

# MINUTES

Lowell Board of Adjustments Meeting  
Tuesday, February 1, 2022, 6:15 P.M.

## I. CALL TO ORDER AND DETERMINATION OF QUORUM

Chairperson Vieta Benson called the meeting to order. Planning Board members present: John Cantrell, Troy Roberts Sr., David Jennings, and Norris Lamb, indicating a quorum is present. Staff members present: Staff members present: Scott Attaway, City Manager; Cheryl Ramsey, City Clerk; Alex Blackburn, Planning Director; and John Russell, City Attorney. Members of the public were also present.

## II. ADOPTION OF AGENDA

John Cantrell moved to adopt the agenda for the meeting, seconded by Troy Roberts. The vote was unanimously in favor.

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

Chairwoman Benson noted the order of business is a public hearing concerning variance request V22-01, which is a request from Lowery Oaks Development, LLC to reduce the acquired right of way from the current 60 feet width to 50 feet.

The Planning Board was directed to review the handouts provided including Article 6 of the LDO regarding Variances and Administrative Appeals, documentation for requesting the variance and maps showing the location of the right-of-way.

Chairwoman Benson began to read the Procedures for Voting on a Variance. With no discussion, John Cantrell made a motion to go into the public hearing, seconded by Troy Roberts Sr. The vote was unanimously in favor.

There were no members of the Board that believed they had any conflicts of interest.

Cheryl Ramsey swore in all persons (six) interested in speaking on the matter.

City Attorney John Russell went over the ground rules for voting on a variance. Each member must vote on each of the four findings noted. All four votes must be in favor to approve the variance.

Chairwoman Benson asked Alex Blackburn to present the issue with the new and old ordinance. He stated, the City met with the applicants in January 2022 about the property. The

property had been deeded but not accepted by the City because it was never developed. At the time it was deeded, the UDO was in effect, and it required only a 50 foot right of way. The city adopted the new LDO in May of 2021 with the minimum requirement now at 60 foot. The applicants have stated they are willing to comply with the new LDO in terms of the sidewalk, curbs, gutters, and the land width and greenways for sidewalks and utilities but are asking to allow them to follow the former ordinance of a 50ft right of way to access the property. They are asking to reduce the green strip where the street trees are and a little off the back and sidewalk to adjust for the 10ft decrease. Maps of the area were presented to the board as evidence. Alex stated Public Works was contacted to ensure that the changes would be allowed and there were no issues noted. With no questions from the Board, those persons interested in speaking were allowed:

1. Attorney David Smith of 516 S New Hope Dr., Gastonia NC, representing the applicants Scott Phillips and Andrew Lineberger, presented the case further. He stated that the new ordinance, having recently been put in place, has a provision that when circumstances arise as a result from pre-existing situations with properties, it recognizes them and should be taken into consideration when there are conflicts between the old and new ordinances. The applicants plan to use the property as it is currently zoned, not an effort to rezone it. They simply want access for the 50ft to the property. Mr. Smith presented deeds and tax maps of the area showing the portions in question, noting the property was deeded to Lowry Oaks LLC, then offered for dedication to the City of Lowell.
2. The applicant, Andrew Lineberger of 2934 Kendrick Rd, Gastonia, NC described his hardships that would result if not allowed to use the property under the previous UDO. He stated they intended to maintain the spirit of the newly adopted code and improvements excluding the 60ft cross section portion. He then described different ways to comply with the 50-foot allotted.

The Chairperson asked all documents, evidence and the staff report presented to be introduced as evidence. With no further questions, the next speaker was allowed to speak.

3. Ken Loudon, 511 Lowry Ln, Lowell, NC – Believes the applicant has not explained everything they will do to the property and how the construction will ultimately affect his property. He is against the variance and requested the applicant should be more upfront to the plans of the property then come before the board to be approved.
4. Sharon Crabtree, 510 Stowe Dr, Lowell, NC – Suggested to correct the address in staff notes from Stowe Rd to Stowe Drive. She questioned whether there will be two entrances. Mr. Lineberger stated they will no longer need two entrances because the number of units are less than the original rezoning maps. She also had a concern with traffic and children's safety in the area. She will talk to Mr. Lineberger personally at a later date.

5. Larry Blackwell, 201 Crossing Ave, Belmont, NC – He owns property in the area and concerned about how much of the land will be used and if a retaining wall will be installed because of the slope in the direct area and topography issues.

Mr. Lineberger address both Mr. Loudon and Mr. Blackwell's comments stating the land is undevelopable in the new ordinance but was developable from the 2<sup>nd</sup> ordinance. He owns the property and wants to use it. He stated where Mr. Loudon planted trees and installed a driveway is not his property. He said the issue is to rectify the new LDO and without it he then has a useless piece of property. He said Larry is currently crossing someone else's property to get to the back of his driveway and does not understand how this request will affect him negatively. He said once this road is built it will be approved by the DOT and to Lowell's specs and standards regarding erosion or any other concern.

Mr. Attaway corrected the previous statement stating, the approval will be by the City Engineer because it will be a city street not a state regulated street.

6. Scott Phillips, 5045 Graystone Estates, Belmont, NC. He wanted to make a comment to the landowners in the area and stated that this is not a development discussion. Any site, grading, engineering plans etc, are not being presented here today. Those issues will come before Planning when they are ready to develop in the area. Landowners will have the right to speak on those issues then to approve or deny as presented. He added that tonight is simply about the 50foot wide variance for the width of the street entering into the property where the development will take place as it is already zoned.
7. Attorney Smith spoke again and reiterated the four findings (noted in the Procedures for voting on a variance contained in Section 6.1 of LDO) that have to be made on each in order to grant the variance:
  - a. Unnecessary hardship? Applicant can't develop his property because of the new ordinance
  - b. Hardship results from conditions peculiar to the property such as location, size or topography? It is peculiar because the situation with the two 25ft lots purchased by the developer for the expressed purpose of access, which was all done under the old ordinance rule.
  - c. Hardship did not result from actions taken by the applicant or property owner? The applicant had nothing to do with creating this situation.
  - d. Requested variance is consistent with the spirit, purpose and intent of the ordinance? Everything required in the new ordinance can be fulfilled from the old ordinance but within 50 feet. Everything regarding specifications will still have to be approved according to the existing standards.

Mr. Attaway asked the City Attorney if the applicant has asked if the Board of Adjustment considers exactly what those reductions and footages are (required by the Technical Standards & Specifications Manual (TS&SM)) to reduce it down to 50 feet? Mr. Russel stated that the

applicants have not asked for a variance from the TS&SM just for the 60-foot right-of-way to the 50 foot. If approved, they will still need to meet with city staff to make sure they are complying with the TESM manuals. Attorney David Smith suggested that if the board were to grant the reduction from 60 feet to 50 feet, then staff can figure out which option is best. He also noted the handout is more accurate than the application and offers some dimensional propositions for the shrinkages within the 50 feet.

Mr. Russell asked if the TESM is part of the LDO. Mr. Attaway said it is.

Mr. Attaway asked Mr. Lineberger to clarify the two proposal options from the back of the sidewalk instead of the back of the curb. Mr. Lineberger stated that was correct and should be the back of the sidewalk.

Mr. Loudon then asked if this can be postponed because the applicants haven't stated what they are going to develop. Mr. Lineberger stated that he is not required to do that.

The City Attorney said while still in the public portion of this meeting there is an option to continue the hearing if the Board wanted to do so.

Board member Norris Lamb asked if the only reason we are here is for the change of the ordinance? He also asked why did the ordinance change? Mr. Attaway said in working on the new ordinance they worked with a land use consultant group called InFocus. He stated the Planning Board went chapter by chapter of the new ordinance and it was brought to City Council to be adopted. By doing that it requires all new city streets to be 60 ft. The applicant has the right to pursue the variance by the General Statute by the state of NC General Assembly. Mr. Lamb stated that this is not a new street and should be held under the rules of the ordinance it was under, the old LDO.

A motion was made to close the public hearing by David Jennings, seconded by Norris Lamb and the vote was unanimously in favor. The board then began the votes on each finding.

**Finding 1:** 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. Motion was made by John Cantrell for the reason of a hardship to develop their property, seconded by David Jennings. All members, including the chairwoman voted in favor, a total of five votes.

**Finding 2:** 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. John Cantrell made a motion with the reasoning that the conditions would be peculiar for the land to be made valuable again in the future, seconded by Troy Roberts Sr. All members, including the chairwoman voted in favor, a total of five votes.

**Finding 3:** 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 or a variance shall not be regarded as self-created hardship. Norris Lamb made the motion

with the reason that the applicant had nothing to do with the new LDO, seconded by David Jennings. All members, including the chairwoman voted in favor, a total of five votes.

**Finding 4:** 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. Motion was made by John Cantrell with the reason of restricting the use of the property with the development of the property with the applicant, seconded by David Jennings. All members, including the chairwoman voted in favor, a total of five votes.

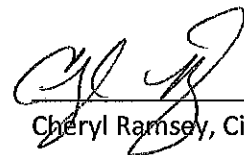
The Board finding in the V22-01, all four findings of fact will now consider the variance. John Cantrell made a motion to grant this variance, seconded by Troy Roberts Sr. The motion was then amended to add that the applicant work with staff to decide condition, A or B, and to grant the variance, seconded by Troy Roberts Sr. All members, including the chairwoman voted in favor, a total of five votes.

#### IV. ADJOURN

Norris Lamb made a motion to adjourn, seconded by John Cantrell, and unanimously in favor by the group.

  
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Vieta Benson, Chairperson

AFFIRM:

  
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Cheryl Ramsey, City Clerk