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**VILLAGE OF HINSDALE  
ZONING BOARD OF APPEALS  
MINUTES OF THE MEETING  
Wednesday, May 15, 2013**

**1. CALL TO ORDER**

Chairman Debra Braselton called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, May 15, 2013 at 7:32 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 and John Callahan

**Absent:** Members Keith Giltner and Rody Biggert

**Also Present:** Village Attorney Michael Marrs, Director of Community Development/Building Commissioner Robb McGinnis, Village Clerk Christine Bruton, Court Reporter Kathy Bono

**3. APPROVAL OF MINUTES – April 17, 2013**

There being no changes or corrections to the draft minutes, Member Moberly moved to **approve the minutes of the Meeting of April 17, 2013**. Member Connelly seconded the motion.

**AYES:** Members Connelly, Moberly, Neiman and Chairman Braselton

**NAYS:** None

**ABSTAIN:** Member Callahan

**ABSENT:** Members Biggert and Giltner

Motion carried.

**4. APPROVAL OF FINAL DECISION – None**

**5. RECEIPT OF APPEARANCES**

All persons intending to testify in the public hearing were sworn in by the court reporter.

**6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE – None**

**7. PRE-HEARING AND AGENDA SETTING – None**

1 **8. PUBLIC HEARINGS**

2 a) **APP-01-13, 735 and 739 Phillippa**

3 Mr. Matthew Kline, attorney for the homeowner, addressed the Board  
4 explaining that this case is an appeal of a determination by the Village  
5 that a new home cannot be constructed on 739 Phillippa. The  
6 homeowner, Dr. Ruth Barski lived in the residence at 735 Phillippa,  
7 acquired the property at 739 Phillippa, put up a fence, installed  
8 landscaping and a sprinkling system thereby creating one zoning lot,  
9 according to Village staff. However, he asserts that it was two lots then  
10 and is two lots now. The lots could not be consolidated, because it would  
11 have resulted in the house being non-conforming, and code states you  
12 cannot create a non-conforming lot. Individually, each of these lots is a  
13 legal non-conforming lot of record. He distributed Exhibit 1, a memo  
14 from Mr. Robert McGinnis, Director of Community Development which  
15 states the Village is of the opinion that by obtaining the fence permit for  
16 the two lots, one zoning lot is created.

17 Mr. Klein offers Exhibit II, which illustrates that each lot was created  
18 by a plat or deed. Member Neiman asked why this isn't a single zoning  
19 lot. Mr. Klein explained this single zoning lot was defined by the owner  
20 when she got a permit for a fence. He suggests she takes out the fence,  
21 only an accessory use, and redefine the property. He pointed out that on  
22 a Grant Street property a playhouse was removed and moved to the  
23 home lot, therefore there was no accessory structure, and the ZBA  
24 agreed at that time there were two legal non-conforming lots again.  
25 Chairman Braselton confirmed two pin numbers still exist.

26 Mr. Klein suggests that many houses on Phillippa are legal non-  
27 conforming lots. He believes that reverting these two to their original  
28 non-conformity would make homes built on these properties consistent  
29 with almost every other house on the block. To leave the lot 'double'  
30 would make it substantially larger than all other lots in the block. Dr.  
31 Barski would take out the fence; denying her the right to do this would  
32 be taking her rights away from her. Mr. Klein pointed out that there  
33 are three neighbors present tonight that have no objection to the  
34 proposal.

35 Member Moberly asked if this is a code or staff issue. Mr. McGinnis  
36 explained that this is not in the code with specificity and staff struggles  
37 with this issue regularly. He provided background information  
38 regarding bulk regulations in Hinsdale and explained that most towns  
39 don't allow building on non-conforming lots, a goal of most zoning codes  
40 is to slowly eliminate non-conforming lots and uses. Past practice was  
41 consistent on this zoning lot issue; he spoke with former and long time  
42 Village building department director Mr. Dan Schoenburg and building  
43 commissioner Mr. Charles Schmidt, who confirmed if people purchased

1 and demolished a house, when they came in to alter or improve that  
2 property they were told they were creating one zoning lot. Since 2005,  
3 current practice is different, a resident can't have an accessory  
4 structure without consolidating. He believes by definition, this is one  
5 zoning lot, but the code doesn't support breaking it out. Village  
6 Attorney Michael Marrs cautioned with respect to precedent, that if the  
7 Board feels the code provisions support Mr. Klein's argument, they  
8 shouldn't rule against this applicant because of future situations. The  
9 concerns about precedent would be more appropriately addressed  
10 through text amendments to the code. Mr. McGinnis cautioned this  
11 could result in more houses on more lots. He further stated that as we  
12 are a non-home rule community, properties are bought and sold and we  
13 have no record until a permit is applied for and at that time the  
14 applicant would be cautioned they were making one zoning lot. Member  
15 Callahan said this will be slowly eliminated over time, but after 2005 no  
16 permit would have been issued without consolidation. It was noted that  
17 a resident could put in a hedge or a swing set and unintentionally create  
18 one zoning lot by improving it.

19  
20 Member Callahan moved **to close the public hearing on APP-01-13,**  
21 **735 and 739 Phillippa.** Member Connelly seconded the motion.

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

25 **NAYS:** None

26 **ABSTAIN:** None

27 **ABSENT:** Members Giltner and Biggert

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29 Motion carried.

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31 **D E L I B E R A T I O N**

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33 Member Moberly argues against the Village policy because it seems  
34 arbitrary to him. Member Neiman commented that in his opinion the  
35 language in §10 105 is dispositive; when he reads the language, it says  
36 it's ok notwithstanding any other section of the code. Further, given  
37 that Mr. McGinnis's office addresses this issue every day, and they have  
38 no strong view on the matter, it leads him to believe this Board should  
39 approve. Member Callahan agrees, there is no record of this policy and  
40 he believes the benefit of doubt should go to the homeowner.

41  
42 Member Callahan moved **to approve the appeal know as APP-01-13,**  
43 **735 and 739 Phillippa.** Member Connelly seconded the motion.

1           **AYES:** Members Connelly, Moberly, Neiman, Callahan and Chairman  
2           Braselton

3           **NAYS:** None

4           **ABSTAIN:** None

5           **ABSENT:** Members Giltner and Biggert

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7           Motion carried.

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9           **9. NEW BUSINESS** – None

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11          **10. UNFINISHED BUSINESS** – None

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13          **11. ADJOURNMENT**

14           With no further business before the Zoning Board of Appeals, Member  
15           Callahan made a motion to **adjourn the meeting of the Zoning Board**  
16           **of Appeals of May 15, 2013.** Member Moberly seconded the motion.

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18           **AYES:** Members Connelly, Moberly, Neiman, Callahan and Chairman  
19           Braselton

20           **NAYS:** None

21           **ABSTAIN:** None

22           **ABSENT:** Members Giltner and Biggert

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24           Motion carried.

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26           Chairman Braselton declared the meeting adjourned at 8:07 p.m.

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

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

31           Village Clerk

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