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**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE SPECIAL MEETING
Wednesday, August 21, 2013**

1. CALL TO ORDER

Chairman Debra Braselton called the special meeting of the Zoning Board of Appeals to order on Wednesday, August 21, 2013 at 7:01 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 Rody Biggert

Absent: Members Keith Giltner and John Callahan

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

3. APPROVAL OF MINUTES – July 17, 2013

Due to the lack of eligible voting members present, this item was forwarded to the September 18, 2013 meeting.

4. APPROVAL OF FINAL DECISION

a) V-04-13, 800 Merrill Woods Road

Due to the lack of eligible voting members present, this item was forwarded to the September 18, 2013 meeting.

b) V-05-13, 1 S. Monroe

Due to the lack of eligible voting members present, this item was forwarded to the September 18, 2013 meeting.

c) V-03-13, 218 Ogden Avenue

Due to the lack of eligible voting members present, this item was forwarded to the September 18, 2013 meeting.

5. RECEIPT OF APPEARANCES – All persons intending to speak 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) **V-08-13, 5526 S. Washington Street** (A transcript of the following
3 proceeding is on file.)

4 Mr. Tom Angell, owner and applicant, explained to the Board that he
5 had originally made this application in July 2009 and the Board
6 unanimously approved this variance at that time. Unfortunately, he did
7 not proceed in a timely fashion with permitting and, according to code,
8 he must reapply. By way of background, he explained that six or seven
9 years ago he invested a great deal of money into the property; however,
10 the garage was structurally unsound, and needed to be completely
11 replaced. He is requesting a decrease in the required side yard setback
12 of 7.35' to 3.9' feet for the construction of another detached garage
13 located in exactly the same location as the old one. Chairman
14 Braselton confirmed that this application is the exact same request as
15 the 2009 case.

16 **Mr. Walter Mihelich, 5512 S. Washington**, is concerned about
17 flooding; however, in conversation with Mr. Angell he was assured that
18 there will be no change in land use and rain gutters will be piped to the
19 rear of yard. He asked that his driveway not be used during the
20 construction, but otherwise he supports the request. Mr. Angell
21 thanked his neighbor and stated that the existing setback will not
22 worsen the situation and he is sensitive Mr. Mihelich's concerns. He
23 also commented that all topographicals will be provided pursuant to
24 code.

25 There being no further questions on the matter, Member Biggert moved
26 **to close the public hearing for V-08-13, 5526 S. Washington**
27 **Street**. Member Connelly seconded the motion.

28
29 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman
30 Braselton

31 **NAYS:** None

32 **ABSTAIN:** None

33 **ABSENT:** Members Giltner and Callahan

34
35 Motion carried.
36
37

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

39
40 The Board agreed that because of the previous approval, they were satisfied
41 that all criteria for approval had been met. Member Moberly moved **to**
42 **approve the request known as V-08-13, 5526 S. Washington Street**.
43 Member Neiman seconded the motion.

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

2 **NAYS:** None

3 **ABSTAIN:** None

4 **ABSENT:** Members Giltner and Callahan

5
6 Motion carried.

7
8 b) **V-07-13, 330 Chestnut Street** (A transcript of the following proceeding
9 is on file.)

10 Chairman Braselton asked for a motion to open the public hearing. So
11 moved by Member Moberly, seconded by Member Biggert.

12
13 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman
14 Braselton

15 **NAYS:** None

16 **ABSTAIN:** None

17 **ABSENT:** Members Giltner and Callahan

18
19 Motion carried.

20
21 Mr. Peter Coules, attorney for the applicant, Mr. David Habiger,
22 addressed the Board. He provided an illustration showing the small
23 buildable area of this B3 zoning district parcel. His client's proposal is
24 to build one structure on the property which would cover only 35% of
25 90% allowable lot coverage. A variance is necessary because of the
26 thinness of the lot; they are asking for a setback of 5.5' feet instead of
27 the 25' feet required. He stated that the parking lot would require a 10'
28 foot landscape buffer and would be located at an existing cut. No sewers
29 would be moved; they will be able to provide additional green space by
30 building only one small structure. The uniqueness of the property is
31 because of the depth. Mr. Coules reported that neighbors and BNSF are
32 all in favor, there have been no objections. Mr. Habiger pointed out that
33 the building profile is no higher than any other structure along the
34 tracks and conforms to the 30' foot height restriction in the code. Mr.
35 Bernie Bartelli, architect with Culligan Abraham, stated that the single
36 story building will be about 25' feet from existing grade with a solid wall
37 facing the tracks. To soften reverberation from the train, this wall will
38 be covered with ivy. That side of the building was designed to have no
39 windows other than an interior light source. The ivy will address some
40 of the noise.

41
42 **Mr. Tom Hines of 116 S. Vine**, the resident of the second house from
43 the tracks, asked if this will be a business use. Mr. Bartelli explained

1 what the building will look like and what its purpose will be. Mr.
2 Coules pointed out that site plan and exterior appearance will be
3 addressed at the Plan Commission. It was noted that this structure
4 would only occupy 12.5% of the allowable 50% buildable area. Mr.
5 Habiger said he has spent a lot of time with the railroad working toward
6 approval. The site is not zoned for retail. It was confirmed that the
7 pedestrian walkway would remain intact. Mr. Hines would like to see
8 trees planted as a buffer. Mr. Habiger noted that you don't want to look
9 at the railroad tracks from the inside of the building either, and while
10 he does not have a legal document of agreement with the railroad for
11 trees, he intends to plant appropriate trees.

12 There being no further questions on this matter, Member Biggert moved
13 **to close the public hearing for V-07-13, 330 Chestnut Street.**
14 Member Moberly seconded the motion.

15
16 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman
17 Braselton

18 **NAYS:** None

19 **ABSTAIN:** None

20 **ABSENT:** Members Giltner and Callahan

21
22 Motion carried.

23 24 25 **DELIBERATIONS**

26
27 Member Neiman thinks this variance deserves approval. The owner and the
28 architect have done a great job taking a wasteland to a useful purpose while
29 being sensitive to the neighbors. Member Moberly moved **to close the public**
30 **hearing for V-07-13, 330 Chestnut Street.** Member Neiman seconded the
31 motion.

32
33 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman Braselton

34 **NAYS:** None

35 **ABSTAIN:** None

36 **ABSENT:** Members Giltner and Callahan

37
38 Motion carried.

39
40 c) **V-06-13, 14 Glendale Avenue** (A transcript of the following proceeding is
41 on file)

42 Chairman Braselton asked for a motion to open the public hearing. So
43 moved by Member Moberly, seconded by Member Neiman.

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

3 **NAYS:** None

4 **ABSTAIN:** None

5 **ABSENT:** Members Giltner and Callahan

6
7 Motion carried.

8
9 Mr. Scott Day, attorney for the applicant, addressed the Board stating he
10 was here tonight with his colleague, Christina Morrison. The application
11 before the Board is a petition for a variation within the R4 zoning district
12 to increase the height of a residential home above the allowable 30 feet. To
13 consider is the definition of grade, Hinsdale code utilizes existing contours
14 prior to any reshaping of the natural contours of the property, but there
15 are no good records of what those were at the time the house was
16 constructed. However, the home was constructed in accordance with the
17 then region-wide DuPage County Stormwater Management Ordinance
18 which adherence to should have protected the basement and first floor in a
19 100 year rain event. The second definition is height, which the Hinsdale
20 code defines as the vertical distance as measured from the grade. This
21 property measures at 30 feet.

22 Mr. Marc Marcucci, property owner, addressed the Board stating he moved
23 into his home in 1998 with his wife and six children. While out of the
24 country on vacation in 2010 he got a call from his neighbor who was
25 checking his home. There was a severe rainstorm in progress and Mr.
26 Marcucci's basement was full of water. By the time it was over, the flood
27 had inundated the first floor, too. To remedy the problem, he consulted
28 FEMA engineers and, working with the County and the Village, he created
29 stormwater compensation on the property. Additionally, he expanded
30 window wells, added pump systems and resealed all settling cracks. The
31 engineer at the time stated this was a once in a lifetime storm event,
32 however, during the April 2013 storm, they ended up with a full basement
33 and 5 inches of water on the first floor. Everything was destroyed again.
34 He explained that he and his family are attached to their home and in
35 order to solve the problem drastic measures would need to be taken. He
36 hired more engineers who determined the only solution is to raise the
37 house. He noted that the water comes from Salt Creek; the water from the
38 west does not inundate the property.

