

# Village of Lombard

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

# Minutes Zoning Board of Appeals

John DeFalco, Chairperson Mary Newman, Raymond Bartels, Greg Young, Keith Tap, Ed Bedard and Val Corrado Staff Liaison: William Heniff

Wednesday, September 25, 2013

7:30 PM

Village Hall Board Room

#### Call to Order

# Pledge of Allegiance

#### **Roll Call of Members**

Present 5 - John DeFalco, Mary Newman, Keith Tap, Ed Bedard, and Val Corrado

Absent 2 - Raymond Bartels, and Greg Young

# **Public Hearings**

#### 130477

# ZBA 13-06: 521 S. Lewis Avenue (Request to Continue to November 7, 2013)

Requests that the Village grant a variation from Section 155.205 (B)(3) of the Lombard Zoning Ordinance to increase the maximum allowable hedge height in a clear line of sight area from two feet (2') to two feet and six inches (2' 6"), located within the R2 Single-Family Residential Zoning District. (DISTRICT # 5)

Mr. Jeffrey Davis, property owner, presented the petition. Mr. Davis began by stating that he has lived in the house for twenty-nine (29) years without any incidents. The hedges in question were planted approximately fifteen (15) years ago and reached their mature height about seven (7) or eight (8) years ago. The hedges are boxwoods, which are difficult to grow as successfully as he has. They are trimmed once a year.

Mr. Davis then began to describe the recent history with his neighbor to the south as the reason for his request. Chairperson DeFalco commented that many cases that come before the ZBA originate as complaints to Code Administration. Chairperson DeFalco continued by stating that Mr. Davis had already laid sufficient groundwork for his request and did not need to provide information regarding the relationship with Mr. Davis' neighbor.

Mr. Davis submitted into the public record a petition with signatures of nearby residents who support his variation request.

Addressing the IDRC Report, Mr. Davis stated that he disagrees with its findings and believes that there is no clear line of sight issue because of the slope of the lot and adjacent driveway. Mr. Davis submitted photographs into the public record and claimed that the photographs demonstrated his point about there being no safety issues within the clear line of sight area.

Mr. Davis stated that he wants the hedges to be six inches (6") taller because boxwoods look poor when trimmed at a two foot (2') height. The hedges were recently trimmed to the lower height because of a recent adjudication against Mr. Davis. Mr. Davis stated that he has never received a safety complaint from any of his other neighbors on the block.

Mary Jo Davis, co-petitioner, added that the neighbors who signed the previously submitted petition agree that there are no safety issues with the hedges in the clear line of sight area because of the design of the driveway.

David Berry of 533 S. Lewis Avenue spoke in favor of the petition and stated he has lived in the neighborhood for twenty (20) years and raised four (4) children and there has never been a safety issue with the petitioner's landscaping.

Tracy Dembek of 509 S. Lewis Avenue spoke in favor of the petition and stated that she has lived in the neighborhood for twenty-seven (27) years and Mr. Davis' landscaping is always perfectly manicured. Mrs. Dembek added that her children also never had any safety issues while riding bikes past the hedges.

Mike Pine of 522 S. Lewis Avenue spoke in favor of the petition and stated that he lives directly across the street from Mr. Davis and agrees that the Davis' landscaping is always immaculately kept. Mr. Pine added that he does not believe that there is a safety issue, but rather a personal issue between neighbors. Mr. Pine reiterated previous comments regarding the sloping driveway providing sufficient visibility.

Matt Panfil, Senior Planner, stated that before he presented the IDRC report, he wanted to clarify the meaning of a clear line of sight area because he sensed there was some confusion. A clear line of sight area is not a subjective judgment whether or not one can see well from a certain position. A clear line of sight area is an objective measurement established within the Lombard Zoning Ordinance

required when either a private residential driveway or an improved public right-of-ways intersects with a public right-of-way.

Mr. Panfil continued by presenting the IDRC report. Mr. Panfil stated that in this case, where a private residential driveway intersects an improved public right-of-way, the clear line of sight area is formed by completing a triangle formed by lines twenty feet (20') away from the point of intersection. The Zoning Ordinance requires any hedges within the clear line of sight area to be no taller than two feet (2') in height, therefore a variance is required.

Mr. Panfil stated that there is no precedent specifically for variations for exceeding the maximum allowable height of a hedge within a clear line of sight area, but there have been four requests for a solid fence taller than two feet (2') in a clear line of sight area since 2009. While staff and the ZBA recommended denial in three of the four cases, all four were ultimately approved by the Village Board of Trustees.

In response to the petitioner's comments, Mr. Panfil stated that staff finds there is no hardship associated with any unique geographic characteristics of the site and that the petitioner has several options that would resolve the issue such as: trimming and maintaining the hedges at two feet (2') in height; relocating the specific hedges that are within the clear line of sight area; removing the hedges completely and replacing them with an open-style fence, or replacing the hedges with slower-growing evergreen plants that have a lower mature height.

Mr. Panfil added the hedges are measured from the ground at the base of the plant upward to their peak, not from the neighbor's driveway. If the petitioner were to maintain the hedges at a uniform two foot (2') height there would be a corresponding slope to the hedges. Mr. Davis prefers that the hedges have different heights in order for them to appear level at their peak, regardless of the grade beneath. Mr. Panfil stated that this preference is not a hardship.

Mr. Panfil stated that in order to be granted a variation, a petitioner must affirm each of the Standards for a Variation. Staff finds that following Standards have not been met:

 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 clear line of sight 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.

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. Clear line of sight areas for private residential driveways are required at all residences with a driveway throughout the village. Any number of property owners could request a similar variation.

 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 Zoning Ordinance in fact allows for certain types of encroachment into clear line of sight areas. For example, per Section 155.205 (A)(1)(e), the petitioner is entitled to construct a decorative open-style fence within the clear line of sight area if the petitioner so wishes to maintain a physical separation between their lot and their neighbor to the south.

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.

Staff finds that the very purpose for the clear line of sight area is to protect the public welfare, therefore an encroachment into the clear line of sight area represents a threat to the public welfare.

7. 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 hedgerow in the clear line of sight area represents a threat to public safety.

Concluding, Mr. Panfil stated that staff recommends denial of the requested variation.

Chairperson DeFalco reminded those present that it is the task of the

ZBA to evaluate each case to determine if there is a hardship that warrants a variation.

Mr. Bedard stated that he had viewed the property and because there is a slope to the driveway he did not see a safety issue. Mr. Bedard indicated his support for the variation.

Dr. Corrado stated that it is necessary to remember that because an accident has not happened yet, it is still a possibility to consider.

Mrs. Newman asked Mr. Davis why he did not trim the hedges when notified of the violation.

Mr. Davis responded that he was notified in the middle of June, but wanted to wait to trim until after their growth spurt. When he did proceed with trimming the hedges Code Administration told him that they were still six inches (6") too tall. Mr. Davis claimed that he trimmed the hedges another six inches (6") but Code Administration measured again and issued a ticket in August. Mr. Davis indicated he then contacted Mr. Panfil in order to file a variation request. At the court hearing he did not bring all of his materials because he claimed he was told by staff that it was possible that a continuance would be granted. A continuance was not granted and the adjudication officer issued a fine. Mr. Davis then trimmed the hedges to their current height.

Mr. Davis then claimed that the pictures and report that his neighbor at 527 S. Lewis Avenue, Denise Fruhauf, had submitted into the public record were misleading. Mr. Davis then submitted new pictures with views of the hedges from his neighbor's driveway into the public record.

After discussing the pictures with Mr. Davis, Chairperson DeFalco then summarized some of the previous comments from the ZBA members.

Mrs. Newman then asked Mr. Davis what his hardship is.

Mr. Davis stated that he was confused by what a hardship is to which Chairperson DeFalco responded by defining a hardship. Mr. Davis then stated that he was not sure if he had a hardship, but feels that the hedges have aesthetic value and enhance the neighborhood.

Mrs. Davis responded that the stress that has been placed on her and Mr. Davis throughout the adjudication hearing and zoning relief process was their hardship.

Chairperson DeFalco and Mr. Bedard gave examples of hardships that have been considered in the past, such as requiring an accessible ramp in a required yard due to a disability. Mr. Davis added that the physical labor associated with making any further changes to the hedges was a hardship.

Mr. Davis then asked if there was a grandfather clause that would enable him to maintain his hedges at their previous height. Chairperson DeFalco informed Mr. Davis that no such relief was available to him.

A motion was made by Mr. Bedard, seconded by Dr. Corrado, that the Zoning Board of Appeals recommended this petition for approval to the Corporate Authorities, subject to the following conditions:

- 1. The hedges shall be maintained in accordance with the plans prepared by the petitioner, submitted on August 23, 2013.
- 2. The relief shall be limited to a maximum hedge height in the clear line of sight area to two feet six (2'6").

The motion failed to receive a recommendation vote:

Ave: 2 - Ed Bedard, and Val Corrado

Nay: 3 - John DeFalco, Mary Newman, and Keith Tap

Absent: 2 - Raymond Bartels, and Greg Young

A motion was made by Chairperson DeFalco, seconded by Mr. Tap, that the Zoning Board of Appeals recommends this petition for denial to the Corporate Authorities.

The motion carried by the following vote:

Aye: 3 - John DeFalco, Mary Newman, and Keith Tap

Nay: 2 - Ed Bedard, and Val Corrado

Absent: 2 - Raymond Bartels, and Greg Young

As the Zoning Board of Appeals could not obtain four votes to either approve or deny the variation, the hedge height in a clear line of sight area variation was forwarded to the Village Board with no recommendation.

#### <u>130475</u> ZBA 13-05: 640 N. Charlotte Street

Requests that the Village grant 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'), located within the R2 PD Single-Family Residential Planned Development (Prairie Place) Zoning District. (DISTRICT # 4)

Mr. Dave Kundrot, property owner, presented the petition. Mr. Kundrot began by stating that he has lived in the house for eight (8)

years. The proposal is to replace an approximately thirty foot (30') portion of an existing four foot (4') tall solid cedar fence with the same style fence, but six feet (6') in height for security. The reason for the request for a taller fence is enhanced security as well as privacy for a new pool and patio area that is pending construction.

Mr. Kundrot continued by identifying reasons he believes the subject property is unique. The subdivision itself is unique as there are forty-two (42) homes in the subdivision, but there are only three (3) corner lots. The subject lot itself slopes downward and fronts on Goebel Drive, which has a higher than normal amount of pedestrian and car traffic. Also, the governing homeowner association requires a solid cedar fence.

Mr. Kundrot then concluded his presentation by submitting letters of support from Trustee Peter Breen and his neighbors to the north, John and Laura Larkin of 644 N. Charlotte Street, into the public record.

Chairperson DeFalco questioned if there was anyone present to speak in favor of or against the petition. There was no response from the audience.

Matt Panfil, Senior Planner, stated that before he presented the inter-department review committee (IDRC report), he believes clarification is required as to the total amount of the existing four foot (4') tall fence that the petitioner intends to replace with the proposed six foot (6') tall fence. Mr. Panfil stated that staff had interpreted the request to be a total replacement of all four foot (4') tall fence with six foot (6') tall fence based on the pencil drawing that had been submitted with the application. Mr. Kundrot clarified that the request for a six foot (6') tall fence is only for the approximately thirty feet (30') portion of existing four foot (4') fence starting at the southwest corner of the corner side/south property line (adjacent to the existing six foot (6') tall fence along the rear/west property line) and moving eastward. The remaining fence section to the east and moving north to the southwest corner of the house will remain four feet (4') in height.

Mr. Panfil continued by presenting the IDRC report. Mr. Panfil stated that while staff recognizes the reasonableness of the request, it does not believe that they effectively demonstrate a hardship associated with a unique geographical characteristic of the property. Mr. Panfil stated that the original planned development agreement specifically identified areas of the subdivision where zoning relief in regard to maximum allowable fence height was deemed necessary and this lot was not identified as one of those areas.

Mr. Panfil stated that in order to be granted a variation, a petitioner

must affirm each of the Standards for a Variation. Staff finds that following Standards have not been met:

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. In fact, an amendment to the planned development agreement recognized as much by allowing the corner lot directly across from the petitioner only a four foot (4') tall fence.

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. Currently, the petitioner has a four foot (4') tall fence along the south property line. Staff finds that the addition of a pool and patio does not create a hardship such that the existing fence would need to be removed, let alone replaced with a non-compliant fence. Also, as mentioned in Standard 1, the corner lot directly across from the petitioner is also allowed a fence only up to four feet (4') in height.

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 existing four foot (4') tall fence suggests that the ordinance has not created a difficulty or hardship but rather the difficulty has been created by the petitioner's preference for the fence's height to better screen a new pool and patio.

Concluding, Mr. Panfil stated that staff recommends denial of the requested variation.

Chairperson DeFalco then opened the meeting for discussion by the ZBA members.

Mr. Tap asked if the entire length of fence along the south property line was to be replaced, to which Mr. Kundrot replied that he intended

to replaced just the thirty feet (30') of fence along the south property line starting at the southwest corner of the lot and moving east to a line perpendicular to the southwest corner of the house. Mr. Kundrot added that he believes this to be consistent in appearance with the existing six foot (6') tall fence along the west property line.

Mr. Tap then asked for confirmation that the reason for the request was based on privacy and security reasons.

Mr. Kundrot confirmed the question and added that the request is also based on safety concerns because the proposed pool, if left highly visible by a four foot (4') fence, would be attractive to potential trespassers.

Mr. Bedard commented that he believed there had been a previous meeting with the Village Board of Trustees to determine the status of six foot (6') tall fences within corner side yards.

Mr. Panfil responded that such a meeting had taken place on September 18, 2008, but the ultimate decision was to review such requests on a case by case basis.

Mr. Tap stated that there have been similar variance requests along Berkshire Avenue recently.

Mr. Panfil responded that variances for fence height in a corner side yard were granted to 617 E. Berkshire Avenue, ZBA 09-11, on January 1, 2010 as well as at 242 W. Berkshire, ZBA 08-14, on October 2, 2008.

Chairperson DeFalco stated that since the petitioner has clarified the specific location for the proposed six foot (6') tall fence he can support the request. Chairperson DeFalco added that while the Sid Harvey building on the lot to the west is non-residential, it is zoned R2 Single-Family Residence and could one day be houses.

Mrs. Newman asked the petitioner if he was required to use a cedar fence by the homeowner association. Mr. Kundrot confirmed that cedar fencing is required by the homeowner association bylaws

A motion was made by Mr. Tap, seconded by Mr. Bedard, that the Zoning Board of Appeals recommended this petition for approval to Corporate Authorities, subject to the following conditions:

- 1. The fence shall be constructed in accordance with the plans prepared by the petitioner and The Swim Store, submitted on August 29, 2013.
- 2. The relief for a solid fence six feet (6') in height shall be limited to that section of said fence starting at the southwest property line and moving

thirty-one (31) feet directly east.

The motion carried by the following vote:

Aye: 5 - John DeFalco, Mary Newman, Keith Tap, Ed Bedard, and Val Corrado

Absent: 2 - Raymond Bartels, and Greg Young

#### 130476 ZBA 13-07: 330 W. Potomac Avenue

Requests that the Village grant a variation from Section 155.212 of the Lombard Zoning Ordinance to allow an unenclosed roofed-over front porch to be set back twenty-two feet (22') feet where twenty-five feet (25') is required for the front yard, all located within in the R2 Single-Family Residence District. (DISTRICT #1)

James L. Ohle, of James L. Ohle Associates Ltd., presented the petition. Mr. Ohle began his presentation by displaying an image of the existing front façade at the subject property. Mr. Ohle stated that only a small portion, six percent (6%) of the proposed porch required the variation. Mr. Ohle then corrected a typo in the Inter-departmental Review Committee (IDRC) report which stated eighty-four percent (84%) of the proposed porch is permitted by right when it should have read ninety-four (94%) of the proposed porch is permitted by right.

Mr. Ohle commented that another home on west Potomac Avenue had requested a similar variance earlier this year which received approval from the ZBA and Village Board.

Representing the owner, George Webster, Mr. Ohle stated that Mr. Webster agrees to follow the conditions of approval recommended within the IDRC Report.

Mr. Webster then spoke in reference to the before and after pictures and stated that his intention is to remove an eyesore and enhance the home and neighborhood.

Chairperson DeFalco questioned if there was anyone present to speak in favor of or against the petition. There was no response from the audience.

Matt Panfil, Senior Planner, presented the IDRC Report. Mr. Panfil began his presentation by summarizing the variance request. The petitioner is proposing to construct an unenclosed roofed-over front porch on the front of the residence, twenty-two (22) feet from the front property line. The Lombard Zoning Ordinance allows unenclosed roofed-over front porches as a permitted encroachment into the required front yard, provided that a minimum of twenty-five (25) feet is provided.

Mr. Panfil then referenced a graphic within the IDRC Report that illustrates Mr. Ohle's claim that only six percent (6%) of the proposed porch requires the variation.

Mr. Panfil stated that in order to be granted a variation, a petitioner must affirm each of the Standards for a Variation. Staff finds that while the following Standards have not been met, consideration of circumstances is necessary:

 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.

Staff finds that the petitioner's lot does not have unique physical limitations, however the placement of the existing structure on the property does limit the owner from meeting the intent of the ordinance. The principal structure was constructed in the 1930's prior to front yard setback provisions and the curvature of Potomac Avenue prevented the construction of the house to be parallel with the right-of-way of Potomac Avenue.

 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. The design and layout of the petitioner's property is typical of any R2 Single Family Residential lot in the Village of Lombard and the surrounding neighborhood. Many of the homes along Potomac Avenue are legal nonconforming relative to the front yard setback. Furthermore, the existing setback of the house on the subject property is very similar to the setback of the existing home to the east. Again, the curvature of Potomac Avenue increases the setback of the principal structure abutting the western side of the subject property in relation to the principal structure situated at 330 W. Potomac.

