

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda


Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
X Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: March 24, 2005 (B of T) Date: April 7, 2005

TITLE: ZBA 05-02: 322 E. Elm Street

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition 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 six feet (6') in the R2 Single-Family Residence District. (DISTRICT 4)

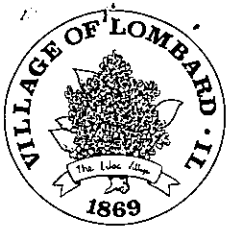
The Zoning Board of Appeals recommended approval of this petition with conditions.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X W.T. Lichter Date 3/25/05

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



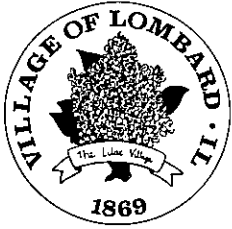
MEMORANDUM

TO: William T. Lichter, Village Manager
FROM: David A. Hulseberg, AICP, Director of Community Development *Delt*
DATE: March 24, 2005
SUBJECT: ZBA 05-02: 322 E. Elm

Attached please find the following items for Village Board consideration as part of the April 7, 2005 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 05-02;
3. An Ordinance granting approval of the requested variation; and
4. Plat of survey associated with the petition.

Please contact me if you have any questions regarding the aforementioned materials.



VILLAGE OF LOMBARD

255 E. Wilson Ave.
Lombard, Illinois 60148
630/620-5700 FAX: 630/620-8222
TDD: 630/620-5812
www.villageoflombard.org

Village President
William J. Mueller

Trustees
Tyler L. Williams, Dist. 1
Richard J. Tross, Dist. 2
Karen S. Koenig, Dist. 3
Steven D. Sebby, Dist. 4
Kenneth M. Florey, Dist. 5
Rick Soderstrom, Dist. 6

Village Manager
William T. Lichter

March 17, 2005

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

Subject: ZBA 05-02; 322 E. Elm 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 from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner yard from four feet (4') to six feet (6') the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on March 23, 2005. Larry Coveny presented the petition. Mr. Coveny stated that the fence in question had been six feet for over fifteen years. He stated that it was his intention to create an opening on the fence to give a clear line of sight. He stated that he has nearly collided with bicyclists as he exited the property. He stated that he did not obtain a permit because he did not know that he needed one since he was cutting the fence down. Mr. Coveny stated that he is not increasing the size or height of the fence. He stated that the neighbors approve of the change. Mr. Coveny stated that he was not informed that their fence was on a nonconforming fence list.

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

Angela Clark, Planner II, presented the staff report. She stated that the petitioner's fence was nonconforming and was recognized as such during a fence inventory conducted in the year 2000. She stated that the petitioner's modification of the fence required a variation since two feet of the fence had been removed and replaced with new materials. Ms. Clark stated that staff conferred with Village Counsel on the matter and it was counsel's opinion that the change would necessitate a variation. Ms. Clark noted that the

"Our shared *Vision* for Lombard is a community of excellence exemplified by its government working together with residents and business to create a distinctive sense of spirit and an outstanding quality of life."

"The *Mission* of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

Re: ZBA 05-02
April 7, 2005
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petitioner's fence was identified on a nonconforming fence list, however the inventory was conducted for internal purposes and homeowners were not notified. She stated that there was no demonstrated hardship and staff has maintained recommendations of denial for requests that involved the placement of lattice on a four foot fence, therefore staff recommended denial of the petition.

Chairperson DeFalco opened the meeting for discussion among the members. Chairperson DeFalco stated that the provisions of the code would allow for modifications of a nonconforming structure if the modifications were less than fifty percent. He stated that the modifications that were made appeared to be considerably less than fifty percent.

Ms. Clark stated that the petitioner was allowed to make minor changes and repairs under the code provisions, however the placement of the new materials required the variation. She stated that if any portion of the fence were removed the entire fence would have to comply with the current code requirements.

Mr. Bedard asked if the petitioner could replace the fence if it were damaged. Ms. Clark stated that repairs could be made to the fence if the damage was less than fifty percent of the fence. She stated that if more than fifty percent of the fence were damaged the fence would be restricted to four feet.

Mr. Young stated that the fence was going from nonconforming to somewhat conforming.

Chairperson DeFalco asked if the petitioner planned to continue the modifications for the length of the fence. Mr. Coveny stated that he originally planned to extend the modification for the length of the fence, but limited it to the area after receiving the notice from code enforcement.

Mr. Polley stated that the fence looked as though it were new or had been painted. Ms. Clark stated that staff had been to the property and believed the fence was an old fence as the backside of the fence was entirely gray. She stated that the side facing the street appeared to have been power washed.

The ZBA members discussed what instances would require the entire fence to meet current code and which instances would be conform with the repair and modification of nonconforming use provisions of the code.

Chairperson DeFalco stated that the modified portion of the fence was conforming when the petitioner cut it. He stated that the modified portion went from conforming to nonconforming once the lattice was attached to it.

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The ZBA members discussed what instances would require the entire fence to meet current code and which instances would conform with the repair and modification of nonconforming use provisions of the code.

Chairperson DeFalco stated that the modified portion of the fence was conforming when the petitioner cut it. He stated that the modified portion went from conforming to nonconforming once the lattice was attached to it.

The ZBA members discussed illegal versus nonconforming fences. Ms. Clark stated that the previous fence variations mentioned were illegal fences, as the code requirements were in place and those petitioners knowingly constructed fences outside of the requirements.

Mr. Young stated that the petitioner's fence was quite different from requests that have previously appeared before the board. He stated that the petitioner's fence was an existing fence that was nonconforming and the modifications have brought it more in line with the current code requirements.

Mr. Bedard agreed and stated that the modified fence was more conforming than its previous state.

Mr. Young asked if the variation were to be granted whether the owner could replace the entire fence with a new fence of six feet in height. Ms. Clark stated that the variation would be granted in perpetuity.

Chairperson DeFalco reiterated that previous petitions had been for newly erected fences rather than nonconforming fences that had been modified. He asked about the status of previous petitions that were denied. He asked what time frame the petitioners had been given to make the necessary changes. Ms. Clark stated the petitioners were given sixty days to modify their fences.

Chairperson DeFalco asked if the ZBA could include a timeframe for compliance such as ten years. Ms. Clark stated that she would have to consult Village Counsel regarding that.

Mrs. Newman noted that previous petitions had been approved for existing structures with provisions that any new structures meet code.

Mr. Polley asked if the petitioner were required to perform the modifications to the entire fence.

Mr. Young stated that he believed the option should be left to the petitioner.

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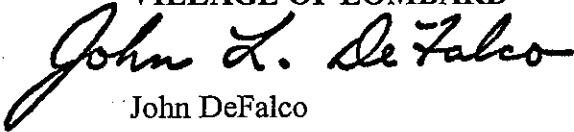
After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals submits this petition to the Corporate Authorities with a recommendation for **approval** of the requested variation subject to conditions.

1. That the petitioner shall apply for and receive a building permit for any proposed fencing or alterations to the fence on the subject property.
2. That the variation shall be limited to the existing fence and proposed improvements. Shall the fence be damaged or removed in the future, any new fencing on the property shall meet all current height requirements.

The roll call vote was 4 to 1 to recommend approval of ZBA 05-02.

Respectfully,

VILLAGE OF LOMBARD



John DeFalco
Chairperson
Zoning Board of Appeals

att-

ANALYSIS

SUBMITTALS

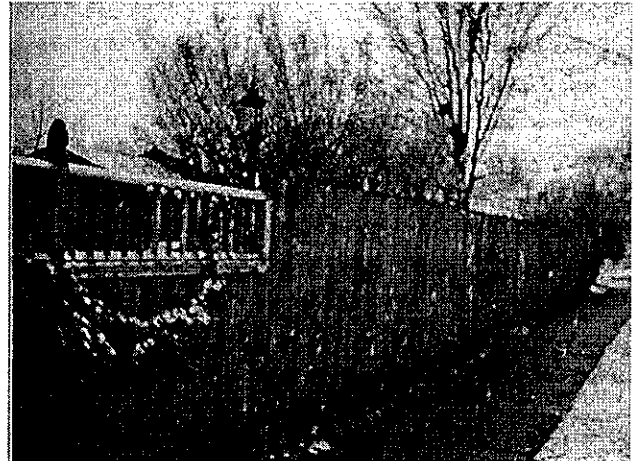
This report is based on the following documents, which were filed with the Department of Community Development on January 19, 2005.

1. Petition for Public Hearing
2. Response to the Standards for Variation
3. Plat of Survey
4. Photographs of the Subject Property

DESCRIPTION

The petitioner's fence was a nonconforming fence as it is located in a corner side yard and constructed of solid wood at approximately six feet in height. The petitioner recently modified a portion of the fence by cutting approximately two feet from the top of the fence and replacing it with two feet of new lattice type construction. The addition of the new materials eliminates the fence's nonconforming status, therefore the fence must now meet the current height restriction of four feet or less. The petitioner would like to extend the modification for the entire length of the fence if the variation is granted.

