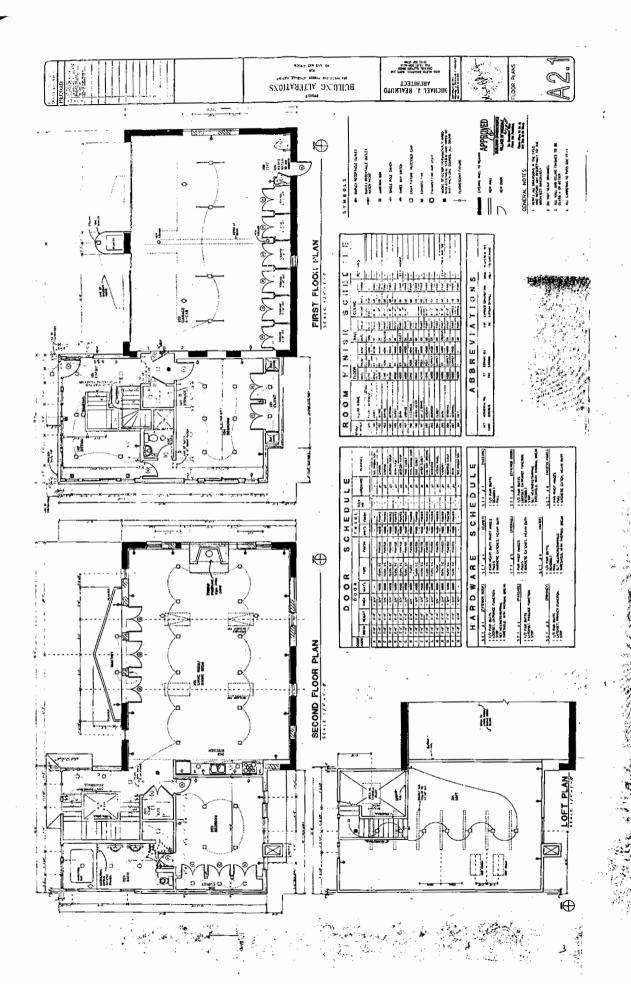
JAMES DUGAN and NANCY DUGAN

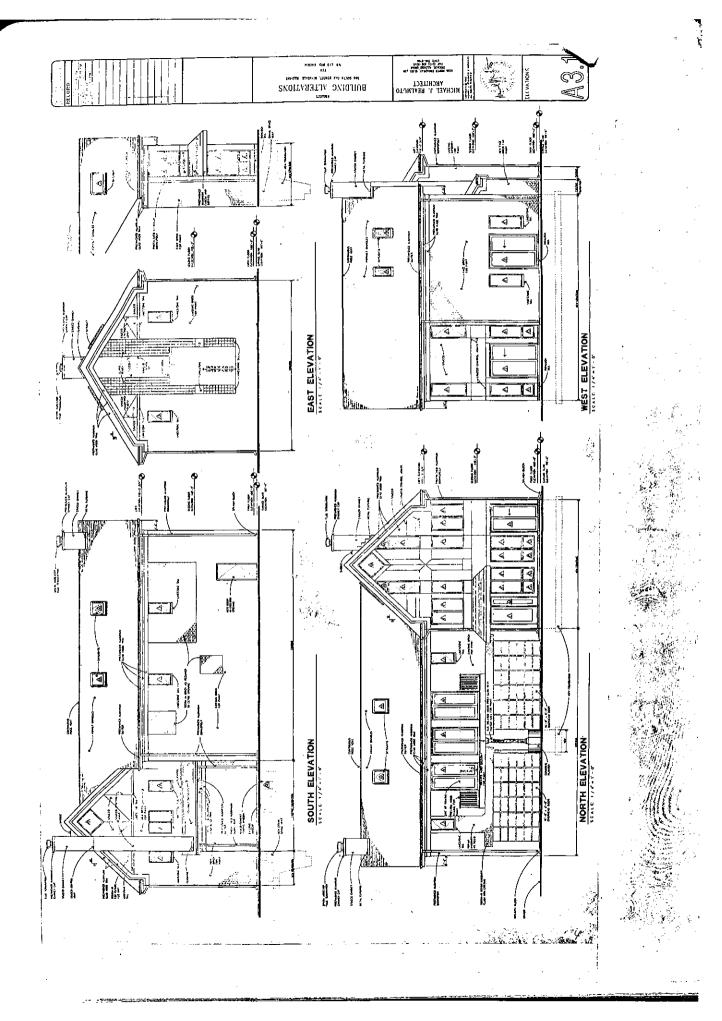
One of their attorney

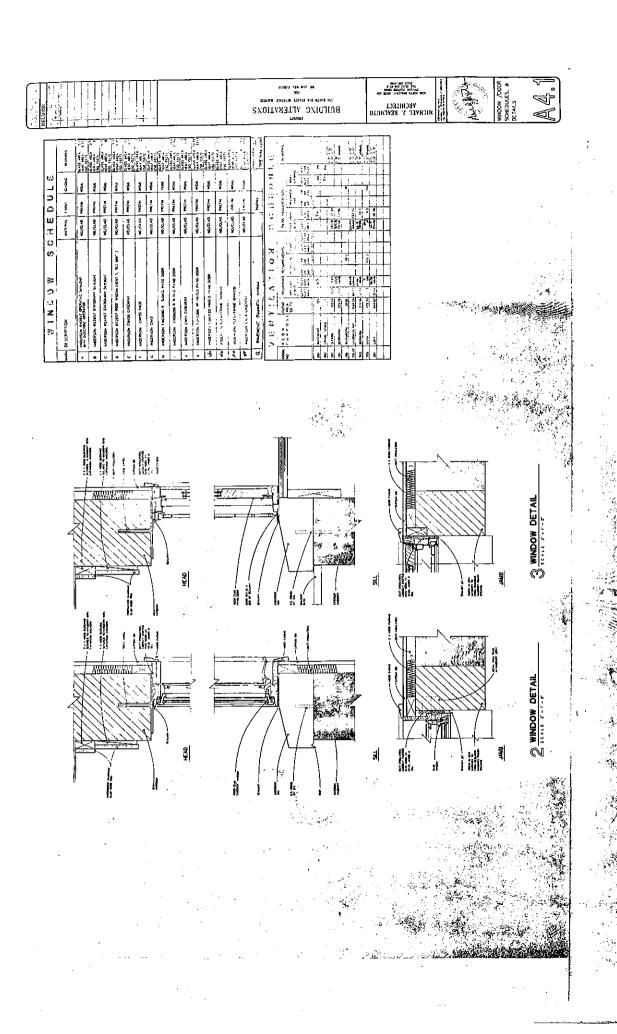
### TABLE OF AUTHORITIES

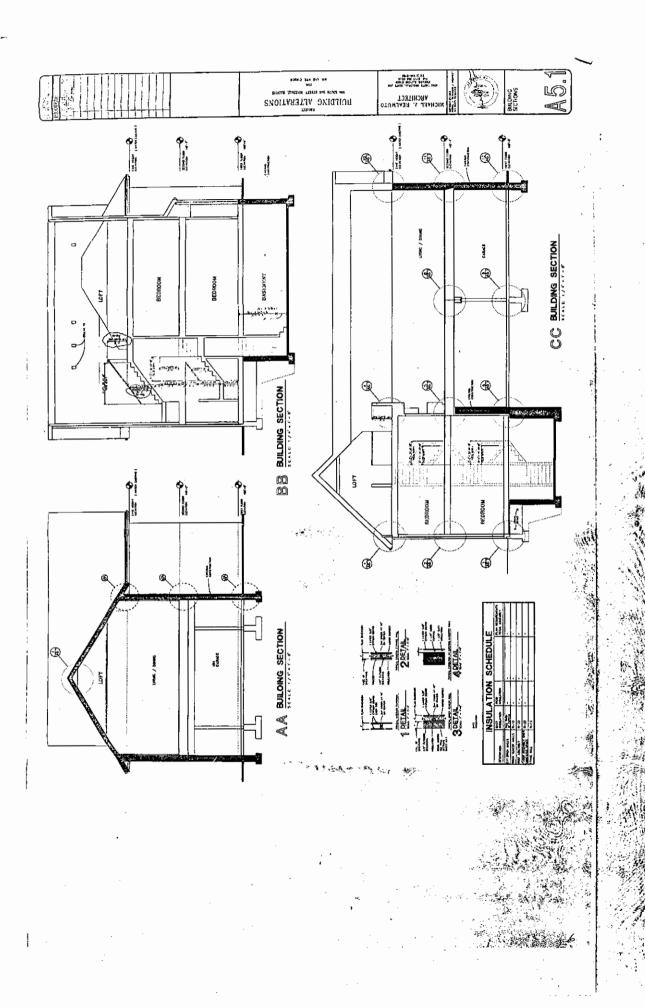
### Illinois Case Law

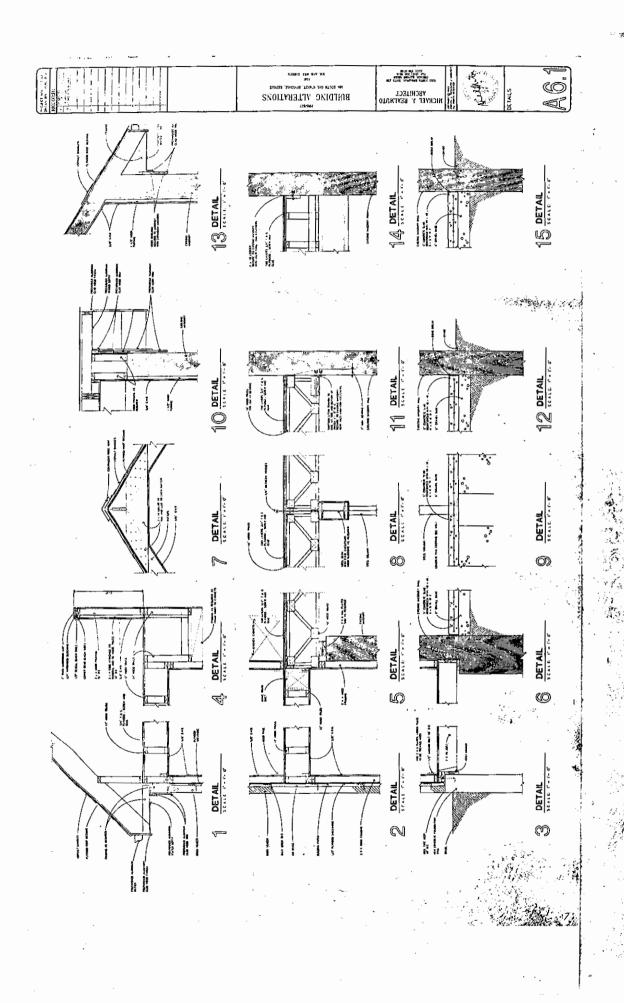
Exhibit 9	Application of Cty. Treasurer & Ex-Officio Cty. Collector of Cook Cty. v. Edelen, 30 Ill. App. 3d 235, 240 (1st Dist. 1975)	p. 5
Exhibit 10	Blankenship v. Kane County, 85 Ill. App. 3d 621 (2d Dist. 1980)	p. 5
Exhibit 11	Board of Education of Roxana Community School District No. 1 v. Pollution Control Board, 2013 IL 115473	p. 11
Exhibit 12	People ex rel. Klaeren v. Vill. of Lisle, 316 Ill. App. 3d 770 (2d Dist. 2000), aff'd, 202 Ill. 2d 164 (2002)	p. 11
Exhibit 13	Winston v. Zoning Board of Appeals of Peoria County, 407 Ill. 588 (1950)	p. 11
Provisions of	of Hinsdale Zoning Code	
Exhibit 14	Hinsdale Zoning Code Section 1-102	p. 7
Exhibit 15	Hinsdale Zoning Code Section 3-110	pp. 8, 12
Exhibit 16	Hinsdale Zoning Code Section 9-101	pp. 1, 3, 4, 12
Exhibit 17	Hinsdale Zoning Code Section 10-104	pp. 1, 2, 7, 8
Exhibit 18	Hinsdale Zoning Code Section 10-105	рр. 6, 7
Exhibit 19	Hinsdale Zoning Code Section 12-101	pp. 7, 12
Exhibit 20	Hinsdale Zoning Code Section 12-206	pp. 8, 12

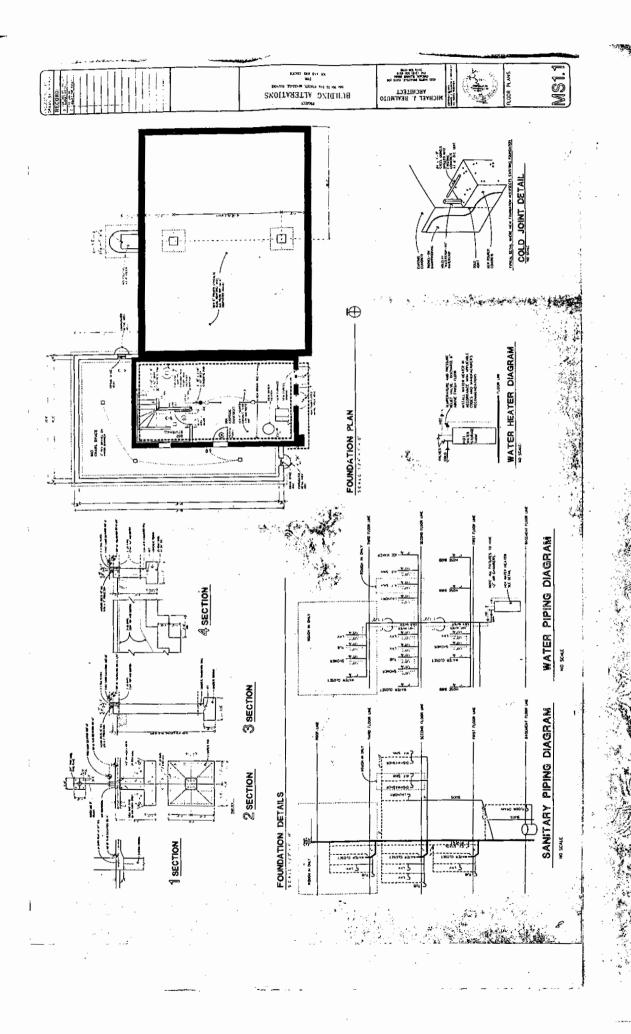


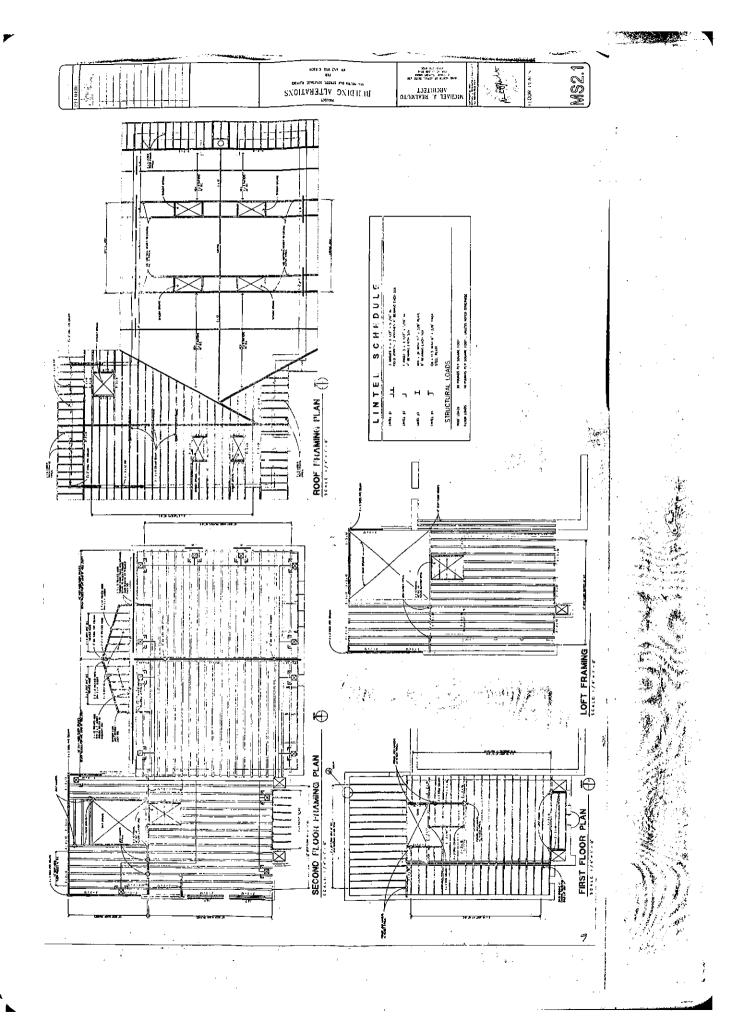








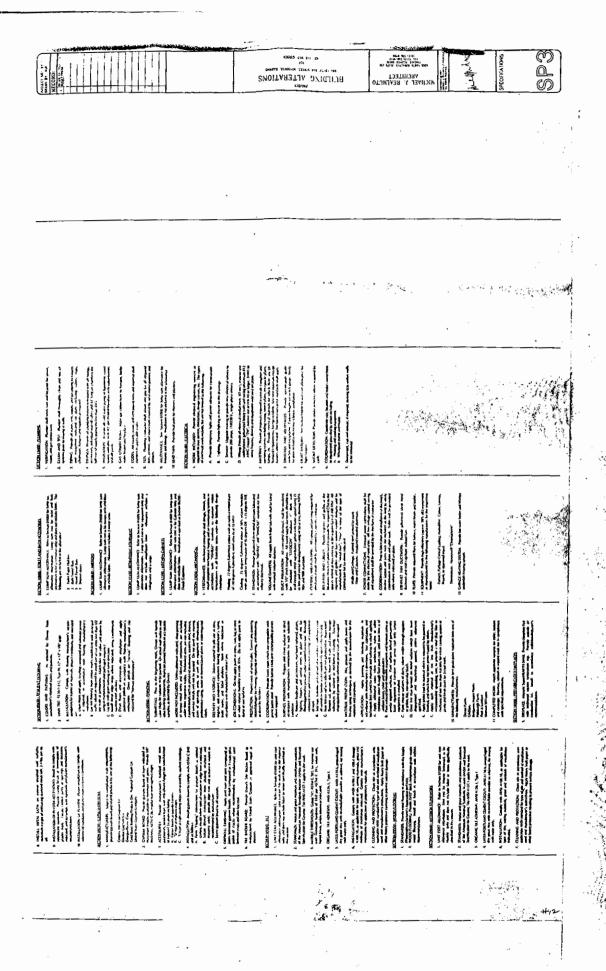




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# AFFIDAVIT OF ROBERT EARLY

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, Robert Early, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

- 1. My name is Robert Early.
- 2. I currently reside at 320 E. Fourth Street, Hinsdale, II., where I have lived since 2001. This affidavit is made upon my personal knowledge.
  - My home is next door to 422 S. Oak Street.
- From the time I moved in until the present day, the properties at 504 S. Oak Street and 422 S. Oak Street have been under common ownership.
- 5. When I moved into 320 E. Fourth Street, Jerome Girsch and his family resided at the principal residence on 422 S. Oak Street.
- 6. The 504 S. Oak property contained a coach house/garage, sport court, and driveway that were used by the Girschs while they resided at the principal residence on 422 S. Oak.
- In or about September 2001, the Girschs sold both Oak Street properties to John and Janet LaRocque.
  - 8. The LaRocques moved into the principal residence on 422 S. Oak.
- Shortly after the LaRocques moved into the Oak Street properties, I visited John
   LaRocque to discuss a property issue with him.
- 10. During the discussion of the property issue, John LaRocque invited me into the coach house on 504 S. Oak to see his office.
- I went inside the coach house and followed John LaRocque upstairs to the second floor of the coach house.



- 12. John LaRocque showed me how he had set up the main room of the second floor of the coach house as his office. The office was equipped with computer equipment and monitors, some of which appeared to be wall-mounted.
- 13. John LaRocque informed me he was a trader (securities/commodities) and often worked from his home office on the second floor of the coach house.
- 14. At no time since I moved into my home in 2001 have I ever witnessed the 504 S. Oak property used as a single family home. I have only witnessed the 504 S. Oak property used as accessory to the principle residence at 422 S. Oak.

FURTHER AFFIANT SAYETH NAUGHT

Lobert Early



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Recommended nearby homes



Similar Home \$960,000 811 S Clay St 4 bd • 4 ba



Similar Size \$639,900 336 Phillippa St 5 bd • 3 ba • 3,250 sq ft



Trending \$415,000 544 W 58th Pl N 3 bd • 2+ ba • 2,472 sq ft



Off Market

Est. \$1,427,300 @



Мар 🦨

3 full, 2 half baths

0.59 2,875 sq ft

acres lot

Commute Time 504 S Oak St, Hinsdale, IL 60521

⇔ Share



# Trustee's Deed Tenancy By The Entirety

THIS INDENTURE made this 25th day of September, 2001, between HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation, organized and existing under the laws of the State of Illinois, and duly authorized to accept and execute trusts within the State of Illinois, not personally, but solely as Trustee under the provisions of a Deed or Deeds in Trust duly recorded and delivered to said Bank in pursuance of a certain Trust Agreement dated 19th day of November,

J.P. "RICK" CARNEY
DUPAGE COUNTY RECORDER
OCT.12,2001 10:19 AM
DEED 09-12-225-009
003 PAGES R2001-219488

1985, and known as Trust Number L-1143, Grantor and party of the first part, and JOHN LAROCQUE and JANET LAROCQUE, as husband and wife, not as joint tenants, and not as tenants in common, but as tenants by the entirety, Grantee and party of the second part.

Grantees Address: 950 Taft Road, Hinsdale, IL 60521

WITNESSETH, that said Grantor, in consideration of the sum of Ten Dollars and other good and valuable considerations in hard paid does hereby convey and quit-claim unto said Grantee, the following described real estate situated in DuPage County, Illinois, to wit:

#### SEE LEGAL ATTACHED TO AND MADE A PART OF DEED

Permanent Index No. 09-12-255-017 & 09-12-225-009

Together with the tenements and appurtenances thereunto belonging.

TO HAVE AND TO HOLD THE same unto said party of the second part, and to the proper use, benefit and behoof forever of said party of the second part.

SUBJECT TO: (a) covenants, conditions and restrictions of record; (b) private, public and utility easements and roads and highways, if any; (c) party wall rights and agreements, if any; (d) special taxes or assessments for improvements not yet completed; (e) any unconfirmed special tax or assessment; (f) installments not due at the date hereof of any special tax or assessment for improvements heretofore completed; and (g) general taxes for the year 2001 and subsequent years, including taxes which may accrue by reason of new or additional improvements during the year 2001.

SUBJECT TO: The liens of all trust deeds and/or mortgages upon said real estate, if any, recorded or registered in said county given to secure the payment of money remaining unreleased at the date of the delivery hereof, to all real estate taxes due or to become due and all conditions, covenants and restrictions or record.

This deed is executed by the party of the first part, as Trustee, as aforesaid, pursuant to and in the exercise of the power and authority granted to and vested in it by the terms of said Deed or Deeds in Trust and the provisions of said Trust Agreement above mentioned, and of every other power and authority thereunto enabling.

IN WITNESS WHEREOF, said party of the first part has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by one of its officers and attested by another of its officers, the day and year first above written.

HARRIS TRUST AND SAVINGS BANK as Trustee aforesaid, and not personally

Shi

Stiffley IVI Protect

Attest:

Form 3000 - ICI/OI trustcesdeedten.doo

EXHIBIT

COUNTY OF DuPage

)SS

STATE OF ILLINOIS

I, the undersigned, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY that Shirley M. Nolan, Assistant Vice President/Land Trust of HARRIS TRUST AND SAVINGS BANK and

Mary Koch, Vice President of said bank, personally known to me to be the same persons, whose names are subscribed to the foregoing instrument as such officers of said bank respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said bank, as Trustee for the uses and purposes, therein set forth and the said AVP of said bank did also then and there acknowledge that he/she as custodian of the corporate seal of said bank did affix the said corporate seal of said bank to said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank, as Trustee for the uses and purposes therein set forth.

Given under my hand and Notzrial seal this 25th day of September, 2001.

This instrument prepared by:

S. Nolan

HARRIS TRUST AND SAVINGS BANK 53 S. Lincoln Street, Hinsdale, IL 60521

"OFFICIAL SEAL" DIANE S. KETCHEN Notary Public, State of Illinois My Commission Expires 9/30/04

TOUN & Javet LAROCOUSE 422 S. OAK ST. HINSDALE IN GOSSI

JAMES R. FLYDY 111 SOUTH GRANT STREET Hinsdale, IL 60521

CITY

422 South Oak Street, Hinsdale, IL & 504 South Oak Street, Hinsdale, IL

ADDRESS OF PROPERTY

STATE OF ILLINOIS

REAL ESTATE TRANSFER TAX

6,150.00

Form 3000 - R1/Oltrusteesdeedten.doo

**DUPAGE COUNTY** 

# EXHIBIT A LEGAL DESCRIPTIONS FOR 422 SOUTH OAK STREET AND 504 SOUTH OAK STREET, HINSDALE, IL

#### PARCEL I:

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- LOT 2 IN MCMANUS RESUBDIVISION OF LOT 1 AND THE SOUTH 101 FEET OF THE À. EAST 64.10 FEBT OF LOT 2 AND THE EAST 12.00 FEET OF LOT 2 (EXCEPT THE SOUTH 101 FEET THEREOF) IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, IN THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER (ACCORDING TO DOCUMENTNO. 14048 RECORDED JUNE 12, 1871 AND DOCUMENT 555319 RECORDED OCTOBER 2, 1948) IN SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DU PAGE COUNTY, ILLÈNOIS, EXCEPT THAT PART OFLOT 2 LYING WEST OF THE EAST LINE OF LOT 2 OF JACKSON'S RESUBDIVISION AFORESAID, EXTENDED SOUTHERLY OF MCMANUS RESUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE. A SUBDIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTH QUARTER OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF MCMANUS RESUBDIVISION AFORESAID, RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319, IN DU PAGE COUNTY, ILLINOIS
- B. THE EAST 3.00 FEET OF LOT 2 IN JACKSON'S RESUBDIVISION OF PART OF LOT 2 IN BLOCK 11 OF W. ROBBINS' PARK ADDITION TO HINSDALE IN THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED OCTOBER 17, 1951 AS DOCUMENT NO. 637040 AND CORRECTED BY CORRECTION CERTIFICATE DATED NOVEMBER 1, 1951 AND RECORDED NOVEMBER 1, 1951 AS DOCUMENT NO. 638267, IN DU PAGE COUNTY, ILLINOIS
- C. THE EAST 17.00 FEET OF THAT PART OF LOT 2 LYING WEST OF THE EAST LINE OF LOT 2 OF JACKSON'S RESUBDIVISION, AS AFORESAID, EXTENDED SOUTHERLY OF MCMANUS RESUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 11 IN W. ROBBINS' PARK ADDITION TO HINSDALE, A SUBDIVISION OF THE SOUTH ½ OF THE NORTHEAST 1/4 AND THE NORTH 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID MCMANUS RESUBDIVISION AFORESAID, RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319, IN DU PAGE COUNTY, ILLINOIS

COMMONLY KNOWN AS: 422 SOUTH OAK STREET, HINSDALE, IL

P.I.N.: 09-12-225-017 DI

PARCEL 2: LOT 3 IN MCMANUS RESUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 2, 1948 AS DOCUMENT NO. 555319 IN DU PAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 504 SOUTH OAK STREET, HINSDALE, ILLINOIS

P.I.N.: 09-12-225-009

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EXHIBIT

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# AFFIDAVIT OF NANCY DUGAN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, Nancy Dugan, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

- 1. My name is Nancy Dugan.
- I currently reside at 540 S. Oak Street, Hinsdale, IL, where I have lived since 2009.
   This affidavit is made upon my personal knowledge.
- 3. My home is next door to the coach house at 504 S. Oak Street. See, Exhibit A, aerial photo from DuPage County GIS Division.
- 4. From the time I moved in until December 2016, on information and belief, the properties at 504 S. Oak Street and 422 S. Oak Street were under common ownership.
- 5. When I moved into 540 S. Oak, John and Janet LaRocque resided at the principal residence on 422 S. Oak Street. Though their principal residence was two lots away from mine, I considered the LaRocques my next-door neighbors.
- 6. The lot immediately north of my home, 504 S. Oak, contained a coach house/garage, sport court, and driveway that were used by the LaRocques, who resided at the 422 S. Oak principal residence. See, Exhibit A.
- 7. Since I moved in until December 2016, the coach house was used primarily as a garage for the vehicles used by the occupants of the house on the 422 lot.
- 8. The coach house on 504 S. Oak is set back approximately 6 feet, 6 inches from my property line. See, Exhibit B (January 24, 2018 photograph measuring distance from Dugan fence to 504 coach house).

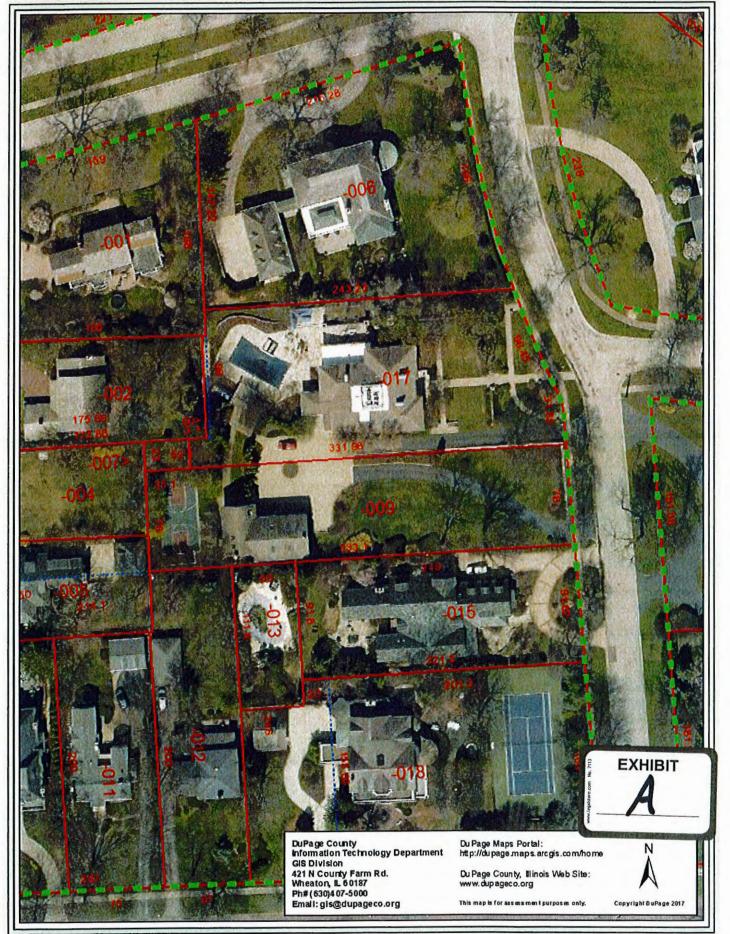


- 9. When making our decision with my husband Jim to purchase our home, I never believed the coach house/garage would or could be torn down and replaced with a second single family home on the LaRocque property.
- 10. My home is oriented to the north, towards the 504/422 S. Oak property. Three of the five bedrooms on the second floor, our main living room, our sun room, and my office directly face the 504 lot.
- 11. The coach house is located in the rear of the 504 lot, all the way towards the rear of our own lot. See, Exhibit A.
- 12. The westernmost end of the coach house is set back from the road approximately 20 feet farther from Oak Street than the easternmost edge of my house. That is, not one of the north-facing windows of my home is directly facing the coach house. See, Exhibit C (Google Earth Pro 2017 photo).
- 13. Our entire home is overlooking the front yard of the 422/504 S. Oak property. Between the trees in that front yard, the trees in our own front yard, and the trees in the yard of our neighbor to the south, our home, like most other homes in the neighborhood, is surrounded by greenery in the summertime. See, Exhibit D (Google Earth Pro June 2016 photo).
- 14. The 7,157 sq. ft. home Bayit proposes to build on the 504 S. Oak lot will be located directly north of our home. See, Exhibit E (Google Earth Pro 2017 photo with overlay of home from Bayit plans).
- 15. Contrary to Bayit's assertions in its brief, the Bayit "Tree Protection Plan" calls for the removal of every tree on the 504 property line to the north of our home. See, Exhibit K to Bayit Brief.
- 16. If the proposed Bayit home is built, instead of overlooking an open and verdant front yard, our home will be directly facing into the windows of a 7,157 sq. ft. home.

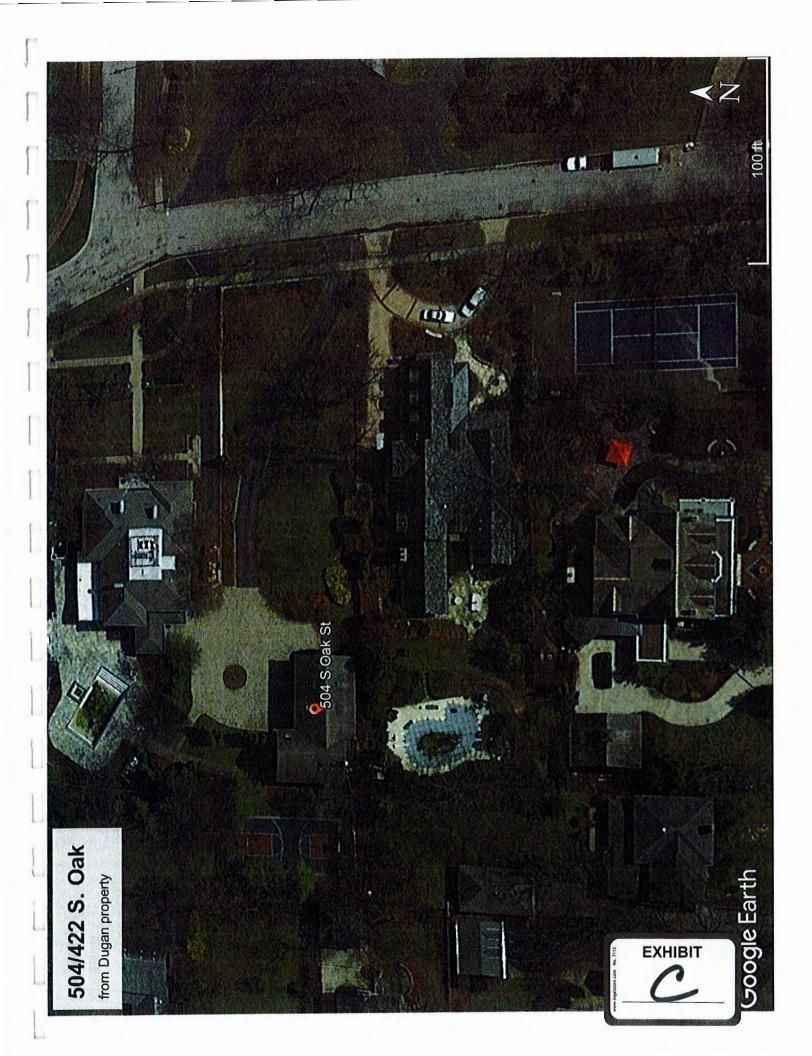
17. The construction of the proposed Bayit home will negatively affect my use and enjoyment of my own home.

