

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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

23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49

**1. CALL TO ORDER**

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

Due to the fact that Chairman Neiman was attending the meeting electronically, Village Clerk Christine Bruton asked for a **motion and a second to appoint Member Keith Giltner Chairman Pro Tem for tonight's proceedings**. So moved by Member Murphy, seconded by Member Moberly.

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

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** None

Motion carried.

**2. ROLL CALL**

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

**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 – None**

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

**5. RECEIPT OF APPEARANCES**

The court reporter administered the oath to all persons intending to speak at scheduled public hearing(s).

**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-02-22, 307 South Lincoln Street**

Attorney Rachel Robert, representing Ms. Natalie & Mr. Nathan Saegesser, homeowners, addressed the Board. She said the architect for the project is Mr. Bruce George, and the builder is Mr. Dave Knecht. She further explained the home

1 is in a trust, and the beneficial owners are the Saegassers. She explained they  
2 are requesting a variation to increase the bulk regulations of FAR applicable in the  
3 R4 zoning district from 6,405' square feet to 6,887' square feet to allow for a fourth  
4 bedroom on second floor. She explained this is an historic home built in 1894.  
5 The master and two bedrooms are on the second floor. They would like to add a  
6 fourth bedroom on the second floor to create a conventional four bedroom cluster  
7 arrangement. She added the addition would be consistent with the existing  
8 structure to preserve the architectural integrity of the home. In total, this is a  
9 request for 354' square feet of additional FAR.

10 It was noted that ZBA approval of this item is a recommendation only to the Village  
11 Board of Trustees.

12 The public hearing was set for the next meeting of the Zoning Board of Appeals.  
13

## 14 8. PUBLIC HEARING

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

16 Chairman Pro Tem Giltner opened the public hearing. He explained that the  
17 applicant has requested the hearing be continued to next month. He asked for a  
18 **motion to continue the public hearing for V-01-22 to the April 20 meeting of**  
19 **the Zoning Board of Appeals.** So moved by Member Podliska. Seconded by  
20 Member Alesia.

21  
22 **AYES:** Members Moberly, Alesia, Murphy, Lee, Podliska, Chairman Neiman,  
23 Chairman Pro Tem Giltner

24 **NAYS:** None

25 **ABSTAIN:** None

26 **ABSENT:** None  
27

28 Motion carried.  
29

### 30 b) APP-01-22, 110 East Ogden Avenue

31 Chairman Pro Tem Giltner opened the public hearing and thanked everyone for  
32 abiding by the rules for written submissions, and reminded everyone that oral  
33 arguments should be 15 minutes only, and the applicant would have five more  
34 minutes to respond to the Village's arguments.

35 Chairman Neiman said the decision to strike and dismiss based on timeliness and  
36 ripeness issues are raised in both parties' briefs. He recommends the oral  
37 arguments include not just the merits of the appeal, but also address the timeliness  
38 and ripeness issues. Mr. Staver asked for five minutes more to allow for his wife's  
39 presentation. Chairman Pro Tem Giltner said there is discretion on time to get to  
40 a good conclusion.

41 Mr. Jared Staver said the Village's motion to dismiss is a contradictory argument.  
42 They say they missed the 45-day deadline to file, and the matter is not ripe. They  
43 are appealing the cutting down of the trees, and all representations in the site plan.  
44 This is an ongoing issue, there is still construction going on, so the 45 days is a  
45 red herring, the purpose of the appeal is to try to avoid litigation.

46 Ms. Kelly Staver addressed the Board stating they have tried to resolve this issue  
47 with the owners. They understand the Board would prefer the parties come to an  
48 agreement on their own. Mr. McGinnis emailed a suggestion to both parties  
49 suggesting the property owner plant trees. The Stavers were amenable, and

1 offered to send quotes, but there was no response. She said the rear of the  
2 property is devoid of screening, and this dramatically changes the site plan  
3 approval. They did not object to a two-story building, because their trees would  
4 screen the building. She cited sections of the zoning code that regulate exterior  
5 appearance review, and believes that their properties are neither protected nor  
6 enhanced, as required by code. The removal of all the trees dramatically  
7 increased noise and negatively impacted their property values. Prior to clear  
8 cutting the trees, they could not see the commercial property; now that is all you  
9 can see. She believes the proposed site plan is injurious to the enjoyment of their  
10 property. She stated that Dr. Hartman said there is aesthetic improvement and  
11 enhanced landscape buffering, but this is false. In an email from February 27,  
12 2020 regarding the installation of a fence, Dr. Hartman states there will be  
13 screening and privacy, but there is not. She referenced the terms of ordinance  
14 O2020-07 that states the violation of any term or condition in the ordinance shall  
15 be grounds to rescind. The Certificate of Zoning Compliance states the approval  
16 is granted based on the information provided to the Village, but if information  
17 changes, or the Village's understanding of facts or circumstances changes, this  
18 may be rescinded. She believes they have provided more than enough evidence  
19 to rescind.

20 Mrs. Staver further contends that the initial application is misleading, as there is  
21 no mention of the existing trees. She believes the artist's rendering is misleading  
22 because it shows a row of trees that will be planted across the full property line,  
23 and those trees are all touching. What has been planted is sparse. The Village  
24 has a duty to ensure that what is stated and promised during the review process  
25 is followed. She believes the absence of the existing trees on their site plan is a  
26 deliberate misrepresentation or an error not consented to by the Village.

27 Chairman Neiman asked Mrs. Staver if she agrees that the 110 E. Ogden owners  
28 have not yet planted all the trees that are intended to be planted. She does not  
29 think so, but believes the Village should protect them under the regulations of the  
30 zoning code. They are asking the Village to enforce the code, and rescind the  
31 Certificate of Zoning Compliance and provide the screening that was promised.  
32 Further, the seven trees that were planted do not provide screening nor do they  
33 appear over their fence.

34  
35 Mr. Michael Marrs, attorney for the Village, noted that the history of the matter was  
36 reviewed at the prehearing, but since the last ZBA meeting, the Village filed a  
37 motion to strike and dismiss the appeal. The first argument is the appeal is not  
38 timely filed. Section 11-502(D)1 of the Village zoning code states that appeals  
39 should be filed not later than 45 days following the action being appealed. The  
40 appellant asserts there is no clear event that constitutes the start of the 45-day  
41 period, and that the 45-day period has not begun, which sounds like a ripeness  
42 issue. However, Mr. Marrs pointed out the dates of the actions complained about.  
43 The appeal was filed on January 14, 2022, 45-days prior to that date is November  
44 30, 2021. The Village Manager issued the Certificate of Zoning Compliance on  
45 August 17, 2021. They are also appealing the Village Manager's failure to act to  
46 enforce the exterior appearance and site plan approval ordinance, and the failure  
47 to enforce a code provision regarding landmark trees. The appellants allege this  
48 should have happened when construction commenced the following summer, in  
49 2021. This is well before the November 30 trigger date.

1 He referred to the continuing efforts of the Village to broker a resolution between  
2 the parties, but that ended when a letter was sent to the Stavers dated November  
3 5, 2021. This was sent two and a half months before the appeal was filed. The  
4 trees that have been planted were planted prior to the November 5 letter. He  
5 concluded that by any measure the appeal is untimely, and the ZBA is without  
6 jurisdiction to hear it and it should be dismissed.

7 The second argument goes to ripeness, and he understands the suggestion that it  
8 is contradictory, but it is presented in the alternative. Ripeness action has to do  
9 with the Village approving the landscaping, but this is still under construction.  
10 Normally the trees would have been planted in 2022, but the Village recommended  
11 planting early in an effort to end the dispute. The property owner has not  
12 requested any inspection of landscaping, and no Certificate of Occupancy has  
13 been granted. At the end of project, the property owner will have to request an  
14 inspection.

15 Director of Community Development Robb McGinnis stated the inspectors go out  
16 for all final inspections. On commercial properties, the Village Planner and the  
17 Village Forester will look at the plantings, and then it goes to him to issue a  
18 Certificate of Occupancy.

19 Following a question from Chairman Neiman, Mr. Marrs acknowledged that there  
20 is some confusion on the issue of the existing trees based on comments from the  
21 owners in the spring of 2022 regarding a second fence and the inability to access  
22 these trees. He did not agree that this necessarily implies the trees were on the  
23 Staver's property as there are conflicting surveys.

24 Member Podliska asked if the Village has the authority to step in at this stage and  
25 say the circumstances have changed from the original approval and therefore the  
26 site plan needs to be reviewed and possibly changed. Mr. Marrs believes the  
27 Village does have that right, and suggests the property owners have some issues  
28 that should be brought back to the Village Board of Trustees in the form of a major  
29 adjustment. Discussion followed.

30 Chairman Neiman asked Mr. Marrs if he agrees that only the Board of Trustees  
31 can order the 110 owners to add more and bigger trees. All the ZBA can do is  
32 stay the effectiveness of an occupancy permit if after the trees were planted, the  
33 ZBA disagreed with the issuance. Mr. Marrs agreed. Chairman Neiman then  
34 suggested if the ZBA continued this appeal until everything has been planted, the  
35 Stavers could in the interim go in front of the Board of Trustees and argue that  
36 were factual misrepresentations made and ask the Board to address the issue of  
37 whether the site plan needs to be amended. Mr. Marrs said the preferable way to  
38 proceed would be for the 110 owners to go before the Board for a major  
39 adjustment. Discussion followed. Mr. McGinnis confirmed that under an appeal,  
40 the ZBA has the same authority as the Village Manager, and they can direct staff  
41 not to issue a Certificate of Occupancy until the applicant goes before the Village  
42 Board to get a major adjustment.

43 Mr. Marrs said it is important for him to make the arguments regarding ripeness so  
44 as not to create a precedent with respect to filing appeals. He noted the appellants'  
45 assertion that the 110 owner will not comply with the landscaping because the  
46 arborvitaes they have planted are not touching. It is his understanding that  
47 landscape plans show mature trees, and mature conditions, not conditions at the  
48 time of planting. He reiterated the Village has not been asked to inspect the  
49 plantings, but even though the plan shows the trees touching, that does not

1 necessarily indicate nonconformity with the landscape plan. Mr. Marrs also  
2 reiterated that the ZBA has no jurisdiction under the code with respect to landmark  
3 trees.

4 Mr. Marrs stated that in his opinion it is an overreach to shut down a multi-million  
5 dollar project to sort out landscaping issues. However, he does agree there is  
6 some contradictory information that the property owner would be well-served to  
7 address with respect to the fencing issues and the existing trees. He said this  
8 started as a trespass and a request to stop the whole project. A major adjustment  
9 is the right way to do this.

10 Mr. Staver addressed the Board and quoted the code with respect to the authority  
11 of the ZBA in an appeal. He believes the ZBA can enforce the site plan. Member  
12 Podliska pointed out that Village Manager cannot change the site plan. Mr. Staver  
13 said she can rescind it, and that is what he is asking the ZBA to do. Discussion  
14 followed regarding authority to rescind. Mr. Marrs explained that the ordinance is  
15 passed by the Village Board, and therefore, it is not within the Village Manager's  
16 powers to rescind. Mr. Staver vehemently disagreed, and believes there is no  
17 mechanism to take this back to the Village Board. Mr. McGinnis agreed that only  
18 the Village Board has the authority to rescind the ordinance. However, if the ZBA  
19 determines that staff is not to issue a Certificate of Occupancy until the Village  
20 Board considers approving an amended site plan, which is within their authority,  
21 then the goal of the appellant is accomplished.

22 Mrs. Staver added they are not necessarily asking the Board to rescind the whole  
23 project, but to force them to go back and resubmit a new landscaping plan. She  
24 says the property owner has clearly stated that the seven trees they have planted  
25 are all they are doing.

26 Member Podliska believes it has been established that there is not a failure of the  
27 Village Manager to act, but there has to be another presentation to the Village  
28 Board if there is a site plan change. Mr. McGinnis said the problem with rescinding  
29 the Certificate of Zoning Compliance is it effectively shuts down the entire job. Mr.  
30 Staver suggested the Board could bifurcate a ruling and say the building is okay,  
31 but what has been done on the Stavers and the site is not, and send that back to  
32 be readdressed. Following a question from Member Murphy, Mr. Staver indicated  
33 that a fence would not do them any good unless it was 20-30' feet tall.

34 Member Lee asked what the trigger would be for the property owners to get back  
35 in front of the Village Board to reopen the site plan revision discussion.

36 Mr. Marrs stated the mechanism to go back to the Village Board is to file a major  
37 adjustment. The Board can then take up the landscaping and screening. He would  
38 advise this be done as soon as possible to get clarity on these issues. Mr. Staver  
39 said the 110 owners are being 'urged' to file a major adjustment, but they don't  
40 have to. He wants some actual action.

41 Mr. Mike Zalud, the general contractor of the project, pointed out that this property  
42 was an unsightly vacant building for ten years. The new building has gone before  
43 the Plan Commission twice, with the same landscape plan. There were no  
44 comments on it whatsoever. He recommended the Board look at a picture of what  
45 the property looked like at this time of the year. There are no leaves on any of the  
46 trees that we are talking about here. He said the trees were removed because of  
47 the engineering plan. They had to dig out the back 12 inches of the property line  
48 and fill that with gravel. The trees would not have survived. They planted seven  
49 trees because that's what the landscape plan showed. They never said they were

1 done planting there. They only did what was required on the drawing. They  
2 planted the trees early to get them growing as early as possible. Following a  
3 question from Member Podliska, Mr. Zalud explained that the seven trees that  
4 have been planted will be seven feet tall and grow together at maturity, according  
5 to the Village forester. He believes they grow about one foot per year, but could  
6 not say how long it would take to fill in the width. Following a question from  
7 Member Moberly, he stated they are not opposed to planting more trees. He added  
8 that Dr. Hartman wants to see a wall of arborvitae at the back of the parking lot.  
9 Chairman Pro Tem Giltner remarked that there is the spirit of the landscaping plan,  
10 but the Stavers lost something.

11 Member Podliska says the fence is irrelevant now, the point is to get vegetation to  
12 the point that it provides effective screening.

13 Member Alesia pointed out that we are spinning our wheels about something that  
14 may not come to fruition because they will not seek a Certificate of Occupancy for  
15 another two to two and half months.

16 Finally, Mr. Zalud added that the trees they removed were of poor quality and  
17 ComEd would have topped them off anyway.

18 Dr. Cara Hartman addressed the Board stating the project is not complete. She  
19 has the best interest for this property and wants her investment to look right. She  
20 did not want to plant the arborvitae in November, but it was a good faith gesture  
21 to work with the neighbors.

22  
23 Member Murphy moved **to close the Public hearing for APP-01-22, 110 East**  
24 **Ogden Avenue.** Member Lee seconded the motion.

25  
26 **AYES:** Members Moberly, Alesia, Murphy, Lee, Podliska, Chairman Neiman, and  
27 Chairman Pro Tem Giltner

28 **NAYS:** None

29 **ABSTAIN:** None

30 **ABSENT:** None

31  
32 Motion carried.

### 33 34 **DELIBERATIONS**

35  
36 Chairman Neiman began discussion by recommending dismissing the part of the appeal  
37 with respect to the legacy trees as the ZBA has no jurisdiction on this matter. The Board  
38 concurred and agreed to strike that motion.

39 Chairman Neiman is not convinced by the Stavers argument of on-going violations, and,  
40 therefore, he believes the Village is correct that the appeal is not timely filed. If the ZBA  
41 dismissed the appeal as untimely, the Stavers could file a new appeal when the  
42 occupancy permit is issued, and then we would be right back where we started. He is  
43 inclined to agree with Member Alesia that this is a ripeness issue because not everything  
44 is planted yet. At that point, the Stavers could amend their existing appeal to say that  
45 we should enjoin the occupancy permit if one is issued, and then we could rule on it. He  
46 reminded Board members that the ZBA cannot order the 110 owners to plant bigger trees,  
47 only the Board of Trustees can do that.

48 Discussion followed regarding the technicalities of dismissing certain parts of the appeal  
49 and continuing others.

1 Mr. McGinnis referenced Section 11-502(D)(4) of the zoning code that states within 30  
2 days following the close of a public hearing, the ZBA shall render a decision on the  
3 appeal. Such decision may reverse, affirm or modify, in whole or in part, the action  
4 appealed from. The code further states the 30 days may be extended with the approval  
5 of the applicant. Mr. Staver agreed to extend the 30 days to July, if the property owner  
6 anticipates having completed the project in June. Member Murphy said then the only  
7 question is whether we want to say anything in the way of instructions to the Village staff  
8 regarding the Certificate of Occupancy.

9 Chairman Neiman remarked there is a fairness issue here. The homeowners had a  
10 legitimate expectation that the screening would remain. For the cost of some really big  
11 evergreen trees, this could be put to bed, but in any case the decision by the ZBA should  
12 be made after everything is planted.

13 Member Lee asked about timing, because when the owners ask for a final inspection they  
14 will be ready for occupancy. They will lose time waiting for the ZBA to meet. Mr.  
15 McGinnis reminded the Board there is a stay on any work along the south lot line, and in  
16 order for the owners to plant any additional trees, the ZBA will have to lift the stay.

17 Member Murphy suggested the following actions for the Board: 1. deny the appeal on  
18 timeliness grounds; 2. defer action on the second action appealed, and with the  
19 agreement of the appellants this will not be resolved within 30 days; 3. deny the appeal  
20 regarding landmark trees, as this Board has no jurisdiction; 4. lift the stay on the south  
21 side of the property so work can continue.

22 Discussion followed regarding the timing of a major adjustment before the Village Board,  
23 and the language of the motion to be made for approval by the ZBA.

24 Member Alesia moved **the Village Manager's issuance of a Certificate of Zoning  
25 Compliance for the subject property referred to as application No. P-21-9434 is  
26 dismissed on timeliness; and the Village Manager's failure to act to enforce Title  
27 VII, Chapter 2 of the Village code regarding landmark trees is dismissed for lack of  
28 jurisdiction.** Member Moberly seconded the motion.

29  
30 **AYES:** Members Moberly, Alesia, Murphy, Lee, Podliska, Chairman Neiman, and  
31 Chairman Pro Tem Giltner

32 **NAYS:** None

33 **ABSTAIN:** None

34 **ABSENT:** None

35  
36 Motion carried.

37  
38 Member Podliska moved to **continue item 2 for ruling to May 18 with the consent of  
39 the applicant, and lifting the stay on the south lot line, and recommending the 110  
40 owners apply for a major adjustment to the Board of Trustees related to  
41 landscaping site plan approval.** Member Lee seconded the motion.

42  
43 **AYES:** Members Moberly, Murphy, Lee, Podliska, Chairman Neiman, Chairman Pro Tem  
44 Giltner

45 **NAYS:** Member Alesia

46 **ABSTAIN:** None

47 **ABSENT:** None

48  
49 Motion carried.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

**9. NEW BUSINESS**

Chairman Neiman announced that Member Alesia is moving to Downers Grove and tonight will be his last meeting. He thanked him for his contributions and wisdom at every hearing; he will be missed.

Member Alesia thanked Chairman Neiman, and said when former Village Trustee Jerry Hughes suggested he be on the Zoning Board, it turned out to be one of his better rash decisions. He thanked the Board saying it has been great working with everyone.

**10. OLD BUSINESS – None**

**11. ADJOURNMENT**

With no further business before the Zoning Board of Appeals, Member Podliska made a motion to **adjourn the Zoning Board of Appeals of March 16, 2022.** Member Murphy seconded the motion.

**AYES:** Members Moberly, Alesia, Murphy, Lee, Podliska, Chairman Neiman, Chairman Pro Tem Giltner

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** None

Motion carried.

Chairman Pro Tem Giltner declared the meeting adjourned at 8:52 p.m.

\_\_\_\_\_  
Christine M. Bruton

Approved: \_\_\_\_\_