



# Planning and Development

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## Memorandum

To: Board of Zoning Appeals

From: Richard Oman, Director of Planning and Development

Subject: BZA Docket # 24-009 (7662 West 174<sup>th</sup> Avenue)

Date: August 5, 2024

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**HEARING DATE:**

August 8, 2024

**RESCHEDULED FROM JULY 11<sup>TH</sup>, 2024**

**BACKGROUND INFORMATION:**

PETITIONER(S): Randy Webb

SITE LOCATION: 7662 West 174<sup>th</sup> Avenue

EXISTING ZONING: R3

**ANALYSIS OF THE REQUEST:**

**OVERVIEW:**

The Petitioner is requesting a 6-foot fence in height along the front yard which faces Concord Court.

Under the current Town of Lowell Land Use and Development Code 155.090 (B), "Fences and walls shall not exceed six feet in height in any side or rear yard and shall not exceed 3 foot in any front yard. For the purposes of this requirement, the front yard shall be defined as all areas located between any adjacent streets and the walls of the primary structure which face them." As a result, to build as proposed, the Petitioner requires a variance of 3 feet along Concord Court.

**REASON FOR REQUESTED CHANGE (DEVELOPMENT OBJECTIVE):**

The Petitioner currently resides on a corner lot, which effectively has a 30-foot front yard building setback line along Concord Court and a 30-foot front yard building setback line along West 174<sup>th</sup> Avenue. The primary structure faces West 174<sup>th</sup> Avenue. However, Concord Court, because of the corner lot, is considered a front yard as well.

**OTHER INFORMATION:**

Per ordinance the fence would be allowed to be 6' but not past the back of the house. It appears from the proposed site plan that the fence along Concord Court is going to come off

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the front building corner and head east to the sidewalk, which is on the right of way line. There is also a 10' easement next to the sidewalk. The house sits back from the corner and being that far away, the proposed 6- foot height does not impact visibility for vehicular or pedestrian traffic along Concord Court and West 174<sup>th</sup> Avenue.

**STAFF RECOMMENDATION AND PROPOSED FINDINGS OF FACT:**

1. Staff recommends that the Board of Zoning Appeals APPROVE the Petitioner's variance.
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 Zoning 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. Under the current Town of Lowell Land Use and Development Code 155.090 (B), Fences and walls shall not exceed six feet in height in any side or rear yard and shall not exceed 3 foot in any front yard. For the purposes of this requirement, the front yard shall be defined as all areas located between any adjacent streets and the walls of the primary structure which face them;
  - B. Approval of Petitioner's variances will not be injurious to the public health, safety, morals, and general welfare of the community;
  - C. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
  - D. Strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of Petitioner's property. However, the Zoning Ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by I.C. 36-7-4-918.5;
  - E. The Findings of the Town of Lowell Board of Zoning Appeals are based upon and in accordance with the Town of Lowell Zoning 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,
  - F. Petitioner 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.

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**PROPOSED MOTIONS:**

1. Staff recommends that the Board of Zoning Appeals grant approval of the Petitioner's requested developmental variance from the requirements of the Town of Lowell Land Use and Development Code 155.090 (B) in order to have a 6-foot fence in the front yard, subject to:

A. Staff approval of construction plans and affidavit from whomever is installing the fence.

2. If the Board of Zoning Appeals agrees with the above recommendations, 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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Attachments:

1. Application
2. Proposed site plan

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**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)