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**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING
FEBRUARY 16, 2022**

1. CALL TO ORDER

Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, February 16, 2022 at 6:30 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

Present: Members Gary Moberly, Joseph Alesia, Keith Giltner (*present by phone*), Tom Murphy, Leslie Lee, John Podliska, and Chairman Bob Neiman

Absent: None

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

3. APPROVAL OF MINUTES

a) **January 19, 2022**

Following changes or corrections to the draft minutes, Member Podliska **moved to approve the draft minutes of January 19, 2022, as amended.** Member Murphy seconded the motion.

AYES: Members Moberly, Alesia, Giltner, Murphy, Lee, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

4. APPROVAL OF FINAL DECISIONS OR FINDINGS OF FACT – None

5. RECEIPT OF APPEARANCES – None

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

7. PRE-HEARING AND AGENDA SETTING

a) **V-01-22, 527 – 541 Kensington Court Subdivision**

Mr. Dave Hellyer, Jay Jordon Homes, addressed the Board explaining they are requesting a variance to install 4' foot solid fencing in the corner yard setbacks of Lot 2 and Lot 9 of the Kensington Court Subdivision. This will provide screening from the Hinsdale Orthopedics parking lot, and relief from site distance triangles. Chairman Neiman asked that the applicant provide more

1 detail with respect to the approving criteria for the public hearing. Mr. Hellyer
2 explained their goal is to create a private community with secure access,
3 although there will not be fencing around the entire perimeter of the subdivision.
4 Director of Community Development Robb McGinnis reminded the Board if the
5 ZBA approves the height and corner side yard setback relief, the matter would
6 go to the Village Board for major site plan review. Mr. Hellyer said they are still
7 working on the architectural, and will have them for the public hearing.
8 The public hearing was set for the next meeting of the Zoning Board of Appeals
9 on March 16.

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11 **b) APP-01-22, 110 East Ogden Avenue**

12 Chairman Neiman asked the homeowners, the 110 E. Ogden representatives
13 and the Village Attorney to approach the podium. Mr. Jared Staver introduced
14 himself and his wife Kelly and explained that they and Michael and Alice Kuhn,
15 who are unable to attend the meeting, are the homeowners who have filed the
16 appeal. Mr. Patrick Walsh, is the attorney representing Dr. Cara Hartman, the
17 owner of 110 E. Ogden Avenue. Mr. Michael Marrs is the Village Attorney.

18 Chairman Neiman began stating there are some initial questions to clarify. He
19 asked Mr. Walsh why the trees were removed, and whose side of the property
20 line were they on. Mr. Walsh said the trees were on his client's property. This
21 has been confirmed by the Village. They put the trees that were requested in
22 early as a gesture of good faith. He does not believe they needed a permit to
23 remove the trees. Chairman Neiman understands that the homeowners are
24 angry. They bought their houses with the trees, and the commercial building
25 at 110 East Ogden Avenue was a one-story building. He suggested that the
26 trees that have been installed do not meet the site plan specifications. Mr.
27 Walsh said the new trees were planted according to the specifications. He
28 believes ComEd will kill the trees anyway because of the easement. Further,
29 the deciduous trees that were there on his client's property did not provide
30 much screening. Discussion followed regarding the level of screening provided
31 by the deciduous trees that were there.

32 Chairman Neiman asked if Mr. Walsh is prepared to work with the homeowners
33 in the spring to plant more trees to provide more screening. He also pointed
34 out that some accommodation to the homeowners would be better than
35 litigation. Mr. Walsh alluded to the conduct of the homeowners, to which
36 Chairman Neiman stated he understands there has been conflict; however,
37 despite all the hard feelings on both sides, some kind of resolution would be in
38 everyone's best interest as both parties have risk. Mr. Walsh said he is always
39 willing to talk and listen.

40 Member Podliska asked about the utility easement. Mr. Mike Zalud, contractor
41 for 110 E. Ogden, explained that ComEd has provided a diagram that illustrates
42 that the power lines will be over the entire south property line, and that they
43 would trim any trees in this location down to 10-15' feet. Therefore, an arborist
44 was hired to identify the trees. These trees were never part of the landscape
45 plan approved by the Plan Commission. Seven new trees were planted
46 according to the plan that will grow to the bottom of the ComEd wires. His
47 arborist identified some of the existing trees as weeds and poison ivy. The one

1 significant tree would have been topped off at 15' feet by ComEd. He was
2 unable to estimate when the new arborvitae would reach their 15' foot height.
3 Mr. Zalud confirmed that the residents received notice of the Plan Commission
4 meetings and that the site plan was available to them.
5

6 Mr. Jared and Ms. Kelly Staver approached the podium to address the Board.
7 Chairman Neiman began by saying Board members have read the appeal, and
8 that the appeal says there are ongoing violations with respect to the three
9 matters that are being appealed, and that is why the Stavers do not think there
10 is a timeliness issue. Chairman Neiman believes there is some support in the
11 code for this position, but there is some risk. He referenced Section 11-
12 502(D)(1) that requires an appeal to be filed "not later than 45 days following
13 the actions appealed from", but also noted Section 11-502(C) that states "an
14 application for appeal to the zoning board of appeals may be filed by any person
15 aggrieved or adversely affected by an order, decision, determination, or failure to act
16 of the village manager acting pursuant to his or her authority and duties under this
17 code". Chairman Neiman suggested to the Stavers that they be prepared to address
18 why they waited until January to file their appeal. Chairman Neiman referenced
19 Section 11- 502(B) that states "the appeal procedure is provided as a safeguard
20 against arbitrary, ill considered, or erroneous administrative decisions. It is intended
21 to avoid the need for resort to legal action by establishing local procedures to review
22 and correct administrative errors. It is not, however, intended as a means to subvert
23 the clear purposes, meanings, or intents of this code or the rightful authority of the
24 village manager to enforce the requirements of this code. To these ends, the
25 reviewing body should give all proper deference to the spirit and intent embodied in
26 the language of this code and to the reasonable interpretations of that language by
27 those charged with the administration of this code". Therefore, if the Village Manager
28 had a reasonable rationale for her decision, the ZBA is required to give deference.
29 The Village Manager concluded the appeal was untimely. Mr. Staver pointed out
30 that, pursuant to the appeal, Ms. Gargano stayed all landscaping activity on the south
31 lot line. However, he believes the code is clear that all proceedings should be stayed.
32 Discussion of the timeliness issue followed. Chairman Neiman referenced Section
33 11-502(E), stating he disagrees with the position of the Village and the Stavers with
34 respect to what constitutes proceedings.

