



TOWN OF  
**LOWELL**  
CULTIVATING COMMUNITY

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**LOWELL BOARD OF ZONING APPEALS MEETING**

**November 10., 2022**

Vice Chairmen Clemens called the meeting to order at 6:05pm. The Pledge of Allegiance was recited. Recording Secretary Dianna Cade called the roll. Members answering the roll call were Ben Clemens, Shane Lawrence, Bryan Schuch, Tom Cartwright, and Jim Konradi. Also present was Rich Oman, Director of Planning and Building and Nicole Bennett, Town Legal Counsel.

**APPROVAL OF MINUTES:**

Mr. Cartwright made a motion to approve the October 13<sup>th</sup>, regular meeting minutes, seconded by Mr. Konradi and carried out by a roll call vote of all ayes.

**OLD BUSINESS:** None

**NEW BUSINESS:**

**BZA # 22-012** - variance of use from the terms of the Town of Lowell Zoning Ordinance §155.040 has been filed by 106 E. Main LLC (Craig Rosinski) 16963 Golden Oak Dr., Lowell, IN 46356 to use property located at 106 E Main St., Lowell, IN, Parcel #45-19-23-378-001.000-008 for a contractor business. This property is currently zoned TC (town center).

Craig Rosinski, 106 E. Main St. He stated his home address is 16963 Golden Oak Dr., Lowell, IN He stated he is a member of the LLC. He stated on this parcel is the building that Mr. Huseman has occupied for many years; he also uses it now for his business. He would like to construct another building smaller in size or add onto the existing builder. He stated that his understanding is that even though the existing building has been used as a contractor business for years, he needs to get approval to have the same use for a new building.

Attorney Bennett stated for clarification prior to the change in ownership the property use was legal nonconforming for a contractor business. Once the property changed ownership the legal status is lost. Once the LLC took over the property a petition was needed for the continued use and in this situation, they would also like to construct a new structure on the property for the same type of business. The variance of use needs to be granted so that the use can continue. If the use variance is granted, then any new structure for a contracting business would be an allowed use.

Mr. Konradi stated for clarification, by buying the property he cannot legally operate a contractor's business out of there? Attorney Bennett stated that is correct. Discussion. Attorney Bennet asked the petitioner if he was occupying the building when he bought it. He stated no. Mr. Rosinski stated the purpose for being here tonight is because he wanted to build another structure on the property. Attorney Bennett stated when the petitioner came into town hall to inquire about building a new structure, the catalyst that caused the petition was for the variance of use. It was not known prior that there was a new owner. Attorney Bennett continued it should have been addressed when he purchased the property but of no fault of Mr. Rosinski he did not know. Attorney Bennett stated as per the staff report, the TC zoning code does not contemplate a contractor's business as either an approved use or a special use. Therefore, the variance of use is required. If the variance is granted the property can be used for a contractor's

business. As for the construction of a new building or addition to the existing one that is pursuant to the town building code. For tonight's purpose it is one motion, either favorable recommendation, unfavorable or no recommendation to the town council. The town council has the final authority on special and/or use variances.

Mr. Lawrence asked why it was zoned TC. Mr. Oman stated he is not sure. Discussion. Mr. Oman stated that he did not realize that the legal nonconforming status is noncompliant due to change in ownership. His assumption was that it would become illegal nonconforming because of his desire to extend or enlarge the use. Attorney Bennett stated the legal conforming use changes as soon as ownership changes even if there was something there operational. Which in this case there was. She stated use variances do not sell with the property it is held with the owner. Mr. Oman used the Lowell Animal Hospital as an example on the most current variance of use petition that was heard by the BZA. He discussed that petition in relation to the variance of use they had to secure. Discussion. Mr. Oman asked if they needed two motions. Attorney Bennett stated no one motion. Mr. Oman stated his main concern as he indicated on his staff report was that the west side of this parcel has a county drainage easement on it. He stated this would not be a town approval to build on that easement. He stated his recommendation was that the petitioner's surveyor indicate on a site plan where the building would be located, he has no issue with the variance of use it has been a contractor building for many years.

