

HIGHLAND BOARD OF ZONING APPEALS
Minutes of the Meeting of
May 23, 2018

The Highland Board of Zoning Appeals met on May 23, 2018 in the meeting room of the Municipal Building, 3333 Ridge Road, Highland IN. Mrs. Murovic called the meeting to order at 6:30 p.m. The meeting opened with the Pledge of Allegiance led by Mr. Martini.

ROLL CALL: Present were Mr. Martini, Mr. Grzynski, Mr. Leep and Mrs. Murovic. Also present Attorney Mr. Jared Tauber, Building Commissioner Mr. Ken Mika and Town Council Liaison Mr. Steve Wagner. Absent was Mr. Helms.

MINUTES: The minutes of the April 25, 2018 were approved as posted.

ANNOUNCEMENTS: The next meeting of the Board of Zoning Appeals to be June 27, 2018 at 6:30 p.m.

Communications: Mrs. Murovic thanked previous recording secretary Patricia S. Nagy for her service and welcomed Susan C. Rae as the new recording secretary. Mr. Martini motioned to approve Ms. Rae as Recording Secretary. Mr. Grzynski seconded and it unanimously passed with a roll call vote of 4-0.

Old Business: Approval of Findings of Fact for Adult Day Care at 2914 Highway Ave. a B-2 zoned district (also Downtown Sub-District in the Redevelopment Area). {HMC 18.40.030} Permitted Uses. Mr. Grzynski motioned to approve findings of fact. Mr. Martini seconded and it unanimously passed with a roll call vote of 4 – 0.

Findings of Fact for Mitchell Robinson, 9137 Cottage Grove Ave., Highland requesting a variance to move fence beyond build line. Property is on a corner. {HMC 18.05.060}(G)(5)(a) Permitted Obstruction in Required Yards. The following shall not be considered to be obstructions when located in the required yards specified: (a) In All Yards. Ordinary projections of skylights, sills, belt courses, cornices and ornamental features projecting not to exceed 12 inches; open terraces or decks not over four feet above the average level of the adjoining ground but not including a permanent roofed-over terrace or porch and not including terraces or decks which project into the required front yard by more than six feet from the front of the principal structure; awnings and canopies; steps which are necessary for access to a permitted building or for access to a zoning lot from a street or alley; chimneys projecting 18 inches or less into the yard; arbors, trellises and flagpoles; fences, screens, hedges and walls; provided, that in residential districts no fence or wall shall be located in the required front yard and no landscaped screen or hedge shall exceed three feet six inches in height if located in the front yard, and no fence, landscaped screen, hedge or wall shall exceed six feet in height if located in a side or rear yard. On a corner or reverse corner lot, the side yard setback shall be the same as the front yard setback on adjoining lots; fences shall not be installed beyond this point. No fence, screen, hedge or wall shall interfere with line of sight requirements for local streets or intersections. No fence, screen, hedge or wall shall be constructed of material that may be described as rubble, cardboard, chicken wire, trees and brush, corrugated tin, utility poles, railroad ties, barbed wire, broken glass or electrified material. The design, location and construction of a fence or wall shall be approved by the building commissioner prior to the issuance of a building permit. Mr. Martini motioned to approve the Findings of Fact. Mr. Leep seconded and it unanimously passed with a roll call vote of 4-0.

Old Business: Continued Public Hearing for Lisa Whipps, 2151 Hayes Leonard Rd., Valparaiso, IN 46385 regarding property at 9910 Express Drive, an I1 zoned district. {HMC 18.40.030} Permitted Uses.

Ms. Lisa Whipps presented additional information to the Board during the study session, immediately prior to this meeting. Mrs. Murovic asked if there was anything she would like to expound on concerning this additional information. Ms. Whipps replied that there was not, but she was open to questions or concerns. Mr. Grzynski asked for clarification of one of the photographs. Ms. Whipps replied that the photo showed the parking lot of her Hobart location with 36 parking spots. The other building they have is in Schererville and is 2,200 sq. feet with 6 parking spaces. She is proposing 26 spaces for the location in Highland on Express Drive. Mrs. Murovic pointed out that the Board is concerned about the parking, but there are also other issues, including drainage, because of the easement on the back side and suggested they could use additional time to study and review the new information, due to the fact that it was given to the Board immediately prior to this meeting. Mrs. Murovic also suggested that they would like additional information concerning the drainage issue. Ms. Whipps responded that she called a few weeks earlier and asked what the additional concerns regarding drainage were and that she is working with three companies that are on the list that was provided to her. She also stated that she would be interested in something from the Town of Highland that described how she should address this drainage issue with the companies she is working with to solve the problem. She said it appears that there is a drainage ditch behind the property. Mrs. Murovic stated that there is also a state right-of-way behind the property and asked for clarification from Mr. Ken Mika. He confirmed that fact and stated that the entire length of her proposed property at 9910 Express Drive and the neighboring properties have a drainage ditch behind them. Mr. Mika expressed that the Town's main concern is that the moving company to the north of her property has extended some of their trailers into the state right-of-way and has upset the natural drainage course of the ditch. The town will need assurance that the whole area will be cleaned up so the ditch can gain the natural flow back and the ditch will function as intended, with proper drainage restored, not only on her property, but the others as well.

Mr. Mika asked Ms. Whipps if she will be doing any major modifications to this building. She responded that she will not, possibly just electrical work inside and cleaning. He explained that the reason he asked is because this building, as far as classification, is industrial. She will actually be changing the occupancy type to a place of assembly. That occupancy type has additional safety standards compared to the industrial type. A design professional may have to look at this building, evaluate it for what it is and determine if it could meet those standards and be designed to accomplish this particular use. It would also require them to submit this building for a change in occupancy to the State. Ms. Whipps stated that this is the same type of building as her other location in Hobart and that she built the building and there were no other occupants. Mr. Mika stated that she was most likely approved for that type of use in the area of Hobart she is in and that the area of the building in Highland is specifically an industrial zone. A State design release would be needed to change the occupancy of the building in Highland. Ms. Whipps responded that she understood and Mrs. Murovic added that the Board wants Ms. Whipps to be aware of this. Ms. Whipps responded that she wants all the information she can get and wants to be prepared for the next meeting. Ms. Whipps asked how she would locate this information and how she would start. Mr. Mika responded that a State Design Professional is a licensed Architect, and that she could possibly talk to an Engineer, but the best start would be the Architect. They would then have to evaluate the existing building, compare it to what the standard is for that particular type of use and then have them guide her from there. Ms. Whipps then asked where she would go to speak to someone about the drainage issues. She understood that there are problems with the other properties, but wanted to know where she could go to

repair/resolve the issues with the property she was pursuing. Mr. Mika stated that he felt she should talk to the property owner of the moving company that has created the problem with the flow of the drainage ditch. He also stated that she could call the Building & Inspection Dept. tomorrow for more information about this issue, and he would advise her of what he is seeing visually, but the company that caused the problem is ultimately responsible for fixing the problem considering the fact that they created it. Ms. Whipps takes Mr. Mika's name and says she will call the next day.

Mr. Martini asked a question about the diagram that showed the flow from the east to the west around the building to the south and then coming out, which he liked. He stated that the Board would prefer to have a better engineering plat for the parking, especially when he looked at the photograph of the existing area, because it was full of trucks and whatever else. He stated that he has driven by the area and the surface is not good in front and he imagines it's even worse in the back. Ms. Whipps stated that one of the companies she is working with wants to test that soil in the back to see what that surface is before they will even consider giving her a bid. Mr. Martini stated that she has shown the photographs of the other facilities and they look beautiful compared to what exists now at this Express Drive property. Mr. Martini stated that they are very concerned about that because there will be families driving in with children. He also stated that he liked the concept of the flow diagram. Ms. Whipps stated that she did a lot of research on the internet to determine what she needed as far as handicapped spots and the size of spots. There is 14' on the north side of the building and they could have traffic coming and going, but she would prefer to have it go in only one direction, which has already been cleared with the other owners of the nearby properties. Mr. Martini expressed that this is a good idea. Mrs. Murovic stated that for safety measures, it would be simpler to go in one direction. Ms. Whipps stated that with parents dropping off children this is the best way, because they could be dropped off at the back door and continue in one direction. Mrs. Murovic reiterated that there was a high alert for safety due to the fact that there will be children frequenting this facility. Ms. Whipps summed up that the main areas she must address are the drainage issue and the occupancy issue inside the property. Mr. Martini added that Ms. Whipps should call Mr. Mika the next day and she agreed that she will.

Mr. Martini motioned to continue the Public Hearing. Mr. Grzynski seconded and it unanimously passed with a roll call vote of 4 – 0.

New Business: Public Hearing for Richard P. Traybsza, 9444 Forrest Drive, Highland requesting a variance to move fence beyond build line. Property is on a corner. {HMC 18.05.060}(G)(5)(a) Permitted Obstruction in Required Yards. The following shall not be considered to be obstructions when located in the required yards specified: (a) In All Yards. Ordinary projections of skylights, sills, belt courses, cornices and ornamental features projecting not to exceed 12 inches; open terraces or decks not over four feet above the average level of the adjoining ground but not including a permanent roofed-over terrace or porch and not including terraces or decks which project into the required front yard by more than six feet from the front of the principal structure; awnings and canopies; steps which are necessary for access to a permitted building or for access to a zoning lot from a street or alley; chimneys projecting 18 inches or less into the yard; arbors, trellises and flagpoles; fences, screens, hedges and walls; provided, that in residential districts no fence or wall shall be located in the required front yard and no landscaped screen or hedge shall exceed three feet six inches in height if located in the front yard, and no fence, landscaped screen, hedge or wall shall exceed six feet in height if located in a side or rear yard. On a corner or reverse corner lot, the side yard setback shall be the same as the front yard setback on adjoining lots; fences shall not be installed beyond this point. No fence, screen, hedge or wall shall interfere with line of sight requirements for local streets or intersections. No fence,

screen, hedge or wall shall be constructed of material that may be described as rubble, cardboard, chicken wire, trees and brush, corrugated tin, utility poles, railroad ties, barbed wire, broken glass or electrified material. The design, location and construction of a fence or wall shall be approved by the building commissioner prior to the issuance of a building permit.

Mr. Tauber stated that the Proofs of Publication were in compliance with IC 5-3-1.

Mr. Traybsza stated his name and address and confirmed he bought this property in August of 2017. It was a fixer-upper and had been a rental property prior to him purchasing it. One of the stipulations agreed upon during their purchase was that he would give the owners their asking price if they would repair several items, because it needed a lot of work. One of the items that needed repair was the fence, but the previous owners refused to fix it. He stated that the fence rocked in the wind and there is a big concern for safety because the fence is going to fall down. He has recently had to secure the fence to a tree with 2 x 4's just to ensure that it won't fall down. He has also been concerned that the fence may fall on his west neighbor's cars and cause damage that he would be responsible for. He refers to page 3 and 4 of his outline for the main plan that he would like to pursue. He wants to enclose an 8 x 10' area to give him additional yard space and security for the garage. He wants to run the fence down approximately 79' to the face of the garage, with a gate at that point. He stated that he has had issues with passers-by looking into the garage windows, he has had to replace broken windows on the garage and has had to clean up copious amounts of trash from the area, including beer bottles and dog feces. He has even seen people standing by the side of his garage at night when he takes out his trash. He is concerned for his personal property safety and damage to his new garage. He presented the last Surveyor Location Report of his property from 1998 and stated that a variance was done in either 1968 or 1970 for the garage, which was constructed after his house. He also presented consent forms from two of his neighbors that would be directly affected by his proposed fence. Both of them had no problem as there is a 5' sidewalk and another 6' of grass for them to get a good view of the area and any oncoming traffic.

Mr. Traybsza stated that he works as a paramedic in Highland and has responded several times to this intersection and has had no problems with obstruction of views, even when they are approaching the stop sign at about 25 – 30 miles an hour, both on Forrest and 43rd streets, in both directions.

His budget for this fence will be approximately \$1,900 for a 6' fence with 4 x 4 posts. Mr. Traybsza stated that he found 3 other properties with fencing along the sidewalk in his R-1 zone and has included photos of them in his presentation. It was difficult to find properties that are cornered the same way, as his is a very unique property. He stated that he needs security because he has valuable tools. He will need additional yard space because he plans to have a dog in the future. A fenced-in yard is very valuable to him.

Mr. Traybsza asked the board for questions, suggestions and what is allowed or not allowed. He stated that he is new at this process and being his first time he is trying to get a feel for it. He is ready to replace his fence and hopes it will be approved. The inside of his home has been gutted and restored. It is beautiful now and he'd like the outside to match the inside. He had no grass last year, but it has grown in this year. He wants this fence to continue the property restoration and add to the beauty that has been restored to the rest of the house. He wants to do most of it himself with the help of his father and father-in-law.

Mrs. Murovic opened the Public Hearing. Hearing no remonstrances, the Public Hearing was closed.

Mr. Martini asked Mr. Traybsza for clarification and to mark the plat where exactly he wants to erect the replacement fence. Mr. Traybsza marked the plat and also explained that there is a utility pole with an easement and the fence location will not affect the access to that pole. Mr. Traybsza stated that the fence will be wooden and 6' high. Mr. Martini commented that Mr. Traybsza's proposal is well-prepared. Mr. Traybsza replied that he had over 45 days to prepare and cares a lot about his house and his community and wanted to show that with a well-prepared presentation.

Mr. Martini asked Mr. Traybsza about the neighbor's consents that were included in his proposal. He replied that they had no problem signing them for him and that their main concern was that he would assume full financial responsibility, which he will do.

Mrs. Murovic asked the rest of the Board if they had any concerns or thoughts to add.

Mr. Martini stated that his main concern was having the fence right on the sidewalk. He recommended it should be moved back 3' toward Mr. Traybsza's property. He then asked Mr. Mika what he suggested about this matter. Mr. Mika replied that because of Mr. Traybsza's unique property and the curve involved it may need to be looked at differently because it may obscure pedestrian traffic as the neighbors are coming in or going out of their driveways. Mrs. Murovic asked if a 90 degree angle from the fence line would suffice. Mr. Mika stated that should work in this case. Mrs. Murovic added that it is important that the fence be back off the sidewalk for the maintenance/blowing of the snow in the winter months. Mr. Grzymiski stated that his opinion in this matter would be to position the fence 3' off the sidewalk with the 90 degree angle in the corner. Mrs. Murovic stated that it would be a 10' angle and a right angle. Mrs. Murovic asked if Mr. Traybsza would be going up to the front of his garage. He responded that was correct and he would also add a larger gate than he has now. He will make the gate wide enough to accommodate a small vehicle. He also stated that he can add 10' corners at both ends. Mrs. Murovic stated that the other side may not need it as there was no view issue there.

Mr. Martini motioned to grant the variance to the petitioner, Richard P. Traybsza, Jr. according to the plat presented that is marked in yellow. Also, the southwest corner would have to have a 90 degree angle and there would have to be at least a 2' setback from the sidewalk. Mr. Grzymiski stated it would be 45 degrees. Mrs. Murovic stated that it is a matter of perspective and depends on which way it is looked at. From one direction it is 90 degrees and from the other it is 45 degrees. Mr. Grzymiski motioned but wanted to clarify the distance as a 3' setback from the sidewalk. Mrs. Murovic stated the 3' distance is substantial and that this would make it very simple. Mrs. Murovic asked Mr. Mika if there is anything he would like to add. He replied that he felt they should not reference the plat that was marked with the location of the proposed fence in yellow because the fence was shown right on the sidewalk. Mrs. Murovic stated that for clarification, they will state the fence must be setback 3' from the sidewalk, with a 45 degree angle on the southwest corner.

Mr. Martini motioned to grant the variance with a stipulation that the fence be setback 3' from the sidewalk with a 45 degree angle on the southwest corner. Mr. Grzymiski seconded and it unanimously passed with a roll call vote of 4 - 0.

Public Hearing for Burlington Coat Factory, 10225 Indianapolis Blvd., represented by Guy Dragisic, 1130 North Garfield, Lombard, IL requesting a variance to exceed sign allowance at the location of 10225 Indianapolis Blvd. {HMC 18.85.080 (G)(2)(a)} Each occupancy shall be permitted a maximum of one sign.

Mr. Guy Dragisic of Olympic Sign Company introduced himself and stated his address.

Mr. Tauber stated that the Proofs of Publication were in compliance with IC 5-3-1.

Mr. Dragisic stated that Burlington Coat Factory is proposing a secondary sign on the north elevation. The purpose of this would be to capture vision off of Rt. 41 southbound. Their concern is that the old HH Gregg building obscured vision from 41 to the front elevation sign that is their permanent sign. The sign does not face any public residential areas. They are trying the best they can to get seen. He added that the sign will be white face, translucent and illuminated, but that the actual light source will not be visible.

Mrs. Murovic opened the Public Hearing. Hearing no remonstrances the Public Hearing was closed.

Mrs. Murovic asked for clarification of the front face of the building and asked if the drawings presented by Mr. Dragisic is exactly what the front of the building would look like. She has also noticed there is still work going on at the building. He confirmed that they do show the front depiction. She then asked if there is also a monument sign. He responded that there are tentative plans for that type of sign.

Mr. Grzynski thanked Mr. Dragisic for his presentation, but stated that his concern is that other businesses have approached them for a secondary sign on their buildings and as far as he remembered, they have always been denied. He also stated that the old HH Gregg building may be in use soon and the new occupants will be looking for something similar if they see that Burlington got the second sign. He stated he will be voting against granting this variance.

Mr. Dragisic commented that he believed the old HH Greg Building would actually be allowed two signs because it was an outlet. Mr. Mika answered that technically that was an independent lot that was not part of the lots assigned to Highland Grove and that did not comply with the rules when Highland Grove went in and that is why they had to get a variance.

Mrs. Murovic asked if the front sign is 250 sq. feet. Mr. Dragisic mentioned that the proposed sign is 149 sq. feet, and then confirmed the front sign as being 250 sq. feet. Mrs. Murovic stated that she felt that the sign they currently have as their permanent sign is a good size and they also had the tenant sign on the monument.

Mr. Martini thanked Mr. Dragisic for his presentation and welcomed him to Highland. He stated that there have recently been a number of businesses that have asked for the same thing, two signs plus a marquee and that they had all been denied. He also stated that with their main sign and the marquee sign, the Board felt this was sufficient signage. Mr. Leep added that he does not consider what they have now as a hardship.

Mr. Martini motioned to deny the request of a second sign on the north side of the building, known as B. Mr. Grzynski seconded the motion and it unanimously passed with a roll call vote of 4 – 0.

Public Hearing for Joseph & Kathy Kwasny, 3132 97th Place, Highland, IN requesting a variance to move the fence beyond the build line. Property is on a corner. {HMC 18.05.060}(G)(5)(a) Permitted Obstruction in Required Yards. The following shall not be considered to be obstructions when located in the required yards specified: (a) In All Yards.

Ordinary projections of skylights, sills, belt courses, cornices and ornamental features projecting not to exceed 12 inches; open terraces or decks not over four feet above the average level of the adjoining ground but not including a permanent roofed-over terrace or porch and not including terraces or decks which project into the required front yard by more than six feet from the front of the principal structure; awnings and canopies; steps which are necessary for access to a permitted building or for access to a zoning lot from a street or alley; chimneys projecting 18 inches or less into the yard; arbors, trellises and flagpoles; fences, screens, hedges and walls; provided, that in residential districts no fence or wall shall be located in the required front yard and no landscaped screen or hedge shall exceed three feet six inches in height if located in the front yard, and no fence, landscaped screen, hedge or wall shall exceed six feet in height if located in a side or rear yard. On a corner or reverse corner lot, the side yard setback shall be the same as the front yard setback on adjoining lots; fences shall not be installed beyond this point. No fence, screen, hedge or wall shall interfere with line of sight requirements for local streets or intersections. No fence, screen, hedge or wall shall be constructed of material that may be described as rubble, cardboard, chicken wire, trees and brush, corrugated tin, utility poles, railroad ties, barbed wire, broken glass or electrified material. The design, location and construction of a fence or wall shall be approved by the Building Commissioner prior to the issuance of a building permit.

Mr. Joseph Kwasny stated that his wife, Mrs. Kathy Kwasny will make their presentation.

Mr. Tauber stated that the Proofs of Publication are in compliance with IC 5-3-1.

After introducing herself, Mrs. Kathy Kwasny showed the Board photos of their property to better explain why they would like their new fence installed in the same location as their present fence. The fence is 50 years old and must be replaced. She explained that they cannot afford to lose their yard space and they would have to dig up the patio to place the new fence in the location suggested by the ordinance. This would be very costly for them, they would lose valuable yard space and it would lower their property value. She and her husband have been maintaining the old cedar fence for many years, replacing boards and posts, etc. They are getting older now and don't want to deal with the maintenance of a wood fence any longer, they want a PVC fence to replace it. Their new fence is the same height as the cedar fence, but it will have greater visibility than the old one because there are slats with spaces between them as opposed to the present fence that has no visibility through it. This would make the new fence safer than the old one for traffic and pedestrians. To the best of her knowledge, there has never been an accident or a safety issue with cars or pedestrians near their property in the 41 years they have lived there. The new vinyl PVC fence would also be much better looking and beautify the property and the community. She feels it would be a great hardship for them to move the location of the fence.

Mr. Grzymiski commented that the new fence would not be a wall like the old one and that people would still have a partial view of the yard. It would be an improvement. Mrs. Murovic commented that they made a nice choice with the new fence. Mr. Mika added that he had a chance to visually inspect the fence and yard situation at their property and confirms that the fence is badly needing to be replaced. With the existing conditions he stated that it would warrant the Board to look at it in a positive way. The main concern is for pedestrian vision, and he added that their drive approach is a little deeper than most.

Mrs. Murovic opened the Public Hearing. Hearing no remonstrances the Public Hearing was closed.

Mr. Brian Davis of 3133 98th Street commented that he couldn't see their fence any other way and he has been living in his residence since 2011. He thought it was ridiculous that the Kwasny's had to go through all this just to improve their house.

Mr. Steven Wagner of 3244 Maple Drive added that the sidewalk was in good shape so there was no reason the fence would not be able to come up to it and he felt that it would not obstruct anything. He also stated that he felt the old fence was in very bad shape and the new vinyl fence and gate would beautify the area significantly.

Mrs. Murovic opened the Public Hearing. Hearing no remonstrances the Public Hearing was closed.

Mr. Martini stated that this is a clear case of replace in kind. He felt that if the Kwasny's were forced to move it back a few feet it would be very expensive for them, they would lose valuable, needed yard space and especially the patio that they put in. He felt the Board should move ahead with this issue and grant the variance. He added that he doesn't know how any corners would be situated with the concrete patio floor. The Board discussed the corners, but felt that the visibility through the slats in the new vinyl fence would meet the intent of having angles or corners, and that it would not be needed with this particular property.

Mr. Martini motioned to grant the variance request. Mr. Leep seconded and it unanimously passed with a roll call vote of 4 – 0.

BUSINESS FROM THE FLOOR: None

ADJOURNMENT: Motion: Mr. Grzymski Second: Mr. Martini Time: 7:35