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**VILLAGE OF HINSDALE  
MINUTES OF THE MEETING  
ZONING BOARD OF APPEALS  
Wednesday, July 20, 2011**

**1. CALL TO ORDER**

Chairman Debra Braselton called the meeting of the Zoning Board of Appeals to order on Wednesday, July 20, 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 Marc Connelly, Gary Moberly, Bob Neiman, Keith Giltner and Roddy Biggert.

Absent: Member John Callahan

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 – June 22, 2011**

Chairman Braselton made a correction to the minutes. Member Moberly moved **approval of the minutes of the Meeting of June 22, 2011, as amended.** Member Giltner seconded the motion.

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

**NAYS:** None

**ABSTAIN:** Member Connelly

**ABSENT:** Member Callahan

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 - None**

**7. PUBLIC HEARINGS**

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

Mr. Mario Spino, representative for Parent Petroleum, is requesting a 700 square foot addition to west side of the BP Amoco located at the

1 Northwest corner of Ogden and York. The property has never had a  
2 loading zone, although one is required by code. Therefore, this proposed  
3 addition to the building requires a variance. He reported that he went  
4 to the Plan Commission and they requested that more green space be  
5 provided. They have installed a 42" high wrought iron fence to block off  
6 the seating area and have added two parking spaces. He noted that 15  
7 parking spaces are required, there are 19 provided. He explained that  
8 the Plan Commission and the Zoning & Public Safety Committee  
9 unanimously approved their proposal. Further, while he had not spoken  
10 with the surrounding neighbors, they had all been properly noticed. The  
11 architect for the project, Ms. Diane Duncan addressed the Board  
12 regarding the applicable standards. She explained that because this is  
13 a corner lot, there are unique physical conditions. The problem is not  
14 self-created by her clients, this is an existing building and they are  
15 trying to improve it to expand their business and bring more tax dollars  
16 to Hinsdale. Her client is exercising their rights, not asking for special  
17 privilege. She also noted there are other buildings without loading  
18 zones in the immediate area, specifically across the street. This  
19 proposal is not detrimental to the public welfare; they have added  
20 parking and installed fences, upgraded existing elevations as  
21 appropriate to the area and many other improvements. They will  
22 maintain the integrity of the current building. They have added  
23 landscaping and energy efficient LED canopy lights.

24  
25) Discussion followed regarding the 1989 zoning code requirements and  
26 that this building predates that code and the loading zone requirement.  
27 Member Moberly moved to **close the Public Hearing for V-05-11, 149**  
28 **E. Ogden Avenue.** Member Giltner seconded the motion.

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

32 **NAYS:** None

33 **ABSTAIN:** None

34 **ABSENT:** Member Callahan

35  
36 Motion carried.

## 37 38 39 8. NEW BUSINESS

### 40 a) **Approve Final Decision for V-01-11, 345 E. Hickory Street**

41 Chairman Braselton asked if all members have reviewed the Final  
42 Decisions and if they have any changes. There were none. Member  
43 Moberly moved to **Approve the Final Decision for V-01-11, 345 E.**  
44 **Hickory Street.** Member Neiman seconded the motion.



1 **9. UNFINISHED BUSINESS – None**  
2

3 **10. ADJOURNMENT**

4 With no further business coming before the Zoning Board of Appeals,  
5 Member Neiman made a motion to **adjourn the meeting of the Zoning**  
6 **Board of Appeals of June 22, 2011.** Member Biggert seconded the  
7 motion.  
8

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

11 **NAYS:** None

12 **ABSTAIN:** None

13 **ABSENT:** Member Callahan  
14

15 Motion carried.  
16

17 Chairman Braselton declared the meeting adjourned at 8:48 p.m.  
18  
19  
20

21 \_\_\_\_\_  
22 Christine M. Bruton  
23 Village Clerk

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

**FINAL DECISION**

**VILLAGE OF HINSDALE  
ZONING BOARD OF APPEALS  
PETITION FOR VARIATION**

**Zoning Calendar:** V-05-11

**Petitioner:** Mario Spina

**Meeting held:** Public Hearing was held on Wednesday, July 20, 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 May 26, 2011.

**Premises Affected:** Subject Property is commonly known as 149 E. Ogden Ave., Hinsdale, Illinois and is legally described as:

THAT PART OF LOTS 10 AND 11 (EXCEPT THE SOUTHWESTERLY 1/3 OF SAID LOT 11) ALL IN BLOCK 2 IN THE TOWN OF FULLERSBURG IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 14, 1852 AS DOCUMENT NO. 6172 AND RE-RECORDED APRIL 9, 1929 AS DOCUMENT NO. 277264, TAKEN AS A TRACT DESCRIBED AS FOLLOWS: (THE EASTERLY LINE OF THE AFORESAID LOT 10 IS CONSIDERED AS BEARING NORTH 29 DEGREES 30 MINUTES 00 SECONDS WEST) COMMENCING AT A POINT ON THE EASTERLY LINE OF SAID LOT 10, DISTANT 12.00 FEET NORTHERLY OF THE SOUTHEAST CORNER THEREOF (SAID POINT BEING THE NORTHERLY CORNER OF A PARCEL OF LAND CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, FOR THE USE OF THE DEPARTMENT OF TRANSPORTATION, BY WARRANTY DEED DATED JANUARY 3, 1079 AND RECORDED JUNE 20, 1979 AS DOCUMENT R79-51990); THENCE CONTINUING NORTH 28 DEGREES 30 MINUTES 00 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 10 (SAID LINE BEING ALSO THE WESTERLY LINE OF YORK ROAD), FOR A DISTANCE OF 166.99 FEET TO A POINT; THENCE SOUTH 56 DEGREES 00 MINUTES 10 SECONDS WEST ALONG A LINE, FOR A DISTANCE OF 221.74 FEET TO A POINT ON THE

EASTERLY LINE OF THE SOUTHWESTERLY 1/3 OF SAID LOT 11 THAT IS 182.20 FEET NORTHERLY OF THE SOUTHERLY LINE OF THE AFORESAID LOT 11 (BEING THE NORTHERLY LINE OF OGDEN AVENUE); THENCE SOUTH 34 DEGREES 50 MINUTES 10 SECONDS EAST ALONG THE AFORESAID EASTERLY LINE OF THE SOUTHWESTERLY 1/3 OF LOT 11 A DISTANCE 182.20 FEET TO A POINT IN THE NORTHERLY LINE OF THE AFORESAID OGDEN AVENUE; THENCE NORTH 54 DEGREES 52 MINUTES 00 SECONDS EAST ALONG THE SOUTHERLY LINE OF THE AFORESAID LOTS 10 AND 11) BEING THE NORTHERLY LINE OF THE AFORESAID OGDEN AVENUE), FOR A DISTANCE OF 189.96 FEET TO A POINT DISTANT 12.00 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 10: THENCE NORTH 13 DEGREES 11 MINUTES 00 SECONDS EAST ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, FOR A DISTANCE OF 17.92 FEET TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

**Subject:** In this application for variation, the applicant requests relief from the loading space requirements set forth in 9-105 of the Village's Zoning Code for the construction of a 700 square foot Quick Serve Restaurant (QSR) as well as additional site improvements to the gas station and mini-mart at 149 E. Ogden Road.

**Facts:** This property is located in the B-3 General Business District in the Village of Hinsdale and is located on the NW corner of York Road and Ogden Avenue. The property has a frontage of approximately 167', an average depth of 190', and a total square footage of approximately 38,000. The maximum FAR is approximately .09 or 3,427 square feet.

The specific relief requested is from 9-105C(1).

**Action of the Board:** Members discussed the request and agreed that due to the fact that the property never had a loading zone, nor was there room to provide one, 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 Moberly and seconded by Member Giltner.

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

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** Member Callahan


THE HINSDALE ZONING BOARD OF APPEALS

\_\_\_\_\_  
Chairman Debra Braselton

Filed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, with the office of the Building Commissioner.

## MEMORANDUM

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

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

**DATE:** September 15, 2011

**RE:** Zoning Variation – V-06-11 433 S. Washington St.

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In this application for variation, the applicant requests relief from the corner side yard setback requirements set forth in section 3-110-D2 for the construction of a new single family home. The applicant is requesting a 16' reduction in the required corner side yard from 43.3' to 27.3'. It should be noted that this request is being generated due to the fact that because this is a conforming lot, the corner side yard setback is a function of block average. The lots on Fifth Street are fairly deep, moving the block average back further with a resulting substantial loss to setback on the subject lot.

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the northeast corner of Washington and Fifth Street. The property has a frontage of approximately 81', an average depth of 150', and a total square footage of approximately 12,150. The maximum FAR is approximately 4,116 square feet and the maximum allowable building coverage is 25% or approximately 3,037 square feet.


cc: Dave Cook, Village Manager  
Zoning file V-06-11



**MEMORANDUM**

**Date:** September 16, 2011

**To:** Z.B.A. Chairman and Commissioners

**From:** Chris Bruton, Z.B.A. Secretary 

**Re:** Deliberations


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Chairman Braselton introduced for Board discussion and consideration the topic of deliberations following public hearings, specifically the pros and cons of whether or not to conduct deliberations on each individual matter immediately following each hearing, or to continue to deliberate all hearings at one time after all are concluded.

cc: Dave Cook, Village Manager  
Ken Florey, Village Attorney

**MEMORANDUM**

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

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

**DATE:** September 13, 2011

**RE:** Fence Variation Standards

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It has come to our attention that there is a conflict between the Municipal Code and the Zoning Code with respect to variation standards for fences. 9-12-3 of the Municipal Code has specific standards for fence variations that do not mirror those set forth in 11-503 of the Zoning Code.

Staff respectfully requests that the Zoning Board of Appeals review each of the standards pertaining to fence variations and offer an opinion on which of the two should be used. Once a decision is made, Staff will pursue a text amendment accordingly.

cc: Dave Cook, Village Manager

3. No "solid fence", as defined herein, shall be permitted that exceeds twenty four inches (24") in height as measured from the natural grade in any front yard or any corner side yard. A "solid fence" is a fence in which the open spaces, when viewed at a right angle to the vertical fence plane, constitute less than one-third (1/3) of the total fence contour. The "total fence contour" is the entire square foot area within and between the outside vertical outline of the fence. The "open spaces" are areas within the "total fence contour", which, when viewed at right angles to the vertical fence plane, allow clear visibility through said fence plane.
4. No chainlink fence shall contain strips or slats of any kind between or among the links.
5. No barbed wire fences shall be permitted; provided, however, that no more than three (3) strands of barbed wire may be used on the top of fences enclosing public utility facilities.
6. No electrically charged fences shall be permitted.
7. No wingwall may encroach into a required yard.

I. Protective Fences: Any school, church, hospital, or library may petition to the zoning board of appeals for a permit to construct a protective fence that would not conform to the requirements of subsection E of this section or the requirements of subsection H1 of this section insofar as such requirements relate to chainlink fences; provided, however, that under no circumstances shall any fence be permitted under this subsection on a lot zoned in the AA or A residence districts of the Hinsdale zoning ordinance which is used for residential purposes except in conformance with all the requirements of this section. The zoning board of appeals shall approve such petition only upon the finding that: 1) the fence is justified in light of the seriousness of the risk posed to the safety of persons and the fence will mitigate that risk; 2) the fence will not alter the essential character of the locality; 3) the fence will be in harmony with the general purpose and intent of this section; 4) the fence will set no unfavorable precedent either to the locality or to the village as a whole; 5) the fence will be the minimum size and type necessary to accomplish its intended purpose; and 6) the fence will not adversely affect the public safety and general welfare.

9-12-3  
J. Variations: 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: 1) the petitioner is affected by unique circumstances which create a hardship justifying relief from the provisions of this section, 2) the variation will not alter the essential character of the locality, 3) the variation will be in harmony with the general purpose and intent of this section, 4) the variation will set no unfavorable precedent either to the locality or to the village as a whole, 5) the variation will be the minimum necessary to afford relief to the petitioner, and 6) the variation 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.

**K.Nonconforming Fences:** All fences heretofore lawfully constructed and not in conformity with the provisions of this section shall be deemed nonconforming fences and may exist and may be maintained; provided, however, that no such maintenance shall expand any existing nonconformity or create any new nonconformity. No nonconforming fence shall be enlarged or extended in any manner except in accordance with the provisions of this section.

**L.Swimming Pools:** Nothing in this section shall be construed to alter or limit the provisions of the international residential code related to fences designed to enclose swimming pools.

**M.Exemptions:** The provisions of this section shall not apply to fences owned or maintained by the village or to fences constructed and maintained by any other governmental body or agency for the principal purpose of reducing noise. (Ord. O2008-46, 8-12-2008)

#### **9-12-4: MOVING BUILDINGS:**

**A.Permit Required:** No person shall move any building on, through, or over any street, alley, sidewalk, or other public place in the village without having first obtained a permit from the building commissioner. Applications for such permits shall be made in writing and shall state thereon the name of the applicant, the name of the owner of the building, the name of the contractor engaged to move the building, the name of the licensed tree contractor to trim tree branches if necessary, the proposed route and the number of days it is intended that the building should occupy any portion of any street, alley, sidewalk, or other public place. No permit shall be issued except upon approval of such application by the building commissioner and payment of the fee provided in subsection B of this section.

**B.Permit Fee:** No permit for moving a building shall be issued until the fee therefor has been paid to the village as provided in section 9-1-4 of this title.

**C.Bond And Insurance Requirements:** Every applicant for a permit under this chapter shall submit with the application a cash bond in the sum of one thousand dollars (\$1,000.00), and an insurance certificate evidencing an insurance policy indemnifying and saving harmless the village from any claim in connection with the moving of the building with policy limits not less than one million dollars (\$1,000,000.00).

**D.Procedures For Moving:**

1. **Lights And Warnings:** Whenever a street or alley is blocked by a house or structure that is being moved, warnings to that effect shall be placed by the director of public services so as to warn vehicles and persons from entering that portion of the street which is so blocked. The person moving any building through the streets shall keep warning signs and lanterns or lights at night on the building so as to guard against any person or vehicle from colliding with it.

2. **Tree Trimming:** The applicant shall provide a licensed tree contractor to trim and cut any tree branches necessitated by moving the building as directed by the public works

F. *Standards For Variations:*

1. ~~General Standard:~~ No variation shall be granted pursuant to this section unless the applicant shall establish that carrying out the strict letter of the provisions of this code would create a particular hardship or a practical difficulty. Such a showing shall require proof that the variation being sought satisfies each of the standards set forth in this subsection F.
2. *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, or 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 owner of the lot.
3. *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.
4. *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.
5. *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.

6. *Code And Plan Purposes:* The variation would not result in a use or development of the subject property that would be not 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.
7. *Essential Character Of The Area:* The variation would not result in a use or development on the subject property that:
  - (a) Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development, or value of property or improvements permitted in the vicinity; or
  - (b) Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or
  - (c) Would substantially increase congestion in the public streets due to traffic or parking; or
  - (d) Would unduly increase the danger of flood or fire; or
  - (e) Would unduly tax public utilities and facilities in the area; or
  - (f) Would endanger the public health or safety.

8. *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 property.

*G. Variation Less Than Requested:* A variation less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

*H. Conditions On Variations:* The zoning board of appeals may impose such specific conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of this code upon the premises benefited by a variation as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject property or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variation. Violation of any such condition or limitation shall be a violation of this code and shall constitute grounds for revocation of the variation.

*I. Affidavit Of Compliance With Conditions:* Whenever any variation authorized pursuant to this section is made subject to conditions and limitations to be met by the applicant, the applicant shall upon meeting such conditions file an affidavit with the village manager so stating.

*J. Effect Of Grant Of Variation:* The grant of a variation shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approval that may be required by the codes and ordinances of the village including, but not limited to, a certificate of zoning compliance, a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

*K. Limitations On Variations:* Subject to an extension of time granted by the village manager pursuant to subsection 11-101K of this article, no variation from the provisions of this code shall be valid for a period longer than one year unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion or unless a certificate of occupancy is issued and a use is commenced within that period.

A variation shall be deemed to authorize only the particular construction or development for which it was issued and shall automatically expire and cease to be of any force or effect if such construction or development shall be removed and not replaced within six (6) months following such removal. (Ord. 94-34, § 3, 7-12-1994; Ord. 95-14, § 2, 4-25-1995; Ord. 95-15, § 2E, 4-24-1995; Ord. 97-4, § 9A, 3-4-1997; Ord. 99-6, §§ 7B, C, 3-2-1999; Ord. 99-34, § 3, 8-3-1999; Ord. O2000-34, § 2, 9-5-2000; Ord. O2004-11, § 2, 3-2-2004)

## PART VI. AMENDMENTS AND SPECIAL APPROVALS

### Sec. 11-601. Amendments:

*A. Authority:* This code and the zoning map may be amended from time to time by ordinance duly enacted by the board of trustees in accordance with the procedures set out in this section.

*B. Purpose:* The amendment process established by this section is intended to provide a means for making changes in the text of this code and in the zoning map that have more or less general significance or application. It is not intended to relieve particular hardships nor to confer special privileges or rights. Rather, it is intended as a tool to adjust the provisions of this code and the zoning map in light of changing, newly discovered, or newly important conditions, situations, or knowledge.