

**UNITED STATES OF AMERICA
STATE OF ILLINOIS, COUNTY OF DUPAGE
BEFORE THE HINSDALE ZONING BOARD OF APPEALS**

In re: the matter of:

The appeal of the issuance of a
Certificate of Zoning Compliance
to Anno Domini Hinsdale IV, LLC
for the project at First Street and
Garfield Avenue

ZBA Case No. APP-02-09

Property: 26-32 E. First Street

**DECISION OF THE
VILLAGE OF HINSDALE ZONING BOARD OF APPEALS**

I. INTRODUCTION

This matter comes before the Village of Hinsdale Zoning Board of Appeals (“ZBA”) on the application for appeal filed by The Alliance For Hinsdale and John Bohnen (hereafter “Appellants”) pursuant to §11-502 of the Code (hereafter “the Code”). Appellants seek review of the Village Manager’s decision to issue a Certificate of Zoning Compliance for the property located at 26-32 E. First Street. The Village Manager issued said Certificate of Zoning Compliance on June 5, 2009 pursuant to an Application for Certificate of Zoning Compliance filed by Anno Domini Hinsdale IV, LLC (hereafter “Anno Domini”) on June 3, 2009. Appellants timely filed (on July 20, 2009) their appeal of the Village Manager’s decision. The parties to this appeal submitted written briefs and documentary evidence and provided testimony and argument at a public hearing on October 21, 2009. On that date the ZBA voted unanimously to grant the Appellants' appeal. For the reasons set forth herein, the ZBA reverses the Village Manager’s decision and rescinds the Certificate of Zoning Compliance.

II. BACKGROUND

Anno Domini is the owner of the property located at 26-32 E. First Street in Hinsdale, Illinois. Said property is located in downtown Hinsdale in the central business district and is zoned B-2. The site is presently improved with a single story retail building covering approximately half of the site and a surface parking lot covering the other half of the site. The existing building was constructed prior to the adoption of the 1989 Code and is thus a “precode structure”.

Since 2004, Anno Domini has sought approval of plans to redevelop the subject property on four separate occasions (hereafter “Garfield I”, “Garfield II”, “Garfield III” and “Garfield IV”). In Garfield I, II and III, Anno Domini proposed to demolish the existing precode structure and construct a new 3-story mixed retail development and integrated parking structure. In its fourth and present submission (Garfield IV), Anno Domini seeks approval of a plan to add two stories to the existing single story building; expand the southeast corner of the existing building both vertically and horizontally and to improve the existing surface parking lot.

III. ISSUES ON APPEAL

Appellants assert that the Village Manager’s June 5, 2009 issuance of a Certificate of Zoning Compliance for Garfield IV was erroneous and must be rescinded. Appellants cite multiple bases for its request, including:

- That in considering the Garfield IV Application, the Village Manager improperly relied on an average grade calculation exhibit (hereafter “the September 30, 2008 survey”) from the Garfield III. Further, that the average grade elevation as set forth in the September 30, 2008 survey was derived using the four corners of a structure other than the one actually proposed. Further, that the Village Manager should have known that the survey

submitted by the applicant was neither current nor an accurate portrayal of grade elevations and should have rejected the Application for Certificate of Zoning Compliance on that basis alone. Further, that when the Village Manager's reliance on the wrong survey was discovered, he relied on an undated, unsigned average grade calculation that he obtained from the Village's files (hereafter "the second survey") that was not a part of the Garfield IV Application for Certificate of Zoning Compliance. Without accurate grade elevations, it is impossible to determine whether the Garfield IV site plan is code compliant as to building height.

- That the Garfield IV site plan contemplates the entrance to the loading space being located in a façade facing a public right of way, in violation of §9-105(C)(1) of the Code.
- That the Garfield IV application contemplates the improper horizontal extension of a precode structure as set forth in §10-104(B) of the Code. The existing building which is proposed to be enlarged does not have the required setbacks and is therefore, nonconforming. That the ground floor and east elevation sheets of the plans for the proposed structure show the impermissible horizontal extension above which there will be portions of the second and third floors. Pursuant to §10-104(B)(1), the nonconforming precode structure may be extended vertically, but not horizontally.
- That the Village Manager failed to properly analyze and identify the parking deficiency that would result from the proposed development under §9-104(D)(5) of the Hinsdale Zoning Code. Further, that §11-401 of the Code requires that the Village Manager make the Certificate of Zoning Compliance specifically conditional on the developer's application for and attainment of a variance or other approval for parking deficiencies.

- That the grade elevations and average grade calculation in both surveys relied upon by the Village Manager were inaccurate. Further, that if the proposed project is built based upon those inaccurate grade elevations, the resulting building would contain an impermissibly tall façade on First Street, in violation of §5-110 of the Code.

The Village Manager responds to the issues raised by Appellants and raises the affirmative matters of jurisdiction and standing, as follows:

- That the Alliance for Hinsdale does not have standing to file an appeal of his decision to grant a Certificate of Zoning Compliance as its application for appeal does not show that the Alliance for Hinsdale has been adversely affected by his decision. Further, the ZBA does not have jurisdiction to hear this appeal.
- That although the wrong document was used to determine the average grade, the Village Manager's reliance on that document was harmless error. Further, that recalculation of the average grade based upon the four corners of the proposed structure as set forth in the "second survey" is accurate and still results in a finding that the proposed building will not exceed the height limit imposed in the B-2 business district.
- That the existing precode structure contains a loading space that is located in the same area where the proposed Garfield IV loading dock entrance is proposed to be located. Therefore, the loading dock entrance door contemplated by the proposed plan does not increase nonconformity.
- That the front yard of the site is on Garfield Street and the required setback in the side yard of the site are 0'. Therefore the proposed plan's horizontal extension of the building to the interior side yard property line does not increase the non-conformity of the precode structure and is therefore, code compliant.

- That pursuant to §11-401(E)(3) of the Code, the authority of the Village Manager with respect to the issuance of a Certificate of Zoning Compliance is limited to stating the specific use of the subject property, identifying the specific plans and setting forth any conditions imposed in connection with any approval granted pursuant to the code.
Further, that the Board of Trustees, not the Village Manager, is vested with the authority to decide whether the developer will be allowed to pay a fee for deficient parking spaces and if so, what the amount of the parking deficiency fee will be.
- That the height of the proposed building is compliant with the height restriction imposed by §5-110 of the Code. Further, that because the subject site slopes downward from the south to the north, the allowable height of the building at the lower elevation (First Street) is 35' plus the average grade of the site.

IV. FINDINGS OF FACT

A. Jurisdiction and Standing

The ZBA has jurisdiction over this matter pursuant to §11-502(A) of the Hinsdale Zoning Code in that the Appellants have asked the ZBA to review the Village Manager's June 5, 2009 issuance of the Certificate of Zoning Compliance.

Under §11-502(C) of the Code, "an application for appeal to the Zoning Board of Appeals may be filed by any person aggrieved or adversely affect by an order, decision, determination, or failure to act of the Village Manager acting pursuant to his or her authority and duties under this Code". The Code, however, does not define when a person is "aggrieved or adversely affected." We therefore turn to the Illinois Municipal Code for guidance.

Section 5/11-13-12 of the Illinois Municipal Code, 65 ILCS, states that appeals to boards such as the ZBA may be taken by "any person aggrieved," but just as the Village Code, contains no definition of "aggrieved." Section 5/11-13-15 offers some guidance, however. That section states that any "owner or tenant" of property "within 1200 feet in any direction" of the property subject to a zoning decision may "institute any appropriate action" to prevent zoning violations. Because the record indicates that Appellant Bohnen owns property within 1,200 feet of the Garfield site, he has standing to bring this Appeal.

Appellant Bohnen appears to have standing in that the record indicates that he owns a business in the close proximity (and within what appears to be 1,200 feet) of the Garfield site. Whether the Alliance for Hinsdale has standing to appeal, however, is less clear. Under §12-205(F) of the Code, the term "person" includes individuals, firms, partnerships, joint ventures, trusts, trustees, estates, corporations, associations and any other similar entities. The Alliance for Hinsdale therefore appears to be a "person" and may file a ZBA Appeal under Section 11-502(C) of the Code.

The record contains no evidence that the Alliance for Hinsdale owns or rents property within 1,200 feet of the Garfield site or that it is otherwise adversely affected or aggrieved, and its standing to appeal is therefore questionable. The parties did not brief the standing issue. Because Appellant Bohnen does have standing, this Appeal is properly before the ZBA, and the ZBA therefore need not decide whether the Alliance for Hinsdale has standing to appeal.

B. The Application for Certificate of Zoning Compliance was deficient and contained inaccurate documents which were relied upon by the Village Manager in deciding to grant the Certificate of Zoning Compliance.

Section 11-301(A) of the Code requires that every application submitted shall contain such information as is required by the Village and that application requirements shall be established by administrative order. Pursuant to §11-301(G) of the Code, the Village Manager

shall has the authority to waive certain application requirements but that if waived, the Village Manager shall provide, in writing, his or her reasons why any such requirement has been waived, and shall refer such writing to the appropriate boards and commissions. That section also gives the ZBA authority to require complete applications. The Village's application requirements are set forth in its Plan Commission Application Directions which state that an "Applicant must complete ALL sections of the application" (emphasis in original). Each application must be accompanied by the applicant's sworn certification that that the information contained in the application is true and correct to the best of the applicant's knowledge and that the applicant acknowledges that an incomplete or nonconforming application will not be considered. The Village's Application for Certificate of Zoning Compliance instructs that the applicant "must complete all portion of this application". This application also requires an affirmation from the applicant that the information provided is true and complete and that the applicant understands that any omission of applicable or relevant information from this form could be a basis for denial or revocation of the Certificate of Zoning Compliance.

Anno Domini filed its Application for Certificate of Zoning Compliance and its Application for Site Plan, Exterior Appearance and Design Review for Garfield IV on June 3, 2009. Included as part of said applications were site plans, an average grade calculation exhibit (the September 30, 2008 survey), developer's certification and other documents. The September 30, 2008 survey was originally submitted as part of Anno Domini's application for Garfield III and does not contain a depiction of the proposed Garfield IV development.

Under the standards regarding complete applications stated above, Anno Domini's Application for Certificate of Zoning Compliance is faulty in several regards:

- The application fails to enumerate the number of parking spaces required or to even estimate the range of magnitude of the parking deficiency.
- The application states “N/A” with regard to the maximum elevations of principal and accessory buildings.
- The application and attached site plan do not specify whether the third floor will be used for office or residential purposes.
- The applicant failed to include a current and accurate survey showing the grade elevations of the existing building or proposed structure.

The Board finds that the errors and omissions in the Application rendered it inadequate and it should have been rejected.

B. The Village Manager relied on an average grade elevation exhibit (the September 30, 2008 survey) for the Garfield III proposal in issuing his Certificate of Zoning Compliance for the Garfield IV project

The Village Manager relied on a number of documents in making his decision to grant the Certificate of Zoning Compliance. Specifically, he relied on the plan submitted with the application to the Plan Commission, “all applications, all plans, everything that is going to go to the plan commission” and a draft of the Village Planner’s cover memo to the Plan Commission (dated June 10, 2009). The developer’s application to the Plan Commission and his application for Certificate of Zoning Compliance were both submitted on June 3, 2009.

The average grade elevation calculation contained in said application was part of a submission for the Garfield III and had no applicability to the Garfield IV proposal. The Village Manger’s admitted mistaken reliance upon the Garfield III average grade elevation calculation rather than the Garfield IV calculations rendered the Village Manager’s June 5, 2009 issuance of the Certificate of Zoning Compliance void *ab initio*. The Village Manager’s subsequent reliance

on another survey containing the Garfield IV data obtained from the Village's file was similarly erroneous because that data did not accompany the application as required by the Code.

D. The proposed building violates §9-105 of the Code.

All parties agree and the ZBA finds that the existing building is a precode structure. The ZBA finds that the southeast corner of the existing building contains a loading space with three single door service entrances and one double door service entrance to the building. Two of the service doors face south and two face east. The existing building is notched in at that southeast corner and the service doors are located on those two exterior walls. The surface area around the notched in section is open and covered by asphalt pavement and striped with parking space designations. One space is designated a no parking area and is located directly in front of the double door service entrance.

The Garfield IV application contemplates a 10'W x 50'L loading dock that is accessed by a 10' wide gated entrance door in the façade facing Garfield Avenue. There is no indication of the height of the proposed loading dock door on the site plans provided by the developer as part of his application.

The Off Street Loading provisions of the Code are contained in §9-105, which reads, in pertinent parts:

§9-105(C)(1) "Location On Lot...No loading space shall open onto any building façade facing a public right of way". Code, §9-105(C)(1)

§9-105(C)(3)(e) "Space Dimensions. Each loading space, excluding required maneuvering areas, shall have the following minimum dimensions, in feet:

- (i) Tractor trailer: 12W x 50L x 15H
- (ii) Standard: 10W x 25L x 14H"

§9-105(D)(2) "Minimum Requirements. Unless waived by the village manager, the first space required for any building having in excess of ten thousand (10,000) square feet shall be sized to accommodate a tractor trailer and, unless otherwise required by the manager, all other spaces may be standard size".

The proposed location of the Garfield IV loading dock door would be in the new façade facing Garfield Avenue, a public right of way. Because the building is currently serviced by standard sized service doors, the construction of a 10' wide loading dock door in the façade facing Garfield increases the nonconformity of the existing precode structure. Further, there is no evidence that the Village Manager waived the §9-105(D)(2) requirement that the loading dock be sized to accommodate a tractor trailer (12W x 50L x 15H). For those reasons, the Board finds that the proposed building could not be code compliant and that the Certificate of Zoning Compliance was erroneously issued.

V. CONCLUSIONS AND DECISION

The ZBA concludes that the Application for Zoning Compliance was deficient and should have been rejected by the Village Manger. The Board further concludes that the Village Manager's reliance on the September 30, 2008 survey as well as the proposed plan's violation of §9-105(C)(1) and §9-105(D)(2) of the Code resulted in the erroneous issuance of a Certificate of Zoning Compliance. Having so concluded, the Board need not consider the remaining issues raised in this appeal.

§11-401(H) of the Code reads:

“Void Certificates: Any certificate of zoning compliance issued in violation of the provisions of this code, whether intentionally, negligently, or innocently, shall be void ab initio and shall give rise to no rights whatsoever”.

The Board hereby concludes that the Certificate of Zoning Compliance was issued in violation of the Code and hereby reverses the decision of the Village Manger and rescinds the Certificate of Zoning Compliance issued on June 5, 2009.

This is a final decision of the Village of Hinsdale Zoning Board of Appeals and is reviewable under the Administrative Review Act, 735 ILCS 5/3-101 *et seq.*

RESOLVED this 11th day of November, 2009, by the Village of Hinsdale Zoning Board of Appeals.

William N. Haarlow, Chairman

Gary Moberly, Member

Debra J. Braselton, Member

Robert Neiman, Member

Keith Giltner, Member