



City of Lowell
101 W. First Street
Lowell, North Carolina 28098

Phone: 704-824-3518
www.lowellnc.com

LOWELL BOARD OF ADJUSTMENT

Regular Meeting

Tuesday, February 1, 2022, 6:00 P.M.

-
- 1. CALL TO ORDER AND DETERMINATION OF QUORUM**

 - 2. ADOPTION OF AGENDA FOR THIS MEETING**

 - 3. VARIANCE APPLICATION V22-01: Request for reduction of required Right-of-Way from current 60 feet width to 50 feet.**

 - 4. ADJOURN**

ARTICLE 6

VARIANCES AND ADMINISTRATIVE APPEALS

6.1 Variances

6.1-1 Purpose. The variance process fulfilled by the *Board of Adjustment* is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance in accordance with G.S.160D-705(d). It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general or to increase the profitability of a proposed development. Rather, it is intended to provide relief where the requirements of this Ordinance render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.

6.1-2 Provisions That May Not Be Varied By the Board of Adjustment. In no event shall the *Board of Adjustment* grant a variance:

- (A) With respect to any *Conditional Zoning* district or *special use* zoning permit adopted pursuant to this Ordinance. Modifications applicable to Conditional Zoning Districts and/or Special Use Permits may be considered in accordance with the provisions of either Section 5.4-3(F) of this Ordinance for Conditional Zoning districts or Section 7.8-14 of this Ordinance for Special Use Permits respectively.
- (B) To the flood protection provisions within a designated floodway district that would result in any increase in the flood levels during the regulatory flood discharge.
- (C) Which would permit uses of land or densities not otherwise permitted in the district in which the property is located.
- (D) Which would conflict with the North Carolina State Building Code, the North Carolina Fire Prevention Code, or any other codes of the State of North Carolina unless otherwise authorized by laws and/or regulations.

6.1-3 Application. The following process shall be followed in applying for a variance:

- (A) An application for a *variance* may be filed by the landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized agent of the landowner. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a *variance* shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator*.
- (B) Before filing the application, the applicant shall meet with the *Planning, Zoning & Subdivision Administrator* to discuss the proposed variance and to become more familiar with the applicable requirements and the variance

process. Modifications applicable to Conditional Zoning districts and/or Special Use Permits may be considered in accordance with the provisions of either Section 5.4-3(F) of this Ordinance for Conditional Zoning districts or Section 7.8-14 of this Ordinance for Special Use Permits respectively.

- (C) An application for a variance shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator* and contain the information and plans required on the application form.
- (D) The application shall be accompanied by a fee as required by the City of Lowell.
- (E) Once the application is accepted as complete by the *Planning, Zoning & Subdivision Administrator*, the request shall be scheduled for consideration at an evidentiary hearing by the *Board of Adjustment* in accordance with G.S.160D-406.

6.1-4 Action by The Board of Adjustment. The following action shall be taken by the *Board of Adjustment* upon receipt of the completed application in accordance with G.S.160D-406:

- (A) An evidentiary hearing shall be held on the requested variance within thirty-six (36) days of receipt of a complete application.
- (B) Notice of the hearing in accordance with G.S.160D-406(b) and any administrative materials to be presented in accordance with G.S.160D-406(c) shall be deposited in the mail at least ten (10) days but not more than twenty-five (25) days prior to the date of the hearing to:
 - (1) The person or entity whose variance application or request is the subject of the hearing;
 - (2) The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
 - (3) Owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and,
 - (4) To any other person who makes a written request for such notice at least ten (10) days prior to the date of the hearing.
- (C) A sign stating the purpose, time, date and place shall be prominently posted on the subject property or an adjacent street or highway right-of-way at least ten (10) but not greater than twenty-five (25) days prior to the date of the hearing.
- (D) In considering the application, the *Board of Adjustment* shall review the application materials, the staff recommendation, the general purpose and standards set forth in this Article for the granting of variances, and all testimony and evidence received by the Board at the evidentiary hearing.
- (E) After conducting the evidentiary hearing, the *Board of Adjustment* may:
 - 1. Continue the evidentiary hearing that has been convened without further advertisement;
 - 2. Deny the request; or
 - 3. Grant the request upon the concurring vote of four-fifths (4/5) of the

members of the *Board of Adjustment* necessary to grant a variance per G.S.160D-406(i). Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in subsection 6.1-6 below or, for flood protection regulation variances, as set forth in Article 18 of this Ordinance. For purposes of this section, vacant positions and members of the Board who are disqualified from voting on the hearing decision shall not be considered “Board members” for calculation of the majority if there are no qualified alternate Board members available to take the place of such members.

- 6.1-5 Conditions Appropriate conditions, other than a change in the listed use, may be imposed on any variance, provided that the conditions are reasonably related to the variance. (G.S.160D-705(d))
- 6.1-6 Standards of Review. The *Board of Adjustment's* decision shall be based on competent, material and substantial evidence in the record. All persons providing evidence shall be sworn or affirmed by the Chairman or the Clerk to the Board. The *Board of Adjustment* shall not grant a variance until it makes each of the following findings per G.S.160D-705(d):
- (A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate, in the absence of a variance, that no reasonable use can be made of the property.;
 - (B) The hardship results from conditions that are peculiar to the property such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, shall not be the basis for granting a variance.;
 - (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.;
 - (D) The requested variance is consistent with the spirit, purpose and intent of the ordinance; such that public safety is secured and substantial justice is achieved.
- 6.1-7 Effective Date of Decision. Any decision made by the Board of Adjustment regarding a variance shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board of Adjustment, signed by the Chair and shall be filed with the City Clerk. The effective date of the decision shall be upon the date it is filed with the City Clerk. The decision shall be delivered by the *Planning, Zoning & Subdivision Administrator* or their designee via personal delivery, electronic mail or by first class mail to the applicant, property owner and to any person who has submitted a written request for a copy prior to the close of the evidentiary hearing on the case. The person making such deliveries shall certify in writing to the file that delivery has been made.

Following the effective date of the decision of the *Board of Adjustment*, the following actions may be taken:

- (A) After the *Board* approves a variance, the applicant shall follow all appropriate procedures set forth in this Ordinance for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.
- (B) After the denial of the variance request, the applicant may make application for a rehearing in accordance with *Board's* rules of procedure and this Ordinance.

- 6.1-8 Duration. The variance may be issued for a limited duration only. Unless otherwise specified, construction and/or operation shall be commenced within twenty-four (24) months of the date of issuance of a variance, or the variance shall become void.
- 6.1-9 Appeals. An appeal from any decision of the *Board of Adjustment* may be made by an aggrieved party and shall be made to the Superior Court of the county in which the subject property is located in the nature of certiorari. Per G.S.160D-1405(d), any such petition to the Superior Court shall be filed by the later of thirty (30) days after a written copy of the decision is delivered to the applicant, property owner, and to any other person who, prior to the date the decision becomes effective, has submitted a written request for a copy of the decision. Said decision shall be delivered by personal delivery, electronic mail, or by first class mail. When first class mail is used to deliver the notice, three (3) days shall be added to the time to file the petition.

6.2 Appeals of Administrative Decisions

- 6.2-1 Purpose. Appeals to the *Board of Adjustment* from the determinations of the *Planning, Zoning & Subdivision Administrator* of the City of Lowell are permitted as provided for in this section and in accordance with G.S.160D-705(b). Additionally, G.S.160D-1403(b) provides for separate and original civil actions without filing an appeal under this section.
- 6.2-2 Decisions that may be appealed. Any final and binding order, requirement, or determination made in writing by an administrative officer charged with administering and/or enforcing the provisions of this Ordinance may be appealed to the *Board of Adjustment*. Any such determination shall be given to the owner of the property that is subject to the determination and to the party who sought the determination, if different than the property owner. Said notice shall be delivered by personal delivery, electronic mail or by first-class mail.
- 6.2-3 Standing - parties who may file an appeal. Any person who has standing under G.S.160D-1402(c) may bring an appeal to the *Board of Adjustment*.
- 6.2-4 Period to File an Appeal. A person with standing shall have thirty (30) days from the date of receipt of the written determination within which to file an appeal. Any person or entity with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to appeal.

6.2-5 Constructive Notice. Per G.S.160D-403(b) persons with standing to appeal shall have constructive notice of a determination from the date a sign providing notice a determination has been made is prominently posted on the property. A sign containing the words “Zoning Decision”, “Subdivision Decision” or similar language for other determinations in letters at least six inches high and identifying a means to contact a City of Lowell official for information about the determination, with said sign being posted for a minimum of ten days. Posting of the sign shall be the responsibility of the landowner or applicant and verification to the City is required.

6.2-6 Filing of Appeal.

- (A) The appeal shall be filed with the *Planning, Zoning & Subdivision Administrator* in writing and shall contain information identifying the property, the owner and the purpose for the request.
- (B) The appeal shall be accompanied by a fee as established by the City of Lowell.
- (C) Upon acceptance of the appeal application by the *Planning, Zoning & Subdivision Administrator*, a hearing shall be scheduled for the *Board of Adjustment* within thirty-six (36) days of the date of submittal of a complete application. Notwithstanding, the appellant can apply for an expedited hearing to occur within fifteen (15) days of such filing as provided in Subsection D below.
- (D) The filing of an appeal per G.S.160D-405 shall stay the enforcement of the action appealed unless the *Planning, Zoning & Subdivision Administrator* certifies to the *Board of Adjustment* after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life and property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In such case, enforcement proceedings shall not be stayed except by a restraining order granted by the Superior Court of Lowell County on notice to the administrative official from whom the appeal is taken, with due cause shown. If enforcement proceedings are not stayed, the appellant may file for an expedited hearing of the appeal to occur within fifteen (15) days after such request is filed.

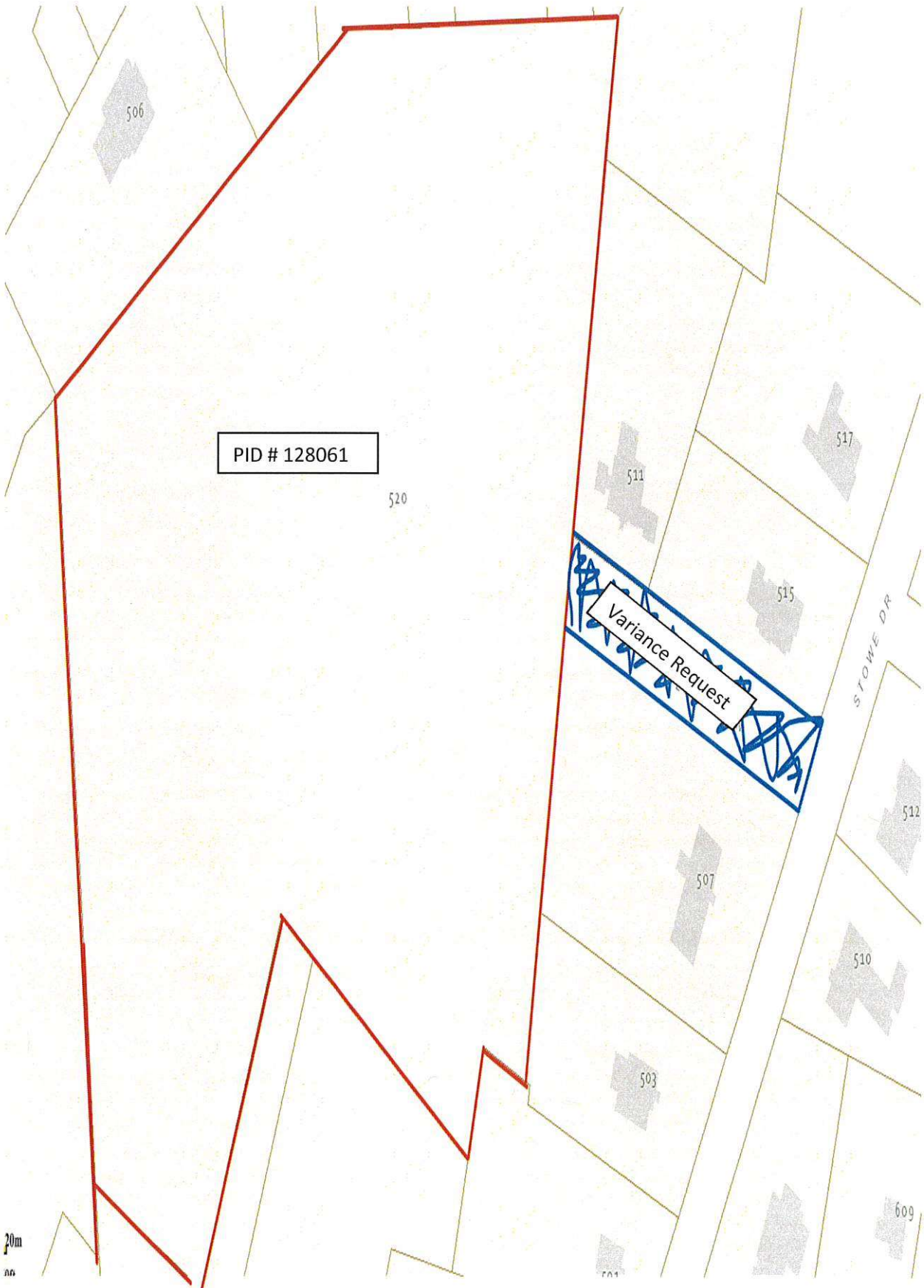
6.2-7 Action by the Board of Adjustment.

- (A) Upon receiving the appeal application, the *Board of Adjustment* shall hold an evidentiary hearing on the appeal. Notice of the hearing shall be as provided in Section 6.1-4. The person whose decision is being appealed shall transmit to the *Board* all documents and exhibits constituting the record upon which the action appealed from is being taken. Said information shall also be provided to the applicant and to the owner of the property that is subject to the appeal, if such person(s) is not the applicant.
- (B) The evidentiary hearing shall be conducted in accordance with rules of procedure of the *Board of Adjustment* and in accordance with the G.S.160D-406. All persons providing evidence at the hearing shall be sworn or affirmed by either the Chair or the Clerk to the Board. The official who made the decision that is being appealed shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the City would be unduly prejudiced by the presentation of matters not presented in

- the notice of appeal, the Board shall continue the evidentiary hearing.
- (C) Either after the evidentiary hearing or at a subsequent or continuation meeting to be held within 30 days of the close of the evidentiary hearing, the *Board of Adjustment* shall adopt an order reversing, affirming, wholly or partly, or modifying the contested action. The *Board's* decision shall be based upon competent, material and substantial evidence.
 - (D) The *Board of Adjustment* shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the requirements of this Ordinance.
 - (E) The *Board of Adjustment* shall not reverse or modify the contested action unless there is a concurring vote of a majority of the Board's members. For purposes of this section, vacant positions and members of the Board who are disqualified from voting on the hearing decision shall not be considered "Board members" for calculation of the majority if there are no qualified alternate Board members available to take the place of such members.
 - (F) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.
 - (G) Any decision made by the Board of Adjustment regarding an appeal shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board, signed by the Chair and shall be filed with the City Clerk. The effective date of the decision shall be upon the date it is filed with the City Clerk. The decision shall be delivered by the *Planning, Zoning & Subdivision Administrator* or their designee via personal delivery, electronic mail or by first class mail to the applicant, property owner and to any person who has submitted a written request for a copy prior to the close of the evidentiary hearing on the case. The person making such deliveries shall certify in writing to the file that delivery has been made.

6.2-8 Effect of reversal or modification. In the event that the *Board of Adjustment* reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the *Board* unless an appeal is taken on the Board's decision.

6.2-9 Appeal from Board of Adjustment. An appeal from any decision of the *Board of Adjustment* may be made by an aggrieved party and shall be made to the Superior Court of the county in which the subject property is located in the nature of certiorari. Per G.S.160D-1405(d), any such petition to the Superior Court shall be filed by the later of thirty (30) days after a written copy of the decision is delivered to the applicant, property owner, and to any other person who, prior to the date the decision becomes effective, has submitted a written request for a copy of the decision. Said decision shall be delivered by personal delivery, electronic mail, or by first class mail. When first class mail is used to deliver the notice, three (3) days shall be added to the time to file the petition.



PID # 128061

520

Variance Request

STOWE DR

20m



PID # 128061

Variance Request

**CITY OF LOWELL
VARIANCE APPLICATION**

SUBMISSION REQUIREMENTS AND INSTRUCTIONS FOR VARIANCE REQUEST

An application for a variance from the Unified Development Ordinance to the Board of Adjustment submitted to the City of Lowell must comply with the requirements and procedures outlined herein.

This packet contains a checklist of general, written and graphic requirements, as well as application submittal forms. The checklist, together with all required information and application forms, must be submitted in **complete and accurate form** before the Variance Request will be processed by the Department.

