

**HIGHLAND BOARD OF ZONING APPEALS**  
**Minutes of the Meeting of**  
**June 22, 2022**

The Highland Board of Zoning Appeals met in the meeting room of the Highland Municipal Building, 3333 Ridge Road, Highland, IN 46322 on June 22, 2022. 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. Thomas, Mr. Martini, Mr. Helms and Mrs. Murovic. Also present were Building Commissioner/Zoning Administrator, Mr. Ken Mika, BZA Town Attorney, Mr. John Reed and Town Council Liaison Toya Smith. Absent was Mr. Grzymski.

**MINUTES:** The Minutes of the May 25th, 2022 meeting were approved as posted.

**ANNOUNCEMENTS:** The next meeting of the Board of Zoning Appeals is to be held on July 27th, 2022.

**COMMUNICATIONS:** None

**Old Business: Approval of Findings of Fact for Steindler Signs and Graphix, 10740 W. US Hwy 30, Wanatah, IN,** requesting a Variance for a sign at 8319 Indianapolis Boulevard, when a sign already exists on the building. {HMC 18.85.030} (B) (1) (a) Sign Types. (B) Permanent Business Signs. (1) Location. (a) One permanent business sign shall be required for all buildings and businesses in a non-residential zoning district. Such a sign shall be placed above the front entrance of the business, but no higher than the second story of the building where the business is located.

Mr. Martini motioned to approve the Findings of Fact for Steindler Signs and Graphix. Mr. Thomas seconded and the motion passed with a 3 – 0 roll call vote. Mrs. Murovic abstained from the vote as she had not been present for their original petition hearing.

**New Business: Deferred Public Hearing for Sursee Improvements, LLC, 565 Taxter Road, 4<sup>th</sup> Floor, Elmsford, NY,** requesting a Use Variance for a Personal Storage Facility at 8401 Indianapolis Boulevard. {HMC 18.45.030} Permitted uses in a B-3 District do not include Storage Facilities.

Mrs. Murovic asked Mr. Reed if the Proof of Publication was in order. He replied that it was and Mr. Mika confirmed that the sign had been posted properly.

Mr. Jack Rosencrans and Mr. Dan Nieman, both from DLC Management, 565 Taxter Road, Elmsford, NY, introduced themselves and stated they were representing Sursee Improvements, LLC. Mr. Rosencrans continued that DLC Management was the owner

of the former Ultra grocery store property at 8401 Indianapolis Boulevard, had owned it since 2006 and had spent the last 5 years marketing the property. They were attending the meeting this evening to seek a Use Variance for a portion of the property. He handed out a packet with architectural drawings and plans to the Board members. He then explained that their goal was to redevelop this property on a wholesale basis. He said a portion of the property (28,000 square feet) was to house a fitness center and that they could not execute that portion of the property without the wholesale redevelopment of the rest of the property. He continued that the self-storage would be housed in the northern section of the property and would be almost 50,000 square feet, which was 38% of the total space. He added they intended to build a mezzanine area, so there may be 2 floors within the space. He said that this mixed use of the space would give them the financial flexibility to develop the property and implement all the improvements needed. He went on to explain that the Ultra store had been there for over 40 years and needed new drainage, grading, sight improvements, landscaping and concrete, so adding the self-storage was all part of that effort to make the numerous improvements that were needed. He said they realized that this was the gateway to the Town of Highland.

Mrs. Murovic opened the meeting to the public. Mr. Richard Jureczko, 2715 41<sup>st</sup> Street, stepped forward and stated he didn't know about the ownership of the former Ultra store. He asked what else would be included in the property other than self-storage. Mr. Rosencrans stated that there would be a total space of 130,000 square feet. Currently, the Dollar Tree is operating in 13,000 sq. ft. of that total. There will also possibly be a fitness franchise operating in the space of 28,000 square feet. The north end of the property would house the self-storage, then in the middle, the goal is to have approximately 30,000 square feet of retail. He stated that 60% of the overall building space would be utilized for retail space and the other 40% would house the self-storage. He continued they had approximately 20,110 square feet of flex space behind the spaces reserved for service oriented retail shops that may like the idea of being located near the fitness area, such as hair & nail salons or juice and smoothie bars. He then stated that some of the smaller tenants may want to just have a 75' length, so they had reserved some flexibility for the space behind them that may be left as dead space. He added that they had plans to improve the façade and modernize the property, possibly adding some restaurants to the property to help densify the site. He stated they felt this would help utilize all the space available.

Mr. Helms asked for clarification of the hardship involved. Mr. Rosencrans stated that the building, as it stands today, is not viable. It has 40 year old systems in it and the market is unappealing to tenants that could afford the rents needed for that type of investment. The roof needs to be replaced, the A/C system needs replaced, the store front needs replaced, the sprinkler system needs replaced, among other things. They estimate the cost of the project to be 15 million dollars. The self-storage facility is, in their opinion, the only way to finance this type of project. Mr. Martini asked if the inside storage would be climate controlled. Mr. Rosencrans said it would be and that studies indicated that storage facilities are under served in Highland. Mr. Helms asked if there was any chance in the future that the space could be converted back to retail space if there was a need for it in the future. Mr. Rosencrans stated that would most likely not

happen, as it would be difficult to convert it back to retail space after the storage had been approved. Mrs. Murovic asked if these units would be strictly rental units. He replied that they would only be rented. Mr. Martini asked if the storage would have 2 levels and Mr. Rosencrans replied that they did want to have 2 levels, bringing the total storage space close to 100,000 square feet. Mr. Rosencrans stated that it would be more like 75,000 square feet of storage space, because of loading areas and hallways. Mr. Thomas asked about marketing the spaces as retail. He mentioned the old K-Mart site to the north of this property that has a lot of retail and is adding more. Mr. Thomas and Mrs. Murovic mentioned the fact that this is a very visible area, that it was the entryway to Highland and the fact that there is a beautiful park across the street from this property and felt this development may not be conducive to the area. Mr. Rosencrans replied that the property is certainly not an attractive gateway to Highland the way it sits right now. He stated that his company purchased this property because of the fact that they recognized it as a good retail site, with great visibility and it was a busy commercial corridor. He added that DLC owns 80 commercial properties around the country and commercial leasing was their main business. He also stated that they had been working with a 3<sup>rd</sup> party broker for the past year that had brought them no activity. The petitioner's spoke of various problems in the marketing of the space including the condition of the property, the location, the fact that the other retail area just to the north had been able to open a few of the retail spots on their own, saving a lot of money. Mr. Rosencrans pointed out that in order for DLC to open those types of retail spots, they would have to invest 2 – 3 million dollars into each store. Mr. Thomas asked what improvements had been made to the property since 2006. Mr. Rosencrans stated that they have made repairs to the roof and are responsible for the capital upkeep of the property and keeping it clean. He continued that they would love to improve the façade, but in reality, the possible tenants for these spaces have their own types of branding for the store fronts that they would want and demand, so any improvements they made now may have to be pulled out in the future when the spaces were leased. He added that the property has been losing money, so financing any work is difficult. Mr. Rosencrans added that they have given great effort to the marketing of this property in the last 5 years and he would argue that what was being proposed tonight is an attractive option, considering it is the gateway to Highland and even though it does include the self-storage, it is not a blight on the neighborhood, but rather a great improvement to what is existing there now. Mrs. Murovic stated she didn't feel it would be aesthetically pleasing, conducive, or really help improve the area.

Mr. Martini asked what guarantee Highland would have that, if the variance were granted, would they absolutely invest the kind of money and make the improvements they were saying they would. Mr. Mika explained that getting a use variance would only be the first step for the petitioners and they would then have to go through the Plan Commission for approvals. He added that this property is located in an Indianapolis Boulevard Zoning Overlay District, which is essentially a Planned Unit Development and there were strict requirements for building materials, drainage, lighting, landscaping, and many others. The property would also have to be sub-divided. He stated that if they get this use variance, they will still have to comply with the Plan Commission's standards under the zoning ordinance. Mr. Mika then asked Mr. Rosencrans about the flex space indicated on the drawing and if there would be any possibility of that space becoming

