

**LOWELL BOARD OF ZONING APPEALS MEETING**  
**April 11<sup>th</sup>, 2019**

Vice President Konradi called the meeting to order at 6:35 pm. The Pledge of Allegiance was recited. Recording Secretary Dianna Cade called the roll. Members answering the roll call were Jim Konradi, Manny Frausto, and Chris VanDyke. Ryan Thiele and Sean Brady were absent. Also, present were, Town Manager, Jeff Sheridan and Town Attorney Nicole Bennett.

**ELECTION OF OFFICERS:**

Mr. Van Dyke made a motion to nominate Sean Brady as Chariman for 2019. No other nominations were made. Motion carried with a voice vote of all ayes.

Mr. VanDyke made a motion to nominate Ryan Thiele as Vice Chairman for 2019. No other nominations were made. Motion carried with a voice vote of all ayes.

Mr. VanDyke made a motion to nominate Jim Konradi as Secretary for 2019. No other nominations were made. Motion carried with a voice vote of all ayes.

**APPROVAL OF MINUTES**

Mr. VanDyke made a motion to approve the December 13th, 2018 regular meeting minutes, seconded by Mr. Frausto and carried by voice vote of all ayes.

**PUBLIC HEARING:**

BZA #19-002: variance from developmental standards Town of Lowell Zoning Ordinance §155.075 (4)(d) – Swimming Pool to encroach established front yard. 25’ established. 17’ requested. §155.090 – (A)(1)(c)(3)(B) – to allow a 6’ fence in an established front yard. Petition has been filed by Brian Trapp, 202 S. Nichols, Lowell, IN. Parel #45-19-27-230-017.000-038 – Brian Trapp, 202 S. Nichols, stated he would like to add a privacy fence around the perimeter that is existing, and to move that privacy fence building line, instead of establishing twenty-five feet we are requesting seventeen feet for a net gain of eight feet. We would also like to place a swimming pool within the perimeter with the edge of the pool to sit on what is the current property line established twenty-five feet from the easement, which would allow for the greater than five feet from the new building line.

Mr. Konradi asked if there were any questions from the Board. Attorney Bennett asked what type of fence would be installed. Mr. Trapp stated a six-foot-tall dog-eared wooden fence would be installed around the perimeter as drawn on the survey. There is already an existing fence between the house and garage that is a six-foot privacy dog-eared fence. We are going to eliminate a four-foot chain-link fence. He stated he has spoken to some neighbors to see if there was any opposition and no one in the immediate area has any questions or concerns about the requested variance. Mr. VanDyke asked if the extra eight feet would just be for space or if a deck would be planned. Mr. Tripp stated the additional eight feet is because if we worked off of the already established property line, the pool would need to be moved further in to the yard by five feet to maintain with the Town Ordinances that are in existence. This will allow us to put the pool on the current property line, and also allow us an area where we can put the pool equipment so it is not in our direct line of what we are going to be using. The fence not only offers privacy, but security to the community for the pool.

Attorney Bennett asked if she could inject to clarify some legal issues. She stated as a point of clarification, the question of the property line is actually the building line. By my review, he does not need a variance. Because this is a corner lot, you have a front yard and side yard that is in a sense two front yards. In 155.075 it sets forth that in a corner lot when erecting an accessory structure on the side, which the ordinance does not set forth which side of the house, just the side, the structure must be placed as a setback one-half of the required setback of the primary structure. The primary structure required setback is thirty feet from the roadway, so in this situation his required setback for placement of the pool must be fifteen feet, and he is requesting seventeen. For that item, he does not need a variance because it is within the required setback. The fence is an issue not only as to height, but as to placement as well. There is not a sidewalk on any part of the property here, Nichols or Oakley, and the request is to have a fence run along Nichols and the south property line. From that standpoint it is the front yard, which is allowed a three-foot high fence, but he is requesting a six-foot high fence. Secondly, he wants to place the fence on the property line, literally along the edge of the road. Mr. Trapp stated there is an easement between the edge of the road and the property line, which is the twenty-five feet. Attorney Bennett explained that he owns to the road and that the twenty-five feet is actually thirty feet and that that is a building line, not the property line. Mr. Trapp clarified that he wanted to place the fence as close to the road as the Board would allow him to. He stated what we discussed earlier is seventeen feet requested to gain eight feet from the building line. Discussion followed regarding the location of the fence.

Attorney Bennett stated that per the Ordinance it has to be two-feet off of the right-of-way, so without a variance she showed Mr. Trapp where he could install a fence. Mr. Trapp stated he would happily use that line if allowed by the Town. Attorney Bennett stated the height is now the question. By Ordinance for the placement of a fence, it does not indicate where, but states that all fences and walls shall be setback a minimum of two feet from all adjacent rights-of-way. For purposes of Nichols, the requirement is that it cannot sit on the street line itself, but it needs to be setback two feet. For placement alone, that is where any fence must be placed, however regardless of a three-foot height, six-foot height, whichever, the requirement is that it is still two-feet off of the right-of-way. Since this is a front yard, now the issue is that only a three-foot height fence is authorized, but you are requesting six-foot. Attorney Bennett stated the location of the fence is permitted, the issue is the distance between his driveway and the south property line, the placement as well as the height. Mr. Konradi stated he thought that fences needed to be behind the building line. Discussion followed.

Mr. Trapp stated without getting in to obscene amount of gain, realistically all we would want is an eight to ten-foot gain. Attorney Bennett stated if you sink the pool to forty-eight inches, by law a five-foot fence is required. That would be a fence around the pool or the perimeter of the yard. Mr. Konradi asked what line he would have to be at for no variance. Attorney Bennett stated he would have to be fifteen feet off of Nichols, at three-feet high. Mr. Konradi asked Mr. Trapp if he could live with fifteen feet off of Nichols for the placement of the fence. Mr. Trapp replied yes. Mr. Konradi stated we are at the fifteen feet so no variance is needed. Now the height. Attorney Bennett stated the Ordinance allows three-feet high in the front yard, which would be along Nichols or along Oakley. Anything above that you would need a variance, and we are only looking at the Nichols side. Mr. Konradi clarified you are requesting to place a six-foot fence along Nichols, which needs a variance, but no variance is needed for the placement of the fence at the fifteen-foot line. Mr. Trapp stated he would be well within the fifteen feet off of the road. Mr. Konradi stated if he puts a six-foot fence fifteen feet from the road, the only variance he needs is for the height. Attorney Bennett stated that was correct. The placement of the pool would need to be a minimum of fifteen-feet off of the property line, so the only requirement would be how far the fence is from the pool for safety purposes, which is mandated

at the permit level. For the pool itself he would have to be ten-feet in from the south and fifteen-feet from the rear, and ten-feet from the house. Mr. Trapp stated he would be well within those limits.

Mr. Konradi reiterated that the only thing they are dealing with is the height of the fence then. With that he opened the public portion of the meeting asking for any comments towards or against the petitioner. No remonstrances were heard. Mr. Konradi closed the public portion of the hearing. Attorney Bennett stated she would ask the Board refer to the required considerations and findings set forth in page two of Mr. Trapp's petition. These questions are essentially what are your consideration.

Mr. Frausto read the below findings that were submitted by the petitioner:

The approval will not be injurious to the public health, safety, morals, and general welfare of the community?

*The fence we are requesting to have installed will not only serve to better our own property and provide privacy from and for adjacent neighbors and the church, but it will also serve as a security barrier for the pool we are also requesting to have installed. This is the only area on the property that can accommodate a pool. The pool will be over forty feet from the closest residence. In addition, the pool will be near storm drains so in the even there is a rupture the water can safely be shed and prevent any personal or property damage.*

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner?

*The fence and pool we are requesting to install will not in any way impede use, view, access, visibility, or functionality of the property or any of the adjacent properties, surrounding areas, or utilities. Also, there will not be any additional offensive noise, light, or obstructions that may in some way devalue any of the adjacent properties or surrounding areas to the requested variance location.*

The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property for which the variance is sought?

*The fence and pool we are requesting to install will in no way adversely affect or make it more difficult to strictly adhere to the zoning ordinance. Though we are requesting to extend the fence beyond our current building line, we are still going to stay within all property lines. The corner lot in addition to the development of the surrounding area has significantly increased traffic and thusly decreased any amount of privacy that was once enjoyed. This fence will give some of that back to us and this area of the yard is the only space on the property that can accommodate a pool.*

Mr. Sheridan stated the chlorinated water cannot go down a stormwater drain, just for everyone's information.

Attorney Bennett stated for purposes of your consideration; this is what Mr. Trapp set forth as his answers to the findings. You do not have to make specific factual based findings, or agree with what he is proposing as findings, so long as your determination of your motion is to approve that you are considering those items and that the answers are within the consideration for that approval. She stated she would request that the motion include the consideration of the required statutory findings.

Mr. Frausto made a motion to grant the variance for BZA request #19-002 The Board considered the Findings of Fact in making such determination. The motion is for approval of a six-foot fence high fence on a corner lot. Seconded by Mr. VanDyke and carried by roll call vote with three ayes.

**NEW BUSINESS:** NONE

**ANNOUNCEMENTS:** Mr. Konradi stated that the next regularly scheduled meeting is 05/09/2019 at 6:30pm.

**ADJOURNMENT:**

With no further comments or questions, Mr. VanDyke made a motion to adjourn the meeting at 7:15pm, seconded by Mr. Frausto and carried with a roll call vote of all ayes.

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Jim Konradi, Secretary