

**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

1 circular drive. The request would result in a 4% variation of required
2 width. He explained this house is located near a very busy intersection,
3 there exists large parkway trees and there is significant pedestrian
4 traffic resulting in a safety issue that could be alleviated with a circular
5 driveway. Mr. McGinnis explained that houses with similar lots and
6 driveways likely predate the existing ordinance. Member Neiman
7 advised Mr. Olguin to look into this. Member Connelly asked if there is
8 neighbor support, to which Mr. Olguin stated that he is not aware of any
9 objections, but will acquire more information when the public notice is
10 sent. Chairman Haarlow set the public hearing for V-03-11 for May 16,
11 2011.
12

13 7. Public Hearings

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

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

1 variance, removing the fence is the only remedy, to cut off the top of the
2 fence would be aesthetically undesirable. Chairman Haarlow pointed
3 out that the Board is not allowed to consider economic hardship.
4

5 (Member Moberly joined the proceedings at 7:59 p.m.)
6

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

19 There is a motion to close the public hearing on the floor, Member
20 Moberly seconded the motion.
21

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

24 **NAYS:** None

25 **ABSTAIN:** None

26 **ABSENT:** None
27

28 Motion carried.
29
30

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

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

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

26
27 **AYES:** Members Moberly, Connelly, Braselton, Neiman, Giltner,
28 Callahan and Chairman Haarlow

29 **NAYS:** None

30 **ABSTAIN:** None

31 **ABSENT:** None

32
33 Motion carried.

34
35 Chairman Haarlow asked the Board to revisit the approval of the minutes
36 as Member Moberly is present and will be able to vote. Member Braselton
37 moved **approval of the minutes of the Regular Meeting of February**
38 **16, 2011.** Member Connelly seconded the motion.

39
40 **AYES:** Members Connelly, Moberly, Braselton and Chairman Haarlow

41 **NAYS:** None

42 **ABSTAIN:** Members Neiman, Giltner, Callahan

43 **ABSENT:** None
44

1 Motion carried.

2
3 **D E L I B E R A T I O N S**

4
5 **V-02-11, 16 W. Birchwood Avenue**

6
7 Chairman Haarlow began discussion commenting that special privilege, in a
8 sense, could be considered, but to his mind that would be mitigated by the
9 medical consideration. Further, in terms of criteria, he thinks all have been
10 met. Member Neiman agreed. Member Braselton thinks the request is
11 modest and well thought out. Member Moberly commented that he is only
12 slightly concerned with precedent and Member Connelly pointed out that each
13 property and each situation is unique. Member Callahan moved **to approve**
14 **the variation request know as V-02-11, 16 W. Birchwood Avenue.**
15 Member Braselton seconded the motion.

16
17 **AYES:** Members Connelly, Moberly, Braselton and Chairman Haarlow

18 **NAYS:** None

19 **ABSTAIN:** Members Neiman, Giltner, Callahan

20 **ABSENT:** None

21
22 Motion carried.

23
24 Mr. Stockbridge thanked the Board and explained his client's time constraints
25 and that he would like to apply for a building permit right away. He asked if
26 the Board could approve their Final Decision at this time.

27
28 Member Callahan moved **to approve the Final Decision for V-02-11, 16 W.**
29 **Birchwood Avenue.** Member Neiman seconded the motion.

30
31 **AYES:** Members Connelly, Moberly, Braselton and Chairman Haarlow

32 **NAYS:** None

33 **ABSTAIN:** Members Neiman, Giltner, Callahan

34 **ABSENT:** None

35
36 Motion carried.

37
38 **V-01-11, 345 E. Hickory Street**

39
40 Member Callahan began deliberations noting that the fence is within inches
41 and in some places compliant because of the grade. He suggested the Board
42 look at the totality of the situation, the homeowners were making an
43 improvement, it won't look bad to the neighborhood and sets no precedent.
44 Equity would absolutely say approve this request. Member Connelly agreed,

1 pointing out that there was some confusion with the permit, he believes if the
2 application is wrong it should be denied. There is some room for
3 misunderstanding, he agreed this is de minimis, the fence looks great and
4 agreed the Board should consider the totality of circumstance. Member
5 Braselton concurred. Member Neiman asked Mr. McGinnis to expound on the
6 building department practice of approving applications as noted and how to
7 avoid similar confusion. Mr. McGinnis replied that in many communities the
8 height in the side and front yards for a fence are the same, fence contractors
9 have problems on standard lots, let alone as specified by our zoning code that
10 takes into consideration whatever way the house faces. With respect to as
11 noted approvals versus rejecting outright, he doesn't know right answer,
12 however, in this case he presumed work had started before the permit was
13 issued. It couldn't have been any clearer the fence could not be four feet tall
14 as it is noted in three places on the permit. Member Neiman wondered if the
15 procedure should change. Mr. McGinnis stated that he talked to Mr. Hines
16 and told him the fence needed to be three feet. Member Giltner commented
17 that although the neighbors are okay with the fence and the slope is a
18 consideration aesthetically and in terms of compliance, he is not swayed by
19 arguments of economic hardship or innocence of mistake. If the Village called
20 the owner and told them the fence must be three feet, stated Member Neiman,
21 the owner disregarded that instruction and that is not an innocent mistake.
22 Member Connelly concerned that this is additional testimony, and the public
23 hearing should be reopened, as it is unknown when the conversation happened
24 relative to when the fence went up. Member Callahan feels it is improper to
25 consider this information as this wasn't brought up in the public hearing.
26 Discussion followed. Chairman Haarlow said in his five years on the Zoning
27 Board of Appeals, Board members always had access to staff or the Village
28 Attorney during deliberations. So, from a legal standpoint, the only
29 appropriate course of action would be to entertain a motion to postpone
30 discussion, reopen the public hearing and take additional testimony and
31 reconsider. If we don't, then we open ourselves to the possibility of not
32 conducting the case in a legal manner, because the Hines should have the
33 right to respond to Mr. McGinnis's comments about a conversation. Chairman
34 Haarlow stated he would not be comfortable continuing without reopening the
35 hearing, which we cannot do tonight without the presence of a court reporter.
36 He asked for a motion to continue. Mr. McGinnis explained the permit was
37 paid for up front, the secretary called Mr. Hines when it was ready. The
38 conversation with Mr. Hines happened over the counter when he came in to
39 pick up the permit. Mr. McGinnis stated that the certificate of zoning
40 compliance was issued on November 1st, the permit on November 3rd, the
41 conversation occurred on November 3rd or later when both were picked up by
42 Mr. Hines. Mr. McGinnis confirmed that Mr. Hines would not have known
43 this was approved as noted till it was ready to be picked up. Member
44 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

1 Chris Bruton and it has been an honor to serve with this Board. He offered
2 thanks to all.
3

4 **10. Adjournment**

5 With no further business coming before the Zoning Board of Appeals,
6 Member Braselton made a motion to **adjourn the special meeting of the**
7 **Zoning Board of Appeals of April 21, 2011.** Member Moberly seconded
8 the motion.
9

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

12 **NAYS:** None

13 **ABSTAIN:** None

14 **ABSENT:** None
15

16 Motion carried.
17

18 Chairman Haarlow declared the meeting adjourned at 9:09 p.m.
19
20
21

22 Approved: _____

23 _____
24 Christine M. Bruton
25 Deputy Village Clerk
26

MEMORANDUM

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

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

DATE: May 11, 2011

RE: Zoning Variation – V-04-11 7 W. Ayres


In this application for variation, the applicant requests relief from the fence requirements set forth in 9-12-3(E)(1)(a) for the construction of 6' high open wrought iron fence in the front yard and 9-12-3(E)(1)(b) for the construction of a 6' high open wrought iron fence in the corner sideyard. The Code limits fences in front yards to 3' in height when open and 4' in corner side yards when open.

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the NW corner of Ayres and Washington Street. The property has a frontage of approximately 232', an average depth of 310', and a total square footage of approximately 71,920. The maximum FAR is approximately 16,384 square feet and the maximum allowable building coverage is 25% or approximately 17,980 square feet.

cc: Dave Cook, Village Manager
Zoning file V-04-11

MEMORANDUM

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

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

DATE: March 10, 2011

RE: Zoning Variation – V-03-11 938 S. Grant

In this application for variation, the applicant requests relief from the driveway requirements set forth in 9-104-F3 for the construction of a circular driveway. The code requires that lots be a minimum of 75' wide to be allowed two curb cuts. The subject lot is 72' wide.

This property is located in the R-2 Residential District in the Village of Hinsdale and is located on the west side of Grant Street between Ninth and 55th. The property has a frontage of approximately 72', an average depth of 223.5', and a total square footage of approximately 16,104. The maximum FAR is approximately 5,065 square feet and the maximum allowable building coverage is 25% or approximately 4,026 square feet.

cc: Dave Cook, Village Manager
Zoning file V-03-11

FINAL DECISION

VILLAGE OF HINSDALE ZONING BOARD OF APPEALS PETITION FOR VARIATION

Zoning Calendar: V-02-11

Petitioner: Martin and Patricia Geraghty

Meeting held: Public Hearing was held on Wednesday, April 21, 2011 at 7:30 p.m. in Memorial Hall, in the Memorial Building, 19 East Chicago Avenue, Hinsdale, Illinois, pursuant to a notice published in The Hinsdalean on March 31, 2011.

Premises Affected: Subject Property is commonly known as 16 W. Birchwood Avenue, Hinsdale, Illinois and is legally described as:

LOT 9 (EXCEPT THAT PORTION OF LOT 9 DESCRIBED AS BEGINNING AT THE NORTH EAST CORNER OF SAID LOT 9; THENCE SOUTHERLY ON THE EAST LINE OF LOT 9, 141.45 FEET; THENCE NORTH 136.20 FEET TO A POINT ON THE NORTH LINE OF LOT 9, 40.00 FEET WEST OF THE POINT OF BEGINNING; THENCE EAST 40.00 FEET TO THE POINT OF BEGINNING) IN MAC DIARMID AND PALUMBO'S MERRILL WOODS, A RESUBDIVISION OF THE KNAUS SUBDIVISION OF MERRILL WOODS, ALONG WITH LOT NO. 2 OF PARRILLO'S SUBDIVISION, THE NORTH EAST ¼ OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID MAC DIARMID AND PALUMBO'S MERRILL WOODS RECORDED FEBRUARY 1, 1978 AS DOCUMENT R78-09188, IN DUPAGE COUNTY, ILLINOIS

Subject: In this application for variation, the applicant requests relief from the interior side and rear yard setback requirements set forth in section 3-110-D2 and D3 for the construction of an elevator. The applicant is requesting a 2' reduction in the required side yard from 16.5' to 14.5' and a 4' reduction in the required rear yard from 50' to 46'.

Facts: This property is located in the R-2 Residential District in the Village of Hinsdale and is located on the south side of Birchwood Lane between Merrill Woods and Washington. The property has

a frontage of approximately 105', an average depth of 197.5', and a total square footage of approximately 19,782. The maximum FAR is approximately 5,947 square feet and the maximum allowable building coverage is 25% or approximately 4,945 square feet.

The specific relief requested is from 3-110-D2 and D3.

Action of the Board:

Members discussed the request and agreed that concerns over special privilege were offset by medical necessity. All members agreed that the standards for variation set forth in 11-503 (F) of the Hinsdale Zoning Code had been met and recommended approval.

A motion to recommend approval was made by Member Callahan and seconded by Member Braselton.

AYES:

Members Marc Connelly, Gary Moberly, Debra Braselton, Bob Neiman, Keith Giltner, John Callahan, and Chairman Bill Haarlow

NAYS:

None

ABSTAIN:

None

ABSENT:

None

THE HINSDALE ZONING BOARD OF APPEALS

Chairman Bill Haarlow

Filed this ____ day of _____, _____, with the office of the Building Commissioner.

Zoning Calendar No. _____

VILLAGE OF HINSDALE

APPLICATION FOR VARIATION

COMPLETE APPLICATION CONSISTS OF (10) COPIES

(All materials to be collated)

FILING FEES: \$250.00 Non-refundable processing fee
\$600.00 Initial Escrow required

Total Payment Due with Application: \$850.00

NAME OF APPLICANT(S): _____

ADDRESS OF SUBJECT PROPERTY: _____

TELEPHONE NUMBER(S): _____

EMAIL ADDRESS: _____

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

DATE OF APPLICATION: _____

SECTION I

Please complete the following:

1. Owner. Name, address, and **telephone number** of owner: _____

2. Trustee Disclosure. In the case of a land trust the name, address, and **telephone number** of all trustees and beneficiaries of the trust: _____

3. Applicant. Name, address, and **telephone number** of applicant, if different from owner, and applicant's interest in the subject property: _____

4. Subject Property. Address and legal description of the subject property: (Use separate sheet for legal description if necessary.) _____

5. Consultants. Name and address of each professional consultant advising applicant with respect to this application:
 - a. Attorney: _____
 - b. Engineer: _____
 - c. _____
 - d. _____

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

a. _____

b. _____

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

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

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

SECTION II

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

1. Title. Evidence of title or other interest you have in the Subject Project, date of acquisition of such interest, and the specific nature of such interest.

2. Ordinance Provision. The specific provisions of the Zoning Ordinance from which a variation is sought:

3. Variation Sought. The precise variation being sought, the purpose therefor, and the specific feature or features of the proposed use, construction, or development that require a variation: (Attach separate sheet if additional space is needed.)

4. Minimum Variation. A statement of the minimum variation of the provisions of the Zoning Ordinance that would be necessary to permit the proposed use, construction, or development: (Attach separate sheet if additional space is needed.)

5. Standards for Variation. A statement of the characteristics of Subject Property that prevent compliance with the provisions of the Zoning Ordinance and the specific facts you believe support the grant of the required variation. In addition to your general explanation, you must specifically address the following requirements for the grant of a variation:

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

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

6. Municipal Code 9-12-3.J – Variations – Fences Any person may petition to the Zoning Board of Appeals for a variation from the provisions of this section. A petition for a variation shall include the following information: name, address, and telephone number of petitioner; a description of the requested variation; a site plan, drawn to scale, depicting the proposed fence and showing its location in relation to the lot lines of the lot on which the fence is placed, any structures on said lot, and all adjacent properties; existing elevations in the area in which the fence is placed and any proposed grade changes in said area; and such additional information as the Zoning Board of Appeals may require. The Zoning Board of Appeals shall grant a variation from the provisions of this Section only upon finding that:
- (a) the petitioner is affected by unique circumstances which create a hardship justifying relief from the provisions of this Section;
 - (b) will not alter the essential character of the locality;
 - (c) will be in harmony with the general purpose and intent of this Section;
 - (d) will set no unfavorable precedent either to the locality or to the Village as a whole;
 - (e) will be the minimum necessary to afford relief to the petitioner; and
 - (f) will not adversely affect the public safety and general welfare.

Every grant of a variation shall be based on written findings of fact evidencing compliance with the foregoing standards and specifying the reasons for granting the variation.

SECTION III

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

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

SECTION IV

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

SECTION V

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

Name of Owner: _____

Signature of Owner: _____

Name of Applicant: _____

Signature of Applicant: _____

Date: _____