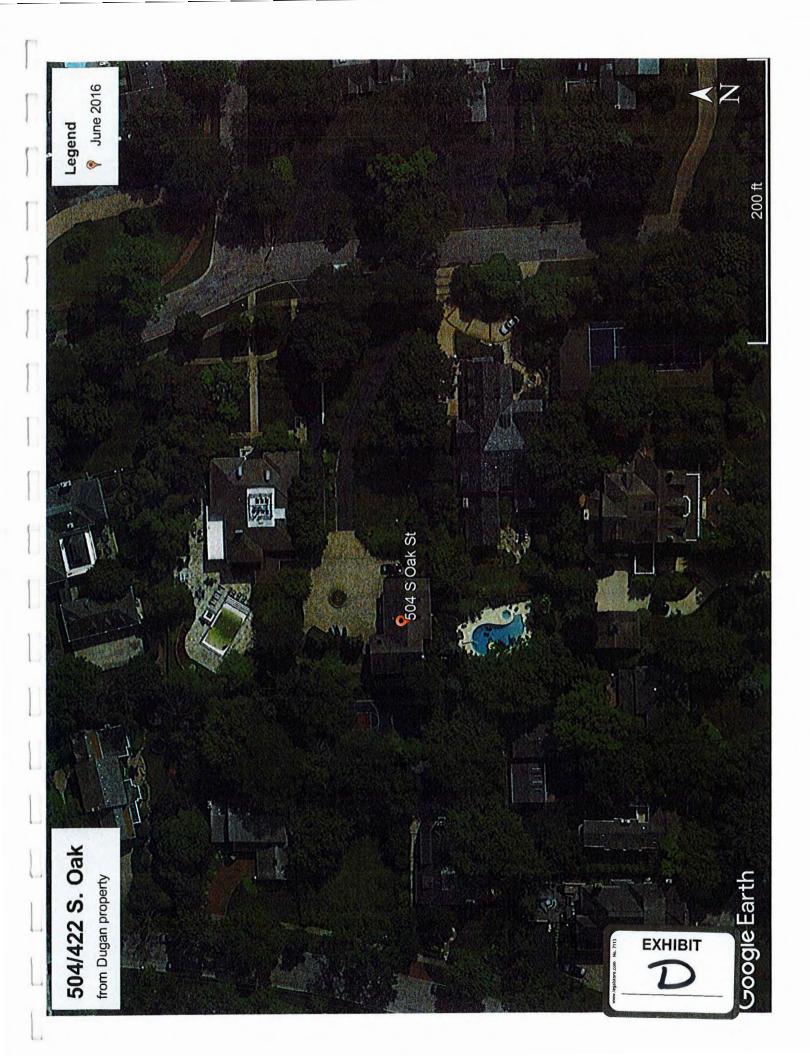
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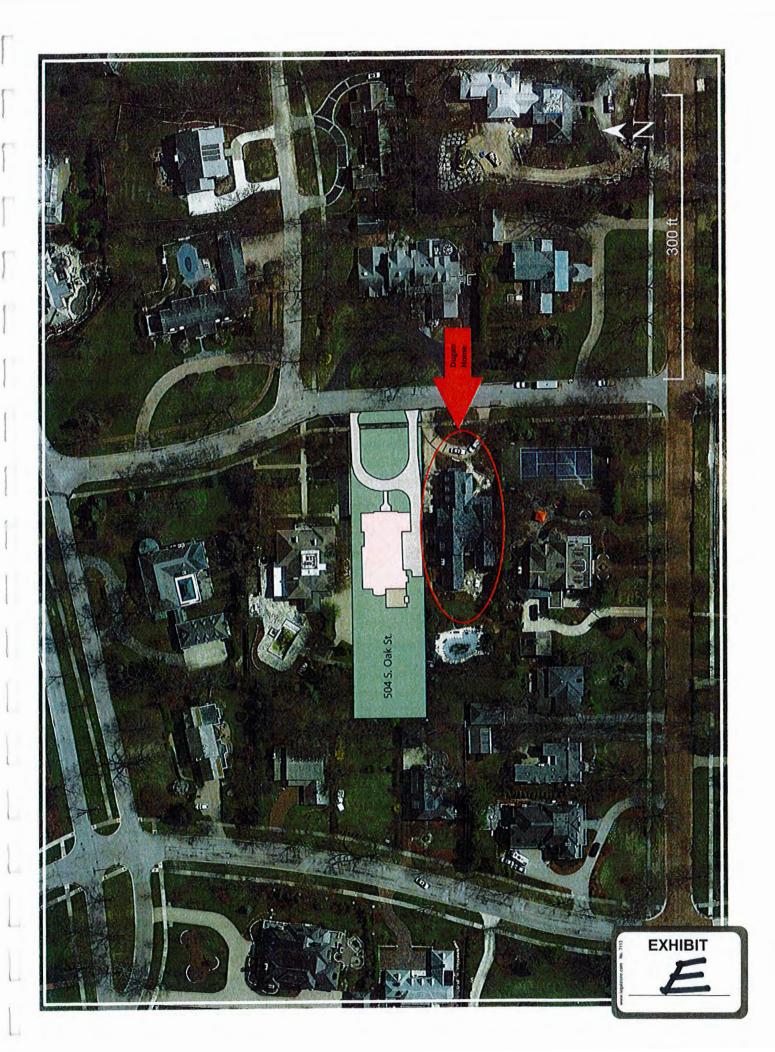
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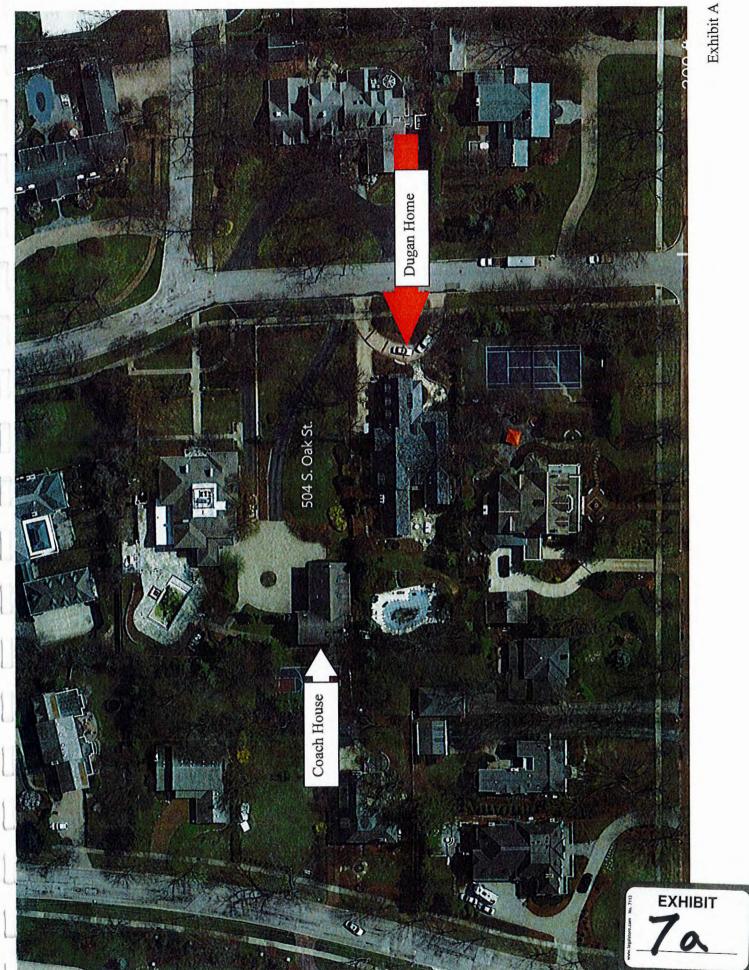


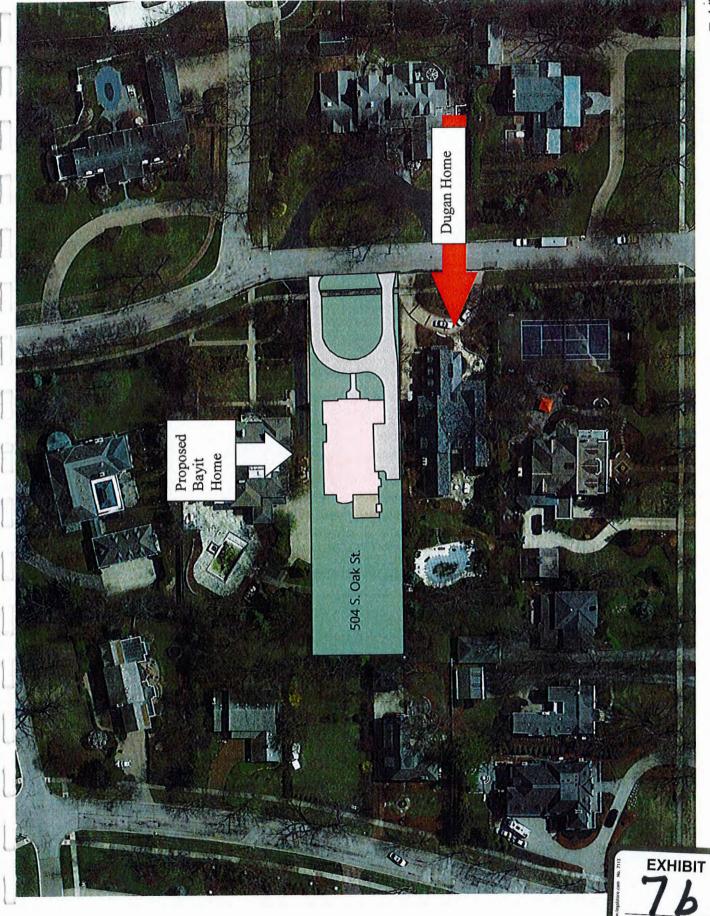












# AFFIDAVIT OF JOHN BOHNEN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, John Bohnen, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

- 1. My name is John Bohnen. This affidavit is made upon my personal knowledge.
- 2. I currently reside at 230 E. First Street, Hinsdale, IL, where I have lived since 1975.
- 3. I have been a resident of Hinsdale for almost my entire life.
- 4. I am a real estate broker licensed by the State of Illinois. I am affiliated with several national and local real estate associations, including the Illinois Association of Realtors and the National Association of Realtors.
- I am the managing Broker of County Line Properties, a boutique real estate firm located in Hinsdale. I founded County Line Properties in 1991.
- 6. I have over 25 years of experience appraising residential real estate in and around Hinsdale and similar suburbs in the area.
- I have sold over 200 homes in and around Hinsdale and similar suburbs over the past 25 years.
- 8. I am familiar with the residence at 540 S. Oak and the residence and coach house/garage at 422 S. Oak and 504 S. Oak in Hinsdale.
- 9. I am familiar with the historical values of those properties and similarly situated homes in the area.
- 10. Typically, homes with more pleasant views, such as open space and greenery, command higher values than those with views of adjacent structures.





- 11. In my experience, purchasers pay a premium for homes with proximity and/or exposure to open space/greenery rather than proximity to adjacent structures.
- The Dugans' home at 540 S. Oak is located south of the coach house/garage at 504S. Oak. The 540 S. Oak home is oriented towards the north, facing the 504 S. Oak property.
- 13. Many of the rooms in the Dugans' home face the 504 S. Oak property, including several bedrooms, the main living room, a sun room, and an office.
- 14. The coach house/garage on the 504 S. Oak property is located in the rear of that lot. The Dugan home is located towards the front of the 504 S. Oak lot. See, Aerial attached as Exhibit A.
- 15. The front setback of the coach house is approximately 20 feet west of the rear setback of the Dugan home. That is, the entire Dugan home overlooks the south yard of the 504/422 lot.
- 16. In 2009, the Dugans purchased a home with a view overlooking the open, landscaped space of the 504 S. Oak lot.
- 17. I have reviewed the proposed plans for the new, single-family residence prepared by Patrick Plunkett and dated July 28, 2017.
- 18. The plans call for the proposed home to be built directly north of the Dugan home. See, Aerial with overlay of Plunkett plans attached as Exhibit B.
- 19. The construction of the proposed home would change the view from the Dugan home from overlooking a landscaped yard with trees, bushes and other greenery to looking directly at another residence.
- 20. If the proposed Bayit home is constructed on the 504 S. Oak St. lot, the view from many of the north-facing rooms in the Dugan home will be of the façade and into the windows of the 504 S. Oak residence.

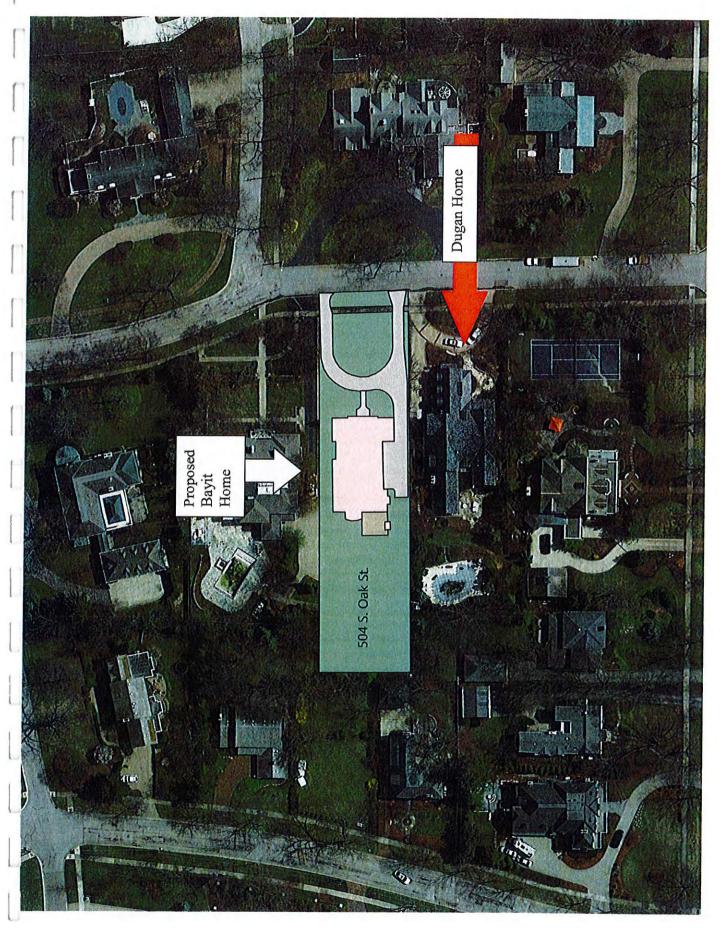


- 21. This change in view will have an impact on the fair market value of the Dugan home.
- 22. While the additional 20-foot setback suggested by the Hinsdale Historic Preservation Committee would somewhat mitigate the adverse effect of the proposed home on the value of the Dugans' home, it would not eliminate that adverse effect.
- 23. In my opinion, the construction of the proposed home at 504 S. Oak will have a negative effect on the fair market value of the Dugan home.

John Bohnen

FURTHER AFFIANT SAYETH NAUGHT

\$



30 Ill.App.3d 235 Appellate Court of Illinois, First District, Fifth Division.

Application of the COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, Illinois, for judgment and order of sale against real estate rendered delinquent for the non-payment of general taxes for the year 1965.

Willis T. HOWELL et al., Petitioners under Section 72 and Appellants,

V.

Frank N. EDELEN and Marilyn Edelen, Respondents-Appellees.

No. 60393. | June 13, 1975.

Rehearing Denied Aug. 8, 1975.

## Synopsis

The original owner of property sold for taxes sought by petition to vacate an order for issuance of a tax deed, and sought relief against both the tax purchaser's assignee and the grantees. A motion by the original assignee to dismiss was denied by the Cook County Circuit Court, Robert J. Dempsey, but a motion by her grantees to dismiss was sustained. Petitioners appealed. The Appellate Court, Sullivan, J., held that allegations concerning petitioners' actual possession of the land at the times of the conveyances in question made a prima facie showing that the ultimate grantees might not have been bona fide purchasers inasmuch as they could be charged with notice of and duty to make inquiry as to petitioners' interest, and the petition was thus sufficient to withstand the motion by the ultimate grantees to dismiss.

Cause reversed and remanded with instructions to deny the motion by the ultimate grantees.

West Headnotes (5)

[1] Judgment

Actions and Other Proceedings to Review Judgment

In section of Civil Practice Act providing for relief from judgments, subsection concerning rights of purchasers for value was intended to protect bona fide purchasers for value. S.H.A. ch. 110, §§ 72, 72(5).

I Cases that cite this headnote

# [2] Judgment

Actions and Other Proceedings to Review Judgment

Within purview of Civil Practice Act section providing for relief from judgments, and subsection concerning rights of purchasers for value, land purchaser is not bona fide purchaser if he has constructive notice of an outstanding title or right in another person; purchaser having notice of facts which would put prudent man on inquiry is chargeable with knowledge of other facts he might have discovered by diligent inquiry, and prospective purchaser is chargeable with knowledge of facts inconsistent with claims of ownership by record owner. S.H.A. ch. 110, §§ 72, 72(5).

4 Cases that cite this headnote

#### [3] Vendor and Purchaser

- Purchasers from Bona Fide Purchaser

Purchaser from grantee who obtained title in good faith and for value without notice of prior equities will be protected against such equities, although purchaser from grantee has notice thereof, but such sale would not be effective against rights of persons in possession at time of both conveyances. S.H.A. ch. 110, § 72(5).

2 Cases that cite this headnote

# [4] Pleading

Insufficient Allegations or Denials

#### Pretrial Procedure

. Other Actions

Taxation



 Application for Deed, and Proceedings Thereon

In proceeding to vacate order for issuance of tax deed, wherein petition sought relief against both original tax purchaser's assignee and her grantees, allegations concerning petitioners' actual possession of land at times of conveyances in question made prima facie showing that ultimate grantees might not have been bona fide purchasers inasmuch as they could be charged with notice of and duty to make inquiry as to petitioners' interest, and petition was thus sufficient to withstand dismissal motion by ultimate grantees. S.H.A. ch. 110, §§ 72, 72(5); ch. 120, §§ 744, 747.

1 Cases that cite this headnote

#### [5] Vendor and Purchaser

Constructive Notice, and Facts Putting on Inquiry

Whatever is sufficient to put party on inquiry is notice of all facts which pursuance of such inquiry would have revealed; and without such inquiry, no one can claim to be innocent purchaser as against party claiming interest in property supported by such notice. S.H.A. ch. 110, § 72(5).

I Cases that cite this headnote

#### Attorneys and Law Firms

\*\*558 \*236 Gierach, Stambulis & Schussler, Ltd., Oak Lawn, for appellants; Will Gierach, Oak Lawn, of counsel.

Ned Langer and Stuart I. Finkle, Chicago, for appellees; Jeffrey Gottlieb, Chicago, of counsel.

# **Opinion**

SULLIVAN, Justice.

This is an appeal from the grant of a motion to dismiss an amended petition under section 72 of the Civil Practice Act (Ill.Rev.Stat.1973, ch. 110, par. 72) which sought to vacate an order for the issuance of a tax deed. The petition sought relief against both the original tax purchaser's

assignee, Elsie Lhotka, and her grantees, the Edelens. A motion to dismiss the petition was filed by the Edelens, and Elsie Lhotka filed a motion to strike and dismiss. The motion to Elsie Lhotka was denied, but the motion of the Edelens was granted and petitioners appeal from that order of dismissal, contending that (1) the tax deed was void and could therefore pass no interest to the Edelens; or (2) the Edelens were not bona fide purchasers but rather had notice from various facts of petitioners' claim to the property in question.

In July of 1969, Elsie Lhotka petitioned the circuit court for the issuance of a tax deed. In the petition she asserted that on February 16, 1967 her assignor, Suburban Tax Lien, had purchased the lot in question at the annual tax sale; <sup>1</sup> that a certificate of purchase was issued to said assignor, who subsequently transferred the certificate to Elsie Lhotka; that, as of the date of the petition, all taxes and assessments which became due since the date of the sale had been paid or would be paid prior to the request for the entry of an order for deed; and, that petitioner had complied with all notice requirements of sections 263 and 266 of the Revenue Act. (Ill.Rev.Stat.1969, ch. 120, pars. 744, 747.) She therefore prayed for an order directing the County Clerk to issue her a tax deed and, further, that a writ of assistance issue to put her in possession.

In December of 1969 an 'Application for an Order Directing the County Clerk to Issue Tax Deed' was filed by Elsie Lhotka, stating that \*237 the time of redemption had expired and no redemption was made; that all taxes and special assessments which became due since the date of the sale had been paid; that all notices required by law had been duly served and published; and that the petitioner had complied in all respects with the provision of the statutes of Illinois in relation to the issuance of tax deeds. This petition was accompanied by an affidavit of James Haleas, attorney for Elsie Lhotka, stating that he had inspected the premises on August 4, 1969; that the property was vacant and unimproved and had a frontage of 100 feet and a depth of 160 feet; that a certain trustee was the record owner of the property; that certain persons had been served with notice on certain dates; that Unknown Owners had been served by publication; and that all subsequent taxes on the property were paid.

On December 30, 1969, following a hearing, the order requested was entered pursuant to the court's finding that the assignee was the legal owner and holder of the Certificate of Purchase from the tax sale; that the period

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of redemption had expired; that all subsequent taxes had been paid; that all notices required by law had been given; that the evidence taken at the hearing established due diligence; and that there was no just reason to delay enforcement \*\*559 of the decree. Accordingly, an order was issued to the County Clerk to deliver to Elsie Lhotka a tax deed, and further directing that a writ of assistance issue to put her in possession. A transcript of the hearing was also made and filed with the order.

Over three years later, on July 6, 1973, the Howells filed their original section 72 petition to vacate the December 30, 1969 order, granting Elsie Lhotka a tax deed. An amended petition was then filed wherein they alleged in substance that the tax deed was secured through acts of fraud in that (1) the affidavit presented to the court by the attorney for Elsie Lhotka fraudulently described the dimensions of the lot in question as having a frontage of 100 feet and a depth of 160 feet when, in fact, it was an irregular shaped lot with a frontage of 100 feet and a depth of 402.5 feet on one side and 461.5 feet on the other; (2) the lot was described as vacant, whereas aircraft tie downs were buried in the ground and aircraft parking and storage was regularly conducted on a portion of the lot; (3) the lot was described as unoccupied when, in fact, on August 4, 1969 and for some two years prior thereto, the easterly portion of the lot was occupied by the Howells and their tenants as a part of the Howell Airport; (4) the Howells, as occupiers of the lot in question, were entitled to personal notice before the expiration of the time of redemption as a condition precedent to the court's jurisdiction and the entry of a valid decree for tax deed, and that no such notice was given them as required by sections 263 and 266 of the Revenue Act; (5) the owners of the aircraft upon the lots were occupants who had not received \*238 notice of the tax sale; (6) the right, title, and interest of Mabel Howell to the property was claimed by her in a complaint for separate maintenance filed June 2, 1969 and confirmed by the court in the divorce decree entered July 30, 1970 and that with the exercise of due diligence the tax purchaser and her grantees could have ascertained from the public records that she was entitled to notice.

Petitioners further asserted that they had no notice of the ax deed proceedings until about March 1, 1973, when one of the alleged Bona fide purchasers for value, Frank Edelen, presented himself at the Howells' office at the airport and asked them to remove the aircraft parked on the lot in question. Petitioners alleged that the Edelens lived across the street from the property and

were acquainted with the Howells and knew that the Howell Flying Service had improved and occupied the lot. Further, petitioners alleged that the Edelens were not Bona fide purchasers in that they had notice of defects in the title from the errors apparent in the record of the tax deed proceedings, from an inspection of the premises which would have revealed the Howells' use of the property and its occupancy by aircraft belonging to the Howells' lessees, and from the further fact that the purchase price was substantially less than the actual value of the property. 2 The Howells' affidavit was attached to the petition, and it stated that from 1966 to its date the lot in question was occupied by various aircraft and improved with graded taxiways and an aircraft parking and storage area regularly used in the conduct of the business known as 'Howell Airport.' The airport, containing runway and hangars, occupies a 100 acre parcel adjoining the property in question.

Finally, the amended petition stated facts showing that in 1969 an agent of Suburban Tax Lien, the original tax purchaser, had made certain misrepresentations to counsel for the Howells to the effect that all taxes \*\*560 on the property in question had been paid. In fact, the Howells asserted that Suburban Tax Lien and its assigns allowed the Howells to pay all taxes from 1966 to the date of the petition and to remain in quiet possession for the express purpose of allowing the owners' rights to expire without the owners' knowledge of the issuance of a tax deed and that, to further improve her legal position, Elsie Lhotka located a cooperating broker (Edelen) to act as a purported Bona fide purchaser. It was argued that this misrepresentation constituted a fraudulent concealment, \*239 thereby tolling the running of the two year limitation of subsection 3 of section 72.

The court found that the allegations of fraud in the petition were sufficient to warrant a denial of Elsie Lhotka's motion to strike and dismiss; however, the court sustained the motion to dismiss of the Edelens. In their motion, the Edelens contended that lack of jurisdiction did not affirmatively appear in the record of the tax deed proceedings; that the Edelens were not parties to the original action; that on October 22, 1970 Elsie Lhotka conveyed the subject premises to Elmhurst National Bank, as Trustee; that in 1972 the Edelens purchased the property for 'valuable consideration without notice or knowledge of any claim' by the Howells to the property, receiving a trustee's deed dated December 4, 1972; that the section 72 petition of the Howells was filed after their

purchase and makes no allegations of fraud on the part of the Edelens which would toll the running of the two year limitation set forth in subsection 3 of section 72. Therefore, the Edelens urged and the court found that they were protected by subsection 5 thereof, which provides:

> 'Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order, judgment or decree pursuant to the provisions of this section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order, judgment or decree but before the filing of the petition. nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order, judgment or decree.'

The Howells appeal from the order sustaining the Edelens' motion to dismiss the section 72 petition.

#### OPINION

We note first the general maxim that, for purposes of ruling on a motion to dismiss, all facts well pleaded are to be considered as true. Logan v. Presbyterian-St. Luke's Hospital, 92 Ill.App.2d 68, 235 N.E.2d 851; Haney v. Haney, 37 Ill.App.2d 216, 185 N.E.2d 409.

[1] Secondly, we note that although the language of subsection 5 of section 72 speaks only of the rights of purchasers for value. (See, E.g., People ex rel. Wright v. Doe, 26 Ill.2d 446, 187 N.E.2d 222; \*240 Southmoor Bank & Tr. Co. v. Willis, 15 Ill.2d 388, 155 N.E.2d 308.) Accordingly, the Joint Committee Comments regarding the subsection state:

'This subsection is intended to protect a Bona fide purchaser of property from the effects of an order setting aside a judgment or decree affecting the title to the property if he was not a party to the original proceeding, when lack of jurisdiction does not affirmatively appear from the record proper.' (Emphasis added.)

We believe it apparent that in denying the motion to strike and dismiss of Elsie Lhotka while granting the motion to dismiss of the Edelens, the court found that sufficient allegations of fraud were made against Elsie Lhotka to toll the two year \*\*561 period of limitations contained in section 72(3) but that the Edelens were Bona fide purchasers for value protected by section 72(5). Inasmuch as we find that petitioners have alleged sufficient facts to question the good faith of the Edelens, we feel it necessary to reverse on that issue without reaching the question of the deed's validity.

[2] A purchaser of land is not a Bona fide purchaser if he has constructive notice of an outstanding title or right in another person. (Smith v. Grubb, 402 III. 451, 84 N.E.2d 421; 35 I.L.P. Vendor & Purchaser, s 133.) A purchaser having notice of facts which would put a prudent man on inquiry is chargeable with knowledge of other facts he might have discovered by diligent inquiry. (Carnes v. Whitfield, 352 III. 384, 185 N.E. 819: 35 I.L.P. Vendor & Purchaser, s 133.) A prospective purchaser is chargeable with knowledge of facts which are inconsistent with the claims of ownership by the record owner, for, as stated in Burnex Oil Co. v. Floyd, 106 III.App.2d 16, 24, 245 N.E.2d 539, 544:

'Whatever is sufficient to put a party upon inquiry is notice of all facts which pursuance of such inquiry would have revealed and without such inquiry no one can claim to be an innocent purchaser as against the party claiming an interest in the property supported by such notice.'

[3] Here, the Edelens' examination of the chain of title to the property showed the original tax deed to Elsie Lhotka in December 1969, and the writ of assistance placing her in possession. In October, 1970, she conveyed the property to Elmhurst National Bank, as Trustee <sup>3</sup>, which in \*241 turn conveyed the property to the Edelens in December of 1972. The chain of title revealed no interest in the Howells or the Howell Airport. Nonetheless, the Howells' petition states that the property was improved by aircraft tie downs and taxiways and that aircraft were parked on the property. Further, the Howells alleged that the property was regularly used in the conduct of the business known as Howell Airport and that the Edelens lived across

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Application of County Treasurer and Ex-Officio County..., 30 III.App.3d 235 (1975) 332 N.E.2d 557

the street from the lot in question and were acquainted with the Howells and their use of the lot.

[4] [5] We believe these allegations of fact were sufficient to establish a Prima facie showing that the Edelens may not have been Bona fide purchasers, inasmuch as they could be charged with notice of and a duty to make inquiry as to the Howells' interest in the property. Whatever is sufficient to put a party on inquiry is notice of all facts which pursuance of such inquiry would have revealed and without such inquiry no one can claim to be an innocent purchaser as against the party claiming an interest in the property supported by such notice. (Ambrosious v. Katz, 2 Ill.2d 173, 117 N.E.2d 69; Bryant v. Lakeside Galleries, Inc., 402 Ill. 466, 84 N.E.2d 412; Burnex Oil Co. v. Floyd, Supra.) If, in the section 72 hearing, it is established that the Edelens are charged with notice of the Howells' claim,

then they can stand in no better position than Elsie Lhotka and are subject to any relief the court may deem necessary against either of them.

In light of the above, this cause is reversed and remanded with instructions to deny the Edelens' motion to dismiss the section 72 petition and for further proceedings not inconsistent with this opinion.

Reversed and remanded with directions.

BARRETT, P.J., and DRUCKER, J., concur.

All Citations

30 Ill.App.3d 235, 332 N.E.2d 557

#### Footnotes

- Attached to the petition was a copy of the Certificate of Purchase, indicating Suburban Tax Lien paid \$99.63 for the property at the sale.
- The affidavit of Frank Edelen stated that he bought the property for \$10,000. At the hearing to set a supersedeas bond Mr. Edelen admitted that he purchased the property 'way under market' value and that he had a tentative offer for the 3 1/2 acre parcel of \$140,000 if rezoned from residential to multiple dwelling. However, the court concluded that the value of the property was approximately \$45,000.
- The record does not indicate the identity of the beneficiary of the trust involved. We assume it to be Elsie Lhotka. In any event, even though a purchaser from a grantee who obtained title in good faith and for value without notice of prior equities will be protected against such equities, although he has notice thereof (Eich v. Czervonko, 330 III. 455, 161 N.E. 864, cert. denied, 278 U.S. 642, 49 S.Ct. 37, 73 L.Ed. 557), we do not believe such a sale would be effective here where the Howelis have allegedly occupied the property since 1966, prior to Elsie Lhotka's transfer of title to the trust.

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85 Ill.App.3d 621 Appellate Court of Illinois, Second District.

Richard BLANKENSHIP, Connie Blankenship,
Richard Freeman, Judy Freeman, Wade Hamaby,
Helen Hamaby, Fred Lemon, Joan Lemon, Tom
McGee, Judy McGee, Richard Cole, Naome
Cole, Ronald Sundeen, Janice Sundeen, Harlan
Yarke, Karen Yarke, LaRue Kabance, Betty
Kabance and Brian Johnson, Plaintiffs-Appellants,

COUNTY OF KANE, a body politic, Kane County Board of Supervisors, Ford City Bank and Trust Company, as Trustee Under Trust Agreement Dated June 11, 1973 and known as trust no. 515, and Barko Development Corp., an Illinois Corporation, Defendants-Appellees.

> No. 79-454. | June 27, 1980.

#### **Synopsis**

Property owners appealed order of the Circuit Court, Kane County, John A. Krause, J., dismissing their complaint on the ground of laches in an action seeking a declaration that a special use ordinance was invalid, and an injunction against development of property pursuant to that ordinance. The Appellate Court, Woodward, J., held that: (1) defense of laches was sufficiently raised in defendants' motion to dismiss in that plaintiffs' complaint admitted that ordinance was passed ten years before suit was brought, motion to dismiss alleged that defendants had spent over two and one-half million dollars in reliance on the ordinance, actual knowledge of the application for the ordinance could be imputed to plaintiffs who were residents of the area at time of the enactment, and plaintiffs not resident at the time of the enactment were charged with constructive knowledge of the special use ordinance, and (2) plaintiffs who claimed misrepresentation at zoning hearing had actual knowledge that ordinance might be passed, and thus, their lack of due diligence and defendants' substantial change in position precluded them from attacking the ordinance on the basis of misrepresentation, and plaintiffs who acquired their property subsequent to enactment of ordinance had constructive notice at the time of their purchase, and thus,

they could not have been misled by any misrepresentations made prior to enactment of ordinance.

Affirmed.

West Headnotes (5)

#### [1] Pretrial Procedure

Delay or failure to prosecute in general Motion to dismiss based on laches is insufficient absent some allegation of knowledge since that doctrine does not apply unless party against whom defense is asserted has discovered or should have discovered fact upon which his claim is based. S.H.A. ch. 110, § 48; Supreme Court Rules, Rule 191, S.H.A. ch. 110A, § 191.

Cases that cite this headnote

#### [2] Equity

... Prejudice from Delay in General

"Laches" is a defense based on neglect or omission by plaintiff to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will act as a bar to plaintiff's claim. Supreme Court Rules, Rule 191, S.H.A. ch. 110A, § 191.

Cases that cite this headnote

# [3] Zoning and Planning

- Applicability to Persons or Places

Subsequent purchasers of property are charged with constructive knowledge of zoning ordinances in effect at time of purchase.

Cases that cite this headnote

#### [4] Pretrial Procedure

Delay or failure to prosecute in general Defense of laches was sufficiently raised in defendants' motion to dismiss in action by property owners challenging validity of Blankenship v. Kane County, 85 III.App.3d 621 (1980) 407 N.E.2d 145, 40 III.Dec. 914

special use ordinance, in that plaintiffs' complaint admitted that suit was brought ten years after ordinance was passed, defendants' motion to dismiss contained a sufficiently verified allegation that defendants had spent over two and one-half million dollars in reliance on the ordinance, actual knowledge of application for special use ordinance could be imputed to plaintiffs who were residents at time of enactment, and plaintiffs not resident in the community when ordinance was passed were charged with constructive knowledge of zoning ordinances in effect at time they purchased their property. S.H.A. ch. 110, § 48; Supreme Court Rules, Rule 191, S.H.A. ch. 110A, § 191.

1 Cases that cite this headnote

#### [5] Zoning and Planning

Applicability to Persons or Places

## Zoning and Planning

→ Validity of regulations

Where plaintiffs brought action to challenge validity of special use ordinance ten years after passage of such county ordinance. during which time defendants expended substantial sums in reliance on special use provided for, and plaintiffs who claimed misrepresentation at zoning hearing had actual knowledge that special use ordinance might be passed, plaintiffs' lack of due diligence and defendants' substantial change in position operated to preclude plaintiffs from attacking the ordinance on basis of misrepresentation; furthermore, plaintiffs who acquired their property subsequent to enactment of ordinance had constructive notice of the ordinance at time of purchase of their property, and thus, they could not have been misled by any representations made prior to its enactment.

Cases that cite this headnote

# Attorneys and Law Firms

\*621 \*\*146 \*\*\*915 Geister, Schnell, Richards & Brown, Donald G. Weaver, Elgin, for plaintiffs-appellants.

David H. Armstrong, Wolin, Frisch, Zelmar & Kaufman, Chicago, for defendants-appellees.

#### Opinion

# WOODWARD, Justice:

Plaintiffs, certain property owners, brought this action seeking a \*622 declaration that a special use ordinance was invalid, and an injunction against defendants' development of property pursuant to that ordinance. Plaintiffs now appeal the trial court's dismissal of their complaint on the ground of laches.

In September of 1969 the Kane County Board of Supervisors enacted an ordinance granting a special use for a restricted landing area to be developed in the northwest corner of Kane County. In April of 1979 this suit was filed by plaintiffs challenging the validity of the ordinance by raising certain statutory and constitutional objections. Plaintiffs claimed that the ordinance as enacted exceeded in scope that which the petitioner sought and that provided in the notice and hearing prior to its enactment. Specifically, plaintiffs' objection was based on the omission of a recommended stipulation that the landing area be restricted to persons owning property in an adjacent subdivision. It is conceded by all parties that the law in effect at the time the ordinance was passed would have rendered such a restriction illegal. Plaintiffs argue, however, that misleading or ambiguous representations as to that restriction contained in the notice and at the hearing rendered the ordinance invalid. On defendants' motion pursuant to Section 48 of the Civil Practice Act, the trial court dismissed plaintiffs' suit with prejudice, finding that the claim was barred by laches.

On appeal, plaintiffs contend that the trial court erred in dismissing the complaint \*\*147 \*\*\*916 because (1) defendants' motion to dismiss was insufficient under Section 48 of the Civil Practice Act and Supreme Court Rule 191, in that it contained unpermitted conclusions of law and fact, and (2) the doctrine of laches does not bar plaintiff's claim.

[1] Plaintiffs' first contention specifically challenges the allegation in paragraph six of defendants' motion to dismiss that "plaintiffs had actual or constructive knowledge of the airport development." A motion to dismiss based on laches would be insufficient absent some allegation of knowledge since that doctrine does not apply unless the party against whom the defense is asserted has discovered or should have discovered the fact upon which his claim is based. (Perlman v. First National Bank of Chicago (1973), 15 Ill.App.3d 784, 305 N.E.2d 236.) Plaintiffs object to the allegation, saying that there is no factual basis in the record or in the pleadings for the assertion that plaintiffs could have had such knowledge.

[2] Ill.Rev.Stat.1979, ch. 110, par. 48 allows a defendant to raise in a motion to dismiss any "affirmative matter" which operates to avoid or defeat plaintiffs' claim. One such affirmative matter is the defense of laches. However, if the elements of the defense do not appear on the face of the pleading attacked, the motion to dismiss must be supported by an affidavit which sets forth facts supporting the claim to the defense. (Supreme Court Rule 191; \*623 Ill.Rev.Stat.1979, ch. 110A, par. 191.) Laches is a defense based on such a neglect or omission by plaintiff to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will act as a bar to plaintiff's claim. (Freymark v. Handke (1953), 415 III. 360, 114 N.E.2d 349.) In this case, defendants' motion to dismiss alleges that the ordinance was passed in 1969, that suit was first brought in 1979, that defendants expended several million dollars in reliance on the ordinance, and that plaintiffs had constructive or actual knowledge of "the development in question." Plaintiffs contend, correctly, that the allegation of knowledge is necessary to sufficiently raise the defense of laches. However, plaintiffs further contend that there is no factual basis for the trial court's finding that the element of knowledge was sufficiently alleged. Plaintiffs argue that defendants' verification of its motion is insufficient in that the verifier could not have personal knowledge, as required by Supreme Court Rule 191, of whether or not plaintiffs ever had knowledge of the development in question, and that therefore the allegation is merely a conclusion and renders the pleading defective.

[3] It appears, however, that all elements of the defense of laches do appear on the face of the pleadings. Clearly, plaintiffs' complaint admits that the ordinance was passed in 1969, and the record reveals that suit was brought in

1979. The motion to dismiss alleges that defendants have spent over two and one half million dollars in reliance on the ordinance, which allegation is sufficiently verified. Further, the issue of knowledge is, in fact, resolved on the face of plaintiff's complaint. The complaint alleges that, subsequent to the filing of a petition regarding a special use, "the Kane County Zoning Board of Appeals caused a Notice to be published in the Elgin Courier News on July 10, 1969 of a public hearing to be held on July 25, 1969, for consideration of the petition for special use for restricted landing area," and further alleges that such hearing was held. Thus, as to any plaintiffs who were residents of the area at the time of the ordinance's enactment, actual knowledge of the application for the special use permit and ordinance can be imputed to them by reason of the notice and hearing which occurred, as alleged in the complaint. Further, the notice and hearing apparently complied with the requirements of Ill.Rev.Stat. 1979, ch. 34, par. 3158 regarding amendment of county zoning regulations by ordinance. As to any plaintiffs not resident in the community in 1969, but presently living there, those plaintiffs may be said to have had constructive knowledge of the special use ordinance since all subsequent purchasers are charged \*\*\*917 with constructive knowledge of the current zoning ordinances (in effect at the time of purchase). (See DuMond v. City of Mattoon (1965), 60 Ill.App.2d 83, 207 N.E.2d 320; City of Chicago v. Atkins (1958), 19 Ill.App.2d 177, 153 N.E.2d 302.)

[4] \*624 Therefore, those plaintiffs who acquired property subsequent to the special use permit ordinance cannot contend that they were misled by any alleged representations or alleged stipulation made prior to the enactment of the ordinance. Thus, even if there is no basis in the record for a finding that all plaintiffs had actual knowledge of the physical development of the landing area, the allegations in the pleadings do support a finding that all plaintiffs had actual or constructive knowledge of the special use ordinance which they are now challenging. We therefore conclude that the defense of laches was sufficiently raised in defendants' motion to dismiss.

Plaintiffs contend that, even if the defense was sufficiently raised, there are insufficient facts to support the trial court's dismissal of the complaint on the basis of laches. Specifically, plaintiffs assert that the ten year lapse of time between the ordinance's enactment and the filing of this suit is only one of many circumstances to be considered

Blankenship v. Kane County, 85 III.App.3d 621 (1980) 407 N.E.2d 145, 40 III.Dec. 914

in evaluating the defense of laches. Plaintiffs argue that their mere acquiescence in the passage of the ordinance, without more, is insufficient to bar plaintiffs' claim.

It has been held that, where a plaintiff challenges an ordinance on serious constitutional grounds, delay in challenging or mere acquiescence in its passage will not operate to bar that challenge. (LaSalle National Bank v. City of Evanston (1962), 24 Ill.2d 59, 179 N.E.2d 673.) However, plaintiffs have not argued constitutional issues in this appeal, but have alluded to their original allegations of defects in notice and hearing only to imply that laches is somehow not available to defendants because of "unclean hands." Moreover, even when constitutional grounds were asserted to attack the validity of an ordinance, it was held that the plaintiffs should have asserted such invalidity within a reasonable time after passage where the basis for the challenge was the lack of a two-thirds vote for passage. Smith v. City of Macomb (1976), 40 Ill.App.3d 658, 352 N.E.2d 697.

[5] In Villiger v. City of Henry (1977), 47 Ill.App.3d 565, 5 Ill.Dec. 807, 362 N.E.2d 120, relied on by both parties here, the appellate court for the Third District, based on the Smith decision, found that plaintiffs' lack of due diligence in asserting their claim (six or seven years), together with defendants' substantial reliance, worked an estoppel against plaintiffs' attack on the ordinance on the grounds of insufficient notice. Plaintiffs here point out that in both Villiger and Smith the plaintiffs had been objectors at the time the ordinance was passed, and that therefore those cases do not control in the situation here presented. However, those cases appear to stand for the proposition that some claims, asserted as constitutional challenges, if not truly substantial, will not preclude the application of the doctrine of laches where there is a clear showing of lack of due diligence by plaintiffs and substantial reliance by defendants. The \*625 fact that

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plaintiffs may have objected to an ordinance when it was passed would only tend to indicate that those plaintiffs had actual knowledge of its existence and that they should thus be barred from challenging it at a much later date. Plaintiffs in this case who claim misrepresentation at the 1969 zoning hearing clearly had actual knowledge that the special use permit might be granted and a proper ordinance passed. Plaintiffs, however, apparently waited ten years to attack the validity of that ordinance, during which time defendants expended substantial sums in reliance on this special use provided for in the ordinance. Under these circumstances plaintiffs' lack of due diligence and defendants' substantial change in position operates to preclude plaintiffs from now attacking the ordinance on the basis alleged in their complaint; it was plaintiffs' duty to challenge the validity of the ordinance within a reasonable time after its passage. (See Villiger v. City of Henry.) As to any plaintiffs \*\*149 \*\*\*918 who acquired their property subsequent to the enactment of the special use permit ordinance, they had constructive notice of the ordinance at the time of purchase; they could not have been misled by any representations made prior to its enactment. They therefore have no basis for the allegations contained in the complaint.

We therefore conclude that the trial court's finding that plaintiffs' complaint should be dismissed with prejudice was proper.

Accordingly, the judgment is affirmed.

UNVERZAGT and VAN DEUSEN, JJ., concur.

All Citations

85 Ill.App.3d 621, 407 N.E.2d 145, 40 Ill.Dec. 914

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Distinguished by International Union of Operating Engineers, Local
148, AFL-CIO v. Department of Employment Sec., Ill.App. 5 Dist.,
December 16, 2003

407 Ill. 588 Supreme Court of Illinois.

WINSTON et al.

٧.

ZONING BOARD OF APPEALS OF PEORIA COUNTY et al.

> No. 31628. | | Nov. 27, 1950. |

Rehearing Denied Jan. 15, 1951.

# Synopsis

Action by Edward Winston and others against the Zoning Board of Appeals of Peoria County, and others under the Administrative Review Act to review a decision of the board granting a variation permitting construction of an apartment building on property classified as country home district. From a judgment dismissing the action in the Circuit Court for Peoria County, Howard White, J., the plaintiffs appealed. The Supreme Court, Wilson, J., construed the Administrative Review Act and held that the complaint was fatally defective.

Judgment affirmed.

Gunn, J., dissented.

West Headnotes (19)

#### [1] Appeal and Error

Review of constitutional questions

Where constitutional issues raised by complaint were not passed upon by the trial court, they were not properly before the Supreme Court though argued extensively.

2 Cases that cite this headnote

#### [2] Administrative Law and Procedure

.- Petition or application

# Zoning and Planning

. Dismissal

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting a variation for construction of an apartment building, a motion to dismiss the complaint was authorized procedure. S.H.A. ch. 34, § 152k; ch. 110, §§ 172, 264 et seq., 272, 273, 277.

Cases that cite this headnote

#### [3] Administrative Law and Procedure

.= Proceedings for Review

# Administrative Law and Procedure

→ Petition or application

The Administrative Review Act does not exclude the use of motions, or prohibit a motion to dismiss, or motions to strike, and the prohibition contained in section 9 that no pleading, other than those enumerated, shall be filed, relates to the complaint and answer, and its intent is to prevent the filing of other similar pleadings as, for example, a reply, and a motion is not included. S.H.A. ch. 110, §§ 48, 264 et seq., 272, 273, 277.

1 Cases that cite this headnote

#### [4] Administrative Law and Procedure

Special statutory proceeding

#### Administrative Law and Procedure

... Dismissal.

# Zoning and Planning

... Interim relief; preliminary injunction

#### Zoning and Planning

- Dismissal

There is no provision in the Administrative Review Act prohibiting an action against a board or commission and the mere fact that one individual was not a proper defendant, in an action to review a decision of the zoning board of appeal, was insufficient to justify the dismissal of the action, against all defendants. S.H.A. ch. 110, § 264 et seq.

Cases that cite this headnote

#### [5] Administrative Law and Procedure

.- Petition or application

# Zoning and Planning

- Petition, complaint or application

In action to review a decision of the zoning board of appeals under the Administrative Review Act constitutional issues could be raised in the complaint. S.H.A. ch. 110, § 264 et seq.

1 Cases that cite this headnote

#### [6] Courts

Particular Constitutional Provisions and Statutes

In an action under the Administrative Review Act to review a decision of the zoning board of appeals, where a defendant challenged the constitutionality of the Act to the extent it permitted actions against a board and similar agencies, validity of the act was the foundation of the defense made, and the constitutional question was properly raised so as to give the Supreme Court jurisdiction to review the judgment of dismissal on a direct appeal. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

4 Cases that cite this headnote

#### [7] Appeal and Error

- Review of constitutional questions

Supreme Court will not decide a constitutional question on a direct appeal if the cause can be decided without so doing.

Cases that cite this headnote

#### [8] Administrative Law and Procedure

. Petition or application

#### Pleading

Statement of cause of action in general

A complaint in an action brought under the Administrative Review Act, or any other statute or the common law must state a cause of action. S.H.A. ch. 110, §§ 264 et seq., 267.

1 Cases that cite this headnote

#### [9] Administrative Law and Procedure

· Persons aggrieved or affected

Under the Administrative Review Act the right to review a final administrative decision is limited to parties of record to the proceedings before the administrative agency whose rights, privileges, or duties are affected by the decision. S.H.A. ch. 110, ss 264 et seq., 267.

15 Cases that cite this headnote

# [10] Administrative Law and Procedure

Petition or application

# **Zoning and Planning**

Right of Review: Standing

#### Zoning and Planning

- Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals, statement in complaint that plaintiffs were parties of record to the appeal from decision of the zoning enforcing officer was a sufficient allegation that they were parties of record to the proceedings before the zoning board. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

Cases that cite this headnote

# [11] Administrative Law and Procedure

. ~ Petition or application

# Zoning and Planning

\* Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting a variance for construction of an apartment building, allegation of fact that plaintiffs were the owners of the land in the vicinity of the property involved was not an allegation that they were injured by the decision sought to be reviewed, but it

was necessary for them to allege that their property was classified in the same district as the land in question, but that they were not permitted to enjoy the use allowed by the variance. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

2 Cases that cite this headnote

#### [12] Pleading

• Characterization of acts or conduct and stating result thereof in general

#### Pleading

- Application and proceedings thereon

#### Pretrial Procedure

.- Matters not admitted

Allegation in complaint that value and use of property of plaintiff was affected by granting of the variance was a mere conclusion of the pleader and not being supported by allegation of specific facts, was not admitted by motion to dismiss.

I Cases that cite this headnote

#### [13] Administrative Law and Procedure

Petition or application

#### Zoning and Planning

- Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting the variation to permit the construction of an apartment building, plaintiffs were required to allege specific facts showing that they were parties to the administrative proceeding. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

Cases that cite this headnote

#### [14] Administrative Law and Procedure

Petition or application

#### Zoning and Planning

... Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting a variation to permit

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the construction of an apartment building, complaint failed to state a cause of action. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

Cases that cite this headnote

#### [15] Pleading

Application and proceedings thereon

#### Pretrial Procedure

.- Matters Deemed Admitted

Where part of motion to dismiss was supported by affidavit and no counter affidavit was filed by plaintiffs, the facts stated in the affidavit must be taken as true.

I Cases that cite this headnote

#### [16] Administrative Law and Procedure

... Parties

The requirement of the Administrative Review Act that all adverse parties of record to the administrative proceeding be made parties defendants on review is mandatory. S.H.A. ch. 110, §§ 264 et seq., 271.

7 Cases that cite this headnote

#### [17] Administrative Law and Procedure

.- Special statutory proceeding

Administrative Review Act being an innovation and departure from the common law, the procedures it establishes must be pursued in order to justify its application. S.H.A. ch. 110, § 264 et seq.

19 Cases that cite this headnote

# [18] Administrative Law and Procedure

- Parties

# Zoning and Planning

.- Necessary and indispensable parties

In action under the Administrative Review Act to review a decision of the zoning board granting a variance permitting construction of an apartment building, complaint was fatally defective in failing to include as defendants all persons other than the plaintiffs who were parties of record to the administrative proceeding. S.H.A. ch. 34, § 152k; ch. 110, §§ 264 et seq., 271.

6 Cases that cite this headnote

#### [19] Constitutional Law

Resolution of non-constitutional questions before constitutional questions. Where judgment dismissing the action was sustainable on other grounds, constitutional question would not be decided.

3 Cases that cite this headnote

#### Attorneys and Law Firms

\*589 \*\*866 McConnell, Kennedy & McConnell, of Peoria (Max J. Lipkin, Peoria, of counsel), for appellants.

O'Hern, Alloy & O'Hern, and Michael A. Shore, all of Peoria (Jay J. Alloy, and William W. Dunn, Peoria, of counsel), for appellees.

#### Opinion

#### WILSON, Justice.

The plaintiffs, Edward Winston and nine others, prosecute an appeal from a judgment of the circuit court of Peoria County dismissing an action brought under the Administrative Review Act to review a decision of the zoning board of appeals of Peoria County granting a variation to permit the construction of a forty-unit apartment building on certain property classified in a 'B' country home district.

By their complaint, plaintiffs alleged that Robert Silberstein applied for a building permit to construct a multiple unit apartment building; that J. Edward Radley, county zoning officer, denied the application; that Silberstein filed a petition for a variance with the county zoning board of appeals; that the board, after hearings, rendered a decision granting the variation requested; that plaintiffs are the owners of property in the vicinity of the land involved; that the value and use of their property are affected by the variation granted, and that they were parties of record to the appeal from the decision of the zoning enforcing officer. In addition to alleging that

the zoning board's decision was illegal because it was (1) unaccompanied by findings of fact, (2) unsupported by the proof, and (3) did not constitute a reversal of the zoning enforcing officer's decision but amounted to \*\*867 a mere recommendation, plaintiffs further charged (4) that section 3 of the County Zoning Act ( \*590 Ill.Rev.Stat.1949, chap. 34, par. 152k), insofar as it relates to variations, and (5) section 16.1 of the county zoning ordinance pertaining to variations are both unconstitutional.

Silberstein, Radley and the zoning board, but not the individual members of the board, were named as parties defendant. Radley moved to be dismissed as a defendant, Silberstein moved to dismiss the complaint, and the individual members of the zoning board filed special and limited appearances and moved to quash the return of summons against the zoning board and to dismiss the action. The trial judge allowed Silberstein's motion to dismiss, made no ruling as to the other two motions and entered judgment dismissing the action, without specifying any reason for his decision. Plaintiffs did not move to amend their complaint nor did they seek to and other persons as defendants.

[1] The issues raised by the complaint, both constitutional and otherwise, were not passed upon by the trial court, and, consequently, the question of the constitutionality of section 3 of the County Zoning Act and section 16.1 of the zoning ordinance of Peoria County, although argued extensively, are not properly before this court. Shilvock v. Retirement Board, 375 Ill. 68, 30 N.E.2d 633; Ryan v. City of Chicago, 363 Ill. 607, 2 N.E.2d 913. The only questions presented for determination are those raised by Silberstein's motion to dismiss the complaint, the ultimate question being whether there is any good and sufficient ground in the motion to dismiss warranting the judgment dismissing plaintiff's action.

[2] [3] Before taking up the grounds for dismissal urged by Silberstein in the trial court and adopted by his codefendants on appeal, consideration must first be given to plaintiff's contention that Siberstein had no right, under the Administrative Review Act, to make a motion to dismiss the complaint. Section 14 (III.Rev.Stat.1949, chap. 110, par. 277,) provides that the Civil Practice Act shall apply, except as otherwise provided in the statute. Motions to \*591 dismiss an action are authorized by section 48 of the Civil Practice Act. (III.Rev.Stat.1949, chap. 110, par. 172.) The Administrative Review Act contains no provision

excluding the use of motions or prohibiting motions to dismiss or motions to strike. Section 9 (Ill.Rev.Stat.1949, chap. 110, par. 272), providing, in part, that 'No pleadings other than as herein enumerated shall be filed by any party unless required by the court', does not compel a contrary conclusion. The prohibition of section 9 relates to the complaint and answer, and its plain intent is to prevent the filing of other similar pleadings as, for example, a reply. Motions are not within the contemplation of the prohibition. Reference is also made to section 10 of the act (Ill.Rev.Stat.1949, chap. 110, par. 273) providing for the dismissal of the complaint, upon the motion of any defendant, because of the plaintiff's failure to pay the costs of preparing the record of proceedings before the agency and our decision in Krachock v. Department of Revenue, 403 Ill. 148, 85 N.E.2d 682, affirming a judgment dismissing a complaint filed under the Administrative Review Act.

[5] Silberstein's motion to dismiss was based, in [4] substance, upon the following six grounds: (1) that the complaint failed to alleged facts showing plaintiffs were entitled to maintain the action; (2) that plaintiffs failed to join certain parties to the administrative proceeding as defendants, contrary to the provisions of the Administrative Review Act; (3) that, if the statute permits an action against an administrative agency, it contravenes the constitutional prohibition against making the State a party defendant; (4) that the statute does not authorize an action against a board and, hence, the action should be dismissed for plaintiffs' failure to make the individual members of the board defendants within the time allowed; (5) that Radley was not a proper defendant because he was not a party to the administrative proceeding, and (6) that plaintiffs were not entitled to raise constitutional issues in an action brought \*592 under the Administrative Review Act. The last three grounds for dismissal are not argued in the joint brief filed in this court by all three defendants. In this connection, we deem sufficient the observation that there is no \*\*868 provision in the Administrative Review Act prohibiting an action against a board or commission, that the mere fact Radley was not a proper defendant was insufficient to justify the dismissal of the action against all defendants, and that no reason suggests itself why constitutional issues cannot be raised in a complaint filed under the Administrative Review Act.

[6] [7] Inasmuch as Silberstein challenged the constitutionality of the Administrative Review Act to

the extent it permits actions against boards, commissions and similar agencies, the validity of the statute was the foundation of a defense made, and the constitutional question was properly raised so as to give this court jurisdiction to review the judgment of dismissal on a direct appeal. People ex rel. Rago v. Lipsky, 390 III. 70, 60 N.E.2d 422; Herb v. Pitcairn, 384 Ill. 237, 51 N.E.2d 277. This is the only constitutional issue properly presented by this appeal. It is, however, established that a constitutional question will not be considered if the cause can be decided without so doing. People v. Metcoff, 392 III. 418, 64 N.E.2d 867; People v. Chiafreddo, 381 III. 214, 44 N.E.2d 888; Durkin v. Hey, 376 Ill. 292, 33 N.E.2d 463; Bohnert v. Ben Hur Life Ass'n, 362 III. 403, 200 N.E. 326. Accordingly, the other grounds for dismissal made and argued will be considered first.

[9] It is fundamental that the complaint in an [8] action brought under the Administrative Review Act, or any other statute, or the common law must state a cause of action. Krachock v. Department of Revenue, 403 Ill. 148, 85 N.E.2d 682; Wuellner v. Illinois Bell Telephone Co., 390 Ill. 126, 60 N.E.2d 867. Section 4 of the Administrative Review Act (Ill.Rev.Stat.1949, chap. 110, par. 267) declares, in part, 'Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within \*593 thirty-five (35) days from the date that a copy of the decision sought to be reviewed was served upon the party affected thereby.' Since section 4 makes no specific provision as to the persons or classes of persons entitled to maintain an action under the act, recourse must be had to other parts of the statute. In section 1 (Ill.Rev.Stat.1949, chap. 110, par. 264), relating to definitions, the term 'administrative decision' is defined as 'any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties \* \* \*.' Section 2 (Ill.Rev.Stat.1949, chap. 110, par. 265) is illuminating to the extent that it ordains, in pertinent part, 'Unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.' It thus is apparent that the right to review a final administrative decision is limited to parties of record to the proceeding before the administrative agency whose rights, privileges, or duties are affected by the decision. Krachock v. Department of Revenue, 403 III. 148, 85 N.E.2d 682.

[10][11] Apart from the portions of the complaint meeting the technical requirements of the statute that the complaint must include the decision sought to be reviewed and specify whether the transcript of evidence shall be filed as part of the record (Ill.Rev.Stat.1949, chap. 110, par. 272(a), plaintiffs rely upon the allegations of paragraph 9 of their complaint as setting forth facts showing a cause of action. The ninth paragraph of the complaint reads as follows: 'That the plaintiffs herein are property owners in the vicinity of the premises involved and that the value and use of their property is affected by the granting of the variance herein referred to, and that they were parties of record to the appeal from the decision of the zoning enforcing officer of Peoria County, and that they are \*594 aggrieved by said decision.' Plaintiffs' statement that they were parties of record to the appeal from decision of the zoning enforcing officer is sufficient as an allegation that they were parties of record to the proceedings before the zoning board, and defendants do not contend otherwise. Defendants do assert, however, that the remaining allegations of paragraph 9 do not constitute allegations of fact showing \*\*869 that plaintiffs' rights or privileges were affected by the decision of the zoning board. The simple allegation of fact that plaintiffs were the owners of land in the vicinity of the property involved does not constitute an allegation that they were injured or damaged by the decision sought to be reviewed. Klumpp v. Rhoads, 362 III. 412, 200 N.E. 153. To show that they were aggrieved by the decision, it would be necessary for them to allege, for example, that their property was classified in the same district as the land in question but that they were not permitted to enjoy the use allowed by the variance. Michigan-Lake Building Corp. v. Hamilton, 340 III. 284, 172 N.E. 710.

[12] [13] respective properties are to the land involved, the actual use of their land, the zoning restrictions applicable to them, or even whether the value of their land is adversely or beneficially affected by the decision sought to be reviewed. For all that appears in the complaint, plaintiffs' properties may be a mile or more from Silberstein's land, in part of the incorporated area of the county, not subject to the county zoning ordinance, and enhanced in value as the result of the decision of the zoning board. The allegation that 'the value and use of their property is affected by the granting of the variance' is a mere conclusion of the pleader and, not being supported by

allegations of specific facts, was not admitted by the motion to dismiss. Harris v. Ingleside Building Corp., 370 Ill. 617, 19 N.E.2d 585; Ryan v. City of Chicago, 369 Ill. 59, 15 N.E.2d 708. Although plaintiffs' final allegation that 'They are aggrieved by said decision' plainly refers to Radley's decision denying \*595 Silberstein's application for a building permit and not the decision of the board granting Silberstein's petition even assuming that plaintiffs intended to allege they were aggrieved by the zoning board's decision, the allegation would be a mere conclusion of the pleader. To show a cause of action, it was incumbent upon plaintiffs to allege specific facts showing that they were parties to the administrative proceeding whose rights privileges or duties were adversely affected by the decision of the zoning board. (Ill.Rev.Stat.1949, chap. 110, par. 264; Krachock v. Department of Revenue. 403 Ill. 148, 85 N.E.2d 682.) This, they have failed to do and, consequently, the complaint does not state a cause of action.

[15] [16] [17] [18] In the motion to dismiss, it was further asserted that plaintiffs, contrary to the provisions of the Administrative Review Act, had failed to include as defendants five named persons who were parties of record to the proceedings before the zoning board and who supported the petition for a variation. This part of the motion was supported by an affidavit to the same effect and, no counteraffidavit having been filed by plaintffs, the facts stated in the affidavit must be taken as true. Leitch v. Hine, 393 Ill. 211, 66 N.E.2d 90. Section 8 of the Administrative Review Act (Ill.Rev.Stat.1949, chap. 110, par. 271) provides that 'In any action to review any final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants.' The [14] Plaintiffs do not allege how near their requirement that all adverse parties of record to the administrative proceeding shall be made defendants on review is mandatory and specific and admits of no modification. The act being an innovation and departure from the common law, the procedures it establishes must be pursued in order to justify its application. Krachock v. Department of Revenue, 403 Ill. 148, 85 N.E.2d 682. In addition to not stating a cause of action, the complaint was also fatally defective in \*596 failing to include as defendants all persons other than the plaintiffs who were parties of record to the administrative proceeding.

Winston v. Zoning Bd. of Appeals of Peoria County, 407 III. 588 (1950) 95 N.E.2d 864

[19] Since the judgment dismissing the action must be sustained, it becomes unnecessary to consider the constitutional question raised in the motion to dismiss the complaint.

Judgment affirmed.

GUNN, J., dissenting.

All Citations

The judgment of the circuit court of Peoria County is affirmed.

407 III. 588, 95 N.E.2d 864

**End of Document** 

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998 N.E.2d 1256, 376 III.Dec. 323

2013 IL 115473 Supreme Court of Illinois.

The BOARD OF EDUCATION OF ROXANA COMMUNITY SCHOOL DISTRICT NO. 1, Appellant,

The POLLUTION CONTROL BOARD et al., Appellees.

Docket No. 115473.

Nov. 21, 2013.

#### Synopsis

Background: Board of Education sought administrative review of the Pollution Control Board's decisions denying reconsideration of its denial of Board of Education's request to intervene in 28 proceedings on a taxpayer's applications to the Illinois Environmental Protection Agency (IEPA) to have its facilities certified as "pollution control facilities" for tax purposes, and IEPA's granting of all 28 petitions. The Appellate Court of Illinois dismissed for lack of jurisdiction, 2012 IL App (4th) 120174-U. Board of Education appealed.

Holdings: The Supreme Court, Karmeier, J., held that:

- [1] Board of Education was not a "party" authorized to appeal to Appellate Court, overruling Reed-Custer Community Unit School District No. 255-U v. Pollution Control Board, 232 Ill.App.3d 571, 173 Ill.Dec. 828, 597 N.E.2d 802, and
- [2] Board of Education's request to intervene was not a "complaint" conferring standing to appeal to Appellate Court, rejecting *Citizens Against the Randolph Landfill (CARL) v. Pollution Control Board*, 178 Ill.App.3d 686, 692, 127 Ill.Dec. 529, 533 N.E.2d 401.

Affirmed.

West Headnotes (6)



#### [1] Taxation

. Decisions reviewable and right of review Appellate Court of Illinois lacked jurisdiction under the Illinois Environmental Protection Act to consider the Board of Education's appeals of the Pollution Control Board's decisions denying Board of Education's request to intervene in 28 proceedings on a taxpayer's applications to have taxpayer's facilities certified as "pollution control facilities" for tax purposes and Pollution Control Board's decisions granting taxpayer's applications, since the Board of Education was neither a "party to a Board hearing" nor a "party adversely affected by a final order or determination of the Board," where the Board of Education was not an actual party of record in the underlying proceedings before the Pollution Control Board; overruling Reed-Custer Community Unit School District No. 255-U v. Pollution Control Board, 232 Ill.App.3d 571, 173 Ill.Dec. 828, 597 N.E.2d 802. S.H.A. 415 ILCS 5/41.

Cases that cite this headnote

## [2] Administrative Law and Procedure

.- Judicial Review of Administrative Decisions

The appellate court has jurisdiction to review administrative decisions only as provided by law. S.H.A. Const. Art. 6, § 6.

4 Cases that cite this headnote

#### [3] Environmental Law

v.= Decisions reviewable and right of review Under the statute authorizing judicial review of decisions by the Pollution Control Board in administrative proceedings involving certification of pollution control facilities by applicants for or holders of pollution control facility certificates who are aggrieved by the Board's decision, such appeals must

998 N.E.2d 1256, 376 III.Dec. 323

be brought in circuit court, and there is no statutory authorization for litigants to skip ahead and go directly to the appellate court. S.H.A. 35 ILCS 200/11-60.

Cases that cite this headnote

## [4] Administrative Law and Procedure

. Right of Review

#### Administrative Law and Procedure

- Persons aggrieved or affected

Generally, administrative review is limited to parties of record before the administrative agencies and then only when their rights, duties or privileges are adversely affected by the decision.

4 Cases that cite this headnote

#### [5] Taxation

. Decisions reviewable and right of review Board of Education was not a "person who filed a complaint on which a hearing was denied" with standing to appeal of the Pollution Control Board's decisions denying Board of Education's request to intervene in 28 proceedings on a taxpayer's applications to have taxpayer's facilities certified as "pollution control facilities" for tax purposes and Pollution Control Board's decisions granting taxpayer's applications, since Board of Education's requests for leave to intervene were not "complaints"; rejecting Citizens Against the Randolph Landfill (CARL) v. Pollution Control Board, 178 Ill.App.3d 686, 692, 127 Ill.Dec. 529, 533 N.E.2d 401. S.H.A. 415 ILCS 5/41.

Cases that cite this headnote

## [6] Constitutional Law

.~ Encroachment on Legislature

The responsibility for the wisdom of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy.

3 Cases that cite this headnote

#### Attorneys and Law Firms

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Katherine D. Hodge and Monica T. Rios, of Hodge Dwyer & Driver, and Larry E. Hepler, Beth A. Bauer, Thomas H. Wilson and Michael P. Murphy, of HeplerBroom, LLC, all of Springfield, for appellee WRB Refining LP.

Lisa Madigan, Attorney General, of Springfield (Michael A. Scodro, Solicitor General, and Richard S. Huszagh, Assistant Attorney General, of Chicago, of counsel), for appellees Illinois Pollution Control Board and Illinois Environmental Protection Agency.

#### **OPINION**

Justice KARMEIER delivered the judgment of the court, with opinion.

\*\*325 ¶ 1 The issue in this case is whether the appellate court ruled correctly when it concluded that it lacked jurisdiction to entertain an appeal by the Board of Education of Roxana Community School District No. 1 (the Board of Education) from decisions of the Pollution Control Board which denied the Board of Education's petitions to intervene in 28 separate proceedings for certification of certain facilities as "pollution control facilities" and granted the subject certifications. The basis for the appellate court's ruling was that judicial review of a Pollution Control Board decision to issue, refuse to issue, deny, revoke, modify or restrict a pollution control certificate is governed by section 11-60 of the Property Tax Code (35 ILCS 200/11-60 (West 2010)). Under that provision, appeals must be filed in circuit court, not the appellate court, and can only be brought by applicants for or holders of the certificates, classifications into which the Board of Education did not fall. 2012 IL App (4th) 120174-U, 2012 WL 7051294.

- ¶ 2 One justice dissented. He believed the Board of Education should have been permitted to prosecute this appeal pursuant to section 41 of the Environmental Protection Act (415 ILCS 5/41 (West 2010)), which permits appeals directly to the appellate court by, *inter alios*, "any party adversely affected by a final order or determination of the Board."
- ¶ 3 Following entry of the appellate court's judgment, the Board of Education petitioned this court for leave to appeal. Ill. S.Ct. R. 315 (eff. Feb. 26, 2010). We granted the petition. For the reasons that follow, we now affirm.

#### ¶4BACKGROUND

- ¶ 5 The facts necessary for resolution of this appeal are straightforward and undisputed. A company known as WRB Refining, LP (WRB), owns the Wood River Petroleum Refinery in Madison County, Following major renovations to the refinery, WRB submitted separate applications to the Illinois Environmental Protection Agency (IEPA) pursuant to \*\*326 \*1259 section 11-25 of the Property Tax Code (35 ILCS 200/11-25 (West 2010)) to have 28 of the refinery's systems, methods, devices, and facilities certified as "pollution control facilities" within the meaning of section 11-10 of the Code (35 ILCS 200/11-10 (West 2010)). WRB sought those certifications because, if approved, they would result in a preferential tax assessment of the subject systems. methods, devices and facilities. See 35 ILCS 200/11-5, 11-15, 11-20 (West 2010).
- ¶ 6 WRB filed its 28 applications in October of 2010. The following August, the IEPA recommended to the Pollution Control Board that it approve two of WRB's certification requests. The Board accepted the IEPA's recommendations and certified the two entities at issue as pollution control facilities.
- ¶ 7 Shortly thereafter, the Board of Education filed separate petitions for leave to intervene in the two proceedings where certification had been granted. The Board of Education argued that the particular applications submitted by WRB failed to satisfy statutory requirements under the Property Tax Code and that it had a legally cognizable interest in challenging the sufficiency of the applications because issuance of the certifications would ultimately deprive it of tax revenue.

- ¶ 8 The Pollution Control Board considered and denied the Board of Education's petitions to intervene, reasoning that because the certifications in the two matters had already been issued, the Board of Education's petitions were now moot. The Board of Education asked the Pollution Control Board to reconsider that decision. While the requests to reconsider were pending, the IEPA recommended that the Pollution Control Board also approve WRB's applications to certify the remaining 26 systems, methods, devices, and facilities as "pollution control facilities."
- ¶ 9 Before the Pollution Control Board took action in these remaining 26 cases, the Board of Education filed petitions for leave to intervene in each of them. Those petitions, filed in December of 2011, were premised on the same arguments asserted by the Board of Education in the initial two cases.
- ¶ 10 Both the IEPA and WRB objected, arguing that under the statutory and regulatory scheme governing certification of pollution control facilities, the Board of Education had no right to intervene. The Board of Education responded by filing a joint reply addressed to all 28 proceedings. In that reply, the Board of Education challenged the Pollution Control Board's view that its petitions to intervene in the initial two cases were moot. It also argued that it possessed a legally cognizable basis for intervening and that the Pollution Control Board had authority under the law to permit it to intervene. In addition, it took issue with the substance of the Pollution Control Board's decision to issue pollution control facility certifications in the initial two proceedings.
- ¶ 11 In a detailed and unanimous order entered January 19, 2012, the Pollution Control Board denied reconsideration. Within the time permitted by law, the Board of Education sought administrative review of the Pollution Control Board's decision in the appellate court pursuant to section 41 of the Illinois Environmental Protection Act (415 ILCS 5/41 (West 2010)). In the interim, the Pollution Control Board entered a separate order, also detailed and also unanimous, denying the Board of Education's petitions to intervene in the remaining 26 proceedings and granting WRB's applications for pollution control facility certification in each of those cases. The Board of Education sought administrative review of that decision as well, and, on

the Board of Education's \*\*327 \*1260 motion, the appellate court consolidated both appeals.

¶ 12 As noted at the outset of this opinion, the appellate court, with one justice dissenting, dismissed the Board of Education's consolidated appeal on the grounds that it lacked jurisdiction to consider it. The appellate court opined that section 41 of the Illinois Environmental Protection Act, the provision invoked by the Board of Education in seeking direct administrative review by that court, was inapplicable here. Section 41 is the general provision for judicial review of final decisions of the Pollution Control Board, and it provides that such appeals may be brought by, inter alios, "any party adversely affected by a final order or determination of the Board." The appellate court noted, however, that the legislature has promulgated a separate and more specific provision for appeals in proceedings involving the Pollution Control Board's "issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate," which is the type of proceeding from which this appeal emanated. That provision is section 11-60 of the Property Tax Code (35 ILCS 200/11-60 (West 2010)). By its terms, section 11-60 authorizes appeals from such decisions only by applicants for or holders of pollution control facility certificates who are aggrieved by the Board's decision. The Board of Education is neither an applicant for or holder of a pollution control facility certificate. Moreover, such appeals are subject to the regular provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq. (West 2010)). Unlike section 41 of the Illinois Environmental Protection Act, there is no mechanism for bringing such appeals directly to the appellate court. They must be initiated, instead, in the circuit court. 735 ILCS 5/3-104 (West 2010).

¶ 13 In the appellate court's view, section 11-60 of the Property Tax Code rather than section 41 of the Illinois Environmental Protection Act must take precedence in cases such as this for two basic reasons. First, to hold otherwise would mean that the court "would be essentially disregarding the specific and narrow guidance provided by section 11-60," a course that would not only run afoul of the "long held principle that the appellate court must construe a statute as a whole so that no part is rendered meaningless or superfluous," but could also "produce absurd results in that it could conceivably allow, at a minimum, applicants seeking a pollution-control-facilities

certification to engage in forum shopping any potential appeal in either the circuit court or appellate court." 2012 IL App (4th) 120174–U, ¶ 25, 2012 WL 7051294. Second, applying section 11–60 of the Property Tax Code rather than section 41 of the Illinois Environmental Protection Act to proceedings such as these, which were brought under the Property Tax Code, is compelled by the "well-settled axiom of statutory interpretation that the general must yield to the specific." *Id.* ¶ 26.

¶ 14 One justice dissented. Contrary to his colleagues in the majority, he believed that the Board of Education should be permitted to appeal pursuant to section 41 of the Illinois Environmental Protection Act. He would have allowed the appeal, reversed the Pollution Control Board's decisions, and reversed and remanded to the Pollution Control Board with directions to grant the Board of Education's petitions for leave to intervene and to conduct further hearings on the merits. 2012 IL App (4th) 120174–U, ¶ 45, 2012 WL 7051294 (Appleton, J., dissenting).

#### ¶ 15 ANALYSIS

¶ 16 In its appeal to our court, the Board of Education argues that the appellate \*\*328 \*1261 court's jurisdictional analysis was incorrect as a matter of law and that section 41 of the Illinois Environmental Protection Act provides a proper basis for challenging the Pollution Control Board's decisions through direct appeal to the appellate court, as the dissenting justice had reasoned. It then goes on to assert that the Pollution Control Board erred when it denied the Board of Education permission to intervene in the pollution control facility certification proceedings, that the Pollution Control Board erred when it concluded that the Board of Education's petitions to intervene in the first two proceedings were moot, and that the Pollution Control Board erred in certifying the subject facilities as pollution control facilities.

[1] ¶ 17 We begin with the question of the appellate court's jurisdiction. Whether the appellate court has jurisdiction to consider an appeal presents a question of law which we review de novo. Gardner v. Mullins, 234 Ill.2d 503, 508, 334 Ill.Dec. 617, 917 N.E.2d 443 (2009); In re A.H., 207 Ill.2d 590, 593, 280 Ill.Dec. 290, 802 N.E.2d 215 (2003). In this case, we agree with the appellate court's conclusion that it lacked jurisdiction to consider the Board

of Education's appeals. We do so, however, based on different reasoning.

[3] ¶ 18 It is undisputed that under the statutory scheme implemented by the General Assembly, the Board of Education's only direct path to the appellate court for administrative review of the Pollution Control Board's decisions in these 28 cases is through section 41 of the Illinois Environmental Protection Act (415 ILCS 5/41 (West 2010)). Unless the Board of Education can avail itself of that statute, its appeal is doomed, for the appellate court has jurisdiction to review administrative decisions only as provided by law (Ill. Const. 1970, art. VI, § 6; Town & Country Utilities, Inc. v. Illinois Pollution Control Board, 225 Ill.2d 103, 121, 310 Ill.Dec. 416, 866 N.E.2d 227 (2007); People ex rel. Madigan v. Illinois Commerce Comm'n, 394 Ill.App.3d 382, 386, 333 Ill.Dec. 647, 915 N.E.2d 453 (2009)), and the only other mechanism for obtaining judicial review of decisions by the Pollution Control Board in administrative proceedings involving certification of pollution control facilities is section 11-60 of the Property Tax Code (35 ILCS 200/11-60 (West 2010)). As the appellate court here noted and as we have just pointed out, the express terms of that statute authorize appeals in such proceedings only by applicants for or holders of pollution control facility certificates who are aggrieved by the Board's decision, categories into which the Board of Education does not fall, and, in any case, such appeals must be brought in circuit court. There is no statutory authorization for litigants to skip ahead and go directly to the appellate court.

¶ 19 While the appellate court majority in this case was of the view that section 11-60 of the Property Tax Code leaves no room for resort to section 41 of the Illinois Environmental Protection Act in cases involving certification of pollution control facilities, we need not go that far in resolving the particular case before us today. That is so because even if section 41 were not completely supplanted by section 11-60 with regard to appeals in such cases, it still would be of no aid to the Roxana Board of Education here.

[4] ¶ 20 Section 41 provides for appeals by "[a]ny party to a Board hearing, any person who filed a complaint on which a hearing was denied, any person who has been denied a variance or permit under this Act, any party adversely affected by a final order or determination of the Board, and any person who participated in the public

comment process under subsection (8) of Section 39.5 of this Act." \*\*329 \*1262 415 ILCS 5/41 (West 2010). In its arguments before our court, the Board of Education contends that it falls within the fourth of these categories and qualifies as "any party adversely affected by a final order or determination of the Board." It does not. Our court has specifically held that to be a "party" within the meaning of the fourth category of section 41, one must have been an actual party of record in the underlying proceedings before the Board. Lake County Contractors Ass'n v. Pollution Control Board, 54 Ill.2d 16, 21, 294 N.E.2d 259 (1973); People v. Pollution Control Board, 113 Ill.App.3d 282, 291, 68 Ill.Dec. 744, 446 N.E.2d 915 (1983), rev'd on other grounds sub nom. Pioneer Processing. Inc. v. Environmental Protection Agency, 102 Ill.2d 119, 79 Ill.Dec, 640, 464 N.E.2d 238 (1984). This is consistent with the general rule that administrative review is limited to parties of record before the administrative agencies and then only when their rights, duties or privileges are adversely affected by the decision. See, e.g., Williams v. Department of Labor, 76 Ill.2d 72, 78, 27 Ill.Dec. 769, 389 N.E.2d 1177 (1979); Robinson v. Regional Board of School Trustees, 130 Ill.App.3d 509, 512-13, 85 Ill.Dec. 748, 474 N.E.2d 708 (1985). Because the Board of Education was denied leave to intervene in these proceedings, it is not and cannot be deemed to have ever been a party to the litigation. In re Veutch, 93 III.App.3d 413, 415, 48 III.Dec. 799, 417 N.E.2d 201 (1981). Accordingly, the fourth clause of section 41 could not afford it any basis for seeking administrative review in the appellate court. 1

¶ 21 In urging the exercise of jurisdiction, the dissenting appellate court justice argued that this matter might actually fall within the third clause of section 41, which permits appeals by "any person who filed a complaint on which a hearing was denied," but that contention is without merit. The Board of Education did not file a "complaint on which a hearing was denied." It did not file a complaint at all. In civil matters, a "complaint" is generally understood to mean the initial pleading that starts an action, states the basis for the plaintiff's claim, and sets forth the demand for relief. Black's Law Dictionary 323 (9th ed. 2009). The proceedings at issue here were initiated by applications for pollution control facility certificates. Those were filed by WRB, not the Board of Education. The Board of Education simply requested leave to intervene. There is no meaningful sense in which a petition to intervene can be considered a complaint. The contrary view taken by the

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appellate court in Citizens Against the Randolph Landfill (CARL) v. Pollution Control Board, 178 Ill.App.3d 686, 692, 127 Ill.Dec. 529, 533 N.E.2d 401 (1988), is untenable, and we reject it.

¶22 The dissenting appellate court justice's interpretation of the law must be rejected for another reason as well. Although he contends that appeals in certification proceedings are properly brought directly to the appellate court when they are prosecuted by third parties, he does \*\*330 \*1263 not dispute that when the appeal is brought by an actual applicant for or holder of a certificate, it must be pursued in circuit court. 2012 IL App (4th) 120174–U, ¶40, 2012 WL 7051294 (Appleton, J., dissenting). The dissenting justice's approach would thus create a situation in which the particular court to which an appeal must be brought would differ depending on the particular litigant who brought it.

¶ 23 We are unaware of any other situation in Illinois law where this occurs, and we can conceive of no sound reason why the legislature would possibly have wanted to create such a dual-track system with respect to appeals in pollution control facility certification proceedings. We therefore agree with the appellate court majority that such a construction of the law would yield absurd results and must be rejected.

¶ 24 Finally, and in any case, a court's refusal to entertain an appeal from the denial of petitions to intervene in administrative proceedings cannot be error if the entity seeking to appeal had no right to intervene to begin with. In this case, the Board of Education failed to show that it had any such right. Under the law, the question of whether a system, method, construction, device, building, etc., qualifies as a pollution control facility within the meaning of section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (West 2010)) is a technical one between the entity seeking certification and state regulatory officials. See 35 ILCS 200/11-20, 11-25, 11-30 (West 2010). The General Assembly made no provision for involvement of any other parties in the certification process. Nor has the Pollution Control Board. There is nothing in the applicable administrative regulations authorizing participation by third parties in the pollution control facility certification process. See 35 Ill. Adm.Code 125.200 to 125.216 (2005).

[6] \$\\$25\$ We recognize, of course, that legitimate concerns may arise when the only parties permitted to participate in the regulatory process are regulators and the companies they regulate. That, however, is a matter for the General Assembly. The responsibility for the wisdom of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy. *People v. Carpenter*, 228 Ill.2d 250, 270–71, 320 Ill.Dec. 888, 888 N.E.2d 105 (2008).

¶ 26 We must also point out that under this state's property tax system, taxing bodies such as the Board of Education have been given some voice in how certified pollution control facilities within their borders are ultimately taxed. It is simply not at the certification stage. It comes later, when the Department of Revenue actually assesses the value of those facilities. At that point, any person aggrieved by the assessment may apply for review and correction of the assessment and ask for a hearing on the matter. 35 ILCS 200/8-35(a) (West 2010); 86 III. Adm.Code 110.110 (1996). That stage had not yet been reached in this case. Even if it had, review in such proceedings lies in the circuit court. The law does not authorize direct review by the appellate court, as the Board of Education sought here. 35 ILCS 200/8-40 (West 2010).

#### ¶27 CONCLUSION

¶ 28 For the foregoing reasons, we hold that the appellate court did not err when it dismissed the Board of Education's appeal for lack of jurisdiction. In light of this conclusion, there is no need to address the Board of Education's remaining arguments. \*\*331 \*1264 The judgment of the appellate court is affirmed.

¶ 29 Affirmed.

Chief Justice GARMAN and Justices FREEMAN, THOMAS, KILBRIDE, and THEIS concurred in the judgment and opinion.

Justice BURKE took no part in the decision.

**All Citations** 

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2013 IL 115473, 998 N.E.2d 1256, 376 Ill.Dec. 323

Board of Educ. of Roxana Community School Dist. No. 1 v...., 2013 IL 115473 (2013) 998 N.E.2d 1256, 376 III.Dec. 323

#### Footnotes

In Reed—Custer Community Unit School District No. 255—U.v. Pollution Control Board, 232 III.App.3d 571, 173 III.Dec. 828, 597 N.E.2d 802 (1992), a panel of the appellate court relied on the fourth clause of section 41 to assert jurisdiction over a school district's appeal of the Pollution Control Board's denial of its attempt to revoke a company's pollution control facility certification. Significantly, the appellate court did not consider whether the law permitted third parties to seek revocation of a certificate, and no challenge was raised to its jurisdiction under section 41. It is therefore scant authority for the Board of Education's position in this case. In any event, to the extent that it is inconsistent with our holding today, it is overruled.

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KeyCite Yellow Flag - Negative Treatment
Distinguished by Grant County Concerned Citizens v. Grant County Bd.
of Adjustment, S.D., June 24, 2015

316 Ill.App.3d 770 Appellate Court of Illinois, Second District.

The PEOPLE ex rel. Robert J. KLAEREN II, Frieda Chernobrov, Carle R. Wunderlich II, and Aizik Chernobrov, Plaintiffs—Appellees,

The VILLAGE OF LISLE, Meijer, Inc., and Saint Procopius Abbey, Defendants—Appellants.

No. 2-99-1256.

#### Synopsis

Neighbors sought preliminary injunction preventing continuation of site preparation for construction of retail store in village, alleging procedural defects in the public hearing before the annexation and rezoning of the property. The Circuit Court, Du Page County, Bonnie M. Wheaton, J., granted a preliminary injunction. Village and developer brought interlocutory appeal. The Appellate Court, Hutchinson, J., held that the complete denial of the right of neighbors to cross-examine witnesses at village's public hearing violated the Municipal Code.

Affirmed.

Rapp, J., filed a dissenting opinion.

West Headnotes (39)

#### [1] Constitutional Law

.= Procedural due process in general

#### Constitutional Law

.= Substantive Due Process in General

While "procedural due process" governs the methods by which the state may deprive an individual of a protected interest, "substantive due process" imposes absolute limits on the state's ability to act without regard to

any of the procedural protections provided. U.S.C.A. Const. Amend. 14.

Cases that cite this headnote

#### [2] Constitutional Law

Particular issues and applications

The determination of the compatibility of land uses, and the restriction of those uses to separate districts, is an exercise of legislative wisdom limited only by substantive due process, and thus, such regulation is unconstitutional if it is arbitrary and unreasonable and has no substantial relation to the public health, safety, morals, or general welfare. U.S.C.A. Const. Amend. 14.

1 Cases that cite this headnote

#### [3] Zoning and Planning

⇒ Public health, safety, morals, or general welfare

#### Zoning and Planning

Validity of regulations in general

#### Zoning and Planning

- Validity of regulations

As a legislative judgment, a zoning ordinance is presumed valid and may only be invalidated by clear and convincing evidence that the ordinance as applied is arbitrary, unreasonable, and without substantial relation to the health, safety, morals, or general welfare of the public.

Cases that cite this headnote

#### [4] Constitutional Law

Factors considered; flexibility and balancing

Procedural due process is a flexible concept, and the procedural protections employed must be adapted to the particular situation. U.S.C.A. Const. Amend. 14.

Cases that cite this headnote

[5] Constitutional Law



... Factors considered; flexibility and balancing

Courts must consider three factors when determining the procedural protections due process requires: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. U.S.C.A. Const. Amend. 14.

Cases that cite this headnote

#### [6] Zoning and Planning

Legislative, administrative, judicial, or quasi-judicial power

#### Zoning and Planning

.= Nature and extent of power

Generally, when the ultimate authority to rule on a specific application for a variance or special use resides in a village board of trustees, the board is acting in a legislative and not an administrative capacity.

Cases that cite this headnote

#### [7] Municipal Corporations

. - Appeal from decisions

Simply classifying a local legislative body's process as "legislative" does not insulate the underlying procedures from judicial review.

Cases that cite this headnote

#### [8] Zoning and Planning

E Legislative, administrative, judicial, or quasi-judicial power

When a local legislative body no longer crafts rules of general application regarding zoning variances or special uses, but instead acts to grant permits, make special exceptions, or decide particular cases, it functions less like a legislative body and its actions are better described as administrative, quasi-judicial, or judicial in character.

Cases that cite this headnote

#### [9] Zoning and Planning

.- Hearings and meetings in general

The public hearing and fact-finding requirements imposed by the Municipal Code for a legislative body acting in an administrative or a quasi-judicial capacity regarding zoning issues are intended to distance local legislative bodies from the fact-finding process and to eliminate the ad hoc granting of permits. S.H.A. 65 ILCS 5/11–13–1.1, 13–5, 13–11.

Cases that cite this headnote

#### [10] Appeal and Error

... Review of constitutional questions

A reviewing court will decide a constitutional issue only when it is essential to the disposition of the case.

Cases that cite this headnote

#### [11] Zoning and Planning

Hearings and meetings in general

The complete denial of the right of adjoining landowners to cross-examine witnesses at village's public hearing on a proposed development involving a special use, a planned unit development (PUD), a variation, petitions for rezoning, and an annexation agreement, violated the Municipal Code. S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [12] Zoning and Planning

... Hearings and meetings in general

A public "hearing" regarding a zoning proposal, within the meaning of the zoning provisions of the Municipal Code, means the right to appear and give evidence and also the right to hear and examine the witnesses whose

testimony is presented by opposing parties. S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [13] Zoning and Planning

- Hearings and meetings in general

that Municipal Code provided significant procedural safeguards to adjoining property owners in large municipalities, including the right to subpoena witnesses, cross-examine opposing witnesses, and present witnesses on their behalf at zoning hearings, did not imply, under doctrine of "expressio unius est exclusio alterius," that adjoining landowners in smaller municipalities had only an illusory right to zoning hearings and had no right to cross-examination witnesses; rather, the Code reflected a legislative intent favoring greater flexibility regarding hearings in smaller municipalities. S.H.A. 65 ILCS 5/11-13-1.1, 13-7, 13-7a.

2 Cases that cite this headnote

#### [14] Statutes

= Express mention and implied exclusion; expressio unius est exclusio alterius

Under the doctrine of "expressio unius est exclusio alterius," a court may infer that, when a statute lists certain things, those things omitted were intended as exclusions.

3 Cases that cite this headnote

#### [15] Statutes

Express mention and implied exclusion; expressio unius est exclusio alterius

The maxim of expressio unius est exclusio alterius is merely a rule used to help courts ascertain the intent of the legislature; it is not a rule of law.

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3 Cases that cite this headnote

#### [16] Zoning and Planning

... Hearings and meetings in general

Legislature's amendment of both the Counties Code and the Municipal Code after the Appellate Court's ruling in *E & E Hauling, Inc.* defining a zoning "hearing" under the Counties Code as including a right of cross-examination, without amending or clarifying the language requiring a "hearing," indicated legislative intent that a zoning hearing under the Municipal Code included the right of cross-examination by opponents of the zoning proposal. S.H.A. 55 ILCS 5/5-12014; S.H.A. 65 ILCS 5/11-13-1.1.

Cases that cite this headnote

#### 1171 Statutes

. Prior or existing law in general

#### Statutes

.. Reenactment or incorporation of prior statute

The legislature is presumed to know the judicial construction that a statute has been given, and when the legislature reenacts a statute without modification, it is assumed to have intended the same effect.

5 Cases that cite this headnote

#### [18] Witnesses

- Control and discretion of court

In a judicial proceeding, the scope of crossexamination is a matter committed to the discretion of the trial court.

Cases that cite this headnote

#### [19] Zoning and Planning

Hearing or meeting in general

#### Zoning and Planning

... Hearings and meetings in general

Generally speaking, in the ordinary zoning or rezoning hearing, the cross-examination of persons expressing their views may not be appropriate or contribute anything of value to the fact-finding process, but where the hearing assumes distinctly adversary proportions and complex, technical, and disputed factors are involved, it is particularly pertinent to an objective factual evaluation of the testimony presented to permit cross-examination in a reasonable degree; otherwise, it is possible that matters of vital significance to the fact-finding tribunal may be glossed over, obscured, or omitted in a recital-like presentation of technical subjects and expert opinion. S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [20] Zoning and Planning

- Hearings and meetings in general

At a zoning hearing, the official presiding has broad discretion to ensure that cross-examination is appropriate and contributes to the fact-finding process, or in other words, is relevant and reasonable. S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [21] Zoning and Planning

- Hearings and meetings in general

The deference that reviewing courts accord to a presiding official's decisions regarding the relevance of cross-examination at a zoning hearing does not allow a local zoning body to adopt procedures that do not include the right to cross-examination. S.H.A. 65 ILCS 5/11–13–1.1, 13–5, 13–14, 15.1–3.

Cases that cite this headnote

## [22] Zoning and Planning

- Hearings and meetings in general

Municipalities may adopt a wide variety of procedural devices to ease the administrative burdens of allowing cross-examination at zoning hearings without unduly interfering with that right, such as limiting the class of individuals allowed to exercise that right, or requiring, within reasonable limits, those wishing to exercise that right to register in advance of the public hearing, or requiring

those wishing to exercise that right to allege some special interest beyond that of the general public, or adopting a rule creating a presumption of the right to cross-examination in favor of an identified class. S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-7, 13-14, 15.1-3.

Cases that cite this headnote

#### [23] Zoning and Planning

.= Matters affecting validity in general

#### Zoning and Planning

.= Effect on property value

The desires of neighboring property owners alone cannot justify a zoning restriction, but the preservation of property values is one purpose of zoning ordinances, and the diminution of property values in a neighborhood is one factor that should be considered before a change in zoning. S.H.A. 65 ILCS 5/11-13-1.

Cases that cite this headnote

## [24] Zoning and Planning

Hearings and meetings in general

A municipality should be free to adopt reasonable limitations on the right of cross-examination at a zoning hearing that are uniquely suited to local conditions, but the reasonableness of any limitation on the rights of adjoining property owners must be judged in light of the potential impact on property values in the neighborhood. S.H.A. 65 ILCS 5/11-13-1, 13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [25] Zoning and Planning

.- Hearings and meetings in general

A municipality may reasonably restrict the right of cross-examination at a zoning hearing, based on subject matter, by having the presiding officer identify those witnesses whose testimony will or will not be subject to cross-examination, based upon factors that include, but are not limited to, the complexity of the issue, whether the witness possesses

special expertise, whether the testimony reflects a matter of taste or personal opinion or concerns a disputed issue of fact, and the degree to which the witness's testimony relates to the factors to be considered in approving the proposal. S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-7, 13-14, 15.1-3.

1 Cases that cite this headnote

#### [26] Zoning and Planning

Hearings and meetings in general

The determination whether to restrict the right of cross-examination at a zoning hearing, based on subject matter, may be made either immediately after the witness's testimony or may be made in advance based on the anticipated testimony. S.H.A. 65 ILCS 5/11-13-1, 13-1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [27] Zoning and Planning

Hearings and meetings in general

The hearing officer may adopt rules specifying which factual issues are considered relevant to the zoning decision and limiting cross-examination at the zoning hearing to witnesses addressing those issues. S.H.A. 65 ILCS 5/11-13-1, 13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [28] Zoning and Planning

.- Hearings and meetings in general

The complete prohibition on the exercise of the right of cross-examination at a zoning hearing is per se unreasonable and does not comport with the Municipal Code. S.H.A. 65 ILCS 5/11-13-1, 13-1.1, 13-5, 13-14, 15.1-3.

Cases that cite this headnote

#### [29] Zoning and Planning

... Proceedings to Modify or Amend

The failure to comply with the statutory procedural requirements voids a zoning modification.

Cases that cite this headnote

#### [30] Municipal Corporations

- Review

#### Zoning and Planning

Preservation before board or officer of grounds of review

Neighbors who opposed the annexation and rezoning of property preserved for appellate review the issue of whether they should have been allowed to cross-examine witnesses at the village's public hearing, though the neighbors did not raise such an objection at the public hearing, where the mayor's statement at the beginning of the hearing regarding procedures for the hearing, and the tenor of the mayor's responses to requests to modify those procedures, clearly indicated that procedural objections at the hearing would have been futile. S.H.A. 65 ILCS 5/11–13–1, 13–1, 13–5, 13–14, 15.1–3.

Cases that cite this headnote

#### [31] Administrative Law and Procedure

Preservation of Questions Before Administrative Agency

The purpose of presenting objections is to allow an administrative tribunal to correct possible procedural errors.

Cases that cite this headnote

#### [32] Administrative Law and Procedure

Preservation of Questions Before Administrative Agency

A formal objection to the procedures employed at a public hearing is not required to preserve allegations of error, when the record indicates that such objection would have been futile.

Cases that cite this headnote

#### [33] Municipal Corporations

Proceedings

#### Zoning and Planning

.= Hearing or meeting in general

The village's procedures for addressing the adjoining landowners' concerns regarding proposed annexation and rezoning of property, which included filtering questions to the witnesses through the body conducting the hearing and delaying the responses to the questions until the approval process was conducted, was no substitute for the right of adjoining landowners to cross-examine witnesses at the hearing. S.H.A. 65 ILCS 5/11–13–1, 13–1.1, 13–5, 13–14, 15.1–3.

Cases that cite this headnote

#### [34] Constitutional Law

.- Inquiry Into Legislative Judgment

#### Constitutional Law

.= Wisdom

A reviewing court will not interfere with a legislative judgment merely because the reviewing court would have reached a different conclusion or the reviewing court questions the wisdom of the decision.

Cases that cite this headnote

#### [35] Public Employment

... In General; Term and Tenure

Elected officials are accountable to the people who elected them, and the question whether they should continue to exercise the power entrusted them by the electors is a political, not a legal, question.

Cases that cite this headnote

#### [36] Zoning and Planning

Modification or amendment; rezoning

Although the reviewing court was required to accord deference to the village board's legislative judgment when the reviewing court considered the substance of the board's decision regarding rezoning, that deference did not extend to the reviewing court's examination of the underlying procedural requirements.

Cases that cite this headnote

#### [37] Zoning and Planning

: Hearings and meetings in general

#### Zoning and Planning

.- Hearings in general

While a joint hearing procedure to address a zoning proposal provides greater efficiency when several different bodies will be called upon to rule on the same evidence, such a procedure must be designed to separate the fact-finding process from the legislative determination to grant a variance, and the procedure must not interfere with an independent evaluation of the proposal by the assembled bodies.

Cases that cite this headnote

#### [38] Zoning and Planning

- Hearings and meetings in general

A zoning hearing that incorporates an arbitrary time limit on cross-examination by members of the public, without consideration of the nature of the comments by witnesses and their relevance to the factual issues presented, fails to meet the Municipal Code's definition of a zoning "hearing." S.H.A. 65 ILCS 5/11-13-1.1, 13-5, 13-14, 15.1-3.

1 Cases that cite this headnote

#### [39] Zoning and Planning

· Hearing or meeting in general

Although modification of a zoning proposal in response to evidence obtained during a public hearing may be appropriate, a second hearing is required when those modifications result in a material change in the nature of the development or involve a significant introduction of additional evidence.

Cases that cite this headnote

#### Attorneys and Law Firms

\*\*1103 \*773 \*\*\*126 Thomas F. Geselbracht, David L. Reifman, Gilly Nadel, Danielle Meltzer Cassel, \*\*1104 \*\*\*127 and Daniell Sveska, all of Piper, Marbury, Rudnick & Wolfe, and Robert J. DiLeonardi, Chicago, and Robert T.C. Kay, of Peregrine, Stime, Newman, Ritzman & Bruckner, Ltd., Wheaton, for appellants.

Mark W. Daniel, John R. Zemenak, and Scott E. Pointner, all of Rathje, Woodward, Dyer & Burt, Wheaton, for appellees.

#### **Opinion**

Justice HUTCHINSON delivered the opinion of the court:

This matter reaches us as an interlocutory appeal of an order granting a preliminary injunction preventing defendants Saint Procopious Abbey (the Abbey) and Meijer, Inc. (Meijer), from continuing site preparation required for the construction of a Meijer retail store on a parcel of land owned by the Abbey pursuant to the terms of a contract for the sale of the parcel between Meijer and the Abbey. Plaintiffs are adjoining landowners, who alleged that, because of procedural defects, ordinances enacted by another defendant, Village of Lisle (the Village), annexing the Abbey property, rezoning the property, and authorizing construction as a planned unit development (PUD) were void.

Plaintiffs originally brought suit in their individual capacities but later added a count sounding in *quo* warranto, suing on behalf of the State. For the sake of clarity we will refer to them simply as "plaintiffs," whether they are acting as individuals or as the real parties in interest in the *quo* warranto action.

# [Nonpublishable material removed under Supreme Court Rule 23.]

Defendants timely appeal and contend that (1) plaintiffs lack standing to challenge the annexation and rezoning; (2) plaintiffs do not have a protectable interest in the continuation of the existing zoning; (3) plaintiffs are unlikely to succeed on the merits of their claim because due process does not require cross-examination in a zoning \*774 hearing; (4) plaintiffs are unlikely to succeed on

the merits of their claim because Illinois statutory law does not create a right to cross-examination; (5) plaintiffs have not demonstrated irreparable injury; and (6) the trial court abused its discretion when it only required a bond of \$5,000. We address defendants' third and fourth contentions in the published portion of this opinion. Defendants' remaining contentions are addressed in the nonpublished portion of the opinion. We affirm.

#### **BACKGROUND**

#### July 9, 1998 Hearing

Plaintiffs' challenge to the annexation and rezoning focused on procedural irregularities at the July 9, 1998, joint public hearing, and the testimony elicited at the hearing on the preliminary injunction also centered on the conduct of the July 1998 hearing. A transcript of that public hearing is contained in the record and reveals that on July 9, 1998, the Village board of trustees (board), the Village plan commission (plan commission), and the Village zoning board of appeals (ZBA) each convened a public hearing regarding the Meijer proposal at the Village hall. Each board then independently moved to recess its hearing and reconvene in the auditorium of a local junior high school. When the hearing reconvened, the mayor described the procedure as follows:

"This is a public hearing. It is not a debate. There will be no attempt at tonight's hearing to answer any question raised by the audience. Questions may be addressed during the review process I just described.

To the extent possible the speaker will address questions and concerned [sic] raised by the combined boards this evening.

\* \* \*

The petitioner will be first subject to any questions by the assembled boards. We will attempt to deal with each individual aspect of the presentation as it's made.

People in the audience speaking in favor of the proposal will then be heard. People in the audience speaking in opposition of the proposal will then be People ex rel. Klaeren v. Village of Lisle, 316 III.App.3d 770 (2000) 737 N.E.2d 1099, 250 III.Dec, 122

heard. The petitioner will then be allowed to make closing comments.

\*\*1105 \*\*\*128 After closing comments by the petitioner, the public hearing will be adjourned.

Public records will remain open for written comments by interested parties. Any written comments must be received at the Village offices by 4:30 p.m. Friday, July 31st.

To be fair to everyone in the audience, I ask that you limit your \*775 comments to two minutes each. I will be the time keeper and will let you know when 15 seconds remain.

No one will be allowed to speak a second time until everyone has an opportunity to speak once. That requirement will also be applicable to members of the assembled boards."

\* \* \*

The first witness on behalf of Meijer was Dave Kasparik, an architect. Kasparik described the design of the proposed store and presented an artist's rendering of the completed building. Jacques Gourguechon, a land planner, described the proposed site plan, the location of the building, and the land use on the property. Donald O'Hara, a traffic consultant, presented the results of a traffic study conducted on roads surrounding the site and described the anticipated impact of the development and made recommendations for mitigating the impact. Christopher Burke, a hydraulic engineer, described the plans to accommodate water runoff and wetland mitigation. During the presentation, a number of members of the assembled bodies asked questions.

Following Meijer's presentation, the mayor invited those in favor to speak. Two members of the audience spoke in favor of the development. The mayor then invited those opposed to the development to speak.

The first individual to speak in opposition of the project was Scott Harbek. Harbek indicated that he represented a group calling itself "No Meijer on Maple." Harbek indicated that the group had collected over 2,000 signatures on a petition opposing the development.

Harbek further stated that nine representatives from different subdivisions in Lisle had prepared three- to five-minute presentations on behalf of the group. Harbek asked whether such a presentation would be permitted, and the mayor responded that only a single representative would be allowed to speak on behalf of the organization and that the two-minute time limit would be enforced. The mayor further explained:

"Rather than try and debate with you the procedure we are going to try and follow, I tried to explain at the beginning of the meeting. My instructions would give everyone who wants to speak or had a written comment an opportunity to be heard. I think that is fair.

No matter what we do it is going to be characterized as being unfair. That being the case, we are going to proceed with the suggestion I made. You have two minutes, beginning now."

Harbek then opined that the proposed development would have a greater impact on traffic than the Meijer representative predicted. Harbek further opined that such a development was inappropriate for the neighborhood and would decrease the quality of life.

\*776 Howard Richter, a real estate appraiser, testified that he was familiar with Meijer stores and had conducted economic impact analyses on similar, unrelated projects. Richter admitted that he had not inspected the neighborhood but opined that homes in the blocks surrounding the development would be adversely impacted not less than 15% and those homes within a one-mile radius would be impacted 5% to 7%. Richter further stated that the public response to the proposal evidenced by the size of the crowd at the hearing supported his opinion of the impact on property values. The mayor interrupted, stating "15 seconds." Richter then addressed the issue of tax increment financing (TIF). The mayor interrupted again, stating, "Mr. \*\*1106 \*\*\*\*129 Richter you are out of time. Thank you very much."

Another opponent, Michael Pfeifer, raised several concerns, including the possibility of parking lot traffic, snow removal operations, and garbage compactors creating noise pollution in the area. Pfeifer concluded, "So if you all would address those things, I would appreciate it." The Meijer representatives did not respond, and no member of the board, the plan commission, or the ZBA

People ex rel. Klaeren v. Village of Lisle, 316 III.App.3d 770 (2000) 737 N.E.2d 1099, 250 III.Dec. 122

questioned the Meijer representatives further in response to Pfeifer's comments.

Many other individuals, including one of the plaintiffs, spoke in opposition to the proposal. Many speakers made only general comments, but several identified questions they wanted the assembled bodies to ask of the Meijer representatives. On several occasions the mayor warned individuals that their time had expired or was about to expire. After the final speaker, the mayor stated, "With that, we'll close the audience participation."

#### Plaintiffs' Complaint

On February 11, 1999, plaintiffs filed a complaint against the Village seeking, among other things, an injunction to prevent a vote approving the annexation and rezoning. The trial court held that plaintiffs failed to name a necessary party and denied the injunction. On February 15, the board adopted ordinances annexing and rezoning the parcel and approving an annexation agreement with Meijer. The cause was continued several times, and plaintiffs amended their complaint to add Meijer and the Abbey as defendants and added a count sounding in quo warranto. On September 14, 1999, the trial court entered a temporary restraining order that halted excavation and landscaping work on the property. On October 4, 1999, the trial court conducted a hearing on plaintiffs' motion for a preliminary injunction.

[Nonpublishable material removed under Supreme Court Rule 23.]

#### Trial Court's Ruling

On October 18, 1999, the trial court issued a memorandum opinion and order granting the preliminary injunction. The trial court relied \*777 on E & E Hauling, Inc. v. County of Du Page. 77 Ill.App.3d 1017, 33 Ill.Dec. 536, 396 N.E.2d 1260 (1979), and held that a public hearing must include a right of cross-examination. The trial court further held that, although the mayor as chair of the July 1998 hearing had a right to impose reasonable conditions on the participation of the public, he could not totally deny plaintiffs the right to question the witnesses for Meijer. The trial court concluded that plaintiffs were likely to succeed on the merits of their claim that the

public hearing was rendered illusory by the total denial of the right to examine Meijer's witnesses. The trial court also concluded that irreparable injury could be presumed because the Village board acted in violation of state law. The trial court ordered that no further action be taken on the Meijer site until further order of the court or until the Village held a proper public hearing on the matter. The trial court also ordered that plaintiffs post a bond of \$5,000. Defendants timely appeal.

#### **ANALYSIS**

[Nonpublishable material removed under Supreme Court Rule 23.]

#### Due Process

[1] Defendants argue that plaintiffs failed to demonstrate a likelihood of success on the merits because due process does not require the right of cross-examination in the zoning context. Key to our discussion of due process in the zoning context is the distinction between procedural and substantive due process. While procedural due process governs the methods by which the state may deprive an individual of a protected interest, substantive due process imposes absolute limits on the state's ability to act without regard to any of the procedural protections provided.

\*\*1107 \*\*\*130 In re Perona, 294 Ill.App.3d 755, 760, 229 Ill.Dec. 11, 690 N.E.2d 1058 (1998).

[3] The seminal zoning case, Village of Euclid v. [2] Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), recognized that the determination of the compatibility of land uses and the restriction of those uses to separate districts is an exercise of legislative wisdom limited only by substantive due process. Euclid, 272 U.S. at 395, 47 S.Ct. at 121, 71 L.Ed. at 314. Such regulation is unconstitutional if it is arbitrary and unreasonable and has no substantial relation to the public health, safety, morals, or general welfare. Euclid, 272 U.S. at 395, 47 S.Ct. at 121, 71 L.Ed. at 314. Illinois recognizes this limitation of substantive due process, and the relevant considerations have been identified in the often-cited La Salle-Sinclair factors. See Zeitz v. Village of Glenview, 304 Ill.App.3d 586, 594-95, 238 Ill.Dec. 52, 710 N.E.2d 849 (1999), citing La Salle National Bank v. County of Cook, 12 III.2d 40, 145 N.E.2d 65 (1957), and Sinclair Pipe Line Co. v. Village of Richton Park, 19 Ill.2d 370, 167 N.E.2d

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406 (1960). As a legislative judgment, a zoning ordinance is presumed valid and may only be invalidated by clear and convincing evidence that the ordinance \*778 as applied is arbitrary, unreasonable, and without substantial relation to the health, safety, morals, or general welfare of the public. Zeitz, 304 Ill.App.3d at 595, 238 Ill.Dec. 52, 710 N.E.2d 849.

However, the plaintiffs in this case have not raised a substantive due process challenge to the proposed development. Accordingly, we are not called upon to evaluate the wisdom of the Village's action and need not consider such factors as the existing uses and zoning of nearby property or the community's need for the proposed use. See Zeitz, 304 Ill.App.3d at 594–95, 238 Ill.Dec. 52, 710 N.E.2d 849. Plaintiffs instead challenge the procedure used by the Village board when it approved the development.

[5] Procedural due process is a flexible concept, and the procedural protections employed must be adapted to the particular situation. Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 902, 47 L.Ed.2d 18, 33 (1976). Courts must consider three factors when determining the procedural protections due process requires: (1) the private interest that will be affected by the official action: (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews, 424 U.S. at 335, 96 S.Ct. at 903, 47 L.Ed.2d at 33; see also East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel, 178 Ill.2d 399, 415-16, 227 Ill.Dec. 568, 687 N.E.2d 1050 (1997).

Defendants argue that no Illinois court has held that procedural due process requires a right of cross-examination at a zoning hearing. Defendants also cite numerous cases from foreign jurisdictions in support of their argument that procedural due process in a zoning matter does not require a right of cross-examination. Plaintiffs in response cite additional cases from foreign jurisdictions in support of their contention that procedural due process does require the right of cross-examination. We have reviewed all of the cases cited by the parties and find only that this is an area of the law around which no

clear consensus has developed. Accordingly, we find that detailed analyses of the competing authorities does not aid our resolution of this case.

[7] Defendants also argue that cross-[6] examination was not required by due process because the Village board was acting in a legislative capacity when it approved the Meijer development. Generally, when the ultimate authority to rule on a specific application for a variance or special \*\*1108 \*\*\*131 use resides in a board of trustees, the board is acting in a legislative and not an administrative capacity. Yusuf v. Village of Villa Park, 120 III.App.3d 533, 543, 76 III.Dec. 175, 458 N.E.2d 575 (1983). However, simply classifying a process as legislative does not insulate the underlying procedures from \*779 review. See Geneva Residential Ass'n, Ltd. v. City of Geneva, 77 Ill.App.3d 744, 755, 34 Ill.Dec. 177, 397 N.E.2d 849 (1979). Moreover, when a local legislative body no longer crafts rules of general application but instead acts to grant permits, make special exceptions, or decide particular cases, it functions less like a legislative body and its actions are better described as administrative, quasi-judicial, or judicial in character. Bossman v. Village of Riverton, 291 Ill.App.3d 769, 772-73, 225 Ill.Dec. 742, 684 N.E.2d 427 (1997), citing Ward v. Village of Skokie, 26 III.2d 415, 424, 186 N.E.2d 529 (Klingbiel, J., specially concurring). Placing such functions in the hands of legislative bodies creates an obvious opportunity for the extension of special privileges to those well-connected politically and presents a challenge to the basic concepts of due process embodied in our legal system. See Ward, 26 Ill.2d at 424, 186 N.E.2d 529 (Klingbiel, J., specially concurring).

[9] [10] However, we need not consider further whether procedural due process demands greater procedural safeguards to counter the potential for abuse present when a legislative body acts as an administrative or a quasi-judicial body, because the legislature has adopted by statute additional procedural safeguards. See *Bossman*, 291 Ill.App.3d at 773, 225 Ill.Dec. 742, 684 N.E.2d 427, citing sections 11–13–1.1, 11–13–5, and 11–13–11 of the Illinois Municipal Code (65 ILCS 5/11–13–1.1, 11–13–5, 11–13–11 (West 1994)); see also *Geneva Residential Ass'n*, 77 Ill.App.3d at 754–55, 34 Ill.Dec. 177, 397 N.E.2d 849. The public hearing and fact-finding requirements imposed by statute are intended to distance local legislative bodies from the fact-finding process and eliminate the *ad hoc* granting of permits.

Geneva Residential Ass'n, 77 III.App.3d at 754-55, 34 III.Dec. 177, 397 N.E.2d 849. A reviewing court will decide a constitutional issue only when it is essential to the disposition of the case. In re Petition to Form a New Park District, 247 III.App.3d 702, 716, 187 III.Dec. 256, 617 N.E.2d 464 (1993). Therefore, we will not consider further the nature of the safeguards mandated by procedural due process because our examination of the relevant statutory procedural protections resolves the issue of the right to cross-examination.

#### Statutory Requirements for Cross-examination

[11] Defendants also contend that the Illinois Municipal Code (the Municipal Code) (65 ILCS 5/1-1-1 et seg. (West 1998)) did not provide for the right of crossexamination during the July 1998 public hearing on the Meijer proposal. Several sections of the Municipal Code requiring a hearing were implicated because the proposed development involved a special use, a PUD, a variation, petitions for rezoning, and an annexation agreement. Section 11-13-1.1 provides, in pertinent part. "[a] special use [including a planned development] shall be permitted only after a public hearing before some commission or committee \*780 designated by the corporate authorities." 65 ILCS 5/11-13-1.1 (West 1998). Section 11-13-5 provides "no \* \* \* variation shall be made \* \* \* without a hearing before the board of appeals," 65 ILCS 5/11-13-5 (West 1998). Section 11-13-14 provides "no [zoning] amendments shall be made without a hearing before some commission or committee designated by the corporate authorities." 65 ILCS 5/11-13-14 (West 1998). Section 11-15.1-3 provides "[t]he corporate authorities shall fix a time for and hold a public hearing upon the proposed annexation agreement." 65 ILCS 5/11-15.1-3 (West 1998).

[12] The issue of whether plaintiffs possessed a right to cross-examination \*\*1109 \*\*\*132 turns primarily on the definition of the word "hearing" used in the Municipal Code. Few cases in Illinois have addressed this issue, but we find that E & E Hauling. Inc. v. County of Du Page, 77 Ill.App.3d 1017, 1021, 33 Ill.Dec. 536, 396 N.E.2d 1260 (1979), is squarely on point. E & E Hauling examined the meaning of the word "hearing" as used in the version of the Counties Code then in effect (Ill. Rev. Stat.1977, ch. 34, par. 3158 (now codified, as amended, at 55 ILCS 5/5-12014 (West 1998))). E & E Hauling, 77 Ill.App.3d at 1021,

33 Ill.Dec. 536, 396 N.E.2d 1260. The E & E Hauling court held "[t]he general rule is well established that a ' "public hearing" before any tribunal or body' means 'the right to appear and give evidence and also the right to hear and examine the witnesses whose testimony is presented by opposing parties." E & E Hauling, 77 Ill.App.3d at 1021, 33 Ill.Dec. 536, 396 N.E.2d 1260, quoting Braden v. Much, 403 Ill. 507, 513, 87 N.E.2d 620 (1949). The E & E Hauling court also observed " '[a zoning board] often deals with important property interests; and a denial of a right to cross-examine may easily lead to the acceptance of testimony at its face value when its lack of credibility or the necessity for accepting it only with qualifications can be shown by cross-examination." E & E Hauling 77 Ill.App.3d at 1022, 33 Ill.Dec. 536, 396 N.E.2d 1260, quoting Wadell v. Board of Zoning Appeals, 136 Conn. 1, 8-9, 68 A.2d 152, 155-56 (1949). The reviewing court concluded that the denial of a right of cross-examination to an adjoining landowner rendered the hearing improper and voided the zoning amendment. E & E Hauling, 77 Ill.App.3d at 1023, 33 Ill.Dec. 536, 396 N.E.2d 1260.

Defendants argue that the holding in E & E Hauling should be limited because the E & E Hauling court improperly interpreted the phrase "examine the witnesses" from the Braden opinion as the equivalent of "cross-examination." However, the authorities on which Braden relied clearly addressed the issue of a right of cross-examination. Compare Braden, 403 Ill. at 513, 87 N.E.2d 620, with Farmers' Elevator Co. v. Chicago, Rock Island & Pacific Ry. Co., 266 Ill. 567, 573, 107 N.E. 841 (1915) ("Allowing the testimony to be heard \* \* \* without any opportunity to cross-examine the witnesses presenting it, amounts to a practical denial of the vital part of the hearing required by this statute"). We find that \*781 the E & E Hauling court holding was consistent with the long-established definition of "hearing."

[13] [14] [15] Defendants also urge us to invoke the statutory construction doctrine expressio unius est exclusio alterius and find that the legislature did not intend the mandated public hearing to include a right of cross-examination. Under this doctrine, a court may infer that, when a statute lists certain things, those things omitted were intended as exclusions. See Bridgestonel Firestone, Inc. v. Aldridge. 179 Ill.2d 141, 151–52, 227 Ill.Dec. 753, 688 N.E.2d 90 (1997). However, this maxim is merely a rule used to help courts ascertain the intent of the legislature; it is not a rule of law. Bridgestonel

Firestone. 179 III.2d at 153, 227 III.Dec. 753, 688 N.E.2d 90. Defendants note that sections 11–13–7 and 11–13–7a specifically grant a right of cross-examination to those property owners within 250 feet of a proposed special use in a municipality with a population of more than 500,000. See 65 ILCS 5/11–13–7, 11–13–7a (West 1998). Defendants argue that, because the relevant provisions applicable to smaller municipalities do not list the right of cross-examination, this omission evinces an intent to exclude that right from the definition of "hearing." See 65 ILCS 5/11–13–1.1 (West 1998). We disagree.

First, the relevant statutory provisions do not present an opportunity for the appropriate application of this rule of statutory construction. Section 11-13-1.1 does not present a list of rights from which we may conclude that others have been excluded. Instead this section merely requires \*\*1110 \*\*\*133 a public hearing without specifying the required elements of that hearing. An interpretation of the Municipal Code that provides significant procedural safeguards to adjoining property owners in large municipalities, including the right to subpoena witnesses, cross-examine opposing witnesses, and present witnesses on their behalf, yet provides only an illusory right to a hearing for adjoining landowners in smaller municipalities would be absurd. Rather, we conclude that the list of rights granted adjoining owners in larger municipalities demonstrates legislative recognition of the full panoply of rights envisioned in a public hearing in all municipalities,

Second, the distinction in the Municipal Code between larger and smaller municipalities merely expresses a legislative intent favoring greater flexibility in the smaller municipalities. See Bossman, 291 III.App.3d at 773, 225 Ill.Dec. 742, 684 N.E.2d 427 (holding that municipalities of less than 500,000 may either vest the ultimate decision on variances in special uses in a zoning board of appeal or reserve that decision for the corporate legislative body). We find that this distinction does not imply a legislative intent that adjoining landowners in smaller municipalities are entitled to fewer procedural safeguards. Instead, we find that this distinction evinces a legislative recognition that in smaller municipalities it is \*782 more difficult to adopt a per se rule defining which adjoining landowners are so adversely affected by the determination that they should be entitled to additional procedural safeguards. In other words, while a 250-foot limit may adequately identify adversely affected landowners in a metropolitan

area, development in suburban or rural areas may have a greater or lesser impact on neighboring property, and municipal authorities in such areas should be free to adopt procedural rules uniquely adapted to reflect these differences.

[16] [17] Finally, we note that the legislature amended the zoning provisions of both the Municipal Code and the Counties Code after the decision in E & E Hauling without amending or clarifying the language requiring a hearing. See 55 ILCS 5/5-12014 (West 1998) (amendment of county zoning-amended by Pub. Act 89-272, eff. August 10, 1995); 65 ILCS 5/11-13-1.1 (West 1998) (special use approval by municipalities-amended by Pub. Act 86-330, eff. August 30, 1989). The legislature is presumed to know the judicial construction that a statute has been given, and when the legislature reenacts a statute without modification it is assumed to have intended the same effect. Nevious v. Bauer, 281 Ill.App.3d 911, 915. 217 Ill.Dec. 681, 667 N.E.2d 1074 (1996). Therefore, we conclude that the word "hearing" in the zoning provisions of the Municipal Code has the meaning adopted by this court in E & E Hauling and includes a right of crossexamination.

[18] Defendants argue that allowing the general public an unlimited right of cross-examination would result in an unjustified administrative burden. Although this argument is addressed primarily to the issue of whether procedural due process requires cross-examination, we discuss it here to clarify our ruling regarding crossexamination. We note that the reviewing court in E & E Hauling recognized only a right to relevant crossexamination. E & E Hauling, 77 Ill.App.3d at 1022, 33 Ill.Dec. 536, 396 N.E.2d 1260. In a judicial proceeding, the scope of cross-examination is a matter committed to the discretion of the trial court. Bell v. Hill, 271 Ill.App.3d 224, 231, 207 Ill.Dec. 714, 648 N.E.2d 170 (1995). The courts in our sister states that recognize a right of crossexamination in zoning hearings also recognize that the relevance of that cross-examination varies with the nature of the evidence presented and requires a similar exercise of discretion by the body conducting the hearing. See, e.g., Hyson v. Montgomery County Council, 242 Md. 55, 67, 217 A.2d 578, 586 (1966).

\*\*1111 [19] [20] [21] \*\*\*134 When reviewing a limitation on cross-examination, a court should consider the extent to which cross-examination is required for a

full and true disclosure of the facts with due regard to the circumstances of each particular case. See *Hyson*, 242 Md. at 67, 217 A.2d at 586. We find particularly instructive the observations of the Supreme Court of Washington on this issue in the context of a petition for rezoning to \*783 allow construction of an oil refinery. See *Chrobuck v. Snohomish County*, 78 Wash.2d 858, 480 P.2d 489 (1971).

"Generally speaking, in the ordinary zoning or rezoning hearing before a planning commission the crossexamination of persons expressing their views may not be appropriate or contribute anything of value to the fact-finding process. Where \* \* \*, however, the hearing assumes distinctly adversary proportions \* \* \* and complex, technical and disputed factors, revolving about such matters as oil refinery processes, air pollution, noise levels, visual impact, \* \* \* are involved, it would appear particularly pertinent to an objective factual evaluation of the testimony presented to permit cross-examination in a reasonable degree. Otherwise, it is possible that matters of vital significance to the fact-finding tribunal may be glossed over, obscured or omitted in a recital-like presentation of technical subjects and expert opinion," Chrobuck, 78 Wash.2d at 870-71, 480 P.2d at 496.

We conclude that, at a zoning hearing, the official presiding must be given broad discretion to ensure that cross-examination is appropriate and contributes to the fact-finding process or, in other words, is relevant and reasonable. However, we hold that the deference accorded decisions regarding the relevance of cross-examination does not allow a local zoning body to adopt procedures that do not include the right to cross-examination.

We note that municipalities may [22] [23] adopt a wide variety of procedural devices to ease the administrative burdens of allowing cross-examination without unduly interfering with that right. For example, a municipality could adopt rules limiting the class of individual allowed to exercise a right of crossexamination. A municipality could, within reasonable limits, require those wishing to exercise the right of crossexamination to register in advance of the public hearing. Those wishing to exercise their right of cross-examination could also be required to allege some special interest beyond that of the general public. A municipality could ease the administrative burden of identifying those with a special interest by adopting a rule creating a presumption of the right to cross-examination in favor of an identified

class. The legislature made a similar classification when it adopted the 250-foot notice requirement contained in section 11-13-7. See 65 ILCS 5/11-13-7 (West 1998). The desires of neighboring property owners alone cannot justify a zoning restriction, but the preservation of property values is one purpose of zoning ordinances, and the diminution of property values in a neighborhood is one factor that should be considered before a change in zoning. See Lambrecht v. County of Will, 217 Ill.App.3d 591, 599, 160 III.Dec. 464, 577 N.E.2d 789 (1991); 65 ILCS 5/11-13-1 (West 1998). A municipality \*784 should be free to adopt reasonable limitations on the right of crossexamination uniquely suited to local conditions, but the reasonableness of any limitation on the rights of adjoining property owners must be judged in light of the potential impact on property values in the neighborhood.

[25] [26] [27] Similarly, a municipality may reasonably restrict the right of cross-examination based on subject matter. The presiding officer at a public hearing may identify those witnesses whose testimony will or will not be subject to cross-examination. The factors to be considered include, but are not limited to, the complexity of the issue, whether the witness possesses special expertise, whether the \*\*1112 \*\*\*135 testimony reflects a matter of taste or personal opinion or concerns a disputed issue of fact, and the degree to which the witness's testimony relates to the factors to be considered in approving the proposal. Such a determination may be made either immediately after the witness's testimony or may be made in advance based on the anticipated testimony. Additionally, the hearing officer could adopt rules specifying which factual issues are considered relevant to the decision and limiting cross-examination to witnesses addressing those issues. Such a procedure would have the additional benefit of identifying for interested parties those factual issues considered relevant by the decision maker.

[28] [29] The case before us highlights some of these considerations. Several members of the public, both for and against the project, expressed their opinions regarding the need for development in general and how the proposed development would change the character of the community. Although public sentiment may be a relevant consideration for policy makers, cross-examination of the speakers would likely reveal little of value to the fact-finding process. On the other hand, several opponents raised concerns that questioned the accuracy of Meijer's factual presentation. For example, opponents questioned

whether the traffic study was consistent with Meijer's projection of retail sales. Others questioned whether the study considered the effect of traffic on side streets. An examination of the Meijer witnesses by the public on these subjects would have been relevant to the proposed accommodations for increased traffic. Other opponents raised specific questions regarding whether a power failure would affect the proposed system for handling storm water. This too was a specific factual issue to which the Meijer witnesses could be expected to respond. However, we need not determine which public comments were relevant or what limitations on the right of crossexamination would have constituted a valid exercise of discretion because the procedure employed by the mayor prohibited all cross-examination by the public, without regard to the identity of the speaker or the relevance of the \*785 question. We hold that a complete prohibition on the exercise of the right of cross-examination at a public hearing is per se unreasonable and does not comport with the meaning of the word "hearing" used in the Code. It is well established that the failure to comply with the statutory procedural requirements voids a zoning modification. See Treadway v. City of Rockford, 24 Ill.2d 488, 496, 182 N.E.2d 219 (1962); E & E Hauling, 77 Ill.App.3d at 1023, 33 Ill.Dec. 536, 396 N.E.2d 1260. Therefore, we conclude that plaintiffs demonstrated a likelihood of success on the merits of their claim.

[30] were entitled to a right of cross-examination, they waived this right by failing to object at the July 1998 hearing. We disagree. Formal objections go hand in hand with formal proceedings. Balmoral Racing Club, Inc. v. Illinois Racing Board, 151 Ill.2d 367, 397, 177 Ill.Dec. 419, 603 N.E.2d 489 (1992). The purpose of presenting objections is to allow an administrative tribunal to correct possible procedural errors. Balmoral Racing, 151 Ill.2d at 398, 177 Ill.Dec. 419, 603 N.E.2d 489. The mayor's statement regarding procedures at the beginning of the hearing and the tenor of his responses to requests to modify those limitations clearly indicated that the mayor would not consider procedural objections raised by the public. We hold that a formal objection to the procedures employed at a public hearing is not required to preserve allegations of error when the record indicates that such objection would have been futile. Therefore, we conclude that plaintiffs did not waive any error resulting from the denial of their right to cross-examination.

[33] Defendants also argue that any questions raised by the public at the hearing \*\*1113 \*\*\*136 were addressed during the approval process. However, a requirement that questions be filtered through the body conducting the hearing is an unjustified restriction on the right of crossexamination, and such a restriction is more onerous when the responses are delayed until after the hearing. See E & EHauling, 77 Ill.App.3d at 1022, 33 Ill.Dec. 536, 396 N.E.2d 1260. Therefore, we conclude that the Village's procedures for addressing public concerns were not a substitute for the right of cross-examination created by the Municipal Code.

[34] [36] We emphasize that our holding here is addressed solely to the process by which the board reached its decision, not the decision itself. We will not interfere with a legislative judgment merely because we would have reached a different conclusion or we question the wisdom of the decision. See Northern Trust Bank/Lake Forest, N.A. v. County of Lake, 311 Ill.App.3d 332, 336, 243 III.Dec. 668, 723 N.E.2d 1269 (2000). Elected officials are accountable to the people who elected them, and the question of whether they should continue to exercise the power entrusted them by the electors is a political, not a legal, question. See People ex rel. Cook County v. Majewski, 28 Ill.App.3d 269, 273, 328 N.E.2d 195 (1975); In re Petition for Removal of Bower, 91 Ill.App.2d 63, 69, 233 N.E.2d 225 (1968). If the board's decision is [31] [32] Defendants argue that, even if plaintiffs unwise \*786 but does not violate substantive due process, plaintiffs' remedy lies in the political arena; simply put, if unhappy, plaintiffs may campaign to throw the rascals out. On the other hand, the procedural requirements we have identified serve not to protect the public from unwise decisions but from uninformed decisions. If plaintiffs had been granted the right of cross-examination, the board may have reached the same decision, but the danger that the decision would have been based on a presentation that glossed over important facts would have been minimized. See Chrobuck, 78 Wash.2d at 870-71, 480 P.2d at 496. In other words, although the board was not bound to listen to plaintiffs' concerns, it was bound to hear them before making its decision. Therefore, although we must accord the board's legislative judgment deference when considering the substance of its decision regarding rezoning, that deference does not extend to our examination of the underlying procedural requirements. See Treadway, 24 Ill.2d at 496, 182 N.E.2d 219.

[Nonpublishable material removed under Supreme Court Rule 23.]

#### Other Procedural Issues

Although the denial of plaintiffs' right of crossexamination was sufficient to sustain the trial court's finding that plaintiffs were likely to succeed on the merits of their claim, we feel that it is appropriate to briefly address additional procedural challenges raised by plaintiffs.

[37] First, plaintiffs challenge the joint hearing procedure. While we recognize that such a procedure provides greater efficiency when several different bodies will be called upon to rule on the same evidence, such a procedure must be designed to address the concerns expressed in *Geneva Residential Ass'n*, and the procedure must not interfere with an independent evaluation of the proposal by the assembled bodies. See *Geneva Residential Ass'n*. 77 Ill.App.3d at 755, 34 Ill.Dec. 177, 397 N.E.2d 849 (holding that the fact-finding process should be separate from the legislative determination to grant a variance).

[38] Second, plaintiffs challenge the two-minute time limit imposed on public comments. We conclude that any such limit on public comment implicates the same concerns regarding the right to present evidence that we addressed regarding the scope of cross-examination. Therefore, we hold that, although a zoning body has the discretion to limit public comment, it should do so with care. A proceeding that incorporates an arbitrary time limit without consideration of the nature of the \*\*1114 \*\*\*137 comments and their relevance to the factual issues presented fails to meet the statutory definition of a public hearing.

[39] Finally, plaintiffs argue that they were further deprived of their right of cross-examination because defendants were allowed to modify their proposal after the public hearing concluded. Defendants argue that modifications to a proposed development are an inherent part of \*787 the approval process. We recognize that a per se rule requiring additional public hearings following every modification of a proposed development would be unworkable. However, there is no public hearing when a party does not know what evidence is offered or considered and is not given an opportunity to test,

explain, or refute. Balmoral Racing. 151 III.2d at 410, 177 III.Dec. 419, 603 N.E.2d 489, citing Interstate Commerce Comm'n v. Louisville & Nashville R.R. Co., 227 U.S. 88, 93, 33 S.Ct. 185, 187, 57 L.Ed. 431, 434 (1913). Therefore, we conclude that, although modification of a proposal in response to evidence obtained during a public hearing may be appropriate, a second hearing is required when those modifications result in a material change in the nature of the development or involve a significant introduction of additional evidence.

[Nonpublishable material removed under Supreme Court Rule 23.]

#### CONCLUSION

In the nonpublished portion of this opinion, we determine that plaintiffs have standing to challenge the annexation and rezoning of the Meijer parcel and that the trial court did not abuse its discretion when it set the amount of the bond. We also conclude that, because the public hearing did not meet the statutory requirements, including the right of cross-examination, the trial court did not abuse its discretion when it ordered a preliminary injunction.

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.

COLWELL, J., concurs.

Justice RAPP, dissenting:

I respectfully dissent. The process of municipal annexation and zoning is a legislative function. As our supreme court has noted:

"It is well established that it is primarily the province of the municipal body to determine the use and purpose to which property may be devoted, and it is neither the province nor the duty of the courts to interfere with the discretion with which such bodies are vested unless the legislative action of the municipality is shown to be arbitrary, capricious or unrelated to the public health, safety and morals." La Salle National Bank v. County of Cook, 12 Ill.2d 40, 46, 145 N.E.2d 65 (1957).

As an administrative body, the board possesses broad discretion in conducting its hearings. See Village of South Elgin v. Pollution Control Board, 64 Ill.App.3d 565, 568, 21 III.Dec. 451, 381 N.E.2d 778 (1978). The board's discretion, however, must not be exercised arbitrarily. Wegmann v. Department of Registration \*788 & Education, 61 Ill.App.3d 352, 356, 18 Ill.Dec. 661, 377 N.E.2d 1297 (1978). "All that is necessary is that the procedures be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard' [citation], to insure that they are given a meaningful opportunity to present their case," Petersen v. Chicago Plan Comm'n, 302 Ill.App.3d 461, 466, 236 Ill.Dec. 305, 707 N.E.2d 150 (1998), quoting Mathews v. Eldridge, 424 U.S. 319, 349, 96 S.Ct. 893, 909, 47 L.Ed.2d 18, 41 (1976), As the court noted in Teleser v. Holzman, 31 III.2d 332, 339, 201 N.E.2d 370 (1964):

"[P]rocedural due process in an administrative proceeding does not require \*\*1115 \*\*\*138 a proceeding in the nature of a judicial proceeding, [citation] but is satisfied by a form of procedure that is suitable and proper to the nature of the determination to be made and conforms to fundamental principles of justice."

Zoning and annexation hearings concern matters related to the public health, safety, and morals and thus are essentially matters of public policy. It is policy decided and promulgated by elected representatives of the inhabitants of a political subdivision. It is my opinion that the board's role in this case was to conduct a fact-gathering proceeding, not a full adversarial hearing. Accordingly, "the full panoply of judicial procedure' does not apply to the fact-finding investigation, including 'rights of discovery, confrontation, cross-examination, and other elements of due process involved in judicial and quasi-judicial proceedings." Petersen, 302 Ill.App.3d at 468, 236 Ill.Dec. 305, 707 N.E.2d 150, quoting Jabbari v.

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Human Rights Comm'n, 173 Ill.App.3d 227, 233, 123 Ill.Dec. 17, 527 N.E.2d 480 (1988).

The majority's focus on the definition of the word "hearing" to resolve these issues is, in my opinion, misplaced. The further reliance on E & E Hauling, Inc. v. County of Du Page, 77 Ill.App.3d 1017, 33 Ill.Dec. 536, 396 N.E.2d 1260 (1979), is also misplaced in that E & E Hauling derives its definition of "hearing" through Braden v. Much, 403 Ill. 507, 87 N.E.2d 620 (1949), which itself relies on Farmers' Elevator Co. v. Chicago, Rock Island & Pacific Rv. Co., 266 Ill. 567, 107 N.E. 841 (1915). That is to say that the etymology of the holding in E & E Hauling is Farmers' Elevator Co., which dealt with the issue of a connection between railroads, wherein the decision effectively caused the transfer of property from one litigant to another, a quasi-judicial process. The requirement of a full due process proceeding was obvious in Farmers' Elevator Co., diluted in its application in Braden, and even more diluted in E & E Hauling, I do not believe that the phrase "the right to examine the witnesses," used in E & E Hauling, 77 III.App.3d at 1021. 33 Ill.Dec. 536, 396 N.E.2d 1260, upon which the majority relies to extend the right to cross-examination in zoning and annexation proceedings, is proper in the context of what is essentially a legislative determination. Establishing the proper zoning classification is not a quasi-judicial process.

\*789 The majority recognizes the need for a process that provides a proper and fair forum for all parties to present their respective positions. I have no quarrel with this, but 1 see a danger in the various suggestions as to procedures set out by the majority. Too much discretion is allowed the presiding officer. These requirements are best left to the legislature, from which all local zoning authority emanates.

#### All Citations

316 Ill.App.3d 770, 737 N.E.2d 1099, 250 Ill.Dec. 122

KeyCite Yellow Flag - Negative Treatment Distinguished by International Union of Operating Engineers, Local 148, AFL-CIO v. Department of Employment Sec., Ill.App. 5 Dist., December 16, 2003

> 407 Ill. 588 Supreme Court of Illinois.

> > WINSTON et al.

ZONING BOARD OF APPEALS OF PEORIA COUNTY et al..

> No. 31628. Nov. 27, 1950.

Rehearing Denied Jan. 15, 1951.

#### Synopsis

Action by Edward Winston and others against the Zoning Board of Appeals of Peoria County, and others under the Administrative Review Act to review a decision of the board granting a variation permitting construction of an apartment building on property classified as country home district. From a judgment dismissing the action in the Circuit Court for Peoria County, Howard White, J., the plaintiffs appealed. The Supreme Court, Wilson, J., construed the Administrative Review Act and held that the complaint was fatally defective.

Judgment affirmed.

Gunn, J., dissented.

West Headnotes (19)

#### [1] Appeal and Error

- Review of constitutional questions

Where constitutional issues raised by complaint were not passed upon by the trial court, they were not properly before the Supreme Court though argued extensively.

2 Cases that cite this headnote

#### [2] Administrative Law and Procedure

Petition or application

#### **Zoning and Planning**

Dismissal

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting a variation for construction of an apartment building, a motion to dismiss the complaint was authorized procedure. S.H.A. ch. 34, § 152k; ch. 110, §§ 172, 264 et seq., 272, 273, 277.

Cases that cite this headnote

#### [3] Administrative Law and Procedure

.- Proceedings for Review

#### Administrative Law and Procedure

- Petition or application

The Administrative Review Act does not exclude the use of motions, or prohibit a motion to dismiss, or motions to strike, and the prohibition contained in section 9 that no pleading, other than those enumerated, shall be filed, relates to the complaint and answer, and its intent is to prevent the filing of other similar pleadings as, for example, a reply, and a motion is not included, S.H.A. ch, 110, §§ 48, 264 et seq., 272, 273, 277.

1 Cases that cite this headnote

#### 141 Administrative Law and Procedure

- Special statutory proceeding

#### Administrative Law and Procedure

. Dismissal

#### Zoning and Planning

Interim relief; preliminary injunction

## Zoning and Planning

- Dismissal

There is no provision in the Administrative Review Act prohibiting an action against a board or commission and the mere fact that one individual was not a proper defendant, in an action to review a decision of the zoning board of appeal, was insufficient to justify the dismissal of the action, against all defendants. S.H.A. ch. 110, § 264 et seq.

**EXHIBIT** WEST. W 526 Planton Roots - thousands a March & Givernata

Cases that cite this headnote

#### [5] Administrative Law and Procedure

- Petition or application

#### Zoning and Planning

Petition, complaint or application

In action to review a decision of the zoning board of appeals under the Administrative Review Act constitutional issues could be raised in the complaint. S.H.A. ch. 110, § 264 et seq.

1 Cases that cite this headnote

#### [6] Courts

.= Particular Constitutional Provisions and Statutes

In an action under the Administrative Review Act to review a decision of the zoning board of appeals, where a defendant challenged the constitutionality of the Act to the extent it permitted actions against a board and similar agencies, validity of the act was the foundation of the defense made, and the constitutional question was properly raised so as to give the Supreme Court jurisdiction to review the judgment of dismissal on a direct appeal. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

4 Cases that cite this headnote

#### [7] Appeal and Error

- Review of constitutional questions

Supreme Court will not decide a constitutional question on a direct appeal if the cause can be decided without so doing.

Cases that cite this headnote

#### [8] Administrative Law and Procedure

> Petition or application

#### Pleading

= Statement of cause of action in general

A complaint in an action brought under the Administrative Review Act, or any other statute or the common law must state a cause of action. S.H.A. ch. 110, §§ 264 et seq., 267.

1 Cases that cite this headnote

#### [9] Administrative Law and Procedure

Persons aggrieved or affected

Under the Administrative Review Act the right to review a final administrative decision is limited to parties of record to the proceedings before the administrative agency whose rights, privileges, or duties are affected by the decision. S.H.A. ch. 110, ss 264 et seq., 267.

15 Cases that cite this headnote

#### [10] Administrative Law and Procedure

... Petition or application

#### Zoning and Planning

.= Right of Review Standing

#### Zoning and Planning

= Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals, statement in complaint that plaintiffs were parties of record to the appeal from decision of the zoning enforcing officer was a sufficient allegation that they were parties of record to the proceedings before the zoning board. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

Cases that cite this headnote

## [11] Administrative Law and Procedure

:= Pctition or application

#### Zoning and Planning

Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting a variance for construction of an apartment building, allegation of fact that plaintiffs were the owners of the land in the vicinity of the property involved was not an allegation that they were injured by the decision sought to be reviewed, but it

was necessary for them to allege that their property was classified in the same district as the land in question, but that they were not permitted to enjoy the use allowed by the variance. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

2 Cases that cite this headnote

#### [12] Pleading

Characterization of acts or conduct and stating result thereof in general

#### Pleading

. Application and proceedings thereon

#### Pretrial Procedure

. Matters not admitted

Allegation in complaint that value and use of property of plaintiff was affected by granting of the variance was a mere conclusion of the pleader and not being supported by allegation of specific facts, was not admitted by motion to dismiss.

I Cases that cite this headnote

#### [13] Administrative Law and Procedure

.- Petition or application

#### Zoning and Planning

... Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting the variation to permit the construction of an apartment building, plaintiffs were required to allege specific facts showing that they were parties to the administrative proceeding. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

Cases that cite this headnote

#### [14] Administrative Law and Procedure

.- Petition or application

#### Zoning and Planning

- Petition, complaint or application

In action under the Administrative Review Act to review a decision of the zoning board of appeals granting a variation to permit the construction of an apartment building, complaint failed to state a cause of action. S.H.A. ch. 34, § 152k; ch. 110, § 264 et seq.

Cases that cite this headnote

#### [15] Pleading

. Application and proceedings thereon

#### Pretrial Procedure

.= Matters Deemed Admitted

Where part of motion to dismiss was supported by affidavit and no counter affidavit was filed by plaintiffs, the facts stated in the affidavit must be taken as true.

I Cases that cite this headnote

#### [16] Administrative Law and Procedure

Parties حد

The requirement of the Administrative Review Act that all adverse parties of record to the administrative proceeding be made parties defendants on review is mandatory. S.H.A. ch. 110, §§ 264 et seq., 271.

7 Cases that cite this headnote

#### [17] Administrative Law and Procedure

Special statutory proceeding

Administrative Review Act being an innovation and departure from the common law, the procedures it establishes must be pursued in order to justify its application. S.H.A. ch. 110, § 264 et seq.

19 Cases that cite this headnote

#### [18] Administrative Law and Procedure

. Parties

#### Zoning and Planning

... Necessary and indispensable parties

In action under the Administrative Review Act to review a decision of the zoning board granting a variance permitting construction of an apartment building, complaint was fatally defective in failing to include as defendants all persons other than the plaintiffs who were parties of record to the administrative proceeding. S.H.A. ch. 34, § 152k; ch. 110, §§ 264 et seq., 271.

6 Cases that cite this headnote

#### [19] Constitutional Law

Resolution of non-constitutional questions before constitutional questions. Where judgment dismissing the action was sustainable on other grounds, constitutional question would not be decided.

3 Cases that cite this headnote

#### Attorneys and Law Firms

\*589 \*\*866 McConnell, Kennedy & McConnell, of Peoria (Max J. Lipkin, Peoria, of counsel), for appellants.

O'Hern, Alloy & O'Hern, and Michael A. Shore, all of Peoria (Jay J. Alloy, and William W. Dunn, Peoria, of counsel), for appellees.

#### **Opinion**

WILSON, Justice.

The plaintiffs, Edward Winston and nine others, prosecute an appeal from a judgment of the circuit court of Peoria County dismissing an action brought under the Administrative Review Act to review a decision of the zoning board of appeals of Peoria County granting a variation to permit the construction of a forty-unit apartment building on certain property classified in a 'B' country home district.

By their complaint, plaintiffs alleged that Robert Silberstein applied for a building permit to construct a multiple unit apartment building; that J. Edward Radley, county zoning officer, denied the application; that Silberstein filed a petition for a variance with the county zoning board of appeals; that the board, after hearings, rendered a decision granting the variation requested; that plaintiffs are the owners of property in the vicinity of the land involved; that the value and use of their property are affected by the variation granted, and that they were parties of record to the appeal from the decision of the zoning enforcing officer. In addition to alleging that

the zoning board's decision was illegal because it was (1) unaccompanied by findings of fact, (2) unsupported by the proof, and (3) did not constitute a reversal of the zoning enforcing officer's decision but amounted to \*\*867 a mere recommendation, plaintiffs further charged (4) that section 3 of the County Zoning Act ( \*590 Ill.Rev.Stat.1949, chap. 34, par. 152k), insofar as it relates to variations, and (5) section 16.1 of the county zoning ordinance pertaining to variations are both unconstitutional.

Silberstein, Radley and the zoning board, but not the individual members of the board, were named as parties defendant. Radley moved to be dismissed as a defendant, Silberstein moved to dismiss the complaint, and the individual members of the zoning board filed special and limited appearances and moved to quash the return of summons against the zoning board and to dismiss the action. The trial judge allowed Silberstein's motion to dismiss, made no ruling as to the other two motions and entered judgment dismissing the action, without specifying any reason for his decision. Plaintiffs did not move to amend their complaint nor did they seek to and other persons as defendants.

[1] The issues raised by the complaint, both constitutional and otherwise, were not passed upon by the trial court, and, consequently, the question of the constitutionality of section 3 of the County Zoning Act and section 16.1 of the zoning ordinance of Peoria County, although argued extensively, are not properly before this court. Shilvock v. Retirement Board, 375 Ill. 68, 30 N.E.2d 633; Ryan v. City of Chicago, 363 Ill. 607, 2 N.E.2d 913. The only questions presented for determination are those raised by Silberstein's motion to dismiss the complaint, the ultimate question being whether there is any good and sufficient ground in the motion to dismiss warranting the judgment dismissing plaintiff's action.

[2] [3] Before taking up the grounds for dismissal urged by Silberstein in the trial court and adopted by his codefendants on appeal, consideration must first be given to plaintiff's contention that Siberstein had no right, under the Administrative Review Act, to make a motion to dismiss the complaint. Section 14 (Ill.Rev.Stat.1949, chap. 110, par. 277,) provides that the Civil Practice Act shall apply, except as otherwise provided in the statute. Motions to \*591 dismiss an action are authorized by section 48 of the Civil Practice Act. (Ill.Rev.Stat.1949, chap. 110, par. 172.) The Administrative Review Act contains no provision

95 N.E.2d 864

excluding the use of motions or prohibiting motions to dismiss or motions to strike. Section 9 (Ill.Rev.Stat.1949, chap. 110, par. 272), providing, in part, that 'No pleadings other than as herein enumerated shall be filed by any party unless required by the court', does not compel a contrary conclusion. The prohibition of section 9 relates to the complaint and answer, and its plain intent is to prevent the filing of other similar pleadings as, for example, a reply. Motions are not within the contemplation of the prohibition. Reference is also made to section 10 of the act (Ill.Rev.Stat.1949, chap. 110, par. 273) providing for the dismissal of the complaint, upon the motion of any defendant, because of the plaintiff's failure to pay the costs of preparing the record of proceedings before the agency and our decision in Krachock v. Department of Revenue, 403 Ill. 148, 85 N.E.2d 682, affirming a judgment dismissing a complaint filed under the Administrative Review Act.

[5] Silberstein's motion to dismiss was based, in 141 substance, upon the following six grounds: (1) that the complaint failed to alleged facts showing plaintiffs were entitled to maintain the action; (2) that plaintiffs failed to join certain parties to the administrative proceeding as defendants, contrary to the provisions of the Administrative Review Act; (3) that, if the statute permits an action against an administrative agency, it contravenes the constitutional prohibition against making the State a party defendant; (4) that the statute does not authorize an action against a board and, hence, the action should be dismissed for plaintiffs' failure to make the individual members of the board defendants within the time allowed; (5) that Radley was not a proper defendant because he was not a party to the administrative proceeding, and (6) that plaintiffs were not entitled to raise constitutional issues in an action brought \*592 under the Administrative Review Act. The last three grounds for dismissal are not argued in the joint brief filed in this court by all three defendants. In this connection, we deem sufficient the observation that there is no \*\*868 provision in the Administrative Review Act prohibiting an action against a board or commission, that the mere fact Radley was not a proper defendant was insufficient to justify the dismissal of the action against all defendants, and that no reason suggests itself why constitutional issues cannot be raised in a complaint filed under the Administrative Review Act.

[6] [7] Inasmuch as Silberstein challenged the constitutionality of the Administrative Review Act to

the extent it permits actions against boards, commissions and similar agencies, the validity of the statute was the foundation of a defense made, and the constitutional question was properly raised so as to give this court jurisdiction to review the judgment of dismissal on a direct appeal. People ex rel. Rago v. Lipsky, 390 III. 70, 60 N.E.2d 422; Herb v. Pitcairn, 384 Ill. 237, 51 N.E.2d 277. This is the only constitutional issue properly presented by this appeal. It is, however, established that a constitutional question will not be considered if the cause can be decided without so doing. People v. Metcoff, 392 Ill. 418, 64 N.E.2d 867; People v. Chiafreddo, 381 Ill. 214. 44 N.E.2d 888; Durkin v. Hey, 376 Ill. 292, 33 N.E.2d 463; Bohnert v. Ben Hur Life Ass'n, 362 III. 403, 200 N.E. 326. Accordingly, the other grounds for dismissal made and argued will be considered first.

[9] It is fundamental that the complaint in an [8] action brought under the Administrative Review Act, or any other statute, or the common law must state a cause of action. Krachock v. Department of Revenue. 403 Ill. 148, 85 N.E.2d 682; Wuellner v. Illinois Bell Telephone Co., 390 Ill. 126, 60 N.E.2d 867. Section 4 of the Administrative Review Act (Ill.Rev.Stat, 1949, chap. 110, par. 267) declares, in part, 'Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within \*593 thirty-five (35) days from the date that a copy of the decision sought to be reviewed was served upon the party affected thereby.' Since section 4 makes no specific provision as to the persons or classes of persons entitled to maintain an action under the act, recourse must be had to other parts of the statute. In section 1 (Ill.Rev.Stat.1949. chap. 110, par. 264), relating to definitions, the term 'administrative decision' is defined as 'any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties \* \* \*.' Section 2 (Ill.Rev.Stat.1949, chap. 110, par. 265) is illuminating to the extent that it ordains, in pertinent part, 'Unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.' It thus is apparent that the right to review a final administrative decision is limited to parties of record to the proceeding before the administrative agency whose rights, privileges, or duties are affected by the decision. Krachock v. Department of Revenue, 403 III. 148, 85 N.E.2d 682.

[11] Apart from the portions of the complaint [10]meeting the technical requirements of the statute that the complaint must include the decision sought to be reviewed and specify whether the transcript of evidence shall be filed as part of the record (Ill.Rev.Stat.1949, chap. 110, par. 272(a), plaintiffs rely upon the allegations of paragraph 9 of their complaint as setting forth facts showing a cause of action. The ninth paragraph of the complaint reads as follows: 'That the plaintiffs herein are property owners in the vicinity of the premises involved and that the value and use of their property is affected by the granting of the variance herein referred to, and that they were parties of record to the appeal from the decision of the zoning enforcing officer of Peoria County, and that they are \*594 aggrieved by said decision.' Plaintiffs' statement that they were parties of record to the appeal from decision of the zoning enforcing officer is sufficient as an allegation that they were parties of record to the proceedings before the zoning board, and defendants do not contend otherwise. Defendants do assert, however, that the remaining allegations of paragraph 9 do not constitute allegations of fact showing \*\*869 that plaintiffs' rights or privileges were affected by the decision of the zoning board. The simple allegation of fact that plaintiffs were the owners of land in the vicinity of the property involved does not constitute an allegation that they were injured or damaged by the decision sought to be reviewed. Klumpp v. Rhoads, 362 III. 412, 200 N.E. 153. To show that they were aggrieved by the decision, it would be necessary for them to allege, for example, that their property was classified in the same district as the land in question but that they were not permitted to enjoy the use allowed by the variance. Michigan-Lake Building Corp. v. Hamilton, 340 Ill. 284, 172 N.E. 710.

[12] [13] respective properties are to the land involved, the actual use of their land, the zoning restrictions applicable to them, or even whether the value of their land is adversely or beneficially affected by the decision sought to be reviewed. For all that appears in the complaint, plaintiffs' properties may be a mile or more from Silberstein's land, in part of the incorporated area of the county, not subject to the county zoning ordinance, and enhanced in value as the result of the decision of the zoning board. The allegation that 'the value and use of their property is affected by the granting of the variance' is a mere conclusion of the pleader and, not being supported by

allegations of specific facts, was not admitted by the motion to dismiss. Harris v. Ingleside Building Corp., 370 Ill. 617, 19 N.E.2d 585; Ryan v. City of Chicago, 369 Ill. 59, 15 N.E.2d 708. Although plaintiffs' final allegation that 'They are aggrieved by said decision' plainly refers to Radley's decision denying \*595 Silberstein's application for a building permit and not the decision of the board granting Silberstein's petition even assuming that plaintiffs intended to allege they were aggrieved by the zoning board's decision, the allegation would be a mere conclusion of the pleader. To show a cause of action, it was incumbent upon plaintiffs to allege specific facts showing that they were parties to the administrative proceeding whose rights privileges or duties were adversely affected by the decision of the zoning board. (Ill.Rev.Stat.1949, chap. 110, par. 264; Krachock v. Department of Revenue, 403 Ill. 148, 85 N.E.2d 682.) This, they have failed to do and, consequently, the complaint does not state a cause of action.

[18] In the motion to dismiss, it was [15] [16] [17] further asserted that plaintiffs, contrary to the provisions of the Administrative Review Act, had failed to include as defendants five named persons who were parties of record to the proceedings before the zoning board and who supported the petition for a variation. This part of the motion was supported by an affidavit to the same effect and, no counteraffidavit having been filed by plaintffs, the facts stated in the affidavit must be taken as true. Leitch v. Hine, 393 Ill. 211, 66 N.E.2d 90. Section 8 of the Administrative Review Act (Ill.Rev.Stat.1949, chap. 110, par. 271) provides that 'In any action to review any final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants.' The [14] Plaintiffs do not allege how near their requirement that all adverse parties of record to the administrative proceeding shall be made defendants on review is mandatory and specific and admits of no modification. The act being an innovation and departure from the common law, the procedures it establishes must be pursued in order to justify its application. Krachock v. Department of Revenue, 403 Ill. 148, 85 N.E.2d 682. In addition to not stating a cause of action, the complaint was also fatally defective in \*596 failing to include as defendants all persons other than the plaintiffs who were parties of record to the administrative proceeding.

Winston v. Zoning Bd. of Appeals of Peoria County, 407 III. 588 (1950) 95 N.E.2d 864

[19] Since the judgment dismissing the action must be sustained, it becomes unnecessary to consider the constitutional question raised in the motion to dismiss the complaint.

Judgment affirmed.

GUNN, J., dissenting.

**All Citations** 

The judgment of the circuit court of Peoria County is affirmed.

407 III. 588, 95 N.E.2d 864

**End of Document** 

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## Sec. 1-102: Authority and purposes:

This Code is adopted pursuant to the authority granted to the Village by the Illinois Municipal Code for the following purposes.

- A. Overall purpose. The overall purpose of this Code is to maintain Hinsdale as one of the nation's finest residential suburbs by preserving and enhancing its historic character as a community comprised principally of well-maintained single family residential neighborhoods and small, thriving business areas oriented to serve the day-to-day needs of local residents.
- B. Land use patterns. The purposes of this Code related to land use patterns are to:
  - 1. Implement and foster the goals and policies of the Village's Official Comprehensive Plan; and
  - 2. Establish a rational pattern of land uses and encourage the most appropriate use of individual parcels of land in the Village; and
  - 3. Encourage compatibility between different land uses; and
  - 4. Encourage and promote detached single family homes as the principal land use in the Village; and
  - Limit the bulk and density of new and existing structures to preserve the existing scale of development in the Village; and
  - 6. Provide for the gradual elimination of non-conforming uses that adversely affect the character and value of permitted development; and
  - 7. Protect the scale and character of the existing residential, business, commercial, and office development areas of the Village from the encroachment of incompatible uses; and
  - 8. Encourage and enhance the preservation of natural resources, aesthetic amenities, and natural features; and
  - Secure adequate natural light, clean air, privacy, a safe environment, and convenience of access to property; and
  - 10. Promote and protect the public health, safety, morals, and the general welfare of the Village.
- C. Public infrastructure. The purposes of this Code related to public infrastructure are to:
  - 1. Facilitate the most efficient use of existing and planned public facilities and utilities; and
  - Protect existing public facilities and utilities from being overloaded due to excess development;
  - 3. Protect and enhance a pattern of interconnected streets and highways that is unified, integrated, safe, effective, and efficient; and
  - 4. Protect residential streets from degradation by non-residential traffic; and

- 5. Reduce congestion and promote safety on streets and highways by limiting traffic generation through the control of land use intensity; and
- 6. Avoid or lessen the hazards of flooding and storm water accumulation and run-off; and
- 7. Establish and regulate set-back lines along streets and highways, property lines, and storm flood water runoff channels or basins.
- D. Justifiable expectations and taxable value. The purposes of this Code related to justifiable expectations and taxable value are to:
  - 1. Protect and respect the justifiable reliance of existing residents, businesspeople, and taxpayers on the continuation of existing, established land use patterns; and
  - 2. Protect and enhance the taxable value of land and buildings.
- E. Administration. The purposes of this Code related to administration are to:
  - Define the powers and duties of administrative officers and bodies necessary to administer this Code; and
  - 2. Establish procedures for the efficient and effective use of the provisions of this Code; and
  - 3. Establish standards for the review of applications filed pursuant to this Code; and
  - 4. Prescribe penalties for the violation of the provisions of this Code.

## Sec. 3-110:Bulk, Space, And Yard Requirements:

The building height, lot, yard, floor area ratio, and coverage requirements applicable in the single-family residential districts are set forth in the following table. Footnote references appear in subsection I of this section at the end of the table.

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						R-1	R-2	R-3	R-4	
A. Maximum height (feet or stories, whichever is more restrictive):									EXHIBIT	
1	1. Principal structures:									
Constant of the constant of th		(a)	Feet:							
			(i)	Smallest side yard provided of 14' or less			30'			
			(ii) Smallest side yard provided of not less than 14' and not more than 24'					30' plus 20% of the difference between the smallest side yard provided and 14'		
			(iii)	Smallest side yard of more than 24'			the smallest	oof the difference between side yard provided and o exceed 34'		
		(b)	(b) Stories			3	3	3	3	
2.		Accessory structures				15	15	15	15	
B. Maximum elevation:										
1.	•	Principal structures:								
		(a) Smallest side yard provided of 14' or less			37' plus 0.75 foot of side y provided in e and not more but not to ex	vard excess of 10' e than 14',	35.5' plus 0.75' for every foot of side yard provided in excess of 8' and not more than 14', but not to exceed 40'			
		(b) Smallest side yard provided of more than 14' and not more than 24'				40' plus 20% of the difference between the smallest side yard provided and 14'				
		(c) Smallest side yard of more than 24'				42' plus 10% of the difference between the smallest side yard provided and 24', but not to exceed 44'				
2.	2. Accessory structures					n/a		n/a		
9	C. Minimum lot area and dimensions: <sup>1,2</sup>									
Total lot area (square feet)						30,000	20,000	15,000	10,000	

3.   Lot width:	0.000	15.000	20.000	000				I			
(a) Interior lot 125' 100' 70'  (b) Corner lot 125' 100' 80'  4. Lot depth 125' 125' 125' 125'  D. Minimum yards: 2,3,4,5,6  1. Front 7,8,9 35' 35' 35'  2. Minimum side yards: 9	0,000	15,000	20,000	,000		Lot area per unit (square feet)					肿
(b)   Corner lot   125'   100'   80'						Lot width:			Lot		3
4. Lot depth	70'	70'	100'	25'		Interior lot		)	(a)		To the same and th
D. Minimum yards: 2.3.4,5,6   1.   Front 7,8,9   35'	80'	80'	100'	25'		ner lot	orne	)	(b)		er offered and and
1.       Front <sup>7,8,9</sup> 35'       35'       35'         2.       Minimum side yards: <sup>9</sup>	125'	125'	125'	25'			oth	t d	Lot		4
2. Minimum side yards: 9  (a) Corner lot: 8,10  (ii) Interior side  10' 10' 8'  (b) Interior lot: 10  (iii) Minimum per yard  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 8'  10' 10' 10' 8'  10' 10' 10' 8'  10' 10' 10' 10' 8'  10' 10' 10' 10' 8'  10' 10' 10' 10' 10' 10' 8'  10' 10' 10' 10' 10' 10' 10' 10' 10' 10'						rds: <sup>2,3,4,5,6</sup>	yard	nu	/linim	). N	
(a) Corner lot: <sup>8,10</sup> (i) Corner side 35' 35' 35' (ii) Interior side 10' 10' 8'  or 6' plus 10% of lot width in excess of 50', whichever is more  (b) Interior lot: <sup>10</sup> (i) Minimum per yard 10' 10' 8'  or 6' plus 10% of lot width in excess of 50', whichever is more  (ii) Minimum total 30% of lot width up to, and including, 125' plu of lot width in excess of 125'  3. Rear: <sup>9,11</sup> (a) Corner lot 15% of lot depth, min. 25' (b) Interior lot 50' 50' 25'  E. Maximum floor area ratio: 12,13	35'	35'	35'	35'			8,9	ont	Fro		1
						side yards: <sup>9</sup>	ım si	nir	Min	•	2
(ii)   Interior side						ner lot: <sup>8,10</sup>	orne	)	(a)		
or 6' plus 10% of lot width in excess of 50', whichever is more  (b) Interior lot: 10  (i) Minimum per yard  10'  10'  8'  or 6' plus 10% of lot width in excess of 50', whichever is more  (ii) Minimum total  30% of lot width up to, and including, 125' plu of lot width in excess of 125'  3. Rear: 9,11  (a) Corner lot  15% of lot depth, min. 25'  (b) Interior lot  50'  50'  25'  E. Maximum floor area ratio: 12,13	35'	35'	35'	35'		Corner side	) (				
	8'	8'	10'	10'		Interior side	i) (i				
(i) Minimum per yard 10' 10' 8'  or 6' plus 10% of lot width in excess of 50', whichever is more  (ii) Minimum total 30% of lot width up to, and including, 125' plu of lot width in excess of 125'  Rear: 9,11  (a) Corner lot 15% of lot depth, min. 25' of lot depth, min. 25'  (b) Interior lot 50' 50' 25'  E. Maximum floor area ratio: 12,13		excess of 50									
or 6' plus 10% of lot width in excess of 50', whichever is more    (ii)   Minimum total   30% of lot width up to, and including, 125' plu of lot width in excess of 125'   (a)   Corner lot   15% of lot depth, min. 25'   25'						Interior lot: <sup>10</sup>			(b)		
whichever is more  (ii) Minimum total 30% of lot width up to, and including, 125' plu of lot width in excess of 125'  Rear: 9,11	8'	8'	10'	10'		Minimum per yard	) [				
(a) Corner lot  15% of lot depth, min. 25'  (b) Interior lot  50'  50'  E. Maximum floor area ratio: 12, 13	us 35%	30% of lot width up to, and including, 125' plus 359 of lot width in excess of 125'					) <b>N</b>				
of lot depth, min. 25'  (b) Interior lot  E. Maximum floor area ratio:12,13							11	ar	Rea		3
E. Maximum floor area ratio:12,13	25'	25'	of lot lepth, min.	t		Corner lot			(a)		
	25'	25'	50'	50'		Interior lot			(b)		
1. Lots with a total lot area less 0.25 plus 1,100 square feet						E. Maximum floor area ratio:12,13				E	
than 10,000 square feet		0.25 plus 1,100 square feet									1
2. Lots with a total lot area equal to or greater than 10,000 0.24 plus 1,200 square feet		).24 plus 1,200 square feet									2

		,			
SC SECTION	square feet but not greater than 20,000 square feet				
3.	Lots with a total lot area greater than 20,000 square feet		0.20 plus 2,0	000 square fee	et
F. M	aximum building coverage: <sup>14</sup>				
1.	Maximum combined total principal and accessory uses	25%	25%	25%	25%
2.	Maximum total accessory uses	10%	10%	10%	10%
	laximum lot coverage, as defined ection 12-206 of this code15	50%	50%	50%	50%
GI 1	linimum spacing between sipal and accessory structures 16	10'	10'	10'	10'

#### Exceptions and explanatory notes:

- 1. *Nonconforming Lots:* See section <u>10-105</u> of this code for lot requirements with respect to legal nonconforming lots of record.
- 2. Exception For Through Lots: Any through lot that:
  - (a) Is a lot of record;
  - (b) Was platted prior to October 4, 1995;
  - (c) Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation;
  - (d) Is the only through lot that is a lot of record within the block in which it is located;
  - (e) Is capable of being subdivided into two (2) lots, each containing not less than 87.5 percent of the required lot area for the zoning district in which it is located and each having a lot width and depth no less than those required pursuant to subsections 10-105A2(b) and A2(c) of this code:
  - (f) Is capable of being subdivided without creating any new, or increasing any existing, nonconformity with respect to any building located on such through lot; and
  - (g) Is not capable of being subdivided in conformance with all of the requirements of this code;
  - may nevertheless be subdivided, but only into two (2) lots of substantially equal area. Each of the resulting lots shall be deemed to be a legal nonconforming lot of record subject to the requirements of section 10-105 of this code regarding nonconforming lots.
- 3. Visibility Across Corners: Any other provision of this code to the contrary notwithstanding, nothing shall be erected, placed, planted, allowed to grow, or maintained on any corner lot in any residential district in violation of the provisions of title 7, chapter 1, article D of the village code.

- Special Setbacks For Signs: Special setbacks established for some signs by subsections 9-106F and H of this code shall control over the yard and setback requirements established in the table.
- 5. Specified Structures And Uses In Required Yards: The following structures and uses, except as limited below, may be located in any required yard:
  - (a) Statuary, arbors, trellises, and ornamental light standards having a height of eight feet (8') or less; and
  - (b) Eaves and gutters projecting not more than three feet (3') from an exterior wall; and
  - (c) Awning, canopies, bay windows, and balconies, projecting not more than three feet (3') into a front or rear yard from an exterior wall for a distance along such wall of not more than one-third  $\binom{1}{3}$  of the building width of the building in question or two feet (2') into a side yard from an exterior wall for a distance along such wall of not more than one-fourth  $\binom{1}{4}$  of the building depth of the building in question; provided, however, that all such projections shall be confined entirely within planes drawn from the main corners of the building at an interior angle of forty five degrees (45°) with the wall in question; and
  - (d) Covered, unenclosed porches, patios or terraces projecting not more than: 1) eight feet (8') into a front or corner side yard from an exterior wall; provided, however, that no such porch, patio or terrace shall extend: a) closer than twenty five feet (25') from the front lot line in an R-1 or R-2 district, b) closer than twenty feet (20') from the front lot line in an R-3 or R-4 district, or c) more than two feet (2') outside any side or rear yard line as extended into the front or corner side yard; or 2) three feet (3') into a rear yard from an exterior wall for a distance along such wall of not more than one-third (1/3) of the building width of the building in question; and
  - (e) Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, cornices, and the like projecting not more than two feet (2') from an exterior wall; and
  - (f) Outside stairways projecting from an exterior wall of a principal structure or from a porch, patio or terrace; provided, however, that such staircase shall not extend to any point more than eleven feet (11') into the required yard and the height of such staircase shall not be greater than four feet (4') but not closer than ten feet (10') to the front or corner side lot lines; and
  - (g) Flagpoles; and
  - (h) Nonmechanical laundry drying equipment, except in front yards; and
  - (i) Terraces; provided, however, that except for an otherwise permitted driveway, no paved terrace, and no wall or similar structure requiring a foundation to support a terrace, shall encroach past the interior side of a principal structure, or be located within ten feet (10') of any rear lot line; and
  - (j) Recreational devices, but only freestanding basketball standards and no other recreational devices in any front yard; and
  - (k) Fences, walls, and hedges, subject to the limitations of section 9-107 of this code; and
  - (I) Driveways, subject to the limitations of subsection 9-104F of this code; and
  - (m) Swimming pools and appurtenances thereto constructed at or below finished grade, except

in any front or corner side yard and not within ten feet (10') of any lot line when located within any required yard, subject to the requirements of subsection 9-107E of this code.

- (n) Sidewalks in the front, rear and corner side yards when located a minimum of two feet (2') from any interior lot line and in an interior side yard when located in only one interior side yard and located two feet (2') from the interior lot line and not exceeding thirty inches (30") in width.
- (o) Window wells and emergency egress area wells in rear yards. Window wells may extend not more than two feet (2') from an exterior wall into the front, corner side and interior yards. One emergency egress area well, defined in title 9, chapter 2 of the village code, as amended, may be permitted in an interior side yard and shall have a metal grate which is flush with the ground. No guardrail shall be permitted as part of an emergency egress area well.
- (p) Patios; provided, however, that patios shall not encroach past the interior side of a principal structure, or be located within ten feet (10') of any rear lot line.
- (q) Generators located in side yards at least three feet (3') from the lot line and no farther than five feet (5') from the exterior wall of the principal structure. Generators: 1) may only be installed if the manufacturer decibels rating of the unit does not exceed seventy (70) decibels at seven meters (7 m), 2) may only be exercised during the hours of ten o'clock (10:00) A.M. to two o'clock (2:00) P.M., and 3) may not be otherwise operated so as to create a nuisance. Generators must be screened with a solid fence or densely planted evergreens.
- 6, Platted Building Lines: See subsection 12-101F of this code.
- 7. Special Orientation Requirement For Through Lots: If: a) fifty percent (50%) or more of the total number of lots on a frontage are through lots, and b) the fronts of the single-family dwellings located on fifty percent (50%) or more of the total number of through lots on that frontage face the same frontage, then development of a single-family dwelling on a through lot on the same frontage shall result in the front of such single-family dwelling facing the same frontage as fifty percent (50%) of the single-family dwellings on all through lots on the same frontage.
- 8. Front And Corner Side Yard Adjustment On Partially Developed Frontages: When a lot has a front or corner side yard located on a frontage in which fifty percent (50%) or more of the lots have already been developed, the front or corner side yard applicable to such lot shall be determined by taking the average of the setbacks of the buildings on all of the lots on such frontage, including the existing building on the subject lot, which if vacant for less than five (5) years, the building that previously sat on such lot shall be included, and excluding the highest and lowest setbacks for buildings on developed lots on such frontage and all lots containing nonresidential principal buildings or structures; provided, however, that no such front or corner side vard shall be permitted to be less than twenty five feet (25') in the R-1 and R-2 districts and twenty feet (20') in the R-3 and R-4 districts. When a lot has a front or corner side yard located on a frontage in which less than fifty percent (50%) of the lots have already been developed, the front or corner side yard applicable to such lot shall be determined by taking the average of the setbacks of the buildings on each of the developed lots and the required front or corner side yard in the zoning district for each of the undeveloped lots, including the existing building on the subject lot, which if vacant for less than five (5) years, the building that previously sat on such lot shall be included, and excluding the highest and lowest setbacks for buildings on developed lots on such frontage and all lots containing nonresidential principal buildings or structures: provided. however, that no such front or corner side yard shall be permitted to be less than twenty five feet (25') in the R-1 and R-2 districts and twenty feet (20') in the R-3 and R-4 districts. When a lot has a front or corner side yard located on a frontage that contains three (3) or less lots, the front or corner side yard applicable to such lot shall be determined by taking the average of the setbacks of all principal structures on such frontage, including the existing building on the subject lot,

which if vacant for less than five (5) years, the building that previously sat on such lot shall be included, and excluding all lots containing nonresidential principal buildings or structures. When determining a front or corner side yard required pursuant to this subsection, all measurements of setbacks of existing buildings shall exclude all encroachments in front or corner side yards by covered, unenclosed porches authorized by subsection I5 of this section. When a through lot is located on a frontage where fifty percent (50%) or more of the total number of lots on the frontage are through lots, the front yard that is opposite the front yard toward which the front of the principal dwelling is oriented shall be fifty percent (50%) of the average front yard as determined under this subsection; provided, however, that no such front yard shall be permitted to be less than thirty five feet (35').

- 9. Side And Rear Yard Regulations For Accessory Structures And Uses: Parking areas wherever located and other detached accessory structures and uses when located within the rear twenty percent (20%) of the lot shall not be required to maintain an interior side or rear yard in excess of two feet (2'); provided, however, that when the rear yard of such lot abuts the side yard of an adjacent lot, then detached accessory structures and uses shall not be located closer than six feet (6') from said side yard, and provided further, however, that the exception provided by this subsection shall not apply to residential recreational facilities or antennas and antenna support structures. No accessory structure or use, or combination of such structures or uses, other than permitted accessory parking garages, located within an otherwise required side or rear yard pursuant to this subsection shall occupy more than thirty percent (30%) of such required yard.
- 10. Corner And Interior Side Yard Adjustment: The required corner side yard in the R-3 and R-4 districts may be reduced by one foot (1') for each foot of additional interior side yard provided in excess of the applicable minimum interior side yard requirement; provided, however, that no such corner side yard shall be reduced to a size less than twenty feet (20').
- 11. Rear Yard Regulation For Decks: Decks shall not be required to maintain a rear yard in excess of twenty five feet (25') in the R-1 and R-2 districts nor in excess of fifteen feet (15') in the R-3 and R-4 districts.
- 12. Special Floor Area Ratio Standard: This maximum floor area ratio requirement shall not apply to prevent development of a total of two thousand eight hundred (2,800) square feet of gross building floor area.
- 13. Floor Area Bonus For Detached Garages: In determining the floor area ratio for lots having a detached garage and no other garage, exclude one-half  $\binom{1}{2}$  of the area of the detached garage, but not more than two hundred fifty (250) square feet.
- 14. Building Coverage Exceptions: Coverage by the following structures and portions of structures shall not be included in determining the amount of building coverage:
  - (a) Decks; and
  - (b) One-fourth  $\binom{1}{4}$  of the floor area of a detached garage located on a zoning lot having a detached garage and no other garage, but not more than one hundred twenty five (125) square feet; and
  - (c) The first two hundred (200) square feet of a porch if all of the following criteria are met: 1) the porch is covered, and 2) the porch is, and shall permanently remain, unenclosed, and 3) the porch is attached to that part of a single-family detached dwelling that fronts a required front yard or corner side yard, and either 4) in the case of a front yard, the portion of the porch to which the exemption applies lies between the widest apart side building lines of the dwelling or lies in front of the front building line of the dwelling extended or 5) in the case of a corner side yard, the

- portion of the porch to which the exemption applies lies between the frontmost and the rearmost building lines of the dwelling or lies in front of the corner side building line of the dwelling extended; provided, however, that this exemption shall not exceed a total of two hundred (200) square feet for any zoning lot.
- 15. Residential Lot Coverage: For residential lots under ten thousand (10,000) square feet, maximum lot coverage shall be sixty percent (60%).
- 16. Exception For Specified Structures: This limitation shall not apply to attached accessory structures, nor to air conditioning units, antennas, or antenna support structures, nor to any accessory structure protected by a fire separation wall approved by the village manager. (Ord. 92-43, §§ 2A, B, 3, 10-6-1992; Ord. 95-10, §§ 4A, 5, 6, 3-21-1995; Ord. 95-15, § 2B, 4-24-1995; Ord. 95-33, §§ 3A, B, 10-3-1995; Ord. 99-6, §§ 2, 7A, 3-2-1999; Ord. 99-34, §§ 2A, B, 8-3-1999; Ord. 99-51, § 2, 11-2-1999; Ord. O2001-10, § 2, 3-6-2001; Ord. O2002-76, § 2, 12-17-2002; Ord. O2003-01, § 2, 2-4-2003; Ord. O2007-09, § 2, 1-23-2007; Ord. O2007-10, § 2, 1-23-2007; Ord. O2008-42, 8-12-2008; Ord. O2010-10, § 3, 2-1-2010)

# Sec. 9-101:Accessory Structures And Uses:



- A. Authorization: Subject to the limitations of this section, accessory structures and uses are permitted in any zoning district in connection with any principal use lawfully existing within such district.
- B. Definition: An "accessory structure or use" is a structure or use that:
  - 1. Is subordinate in extent and purpose to, and serves, a principal structure or use; and
  - 2. Is customarily found as an incident to such principal structure or use; and
  - 3. Contributes to the comfort, convenience, or necessity of those occupying, working at, or being served by such principal structure or use; and
  - 4. Except as otherwise expressly authorized by the provisions of this code, is located on the same zoning lot as such principal structure or use; and
  - 5. Is under the same ownership and control as such principal structure or use.
- C. Certificate Of Zoning Compliance Required: When required by subsection <u>11-401</u>C of this code, a certificate of zoning compliance evidencing the compliance of the accessory use or structure with the provisions of this code shall be obtained before any such accessory use or structure is established or constructed.
- D. Special Regulations Applicable To Particular Accessory Structures And Uses:
  - 1. Storage: Except as otherwise expressly permitted by this code, outdoor storage shall not be allowed as an accessory use. When so permitted, such storage shall be screened as required by subsection 9-107C of this article. Accessory storage structures, other than garages, shall not exceed one hundred twenty (120) square feet in gross floor area if accessory to a residential use nor ten percent (10%) of either the floor area or the volume of the principal structure if accessory to any other type of principal structure.
  - 2. Residential Recreational Facilities: Residential recreational facilities shall be limited to use by the occupants of the principal residential use and their guests and shall not be illuminated by lighting fixtures exceeding fifteen feet (15') in height. See subsection 9-107E of this article for landscaping and screening requirements applicable to such facilities.
  - Accessory Parking In Single-Family Residential Districts: Except when approved as part of a special use permit application, parking lots shall not be permitted as an accessory use in any single-family residential district.
  - 4. Off Street Storage Of Vehicles In Residential Districts: The following provisions shall govern the off street storage of all vehicles in all residential districts:

- (a) Storage Defined: For purposes of this subsection D4, the term "storage" shall mean the parking of a vehicle for a continuous period of longer than twenty four (24) hours.
- (b) Classification Of Vehicles: For purposes of this code, every vehicle shall be categorized within one of the following three (3) classifications:
  - (i) Class I Vehicle: A vehicle that does not exceed twenty feet (20') in length, seven feet (7') in width, or eight feet (8') in height.
  - (ii) Class II Vehicle: A vehicle that is not a class I vehicle and that does not exceed thirty feet (30') in length, eight feet (8') in width, or eleven feet (11') in height.
  - (iii) Class III Vehicle: A vehicle that is neither a class I vehicle nor a class II vehicle.
  - In addition, for purposes of this code, every vehicle also shall be categorized within one of the following two (2) additional classifications:
  - (iv) First Division Vehicle: Every vehicle that is not a second division vehicle.
  - (v)Second Division Vehicle: A vehicle that is designed to carry more than ten (10) persons, or is designed or used for living quarters, or is designed for pulling or carrying freight, cargo, or implements of husbandry, or is operated for the purpose of transporting property or ten (10) or more persons in furtherance of any commercial or industrial enterprise, or is a first division vehicle that has been remodeled for use as, and is being used as, a second division vehicle.
- (c) Storage Of Vehicles In Garages: Any number of class I, class II, or class III vehicles may be stored in a garage in a residential district provided that said garage complies with all applicable provisions of this code and provided further that class III vehicles shall be stored only in a completely enclosed garage.
- (d) Storage Of Vehicles In Parking Lots: Any number of class I or class II vehicles may be stored in lawfully existing parking lots in any multiple-family residential district (or any such lot approved as part of a special use permit application); provided, however, that no vehicle shall be stored so as to reduce the availability of off street parking spaces below the minimum number of spaces required pursuant to subsection 9-104F of this article. No class III vehicle shall be stored in any parking lot in a residential district. For purposes of this subsection D4(d), a common parking area provided pursuant to subsection 9-104B2(b) of this article shall be treated as a parking lot.
- (e) Storage Of Vehicles In Parking Areas: Vehicles may be stored in parking areas only in compliance with the provisions of subsection D4(f) of this section and only in the following locations on a lot in a residential district:

- (i) Class I Vehicle: Anywhere on the lot, including any required yard.
- (ii) Class II Vehicle: Anywhere on the lot, including the required side and rear yards, but excluding the required front and corner side yards.
- (iii) Class III Vehicle: Nowhere on the lot.
- (f) General Regulations And Standards: The following standards and regulations shall apply to the storage of vehicles in parking lots and parking areas on a lot in a residential district:
  - (i) Distance From Lot Line, Public Sidewalk: No class II or III vehicles shall be stored within three feet (3') of any lot line or any vehicular or pedestrian right of way.
  - (ii) Surface: No motorized vehicle shall be stored except on an all weather stone, gravel, asphaltic, or cement pavement surface.
  - (iii) Screening: See section <u>9-107</u> of this article for landscaping and screening requirements applicable to the storage of class II vehicles on a lot in a residential district.
  - (iv) Permanent Location Prohibited: No vehicle shall have its wheels removed or be affixed to the ground so as to prevent its ready removal.
  - (v) Residential Use Prohibited: No vehicle shall be used for living, sleeping, or housekeeping purposes.
  - (vi) Utility Hookups: No vehicle shall be connected to any public utility except for required servicing.
  - (vii) Unsafe Conditions: No vehicle shall be parked or stored so as to create a dangerous or unsafe condition. The ground under or surrounding the location wherein a vehicle is stored shall be free of noxious weeds, debris, and combustible material.
  - (viii) Commercial Identification Prohibited: Not more than one vehicle with any exterior marking in excess of one square foot in area, measured as provided in subsection 9-106D11 of this article, identifying or advertising a commercial enterprise shall be stored in any parking area on any lot in a residential district nor shall any such vehicle be stored in any required front or corner side yard.
- (g) Temporary Storage: Notwithstanding any other provision of this subsection D4, any vehicle may be stored at any location on a lot in a residential district for a temporary period not to exceed seventy two (72) hours; provided, however, that, unless authorized by the village manager based on special circumstances, no more than one such temporary period shall occur in any seven (7) day period. No certificate of zoning compliance shall be required for

such temporary storage.

- 4.1 Parking Of Second Division Motor Vehicles In Residential Districts: No second division vehicle shall be parked on or in any lot, parking lot, or parking area in any residential district at any time, except only as follows:
  - (a) The vehicle is parked in a completely enclosed garage or other building; or
  - (b)The vehicle currently is necessary for the rendering of services currently being provided to a residence in the immediate area where the vehicle is parked; or
  - (c)The vehicle is parked for a specific temporary period of time pursuant to the prior express approval of the Hinsdale police department.
- 5. Storage Of Inoperable Vehicles: No vehicle incapable of being driven or used for the purpose or use for which it was designed, other than a vehicle awaiting timely repair at an automotive repair shop, gasoline service station, or new or used car dealer, shall be stored in any parking lot or parking area in the village.
- 6. Antennas With Surface Areas Of Ten Square Feet Or Less: Antennas and antenna support structures having a combined surface area not greater than ten (10) square feet, and no single dimension exceeding twelve feet (12'), shall be permitted as an accessory use. See subsection 9-107F of this article for landscaping and screening requirements applicable to ground mounted antennas.
- 7. Antennas, Other Than Amateur Radio Facilities, With Surface Areas Exceeding Ten Square Feet: Except for amateur radio facilities permitted pursuant to subsection D8 of this section, antennas and antenna support structures having a combined surface area greater than ten (10) square feet, or having any single dimension exceeding twelve feet (12'), shall be permitted as an accessory use only in compliance with the following regulations:
  - (a) Number Limited: No more than one such antenna and antenna support structure may be located on any zoning lot.
  - (b) Height Limited: No such antenna and antenna support structure shall exceed fifteen feet (15') in height when associated with a public utility station, or twelve feet (12') in height when associated with any other use, unless such antenna and antenna support structure is attached to a building pursuant to subsection D7(c) of this section.
  - (c) Attachment To Buildings Limited: No such antenna or antenna support structure shall be attached to a principal or accessory structure unless all of the following conditions are satisfied:
    - (i) Size: The antenna and its support structure shall not exceed fifteen (15) square feet in area or twelve feet (12') in any dimension.

- (ii) Height: The antenna and its support structure shall not extend more than three feet (3') above the highest point of the building on which it is mounted or the maximum permissible building height, whichever is less.
- (iii) Mounting: The antenna and its support structure shall not be attached or mounted upon any building appurtenance, such as a chimney. The antenna and its support structure shall not be mounted or attached to the front of any principal building or to the side of any building facing a street, including any portion of the building roof facing any street. The antenna and its support structure shall be designed to withstand a wind force of eighty (80) miles per hour without the use of supporting guy wires.
- (iv)Color: The antenna and its support structure shall be a color that blends with the roof or building side on which it is mounted.
- (v) Grounding: The antenna and its support structure shall be bonded to a grounding rod.
- (vi)Other Standards: The antenna and its support structure shall satisfy such other design and construction standards as the building commissioner reasonably determines are necessary to ensure safe construction and maintenance of the antenna and its support structure.
- (d) Setback From Street: No such antenna or its support structure shall be erected or maintained closer to any street than the wall of the principal building to which it is accessory that is nearest to such street.
- (e) Guy Wires Restricted: No guy or other support wires shall be used in connection with such antenna or its support structure except when used to anchor the antenna or support structure to an existing building to which such antenna or support structure is attached.
- (f) Screening: See subsection <u>9-107</u>F of this article for landscaping and screening requirements applicable to ground mounted antennas.
- (g) Village Antennas And Antenna Support Structures: The provisions of subsections D7(a), D7(b), D7(c)(ii), D7(c)(ii), and D7(c)(iii) of this section shall not apply to antennas or antenna support structures erected by the village for municipal purposes.
- 8. Amateur Radio Facilities With Surface Area Exceeding Ten Square Feet: Any antenna and antenna support structure having a combined surface area greater than ten (10) square feet or having any single dimension exceeding twelve feet (12') that is capable of transmitting as well as receiving signals and is licensed by the federal communications commission as an amateur radio facility must satisfy each of the following conditions:
  - (a) Number Limited: No more than one such antenna support structure with a surface area greater than ten (10) square feet or any single dimension exceeding twelve feet (12') may be located on any zoning lot.

- (b) Height Limited: No such antenna support structure shall, if ground mounted, exceed sixty five feet (65') in height or, if attached to a building pursuant to subsection D7(c) of this section, the height therein specified.
- (c) Attachment To Buildings Limited: No such antenna or its support structure shall be attached to a principal or accessory structure unless all of the following conditions are satisfied:
  - (i) Height: The antenna and its support structure shall not extend more than twenty feet (20') above the highest point of the building on which it is mounted.
  - (ii) Mounting: The antenna and its support structure shall not be attached to or mounted upon any building appurtenance, such as a chimney. The antenna and its support structure shall not be mounted or attached to the front of any principal building or to the side of any building facing a street, including any portion of the building roof facing any street. The antenna and its support structure shall be designed to withstand a wind force of eighty (80) miles per hour without the use of supporting guywires.
  - (iii) Grounding: The antenna and its support structure shall be bonded to a grounding rod.
  - (iv)Other Standards: The antenna support structure shall satisfy such other design and construction standards as the village manager reasonably determines are necessary to ensure safe construction and maintenance of the antenna and its support structure.
- (d) Setback From Street: No such antenna or its support structure shall be erected or maintained closer to any street than the wall of the principal building to which it is accessory that is nearest to such street.
- (e) Setbacks From Adjacent Buildings: No such antenna or its support structure shall be located in any required side yard or nearer than one-half (<sup>1</sup>/<sub>2</sub>) the height of the antenna and support structure to any habitable building on any adjacent property.
- 9. Exterior Lighting: Any permitted accessory lighting fixtures shall be so designed, arranged, and operated as to prevent glare and direct rays of light from being cast onto any adjacent public or private property or street and so as not to produce excessive sky reflected glare. Except for streetlights, no exterior light in or adjacent to any residential district shall be so designed, arranged, or operated to produce an intensity of light exceeding one-half (1/2) foot-candle at any residential lot line.
- 10. Uses Subject To Special Restrictions: When the district regulations of this code require compliance with any procedures or standards with respect to a specific use, such use shall not be established as an accessory use except in compliance with those procedures and standards.
- E. Use, Bulk, Space, And Yard Regulations: Except as expressly provided otherwise in this section, every accessory structure and use shall comply with the use, bulk, space, and yard regulations made applicable to them by the regulations of the district in which they are located.

F. Use Limitation: No accessory structure or use shall be constructed, established, or maintained on any lot prior to the substantial completion of construction of the principal structure to which it is accessory. (Ord. 94-36, § 2, 8-2-1994; Ord. O2001-27, § 2, 6-5-2001; Ord. O2004-17, §§ 2, 3, 4-6-2004)

### Sec. 10-104:Precode Structures:



- A. Authority To Continue: Any precode structure may be maintained, altered, enlarged, rebuilt, restored, and repaired so long as it remains otherwise lawful, subject to the restrictions in subsections B through E of this section and subsection 10-101D of this article.
- B. Maintenance, Repair, Alteration, And Enlargement: Any precode structure may be maintained, repaired, altered or enlarged; provided, however, that except as hereinafter expressly provided, no such maintenance, repair, alteration, or enlargement shall either create any new parking, loading, yard, bulk or space nonconformity or increase the degree of any parking, loading, yard, bulk, or space nonconformity of all or any part of such structure as it existed on the effective date of this code. Notwithstanding the preceding sentence:
  - Front And Rear Yard Vertical Extensions: Any portion of a precode structure that is
    nonconforming with respect to a required front or rear yard may be extended vertically within its
    existing perimeter walls but may not be extended horizontally; and
  - 2. Side Yard Vertical Extensions: Any portion of a precode structure that is nonconforming with respect to a required side yard may be extended vertically within its existing perimeter walls; provided, however, that no such extension shall be allowed within ten feet (10') of any side lot line in the R-1 and R-2 districts or within six feet (6') of any side lot line in the R-3 and R-4 districts; and
  - 3. Side Yard Horizontal Extensions: Any portion of a precode structure that is nonconforming with respect to a required side yard may be extended horizontally between the required front and rear yard lines at a distance from the side lot line equal to the greater of: a) the minimum existing distance between said side lot line and said nonconforming portion or b) ten feet (10') in the R-1 and R-2 districts or six feet (6') in the R-3 and R-4 districts; and
  - 4. Roof Elevation Extensions: Any portion of a precode structure that is nonconforming with respect to the permitted maximum elevation may be extended horizontally at an elevation in excess of said permitted maximum elevation; provided, however, that the top of the roof of such extension shall not exceed the top of the precode structure.
  - 5. Roof Height Extensions: Any portion of precode structure located on a conforming lot in a single-family residential district that is nonconforming with respect to the permitted maximum height and that is a precode structure solely due to the nonconforming height of the structure may be extended: a) horizontally at a height in excess of said permitted maximum height but not in excess of the roofline of the existing structure or b) horizontally and vertically at a height in excess of the permitted maximum height but not in excess of the height of the structure as of the date of initial occupancy of the original structure, provided, however, that such extension shall not be permitted where the height of the structure as of the date of initial occupancy of the original structure exceeded the maximum height authorized by law; and, in either case, such extension shall not extend more than twenty four inches (24") beyond the exterior face of the exterior walls of said existing structure.
  - 6. Certain Garages Accessory To Certain Precode Detached Dwellings: Notwithstanding the applicable maximum floor area and building coverage regulations and notwithstanding the limitations set in subsection C1 of this section, a detached garage accessory to, and on the same zoning lot as, a precode single-family detached dwelling structure may be demolished and

replaced with a new detached garage if, but only if, all of the following conditions and standards are met: a) the dwelling was constructed prior to 1950, b) the dwelling does not have an attached garage, and c) the replacement garage does not exceed a total floor area of four hundred forty (440) square feet.

For the purposes of this subsection B, any vertical or horizontal extension of a precode structure in violation of subsection B5 of this section shall be construed to increase the degree of an existing nonconformity. For purposes of this subsection B, the provisions of subsection D of this section shall, where applicable, be applied in determining the existence and extent of any side yard nonconformity.

- C. Damage Or Destruction: Any precode structure that is demolished, damaged, or destroyed by any means, whether or not within the control of the owner thereof, may be rebuilt, restored, or repaired; provided, however, that:
  - Voluntary Damage: In no event shall any demolition, damage, or destruction to such a structure caused by any means within the control of the owner be rebuilt, restored, or repaired except in conformity with all of the applicable district regulations other than minimum lot area and lot dimension regulations.
  - 2. Involuntary Damage: In no event shall any damage or destruction to such a structure caused by any means not within the control of the owner be rebuilt, restored, or repaired so as to create any new parking, loading, yard, bulk, or space nonconformity or to increase the degree of any parking, loading, yard, bulk, or space nonconformity existing prior to such damage or destruction. For the purposes of this subsection C2, any vertical or horizontal extension of a structure in violation of the yard, bulk, or space regulations applicable in the district in which such structure is located shall be construed to increase the degree of an existing nonconformity, except that:
    - (a) Front And Rear Yard Vertical Extensions: Any portion of a precode structure that was, prior to such damage or destruction, nonconforming with respect to a required front or rear yard may be extended vertically within its existing perimeter walls but may not be extended horizontally; and
    - (b) Side Yard Vertical Extensions: Any portion of a precode structure that was, prior to such damage or destruction, nonconforming with respect to a required side yard may be extended vertically within its existing perimeter walls; provided, however, that no such extension shall be allowed within ten feet (10') of any side lot line in the R-1 and R-2 districts or within six feet (6') of any side lot line in the R-3 and R-4 districts; and
    - (c) Side Yard Horizontal Extensions: Any portion of a precode structure that was, prior to such damage or destruction, nonconforming with respect to a required side yard may be extended horizontally between the required front and rear yard lines at a distance from the side lot line equal to at least: 1) the minimum existing distance between said side lot line and said nonconforming portion as it existed prior to such damage or destruction and 2) ten feet (10') in the R-1 and R-2 districts or six feet (6') in the R-3 and R-4 districts.

For purposes of this subsection C, the provisions of subsection D of this section shall, where applicable, be applied in determining the minimum yards required and the existence and extent of any side yard nonconformity.

- D. Special Yard Regulations: Whenever any precode structure is located on a lot that does not comply with the lot area or lot width regulations of the district in which it is located, such structure may be maintained, altered, enlarged, rebuilt, restored, and repaired subject to the side yard regulations for such district as stated in subsection 10-105A of this article rather than the side yard regulations otherwise applicable in such district.
- E. Moving: No precode structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
- F. *Driveways:* A driveway that has been in existence in excess of twenty five (25) years may be reconstructed in its present location. (Ord. 92-43, § 5, 10-6-1992; Ord. 95-10, §§ 4C, D, 3-21-1995; Ord. 95-15, § 2D, 4-24-1995; Ord. 98-21, § 2, 5-5-1998; Ord. 99-6, § 3, 3-2-1999; Ord. O2003-5, § 2, 3-4-2003; Ord. O2007-16, § 3, 2-20-2007)

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



- A. Authority To Use For Single-Family Detached Dwellings In Residential Districts: In any residential district, notwithstanding the regulations imposed by any other provisions of this code, a single-family detached dwelling, and any permitted accessory structure, that complies with the regulations of this subsection may be erected, maintained, altered, enlarged, rebuilt, restored, and repaired on a legal nonconforming lot of record. Construction of such dwelling, and any accessory structure, shall comply with all the regulations applicable to such dwellings and accessory structures in the zoning district in which the lot in question is located, except that the following requirements shall apply in place of requirements otherwise applicable:
  - 1. Maximum Elevation:

	SEPVIE BURL	CANAL EL POTROS AL CONSERVADA.	The make and the state of the second state of	R-1	R-2	R-3	R-4	1	R-6
(a)	Prin	cipal structure	es					N appli	ot cable
	(i)	Smallest side provided of fless	yard provid	34 feet plus 0.75 foot for each foot of side yard provided in excess of 6 feet, and not more than 14 feet, but not to exceed 40 feet					
	(ii)	Smallest side provided of r 14 feet and r than 24 feet	nore than	40 feet plus 20 percent of the difference between the smallest side yard provided and 14 feet					ot cable
	(iii) Smallest side yard of more than 24 feet			42 feet plus 10 percent of the difference between the smallest side yard provided and 24 feet, but not to exceed 44 feet					ot cable
(b)	Accessory structures			Not app	licable	Not app	olicable	No applio	

2. Minimum Lot Area And Dimensions:

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					R-1	R-2	R-3	R-4		

Carrier and Carrie		.,.						
(a)	Total lot	t area (squ	are feet)	14,000	14,000	10,000	7,000	
TENSCAN.								
(b)	Lot width (feet):							
	(i)	(i) Interior lot		70	70	50	50	
3	(ii) Corner lot		80	80	50	50		
(c)	Lot depth (feet)			125	125	125	100	

# 3. Minimum Side Yards (Feet):

				R-1	R-2	R-3	R-4	R-5,	
(a)	Co	rner lot:							
	(i)	Interio	or	10 feet	10 feet	6 feet	6 feet	6 feet	
		side		or 6 feet plus whichever is r		ot width in exces	ss of 50 feet,		
	(ii)	Corne side	r	35 feet or 30 percent of lot width, whichever is less	35 feet or 30 percent of lot width, whichever is less	15 feet or 30 percent of lot width, whichever is greater	15 feet or 30 percent of lot width, whichever is greater	6 feet or 30 percent of lot width, whichever is greater	
(b)	Inte	rior lot:							
	(i)	Minim per ya		10 feet	10 feet	6 feet	6 feet	6 feet	
				or 6 feet plus					

STATE OF THE STATE			whichever is more	
The state of the s				
PROCEST TO A CONTRACT OF THE PROCESS	(ii)	Minimum total	30 percent of lot width up to, and including, 125 feet plus 35 percent of lot width in excess of 125 feet	20 feet or 30 percent of frontage, whichever is less

B. Authority To Use For Permitted Uses In Nonresidential Districts: A legal nonconforming lot of record located in any district other than a residential district may be developed for any use permitted or specially permitted in the district in which it is located if, but only if, the development of such lot meets all requirements of the district in which it is located, including floor area ratio, coverage, and yard and setback requirements, except lot area, width, and depth requirements. (Ord. 92-43, § 6, 10-6-1992; Ord. 95-10, § 4B, 3-21-1995; Ord. 95-15, § 2C, 4-24-1995; Ord. 99-6, §§ 4A, B, 3-2-1999)

## Sec. 12-101:General Scope:



- A. Territorial Application: This code shall apply to all land, structures, and uses within the corporate limits of the village.
- B. General Application: All structures erected hereafter, all uses of land or structures established hereafter, all structural alterations or relocations of existing structures occurring hereafter, and all enlargements and extensions of, additions to, changes in, and relocations of existing uses occurring hereafter shall be subject to all regulations of this code applicable to the zoning districts in which such land, structures, or uses are located. Existing structures and uses that do not comply with the regulations of this code shall be subject to the provisions of article X of this code relating to nonconformities.
- C. General Prohibition: No structure, no use of any structure or land, and no lot of record or zoning lot, now or hereafter existing, shall hereafter be established, enlarged, extended, altered, moved, divided, or maintained in any manner, except as authorized by the provisions of this code and except in compliance with the regulations of this code. Without limiting the foregoing, any such activity that would cause any existing structure not to comply with this code or that would create any parcel of land that could not be developed in compliance with this code shall be prohibited.
- D. Special Prohibition; Multiple Uses On Residential Zoning Lot: Except when authorized as part of a planned development approved pursuant to section <u>11-603</u> of this code, no zoning lot zoned in any residential district in the village shall be used for more than one principal use or one principal structure.

## E. Exempt Uses:

- 1. Utility Lines: The following utility uses are exempt from the provisions of this code: poles, wires, cables, conduits, vaults, laterals, pipes, mains, and valves, but not including substations located on or above the surface of the ground, for the distribution to consumers of telephone, cable television or other communications, electricity, gas or water, or for the collection of sewage or surface water. All such uses shall, however, comply with the subdivision and other applicable ordinances of the village.
- 2. Railroad Uses: All railroad rights of way used for railroad purposes, trackage, and passenger stations existing on the effective date of this code shall be exempt from its provisions. Any other railroad facilities or uses, or any change of such existing facilities or uses, shall be subject to all of the provisions of this code.
- F. Private Agreements: This code is not intended to abrogate, annul, or otherwise interfere with any platted building line, easement, covenant, or other private agreement or legal relationship; provided, however, that where the regulations of this code are more restrictive or impose higher

corner side lot lines.

Garage, Detached (For Determining Floor Area Ratio And Building Coverage In Single-Family Residential Districts): In a single-family residential district, a structure designed or used for the parking and storage of vehicles at one level that is:

- A. Located to the rear of the principal single-family detached dwelling on the same zoning lot; and
- B. Separate from, and not located nearer than ten feet (10') to, the nearest part of the principal single-family detached dwelling.

Garage, Parking: A structure, or part thereof, designed or used for the parking and storage of vehicles at one or more levels.

Glare, Direct: Light visible directly from the source thereof.

Governmental Sign: See subsection 9-106D of this code.

Grade: The average level of the ground existing prior to any reshaping of the natural contours at the four (4) corners of a structure or proposed structure that are, respectively, closest to the four (4) points of intersection of the required front, rear and side yard lines. When the existing natural ground level slopes away from any such corner, then the level of the ground at such corner shall be measured at the lowest point lying within six feet (6') of such corner.

Grading: Reshaping natural land contours using natural land materials.

Ground Sign: See subsection 9-106D of this code.

Height: The vertical distance measured from grade to the highest point of the roof for flat roofs, or to the deck line for mansard roofs, or to the mean height between the principal eave and the highest ridge or point for gable, hip, and gambrel roofs, or to the highest point of a structure without a roof. When a parapet wall, a penthouse, or any similar structure is located on the roof of a building with a flat or mansard roof, the building height shall be measured to the highest point of said structure if any part of it extends above the height as measured pursuant to the first sentence of this definition. Notwithstanding the foregoing, the following shall not be considered in determining the height of a building: mechanical equipment; walls or similar structure designed exclusively for the purpose of screening mechanical equipment from view; chimneys and railings; and turrets, widow walks, or cupolas having no exterior length, width, or diameter in excess of nine feet (9').

Helistop: A structure used for an emergency medical helicopter heliport (the "landing pad") to transport patients for medical and surgical emergencies. For the purposes of this definition, the following shall be applicable:

A. Helicopter transports may only be made for outgoing patients from the structure and may be made only when patients require immediate transport for surgery or medical care in an intensive care unit.

- B. The decision to transfer an outgoing patient by air will strictly remain a decision between the referring physician, the transport team and their medical control.
- C. No helicopter transport business shall be owned or operated from the helistop and no helicopter may be based, stored, fueled or serviced at a helistop.
- D. The user of a helistop must submit all required documentation to the state of Illinois department of transportation division of aeronautics in order for that agency to review and, if the appropriate regulations are met, to issue the appropriate permit for utilization of a helistop.
- E. A helistop must be reviewed and approved as a special use in the health services district for purposes of a hospital.

Holiday Decorations: See subsection 9-106D of this code.

Home Occupation: See subsection 9-102B of this code.

Hotel: An establishment that is designed for transient guests, that is commonly known as a hotel in the community in which it is located, that does not have individual entrances from the outside of the building for the dwelling or rooming units located therein, and that provides customary hotel services such as maid service, furnishing and laundry of linen, telephone service, desk service, bellboy service, and the use and upkeep of furniture.

Identification Sign: See subsection 9-106D of this code.

Improvement Or Facility, Public: A sanitary sewer, storm sewer, drainage appurtenance, water main, roadway, parkway, sidewalk, planting strip, or other facility for which the village or any other government agency may assume maintenance or operational responsibility.

Institutional Building: Any building the principal use of which is an institutional use.

Institutional Use Or Purpose: Any use permitted in the institutional buildings district.

Interior Lot: See definition of Lot, Interior.

Interpretation: See section 11-501 of this code and this part.

Joint Identification Sign: See subsection 9-106D of this code.

Landbanking: The setting aside of land area for future use. See also subsection 9-104E of this code.

Legal Nonconforming Lot Of Record: See definition of Nonconforming Lot Of Record, Legal.

Less Restrictive District: See section 2-102 of this code.

Live Entertainment: A public performance intended to be diverting or engaging with or without the use of instrumental, electronic, or mechanical accompaniment.

standards or requirements than such platted building line, easement, covenant, or other private agreement or legal relationship, the regulations of this code shall govern. (1991 Code)

## Sec. 12-206: Definitions:

When used in this code, the following terms shall have the meanings herein ascribed to them:

Abut: To touch, to lie immediately next to, to share a common wall or lot line, or to be separated by only a street, alley, or drainage course.

Accessory Building, Structure, Or Use: See section 9-101 of this code.

Adjacent: To lie near, close to, or in the vicinity.

Advertising Sign: See subsection 9-106D of this code.

Alley: A public right of way that affords only a secondary means of vehicular access to abutting property.

Alteration: Any change in the size, shape, character, occupancy, or use of a structure.

Alteration, Structural: See definition of Structural Alteration.

Amendment: See section 11-601 of this code.

Animated Or Moving Sign: See subsection 9-106D of this code.

Antenna: Any structure designed for transmitting signals to a receiving station or for receiving television, radio, data, or other signals from satellites or other services.

Antenna Support Structure: Any structure used for the principal purpose of supporting an antenna.

Antenna Surface Area: See definition of Surface Area, Antenna.

Appeal: See section 11-502 of this code.

Area, Gross: The total land and water area included in a parcel that is the subject of an application filed pursuant to this code, excluding only property located in public rights of way or private easements of access or egress at the time of application.

Area, Net: The gross area of a parcel less land and water areas required or proposed to be publicly dedicated, or land to be devoted to private easements of access or egress. Both land and water areas not so publicly dedicated or devoted shall be included in the calculation of net area.

Attached Dwelling: See definition of Dwelling, Single-Family Attached.

Attached Garage: A garage abutting the principal structure or connected via conditioned area as defined by the building code.

Attention Getting Device: See subsection 9-106D of this code.

Automatic Teller Machine: An automated device that performs banking or financial functions.

Awning: A rooflike covering, temporary in nature, that projects from the wall of a building.

Awning Sign: See subsection 9-106D of this code.

**EXHIBIT** 

Basement: A portion of a structure located partly underground having an average ceiling height above grade of more than three and one-half feet  $(3^{1}/2^{1})$  but less than six feet  $(6^{1})$ .

Berm: A hill or contour of land that acts as a visual barrier between a lot and adjacent properties, alleys, or streets.

Block: A tract of land bounded by streets or by a combination of streets, public lands, railroad rights of way, waterways, or boundary lines of the village.

Board Of Appeals: The zoning board of appeals of the village. See section 11-102 of this code.

Board Of Trustees: The president and the board of trustees of the village of Hinsdale.

Buffering: Any means of protecting a parcel from the visual or auditory effects of an adjacent use. Buffering may include, but is not limited to, berming, fencing, landscaping, setbacks, or open spaces.

Building: See definition of Structure. References to "building" shall in all cases be deemed to refer to both buildings and structures.

Building, Accessory: See section 9-101 of this code.

Building Code: The building code of the village of Hinsdale.

Building Coverage: The percentage of a lot's area covered by any building or structure. See also definition of Lot Coverage.

Building Depth: The longest straight line that can be drawn through a structure substantially parallel to the side or corner side lot lines of the lot on which it is located.

Building, Detached: A building surrounded entirely by open space.

Building Height: See definition of Height.

Building Or Structure Front: That exterior wall of a building or structure facing the front line of the lot on which it is located.

Building, Principal: A building in which is conducted the principal use or uses of the lot on which said building is situated.

Building Width: The longest straight line that can be drawn through a structure parallel to the front lot line.

Bulk And Space Regulations: The regulations of this code pertaining to the permissible or required height, elevation, volume, area, floor area, floor area ratio, minimum lot area and dimensions, building coverage, lot coverage, and usable open space applicable to uses and structures. The term does not include yard requirements.

Bulletin Board Sign: See subsection 9-106D of this code.

Business District: Any district whose designation begins with the letter "B", as set forth in section  $\underline{2}$ - $\underline{101}$  of this code.

Business Sign: See subsection 9-106D of this code.

Business Use Or Purpose: Any use permitted in a business district.

Canopy: A rooflike structure of a permanent nature that projects from the wall of a building.

Canopy Sign: See subsection 9-106D of this code.

Carryout Eating Place: See definition of Eating Place, Carryout.

Cellar: A portion of a structure located partly or wholly underground having an average ceiling height above grade of not more than 3.5 feet.

Cemetery: A burial ground including structures such as mausoleums, columbaria, incidental management offices, and maintenance facilities.

Certificate Of Nonconformity: See subsection 11-402G of this code.

Certificate Of Occupancy: See section 11-402 of this code.

Certificate Of Zoning Compliance: See section 11-401 of this code.

Circulation Aisle: The means of access to a parking or loading space for a motor vehicle.

Civic Event Sign: See subsection 9-106D of this code.

Civic Or Civic Use Or Purpose: An undertaking in which the citizens of a community, by their cooperative action and as their central goal, seek to promote the general welfare and common good of the community; in other words, a community movement to accomplish community goals.

Classification Or Zoning Classification: The district into which a parcel of land is placed and the body of regulations to which it is subjected by this code and the zoning map.

Clear Site Area: See title 7, chapter 1, article D of the village code.

Code Of Ethics: The Hinsdale code of ethics.

Commercial Building: A building the principal use of which is a commercial use.

Commercial Use Or Purpose: Any use permitted in a business district.

Completely Enclosed Building: A building separated on all sides from the adjacent open area, or from other buildings or structures, by a permanent roof and by exterior walls or party walls, pierced only by windows or doors normally provided for the accommodation of persons, goods or vehicles. However, a parking structure that has less than fifty percent (50%) of its outer wall space open but that does not allow any parked vehicle within said structure to be seen from the exterior thereof shall be considered a completely enclosed building.

Comprehensive Plan: See subsection <u>11-201B</u> of this code.

Construction Sign: See subsection 9-106D of this code.

Corner Lot: See definition of Lot, Corner.

Cul-De-Sac: A street having one end open and one end permanently terminated by a vehicular

turnaround.

Curb Level: The street curb height at the midpoint of a lot line. Where no curb exists, the elevation of the crown of the street at the midpoint of the lot line shall be deemed to be the curb level.

Daycare: Daytime care or instruction of children away from their own homes by a person other than a relative, whether or not for compensation or reward.

Daycare Home: A dwelling unit in which daycare for children is being provided as a home occupation.

Deck: A structure attached to or closely adjacent to any dwelling unit that is designed and intended for the support of persons: that is made of wood; that has no permanent or temporary cover or canopy; that is constructed on piers and without continuous foundation or footings; and that has no part extending above the floor level of the first story of such dwelling, excluding any cellar or basement; provided, however, that protective, decorative, or ornamental appurtenances such as hand railings, benches, and the like may extend to a height of forty two inches (42") above such floor level.

Dedication: The designation of land for a public use by the owner thereof.

Density, Gross: The number of persons, families, or dwelling units or the amount of gross floor area in a building, on a lot, or in a development divided by the gross area of the development.

Density, Net: The number of persons, families, or dwelling units or the amount of gross floor area in a building, on a lot, or in a development divided by the net area of the development.

Depth Of Lot: See definition of Lot Depth.

Detention: Temporary on site storage of stormwater to be released at a predetermined rate by means of facilities engineered for that purpose.

Development: Any manmade change, other than maintenance of existing structures, paved areas, or utilities, to improved or unimproved real estate, including, without limitation, the construction or installation of new, or enlargement of existing, structures, streets, or utilities; dredging, filling, drilling, mining, grading, paving, or excavating operations; and open storage of materials.

Display Surface Or Face: The area made available by a sign structure for the purpose of displaying the sign's message.

Distance Of Sign Projection: The distance from the exterior wall surface of a building to the sign element farthest distant from such surface.

District Boundary Line: A line on the zoning map separating one district from another. See also subsection <u>2-103</u>C of this code.

District Boundary Lot: Any lot or parcel of land any lot line of which coincides with a district boundary line or which is contiguous to any public or private right of way containing a district boundary line.

District Or District, Zoning: See definition of Zoning District.

Drive-In Eating Place: See definition of Eating Place, Drive-In.

Drive-In Establishment Or Facility: An establishment or facility that by design of physical facilities or by service or packaging procedures encourages or permits customers to receive a service or obtain a product that may be used or consumed in a motor vehicle on or off the premises or to be entertained

while remaining in a motor vehicle.

Drive-Through Lane At A Drugstore Or Pharmacy: A lane that may include a drive-up/pick up window and a drive-through lane to serve the same.

*Driveway:* A paved roadway constructed within the public way, connecting the public roadway with private property, leading completely within the private property for the purpose of providing access for motor vehicles from the public way into the private property, and shall be used in such a way that the access into the private property will be completed and will not cause the blocking of any parkway or street.

Driveway Approach: An area between the traveled roadway of a public street right of way and private property intended to provide access for vehicles from the roadway of a public street to private property. Such approach must provide access to something definite on private property such as a driveway, a parking area, or a door at least eight feet (8') wide, intended and used for the entrance of vehicles.

Dwelling: Any structure or portion thereof designed or used for habitation by one or more families.

Dwelling, Multiple-Family: A dwelling, other than a townhouse dwelling, containing more than two (2) dwelling units.

Dwelling, Single-Family Attached: See definition of Dwelling, Townhouse.

Dwelling, Single-Family Detached: A dwelling containing only one dwelling unit, situated on a separate subdivision lot or being a separate condominium unit capable of individual sale and completely surrounded by open space.

Dwelling, Staff: A dwelling where lodging is provided in rooming units exclusively for the administrators, employees, vocational students, or other personnel of a hospital, and their families.

Dwelling, Townhouse: A dwelling composed of a row of two (2) or more adjoining dwelling units, each situated on a separate subdivision lot or being a separate condominium unit capable of individual sale, and each of which is separated from the others by one or more unpierced walls extending from ground to roof, and each of which is provided with garage space sufficient for at least two (2) vehicles.

Dwelling, Two-Family: A dwelling, other than a townhouse dwelling, containing two (2) dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall.

Dwelling Unit: Any room or group of rooms located within a dwelling forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, cooking, eating, and sanitation by one family.

Easement: Authorization by a property owner for the use by another, and for a specified purpose, of any designated area of his or her property. The term also refers to such a designated area.

Eating Place: An establishment where food is available to the general public primarily for consumption within a structure on the premises, where at least fifty percent (50%) of the gross floor area of the establishment is devoted to patron seating, and where the consumption of food in motor vehicles on the premises is neither encouraged nor permitted.

Eating Place, Carryout: An establishment which by design of physical facilities or by service or packaging procedures permits or encourages the purchase of prepared, ready to eat foods intended

to be consumed off the premises, and where the consumption of food in motor vehicles on the premises is neither permitted nor encouraged.

Eating Place, Drive-In: A drive-in establishment, as defined herein where food is prepared and served for consumption in motor vehicles.

Effective Date: See section 12-107 of this article.

*Elevation:* As used in sections <u>3-110</u>, 10-104 and 10-105 of this code, the vertical distance measured from top of foundation to the highest point of a building or structure. For the purposes of this definition:

- A. "Top of foundation" shall mean a point one foot (1') above the lowest point of the foundation of a building or structure that is either: 1) above grade or 2) visible from the exterior of the building or structure; provided, however, that if the top of the lowest floor joist of the first full story of such building or structure is lower than said lowest point of the foundation, then the top of said floor joist shall be deemed to be the top of foundation; and
- B. "Highest point of a building or structure" shall mean the point of said building or structure that is located at the highest vertical distance above the top of foundation. Notwithstanding the foregoing, the following shall not be included in determining said highest point: chimneys and railings, and any turrets, widow walks, and cupolas having no exterior length, width, or diameter in excess of nine feet (9').

Enlargement: An addition to the floor area of, or any other increase in the size of, any existing structure.

Extension: An increase in the amount of existing floor area used for an existing use within an existing structure or an increase in that portion of a tract of land occupied by an existing use.

Exterior Wall: Any wall of a building or structure one side of which is exposed to the outdoors.

Family: One or more persons related by blood, marriage, legal adoption, or guardianship, or not more than three (3) persons not so related, together with gratuitous guests and domestic servants, living together as a single housekeeping unit.

Fence: A barrier structure used as a boundary or as a means of protection, confinement, or screening.

Floor Area, Gross (For All Purposes Except Determining Floor Area Ratio In Single-Family Districts And Off Street Parking Requirements): Except as hereinafter provided, the sum of the gross horizontal areas of all floors of all stories and partial stories of a building, or of such area devoted to a specific use, measured from the exterior face of exterior walls or from the centerline of walls separating two (2) buildings or uses. Gross floor area shall include:

A. Fifty percent (50%) of all floor area located in a basement;

- B. One hundred percent (100%) of all floor area located in any story of a structure other than the uppermost story or partial story;
- C. One hundred percent (100%) of all floor area having a ceiling height of seven feet (7') or more and located in the uppermost story of a structure if such story is counted as a full story;
- D. Fifty percent (50%) of all floor area having a ceiling height of seven feet (7') or more and located in the uppermost story or partial story of a structure if such story is counted as a half story; and
- E. Notwithstanding the foregoing, one hundred percent (100%) of all floor area of all levels of all parking structures except cellar and basement levels, which shall be counted as other cellar and basement levels, and the uppermost level, which shall be counted only fifty percent (50%).

For purposes of measuring gross floor area, all of the following shall, without limitation, be included:

- A. Elevator shafts and stairwells at each floor:
- B. Floor spaces and shafts, not including roof space, used for mechanical, electrical, and plumbing equipment;
- C. Penthouses;
- D. Interior balconies and mezzanines;
- E. Atria;
- F. Enclosed porches (but not open porches);
- G. Floor space used for accessory uses; and
- H. Where any space has a floor to ceiling height of more than sixteen feet (16'), each sixteen feet (16') in height, and any major fraction thereof, shall be treated as a separate floor.

Floor Area, Gross (For Determining Floor Area Ratio In Single-Family Residential Districts): Except as hereinafter provided, the sum of the gross horizontal areas of all floors of all stories and partial stories of a building, or of such area devoted to a specific use, measured from the exterior face of exterior walls or from the centerline of walls separating two (2) buildings or uses. Gross floor area shall include:

- A. Fifty percent (50%) of all floor area located in a basement, except as provided in subsection 2(d) of this definition;
- B. One hundred percent (100%) of all floor area located on any level, other than a basement, that is counted as a story or a half story; provided, however, that:
  - 1. When any portion of a story or half story has no floor above it and has a ceiling height of seven feet (7') or more over an area that is twenty percent (20%) or less than the portion of the story or half story immediately below such portion it shall be excluded before any calculation of gross floor area pursuant to this subsection B; and
  - 2. When any portion of a story or half story has no floor above it and has a ceiling height of seven feet (7') or more over an area that is less than one-half (1/2), but more than twenty percent (20%), of the portion of the story or half story immediately below such portion, then only fifty percent (50%) of the floor area of such portion that has a ceiling height of seven feet (7') or more shall be included; and
  - 3. When any portion of a story or half story has no floor above it and has a ceiling height of seven feet (7') or more over an area that is equal to or greater than one-half  $\binom{1}{2}$  of the portion of the story or half story immediately below such portion, then one hundred percent (100%) of the floor area of such portion that has a ceiling height of seven feet (7') or more shall be included; and
  - 4. For a single-family detached dwelling in the R-1, R-2, R-3 or R-4 district constructed prior to January 1, 1930: a) the floor area of the uppermost level of that dwelling, if that dwelling has two (2) full stories below the uppermost level, shall be excluded before any calculation of gross floor area pursuant to this subsection B and b) the floor area of the basement of that dwelling also shall be excluded before any calculation of gross floor area pursuant to this subsection B, provided, however, that such basement floor area shall not be excluded if that floor area is a part of any alteration or enlargement of that dwelling at any time after March 1, 2006, which alteration or enlargement changes the elevation of any portion of the first story of that dwelling; and
- C. One hundred percent (100%) of all exterior area that is surrounded on eighty five percent (85%) or more of its perimeter by the walls of any structure.

