

LOWELL BOARD OF ZONING APPEALS MEETING
October 10th, 2019

President Sean Brady called the meeting to order at 6:30 pm. The Pledge of Allegiance was recited. Recording Secretary Dianna Cade called the roll. Members answering the roll call were, Manny Frausto, Chris VanDyke, Sean Brady and Jim Konradi. Ryan Thiele was absent. Also, present was, Nicole Bennett, Town Legal Counsel.

APPROVAL OF MINUTES

Mr. Frausto made a motion to approve the September 14th 2019 regular meeting minutes, seconded by Mr. VanDyke and carried by roll call vote of all ayes.

NEW BUSINESS:

BZA #19-011 545 TIMBERWOOD LN, LOWELL, IN - a variance from developmental standards of the Town of Lowell Zoning Ordinance, §155.032 (B) District Standards - Accessory Structure and §155.075 (A)(1)(5)(a) Accessory Use/Structure Standards. Petitioner is requesting to allow an accessory structure (shed) in an easement and less than the required fifteen (15) feet from the rear of the property. Petition has been filed by Amy Welburn 545 Timberwood Ln, Lowell, IN. Parcel #45-19-23-153-008.000-008. – Nathan Welburn, 545 Timberwood Ln. stated he already had a concrete slab that measured 15’x18’ on the property and would like to use that area to place the shed on, which measures 10’x16’. The slab has been there at least twenty-five years.

Mr. Brady opened the public hearing. With no one to speak for or against the petitioner, Mr. Brady closed the public hearing.

Mr. Konradi asked what size the slab was. Mr. Welburn stated the slab is 15’x18’. Mr. Konradi stated he assumed that it was explained that if you build something in an easement and utilities come in, they have to have access and could ask to have the shed moved. Mr. Welburn stated he did understand that risk. Mr. Brady stated he was familiar with the easement and does not think that anything will happen there, but if an affidavit needs to be added to the permit stating that, then we can do so. Attorney Bennett stated if the Board approves this petition, it would be a condition of it by law. Mr. Welburn stated they are bringing in the shed, it is not being built there so it can be removed. Discussion followed regarding the fact that the concrete slab never should have been placed there and was never permitted. Town Manager Craig Hendrix stated the staff has recommended denial because this will be an issue if we ever have to go back and put a pipe in, this will block the grade and drainage. We would now have to deal with moving the shed and destroying the slab. Mr. Konradi asked if they were approving the shed and slab since the slab should have never been there. Attorney Bennett stated the request is for the placement of the shed. If you approve the variance you approve the shed being placed on the slab. If you deny it, nothing will happen with the slab because the petition is in regards to the shed. By placing the shed on there, the variance encompasses the structure, but if the shed would need to be removed then that would include the concrete slab as well. Mr. Frausto stated the staff recommends denial on the basis of if there is a need that arises that we need to get through there. If he signs an affidavit and states on record that if there is a need, he will make the move at his expense on our timeline, would that be an issue. Mr. Hendrix stated we prefer to not have to deal with it at all.

Mr. Brady asked if he went to sell the home to a new owner, how would that transpire with what happens here. Mr. Hendrix stated the variance would run with the land. Mr. Brady asked how that would be notified to the new owner. Attorney Bennett stated that is “buyer beware”. It is there responsibility to do research on the property. Discussion followed.

Mr. Konradi asked what has changed because it used to be that these types of variances were approved so long as the owner was aware of the risk, but we are now being recommended to deny this variance. Mr. Hendrix stated per the Ordinance, it is not allowed except by variance, but if we are just handing out variances then what good is the Ordinance? Mr. Konradi asked if it has been done wrong all of these years. Mr. Hendrix stated he is an engineer that tends to do a lot of work in rear yards and would like to eliminate any potential risk. If the variance is approved, then please get the affidavit, but there are plenty of other places to put it. Mr. Frausto asked Mr. Welburn if there was any other area to place the shed. Mr. Welburn stated both of his neighbors have fences to the property lines and where the slab is laid is where we would like to utilize. Mr. Hendrix explained the difference between fences and structures and that there is an affidavit that people sign if they put a fence in the easement. Attorney Bennett stated the BZA is not legally bound to follow prior action, it is case by case. What has been done is irrelevant to this case. You must consider the findings when coming to your decision. As to the question of what has changed, recommendations and positions of the Town can change just by a change in staff that comes from a different approach or direction. Attorney Bennett went on to read aloud the findings that must be considered with the petition.

