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**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING
March 18, 2009**

1. Call to Order

Chairman Anglin called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, March 18, 2009 at 7:30 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. Roll Call

Present: Chairman Paul V. Anglin, Members William Haarlow, John Callahan, Kim Angelo, John Richter and Bob Saigh

Absent: Member Marc Connelly

Also Present: Village Attorney Kenneth Florey, Commissioner Robb McGinnis, Staff Secretary Christine Bruton and Court Reporters Kathy Bono and Tara Zeno

3. Approval of Minutes – Regular Meeting of February 18, 2009

Chairman Anglin and Member Callahan noted corrections to the draft minutes. Member Saigh moved to **approve the Minutes of February 18, 2009, as amended**. Member Richter seconded the motion.

AYES: Members Haarlow, Angelo, Richter, Saigh, Chairman Anglin

ABSTAIN: Member Callahan

NAYS: None

ABSENT: Member Connelly

Motion carried.

4. Receipt of Appearances

Attorney Raymond C. Gerard from Eiden & O'Donnell, Ltd. will be representing APP-01-09.

5. Receipt of Requests, Motions, Pleadings, or Requests to make Public Comment of a General Nature - None

6. Pre-Hearing and Agenda Setting

a) 550 Walnut Street, APP-01-09

This item is set for Public Hearing at the regularly scheduled meeting of the ZBA on April 15, 2009. Attorney Florey noted for

1 Mr. Gerard that under Village code, the applicant is responsible
2 for legal fees for longer and more expensive matters and in some
3 cases an additional deposit is necessary.
4

5 **7. Public Hearings**

6 a) **522 Hickory Street, V-10-08**, reopened at February meeting.

7 Chairman Anglin noted that this case has been reopened because
8 the applicant had included an alternative in the original
9 application that had not been considered so, in fairness, it is
10 appropriate to take up the alternative.
11

12 Mr. Klein addressed the Board regarding his client's emergency
13 backup generator located on the side of the property next to the
14 air conditioner compressors. He stated that the Village changed
15 the ordinance whereby generators were no longer permitted in
16 the side yard. Chairman Anglin clarified that they had never
17 been permitted in the side yard. Mr. Klein stated he believes
18 there are many unpermitted generators in town. He illustrated
19 the alternative location of the generator, in the far back corner of
20 the lot. No one is near this location to hear it or see it; it is the
21 location of least impact. Additionally, the Village already allows
22 heightened buffering in this area because of the proximity to the
23 school. A six foot fence exists and an eight foot fence is allowed.
24 Mr. Klein provided photographs to the Board to illustrate the
25 location from all angles. The unit itself is 22" tall. He believes
26 this is a non-conforming lot and therefore the issue is not self-
27 created. Mr. Klein stated that the location of the generator is
28 fully consistent with code practices, does not adversely impact
29 the area, is a reasonable request and the practical difficulty
30 standard is met. Discussion followed regarding electrical
31 reliability, safety, an existing gate at the back of the property,
32 the height of the fence, and alternative locations for the
33 generator that would be code compliant.

34 No one was present to speak to the case and, hearing no further
35 comments or discussion, Chairman Anglin closed the public
36 hearing for V-10-08. The Board will deliberate upon completion
37 of all public hearings. Mrs. Anderson's poetry on the subject was
38 mentioned for the record and is contained in the permanent file.
39

40 b) **540 W. Ogden Avenue, APP-03-08**, reopened at February 41 meeting

42 Mr. Florey reported that Mr. Daniel will object to the continuation
43 of this hearing, but there are settlement discussions underway

1 and it is his recommendation that the public hearing be continued
2 until the April 15th meeting.
3

4 Attorney Mark Daniel and Mr. Joseph Abel are present tonight;
5 Mr. Horne was not able to attend. Mr. Daniel stated that there
6 had been a meeting between MIH,LLC and the Village, but the
7 parties are a long way from a settlement and he asked for a
8 conclusion of this matter tonight. In light of the delay, they have
9 lost the opportunity for occupancy until fall at the earliest. He
10 noted that he had submitted to Mr. Florey and Ms. Bruton a
11 transcript of the February 18th ZBA meeting to be included in the
12 record, which includes the grounds for objecting to reopening the
13 hearing.
14

15 Chairman Anglin said he would entertain a motion to continue.
16 Member Saigh moved **to continue the hearing to the regularly**
17 **scheduled April 15, 2009 meeting.** Member Haarlow seconded
18 the motion.
19

20 **AYES:** Members Haarlow, Angelo, Richter, Saigh, Chairman
21 Anglin

22 **ABSTAIN:** Member Callahan

23 **NAYS:** None

24 **ABSENT:** Member Connelly
25

26 Motion carried.
27

28 Mr. Daniel asked if Mr. Horne or Mr. Abel need appear in April.
29 Chairman Anglin said that is unnecessary since there would be no
30 further testimony given.
31

