

ANALYSIS

SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on March 20, 2008.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Written narrative, prepared by the petitioner, describing the existing fence and need for a variation.
4. Plat of Survey prepared by Marchese Surveying, Inc., (undated).

DESCRIPTION

The subject property is located at the southeast corner of Washington Boulevard and Westmore-Meyers Road. The petitioner is requesting a variation to allow the installation of a fence four (4) feet in height with a one (1) foot lattice extension, a total height of five (5) feet. The lattice extension will consist of boards two (2) feet in width spaced two (2) feet apart. The new fence will replace an existing fence greater than five (5) feet in height that is in disrepair. The proposed fence would be set back approximately eleven (11) feet from the side lot line. As the existing nonconforming fence is being replaced, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

The Private Engineering Services Division has no comments on the subject petition.

Public Works Engineering

Public Works Engineering has no comments regarding this request.

FIRE AND BUILDING

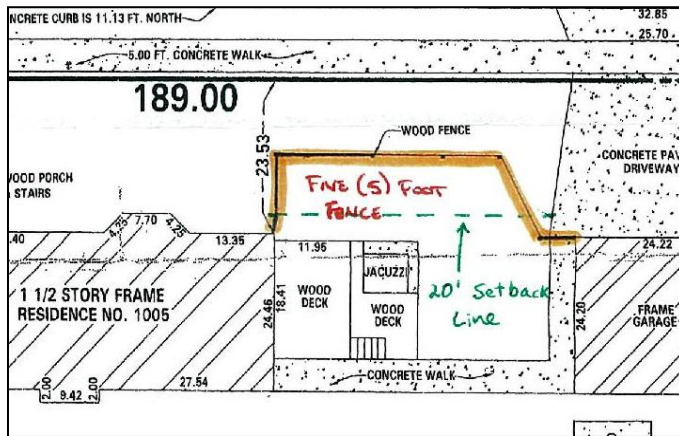
The Fire Department/Bureau of Inspectional Services has no comments on the subject petition.

PLANNING

The subject property currently has a legal nonconforming wood fence slightly greater than five feet in height within the corner side yard. The Zoning Ordinance allows nonconforming fences to remain in existence provided that once a nonconforming 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. Five-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 their request, the petitioners have raised a few issues related to safety and neighborhood character. While staff recognizes these points are valid to a point, staff does not believe these concerns are demonstrative of a hardship. The petitioners also argue that the construction of a five-foot fence set back twenty (20) feet from the corner side property line as required would create an awkward situation due to the placement of a tree and an existing deck. Staff does not find this to be the case. A fence set back twenty (20) feet or slightly further would be located between the tree and the existing deck. This can be inferred from the site plan and photograph below:



The fence proposed fence does not fall within a twenty-foot by twenty-foot clear line of sight triangle at the driveway.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." The following standards have not been affirmed:

1. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be applied.*

Staff finds that there are no conditions related to the property that prevent compliance with the fence height regulations. The petitioner's property does not have physical surroundings, shape, or topographical features that differ substantially from other corner lots in the neighborhood as to be demonstrative of a hardship. The property is relatively flat and the existing topography does not impact the ability of the property owner from meeting the fence height provisions.

2. *The conditions upon which an application for a variation is based are unique to the property for which the variation is sought, and are not generally applicable to other property within the same zoning classification.*

Staff finds that the conditions are not unique to the subject property. Many other properties with a similar layout and design have been able meet the established regulations.

4. *The alleged difficulty or hardship is caused by this ordinance and has not been created by any person presently having an interest in the property.*

Staff finds that the fence could be constructed per the ordinance requirements either by lowering the fence height to four (4) feet or changing the location so that the fence is outside the corner side yard. The hardship has been created by the petitioner as a result of the preference for the fence's height and location.

Staff recommends that the petition be denied on the grounds that a hardship has not been demonstrated.

FINDINGS AND RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations for the requested variation. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Zoning Board of Appeals make the following motion recommending **denial** of the aforementioned variation:

Based on the submitted petition and the testimony presented, the requested variation **does not comply** with the Standards required for a variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings included as part of the Inter-departmental Review Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 08-04.

Inter-Departmental Review Group Report Approved By:

David A. Hulseberg, AICP
Assistant Village Manager/Director of Community Development

DAH

att-

c: Petitioner