

**HIGHLAND BOARD OF ZONING APPEALS**  
**Minutes of the Meeting of**  
**October 23, 2019**

The Highland Board of Zoning Appeals met on October 23rd, 2019 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 Board Members Mr. Martini, Mr. Grzynski, Mr. Leep and Mrs. Murovic. Also present were Building Commissioner/Zoning Administrator, Mr. Ken Mika, Town Attorney Mr. Jared Tauber and Town Council Liaison Mr. Steve Wagner.

**MINUTES:** The minutes of the September 25th, 2019 meeting were approved as posted.

**ANNOUNCEMENTS:** The next meeting of the Board of Zoning Appeals to be December 11th, 2019 at 6:30 p.m., which will combine the months of November and December into one meeting, due to the Holidays. Mr. Martini motioned for approval of this date, seconded by Mr. Leep and passed unanimously with a roll call vote of 4 – 0.

**COMMUNICATIONS:** The Board of Zoning Appeals received confirmation from the Town Council concerning the approval of the BZA's Favorable Recommendation to the Town Council regarding a Use Variance for a Daycare Facility by Lindsey Rockymore at 2933 45<sup>th</sup> Street.

**Old Business: Approval of Findings of Fact for Lindsey Rockymore, 2104 E. 171<sup>st</sup> Place, South Holland, IL 60473,** requesting a Use Variance for a childcare facility located at 2933 45<sup>th</sup> Street, Highland, IN 46322. {HMC 18.35.040} Permitted uses in a B-1 District do not include daycare.

Mr. Martini Motioned to approve the Findings of Fact. Mr. Grzynski seconded and the motion was unanimously approved with a roll call vote of 4 – 0.

**New Business: Public Hearing for Michael Schmidt, 8316 5<sup>th</sup> Street, Highland, IN 46322,** requesting a variance to replace a 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. Jared Tauber stated that he had reviewed the Proofs of Publication and they were in compliance with IC 5-3-1.

Mr. Michael Schmidt stepped forward and stated his name and address as 8316 5<sup>th</sup> Street in Highland, IN. He proceeded to hand out some photos of his property showing his existing fence, shed and a copy of his plat of survey, with highlighted area showing where he would like to install his fence, which is exactly where it was existing. He stated that he had purchased the property in 2008 and the fence had been there since at least that time. He said he wanted to tear down the old fence and re-install a new fence in the same location. He stated that he understood that the ordinance had changed and that the existing location of the fence would not be allowed with the changes made regarding corner properties, but also stated the shed would have to be moved to comply and that he was unable to move it and didn't even know how to go about doing that. He also stated that he had two children, ages 7 & 9 and that the 9 year old had Down's syndrome and was a "flight risk" and had already been brought home by the Highland Police Department once and that he did not want it to happen again. He stated the fence was in disrepair, did not latch and a solid, sturdy, secure fence was important for his children to remain safe when they were playing in the yard. He also mentioned it was a very small yard and to move the shed a few feet into the existing yard would create an even smaller playing area for them. He said he was just trying to improve his property and replace a dilapidated fence.

Mrs. Murovic opened the discussion to the public. Hearing no remonstrance, she closed the public discussion and brought it back to the Board.

Mr. Martini asked what type of fence Mr. Schmidt wanted to put up. Mr. Schmidt replied it was wooden, the same as what was existing and it was very basic, 6' in height. Mr. Martini asked what was on the west side of the yard. Mr. Schmidt replied that there was a small, 4' chain link fence there and that it belonged to his neighbor. Mr. Martini then stated that they had many petitioners through the years ask for this type of variance, and that the Board asked them to move the outside fence line at least 2' from the sidewalk, for safety reasons. He also stated that these requests had been approved a number of times in the recent past. Mr. Schmidt stated that he was asking not to have to move the fence 2' off the sidewalk, because of his shed and the other reasons he stated.

Mrs. Murovic explained that there are two build lines on houses that are located on corners, and that for the fence to comply with the present code, it would have to be moved back even more than the 2' the Board was asking. She stated that they saw his plight and were trying to work with him and make concessions because of the reasons he had specified.

Mr. Leep stated that according to code, his fence would have to be approximately 12' off the sidewalk, and that they were not going to ask him to move it back that far. Mr. Leep then asked Mr. Schmidt if he had measured the distance between the sidewalk and his shed. Mr. Schmidt replied that he had not, but going off the picture, it may be 2', it may be 1-1/2'. He also stated that there were paver blocks between the shed and the fence, also you can walk between the fence and the shed.

Mr. Martini stated that they had to be consistent with judgements like this, approving things like this. He stated he had been on the Board for 10 years and went on to give an example regarding garage heights and that they have had a number of petitioners saying they would like to build their garages 19', 20' or 21'. He stated they cannot approve any of them and that 18' is the absolute maximum. As of late, they had not varied from the fact that the fence must be a minimum of 2' off the sidewalk. Mr. Martini then suggested that possibly Mr. Schmidt could use the east side of his shed as the edge of the fence on that side. Mr. Schmidt then stated that he wasn't sure of the exact measurement of the shed from the sidewalk. He asked if he would be fined if it was a foot and a half rather than 2'. He then went on to ask if he could repair the existing fence a panel or a post at a time without obtaining a permit. Mr. Mika replied and said that he would eventually need to obtain a permit for the work, and that situation would bring up the ordinance requirement and put him in the same boat.

Mr. Leep asked Mr. Schmidt if his shed had a wooden floor and if it was on patio blocks. He replied that it did. Mr. Schmidt went on to say that obviously no one in the town seemed to mind if he put his fence back in the same spot. He stated he put the ad in the paper, as requested, paid that, then had to pay \$150 just to come to the meeting and paid \$7.75 for the sign. Mrs. Murovic pointed out that it cost more than the fee paid just to have the sign printed. Mr. Schmidt then apologized for his frustration with the process. Mrs. Murovic again pointed out that the Board wanted to work with him, and that for safety and maintenance reasons, the fence could not be put back in its original location on the sidewalk.

Mr. Martini then asked when Mr. Schmidt planned to do the work of replacing the fence. He replied that he had planned to do the work in September, but when he came to obtain the permit, found out he had to go through the variance process. Mr. Martini asked again how Mr. Schmidt felt about using the east wall of the shed as part of the fence. Mr. Schmidt replied that he wasn't thrilled with that because he sometimes had vandalism and graffiti on the fence as it was and didn't want to deal with that on his shed. Mr. Martini suggested that Mr. Schmidt could think about his options and come back on December 11<sup>th</sup> to continue his hearing.

Mr. Leep asked what kind of shape the shed was in. Mr. Schmidt said it was in better shape than it looked. Mr. Leep continued to say that there was a simple process of putting rollers under the shed, building pavers and sliding it over to its new location. Mr. Schmidt said that he was not a mechanical person and would not want to attempt that process. Mr. Leep stated that possibly the contractor would assist with the process of moving the shed. Mr. Schmidt

stated again that he felt his only option was to put the new fence up where the old one was. Mrs. Murovic explained that they did not want to insist that the fence be pushed back to the build line, which would be 12' in from the sidewalk, but they did have to require that the fence being moved in from its present location, preferably a 2' minimum distance, because of the fence code requirements for corners. She again pointed out that this was a generous concession and they were working with him as much as they could.

Mr. Mika also stated that the Board was trying to work with Mr. Schmidt. He pointed out that Mr. Leep had mentioned the fence contractor would possibly work with him to move the shed with little or no charge if they were to complete the job for him. Mr. Schmidt insisted that he could not move the shed and did not want to move it.

Mr. Mika suggested the fence could be placed up close to the shed line, without using the edge of the shed. It could go along the side of the shed, so the shed would not be exposed. Mr. Mika also pointed out that the home owner had a potential issue with security if the fence was not enclosing the shed.

Mr. Leep explained further the reason the fence must be moved in was because of safety for Mr. Schmidt's own driveway and also, that of his neighbor's driveway to the north. He went on to point out that there are many children on bikes or running down the sidewalk, especially with Johnson Elementary School so close, it would create an obvious blind spot if the fence was placed on the sidewalk - the reason for this rule was to create better visibility.

Mr. Schmidt asked if he were installing a different type of fence, such as chain link fence, if that would be permitted. Mr. Mika replied that it would be permitted, however, he would run into the same rules for any type of fence because the ordinance rules apply to all fences.

Mr. Leep motioned that the variance be granted on the condition that new fence be constructed no closer to the sidewalk than the edge of the shed in its current location. If the shed was moved, then that same distance could be maintained.

Mr. Martini seconded and the motion was unanimously approved with a roll-call vote of 4 – 0.

**BUSINESS FROM THE FLOOR: None**

**ADJOURNMENT: Motion: Mr. Martini Second: Mr. Leep Time: 7:07 p.m.**