39 Mr. Dan Lynch from Christopher Burke Engineering, explained that the
40 flood insurance rate map from 1981 was in effect when the house was built,
41 and the house was designed with the best information available at the time
42 to protect it from flooding. In 2004 new maps were issued, however
43 Hinsdale was excepted because it is a dual county community. Mr. Lynch

1 noted that even after raising the elevation of the Marcucci home, theirs
2 will still be lower than all others in the area. He explained it is a complex
3 procedure to raise a home; the house will be separated from the foundation
4 and raised by hydraulic jacks, the existing foundation will be extended
5 with cement to the new elevation and the house is set back down. Member
6 Neiman asked how raising the house will affect water runoff to the
7 neighbors. Mr. Lynch said the grading remains essentially the same in full
8 compliance with DuPage County guidelines; the perimeter yard drainage
9 won't change. The only place the grading is changing is with the driveway
10 because as the garage floor is raised up, the slope of the driveway will
11 increase. The driveway slope will run north to the street as it does now
12 where there is roadside drainage along Glendale. Mr. Lynch said it will
13 not affect runoff to the neighbors. Raising the top of the foundation will
14 increase the flood elevation above first floor, well in excess of the April
15 2013 event. Additionally, retaining walls will be built to prevent the water
16 from reaching the foundation. Member Biggert speculated this isn't a
17 runoff problem; it's an encroachment issue from Salt Creek. Mr. Lynch
18 confirmed that is exactly the case. Discussion followed regarding the
19 function of the retaining wall and where water will go and dissipate. Mr.
20 Marcucci noted when the house was built he put a storm water tank in his
21 yard to compensate for the displaced water at 1 ½ times. There are
22 200,000 gallons of water retained under his backyard, but this isn't
23 enough. Mr. Day explained the regulatory scheme and standards; a
24 retaining wall within 10' feet of the foundation of the home complies with
25 the regulations of the DuPage County Stormwater Management Ordinance.
26 Displacing the water in his basement will not affect the neighbors, said Mr.
27 Marcucci; Mr. Lynch agreed because this water is dispersed throughout the
28 entire Salt Creek watershed.

29 Mr. Day addressed the criteria for approval of the variation request. The
30 hardship is obvious, \$800,000 of flood damage and the unique physical
31 condition which requires relief from the existing topography. The problem
32 is not self-created and this solution is a reasonable and minimal approach.
33 If the Marcucci's had known in 1998 what the flood elevation was going to
34 be today, the home would have been built higher at that time.
35 Additionally, granting the variation will avoid a situation that might create
36 blight for this area from an unusable house.

37 **Mr. Terrence Heuel, attorney for Perry and Kathryn Accettura of 19**
38 **E. Birchwood**, addressed the Board. In the last flood, the floodwater
39 came up to their retaining wall, it was two steps away from coming in the
40 kitchen. What will happen to the water that used to be in Marcucci's
41 basement? There was 150,000 gallons of water in Marcucci's basement,
42 where will it go? This entire area is a problem. It is a hardship, but is it
43 self-created? No one is upset about the change in height; the problem is

1 what to do about the water in his basement.

2 **Mr. Michael Capp, engineer for the Accettura's**, said he is sensitive
3 and conversant with flood plain issues. He believes zoning issues deal with
4 dimensions, bulk describes volume, the variance is for height, but we're
5 really talking about the volume of water that will be displaced by his
6 proposal. He showed pictures of the flooding in the area and stated, in his
7 opinion, the water will go south to the neighbor's back yards. Mr. Marcucci
8 is creating an island and that will displace the water in the immediate
9 neighborhood to an elevation that it currently attains under these
10 conditions.

11 Member Neiman noted that the retaining wall is perfectly legal and raising
12 the house is added protection, but will not change the diversion of water.
13 Chairman Braselton reminded the Board they are not granting the
14 variance, but only making a recommendation to the Village Board. Mr.
15 Capp commented that without opportunity to analyze the data he cannot
16 answer Mr. Marcucci's question about how much of a difference this
17 displacement would be over the neighborhood. Mr. Lynch stated he did do
18 the calculations of displaced volume; he looked at the area between the
19 Marcucci residence and Salt Creek and determined that at most the
20 displacement would fill this area floodplain approximately 1/10" of an inch.
21 He reiterated the cubic feet in the basement, relative to the square footage
22 of the floodplain, would be 1/10" of an inch. Director of Community
23 Development Robb McGinnis stated that he had attended a meeting with
24 Mr. Marcucci and the Christopher Burke engineers to discuss water
25 displacement and the FEMA regulations and requirements. The question
26 is what happens to the de facto compensatory storage provided by the
27 basement spread out over an entire watershed. The amount of water
28 leveled over the entire watershed is probably immeasurable. He also noted
29 that this variation request is for an increase in height; Mr. Marcucci could
30 cut down the roof of the house and not have been before the ZBA at all.

31 **Mr. Jim Audet, 23 E Birchwood**, stated he has no problem with the
32 height. The water came up in his backyard but stopped. The water
33 reaches a certain level and then recedes. He agrees with Marcucci's
34 engineer; the source of the water is Salt Creek not Marcucci's basement.

35 **Ms. Lauren Fitzgerald of 3823 Washington Street in Oak Brook**,
36 addressed the Board stating she never had any water at her house until
37 Marcucci's built their home. She believes they pump the water from their
38 yard into hers. She doesn't think it's fair to assume the raising and
39 grading proposed will not affect them. They have spent \$100,000 to keep
40 water away from their home and asked the Board to consider more than
41 just the height of the building. She confirmed that she did not get any
42 water in 2010 and 2013, but they have installed water protection measures
43 since the Marcucci's house was built in 1998.

1 **Mr. Graham Hershman of 949 N. Washington** stated that during the
2 floods he had six feet of water in his yard that came to the top of his
3 retaining wall. He would contend that any further displacement of water
4 might not be retained by his six foot wall. He would object to anything that
5 would potentially affect his house or his neighbors; even one inch would
6 make a difference. He believes this is a self-created problem because Mr.
7 Marcucci built in a floodplain. Mr. Hershman is concerned about the data
8 provided tonight, who is to say if the new estimates will work this time
9 either.

10 Mr. Marcucci responded that he is planning to build a retaining wall, which
11 would still be a foot below his neighbor's retaining walls. There is a
12 problem in the area; he is not the problem, the watershed is the problem.
13 Mr. Day commented that furthermore, the home is not located in the
14 floodplain, it is outside the regulatory floodplain; this discussion tonight
15 has been about storm water, which is not under the purvue of the ZBA.
16 Stormwater regulations are enforced and determined by DuPage County.
17 He reiterated that based on the elevation of the houses, this basement will
18 fill first before it would affect the surrounding neighbors. He pointed out
19 that none of the neighbors have objections to the height of the home, but
20 rather have issues with the DuPage County Stormwater regulations.
21 Member Neiman moved **to close the public hearing for V-06-13, 14**
22 **Glendale Avenue.** Member Biggert seconded the motion.

23
24 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman
25 Braselton

26 **NAYS:** None

27 **ABSTAIN:** None

28 **ABSENT:** Members Giltner and Callahan

29
30 Motion carried.

31
32 **DELIBERATIONS**

33
34 It was noted that this is a recommendation only and will go to the Village
35 Board of Trustees regardless of the ZBA vote. Member Neiman believes in
36 global warming and science. He stated that the ZBA tries to be sensitive to
37 requests that will affect neighbors, even if it isn't a direct criteria for
38 approval. The relevant portions of the approval criteria are under the
39 essential character of the area portion of the code; that is approval will not
40 result in a material detriment of the public welfare or unduly increase flood or
41 fire. The Marcucci's lawyers comment that the ZBA is ill-equipped to measure
42 materiality and therefore must defer to engineering experts. The Village says
43 the amount of displaced water will be a 'spit in the ocean'. The Marcucci's

1 have satisfied the required criteria and he will vote in favor despite concern
2 for the neighbors. We can't vote on the retaining wall and raising the
3 elevation won't materially affect flooding in neighboring properties. Member
4 Biggert agrees Marcucci's counsel has satisfied his burden of proof. Member
5 Moberly agrees, he is not insensitive to the water issues, but believes the
6 criteria of this case has been met. Member Moberly moved to approve **V-06-**
7 **13, 14 Glendale Avenue.** Member Neiman seconded the motion.

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

10 **NAYS:** None

11 **ABSTAIN:** None

12 **ABSENT:** Members Giltner and Callahan

13
14 Motion carried.

15
16 *(The Board took a 10 minutes recess, upon reconvening the Board resumed the*
17 *following business.)*

18
19 d) **V-09-13, 421 E. Ogden Avenue** (A transcript of the following proceeding
20 is on file.)

21 Mr. John George, attorney for Adventist Hinsdale Hospital, addressed the
22 Board stating they are seeking variations for signs to serve the outpatient
23 cancer center. This property encompasses nine acres and is in the O3
24 Zoning district, they are not asking for setback, lot coverage or FAR relief
25 for the building, it is completely code compliant. He described the facility
26 and the services to be provided. The variation request is only about
27 signage. The Zoning code prohibits off premises signs, they are asking for
28 two in order to identify the business location. Spinning Wheel Road is
29 being closed, and they need directional signs to the businesses in that area.
30 IDOT agrees it is a good idea to close that road. They are asking for nine
31 ground signs, only one allowed by code. The code does not provide for
32 campus signage. Ground signs are needed to direct patients to the correct
33 part of the facility. These are required to be 100' square feet total, they are
34 requesting 467' square feet total. There will be two separate entrances and
35 they are asking for signs above each at 38' high instead of the allowed 20'.

36 Mr. Jordan Black, from Sign Craft USA, addressed the Board stating he
37 was involved with designing the signs to make them architecturally
38 integrated with the building and to conform to Hinsdale's standards. He
39 provided a powerpoint illustrations of the proposed signage. He outlined
40 the materials used to construct the signs and described the subtle lighting
41 and appropriate landscaping provided and the purpose for each sign.

42 Mr. George explained that IDOT is not requiring a change to existing
43 traffic signage. The street will still be Salt Creek Road. Chairman

1 Braselton commented that she can understand why they want the height of
2 the sign, so it can be seen; the purpose of the extra signage is just to direct
3 people to their destinations. Member Moberly asked why this sign is so
4 much bigger than the others in the area. Mr. George explained that when
5 the traffic is going in either direction people need to be able to identify the
6 location. They directed the sign company to design as small a sign as
7 possible and still serve the purpose for which it is intended. Some of the
8 other business signs on Ogden Avenue are more easily recognizable by
9 brand and a larger sign not as necessary, said Mr. Black, and noted that
10 people still rely on signage to reach their destinations, not just GPS type
11 technology.

12
13 Mr. George addressed the criteria in the zoning code for granting a
14 variation, and stated this is a unique situation in part because of the
15 closing of Spinning Wheel Road; the type of sign variations requested do
16 not affect or change character of neighborhood and there is no other
17 remedy.

18
19 **Mr. David Theiler of 617 N. Oak**, stated this project is located about a
20 block from their home and he finds nothing offensive about the Center or
21 the signage and encourages the Board to grant these variances.

22
23 There being no further questions for the applicant, Member Biggert moved
24 **to close the public hearing for V-09-13**. Member Moberly seconded the
25 motion.

26
27 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman
28 Braselton

29 **NAYS:** None

30 **ABSTAIN:** None

31 **ABSENT:** Members Giltner and Callahan

32
33 Motion carried.

34
35
36 **D E L I B E R A T I O N S**

37
38 Chairman Braselton began discussion by stating that she believes this request
39 is reasonable and necessary. Member Biggert believes that all approving
40 criteria are met. Member Neiman agreed and stated this is a great use of the
41 site and benefit to the community. Member Moberly moves to **approve the**
42 **variation request known as V-09-13, 421 E. Ogden Avenue**. Member
43 Biggert seconded the motion.

1 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman Braselton
2 **NAYS:** None
3 **ABSTAIN:** None
4 **ABSENT:** Members Giltner and Callahan

5
6 Motion carried.

7
8 **9. NEW BUSINESS** - None

9
10 **10. UNFINISHED BUSINESS** - None

11
12 **11. ADJOURNMENT**

13 With no further business before the Zoning Board of Appeals, Member
14 Moberly made a motion to **adjourn the meeting of the Zoning Board of**
15 **Appeals of August 21, 2013.** Member Biggert seconded the motion.

16
17 **AYES:** Members Connelly, Moberly, Neiman, Biggert and Chairman
18 Braselton

19 **NAYS:** None

20 **ABSTAIN:** None

21 **ABSENT:** Members Giltner and Callahan

22
23 Motion carried.

24
25 Chairman Braselton declared the meeting adjourned at 9:56 p.m.

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Christine M. Bruton
Village Clerk

Approved: _____