

**VILLAGE OF LOMBARD**  
**INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Zoning Board of Appeals                      HEARING DATE: December 16, 2009

FROM: Department of Community              PREPARED BY: Stuart Moynihan  
Development    Associate Planner

**TITLE**

**ZBA 09-11; 617 E. Berkshire Avenue:** The petitioner requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:

- 1) 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').
  
- 2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

**GENERAL INFORMATION**

Petitioner/Owner:                      Elizabeth Wilson  
617 E. Berkshire Avenue  
Lombard, IL 60148

**PROPERTY INFORMATION**

Existing Zoning:                      R2 Single Family Residential District

Existing Land Use:                      Single Family Residence

Size of Property:                      approximately 7,622 square feet

Surrounding Zoning and Land Use:

North:                      R2 Single Family Residence District; developed as Single Family Residences

South:                      R2 Single Family Residence District; developed as Single Family Residences

East:                      CR Conservation Recreation District; developed as Schaefer Elementary School

West: R2 Single Family Residence District; developed as Single Family Residences

## **ANALYSIS**

### **SUBMITTALS**

This report is based on the following documents, which were filed with the Department of Community Development on November 24, 2009.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Plat of Survey, prepared by ARS Surveying Services, dated November 12, 2009.

### **DESCRIPTION**

The subject property is located at the southwest corner of Vista Avenue and Berkshire Avenue. The petitioner is requesting a variation to allow an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The previous owner of the property constructed the fence in October of 2009, without a building permit, as a replacement for an existing non-conforming six foot (6') fence in the same area. The fence is located along the Vista Avenue side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence has been 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 PES Division of Community Development has the following comments on the above petition:

1. The fence should be moved out of the clear line of sight area.

##### **Public Works Engineering**

Public Works Engineering has no comments regarding this request.

#### **FIRE DEPARTMENT**

The Fire Department has reviewed the petition and has no comments.

## BUILDING DIVISION

Upon review of the above referenced request for fence height variation from 4' to 6' in a corner side yard set back, the Building Division has the following comment:

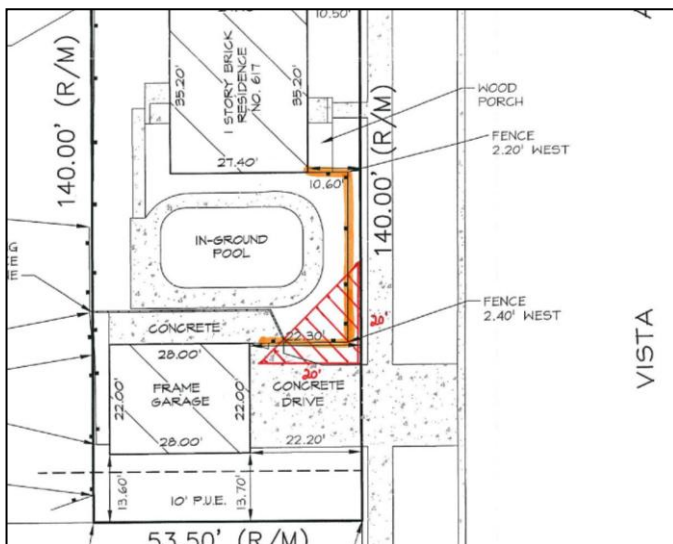
1. The fence height of 6' could be allowed if the clear line of site at the driveway is maintained. If the solid wood fence obstructs the line of sight as a vehicle pulls out of the garage and the driver cannot see the sidewalk, this could very well pose a problem of causing an injury to a pedestrian or child traveling on the sidewalk. Thus keeping the line of site clear at the corner of the drive and walk is critical to the safety of pedestrians and the fence should be relocated to allow for this condition.

## PLANNING

The subject property currently has an existing solid wood fence six feet (6') in height within the corner side yard and within the clear line of sight area. This fence was constructed as a replacement for a non-conforming fence of the same height. The fence was constructed in October of 2009 by the previous property owner, without a building permit. After becoming aware of the fence replacement, the Village informed the previous property owner of the need for the requested variations. However, as the property was under contract and in the process of being sold, staff determined that it would be best to process the request after the sale. The new owner was informed of the need for variations prior to the closing, and they are now the petitioner.

The Zoning Ordinance allows non-conforming fences to remain in existence provided that once a non-conforming 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.

The newly constructed fence currently stands within the clear line of sight triangle at the driveway on the subject property. The fence is indicated by the orange line below. The clear line of sight area at the intersection of the driveway and the public right-of-way is formed as a triangle with legs extending twenty feet (20') north along the property line and twenty feet (20') west along the driveway. The clear line of sight triangle is shown in red.



Six 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 the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of an in-ground pool. Specifically, the petitioner identifies the pool as a hazard to children in the area and states that the existing fence would prevent them from seeing the pool and entering the property. Furthermore, the petitioner states that these concerns are exacerbated by the elementary school located across Vista Avenue. While staff recognizes that these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship.

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. There are no conditions which prevent the fence from being removed from the clear line of sight area.

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 to meet the established regulations. The presence of an in-ground pool and the proximity of a school are not unique or even rare circumstances in the Village. The nearby property at the corner of Vista Avenue and Pleasant Avenue, 616 E. Pleasant Avenue, has met the established regulations. This property also contains a pool. Building Code provisions require a 4' high fence around pools. The petitioner can meet both the Building Code and Zoning Ordinance by modifying the fence height to 4 feet.

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 by lowering the fence to four feet (4'). The fence could also be moved out of the clear line of sight area or constructed to be seventy-five percent (75%) open. The hardship has been created by the petitioner as a result of the petitioner's preference for the fence's height and location.

5. *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.*

It is staff's opinion that a solid wood fence located within a clear line of sight area could be injurious to the public welfare if the lack of visibility contributed to an accident.

6. *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.*

As stated above, the fence in the clear line of sight area could be a danger to public safety.

Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner should be required to obtain a fence permit for the proposed 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 variations. 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 variations:

Based on the submitted petition and the testimony presented, the requested variations **do 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 09-11.

Inter-Departmental Review Group Report Approved By:

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William Heniff, AICP  
Director of Community Development

c: Petitioner