

**VILLAGE OF HINSDALE  
ZONING BOARD OF APPEALS  
MINUTES OF THE MEETING  
APRIL 18, 2018**

**1. CALL TO ORDER**

Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, April 18, 2018 at 6:31 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

On behalf of the Board, Chairman Neiman offered condolences at the passing of Member Keith Giltner's father, stating our thoughts and prayers are with him. He thanked retiring member Marc Connelly for his many years of service on the Zoning Board, and made mention of his soft, quiet wisdom that will be missed. He also welcomed new member Tom Murphy to the Board.

**2. ROLL CALL**

**Present:** Members Gary Moberly, Joseph Alesia, Tom Murphy, Kathryn Engel, John Podliska and Chairman Bob Neiman

**Absent:** Members Keith Giltner

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

**3. APPROVAL OF MINUTES**

**a) Regular meeting of February 22, 2018**

Following corrections to the draft minutes, Member Engel moved to **approve the draft minutes of February 22, 2018, as amended.** Member Moberly seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** Member Giltner

Motion carried.

**b) Regular meeting of March 21, 2018**

Following corrections to the draft minutes, Member Moberly moved to **approve the draft minutes of March 21, 2018, as amended.** Member Alesia seconded the motion.

**AYES:** Members Moberly, Alesia, Murphy, Podliska and Chairman Neiman

**NAYS:** None

**ABSTAIN:** Member Engel

1           **ABSENT:** Member Giltner

2  
3           Motion carried.

4  
5           **4. APPROVAL OF FINAL DECISION**

6           a) **V-01-18, 415 South Vine Street**

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

8           The agenda was revised to include the approval of these final decisions;  
9           however, the Board agreed they would like more time to review the  
10          documents. As there is no substantive issue in either case affected by a  
11          delay of the approval, Member Podliska moved **to delay approval of the**  
12          **final decisions for V-01-18, 415 South Vine Street and V-02-18,**  
13          **Monument Sign on Landscaped Median of Salt Creek Lane.** Member  
14          Engel seconded the motion.

15  
16          **AYES:** Members Moberly, Alesia, Murphy, Engel, Podliska and Chairman  
17          Neiman

18          **NAYS:** None

19          **ABSTAIN:** None

20          **ABSENT:** Member Giltner

21  
22          Motion carried.

23  
24           **5. RECEIPT OF APPEARANCES**

25          Court Reporter Kathy Bono administered the oath to all persons intending to  
26          speak this evening.

27  
28           **6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE**  
29           **PUBLIC COMMENT OF A GENERAL NATURE – None**

30  
31           **7. PRE-HEARING AND AGENDA SETTING**

32          a) **V-04-18, 550 West Ogden Avenue**

33          Mr. David Kanzler, CEO of Hinsdale Orthopedics and property manager,  
34          addressed the Board. He explained they are asking for this variance for two  
35          reasons: 1) Patient safety, the large landscaping structure blocks sightlines  
36          for patients and cars; and 2) there are parking challenges in the area, 20  
37          employees are being parked remotely. Granting the variance would provide  
38          an additional 4-6 parking spaces. Mr. Kanzler reported the business has  
39          been in place since 1980, and although no injury has been reported, there  
40          have been fender benders, but he cannot confirm whether the parking lot  
41          landscaping is the cause. He pointed out the neighbors are concerned that  
42          employees and patients do not park in front of their houses, since the loss of  
43          the Amlings parking. Member Moberly noted the landscaping is very tall; it  
44          could possibly be made smaller and lower. Mr. Kanzler agreed, but pointed  
45          out this would not address the parking need.

46          Director of Community Development Robb McGinnis confirmed the parking,  
47          as it exists, is grandfathered in well before 1989. There is a 60 space

1 deficiency under the current code.

2 The Board had no further questions for the applicant; Chairman Neiman set  
3 the public hearing for May 16, 2018.  
4

5 **b) V-05-18, 842 West Seventh Street**

6 Mr. Dan Roberts, Roberts Design and Build, addressed the Board stating that  
7 Mr. John Behrendt from his office addressed the ZBA previously for the  
8 original application. In this revised application, they are requesting corner  
9 side yard setback relief, but have reduced the request as a result of Board  
10 suggestions at the pre-hearing in February. They are able to make that  
11 compromise because they are no longer trying to keep a portion of the  
12 existing structure. The corner side yard setback would be reduced from the  
13 required 15' feet to 11.5' feet. He explained this corner lot is 45' feet wide by  
14 125' feet deep, and the hardship is trying to fit a reasonable house on the  
15 property.

16 The second request is for maximum building coverage relief of 1%. He  
17 pointed out there are many 47' foot lots; to his knowledge, this is the only 45'  
18 lot. They are only asking for enough relief to make the building lot coverage  
19 the same as a 47' foot wide lot would permit. This is 62' square feet of relief,  
20 which makes a huge difference in making a plan work. He noted there are  
21 always storm water concerns with a larger footprint, but in this case there are  
22 two streets for water to flow to, and as a corner lot there is more grass to  
23 absorb water. He has analyzed the building coverage relief relative to the 47'  
24 foot and 50' foot lots that are more prevalent, and he believes the request is  
25 reasonable and comparable to those.

26 Mr. Roberts said he has no feedback from neighbors as yet. They haven't sat  
27 down with everyone yet, but will before the next meeting. He does not believe  
28 this will impact any neighbor, as this property is up against Route 83.  
29 Chairman Neiman said although the two requests are interrelated, the seven  
30 standards for approval would have to be met for each request. It was clarified  
31 that the architect/builder is listed as the applicant on this case, but is acting  
32 on behalf of the property owner, Mr. Frank Spirovski. Mr. McGinnis said he  
33 has not done a count, but there are many 47' lots in the Village. He has never  
34 seen a 45' lot before.

35 The Board had no further questions for the applicant; Chairman Neiman set  
36 the public hearing for May 16, 2018.  
37

38 **8. PUBLIC HEARINGS**

39 **a) APP-03-17, 504 South Oak Street & 422 South Oak Street**

40 Chairman Neiman opened the public hearing on this matter and reminded the  
41 Board this is a continuation of the hearing from February.

42 Member Alesia stated that he was absent from the February 22<sup>nd</sup> hearing, but  
43 has reviewed the materials and the transcript and is ready to participate.  
44 There was no objection to his participation. Chairman Neiman also clarified  
45 that the arguments tonight are limited to the supplemental issue from  
46 February 22<sup>nd</sup>. He asked both parties to limit their arguments in accordance  
47 with the 10 minute rule which should suffice.

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

There being no further testimony, or questions from the Board, Member Podliska moved to **close the public hearing for APP-03-17, 504 South Oak Street & 422 South Oak Street**. Member Engel seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** Member Giltner

Motion carried.

### **DELIBERATIONS**

Chairman Neiman began deliberations by reading the standard that is applicable from the zoning code which states that the appeal procedure is provided as a safeguard against arbitrary, ill-considered or erroneous administrative decisions. It is intended to avoid the need for legal action by establishing procedures to review and correct administrative errors, but it is not intended as a means to subvert the clear purpose, meanings or intent of the code or the rightful authority of the Village Manager to enforce the requirements of the code. To that end the reviewing body, (the Zoning Board of Appeals), should give deference to the spirit and intent of the language of the code and reasonable interpretations of that code by those charged with its administration.

Member Murphy asked if a resident with one zoning lot could build guest quarters above their garage that included a kitchen, etc. if they state no one is going to live there. Mr. McGinnis explained you can only have one principal use on a lot, or zoning lot, or lot of record. So, when people ask for a pool house or a coach house, it has to be one element short of a dwelling unit. In other words, either a kitchen, bathroom or bedroom would have to be eliminated. Additionally, the Village makes sure the utilities come off the principal structure.

Member Podliska referenced the standard of review read by Chairman Neiman and concludes it is a reasonable interpretation contained in the July 12, 2017 letter; the structures are capable of being separately maintained, altered, enlarged, rebuilt, restored and repaired in conformance with §10-104, and therefore these are two separate lots, and the building on 504 S. Oak can proceed. He believes this is a reasonable interpretation, and he is strongly influenced by the photograph included in Bayit Properties submission, Exhibit J. that illustrates 504 S. Oak is a stand-alone single-family residence. Additionally, the property has its own access and its own billing for purposes of utilities. He noted that the Dugans submit that if this property is an

1 accessory to the principal structure, it is one zoning lot that can't be  
2 subdivided thereafter, but he disagrees with the analysis. Even if the code  
3 states it became one lot, the ZBA has the authority, if the circumstances are  
4 appropriate, to subdivide. The two existing structures conform to the  
5 surrounding area. Although the purchaser wants to tear the building down  
6 and build something else, and while the Dugans are asking to have this  
7 treated as a single lot, and part of their argument is their reliance upon the  
8 appearance of this lot, they may not enjoy the same view if something larger  
9 is built on the entire property.

10 Member Moberly agrees with Member Podliska's remarks, and added there  
11 were two houses on these properties in 1989, two houses in 1994 and two  
12 houses on two lots were sold in 2017.

13 Member Alesia also agrees, and added that when the Girschs went in to make  
14 their changes they were told they were creating an accessory structure, and  
15 would lose their right to sell this as a separate lot. Mr. Girsch changed the  
16 plans and built a property that is capable of being a single-family dwelling. It  
17 is capable of being a single-family residence regardless of how it was used  
18 since 1994. So, he concludes the Village's decision in this matter is  
19 reasonable.

20 Member Engel concurred, and added the record indicates this pre-code  
21 structure was remodeled, not entirely demolished and rebuilt.

22 Member Murphy disagrees and believes this property is clearly an accessory  
23 in use to 422 S. Oak. He is not convinced by the argument that having your  
24 next door neighbor's house and storing stuff in it makes it an accessory, but  
25 one of the provisions states the use of the structure has to be customarily  
26 found as an incident to such principal structure and use. Nor is he convinced  
27 that Mr. Girsch went to great lengths, because he knows Jerry Girsch and  
28 he's a careful guy. If he wanted to make sure, he would have asked for a  
29 letter of clarification at the time. There is no evidence there was ever a  
30 resident of the 504 S. Oak building; it was used for nothing and it was  
31 designed for nothing but to be the coach house and a four-car garage.  
32 Member Murphy added that, with all that said, he does not feel the decision  
33 the Village made is unreasonable, but he would have made it differently. He  
34 added, after hearing the standard of review, it would be hard to say his views  
35 are right enough that the Village is wrong.

36 Chairman Neiman said this is a difficult decision, and commended both  
37 attorneys for submitting good arguments; however, he does not believe the  
38 Dugans have established that the Village Manager's decision was arbitrary,  
39 ill-considered or erroneous. Mr. Girsch came back, and changed the plans,  
40 and with those changes these would remain two separate lots. Additionally,  
41 he is not sure how the builder was supposed to do any more due diligence  
42 than they did. The properties were marketed as two separate lots. The  
43 developer came back to the Village, and got assurances from the Village that  
44 it was two separate lots. He will vote to affirm the decision of the Village  
45 Manager in the letter of July 12, 2017.

46  
47 Member Alesia moved to deny APP-03-17, 504 South Oak Street & 422

1       **South Oak Street.** Member Podliska seconded the motion.  
2

3       **AYES:** Members Moberly, Alesia, Engel, Podliska and Chairman Neiman  
4

5       **NAYS:** None  
6

7       **ABSTAIN:** Member Murphy  
8

9       **ABSENT:** Member Giltner  
10

11       Motion carried.  
12

13       **9. NEW BUSINESS – None**  
14

15       **10. OLD BUSINESS – None**  
16

17       **11. ADJOURNMENT**

18       With no further business before the Zoning Board of Appeals, Member Moberly  
19       made a motion to **adjourn the meeting of the Zoning Board of Appeals of**  
20       **April 18, 2017.** Member Engel seconded the motion.  
21

22       **AYES:** Members Moberly, Alesia, Murphy, Engel, Podliska and Chairman  
23       Neiman  
24

25       **NAYS:** None  
26

27       **ABSTAIN:** None  
28

29       **ABSENT:** Member Giltner  
30

31       Motion carried.  
32

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

34         
35       Christine M. Bruton  
36       Village Clerk

Approved: May 16, 2018

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

BEFORE THE HINSDALE ZONING BOARD OF APPEALS

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

CONTINUED REPORT OF PROCEEDINGS had of  
the above-entitled matter before the Hinsdale  
Zoning Board of Appeals, at 19 East Chicago  
Avenue, Hinsdale, Illinois, on April 18, 2018,  
at the hour of 6:30 p.m.

BOARD MEMBERS PRESENT:

MR. ROBERT NEIMAN, Chairman;

MR. GARY MOBERLY, Member;

MR. TOM MURPHY, Member;

MR. JOE ALESIA, Member;

MR. JOHN F. PODLISKA, Member; and

MS. KATHRYN ENGEL, Member.

\* \* \* \* \*

1 ALSO PRESENT:

2 MS. CHRISTINE BRUTON, Deputy Village  
3 Clerk;

4 MR. ROBB MCGINNIS, Director of  
5 Community Development;

6 MR. MICHAEL MARRS, Village Attorney;

7 MR. ROBERT O'DONNELL, Attorney for  
8 Mr. & Mrs. Dugan;

9 MS. SUSAN OVERBY, Attorney for Bayit  
10 Builders and Avra Properties.

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06:56:54PM 10 CHAIRMAN NEIMAN: Next matter is the  
11 continuation of the appeal Case APP-03-17, 504  
12 South Oak Street, 422 South Oak Street.

13 MR. ALESIA: Before we begin, just for  
14 the record, on February 22nd I was absent from  
15 the meeting, but I have had a chance to review  
16 all the materials as well as the transcript of  
17 that meeting, so unless there's any objection,  
18 I'm ready to participate.

06:57:28PM 19 CHAIRMAN NEIMAN: Great. Keep in mind  
20 that the arguments this evening are limited to  
21 the supplemental issue that we discussed at the  
22 February 22nd meeting. It's not necessary to



1 rehash the other arguments that were made on  
2 February 22nd and so if both parties could limit  
3 their arguments to that issue. I think under  
4 the circumstances, normally, we have a 15-minute  
5 rule. I think a 10-minute rule for each side on  
6 the supplemental issues should suffice and if  
7 you need more time, we will give you more time.

8 MR. O'DONNELL: Good evening. Again,  
9 my name is Bob O'Donnell. I represent the  
10 appellants James and Nancy Dugan.

11 I am going to refer to the same  
12 packet of material that I used at the last  
13 hearing. It's 13 pages. I have extra hard  
14 copies if anyone needs it. If you all have  
15 yours.

16 Shortly before the last hearing was  
17 adjourned an issue arose actually when the  
18 village attorney was speaking, he was holding up  
19 a document that he identified as a certificate  
20 of occupancy for the 504 property and I objected  
21 because we had not seen any such document and we  
22 had made two requests under the Freedom of

1 Information Act to the village and no such  
2 document appeared.

3 Since that time, and I'll not  
4 rehash what occurred that resulted in the  
5 adjournment, but since that time, we have had an  
6 opportunity to get ahold of that document as  
7 well as return to the village and review all of  
8 the documents that the village had responsive to  
9 our request and compare them to what we had  
10 previously been given.

11 The document -- and it's a document  
12 that is the first page of Group Exhibit A to the  
13 Bayit Builders' supplemental submission. I  
14 would put it on the screen but candidly, it's so  
15 small, you wouldn't be able to see it.

16 But the document is not a  
17 certificate of occupancy. It's a document on a  
18 village form, it's an application for a  
19 certificate of occupancy. In the upper right-  
20 hand corner of the document makes reference to a  
21 permit number. That is the building permit  
22 number and if you take a look at the second page

1 of that group exhibit, that is the application  
2 for the building permit. It shows the building  
3 permit number and the date of issuance of the  
4 permit 3/29/94.

5 That 3/29/94 date is the same date  
6 that appears on the application for the  
7 certificate of occupancy. So it appears,  
8 commonly done in many municipalities, that when  
9 the building permit is issued, one submits the  
10 application for a certificate of occupancy which  
11 the village then holds in its file until such  
12 time as the project is completed and the CO is  
13 issued.

14 The document also on the form that  
15 is the application for the certificate of  
16 occupancy has about 80 percent down that first  
17 page a section that says to be filled out by the  
18 building department. There are two lines, one  
19 for a conforming use, the other for a  
20 nonconforming use. And here the word, the  
21 letters ok are written in the conforming use.  
22 To me that means that the use that's proposed

07:00:56PM

07:01:26PM

1 and the building to be built is a conforming use  
2 in the zoning district or in a class of  
3 occupancy R-1 the zoning district is listed just  
4 beneath.

5 There's nothing on this document  
6 that reflects or indicates or states in any way  
7 that a certificate of occupancy was approved.  
8 This is an application not a certificate of  
9 occupancy.

07:02:02PM 10 However, the only purpose of my  
11 objection really was that there was a document  
12 being identified that we had not seen. A  
13 certificate of occupancy would have been  
14 required on the 504 lot for the accessory  
15 structure. In other words, if it was a four-  
16 car garage with a recreation room, the village  
17 now and then requires a certificate of occupancy  
18 if the property is going to be used.

07:02:38PM 19 A certificate of occupancy is not  
20 limited to being issued for residential units,  
21 single-family homes. It is required to be  
22 issued for a structure that is going to be used.

1 So a rec room with a four-car garage, an  
2 apartment with a four-car garage, an office with  
3 a four-car garage, even an accessory structure  
4 would have required a certificate of occupancy.

5 So the certificate of occupancy  
6 does not support in any way, shape or form, that  
7 the structure on the 504 property was not an  
8 accessory structure, which really leads us back  
9 to the fact that the coach house, which has been  
10 identified frankly in every writing that I have  
11 seen, the coach house on the 504 lot is an  
12 accessory structure.

13 Your code and Exhibit 4 to the  
14 packet I referred to Section 9-101.B, the  
15 definition of accessory structure applies hand  
16 in glove to the coach house. I don't need to go  
17 through it. I did that last time. It applies.

18 If it is an accessory structure,  
19 the structure on the 504 lot, and it is, it must  
20 be located on the same zoning lot as the  
21 principal structure. That's according to  
22 Section 12-206 or Exhibit No. 6.

1                   A zoning lot may not be divided  
2       unless the lots are conforming if they are  
3       subdivided. Here the two lots, particularly the  
4       504 lot, would not be conforming if divided  
5       therefore the zoning lot cannot be divided.

6                   And most importantly, that's  
7       exactly what the Girschs were told in 1993 by  
8       the village manager. If you take a look at  
9       Exhibit No. 8, what they were told is speaking  
10      directly to this point, "In summary, the zoning  
11      lot appears to be large enough to allow your  
12      clients to pursue their improvement plans.  
13      However, once the coach house is accessory to  
14      the principal structure, the property consists  
15      of one zoning lot and cannot be subdivided in  
16      the future."

17                  Now, you might say well, what they  
18      were contemplating at that time is a four-car  
19      garage with a rec room. Doesn't matter.  
20      Whether it's a four-car garage with a rec room  
21      or a four-car garage with an apartment, it's  
22      still a coach house. It still fits the

1 definition of an accessory structure.

2 The point that the village manager  
3 was making is if you are going to have an  
4 accessory structure, which they did, then that  
5 accessory structure has to be part of a zoning  
6 lot, the zoning lot can't be divided. That was  
7 also -- that same point was confirmed by the  
8 village manager in July of 2017.

9 When I look at the supplemental  
10 submittal of Bayit Builders, they make a  
11 statement, and it's interesting, they make a  
12 statement in the last page of their submission,  
13 and they specifically make reference to the  
14 single-family home, the so-called single-family  
15 home that exists on the 504 property, and they  
16 say that that single-family home can't be  
17 converted, using the word converted, to an  
18 accessory structure.

19 The structure on the 504 property  
20 was never used as a single-family home. At no  
21 point in time was that structure used as  
22 anything than accessory to the principal

1 structure on the 422 lot.

2 That structure, from the time it  
3 was built in the early '90s until today, was  
4 used only as a four-car garage to service the  
5 principal structure on the 422 lot and in  
6 addition to the four-car garage serving only the  
7 principal structure on the 422 lot it had an  
8 apartment, a living area. That living area does  
9 not take -- does not convert it into a single-  
10 family home. It was never used as a single-  
11 family home and your code talks in terms of use.

12 CHAIRMAN NEIMAN: Where does the  
13 definition of a zoning lot address the idea that  
14 how the owner uses any of the buildings on the  
15 lot is relevant?

16 MR. O'DONNELL: If I may direct you to  
17 that point, Mr. Chairman, and I have extra  
18 copies of this.

19 That Section 12-206 when -- and I  
20 included the entire provision, but as one reads  
21 this and the relevant portion is a tract of land  
22 consisting of one or more lots of record. Yes,



1 here. Or parts thereof under single ownership  
2 or control. Yes. Located entirely within a  
3 block and occupied by, occupied by, a principal  
4 building and its accessory buildings.

5 The 422 lot contained a single-  
6 family home with a single occupant utilizing an  
7 accessory structure that existed on the 504 lot.  
8 Section 12-206 defines a zoning lot to fit what  
9 occurred here.

07:08:28PM

10 So directly to your point, Chairman  
11 Neiman, occupied by or used by would mean one  
12 and the same. Those two lots were occupied as a  
13 single zoning lot by a principal structure and  
14 an accessory structure from the time that  
15 structure on the 504 lot was built in 1994  
16 remaining to today. It was never used as a  
17 single-family home.

07:09:04PM

18 CHAIRMAN NEIMAN: So you read the term  
19 occupied by in Section 12-206 to imply that the  
20 owner has to actually live there?

21 MR. O'DONNELL: I'm saying in this  
22 instance, yes. The owner did live on the zoning

1 lot with a house on one lot 422 and an accessory  
2 structure on 504.

3 CHAIRMAN NEIMAN: But are you saying  
4 that the owner didn't occupy the building on the  
5 south lot?

6 MR. O'DONNELL: When you say south, you  
7 are talking 504?

8 CHAIRMAN NEIMAN: Yes.

9 MR. O'DONNELL: No. The owner occupied  
10 the zoning lot. This occupied by refers to the  
11 zoning lot. The zoning lot is the two or more  
12 lots under single ownership or control.

13 CHAIRMAN NEIMAN: Thank you.

14 MR. ALESIA: You mention use and  
15 there's been a lot of back and forth on use.

16 What section can you point us to  
17 where use is pivotal in support of your argument?

18 MR. O'DONNELL: The most frequent use  
19 of the word use, I knew I was going to do that.  
20 If you look at tab 4, that's the definition of  
21 an accessory structure or use.

22 So in each of the five elements of

07:09:42PM

07:10:14PM

1     what constitutes or what constitutes an  
2     accessory structure, it makes specific reference  
3     to use or use with respect to each one of those.

4             So my point there is a structure  
5     can be accessory to a principal structure either  
6     by designation or use. And here I would suggest  
7     it was both but it was clearly by use because  
8     from the time it was built until today it  
9     served, it meaning the structure on the 504  
10    property, served only the principal structure on  
11    the 422 lot. That makes it an accessory  
12    structure. One in Hinsdale can only have an  
13    accessory structure as part of a zoning lot.

14            MR. MURPHY: You are talking about a  
15    definition of accessory structure or use. I'm  
16    not surprised that use pops up in each of those  
17    because in each case we are talking about a  
18    structure or use as though you can have a  
19    structure and you can have a separate something,  
20    a walkway or whatever that is a use, I presume.

21            So I guess I'm not following the  
22    argument that in defining accessory structure

1 use, the use of the word use means that the  
2 structure evaluation is going to be done only by  
3 use because structure and use are two different  
4 things in the definition. Does that make sense?

5 MR. O'DONNELL: Candidly, not really.  
6 And I can tell you why it doesn't make sense.  
7 Because here it talks about an accessory  
8 structure.

9 MR. MURPHY: Or use.

10 MR. O'DONNELL: Or use.

11 But I think most applicable here is  
12 that we have a structure on the 504 property.  
13 What is that structure? First and foremost the  
14 structure is a four-car garage.

15 Now, a four-car garage doesn't  
16 necessarily make it accessory but in this  
17 instance, the two garages that existed prior to  
18 1994, one on 504, one on 422, were torn down.  
19 They were replaced with a single four-car garage  
20 serving only the 422 property because that was  
21 the only occupant, that was the only user of the  
22 property.

1                   So if we focus -- and I would  
2       submit to you by definition the primary function  
3       of a coach house historically is to house today  
4       vehicles, yesterday it used to be the horse and  
5       carriage with living quarters attended to it.  
6       But always defined as accessory.

7                   In fact, I did look up several  
8       definitions this afternoon and historically, a  
9       coach house served what you call it a principal  
10      structure or principal use, historically, it's  
11      often referred to as the main house but it also  
12      often refers to the property, what we are now  
13      calling the zoning lot, being the estate.  
14      Whatever term you use, that structure served  
15      only the 422 principal structure.

16                  MR. MURPHY: I get that.

17                  I guess what I'm saying is just as  
18      a legal matter reading this you are saying an  
19      accessory structure or use, two things, but  
20      accessory structure or accessory use A and B.  
21      We are not talking about an accessory use here,  
22      we are talking about a structure.

1 MR. O'DONNELL: Well, in a sense we are  
2 talking about both. It doesn't say accessory  
3 structure and use, it says accessory structure  
4 or use.

5 MR. MURPHY: Right, but what would  
6 accessory use be? What kind of a nonstructure --  
7 the words "or use" have to mean something.

8 MR. O'DONNELL: They do. I agree.

9 MR. MURPHY: So if something is not an  
10 accessory structure, it can still be an  
11 accessory use. What kind of thing are you  
12 talking about?

13 MR. O'DONNELL: One that would come to  
14 my mind where one utilized a vacant area but  
15 landscaped, used it for children's recreation,  
16 had a patio, not technically a patio, maybe a  
17 structure, that's why I'm kind of not going  
18 there. You can clearly incorporate the estate  
19 to include a large open space area.

20 MR. MURPHY: Exactly how I would read  
21 it. But then when I go through this definition,  
22 I should be able to cross out the words "or use"

1 every time through here and still read it and I  
2 would get the definition of accessory structure.  
3 I take out "or use" in any of these places  
4 because that's B of the two-prong definition we  
5 are using, I take out "or use" in each of those  
6 places, I should still be able to read this and  
7 have an accurate definition of an accessory  
8 structure, right?

9 MR. O'DONNELL: Yes. Yes. I agree.

07:15:38PM 10 MR. MURPHY: It seems to me, what it's  
11 worth, it seems to me the word serves is much  
12 more meaningful with respect to the definition  
13 of accessory structure than the word use because  
14 you should be able to just eliminate those words  
15 use to come up with a definition of structure.  
16 And then I think the concept you are talking  
17 about is more of the word use is No. 1, serves,  
18 comes up in No. 3 as being served. Does that  
19 make sense?

07:16:12PM 20 MR. O'DONNELL: No, it does. I  
21 understand. And again, it's either or. It's  
22 either a principal structure or use or it could

1 be both.

2 MR. MURPHY: Agree. Agree. Okay.

3 MR. O'DONNELL: Because when we talk  
4 about a garage, you know, and again, it's not  
5 just the garage in this case, you have the  
6 connective motor court that straddles the  
7 property line so that's really part of the  
8 parking/driving uses that are on what I believe  
9 to be the single zoning lot.

07:16:46PM 10 MR. MURPHY: I guess my point is when  
11 you diagram this, when you break this down I  
12 think with the contract division, I'm not left  
13 with use being the defining aspect of an  
14 accessory structure. And there's still plenty  
15 of things in here that tie the two together and  
16 it still makes sense but I don't think the code  
17 is saying use is the governing fact.

18 MR. O'DONNELL: No. And I'm not  
19 suggesting that it is. I was merely responding  
07:17:18PM 20 to Member Alesia.

21 MR. MURPHY: I thought you said that.  
22 I watched all the earlier --



1 MR. O'DONNELL: No. And I didn't --

2 MR. MURPHY: You did not say that  
3 before? Okay. I misunderstood.

4 MR. O'DONNELL: Well, I didn't watch so  
5 if you say I did, I did.

6 MR. MURPHY: I thought that was a key  
7 part of your argument. If it is not, then I'm  
8 sorry.

9 MR. O'DONNELL: I don't think it was.  
10 I was just responding to where does use come  
11 into play and I was just responding by saying it  
12 really comes into play in the definition of  
13 accessory structure.

14 MR. MURPHY: Okay.

15 CHAIRMAN NEIMAN: It seems to me we  
16 have gotten back to the substance of what was  
17 argued in February, which may be helpful to us  
18 this evening, and if it's the consensus of the  
19 board members that we should continue this for a  
20 few more minutes, that's okay with me, but we  
21 are beyond the scope of what the argument was.

22 I think by definition the limited

07:17:38PM

07:18:02PM

1 issue of whether or not there was an occupancy  
2 permit granted was only worth a couple minutes  
3 and we got back into the substance of the  
4 argument, which at least for me, helps refresh  
5 my memory.

6 MR. O'DONNELL: I have concluded but  
7 for questions, so it's at your pleasure now.

8 CHAIRMAN NEIMAN: I have a question.

9 So your argument in your  
10 supplemental brief is that Mr. Girsch's intent  
11 was to use both lots as a single-family compound  
12 while maintaining the appearance. So far as the  
13 village was concerned, the properties were  
14 capable of being used independently.

15 How, when one owner, one family,  
16 owns two adjacent lots both with structures on  
17 them and arguably, both structures could meet  
18 the definition of a principal residence but the  
19 owner is using one of the structures for  
20 something other than a principal residence, how  
21 is the village supposed to know that the owner  
22 is doing that and does it make a difference?

1 MR. O'DONNELL: I don't think it makes  
2 a difference under your code, but I do think the  
3 circumstance would arise when the owner of the  
4 property seeks some permission, some permit,  
5 some approval from the village before doing  
6 something.

7 And I think that's when this  
8 village and many other villages take the  
9 opportunity really to cement the notion of a  
10 zoning lot. There's that movement of a foot  
11 here, I believe, and I know it's in other  
12 municipalities where candidly you don't want  
13 this circumstance to arise. But I think it  
14 really depends in the first instance how you are  
15 using the properties. In other words, you do  
16 have to meet the defined requirements of an  
17 accessory structure.

18 Now here I think the coach house  
19 pretty definitively does that. But to answer  
20 your question, Chairman Neiman, if you, for  
21 example, had two clearly single-family homes on  
22 two separate lots and by all appearances the two

07:21:12PM

1 properties were completely separate homes, there  
2 was no motor court straddling them, there was no  
3 this house is using that house for a garage, had  
4 the garage on the other lot, and in addition to  
5 the garage, by the way, there was a sport court  
6 located behind the coach house which was  
7 obviously serving only purposes attended to the  
8 principal structure so in this case it wasn't  
9 just the structure itself, the garage or the  
10 coach house itself, but I think a municipality  
11 unless someone comes forward and makes  
12 application for some approval or some permit,  
13 then it's really everyone is on notice that if  
14 you use the properties, if you have an accessory  
15 structure and a principal structure, then you  
16 are allowed to do that.

07:21:48PM

17 And I think a key is here both  
18 before the original home was torn down by Girsch  
19 and then rebuilt on the exact same footprint the  
20 structure was nonconforming. The side yard  
21 setback there was a violation and it remains  
22 today violation of a side yard setback. So you

1 get that break. You get that because it's a  
2 zoning lot. That's what allowed that circumstance  
3 to occur because you are taking the two lots and  
4 combining them into one.

5 So under the code it's, I believe,  
6 if you are using a coach house, attended to a  
7 principal structure, you can only do that on a  
8 zoning lot. But here it really doesn't matter  
9 because when Girsch came to the city, to the  
10 village in 1994, he was told if you are going to  
11 use it, the coach house is accessory to the main  
12 house, it can only be done on a zoning lot and  
13 you can't unwind the zoning lot.

14 CHAIRMAN NEIMAN: But then he changed  
15 his plan.

16 MR. O'DONNELL: What he changed is --  
17 he didn't change his plan. What he changed is  
18 he went from having a rec room above the garage  
19 to an apartment above the garage.

20 CHAIRMAN NEIMAN: Which made it a  
21 principal residence. He met the definition of a  
22 principal residence with those modifications.

1 MR. O'DONNELL: Most respectfully, it  
2 didn't. It's still a coach house. It's still  
3 accessory to the principal structure.

4 CHAIRMAN NEIMAN: Because that's how  
5 Girsch was using it?

6 MR. O'DONNELL: That's how it was  
7 built. With all due respect, I don't think you  
8 can tell anyone that a four-car garage with a  
9 1,500 foot apartment, that four-car garage was  
10 there to serve and only serve the 422 structure.  
11 Only. And, parenthetically, the testimony we  
12 had last time is that the use of the residential  
13 portion of the coach house was as an office.

14 CHAIRMAN NEIMAN: So I'll grant you,  
15 Mr. O'Donnell, that it would be unusual,  
16 especially in this town perhaps, to have a four-  
17 car garage on the first floor of a principal  
18 residence and a 1,500 square foot living space  
19 above it.

20 In my view there are some highly  
21 unusual homes that have been built in this town  
22 with four-car garages and 15,000 square feet of

1 living space all around them. But, regardless,  
2 both buildings still met the definition of a  
3 principal residence.

4 Here's my problem. I understand  
5 that in terms of appearance it looked like a  
6 coach house. I understand that that's how the  
7 Girschs used it but isn't it still a principal  
8 residence?

9 MR. O'DONNELL: No.

07:24:50PM 10 CHAIRMAN NEIMAN: Because it wasn't  
11 used that way?

12 MR. O'DONNELL: It wasn't designed,  
13 built or used that way. It was designed to be a  
14 coach house. It was designed and built and used  
15 to be accessory to 422. I would submit there's  
16 no doubt about that.

17 So when you say well, it meets the  
18 requirements of a principal residence, that was  
19 never on the table. That was never what it was  
20 going to be used for. That was never what was  
07:25:14PM 21 built. That's never how it was used. So it  
22 defies logic to say no, roll back to 1994 could

1       they have built a four-car garage with a 1,500  
2       square foot apartment? Let's say that they  
3       could have. All right. But one difference.  
4       One difference. They could not under your code  
5       have continued the nonconformity from the side  
6       yard setback. The only reason that that was  
7       key, that's critical, they didn't get a variance  
8       from the side yard setback. They continued that  
9       nonconformity and the only reason they were  
10      allowed to continue that nonconformity is  
11      because it was a zoning lot.

12                   My answer to your question would be  
13      different. It would have to be different  
14      legally if they cured the nonconformity of the  
15      side yard setback but they didn't. That was for  
16      whatever reason important to them to build the  
17      exact same structure on the exact same footprint  
18      and carry that nonconformity forward. That's a  
19      zoning lot.

20                   CHAIRMAN NEIMAN: We are now 25 minutes  
21      into the 10-minute limit. Any other questions  
22      from the board?



1 MR. MURPHY: Is there a definition of  
2 principal residence in the code? I know there's  
3 dwelling but I didn't read it all obviously, but  
4 I didn't know if that was a term of art.

5 MR. MCGINNIS: There is a definition  
6 for principal structure or building. "A  
7 structure or building in any zoning lot intended  
8 to be utilized for a principal use and to which  
9 any other structure on such lot must be  
10 accessory."

11 MR. MURPHY: Okay. That helps.

12 CHAIRMAN NEIMAN: That's interesting.  
13 Intended to be utilized for a principal use.

14 MR. MARRS: But are you asking,  
15 Commissioner, the definition for single-family  
16 dwelling?

17 MR. MURPHY: The term was used  
18 principal residence and I didn't see that  
19 definition appear anywhere so I wondered if it  
20 was --

21 MR. MCGINNIS: There's a distinction.  
22 There's also dwelling unit. I think that's

1 important to point out as well.

2 MR. MURPHY: Well, dwelling, I did find  
3 that definition. That's any structure or  
4 portion thereof designed or used for habitation  
5 by one or more families, right?

6 CHAIRMAN NEIMAN: Designed or used.

7 MR. MOBERLY: Designed is the key word.

8 MR. O'DONNELL: Just to clarify,  
9 principal structure is used in the definition of  
10 accessory structure but the phrase principal  
11 building is used in the definition of zoning  
12 lot. I think they are intending to mean the  
13 same thing but it's a different label.

14 CHAIRMAN NEIMAN: Well, 12-206 in the  
15 alphabetical definitions.

16 MR. MCGINNIS: Under dwelling there's  
17 actually three different definitions, dwelling,  
18 dwelling single-family detached and dwelling  
19 unit.

20 CHAIRMAN NEIMAN: Okay.

21 Any other questions of

22 Mr. O'Donnell?

1 (No response.)

2 Thank you.

3 MR. O'DONNELL: Thank you.

4 MS. OVERBY: Susan Overby on behalf of  
5 Bayit Builders and Avra Properties.

6 First, there are a number of  
7 factual inaccuracies that I'd like to correct  
8 from Mr. O'Donnell's presentation. But the  
9 first I'd like to point -- to direct your  
10 attention to is the certificate of occupancy and  
11 there's a disagreement between the sides about  
12 what a certificate of occupancy is and what an  
13 application for certificate of occupancy is.

14 So the first attachment to our  
15 submission is what we submit is a certificate of  
16 occupancy. And as Mr. O'Donnell noted, the  
17 reason that this became an issue is because the  
18 village's attorney was attempting to controvert  
19 the Dugans' argument that Mr. Girsch evidence of  
20 the fact that he did not intend this to be a  
21 single-family residence was that he did not  
22 apply for or receive a certificate of occupancy.

07:30:10PM

07:30:42PM

1                   Now that this document has come to  
2     light, the Dugans' position has shifted and they  
3     claim that whether or not they applied for a  
4     certificate of occupancy is irrelevant. But  
5     regardless of that shift in argument, we submit  
6     that this is, in fact, an approved application  
7     for certificate of occupancy. It is not dated  
8     3/27/94. It is dated February 16, 1994, on the  
9     date to the building commissioner. Then you can  
10    see at the top a permit was later issued in  
11    March of 1994 and in the section that says to be  
12    filled out by building department, it says  
13    conforming use, ok, class of occupancy R-1 and  
14    the type of occupancy that was applied for was a  
15    single-family residence.

16                  Now, the Dugans' argue that this is  
17    merely an application, it is not in fact a true  
18    certificate of occupancy. So I went back and I  
19    looked through the FOIA request for 504 South  
20    Oak and determined that this document is all  
21    that exists for any certificates of occupancy in  
22    the file for 504 South Oak. There's no separate

1 stand-alone certificate of occupancy, which  
2 leads us to believe that the village's practice  
3 was to approve an application for a certificate  
4 of occupancy after the permits were issued and  
5 after the inspection.

6 MR. MURPHY: Have you found any other  
7 instance?

8 MS. OVERBY: Yes, and I have attached  
9 them.

07:32:26PM 10 So attached to my submission I have  
11 attached the building permits, all the building  
12 permits that show that for this 1993, 1994  
13 renovation all of those were for single-family  
14 residences.

15 MR. MURPHY: No, that's not my  
16 question.

17 Have you found other instances  
18 where this was done?

19 MS. OVERBY: Yes. Yes. So Exhibit D  
07:32:46PM 20 is a 1948 certificate of occupancy for 504 South  
21 Oak and it's the same certificate of occupancy  
22 and then it says, to be filled out by the

1 building department and it's checked conforming  
2 use checked class A. There's no other separate  
3 stand-alone.

4 MR. MURPHY: I'm talking about your  
5 position is that the village -- this was how the  
6 village did things.

7 MS. OVERBY: It's based on my review of  
8 the file which --

9 MR. MURPHY: For what property?

07:33:14PM 10 MS. OVERBY: For two properties.

11 MR. MURPHY: What I'm asking is were  
12 there other instances around that time that you  
13 could find where the village was doing this  
14 thing, this exact thing, when they issued a  
15 certificate of occupancy?

16 MS. OVERBY: You mean in 1994, 1993?

17 MR. MURPHY: Yes. 1948 doesn't seem to  
18 be terribly relevant to how things were being  
19 done. You can assume this meant that was all  
20 there needed to be, then it seemed like there  
21 would be other instances.

22 MS. OVERBY: So I reviewed the file for

1 504 South Oak and 422 South Oak and for the  
2 entire histories of both of those properties I  
3 was unable to locate a stand-alone certificate  
4 of occupancy. I was only able to locate an  
5 application for certificate of occupancy that  
6 indicated an approval.

7 MR. MURPHY: My question is: Down the  
8 street six months earlier they do the exact --

9 MS. OVERBY: I understand your  
10 question. With respect to 422 South Oak I was  
11 unable --

12 MR. MOBERLY: What about for -- there  
13 were hundreds of houses built in the '90s in  
14 Hinsdale. Is this the standard procedure for  
15 how all certificates of occupancies were --

16 MR. MCGINNIS: I can't tell you that.  
17 I can tell you today they would issue a  
18 certificate of occupancy or a certificate of  
19 completion for everything.

20 What I found was that there was a  
21 formal certificate of occupancy granted for new  
22 single-family homes back into the '80s and '90s

1 but I can't find evidence of a formal  
2 certificate of occupancy issued for anything  
3 other than but for new single-family homes.

4 MR. MOBERLY: But is this it?

5 MR. MCGINNIS: No. That's not the  
6 formal certificate of occupancy that was issued  
7 for new single-family homes.

8 MS. OVERBY: But that was only issued  
9 for new single-family homes.

07:35:08PM 10 MR. MOBERLY: Okay. This was a  
11 rebuilt. Or you tell me what it is.

12 MS. OVERBY: Right. And so that leads  
13 to my next point, which is the Dugans' argue  
14 that in 1994, 1993 the entire structure at 504  
15 South Oak was torn down and rebuilt. The plans  
16 indicate that that is not correct. And with  
17 respect to this argument that they rebuilt this  
18 nonconformity, that's simply not true when you  
19 look at the plans. They demolished -- so prior  
07:35:34PM 20 to 1994, 504 South Oak had an attached garage  
21 and then it had one single stall garage. They  
22 removed the attached garage, they removed a



1 living space or recreation area, I'm not sure  
2 what it was, and expanded the garage that was  
3 under the living space to the four-car garage  
4 and the four corners of the main structure  
5 remain the same. They changed the windows. So  
6 this alleged rebuilding of a nonconformity is  
7 simply not accurate to what the plans show.

8 CHAIRMAN NEIMAN: I have some questions  
9 going back to the certificate of occupancy  
10 issue.

11 MS. OVERBY: Sure.

12 CHAIRMAN NEIMAN: Is it your contention  
13 that the application for the certificate of  
14 occupancy for 504 South Oak was submitted on  
15 February 16, 1994?

16 MS. OVERBY: It's my contention that  
17 that's when it was dated by the applicant.

18 CHAIRMAN NEIMAN: Okay. Fair enough.

19 Is it also your contention that up  
20 in the right-hand corner of the application the  
21 certificate of occupancy there's a permit number  
22 issued and a date issued of March 27, 1994, is

1 it your contention that the certificate of  
2 occupancy was, in fact, issued on March 27, 1994?

3 MS. OVERBY: No. That's when the permit  
4 was issued. Because we can see the permit on  
5 the next page.

6 CHAIRMAN NEIMAN: Right.

7 MS. OVERBY: So the permit was issued  
8 and then inspections were done. And I have  
9 attached all of the inspections. And then at  
10 some later date, while it's not dated, someone  
11 filled in conforming use ok, R-1.

12 CHAIRMAN NEIMAN: Where is that?

13 MS. OVERBY: That is on the application  
14 for certificate of occupancy under to be filled  
15 out by the building department.

16 CHAIRMAN NEIMAN: At the bottom of the  
17 application?

18 MS. OVERBY: Correct. Conforming use  
19 ok, class of occupancy R-1.

20 So our contention is that Girsch's  
21 architect submitted this application, which was  
22 dated the 16th of 1994, permits were issued,

1 then various inspections occurred over the  
2 course of the project. And then at some point  
3 the building department filled in conforming use  
4 ok and class of occupancy R-1. I can't say when  
5 conforming use ok was put in, it's not dated.

6 CHAIRMAN NEIMAN: Okay. Mr. McGinnis,  
7 is it accurate to say, I just want to make sure  
8 I understood your -- the village's position on  
9 this.

07:38:28PM 10 Is it accurate to say that in this  
11 time period in '94 the village normally did not  
12 have a separate form for the approval of a  
13 certificate of occupancy?

14 MR. MCGINNIS: So, again, not having  
15 the, you know, anything to pull from, we do have  
16 the staff secretary was here at the time. I did  
17 ask her about this. I did show her the  
18 document. She said that it was her  
19 understanding that Chuck Schmitz, who was the  
07:39:02PM 20 then building commissioner, only issued a formal  
21 certificate of occupancy for new single-family  
22 homes primarily because the title company wanted

1 to see that formal certificate of occupancy  
2 before they rolled the construction loan into an  
3 end loan.

4 And the certificate of occupancy,  
5 the formal half sheet of certificate of  
6 occupancy, was not generally issued for  
7 remodels, renovations, what have you, additions.

8 CHAIRMAN NEIMAN: And just to clarify  
9 the record, it's therefore possible that  
10 Ms. Overby's position that the ok, class of  
11 occupancy R-1 without a date at the bottom of  
12 the application for certificate of occupancy, is  
13 it possible that that is how the village issued  
14 a certificate of occupancy at the time and it's  
15 also possible that that's not how they did it,  
16 we just don't know?

17 MR. MCGINNIS: I would agree with that.

18 CHAIRMAN NEIMAN: Okay. That clarifies  
19 things.

20 MS. OVERBY: So the reason we sort of  
21 got into this conversation about the certificate  
22 of occupancy and other documents that relate to

1 the village's view of these properties in the  
2 original hearing was that the Dugans argued that  
3 there was no evidence that the village treated  
4 504 South Oak as a single-family residence and  
5 from my clients' perspective in terms of the due  
6 diligence that they could possibly have done  
7 before purchasing this property, the only things  
8 they could have done they did it.

07:40:46PM 9 They sent a letter to the village  
10 asking can we develop this as a single-family  
11 residence and the village said they could. And  
12 they reviewed the files on the properties which  
13 indicate that this property has been treated by  
14 the village as a single-family residence in  
15 every interaction that the village has with the  
16 property.

07:41:14PM 17 So you asked Mr. Dugan's attorney  
18 how is the village supposed to enforce the  
19 implication of a single zoning lot if the  
20 implication of a single zoning lot can be  
21 created by mere use of a property and he said  
22 well, the way that village's typically interact

1 is when they issue permit or have some other  
2 reason to inspect the property. And the file for  
3 504 South Oak shows that every time the village  
4 interacted with that property they treated it as  
5 a single-family residence.

6 I also think it's important to note  
7 that from 1948 until 1993 the properties 504  
8 South Oak and 422 South Oak were owned by  
9 separate owners. Completely different families  
10 lived in those houses.

11 To say that 504 South Oak has  
12 always been a coach house is simply incorrect  
13 and that also goes to the fact that the Dugans  
14 argue incorrectly that the property was built in  
15 1994. It was not built in 1994. It was  
16 remodeled in 1994.

17 And as we argued, Mr. Girsch went  
18 to great lengths to ensure that he could, at a  
19 future date, sell the property to be redeveloped  
20 or used as a single-family residence later on.  
21 And so he changed his plan. He expended a lot  
22 more money to make sure that 504 South Oak

1 retained all of the characteristics of a single-  
2 family residence.

3 CHAIRMAN NEIMAN: I happened to ride by  
4 the house this morning and there was some  
5 differences from when I rode by and drove by it  
6 in February.

7 There's a new fence that gives the  
8 appearance that on the 422 lot there's now a  
9 fence along -- I don't know if it's along the  
10 property line, but it's a new fence and there's  
11 been some kind of demolition on the 504 building  
12 and if I'm not mistaken, I'm not sure there were  
13 two driveway aprons all along when the Dugans  
14 owned it but now there's one driveway apron that  
15 goes to the 422 lot and there's a separate one  
16 for the 504 lot. How come?

17 MS. OVERBY: My clients own both  
18 properties and we are remodeling 422 South Oak  
19 to prepare it to be sold.

20 CHAIRMAN NEIMAN: Okay.

21 MS. OVERBY: So I can't speak to exactly  
22 why they did that.

1 I know they have been using 504  
2 South Oak to stage trucks and equipment at 504  
3 while they are working on the interior of 422.

4 I'm not quite sure that I'm getting  
5 what you are asking.

6 CHAIRMAN NEIMAN: I was a little  
7 surprised. There seems to me to be an attempt  
8 to alter the appearance of the lots, lot/lots,  
9 to be determined, to make it appear to the eye  
10 today as opposed to when I drove by in February  
11 that they were -- they look more separate than  
12 they did a couple months ago.

13 MS. OVERBY: Well, when we purchased  
14 the two lots, we intended to make them as  
15 separate as separate could be and we are  
16 finishing our remodeling on 422 and preparing to  
17 sell it. So it's not in any way to sway this  
18 body if that's what you are asking.

19 CHAIRMAN NEIMAN: Yes, kind of.

20 MS. OVERBY: No. That's not the  
21 intention of doing it. We have pictures. Both  
22 sides have submitted a lot of different pictures



1 showing how the properties were. It's not an  
2 attempt to change the facts on the ground such  
3 that it would sway you. It's simply in  
4 preparation for attempting to sell 422 South Oak.

5 MR. MOBERLY: Just for follow-up, we  
6 drove by this, my wife and I wanted to see what  
7 this was all about. And it was probably after  
8 the first hearing and the fence was there then.

9 CHAIRMAN NEIMAN: It was?

07:45:30PM 10 MR. MOBERLY: Yes. There was a  
11 relatively new wooden fence but it's been there  
12 for I'm not sure. Was there a building permit  
13 required for a fence?

14 MR. MCGINNIS: I'm going to need to  
15 look into this tomorrow. Actually, I wrote a  
16 note here.

17 MR. MOBERLY: Okay. The fence was up I  
18 think relatively shortly after our first  
19 meeting. I drove by and there was a fence there.  
20 It's probably been six weeks.

07:45:54PM 21 MS. ENGEL: I drove by there before the  
22 first meeting and that fence was there.

1 MR. MOBERLY: It looks like it was  
2 built within six to nine months.

3 MR. MCGINNIS: There have been permits  
4 pulled for the 422, several permits pulled for  
5 the 422 South Oak property.

6 CHAIRMAN NEIMAN: How about 504?

7 MR. MCGINNIS: The permit apps were  
8 submitted for the new house but beyond that I  
9 would have to --

07:46:22PM

10 CHAIRMAN NEIMAN: Okay. Because  
11 there's work going on in 504. Windows are gone.  
12 I mean, there's work going on.

13 MS. OVERBY: That one window in the  
14 front I think has been boarded up for some time..

15 CHAIRMAN NEIMAN: Okay.

16 MR. PODLISKA: 422 has its own garage  
17 now, right, multi-car garage?

18 MS. OVERBY: Yes.

07:46:50PM

19 MR. PODLISKA: And the 504 property you  
20 are asking us to make a decision based upon the  
21 appearance of that property, I think it's in one  
22 of your exhibits here?

1 MS. OVERBY: Yes.

2 MR. PODLISKA: Your response in  
3 opposition. You have Exhibit J. I'm not quite  
4 sure how to get you to the page I'm looking at  
5 because these pages are not sequentially  
6 numbered, but it's attachment 1 and it says it's  
7 a Village of Hinsdale Historic Preservation  
8 Commission application for certificate of  
9 appropriateness.

07:47:22PM

10 MS. OVERBY: Right.

11 MR. PODLISKA: And then attached to  
12 that there's some architectural drawings and  
13 then some color photographs. And I'm looking at  
14 the first colored photograph it's shifted to the  
15 right of the page.

16 MS. OVERBY: This one? Yes.

17 MR. PODLISKA: Yes. That's the  
18 property we are talking about, right?

19 MS. OVERBY: Correct.

07:47:44PM

20 MR. PODLISKA: Okay. This is what we  
21 have been referring to with a lot of use of the  
22 term coach house, right?

1 MS. OVERBY: Correct.

2 MR. PODLISKA: That sure looks like a  
3 single-family residence to me.

4 MS. OVERBY: It does to me, too.

5 MS. ENGEL: And it doesn't look  
6 anything like the one next to it.

7 MR. PODLISKA: So I'm concerned that we  
8 may have gotten more tied up with jargon than we  
9 should have.

07:48:02PM 10 Because I'm looking at this house  
11 and this looks like a single-family residence.  
12 We talked about the small square footage but  
13 this is a house that you can very easily see in  
14 any part of Hinsdale.

15 MS. OVERBY: It was marketed and sold  
16 as a single-family residence and that is how we  
17 bought it.

18 MR. PODLISKA: This is not the house  
19 before 1994, this is the house since then?

07:48:24PM 20 MS. OVERBY: No. This is from the  
21 listing photo.

22 MR. PODLISKA: Okay. Thank you.

1 MS. OVERBY: You are welcome.

2 MR. MOBERLY: I'm a licensed realtor.

3 I'm sure you are shocked and impressed by that,  
4 but this is the listing from the MLS and it  
5 closed on July 13, 2017, the same day as the 422  
6 lot closed and they closed as separate  
7 transactions on separate pins.

8 MS. OVERBY: So I would like to make  
9 one final point and then I'm happy to answer any  
10 additional question.

11 It's our position that the code has  
12 no language that makes it so the use of a  
13 single-family residence alone can cause it to be  
14 transformed into an accessory structure and  
15 cause two previously separate lots to be  
16 combined into a single-family lot; and if that  
17 is the village's contention, our response is  
18 that that needs to be accomplished in a way that  
19 is much clearer to a third-party purchaser who  
20 is coming to develop a property and takes all  
21 necessary steps to ensure that they can develop  
22 the property as it was sold to them and to

1 prevent this situation where an unwearry buyer  
2 gets into a situation where they have spent over  
3 a million dollars and then if the Dugans  
4 prevail, their position is that lot can only be  
5 used as an accessory structure from here on out  
6 and that, quite frankly, doesn't seem fair.

7 MR. MURPHY: Did you say that they had  
8 asked the village before buying?

9 MS. OVERBY: Yes.

07:50:18PM 10 MR. MURPHY: What exactly -- I haven't  
11 seen anything.

12 MS. OVERBY: I sent a supplemental  
13 letter. We sent a letter to the village manager  
14 and -- actually, the realtor sent a letter to  
15 the village manager attaching our plan and the  
16 village manager said yes, you can develop the  
17 property in this manner. And I'll be honest,  
18 there's some disclaimer language saying you have  
19 to get all the proper permits. And so we  
07:50:44PM 20 purchased the property and then when we  
21 submitted the permit, that's when all of this  
22 sort of erupted.

1 MR. MURPHY: I missed that.

2 CHAIRMAN NEIMAN: Any other questions?

3 MR. MARRS: Just to go back when I  
4 first referenced the certificate of occupancy  
5 document, the application last time, it was my  
6 understanding was that that's what served as a  
7 certificate of occupancy at that time and that  
8 that designation of ok is what converted it from  
9 the application to certificate.

07:51:54PM

10 Now, I understand, based on what  
11 Robb says, I don't think we are going to get to  
12 the bottom of that, how that actually happened  
13 back then.

14 But that aside, I do think the fact  
15 that it's checked single family, that building  
16 permits subsequently were issued and signed off  
17 on and inspections were done based on this  
18 application, that it's more evidence again that  
19 this was being treated as a single-family home  
20 and I want to go back to something that I think  
21 is important.

07:52:26PM

22 When Mr. O'Donnell was talking

1 about the 1993 letter, he read you a provision  
2 however, once the coach house was accessory to  
3 the principal structure, the property consists  
4 of one zoning lot and cannot be subdivided in  
5 the future. He did not read the very next  
6 sentence, which says, please note that no  
7 separate dwelling units will be permitted in the  
8 coach house, all right.

9 So this was written at a time when  
10 they had proposed this plan of a rec room with a  
11 garage and the village was telling them that's  
12 fine. If you do this, you can do it but you are  
13 going to create a zoning lot and be advised that  
14 you can't put a dwelling unit in there.

15 So what happened next? They went  
16 back, they changed their plans in order to  
17 protect their rights and put everything that  
18 they needed into this to create a dwelling unit.  
19 It's got a kitchen, it's got a bathroom. It's  
20 got sleeping areas.

21 It's been pointed out that this is  
22 not similar to every other house in Hinsdale,



1 that it has a lot of garage space in comparison  
2 to living space. Well the village doesn't  
3 regulate design. They look at whether it has  
4 all the elements that make it a dwelling unit.  
5 And that's what this is. And they couldn't have  
6 put that dwelling unit in, it wouldn't have been  
7 approved if it wasn't being approved as a dwelling  
8 unit. If it was an accessory structure, they  
9 wouldn't have signed off on it with the kitchen  
10 and everything else in it. So I think that's  
11 important.

12 And the only other point I wanted  
13 to make is that we have had a lot of talk about  
14 the definitions here and the use of the word use.  
15 And the village has just never -- they are not  
16 the use police. They don't have the resources  
17 to go out and monitor uses on properties. And I  
18 go back to that point of what we look at, what  
19 the village looks at, is those contacts that  
20 come to them when people apply for permits and  
21 the record shows that through time the village  
22 has consistently treated this as a single-family

1 use and I know that it was in Ms. Overby's brief  
2 but she didn't touch on it but I wanted to  
3 mention the motor court.

4 We have the permits that we talked  
5 about last time and that she attached as  
6 exhibits where they came in for the driveway  
7 permit and the village said well, we can't grant  
8 this. This is two separate addresses, two  
9 separate properties. You need two separate  
10 permits. And importantly, you have to keep that  
11 driveway one foot off the property line or we  
12 are not going to approve it and that's how it  
13 was designed and inspected presumably. Now it  
14 may have been filled in later after the village  
15 was no longer monitoring it but that was the  
16 village's condition on approving that particular  
17 permit.

18 So those are the couple of points I  
19 wanted to make. The village has, in my mind, been  
20 very consistent all through this in treating this  
21 as a single-family unit and again, the use is  
22 not the dispositive factor and it's not explicit

1 in our definitions that this is what controls.  
2 It is whether it is -- we can't have a single-  
3 family dwelling unit on the same zoning lot as  
4 another single-family dwelling unit.

5 So to my mind, it's not designed as  
6 an accessory structure, it's a dwelling unit and  
7 we ask that that's how the village interpreted  
8 it and we ask that you uphold our determination.

9 CHAIRMAN NEIMAN: Thank you.

07:56:22PM 10 Is there a motion to close the  
11 Public Hearing?

12 MR. PODLISKA: So moved.

13 MR. MOBERLY: Second.

14 CHAIRMAN NEIMAN: Roll call, please?

15 MS. BRUTON: Member Moberly?

16 MR. MOBERLY: Yes.

17 MS. BRUTON: Member Alesia?

18 MR. ALESIA: Yes.

19 MS. BRUTON: Member Murphy?

07:56:30PM 20 MR. MURPHY: Yes.

21 MS. BRUTON: Member Engel?

22 MS. ENGEL: Yes.

1 MS. BRUTON: Member Podliska?

2 MR. PODLISKA: Yes.

3 MS. BRUTON: Chairman Neiman?

4 CHAIRMAN NEIMAN: Yes.

5 (WHICH, were all of the  
6 proceedings had, evidence  
7 offered or received in the  
8 above entitled cause.)

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1       STATE OF ILLINOIS   )  
                                  )   SS:  
2       COUNTY OF DU PAGE )

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

16                           IN TESTIMONY WHEREOF I have  
17      hereunto set my hand and affixed my notarial  
18      seal this 26th day of April, A.D. 2018.

19  
20  
21  
22

  
KATHLEEN W. BONO,  
C.S.R. No. 84-1423

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