ALL MEETINGS ARE HELD IN THE CITY OF LOWELL COUNCIL CHAMBERS LOCATED AT 101 W. FIRST STREET, LOWELL, NC 28098 AT 6:00 P.M. DURING THE HEARING YOU WILL BE EXPECTED TO EXPLAIN YOUR REQUEST AND GIVE REASONS AS TO THE NECESSITY FOR A VARIANCE AND PRESENT ANY OTHER WITNESSES TO GIVE TESTIMONY. ANY OTHERS IN ATTENDANCE WILL ALSO BE GIVEN THE OPPORTUNITY TO GIVE TESTIMONY. THE APPLICANT OR A REPRESENTATIVE IS EXPECTED TO BE PRESENT AT THE MEETING. LACK OF REPRESENTATION BY THE APPLICANT MAY RESULT IN THE REQUEST BEING TABLED TO THE NEXT MEETING. HOWEVER, A DECISION COULD BE MADE WITHOUT THE BENEFIT OF THE APPLICANT'S BEING PRESENT.

.....
FOR CITY USE ONLY:

CASE # V22-01 DATE RECEIVED: January 18, 2022

ACCEPTED: IF NO, STATE REASON: _____

HEARING DATE: February 1, 2022 CLOSING DATE: _____

FEE: _____ CHECK# _____ NOTICE DATE: 1-19-2022 ^{Signs} MEDIA: 1-20-2022

BOA PACKET DATE: 1-28-22 AGENDA ITEM# _____ A/V PRESENTATION: _____

BOA ACTION: _____ VOTE: _____

CONDITIONS:

.....

SUBMISSION REQUIREMENTS FOR A VARIANCE

1. GENERAL REQUIREMENTS

Incomplete or inaccurate applications will not be accepted for processing or placement on the agenda.

 ✓ 1.1 PRE APPLICATION MEETING (DATE: 1 / 19 / 2022 TIME: 10:00)

The applicant is to meet with staff to discuss the overall application process before submitting the application packet. Please call (704) 824-3518 for an appointment. Final staff recommendations to the Board of Adjustment about this application will be contained in the staff report.

 ✓ 1.2 REQUESTED HEARING DATE DATE: 2 / 1 / 22

Prior to submitting the application packet and necessary information, the applicant should revise proposed plans and/or information as advised by the City Manager or his designee. After the closing date, the applicant cannot modify any portion of the information submitted unless specifically requested by staff or the Board of Adjustment. Early submission is recommended to assure placement on the agenda and adequate time for revisions and corrections.

 ✓ 1.3 APPLICATION FEE *(MAKE CHECK PAYABLE TO THE CITY OF LOWELL)*

A non-refundable fee (as set by the City Council and listed in the current Fee Schedule) to cover the costs of advertising and preparing for the public hearing shall accompany the application. Cancellations must be submitted in writing to the City Manager. There shall be no refund or part thereof once public notice has been given.

2. WRITTEN REQUIREMENTS

_____2.1 **PERMIT DENIAL NOTICE/ADMINISTRATORS ORDER (IF APPLICABLE)**

Submit one copy of the notice issued by the City of Lowell.

✓____2.2 **DESCRIPTION OF REQUEST AND REASONS FOR VARIANCE FORM**

Complete and submit the Description of Request and Reasons for Variance form (provided).

✓____2.3 **VARIANCE APPLICATION FORM**

Complete and submit the Variance Application form (provided).

✓____2.4 **APPLICANT'S AFFIDAVIT**

Complete and submit the Affidavit (provided).

_____2.5 **CHECKLIST OF REQUIREMENTS**

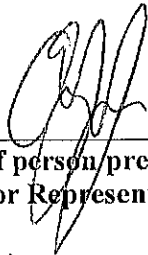
Submit this checklist fully completed. All items must be included unless waived by the Planning Director.

3. GRAPHIC REQUIREMENTS

✓ 3.1 **PLOT PLAN**

Submit ten (10) copies of the plot plan drawn to scale, containing the following information:

- ✓ A. all existing property lines and parcel numbers for each parcel within the subject site and all property within and contiguous to and directly across the street from the exterior boundary of the subject tract, and the name of the owners;
- ✓ B. the exact boundaries and dimensions of the subject lot (*this must be by actual survey unless waived by the Code Administrator*).
- ✓ C. existing zoning district boundaries (shown in dashed lines with heavier line weight than property lines) and zoning designations;
- ✓ D. title, scale and north point (north shall be at the top of the plat);
- ✓ E. the size and location of all existing and proposed structures;
- ✓ F. the existing and proposed use of the entire lot and all structures;
- ✓ G. street names and right-of-way lines with line weight heavier than property lines;
- ✓ H. stamp and signature of engineer or surveyor (*unless waived by the Code Administrator*).

 11/15/2022
Signature of person preparing this checklist Date Submitted
(Applicant or Representative)

Andrew Joel Lueberger
Printed name of person preparing this checklist

DESCRIPTION OF REQUEST AND REASONS FOR A ZONING VARIANCE

FOR CITY USE ONLY:

CASE# VLL-01

DATE RECEIVED: 1-18-2022

THE APPLICANT SHOULD PREPARE DEFINITIVE STATEMENTS REGARDING THE FOLLOWING: (USE ADDITIONAL SHEETS IF NECESSARY)

- 1) Please describe the requested variance.

We currently have two 25' parcels making a 50' access point to our existing acreage on Lowery Ln. The newly adopted residential street diagram in the Lowell Development Ordinance (LDO) has been designed for 60' wide access parcels.

- 2) Describe how the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The hardship exist because there were two parcels that predate the existence of the Lowell Development Code that were intended to be used as access for the remaining acreage. These parcels both with 25' each only give us 50'. The newly adopted Lowell Development Code calls for 60'. There are no other hardships and the only limiting factor is the newly adopted Lowell Development Ordinance.

- 3) Does the hardship result from actions taken by the applicant or the property owner? Explain.

Neither, The hardship exist because of the actions taken by the City of Lowell in the adoption of their new Land Development Ordinance which has wider street standards than previously required in the city.

- 4) Describe how the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

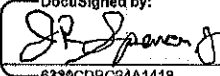
The Variance we seek will remain consistent with the spirit, purpose, and intent of the newly adopted ordinance because we intend to design the street in such a way that the overall look of the street will remain similar to the new requirements. We intend to keep the road the full size of 22' wide comply with the LDO, we will keep the curb and gutter sizes at 2.5' which will comply with the LDO, we will have a 5' sidewalk on both sides of Lowery Ln which will comply with the LDO, and our grass planting strips will be 5.5' in width which is only 2.5' less per side than the newly adopted LDO calls for.

The newly adopted Lowell Development Ordinance references that conflicts may occur from old parcels and this variance request serves to right the conflict. Please see Article 22.1 and Article 22.3 of the LDO.

PROPERTY OWNER'S AFFIDAVIT

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I (we) JOHN SPENCER, Lowry Oaks Development LLC hereby certify that we are all of the owners of the property that is the subject of this Variance application. We hereby consent to the Board of Adjustment of the City of Lowell acting on our application. We understand that our application will be considered and processed in accordance with the regulations as set forth by the City of Lowell's Unified Development Ordinance. We agree to accept, fulfill and abide by those regulations and all stipulations and conditions contained in the decision entered by the Board of Adjustment. The statements and attached exhibits are in all respects true and correct to the best of our knowledge and belief.

DocuSigned by:

6329CDBCPAA1418...
Signature

John Spencer

Printed Name

PO BOX 470487

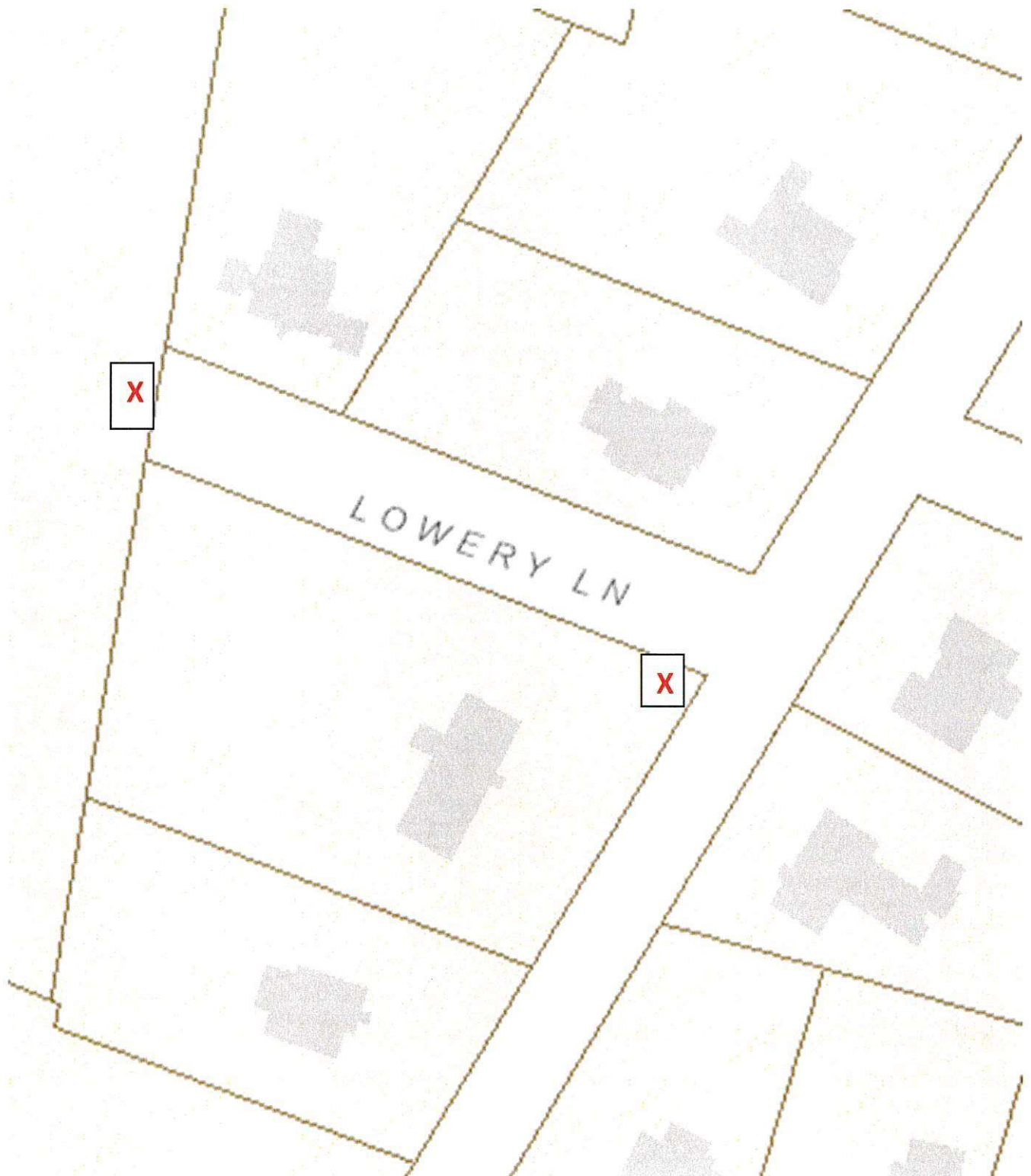
Mailing Address

Charlotte, NC 28247

City and State

704-965-2792

Phone



Placement of Notification Signs for Variance 22-01.
January 20, 2022.



CITY OF LOWELL
PUBLIC Z HEARING
REQUEST: VARIANCE 22-01
DATE: FEBRUARY 1, 2023 TIME: 6:00 PM
LOCATION: CITY HALL
INFORMATION: 701-829-3518



Notices sent to Addresses below: *(Mailed on January 19, 2022)*

PID# 128061	Lowery Oaks Development, LLC. P.O. Box 470487 Charlotte, NC 28247
PID# 128083	Larry A. Blackwelder and Celia P. Blackwelder 201 Crossing Ave Belmont, NC 28012-9544
PID# 128080	Kenneth Loudon and Juhye Loudon 511 Lowry Lane Lowell, NC 28098
PID# 128082	Daniel M. Fleming and Elizabeth Fleming 515 Stowe Drive Lowell, NC 28098
PID# 201859	Sharron B. Crabtree 510 Stowe Drive Lowell, NC 28098-1628
PID# 201857	Kwarta Mary Mitchell 512 Stowe Drive Lowell, NC 28098-1628

Notice of Public Hearing

V22-01

The applicant is requesting a variance of the Lowell Development Ordinance Technical Standards and Specifications Manual regarding Right of Way. This section requires a minimum of 60 feet for acceptable Right of Way. The applicant has proposed a smaller Right of Way of 50 feet along the access of Lowry Lane. The Lowell Board of Adjustment will hear this case on February 1, 2022 at 6:00 p.m. at the Lowell City Hall located at 101 W. First Street Lowell, NC 28098.

For further information, please contact Alex Blackburn, Planning, Zoning & Subdivision Administrator, at 704-824-3518.