

# **LOWELL BOARD OF ZONING APPEALS**

**February 13<sup>th</sup>, 2025**

Chairman Dave Regan called the meeting to order at 6:00pm. The Pledge of Allegiance was recited. Recording Secretary, Dianna Cade called the roll. Members answering the roll call were Dave Regan, Tom Carwright, and Dan Calhoun. Jim Konradi and Shane Lawrence participated via zoom. Also, present was Rich Oman, Director of Planning and Development, and Town Attorney Nicole Bennett.

## **ELECTION OF OFFICERS:**

Mr. Cartwright made a motion to nominate to Dave Regan as the Chairman of the BZA for 2025, seconded by Mr. Lawrence. No other nominations were heard. Nominations were closed. Motion was carried with a roll call vote of all ayes.

Mr. Cartwright made a motion to nominate Shane Lawrence as Vice Chairman of the BZA for 2025, seconded by Mr. Calhoun. No other nominations were heard. Nominations were closed. Motion was carried with a roll call vote of all ayes.

Mr. Cartwright made a motion to nominate Dan Calhoun as Secretary of the BZA for 2025, seconded by Mr. Lawrence. No other nominations were heard. Nominations were closed. Motion was carried with a roll call vote of all ayes.

## **APPROVAL OF MINUTES:**

Mr. Lawrence made a motion to approve the regular meeting minutes from November 14<sup>th</sup>, 2024, seconded by Mr. Cartwright and carried with a roll call vote of all ayes.

## **OLD BUSINESS:**    None

## **NEW BUSINESS:**

BZA #25-001 - BZA #25-001 Variance from developmental standards of Town of Lowell Zoning Ordinance §155.104(A) 1(a)(1) for property located at 1660 E. Commercial Ave. Jimmy Johns quick serve restaurant. Petitioners are requesting to exceed the total amount of allowed square footage for signage and exceed the amount of allowable square footage per wall sign. The petition has been filed by Bendsen Signs 1506 East McBride Ave, Decatur, IL 62526, representing Raina Lowell LLC, 516 Gene Darfler CT., Naperville, IL, 69565. This petition is for Parcel #45-19-24-380-026.000-008.

Raul Bhatia, 6520 Double Eagle Dr, Woodridge, IL 60517. He stated that he is with Jimmy Johns. On-line is Ed Long, representing Bendsen Signs, 1506 East McBride, Decatur, IL 62526.

Mr. Bhatia stated they are asking for signage for the new Jimmy Johns that is being built.

Chairman Regan asked about the requested wall signage. Mr. Oman discussed the square footage amount of wall signage that is allowed by ordinance. Chairman Regan asked what material the wall signage was made from. Mr. Long stated depending on the material the wall is made from the signage is either vinyl or painted on. A concrete exterior finish the vinyl would not adhere to, so a stencil is provided and the graphic is painted on. Discussion on the material for these wall signs. Discussion on the exit only signs. Discussion on the entrance/exit onto Route 2. Mr. Konradi and Mr. Lawrence are heard stating that they have no comments or questions.

President Regan opened up the public hearing, no remonstrance's were heard in person or on-line. The public hearing was closed.

Mr. Konradi made a motion to approve proposed sign package with a total square footage of 350 square feet. seconded by Mr. Lawrence and carried with a roll call vote of all ayes.

Mr. Konradi made a motion to approve the staff report as the Findings of Fact, seconded by Mr. Lawrence and carried with a roll call vote of all ayes.

BZA #25-002 -Meadows of Cedar Creek – Phase 5, Lots 33-45- variance from the Flood Hazard Reduction Standards of the Town of Lowell Flood Hazard Areas Ordinance, §151.05(A)(10), for property located at: Meadows of Cedar Creek, Phase 5, Lots 33-45, situated on the north side of Castlebrook Drive, in Lowell, Lake County, Indiana, Parcel Nos. 45-19-14-476-004.000-008 through 45-19-14-476-016.000-008. Petitioner, Demotte State Bank, 210 South Halleck St., Demotte, IN 46310 is requesting a variance from the required compensatory storage ration of 2:1 to permit a 1:1 ratio in the floodplain.

Attorney Randy Wyllie, Wieser and Wyllie, 459 Old Lincoln Hwy, Schererville, IN. Representing petitioner Demotte State Bank. Attorney Wyllie stated Mr. Don Oliphant, an Engineer with Christopher Burke who is an expert in this area in floodplain management is also here to present and answer any technical questions for the Board.

