

LOWELL BOARD OF ZONING APPEALS MEETING
September 13th, 2018

President Brady called the meeting to order at 6:31 pm. The Pledge of Allegiance was recited. Recording Secretary Dianna Cade called the roll. Members answering the roll call were Jim Konradi, Ryan Thiel, Manny Frausto, Chris VanDyke and Sean Brady. Also present were, Town Manager Jeff Sheridan, and Town Attorney Nicole Bennett.

APPROVAL OF MINUTES

Mr. Frausto made a motion to approve the August 09th, 2018 regular meeting minutes, seconded by Mr. Thiel and carried by voice vote of all ayes.

PUBLIC HEARING:

BZA #18-023 An application to request a Variance from Developmental Standards from the requirements of Ordinance 155.075(A)(5)(a) has been filed by Team E. Inc., 412 W. Hilltop Ct., Lowell, IN 46356 for property located at **151A Deanna Dr., Lowell, IN.** Partial of Parcel #45-19-25-226-003.000-008. Variance is to allow an eight-foot encroachment into an existing easement for placement of a commercial accessory structure. The above-mentioned Ordinance does not permit encroachments or accessory structures into easements.

Mr. Jack Eskridge, 412 W. Hilltop, Lowell, IN. Mr. Eskridge stated in researching the property there was a fifteen-foot easement in place since 1974. He noted when the townhomes were developed behind there and the utilities and pond installed the easement got reduced. He referred to some photos that he had provided to the board and stated that there is still a pretty good size easement. He stated the encroachment will actually be only six foot since it will be next to the building. He stated he is proposing to put a walk-in cooler there that would extend out eight foot, which is why he is asking for a six-foot variance. He stated that he had utility locates done and referenced photos that he had submitted to the Town Manager.

Mr. Eskridge stated that the cooler is portable and built in sections and then placed on a pad. Mr. Frausto asked what size the cooler was. Mr. Eskridge stated it is 8 ft. by 12 ft. is coming out of the west side of building and the twelve foot is north/south.

Mr. Konradi asked if there were any utilities underneath the proposed area. Mr. Eskridge stated no and discussed the locations of the gas and electric meters. Mr. Frausto asked if the access was on the outside. Mr. Eskridge stated inside.

The public hearing was opened.

Leslie Primm, 18273 Platinum Dr. Lowell, IN. She stated she is the President of the HOA for the Townes of Lowell which is located behind this property. She asked if she could view the photos that we provided by the petitioner. She asked if she could share the

photos with the other residents present at the meeting. Mr. Sheridan stated yes. There is a resident heard speaking in the background. He states that he lives directly behind the bar and sees it every day. He is heard asking if they would be willing to fence it in. Mr. Sheridan asks if he is referring to the cooler area. The resident states the entire thing it is an eyesore. Attorney Bennett asks the resident to come up to the podium and state his name and address for the record.

Robert VanderMeer, 5242 Platinum Dr. Lowell, IN. As he stated previously, he lives right on the other side of the retention pond. He noted that they are glad that the bar is gone. He requested a fence so that they would not have to see it. Mr. Eskridge stated he guarantees that it will be cleaned up, free of debris and they have painted the building. Mr. VanderMeer discussed the distance between his property and this property and the responsibilities of who mows what. Mr. VanderMeer stated he just wanted to see if there was a chance for a fence since the area is such an eyesore. Mr. Brady stated the variance tonight is for an encroachment we cannot stipulate if somebody puts up a fence or not. Mr. Sheridan stated that the issue with a fence would be the utility easement any fence is at risk in case the utilities need to get in there. Attorney Bennett stated to clarify for the purposes of the Boards understanding any variance request the Board has the legal authority to place conditions upon that. She noted she does not want any misunderstanding that they do not have the legal authority to do that because they do.

The public hearing was closed.

Mr. Sheridan presented the staff report. (see attached).

Mr. Thiele stated he realizes that the cooler is not directly crossing over any existing utilities and currently there are none in the easement. He stated if in the future the easement would be needed by one of the utilities he wants it on record that this cooler could be at risk. Mr. Sheridan stated the petitioner is aware of that and they have discussed it and he understands if it is removed or damaged it is his risk because he is encroaching on the easement. Mr. Frausto stated it is not a permanent structure. Attorney Bennett stated the pad is permanent and that could be at risk. She noted that is the legal standard with any of these permissions that if it is needed whatever is in there can be at risk and the utilities have no legal accountability to remove the structure.

Mr. Thiel stated on the agenda it states eight-foot encroachment and on the staff report it stated six foot, he asked for clarification. Mr. Eskridge stated the plans now show from the back of the building there is a two-foot buffer; he needs an additional six foot.

Mr. Thiele made a motion to approve the variance request from §155.075 asking for a six-foot encroachment into the existing easement to place a commercial accessory structure, seconded by Mr. Frausto and carried with a roll call vote of all ayes.

VARIANCE APPROVED 5-0 151A Deanna Dr. BZA #18-023

FINDINGS OF FACT:

President Brady read the Findings of Fact into public record for **BZA #18-013** - An application to request a Variance from Developmental Standards from the requirements of Ordinance 155.033 (B) District Standards has been filed by **Tim Kleber 201 W. Commercial Ave.**, Lowell, IN Parcel #45-19-26-101-018.000-008 in order to erect a swimming pool and hot tub that does not meet the rear setback requirement. Specifically, the petitioner is requesting a ten-foot encroachment into the required rear setback.

Mr. Konradi made a motion to accept the Findings of Fact as read, seconded by Mr. VanDyke and carried with a roll call vote of all ayes.

President Brady read into public record the Findings of Fact for **BZA #18-014** - An application to request three (3) Variances from Developmental Standards from the requirements of Ordinances: §155.038 (B), §155.091, §155.104 (A)(1) has been filed by Family Express Corp., 213 S. SR 49, Valparaiso, IN for property located at 1520 E. Commercial Ave., Lowell, IN Parcel #45-19-25-126-002.000-008.

Mr. Konradi made a motion to accept the Findings of Fact as read, seconded by Mr. Frausto and carried with a roll call vote of all ayes.

ANNOUNCEMENTS: Next regularly scheduled meeting is 10/11/18 at 6:30pm

PUBLIC COMMENTS: NONE

ADJOURNMENT:

With no further comments or questions, Mr. Konradi made a motion to adjourn the meeting at 7:05pm, seconded by Mr. Thiel and carried with a roll call vote of all ayes.

Sean Brady, President

Ryan Thiele, Secretary