

LOWELL BOARD OF ZONING APPEALS MEETING
August 9th, 2018

Vice President Konradi 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 and Manny Frausto. Chris VanDyke and Sean Brady were absent. Also present were, Town Manager Jeff Sheridan, Director of Planning Laura Rouse-DeVore and Town Attorney Nicole Bennett.

APPROVAL OF MINUTES

Mr. Frausto made a motion to approve the July 12th, 2018 regular meeting minutes, seconded by Mr. Thiel and carried by voice vote of all ayes.

PUBLIC HEARING:

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. Kleber, 201 W. Commercial Ave., Lowell In., stated that they are asking for this variance to put a reasonable size pool in the backyard for their children. Mr. Konradi asked what the reason was that they didn't have enough room. Mr. Kleber stated it is a corner lot and that restricts them on the setbacks and also the setback on Route 2 is larger which required the house to be put back further on the lot, this caused a smaller back yard. Mr. Frausto asked if there were any utilities in the back that are at risk. Ms. Rouse-DeVore stated no. Mr. Konradi asked how many feet from the house the pool would be. Mr. Kleber stated fourteen feet. Ms. Rouse-DeVore stated there is also an existing deck that they are trying to preserve that leads to some of the hardship. Mr. Thiele stated since there are no utilities in the easement currently could that lead to potential issues in the future. Ms. Rouse-DeVore stated it is a set-back not an easement. She noted the setback is a requirement of the zoning classification.

Ms. Rouse-DeVore stated the Kleber family at 201 W. Commercial Ave., is requesting a variance from the rear setback requirement, Section 155.033 (B), of fifteen feet for placement of an accessory structure. The Kleber's lot is a corner lot and requires additional setback distances along both street frontages. She noted this creates a very small area in the rear yard where they can place their pool. Therefore, the Kleber's are seeking approval of the variance to allow them to encroach ten feet into the required rear setback.

She stated they live on the corner of Liberty St. and Commercial Ave. and because the lot is corner they are limited on the buildable area where the pool can be placed. She stated the pool will be placed at least five feet from the rear yard. She noted they could take 4.6

feet of existing deck off and it would still encroach, so she advised them to come in for the full encroachment. She stated staff does not believe granting the variance requests would be injurious to the public health, safety, morals or general welfare of the community.

She noted there is no impact to traffic volumes, Thoroughfare or neighborhood. She stated the use is consistent with the comprehensive plan. She noted as of the date of this report, staff has received no responses favorable or unfavorable from the notifications mailed to surrounding property owners. Staff is recommending that the BZA approve the variance request.

Public hearing was opened, no remonstrances were heard. Public hearing was closed.

Mr. Thiele made a motion to approve the variance regarding the requirements of ordinance 155.033 in order to erect a swimming pool and hot tub that does not meet the rear setback requirements, seconded by Mr. Frausto and carried with a roll call vote of all ayes.

VARIANCE PASSED BZA #18-013 201 W. COMMERCIAL

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.

Attorney Dave Wickland, with offices in Munster whom represent Family Express. He stated Family Express is here to seek permission to convert a soon to be defunct Family Video store into a Family Express fuel and convenience store. He stated in order to proceed they need to ask for three developmental variances.

Mr. Scott Jones, Director of Facilities for Family Express. Mr. Jones stated the first variance is for the permanent sign. He noted they have a total of 292 sq. ft. consisting of their wall sign, fuel canopy sign and ground sign. He noted the amount allowed by the Town ordinance would be 150 sq. ft. He stated a map of the three areas of signs was submitted to the Board, and a second page that shows a layout with the dimensions along with a picture showing the gasoline signs on the canopy.

Mr. Jones stated the second variance is for the height of the accessory structure. He stated that the canopy height over the gasoline islands is nineteen feet and ten inches. He noted that the allowed size is sixteen feet, they are seeking a variance of a little over four feet.

Mr. Jones stated that the last variance request is for landscaping. He noted they are requesting a variance from the required quantities of plantings per the ordinance based on the square foot of the store.

Ms. Rouse-DeVore stated that the applicant is Family Express and the site is located at 1520 E. Commercial Ave. which is currently operating as a Family Video Store. She noted that the existing use of the property is retail/commercial. Family Express is asking for three variances in which they are seeking relief from the maximum square footage of signage allowed, maximum height of accessory structure and the number of required plantings.

She noted they are proposing to convert the property into a fueling station. She noted they are attempting to do so with as little disruption to the existing site plan as possible. She stated the site is restrictive for plantings and landscaping. She noted it is staff's opinion that the landscape plan submitted by Family Express is an ample amount of planting and landscaping and since the site is surrounded by Evergreen Park on the south and west side the site is buffered. She stated the landscaping plan proposed is around eighty percent of what would be required.

Ms. Rouse-DeVore stated the maximum height in the code for accessory structures does not allow for a canopy height that will safely allow certain vehicle types to pass under it including our own fire trucks. She stated the applicants have requested a variance for a canopy height a little over three feet maximum height of what is currently permitted in the code.

Ms. Rouse-DeVore stated that Family Express is asking for a variance for signage over what is allowed which is 150 sq. ft. maximum. She noted they are proposing to display a total of 292.76 sq. ft. of signage to help with traffic flow thru the existing site and create brand identify and uniformity with other Family Express sites in the area.

Ms. Rouse-DeVore stated staff does not believe granting the variance requests would be injurious to the public health, safety, morals or general welfare of the community. She noted it is staff's belief that the strict application of the terms of the zoning ordinance in this case does present practical difficulties in the applicant's desired use of the property and the limited green space on the property. She noted that staff anticipates that impact to existing thoroughfare and traffic volumes will be minimal if recognized at all. The variance from sign standards will actually help traffic navigate to and thru the site. She stated the proposed business type, a neighboring fuel station is consistent with what currently exists in this area, which is highway business and retail commercial.

She noted as of this date, staff has received no notices favorable or unfavorable as to the notification mailed to surrounding property owners.

She stated staff is recommending the BZA approve the requests for a variance from 155.091 to allow landscaping quantities as proposed in the landscape plan attached, dated 7/17/18.

She stated that staff is recommending the BZA approve the request for a variance from the maximum accessory structure height of sixteen feet in section 155.038 to allow a fuel

canopy height of nineteen feet ten inches.

She stated that staff is recommending the BZA approve the request for a variance from the 155.104 (A) (1) to allow the signage of 292.76 sq. ft. as shown and submitted on the attached sign schedule and plan dated 7/17/18.

Attorney Bennett gave the Board a briefing on the overview of the entire scope of the project. She noted the site plan does not require the approval of the BZA it was included in the packet so that the Board could see the whole project. She explained the site plan approval for this project was being petitioned in front of the Plan Commission tonight. Attorney Bennett stated the parameters and criteria on why it was being heard and considered. She stated that the site plan in its current form without the BZA variance approvals would not be able to get approved by the PC. She stated that in no way binds this board to approve in any fashion. She noted they are three separate votes even if they are all on one petition they are three separate approvals, denials or approved with conditions. She stated the monument sign is the allowed permitted sign by ordinance. She discussed the other signage that is being requested. She noted that the variance is not only for the amount allowed but also the specific signage. She noted the approval for the signage would be for the sum and at the specific locations.

Attorney Bennett stated that for the landscaping, Ms. Rouse-DeVore stated it as a percentage. Discussion followed. Attorney Bennett stated that the motion would need to be made as to the specific drawing that was submitted. Mr. Thiele stated is the eighty percent calculation what would be required on a parcel that size. Ms. Rouse-DeVore stated the ordinance requires plantings based on the square footage of the building and the eighty percent is garnered from what would be required for that building. Mr. Thiele stated since they are using the existing building they literally do not have the dirt to plant in. Ms. Rouse-DeVore yes. Mr. Thiele stated can the additional percent of landscaping required be planted in Evergreen Park. Attorney Bennett stated you as a Board have the authority to put forth any conditions on an approval as you would with any situation. Mr. Thiele asked what the twenty percent was in regards to the actual plants. Ms. Rouse-DeVore stated it is foundation plantings. She noted it is basically 12" shrubs.

The public hearing was opened, no remonstrances were heard. The public hearing was closed.

Mr. Thiele made a motion to approve the 155.091 landscaping variance required plantings with the condition that the twenty percent that is not being planted at this site be planted in Evergreen Park, seconded by Mr. Frausto and carried with a roll call vote of all ayes.

VARIANCE FOR LANDSCAPE APPROVED WITH THE CONDITION THAT THE 20% THAT WAS NOT PLANTED AT THIS SITE BE PLANTED AT EVERGREEN PARK

Mr. Thiele made a motion to approve the Business/Highway district standard height

accessory structure variance from 155.038 for the fuel canopy height to nineteen feet and ten inches versus what is allowed in the code of sixteen feet, seconded by Mr. Frausto and carried with a roll call vote of all ayes.

VARIANCE APPROVED FOR ACCESSORY STRUCTURE FOR FUEL CANOPY OF NINETEEN FEET AND TEN INCHES FROM THE ALLOWED SIXTEEN FEET.

Mr. Thiele made a motion to approve the variance 155.104 permanent sign standards for the total square foot signage of 292.76 from the allowed 150 sq. ft., seconded by Mr. Frausto and carried with a roll call vote of all ayes.

VARIANCE APPROVED FOR TOTAL SIGNAGE OF 292.76 SQ. FT.

NEW BUSINESS:

FINDINGS OF FACT:

ANNOUNCEMENTS: Next regularly scheduled meeting is 9/13/18 at 6:30pm

PUBLIC COMMENTS: NONE

ADJOURNMENT:

With no further comments or questions, Mr. Thiele made a motion to adjourn the meeting at 7:00pm, seconded by Mr. Frausto and carried with a voice vote of all ayes.

Jim Konradi , Vice President

Ryan Thiele, Secretary