

October 15, 2009

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

**Subject: ZBA 09-09; 1107 Woodrow Avenue:**

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 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') and a variation to Section 155.205(A)(1)(c)(3) of the Lombard Zoning Ordinance to increase the maximum height of a fence in a rear yard abutting the front yard of an adjacent lot to six feet (6') where a maximum height of four feet (4') is permitted.

The Zoning Board of Appeals conducted a public hearing on September 23, 2009.

Tim Hogan, 1107 Woodrow Avenue, owner of the subject property, presented the petition. Mr. Hogan stated that he purchased the subject property in 2003 and the fence was already on the property. He added that he did not know about the fence requirements when he purchased the property. Mr. Hogan stated that he is a member of the Lombard Fire Department and he is required to stay overnight at the fire station for sometimes 60 hours per week. He added that the fence provides safety for his family while he is gone. He stated that he has invested money into the property to make it more presentable. He added that he put in new windows and siding. He stated that he is also going to install new sidewalks. Mr. Hogan stated that the neighbors love the fence because all of the neighborhood kids play in the back safely. He then submitted a petition signed by all of the neighbors in favor of the fence. He added that there are 14 sex offenders within a one and a half mile radius of his property. Mr. Hogan then stated that he would have gotten a permit for the fence had he known about the requirements. He added that the fence would be costly to take down and his wife is currently unemployed, due to medical reasons. He reminded the ZBA that the fence was preexisting. Lastly, he stated that he is away from

his family a lot, but he always makes sure to check on his family, whenever possible.

Chairperson DeFalco opened the meeting for public comment.

Jim Kartholl, 1117 W. Woodrow Avenue, spoke in favor of the variation. Mr. Kartholl stated that he has lived at his property (across the street from the petitioner) since 1996 and there has always been a fence located on the petitioner's property. He also stated that the fence was there, prior to the petitioner purchasing the property. Mr. Kartholl stated that all of the neighbors appreciate the fence because the neighborhood children all play in the petitioner's back yard.

Chairperson DeFalco then requested the staff report.

Michael Toth, Planner I, presented the staff report. The subject property is located at the southwest corner of Woodrow Avenue and Third Avenue. The petitioner is requesting a variation to maintain a solid vinyl fence at a height of six feet (6') where only four feet (4') is permitted.

The petitioner purchased the subject property in June, 2003. According to the petitioner, the subject fence was already present on the property when the property was purchased. Staff researched the permit history of the property and found that no permit was ever issued for the fence. Since the petitioner wishes to maintain the fence as constructed, a variation is required.

The fence is six (6) feet, where only four (4) feet is permitted in the corner side yard; therefore, the fence is considered nonconforming by Code standards. Staff notes that the house itself is also nonconforming with respect to the side yard required setback as it is located only eleven (11) feet from the property line along Third Avenue, where twenty (20) feet is required. A small portion of the fence is also located within a clear line of sight area, which originates from the neighbor's driveway to the south. The fence also abuts the front yard of that same property directly to the south along Third Avenue, which would require the fence to be four (4) feet or less along the thirty (30) foot rear yard area.

On the southeast corner of the existing fence, a six foot (6') portion is located within the twenty foot (20') clear line of site area, which extends north, from the property to the south's driveway. As such, the petitioner has agreed to address the issue by placing the fence on an angle, as to not interfere with the aforementioned clear line of sight area. By replacing the fence, the property would no longer have any clear line of sight issues.

Although the petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and safety, staff does not support the petition since there is not a demonstrated hardship involving the physical characteristics of the property. As the six-foot high fence is within the corner side yard, staff is concerned about the obstruction it creates.

Furthermore, the fence blocks the view from the front yard of the neighboring property; as such, staff is recommending denial of the petition.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Bedard asked the petitioner if the fence had previously existed and if there would be any changes made to the fence.

Tim Hogan replied that the fence would remain the same with the exception of the corner piece that was cut out to make way for the clear line of site area.

Mr. Young asked why this petition is before the ZBA.

Mr. Toth responded that the fence was found to be in violation of Code with respect to the height in the corner side yard and rear yard, abutting the neighbor's front yard. He stated that there was no permit required for fences prior to 2000, but they still needed to meet the Code requirements.

Mr. Young asked the petitioner if the fence had previously existed.

Tim Hogan replied, yes.

Mr. Tap asked if the neighbor to the south was okay with the fence.

Tim Hogan replied, yes, that his neighbor's name is on the submitted neighborhood petition.

Chairperson DeFalco mentioned the fence case on Washington that was in excess in height in the corner side yard. He added that the ZBA recommended denial as the fence was new and it blocked the neighbor's view from their house. He then mentioned that this case differs because this is a new property owner, who did not erect the fence. He then asked staff where the clear line of sight area is measured and if it is sufficient.

Mr. Toth described the clear line of site area on the subject property. He then stated that the petitioner did properly correct the clear line of site area as it pertains to the fence.

Chairperson DeFalco asked staff if the petitioner could use a fence that was 75% open construction.

Stuart Moynihan, Associate Planner, stated that a fence taller than four feet and of 75% open construction could only be done if the property abutted another corner lot, which in this case it does not.

Chairperson DeFalco mentioned the past fence case on School and Division. He stated that it was a new home with a fence in excess of the required height. He stated that the variation was denied and the fence had to be cut down to the required four feet.

Dr. Corrado asked the petitioner if their fence could be cut down.

Tim Hogan replied by stating that the fence could not be cut down because it is constructed of vinyl panels.

Mr. Tap asked staff why the petitioner was required to have a permit.

Mr. Toth stated that regardless of the outcome of the variation, a fence permit is required – whether or not they have to cut it down or relocate it.

Chairperson DeFalco stated that the case before the ZBA is for a preexisting fence. The survey from 2002 already indicates that a fence was located on the property; therefore, there was a fence at that location prior to 2002.

Mr. Bedard stated that he does not believe that the petitioner should be held accountable for the fence as it was there when he purchased the property. He then asked how this issue just came about now.

Mr. Toth stated that it was found in violation based upon a complaint to the Code Enforcement Department. He then reminded the ZBA that the four foot fence height requirement in the corner side yard is code and it has been supported time-and-time-again by the Village Board. He mentioned the ZBA meetings involving the Board, pertaining to fence height.

Chairperson DeFalco asked what would happen if the variation was not granted.

Mr. Toth stated that the fence would then have to come into conformance with Village Code. He stated that the fence would either have to be lowered, moved or taken down.

Mr. Bedard stated that he was ready to make a motion to recommend approval of the variation. He stated that a condition should be added which states that if the fence is damaged or destroyed by more than 50% it would have to come into conformance with Code. Mr. Bedard also stated that he recommends that the petitioner's public hearing fees be waived as the fence was there when he purchased the property.

Mr. Toth stated that the ZBA does not have the authority to waive public hearing fees. He added that only the Village Board can waive those fees.

Chairperson DeFalco stated that he would be ready for a motion of approval, which may include a condition of approval, should the ZBA vote for approval.

Mr. Bedard made the motion of approval, which was seconded by Mr. Tap.

Chairperson DeFalco stated that he wanted to comment on the case before a vote was to be taken. He stated that the ZBA has historically been strict on fence height variations. He then mentioned the September 18, 2008 special meeting of the ZBA and Village Board regarding fence height. He then added that the ZBA asked the Trustees to change the Ordinance, which they did not do. He then made representation that there are justifiable means to grant a variation and he is concerned with the strict interpretation of code. He stated that because the petitioner did not construct the fence and it has been located at that location for a number of years, a variation could be justified. Lastly, he stated that he would go against his usual voting on this matter and vote in favor of the petition.

Mr. Young stated that he agrees with Chairperson DeFalco's comment.

On a motion by Mr. Bedard and a second by Mr. Tap, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board approve 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') and a variation to Section 155.205(A)(1)(c)(3) of the Lombard Zoning Ordinance to increase the maximum height of a fence in a rear yard abutting the front yard of an adjacent lot to six feet (6') where a maximum height of four feet (4') is permitted, subject to the following condition:

1. In the event that the fence is damaged or destroyed by more than 50% of its value, the fence shall be required to comply with the fence height provisions listed in the Zoning Ordinance.

Respectfully,

**VILLAGE OF LOMBARD**

John DeFalco  
Chairperson  
Zoning Board of Appeals