



Planning and Development

Memorandum

To: Board of Zoning Appeals

From: Richard Oman, Director of Planning and Development

Subject: BZA Docket # 25-002 (Meadows of Cedar Creek – Phase 5, Lots 33-45);
Variance from Flood Hazard Areas Ordinance § 151(A)(10)

Date: February 10, 2025

ORIGINAL HEARING DATE:

February 13, 2025

BACKGROUND INFORMATION:

PETITIONER(S): Demotte State Bank

SITE LOCATION: **Meadows of Cedar Creek – Phase 5, Lots 33-45**

EXISTING ZONING: R-2

ANALYSIS OF THE REQUEST:

OVERVIEW:

The Petitioner is requesting a variance from the compensatory storage requirement of the Flood Hazard Areas ordinance in Chapter 151.05(A)(10), to permit the Petitioner to reduce the required compensatory storage from 2:1 to 1:1 for Lots 33-45 in the Meadows of Cedar Creek – Phase 5 Subdivision.

The current Town of Lowell Land Use and Development Code states, in applicable part, as follows:

1. § 151.02 DEFINITIONS.

BASE FLOOD ELEVATION (BFE). The elevation of the 1% annual chance flood.

FLOOD. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

FLOOD PRONE AREA. Any land area acknowledged by a community as being susceptible to inundation by water from any source. (See **FLOOD**)

FLOODPLAIN. The channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The FLOODPLAIN includes both the floodway and the fringe districts (*emphasis added*).

FLOODWAY. The channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

SPECIAL FLOOD HAZARD AREA (SFHA). Those lands within the jurisdiction of the town subject to inundation by the regulatory flood. The **SFHAs** of the town are generally identified as such on the Lake County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 18, 2012 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO). The **SFHA** may also be identified by best available data regulatory data maps provided by, or approved by, the Indiana Department of Natural Resources.

2. § 151.05 PROVISIONS FOR FLOOD HAZARD REDUCTION,

(A) *General standards.* In all SFHAs and known flood prone areas the following provisions are required:

...

(10) Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill and structure below the BFE (Base Flood Elevation) shall be compensated for by excavating a volume below the BFE which is twice the fill volume below the BFE. The compensatory excavation volume shall be at least equal to twice the volume of storage lost (replacement ratio of 2 to 1) due to the fill and structure.

REASON FOR REQUESTED CHANGE (DEVELOPMENT OBJECTIVE):

A floodplain consists of the floodway and the flood fringe. The floodplain can also be considered the Special Flood Hazard Area (SFHA). All areas within the floodway are under the jurisdiction of the Department of Natural Resources (DNR) and any development requires a *Construction in a Floodway Permit* from the DNR to proceed. Areas outside of the floodway but within the floodplain (flood fringe) are within the jurisdiction of the local municipality.

In 2012, the DNR issued a model Flood Hazard Areas ordinance for adoption by local municipalities, which in part, established a minimum ratio of 1:1 for compensatory storage; however, the DNR authorized local municipalities to increase the ratio. In 2013, the Town of Lowell adopted the DNR's model ordinance as proposed (See Chapter 151 of the Lowell Code). In 2016, the Town of Lowell amended Chapter 151, in part, to increase the compensatory storage ratio to 2:1 to discourage unnecessary development within SFHAs.

In 2008, upon application by the original owner/developer, the Lowell Plan Commission approved the final plat for Meadows of Cedar Creek Subdivision, Phase 5, which was recorded with the Office of the Lake County Recorder. The 2008 final plat identified a regulated drainage easement on the rear quarter (approx. 90 ft.) of Lots 37-45 and a 15 ft. drainage easement on the rear of Lots 33-36. However, in 2012, the Federal Emergency Management Agency (FEMA) determined that all or part of Lots 31-45 in Meadows of Cedar Creek were in the floodway (and thus unbuildable), and approximately 60 other lots in the Subdivision were in the floodplain. As a result, the surveyor for the original owner/developer recorded an affidavit on Lots 34-45 (Lot 33 was left off in error) identifying the parcels as lying in the floodway.

Thereafter in 2021, the Petitioner (now the owner of Lots 33-45) contracted with an Engineering Firm to prepare a *FEMA Map Revision* to identify the specific areas within Lots 33-45 that are in the floodway. (The *FEMA Map Revision* was thereafter approved and adopted by FEMA.) The Petitioner further contracted for and prepared engineering designs and hydraulic computer modeling which were submitted to the Indiana DNR (IDNR) and the Federal Emergency Management Agency (FEMA) proposing to regrade Lots 33-45 to correct the 2008 grading of the lots (per the original plat) and identify the dedicated flood hazard areas appropriately. The IDNR and FEMA granted approval of the Petitioner's proposals, including a compensatory storage ratio of 1:1, in compliance with the DNR requirements. The Petitioner now desires to replat Lots 33-45 with proper grading and floodplain designations and redevelop the Lots for proper placement and construction of single-family homes wherein potential buyers, the public, and the Town of Lowell will have notice and be fully advised of the floodplain location, greenspace benefits, and building conditions/restrictions on Lots 33-45.

Petitioner now requests the Town of Lowell Board of Zoning Appeals approve its request for a variance from the requirements of § 151.05(A)(10) to reduce the required minimum compensatory storage ratio from 2:1 to 1:1 in the floodway in Meadows of Cedar Creek Subdivision, Phase 5, Lots 33-45.

STAFF REVIEW COMMENTS:

Staff has spoken with the Petitioners, Attorney and Engineer. It is the staff's opinion that the required State approvals have been received. The State was presented an application for a LOMR (letter of map revisions). This involved the Petitioner supplying the State with the required engineering necessary for review from the appropriate State departments. The compensatory storage variance from the BZA, in this instance, would permit construction of homes on Lots 33-42 in the portions of the lots located in the flood fringe, with conditions and restrictions identified by staff. Staff discernment is that if structures are built with the conditions

and restrictions proposed, then construction of the new homes would comply with Federal, State, and local laws, and the new homes would not adversely affect the existing homes.

OTHER INFORMATION:

STAFF RECOMMENDATION AND PROPOSED FINDINGS OF FACT:

1. Staff recommends that the Board of Zoning Appeals APPROVE the Petitioner's variance request with the following conditions and restrictions:
 - A. Grading and building pads shall be prepared prior to final platting and issuance of building permits for Lots 33-45.
 - B. Lots 33-45 shall be replatted with existing Lots 42-45 combined into a single lot (*replatted Lot 42*). The western portion of the *replatted Lot 42* (the existing Lot 42, only, per the 2008 plat) shall be buildable subject to all BZA conditions; and the remaining portion of the *replatted Lot 42* (the existing Lots 43-45, only, per the 2008 plat) shall be designated entirely as detention area, subject to all BZA conditions, with no permitted construction of any kind. The owner of the *replatted Lot 42* shall be responsible for mowing and maintenance of the entire *replatted Lot 42*. The Town shall cooperate with the Petitioner after Replat to obtain a proper assessment by the Office of the Lake County Assessor of the *replatted Lot 42*.
 - C. A Conservation easement encompassing the SFHA shall be added to the north/rear of Lots 33-45 on the replat. This language of the platted easement shall be limited to use of the area as determined by the BZA-imposed-conditions, the Town of Lowell Code of Ordinances, and what is appropriate and legal for a SFHA.
 - D. The Crosswalk at Castlebrook Drive and 172nd Avenue shall be moved south to Castlebrook Drive and 173rd Avenue on the replat, with all required signage and striping per ADA requirements.
 - E. Wetland and geotechnical reports shall be provided. Geotech engineer shall be on site during earth moving and foundation construction for all lots.
 - F. A Restoration Plan for the area within the Conservation Easement, as identified on the replat, shall detail the type of plantings and maintenance restrictions within the floodplain. As-Built information certified by a licensed engineer or surveyor shall confirm that the grading meets the engineering requirements.
 - G. Elevation certifications shall be completed on finished foundations prior to framing to confirm elevation is in accordance with approved plot plan for replatted Lots 33-42 (existing Lots 33-45, per 2008 plat).
 - H. A LOMR-F shall be completed and submitted with request for CO.
 - I. Flow-thru-type fences with vertical bars or panels, only, shall be permitted in the flood fringe on the lots in the replat. Privacy panel, chain link, and similarly flow-restrictive fences shall be prohibited in the flood fringe.
 - J. No construction *of any kind* shall be permitted in the floodway. This prohibition shall include construction of any primary or accessory structures, as well as fences, walls, swing sets, mailboxes, lamp posts, doghouses, tree houses, raised landscaping, or other such incidentals which are not deemed accessory structures in the Town of Lowell Code of Ordinances.

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- K. All of the above conditions shall be included in a written Restriction and recorded with the Office of the Lake County Recorder on replatted Lots 33-42 (existing Lots 33-45, per 2008 plat) at the time the replat is recorded or within 120 days of approval of the BZA, whichever occurs first.
2. The Town of Lowell Board of Zoning Appeals shall make written Findings of Fact in accordance with I.C. §36-7-4-915, and the Town of Lowell Flood Hazard Areas Ordinance as amended from time to time. Based upon its evaluation, Staff recommends that the Board of Zoning Appeals make Findings of Fact as follows:
- A. Per the current Town of Lowell Flood Hazard Areas Ordinance § 155.05 (A)(10): whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill and structure below the BFE shall be compensated for by excavating a volume below the BFE which is twice the fill volume below the BFE. The compensatory excavation volume shall be at least equal to twice the volume of storage lost (replacement ratio of 2 to 1) due to the fill and structure.
 - B. Petitioner requires a variance from the Town of Lowell Flood Standards to reduce the compensatory storage requirement from 2:1 to 1:1 in Meadows of Cedar Creek Subdivision, Phase 5.
 - C. Petitioner has shown good and sufficient cause that the variance should be approved.
 - D. Strict application of the terms of the Flood Hazard Areas ordinance will result in exceptional hardship to the Petitioner and/or in the use of the Petitioner's property.
 - E. The Board has determined that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances
 - F. The Findings of the Town of Lowell Board of Zoning Appeals are based upon and in accordance with the Town of Lowell Flood Hazard Areas Ordinance and Indiana State statutes, and shall not be construed or interpreted to be a determination by the Town of Lowell Board of Zoning Appeals of compliance, or noncompliance, with covenants, restrictions, or limitations on the real estate defined herein, if any; and,
 - G. Petitioners shall comply with all requirements of the Town of Lowell Municipal Code and Indiana state statutes related to the applicable building permits, licensing/registration of contractors, inspections, etc. that are required for construction as permitted herein. Additionally, approval of any variance by the Town of Lowell Board of Zoning Appeals shall not be construed or interpreted as

pre-approval or waiver of any such requirement.

PROPOSED MOTIONS:

1. Staff recommends that the Board of Zoning Appeals APPROVE the Petitioner's requested variance from the requirements of the Town of Lowell Flood Hazard Areas Ordinance, § 155.05 (A)(10) to allow a compensatory storage ratio reduction from 2:1 to 1:1 WITH THE FOLLOWING CONDITIONS

- A. Grading and building pads shall be prepared prior to final platting and issuance of building permits for Lots 33-45.
- B. Lots 33-45 shall be replatted with existing Lots 42-45 combined into a single lot (*replatted Lot 42*). The western portion of the *replatted Lot 42* (the existing Lot 42, only, per the 2008 plat) shall be buildable subject to all BZA conditions; and the remaining portion of the *replatted Lot 42* (the existing Lots 43-45, only, per the 2008 plat) shall be designated entirely as detention area, subject to all BZA conditions, with no permitted construction of any kind. The owner of the *replatted Lot 42* shall be responsible for mowing and maintenance of the entire *replatted Lot 42*. The Town shall cooperate with the Petitioner after Replat to obtain a proper assessment by the Office of the Lake County Assessor of the *replatted Lot 42*.
- C. A Conservation easement encompassing the SFHA shall be added to the north/rear of Lots 33-45 on the replat. This language of the platted easement shall be limited to use of the area as determined by the BZA-imposed-conditions, the Town of Lowell Code of Ordinances, and what is appropriate and legal for a SFHA.
- D. The Crosswalk at Castlebrook Drive and 172nd Avenue shall be moved south to Castlebrook Drive and 173rd Avenue on the replat, with all required signage and striping per ADA requirements.
- E. Wetland and geotechnical reports shall be provided. Geotech engineer shall be on site during earth moving and foundation construction for all lots.
- F. A Restoration Plan for the area within the Conservation Easement, as identified on the replat, shall detail the type of plantings and maintenance restrictions within the floodplain.
- G. As-Built information certified by a licensed engineer or surveyor shall confirm that the grading meets the engineering requirements.
- H. Elevation certifications shall be completed on finished foundations prior to framing to confirm elevation is in accordance with approved plot plan for replatted Lots 33-42 (existing Lots 33-45, per 2008 plat).
- I. LOMR-Fs shall be completed and submitted with request for CO.
- J. Flow-thru-type fences with vertical bars or panels, only, shall be permitted in the flood fringe on the lots in the replat. Privacy panel, chain link, and similarly flow-restrictive fences shall be prohibited in the flood fringe.
- K. No construction *of any kind* shall be permitted in the floodway. This prohibition shall include construction of any primary or accessory structures, as well as fences, walls, swing sets, mailboxes, lamp posts, doghouses, tree houses, raised

landscaping, or other such incidentals which are not deemed accessory structures in the Town of Lowell Code of Ordinances.

- L. All of the above conditions shall be included in a written Restriction and recorded with the Office of the Lake County Recorder on replatted Lots 33-42 (existing Lots 33-45, per 2008 plat) at the time the replat is recorded or within 120 days of approval of the BZA, whichever occurs first.

2. If the Board of Zoning Appeals agrees with the above conditions, **Staff** requests that this report be adopted by the Town of Lowell Board of Zoning Appeals as its written Findings of Fact.

Rich Oman, Director of Planning and Development
Town of Lowell
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Email: building@lowell.net

ACTION TAKEN: _____

1 MOTION/VOTE: ____ IN FAVOR; ____ OPPOSED; ____ ABSTAINED; ____ ABSENT;
2 MOTION/VOTE: ____ IN FAVOR; ____ OPPOSED; ____ ABSTAINED; ____ ABSENT;

FINDINGS OF FACT/VOTE: ____ IN FAVOR; ____ OPPOSED; ____ ABSTAINED; ____ ABSENT;

DATE: _____

BOARD OF ZONING APPEALS PRESIDENT _____ (SIGN)