For purposes of measuring gross floor area, all of the following shall, without limitation, be included:

A. Elevator shafts and stairwells at each floor;

- B. Floor spaces and shafts, not including roof space, used for mechanical, electrical, and plumbing equipment;
- C. Penthouses:
- D. Interior balconies and mezzanines;
- E. Atria;
- F. Enclosed porches (but not open porches);
- G. Floor space used for accessory uses; and
- H. Where any space has a floor to ceiling height of more than fourteen feet (14'), each fourteen feet (14') in height, and any fraction thereof in excess of fourteen feet (14') of height or a multiple thereof, shall be treated as a separate floor.

Floor Area, Net (For Determining Off Street Parking Requirements): The gross floor area of a building minus floor space devoted to washrooms intended for general public use; elevator shafts and stairwells at each floor; floor space and shafts used for mechanical, electrical, and plumbing equipment; public foyers and atria intended for general public use; exterior building walls; floor space devoted to off street parking and loading; and basement floor space used only for bulk storage.

Floor Area Ratio (FAR): The gross floor area of a building divided by the total lot area of the zoning lot on which it is located. For planned developments, the FAR shall be determined by dividing the gross floor area of all principal buildings by the net area of the site.

Foot-Candle: The illumination of a surface one foot (1') distant from a source of one candle power, equal to one lumen per square foot.

Front Lot Line: See definition of Lot Line, Front.

Front Yard: See definition of Yard, Front.

Front Yard Line: See definition of Yard Line, Front.

Frontage: All of the property fronting on one side of a street line, measured along such street line, between an intersecting or intercepting street and another intersecting or intercepting street, a right of way in excess of thirty feet (30'), an end of a dead end street, or a village boundary.

Frontage, Zoning Lot: All of the property of a zoning lot fronting on a street, measured between side or

Loading Space: An off street area used for the standing, loading, or unloading of one truck or trailer.

Lot: See definitions of Lot Of Record and Lot, Zoning. Unless the context indicates otherwise, all references in this code to a "lot" shall be deemed to mean a "zoning lot".

Lot Area Per Unit: That portion of the total lot area allocated for each dwelling unit located on a lot.

Lot Area, Total: The total land and water area included within lot lines, excluding, however, land areas subject to easements for public or private access or egress.

Lot, Buildable Area Of: That portion of a lot bounded by the required yards.

Lot, Buildable Width Of: The width of a lot remaining as buildable after side yards and corner side yards are provided.

Lot, Corner: A lot abutting upon two (2) or more streets at their intersection or junction or a lot bounded on two (2) sides by a curving street where it is possible to draw two (2) intersecting tangents, one each commencing at each of the two (2) points of intersection of the lot lines and street line, which intersect with each other to form an interior angle of less than one hundred thirty five degrees (135°).

Lot Coverage: The percentage of a lot's area covered by any building or structure, or any surface that has been compacted or covered with a layer of material so that it is resistant to infiltration by water. Such surfaces shall include, without limitation, driveways, patios, tennis courts, compacted graveled areas (but not uncompacted areas of decorative gravel), sidewalks, paved terraces and other similar surfaces that restrict the ability of water to drain, seep, filter or pass through into the ground below. See also definition of Building Coverage.

Lot Depth: The maximum straight line distance between the front and rear lot lines.

Lot, Interior: A lot other than a corner lot.

Lot Line, Corner Side: Any street line of a corner lot other than its front lot line.

Lot Line, Front: In the case of an interior lot abutting upon only one street, the line separating such lot from such street; in the case of a through lot, each line separating such lot from a street shall be considered a front lot line; in the case of a corner lot, the shorter lot line separating such lot from a street shall be considered to be the front lot line.

Lot Line, Rear: That lot line that is parallel to and most distant from the front lot line of the lot; provided, however, that in any case where no lot line of at least twenty feet (20') in length is parallel to the front lot line, an imaginary line twenty feet (20') in length, entirely within the lot, parallel to, and at the maximum possible distance from, the front lot line shall be considered to be the rear lot line.

Lot Line, Side: Any lot line other than a front, corner side, or rear lot line.

Lot Lines: The property lines bounding a lot; provided, however, that when a lot includes land subject to a public right of way easement for street purposes, the line separating such right of way from the rest of the lot shall be deemed to be the lot line.

Lot, Minimum Total Area Of: The smallest lot on which a particular use or structure may be located in a particular district.

Lot Of Record: A lot that is part of a subdivision, the plat of which has been recorded in the office of

the DuPage County recorder of deeds or, if appropriate, the Cook County recorder of deeds, or a parcel of land separately described in a recorded deed.

Lot, Through: A lot having frontages on two (2) nonintersecting streets.

Lot, Width Of: The shortest distance between side lot lines measured by a line passing through the point of the required front yard line equidistant from the points where the front yard line intersects the side yard lines (measured along the front yard line); provided, however, that the length of the front lot line shall not be less than eighty percent (80%) of the required minimum lot width except for curved front lot lines of legal nonconforming lots of record abutting a cul-de-sac which shall be not less than fifty percent (50%) of the required minimum lot width.

Lot, Zoning: A tract of land consisting of one or more lots of record, or parts thereof, under single ownership or control, located entirely within a block and occupied by, or designated by its owner or developer at the time of filing for any zoning approval or building permit as a tract to be developed for, a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designed and arranged, or required under this code, to be used with such building or use. Notwithstanding the foregoing, sale of individual lots of record underlying individual dwelling units in a townhouse or two-family dwelling, following issuance of a certificate of occupancy for such dwelling, shall not prevent treatment of the tract of land underlying such dwelling as a zoning lot and all applicable bulk, space, and yard requirements shall be applied with respect to such dwelling and such zoning lot rather than with respect to individually owned dwelling units and lots of record.

Marquee Or Canopy: A rooflike structure of a permanent nature that projects from the wall of a building.

Marquee Sign: See subsection 9-106D of this code.

Memorial Sign: See subsection 9-106D of this code.

Minimum Lot Area: See definition of Lot. Minimum Total Area Of.

More Restrictive District: See section 2-102 of this code.

Moving Sign: See subsection 9-106D of this code.

Multiple-Family Dwelling: See definition of Dwelling, Multiple-Family.

Nameplate Sign: See subsection 9-106D of this code.

Net Floor Area: See definition of Floor Area, Net (For Determining Off Street Parking Requirements).

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

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

- A.1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth, and width at such location would not have been prohibited by any ordinance or other regulation; and
  - 2. Is located in a residential district and meets the minimum lot area and lot dimension standards of subsection <u>10-105</u>A of this code, or is located in a district other than a residential district;

and

- Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a precode structure that is not authorized to be rebuilt or replaced pursuant to subsection <u>10-104</u>C of this code; or
- B. Was created pursuant to section 3-110 of this code.

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

Nonconforming Sign: Any sign lawfully existing on the effective date of this code, or any amendment to it rendering such sign nonconforming, that does not comply with all of the standards and regulations of this code or any such amendment hereto.

Nonconforming Structure: See definition of Precode Structure.

Nonconforming Use: Any use lawfully being made of any land, building, or structure, other than a sign, on the effective date of this code, or any amendment to it rendering such use nonconforming, that does not comply with all of the regulations of this code, or any such amendment hereto, governing use for the zoning district in which such land, building, or structure is located.

Nonresidential Driveway: A driveway providing access to commercial or industrial establishments, in business for the purpose of servicing or storing motor vehicles, loading or unloading merchandise transported in the vehicles, or serving the driver of the vehicle while he remains in the vehicle and for property devoted to institutional use.

Nursing And Personal Care Facility: An establishment that provides full time nursing and health related personal care, but not hospital services, with inpatient beds for three (3) or more individuals who are not related by blood or marriage to the operator and who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves. No care for the acutely ill or surgical or obstetrical services shall be provided in such an establishment; a hospital shall not be construed to be included in this definition.

Office Building: Any building the principal use of which is an office use.

Office District: Any district, except the open space district, whose designation begins with the letter "O" as set forth in section 2-101 of this code.

Office Use Or Purpose: Any use permitted in an office district.

Official Comprehensive Plan: See subsection 11-201B of this code.

Official Map: See section 11-202 of this code.

On Site Informational Sign: See subsection 9-106D of this code.

Open Sales Lot: Land used or occupied for the purpose of buying, selling, or renting merchandise out of doors.

Open Space And Usable Open Space: An area or areas of a lot, including required yards, that is:

- A. Open and unobstructed from ground to sky except by facilities specifically designed, arranged, and intended for use in conjunction with passive or active outdoor recreation or relaxation; and
- B. Located at least five feet (5') from any structure except structures specifically designed, arranged, and intended for use in conjunction with passive or active outdoor recreation or relaxation; and
- C. Landscaped, maintained, or otherwise treated to create a setting appropriate to recreation or relaxation; and
- D. Accessible and usable by the residents of all dwellings, or the users of all nonresidential buildings, it is intended or required to serve.

Open Space, Common: Open space held in private ownership, regularly available for use by the occupants of more than one dwelling or the users of more than one nonresidential building.

Open Space, Private: Open space held in private ownership, the use of which is normally limited to the occupants of one dwelling or the users of one nonresidential building.

Open Space, Public: Open space dedicated to or owned by any government or governmental agency or authority.

Owner: Includes the holder of legal title as well as holders of any equitable interest, such as trust beneficiaries, contract purchasers, option holders, lessees under leases having an unexpired term of at least ten (10) years, and the like.

Parking Area: Any land area, not located in a garage, designed and used for the parking of not more than four (4) vehicles.

Parking Garage Or Structure: See definition of Garage, Parking.

Parking Lot: Any land area designed or used for the parking, and associated circulation, of more than four (4) vehicles.

Parking Space: An area for the parking of a vehicle.

Particulate Matter: Material other than water that is suspended or discharged into the atmosphere in a finely divided form as a liquid or solid.

Patio: An impervious area intended for recreational uses, either passive or active, and not covered by any permanent structure.

Paved Terrace: See definition of Terrace, Paved.

Perimeter Landscaped Open Space: A landscaped open space intended to enhance the appearance of, or screen from view, parking lots and other outdoor aesthetically unpleasant uses or areas or to create a transition between incompatible uses by means of appropriate buffering, landscaping, or screening primarily along lot lines.

Personal Wireless Services: Commercial mobile telecommunications services, unlicensed wireless telecommunications services, and common carrier wireless telecommunications exchange access services.

Personal Wireless Services Antenna: An antenna used in connection with the provision of personal wireless services.

Plan Commission: The plan commission of the village of Hinsdale. See section 11-103 of this code.

Planned Development: A use of land: a) for a "lifestyle housing" development as that term is defined in subsection 11-603M of this code, or b) the expansion of new or used motor vehicle dealerships located on property abutting Ogden Avenue and existing as of May 1, 2003, as set forth in subsection 11-603N of this code, or c) for a two (2) or more building development that offers benefits to the general public welfare beyond those required by this code or other law and that:

- A. Will contain or provide amenities in addition to amenities otherwise required by law;
- B. Is a parcel or tract of land under single ownership or unified control developed as a unit pursuant to the provisions of section <u>11-603</u> of this code; and
- C. The development meets the preponderance of the purposes stated in subsection <u>11-603B</u> of this code and is not used to avoid one or more zoning regulations that can be varied by the zoning board of appeals. See section <u>11-102</u> of this code.

Play Field: An area of active recreation such as a baseball diamond, a football field, a soccer field, or the like.

Political Sign: See subsection 9-106D of this code.

Portable Sign: See subsection 9-106D of this code.

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

A. Does not comply with all of the regulations of this code, or any such amendment to it, governing parking, loading, or bulk and space requirements for the zoning district in which such building or structure is located; or

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

Premises: A lot, plot, or parcel of land, together with the buildings and structures thereon.

Principal Structure Or Building: A structure or building on a zoning lot intended to be utilized for a principal use and to which any other structure on such lot must be accessory.

Principal Use: The use of a zoning lot, whether a permitted or specially permitted use, designated by the owner of such lot as the primary or main use of such lot and to which any other use on such lot must be accessory.

Private Right Of Way: See definition of Right Of Way, Private.

Private Sale Sign: See subsection 9-106D of this code.

Private Warning Sign: See subsection 9-106D of this code.

Professional, Home Based, Supplemental Education Program Centers: Any business which seeks to supplement and not replace current local school programs through application by certified individuals of an established learning process which is primarily performed by the client off site at the client's home.

Projecting Sign: See subsection 9-106D of this code.

Property Line: See definition of Lot Lines.

Public Hearing: A meeting conducted pursuant to the provisions of the Illinois open meetings act at which members of the general public must be permitted to give testimony, evidence, or opinions relevant to the subject matter.

Public Improvement Or Facility: See definition of Improvement Or Facility, Public.

Public Meeting: A meeting conducted pursuant to the provisions of the Illinois open meetings act at which members of the general public, as opposed to members of the committee, board, or commission and as opposed to the applicant for relief, have no right (but may be given the opportunity) to offer testimony, evidence, or opinions.

Public Right Of Way Or Public Way: See definition of Right Of Way, Public.

Public Utility: Any person, firm, or corporation under public regulation furnishing franchised services such as cable television, electricity, gas, telephone, water, or sewage service.

Pylon Sign: See subsection 9-106D of this code.

Railroad Right Of Way: A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops, or car yards.

Real Estate Sign: See subsection 9-106D of this code.

Rear Lot Line: See definition of Lot Line, Rear.

Rear Yard: See definition of Yard, Rear.

Rear Yard Line: See definition of Yard Line, Rear.

Receipt Of The Recommendation Of The Plan Commission: The convening of the first regularly scheduled meeting of the standing committee of the board of trustees having jurisdiction over the matter in question or, if there is no such standing committee, the convening of the first regularly scheduled meeting of the board of trustees after the approval by the plan commission of its written findings and recommendations.

Recreational Device: A structure or outdoor facility not attached to the principal structure on a lot and intended principally for recreational use by children such as, but not limited to, a playhouse, a swing set, a trampoline, a sandbox, or a freestanding basketball standard.

Recreational Facility, Residential: An area, court, pool, or facility, other than a recreational device, intended for active recreational or athletic use such as game courts, swimming pools, or ball fields established as an accessory use to a residential dwelling.

Recreational Vehicle: Every vehicle or boat originally designed for living quarters, recreation, or human habitation and not used as a commercial vehicle, including, but not limited to, the following:

- A. Boat: Any vessel used for water travel. A boat mounted on a trailer shall be considered one vehicle.
- B. Camper Trailer: A folding or collapsible vehicle without its own motive power, designed as temporary living quarters for travel, camping, recreation or vacation use;
- C. Motorized Home: A temporary dwelling designed and constructed for travel, camping, recreational or vacation uses as an integral part of a self-propelled vehicle.
- D. Off The Road Vehicle: A vehicle intended principally for recreational use off of roads where state vehicle licenses are required, such as a dune buggy, go-cart, or snowmobile.
- E. Racing Car Or Cycle: A vehicle intended to be used in racing competition, such as a race car, stock car, or racing cycle.

- F. *Travel Trailer:* A vehicle without its own motive power, designed to be used as a temporary dwelling for travel, camping, recreational, or vacation uses.
- G. *Truck Camper:* A structure designed primarily to be mounted on a pickup or truck chassis and designed to be used as a temporary dwelling for travel, camping, recreational, or vacation uses. When mounted on a truck, such a structure and the truck shall together be considered one vehicle.
- H. Van: A general term applied to a noncommercial motor vehicle licensed by the state of Illinois as a recreational vehicle.
- I. Vehicle Trailer: A vehicle without its own motive power that is designed to transport another vehicle, such as a boat, motorcycle or snowmobile for recreational or vacation use and that is eligible to be licensed or registered and insured for highway use. A vehicle trailer with another vehicle mounted on it shall be considered one vehicle.

Residential Driveway: A driveway which provides access to off street parking facilities serving residential buildings.

Residential District: Any district the designation of which begins with the letter "R" as set forth in section 2-101 of this code.

Residential Structure: A structure containing one or more dwelling units.

Residential Use Or Purpose: Any use permitted in a residential district.

Retention Basin: An area containing a permanent pool of water as well as capacity to detain additional storm water for long periods of time.

Right Of Way, Private: A strip of land designated for use for vehicular or pedestrian access or passage, or for utility lines or similar facilities, that has not been dedicated to or accepted by any government agency.

Right Of Way, Public: A strip of land designated for use for vehicular or pedestrian access or passage, or for utility lines or similar facilities, that has been dedicated to and accepted by a government agency.

Roof Sign: See subsection 9-106D of this code.

Rooming Unit: Any habitable room or group of not more than two (2) habitable rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

S/C: See definition of Standard Industrial Classification Manual (SIC).

Screening: A structure erected or vegetation planted that conceals an area from view at all times

during the year.

Senior Citizen Housing: A dwelling unit in a dwelling:

- A. Constructed, maintained, and operated for the exclusive occupancy by: 1) persons who are at least sixty two (62) years of age; 2) persons who are under a disability or are handicapped as determined by the regulations of the United States department of housing and urban development; or 3) two (2) or more persons, one of whom meets the occupancy criteria stated in item 1 or 2; provided, however, that not more than one dwelling unit in such dwelling may be occupied by a resident manager who does not meet the aforesaid occupancy criteria; and
- B. That complies with such special construction standards that may from time to time be imposed on dwellings constructed and maintained pursuant to the United States housing act of 1937 by federal statute or regulation and such additional special construction standards for senior citizen housing as the board of trustees may, from time to time, approve by ordinance or resolution; and
- C. That may provide communal eating facilities for the exclusive use of the aforesaid occupants and their occasional guests.

Setback: The minimum horizontal distance between a specified lot line, measured along a straight line and at a right angle to such lot line, and the nearest point of a building or structure.

Side Lot Line: See definition of Lot Line, Side.

Side Yard: See definition of Yard, Side.

Side Yard Line: See definition of Yard Line, Side.

Sidewalk: Any hard surfaced path, a minimum of twenty four inches (24") in width, the primary purpose of which is to serve as a walkway.

Sight Triangle: See title 7, chapter 1, article D of the village code.

Sign: Any object, device, display, or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or projected images, whether or not illuminated. For definitions of particular functional and structural types of signs, see subsection <u>9-106D</u> of this code.

Sign, Nonconforming: Any sign that fails to conform to the regulations of section <u>9-106</u> of this code.

Sign With Backing: Any sign that is displayed upon, against, or through any material or color surface or backing that forms an integral part of such display and differentiates the total display from the background against which it is placed.

Sign Without Backing: Any sign other than a sign with backing.

Single-Family Attached Dwelling: See definition of Dwelling, Single-Family Attached.

Single-Family Detached Dwelling: See definition of Dwelling, Single-Family Detached.

Site Plan: A graphic rendering of a proposed use, construction, or development that complies with the provisions of section <u>11-604</u> of this code.

Site Plan Review: See section 11-604 of this code.

Smoke: Small gas borne particles other than water that form a visible plume in the air.

Special Use: A use that has some special impact or uniqueness that requires careful review of its location, design, configuration, and impact.

Special Use Permit: See section 11-602 of this code.

Stacking Space: An area, measuring at least eight feet (8') in width and twenty feet (20') in length, for the temporary storage of a vehicle awaiting access to a drive-in establishment or facility.

Standard Industrial Classification Manual (SIC): The 1987 edition of the publication prepared by the office of management and budget, executive office of the president of the United States, available from the superintendent of documents, U.S. government printing office, Washington, D.C., as amended through the effective date of this code.

Story (For Determining Stories In All Districts Other Than Single-Family Residential Districts): Except as hereinafter provided, each level of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above, then the space between the floor and the ceiling next above it. The various levels shall be treated as follows:

- A. A cellar shall not be counted as a story;
- B. A basement shall be counted as one-half  $(^{1}I_{2})$  story;
- C. The first level that is neither a cellar nor a basement, whether or not located above a cellar or basement, shall be counted as the first full story;
- D. Except as provided in subsection E of this definition, any level located above such first full story shall also be counted as a full story; and
- E. Notwithstanding subsection D of this definition, the uppermost level of a structure:
  - 1. Shall not be counted as a story when it has a ceiling height of seven feet (7') or more over a floor area that is less than one-third  $\binom{1}{3}$  of the floor area of the next lower level;

- 2. Shall be counted as one-half  $(^{1}/_{2})$  story when it has a ceiling height of seven feet (7') or more over a floor area that is one-third  $(^{1}/_{3})$  or more, but less than one-half  $(^{1}/_{2})$ , of the floor area of the next lower level; and
- 3. Shall be counted as a full story when it has a ceiling height of seven feet (7') or more over a floor area that is one-half  $\binom{1}{2}$  or more of the floor area of the next lower level.

For the purpose of determining the number of stories, the following rules shall apply:

- A. The floor of a story may split levels provided that there is not more than four feet (4') difference in elevation between the different levels of the floor; and
- B. Where any space has a floor to ceiling height of more than sixteen feet (16'), each sixteen feet (16') in height, and each major fraction thereof in excess of sixteen feet (16') of height or a multiple thereof, shall be treated as a separate story.

Story (For Determining Stories In Single-Family Residential Districts): Except as hereinafter provided, each level of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above, then the space between the floor and the ceiling next above it. The various levels shall be treated as follows:

- A. A cellar shall not be counted as a story;
- B. A basement shall be counted as one-half  $(^{1}I_{2})$  story;
- C. The first level that is neither a cellar nor a basement, whether or not located above a cellar or basement, shall be counted as the first full story;
- D. Except as provided in subsection E of this definition, any level located above such first full story shall also be counted as a full story; and
- E. Notwithstanding subsection D of this definition, the uppermost level of a structure:
  - 1. Shall not be counted as a story when it has a ceiling height of seven feet (7') or more over a floor area that is twenty percent (20%) or less of the floor area of the next lower level;
  - 2. Shall be counted as one-half  $(^{1}/_{2})$  story when it has a ceiling height of seven feet (7') or more over a floor area that is more than twenty percent (20%) and less than one-half  $(^{1}/_{2})$  of the

floor area of the next lower level:

3. Shall be counted as a full story when it has a ceiling height of seven feet (7') or more over a floor area that is one-half  $\binom{1}{2}$  or more of the floor area of the next lower level.

For the purpose of determining the number of stories, the following rules shall apply:

- A. The floor of a story may split levels provided that there is not more than four feet (4') difference in elevation between the different levels of the floor; and
- B. Where any space has a floor to ceiling height of more than fourteen feet (14'), each fourteen feet (14') in height, and any fraction thereof in excess of fourteen feet (14') of height or a multiple thereof, shall be treated as a separate story.

Street: The paved portion of a public or private right of way, other than a driveway, that affords the principal means of vehicular access to abutting property.

Street Line: A lot line separating a street right of way from other land.

Structural Alteration: Any change, other than incidental repairs, that would prolong the life of the supporting members of a structure such as bearing walls, columns, beams, girders, or foundations or that would alter the dimensions or configurations of the roof or exterior walls of a structure or that would increase either the gross or net floor area of a structure.

Structure: Anything constructed or erected, the use of which requires more or less permanent location on the ground, or anything attached to something having a permanent location on the ground, but not including paving or surfacing of the ground. "Structure" shall in all cases be deemed to refer to both structures and buildings.

Structure, Accessory: See section 9-101 of this code.

Structure, Nonconforming: See definition of Nonconforming Structure.

Structure, Principal: See definition of Principal Structure.

Subdivision Ordinance: The Hinsdale subdivision ordinance.

Substantial Conformity: For the purposes of granting plan approvals relating to planned developments and site plans, a newly submitted plan shall be deemed to be in substantial conformity with a previously approved plan if, but only if, the newly submitted plan:

A. Does not increase the number of dwelling units, the gross floor area of the development, or the gross floor area devoted to any particular use; and

- B. Does not increase building coverage by more than ten percent (10%) of the percentage of the previously approved plan; and
- C. Does not change the orientation of any building by more than two percent (2%) compared to the previously approved plan; and
- D. Does not decrease open space; and
- E. Does not change the general location of any open space in any manner to detract from its intended function in the previously approved plan; and
- F. Does not change the general location and arrangement of land uses within the development as shown on the previously approved plan; and
- G. Does not change or relocate rights of way shown on the previously approved plan in any manner or to any extent that would decrease their functionability, adversely affect their relation to surrounding land use and rights of way elements, or reduce their effectiveness as buffers or amenities; and
- H. Does not alter the percentage of any land use in any stage of the development by more than ten (10) percentage points as compared to its percentage in the previously approved plan; and
- I. Does not delay any stage of the previously approved development schedule by more than twelve (12) months; and
- J. Does not violate any applicable law or ordinance; and
- K. Does not depart from the previously approved plan in any other manner determined by the reviewing body or official, based on stated findings and conclusions, to be a material deviation from the previously approved plan.

Surface Area, Antenna: An area determined by adding together the actual surface area of each solid element or part of an antenna or its support structure, where "solid" is defined to include all air spaces that are fully bounded by solid elements.

Temporary Sign: See subsection <u>9-106</u>D of this code.

Temporary Uses: See section 9-103 of this code.

Terrace: A level plane or surfaced patio, abutting a principal building at or within three feet (3') of grade and not covered by any permanent structure.

Terrace, Paved: A terrace with a surface of any material other than natural vegetation.

Townhouse: See definition of Dwelling, Townhouse.

Transitional Service Facility: An authorized and licensed dwelling operated by a public or private agency duly authorized and licensed by any state agency having authority to license and approve said facility that houses individuals being cared for by the agency and deemed by the agency to be capable of living and functioning in the community and that provides continuous professional guidance.

Transitional Service Facility Resident: A person receiving care or treatment at a transitional service facility.

Two-Family Dwelling: See definition of Dwelling, Two-Family.

Usable Open Space: See definition of Open Space And Usable Open Space.

Use: The purpose or activity for which a structure or land is designed, arranged, or intended, or for which it is occupied or maintained.

Use, Accessory: See section 9-101 of this code.

Use Interpretation: An interpretation of the permitted use or special use lists established by this code for the purpose of allowing a use not expressly mentioned in those lists to be established in a zoning district found to be appropriate for such use by application of the standards established in subsection 11-501E of this code.

Use, Nonconforming: See definition of Nonconforming Use.

Use, Permitted: A use that appears on the permitted use list of a particular zoning district.

Use, Principal: See definition of Principal Use.

Use, Special: A use that appears on the special use list in a particular district.

Use, Temporary: See section 9-103 of this code.

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

Variation: See section 11-503 of this code.

Vehicle: Any device for carrying passengers, goods, or equipment including, but not limited to, passenger automobiles, vans, trucks, buses, recreational vehicles, and vehicles used for commercial, business, or governmental purposes.

Vehicle, Recreational: See definition of Recreational Vehicle.

Village Code: The village code of Hinsdale.

Village Engineer: The head of the engineering department of the village.

Village Manager: See title 1, chapter 8, article A of the village code of Hinsdale. The chief administrative official of the village, subject to the superior right and power of the board of trustees to supervise and administer the government and affairs of the village. When used in this code, the term village manager shall refer either to such official or to his or her duly authorized delegate.

Wall Sign: See subsection 9-106D of this code.

Warning Sign: See subsection 9-106D of this code.

Wholesale Trade: A business engaged in the sale of commodities in quantity, usually for resale or business use chiefly to retailers, other businesses, industries, and institutions rather than to the ultimate consumer.

Width Of Lot: See definition of Lot Width.

Window Sign: See subsection 9-106D of this code.

Yard: A required open space on a lot between a lot line and a yard line that is, except as otherwise expressly authorized by this code, unoccupied and unobstructed from grade to the sky.

Yard, Corner Side: A yard extending from the front yard line to the rear lot line between the corner side lot line of the lot and the corner side yard line.

Yard, Front: A yard extending across the entire front of a lot between the front lot line of the lot and the front yard line.

Yard Line, Corner Side: A line drawn parallel to a corner side lot line at a distance therefrom equal to the depth of the required corner side yard.

Yard Line, Front: A line drawn parallel to a front lot line at a distance therefrom equal to the depth of the required front yard. If the front lot line is not straight, then the front yard line shall be drawn as nearly parallel to such front lot line as possible but shall in no case be drawn closer to any point on such front lot line than the depth of the required front yard.

Yard Line, Rear: A line drawn parallel to a rear lot line at a distance therefrom equal to the depth of the required rear yard.

Yard Line, Side: A line drawn parallel to a side lot line at a distance therefrom equal to the depth of the required side yard.

Yard, Perimeter: A yard within, and abutting the boundary of, a planned development.

Yard, Rear: A yard extending along the full length of the rear lot line between the side lot lines and between the rear lot line and the rear yard line, except that in the case of a corner lot the rear yard shall extend from the inner side lot line to the corner side yard line.

Yard, Required: The minimum yard depth designated in the regulations of this code establishing minimum front, corner side, side, and rear yard requirements for various uses, structures, and districts.

Yard, Side: A yard extending along a side lot line from the front yard to the rear yard between the side lot line and the side yard line.

Zoning Board Of Appeals: The zoning board of appeals of the village of Hinsdale. See section <u>11-102</u> of this code.

Zoning Classification: See definition of Classification Or Zoning Classification.

Zoning Code: The Hinsdale zoning code; that is, this code. Unless the context specifically requires otherwise, all references to this code shall be deemed to refer to any certificate, permit, approval, resolution, or ordinance granted or adopted pursuant to this code.

Zoning District: A part of the corporate area of the village wherein regulations of this code are uniform. See also section <u>2-101</u> of this code.

Zoning District Map Or Zoning Map: See section 2-103 of this code.

Zoning Enforcement Official: The village manager of the village. (Ord. 92-43, §§ 2A, 4B, 10-6-1992; Ord. 95-10, §§ 2, 3, 3-21-1995; Ord. 95-14, § 3B, 4-24-1995; Ord. 95-15, § 2, 4-24-1995; Ord. 95-33, § 2, 10-3-1995; Ord. 97-4, § 10, 3-4-1997; Ord. 99-6, §§ 5A-E, 7D, 3-2-1999; Ord. O2002-66, § 5, 10-1-2002; Ord. O2004-44, § 2, 8-17-2004; Ord. O2005-38, § 2, 8-16-2005; Ord. O2006-21, § 2, 3-7-2006; Ord. O2007-09, § 3, 1-23-2007; Ord. O2007-10, § 3, 1-23-2007; Ord. O2007-16, § 4, 2-20-2007; Ord. O2007-62, § 5, 9-4-2007; Ord. O2008-42, 8-12-2008; Ord. O2009-47, § 4, 9-1-2009; Ord. O2010-07, § 3, 2-1-2010; Ord. O2010-14, § 3, 3-23-2010; Ord. O2012-13, 3-20-2012)

# BURKE, WARREN, MACKAY & SERRITELLA, P.C.

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SUSAN J. MILLER OVERBEY DIRECT DIAL NUMBER (312) 840-7051 soverbey@burkelaw.com

February 7, 2018

### VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Village of Hinsdale Zoning Board of Appeals 19 E. Chicago Avenue Hinsdale, Illinois 60521

Re:

504 Oak Street, Hinsdale, Illinois

Zoning Board of Appeals Calendar No. App-03-17

#### Ladies and Gentlemen:

On January 3, 2018, Avra Properties Fund II End-User, LLC ("Avra") and Bayit Builders, LLC ("Bayit") submitted their Response in Opposition to James and Nancy Dugans' Application for Zoning Appeal. In further support of said Response, Avra and Bayit hereby submit a letter dated May 27, 2016 from the Village of Hinsdale's Village Planner, Chan Yu, to Ginny Stewart, the listing agent of 504 S. Oak St. This letter states that pursuant to a review of the Zoning Code, 504 S. Oak St. could be developed as a single-family residence provided it complied with the Zoning Code's bulk, space, and yard requirements. The letter does not state that 504 S. Oak St. is part of a single zoning lot with 422 S. Oak St. This letter was provided to Avra and Bayit before it purchased the 504 S. Oak St. and shows – contrary to the Dugans' assertion – that Avra and Bayit did all possible due diligence prior to purchasing the property.

Very truly yours,

Jusan J. Miller Overbey
Susan J. Miller Overbey

Enclosures

cc: Robert O'Donnell (w/encl.)



VILLAGE OF HINSDALE COMMUNITY DEVELOPMENT DEPARTMENT

May 27, 2016

Ms. Ginny Stewart 22 W. First St. Hinsdale, IL 60521

RE:

Pre-Plan Review for 504 S. Oak St., Hinsdale, IL.

NOTE:

This letter is not an approval of, or an authorization to commence any

work of any kind.

Dear Ms. Stewart,

We have reviewed your request for a pre-plan review using the information you provided. Our review was made pursuant to the amended Hinsdale Zoning Code, which was approved by the Village Board of Trustees on April 25, 1989. The review below includes the most recent amendments adopted by the Village Board on January 18, 2005. Based on the provisions of that code, we can offer the following.

The property commonly known as 504 S. Oak St. is located in the "R-1 Single Family Residential District." The property has legal frontage on Oak Street, with a front yard lot width of 78.00', and average lot depth of approximately 332.11'. The area of the lot is approximately 25,905 square feet.

The property is a nonconforming interior lot within the R-1 Single Family Residential District. The plat of survey submitted does not depict any recorded building setback lines or easements.

If your intent is to demolish the structure, the Village would require a demolition permit, final readings on all meters, all meters removed by the appropriate agencies, and all utilities disconnected at their mains at time of application.

Any new home built on the lot or addition to the existing home must comply with the requirements of Section 3-110 of the Hinsdale Zoning Code and the following bulk, space, and yard requirements:

## **MAXIMUM HEIGHT:**

Principal Structure:

a.) Smallest Side Yard provided of 14 Feet or Less

30 Feet

b.) Smallest Side Yard provided of not less than 14 feet and not more than 24 feet 30 Feet plus 20 percent of the difference between the smallest side yard provided and 14 feet

c.) Smallest Side Yard of more than 24 feet

32 Feet plus 10 percent of the difference between the smallest side yard provided and 24 feet, but not to exceed 34 feet

Accessory Structures: 15 feet

### MINIMUM YARDS:

Front yard	Average of Block*
Interior Side yard	10.00 feet**
Rear yard	50.00 feet**

- \* Section 3-110-I(8) states that when a lot is located on a block in which 50% or more of the lots have already been developed, the front yard or corner side yard requirements applicable to such lot shall be determined by taking the average of the setbacks of the buildings on all of the lots on such frontage; provided, however, that no such front or corner side yard shall be permitted to be less than 25 feet in the R-1 and R-2 District and 20 feet in the R-3 and R-4 District. You would have to confirm the setback of the block prior to issuance of a building permit.
- \*\* Section 3-110-I (9) states that an accessory structure located in the rear 20% of the lot shall not be required to maintain an interior side or rear yard in excess of 2 feet provided, however, that when the rear yard of such lot abuts the side yard of an adjacent lot, then detached accessory structures and uses shall not be located closer than 6 feet from said side yard. No accessory structure or use, or combination of such structures or uses, other than permitted accessory parking garages, located within an otherwise required side or rear yard pursuant to this paragraph shall occupy more than 30 percent of such required yard.

### **MAXIMUM BUILDING COVERAGE**

Maximum combined total principal and accessory uses building coverage is based on 25% of the lot size

 $25,905 \times 25\% = 6,476.25$  square feet

The maximum total accessory uses building coverage is based on 10% of the lot size  $25,905 \times 10\% = 2,590.50$  square feet

## **MAXIMUM FLOOR AREA RATIO (FAR):**

Maximum floor area ratio is calculated by the size of the lot 25,905 square feet x .20 + 2,000 totaling 7,181 square feet.

## **MAXIMUM TOTAL LOT COVERAGE**

Lots with an area greater than 10,000 square feet have maximum total lot coverage of 50%. Lots with an area lesser than 10,000 square feet have maximum total lot coverage of 60%.

## **MAXIMUM LOT COVERAGE IN REAR YARD**

Maximum lot coverage in the rear yard is 30%.

This analysis is based solely on the information you have provided to the Village with your request for a pre-plan review. If any of the information regarding the property that is the subject of this review is determined to be different from what you provided, or if any relevant additional information is discovered during the Village's regular building and zoning review, then the analysis provided herein, or any part of it, may change. The Village reserves the right to correct any errors in this review prior to the issuance of a building permit.

This review does not create any obligation on the Village to issue any kind of permit to you or any right in you to any such permit. You must properly prepare and file with the Village the appropriate applications before the Village will begin consideration of whether a permit should be issued.

Respectfully,

VILLAGE OF HINSDALE

Chan Yu, Village Planner