

August 21, 2008

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

Subject: ZBA 08-08; 151 E. Berkshire Avenue

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a front yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on June 25, 2008. Karen Herbert, owner of the subject property, presented the petition. She stated that her desire is to install a six foot fence on the west side of her property for security and privacy reasons. She indicated that she had sought previous zoning relief in 2001 to allow a roofed-over entrance in what the Village has designated her corner side yard. However, she believes it to be her front yard. Mrs. Herbert stated that due to drainage issues on the property the grading had to be adjusted. This caused her to lose her landscaping and walkways. PVC pipe was installed around the property to assist with drainage. Mrs. Herbert indicated that she believes she had suffered an undue hardship by having to correct this drainage issue without the assistance of the Village.

Ms. Herbert stated that the property slopes somewhat toward the sidewalk which limits that privacy that could be provided by a four (4) foot fence. She stated that she has the support of her neighbors to construct a six (6) foot fence in its proposed location. She stated that the fence would add value to the neighborhood. She said that she understood the intention of the ordinance. However, it does not make sense in these circumstances. She further stated that she believed that due to these circumstances a variation should be granted.

Chairperson DeFalco opened the meeting for public comment. No one spoke for or against the petition. Chairperson DeFalco then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. Mr. Moynihan stated the subject property is located at the southeast corner of Berkshire Avenue and Garfield Street. The petitioner is requesting a variation to allow the installation of a fence six (6) feet in height in the required front yard where a maximum of four (4) feet is allowed. The petitioner states that a six (6) foot fence is necessary to provide privacy during usage of an elevated deck on the property.

The petitioner has indicated in her written response and response to the Standards for Variations that the yard along Berkshire Avenue is functionally the front yard rather than the yard along Garfield Street. However, the yard along Berkshire Avenue was previously established as the corner side yard in ZBA 06-01. As the residence was constructed ten and six tenths (10.6) feet from the corner side lot line, it is considered a legal non-conforming structure. This ZBA case granted a variation on the subject property to reduce the corner side yard setback from twenty (20) feet to six (6) feet to allow for the construction of a roofed-over entry stoop. If the petitioner were to be allowed to designate the yard abutting Berkshire Avenue as the front yard, it would cause a non-conformity with regard to the required front yard and rear yard setbacks. As the petitioner's action would then be the cause of the non-conformity, a variation would be necessary for the entire home.

Even if Garfield Street was established as the corner side yard, the setback for a six (6) foot fence would still be thirty (30) feet on the subject property as the rear yard of 151 E. Berkshire would abut the thirty (30) foot front yard setback of 437 N. Garfield St.

While the petitioner has raised concerns about privacy and safety, a hardship has not been established on the property. A fence could be installed set back thirty (30) feet which would provide privacy on the deck and in the garden.

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.

Staff finds that the conditions are not unique to the subject property. The majority of nearby residences along Berkshire Avenue are oriented in a manner similar to the home on the subject property in that their primary entrances face Berkshire Avenue. With regard to these properties, the primary entrances are considered to be facing the corner side yard.

Staff finds that the fence could be constructed per the ordinance requirements either by lowering the fence height to four (4) feet or changing the location so that the fence is outside the front yard.

Staff recommends that the petition be denied on the grounds that a hardship has not been demonstrated.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Polley asked if the fence would cause any clear line of sight issues on Berkshire.

Chairperson DeFalco responded that the fence would be out of any clear line of sight areas.

Mr. Tap asked if the space between the home and the fence would be ten (10) feet as the submitted plans seemed to indicate.

Mrs. Herbert responded that this was accurate and the fence would be set back twenty one (21) feet from the sidewalk.

Chairperson DeFalco stated that the fence would have to be set back thirty (30) feet from the property line, not the sidewalk, to be allowed at six (6) feet in height.

Mrs. Herbert asked how the determination was made that the yard along Berkshire Avenue is the corner side yard.

Chairperson DeFalco stated that this was the only way the front and back yard setbacks could be met. He also stated that a typical width at the front lot line is sixty (60) feet as it is on the subject property.

Mrs. Herbert stated that if you were to ask anyone where her front yard is they would point to what the Village considers her corner side yard.

Chairperson DeFalco stated that the front yard setback is adjacent to Garfield Street even if a door faces Berkshire Avenue. He said that a six (6) foot fence could be constructed even with the house and would be within the ordinances.

Mrs. Herbert stated that she had paid for a landscape plan which enhances her property and a fence even with the home would interfere with that plan.

Chairperson DeFalco stated that the neighbor on Garfield Street to the south would see a six (6) foot high fence for the first ten (10) feet in front of their property. It could not be guaranteed that the current owner to the south would be there forever, and there must be consideration of future owners.

On a motion by Mr. Tap and a second by Mr. Corrado, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board deny a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence

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height in a front yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals