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**VILLAGE OF HINSDALE
MINUTES OF THE
SPECIAL MEETING OF THE
ZONING BOARD OF APPEALS
Wednesday, June 22, 2011**

1. CALL TO ORDER

Chairman Debra Braselton called the meeting of the Zoning Board of Appeals to order on Wednesday, June 22, 2011 at 7:30 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

Present: Chairman Debra Braselton, Members Gary Moberly, Bob Neiman, Keith Giltner, John Callahan, and Rody Biggert.

Absent: Marc Connelly

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

3. APPROVAL OF MINUTES – May 18, 2011

Member Moberly moved **approval of the minutes of the Meeting of May 18, 2011**. Member Neiman seconded the motion.

AYES: Members Moberly, Neiman, Giltner, Callahan, Biggert and Chairman Braselton

NAYS: None

ABSTAIN: None

ABSENT: Member Connelly

Motion carried.

4. RECEIPT OF APPEARANCES

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

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

6. PRE-HEARING AND AGENDA SETTING

a) V-05-11, 149 E. Ogden Avenue

Mr. Mario Spino, representing Parent Petroleum, the BP Amoco at Ogden and York Roads, explained they are asking for a variance to put in a loading zone, which is difficult because of the corner location and a 750' square foot addition for a restaurant. Member Giltner asked if the

1 Plan Commission had discussed the loading zone, Mr. Spino replied that
2 they asked for more landscaping and to move the loading zone. Member
3 Moberly asked for an illustration to show where the restaurant will be
4 located. The Public Hearing was set for July 20th.

5 6 **7. PUBLIC HEARINGS**

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

8 Chairman Braselton opened the hearing. Mr. Walter Morrissey,
9 attorney for property owners Bernadine and Charles Hines, addressed
10 the Board. He explained that Mr. Hines is unable to attend tonight's
11 meeting. He outlined all supplemental materials distributed to the
12 Board since February when the application was originally submitted.
13 He noted the disparity on the face of the permit. Mr. Morrissey stated
14 that Mr. McGinnis said he had a conversation with Mr. Hines when the
15 permit was picked up, however, he reported that Mr. Hines has no
16 recollection of this conversation. He stated that Mr. Hines relied on the
17 fence contractor, who because he had installed a 4' foot fence next door,
18 continued the installation on the Hines property. The Hines fence has a
19 3' foot limit because it is a front yard, but there was confusion because
20 of front and side yard fence definitions. The contractor made an
21 innocent mistake.

22 Mr. Morrissey explained the history of the lot in terms of ownership,
23 and the subdivision of the lot between the Hines and their now next
24 door neighbors. The visual effect of the fence is de minimis, you cannot
25 discern the height difference without a measuring instrument.
26 Additionally, the fence provides a secondary barrier to the in-ground
27 pool. Neighbors have written letters in support. The grade on Hickory
28 is unusually steep, the iron fence was installed at a cost of \$8,000.00; to
29 alter the fence would be unsightly. He believes this is an innocent,
30 understandable mistake and that no precedent is set as a detriment to
31 the Village. Member Neiman asked Mr. McGinnis if he believes it is
32 conceivable that the property owner didn't hear or misunderstood the
33 conversation at the counter. Member Moberly asked why the permit
34 says 4' feet when only 3' feet is permitted. Mr. McGinnis stated that
35 permits are approved 'as noted' to expedite the process and help people
36 move forward with their projects. Mr. Morrissey commented that the
37 Hines and the Gilberts have worked with Mr. McGinnis and speak
38 highly of him. Member Moberly suggested this is an issue between the
39 fence contractor and the homeowner.

40
41 Member Callahan moved to **close the Public Hearing for V-01-11,**
42 **345 E. Hickory Street.** Member Moberly seconded the motion.
43 Discussion continued. Member Giltner asked Mr. Morrissey to elaborate
44 on setting precedent because of the size of lot. Mr. Morrissey said that

1 because the lot between the properties was subdivided it makes it
2 unique and the fact it was a vacant mess for seven years. Member
3 Neiman pointed out that, per council, as long as there are factual
4 distinctions, precedent is not an issue. He further stated that the
5 history of the lot is not a swaying argument for a code variation for a
6 new fence. Member Biggert referenced a June 16th letter from Mr.
7 Hines to the contractor, wherein Mr. Morrissey replied that the
8 contractor is unwilling to remedy this fence.

9
10 **AYES:** Members Moberly, Neiman, Giltner, Callahan, Biggert and
11 Chairman Braselton

12 **NAYS:** None

13 **ABSTAIN:** None

14 **ABSENT:** Member Connelly

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16 Motion carried.

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19 **b) V-04-11, 7 West Ayres Street (Transcript on file)**

20 Ms. Cathy Keating, attorney for the homeowners, Frederick and
21 Priscilla Meyers, addressed the Board stating that her clients are not
22 present tonight because they are out of the country. She said that she
23 turned in the mailing response cards to Ms. Bruton; she submitted
24 letters of support and affidavits and photographs of fences proposed.
25 She asked that they be part of the record. Her clients are asking for a 6'
26 foot fence where a 4' foot in the corner side yard and 3' foot in the front
27 are permitted. The unique circumstances in this case are the size of the
28 property and juxtaposition of northbound Washington Street to the
29 property. Washington Street goes right into the side yard, the concern
30 is for misdirected cars using the existing driveway and driving on the
31 lawn. Additionally, they want a fence to contain their dogs. It is a
32 pivotal busy corner, they want the fence to look right and aesthetics
33 would dictate a tall fence such as proposed. Shorter fences would be out
34 of scale. Eleven neighbors have written letters in support. The side
35 yard is so large compared with those in the vicinity it is mistaken for a
36 park and the proposed fence would demark the property as private
37 residential. She described the material and look of the proposed fence
38 that will complement the historic home. This is not precedent setting
39 because of the large lot and location of the house on the lot. Chairman
40 Braselton asked if there is any other basis for the 6' foot fence other
41 than aesthetics, Member Neiman noted that the aesthetic argument
42 doesn't satisfy the requirements of the standards to approve. He
43 suggested a row of evergreens and a compliant fence to achieve the
44 demarcation. Ms. Keating explained that a shorter fence is bulkier and

1 a taller fence would provide a safety barrier, but conceded that
2 aesthetics is the main consideration. Member Moberly moved to **close**
3 **the Public Hearing on V-04-11, 7 West Ayres Street.** Member
4 Giltner seconded the motion.

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6 **AYES:** Members Moberly, Neiman, Giltner, Callahan, Biggert and
7 Chairman Braselton

8 **NAYS:** None

9 **ABSTAIN:** None

10 **ABSENT:** Member Connelly

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12 Motion carried.

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14 A resident in the audience asked to speak to V-04-11. Member Callahan
15 **moved to reopen V-04-11.** Member Moberly seconded the motion

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17 **AYES:** Members Moberly, Neiman, Giltner, Callahan, Biggert and
18 Chairman Braselton

19 **NAYS:** None

20 **ABSTAIN:** None

21 **ABSENT:** Member Connelly

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23 Motion carried.

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25 Mr. Joe Gutgsell of 515 N. Lincoln Street, a neighbor who has written a
26 letter in opposition to the proposed variance, addressed the Board. He
27 does not believe there is a reason to grant the request and affirmed that
28 aesthetics is not a standard to grant. The Meyers cannot show hardship
29 and all the neighbors he spoke to were opposed. He does not believe the
30 public safety reasoning makes sense nor is the fence appropriate.

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32 Member Moberly moved to **close the Public Hearing on V-04-11, 7**
33 **West Ayres Street.** Member Giltner seconded the motion.

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35 **AYES:** Members Moberly, Neiman, Giltner, Callahan, Biggert and
36 Chairman Braselton

37 **NAYS:** None

38 **ABSTAIN:** None

39 **ABSENT:** Member Connelly

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41 Motion carried.

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1 **8. NEW BUSINESS**

2 a) **Approve Final Decision for V-03-11, 938 S. Grant Street**

3 Chairman Braselton asked if there were any changes or corrections to
4 the final decision. There being none, Member Callahan moved to
5 **Approve Final Decision for V-03-11, 938 S. Grant Street.** Member
6 Giltner seconded the motion.

