

## **LOWELL BOARD OF ZONING APPEALS MEETING**

**December 13th, 2018**

Vice President Konradi called the meeting to order at 6:31 pm. The Pledge of Allegiance was recited. Recording Secretary Dianna Cade called the roll. Members answering the roll call were Jim Konradi, Manny Frausto, Chris VanDyke and Ryan Thiele. Sean Brady was absent. Also, present were, Director of Planning and Development Aj Bytnar, and Town Attorney Nicole Bennett.

### **APPROVAL OF MINUTES**

Mr. Frausto made a motion to approve the November 8th, 2018 regular meeting minutes, seconded by Mr. VanDyke and carried by voice vote of all ayes.

### **PUBLIC HEARING:**

#### **BZA #18-031 - 18220 Clark Rd. Lowell, IN**

- Variance of use for property located at 18220 Clark Rd., Lowell, IN Use petitioned for is senior shared residential home. Zoning Ordinance §155.006 Definitions and §155.036 PB has been filed by owner/applicant Edward McCracken.

Attorney Adam Sworden, 103 Indiana Ave., Valparaiso, IN stated he is here to represent his client, Ed McCracken. Attorney Sworden stated his client has been meeting with the Town for several months regarding this project and has now found this new location that is in a PUD-R zone. For simplicity the application will be using the R-2 base zoning for criteria. The Town has received over the last several months through TRC review meetings various documents including site plans. Attorney Sworden handed out the site plans and supporting documents to the members of the Board. Director of Planning and Development AJ Bytnar reminded the Board that this decision is only about the use itself not the developmental standards. Attorney Sworden stated this is a design project that is not a nursing home or group home, but the group home zoning classification is the closest thing that the Town has under its ordinance as far as criteria for this proposed development. This model is a niche for people that do not want to go in to a nursing home, but cannot necessarily live at home and have the means to provide for their own assistance or their own care through self-pay or their own insurance. This is a residential dormitory for elderly folks who may need some daily assistance through the minimal staff provided here and will be able to contract out and bring in other support people as they need. Attorney Sworden stated with that, we are here with the use application. One thing that came up early on with this in addition to the underlying zoning was in regards to needing State licensing. Because they are not actually providing healthcare at this property, there is no additional State requirement for this facility to be licensed, but the design of the building has to obviously meet State fire codes along with the Town's building codes.

Mr. Konradi opened the public hearing. With no one speaking for or against the petition, Mr. Konradi closed the public hearing.

Director Bytnar stated when he was working with Mr. McCracken on this there was much discussion on what was allowed and what was not allowed on this property that was originally zoned as PUD Business. In looking through our zoning, there is nowhere that specifically allows

this type of use. It is part of a gray area between residential and commercial use, such as a nursing home or assisted living, but since it is not held to the State requirements, we could not classify it as such. We felt the variance in use was really the only path unless he was going to do a single site PUD, which would need a variance in the standards because do not allow a PUD under five acres. This may not be the quickest path, but it is the only logical way to address something that is currently outside of our zoning ordinance. Mr. Konradi asked what the actual variance is. Director Bytnar stated it is a variance of use to allow a shared home, as articulated in the application. Attorney Sworden went on to review the Findings of Fact with the Board.

Director Bytnar explained the motion process needed for this request. He noted that if the Board is in favor of the variance then a motion needs to be made to accept the findings of fact as presented and to send a favorable recommendation to the Town Council. Director Bytnar stated in Lake County, a variance of use requires the Town Council to make the approval rather than the BZA. Town Attorney Nicole Bennett stated one thing that both Attorney Sworden and Mr. Bytnar have touched on is that this use is not defined anywhere in the Town's Ordinance. This is not defined by State Statute but is rather a new niche. For purposes of every BZA after you, it is advised that a definition for this use is created for future reference. Because this does not fall in the category of assisted living or nursing home, a definition needs to be created with restrictions. Attorney Bennett gave some examples that need to be defined such as age restrictions, mobility restrictions, and rooms versus the actual number of beds/tenants. Attorney Sworden stated while there is no licensing required from the State, there are some criteria that the State defines. He went on to quote the criteria that the State has in its definition. Discussion followed regarding the layout of the home and possible requirements within the structure. Mr. Konradi asked if there were limitations to the people who want to move in. Attorney Bennett stated the best comparison would be an apartment complex that limits the amount of people to a certain area. Attorney Sworden stated there is a regulation of sixteen or under residents for a group home such as this. Mr. Konradi asked if age limitations were available. Attorney Sworden stated we were not presenting an age limitation, but in most cases, they are over the age of 65. There is an off-chance that someone with special needs that is under that age may fit in to this home as well. Discussion followed regarding criteria and occupancy.

Mr. Bytnar stated he understood it went before the TRC, but requested that it go before them again for a "check-up" due to some changes that may affect the site design with a subdivision that will be coming in including a shared path with that proposed subdivision. Mr. Thiele asked who dictated the max occupancy of sixteen people. Attorney Sworden stated due to the design of the home and State codes, that is where the sixteen comes from. Mr. Frausto asked if, due to parking limitations, would residents be limited to only family being able to transport them. Mr. McCracken stated that transportation is part of the care system that is provided for them. Mr. Frausto asked if the definition would set a precedence for all other development. Attorney Bennett stated the BZA handles everything case by case, so this will only set the standard for this particular project. Mr. VanDyke asked what makes this project different from a group home. Attorney Sworden stated the way the State deals with that is by definition. This is not a group home because it does not meet the State's definition of a group home. Mr. Bytnar stated the State law and local ordinances define a group home as dealing with individuals with mental or development disabilities. Attorney Bennett stated there are more things to differentiate, but the key is the lack of medical care being provided by the facility. Discussion followed as to what the BZA could use to compare this particular project to. After much discussion, the conclusion was that this project is most like independent living, as it will be a month-to-month "lease", but will not provide any medical care. If an occupant wants to have medical staff come in, they do so at their own expense and it will not be around the clock care.

Mr. Thiele asked if the BZA could tie the age restriction in to their recommendation. Attorney Bennett stated you could set it up to state what is defined as a senior citizen, but not actually put the age restriction on it. This will define the intended market of this home versus the need so that this does not turn in to something like a halfway house, which is not it's intended use. Attorney Sworden stated that is why he was articulating the State's definition for this because it takes away trying to pick an age. These occupants are providing a fee, there are at least five or more residents living there, they have at least one regularly scheduled health related service or regularly scheduled supportive service. Anyone who fits in to this category would qualify to live there, regardless of their age. Attorney Bennett asked for the IC for that definition. Attorney Sworden stated it is 410 IAC 16.2-5. Attorney Bennett stated that opens it up to someone who would qualify for a group home or halfway house. Attorney Sworden stated if they get in to the 24-hour requirement, they could not qualify, but if they do not then they could qualify to live here. Discussion followed regarding the definition and the groups of people that could qualify.

Mr. Bytnar stated that the Board needs to keep in mind that a residential facility for development or mentally disabled people is allowed, by right, in an AG, R-1, R-2, R-3, R-4, and Manufactured Housing. A group home is allowed by special exception in those same zoning districts, and an assisted living/retirement facility is also allowed by special exception in those zoning districts, as well as a nursing home. When we are talking about intensity of use, some of those are more intense in use than what they are proposing and are either allowed by right or by special use. Mr. Frausto stated can the Town establish that definition so that this facility does not sway from its intended use. Attorney Sworden stated you could use the IAC as a benchmark and then create exceptions to that. Discussion followed.

Director Bytnar suggested a deferral in order to work out a definition that would be mutually agreeable between our attorney and the petitioner to present to the Board in January so everyone feels comfortable with a recommendation to the Town Council. Mr. Thiele made a motion for a deferral, seconded by Mr. Frausto. Mr. Thiele stated the senior definition needs to be clarified since we have nothing as a model. The motion carried 4-0 by roll call vote.

**BZA #18-033, - 302 Cottage Grove, Lowell, IN.**

-Variance from developmental standards §155.034 District Standards and §155.124 Non-conforming Lots to allow for setbacks on a double frontage lot to generally match the adjacent properties. Specifically, 15ft on Mill St., 30 ft. on Cottage Grove Ave., 8 ft. interior side yard and 35 ft rear yard setbacks for a single-family dwelling, has been filed by owner/applicant Paul Banter. IN. – Mark Leech, 4825 W. 100<sup>th</sup> Ln. Crown Point, IN, CFO for BBT Custom Homes stated we are trying to build a new construction home on this property and are looking for some setback variances to conform with other homes on that street. This is currently a vacant lot.

Mr. Konradi opened the public hearing. With no one commenting for or against the petition, Mr. Konradi closed the public hearing.

Mr. Bytnar stated this lot was platted before the Zoning Ordinance. The Zoning Ordinance states that a lot of record shall be allowed to be built on for those purposes. However, it also says that it shall also conform with the setback regulations. Since we do not have the setbacks for the original lot, we have to go off of the current setbacks. A lot of municipalities that have older areas of Town, there is typically wording that says it will be the average setbacks of adjacent property for consistency. Our Ordinance, however, does not say that which is why they are here for a variance. What they are requesting will overall meet the design standards of the neighborhood. Mr. Bytnar stated if there is a motion to be made, it would be an approval based on the exact way that it is worded in the application to allow this to be built as presented with the

setbacks that were part of the legal ad that was published. Mr. Thiele made a motion to approve BZA #18-033 based on the setbacks as petitioned and the findings of facts as presented, seconded by Mr. Frausto, carried 4-0 by roll call vote.

**NEW BUSINESS:** NONE

**ANNOUNCEMENTS:** Mr. Konradi stated that the next regularly scheduled meeting is 01/17/18 at 6:30pm. Director Bytnar stated for January 2019 please take note that the meeting is on the third Thursday instead of the second Thursday.

**ADJOURNMENT:**

With no further comments or questions, Mr. VanDyke made a motion to adjourn the meeting at 7:35pm, seconded by Mr. Thiele and carried with a roll call vote of all ayes.

\_\_\_\_\_  
Jim Konradi, Vice President

\_\_\_\_\_  
Ryan Thiele, Secretary