32 **Deliberations V-10-08**

33
34 Chairman Anglin opened discussion, noting that the Board is considering
35 granting a variation regarding the location of the generator; two feet off the
36 lot line instead of ten feet. Member Saigh noted that he would like the
37 extra measure of the fence being a requirement of the approval. Chairman
38 Anglin agrees that this is a safety concern; the applicant agreed to this
39 condition.
40

41 Member Haarlow commented regarding the hardship issue and setting
42 precedent. He agrees that it doesn't make sense to put the generator in the
43 middle of the back yard, but this lot is not that small. In terms of power

1 outages, everyone experiences that problem. He does not believe that this is
2 a significantly smaller yard relative to other lots in the Village. Chairman
3 Anglin also commented that the permitted location is not the middle of the
4 yard, it is only two feet off the side yard fence.
5

6 Mr. Cochlan and Mr. Klein responded to these concerns restating that they
7 have proven hardship and also practical difficulty. They believe there
8 would be no impact on anyone by granting this variation. Member Richter
9 pointed out that school property requires special protection and there is no
10 guarantee that a fence will be there. Three years ago a variation was
11 granted to build a basement to Mr. Cochlan's specifications, noted Member
12 Angelo, and he is not willing to do that again without better demonstration
13 of hardship.

14 Member Angelo moved to grant the variation with the added requirement
15 that there be a fence. Member Callahan noted that the gate has to be
16 locked from the inside. Member Angelo withdrew his motion. Member
17 Callahan moved **that the alternative proposal of the applicant be**
18 **approved with the requirement that there is a fence and the gate**
19 **between the rear yard and the school be locked from the inside.**
20 Member Saigh seconded the motion.
21

22 **AYES:** Members Callahan, Saigh and Chairman Anglin

23 **ABSTAIN:** None

24 **NAYS:** Members Haarlow, Angelo and Richter

25 **ABSENT:** Members Connelly
26

27 Motion denied because of a tie vote.
28

29 **8. New Business**

30

31 **9. Unfinished Business**

32

33 **10. Adjournment**

34 Chairman Anglin said he would consider a motion to adjourn when
35 all coats were gathered and everybody was ready to leave the room
36 when the motion was approved.
37

38 Member Callahan asked Mr. Florey to address the issue when ZBA
39 members are sued as individuals and resulting conflict of interests.
40 Mr. Florey said there would be a motion to dismiss members as
41 individual defendants, who then would be sued only as ZBA officials,
42 thus eliminating the conflict. Conflict really only exists when there
43 is the possibility of financial gain explained Mr. Florey. Even if

1 there were the possibility of personal liability, plaintiffs are not
2 asking for financial damages. It would be highly unlikely that there
3 would be any damages awarded against individuals in this instance.
4 Member Callahan is concerned that it would be difficult to rule on
5 something when there is a pending suit. Mr. Florey said the law
6 assumes officials can be unbiased under difficult situations, but
7 members should excuse themselves if they cannot.
8

9 Member Angelo asked about the appeal filed by the Alliance for
10 Hinsdale. Chairman Anglin said he was notified that the appeal was
11 filed late and therefore could not be forwarded. Member Angelo
12 expressed concern that the rest of the Board should have been
13 notified and should have the opportunity to weigh in on these
14 matters. Chairman Anglin agreed that this is appropriate and will
15 make sure moving forward Board members are informed of what is
16 happening.
17

18 Mr. Florey explained there were two pieces of litigation last week.
19 The Alliance for Hinsdale filed a temporary restraining order to force
20 the appeal to the ZBA. The judge denied the request on the grounds
21 that there is no underlying complaint. The Alliance filed an
22 amended complaint for a temporary restraining order and added
23 additional parties to Garfield I. The judge denied all the motions for
24 three reasons: 1) it should be a separate case, Garfield III is
25 unrelated to Garfield I.; 2) there is no standing, the Village Manager
26 properly exercised the gatekeeper authority and the appeal was not
27 timely filed, as required; 3) appeals to the ZBA on a pending matter
28 before the Plan Commission or Village Board are not ripe to take out
29 of that process.
30

31 Member Angelo asked Mr. Florey if he consulted with the Village
32 Manager about the Alliance appeal on whether to deny moving it
33 forward before or after Chairman Anglin received the appeal. Mr.
34 Florey confirmed that he had conferred with Mr. Cook on the matter,
35 but did not believe that the appeal was forwarded to Chairman
36 Anglin. Chairman Anglin stated that he had requested a copy of the
37 appeal, but did not receive it until after the decision not to forward it
38 to the ZBA had been made.
39

40 With no further business coming before the Zoning Board of
41 Appeals, Member Richter made a motion to **adjourn the meeting**
42 **of the Zoning Board of Appeals of March 18, 2009.** Member

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Callahan seconded the motion. Voice vote taken, all in favor, motion carried.

Chairman Anglin declared the meeting adjourned at 8:37 p.m.

Christine M. Bruton
ZBA Staff Secretary

Approved: _____