

**June 26, 2024**

**Title**

ZBA 24-02

**Petitioner & Property Owner**

Sue and Tom Lotter  
1144 E. Woodrow Avenue  
Lombard, IL 60148

**Property Location**

1144 E. Woodrow Avenue  
06-09-309-048

**Zoning**

R2 Single-Family Residence  
District

**Existing Land Use**

Single-Family Home

**Comprehensive Plan**

Low Density Residential

**Approval Sought**

A variation from Section 155.212 to allow a partially covered deck to encroach into the rear yard setback on the subject property located in the R2 Single-Family Residence District.

**Prepared By**

Anna Papke, AICP  
Planning and Zoning Manager



**LOCATION MAP**

**PROJECT DESCRIPTION**

The subject property is developed with a single-family home with a deck attached to the rear of the house. The petitioner proposes to replace the existing deck with a new deck, a portion of which will be covered by a gazebo-style roof. The proposed deck will encroach into the 25-foot rear yard setback. Village Code permits decks to encroach into rear yard setbacks if they are open. The roofed-over area that the petitioner is proposing for the rear of the deck is not a permitted encroachment. Therefore, the petitioner is requesting a variance to permit a partially covered deck to encroach into the rear yard setback.

**APPROVALS REQUIRED**

The petitioner requests that the Village approve a variation from Section 155.212 to allow a partially covered deck to encroach into the rear yard setback on the subject property located in the R2 Single-Family Residence District.

**EXISTING CONDITIONS**

The property contains an existing two-story single-family residence.

**PROJECT STATS**

**Lot Size**

Parcel Area: 10,454 sq. ft.

Parcel Width: 104.9 feet

**Setbacks of proposed deck, including portion with gazebo roof**

Side (west) 10 feet

Side (east) 39 feet

Rear (north) 7 feet

**Surrounding Zoning & Land Use Compatibility**

North, south and west:  
R-2, Single Family Residential  
East: RS-7.5 (Villa Park)

**Submittals**

1. Petition for public hearing;
2. Response to standards for variation;
3. Plat of survey prepared by Marchese and Sons, Inc., dated 10/13/2021; and
4. Architectural plans prepared by Modern Design & Graphics, dated 5/8/2024.

**INTER-DEPARTMENTAL REVIEW**

**Building Division:**

The Building Division has no comments regarding the petition. Additional comments may be forthcoming during permit review.

**Fire Department:**

The Fire Department has no comments regarding the petition. Additional comments may be forthcoming during permit review.

**Private Engineering Services:**

Private Engineering Services (PES) has no objections to the petition, but notes that the roof will be considered an impervious area, which will contribute to the total impervious area of the property. Additional comments may be forthcoming during permit review.

**Public Works:**

The Department of Public Works has no comments regarding the petition. Additional comments may be forthcoming during permit review.

**Planning Services Division:**

The Zoning Ordinance establishes front, side and rear yard setback requirements for principal structures in all zoning districts within the Village. Village Code Sec. 155.212, Permitted obstructions in required yards, provides for specific forms of development to encroach into required yards. The subject property is located in the R2 District, where principal structures are required to be set back 25 feet from the rear property line. Sec. 155.212 allows open decks not over three feet above the average level of the adjoining ground to encroach into the rear yard setback, provided that a two-foot side yard setback is maintained. There is no required rear yard setback for open decks.

The petitioner proposes to construct a deck on the rear of a single-family residence. The rear-most portion of the deck will be covered with a gazebo-like roof and a screening wall will be installed along the rear perimeter of the deck (Figure 1). The remaining portion of the deck will be uncovered and surrounded with a standard-height railing (36-42 inches). Because the proposed deck is not entirely open, it does not qualify as a permitted encroachment in the 25-foot rear yard setback of the subject property and cannot be approved administratively by staff.

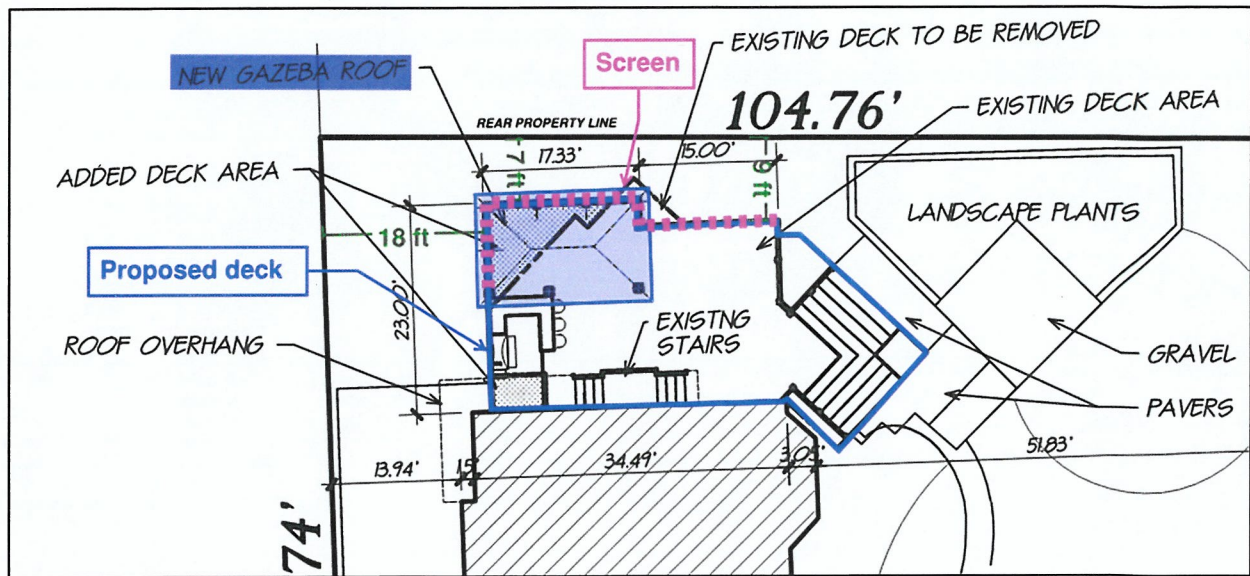


Figure 1. Annotated detail from proposed site plan.

The roofed-over area on the proposed deck is separated from the house by an expanse of open deck. Visually and functionally, the proposed deck is similar to an open deck sitting next to a standalone pergola. Staff notes that if the deck and pergola were constructed as separate structures, both would meet required setbacks and height maximums, and could be permitted administratively. Per the Zoning Ordinance, a pergola located in the rear yard of the subject property would have required setbacks of six feet from the rear property line and three feet from the interior side property line. The Building Code does not require any separation between open decks and gazebos, so the two structures could be constructed adjacent to each other. As shown in Figures 2 and 3, the visual bulk of the proposed deck with roofed-over area is very similar to the visual bulk of an open deck and standalone gazebo.

The purpose of setback requirements is to provide reasonable separation between structures and promote compatibility between development on neighboring properties. The proposed deck will have the same visual impact on adjacent properties as would a separate deck and pergola that could be constructed by right. Additionally, the rear of the subject property slopes downward toward the northeast property corner. The change in topography is visible in the west elevation on the submitted plans (Figure 4). Were the petitioner to construct the deck and pergola as two separate structures, the topography would present an additional practical difficulty in achieving a uniform finished floor elevation across the two structures.

Finally, staff notes that the subject property is a square lot that is shallower than many other single-family residential lots in the immediate neighborhood (Figure 5). If the subject property exhibited a lot depth typical of other properties in the neighborhood, the proposed deck with covering likely would not encroach into the rear yard setback and the petitioner would be able to construct the deck as proposed without requiring a variance.

Given these circumstances, staff supports the variance request.