Attorney Wyllie stated the petitioner has seen the staff report. The petitioner has submitted to the Indiana DNR and FEMA for a map revision and it was approved. He stated the federal and state authorities only require a 1:1 compensatory storage ratio. The local ordinance is 2:1. They are seeking a variance to allow for a 1:1 storage ratio which is the model for both governmental agencies. He stated this applies to the lots that are shown on the plat. This would allow for the building of homes on these lots. The flood area is at the rear of the lots.

President Regan asked about the location of the lots. Mr. Oliphant stated they are lots 33-45. Platted lots west of Castlebrook. Mr. Regan asked if this was taking away from the retention pond are the smaller. What exactly is happening. Mr. Oliphant stated they would be installing building pads in front in line with the current zoning requirements for these lots. The petitioner would lose the three north lots, that is where the compensatory storage will be. They will be replated with lot 42 which is the 4th lot down. The remaining lots will then meet the 1:1 storage requirement due to the gains on the three lots that are being deleted and used for comp storage. Attorney Wylie stated the lots will not be smaller. Attorney Bennett asked Mr. Oman to display the grading plan on the monitor, specifically page 2. Attorney Wylie stated the top three lots will not be built on. Mr. Cartwright asked if the retention pond was in the middle of the lots. Mr. Oman stated he will explain the history. Mr. Oman stated it is not a retention pond; it is just water. He stated new maps came out in 2012. FEMA added arials under neath the maps. This allowed banks to see the floodway line and floodplain and where houses were in relation to that. The older maps in 1982 did not have that. There were some things the developer did and was asked not to. You cannot build in a floodway. This developer did anyway because nobody knew any better until 2012. The town decided to make the compensatory storage 2:1 instead of 1:1 to deter people from buying them. The petitioner (Demotte St Bank) has hired an engineer to study the area to show where the actual floodway line is from 1982 until now. They presented these findings to FEMA and INDR which approved a map change. The line has changed since it was incorrect in the first place. The study proved that. The original study was done in 1982 without maps and the equipment that is available today and in this case it was wrong. Mr. Oman showed on the map displayed on the monitor where the new floodway line was. He stated these lots can be built on FEMA has approved the map revision. You can build in a flood plain. The petitioner is asking for a variance on the compensatory storage from 2:1 to 1:1 which is what FEMA and INDR allow. Then town made it stricter so that it would deter people from buying or building in a floodway. The town knew the map was incorrect but was not going to

pay for the study to be done to correct it, it was not our development. Mr. Oman displayed the plat from 2008 which is the plat of record. Attorney Bennett stated what Mr. Oman is describing what happened after that. When the map came out in 2012 it put these properties in the floodplain. Discussion on FEMA rules. Discussion on the floodway and the retention pond location. Mr. Oman stated we made the storage stricter to protect the public.

Mr. Oliphant discussed the 2012 revision, specifically the remapping for this county. He stated FEMA did not study every creek for that change, they took whatever best available data they had at the time. This happened in 2012 the latest map they had was 1998 which predated this subdivision. They kept the same elevations from the creek and remapped them, which was not what was out there. He stated it was a 3–4-year process to remap and present the map to state and federal agencies. The remap showed them this area as it is today and was like in 2012. He further discussed the flood elevations.

Mr. Regan stated he knows it floods over there a lot, did the back half flood line change? Mr. Oliphant discussed the elevations in this area. He discussed flood profile. He indicated on the map that was displayed on the monitor the two separate floodways that the new map separated by 173<sup>rd</sup>. The remap removed several other lots within the subdivision east of Castlebrook. The floodplain limit is west of Castlebrook. Mr. Oliphant stated they did not touch the Cedar Creek flood plain they only remodeled McConnell Ditch.

Attorney Bennett discussed the elevations. She stated this is an approved plat the BZA is not determining what is buildable, what is not buildable. The BZA does not have that authority. The BZA is not determining where any of these lines are for the floodway or flood fringe. DNR and FEMA allow building in the flood fringe. The Lowell flood hazard ordinance identifies what criteria must be met which is a model ordinance from FEMA. The town can also add requirements. This board cannot determine if a house can be built there that is already established by state law. The Lowell ordinance requires 2:1 comp storage; the end three lots where the actual retention will be is what this petition is discussing. This petition is applicable to only those end three lots to permit the construction of 1:1 instead of 2:1. FEMA and INDR require only 1:1. The only item the BZA has authority to review in regard to this petition is directly the depth of that retention pond.

Mr. Regan asked is the depth of the retention pond mentioned in the notes. Mr. Oliphant discussed the contours and comp storage cut. These end lots will be deed restricted to not have anything built on them and will be replated as part of lot 42. The homeowner of lot 42 will be required to maintain the three lots. Mr. Oman stated lot 42 will have the house built on it, lot 43-45 will be theirs to own and they cannot build on it. Mr. Regan stated these three lots will be part of a retention pond, and the owner will have to maintain it that could be problematic if they do not maintain it. Mr. Oliphant stated it is not a retention pond, there is no outfall, it will be graded so that it simply restores the storage within the floodplain area. Discussion.

Mr. Regan stated so at this point somebody could come in and build on those lots. Attorney Bennett stated that is correct. Discussion.

Attorney Bennett discussed the staff report. Specifically, page 4. They are a list of conditions to be placed. She discussed that the some of the conditions would be on a plat and some on a recorded document this would protect future buyers. She stated then these items would then show up on a title search. She discussed the conditions. Attorney Wyllie discussed the title policy.

Chairman Regan stated he was opening the public hearing and discussed the rules, including stating your name and address and the length of time was three minutes per speaker.

Deanna Cleland, 6107 Oak Valley Dr. Lowell, IN. She passed out a map. She stated it shows where the pond is. The sizes of the lots have not changed since 2012. No earth movement. In 2014 the same Lowell town board stated these lots were unbuildable lots. They could be sold as such, but nothing could be built on them. She asked to have the GIS displayed. She stated there is a slim narrow piece, she said what are you going to build. She said these are \$500,000 in value homes. If they are going to be building duplexes, single car garages she does not understand what size square footage would fit in this area.

Adam Lulinski, 17330 Castlebrook Dr, Lowell, IN. He stated that he borders these lots. If these lots get built up two foot the water is all going to go to my house. He stated on 173<sup>rd</sup> when it rains cones have to be placed because the water comes out of the river, and it floods. The road must be shut down. He stated it was never disclosed that it was a flood zone. He bought the property from the builder. What are they going to build duplexes in a flood zone is this what Lowell wants. There were supposed to be covenants where they ever filled from our developer. He has lived there since 2008. He stated in December of 2024 he received a letter from his mortgage company that he needs flood insurance due to the new maps. He never needed flood insurance before. This cost him \$1000.00. Is the soil going to be tested? He does not want contaminated soil next to his house. If the board lived next door to this, would they want their basement flooded. He stated the ground is not natural it was all built up. The pond is knee deep and it is illegal to be 8:1 in most subdivisions. He stated in 2008 DNR shut down the whole thing he had to get a permit from them to put up a deck around his pool and put up a shed. What is getting built in that small little area. He wants the town of Lowell to sign something that if it affects his house the town of Lowell will pay for it. If the town is not confident enough to do that then tell these people to figure something else out. Do we need taxes this bad. There is one person this is affecting the most is him. All the land is not natural land it is dump truck hills how are they getting a true reading on the contour of the land. It was all done by Roy Mason. He called the town and alerted them. The whole thing got shut down. If his house gets flooded he wants them to know that they approved, it. If the town can't sign something that they will pay for damages to his property, then he would not approve this. This is on them. Think about if you lived next door how you would vote.

Dianna Martitnez, 6105 Oak Valley Dr, Lowell, IN. Mrs. Martinez stated she is experiencing a lot of flooding. One or two inches of rain and the street floods and they cannot get out of their drive. Due to the pond overflowing. The creek behind them also floods. There is a neighbor of hers that the creek flooded up to his brand-new deck. She stated they would like equal homes built to the value of theirs. Can sewers be put in that will handle the water, so their backyards are not pools.

Mark Gonlag, 17320 Oak Valley Dr, Lowell, IN. Mr. Gonlag stated he did not get a letter. Did everybody get a letter in the subdivision? Attorney Bennett stated only if you are within 100 feet. That is what the law requires. Mr. Gonlag asked if the Board has driven down the street? The street is only 8 feet to the water and an easement in the front and a sidewalk the homes would have to be on stilts. He said it seems like the local ordinance means nothing. Attorney Bennett stated state law trumps local. He stated the ordinance for Lowell means nothing if the state says I can then I won't have to listen to it. Attorney Bennett explained the local and state laws. He discussed the flooding in his neighborhood. He stated the last three lots are going to be one individual lot and they are going to have to maintain the pond is the rest of it going to be filled in so they can put a slab in there. Is the water going to be filled in? Does anybody know? Attorney Bennett stated this is not a question and answer. He stated anybody on this Board should drive down the road after a 2" rain.

Clint Duvall 6110 Oak Valley Dr, Lowell, IN. Mr. Duvall stated we are clearly at your mercy. He does not have the power to make the decision. There are reasons why they want this approval, and what you can do it not approve it in regards to the ratio that would benefit their favor for various

reasons. We have valid concerns. Put yourself in his shoes, there is risk to the surrounding lots. You can all see we have reason to be concerned. Which is why we are here today. This will change one's perspective if you don't approve the ratio and it will benefit us in the surrounding lots.

Kathleen Michels, 17319 Oak Valley Dr. Lowell, IN. Mrs. Michels stated they live along the backside they are not across from this retention pond. She showed the Board pictures of the flooding in her backyard this year. She stated it is a huge problem. If this is what my backyard looks like after a little rain. She stated that after you build all these houses, duplexes, apartments whatever you are going to put in our beautiful subdivision and ruin it. We are already dealing with flooding, we are not coming up with an adequate solution in my eyes or anybody else who has to live in the subdivision. As a town we need to stick together for the people and not approve something like this. This is going to take away from our hard work that we have put into our house and everybody else that lives in this subdivision or Lowell by approving something that shouldn't be approved. I understand they are buildable lots but we the people of Lowell, decide what we want to build in this town. And this is something we should not do. Imagine if your child was going to buy this lot. We need to vote this no it is crazy.

Nick Jovanovich, 17303 Oak Valley Dr. Lowell, IN. He stated that he builds subdivisions. He stated through building them that he can tell the Board that what engineers say is not what works. He stated what he feels needs to be done in order to fix the issue with the flooding.

Mark Gonlag came to the podium again and asked how they find out if they want to really fill in that water. The last three lots getting dug deeper. Mr. Oman stated he will answer the question after the public hearing is closed.

No further comments were heard and no one else was online. public hearing was closed.

Attorney Wyllie stated Mr. Oliphant wanted to address some of the comments. Mr. Oliphant stated the pond and body of water behind these lots will not be touched. There will be no filling within that water body whatsoever. The pipes that currently drain Castlebrook are going through existing easements between these lots and those will be maintained. They will drain just as they do today. The lots will be crowned just as a normal residential lot. The drainage will go east and west, nothing south. The comments related to Oak Valley Dr this is an entirely different floodplain. That is Cedar Creek. They are not touching that at all. That flooding is due to Cedar Creek not McConnell ditch. Cedar Creek is a much larger creek compared to McConnell Ditch. The floodplain they are referring to is McConnell Ditch. Only revised floodplain on McConnell Ditch. He thinks there is some misunderstanding on how this map revision is affecting the whole subdivision. He stated you can look at the floodplain map for Cedar Creek right now and it is in the rear of those houses. This will have no impact pros or cons to Cedar Creek. Discussion. Attorney Wyllie stated there were 3 years of engineering work done on this map and that FEMA and INDR did approve of this. Mr. Oliphant stated Geotech reports are a condition. They have one on the existing soils and they will submit one when the pads are built. We would not through anything organic there it will be structural fill. He discussed the two feet elevation and slope.

The crowd is heard trying to speak. Attorney Bennett stated the public hearing has been closed. Discussion.

Mr. Oliphant discussed Christopher Burke Engineering firm that he works for and his credentials. He stated this was partially in the county and they had to approve this project also.

Attorney Bennett stated this subdivision has been an issue for many years. She asked Mr. Oliphant to discuss Cedar Creek and McConnell Ditch. He stated as you can see the lots on Oak Valley are fully encompassed in the flood fringe of Cedar Creek and he is not surprised they have water issues. Someone in the crowd is heard saying why put more people in that situation. Attorney Bennett stated once again, the town is not putting anybody in this situation. The law allows for construction in the flood fringe not in the floodway. The plat is approved and owned privately by people. Not a situation owned by the Town the town cannot impose restrictions. Discussion. Attorney Bennett stated whether or not this is approved construction can begin tomorrow on these lots. Mr. Oman discussed the parameters. The crowd is heard talking. One member is heard talking not sure who it is. Chairman Regan stated public comment has been closed. Multiple members of the Crowd is heard shouting again.

Mr. Konradi made a motion to approve the petition with the conditions of A-L, seconded by Mr. Lawrence and carried with a roll call vote.

Shane Lawrence voting – aye

Tom Cartwright voting – no

Dan Calhoun voting – no

Dave Regan voting – aye

Jim Konradi voting – aye

Motion passes 3-2.

Mr. Konradi made a motion to approve the staff report as the Findings of Fact, seconded by Mr. Lawrence and carried with a roll call vote of

Shane Lawrence voting – aye

Tom Cartwright voting – no

Dan Calhoun voting – no

Dave Regan voting – aye

Jim Konradi voting – aye

**PUBLIC COMMENT:** NONE

**ANNOUNCEMENTS:** Next regularly scheduled meeting will be held on March 13<sup>th</sup>, 2025.

### **ADJOURNMENT**

With no further comments or questions, Mr. Cartwright made a motion to adjourn the meeting at 7:30pm, seconded by Mr. Lawrence and carried by a voice vote of all ayes.

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Dave Regan, President

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Dan Calhoun, Secretary