Heroes Among Us – Howard Swibel and Nancy Harbottle

Chicago Partner Howard Swibel and Hoffman Estates Partner Nancy Harbottle obtained a stunning victory for the family of a disabled child. Jonathan, age 7, has moderate to severe autism. His mother and father sought to install a playground set in the fenced-in side yard of their home. Jonathan’s family sought a variance from the village to install the playground set. The family required a variance because their home was positioned on a corner lot, containing two “front yards” (one actually being a side yard). Playground equipment cannot be placed in a front yard under the village zoning ordinance.

At the hearing before the zoning board of appeals, which was evidentiary in nature, Howard made an excellent opening statement summarizing the evidence to be presented and the law to be applied. Then, the testimony came in. Howard and Nancy first called Jonathan’s therapist. The therapist testified to Jonathan’s disability and the need for the playground equipment in the family yard. Due to a danger to others and to Jonathan, he could not play in a community park. The equipment was necessary to keep Jonathan productively busy, to provide him with therapeutic opportunities and increase his receptiveness to learning.

Howard and Nancy next put on Jonathan’s mother who tearfully testified as to the family’s plight and Jonathan’s Illness.

Finally, Howard and Nancy presented a neighbor who testified that he had no objection to the appearance or location of the playground set.

The testimony was coupled with documentary submissions setting forth the evidence to be presented and attaching letters from medical professionals and photographs depicting the equipment at issue and several other homes in the village with similar equipment. The presentation, testimony and evidence were compelling.

Astonishingly, residents of the village stepped forward to oppose the variance. One such husband and wife testified that their yard did not have the required space for playground equipment for their healthy children and that it was unfair that Jonathan’s family was able to seek a variance merely due to Jonathan’s disability. They further testified that if their children became disabled, they would be back before the board seeking the same variance.

Another resident – who lived nowhere near Jonathan’s family – requested that the equipment be placed in the backyard instead of in the front/side yard of the residence. However, as stated by the building commissioner and Jonathan’s mother, the backyard contained a concrete patio and power lines such that it would be dangerous to Jonathan for the playground equipment to be installed there.

Then, the members of the zoning board asked questions and debated openly. Their discussions lead all observers to believe that the variance would be denied. One member
stated that zoning laws were among the most important laws in the United States and that it would be unfair if Jonathan’s family were permitted to install the playground equipment in their yard due to his disability. Howard tactfully explained to this member and the board that the Americans with Disabilities Act, which is a federal law, trumped the village’s zoning ordinance. Howard explained that the ADA requires reasonable accommodations or modifications for the disabled person and that the village was required to “modify” their zoning ordinance to permit installation of the playground equipment in the side yard.

Another board member complained that the survey of the family yard contained a handwritten drawing of the playground equipment and, therefore, he could make no decision without a clean copy of the survey.

Another board member stated that the equipment was not necessary while another member complained about the appearance of the fence (which had previously been approved by village officials and was, therefore, irrelevant to this hearing).

Howard was able to explain away each objection.

After the evidence was closed and the vote taken, Jonathan’s family prevailed in a vote of 4 to 2. It was an emotional victory.

The firm undertook this engagement for a nominal fee due to the financial position of the family. Howard and Nancy spent many hours researching the zoning ordinance, the ADA, and preparing submissions, witnesses and their arguments. The professionalism, patience, preparedness and grace displayed by Howard and Nancy were amazing. The family was ecstatic and grateful.