

April 20, 2009

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

Subject: ZBA 09-01; 418 W. Wilson Avenue

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 approve the following actions for the subject property located within the R2 Single-Family Residence District:

1. A variation from Section 155.407(H) of the Lombard Zoning Ordinance to reduce the minimum required open space on the subject property from fifty percent (50%) to thirty-six and one half percent (36.5%).
2. A variation from Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for a open deck not over three feet (3') above the average level of the adjoining ground.

The Zoning Board of Appeals conducted a public hearing on April 13, 2009.

John Vittorini, 418 W. Wilson Ave., presented the petition. He stated that the asphalt driveway has been in the same configuration for 30 years. Regarding open space, he stated that he telephoned the Village and was told that a paver patio did not require a permit. The garage was built in 1980 and recently destroyed by fire. He applied for a permit to have it rebuilt. He indicated that there was a wooden deck for over 20 years where the new deck is. He installed the pavers and was never told of the need for a variance. He stated that it was built on the fence line. He stated that he applied for all permits that he knew were necessary and that they were approved.

Jack Kozar, 250 E. St. Charles Rd., stated that he is the petitioner's attorney. He asked for the Village's help. John has lived for 30 years in Lombard. He

has raised a family that are good members of the community. He has spent a lot of time and equity in his home. The Vittorinis are good examples of Lombard pride. Money and time spent into house. He stated that there are two variances before the ZBA: a setback for the deck and increased impervious space. He stated that the deck made of paver stones is required to be setback two feet. The deck was built at about ½ foot. However, the deck was built in the footprint of the old wooden deck. Mr. Kozar stated that the staff report say that these setbacks are needed to limit bulk on the property, to protect the privacy of neighbors, and to prevent encroachment. He stated that he did not believe the deck being set at its current location would cause a loss of privacy due to the adjacent privacy fence. He also stated that if the deck were constructed at the required setback there would be a ravine which would be dangerous.

Mr. Kozar addressed the Standards for Variations as they relate to the deck. He stated that there is a hardship to the owner in the cost of removal of the items. He stated that there would be a ravine which would be dangerous. He stated that the request for a variation is not based upon a desire for financial gain as the petitioner does not plan to sell his home. He stated that the deck is not visible from the street or neighbors. He stated that there would be no change to the neighbor's privacy. Mr. Kozar stated that Mr. Vittorini had no intention of wrong doing in this matter. He had the impression that a paver patio does not require permit. He stated that the paver patio was there for 2 months while all construction was occurring. There was no mention of the patio by any of the inspectors. He stated that the patio will not be a threat to the public. Mr. Kozar stated that the deck and the Vittorini's property as a whole improve the character of the neighborhood. He stated that there would be no impairment of light and air to other properties. Mr. Kozar continued by stating that they were talking about 1.5 feet for a deck that is not visible outside of the property and is adjacent to a 6 foot fence.

Mr. Kozar addressed the Standards for Variations as they relate to open space. He stated that the properties surrounding the Vittorinis' property has been flooding for 30 years, water issues are not recent. He also stated that rainfall has been like last year in that it is above average. He stated the petitioner obtained permits when necessary and never tried to hide anything from the Village.

Mr. Kozar stated that the driveway was installed per permit which was issued in September of 2008. At the time of this permit, the paver patio had been in existence for two and a half months. At this point, Mr. Kozar referred to exhibit I which depicted dimensions on a plat of survey. He stated that the driveway was resurfaced per the plan. Kozar showed older pictures of the driveway. Then, he showed pictures of how the driveway is now. He asked the ZBA to compare the pictures and stated that the driveway is all the same.

Mr. Kozar stated that there were three other items he would like to address. First, the paver patio had already been in existence. Second, there was no indication on the permit that the removal of the patio or deck was a condition of approval. Third, the contractor could not speak on the Vittorinis' behalf. Mr. Kozar stated that he cannot speak on behalf of the contractor and that the

contractor could not be in attendance. He stated that the conversation that the contractor had with Mr. Moynihan is not on record.

Mr. Kozar stated that the paver patio was built on the footprint of the older deck and that the new patio is smaller. He referred to a photograph in order to illustrate this point. He stated that no permit was ever issued and that page three of the report admits that a permit is not needed for a patio paver. He stated that he had asked Mr. Toth about why a permit would be needed. He stated that Mr. Toth told him that this particular rule was not written in the code and was an "in house" rule.

Mr. Kozar stated that he wished to speak to the green space requirement. He stated that rainfall can pass between voids of the paver bricks. He stated that the petitioner built his patio openly. The staff report stated that the patio was built after the driveway but this is not true. A driveway permit was issued even though the patio was installed. He stated that the staff report states that the patio is not strictly impervious.

