

Village of Lombard

*Village Hall
255 East Wilson Ave.
Lombard, IL 60148
villageoflombard.org*



Meeting Minutes

Wednesday, September 23, 2009

7:30 PM

Village Hall Board Room

Zoning Board of Appeals

*John DeFalco, Chairperson
Mary Newman, Eugene Polley,
Greg Young, Val Corrado, Ed Bedard
and Keith Tap
Staff Liaison: Stuart Moynihan*

Call to Order

Chairperson DeFalco called the meeting to order at 7:30 p.m.

Roll Call of Members

Present: Chairperson John DeFalco, Val Corrado, Greg Young, Ed Bedard and Keith Tap

Absent: Mary Newman and Eugene Polley

Also present: Michael Toth, Planner I, and Stuart Moynihan, Associate Planner.

Public Hearings

090603

ZBA 09-07: 412 S. Craig Place

Requests that the Village grant a variation from Section 155.210(B)(2)(a) of the Lombard Zoning Ordinance to reduce the interior side yard setback to three and one-half feet (3.5') where six feet (6) is required to allow for an open deck within the R2 Single-Family Residence District. (DISTRICT #5)

Chairperson DeFalco stated that the petitioner is requesting a continuance to the October 28, 2009 ZBA meeting.

It was moved by Young, seconded by Bedard, that this matter be continued to the October 28, 2009 meeting. The motion carried by the following vote:

Aye: 5 - Chairperson John DeFalco, Corrado, Young, Tap and Bedard

Absent: 2 - Newman and Polley

090604

ZBA 09-08: 228 W. Willow Street

Requests that the Village grant a variation from Section 155.407(F)(1)(a)(1) of the Lombard Zoning Ordinance to reduce the front yard setback to thirty (30) feet where 33.93 feet is required to allow for an enclosed front porch within the R2 Single-Family Residence District. (DISTRICT #1)

The petitioner, Brian Weltyk, presented the petition. Mr. Weltyk stated that he was requesting the variation to replace a previous front porch with one of the same size. This would be an improved and safer structure. The old porch was 85 years old with no insulation.

Chairperson DeFalco asked if anyone was present to speak for or against the petition.

Lucinda Arendt, 211 W. Willow St., read a letter and submitted it to the record. She stated that both the garage and the new addition on the property are intrusive to other properties in the neighborhood. She expressed her disappointment with the Village government in approving these structures. She stated her objection to the variation and any further construction.

David Ringgenberg, 209 W. Willow St., read a letter and submitted it to the record. He

stated that he did not object to the original size of the porch but would object to it being any larger. He stated that he questions the vertical addition as the home now looks like a three-flat.

Thomas Zymali, 219 W. Willow St., stated that there is an intrusive theme on the subject property due to the height of the addition and size of the garage. He stated he would vote against the variation.

Chairperson DeFalco then requested the staff report. Stuart Moynihan, Associate Planner, read the staff report. Mr. Moynihan stated that the petitioner is requesting this variation to replace a previously existing legal non-conforming enclosed front porch with a new porch that will have almost identical dimensions. The previous front porch had a front yard setback of 29.78 feet where thirty (30) feet was previously required. This corresponds to a front yard setback encroachment of approximately 2.5 inches.

In October 2008, the Village Board approved text amendments to the Lombard Zoning Ordinance establishing average front yard setbacks for detached single-family dwellings on residentially zoned properties. For the subject property, these text amendments had the effect of increasing the required front yard setback from thirty (30) feet to 33.93 feet. This setback is formulated as the average of the front yard setbacks of the residence to the west, which is 37.78 feet, and the residence to the east, which is 30.07 feet.

As a result of the aforementioned text amendments, the existing enclosed porch became legal non-conforming as it then encroached 4.15 feet into the front yard setback. After the new code was adopted, the petitioner submitted a permit application to replace the porch at the same dimensions, along with adding a second story addition on the home.

The previously existing front porch had acted as the front entrance to the home. In order to meet the current setback requirement, the enclosed porch would have to project from the home no more than four (4) feet. The petitioner has stated that such a reduction in the porch's size would be a detriment to both its functionality and the home's character. He states that it would also restrict access at the front entrance of the residence.

