

**THE CITY OF HIGHLAND HEIGHTS, OHIO
BOARD OF BUILDING AND ZONING APPEALS
APPEAL HEARING FOR TURNDEV
MAY 10, 2023 - MINUTES**

Chairman David Corrado called the meeting to order at 7:02 p.m.

ROLL CALL

PRESENT: Board Members Sean Biega, Michael Conley, David Corrado, Tom Hawkins, Michael Jiannetti

ALSO PRESENT: Board Secretary Susan Olson; Building Commissioner Dale Grabfelder; Director of Law Michael Lograsso

APPELLANT: Thomas Flynn, partner, TurnDev, 3900 Park East Drive, Suite 200, Beachwood, Ohio 44122

ABSENT: Nick Cavalaris, partner and counsel for TurnDev, Kohrman, Jackson & Krantz, 1375 East Ninth Street, One Cleveland Center, 29th Floor, Cleveland, Ohio 44114

Chairman Corrado stated that pursuant to Section 6.06.01 of the Charter of the City of Highland Heights, Ohio, the Board of Building and Zoning Appeals is empowered to affirm, amend or supersede a decision of the City of Highland Heights Planning and Zoning Commission.

In accordance with Highland Heights Codified Ordinances Section 1114.04(b), Board of Building and Zoning Appeals, Hearings, written notices advising the date of tonight's hearing were given by U.S. mail to the appellant, appellant's counsel, abutting property owners, and property owners located directly across the street from 625 Alpha Drive, Highland Heights, Ohio 44143, and appeared as follows:

BBZA Public Notice for TurnDev dated April 26, 2023

The City of Highland Heights Board of Building and Zoning Appeals will conduct a hearing on Wednesday, May 10, 2023 at 7:00 p.m. in the Highland Heights City Hall Council Chamber, 5827 Highland Road, Highland Heights, Ohio 44143, concerning the application submitted by TurnDev, who is appealing the decision made by the City of Highland Heights Planning and Zoning Commission on April 10, 2023. The Commission denied approval to TurnDev to operate a proposed indoor self-storage facility, on property located at 625 Alpha Drive, Highland Heights, Ohio 44143, a Park-Commercial-Light Manufacturing Zoning District, pursuant to the Codified Ordinances of the City of Highland Heights Section 1113.09, Determination of Other Similar Uses.

At such hearing, the Board of Building and Zoning Appeals will entertain any comments from those in attendance regarding this appeal. Additionally, the public has the option to forward comments to the Recording Clerk at solson@highlandhts.com prior to 12:00 p.m. on the day of the meeting. The Codified Ordinances of the City of Highland Heights may be accessed at the City website, www.highlandhts.com; click on "Government" at top of home page; click on "Codified Ordinances and Charter" in the left margin.

CASE SUMMARY

At issue is the appeal of TurnDev to the Board of Building and Zoning Appeals (Board) to allow a proposed indoor self-storage facility in the Park-Commercial-Light Manufacturing (PCM) District at 625 Alpha Drive, Highland Heights, Ohio 44143. TurnDev is requesting a reversal of the decision made by the City of Highland Heights (City) Planning and Zoning Commission (P&Z) on April 10, 2023, that denied self-storage as a similar use in the City pursuant to Codified Ordinances of the City of Highland Heights (Code) Section 1113.09, Determination of Other Uses (similar use). The position of TurnDev is that their request for indoor self-storage meets the standards in Section 1113.09 and is permitted in this PCM District, and satisfies all Code standards and conditions.

STATEMENTS FROM THOMAS FLYNN, APPELLANT

Chairman Corrado swore in Mr. Flynn as instructed by Director of Law Lograsso. **Mr. Flynn** said TurnDev has a purchase agreement with Progressive Insurance to acquire the vacant building at 625 Alpha Drive, contingent on approval from the City to allow it to operate as an indoor self-storage facility. Mr. Flynn said he is seeking a reversal of the decision rendered by P&Z on April 10, 2023, that denied TurnDev a similar use pursuant to Section 1113.09, Determination of Other Similar Uses, for indoor self-storage in the PCM District at 625 Alpha Drive. The minutes of the P&Z meeting held April 10, 2023 state the consensus of P&Z for denying a similar use is that self-storage is not listed in Section 1131.04(f)(2)B as a main use in a PCM District, and the additional restriction established in Section 1113.10(e), Standards for Granting Variances, that P&Z has no power to authorize a variance for that which is not specifically permitted in the District in which the use is intended. Mr. Flynn said TurnDev's proposal for self-storage should be permitted, as supported by the finding in Kotoch v. Board of Bldg. & Zoning Appeals, Eighth Appellate District, 1997 Ohio App. LEXIS 4000* (1997), that permitted an outdoor self-storage facility in a Highland Heights' PCM District, because it satisfied all standards under Section 1113.09. He said TurnDev seeks to utilize the property at 625 Alpha Drive for a similar indoor self-storage facility that more easily meets the standards of HHCO 1113.09 than the outdoor storage facility approved in Kotoch. Mr. Flynn said the outdoor facility was geared toward landscapers and general contractors, whereas typical customers of TurnDev will consist of suburban housewives wanting to de-clutter their homes, and those needing storage for decluttering two-car garages to gain space to park cars, storage of seasonal items such as Christmas decorations and patio furniture, and storage for homes without basements. He said he was told by a representative at the Vitalia senior housing facility in Highland Heights that they are consistently asked by prospective residents if there is local storage available. He commented that the location of the self-storage facility in Mayfield Heights currently under construction will have problematic ingress and egress which will not be the case with the TurnDev indoor self-storage. Mr. Flynn said he spoke with Fire Chief William Turner, and it was agreed that TurnDev would meet Fire Code requirements and standards established in Building Code Chapter 1340, Mini-Storage Warehouses. He said he had a discussion with the City Finance Department about the building at 625 Alpha Drive and the negative implications on the City's tax base if it goes dark.

Mr. Flynn pointed out an issue that arose at a previous P&Z meeting held April 10, 2023 that the self-storage use may not meet Building Code Section 1340.04(e)(3), Mini-Warehouse Development Standards, since it would potentially be less than 500 feet from a day care center.

He said P&Z erroneously calculated the distance according to proper Ohio Law standards and the building at 625 Alpha Drive is greater than 500 feet from any day care center. He further stated that applying a Building Code standard to a Zoning Code approval request is irrelevant and would lead to an erroneous decision by the Board if this Building Code Section was used to deny TurnDev's zoning appeal. Mr. Flynn said City Code was written in 1963 and is outdated because it does not contemplate current trends in society and community needs, including day care centers. He said the City added Building Code Chapter 1340 in 1998, subsequent to Kotoch, and it contradicts how the outdoor self-storage facility was built, with regard to exterior building material and height.

Mr. Flynn said TurnDev owns twelve acres of undeveloped land in the City PCM District at Golf View Drive and Bishop Road, and that P&Z granted him approval in 2018 for a proposed self-storage facility at that location, but he did not pursue the project due to the 2019 COVID pandemic. Later in the meeting, **Building Commissioner Grabfelder** said he took exception to Mr. Flynn's claim that P&Z granted approval for a self-storage facility. The minutes of the P&Z meeting held July 23, 2018 state P&Z advised Mr. Flynn to submit updated plans for the proposed self-storage facility. Mr. Flynn did not submit the required updated plans and P&Z did not grant approval for self-storage.

Mr. Flynn provided the following information regarding the building at 625 Alpha Drive:

- The vacant one-story, 77,000 square-foot building is a former call-center built in 1952.
- The building will be converted into a fully climate-controlled indoor storage facility.
- The building purchase price and conversion costs are an investment of \$8M.
- The converted building will meet all City Building and Fire Codes.
- The exterior of the building will not visually imitate the appearance of traditional self-storage facilities that consist of rows of buildings.
- The indoor central atrium will remain as an architectural element with aesthetic appeal.
- Security features will include camera monitoring at three touch points.
- There will be no outdoor storage units.
- There will be no drive-thru into the building.
- There will be no storage of cars or trailers.
- Customers park in the parking lot and carry or use a cart to get their items into the building and into their storage lockers.
- Self-storage is a good fit for this building that does not fit the current needs required for manufacturing use.
- The facility will be managed by a third party.
- The facility will not produce a lot of jobs.
- The facility will be an asset to the community.
- There will be little impact on City services.
- There will be little impact on traffic and noise.
- The target range of customers is from a three to five mile radius, mostly from Highland Heights and Willoughby Hills.

BOARD MEMBERS DIRECT QUESTIONS TO MR. FLYNN

Mr. Corrado stated that P&Z determined the proposed indoor self-storage facility does not meet the criteria for a similar use under Section 1113.09, and asked Mr. Flynn to defend his position that self-storage does indeed meet the standards for a similar use. Mr. Flynn replied that self-storage meets the four standards set forth under Section 1113.09 as follows: 1113.09(a) is met because the use of self-storage is not listed in any other classification of permitted buildings or uses; 1113.09(b) is met because a self-storage use is appropriate; 1113.09(c) is met because there will be no dangers to health and safety, the property will be monitored with security cameras, only items contractually permitted by TurnDev will be allowed, noise will be limited, and the building is aesthetically appealing and unnoticeable as a self-storage facility; and, 1113.09(d) is met because there will be very little impact on traffic.

Mr. Corrado asked Mr. Flynn to explain his reasoning as to why P&Z ruled self-storage is not a similar use. Mr. Flynn replied P&Z ruled self-storage is not a similar use because Code does not specify self-storage as a similar use, and further stated the self-storage use should be allowed.

Mr. Corrado asked Mr. Flynn to explain his reasoning as to why he feels the Board has the authority to grant a similar use for self-storage under Section 1113.10, Standards for Granting Variances. Mr. Flynn replied precedent was set forth in Kotoch permitting an outdoor self-storage facility in the Highland Heights' PCM District. Mr. Corrado replied Kotoch is a specific case with its own unique set of facts. Mr. Flynn said the self-storage facility is a positive asset for community use that does not create a danger to public health and safety and poses no drain on City services.

Mr. Corrado opined indoor self-storage is a good community use and preferred over a vacant building, but Section 1113.10(e) states the Commission shall have no powers to authorize as a variance, the establishment of a principal or an accessory use which is not specifically permitted in the district in which the use is intended. Mr. Flynn said the location of the proposed self-storage facility abuts I-271 that meets the requirement of Section 1113.10(c) where granting a variance is not materially detrimental to the public welfare or injurious to the location of the property.

Mr. Conley asked Mr. Flynn what the long-term plans are for the large parking lot at 625 Alpha Drive. Mr. Flynn replied TurnDev will explore its options.

OPINION OF BUILDING COMMISSIONER GRABFELDER

Building Commissioner Grabfelder said self-storage does not meet the intent of Code nor is it permitted by Code. He said Building Code Chapter 1340 was written post Kotoch; however, there is no existing self-storage in the City other than the outdoor self-storage facility permitted by Kotoch. He said Residential Zoning Districts U-2 (Two-Family) and U-3 (Multi-Family) are established by Code, but they do not physically exist in the City. He said Code should be reviewed and updated.

OPINION OF DIRECTOR OF LAW LOGRASSO

Director of Law Lograsso stated self-storage does not meet the intent of Code nor is it permitted by Code. He said P&Z denied TurnDev a variance from Section 1131.04(f)(2)B on March 10, 2023 because storage is defined by Code only as an ancillary use, and not a main use.

He said that pursuant to Sections 1113.10(d) and 1113.10(e), neither P&Z nor the Board have the power to authorize the establishment of a principal or an accessory use which is not specifically permitted in the district in which the use is intended.

Mr. Flynn said the proposed self-storage facility meets the definition of mini-storage warehouses under Building Code Chapter 1340, Mini-Storage Warehouses, although the location for self-storage is not included in Chapter 1340. He said the conversion of the building at 625 Alpha Drive to self-storage is an adaptive re-use of the building with no need to rebuild.

PUBLIC COMMENTS

In response to Mr. Corrado’s inquiry if the Board received any correspondence on this matter, Ms. Olson replied she received an email dated May 4, 2023 from **Lindsey Fragoso**, homeowner, 293 Burwick Road, Highland Heights, Ohio 44143, stating her objection to the proposed self-storage facility. Ms. Olson read her email aloud: “As a Highland Heights resident living in Aberdeen with two young children, I do NOT want a storage facility on Alpha Drive. It’s close to the high school and Center Elementary. If people need to store items they can drive elsewhere where there are fewer people and businesses. Thanks for your consideration. Lindsey Fragoso, 293 Burwick Road.” No other correspondence was received.

VOTE BY THE BOARD TO AFFIRM THE DECISION OF P&Z MADE APRIL 10, 2023

A motion was made by Mr. Jiannetti to affirm the decision of the Planning and Zoning Commission made April 10, 2023, that denied approval of a similar use, pursuant to HHCO Section 1113.09, Determination of Other Uses, for a proposed self-storage facility to operate in a wholly enclosed building in a PCM District, on property located at 625 Alpha Drive, Highland Heights, Ohio 44143; seconded by Mr. Hawkins.

FURTHER DISCUSSION

Mr. Biega said Code does not state where self-storage can be located in the City. He opined the City needs to understand the changing needs for existing buildings, such as the decreased need for office use, and update Code accordingly. He said the Board is not authorized to change Code.

Mr. Flynn said Code does not include child and day care facilities although they exist in the City.

Building Commissioner Grabfelder replied child and day care facilities and senior living facilities such as Vitalia in Highland Heights are allowed as conditional uses under Chapter 1109, Conditional Use Permits, and permitted to continue operating with valid State of Ohio licensing.

Mr. Flynn said the Board is in a position of authority to move the City ahead of the curve. He said there are other buildings owned by Progressive in the City that are designated to be vacated. He said his business partners for TurnDev, who are also the attorneys for TurnDev, are in active discussions with employers looking to move to Highland Heights, and the decision made by the Board may have a snowball effect when those employers weigh the pros and cons in Highland Heights. He said no one would want the buildings to go dark.

ROLL CALL ON MOTION

Ayes Biega, Conley, Corrado, Hawkins, Jiannetti. Ayes all; motion carried.

APPEAL IS DENIED

The Board of Building and Zoning Appeals has unanimously affirmed the decision of the Planning and Zoning Commission made April 10, 2023, and the appeal requested by TurnDev to allow a similar use for a proposed indoor self-storage facility in the PCM District at 625 Alpha Drive is denied.

REASONING IN VOTE

Mr. Corrado requested Ms. Olson to poll the members in the majority for their reasoning in the manner in which they voted. The consensus of the Board for affirming the decision of the Planning and Zoning Commission made April 10, 2023 that denied a similar use to TurnDev, pursuant to Section 1113.09, Determination of Other Similar Uses, to allow a proposed self-storage facility to operate in a wholly enclosed building in a PCM District follows: P&Z denied TurnDev a variance from Section 1131.04(f)(2)B on March 10, 2023 because storage is specified as an ancillary use only and not a main use in a PCM District, while self-storage in a wholly enclosed building would be a main use; Sections 1113.10(d) and 1113.10(e), Standards for Granting Variances, do not allow the Board to authorize the establishment of a principal or an accessory use which is not specifically permitted in the district in which the use is intended or which is not contemplated by Code; the statements made by Director of Law Lograsso and Building Commissioner Grabfelder that self-storage is not permitted by Code; and Building Code Chapter 1340, Mini-Storage Warehouses, does not specify self-storage is allowed in a PCM District. The consensus of the Board was that self-storage is a good asset for the City and preferred to a vacant building.

RECOURSE TO APPELLANT

Mr. Corrado advised Mr. Flynn that pursuant to Section 1114.10, Appeals to Common Pleas Court, a decision made by the Board of Building and Zoning Appeals is considered final and cannot be re-appealed except to the Common Pleas Court as provided by law pursuant to Ohio R.C. Chapters 2505 and 2506.

MOTION TO CLOSE PUBLIC HEARING

A motion was made by Mr. Biega to close the public hearing; seconded by Mr. Conley. Hearing closed at 7:52 p.m.

SCHEDULE MEETING TO CONSIDER MINUTES

The Board set a meeting date of June 6, 2023 at 7:00 p.m. to consider for approval the minutes of this meeting.

ADJOURNMENT

There being no further business before the Commission, Mr. Corrado asked if anyone wished to make a motion to adjourn the meeting. A motion was made by Mr. Hawkins to adjourn the meeting; seconded by Mr. Conley. Ayes all; motion carried. Mr. Corrado declared the meeting adjourned at 7:55 p.m.

Susan M. Olson, *Secretary*

David A. Corrado, *Chair*