

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in the Meeting Room 4 and 5; Tuesday, February 21, 2017. The meeting began at 7:30 p.m. Members present included, Rod Lasley, Sam Himself, Sonnie Johnston, and Walt O'Riley. Also present were Don Reitz, Planning Director, Greg Steuerwald, County Attorney, Nicholas Hufford, Planner, and Kim Cearnal, Recording Secretary.

Mr. Lasley read the Rules of Procedure for the Board of Zoning Appeals meeting.

Everyone stood and recited the Pledge of Allegiance.

Mr. Lasley asked for a motion for approval of the minutes from the January 17, 2017 meeting.

Mrs. Johnston made a motion to approve the January 17, 2017 meeting minutes.

Mr. O'Riley seconded the motion.

Mr. O'Riley

VOTE: For- 3 Against- 0 Abstained-2 APPROVED
JANUARY 17, 2017 MEETING MINUTES

VAR 01-17: Addie DeAtley for a Variance from Development Standards 4.9 (D) to allow an accessory structure 4ft. from side property line on a .25 acre parcel in a RB zoned district in Middle Township; Section 01, Township 16, Range 1W; Key No. 10-2-01-61W 185-006

VAR 03-16: Addie DeAtley for a Variance from Development Standards 7.6 (C) to allow fence height to be over 6 ft. on a .25 acre parcel in a RB zoned district in Middle township; Section 01, Township 16, Range 1W; Key No. 10-2-01-61W 185-006
VAR 01-17: Addie DeAtley, Mr. Hession stated that VAR 01-17 has been continued for the February 21st BZA meeting.

Mr. Hufford stated that there are two cases, but one applicant, and that they would be voted on separately. He pointed to the power point presentation and showed where the property is located. The presentation showed where a pool was at one time, but Mr. Hufford stated that the pool is no longer in this location and has been moved to other side of backyard. Mr. Hufford stated after doing his site visit, he realized that the height of fence wasn't compliant. He stated this is the reason why the meeting for first case was put on the next agenda so the two cases could be handled at the same time. Mr. Hufford stated that the deck itself is roughly two feet high, the fence is at six feet and the lattice on top of the fence is 2 feet, making it altogether from grade around ten feet three inches high. He stated in addition there is a setback of ten feet in an RB zoned district, and the pool is four feet from property line. Mr. Hufford stated the reason for

this is because of where the septic field is located in the back yard. Mr. Hufford displayed a 3-D modeling tool to show the fence with and without the lattice and at regulation height. Mr. Hufford stated that from the letter of intent, the DeAtley's were told by the contractor for pool that they didn't need any permits. He stated they constructed the fence around pool for privacy and listed those reasons in their letter of intent to the board, while also having letters of support from surrounding neighbors.

Mr. Lasley asked if the applicant wished to speak.

Robert DeAtley, 6576 Reed Rd., Pittsboro, IN., Mr. DeAtley stated that he didn't build the pool but did construct the fence. He stated the reason for this is due to his neighbor across the street being a convicted child molester. Mr. DeAtley stated that this neighbors' home sits a little higher due to the home being on a crawl space. Mr. DeAtley explained that he has issues with this person living so close, but can do nothing about it except protect his privacy. He explained that even with the height of the fence alone being at 6 feet that you could still see over the fence with the way the homes are built. Mr. DeAtley stated that his daughter is fifteen and she has her friends over to swim and wants to protect their privacy as well. He stated that the fencing does not go all the way around because there is a bean field behind their house and didn't see the need to. Mr. DeAtley stated he left it without the lattice work for about a month but from a distance you could still see over fence, so he then added lattice. He stated that his neighbors are fine with the pool and fence both, and does have their letters to back it up.

Mr. Lasley asked the board if they had any further questions.

There were none.

Mr. Lasley opened the public hearing portion.

No one had signed up to speak.

Mr. Lasley closed the public hearing portion.

Mr. Lasley asked if the board had any questions or comments regarding VAR 01-17.

There were none.

Mr. Himsel made a motion to adopt positive findings of facts and approve VAR 01-17.

Mrs. Johnston seconded the motion.

VOTE: For- 4 Against- 0 Abstained-1 APPROVED
VAR 01-17: Addie DeAtley

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

VAR 01-17

An application for the above noted development standards variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to vary development standards to permit **a structure 4' from the side setback** in an RB/Residential district. Acting in its role as staff to the Hendricks County Area Board of Zoning Appeals, the DPB staff subsequently created a file containing all documentation of the request and made that file available for public inspection in Room 212 of the Hendricks County Government Center.

In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 12.6 (C), the DPB staff published a legal notice in the *Hendricks County Flyer* and the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with IC 36-7-4-920. The public hearing included the above variance on its agenda.

In accordance with Section 3.07 (D)(2) of the Rules of Procedure of the Hendricks County Area Board of Zoning Appeals, the applicant also sent courtesy notices to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this variance.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted variance. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and HCZO. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Board weighed the evidence associated with the following requirements and made the following findings.

IC 36-7-4-918.5 Variance from the development standards of the Zoning Ordinance. A Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A Variance may be approved under this section only upon a determination in writing that:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

The Board finds that an approval will not be injurious to the public health, safety, morals and general welfare of the community. The surrounding community consists of residences, and approval of this variance will allow that use to continue.

- (2) **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 Board finds that 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 south side of the property where the setback infringement has occurred abuts a neighboring property that does not contain a dwelling, and so it does not affect the neighboring property in an adverse manner.

- (3) **The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.**

The Board finds that the strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. The size of the lot gives the applicants very few places to put the pool, as well as the existing septic field that takes up most of the back yard.

The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance: None.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 21st day of February 2017.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA



Ron Lasley
Vice Chairman



Don F. Reitz, AICP
Secretary to the Board

Mr. Lasley asked for a motion on VAR 03-17, for the height of the fence.

Mrs. Johnston made a motion to adopt positive findings of facts and approve VAR 03-17.

Mr. O'Riley seconded the motion.

VOTE: For- 4 Against- 0 Abstained-1 APPROVED
VAR 03-17: Addie DeAtley

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

VAR 03-17

An application for the above noted development standards variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to vary development standards to permit *a fence 10' in height* in an RB/Residential district. Acting in its role as staff to the Hendricks County Area Board of Zoning Appeals, the DPB staff subsequently created a file containing all documentation of the request and made that file available for public inspection in Room 212 of the Hendricks County Government Center.

In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 12.6 (C), the DPB staff published a legal notice in the *Hendricks County Flyer* and the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with IC 36-7-4-920. The public hearing included the above variance on its agenda.

In accordance with Section 3.07 (D)(2) of the Rules of Procedure of the Hendricks County Area Board of Zoning Appeals, the applicant also sent courtesy notices to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this variance.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted variance. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and HCZO. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Board weighed the evidence associated with the following requirements and made the following findings.

IC 36-7-4-918.5 Variance from the development standards of the Zoning Ordinance. A Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A Variance may be approved under this section only upon a determination in writing that:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

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The Board finds that an approval will not be injurious to the public health, safety, morals and general welfare of the community. The fence height, while obvious, does not have an injurious effect on any of the aforementioned qualities.

- (2) **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 Board finds that 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 south side of the property where the fence abuts another property is also a fence. There is no adverse effect from having fences side by side.

- (3) **The strict application of the terms of the Zoning Ordinance will not result in practical difficulties in the use of the property.**

The Board finds that the strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. A fence surrounding the location of the pool at the regulated height would not achieve the screening necessary for the applicant to utilize her property.

The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance: None.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 21st day of February 2017.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA



Kou Lasiey
Vice Chairman



Don F. Reitz, AICP
Secretary to the Board

Mr. Reitz took a few minutes to say that he will be retiring in the next few months.

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Being no further business, the meeting was adjourned at 7:50 P.M.