

August 9, 2007

Mr. William J. Mueller  
Village President, and  
Board of Trustees  
Village of Lombard

**Subject: ZBA 07-06; 466 N. Main Street**

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to five feet (5') in the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on June 27, 2007. Keith Tapp, owner of the subject property, presented the petition. He began by outlining the list of documents that were included in the packet received by Zoning Board of Appeals members. He noted that the existing fence has replaced the original six foot (6') fence that was on the property when they purchased their home and that they tried to come to a mutual understanding and reconciliation outside prior to coming before the Zoning Board of Appeals. He then read his narrative that was submitted as part of his petition.

Mr. Tapp finished his presentation by commenting on the staff report. He mentioned that there was no clear line of sight issue related to his fence. He stated that the three inch (3") variance in fence height that is now allowed as a result of the 2005 fence text amendment, is too small. He added that he never received a copy of the fence handout.

Chairperson DeFalco opened the meeting for public comment. No one spoke for or against the petition.

Chairperson DeFalco then requested the staff report.

Michelle Kulikowski, Planner I, presented the staff report. She stated that the petitioner received a permit to install a four foot (4') fence in the corner side yard and rear yard. She mentioned that after the fence was installed the Code

Enforcement Division received a complaint regarding the height of the fence, and staff conducted a site visit and took measurements of the fence from several places inside the yard and from the public sidewalk. She noted that the measured fence height varied due to the change in grade and staff determined that portions of the fence exceeded the maximum allowable fence height, even after considering the allowable variations in fence height for grade variations and decorative finials as permitted under Section 155.205(A)(1)(c)(4). She stated that the fence measured as tall as five feet (5') in some portions of the corner side yard, and therefore, the petitioner is requesting a variation to allow a five (5') fence in a corner side yard.

Ms. Kulikowski stated that there is a change in grade on the subject property. She noted that the elevation is highest at the southeast corner of the fenced area, and the grade slopes to the west and the south. She mentioned that the petitioner has represented the four foot (4') height measurement for the fence was taken at the highest elevation and a laser level was used to extend the fence to the west along the corner side property line. She stated that essentially, the top of the fence does not change as the grade slopes to the west, and therefore, the measured fence height varies depending on where the measurement is taken. She noted that at the southeast corner of the fenced area the fence height is four feet (4') and at the southwest corner, the fence height is five feet (5').

Ms. Kulikowski mentioned that the grade also slopes to the south toward the public sidewalk, which results in a taller fence height measurement on the exterior of the fence than on the interior of the fence. She stated that at the southeast corner of the fenced area, the grade transition is abrupt, resulting in a ditch approximately seven and one-half inches (7.5") deep immediately adjacent to the interior of the fence. She noted that at the highest elevation (southwest corner of the fenced area), the fence measures approximately four feet (4') on the interior of the fence and five feet (5') on the exterior. At the southwestern corner of the property where the grade levels out, the measurement of the fence is five feet (5') on both the interior and exterior side of the fence.

Ms. Kulikowski explained that the Zoning Ordinance definition for a fence specifies that the height is measured from average grade. She also reviewed the Zoning Ordinance definition for average grade. She noted that staff has consistently used the concept of "average grade" for determining the height of structures. She stated that in circumstances where the grade changes substantially, measurements are taken from several points, and these measurements are averaged together to determine the height for the purposes of verifying compliance with the Zoning Ordinance.

Ms. Kulikowski referenced a text amendment approved in 2005, which provided for a small amount of flexibility in the fence height calculation. She explained that the text amendment allows the maximum height of a fence to vary up to three inches (3") in order to allow for grade changes, clearance under fences for maintenance, and reasonable human error. The text amendment also stipulated that fence posts or decorative finials may not cause the fence to

exceed the maximum height limitation by more than three inches (3"). She noted that pursuant to Section 155.205(A)(1)(c)(4), the fence on the subject property may go as high as four feet three inches (4'3") and still comply with code, but because portions of the fence exceed four feet three inches (4'3"), the fence is considered non-conforming.

Ms. Kulikowski stated that staff finds that the grade of the property presents a hardship to a certain degree. She noted that at the southeast corner of the fenced area, the fence boards must be greater than four feet (4') to account for the ditch. Otherwise there would be a substantial gap under the fence when viewed from the public sidewalk. She stated that staff does not support the requested variation for the fence as installed. She mentioned that at the southwestern corner of the property, the grade is leveled out and the fence measures approximately five feet (5') on both the exterior and interior of the fence. She explained that the petitioner has not been able to demonstrate why a five foot (5') fence is necessary at this location and staff finds that the grading does not present a hardship at this location. She noted that the Code already provides some flexibility for minor grade changes and where there are substantial grade changes, fences should be installed in sections so that the top of the fence can change with the grade.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Polley asked why the five foot (5') fence was necessary. Mr. Tapp noted that he had two young children and a ninety-five pound (95 lb.) dog.

Mrs. Newman asked the petitioner why he bought sections of fence that were five feet (5') when he knew they are only suppose to be four feet (4'). Mr. Tapp stated that the fence was built on site and a laser level was used to determine the four foot (4') height.

Dr. Corrado asked if they had a professional build the fence and shouldn't they have read Lombard's regulations? Mr. Tapp stated that they talked to several fence companies and chose Cedar Rustic because they have done a lot of work in Lombard.

Chairperson DeFalco asked about how grade is used as the reference point for determining fence height. If one end of the fence is four feet (4') high and the other is five feet (5') high, would the fence considered to be four and one-half feet (4.5')? Jennifer Backensto, Planner II, stated that essentially the measurements would have to average out to four feet (4') in order to be considered in compliance.

Chairperson DeFalco noted that the north side of their property is not fenced off. He asked what keeps the petitioner's dog in the yard. Mr. Tapp noted that they had a yard sharing agreement and their yard together with the adjacent properties is fully enclosed.

Chairperson DeFalco asked staff whether Cedar Rustic received the courtesy letter that the Village sent out informing fence companies of Lombard's fence regulations. Ms. Backensto

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stated that they had not. Chairperson DeFalco then requested that a fence handout be sent to Cedar Rustic.

Chairperson DeFalco noted another fence variation at School and Division. He asked whether the grade warranted a variation in this case.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 4-0, submits this petition to the Corporate Authorities with a recommendation of denial for the requested variation.

Respectfully,

**VILLAGE OF LOMBARD**

John DeFalco  
Chairperson  
Zoning Board of Appeals