

May 19, 2011

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

Subject: ZBA 11-02; 403 W. Ethel Ave.

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:

- 1) A variation from 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 six feet (6').
- 2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on April 27, 2011. Chairperson DeFalco opened the meeting for public comment.

Eric Nofziger, 403 W. Ethel Ave., presented the petition. Mr. Nofziger stated that there was a six (6) foot fence previously located in the corner side yard of his property. He added that a portion of the fence was destroyed in a recent storm incident. He then stated that they are looking to replace the fence to its original height of six (6) feet. Mr. Nofziger stated that they would like the additional fence height for added privacy and security for his family. He then stated that there are a number of bus routes that circulate through his neighborhood and there are high school students who park and drive through his area. He added that the family has a dog and the additional fence height would prevent the dog from possibly harming a pedestrian.

Referring to the clear line of sight variation, Mr. Nofziger prepared a model of the property, which he shared with the ZBA members. He stated that if he were required to meet the clear line of sight requirements, there would not be adequate clearance between the fence and garage. He also stated that there is a plum tree located in the clear line of sight area and if he had to meet the requirement, the tree would be on the outside of the fence. Lastly, Mr. Nofziger stated that he spoke with a number of the neighbors and none of them had an issue with the proposed fence location.

Chairperson DeFalco asked if there was anyone present to speak in favor or against the petition.

James and Linda Sochnuk, 403 W. Ethel, stated that they submitted a letter in support of the petition, which Michael Toth, Planner I, had distributed to the ZBA members prior to the meeting.

Chairperson DeFalco then requested the staff report.

Mr. Toth then presented the staff report. The subject property is located at the southwest corner of Ethel Avenue and Edson Street. The petitioner is requesting a variation to allow for the replacement of an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The fence is located along the Edson Street side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. The previously existing non-conforming fence was destroyed by a storm incident. The new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

The subject property once contained a solid wood fence six feet (6') in height within the corner side yard and within the clear line of sight area. As the petitioner has indicated, a portion of the previous fence was blown down in a recent storm event. The Zoning Ordinance allows non-conforming fences to remain in existence provided that once a non-conforming fence reaches the end of its useful life any replacement fence will meet current code requirements. In time, this allows for full compliance with the Zoning Ordinance.

Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. As such, the petitioner's replacement of the fence requires that the new fence meet the four-foot height restriction or that a variation be granted. A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area.

Within the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of a canine and safety of their child. Specifically, the petitioner states that the canine would be required to be chained up if they only had a four (4) foot fence and such chain could clothesline their child. While staff recognizes that some of these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship associated with the geographic state of the property.

A clear line of sight area is required when a driveway and the public right-of-way intersect. A triangle is formed with legs extending twenty feet (20') along the property line and twenty feet (20') along the driveway. Within a clear line of sight area fences shall not be greater than two (2) feet in height or of at least 75% open construction. The clear line of sight provisions exist specifically for public safety purposes.

The subject property contains two clear line of sight areas - one north and one south of the existing driveway. The petitioner plans to construct a new fence at six (6) feet in height in both of the required clear line of sight areas. Diagram 1 in the staff report shows the proposed fence indicated by the red line. The clear line of sight triangle is shown in green. A portion of the existing fence still stands to north of the driveway, within the clear line of sight triangle. The petitioner plans to remove that portion of fence and install a new portion of six (6) foot fence on a slight angle; however, the fence would still not meet the clear line of sight area requirements as proposed. The portion of fence that was leveled in the storm incident was located in the clear line of sight area south of the driveway. The petitioner plans to replace that portion of fence with a six (6) foot fence on a slight angle. Conversely, similar to the fence to the north of the driveway, the fence would still not meet the clear line of sight area requirements as proposed.

Concluding, Mr. Toth stated that staff is recommending denial of both variations associated with ZBA 11-02.

Chairperson DeFalco then opened the meeting for discussion by the ZBA members.

Ray Bartels stated that there are a number of buses that go through the petitioner's neighborhood and there is a lot of traffic in that area. He then stated that he is okay with the corner side yard fence height variation, but the petitioner should meet the clear line of sight regulations.

Chairperson DeFalco discussed the dog issue. He mentioned that the property owner is responsible for the behavior of their pets and owning a dog does not constitute a hardship associated with the property. He then stated that the Village does allow fences of open construction to be placed in a clear line of sight area. He added that an open style fence, such as wrought iron, is also permitted at six (6) feet in the corner side yard.

Mr. Nofziger stated that visibility of the dog is an issue; more specifically, if the dog can physically see someone walking by the dog is more apt to try and jump over the fence.

Mr. Tap asked the petitioner why he is unable to meet the clear line of sight requirement.

Mr. Nofziger stated that there is a nice plum tree located in the clear line of site to the south of the driveway. He stated that if the fence were to be angled to meet the clear line of sight, the plum tree would be on the outside of the fence.

Dr. Corrado questioned the six (6) foot height restriction in the corner side yard.

Chairperson DeFalco stated that the old ordinance only allowed fencing to go no higher than three (3) in the corner side yard. He then stated that it was later changed to four (4) feet. He added that the idea behind the height restriction is that tall fences in the corner side and front yard can create a fortress effect. He then stated that the clear line of sight issue is a safety concern and there have been children hit by cars when someone backs out of their driveway and can't see the sidewalk.

Dr. Corrado stated that the answer would be for the petitioner to construct an ornamental fence that is of open construction.

Mr. Toth stated that fences of open construction can be placed in a clear line of sight area and are also permitted at six (6) feet in the corner side yard; however, the petitioner desires to construct a privacy fence for reasons previously discussed.

Mr. Young asked the petitioner if they plan to remove the existing fence in the clear line of sight area to the north of the driveway.

Mr. Toth stated that the submitted plans indicate that the fence is to be removed and replaced. He added the proposed fence would also be located in the clear line of sight to the north of the driveway.

Mr. Young asked if there are two clear line of sight areas next to the driveway.

Mr. Toth stated that there is a clear line of sight area to the north and south of the driveway, as outlined in the staff report.

Mr. Young stated that the clear line of sight distance is more crucial to pedestrians on the sidewalk than it is to cars on the road.

Mr. Nofziger stated that all cars will be required to have back up cameras in the future for this reason.

Chairperson DeFalco stated that there are a number of properties in the immediate neighborhood that meet the corner side yard and clear line sight fence provisions.

Mrs. Newman asked if the petitioner would be required to alter the existing deck to meet the clear line of sight provision.

Mr. Toth stated that if the existing deck were to be removed, it would then have to meet all clear line of sight provisions.

Chairperson DeFalco asked the Board Members if they wanted to vote on the petition as a whole or on each variation separately. The ZBA members all agreed to vote on each variation separately.

Variation #2 - A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

Michael Toth stated that if the clear line of sight variation is to be denied, the petitioner will have to meet the full provisions of the clear line of sight. Moreover, any fencing in the clear line of sight will have to be either two (2) feet or less in height or 75% open construction. He added that if the corner side yard fence height variation were to be approved, that fence would need to be located outside of any clear line of sight areas.

On a motion by Young and seconded by Newman the Zoning Board of Appeals recommended denial of the clear line of sight variation by a 6-0 vote.

Variation #1 - A variation from 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 six feet (6').

On a motion by Young and seconded by Bartels the Zoning Board of Appeals voted 3-3 to approve the variation.

On a motion by Newman and seconded by Tap the Zoning Board of Appeals voted 3-3 to deny the variation.

As the Zoning Board of Appeals could not obtain four votes to either approve or deny the variation, the fence height variation for the corner side yard will be forwarded to the Village Board with no recommendation.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals