

**HIGHLAND BOARD OF ZONING APPEALS**  
**Minutes of the Meeting of**  
**September 22, 2021**

The Highland Board of Zoning Appeals met in the meeting room of the Highland Municipal Building, 3333 Ridge Road, Highland, IN 46322 on September 22, 2021. Mrs. Murovic called the meeting to order at 6:30 p.m. The meeting opened with the Pledge of Allegiance led by Mr. Thomas.

**ROLL CALL:** Present were Board Members Mr. Martini, Mr. Grzynski, Mr. Thomas and Mrs. Murovic. Also present were Building Commissioner/Zoning Administrator, Mr. Ken Mika and BZA Town Attorney, John Reed.

**MINUTES:** The minutes of the August 25th, 2021 meeting were approved as posted.

**ANNOUNCEMENTS:** The next meeting of the Board of Zoning Appeals to be October 27th, 2021.

**COMMUNICATIONS:** None

**Old Business:** None

**New Business: Public Hearing for Autumn-Lynumn Simmons, 3145 Duluth Street, Highland, IN 46322,** requesting a Use Variance for an in-home daycare facility located at 3145 Duluth Street, Highland, IN 46322. {HMC 18.15.030} Permitted uses in an R-1 District do not include daycare.

Mrs. Murovic asked if there was anyone present to represent this petition. Autumn-Lynumn Simmons stepped forward and introduced herself as the petitioner, stating her address as 3145 Duluth Street.

Mrs. Murovic asked Mr. Reed if the Proof of Publication was in order. Mr. Reed replied that it was in order, published in the NWI Times on September 11<sup>th</sup>, 2021, which was more than 10 and less than 30 days from tonight's hearing. Mr. Mika confirmed that the required sign was posted in the allotted time frame, also.

Ms. Simmons began by handing out an information packet to the Board Members. She continued to point out the reasons why they may say "no" to her request, such as an increase in noise, traffic, litter, or strangers to the neighborhood. She then said that those issues would not be a concern because the kids that she would be servicing are already in the house and they live there currently. She pointed out there would be no drop-offs or pick-ups to contend with such as a regular day care would have. She added that in the packet she had handed out, there were photographs of the 4 children she would be caring for, her nieces and nephews ranging from 7<sup>th</sup> and 3<sup>rd</sup> grade to pre-school and infant care.

Ms. Simmons stated that the hardship she faces was mainly her financial instability, because she was currently unemployed. This would help her situation, as she was currently home with the children and this would be a source of income for her. She continued that the 4 children involved were her sister's children and this would also allow her sister to increase her hours at work, which would improve their financial situation further. She added that this was a requirement needed for one of the programs she was trying to sign up for through the State. She said she needed a permit from the Town or a letter stating she did not need a permit. Once she obtained that, she could continue with her application. She continued that there was another page on her hand out that showed the requirements that she had already achieved, such as CPR, First Aid, Early Childhood Development, etc., also through the State, that were required in order to get this approval.

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

Mr. Martini stated that the Board has had a number of petitioners requesting to open day care centers in Highland over the years and that they present the number of children that they would have in their care. He then asked how many children Ms. Simmons planned to have in her care. She replied it would be 4 only and that they were her sister's children. Mr. Martini asked what the hours of operation would be. She replied that it would most likely be 9 a.m. to 5 p.m., but she would have to speak with her sister to confirm that because it depended on her work schedule. Mr. Martini then said that basically, Ms. Simmons would be babysitting for her sister's children. Ms. Simmons confirmed that was correct. Mr. Martini then stated that when his grandchildren were younger, he and his wife watched them to help the family. He continued that it never occurred to them to try and get a license and that it was a family thing. He went on to say that typically, petitioners that come before the Board for this type of child care, have a plan to open it up to anybody. He continued that as he recalled, some of the limits were anywhere from 12 – 16 children and that they would have a plan of the building, facility or home. He then asked if it was her plan not to open it up to any other families. She replied that currently, that was the plan. Mrs. Murovic stated that since Ms. Simmons had stated currently, that she could be opening it up to other families in the future. Ms. Simmons agreed. Mr. Martini then asked if Ms. Simmons planned to be licensed through the State of Indiana. Ms. Simmons said yes, that would be a part of the process. Mr. Martini then said that he thought most petitioners that had come before the Board already had their State licenses. Mr. Mika pointed out that there was varying degrees of licenses and he wasn't sure of the criteria for the varying licenses, but added that this was somewhat unique in that this was a childcare program, not so much day care. He added that there must be some communities that don't require special approvals for this, or permits, based on the options that are referenced on the application, like the municipality supplying a letter stating that in fact, a permit would not be required. He continued that, as had been discussed in the Study Session and what Mr. Martini had alluded to, this was really just babysitting. He then stated that he felt this would not require a Use Variance or any special permit. He confirmed that Ms. Simmons stated that she would be watching 4 kids and then asked if she had her own, also. She confirmed that she had 5, but 4 of them were in school. He then added that since this was family and wouldn't require any special permits, unless it was going to be opened up to additional families.

Mrs. Murovic stated that since it was family, they wouldn't think of it necessarily as a day care. She then added that since Ms. Simmons had alluded to the fact that she may have other children in the future, then that would change the reasons to say "no", because having children from outside the home would change the first two pages of her presentation packet to the Board, the reasons to say "no" or "yes" would not apply any longer. She continued that there would be increased noise, traffic, etc. She concluded that the bottom line was that this was a residential area and not a business district.

Mr. Mika asked Ms. Simmons if it was correct to assume that her sister was not paying her to watch the children currently and that she was doing this to improve the financial circumstances for all of them. Ms. Simmons confirmed that to be correct. Mr. Mika added that this wouldn't even require a business license because technically, it wasn't a business.

Mr. Reed stated that Ms. Simmons had mentioned earlier, in order to facilitate payments for day care help from the government, she would have to have the correct zoning authorization from the municipality and in that event, she would be paid by the government for watching these children, even though they were her own family members. Ms. Simmons confirmed this to be correct. Mr. Reed continued that if it opened up to outside children, it would require more research. He added that he guessed this wasn't the last of these petitions the Board would see and that it was a lucrative program and that it made sense, but from the Town's perspective, there couldn't be a day care every three or four houses. He said that there would have to be something to prevent that, so this decision did not open up the floodgates and cause an issue with having businesses in residential areas. He concluded by saying that he would like to take a closer look at this program. He said that if he could have the opportunity to look deeper into the program, possibly we could come up with something lesser than a Use Variance, like an authorization letter in that Ms. Simmons could achieve her goals of government assistance; however, there would not be an open-ended opportunity for businesses to be established in residential zones. Mrs. Murovic agreed and stated that if the Board started to do that, they would be allowing businesses in residential areas and any Use Variances granted to specific addresses would stay with the properties, which could be problematic in the future.

Mr. Reed suggested the appropriate thing would be for the Board to defer the petition to October 27<sup>th</sup> meeting, which would give him an opportunity to review this program.

Mr. Grzymiski asked Mr. Reed if he was aware of any of these types of programs. Mr. Reed replied that he knew there were programs to supplement daycare costs, but was not aware of a program that could be used for that purpose. He continued that in reviewing, he would look into whether or not the program could be used for babysitting and if it could be used for blood relatives. Also, if there are other limitations, or rather than a Use Variance, are there any alternatives... would an authorization from the Town be acceptable, for example. He went on to say that, since he felt there would be more of these cases in the future, it would be best to get a handle on how to deal with them with this first case, so in the future there would be a regular and consistent way in which to proceed. Mr. Grzymiski stated research was fine, but he felt that enforcement was still an issue. He felt even if it is just for family, it still puts the Town in a very bad spot in terms of who is enforcing it.

Mr. Martini stated to Ms. Simmons that he had never heard of this situation involving babysitting, which he stated was his word to describe it and not hers. He continued to ask if she had heard of any Towns granting approval of such a plan, locally. Ms. Simmons replied that was not something she had looked into and she did not know. Mr. Martini said her initiative was unique and that they were going to explore it, but were not saying no at this meeting.

Mr. Thomas motioned to defer this petition hearing to the October 27<sup>th</sup>, 2021 BZA meeting, in order to give Attorney Reed the opportunity to review the State program involved.

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

**BUSINESS FROM THE FLOOR: None**

**ADJOURNMENT: Motion: Mr. Grzymiski Second: Mr. Martini Time: 6:52 p.m.**

**Agenda is subject to change without notice.**