Mr. Konradi stated it should not be approved without a site plan. Attorney Bennett stated that the petition tonight would be for a recommendation on variance of use only. The site plan is not before this Board tonight. Mr. Oman stated it is a recommendation to the town council. He stated when the council gets your recommendation, they are going to wonder on what grounds you made it, and they are going to know that is a county drain. Discussion. Attorney Bennett stated without a variance of use Huseman will have to stop working there, until this body passes this approval. Mr. Rosinski stated when he bought the property his attorney called the town and verified the use could continue and I specifically had him do that. Attorney Bennett asked who his attorney was. Mr. Rosinski stated Tim Kuiper. Attorney Bennett asked Mr. Oman if he talked to Attorney Kuiper. Mr. Oman stated not that I recall. Attorney Bennett stated she did not speak to Attorney Kuiper. Mr. Oman stated his report was based on enlarging the nonconformity he did not take into consideration the legality of the use. He assumed it was still legal non conforming. Attorney Bennett stated once the property transfers ownership the legal non conforming use terminates. Discussion on motion needed. Attorney Bennett stated if the use variance is granted, he would come back to the Plan Commission for site plan approval.

Vice Chairman Clemens opened up the public hearing, no remonstrances were heard in person or online. The public hearing was closed.

Mr. Schuch made a motion to send a favorable recommendation for a variance of use to the town council for BZA #22-012, seconded by Mr. Konradi and carried with a roll call vote of ayes.

Discussion with the petitioner on how his petition moves forward. Attorney Bennett stated the Finding of Fact for this petition #22-012 will be an agenda item for next months BZA meeting.

**BZA #22-014 - Variance from Developmental Standards from the requirements of Ordinance §155.082 (A)2(b) Entrance/Drive Standards. The petitioner is requesting an increase in the driveway apron width**

from a maximum of 24'. Petition has been filed by Todd Harbrecht, 18385 Judith Way., Lowell, IN 46356 Parcel #45-19-25-282-002.000-008

Rob Fischer, Lifehouse Homes, he stated he is here representing Todd Harbrecht the petitioner. They are doing the project for him. Mr. Fischer's address is 627 E. 110<sup>th</sup> Ave., Crown Point, IN 46307. He stated they are constructing a 4-car garage on the property. He stated they are seeking a variance to increase the size of the driveway apron to match the driveway itself. The driveway is around 40' and the maximum apron allowed by ordinance is 24'. He stated Mr. Harbecht does a lot of woodworking as a hobby and he owns multiple vehicles. This will allow the site to stay consistent and it would be more aesthetically desirable. Mr. Clemens asked for clarification on the amount of the variance request, the petitioner stated 40' the agenda states 44'. Mr. Oman stated it is 44'. Discussion on the location of the driveway.

Vice Chairman Clemens opened up the public hearing, no one was in person or on-line. The public hearing was closed.

Mr. Lawrence made a motion to approve the variance for BZA #22-014, driveway apron request for 44', seconded by Mr. Cartwright 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. Schuch and carried out with a roll call vote of all ayes.

**PUBLIC COMMENT:** NONE

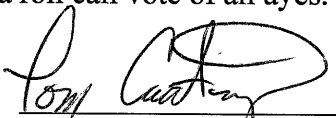
**DISCUSSION:** NONE

**ANNOUNCEMENTS:** Next regularly scheduled meeting is on December 8<sup>th</sup>, 2022.

**ADJOURNMENT:**

With no further comments or questions, Mr. Cartwright made a motion to adjourn the meeting at 6:35pm, seconded by Mr. Konradi and carried out with a roll call vote of all ayes.

  
Ben Clemens, Vice Chairman

  
Tom Cartwright, Secretary