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## MINUTES

**Board of Zoning Appeals**  
Thursday, February 17, 2022

**Regular Meeting**  
7:00 PM

### Call to Order

President Matthew Piper called the Regular Meeting of Board of Zoning Appeals to order at 7:00 PM.

### Pledge of Allegiance to the Flag

President Matthew Piper led the Board and attendees in the Pledge of Allegiance.

### Roll Call

| Attendee Name:              | Title:     | Status: |
|-----------------------------|------------|---------|
| President Matthew Piper     | President  | Present |
| Vice President Aaron Epling | Vice Chair | Present |
| Steve Donato                | Member     | Present |
| James Martin                | Member     | Present |
| Greg St. Clair              | Member     | Present |
| Arthur Steele               | Member     | Present |
| Bobby Stepp                 | Member     | Present |

**Staff Members Present:** Law Director Philip Hartmann, Assistant City Manager Dan Ralley, Planning Director John Talentino, Planning Manager Carson Combs, Staff Attorney Kelly Clodfelder.

**Others Present:** Shannon Magana, OmniScapes LLC, representing BZA-22-3; Michael Mess, General Counsel at Stage Capital Partners representing BZA-22-2; Jason Gabauer of Stage Capital Florida, LLC representing BZA-22-2; and Rebecca Williams, court reporter for case BZA-22-2.

### Approval of the Minutes of the December 16, 2021, Meeting

President Matthew Piper made a motion to approve the December 16, 2021, meeting minutes. The motion was approved by a Voice Vote.

|                |                               |
|----------------|-------------------------------|
| <b>Status:</b> | Accepted by Voice Vote (7-0). |
| <b>Ayes:</b>   |                               |

### Approval of the Minutes of the January 20, 2022, Meeting

President Matthew Piper made a motion to approve the January 20, 2022, meeting minutes. The motion was approved by a Voice Vote.

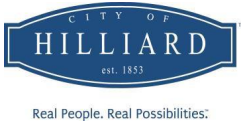
|                |                               |
|----------------|-------------------------------|
| <b>Status:</b> | Accepted by Voice Vote (7-0). |
| <b>Ayes:</b>   |                               |

### Oath to Tell the Truth

President Piper administered the Oath to Tell the Truth.

### Changes to the Agenda (requests for postponements, withdrawals, or change in order of cases)

Mr. Combs indicated that Case #1 held over from the January meeting is still pending while staff continues to work with the applicant. Mr. Talentino stated that an agreement was close to being finalized.



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### Postponed Cases:

**CASE 1: BZA-21-31 – Administrative Appeal – 5340 Franklin Street**

**PARCEL NUMBER:** 050-000142

**APPLICANT:** Thomas Herlihy, 5340 Franklin Street, Hilliard, OH 43026, c/o Jeffrey Lucas, 1717 Bethel Road, Columbus, OH 43220.

**REQUEST:** Review and approval of an administrative appeal of a Notice of Violation issued by the Zoning Enforcement Officer concerning Hilliard Code Section 917 Weeds.

President Matthew Piper made a motion, seconded by Mr. Steele, to postpone the case to the March meeting.

|                  |   |
|------------------|---|
| <b>STATUS:</b>   | Postponed to the March 2022, Meeting (7-0).   |
| <b>MOVER:</b>    | President Matthew Piper   |
| <b>SECONDER:</b> | Arthur Steele   |
| <b>AYES:</b>     | President Matthew Piper, Steve Donato, Aaron Epling, James Martin, Greg St. Clair, Arthur Steele, Bobby Stepp |

### New Cases:

[President Piper moved Case #2 to last on the agenda because of its complexity.]

**CASE 3: BZA-22-3 – Hunsberger residence – 5880 Heritage Lakes Drive**

**PARCEL NUMBER:** 050-007485

**APPLICANT:** James and Amber Hunsberger, 5880 Heritage Lakes Drive, Hilliard, OH 43026; and OmniScapes LLC, c/o Shannon Magana, 4445 Weaver Court North, Hilliard, OH 43026.

**REQUEST:** Review & approval of a variance from the provisions of the Heritage Lakes PUD Concept Plan to reduce the minimum rear setback to 10 feet for a patio.

Mr. Combs provided the staff report.

### BACKGROUND:

The site is located on the east side of Heritage Lakes Drive, approximately 650 feet east of Heritage Oaks Drive. The 0.48-acre parcel is Lot #94 of the Heritage Lakes PUD (Planned Unit Development) District and was platted as part of Section 2, Phase 1 which was originally approved for zoning in 1992. The development text for residential lots in Section 2, Phase 1 specifies setback requirements for the residential lots. This application is a variance request to the required rear yard setback noted in Section IV(C)(3) on Page 10 of the development text to permit the construction of a pool and related patio and fencing.

### CONSIDERATIONS:

- *Description:* The site and surrounding properties are zoned PUD, Planned Unit Development District as part of the Heritage Lakes Plan. The rear of the property backs onto a fairway of the Heritage Golf Club. A decorative post-and-rail white fence installed by the golf course is located along the rear property line to delineate the edge of play. The rear property line is approximately 90 feet from the closest cart path.
- *Rear Setbacks:* The approved development text that applies to this property requires a 40-foot minimum rear setback. Standards in this text developed during 1990s are unique and allow encroachments of up to 8 feet for decks, stoops, porches and patios and also permits reductions to accommodate other circumstances such as floodplain, tree preservation and other features. The text allows encroachments up to 30 feet from the rear property line.
- *Site Placement:* The proposed patio and pool addition is located outside of all platted easements but portions require approval of a rear yard setback reduction from 32 feet to 10 feet. The existing patio and pergola/trellis complies with required setbacks. Approximately two-thirds of the proposed improvements would be located within the required setback but have been approved by the HOA.
- *Patio & Pool Design:* The proposed 772-square foot patio consists of stamped concrete and will surround the proposed 442-square foot fiberglass in-ground pool. Mechanicals for the pool will be placed on a



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concrete pad along the south elevation of the home. Its location is outside of required easements and setbacks and must meet all code requirements for screening.

- *Pool Fence:* A black aluminum decorative fence will be placed around the perimeter of the property behind the house as required by the Building Code for safety. The proposed fence will be 4'-0" to 4'-6" in height with self-closing and locking gates on both sides of the home. The gates will include chimes, and the proposed design and placement complies with the Zoning Code. A fence permit must be obtained prior to installation.

### STAFF RECOMMENDATION:

Staff finds that the proposed variance is not substantial and that the character of the neighborhood would not be altered. The pool and patio would be located on a large lot facing the course and would not impact views from the course through the existing fence. The proposed setback reduction would also not be detrimental to the surrounding residences, nor impact governmental services. Staff also finds that the proposed variance is consistent with the general spirit and intent of the applicable zoning text requirements. Based on these findings consistent with the provisions of Code Section 1106.04, staff recommends that the proposed variance to reduce the required rear setback from 32 feet to 10 feet be approved with the following 4 conditions:

- 1) That the approved variance only applies to the proposed improvements;
- 2) That no additional above-ground structures such as trellises and pergolas be permitted within the 32-foot rear setback;
- 3) That all pool mechanicals be screened in compliance with Code; and
- 4) That all required permits for the pool, patio and fencing be obtained prior to installation.

[end of report]

Mr. Martin asked about the location and design of the pool fence. Mr. Combs clarified that the fence as proposed complies with Code. The mechanicals will be placed on the side of the house and must be screened to meet Code. The pool, patio, fence and mechanicals will all require permits.

Mr. Martin asked staff to clarify the location of the white fence; Mr. Combs noted that it is part of the golf course and provides a separation between the field of play and the lots.

Shannon Magana, Omniscares LLC., added that the proposed fence would not encroach. She indicated that the white fence did not meet the requirements of the Code for pools (and is located on the adjacent property).

President Matthew Piper made a motion, seconded by Vice President Epling, to approve Case #3 BZA-22-3 to reduce the rear setback from 30 feet to 10 feet with the four conditions listed in the staff report.

|                  |  |
|------------------|--|
| <b>STATUS:</b>   | Approved with four conditions (7-0).   |
| <b>MOVER:</b>    | President Matthew Piper  |
| <b>SECONDER:</b> | Vice President Epling  |
| <b>AYES:</b>     | President Matthew Piper, Steve Donato, Vice President Aaron Epling, James Martin, Greg St. Clair, Arthur Steele, Bobby Stepp |

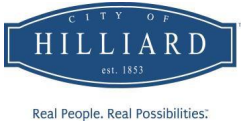
### CASE 2: BZA-22-2 – Administrative Appeal – 4555 Lyman Drive

**PARCEL NUMBER:** 050-003299

**APPLICANT:** 4555 Hilliard LLC, 1800 Watermark Drive, Columbus, OH 43215; c/o Glen Dugger, Smith & Hale LLC, 37 West Broad Street, Suite 460, Columbus, OH 43215.

**REQUEST:** Review & approval of an administrative appeal from a letter by the Planning Director concerning the discontinuance of a nonconforming use.

Mr. Talentino provided the staff report.



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### **BACKGROUND:**

The site is 6.985 acres located on the west side of Lyman Drive approximately 2,000 feet south of Davidson Road. The site is located in the B-4, I-270 Corridor District. According to Franklin County Auditor Records the existing building was built in 1985 and is approximately 126,000 square feet in area. On May 10, 1990, the Planning and Zoning Commission approved an M-5 Plan for 114 additional parking spaces on the west and east sides of the existing building. On November 14, 1991, the Planning and Zoning Commission approved an M-5 Plan to expand the parking lot to the north side of the existing building. On April 8, 1993, the Planning and Zoning Commission approved a conditional use for interior storage. On July 10, 1997, the Planning and Zoning Commission approved an M-5 Plan for a parking lot expansion for employee parking. On October 6, 1998, the City issued a Zoning Certificate for warehouse/distribution for this site. On October 27, 2014, the site was rezoned from M-5 industrial district to B-4, I-270 district. Warehouse was not a permitted use in the B-4 zoning district and the site, therefore, became nonconforming. On November 19, 2020, the Board of Zoning Appeals denied a request to change to another nonconforming use. On December 16, 2021, the Planning Director denied an application for a zoning certificate for a warehousing use.

The applicant is requesting approval of an administrative appeal from a letter by the Planning Director concerning the discontinuance of a nonconforming warehousing use.

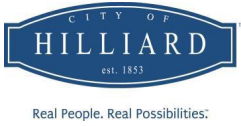
### **CONSIDERATIONS:**

- The site is the former location of the Highlights for Children building which was previously used for warehouse and office uses. The property has approximately 553 feet of frontage on Lyman Drive. The site has two existing full-service access points on Lyman Drive. To the north is Scioto Valley retail store zoned B-4. To the west is undeveloped land within the Ansmil PUD zoned for office and retail uses. To the south are commercial properties with multi-tenant buildings zoned B-4. To the east, across Lyman Drive, is Interstate 270.
- The Hilliard Comprehensive Plan was adopted in 2011. It identifies the site within the I-270 Corridor Focus Area and recommends Mixed-use Commercial land uses. This area is intended to incorporate a mix of small to medium sized commercial and office uses with a well-defined streetscape and planned public spaces. Residential uses may be integrated, however, residential is not intended to be a primary component of the district and should generally not be located on the first floor. Supportive retail uses such as coffee shops, dry cleaner pick-up and drop-off, banking centers, fast/casual dining, small fitness center, and the like are encouraged and should provide an amenity to office and residential uses within walking distance. The primary target for a mix of uses should be 60 percent office, 5 percent retail (focused on Britton Parkway), and 35 percent residential.
- The purpose of the B-4 zoning district is to provide for intense, mixed-use, high quality development that combines office-related employment with residential, neighborhood retail and personal service opportunities. The scale of development is intended to be very urban, allowing taller buildings, greater residential density, parking structures and public spaces to be combined in ways that will make the district walkable, livable, vibrant and transit-friendly. Quality design and construction are to be emphasized.
- Code Section 1137.01 states that it is the City's intent to permit legal nonconformities to continue until they are removed, but not to encourage their growth or survival.
- Determination was made by the Planning Director by email on December 16, 2021 and in a follow-up letter dated January 10, 2022, informing the applicant that non-conforming warehouse uses in the building had been discontinued for a period of 12 consecutive months and that the property must conform to the uses and standards of the B-4 District.
- In an affidavit (refer to attached memorandum) from Highlights for Children, Inc., it was stated that warehousing activities at 4555 Lyman Drive ceased on January 3, 2020.

### **STAFF RECOMMENDATION:**

Staff finds that the warehousing use of the property discontinued in January 2020, and that the applicant's warehouse use beginning in March 2021 violates Hilliard Code Section 1137.02(b). Based on this finding, staff recommends that the decision of the City to deny the applicant's zoning certificate should be upheld and the appeal be denied.

[end of report]



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Mr. Steele asked why warehousing was not defined during the Code rewrite.

Mr. Talentino explained that the Code rewrite in 2014 reduced many of the districts in the Code. This area was changed to match the objectives of the focus area in the Comprehensive Plan to encourage mixed uses in this area. Warehousing was intentionally not included.

Mr. St. Clair asked what has changed since the previous case; Mr. Talentino explained that a Zoning Certificate for a new tenant was denied because the warehouse use had been discontinued for over a year. He explained that it is a different user and that the role of the Board is to review the decision of the Planning Director. He explained that if a warehouse use had continued, it would be non-conforming and would be allowed to continue. Because the use stopped for over a year it is no longer permitted.

Mr. Epling asked if after this is denied, could another use petition the Board for another non-conforming use. Ms. Clodfelder clarified that the non-conforming use expired and warehousing is no longer permitted (the non-conforming use is not allowed).

Mr. Martin asked about the intended uses for this portion of the city. Mr. Talentino said that the mixed use intent for this area includes a number of retail, office and residential uses – not industrial uses.

Mr. Epling asked if there is other evidence in addition to the affidavit; Mr. Talentino said there are lots of photos that suggest no activity, but the City is going by the signed affidavit from Highlights that indicates the use ended in December of 2020. Ms. Clodfelder noted that the property was purchased in February of 2021.

Mr. Martin asked if the new owner is disputing the fact that Highlights said that the use ended. Ms. Clodfelder said that the new owner is disputing that fact using additional information from Highlights that they used the building for warehouse after that date.

The Board members noted that Highlights said the use ended in December 2020, but information was also provided that they continued to use it after that date. President Piper indicated that the question is whether the building has been used as warehouse or storage.

Michael Mess, General Counsel at Stage Capital, 8823 Vineyard Haven Drive, Dublin, Ohio 43016 spoke on behalf of the applicant. Mr. Mess said that warehousing includes distributing, storage and fulfillment. He conceded that distribution ended on January 1 (2021). He said that Highlights stored backup servers through July (2021) meaning that they believe the nonconforming use is still valid.

Mr. Epling asked if Mr. Mess would consider the Amazon data center as a warehouse; Mr. Mess said “yes.”

Mr. Talentino explained that the Hilliard Zoning Code considers Amazon as a data center which is separate from a warehouse.

Mr. Martin asked if the servers were stored in the warehouse portion of the building; Mr. Mess said he could not verify the location.

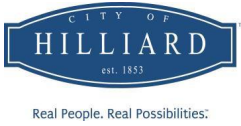
Mr. Martin noted that abandoning office furniture is not warehousing; Mr. Mess said that the servers were in the back portion and that very little of the warehouse was being used. He maintained that Highlights continued to use the warehouse for storage until July

It was noted that the property was purchased in February 2021, and Mr. St. Clair asked for clarification why the owner and their counsel had not relied upon the prior decision of the City and the Board of Zoning Appeals. That they would not approve a non-conforming use

Mr. Mess said they were aware of the Board’s action, but the applicant was trying to get approval of a different non-conforming use. He said they wanted to continue the existing non-conforming use.

President Piper asked if there was any activity that generated revenue during the six months between January 2020 and July 2020; Mr. Mess indicated that there was not, but that storage continued.

Mr. Martin questioned if there were any potential uses for the site that were not warehousing.



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Jason Gabauer, 4560 East Alhambra Circle, Naples, Florida, 34103, (CFO for the holding company) said there were multiple companies looking at the space, but that not having a zoning certificate was a disadvantage in their discussions. He clarified that most leads were warehousing or distribution in some form, including some logistics companies. He said that they were no Letter of Intent (LOI) discussions without a certificate. He stated that there were no potential users just for storage.

Mr. Gabauer explained that another option would be a very expensive redevelopment of the property or they may mothball discussions on the site to see what the market conditions in the future will dictate.

Mr. St. Clair wanted more explanation as to what the Board is approving.

Mr. Talentino explained that a zoning certificate was denied on December 16, 2021. He said that the applicant requested a written letter to explain the denial that was provided on January 10, 2022. Mr. Talentino said this case is an appeal to his decision as Planning Director to deny the request for a warehouse use.

Ms. Clodfelder indicated that if the Board approves the appeal, the warehouse use would continue. She explained that from the City’s perspective, warehousing is the process of storing inventory for sale or distribution, not personal property storage. She provided the analogy that storing personal property in your basement is not considered warehousing.

Mr. Epling noted that this discussion revolves around the definition of “warehousing” and that definitions that he has found focuses on “goods.” Mr. Epling asked for clarification as to what uses are expected for the property.

Mr. Talentino explained that the intent as described in detail in the Community Plan is for a mix of retail, office and residential uses. Mr. Talentino answered that a data center would be permitted in the B-4 District.

Mr. Gabauer said they would be willing to come before the Board for approval of potential uses. He also confirmed that they could look at redeveloping the site. He said the rack shelving has been removed and they have looked at code compliance issues such as removing the old “Highlights” sign.

President Piper, seconded by Mr. St. Clair, made a motion for approval of the administrative appeal from the Planning Director’s letter for continuance of the non-conforming use. (He clarified that a “yes” vote would be to continue the use and a “no” vote would be to deny the use.)

|                  |  |
|------------------|--|
| <b>STATUS:</b>   | The appeal request was denied (6-1).   |
| <b>MOVER:</b>    | President Piper  |
| <b>SECONDER:</b> | Mr. St. Clair  |
| <b>AYES:</b>     | Arthur Steele  |
| <b>NAYS:</b>     | President Matthew Piper, Steve Donato, Aaron Epling, James Martin, Greg St. Clair, Bobby Stepp |

### President’s Communication

There were no items of communication.

### Adjournment – 7:44 PM

President Piper, seconded by Mr. Steele, motioned to adjourn at 7:44 p.m.

Approved:

\_\_\_\_\_  
Acting Clerk  
Carson Combs, Planning Manager