Mr. Kozar stated that the contractor put down the strip of asphalt around the garage and Mr. Vittorini agreed to this. He stated the asphalt is 50% covered by the overhang of the garage. He stated that this installation was not a wise decision. He stated that Mr. Vittorini would be willing to remove this additional coverage.

Mr. Kozar returned to the Standards for Variations as they relate to open space. He stated that Mr. Vittorini would have an unfair hardship if forced to remove these improvements. He stated that the Vittorinis made every effort to come into compliance. Now after all work has been done, it would be expensive to undo it. He stated that a fire destroyed the garage. A new foundation had to be built for the garage. Mr. Vittorini felt it was necessary to replace the driveway. Mr. Kozar stated that the Vittorinis did not create the hardship. They made every attempt to improve the property with a number of expensive improvements. He stated that the property is well maintained and that there would be no impairment of light and air. He stated that these improvements would not depreciate property values.

Chairperson DeFalco opened the meeting for public comment.

Al Retherfod, 414 W. Wilson Ave, stated that he has lived there since 1966. He stated that there has always been a water problem. Heavy rain would cause water to be retained towards the back of the yard. He showed pictures of flooding. He stated that the flow of water goes west to east. He stated that the property on Graham is taking on more water now. He identified water as the main issue. He stated that he now needs a pump in the back yard. Due to the asphalt and pitch of the driveway at the Vittorinis, water is running off onto neighboring property.

Tom Iwasko, 410 W. Wilson Ave., that he has lived in Lombard for three years and Dupage County for much longer. He stated that he is on disability and that he saw grading on subject

property occurring. He stated that Mr. Vittorini and his son were the ones regrading the property. He saw them raking and steamrolling. He stated that Wilson has an issue with water. However, he now needs a two inch pump to deal with the water on his property.

Vincent Vittorini, 418 W. Wilson Ave., stated that he has lived in this house his whole life. He grew up next to Al and has heard a pump running there for years. He stated that no changes they've made can change the problem. He stated that all the properties in the area are essentially level. He also stated that there was no way his father and he graded and steamrolled the property. He said this was a lie.

Chairperson DeFalco requested that testimony be directed to the ZBA and not to other members of the audience.

Vincent Vittorini said only the corners of the property touch. It is mathematically unlikely that these improvement have had this effect.

Chairperson DeFalco then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. Staff has prepared a report and is submitting it to the public record in its entirety. The petitioner is requesting the open space and setback variations to address improvements that were made in excess of what is permitted by code, along with certain improvements made without a permit. In particular, the open deck, constructed from brick pavers, was built without a permit and is located within the required interior side yard setback. The deck, along with other recently constructed improvements, contributes to the deficiency in open space on the property. Overall, the property is currently at 36.5% open space.

On June 4, 2008, a permit was issued for a garage to replace one that was destroyed by fire. The garage was to be built on the existing concrete slab. The existing site improvements were indicated and described to staff by both the petitioner and his contractor. These site improvements, drawn on the plat of survey, occupied 3,779 square feet of the zoning lot. The garage permit was issued with a sticker which indicated: "Improvements shown on these plans will leave the lot with the minimum 50% required open space. No further lot coverage is permitted." For accuracy, the permit also indicated: "Open Space at 50.3%."

On September 16, 2008, a permit was issued to allow the replacement of the existing driveway. The permit indicated that the driveway must be constructed with the same dimensions shown on the plat of survey with the exception of a thirty (30) foot by four (4) foot parking area in the front yard. This additional parking area was allowed on the condition that the wood deck at the rear of the home was removed from the property in order to meet the open space requirement. The contractor verbally indicated that the deck had been removed and was replaced with sod.

Upon an inspection of the lot by Building Division staff, it was discovered that additional impervious surfaces had been constructed which were not depicted on any of the permit applications. These surfaces consist of:

- A. A two and one half foot strip of asphalt located along the eastern property line
- B. Asphalt paving behind and to the east of the garage
- C. A brick paver deck occupying the area to the rear and west of the residence
- D. A brick walkway from the garage to the deck.

The petitioner chose to request a variation and included a survey of the property as part of his petition. The survey indicated that the additional impervious surfaces brought the property to 36.5% open space. From the survey, staff determined that a second variation would be necessary as the brick paver deck was built 0.35 feet from the side property line where two (2) feet is required.

Staff is not supportive of the open space variation for the following reasons:

- The open space requirements of the Zoning Ordinance are set for the provision of open space, to preserve green space, and to maintain the aesthetics of a suburban setting.
- The open space standards within the R2 District help to ensure that lots do not have the appearance of being overbuilt and that a more intensive use of the property is prevented.
- The request for an open space percentage of 36.5% is substantial.
- Impervious surfaces can inhibit the absorption of stormwater which results in additional runoff. The additional runoff can cause flooding on the subject property and surrounding properties.

Staff is not supportive of the setback variation for the deck. The petitioner's packet states that brick pavers do not require a permit. This statement is accurate as long as the pavers are installed at grade level. The brick paver deck on the subject property does require a permit as it has more than one riser. Moreover, all properties are required to meet open space requirements, regardless of the permit requirement. The required setback for decks is necessary to limit bulk on the property, to protect the privacy of neighbors, and to prevent encroachment on neighboring properties.

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. Staff finds that there are no conditions related to the property that prevent compliance with the established regulations. The property does not have physical surroundings, shape, or topographical features that differ substantially from other lots in the neighborhood.

2. 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. Staff finds that the difficulties have been created by the petitioner as a result of the preference for the deck's location and the desire to have greater impervious coverage than allowed by code.
5. Staff finds that the additional impervious surfaces on the property are substantial and have the potential to cause additional stormwater runoff and/or flooding on other properties.
6. Staff finds that these variations will alter the essential character of the neighborhood by allowing excessive bulk on the subject property. The added bulk caused by the brick paver deck is particularly problematic as it is within a setback area.
7. Staff finds that proposed open space variation may reduce and impair natural drainage on the subject property. Impaired drainage may result in drainage problems and flooding on adjacent properties.

Staff recommends denial of both variation requests.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Bedard referred to the petitioner's Attachment B. He stated that the old deck seemed to have its west edge set in 8 or 9 feet off of the lot line.

John Vittorini indicated that the deck has always been the same.

Mr. Bedard stated that he could now see the deck was at the property line. However, the survey as drawn showed the deck to be away from the property line.

Chairperson DeFalco stated that the plat was submitted showing the deck set away from the west property line.

Mr. Moynihan indicated that the plat that was used for the permit was drawn at the front counter of the Building Department in the presence of the petitioner using dimensions provided by the contractor and the petitioner.

John Vittorini stated that this was not true.

Mr. Moynihan stated that plat came from Village records and that the only improvement shown on the plat was the residence.

Chairperson DeFalco asked if a survey was provided showing the existing improvements.

Mr. Moynihan stated that there was not.

John Vittorini indicated that Mr. Moynihan gave him the survey to use for his permits. One permit was used to put up a fence on the property. He stated that an aerial view of the property was used to identify the improvements on the lot but cannot be used to measure property improvements.

Chairperson DeFalco stated that it seems that the dimensions were drawn on the plat in what was intended to be a good faith effort.

Mr. Moynihan stated that the dimensioning of the permit was done at front counter with Mr. Vittorini.

John Vittorini stated that Mr. Moynihan drew the improvements.

Mr. Moynihan agreed.

Chairperson DeFalco stated that ordinances and rules change. He referred to the prior building moratorium in the Village. He discussed non-conforming issues involving building and water runoff. He stated that what one department may approve, another may have rules that cause it to deny the request. He stated that open space of 50.3 percent was calculated by staff based upon the worked out survey.

Mr. Bedard stated that he could see the deck did go all the way to the fence by looking at a picture provided by the petitioner.

Chairperson DeFalco again stated that ordinances change. A deck may have been built at one setback but the setback may be different now.

John Vittorini stated that he has exposed more open space on the property.

Chairperson DeFalco stated that the property now has less open space than allowed.

John Vittorini stated that this is true but the deck was added a while ago. He was told no permit was needed for a paver patio. He stated that if he was told he would have done the right thing.

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Chairperson DeFalco stated that there may have been a miscommunication between staff and the petitioner. However, he stated that they must view the facts of property as they are.

Mr. Kozar asked that staff provide a definition of a deck.

Mr. Moynihan stated that he would send the information.

Chairperson DeFalco stated there may or may not be a difference between decks versus patios. He stated that although a call may have been placed to the Village and there may have been some confusion, the property is still 65 % built upon. The property is over-built and that is what they must examine.

Mr. Tap asked if the staff report's percentage of open space was taken from the staff drawing.

Mr. Moynihan stated that the petitioner had supplied a survey which was included in the petitioner's packet. This survey listed the impervious coverage at 63.5%.

Chairperson DeFalco examined Attachment C in the staff report and compared it to the petitioner's Exhibit C. He stated that the areas constructed without a permit were marked A, B, C, and D in Attachment C. He stated that the extensions of the driveway were not shown on the permit (Exhibit C).

Mr. Kozar asked if Mr. Moynihan went to the petitioner's property to take measurements.

Mr. Moynihan stated that he did not take measurements at the property as they were provided by the petitioner.

Chairperson DeFalco asked the petitioner why, if he had been living on property for 30 years, did he not correct the drawing to show that the driveway extended all the way to the property line.

John Vittorini stated that this was because at the time the issue was the garage only.

Chairperson DeFalco stated that staff had indicated on the permit that the property was at the minimum amount of open space. He asked the petitioner if he thought he should have told staff that there was additional impervious surface not shown on the drawing.

John Vittorini stated that he did not see the dimensions as important as the time. He stated that he is not a surveyor.

Chairperson DeFalco stated that there is no fence at the southeast portion of the property. The posts which hold up a rope are on the neighbor's property. So the asphalt does go to edge of the property.

Chairperson DeFalco stated that the dimensions given were not correct. He stated that with these improvements the property would be under the 50.3% that staff indicated because areas are not shown. He stated that this strip along the driveway would be approximately another 200 square feet of asphalt area.

Mr. Bedard stated that the permit shows this area as open space

Mr. Vittorini stated that the dimensions were given to permit the garage and this was the primary concern.

Chairperson DeFalco stated that the same survey was used for the driveway permit. He asked Mr. Vittorini if he thought it would be important to correct these dimensions when the driveway was the primary concern. He clarified that the additional driveway strip not shown on the driveway permit.

Chairperson DeFalco stated that an additional 120 square foot area was included on this permit.

Mr. Moynihan stated that this area was permitted as the contractor informed him that the rear deck had been removed from the property.

Mr. Kozar questioned this information as the brick paver deck had already replaced the wood deck.

Mr. Moynihan stated that the information that was provided was that the deck had been removed. Therefore, additional impervious surface could be permitted on the property.

John Vittorini stated that the 120 square foot area was originally stone. He stated that a sidewalk was attached to the driveway. The sidewalk was stone.

Chairperson DeFalco stated that the plans show that lot was improved at 50%.

John Vittorini asked why he should be made to remove the deck.

Chairperson DeFalco said that this is an area with a history of flooding. He stated that there are two variations to deal with. He asked the ZBA members if they preferred to discuss them separately or together.

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Mr. Bedard said that they should be discussed together as one variation affects another. He said that the property is nice but it creates problems. He stated that ordinances are in place to mitigate these issues. There is a problem here. He stated that he is not in favor of tearing the patio down but it should be brought back to two feet.

John Vittorini stated that his property still gets flooding when it rains a lot.

Chairperson DeFalco referred to Mr. Kozar's submittal and stated that it reads that Mr. Vittorini graded his property.

John Vittorini stated that he graded a mound of dirt that was from digging a trench.

Mr. Kozar stated that the term graded is a bit of a misnomer. One man and a rake could only do some much.

Chairperson DeFalco stated that the submittal states that the petitioner graded and added dirt and there is testimony from residents. He said that the statement indicates an unlawful action. He asked if it was only raking that was done.

Mr. Kozar stated that it was only raking.

Mr. Polley asked if downspouts were installed on the garage.

John Vittorini stated that there were but that the driveway was not sloped to allow water to flow to the street.

Mr. Bedard stated that the driveway is also sloped to the east toward the neighbor.

John Vittorini stated that his backyard has flooded many times. His neighbors aren't the only ones experiencing flooding.

Mr. Kozar stated that he would like to come up with a workable solution but did not know how to improve the stormwater situation.

Mr. Iwasko stated that he must apologize. He stated that upon seeing Mr. Vittorini's son he may have been mistaken about who was grading the property.

John Vittorini stated that he has experienced 5 to 6 inches of water in the garage.

Mr. Kozar stated that Mr. Vittorini had offered to remove the asphalt around the garage.

Chairperson DeFalco stated that the property still would not be at 50% open space.

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Mr. Kozar suggested that they run a PVC pipe with holes in it from the rear of the property to the front to allow stormwater to reach the street. Mr. Vittorini would still be willing to remove the asphalt around the garage.

Chairperson DeFalco stated that the ZBA should not be engineering stormwater runoff. He stated that the property is only at 36% open space.

Mr. Toth stated that engineering stormwater runoff would have to be handled by an engineer.

Chairperson DeFalco asked if the petitioner would be willing to work with staff to find a workable solution before the Board of Trustees meeting.

Mr. Vittorini stated that he did not see how working with staff would alleviate the flooding problem.

On a motion by Mr. Bedard and a second by Mrs. Newman, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board deny both variations associated with petition ZBA 09-01.

Chairperson DeFalco again urged the petitioner to contact staff to come up with a solution.

John Vittorini stated that the Village would have to work with four or five houses on the block. He said that he did not believe a meeting with staff would alleviate the flooding in the neighborhood. He stated that he thinks it is the Village's responsibility when homes have a problem and there has been flooding for thirty years.

Mr. Toth encouraged the property owners at the meeting to work with Village engineering toward a solution.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals