

December 7, 2006

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

**Subject: ZBA 06-20; 614 E. Berkshire**

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner 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 high fence in a required corner side yard where a maximum height of four feet is permitted;
2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required rear yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted; and
3. A variation from Section 155.205(A)(1)(e) to allow a solid fence within a clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on September 27, 2006. Joseph G. Laspisa, attorney for the petitioner, presented the petition. Mr. Laspisa described the property and noted that it was a double lot that previously had a six-foot wood privacy fence. The fence had deteriorated over time until a portion on Berkshire collapsed. The property owner replaced that portion and then removed and replaced the rest of the fence.

The petitioner then addressed the Standards for Variations. The location of the shed and AC unit prevent compliance with the 20-foot setback and the property owner experienced thefts during the time that the fence was missing. The property is unique in that it is a reverse corner lot. The owner wished to replace the fence for both security and the visual aspect, and no permit was necessary to replace the first

25 percent of the fence. There is no clear line of sight issue because the fence is 20 feet from the street pavement and there have been no known vehicle accidents at that location. There are three other corner properties in the area with six-foot high solid fences. Mr. Laspisa concluded by stating that his client had no intention to skirt the law and requests that his petition be approved.

Chairperson DeFalco then opened the meeting for public comment. There was no one present to speak for or against the petition.

Chairperson DeFalco then requested the staff report.

Jennifer Backensto, Planner II, presented the staff report. The subject property previously had a legal nonconforming six-foot high solid fence within the corner side yard and within the clear line of sight areas along both sides of the driveway. The fence also abutted the front yard of the adjacent property and had several sections that were in disrepair. The petitioner removed the entirety of the nonconforming fence and replaced it with a similar six-foot high solid fence. The Zoning Ordinance contains provisions that allow nonconforming fences to remain with the intention that, once a nonconforming 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. As such, the petitioner's replacement of the fence removed any legal nonconforming rights and requires that the new fence meet the four-foot height restriction and clear line of sight requirements.

The petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and crime. However, a variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. Staff cannot support the variation for the following reasons. Six-foot high fences are not permitted within front yards or corner side yards due to the visual obstruction they create. Similarly, there are additional restrictions placed upon fences that abut a neighbor's front yard to prevent a such a fence from blocking the view from the front yard of the neighboring property.

Ms. Backensto stated that three similar fences were mentioned within the petitioner's Response to Standards, but none of these fences were ever granted zoning relief. Staff conducted a review of all fence variations granted since 1996 and found only one case within one-half mile of the subject property. Therefore, if any of the identified nonconforming fences were to be replaced, the replacement fencing would be required to meet all code regulations.

Staff does not support the variation request to allow a solid fence within a clear line of sight area as it poses a safety hazard. The purpose of the open construction fence requirement is to provide visibility of pedestrians and oncoming traffic.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." The standards have not been affirmed. Staff finds that there are no conditions related to the property that prevent compliance with the fence height regulations or clear line of sight requirements. The conditions are not unique to the subject property. The subject property is a reverse corner lot as its rear yard abuts the front yard of the adjacent property at 522 N. Vista. The Zoning Ordinance has specific fence regulations that apply to all reverse corner lots and clear line of sight areas within the Village. The ordinance has not caused the hardship as the fence could have been constructed per the ordinance requirements. The hardship has been created by the petitioner as a result of the preference for the fence's height and location. The requested relief would be detrimental to the public welfare as visibility of pedestrians and traffic is diminished.

Staff recommends that the petition be denied in its entirety. However, the existing single-family residence has a corner side yard setback of only 15 feet. If the Zoning Board of Appeals finds that it would be appropriate to continue the building line established by the residence, a variation could be granted with the condition that the fence be shifted 15 feet off the property line. If such a variation is considered for approval, the petitioner should be required to obtain a fence permit.

Chairperson DeFalco then opened the meeting for discussion by the Board Members.

Mr. Young asked if the fence had been professionally constructed. The petitioner stated that it was installed by Suburban Fence in North Riverside.

Mr. Bedard asked if the property owner had been aware that the replacement of the remaining 75 percent of the fence required a permit. The petitioner stated that he was aware of that requirement.

Chairperson DeFalco stated that solid four-foot high fences are allowed within corner side yards, but not within a clear line of sight area. He noted that the property has two garages and asked if cars were kept in the garage facing Vista. The petitioner confirmed that they were.

