

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X

Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: David A. Hulseberg, Village Manager *DAH*
DATE: November 5, 2009 (B of T) Date: November 19, 2009
TITLE: ZBA 09-10: 418 W. Wilson Avenue
SUBMITTED BY: Department of Community Development *WJ*

BACKGROUND/POLICY IMPLICATIONS:

The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests that the Village approve the following actions for the subject property located within the R2 Single-Family Residence District:

1. A variation from Section 155.407(H) of the Lombard Zoning Ordinance to reduce the minimum required open space on the subject property from fifty percent (50%) to forty-two and fifty-five one-hundredths percent (42.55%).
2. A variation from Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for an open deck not over three feet (3') above the average level of the adjoining ground.

The ZBA recommended approval subject to amended conditions.

Please place this item on the November 19, 2009 Board of Trustees agenda under items for Separate Action.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <i>DAH</i> _____	Date <u>11/11/09</u>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William Heniff, AICP, *WH*
Director of Community Development

DATE: November 19, 2009

SUBJECT: ZBA 09-10; 418 W. Wilson Avenue

Please find the following items for Village Board consideration as part of the November 19, 2009 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 09-10;
3. Plans associated with the petition; and
4. An Ordinance granting approval of the following actions for the subject property located within the R2 Single-Family Residence District:
 1. A variation from Section 155.407(H) of the Lombard Zoning Ordinance to reduce the minimum required open space on the subject property from fifty percent (50%) to forty-two and fifty-five one-hundredths percent (42.55%).
 2. A variation from Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for an open deck not over three feet (3') above the average level of the adjoining ground.

The Zoning Board of Appeals recommended approval of the zoning actions associated with the petition, subject to six (6) conditions. Subsequent to the Zoning Board of Appeals meeting, Trustee Tross wanted to ensure that the petitioner does not change how the existing gutters from the garage discharge into the yard. Since the proposed conditions recommended by the Zoning

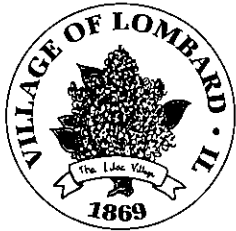
Board of Appeals do not address this concern, staff has drafted the following additional condition for consideration:

7. The downspouts from the garage shall be directed to the west of the garage and discharge in the center of the rear yard on a grassed or landscaped area.

As this condition was not part of the Zoning Board of Appeals recommendation, it will have to be added by the Village Board under separate action.

Please contact me if you have any questions regarding the aforementioned materials.

H:\CD\WORDUSER\ZBA Cases\2009\ZBA 09-10\DAH referral memo.doc



VILLAGE OF LOMBARD

255 E. Wilson Ave.
Lombard, Illinois 60148-3931
(630) 620-5700 Fax (630) 620-8222
www.villageoflombard.org

Village President
William J. Mueller

November 19, 2009

Village Clerk
Brigitte O'Brien

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

Trustees
Greg Alan Gron, Dist. 1
Richard J. Tross, Dist. 2
Zachary C. Wilson, Dist. 3
Dana L. Moreau, Dist. 4
Laura A. Fitzpatrick, Dist. 5
William "Bill" Ware, Dist. 6

Subject: ZBA 09-10; 418 W. Wilson Avenue

Dear President and Trustees:

Village Manager
David A. Hulseberg

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests that the Village approve the following actions for the subject property located within the R2 Single-Family Residence District:

"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."

1. A variation from Section 155.407(H) of the Lombard Zoning Ordinance to reduce the minimum required open space on the subject property from fifty percent (50%) to forty-two and fifty-five one-hundredths percent (42.55%).
2. A variation from Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for an open deck not over three feet (3') above the average level of the adjoining ground.

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

The Zoning Board of Appeals conducted a public hearing on October 28, 2009.

Chairperson DeFalco opened the meeting for public comment. Jack Kozar, the petitioner's attorney, 250 E. St. Charles Rd., presented the petition. He stated that his client has been before the ZBA about six months ago with a similar request. Since that time, they have talked with the Village and the neighbors. Today, they are requesting a compromise. They believe they have found a solution and are asking for the ZBA's blessing. He stated the Vittorini's wish to stay in their current residence where they have invested in their property. He stated that the first variation request is to address the open space on the property which is less than fifty percent. The second variation is to address the setback of the deck which is about one-half foot from the side property line.

Mr. Kozar addressed the first variation request. He stated that the property was non-conforming before 1990 when the open space requirement was added to the

code. The property has been less than 40% open space for the past thirty years. He stated that many of the neighbors are also non-conforming. The neighbors concerns include water absorption and drainage. However, he stated that the brick pavers on the property are somewhat pervious, that the property's natural slope has not been changed, and that the petitioner has changed his gutters so that they flow away from the eastern neighbor. The last remaining gutter to be changed would go from the front of the house under the driveway to drain into the front yard. He stated that no neighbor has objected to excessive bulk on the property as identified by the Village. He stated that the first survey that was presented shows what the property has looked like for thirty years. The second survey shows what the petitioner is proposing to remove to get to 42.55% open space.

Mr. Kozar addressed the second variation request. He stated that the paver patio was built in almost exactly the same footprint as the original wood deck on the property. He stated that the issues regarding setbacks that staff has pointed out are not present in this case. He then submitted a letter from the neighbor to the west at 422 W. Wilson Avenue, Sharie Sisiliano, stating that she does not object to the variation. He stated that building the deck to two feet would cause a safety issue by creating a small ravine. The deck is not visible because of the adjacent six foot fence and should not be considered a detriment to neighbors.

Chairperson DeFalco then requested the staff report. Stuart Moynihan, Associate Planner, introduced Nick Hatfield as the Village's Private Development who was present to answer questions about drainage. Mr. Moynihan then read the staff report. The petitioner is requesting the open space and setback variations to address improvements that were made in excess of what is permitted by code, along with certain improvements made without a permit. In particular, the open deck, constructed from brick pavers, was built without a permit and is located within the required interior side yard setback. The deck, along with other recently constructed improvements, contributes to the deficiency in open space on the property.

This petition is a follow-up on a previous petition, ZBA 09-01, which requested similar zoning relief. As part of ZBA 09-01, the petition requested a variation from the required fifty percent (50%) open space on the property to thirty-six and one-half percent (36.5%). Though the property remains currently at 36.5% open space, the petitioner has proposed to remove some impervious surfaces on the property that will bring the open space percentage up to forty-two and fifty-five one-hundredths percent (42.55%).

On June 4, 2008, a permit was issued for a garage to replace one that was destroyed by fire. The garage was to be built on the existing concrete slab. These site improvements were drawn on a plat of survey and were calculated by staff as occupying 3,779 square feet of the zoning lot. The garage permit was issued with a sticker which indicated: "Improvements shown on these plans will leave the lot with the minimum 50% required open space. No further lot coverage is permitted."

On September 16, 2008, a permit was issued to allow the replacement of the existing driveway. The permit indicated that the driveway must be constructed with the same dimensions shown on the plat of survey with the exception of a thirty (30) foot by four (4) foot parking area in the front yard. This additional parking area was allowed because the contractor verbally indicated that the deck had been removed.

Upon an inspection of the lot by Building Division staff, it was discovered that additional impervious surfaces had been constructed which were not depicted on any of the permit applications. These surfaces consist of:

- A. A two and one half foot strip of asphalt located along the eastern property line
- B. Asphalt paving behind and to the east of the garage
- C. A brick paver deck occupying the area to the rear and west of the residence
- D. A brick walkway from the garage to the deck.

As a result of this inspection, the petitioner was informed that his property did not meet the required 50% open space. Therefore, removal of impervious surfaces or a variation request would be necessary. The petitioner chose to request a variation and included a survey of the property as part of his petition. The survey indicated that the additional impervious surfaces brought the property to 36.5% open space. From the survey, staff determined that a second variation would be necessary as the brick paver deck was built 0.35 feet from the side property line where two (2) feet is required. The deck was constructed without a permit.

The petitioner applied for the two required variations and a public hearing, ZBA 09-01, was held on April 13, 2009. The Zoning Board of Appeals recommended denial of both variation requests. The Board of Trustees subsequently denied the petition on May 7, 2009.

On May 26, 2009, Village staff met with the petitioner's attorney. The attorney presented a calculation showing what the petitioner believes the open space percentage on the property was prior to the garage fire. The petitioner states that the coverage on the property was 60.34% or 4590.36 square feet. Staff calculations from the survey provided indicate that this calculation is slightly off, the coverage being 59.72% or 4543.65 square feet. However, as all of the areas in question are proposed to be removed by the petitioner, the discrepancy does not alter the percentage of open space being requested by the petitioner. Staff is unable to confirm or deny the previous open space percentage on the property. However, it is the opinion of staff that the property probably was deficient in open space to some degree. When the fifty percent (50%) open space requirement was added to the Zoning Ordinance in 1990, the subject property became non-conforming.