Mr. Frausto stated from the staff’s approach this petition would have an adverse effect on maintaining this Ordinance and the consistency moving forward. Mr. Hendrix stated potentially yes. If there is a need for us to do work or there is any utility allowed in that easement, then yes. The Ordinance sets these areas aside for a specific purpose. Mr. Frausto asked if it would make a difference if the slab was not already there. Mr. Hendrix stated the slab is there, which would have to be moved if work needed to be done, but now we would have two things to deal with if we needed to get in there. If the slab was not there, then your decision may be a little easier. Mr. Frausto agreed and stated that is the hard part in this. Mr. Brady stated he is well aware of the area and understood each side’s position, but that area has never had any work done and, in his opinion, that easement should not even exist. Mr. Hendrix stated we do not know what future circumstances we will face. We may need to run a new water main back there. Mr. Brady asked if the shed could be put anywhere else. Mr. Welburn stated he would have to refigure an area so the shed will sit level. Mr. Frausto asked if the extra affidavit would cover any extra time. For example, if we vote in favor of this, we do not want the Town’s timeline being infringed upon to get the construction done. Attorney Bennett asked if he meant a timeline for the petitioner to respond or the utility. Mr. Frausto stated the petitioner. If we send a letter asking for the items to be moved and he refuses, is there any language in that affidavit to guarantee a response if we have to go in there and move the items. Attorney Bennett stated if there is an emergency, there is no timeline, it is gone the moment they need it gone. If not, the law requires reasonable time, there is no specific timeframe given. It all depends on the circumstance and the urgency of it. Mr. VanDyke asked Mr. Welburn if he understood that if there is an emergency and the items need to be removed right away or if they need to ever be moved period, that cost falls on you as the homeowner. Mr. Welburn stated he is well aware of the risk involved. Discussion followed. Mr. VanDyke made a motion to approve BZA #19-011 with the condition of there being an affidavit stating that the homeowner assumes all responsibility for the shed and concrete pad to be relocated in the event that work needs to be done in the easement, seconded by Mr. Konradi and carried by roll call vote with four ayes.

BZA # 19-012 VARIANCE OF USE And BZA #19-016 VARIANCE DEVELOPMENTAL STANDARDS for Approx. 251 CLARK ST.

pursuant to the Town of Lowell Ordinances §155.140 from the requirements of §155.034 the R4 zoning district and §155.034 (B) District standards has been filed by Cindy Knoblich, of 420 E. Hilltop, Lowell, IN to construct a single family residence at approx. 251 Clark St. Lowell, IN, Parcel #45-19-23-332-008.000-008. This property is currently zoned R4 multiple-family residential. – Cindy Knoblich, 420 E. Hilltop Ct., stated she would like to construct a single-family residence and stated that the Board has pictures of what she is looking to build. Mr. Hendrix stated there are two petitions here. One is a variance of use which is requesting single family in R-4 which is not currently allowed. This would be a recommendation to the Town Council. The second is a variance of developmental standards. In order to get a single-family home in there, we are trying to mimic the setbacks that are stated in R-2 rather than those in R-4. This home will mimic the standards that we have in place for R-2, which is what Ms. Knoblich has agreed to do.

Mr. Brady opened the public hearing for BZA #19-016, variance from developmental standards. With no one to speak for or against the petitioner, Mr. Brady closed the public hearing.

Mr. Brady opened the public hearing for BZA #19-012, variance of use. With no one to speak for or against the petitioner, Mr. Bracy closed the public hearing.

Mr. Frausto stated it was a very cute house that was presented to be built. Ms. Knoblich stated she would like the exterior to look like that and is just tweaking some of the interior. Mr. Konradi stated this has a Clark Street address, but faces another road. Mr. Oman stated there is an existing house there now, which backs up to the back of the lot that she purchased. Her house will face Mill. The surrounding houses are single family, even though they are in an R-4 zone. Discussion followed regarding the placement of the driveway and if this was already its own lot. Mr. Hendrix stated before the ordinances changed, single family was a permitted use in R-4. In the switch, it did not end up carrying over. In the future we would like to request that the Plan Commission and Town Council allow single family to at least be a special use in these areas so that the Board of Zoning Appeals can act on these petitions themselves. Attorney Bennett stated these lots are separately platted, but for whatever reason the structure sitting to the east is 251 Clark Street, and Ms. Knoblich’s property is Approx. 251 Clark Street, which will need to be addressed at a later date as well. Attorney Bennett listed the findings that must be considered when contemplating approval for both the variance of use and variance of developmental standards.

Mr. Konradi made a motion to approve BZA #19-016, variance of developmental standards, including the front setback of 30 feet, needing a 20 foot variance; the rear setback of 20 feet, needing a 10 foot variance; the side setback of 8 feet, needing a 7 foot variance; and the lot size requiring 6,000 sq. ft. but the petitioner is requesting 5,500 sq. ft., equaling a 500 sq. ft. variance; and the lot width requiring 150ft. but the petitioner is requesting 55ft., equaling a 95ft. variance. The motion was seconded by Mr. Frausto and carried by roll call vote with four ayes.

Mr. VanDyke made a motion to grant a favorable recommendation for the variance of use regarding BZA #19-012, the allowance of a single-family home in an R-4 zone providing that its approval is not injurious to the public health, safety, morals, and general welfare of the community. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, and the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The motion was seconded by Mr. Konradi and carried by roll call vote with four ayes.

ANNOUNCEMENTS:

Mr. Brady stated that the next regularly scheduled meeting is November 14th, 2019 at 6:30pm.

DISCUSSION:

Mr. Hendrix introduced himself and Mr. Oman to the Board. He stated their backgrounds and discussed some strategies moving forward.

ADJOURNMENT:

With no further comments or questions, Mr. VanDyke made a motion to adjourn the meeting at 7:20pm, seconded by Mr. Frausto and carried with a voice vote of all ayes.

Sean Brady, President

Jim Konradi, Secretary