ZONING BOARD OF APPEALS
SEPTEMBER 12, 2012

CALL TO ORDER
Chairman Celske called the meeting to order at 7:00 p.m.

ROLL CALL
Dal Compo polled the members present: Zoning Board members, Celske, Anderson, Dufern, Karls, Murren, Rosch and Schneider. Also present were Mr. Peter Vernon of BCA Technical Services as staff to the Zoning Board, and John Donahue, Village Attorney.

Village President Bob Nunamaker and Trustees Joanna Colletti, Mike Ireland, Steve Knar and Mike Schiestel were also in attendance. Business owners John Finn, Dr. Fritz Trybus and were in attendance as well. Mrs. Nimsgren and Attorney John Boyd also attended.

APPROVAL OF APRIL 24, 2012 MINUTES
A motion was made by Rosch and seconded by Karls to approve the minutes from the April 24, 2012 meeting as presented. A voice vote followed with all in favor. The motion carried with one abstention.

ZONING BOARD CASE 2012-02 ZONING CHANGE/SPECIAL USE: TATTOO PARLOR, 308 LINCOLN--Chairman Celske recognized Mr. John Finn as representative of a proposed Tattoo Parlor at 308 Lincoln Ave. Chairman Celske asked Mr. Vernon to summarize the case. Mr. Vernon explained that the owners, Mr. and Mrs. Finn, wish to open a Tattoo Parlor at 308 Lincoln. However, tattoo parlors are a B-5 zoned business, and the only B-5 in the Grove is in the current marina area. No storefronts are available there at this time. 308 Lincoln is currently zoned B-1, so the owners are requesting a zoning change and a special use permit.

Chairman Celske recognized Mr. Finn. Mr. Finn explained that he had been a tattoo artist for the past 35 years, but primarily had worked in other businesses during that time. He was employed by the Fuller Brush Company for many of those years. He had noticed that there are many empty storefronts in the Grove, and he received preliminary permission from the owner of 308 for his business.

He further commented that in recent years tattoos have become main stream. He will perform no piercing. He has spoken to the adjoining business owners and received a positive response. There are many laws that govern tattoo parlors. Clients must be eighteen with a valid I.D. Mr.

Finn has taken a course in blood borne pathogens. His proposed hours of operation would be Tuesday through Saturday from 1:00 p.m. to 9:00 p.m. Sundays would be by appointment only.

Chairman Celske accepted the proof of mailing/certified receipts from Mr. Finn. He asked if the committee members had any questions for Mr. Finn.

Member Karls asked if the subject property is the sole one in question or if there are others in conjunction with 308. Member Murren asked if those properties are considered condos. Member Karls further asked the zoning change would also change the zoning to the adjacent properties. Village Attorney said that the application is only for 308 and could not affect the zoning to other properties.

Member Anderson asked Mr. Finn how he came to be in this profession. Mr. Finn explained that his twin brother was also a tattoo artist, and both had gotten tattoos as young persons. They felt that they could do a good job of it as well. Member Anderson asked how many clients he had tattooed over the years; he was told possibly in the thousands. He further inquired if he knew of any subsequent infections; he was told no. Mr. James Finn also commented that he had lived in the community for 20 years and also feels that more businesses are needed in the Grove. He observed that his brother is an upright person in the community.

Trustee Knar commented that he lives within 700 yards of the subject property. Additionally, the Grove is in the midst of downtown redevelopment, and while the tattoo parlor may bring business the connotation of such is not good. Village Attorney Donahue stated the proposed change is from B-1 to B-5. Such a change would raise important issues. The uses of B-5 include "adult" uses. The subject property is a short distance from Village Hall and the downtown area. If this goes forward, future businesses in that storefront could also become B-5. Member Murren asked if exceptions could be attached to the zoning change, or if the zoning would go back to B-1 if the tattoo parlor moved out. Village Attorney Donahue said that exceptions could not be attached, and that zoning changes are permanent.

Village Attorney Donahue brought up the problem of "spot zoning." This is zoning that is applicable to only a small area. This change may drive other potential businesses away. B-5 is primarily for marinas and "adult" types of services.

Mr. Bruce Kaplan, a real estate broker in the community, encouraged the members to find a way to make the situation work for the Finns. He suggested a text amendment instead of a zoning change. Village Attorney Donahue said that the application before the committee was a zoning change, not a text amendment. Mr. Kaplan again asked for alternatives and said that the business was being pushed into a "buzz saw." Village Attorney Donahue stated that using that terminology was out of line and inappropriate.

Mrs. Finn commented that at the time she applied for the zoning change, she did discuss the downtown re-development with Clerk Brouder, but was not given indication that this was a problem. Chairman Celske reiterated that a possible alternative was a text amendment. A new application would have to be requested. Attorney Donahue said a new petition would have to be filed.

Trustee Ireland stated that while he had no interest in having a tattoo personally, he recognized that the tattooing industry is one that has grown recently. He wondered if there was a way to word the application so that it could become acceptable. He asked how many in the audience had a friend or relative with a tattoo. He also pointed out that many who are in military service have them.

Member Anderson said that Trustee Ireland's comments were good, and noted that the practice of tattooing is not new but actually dates back to ancient times. It has religious as well as social and cultural significance. However, he did not feel comfortable making the leap between a tattoo parlor, and the other "adult" uses that this type of zoning would make possible. He asked if Mr. Finn had looked into some areas of Crystal Lake where there are already established tattoo parlors. Mr. Finn said that he likes the Fox River Grove area, and that he didn't wish to step on anyone's toes that had an established business.

Chairman Celske stated that he didn't have a problem with a tattoo parlor per se, but he was uncomfortable with setting the B-5 zoning precedent for future businesses.

Member Murren said that the subject of downtown re-development should not really come into play since it has been talked about for the past 35 years.

Member Dufern said he had no objections to the idea of the tattoo parlor and considers it body art. However, he is against the zoning change.

Member Schneider stated that re-zoning to B-5 is opening the door for other issues and he is not comfortable with it.

Chairman Celske reiterated that the zoning issue was the primary impediment. He told the Finns that they could either withdraw their application or the Board could vote. He told them that they could go back to the Village Clerk and Mr. Vernon to apply for a text amendment if that was their desire.

A MOTION was made by Murren and seconded by Dufern to *deny* the request for a zoning change at 308 Lincoln. A roll call vote was taken. Celske--yes, Anderson—yes, Dufern--yes, Karls—yes, Murren--yes. Rosch—yes. Schneider—yes. Motion Carried.

Chairman Celske told the Finns he wished them luck for their business endeavor.

Zoning Board Case 2012-02 was concluded at 7:37 p.m.

ZONING BOARD CASE 2012-03 CARYGROVE ANIMAL HOSPITAL, 740 NORTHWEST HWY/SPECIAL USE--Chairman Celske recognized Dr. Fritz Trybus, owner of the Cary Grove Animal Hospital, and Mr. Ted Wagner, manager and lessor for Phase II partnership. Dr. Trybus stated that he had opened his animal hospital earlier this year at the subject property. Mr. Vernon had missed the fact that a special use permit was needed for this type of business at the time the other permissions were granted.

Chairman Celske acknowledged the certified mail receipts and the photograph of the signage regarding this hearing.

Dr. Trybus further explained that he had been in veterinary practice in McHenry County for the past six years. He had the dream of opening his own animal hospital, which he did here in Fox River Grove. He had done both a feasibility study and a demographic study. He had also acquired all the permissions that he was aware of at the time. His practice thus opened on June 4, 2012. It is strictly a small animal practice for medical, dental and surgical issues. There is no boarding or over nighting of animals at all.

Mr. Wagner explained that he had been involved with Stone Hill since 1980, and then with Phase II since 2003/2004. He has served as a business partner and has helped many owners start their businesses. He has assisted both Merle Norman and Cody Chiropractic. He stated that at the time of the application, the proper procedures were followed per the instruction given. There are covenants in place because of McDonalds that prevent sales of fast food, etc. in nearby buildings.

Village Attorney Donahue asked if there were difficulties in renting the space due to the location and the retaining walls. Mr. Wagner said yes, it is not considered "retail" space and the building sat empty for a long time. Mr. Donahue further asked if the height of the retaining wall is higher than the height of the building; he was told yes.

Member Schneider asked Mr. Wagner if he really did not know in advance that a veterinary hospital would require a special use permit. Mr. Wagner said he did not--the question was never raised. Chairman Celske asked if there are any current parking issues or signage issues; he was told no on both counts.

Member Dufern asked for clarification as to any potential boarding of animals. He also asked if the animals require any "green space." Dr. Trybus said that any animals which would be in need of overnight care would be transferred to another facility. His current hours of operation are weekdays from 8 a.m. until 6 p.m. and Saturdays 8 a.m. until noon. (It is closed on Wednesdays). There is no outdoor kenneling of any animals.

Member Dufern asked about the safe usage of diagnostic and radiographic equipment. Dr. Trybus explained that the equipment is overseen by a physicist, with the use of dosimeter badges. They have a new digital machine that emits only a small amount of radiation.

A MOTION was made by Rosch and seconded by Dufern to approve the request for a special use permit at Cary Grove Animal Hospital, 740 Northwest Highway with the condition that there will be no expansion for outdoor storage or kenneling. A roll call vote was taken. Celske--yes, Anderson—yes, Dufern--yes, Karls—yes, Murren--yes. Rosch—yes. Schneider—yes. Motion Carried.

Zoning Board Case 2012-03 was concluded at 7:55 p.m.

ZONING BOARD CASE 2012-04 SPECIAL USE/VCA NOYES ANIMAL HOSPITAL, 710 NORTHWEST HIGHWAY—Mr. Vernon summarized the petition. VCA Noyes Animal Hospital, currently located in Lake Barrington, would like to re-locate to the old Blockbuster/Mattress Store building. The special use would include overnight kenneling/treatment of animals.

There was a question regarding kenneling of dogs in an area zoned as B-4. It was noted that kenneling of dogs is not currently permitted in B-4.

Chairman Celske acknowledged the certified mail receipts and proof of signage regarding this hearing.

Mr. Kaplan stated that the subject property has been not only a Blockbuster Store but Cash for Gold and a Mattress Store. VCA Noyes has been looking for a property in which to re-locate for about two years. VCA Noyes has about 600 units across the country. The business owners do not intend to put anyone out of business.

Mrs. Laurie Nimsgren, an employee of VCA Noyes, was introduced to answer any questions. She explained that VCA Noyes has been in its present location for about 60 years. The current owner is 80, and his son is looking to sell the entire property by 2014. The property contains more than one parcel.

The hospital does provide overnight care of animals in some cases. However, if boarding is not permitted this would be adhered to, as boarding is only a small part of the business.

Chairman Celske explained that the location would likely preclude boarding.

Attorney John Boyd, representing Dr. Trybus, spoke on behalf of Cary Grove Animal Hospital. He reminded the Board that Dr. Trybus' business had been open and operational since June. Chairman Celske acknowledged receipt of the written objection from Dr. Trybus.

Attorney Boyd directed attention to the Village Ordinance, section L, subsection 2B, which reads in part "property shall not be used to decrease/diminish standards of (surrounding) property". He further pointed out that there is not an inordinate amount of clientele to share. This was born out by the feasibility study. The VCA Noyes hospital would literally be a stone's throw away. This may be setting both businesses up to fail.

Mr. Wagner said that there was only one special use that was turned down, which was for a fueling center. It was felt that it would create too much competition. Mr. Wagner said that he does target marketing for businesses. The subject property is 2,400 square feet, and a dog grooming business was interested in it. They were grooming about 60 dogs a day, and Mr. Wagner felt this was too much for the location.

Mrs. Nimsgren explained that their current location is only about one mile away, and they have their own clientele. They are not trying to take anyone else's.

Dr. Trybus countered that the current location is about a mile and a half away now, and the feasibility study indicated that the amount of potential clientele could support this distance. However, with the proposed proximity, the market share in the Grove would change. Additionally, clients may just become confused as to which building is which.

Mr. Kaplan pointed out that we are in a free market society, and did not know if there was any legal basis to turn the petition down.

Attorney Boyd said that this is not just about competition; it is about property values and limited clientele. He reiterated the idea that both businesses may fail if they have such close proximity.

Mr. Kaplan noted that when Blockbuster moved out, property values dropped. Having a new business in the building will attract customers.

Dr. Trybus quoted from the ordinance, which stated a property must not be "injurious to use and business in the immediate vicinity".

Member Dufern asked if the former Blockbuster location comes under covenants pertinent to Stone Hill and Phase II; he was told that it does not. It is now owned by a company called Insight. He further asked what the square footage of the building is; he was told 4,410 square feet.

Mrs. Nimsgren said that she had looked for two years for a suitable location, and this was the only one she had found.

Member Anderson said that proximity was the basis of Dr. Trybus's objection, so he wanted to know how far another business would have to be in order to be acceptable. Dr. Trybus said that the current location in Lake Barrington was acceptable according to the feasibility study.

Mrs. Nimsgren stated that VCA Noyes pulls its clientele from Cary, Fox River Grove and Lake Barrington. Additionally, there are two animal hospitals in Cary and they are both doing well.

Member Murren said that he is not favor of the second vet clinic, and feels that it is detrimental.

Chairman Celske noted that in the case of Pep Boys, he had been the sole supporter from the Zoning Board. This petition is a very hard issue. Dr. Trybus has a large personal and financial investment in his business. However, Chairman Celske did not see how the Board could reasonably turn VCA Noyes down. It is not the purpose of the ZBA to prevent competition. Chairman Celske's parents recently brought their dog to Dr. Trybus and were happy with the experience. Even so, he did not see grounds to deny VCA Noyes' request.

Member Rosch said that he was against the second animal hospital.

Member Karls pointed out that the Pep Boys was a block away from a similar business, but not on the same street. She further said that since kenneling and boarding is a part of the petition, she didn't want to see this special use either now or in the future.

Member Rosch stated that Pep Boys and Advanced Auto Parts were not the same type of business in the way that the two animal hospitals are.

Member Schneider observed that the Village Board had overturned decisions before, but didn't see that the ZBA should approve this request.

Member Anderson noted that either the Village or the Attorney did not do their jobs thoroughly since two identical requests were coming in on the same night.

Member Dufern said that he agreed that putting a similar business so close was "injurious", and had wondered if VCA Noyes had looked into other buildings such as the Fox Valley Engineering building.

A MOTION was made by Rosch and seconded by Murren to *deny* the request for a special use permit at 710 Northwest Highway for the proposed VCA Noyes Animal Hospital. A roll call vote was taken. Celske--no, Anderson—yes, Dufern--yes, Karls—yes, Murren--yes. Rosch—yes. Schneider—yes. Motion Carried.

Zoning Board Case 2012-04 was concluded at 8:33 p.m.

OTHER BUSINESS—none

NEXT MEETING—October 1, 2012 at 7:00 p.m., regarding 1106 Hillcrest.

ADJOURNMENT

A motion was made by Murren and seconded by Schneider to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 8:35 p.m.

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Daniel A. Celske, Chairman

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Alison Dal Compo, Secretary

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Date approved