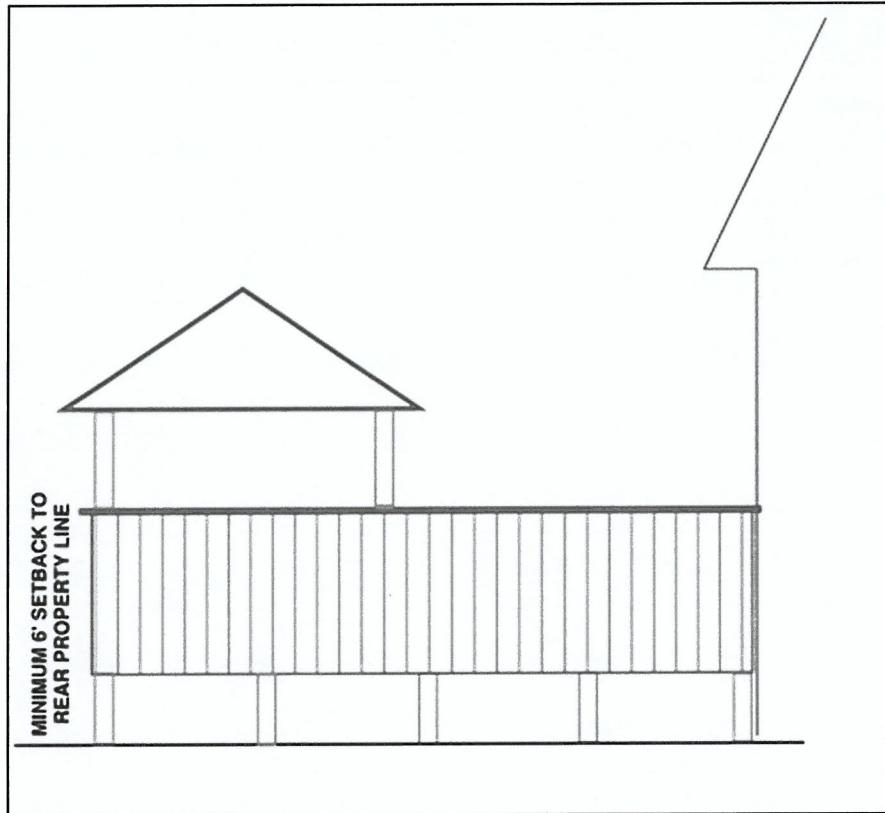


Figure 2. Deck with roofed-over area, as proposed by petitioner. This is not permitted by the Zoning Ordinance.

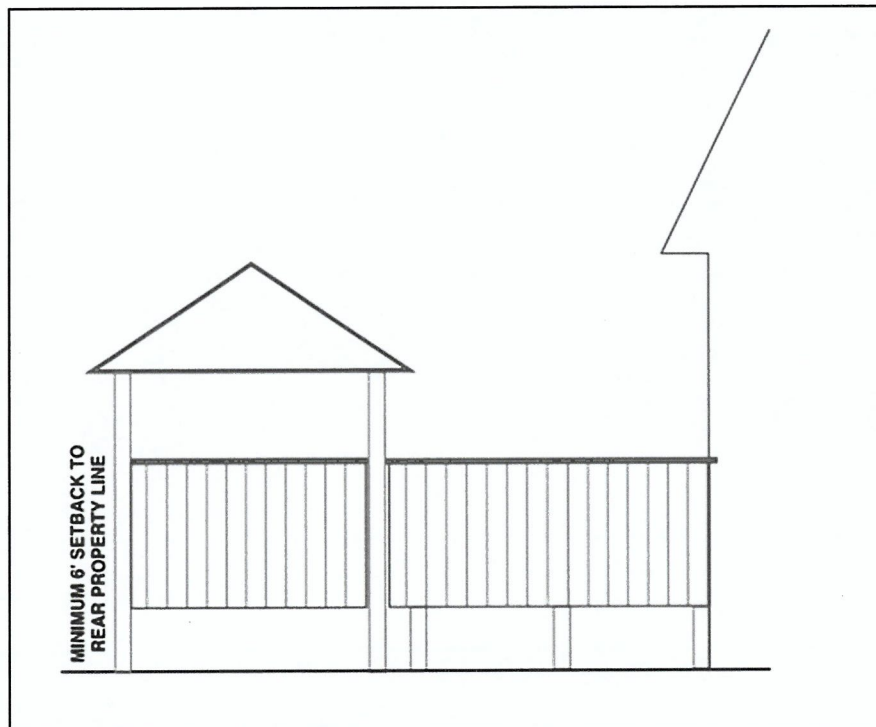


Figure 3. Open deck and standalone gazebo. This is permitted by the Zoning Ordinance.

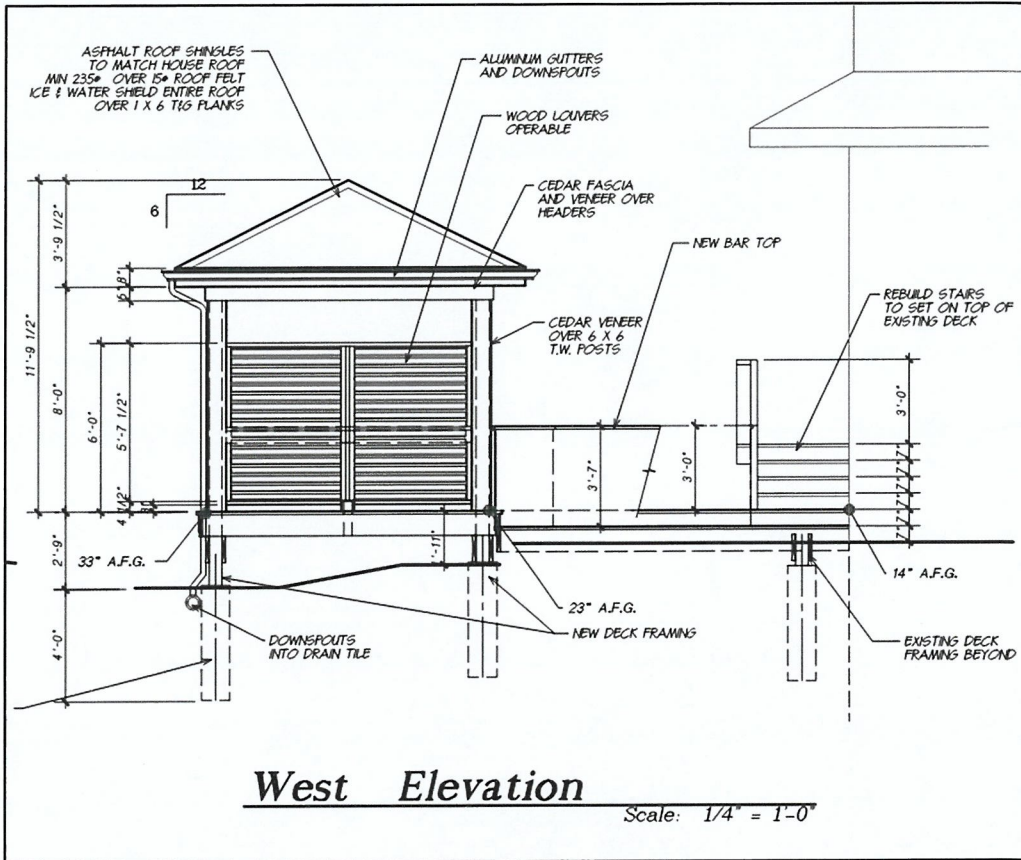


Figure 4. West elevation.

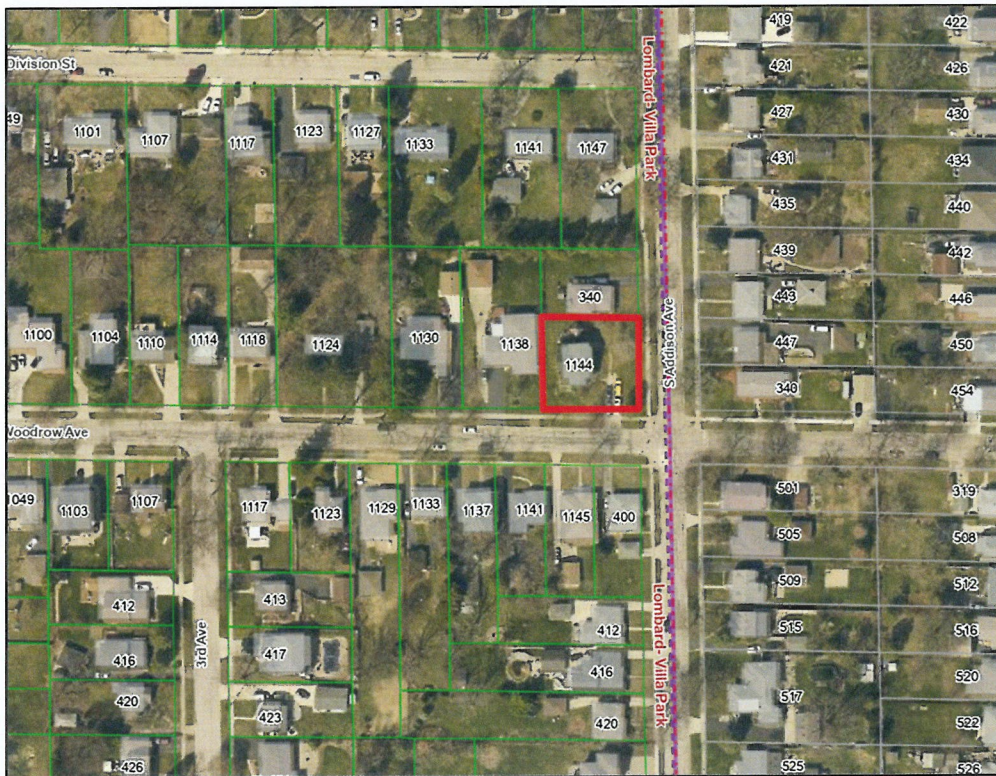


Figure 5. Subject property and surrounding residential lots.

To be granted a variation, petitioners must show that they have affirmed each of the standards for variations outlined in Section 155.407(F)(3). Staff offers the following commentary on these standards with respect to this petition:

- a. *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.*

As noted above, the petitioner could construct the visual equivalent of the proposed deck by right if the open deck and pergola components were structurally separated. However, the rear of the subject property slopes down toward the northeast corner of the property, presenting a practical difficulty to constructing two separate structures.

- b. *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 subject property is a square lot with significantly less lot depth compared to other residential lots in the surrounding neighborhood. This particular configuration contributes to the petitioner's inability to meet the rear yard setback for the partially covered deck.

- c. *The purpose of the variation is not based primarily upon a desire to increase financial gain.*

This standard is affirmed.

- d. *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 for this variation is caused by the semantics of the Zoning Ordinance and their application to the petitioner's proposed plan. Were the petitioner to construct the proposed improvement as a standalone pergola and open deck adjacent to one another, the Zoning Ordinance would allow both structures as permitted encroachments in the rear yard setback. However, if constructed as a single structure, the improvement is considered a partially roofed-over deck. The Zoning Ordinance does not permit partially covered decks to encroach into rear yards. The visual outcomes of the two approaches to construction are identical, but the technical application of the Zoning Ordinance permits one approach and prohibits the other.

- e. *The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.*

This standard is affirmed. The Zoning Ordinance would allow the petitioner to construct an open deck and standalone pergola that would be the visual equivalent of the proposed deck. The proposed deck will not impact other properties to any greater or lesser degree than would the open deck and standalone pergola that could be constructed by right.

f. *The granting of the variation will not alter the essential character of the neighborhood.*

This standard is affirmed. The size and scale of the proposed deck is consistent with accessory structures found on residential properties throughout the Village.

g. *The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

This standard is affirmed.

Staff finds that the variation request meets the standards for variation.

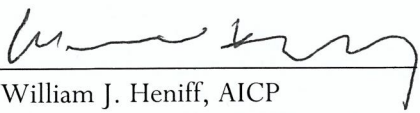
### **FINDINGS & RECOMMENDATIONS**

The Department of Community Development has determined that the information presented **has 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 **approval** of the aforementioned variation:

Based on the submitted petition and the testimony presented, the requested variation does comply with the Standards required for variations by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings as discussed at the public hearing, and those findings included as part of the Inter-Departmental Review Committee Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities approval of ZBA 24-02 subject to the following conditions:

1. The addition shall be constructed in substantial conformance to the plans submitted by the petitioners as noted in this IDRC report;
2. The petitioner shall apply for and receive a building permit for the proposed deck;
3. The petitioner shall satisfactorily address all comments noted within the Inter-Departmental Review Committee Report; and
4. This approval shall be subject to the construction commencement time provisions as set forth within Sections 155.103(C)(10).

Inter-Departmental Review Committee Report approved by:



