

CITY OF NOBLESVILLE ♦ APPLICATION FOR APPEAL

**APPLICATION FOR APPEAL**  
**CITY OF NOBLESVILLE**  
**BOARD OF ZONING APPEALS**

Application Number:

BZNA-0117-2022

The undersigned requests consideration of the appeal specified below. Should this request be approved, such approval shall only authorize the particular use described in this application and as further limited by reasonable conditions imposed upon such approval by the Board of Zoning Appeals.

Project Name or Occupant Name: MIB, LLC

Common Address: 15480 Herriman Blvd. Noblesville, IN 46060

Applicant Name: Silvia B. Miller

Applicant Address: Five Courthouse Plaza

Applicant City/State/Zip: Greenfield, IN 46140 E-mail: sbm@awmh.net

Applicant Phone #1: (317) 468-9802 Phone #2: (317) 462-3455 Fax: (317) 467-6109

Property Location: ☒ Not located in a recorded subdivision, see legal description attached.

Subdivision Name:

\_\_\_\_\_ Subdivision

Section: \_\_\_\_\_ Lot Number: \_\_\_\_\_ Last Deed of Record Number: \_\_\_\_\_ Parcel

Existing Land Use: Commercial retail front, office and storage

Common Description of Request: Continued use of premises as it exists

Zoning District of Property: I-1 Code Section(s) Appealed: UDO § Article 2 as stated in  
April 26, 2022 (Letter Attached); ORD #57-9-04

Date: 6/1/2022 Applicant's Signature: [Signature]

## NARRATIVE STATEMENT

MIB LLC is compelled to appeal to the BZA, under the contention that Noblesville's classification of MIB LLC as a "Sex Shop" is clearly erroneous. MIB LLC is predominantly a medical supplies distributor, and a lifestyle shop. MIB LLC was formed to sell top-of-the-line adult diapers and related incontinence supplies, in addition to a variety of adult-sized baby themed merchandise. In addition to the clothing, this primarily consists of baby bottles, pacifiers, stuffed animals, coloring books, and similar items. These items are also used for themed events; none of which are marketed for sexual stimulation nor believed to constitute adult media within the meaning of Noblesville's ORD. #57-9-04.

More pointedly, for retail establishments located in Noblesville's (hereinafter, "the City") I-1 zoning district, no "[m]ore than 5 percent of [the establishment's] stock in trade [may] consist[] of sexually oriented toys or novelties[.]" and no "[m]ore than 5 percent of its gross public floor area [may be] devoted to the display of sexually oriented toys or novelties." *See e.g.*, ORD. #57-9-04. For purposes of this Ordinance sexually oriented toys or novelties means:

Instruments, devices, or paraphernalia designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

Accordingly, MIB LLC, does not sell, and does not intend to sell any sexually oriented toys or novelties. The City's implication that MIB LLC sells sexually oriented toys or novelties clearly does not rest on the products MIB LLC retails. Rather the City's predisposition against MIB LLC is based on how such products are utilized and the diverse patrons of MIB LLC. However, much like Party City, which advertises and sells an assortment of themed merchandise—including but not limited to "sexy" outfits—MIB LLC does not discriminate against its clientele nor how such clients utilize its products.

Simply put, MIB LLC does not market any of its merchandise primarily for genital stimulation. Nor does MIB LLC sell products primarily designed for genital stimulation. Indeed, the primary use of the items marketed are for medical needs, with the bulk of the sales consisting of adult diapers and clothing designed to hold them in place. Adult diapers are an FDA regulated medical device for which MIB LLC has properly registered as an FDA facility (Owner Operator # 10078329 - Registration #3017502646) as both a specification developer, repackager/Relabeler, and as the initial Distributor/Importer of record of these devices. The

clothing, costumes, pacifiers, baby bottles, and related accessories are not marketed primarily to stimulate human genital organs. Undeniably, the City's interpretation of the Ordinance is construed to include how such merchandize is utilized. If products are defined by how clients use and fetishize the products, every retail establishment in the City are endanger of being classified as a "Sex Shop."

Moreover, by broadening the Ordinance's definition of "sexually oriented toys or novelties," the City imperils the definite language of the Ordinance. Indeed, in Indiana, land use ordinances "must be precise, definite, and certain in expression to inform both the landowner and the municipality to act with assurance and authority regarding local land use decisions." *T. W. Thom Const., Inc. v. City of Jeffersonville*, 721 N.E.2d 319, 327 (Ind. Ct. App. 1999). Zoning ordinances must be construed "to favor the free use of land" and are not extended by implication. *Id.* Certainly, a city is given broad authority in legislating an ordinance but once adopted, such ordinance must be narrowly construed. *Yater v. Hancock County Planning Comm'n*, 614 N.E.2d 568, 574 (Ind. Ct. App. 1993). By construing diapers, costumes, and accessories as sexually oriented toys or novelties, the City expressly disregards Indiana law by extending the construction of the ordinance through broad implication. If such interpretation is allowed to stand, how might current and potential retail establishments act with assurance regarding distribution of merchandise? Are commonly used products vulnerable to being exiled from the City's retail space? If adult diapers—which used primarily by underrepresented communities, including but not limited to individuals with disabilities and elderly individuals in need—are deemed to be sexually oriented toys or novelties, there is nothing to suggest that other commonly used apparel or medical supplies are not at risk of such classification.

Furthermore, there is no evidence to support the notion that MIB LLC operates in violation of the ordinance. Such assumption amounts to pure speculation. *See Wright v. Northrop*, 621 N.E.2d 1142, 1146 (Ind. Ct. App. 1993) (reversing zoning board's decision where "[t]he findings made by the [b]oard amounted to little more than speculative conclusions by the members"). Importantly, under Indiana law, "[t]he only determination to be made by" this authority is "whether the . . . [establishment is] in conformity with the requirements of the zoning ordinance." *Metro Bd. of Zoning Appeals of Marion Cty. v. Shell Oil Co.*, 395 N.E.2d 1283, 1285 (Ind. Ct. App. 1979). The BZA is duty-bound to make findings of fact tailored to address specific facts presented to it. *Town of Munster Bd. of Zoning Appeals v. Abrinko*, 905 N.E.2d 488, 491-92

(Ind. Ct. App. 2009). The specific facts presented clearly demonstrate that MIB LLC operates lawfully and respectfully within the meaning of the City's ordinance. By sending the notice of violation to MIB LLC, the City is impeding the company's right to commerce, and judging the business based upon speculations concerning what purchasers do with the products in the privacy of their own homes.

The Notice of Violation or Non-permitted use has the potential of causing significant pecuniary loss for the business, as the landlord for the property may attempt to use such notice to confiscate product and keep the owners out the building; again violating the business' right to commerce.


**CITY OF NOBLESVILLE**  
**BOARD OF ZONING APPEALS**  
**OF HAMILTON COUNTY, INDIANA**

**CONSENT FORM**

The undersigned, Ryan Polokoff and Sabine Kisse, being the owner of the property commonly known as 15480 Herriman Blvd., Noblesville, IN 46060, hereby authorizes SILVIA B. MILLER to file land development petitions necessary for the aforementioned address.

This consent shall (check one):

- ☒ Remain in effect until revoked by a written statement filed with the Board of Appeals
- ☐ Remain in effect until \_\_\_\_\_.
- ☐ Remain in effect until these land development petitions are resolved.

  
\_\_\_\_\_  
Signature of Owner(s)

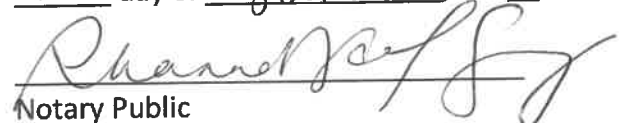
S. Kisse  
\_\_\_\_\_  
Signature of Owner(s)

STATE OF INDIANA,  
COUNTY OF Hamilton  
Subscribed and sworn to before me this  
1<sup>st</sup> day of June, 2022

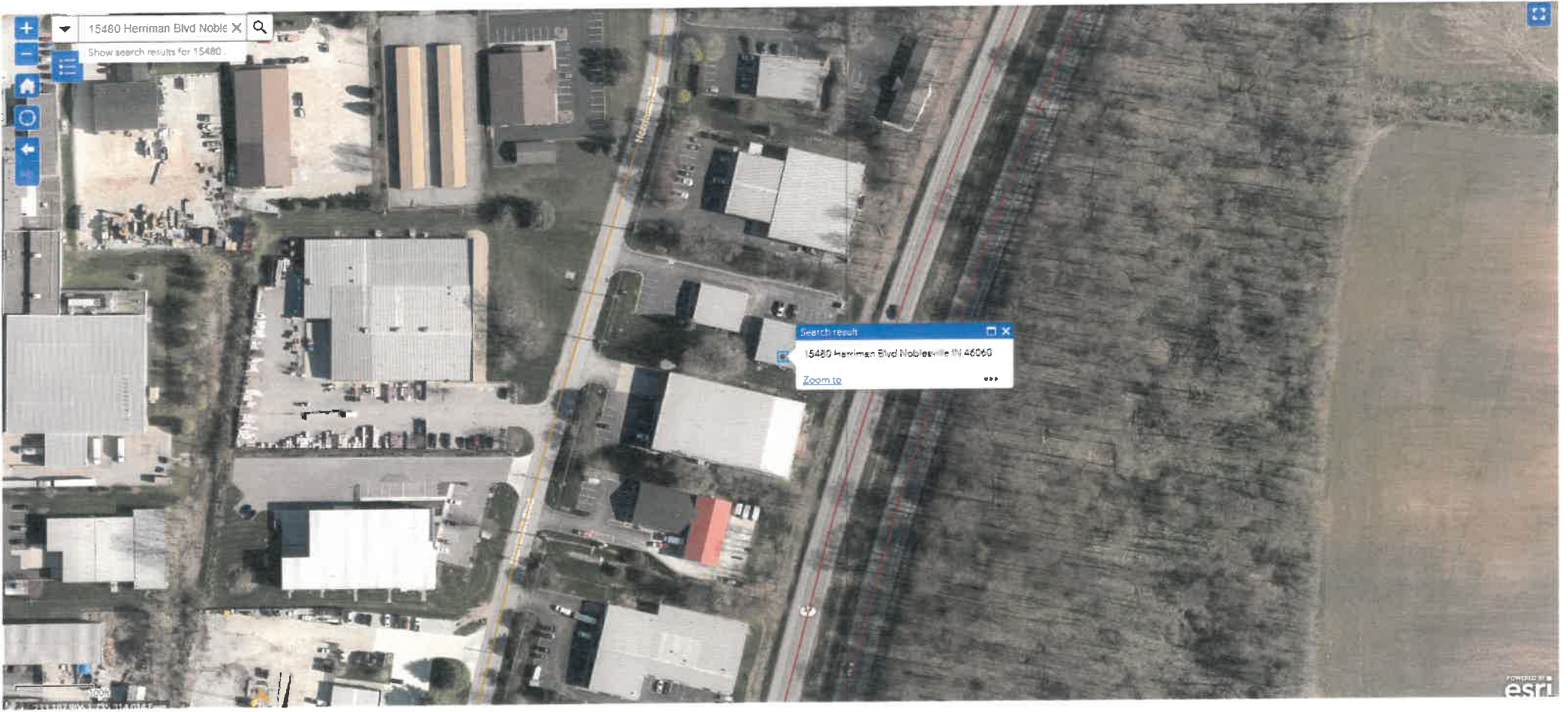
  
\_\_\_\_\_  
Notary Public

Rheanna Wirtgang  
\_\_\_\_\_  
Printed Name of Notary  
My Commission Expires: 10/30/20  
My County of Residence: Madison

STATE OF INDIANA,  
COUNTY OF Hamilton  
Subscribed and sworn to before me this  
1<sup>st</sup> day of June, 2022

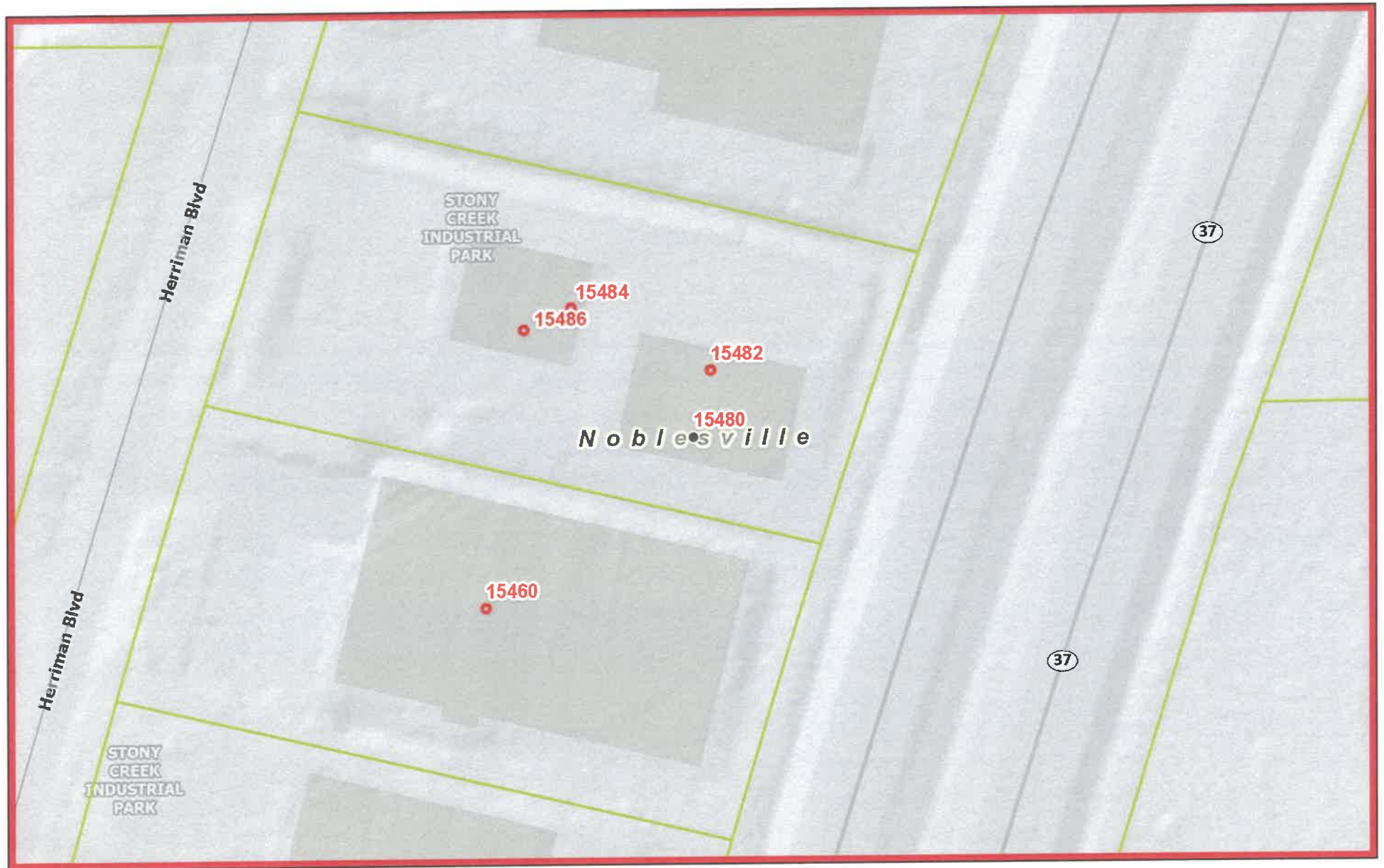
  
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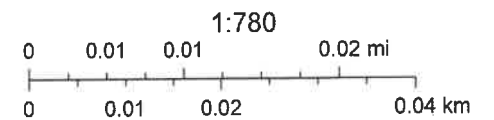


# Hamilton County, Indiana



May 27, 2022

- Address Points
- Parcels



Author: Hamilton County

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