

**VILLAGE OF HINSDALE
MINUTES OF THE
SPECIAL MEETING OF THE
ZONING BOARD OF APPEALS
Thursday, April 21, 2011**

1. Call to Order

Chairman Bill Haarlow called the special meeting of the Zoning Board of Appeals to order on Thursday, April 21, 2011 at 7:37 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. Roll Call

Present: Chairman Bill Haarlow, Members Marc Connelly, Gary Moberly (arr. 7:59 p.m.), Debra Braselton, Bob Neiman, Keith Giltner and John Callahan

Absent: None

Also Present: Director of Community Development/Building Commissioner Robb McGinnis, Deputy Clerk Christine Bruton and Court Reporters Kathy Bono and Tara Zeno

3. Approval of Minutes - February 16, 2011

Member Braselton moved **approval of the minutes of the Regular Meeting of February 16, 2011**. Member Connelly seconded the motion.

AYES: Members Connelly, Braselton and Chairman Haarlow

NAYS: None

ABSTAIN: Members Neiman, Giltner, Callahan

ABSENT: Member Moberly

Motion failed, Chairman Haarlow instructed that approval of minutes be called again when Member Moberly arrives.

4. Receipt of Appearances - None

5. Receipt of Requests, Motions, Pleadings, or Requests to make Public Comment of a General Nature - None.

All individuals anticipating testifying during scheduled public hearings were sworn in by Ms. Bono.

6. Pre-Hearing and Agenda Setting

a) V-03-11, 938 S. Grant

Mr. Jim Olguin, attorney Mr. & Mrs. Kuo explained that his clients are asking for a reduction in lot width requirement for the construction of a

circular drive. The request would result in a 4% variation of required width. He explained this house is located near a very busy intersection, there exists large parkway trees and there is significant pedestrian traffic resulting in a safety issue that could be alleviated with a circular driveway. Mr. McGinnis explained that houses with similar lots and driveways likely predate the existing ordinance. Member Neiman advised Mr. Olguin to look into this. Member Connelly asked if there is neighbor support, to which Mr. Olguin stated that he is not aware of any objections, but will acquire more information when the public notice is sent. Chairman Haarlow set the public hearing for V-03-11 for May 16, 2011.

7. Public Hearings

a) V-01-11, 345 E. Hickory Street (Transcript on file.)

Chairman Haarlow opened the public hearing. Mr. Walter Morrissey, attorney for the homeowners addressed the Board stating his clients are looking for relief for a fence that has already been installed. He provided historical background regarding the 2009 resubdivision of the property located between the Hines and the current next door neighbor. The neighbor installed an open wrought iron that was continued by his clients. He noted supplemental materials provided to the Board following prehearing that include letters from over 10 neighbors that indicate no objections to the fence as well as photographs of non-conforming fences in town. He explained this is not special privilege because of the descending grade on Hickory; the height of the fence cannot be visually determined. This was an innocent mistake by contractor. The fence is compatible with the neighbors and a benefit visually to the neighborhood. Mr. Morrissey explained that this is not a self-created situation because of the inconsistency of language when the fence permit was issued. It is a logical analysis that when the contractor did the property to east, on the side yard, he wouldn't think there are distinctions in the code between the side yard and front yard determinations. The fence is installed and it is expensive and compatible with neighborhood. Member Giltner wondered if this is the first fence this contractor has built in Hinsdale, Mr. McGinnis said he is not familiar with the contractor and noted that the application was made for a 4 ft. fence; the permit issued was for a 3 ft. fence clearly called out. Member Braselton confirmed the fence varies from 6' to 11' inches. Discussion followed regarding the visual look of it as a 3' or 4' ft. fence. Member Connelly said if the application is made for a 4 ft. fence, why wouldn't that be denied? Mr. McGinnis explained that we could deny the application outright, but these applications are routinely approved as noted to expedite the process. Mr. Morrissey suggested that the economic hardship alone should outweigh the requested

variance, removing the fence is the only remedy, to cut off the top of the fence would be aesthetically undesirable. Chairman Haarlow pointed out that the Board is not allowed to consider economic hardship.

(Member Moberly joined the proceedings at 7:59 p.m.)

Member Callahan confirmed from Mr. Morrissey that there has been no neighbor opposition. Mr. Morrissey noted that since the mailing of the legal notice no one has responded negatively. Member Callahan moved **to close the Public Hearing for V-01-11, 345 E. Hickory Street.** Member Neiman stated that he is troubled by whether this is a self-created hardship and precedent setting, wondering where to draw the line. The Village tried to do the right thing, the contractor was confused. The contractor made an innocent mistake, stated Mr. Morrissey; there was no intent by the Hines' to install a non-conforming fence. He asked the Board to consider the de minimis rule as parts of the fence are compliant depending on the grade. Further, the density is reduced in the neighborhood because of the resubdivision. There is a motion to close the public hearing on the floor, Member Moberly seconded the motion.

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

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

b) **V-02-11, 16 W. Birchwood Avenue** (Transcript on file.)

Chairman Haarlow opened the hearing and reminded the Board that there was no pre-hearing on this case; the Board was asked by the applicant to forego pre-hearing. This is not something the Board wants to do, but there were extenuating circumstances as there was no quorum in March and there is a medical consideration. Mr. Jay Stockbridge addressed the Board on behalf of the property owners and residents, Mr. & Mrs. Geraghty. They been in their home for 30 years and would like to stay in Hinsdale and would be able to do so with the proposed elevator addition. He explained that the hearing was properly noticed and the subject property is zoned R-2 as are most in that area. They are asking for two variances; relief from the side yard setback from 16.6 ft. to 14.6 ft. and the rear yard setback from 50 ft. to 46 ft. He noted that the residence itself is about a foot and a half over the current permitted

setback since it was constructed many years ago. There is no additional encroachment; the proposed plan just extends the existing side wall. The approximate footprint of the elevator is 36 sq. feet, he has reviewed the existing layout of house and property and this is the only location that will work. The unique site was not self created, there have been no additions to the house since it was built. There is no special privilege; this is a need based variance request, it is not monetarily driven as with a large room addition. The request is not contrary to the intent of zoning code, the footprint of the proposed improvement is small, will not be detrimental to the public, won't affect drainage and there is no danger of increased flooding or fire. He pointed out that from the street you can't see it, and therefore won't impact the neighbors or adjoining properties. It is not necessary to increase electric service to house. The elevator will be accessed by the existing family room on the first floor, a bedroom on the second floor and an open area in the basement. Member Neiman asked about the requirements of the American Disabilities Act. Mr. Stockbridge explained that it does not apply to private properties, however the proposed equipment has been installed in public applications and fully complies with ADA requirements under those circumstances. Mr. Stockbridge confirmed there is no outside access to the elevator and the exterior will match the existing house. Mr. Geraghty confirmed that there have been no objections from his neighbors. Member Callahan moved **to close the public hearing for V-02-11, 16 W. Birchwood Avenue.** Member Connelly seconded the motion.

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

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

Chairman Haarlow asked the Board to revisit the approval of the minutes as Member Moberly is present and will be able to vote. Member Braselton moved **approval of the minutes of the Regular Meeting of February 16, 2011.** Member Connelly seconded the motion.

AYES: Members Connelly, Moberly, Braselton and Chairman Haarlow

NAYS: None

ABSTAIN: Members Neiman, Giltner, Callahan

ABSENT: None

Motion carried.

DELIBERATIONS

V-02-11, 16 W. Birchwood Avenue

Chairman Haarlow began discussion commenting that special privilege, in a sense, could be considered, but to his mind that would be mitigated by the medical consideration. Further, in terms of criteria, he thinks all have been met. Member Neiman agreed. Member Braselton thinks the request is modest and well thought out. Member Moberly commented that he is only slightly concerned with precedent and Member Connelly pointed out that each property and each situation is unique. Member Callahan moved **to approve the variation request know as V-02-11, 16 W. Birchwood Avenue.** Member Braselton seconded the motion.

AYES: Members Connelly, Moberly, Braselton and Chairman Haarlow

NAYS: None

ABSTAIN: Members Neiman, Giltner, Callahan

ABSENT: None

Motion carried.

Mr. Stockbridge thanked the Board and explained his client's time constraints and that he would like to apply for a building permit right away. He asked if the Board could approve their Final Decision at this time.

Member Callahan moved **to approve the Final Decision for V-02-11, 16 W. Birchwood Avenue.** Member Neiman seconded the motion.

AYES: Members Connelly, Moberly, Braselton and Chairman Haarlow

NAYS: None

ABSTAIN: Members Neiman, Giltner, Callahan

ABSENT: None

Motion carried.