William J. Heniff, AICP  
Director of Community Development

c. Petitioner

**Lotter Variance Request**  
**1144 E. Woodrow Avenue, Lombard**  
**Response to Village Standards**

1. Physical hardship response:

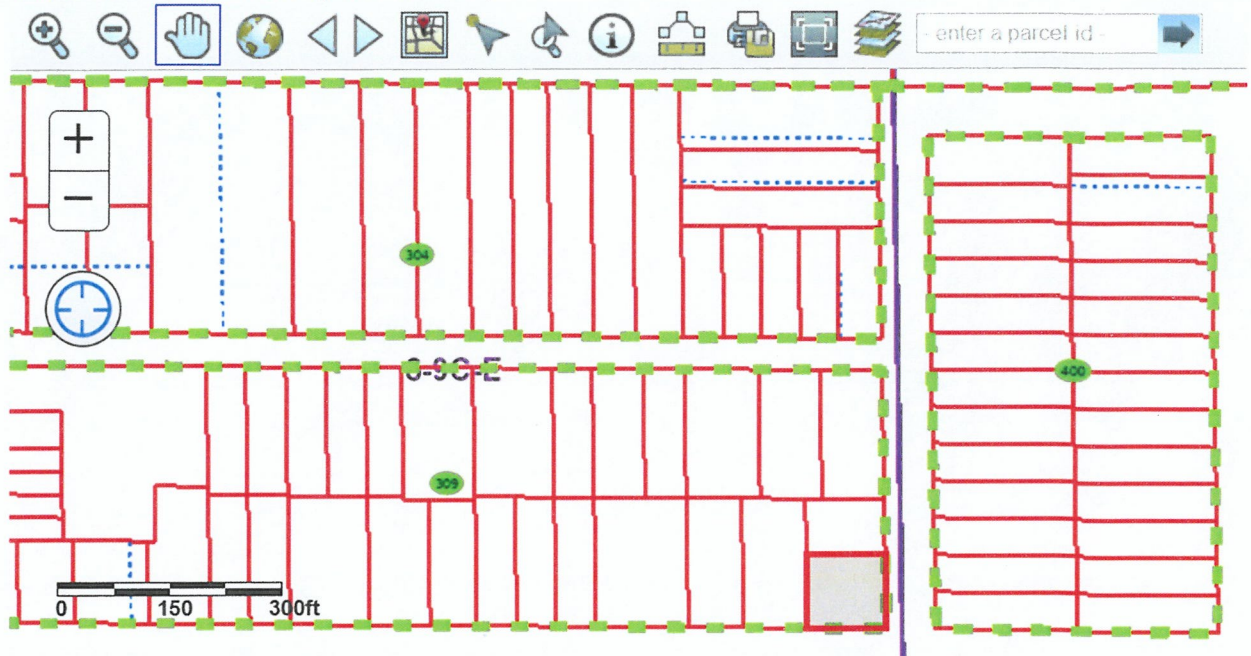
- a. Due to corner lot and steep natural grading, rear of property is in close proximity and at a height that is at the neighbor's bedroom and living space windows. This results in privacy issues for both residences which has been an issue since purchase of property in 1986. The current request seeks to improve the situation in an aesthetically pleasing means through use of perforated privacy screens and louvers off of the current deck and rebuilding a gazebo that was removed due to natural wear and tear.
- b. The privacy screens and gazebo will violate Village Code (Section 155.212), as it encroaches on the 25' rear yard setback. Due to corner lot and division, total distance from rear property line to house is only 30', therefore maintenance of a 25' setback is not feasible and particular to this property. Proposal alternately meets all requirements for an open deck, including setbacks as required by village code.

2. Property uniqueness:

- a. As noted above, the property is a corner lot which does not have similar rear property line distances as adjacent lots or nearby corner lots as shown in figure below. The shorter setback for this property distinguishes itself and presents a unique challenge. On other nearby corner lots, the rear property line provides a greater distance between adjoining properties enabling them to meet the standard setback.



PARCEL NUMBER: 06-09-309-048  
NBHD: 06CEL  
LOTTER, THOMAS E & SUSAN  
Tax Year: 2023 (Taxes Payable in 2024).



3. Financial Gain:
  - a. While the addition will improve the value of the property to some extent, the primary reason is to improve the privacy for both the home owner and the adjacent property.
4. Hardship caused by Ordinance and not Property Owners:
  - a. The owners have lived on the property since 1986 with privacy being an issue throughout. Noise and general unease for neighbors due to proximity of bedroom windows has caused problems while children played outside or general gatherings. This is not the result of any property additions or structures, but has occurred even when the space is open. It is a result of the way the plot and housing layout.
  - b. Additionally, there is a conflict between the ordinances for decks and gazebos as it applies to this property. Either one, deck or gazebo, can be met on their own, however in combination, they both can't be met.
5. Injurious to other Property Owners:
  - a. This request carries no detriment to adjacent owners but rather improves the current privacy issue. It does not limit any neighboring property usage, or decreases their value. Good standing exists with neighboring property owners who are aware of the request being made.
6. Injurious to Neighborhood Character:
  - a. The property previously had a gazabo on the rear deck. This request seeks to add one on the rebuilt, due to normal wear and tear, deck but with the addition of some privacy screens. It will be of a similar style, cedar wood deck with shingle roof. Not only is this consistent with

what was previously on the property, but also with other properties which have wood or synthetic decks.

7. Water, Light and Safety

- a. In regards to water drainage, the owners added an engineered drainage system to the property in the last two years. The new structure will include downspouts that connect to the drainage system to ensure no pooling of water, or affecting of adjacent properties.
- b. The structure has been designed by a licensed architect, meeting all applicable life safety codes.
- c. Privacy screens and a gazebo on the rear property would have no negative impact on other properties as it improves privacy between adjacent plots.