



TOWN OF
LOWELL
CULTIVATING COMMUNITY

LOWELL BOARD OF ZONING APPEALS MEETING

December 8th, 2022

Vice Chairmen Clemens 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 Ben Clemens, Bryan Schuch, Tom Cartwright, and Jim Konradi. Shane Lawrence was absent. Also present was Rich Oman, Director of Planning and Building and Nicole Bennett, Town Legal Counsel.

APPROVAL OF MINUTES:

Mr. Konradi made a motion to approve the November 10th, 2022, regular meeting minutes, seconded by Mr. Cartwright.

Attorney Bennett stated regarding the minutes which were accurately and properly transcribed she would like to set the record straight and clarify one of the petitions. She continued she would like to address the petition BZA #22-012 106 E Main St. LLC. There was significant discussion in the minutes regarding the variance of use and legal non-conforming. She stated in reviewing the minutes she realized that she had caused confusion and misspoke about the contents of the Lowell zoning ordinance regarding legal non-conforming. Pursuant to the Lowell zoning code (which differs from other municipalities) the legal non-conforming use of property when it is the use on its own for just an operation of a business nothing specific to the structure or the land just the operation of the business on the property then the use remains with the property owner as it changes from owner to owner. The Lowell code reads if the use was established, and the town changed the zoning that use will continue forever so long as the use does not change. If it ever changes and becomes permitted to use, then it cannot go back. Alternatively, if a person or business comes to the BZA and asks permission to use a property in a certain way, for instance a variance of use, then that use is owned by the individual. If they sell it does not transfer. For the purposes of this petitioner, he was grandfathered in because when he purchased the property it was a contractor's business. His request was to extend the use by extending the building or building a new building; that is not grandfathered in. That is not permitted because he is extending the amount of structure on the property to continue his use that is legal nonconforming that was grandfathered in. Because he is requesting to extend the structure a variance of use would be required. She stated your vote was to approve the use as requested, which was to allow him to have a contractor's business and extend the building. This does not affect the impact of your vote, she wanted to clarify the discrepancy for the record. Mr. Clemens asked if the motion from last month will remain in place. Attorney Bennett stated that unless in reviewing the Findings of Fact the Board wants to discuss the petition further. Attorney Bennett stated in her opinion the vote supports what the project was, and the petitioner was requesting. She continued, if anybody feels differently then she recommends the Board discusses when they review the Findings of Fact. Attorney Bennett stated if there are no questions, the roll call vote on the minutes can be called.

The roll call was done and the motion to accept the meeting minutes from November 10th, 2022, was carried with all ayes.

OLD 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).

Attorney Bennett stated the Findings of Facts for BZA #22-012 were rolled over from last month. She stated the Board can have further dialogue or if the recommendation for a variance of use to the town council still stands as favorable and the members agree with the Findings then a motion can be made. Mr. Konradi made a motion to approve the Findings of Fact, seconded by Mr. Schuch and carried with a roll call vote of all ayes.

NEW BUSINESS:

BZA # 22-013 - 214 LINCOLN AVE

Variance of use from the terms of the Town of Lowell Zoning Ordinance §155.040 has been filed by Julie Saddler 13237 Truman Circle, Cedar Lake, IN 46303 to use property located at 214 Lincoln Ave., for storage. Parcel #45-19-26-130-001.000-008 for a contractor business. This property is currently zoned R4.

Julie Saddler, 13237 Truman Circle, Cedar Lake, IN. Ms. Saddler stated she is petitioning for outdoor storage for this lot. The property is two parcels, and this is the south parcel back in the corner. It is not buildable it is in a floodway. Ms. Saddler stated one parcel is zoned industrial and one is residential. Attorney Bennett stated the north parcel is not zoned industrial it is Town Center. Attorney Bennett asked what the specific storage was she was looking to do. Ms. Saddler started mostly seasonal outdoor boat and RV storage.

Mr. Konradi asked if the adjacent property owners were notified. Mr. Oman stated yes. Mr. Konradi asked the petitioner if she had any plans for a hard surface or fencing. Ms. Saddler stated because it is in a floodway, she does not think it can be a hard surface, she would have to use permeable rock for a parking area. She would have to consult with the DNR eventually. Ms. Saddler stated fencing would be in the future. Mr. Schuch asked if she has had any discussions with the county on approval. This is a county drainage easement you will need approval from them. She asked for storage. Mr. Schuch stated yes. Mr. Oman stated the county would have to approve the material you are putting in their easement. Attorney Bennett stated a variance of use would also need approval of the Town Council. Mr. Schuch asked the petitioner why she was not putting up fencing. Ms. Saddler responded she has not had any security issues here. Mr. Oman explained the county easement rules. Mr. Oman stated the property does have a hardship since it is in a floodplain there is nothing you can do with the property. Outdoor storage is about the only thing you can do there. Discussion on the entities that have interest in this parcel, including the DNR. Attorney Bennett asked the petitioner if she purchased the property in 2020. Ms. Saddler stated yes. Attorney Bennett stated it appears both properties were bought together by one deed with 2 different zoning classifications. Attorney Bennett stated the building was there. Attorney Bennett stated both properties are in the floodway and the building was existing. Attorney Bennett asked the petitioner if at the time of purchasing the parcels did she know they were in the floodway. Ms. Saddler stated no. Attorney Bennett stated it would have been in the title search. Discussion.

Mr. Konradi stated in his opinion approving the petition without some conditions such as a hard surface, fencing or security would be difficult. He asked if she was planning on a fence right away. She stated she did not, she thought this was just the first step in getting it approved. Attorney Bennett discussed the possible motions and the Boards authority to put conditions on the motion. She discussed variance of uses parameters. Attorney Bennett stated in R4 outdoor storage is not an allowed use. She stated legally the Board can put any conditions on their motion. Attorney Bennett stated the property to the north that the business is run out of is legal non-conforming. A contractor business cannot operate out of a TC zoning district. The business was there prior to before the zoning code changed and because it existed the business could continue to operate. She continued; the parcels are separate. It is not a one lot subdivision. They could be sold separately, and they are not dependent on one another. If this use is approved by the Town Council, the variance of use would be specific to the owner, J Saddler Properties, and is not transferrable when the property is sold.

Vice President Clemens opened the public hearing. No remonstrances are present nor on-line. The public hearing was closed.

Mr. Konradi stated he could not give her a favorable recommendation without any fencing, security, or surface. They would need to see some plans.

Mr. Konradi made a motion to send an unfavorable recommendation to the Town Council, seconded by Tom Cartwright. Ms. Saddler attempted to speak but Attorney Bennett stated she could not during a motion. The motion passed with a roll call vote of all ayes.

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

Attorney Bennett explained why the petitioner could not speak during the roll call vote. Ms. Saddler stated it is her understanding that the recommendation is for her to come back with a plan for a hard surface and fencing. She asked about the DNR approval. Attorney Bennett stated the recommendation from this Board is an unfavorable recommendation to the Town Council. All variances of uses go to the Town Council for final determination. Attorney Bennett stated this Board is not in favor of approving your request. Ms. Saddler stated as it stands? Attorney Bennett stated you have one request before the Board and no new information is allowed to be given to the Town Council. You would have to start all over again with a new petition. Attorney Bennett stated if the recommendation from this Board was with conditions the Town Council would receive those conditions as part of the package forwarded to them from the BZA. Ms. Saddler stated she does not understand. Attorney Bennett stated the motion did not include conditions it was for an unfavorable recommendation. Discussion continued with the petitioners. Numerous voices are heard speaking no one person is discernible. Discussion on when the petition would be going to the Town Council. Attorney Bennett explained the actions the Town Council can take. She specified that no new evidence could be presented to the Town Council. Attorney Bennett stated there would be a time frame where no new petition could be filed on the parcel. The Recording Secretary will get back to the petitioner with that period of time.

BZA #22-015 - 2571 SPRING RUN LN Variance from Developmental Standards from the requirements of Ordinance §155.102 (G)(10) signs. Petition has been filed by Todd Kleven, Lennar Homes, 1700 East Gold Rd., Suite #1100, Schaumburg, IL 60173. This for property located at 2571 Spring Run LN. Parcel # 45-20-19-353-014.000-008. Petitioner is requesting to install marketing flags at model home.

Todd Kleven, Director of Land Acquisition, Lennar Homes, offices are at 1700 Golf Road, Schaumburg, IL 60173.

He stated he is here tonight to petition for marketing flags to be installed at a model home. He passed out some handouts. He stated the home is in Spring Run subdivision. He stated the subdivision was developed in the 1990s. He stated the developer was John Lotton, Lennar is just the builder. They recently purchased the remaining lots in unit 2. He stated the marketing department is having trouble bringing traffic into the community. He stated he is also working with the high school to get permission to install a sign on their property. He stated there are 3 flags, 22' in height. They are requesting three in the backyard and one in the front. He stated typically it is a 4-5 year build out in a subdivision. The model home will be the last home sold; the flags will be removed once that home is sold. The flags say Lennar on them, and they are 3' in height and 5' in width. Mr. Kleven stated the site plan indicates the location of these flags. Mr. Cartwright asked the petitioner if the concrete would be removed once the model home is sold. Mr. Kleven stated the entire front yard of the model home has been turned into a driveway and sidewalks to this home, once it is sold it will be restored.

Vice President Clemens opened the public hearing. No remonstrances were seen in person or heard on -line. The public hearing was closed.

Mr. Schuch made a motion to approve the variance for BZA #22-015, seconded by Mr. Cartwright. Attorney Bennett stated that flags are only permitted if they are the state flag, nation flag. Flags otherwise are not contemplated. Temporary signs, which are usually yard signs, are allowed by ordinance for 24 months. Discussion. Attorney Bennett stated this variance would terminate immediately upon sale. Roll call was done and the variance passed with all ayes.

Mr. Konradi made a motion to accept 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

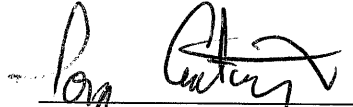
DISCUSSION: NONE

ANNOUNCEMENTS: Next regularly scheduled meeting is on January 12th, 2023

ADJOURNMENT:

With no further comments or questions, Mr. Konradi made a motion to adjourn the meeting at 7:00pm., seconded by Mr. Cartwright and carried out with a roll call vote of all ayes.


Ben Clemens, Vice Chairman


Tom Cartwright, Secretary