

September 18, 2008

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

Subject: ZBA 08-14; 242 W. 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 corner side 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 August 27, 2008. Jerry Alm, owner of the subject property, presented the petition. Mr. Alm stated he was at the meeting to request a variation for his fence which runs along Elizabeth Street. He then submitted photographs of the fence to the Zoning Board of Appeals members and submitted them to the record. He stated that the original fence was constructed before he purchased the home in April 1998. Mr. Alm stated that he had constructed a new six foot fence as a replacement without knowledge that a permit was necessary.

Mr. Alm stated that Elizabeth Street is busy with through traffic and sidewalk traffic. He indicated that he is seeking the variation for the safety of this children, grandchildren, and pets. He stated that he is worried that an individual could climb a four foot fence and be bitten by his dog or worse drown in the pool. He stated the six foot fence is not a danger to the neighborhood. He also indicated the property abutting the rear of his property has a six foot fence in the corner side yard. He stated that he has moved the fence out of the clear line of sight area and agrees that this was a safety issue. However, he stated that the new fence has the benefits of safety and curbside appeal.

Chairperson DeFalco opened the meeting for public comment.

Ray Kern, 303 W. Potomac Avenue, stated that he lives about one hundred feet northwest of Mr. Alm's residence. He stated that there has been a fence in the corner side yard on the subject property since about the 1960's. However, the

owner previous to Mr. Alm installed a six foot fence because of the children walking to and from Parkview School. He stated that in this opinion the new fence on the subject property is an enhancement to the neighborhood. Also, he indicated that a shorter fence would be an eyesore due to the six foot fence on the property to the rear of the subject property.

Chairperson DeFalco then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. Mr. Moynihan stated that the subject property is located at the northeast corner of Elizabeth Street and Berkshire Avenue. The petitioner is requesting a variation to allow a fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The petitioner constructed the proposed fence in July of 2008 as a replacement for a previous non-conforming six foot (6') fence in the same area. The fence is located along a sidewalk easement on the western side of the property. As the existing non-conforming fence has been 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 non-conforming fences to remain in existence provided that once a non-conforming 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.

The newly constructed fence currently stands within the twenty-foot (20') by twenty-foot (20') clear line of sight triangle at the driveway on the subject property. The petitioner has agreed to move the fence out of the clear line of sight area.

Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. 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 privacy, safety, and traffic concerns. While staff recognizes that these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." The following standards 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 to meet the established regulations.

Staff finds that the fence could be constructed per the ordinance requirements either by lowering the fence height to four feet (4') 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 petitioner's preference for the fence's height and location.

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. Tap asked the petitioner if he had obtained a permit previous to construction of the fence.

Mr. Alm stated that he had not but that he had no knowledge this was necessary.

Mr. Young asked if there was a similar case last year on Hammerschmidt Avenue in which a six foot fence was approved because the property was near a school and had a pool in the rear yard.

Chairperson DeFalco stated that this was accurate and that the Zoning Board of Appeals had recommended approval in that case. He stated that at the previous Zoning Board of Appeals meeting another case had been heard with the same situation.

Chairperson DeFalco stated that the Zoning Board of Appeals had a history of looking at fence height cases more closely when there is a pool involved.

Mr. Young stated that a clear precedent was in place.

On a motion by Mr. Young and a second by Mr. Corrado, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board approve 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 six feet (6') in the R2 Single-Family Residence District.

Chairperson DeFalco then asked that the record reflect that this recommendation for approval was influenced by the existence of the pool and the property's proximity to a school. The property's trapezoidal shape was also a consideration. Chairperson DeFalco indicated that while the fence on Mr. Alm's property had been positioned outside of the clear line of sight area, the fence on the neighboring property had not been.

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Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals