

**HIGHLAND BOARD OF ZONING APPEALS**  
**Minutes of the Meeting of**  
**July 25, 2018**

The Highland Board of Zoning Appeals met on July 25, 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. Helms.

**ROLL CALL:** Present were Mr. Helms, Mr. Martini, Mr. Leep and Mrs. Murovic. Also present were Attorney Mr. Jared Tauber and Building Commissioner Mr. Ken Mika. Absent was Mr. Grzymiski.

**MINUTES:** The minutes of the June 27, 2018 were approved as posted.

**ANNOUNCEMENTS:** The next meeting of the Board of Zoning Appeals to be August 22, 2018 at 6:30 p.m.

**Communications:** None

**Old Business: Approval of Findings of Fact** for Lisa Whipps, 2151 Hayes Leonard Rd., Valparaiso, IN 46385 requesting a Use Variance to open a gymnastics studio at 9910 Express Dr., an I1 zoned district. {HMC 18.40.030} Permitted Uses.

Mr. Helms motioned to approve the Findings of Fact. Mr. Martini seconded and it unanimously passed with a roll call vote of 4 - 0.

**Continued Public Hearing for** Kenneth Hay, 1310 Tralee Ct., Dyer, In 46311, requesting a variance to exceed accessory structure allowance. Asking to build an additional detached three car garage at the location of 10250 Kennedy Ave. {HMC 18.05.060 (F) (5)} In Zoning District R-1A, R-1, R-2, or R-3. The summation of the gross floor area of all accessory structures shall not exceed the gross floor area of the principal structure, or 720 square feet, whichever is less.

Mr. Hay stated he would not be going forward with a second variance for height concerning his proposed garage structure at 10250 Kennedy Ave. His new plan would be to keep the height of the garage under 18 feet. He asked the board to consider his variance again, and stated he would like to go forward with the construction.

Ms. Murovic opened the discussion to the public.

Ms. Lydia Shotts of 10226 Kennedy Avenue, Highland, IN 46322 stated she had attended Mr. Hays first Public Hearing on June 27<sup>th</sup>. After summarizing that meeting, she mentioned that she still sees the same tenants on the property and said they had not been evicted as of the date of this continued Public Hearing, as Mr. Hay had suggested they would be. She also mentioned that if Mr. Hay planned to have storage downstairs and a workshop on the 2<sup>nd</sup> floor of his new garage, it would be very inconvenient for him to carry supplies from the 1<sup>st</sup> floor up to the 2<sup>nd</sup> using the outside staircase shown on his proposed drawing of the new garage, especially in the elements the winter may bring. She stated it was just a smaller version of a big store storage locker. She stated that Mr. Hay had different concerns about this property because he did not live there. People such as herself and her neighbors feel much different than he because they actually live

there. She then spoke of the many truckloads of dirt and mulch that had been delivered and a tree that had been taken down, even after he was told at the last BZA meeting of June 27<sup>th</sup> that all plans were on hold until the next meeting. She stated Mr. Hay is saying one thing, but doing what he wants. She suggested that a possible solution for Mr. Hay is clean out the existing garage that is on the property and making use of that, because it was not being used at all and was full of junk that could be disposed of. She mentioned that even though Mr. Hay is claiming he will use the garage only for storage and a workshop on top, she is concerned that eventually he could or would convert the 2<sup>nd</sup> story into a rental apartment. She said there are too many inconsistencies in what Mr. Hay says and does. She also had concerns about the fact that this property is in a flood zone with a lot of restrictions and worried whether or not Mr. Hays would comply with all those conditions. She requested that the Board consider her concerns and not grant this variance.

Ms. Murovic closed the discussion to the public and asked Mr. Hay if he would like to respond.

Mr. Hay stated some of Ms. Shotts comments were factual and some were not. He stated that he has delivered loads of dirt there because he is building a single family home at 9337 Farmer Drive and the dirt that is being dug up there was being transported to 10225 Kennedy Ave. because he thought he may need it if his variance is granted for his construction and to level out some low spots on the property. He did confirm that one load of dirt was delivered after Mr. Mika had told him not to have any additional dirt delivered to the property, even though he had told the contractor to stop. He also mentioned that the points she brought up about the current tenants on his property at Kennedy Ave. and the garage that they're using don't have anything to do with his variance for his 2<sup>nd</sup> garage.

Ms. Murovic stated that these points about the current garage the tenants were using did tie into his request because this is existing accessory structure on the property, and because he is asking for a 2<sup>nd</sup> garage, it would be additional accessory structure square footage on the property, which has limitations. She then asked Mr. Hays if he had a drawing of his new proposed garage. Mr. Hays stated that the new height of the proposed garage would be 17' and it was on the 2<sup>nd</sup> page of the presented package he submitted to the Board. Ms. Murovic asked Mr. Hay to state again the reason he would like to build this 2<sup>nd</sup> garage on his property. Mr. Hay stated it was for storage for construction materials to replace a garage he owned on his property in Griffith that was coming down to make way for a duplex he was building there. Mr. Hay stated that as he had said in the past at the last meeting, there would only be electricity and there would not be any tenants living in this proposed 24' x 36' structure.

Mr. Martini asked what the hardship was for Mr. Hay. No hardship, by the usual definition, could be claimed by Mr. Hay. He simply needed to replace the storage area of the garage that was coming down on his Griffith property. Ms. Murovic stated that it would seem Mr. Hay wanted this garage to continue his business. Mr. Hay clarified that was not the case. He did not have a business, did not have a business license in Highland and needed the garage for storage only. He had no commercial or financial benefits for needing the garage. Storage was the only need. There would be cars, drywall, 2 x 4's and the like in the proposed structure. Mr. Helms asked Mr. Hay if this venture would be worth all the expense. It seemed like a lot to spend for storage only. Mr. Hay responded that his cars were the main reason for him spending the money for this proposed structure. Mr. Hay said his collection of cars is extensive and he needed somewhere to store them all. Mr. Hay also stated that he would like to take trees down, use the dirt he has brought over to level the land so it can be mowed and maintained better, and generally make the property much more presentable than it is now. Mr. Helms mentioned that presently, the property is not well maintained. The garage door is off the hinges and it is the responsibility of the owner to maintain the property, not the tenants. Mr. Hay agreed and stated it is deplorable

now, but that the tenants have contributed to that. He also acknowledged that it is his responsibility and he felt it will look much improved with his proposed plan and the construction of the new garage. Mr. Hay stated that he planned to go ahead with evicting the current tenants and getting new tenants that will work with him to maintain the property to the standards of Highland.

Mr. Martini asked Mr. Tauber what the options were for the Board to motion at this point. Mr. Tauber stated that they could either accept it, deny it or table it until the last member of the Board was present. Mr. Martini made a motion to deny the variance to the petitioner. No Board member seconded. Ms. Murovic stated that the motion had died.

Mr. Helms motioned to grant the variance to the petitioner, with the stipulation and condition that the property must be cleaned up to the legal standards of the Town of Highland. Mr. Leep seconded. Ms. Murovic stated that no permits should be issued until these conditions are met. Mr. Hay completely agreed with these conditions and stated he would work with Mr. Ken Mika on the cleanliness and the structure of the garage and would bring all plans to Mr. Mika for his final approval. The motion was passed with a 3 – 1 vote.

**New Business: Public Hearing for Erin Watson, 9234 Wildwood Drive, Highland, IN,** 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.

Ms. Watson stated she moved to Highland in February of 2018 and bought the house from her grandfather. She stated that her fence contractor made her aware of the fact that she may not be able to replace her existing fence in the same location due to the fact that she was on a corner. She then stated that with the re-zoning, her very important, special and sentimental garden that was started by her grandfather would be cut in half. Due to the fact that she did not know that she wouldn't be able to replace her existing fence, her materials were already bought and paid for. Ms. Watson then explained that her presented portfolio contained receipts for the purchases, photos of the extended garden and photos of several neighboring properties that all have fences extending to their sidewalks. Ms. Watson clearly stated that she loves her house, wanted to

replace the old fence with a beautiful new white fence to improve the property and did not want to cut into her beloved garden.

Ms. Murovic opened the discussion to the public. Hearing nothing, she closed the public discussion and brought it back to the Board.

Mr. Helms explained that the main reason for the fence ordinance concerning corners is for safety reasons. The pedestrian or kid on a skateboard had a better view coming around the corner without it being obstructed by a fence. When a driver is backing out of the driveway, they also have a better view without a fence there. The second reason for the ordinance is for sidewalk maintenance, if they need repair, or in winter months with snow blowing it is easier to maintain if the fence doesn't come all the way up to the sidewalk. One solution they often come up with is to eliminate the corner post and make an angle across the corner in those areas, which greatly increases the visibility.

Ms. Watson stated that she had purchased two mirrors and was planning on mounting them to increase visibility for passers-by so there was an increased line of vision.

Ms. Murovic asked Ms. Watson if she was at all concerned that the new fence would provide too much shade on her garden. Ms. Watson responded that she had thought of that also and had decided to have a matching PVC fence with slits and lattice work at the top around the garden portion so that the sun would be able to shine through to the garden. Mr. Helms added that this would increase the visibility in this area, which is their main concern for safety.

Mr. Leep commented that many times when petitioners have requested these variances, what the Board often decides on is to move the fence line in by a couple of feet. This is a compromise that offers more visibility than having the fence to the sidewalk and it allows for maintenance of the sidewalk, as well. Mr. Leep asked Ms. Watson if this is something she would consider. Ms. Watson replied that she would have to talk to the contractor and see if this is something that would be okay, but that yes, she would be willing to consider this. Mr. Helms explained that Ms. Watson would basically have to make a decision and tell the board that she is either going to move the fence in or not, so they could make a motion to grant or deny the variance.

Ms. Murovic asked if anyone on the Board would like to make a motion with stipulations.

Mr. Leep motioned that the fence variance be granted with the stipulation that the fence is put in a minimum of 2 feet back from the sidewalk, which, according to Ms. Watson's plans, would be no more than 12' out from the house and the garage. Mr. Helms seconded. The motion passed unanimously with a 4 – 0 roll call vote.

**BUSINESS FROM THE FLOOR: None**

**ADJOURNMENT: Motion: Mr. Martini Second: Mr. Helms Time: 7:14 p.m.**