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 has not been caused by the ordinance and has instead been created by the petitioner's preference for the proposed design/use. Staff finds that the hardship for this variation is due to the location of the principal structure in relation to the front yard setback. Although this setback deficiency is minimal, it does reduce the property owner's ability to construct an unenclosed roofed-over front porch to a usable standard with the desire to place typical outdoor furniture on the porch with enough space to access the seating. While an 8' wide porch is being proposed, the majority of the porch is permitted by right as it is behind the 25 foot front yard allowable encroachment area.

4. 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.

Staff finds that granting the request would not be injurious to neighboring properties.

Concluding, Mr. Panfil stated that staff recommends approval of the requested variation, subject to the five (5) conditions outlined in the staff report.

Chairperson DeFalco then opened the meeting for discussion by the ZBA members.

Mr. Tap stated that he had visited the property and did not perceive any sight line issues. Mr. Tap then asked staff if there were any other issues on-site.

Mr. Panfil responded that the proposal meets all other criteria of the municipal code.

Chairperson DeFalco commented that the home on the lot to the west was set back much further than the home on the subject property. Chairperson questioned staff regarding the setbacks for single family homes within the R2 Single-Family Residence District when a lot abuts other lots that have already been developed with detached single-family dwellings.

Mr. Panfil responded that for new construction, the front yard setback would be determined by averaging the front yard setback of the two adjacent lots. While the proposed alterations to the existing home are significant, it is not considered a new home and therefore is still subject to the thirty-foot front yard setback and additional five-foot encroachment for an unenclosed roofed-over porch.

Chairperson DeFalco asked why an eight foot (8') deep porch is being proposed when the previously referenced variation from earlier in the year only proposed a seven foot (7') porch.

Mr. Ohle responded that his professional opinion as an architect is that an eight foot (8') deep porch is the minimum necessary for a furniture zone and movement. Mr. Ohle stated that he believes making the porch comfortably sized encourages residents to use the porch and increases their interaction with the community.

Chairperson DeFalco stated that his front porch is six feet (6') deep and is suitable for his needs.

Dr. Corrado stated that he used to have an eight foot (8') deep porch and believes eight foot (8') is not too much.

Mr. Bedard stated that it is not the overall size of the porch that is the issue, but the degree to which the porch violates the setback requirement.

Chairperson DeFalco stated his concern that if this variation were approved subsequent variation requests would become larger and larger.

Mr. Ohle reiterated that it is only a very small portion of the proposal that requires the variation.

Chairperson DeFalco stated that he understands the desire for a porch, but the lot is very deep and there is sufficient room behind the home for seating areas. Chairperson DeFalco then asked Mr. Webster how long he had live in the home at the subject property.

Mr. Webster replied that he does not live in the home, but rather has a long-term renter with an option to buy.

Mr. Panfil then commented that Mr. Bedard's statement regarding the focus of the variation being not on the overall size and depth of the porch, but the extent to which the front yard setback encroachment.

A motion was made by Dr. Val Corrado, seconded by Keith Tap, that the Zoning Board of Appeals recommended this petition for approval to Corporate Authorities, subject to the following conditions:

- 1. The porch shall be developed in accordance with the submitted plans, prepared by James L. Ohle, Architect.
- 2. The petitioner shall apply for and receive a building permit for the proposed plans.
- 3. Such approval shall become null and void unless work thereon is substantially under way within 12 months of the date of issuance, unless extended by the Board of Trustees prior to the expiration of the ordinance granting the variation.

- 4. In the event that the principal structure on the subject property is damaged or destroyed to fifty-percent (50%) of its value, the new structure shall meet the required front yard setback.
- 5. The roofed-over porch shall remain unenclosed.

The motion carried by the following vote:

Aye: 5 - John DeFalco, Mary Newman, Keith Tap, Ed Bedard, and Val Corrado

Absent: 2 - Raymond Bartels, and Greg Young

# **Business Meeting**

# **Approval of Minutes**

A motion was made by Keith Tap, seconded by Ed Bedard, to approve the minutes of the August 28, 2013 meeting. The motion passed by a unanimous vote.

# **Planner's Report**

Jennifer Ganser, Assistant Director of Community Development, coordinated a discussion regarding the rescheduling of the November and December Zoning Board of Appeals meetings due to holiday conflicts. It was agreed to schedule the meetings for November 20, 2013 and December 18, 2013.

#### **New Business**

#### **Unfinished Business**

# Adjournment

A motion was made by Mary Newman, seconded by Ed Bedard, to adjourn the meeting at 9:21 p.m. The motion passed by a unanimous vote.

John DeFalco, Chairperson Zoning Board of Appeals

William J. Heniff, AICP, Director of Community Development Zoning Board of Appeals