Chairperson DeFalco noted that there is a school one block southeast of the subject property. He asked if it were possible that a six-foot high solid fence could impair the view of the sidewalk from a vehicle backing out of the property. The petitioner stated that it was possible but was not a genuine safety issue as no accidents had occurred where a car could not see someone on the sidewalk.

Mr. Bedard stated that the lack of known accidents at that particular location did not preclude the existence of a possible safety hazard.

Chairperson DeFalco mentioned a case at School and Division where the ZBA members had recommended denial and the board concurred, demonstrating a history of concern with the safety of pedestrians.

Mrs. Newman asked which direction the gates opened. The petitioner stated that they open into the property.

Mr. Polley asked about the purpose of the fence. The petitioner stated that the fence for privacy and security, and the fence was there when the owner purchased the property and that no neighbors have come in to express concerns over the fence. Chairperson DeFalco noted that future neighbors may not have the same opinions.

Dr. Corrado noted that they should have come in for a permit as soon as they replaced more than 25 percent of the fence.

Mr. Bedard stated that he was not inclined to be in favor of the petition at present, but they could look at alternatives if the homeowner were present.

Chairperson DeFalco stated that a six-foot high open, ornamental fence would provide security if not privacy and there are other options to preserve a clear line of sight. He asked where the shed was indicated on the plat of survey. The petitioner said the shed is to the east of the deck, but even if the shed were accommodated the AC unit would still need to be moved. He added that a six-foot high ornamental fence would not stop intruders.

Mrs. Newman asked if they had filed police reports during the time that the fence was down. The petitioner stated that the homeowners had been able to temporarily fix the fence.

Chairperson DeFalco stated that, if the petition was denied, the fence would need to be removed and no new request could be made for one year. He stated that if the petitioner were willing to discuss ways to minimize the impact of the fence, the ZBA could consider those at the next meeting. He had great concern about the clear line of sight issues as well as the proximity of the fence to the sidewalk.

Mr. Young stated that the fence could be dropped down to four feet.

Mr. Bedard added that the fence could be angled.

Mr. Young stated that he had no problem with the six-foot fence provided it was out of the sight triangle.

Ms. Backensto asked to confirm that the petitioner would ask his client about having a six-foot fence outside of the clear line of sight areas. The petitioner stated that he would discuss that with his client and requested that the ZBA table the petition to the next meeting.

*On a motion by Mr. Young, seconded by Mr. Bedard and passed by a roll call vote of 6-0, ZBA 06-20 was continued to allow the petitioner to revise his plans.*

The Zoning Board of Appeals reopened the public hearing on November 29, 2006. Joseph G. Laspisa, attorney for the petitioner, presented the petition. Mr. Laspisa stated that the plans have been modified per the ZBA's request. The northeast corner of the fence has been eliminated so that the fence now starts at the garage and extends directly north to the property line. On the south side of the garage the fence has been changed to run at an angle that would preserve the full 20-foot clear line of sight triangle.

Chairperson DeFalco then opened the meeting for public comment. There was no one present to speak for or against the petition.

Chairperson DeFalco then requested the staff report.

Jennifer Backensto, Planner II, stated that the ZBA members have been provided with revised fence plans that do not encroach into the clear line of sight area, and staff had nothing new to add to the original staff report.

Chairperson DeFalco then opened the meeting for discussion by the Board Members.

Mr. Young asked if the ZBA could vote on the requested pieces of relief individually so that the fence height variations could be approved and the clear line of sight variation could be denied. Ms. Backensto stated that they could either vote on the petition as a whole or vote on the items individually.

Chairperson DeFalco asked about the clear line of sight requirements. Ms. Backensto stated that a minimum clear distance of 20 feet is required on both sides of the driveway, so the plans should reflect that.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 5-1, submits this petition to the Corporate Authorities with a recommendation of approval for the requested fence height variations, subject to the following conditions:

1. The variations shall be limited to the requested relief for fence height and a 20-foot clear line of sight triangle shall be preserved on both sides of the driveway.

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2. The proposed fence shall be developed in compliance with the revised site plan, prepared by the petitioner and date-stamped October 23, 2006.
3. The petitioner shall apply for and receive a building permit for the fence.
4. In the event that the fence is damaged or destroyed more than fifty percent of its value, any new fence shall meet the full provisions of the Zoning Ordinance.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco  
Chairperson  
Zoning Board of Appeals

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