

May 15, 2008

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

Subject: ZBA 08-04; 1005 E. Washington Boulevard

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 corner side yard from four feet (4') to five feet (5') in the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on April 23, 2008. Kristen Walsh, owner of the subject property, presented the petition. She stated that she and her husband were requesting to install a five (5) foot fence that would completely enclose their yard. The fence would be constructed to four (4) feet and would include an additional one (1) foot topper. The topper would give an open, not fortress-like feel. The current fence is in disrepair, and it would benefit the character of the neighborhood to have it replaced. She further stated that the proposed fence height would not change the character of the neighborhood.

Mrs. Walsh stated that the fence would be constructed eleven (11) feet from the sidewalk rather than right against it. This would make the fence less obtrusive. She stated that her family lived on a busy street and that she has a two and a half year old child and another on the way. The fence would serve in part as a safety feature for them. Building the fence to code would limit the usable space of the yard and alter their current landscaping.

She stated that the fence topper would consist of two (2) foot boards spaced two (2) feet apart and could easily be seen through. At this point, Mrs. Walsh submitted two photos. One showed an example of the proposed fence and the other showed the current fence. Mrs. Walsh finished by saying that the fence would not be a danger in the neighborhood or a clear line of sight issue.

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 Washington Boulevard and Westmore-Meyers Road. The petitioner is requesting a variation to allow the installation of a fence four (4) feet in height with a one (1) foot lattice extension, a total height of five (5) feet. The new fence will replace an existing fence greater than five (5) feet in height that is in disrepair. The proposed fence would be set back approximately eleven (11) feet from the side lot line. As the existing nonconforming fence is being replaced, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

The Zoning Ordinance allows nonconforming fences to remain in existence provided 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. 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 their request, the petitioners have raised a few issues related to safety and neighborhood character. While staff recognizes these points are valid to a point, staff does not believe these concerns are demonstrative of a hardship. The petitioners also argue that the construction of a five-foot fence set back twenty (20) feet from the corner side property line as required would create an awkward situation due to the placement of a tree and an existing deck. Staff does not find this to be the case. A fence set back twenty (20) feet or slightly further would be located between the tree and the existing deck.

Staff finds that the Standards for Variations have not been affirmed.

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. Many other properties with a similar layout and design have been able meet the established regulations.

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 corner side yard. The hardship has been created by the petitioner as a result of the preference for the fence's height and location.

Therefore, staff is recommending denial of the petition as requested.

Chairperson DeFalco opened the meeting for discussion among the members.

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Chairperson DeFalco stated that the Board has had a number of fence height cases before them. He described one fence on School Street that was built to six (6) feet in height. The fence had to be saw cut to four (4) feet. Similar concerns about safety were raised. He described another case on Elizabeth Street in which a four (4) fence had an additional lattice. Issues about dogs jumping the fence were raised in this case. Still, the lattice had to be removed.

Mr. Tap asked the staff if the fence were set back twenty (20) feet, would the fence be permitted to be five (5) feet high?

Mr. Moynihan answered that this would be permitted. Chairperson DeFalco stated that the fence could be as high as six (6) feet.

Mrs. Walsh stated that the fence would cut into usable yard space, would be too close to an existing deck, and would change the layout of the yard.

Mrs. Newman asked if the twenty (20) foot side yard were to be maintained, how far would the fence be from the deck?

Mrs. Walsh stated that this would only be a few feet. Also, there is equipment in the area that would be difficult to reach if this were done and an existing tree would be outside the fence.

Mrs. Newman stated that the tree seems to be interfering with the current fence and was causing it to bow. She asked if this was the case and if the proposed fence would be built in the same position.

Mrs. Walsh stated that the fence would be built in the same place but it was not an issue as it appears.

Chairperson DeFalco stated that according to the site plan, a deck set back twenty (20) feet would be at least three and one half feet from the existing deck. He also stated that the width of the lot is eighty (80) feet and the usual lot width in the Village is sixty (60) feet. So, a set back of twenty (20) feet leaves sixty (60) feet to work with when it would normally leave forty (40) feet.

Mrs. Walsh stated that these were valid points. However, she believes the spirit of the ordinance was to address safety issues and not creating a fortress-like feel. She believes that the proposed fence would not have either effect.

Chairperson DeFalco stated that when a fence is adjacent to a neighbor's front yard, they may not want to come out of the front of their house and see a wall to the side of them. This is what is meant by a fortress-like feel and is the case here.

Mrs. Walsh stated that no neighbors were objecting to the fence.

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Chairperson DeFalco stated that the neighbor at 1015 East Washington may not be there forever. A new home could be built closer to the front lot line and would be impacted by the proposed fence.

Mrs. Walsh stated that the proposed topper would give the fence a different feel.

Chairperson DeFalco stated that a hardship must be shown and that this case would set a precedent for other properties in the Village.

Mrs. Walsh asked if there were cases with a precedent for approval.

Mr. Moynihan stated that some similar cases had been recommended for denial and a few others for approval. However, the details of those cases were not necessarily the same as the current one.

Mrs. Walsh stated that the trustee in her district supports her petition and had recommended the public hearing process.

Chairperson DeFalco stated the Zoning Board of Appeals makes only a recommendation to the Board of Trustees. The ZBA must take a look at the ordinances and determine if there is a hardship.

Mr. Bedard stated that given the size of the lot, he did not see a hardship in this case.

On a motion by Mr. Bedard and a second by Mr. Corrado, the Zoning Board of Appeals recommended by a vote of 6 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 height in a corner side yard from four feet (4') to five feet (5') in the R2 Single-Family Residence District.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals