

**VILLAGE OF HINSDALE  
ZONING BOARD OF APPEALS  
Minutes of the Meeting  
June 20, 2007**

**1. Call to Order**

Chairman Nelson called the meeting of the Zoning Board of Appeals to order on Wednesday, June 20, 2007, at 7:19 p.m., in the Memorial Hall, Memorial Building, 19 East Chicago Avenue, Hinsdale.

**2. Swearing in of new Board Members**

Village Deputy Clerk Christine Bruton administered the oath of office to Marc Connelly.

**3. Roll Call**

**Present:** Chairman Thomas Nelson, Members William Haarlow, Kim Angelo, John Richter, Marc Connelly, Bob Saigh

**Absent:** John Callahan, new member

**Also Present:** Director of Community Development Timothy Bleuher, Village Manager Dave Cook, Staff Secretary Christine Bruton, Court Reporter Kathy Bono and Pam Lannom from the Hinsdalean

**4. Approval of Minutes – May 16, 2007**

Chairman Nelson introduced the item and provided background regarding the style and content evolution of ZBA minutes. Mrs. Bruton confirmed that all suggested corrections received from the Chair and Member Saigh have been incorporated into the final draft before the Board. There being no further corrections or comments, Member Richter moved **Approval of the Minutes of May 16, 2007**. Member Haarlow seconded the motion.

Voice vote taken, all in favor, Member Connelly abstained, motion carried.

**5. Receipt of Appearances**

Two appearances were entered. 1.) Mr. Scott M. Day, Day & Robert, PC, 300 E. Fifth Avenue, Suite 365, Naperville, IL 60563, 630.637.9811 for V-6-07 and 2.) Mr. Nicholas J. Etten, 70 W. Madison Street, Suite 3100, Chicago, IL 60602-4207, 312.807.4273 for APP-2-07.

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

**7. Pre-Hearing and Agenda Setting:**

**1. 126 W. 7<sup>th</sup> Street, V-7-07**

Mr. Tschosik, property owner, addressed the Board describing his variation request for a front porch addition. He indicated that his neighbors were excited and supportive and two of them will appear on his behalf at the Public Hearing. Director of Community Development Tim Bleuher informed the Board that a pre-application meeting had been held and his department would support the variation. V-7-07 is set as the second public hearing on July 18, 2007.

**2. Hinsdale Club, APP-2-07**

Chairman Nelson read an order and noted the intention of this Board to take jurisdiction of the appeal. He stated it is clear that this Board has jurisdiction and a duty to take this case. He explained that jurisdiction in all 50 states is determined by the Court of first impression, and that almost all Boards and agencies take their authority from the U. S. Constitution, which includes the right to petition government for the redress of grievances. He said that the State of Illinois has declared that the right to assemble and petition government is a special right. He quoted Judge Popejoy from the April 30, 2007 transcript of Johannesen I regarding the right of a party to appeal and the automatic initiation of a stay, recognizing that such stays are not the result of an action of the ZBA but are state mandated automatic stays.

At the direction of the Chairman, a **brief recess** was taken to allow Board members to review a portion of their decision in APP-1-05 (the Garfield case). The chairman provided copies to the members.

Upon reconvening, Chairman Nelson asked for a motion to overrule the Chair's ruling regarding jurisdiction. Hearing none, he asked for motion to adopt the resolution of this body. So moved by Member Angelo, seconded by Member Richter. No discussion.

**AYES:** Haarlow, Angelo, Richter, Saigh, Nelson

**ABSTAIN:** Connelly

**ABSENT:** Callahan

**NAYS:** None

Motion carried.

The Chair stated that the Board had received a Special and Limited Appearance from Mr. Scott Hardek, present this evening, representing Foxford, LLC. However, the Board cannot accept a Special and Limited Appearance because these are only used in civil law suits. Further, the Board rules require a general appearance. The Chair also pointed out that the Board had received two ex parte communications from Foxfords attorneys and had tried to return them in order to avoid having to open an ex parte file as required by the State Administrative Law Act. The Chair informed Mr. Hardek that he could file an appearance at any time or the Board could stipulate that his comments at this meeting would not constitute an appearance. Mr. Angelo moved to suspend the rules and allow Mr. Hardek to address the Board. Mr. Richter seconded the motion.

**AYES:** Haarlow, Angelo, Richter, Connelly, Saigh, Nelson

**ABSENT:** Callahan

**NAYS:** None

Motion carried.

Mr. Hardek addressed the Board on behalf of himself and Mr. Bruce Goldsmith of Dykema Gossett, LLC representing Foxford and the Hinsdale Club. He disagrees with the opinion of the Chair regarding his appearance and they are not consenting to the jurisdiction of the ZBA over the Village Board. He would like to make a record of the two documents he has supplied to the Board, his appearance and the letter dated June 12, 2007. If it needs to be in an ex parte file, so be it. He wants it to be part of the record. He believes that foreclosing them in this circumstance robs them of their due process.

The Chair clarified that the June 12<sup>th</sup> letter will be Exhibit A and the Special and Limited Appearance will be Exhibit B and both will be contained in an ex parte file. The Chair and Mr. Hardek discussed the State rules on Special and Limited Appearances. Mr. Hardek asked for clarity of the ZBA finding of jurisdiction, believing he is being foreclosed from making a defense.

Mr. Nicholas Etten, petitioner in the appeal, addressed the Board and thinks the Boards position is appropriate and he agrees with the ruling of the Board on jurisdiction. He believes it is a requirement of a granted special use permit to be heard by ZBA. He also observed there is a clear provision in the Illinois Municipal Code regarding the rights of an aggrieved party, and that he and his co-petitioners want a hearing as they are entitled to. He wants to know what is in the file; they need some discovery in this matter and public records. He is representing the Baldwins and himself and his wife, and said they need time to find out who will represent the other signatories of the petition. They want a hearing before this Board and they want and need some discovery on documents and other records. Mr. Etten said he also intends to request the records of the ZBA indicating that in the past 10-15 years the Board has heard special use and planned development cases, and that the current position of the Village is inconsistent with this history.

In view of the fact that the Village had not “forthwith” transmitted the file, the case was continued for pre-hearing to July 18, 2007.

**3. 222 S. Monroe Street, V-8-07**

Mr. Ron Christoph, property owner, addressed the Board regarding his variation request. The existing 1950’s garage is small and dilapidated and they would like to replace the structure on its current location. Mr. Bleuher noted the application is complete.

The Case is set for the third hearing on July 18<sup>th</sup>.

**8. A. Public Hearings:**

**1. 2 S. Thurlow, V-4-07** (Continued to August 15, 2007)

**2. 124 E. Sixth Street, V-5-07** (Continued to July 18, 2007)

**3. 710 S. County Line Road, V-6-07**

Chairman Nelson asked all present who would speak for V-6-07 to stand for the administering of the oath. Court reporter, Kathy Bono, administered the oath.

Mr. Scott Day, attorney for the homeowner, spoke to yard setback provisions, outlined the homeowner’s request and described the large corner lot. He introduced Mr. Graham, the homeowner’s architect, who provided a display board of the home on the lot, and described the proposed addition of a two-car garage. There is no increase in FAR or height and no other relief other than front yard requested. The garage would be hidden by existing vegetation. It was also noted that the installation of a pool renders an existing three-bay garage unusable at the southwest corner of lot.

Chairman Nelson asked for the hardship presentation and referred to the seven standards in the application. Mr. Day explained that this lot dates back to 1920’s and predates current definitions. At some point the Village created a code to define yards for every lot and this is one of the cases where the letter of the law defeats the spirit of the law. Only about one-third of the lot is buildable, according to the code. Pre-code structures and uses are defined, but pre-code yards are not defined. This is a uniquely square corner lot; if the intended side yard fronting on Seventh Street was still the side yard, there would be no problem. He concluded by saying that adjacent properties would be enhanced; light and air characteristics would be maintained. Regarding the stipulation that there be no other remedy, he noted that corner lot code provisions are limiting and in order to have yard space this is the best location for the garage.

Member Haarlow commented that his in-laws lived in this home at one time and he is familiar with the property. He agrees the front of the house is County Line Road; the existing three-car garage is original and more shed-like in nature. The one-car attached garage is not original to the house and was added in the mid-nineties. The hardship is the desire to add a pool. He is not convinced either way that this is not a self-created hardship. Mr. Graham explained that the pool did not drive the garage location.

Mrs. Debbie Svendsen, 740 S. County Line Road, stated that her yard takes a lot of water and that she is worried about the addition of a pool. Mr. Bleuher explained the current extensive effort to address storm water remediation and noted that an ordinance proposing a cap on impervious surfaces is being developed. The Kostelny’s proposal is less than 25% of lot coverage; the proposed Village ordinance would permit 50% utilization of the lot. (Mr. Rob Svendsen is sworn in.) Mr. Svendsen explained that Oak street construction has displaced water to their property on County Line Road. Mr. Bleuher indicated that staff would consider the proposal of an SSA in this area.

Member Angelo moved to **close the Public Hearing on 710 S. County Line Road**. Member Saigh seconded the motion.

Voice vote taken, all in favor, motion carried.

Chairman Nelson asked for a motion to retire to closed session for deliberations. None was forthcoming.

The Board began their deliberations. It was suggested that previous zoning history would be helpful. Chairman Nelson suggested adjourning until such information is available. It was pointed out that the Board would be sensitive to the neighbor's water concerns; however, that issue has nothing to do with the requested variation. The building department will handle this appropriately. It was noted that this variation request is consistent with previous requests and Hinsdale building stock. Mr. Bleuher confirmed that if this were an interior lot the proposed garage addition would be well within the current code requirements. Member Haarlow confirmed that the addition is discrete. It was also noted that the house already has four vehicle bays, and the elimination of the driveway to install a pool makes the hardship self-created. It was agreed that a condition of approval would be the scrutiny of the pool installation and water issues. The Board discussed the existing three car garage and how it relates to the hardship aspects of this case. It was noted that there was no risk of precedent with the approval of this variation.

Member Richter moved to **Approve V-6-07 with a special condition that the Village be concerned with the water problems that might occur as a result of the plan**. Member Saigh seconded the motion.

**AYES:** Haarlow, Richter, Connelly, Saigh

**ABSENT:** Callahan

**NAYS:** Angelo, Nelson

Motion carried.

Recess taken.

## **B. New Business - None**

## **C. Unfinished Business**

### **1. 222 E. Fourth Street, APP-1-07**

Chairman Nelson reported that all three lawyers in the case have contacted him and agreed to a continuance of the matter until after Judge Popejoy makes a ruling. The case is set for first pre-hearing on the July 18<sup>th</sup> ZBA agenda.

### **2. Adoption of Rules & Procedures**

The Board agreed to a special meeting on Wednesday, July 11<sup>th</sup> at 6:15 p.m. to discuss this item.

### **3. Approval of Final Decision V-13-06, 111 E. Fuller Street, nunc pro tunc.**

Item continued.

### **4. Garfield Proceedings in Wheaton, status**

Chairman Nelson reported that Judge Wheaton ruled on the motion for summary judgment in favor of the Village of Hinsdale.

### **5. 426 Clay, fence**

Item continued.

**9. Adjournment**

With no further business coming before the Zoning Board of Appeals, Member Saigh made a motion to adjourn. Member Haarlow seconded the motion.

Voice vote taken, all in favor, motion carried.

Chairman Nelson declared the meeting adjourned at 11:11 p.m.

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Christine M. Bruton  
ZBA Staff Secretary

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