additional self-storage in the future if there were no retail tenants interested. Mr. Rosencrans replied that this would be a topic of discussion in the future if the retail tenants that move in to those front spaces don't want the full 200' depth and there would be some dead space behind their businesses. Mr. Mika stated that if this use variance is ultimately granted by the Town Council, they may require that the self-storage be contained to the specific area designated for it and the flex space will not be allowed to house any additional self-storage. Mr. Rosencrans said he understood and would respect that decision if it was made by the Town Council, but he would ask for as much flexibility for the space at the same time. Mr. Martini asked Mr. Mika if this use variance decision would stay with the land. Mr. Mika replied that was correct, then asked Mr. Reed if the Town could also add a covenant to the decision that would add some restrictions to the decision, such as limiting the use of the flex space and indicating that outside storage would be prohibited. Mr. Reed replied that there could be a covenant written in favor of the Town, that whatever percentage of allowed self-storage is approved, no further expansion of storage area would be permitted. This could also include outside storage and could be recorded against the entire property. Anyone interested in the property in the future would see this written covenant, as it would have a bond number and be officially recorded against the entire property. He added that this is not an unchangeable document, so could possibly be changed in the future. Mr. Mika added that permits would have to be pulled for any future expansions and there would be records of past use variance/variance details in the database that would show what was approved, so the expansion could be monitored that way.

Mr. Martini motioned to grant a favorable recommendation to the Town Council, contingent upon the establishment of a legal covenant limiting the self-storage to 40% of floor square footage in the main building, also stating that there be no self-storage allowed in flex space area and that there be no outside storage, for the Use Variance request at 8401 Indianapolis Boulevard for Sursee Improvements/ DLC Management. Mr. Helms seconded and the motion was tied with a roll call vote of 2 – 2. Due to the tie, there was no action and no recommendation to the Town Council.

**New Business: Public Hearing for Price Point Builders, PO Box 1343, Crown Point, IN,** requesting a Variance for minimum lot size for SFR regarding lot square footage, lot width and reduced main floor area for a 2-story home at 2741 41<sup>st</sup> Street, Highland, IN 46322. {HMC 18.15.060} (C) (1) Minimum Lot Size in an R-1 Residence District. Minimum lot size requirements for an R-1 district are as follows: Every one-family detached dwelling hereafter erected and every transitional use permitted in this zoning district hereafter established shall be on a zoning lot having a minimum area of 7,200 square feet, a minimum width of 60 feet at the building line and a minimum lot depth of 120 feet. A lot of record existing on the effective date of the ordinance codified in this title which is less than 7,200 square feet in the area, less than 60 feet in width, or 120 feet in depth, may only be improved by a variance for the Board of Zoning Appeals. {HMC 18.15.060} (D) Minimum Floor Area in an R-1 Residence District. No dwelling may be established, erected, or changed so that its floor area, exclusive of basements, terraces, unenclosed porches and garages in square feet is less than prescribed below. Two Story: 1,400 square feet (first floor minimum: 1,000 square feet).<sup>9</sup>

Mrs. Murovic asked Mr. Reed if the Proof of Publication was in order for this petitioner. Mr. Reed replied that it was and Mr. Mika confirmed the sign was posted properly.

Mr. Jack Stauffer stepped forward and introduced himself, stating he would be representing Price Point Builders, PO Box 1343, Crown Point, IN at this petition hearing. He handed out packets containing the proposed house design and floor plan, a site plan of the property and some GIS views of the neighboring houses and lots to the Board members. He stated that they were requesting to build a home on a vacant lot located at 2741 41<sup>st</sup> Street. He said they were just asking for reasonable and economic use of the property and felt that adding a single family residential home would be the best use of the property. He continued that the variances they were requesting this evening included lot width, lot area square footage and reduced main floor area of a 2-story home. The lot width was approximately 51.63', with the requirement being 60' and Mr. Stauffer pointed out that all the other lots on the street were 56'. With the home design presented, they would be able to meet the 8' side yard setbacks. The total lot square footage was approximately 500 square feet less than ordinance requirement of 7,200 and the main floor area was to be 924 square feet as opposed to the 1,000 square feet required by ordinance. He added that the area of the upper floor was 1,214 square feet, bringing the total square footage of the home to 2,138 square feet. He continued that Price Point Builders has built several other homes in Highland in the past few years and the owner of this particular lot was a willing seller if the variance requests were obtained.

Mrs. Murovic opened the discussion to the public. Mr. Anthony Maldonado, 2721 41<sup>st</sup> Street, stated he had lived next door to the property for the past 22 years and stated he had cut the grass on the lot for the past 20 years. His mother had been interested in building on the lot, but was told it was not buildable. He had had an opportunity to purchase the lot many years ago, but was also told it was not buildable. Mr. Mika responded that he was not familiar with this case, but made it clear that anyone coming to the Building Department would have been told there was the opportunity to seek variances if they had been interested in building on this lot, as long as the requests were in reason. Mr. Maldonado continued that he was also concerned about a tree on his property that was close to the lot and the fact that there could be flooding issues if a home was built on this property. Mr. Stauffer admitted that if there were any branches infringing on the vacant lot during construction, they may have to be cut back, but they would always do their best to preserve the existing trees. Mr. Mika then pointed out that even if these variances were granted this evening, there would have to be an engineer's drainage plan submitted and approved before construction and the permit process.

Mr. Richard Jureczko, 2715 41<sup>st</sup> Street, stated he was also concerned about the drainage on the property and hoped that this was very carefully examined prior to any construction. He felt the storm water management was currently pretty good on 41<sup>st</sup> Street. Mr. Helms asked Mr. Reed about the Common Enemy Doctrine. Mr. Reed replied that this theory states that it is everyone's responsibility to eliminate water when it comes to your property and you are to drain it in such a way that it moves downstream and eventually, if everyone does this, the water ends up in a waterway or a properly maintained storm sewer.

Mrs. Murovic closed the public discussion and brought it back to the Board.

Mr. Thomas motioned to approve the variance for lot area square footage. Mr. Helms seconded and the motion was approved with a 3 – 1 roll call vote.

Mr. Thomas motioned to approve the variance for lot width. Mr. Helms seconded and the motion was approved with a 3 – 1 roll call vote.

Mr. Thomas motioned to approve the variance for reduced main floor area for a 2-story home. Mr. Helms seconded and the motion was approved with a 3 – 1 roll call vote.

Mr. Mika made it clear to the petitioner that a Comprehensive Engineering Study for Drainage would be required prior to any permits for construction being submitted. This also may include establishing rear yard drains or other means of drainage on the property.

**New Business:** Public Hearing for Misbah Suboh, 3441 Grand Boulevard, Highland, IN, requesting a Variance to build a fence beyond the building 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.

Mrs. Murovic asked Mr. Reed if the Proof of Publication was in order for this petitioner. Mr. Reed replied that it was and Mr. Mika confirmed that the sign was properly posted.

Mrs. Fellisia Suboh, of 3441 Grand Boulevard and Mrs. Sarah Suboh, 3439 43<sup>rd</sup> Street, stepped forward and introduced themselves as the petitioners for this hearing. Mrs. Fellisia Suboh handed out some packets to the Board containing photos of their property.

Mrs. Sarah Suboh explained that her sister-in-law and her husband wanted to install a fence because they had small children. They had originally purchased the home because of the fact that it was fenced in and would keep their small children safe. If they had to install the fence per ordinance, it would take 14' away from their yard, which is almost half of the yard. Mrs. Fellisia Suboh explained that she would also not have enough room on the driveway for the car, because they wanted to go across the driveway with a gate. They also stated that they did not take down the fence, it was blown down by the wind during a storm. When they came to obtain the permit, they found out about the changed ordinance for fences on corners. They spoke about the safety of the children being the main need for the fence, then there were some stairs coming out of a side door, which was their main entrance and if they conformed to the ordinance, they would not be able to use this entrance. Also, there was a basketball hoop that would be affected if the fence did not enclose it, as the children played with it often.

Mrs. Murovic opened the meeting to the public. Mr. Dave Hobson, 3441 Strong Place, stated that he was at the meeting because he lived 2 doors away from the petitioners and he also was interested in replacing his fence, but also lived on a corner. He wanted to listen to the petition to learn what he could and couldn't do with his future fence. He asked if he could repair the fence without changing the location. Mr. Reed replied that it would be allowed to change the panels only, as long as it was less than half the total surface of the fence. Mr. Hobson asked when the fence ordinance had changed. Mr. Mika confirmed it was about 20 years ago.

Mrs. Murovic closed the public discussion and brought it back to the Board.

Mrs. Fellisia Suboh stated that the gate would not be hinged, but rather it would be a sliding gate and have a pocket that would enclose it as it opened. Mr. Helms asked her if they were to allow a 4' setback for the gate across the driveway, would that be enough space for her to park her car and still allow for the sliding gate. She replied that it would.

Mr. Martini voiced his concern that there was no well-established design on a plat drawing for the Board to refer to in making this decision and for that reason, he had to vote against the variance.

Mr. Helms motioned to approve the variance with a 4' set back off the sidewalk and a sliding gate across the driveway, in line with the fence. Mr. Thomas seconded and the motion was approved with a 3 – 1 roll call vote.

**BUSINESS FROM THE FLOOR: None**

**ADJOURNMENT: Motion: Mr. Martini Second: Mr. Thomas Time: 8:14 p.m.**