The petitioner has also indicated that he is proposing to construct essentially the same structure, adding new construction elements that will allow for greater efficiency and safety. In order to address the previous .22 feet encroachment, the new enclosed porch would be reduced to a width of approximately seven (7) feet, eleven (11) inches.

Within the PC 08-21 staff report, several reasons were identified for establishing average front yard setbacks. Among these reasons was the protection of the viewshed of neighboring properties by preventing new homes and additions from being built too far in front of existing homes. This concern does not seem to be applicable in this case. The front yard setback for the principal structure to the west, 230 W. Willow Street, is 37.78 feet. However, projecting from this residence is an unenclosed front porch which has a setback of thirty (30) feet and steps which project still further from the porch. The front yard setback for the principal structure to the east, 220 W. Willow Street, is 30.07 feet. These homes effectively have the same setback as is proposed as part of this variation and, therefore, are unlikely to experience a negative impact on their viewshed.

Staff also stated, "The intent of the proposed relative setback text is to maintain the character of existing neighborhoods and to establish status quo for any new developments."

It is staff's opinion that in this particular case, the variation would allow the petitioner to

maintain the status quo and the character of existing neighborhood.

Staff notes that at least one neighbor has expressed concern over the height of the vertical addition being added to the residence. Though the height of the structure has no direct effect on this variation request, staff would like to address the resident's concern. Staff's review has shown that the submitted plans do meet the height requirements of the R2 zoning district:

No buildings or structures shall exceed two and one-half stories or 30 feet in height, whichever is less.

Mr. Moynihan stated that the Inter-Departmental Review Committee recommends that the Zoning Board of Appeals make a motion recommending approval of the side yard setback variation subject to the conditions in the staff report.

Mr. Young asked if the garage had received any variations as part of its construction.

Mr. Moynihan stated that it had not.

Mr. Young asked if all construction on the property meets code.

Mr. Moynihan stated that to his knowledge it does.

Chairperson DeFalco stated that the porch would have been conforming as well if it was proposed before the recent text amendments. He stated that the reason for the text amendments was to prevent a home from being constructed too far in front of an existing home. Last year no variation would have been necessary.

Mr. Young asked if the porch would meet a 30 foot setback.

Mr. Moynihan stated that the porch would be reduced in size by a few inches to meet this setback.

Chairperson DeFalco addressed the concerned neighbors. He stated that the petitioner has the right to cover fifty percent of his lot per code and this is a large lot.

Mr. Young stated that the ZBA should only be concerned with the front yard setback.

Chairperson DeFalco stated that code used to allow for an unenclosed front porch in the front yard setback.

Mr. Moynihan stated that this is still the case.

Mr. Tap suggested that a statement regarding 50 percent of the value of the structure should be added to condition 2.

It was moved by Tap, seconded by Corrado. The motion carried by the following vote:

Aye: 5 - Chairperson John DeFalco, Corrado, Young, Tap and Bedard

Absent: 2 - Newman and Polley

1. The variation shall be limited to the single-story enclosed front porch as depicted Plat of Survey, prepared by Lambert and Associates, dated June 23, 1994, with the stipulation that a front yard setback of thirty (30) feet be met.

2. The variation shall be limited to the existing residence. Should the existing residence be damaged or destroyed by any means, to the extent of more than fifty percent (50%) of the fair market value of the residence, any new structures shall meet the full provisions of the Zoning Ordinance.

090605

ZBA 09-09: 1107 Woodrow Avenue

Requests approval of the following actions on the subject property located within the R2 Single-Family Residence District:

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot (6') high fence in a required corner side yard where a maximum height of four feet is permitted; and
2. A variation to Section 155.205(A)(1)(c)(3) of the Lombard Zoning Ordinance to allow a six-foot (6') high fence in a required front yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted.
(DISTRICT #5)

Tim Hogan, 1107 Woodrow Avenue, owner of the subject property, presented the petition. Mr. Hogan stated that he purchased the subject property in 2003 and the fence was already on the property. He added that he did not know about the fence requirements when he purchased the property. Mr. Hogan stated that he is a member of the Lombard Fire Department and he is required to stay overnight at the fire station for sometimes 60 hours per week. He added that the fence provides safety for his family while he is gone. He stated that he has invested money into the property to make it more presentable. He added that he put in new windows and siding. He stated that he is also going to install new sidewalks. Mr. Hogan stated that the neighbors love the fence because all of the neighborhood kids play in the back safely. He then submitted a petition signed by all of the neighbors in favor of the fence. He added that there are 14 sex offenders within a one and a half mile radius of his property. Mr. Hogan then stated that he would have gotten a permit for the fence had he known about the requirements. He added that the fence would be costly to take down and his wife is currently unemployed, due to medical reasons. He reminded the ZBA that the fence was preexisting. Lastly, he stated that he is away from his family a lot, but he always makes sure to check on his family, whenever possible.

Chairperson DeFalco opened the meeting for public comment.

Jim Kartholl, 1117 W. Woodrow Avenue, spoke in favor of the variation. Mr. Kartholl stated that he has lived at his property (across the street from the petitioner) since 1996 and there has always been a fence located on the petitioner's property. He also stated that the fence was there, prior to the petitioner purchasing the property. Mr. Kartholl stated that all of the neighbors appreciate the fence because the neighborhood children all play in the petitioner's back yard.

Chairperson DeFalco then requested the staff report.

Michael Toth, Planner I, presented the staff report. The subject property is located at the southwest corner of Woodrow Avenue and Third Avenue. The petitioner is requesting a variation to maintain a solid vinyl fence at a height of six feet (6') where only four feet (4') is permitted.

The petitioner purchased the subject property in June, 2003. According to the petitioner, the subject fence was already present on the property when the property was purchased. Staff researched the permit history of the property and found that no permit was ever issued for the fence. Since the petitioner wishes to maintain the fence as

constructed, a variation is required.

The fence is six (6) feet, where only four (4) feet is permitted in the corner side yard; therefore, the fence is considered nonconforming by Code standards. Staff notes that the house itself is also nonconforming with respect to the side yard required setback as it is located only eleven (11) feet from the property line along Third Avenue, where twenty (20) feet is required. A small portion of the fence is also located within a clear line of sight area, which originates from the neighbor's driveway to the south. The fence also abuts the front yard of that same property directly to the south along Third Avenue, which would require the fence to be four (4) feet or less along the thirty (30) foot rear yard area.

On the southeast corner of the existing fence, a six foot (6') portion is located within the twenty foot (20') clear line of site area, which extends north, from the property to the south's driveway. As such, the petitioner has agreed to address the issue by placing the fence on an angle, as to not interfere with the aforementioned clear line of sight area. By replacing the fence, the property would no longer have any clear line of sight issues.

Although the petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and safety, staff does not support the petition since there is not a demonstrated hardship involving the physical characteristics of the property. As the six-foot high fence is within the corner side yard, staff is concerned about the obstruction it creates. Furthermore, the fence blocks the view from the front yard of the neighboring property; as such, staff is recommending denial of the petition.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Bedard asked the petitioner if the fence had previously existed and if there would be any changes made to the fence.

Tim Hogan replied that the fence would remain the same with the exception of the corner piece that was cut out to make way for the clear line of site area.

Mr. Young asked why this petition is before the ZBA.

Mr. Toth responded that the fence was found to be in violation of Code with respect to the height in the corner side yard and rear yard, abutting the neighbor's front yard. He stated that there was no permit required for fences prior to 2000, but they still needed to meet the Code requirements.

Mr. Young asked the petitioner if the fence had previously existed.

Tim Hogan replied, yes.

Mr. Tap asked if the neighbor to the south was okay with the fence.

Tim Hogan replied, yes, that his neighbor's name is on the submitted neighborhood petition.

Chairperson DeFalco mentioned the fence case on Washington that was in excess in height in the corner side yard. He added that the ZBA recommended denial as the fence was new and it blocked the neighbor's view from their house. He then mentioned that this case differs because this is a new property owner, who did not erect the fence. He then asked staff where the clear line of sight area is measured and if it is sufficient.

Mr. Toth described the clear line of site area on the subject property. He then stated

that the petitioner did properly correct the clear line of site area as it pertains to the fence.

Chairperson DeFalco asked staff if the petitioner could use a fence that was 75% open construction.

Stuart Moynihan, Associate Planner, stated that a fence taller than four feet and of 75% open construction could only be done if the property abutted another corner lot, which in this case it does not.

Chairperson DeFalco mentioned the past fence case on School and Division. He stated that it was a new home with a fence in excess of the required height. He stated that the variation was denied and the fence had to be cut down to the required four feet.

Dr. Corrado asked the petitioner if their fence could be cut down.

Tim Hogan replied by stating that the fence could not be cut down because it is constructed of vinyl panels.

Mr. Tap asked staff why the petitioner was required to have a permit.

Mr. Toth stated that regardless of the outcome of the variation, a fence permit is required - whether or not they have to cut it down or relocate it.

Chairperson DeFalco stated that the case before the ZBA is for a preexisting fence. The survey from 2002 already indicates that a fence was located on the property; therefore, there was a fence at that location prior to 2002.

Mr. Bedard stated that he does not believe that the petitioner should be held accountable for the fence as it was there when he purchased the property. He then asked how this issue just came about now.

Mr. Toth stated that it was found in violation based upon a complaint to the Code Enforcement Department. He then reminded the ZBA that the four foot fence height requirement in the corner side yard is code and it has been supported time-and-time-again by the Village Board. He mentioned the ZBA meetings involving the Board, pertaining to fence height.

Chairperson DeFalco asked what would happen if the variation was not granted.

Mr. Toth stated that the fence would then have to come into conformance with Village Code. He stated that the fence would either have to be lowered, moved or taken down.

Mr. Bedard stated that he was ready to make a motion to recommend approval of the variation. He stated that a condition should be added which states that if the fence is damaged or destroyed by more than 50% it would have to come into conformance with Code. Mr. Bedard also stated that he recommends that the petitioner's public hearing fees be waived as the fence was there when he purchased the property.

Mr. Toth stated that the ZBA does not have the authority to waive public hearing fees. He added that only the Village Board can waive those fees.

Chairperson DeFalco stated that he would be ready for a motion of approval, which may include a condition of approval, should the ZBA vote for approval.

Mr. Bedard made the motion of approval, which was seconded by Mr. Tap.

Chairperson DeFalco stated that he wanted to comment on the case before a vote was to be taken. He stated that the ZBA has historically been strict on fence height variations. He then mentioned the September 18, 2008 special meeting of the ZBA and Village Board regarding fence height. He then added that the Trustees have the authority to change the Ordinance, which they have not done. He then made representation that there are justifiable means to grant a variation and he is concerned with the strict interpretation of code. He stated that because the petitioner did not construct the fence and it has been located at that location for a number of years, a variation could be justified. Lastly, he stated that he would go against his usual voting on this matter and vote in favor of the petition.

Mr. Young stated that he agrees with Chairperson DeFalco's comment.

It was moved by Bedard, seconded by Tap, that this matter be Recommended to the Corporate Authorities for approval subject to one condition. A recommendation was also made to waive the public hearing fees as the fence was existing when the petitioner purchased the property. The motion carried by the following vote:

Aye: 5 - Chairperson John DeFalco, Corrado, Young, Tap and Bedard

Absent: 2 - Newman and Polley

1. *In the event that the fence is damaged or destroyed by more than 50% of its value, the fence shall be required to comply with the fence height provisions listed in the Zoning Ordinance.*

Business Meeting

Approval of Minutes

The minutes of the June 24, 2009 meeting were unanimously approved by the members present with the following corrections:

On pages 6 & 7 strike the salutation "Mr." only where it appears before Corrado and change to "Dr".

Planner's Report

Stuart Moynihan, Associate Planner, noted to the ZBA members that within their packet was information regarding a Zoning and Planning education conference. The Village would pay for any ZBA members to attend.

New Business

Dr. Corrado stated that he noticed that the one-way street directions had been changed at Washington Boulevard and Main Street. Mr. Bedard stated that it can still be difficult to see when going east.

Chairperson DeFalco asked whether someone could reach out to Mr. Polley to discuss his ability to attend ZBA meetings. It was suggested that in the meantime a new Vice

Chairperson should be elected in case Chairperson DeFalco is unable to attend a meeting.

Dr. Corrado stated that he would contact Mr. Polley.

Chairperson DeFalco requested that the election of a new Vice Chairperson should be added to next month's agenda.

Unfinished Business

Adjournment

The meeting was adjourned at 8:25 p.m.

*John DeFalco, Chairperson
Zoning Board of Appeals*

*Michael S. Toth, Planner I
Zoning Board of Appeals*