

**LOWELL BOARD OF ZONING APPEALS MEETING**  
**July 11th, 2019**

President Sean Brady called the meeting to order at 6:30 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, Ryan Thiele and Sean Brady. Also, present was, Nicole Bennett, Town Legal Counsel

**APPROVAL OF MINUTES**

Mr. Konradi made a motion to approve the June 13th, 2019 regular meeting minutes, seconded by Mr. VanDyke and carried by voice vote of all ayes.

**PUBLIC HEARING:**

**CONTINUED FROM 6/13/19 - BZA # 19-004** - An application for a special use as identified in the Town of Lowell Zoning Ordinance §155.039 TC District – medium scale vehicle related use and §155.043 land matrix definition medium scale vehicle has been filed by Arik Mizrachi, 1310-12 E. Chicago Ave. East Chicago, IN 46312 to use property located at 104 W. Commercial Ave., Lowell, IN, Parcel #45-19-23-384-015.000-008 as an auto repair shop. This property is currently zoned Town Center District.

John Garcia, Garcia Consulting Engineers, stated he was there to represent Arik Mizrachi along with Gary Mathews, attorney for the estate of the seller. As stated, they are asking for a Special Use Variance. Currently it is a vacant tire center and our client would like to open a small auto repair business. This will be maintenance only, no selling of cars, and all equipment at the end of the day will be kept inside of the building. There will be seven parking spaces, which they feel will be enough for his customers and he will not have to park on any neighboring lots, three employees, and four indoor repair bays. The repairs will consist of small repair jobs such as oil and lube, breaks, exhaust, tune ups, shocks and struts, etc. There will be no engine or transmission repairs and any hazardous fluids will be hauled away by a contracted company. Mr. Konradi asked if he knew of the hours of business. Mr. Garcia responded 8:00am-5:00pm Monday through Friday no weekends. Mr. Frausto asked where the off-street parking would be. Mr. Garcia stated all parking would be on his property. Mr. Garcia handed out a sketch of the parking plans to the Board. Mr. Konradi asked if they were all to the side and rear. Mr. Garcia stated that was correct and that they would all be striped. Mr. Frausto asked how they intended to minimize noise when next door there is a hospitality business. It's mentioned that it will not be impactful, but how is that guaranteed? Mr. Garcia stated that was in regards to the parking. We will not be using anyone else's spaces. As far as noise, it should only be as noisy as the laundry mat behind it. Mr. Frausto stated he has been in the repair business for over twenty-five years and cannot imagine noise levels being so contained that it will not be impactful to a business next door that is serving food. Aside from the noise, would there be any emissions to be concerned about? Mr. Garcia stated nothing out of the ordinary. The exhaust will be exhausted outside, nothing more than

the cars that are driving by. Mr. Frausto stated that the cars that drive by are not stationary. Mr. Garcia stated all of the repairs will be made inside. Mr. Brady asked how they would be able to not have cars outside and contain them inside of the building after hours. Mr. Garcia stated there are four indoor repair bays and you do not want to store people's vehicles outside at night. Mr. Brady stated he thought that would be hard to do if you have more four repairs being done. Mr. Garcia stated it is not his intention to store customer cars outside after business hours. Mr. Frausto stated if they are limited to seven outdoor spaces, then they are only taking limited jobs in order to not overflow that lot, but how can that be guaranteed? Mr. Mizrachi stated if he had seven jobs a day, he would be very lucky, but that he usually only has three or four. Seven jobs have never happened. Mr. Garcia stated his intentions are minimal jobs daily. Arik Mizrachi, 1317 Bally Bunion Ct., Dyer IN stated usually in repair shops, you do not have many cars per day. He stated he would be happy to commit to eight cars a day and if they are booked then let the customer know they have to come back. We never take a car that they cannot fix the same day. Mr. Mizrachi also stated that he plans on fixing up the exterior of the building as well as installing windows and doors to keep the noise to a minimum. Mr. Frausto asked if sound-proof windows were going to be installed. Mr. Mizrachi stated not sound-proof, but that he would be able to supply the information on the windows he has installed on his other shops. Mr. Frausto asked if the doors would be open during the day. Mr. Mizrachi stated they would always be closed. Mr. Frausto asked if the bays would be air conditioned for his techs. Mr. Mizrachi stated he has multiple fans going normally in his other shops. Mr. VanDyke asked where the other shops were located as far as the areas within the towns. Mr. Garcia stated the shop in Hammond has houses across the street as well as a deli, and that shop needed a variance, which he got. Further discussion was had in regards to the location of his other shops.

Mr. Frausto stated his question is if this business would fit our Town Center zoning. Mr. Mizrachi stated in Hammond the court house is one block away and the hospital is two blocks away. It is in the area we call "downtown Hammond". Mr. Frausto asked if he knew the actual zoning. Mr. Garcia stated he did not know. Attorney Bennett stated the Town Center zoning is unique to Lowell, not many other towns have it. Mr. Frausto stated that is what the Board is trying to establish is, if this use is applicable here. Attorney Bennett stated the documents that were sent to you are quite frankly the changes that you made to the zoning code last year. It is specifically contemplated in the zoning code that was approved in October. Per the changes, a special use in this area is defined as small, medium, and even large-scale vehicle use. Part of the reason this was defined as a special use is because of the number of vehicle related uses that are currently in Town Center. The prior code everything that was set forth as B-1 has been rolled in to Town Center or Professional Business without the contemplation as to what those actual businesses in operation were. She stated as for the question if it fits, it was determined by these Boards as well as the Town Council that it does in this area. Attorney Bennett asked Attorney Gary Mathews, there representing the owners of the property, how long Lake Tire was in business at that location. Attorney Mathews state the property was purchased 1999 and was operated continuously until the end of June, 2018. Attorney Bennett stated prior to the changes in 2013, this was a permitted use so Lake Tire was grandfathered in, it was legal non-confirming up through it's time of leaving there. The

time frame is somewhat critical in that if the use is vacated on the property as no fault to the owner or against the owner's desire, meaning some other interference the grandfathering does not stop it continues as a legal non-conforming use. This is very close to year ago for purposes of legal non-conforming use. She continued, Lowell is very original in the way that the use stays with the property and does not leave with the owner so long as the structure remains the same. If there is a change of ownership and the use is the same than it is grandfathered in. Legally she needs the Board to realize where the place they are at with this being a contemplated special use, by the Town's special use ordinance is that they are permitted to consider improvements to the building structure, such as storage, hours of operation and the Board can implement restrictions to things of that nature. Mr. Frausto stated what would stop a non-desirable business to be put next to a church if it is zoned. Attorney Bennett stated there is nothing to stop it that is zoning law. You cannot spot zone, so when you are doing your zoning classes the idea is that they are cohesive. The contemplation when creating zones is that the businesses within are cohesive and that the special uses are cohesive with maybe some minor modifications to the property itself. Discussion followed.

Mr. Mizrachi stated he is not planning on leaving the building as-is and opening the doors. He stated he is planning on fixing up the building and adding landscaping so that it helps to improve the look of the corner. He invited the Board to look at his other locations to see that he always maintains a professional looking business and will not open the doors until it is so. Attorney Bennett asked what Mr. Mizrachi was planning on doing. Mr. Mizrachi stated he is replacing windows, landscaping, redoing the blacktop, tuckpointing the building and adding new paint or leaving the original brick if it turns out nice, adding a new roof if needed, and new doors. He also stated he would be happy to let the restaurant next door use his parking spots after hours.

Attorney Gary Mathews, Hammond, IN, stated he is four blocks away from Mr. Mizrachi's business in Hammond. Attorney Mathews stated Lake Tire was originally built in 1952 and was used as a gas station. Since it has been opened, it has always been used for vehicle service and repair work. When the Hedinger's bought it, Lake Tire was opened. Both have passed since. Since they did not have children, they chose Attorney Mathews to be the executive of their estate, which is why he was present representing their property. Mr. Mathews gave testament to the way Mr. Mizrachi works. He stated he also purchased the building in Hammond that was one of the other Hedinger properties, and the worst of the buildings as he explained. Mr. Mathews stated he has learned that Mr. Mizrachi is a man of his word and keeps his promises and works hard to ensure his businesses are opened properly. He also added that his other shops are in charge of their respected municipality's vehicles and that every person he has talked to in those communities has stated that Mr. Mizrachi is an asset to the community himself. This building has been used for vehicle purposes since 1952 and the Town has never once seen it unfit or injurious to its residents. The TC zoning encourages people to come to the commercial area and walk around and shop. This store is an ideal business to accomplish that purpose. There is no better place for someone to drop their car off and walk around the downtown area and shop while it is being worked on. This spot is ideal for the other businesses as well.

Mr. Brady opened the public hearing. Nick Filetti, 17145 Oak Valley, Lowell, IN and owner of Dicky's Dogs next to the property in question, mentioned as far as Lake Tire never impeding on the business of the Pizza House when it was there, Lake Tire closed at 5:00pm and the Pizza House opened at 4:00pm. Dicky's Dogs opens at 10:00am. Mr. Filetti explained the intake exhaust system that is in place at the restaurant and that it is 8-10 feet away from the shop's exhaust system where vehicle exhaust will be released. One of the other concerns is noise. Mechanic shops always get hot and at some point, the doors will be opened and the noise will be loud as well as contaminants being released in to the air possibly contaminating people's food that are sitting outside. He stated that his restaurant is an asset to the community and the TC district that has been open for over a month. We have invested over \$100,000 in to this business and building using local contractors and to have that on the line with a possible auto shop opening next door is a major concern of ours. He welcomes business to come in and flourish but, the right kind of businesses. Mr. Filetti gave the example of another auto shop that failed within a year and a half and stated they would run the risk of running out an established restaurant business out of town to take the chance on a business that could close in a year and a half. As a resident of this community and from the standpoint of a parent, he is concerned about the noise, and contaminants being released in the air.

Dan Sutton, owner of 108 and 116 W. Commercial Ave. stated his concern is the structure itself and the shape it is in. He gave examples of some concerns and stated if the Board chooses to approve this, he would hope conditions would be placed on it needing to be structurally sound.

Rachel Leinweber, 5745 W. 172<sup>nd</sup>, Lowell, IN, stated she brings her daughter and son to Dicky's Dogs all the time and they get ice cream and sit outside. If it's 100 degrees outside, the doors will be open and the exhaust will be brought out when people are eating. She is concerned about the noise when she is eating outside at Dicky's Dogs and feels it is going to make a lot of people not want to eat there.

Brian Jager, 17207 Oak Valley Dr., stated he has spent a lot of time at Dicky's Dogs on the outside patio. He stated he has worked at mechanic shops before and those doors never stay closed. If those doors open and the smell is released along with the noise, it will hinder people wanting to come to Dicky's Dogs which is a great business.

With no one else speaking for or against the petitioner, Mr. Brady closed the public hearing. Mr. Mizrachi stated he does not understand why everyone is assuming that the cars will be running in the building. They are brought in and shut off in order to be worked on. He stated he would not let his employees work in a closed shop with cars running.

Mr. Thiele asked if there was any way that the Town could put something in place to make sure no cars are stored outside. Attorney Bennett stated it is in the Town ordinance that provisions or conditions can be placed by the Board on Special Use variances. The most typical are parking restrictions, hours, and number of parking spaces, but it cannot

prohibit the use. She stated that if conditions are placed on the approval of the petition to meet the criteria and those conditions are violated then there is a procedure of due process in place to consider revoking the special use. Discussion followed.

Mr. VanDyke stated the zoning board has a simple job. When businesses come in, they are asking us if rules can be skirted in order to fit their business. Our job is to ensure that the business is a fit and that those rules that are skirted are not going to be injurious to anyone. With that being said, will the approval be injurious to the public health safety or morals of the community. The business was a tire place before and was a gas station before that. Mr. VanDyke asked Mr. Mathews when fuel was no longer being served at that location. Mr. Mathews stated Lake Tire purchased it in 1999 and there was no gas station there, it had been removed. Mr. VanDyke asked if anyone knew what happened to the fuel tanks that were under ground. Attorney Bennett stated that is not before this Board. Mr. Brady asked if there was a way to vent the exhaust to the other side. Mr. Mizrachi stated he could move the exhaust to the other side. Mr. Frausto stated the air would need to be scrubbed either way and that would be costly. Attorney Bennett stated this petition was filed in March this is on the fine line of legal non-conforming use and special use the fact that they are here asking you for permission is giving the Board far more authority than what may have been required. Mr. Frausto stated for the record granted there has been precedent set in the past and he understands that is not going to trump change for us moving forward. He continued right now it seems legally we are bound by ordinances and rules that are put in place to give a carte blanche description to any business that comes in to Town Center, so there is only so much we can do. For the record, this is something that needs to be addressed down the road as to how we fit the Town Center zoning. He stated that currently he did not believe this business was a good fit for Lowell regardless of what it was in the past. We are moving in the direction that we have to respect. Mr. Frausto made a motion to table the petition unless the Board is ready to place conditions on the business and property to keep everyone safe and happy. Attorney Bennett stated legally she would like to make a correction for the record, this is not tradition or status quo, this Board is not bound by precedent. This is not a decision that was a special use previously, had it been, that would have terminated with the prior owner. When a use of a property is legally zoned and the Town changes the Ordinance, which is what happened here, that owner is not required to change their property to come in to compliance with the Ordinance. That is general planning rules. That property then is legal in that it complied with what the zoning was when its business began and it is considered non-conforming within the changed zoning provisions, which is what happened in 2013. The Town changed the Ordinance making it unpermitted. In an effort to try and correct some of these things, there were changes that began in October 2018. Things were added in as special uses so that it gave authority in considering new properties, but that still does not change a property that was once legal and continues on in the same capacity. Your Ordinance states if the use does not change, but is dormant in excess of a year, then the use can be changed. This petition was filed in March so it is very close. She stated she does not want the record showing or the Board thinking that this is a prior special use approval or that this is a precedent set by this Board. The fact that Mr. Mizrachi has filed a special use perhaps versus not proceeding as a legal non-conforming, shows his willingness to work with the Town.

Mr. Konradi asked if we had not changed the zoning, they would not have to be here. Attorney Bennett stated if you are referring to in 2013 that is correct. They are here today in an effort to comply with the current zoning. Historically this has operated in the same fashion since its existence. Mr. Konradi made a motion that BZA #19-004 be approved. Mr. Thiele stated he would like to add provisions to the motion which are that these improvements be made to the building:

New windows, black top rejuvenating or replacement, landscaping, finish building exterior by painting, new garage doors, and these improvements have to meet town building and permitting code. Also, that overnight only two cars shall be allowed in the parking lot. Mr. Konradi accepted those conditions are part of his motion for approval. Mr. Thiele seconded the motion which carried by roll call vote three to two with Mr. Frausto and Mr. VanDyke voting nay.

**NEW BUSINESS:** NONE

**ANNOUNCEMENTS:** Mr. Brady stated that the next regularly scheduled meeting is August 13<sup>th</sup>, 2019 at 6:30pm.

**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.

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Sean Brady, President

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Jim Konradi, Secretary