V-01-11, 345 E. Hickory Street

Member Callahan began deliberations noting that the fence is within inches and in some places compliant because of the grade. He suggested the Board look at the totality of the situation, the homeowners were making an improvement, it won't look bad to the neighborhood and sets no precedent. Equity would absolutely say approve this request. Member Connelly agreed,

pointing out that there was some confusion with the permit, he believes if the application is wrong it should be denied. There is some room for misunderstanding, he agreed this is de minimis, the fence looks great and agreed the Board should consider the totality of circumstance. Member Braselton concurred. Member Neiman asked Mr. McGinnis to expound on the building department practice of approving applications as noted and how to avoid similar confusion. Mr. McGinnis replied that in many communities the height in the side and front yards for a fence are the same, fence contractors have problems on standard lots, let alone as specified by our zoning code that takes into consideration whatever way the house faces. With respect to as noted approvals versus rejecting outright, he doesn't know right answer, however, in this case he presumed work had started before the permit was issued. It couldn't have been any clearer the fence could not be four feet tall as it is noted in three places on the permit. Member Neiman wondered if the procedure should change. Mr. McGinnis stated that he talked to Mr. Hines and told him the fence needed to be three feet. Member Giltner commented that although the neighbors are okay with the fence and the slope is a consideration aesthetically and in terms of compliance, he is not swayed by arguments of economic hardship or innocence of mistake. If the Village called the owner and told them the fence must be three feet, stated Member Neiman, the owner disregarded that instruction and that is not an innocent mistake. Member Connelly concerned that this is additional testimony, and the public hearing should be reopened, as it is unknown when the conversation happened relative to when the fence went up. Member Callahan feels it is improper to consider this information as this wasn't brought up in the public hearing. Discussion followed. Chairman Haarlow said in his five years on the Zoning Board of Appeals, Board members always had access to staff or the Village Attorney during deliberations. So, from a legal standpoint, the only appropriate course of action would be to entertain a motion to postpone discussion, reopen the public hearing and take additional testimony and reconsider. If we don't, then we open ourselves to the possibility of not conducting the case in a legal manner, because the Hines should have the right to respond to Mr. McGinnis's comments about a conversation. Chairman Haarlow stated he would not be comfortable continuing without reopening the hearing, which we cannot do tonight without the presence of a court reporter. He asked for a motion to continue. Mr. McGinnis explained the permit was paid for up front, the secretary called Mr. Hines when it was ready. The conversation with Mr. Hines happened over the counter when he came in to pick up the permit. Mr. McGinnis stated that the certificate of zoning compliance was issued on November 1st, the permit on November 3rd, the conversation occurred on November 3rd or later when both were picked up by Mr. Hines. Mr. McGinnis confirmed that Mr. Hines would not have known this was approved as noted till it was ready to be picked up. Member Braselton commented that she could ignore this additional evidence and vote

on public hearing testimony only.

Member Connelly moved to **approve the variation known as V-01-11, 345 E. Hickory Street.** Member Callahan seconded the motion. Chairman Haarlow interjected that if the matter passes there is no issue, however, if it does not get four affirmative votes, it might indicate sloppy procedures that, in his opinion, would not look good if challenged in court. Member's Connelly and Callahan withdrew their motion and second.

Member Neiman moved to **reopen the variation known as V-01-11, 345 E. Hickory Street at the next meeting of the Zoning Board of Appeals.** Member Moberly seconded the motion.

AYES: Members Moberly, Neiman, Giltner and Chairman Haarlow

NAYS: Members Connelly, Braselton, Callahan

ABSTAIN: None

ABSENT: None

Motion carried.

Chairman Haarlow explained to Mr. Morrissey what would happen next and that he hoped Mr. Hines might attend the next meeting, but that is his choice. Mr. Morrissey responded that he will inform and communicate the invitation to Mr. Hines and we will address the issue of advisory dialogue.

8. New Business

a) Approve Final Decision for V-09-10, 722-728 N. York Road

Member Moberly moved to **Approve Final Decision for V-09-10, 722-728 N. York Road.** Member Connelly seconded the motion.

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

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

9. Unfinished Business

Chairman Haarlow has been elected to the Village Board of Trustees and therefore will no longer be Chairman of the Zoning Board of Appeals. He said that he feels privileged to have worked with former Chairmen Mr. Tom Nelson and Mr. Paul Anglin; service on the ZBA has been a great experience overall. He appreciates the assistance of Robb McGinnis and

Chris Bruton and it has been an honor to serve with this Board. He offered thanks to all.

10. Adjournment

With no further business coming before the Zoning Board of Appeals, Member Braselton made a motion to **adjourn the special meeting of the Zoning Board of Appeals of April 21, 2011.** Member Moberly seconded the motion.

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

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

Chairman Haarlow declared the meeting adjourned at 9:09 p.m.

Christine M. Bruton
Deputy Village Clerk

Approved: _____