PHOTOGRAPHS OF THE SUBJECT PROPERTY



ENGINEERING

Private Engineering Services

From an engineering or construction perspective, PES has no comments.

Public Works Engineering

Public Works Engineering has no comments or changes.

FIRE AND BUILDING

The Fire Department/Bureau of Inspectional Services has no comments.

PLANNING

As the members are aware, the fence height regulations are currently under review. As a final decision has not been made, the existing requirements remain in effect. The petitioner's fence was a nonconforming solid six foot fence located in the corner side yard. The petitioner modified the fence by removing the upper two feet of the fence and replacing it with two feet of new materials. The Zoning Ordinance states that any nonconforming structure that is damaged or destroyed by any means must meet the current zoning requirements. As such, the petitioner's modifications would require that the fence now meet the four-foot height restriction.

A variation may only be granted if there is a demonstrated hardship. The petitioner raised several issues within the response to the Standards for Variations that staff believes are of merit. However, staff cannot support the variation for the following reasons. The uppermost two feet of the fence was removed, thereby eliminating visual obstructions that may have existed when the fence was six feet in height. This type of modification would be consistent with the existing code requirements. It is the placement of the additional two feet of materials that creates the added encroachment.

There have been a number of fence petitions in which property owners proposed to add lattice to existing four foot fences and staff has maintained recommendations of denial. Staff has a list of nonconforming fences as of August 2000. The petitioner's property is identified on the list. Staff believes that as the life span of nonconforming fences expires these fences can be replaced with fences that meet current code requirements. If a variation were granted, a fence exceeding the height requirements now exists as a matter of right rather than be subject to meeting the current regulations upon its replacement. Furthermore, staff finds that the following standards are not affirmed.

1. *That because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner has been shown, as distinguished from a mere inconvenience if the strict letter of the regulations were to be applied.* Staff finds that there is no demonstrated physical hardship, nor are there any unique topographical conditions related to this property that would prevent compliance with the ordinance.

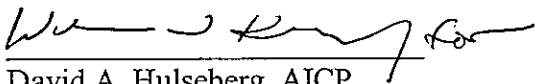
2. *The conditions upon which an application for a variation is based are unique to the property for which the variation is sought, and are not generally applicable to other property within the same zoning classification.* The petitioner's lot is comparable to other corner lots in the single-family residential district. Staff finds that there are not any unique differences between the petitioner's lot and others with the same classification.
3. *The alleged difficulty or hardship is shown to be caused by this ordinance and has not been created by any person presently having an interest in the property.* Staff finds that the hardship has not been created by the ordinance. A permit was not obtained for the modification to the fence. If the petitioner applied for a permit prior to beginning construction on the fence, staff would have informed them of the consequences of altering the fence.

FINDINGS AND RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations for the requested increase in maximum allowable height for a fence in a required corner side yard. 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 requested variation:

Based on the submitted petition and the testimony presented, the requested fence height 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 recommend to the Corporate Authorities **denial** of ZBA 05-02.

Inter-Departmental Review Group Report Approved By:



David A. Hulseberg, AICP
Director of Community Development

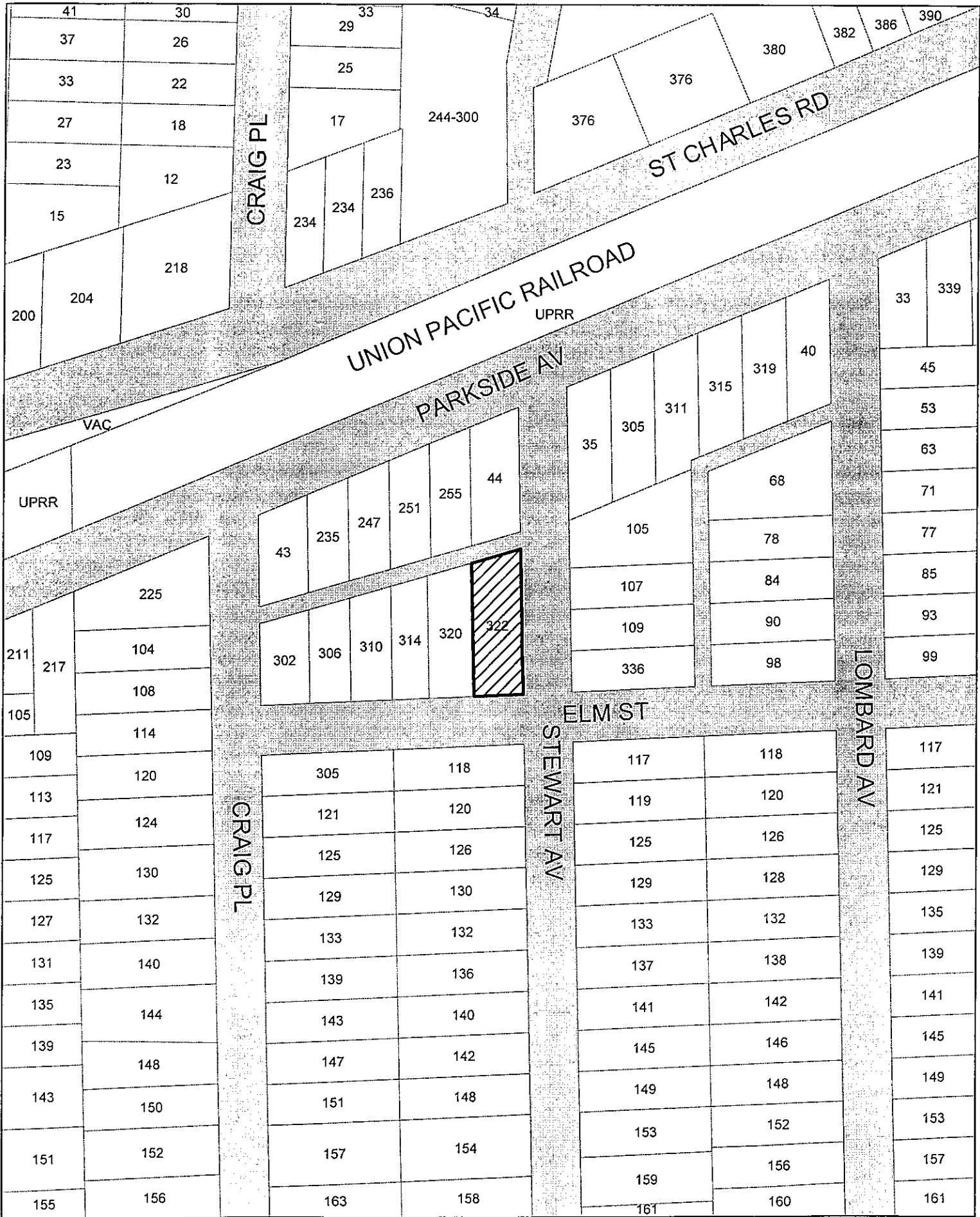
DAH:AC

att-

c: Petitioner

Location Map

ZBA 05-02: 322 E. Elm Street



Address of Property: 322 E. Elm St., Lombard IL

Petitioners: Larry & Jodi Coveny, Owners, 322 E. Elm St., Lombard, IL, 627-0588

A detailed response to the Standards for Variations of the Lombard Zoning Ordinance – Section 155.103.C.7 of the Lombard Zoning Ordinance:

1. The particular hardship is caused by the application of current zoning ordinance on an existing (grandfathered) fence located on the street-(east) side of a corner lot that is a solid wall, 100+ feet long and 6 feet tall, erected by the previous owner (prior to November 1994 when we assumed ownership).

If the strict letter of the regulations were to be applied, this fence wall could not be adapted to a design that is actually more closely aligned with height and “open” design encouraged by the village by disallowing the creative application of a decorative cap by the current owner that is both in keeping with the character of the house and the style of the fence on the remaining sides of the back yard.

2. The conditions upon which an application for a variation is based **are definitely unique to the property (as stated in 1. above)** for which the variation is sought, and are not generally applicable to other property within the same zoning classification.
3. The purpose of the variation is **not** based on **any** desire to increase financial gain. Rather, quite the contrary. The purpose is for safety (to the owners, their guests and neighbors), improved security and to exhibit a more welcoming, neighborly “face” to the homes surrounding 322 E. Elm Street.
4. The difficulty or hardship is caused by the application of the current ordinance and has not been created by any person having an interest in the property.
5. The granting of the variation **will not be injurious to other property** (location is the street side of a corner lot) or to improvements in the neighborhood in which the property is located and **will actually improve public safety and security**:
 - a. A lower profile will allow more visual access of the yard and house, discouraging would-be intruders by providing less of a screen to hide behind.
 - b. A better visual line of sight from the house to the street.
 - c. The ability to see bicyclists and pedestrians passing on the sidewalk outside the fence so as to reduce or eliminate the chance of a collision with people exiting the yard through the gate in the fence.
6. The granting of the variation will not alter the essential character of the neighborhood. **Quite the contrary**, we believe that the sought variation will accomplish the following objectives:

- a. An “open work” cap with a vertical “stripe” design is more consistent with the open picket design of the fence on the west side of the back yard (see plat of survey) between our lot and the adjoining neighbor’s property.
 - b. A friendlier, more welcoming entrance to the home’s Eastern door – the one most used by residents, guests and neighbors. Developing and maintaining strong relationships with neighbors is an important priority in this neighborhood. The redesign is intended to remove an unintentional “keep out” impression that the taller original fence wall implied. **(Please see the letters of support provided by neighbors.)**
 - c. The changes add an Arts & Crafts style to the plain fence – a style more in keeping with the age and style of the house.
7. Since the proposed variation is an 18” **reduction of height** along the 100+ foot fence wall and **the addition of an open pattern cap (see photos)**, the adjustments **will not impair** an adequate supply of light and air to adjacent property because of its location on the street side of the corner lot and the more open, lower profile of the cap!

The proposed variation **has no impact** on the congestion of the public streets; **has no impact** on the danger of fire; **does not impair** natural drainage or create drainage problems on adjacent properties **because there is no adjacent property** on the east side of this corner lot.

The proposed variance **does not endanger** the public safety (see 5. above), nor does it in any way affect or diminish or impair property values within the neighborhood.

Address of Property: 322 E. Elm St., Lombard IL
Petitioners: Larry & Jodi Coveny
Description of Request:

On the East side (street side) of our corner property, we are seeking permission to alter the existing fence.

The fence was installed by previous owners and has been existing as seen in the photos and on the plat of survey since we moved into the property November, 1994. In the Southeast corner, we began to adapt the design by removing 18 inches off the top of the structure and adding a decorative “open” designed cap (see photos).

We sought to accomplish the following objectives with these changes:

1. Security:
 - A lower profile that would allow more visual access of the yard and back door for safety sake from the street, discouraging would-be intruders by providing less of a screen to hide behind.
 - A better visual line of sight from the house to the street.
2. Safety:
 - The ability to see bicyclists and pedestrians passing on the sidewalk outside the fence so as to reduce or eliminate the chance of a collision with people exiting our yard through the gate in the fence.
3. Good Neighbors:
 - A friendlier, more welcoming entrance to our home’s Eastern door – the one most used by friends and neighbors. Developing good relationships with our neighbors is an important priority to us, so we sought to remove an unintentional “keep out” impression that the taller original fence structure implied.
 - The changes add a Mission Style design to a plain fence, a style more in keeping with the age and design of the house.
 - The open work cap with a vertical “stripe” design replicates the open picket design of the fence surrounding the North and West side and Southwest corner of the back yard (see plat of survey).

Since beginning work in the Southeast corner, we have received compliments on the changes from: neighbors who live across the street on Stewart (100 South Stewart) block, several neighbors who live in the 200 South Stewart block and the neighbors next door, directly to the West of us on Elm Street.

January 30, 2005

Village of Lombard
Zoning Board of Appeals
255 E. Wilson Avenue
Lombard, IL 60148

Re: Fence variation for 322 E. Elm Street, Lombard, IL

To whom it may concern:

This letter is being written on behalf of the above mentioned address. The fence in question has been modified with the results being both appropriate and pleasurable for our neighborhood and the Village of Lombard. Living directly across from the house we view the fence from the front of our house and find it much more appealing, as we are able to see more of the house and hence the neighbors. We do not object to the changes or will not in the future and feel a variance should be granted.

Regards,

A handwritten signature in cursive script that reads "Greg & Bev Parks". The signature is written in black ink and is positioned above the typed name.

Greg and Bev Parks
107 S. Stewart Avenue
Lombard, IL 60148

February 4, 2005

Lombard Village Hall
255 E. Wilson Ave.
Lombard, IL 60148
Attn: Zoning Board of Appeals
Re: petition ZBA 05-02

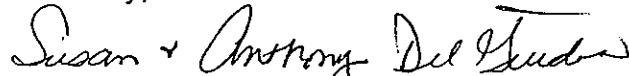
To Whom It May Concern:

We are writing this letter on behalf of Larry and Jody Coveny, who reside at 322 E. Elm St., Lombard, IL 60148 regarding petition ZBA 05-02. We have lived two houses west of the Coveny's for the past four years and have nothing but positive things to say about them and the property where they reside. Jody and Larry take great pride in their home and property and have completed many improvement projects in just the short time we have known them.

Jody and Larry are the kind of people that anyone would be lucky to have as neighbors. They are considerate of everyone around them and always willing to lend a helping hand. One example of this generosity is that during the winters, Larry uses his snow blower to clear off the sidewalk on the entire block's parkway. This is a great service for those of us who only have shovels and the elderly neighbors, not to mention the many commuters who walk past our houses every day.

We understand that the Village's concern is to maintain the integrity of its properties. Jody and Larry voluntarily comply. They have a beautifully maintained cedar fence that surrounds their property and have recently made some amendments to even further its beauty. We have no doubts that they will continue to maintain the appearance of their property and hope that you will allow them to continue with their latest improvement project.

Sincerely,



Susan and Anthony Del Guidice
314 E. Elm St.
Lombard, IL 60148
(630) 932-1696

February 5, 2005

To: The Village of Lombard Zoning Board of Appeals
From: Michael and Yvonne Lanners – 320 E. Elm St. Lombard
Subject: Petition ZBA 05-02, Coveny Residence petition

Dear Zoning Board of Appeals,

It has come to our attention that a variance is needed in order for the fence at the Coveny Residence to remain at its present height. As immediate next door neighbors to the Coveny's, we feel that The Board of Appeals should know that we support them 100% in their efforts to modify their existing 6' fence, which is of legal height due to it's installation several years ago by the previous owners. The Coveny's are enhancing the fence's appearance with quality wood craftsmanship. The modifications greatly improve the esthetics of the fence and, because it is no longer a solid structure all the way up to the 6' height, visibility, light penetration and air circulation is obviously improved. The fence has a beautiful custom look and the vertical balusters running along the top, actually give it the appearance of a much shorter fence. The Coveny's modifications have only improved the appearance of their residence, which ultimately benefits us all. We are fortunate to have residents that take such care of their property.

Sincerely,

A handwritten signature in cursive script that reads "Michael & Yvonne Lanners". The ink is dark and the handwriting is fluid and legible.

Michael and Yvonne Lanners
320 E. Elm
Lombard, IL 60148
630-916-1838

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A VARIATION
OF THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(ZBA 05-02: 322 E. Elm)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, the subject property is zoned R2 Single Family Residence District; and,

WHEREAS, an application has been filed with the Village of Lombard requesting a variation from Title 15, Chapter 155, Section 155.205 (A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height from four (4) feet to six (6) feet; and,

WHEREAS, a public hearing has been conducted by the Zoning Board of Appeals on March 23, 2005 pursuant to appropriate and legal notice; and,

WHEREAS, the Zoning Board of Appeals has forwarded its findings and recommendations to the Board of Trustees with a recommendation of approval of the requested variation; and,

WHEREAS, the President and Board of Trustees does concur with the findings of the Zoning Board of Appeals; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interest of the Village of Lombard to approve the requested variation subject to conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

Ordinance No. _____

Re: ZBA 05-02

Page 2

SECTION 1: That a variation is hereby granted from the provisions of Title 15, Chapter 155, Section 155.205 (A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height from four (4) feet to six (6) feet, subject to the conditions noted in Section 3 below.

SECTION 2: This ordinance is limited and restricted to the property generally located at 322 E. Elm, Lombard, Illinois, and legally described as follows:

LOT 12 IN BLOCK 3 IN CAMBRIDGE MANOR, BEING A SUBDIVISION IN THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 1924 AS DOCUMENT 178816, IN DUPAGE COUNTY, ILLINOIS.

Parcel No: 06-08-115-012

SECTION 3: This ordinance shall be granted subject to compliance with the following conditions:

1. That the petitioner shall apply for and receive a building permit for any proposed fencing or alterations to the fence on the subject property.
2. That the variation shall be limited to the existing fence and proposed improvements. Shall the fence be damaged or removed in the future, any new fencing on the property shall meet all current height requirements.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2005.

First reading waived by action of the Board of Trustees this _____ day of _____, 2004.

Passed on second reading this _____ day of _____, 2005.

Ayes: _____

Ordinance No. _____

Re: ZBA 05-02

Page 3

Nayes: _____

Absent: _____

Approved this _____ day of _____, 2005.

William J. Mueller, Village President

ATTEST:

Barbara A. Johnson, Deputy Village Clerk

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