



# Planning and Development

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## Memorandum

To: Board of Zoning Appeals

From: Richard Oman, Director of Planning and Development

Subject: BZA Docket # 24-014 (203 Woodland Dr)

Date: November 7<sup>th</sup>, 2024

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**HEARING DATE:**

November 14th, 2024

**BACKGROUND INFORMATION:**

PETITIONER(S): Joe Fish

SITE LOCATION: 203 Woodland Dr

EXISTING ZONING: R2

**ANALYSIS OF THE REQUEST:**

**OVERVIEW:**

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

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, Petitioner requires a variance of 3 feet along Commercial Ave.

**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 Commercial Dr. and a 30-foot front yard building setback line along Woodland Dr. The primary structure faces Woodland Dr. However, Commercial Ave., 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. Presently there is a 3' split rail fence. The fence was damaged during a storm, and the current owners would like to replace it with a 6' privacy fence in the same location as the split rail fence. It appears from the proposed site plan that the 6' fence along Commerical Dr, is going to come off the front building corner and head approx. 24 feet to the sidewalk on Commerical Ave. For safety reasons the staff is recommending that the fence be at least 5' from the sidewalk. This will act as a larger barrier along Commercial Ave for any unforeseen mishaps that may arise on the sidewalk from pedestrian bicycle or walking traffic. Commercial Ave is the major thoroughfare for the town's traffic and has many unique intersections and arteries that feed off of it. This section of the roadway is heavily traveled, and an extra safeguard would be desirable. The proposed 6- foot height does not impact visibility for vehicular or pedestrian traffic along Commercial Ave and Woodland Dr.

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

1. Staff recommends that the Board of Zoning Appeals APPROVE the Petitioner's variance with condition as stated in proposed motion.
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.

**PROPOSED MOTIONS:**

1. Staff recommend 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. The fence is 5’ off the sidewalk.
- B. Staff approval of the construction plans.

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)**