35 Mr. Staver addressed the property line issue and stated their position on the
36 location of the trees and the fence, and that they never thought anyone would
37 come on their property and take down their trees. They tried mediation from
38 August, when the trees were removed, to November, and at that point they
39 evaluated their options. The appeal was filed as timely as possible.

40 Member Moberly asked the Stavers how the stay would help them. Mr. Staver
41 said he wants the code followed, and that it might bring everyone to the table.
42 He said all they ever wanted was to mediate, and for the 110 Ogden people to
43 make it right, but they refused to come to the table.

44 Member Podliska suggested all parties look at the pool screening at Garfield
45 and Minneola as an example of adequate screening. Mr. Staver said he is
46 familiar with this screening, and agreed it would be acceptable.
47

1 Mr. Walsh then said there is a lot of inaccuracy in the representations that have
2 been made. Mr. Walsh and Mr. Staver disagreed as to whether there have
3 been efforts on both sides to mediate this matter.

4 Chairman Neiman said an important point is the property line. This issue could
5 be litigated in Wheaton for a couple of years, but it will cost less to plant more
6 arborvitae to settle than to fight it out in court.

7 Dr. Cara Hartman, owner of 110 E. Ogden Avenue, addressed the Board, she
8 said to provide a different perspective. She said that when this incident
9 happened, emails from the Stavers were perceived by her as threatening to her
10 brand, her practice. She said Mrs. Staver came unannounced to her practice
11 in the middle of day to discuss this. This could have been an amicable gesture,
12 but she was uncomfortable with the arrival of Mrs. Staver. This is what
13 precipitated the involvement of their attorney. However, they have been, and
14 are willing, to work this out, despite a lot of miscommunication. Member
15 Moberly pointed out that given the amount of money being spent on this project,
16 why fight about the cost of additional landscaping. Dr. Hartman said they are
17 abiding by a site plan that was approved, and budgeted. Their survey was
18 taken in 2021 by professionals, and they don't feel they did anything wrong.
19 Mrs. Staver responded defending her visit to Dr. Hartman's practice.

20 Village Attorney Michael Marrs addressed the Board. Chairman Neiman asked
21 if he knows which side of the lot line the trees were on. Mr. Marrs said no, and
22 explained that the Village is asked to intervene on neighbor disputes all the
23 time. When Mr. Staver first reached out to the Village after the trees were
24 removed, we did look into it. The Village spent significant time and resources
25 to reach a resolution. A number of staff went out to the property at different
26 times. Ultimately, the Village cannot resolve this issue as it is a private property
27 boundary dispute. On November 5, 2021, the Village sent a letter to the Stavers
28 explaining this position. The Stavers had the contractors insurance and could
29 pursue a claim. Mr. Staver cited the Wrongful Tree Cutting Act. Mr. Marrs said
30 they could go ahead with that, but November 5 was the end of Village
31 mediation. The new trees were planted on November 3, hence the question of
32 timeliness. Mr. Marrs noted, in fairness to the Stavers, that there is some
33 question as to whether it was contemplated that the trees would remain. This
34 was confirmed by Director of Community Development Robb McGinnis, who
35 explained the approved site plan does not indicate existing trees, as would be
36 typical if significant trees were to remain. The Village has not inspected or
37 approved the installed landscaping.

38 With respect to the landmark tree issue, Mr. Marrs said this is outside ZBA
39 jurisdiction, and requests it be stricken.

40 Mr. Marrs described the timeline, stating that upon receipt of the appeal, the
41 landscaping was stopped the next day. There are no allegations regarding
42 construction. He pointed out this is consistent with how Land Rover was
43 handled when that appeal came in.

44 Chairman Neiman reminded the parties of the ZBA rules with respect to page
45 limits of briefs and length of oral arguments. The ZBA has discretion to
46 disregard the time limits, and parties should be prepared to address the issues.
47 The public hearing was set for the next meeting of the Zoning Board of Appeals

1 on March 16.
2

3 **8. PUBLIC HEARING** – None
4

5 **9. NEW BUSINESS** – None
6

7 **10. OLD BUSINESS**

8 Chairman Neiman referenced the Board’s discussion last month regarding zoning
9 code revisions. Mr. McGinnis reported staff will regroup and identify those
10 sections that are most problematic before returning to the Board.
11

12 **11. ADJOURNMENT**

13 With no further business before the Zoning Board of Appeals, Member Podliska
14 made a motion to **adjourn the Zoning Board of Appeals of February 16, 2022.**
15 Member Alesia seconded the motion.
16

17 **AYES:** Members Moberly, Alesia, Giltner, Murphy, Lee, Podliska and Chairman
18 Neiman

19 **NAYS:** None

20 **ABSTAIN:** None

21 **ABSENT:** None
22

23 Motion carried.
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25 Chairman Neiman declared the meeting adjourned at 7:57 p.m.
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29 _____
30 Christine M. Bruton
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Approved: _____