

**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING
September 16, 2009**

1. Call to Order

Vice-Chairman Haarlow called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, September 16, 2009 at 7:35 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. Roll Call

Present: Vice-Chairman William Haarlow, Members Marc Connelly, Gary Moberly, Keith Giltner and John Callahan

Absent: Member Debra Braselton

Also Present: Building Commissioner Robb McGinnis, Staff Secretary Christine Bruton and Court Reporters Tara Zeno and Kathy Bono and Christie Cuthbert from The Hinsdalean

Vice-Chairman Haarlow acknowledged the fine service of Chairman Paul Anglin on the Zoning Board from May 1993 through July 2005 and January 2008 through his untimely passing last week. He was a friend and an excellent example of a citizen dedicated to the Village. He will be missed. Vice-Chairman Haarlow also welcomed the newest member to the ZBA, Mr. Keith Giltner, who is a long-time resident and will be a fine addition to the Board.

3. Approval of Minutes –Regular Meeting of July 15, 2009

There being no corrections or additions to the minutes, Mr. Connelly **moved approval of minutes of the Regular Meeting of July 15, 2009.** Member Callahan seconded the motion.

AYES: Members Moberly, Connelly, Callahan and Vice-Chairman Haarlow

NAYS: None

ABSTAIN: Member Giltner

ABSENT: Member Braselton

Motion carried.

4. Receipt of Appearances - None

The court reporter administered the oath to all those intending to address the Board. Vice-Chairman Haarlow explained the benefits and purpose of the pre-hearing process.

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

6. Pre-Hearing and Agenda Setting

643 S. Lincoln, V-4-09 Mr. Joel Groenewald, homeowner, addressed the Board. He is requesting two pieces of relief for outdoor hardscape; a sidewalk in the back yard, closer to the lot line and wider than permitted by code and a fireplace patio, placed further back than the code allows. He noted that this work has already been done and said that he did not know he would need a permit for this work, nor did the landscaper for the project. On the matter of hardship, he said he has a large family and the permitted patio would be narrow and small thereby making it unusable. He also stated that he believes he has maintained the integrity of the town. Vice-Chairman Haarlow and Member Callahan cautioned Mr. Groenewald that the hardship and self-created issues will be challenging. The Public Hearing was sent for the next regularly scheduled ZBA meeting on October 19, 2009.

707 S. Bodin, V-5-06 Mr. Darius Filmanaviciute, homeowner, explained to the Board that he has an unusual, small, narrow lot and is fighting for every square inch of buildable space. When the time came for the garage, he purchased the piece of land behind the property owned by the Village so as to move the garage as far back as possible. He purchased the land, but it has actually made the situation worse because of a utility easement under the property. Some discussion followed regarding the timing of the purchase and the information about the easement and the 20% setback requirement. Member Connelly suggested he solicit support from his neighbors for the project.

Vice-Chairman Haarlow said that the possibility of the Village buying back the land or voiding the sale is not under the purview of the ZBA, all the ZBA can do is entertain the application before us. Building Commissioner McGinnis will provide the time line for the Board, but stated that the first submittal from the architect included the land. The Public Hearing was set for the next regularly scheduled ZBA meeting on October 19, 2009.

240 S. Bruner, V-6-09 Chuck Forsythe, the contractor for the homeowner, Tracy McArdle, addressed the Board. He explained that they wish to build an addition to the existing house. The home is 4.8' off the lot line, but code now requires 6' feet. They would like to extend the addition straight up from the existing location of the home. They are not increasing the nonconformity of the home. He believes it is an engineering and structural problem to move the second floor in 2.5 feet, in addition to the cost and the loss of symmetry of the structure. The Public Hearing was sent for the next regularly scheduled ZBA meeting on October 19, 2009.

7. Public Hearings

26-32 E. First Street APP-02-09 (Transcript on file)

Vice-Chairman Haarlow opened the hearing and asked Village Attorney Ken Florey to provide background. Mr. Florey explained that he has had conversations with Mr. Bob O'Donnell, the attorney for the applicant, and Village Manager Dave Cook whose decision is being challenged by this appeal. Due to the 60-day requirement, the hearing must be opened tonight and continued to the next ZBA meeting. In the interim, a briefing schedule, witness list, affidavits, etc. will be made ready by October 14th, so the matter can be deliberated and decided on October 21st. He recommends a motion be made to continue the matter and that the motion include acceptance of his plan. Additionally, the applicant must deposit \$10,000 to cover legal fees that the Village may incur as part of the application.

Vice-Chairman Haarlow noted that it is the ZBA precedent and policy to have any matters before them that will require a public hearing go through prehearing first. Due to timing, tonight would be the first opportunity for prehearing and the hearing would be set for October 21st. The ZBA proceeds in this manner to make sure the application is in order and to allow the public an opportunity to be made aware of the matter. He reiterated that because an application must be heard within 60 days of receipt of the appeal or it would automatically be deemed a denial, we need to conduct a public hearing tonight or move to continue.

Mr. John Bohnen of 230 E. First Street addressed the Board. He is the appellant questioning the certificate of zoning compliance issued by Mr. Cook in the matter of Garfield IV. He was informed of the additional \$10,000 escrow deposit today. He said he would like an explanation of the purpose of this money over and above the \$1,100.00 application fee. Mr. Florey explained that any application under the zoning code requires a payment by the applicant for legal fees, court reporting, newspaper publication fees, etc. The legal fees would be any that the Village has incurred due to the application. It was confirmed that the legal fees would be those of Mr. Florey, who represents the Village and the ZBA. This amount was set based on conversations with Mr. Bohnen's attorney about expected witnesses. Mr. Bohnen commented that in order to gain access to his local Village government, he has to pay for it and cannot challenge a decision of the Village Manager unless he pays \$10,000. He further commented that this would have a chilling effect on an average citizen and he questions the wisdom of this policy.

Vice-Chairman Haarlow asked for a motion to continue the public hearing perhaps with the understanding that the appellant objects to the fees. So moved by Member Moberly. Member Callahan questioned if the ZBA is in the position to make such a motion. Mr. Florey confirmed that all parties are in favor of the

continuance. Member Callahan moved **to continue the hearing with the understanding that the appellant has requested such a continuance.** Member Moberly withdrew his motion on the table and seconded the motion of Mr. Callahan.

Member Moberly asked the difference between fees charged for an average variation and this particular situation. Mr. Florey explained in the case of most variations there is minimal legal work, but they do pay. The fees charged are analyzed and estimated by the Village Manager from time to time. Unfortunately, cases such as these have escalated and he noted that the Amlings appeal last year generated approximately \$67,000 in legal fees.

It was further clarified that while Mr. Florey represents the Village and all bodies under the Village, such as the Plan Commission and the Zoning Board of Appeals, Mr. Cook would have separate counsel in the matter of this appeal. Mr. Bohnen remarked that Mr. Ruffalo is very expensive and that he will have to pay Mr. Ruffalo's bill. Mr. Bohnen suggested that Mr. Cook be given a budget.

Karl Weber of 219 E First Street addressed the Board stating this is becoming preposterous. He asked who set the \$10,000 figure. Mr. Florey stated that he made the estimate. Mr. Weber noted that the more challengeable Mr. Cook's decisions are, the higher the fee goes. The higher fees prohibit people from accessing their Village government to address a grievance.

Member Giltner asked Mr. Florey to explain what the process will be at the next meeting with regards to this appeal. Mr. Florey outlined the procedures and noted that there will be very little factual contentions between the parties, it's a matter of determining whether the code allows certain parking for spots that will not be included as part of the project. They may have witnesses, but he anticipates a quick hearing. Member Callahan commented that as a member of the Village, he does not want to see a chilling effect on applications. He wondered if there is any history on the escrow fees and if this is something that has always been done. Mr. Florey explained that it depends on the attorney and that the applicant drives these types of appeals. Member Connelly said that he didn't know too many judges that would award attorneys fees prior to a hearing and is also concerned as to the chilling effect of the fees. Mr. Florey stated that while he has no opinion on the practice, it is a consistent concept with this Village and others in Illinois. Discussion followed regarding the consistency of the fees, the history of fees charged and the causes of larger fees.

Mr. Bohnen stated that he simply wants to present a case to his fellow citizens and have them render a decision. This is a monetary penalty and should be looked at more closely. Mr. Weber stated that he doesn't believe the Village Manager should avail himself of additional counsel besides the Village attorney

and that if these kinds of fees are charged the ZBA will become an unnecessary appendage to Village government.

Mr. Florey read the motion into the record as follows: **Move to accept the request by the applicant in noting the agreement by the Village manager to continue the public hearing until the October 21st ZBA meeting, including accepting the plan proposed by the parties to submit briefs, memoranda, position statements, affidavits or other documents and evidence, including a list of witnesses, if any, that will testify at the hearing by October 14.** Ms. Bruton confirmed that a motion and second were on the floor.

AYES: Members Moberly, Giltner, Connelly, Callahan and Vice-Chairman Haarlow

NAYS: None

ABSTAIN: None

ABSENT: Member Braselton

Motion carried.

8. New Business

Member Callahan reiterated that the Zoning Board of Appeals does not have the jurisdiction to change the Village code. He understands the frustration, but cost questions have come up. There should be no chilling effect and he believes the Village Board should address this.

9. Unfinished Business - None

10. Adjournment

With no further business coming before the Zoning Board of Appeals, Member Callahan made a motion to **adjourn the meeting of the Zoning Board of Appeals of September 16, 2009.** Member Giltner seconded the motion. Voice vote taken, all in favor, motion carried.

Vice-Chairman Haarlow declared the meeting adjourned at 8:40 p.m.

Christine M. Bruton
ZBA Staff Secretary

Approved: _____