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8 **AYES:** Members Moberly, Neiman, Giltner, Callahan, Biggert and
9 Chairman Braselton

10 **NAYS:** None

11 **ABSTAIN:** None

12 **ABSENT:** Member Connelly

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14 Motion carried.

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16 **9. UNFINISHED BUSINESS - None**

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

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22 **V-01-11, 345 E. Hickory**

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24 Member Moberly began discussion by saying he thinks this is a homeowner
25 and contractor issue, the contractor must do the work according to the code.
26 The ZBA is not in the business to forgive contractors who have not done their
27 due diligence. Member Neiman is torn, he agrees with Member Moberly and
28 thinks if we grant the variance we are sending a message to contractors to
29 come back after the fact and we'll grant a variance. When you look at the
30 property, it looks good and there is an unusual grade; Mr. Hines may not have
31 heard what Mr. McGinnis said. He can be persuaded either way. Member
32 Giltner stated he is not a fan of this request. Regarding the history of the
33 property, the innocent mistake, the unnoticeable difference in height and the
34 cost, he has empathy, but these things do not meet the standards. If they had
35 asked for a variance based on grade and potential safety issues prior to the
36 fence being built, he would be less conflicted. Member Callahan commented
37 that there is confusion on the permit; he accepts the de minimis argument
38 because portions of the fence are compliant. He feels if this was a flat
39 property, it would be more egregious. He would be in favor of granting this
40 variance. Member Biggert commented that he is also in favor and persuaded
41 by the standards in §9-12-3, regarding unique circumstances because of the
42 slope of the property. He said there is continuity between the properties and
43 some measure of safety for swimming pools that are present. He does not
44 think that precedent is set; the property is unique because of it's size.

1 Member Neiman is troubled because the aesthetic argument is not a standard,
2 but he does believe there was an innocent mistake and the result is de
3 minimis. Chairman Braselton said this requires a balancing of factors and is
4 persuaded by the steep grade. Member Giltner agrees with grade argument.
5 Member Biggert asked for clarification regarding which section of the code to
6 use to decide the matter, discussion followed. Member Callahan moved **to**
7 **approve the matter known V-01-11, 345 E. Hickory.** Member Biggert
8 seconded the motion.

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10 **AYES:** Members Neiman, Giltner, Callahan, Biggert and Chairman
11 Braselton

12 **NAYS:** Member Moberly

13 **ABSTAIN:** None

14 **ABSENT:** Member Connelly

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16 Motion carried.

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19 **V-04-11, 7 West Ayres Street**

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21 The Board agreed that the fence allowed by code would be sufficient to achieve
22 demarcation and solve the problem of keeping people from driving onto the
23 property. They did not find the safety issue persuasive and agreed that
24 aesthetics is not an allowed criteria to grant a variance. Member Callahan
25 noted that he appreciated the in-person testimony of Mr. Gutgsell. Member
26 Moberly made a motion **not to approve V-04-11, 7 West Ayres Street.**
27 Member Neiman seconded the motion.

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29 **AYES:** Members Moberly, Neiman, Giltner, Callahan, Biggert and Chairman
30 Braselton

31 **NAYS:** None

32 **ABSTAIN:** None

33 **ABSENT:** Member Connelly

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35 Motion carried.

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37 **10. ADJOURNMENT**

38 With no further business coming before the Zoning Board of Appeals,
39 Member Callahan made a motion to **adjourn the meeting of the Zoning**
40 **Board of Appeals of June 22, 2011.** Member Moberly seconded the
41 motion.

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43 **AYES:** Members, Moberly, Neiman, Giltner, Callahan, Biggert, and
44 Chairman Braselton

1 **NAYS:** None
2 **ABSTAIN:** None
3 **ABSENT:** Member Connelly

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5 Motion carried.

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7 Chairman Braselton declared the meeting adjourned at 8:48 p.m.

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12 Christine M. Bruton

13 Village Clerk

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Approved: _____