The petitioner has proposed the removal of:

- A. Asphalt paving behind and to the east of the garage;

- B. Twenty feet of the brick walkway from the garage to the deck;
- C. A one-half foot strip of asphalt located along the eastern property line; and
- D. A two and one-half foot strip of asphalt located along the western edge of the driveway.

Previous to the construction of the brick paver deck at the rear of the home, a wooden deck was located in a similar position. The petitioner has indicated that this wooden deck was more than thirty years old and abutted the western property line. The 1978 Zoning Ordinance lists open terraces not over three (3) feet in height as a permitted encroachment in all required yards. No minimum side yard setback was associated with this provision. However, at the time the wooden deck was removed from the property it was a legal non-conforming structure with regard to the interior side yard setback. The removal of this deck has two effects regarding non-conformities on the subject property:

1. The property was brought into closer compliance with the requirement for fifty percent (50%) open space.
2. The legal non-conforming status of the wooden deck was brought into compliance.

Section 155.303(C) of the Zoning Ordinance states: "In the event that any nonconforming building or structure is damaged or destroyed, by any means, to the extent of more than fifty (50%) of the fair market value of such building or structure immediately prior to such damage, such building or structure shall not be restored unless such building or structure shall thereafter conform to all regulations of the zoning district in which such building or structure and use are located."

Staff is not supportive of the open space variation for the following reasons:

- The open space requirements of the Zoning Ordinance are set for the provision of open space, to preserve green space, and to maintain the aesthetics of a suburban setting.
- The open space standards within the R2 District help to ensure that lots do not have the appearance of being overbuilt and that a more intensive use of the property is prevented.
- The request for an open space percentage of 42.55% is substantial.
- Impervious surfaces can inhibit the absorption of stormwater which results in additional runoff. The additional runoff can cause flooding on the subject property and surrounding properties.

For reference purposes, staff has attached a table of recent cases involving open space variation requests. Staff has supported several of these cases, each for unique reasons. However, staff does not support open space variations in areas prone to flooding. Flooding in the area around 418 W. Wilson Avenue has been documented to Private Engineering Services. Staff feels that this is a significant concern and, therefore, does not recommend approval.

Staff is not supportive of the setback variation for the deck. The required setback for decks is necessary to limit bulk on the property, to protect the privacy of neighbors, and to prevent encroachment on neighboring properties.

Mr. Moynihan addressed deficiencies in the Standards for Variations which were identified in the staff report. He also indicated that staff has included five conditions that the ZBA should consider should they decide to recommend approval.

Chairperson DeFalco asked for comments from the members of the ZBA.

Mr. Tap asked if the neighbor to the west is the same as during the first request.

Mr. Kozar stated that it is.

Chairperson DeFalco asked if the driveway was originally permitted as two and one-half feet from the property line.

Mr. Moynihan stated that this was what the permit depicted. However, the petitioner had provided some pictures during the last public hearing that indicated that it had been closer to the property line.

Mr. Kozar stated that the petitioner would remove one-half foot of this area and some area on the west side of the driveway.

Chairperson DeFalco asked if the gutters on the garage had been adjusted.

Mr. Kozar stated that they had been made to discharge into the backyard.

Mrs. Newman stated that this would just delay the water moving to the east.

Mr. Kozar stated that this is the natural drainage flow but some water would be absorbed in the backyard.

Mr. Newman stated that the open space was still an issue.

Mr. Kozar stated that there is not much else to remove in the backyard except the garage.

Mr. Tap asked about the validity of the survey from the previous public hearing case.

Mr. Kozar stated that an accurate survey was provided then and now. There were some inaccuracies in the permitting process that were at issue.

Chairperson DeFalco asked Nick Hatfield if he had viewed the property.

Mr. Hatfield stated that he had done so.

Chairperson DeFalco asked if the driveway was pitched to the east.

Mr. Hatfield stated that there was some pitch and that some water had been moving to the east when it was raining during his visit.

Chairperson DeFalco asked if removing the one-half foot would present any opportunity to fix the problem.

Mr. Hatfield stated that a trench backfilled with stone could be installed where the driveway was being removed to help direct some water toward the street.

Chairperson DeFalco asked about the \$10,000 backyard drainage grant.

Mr. Hatfield stated that this is a 50% reimbursement and would be applied to the backyard issue specifically.

Mr. Vittorini stated that installing something in his backyard probably wouldn't help his neighbors because he is higher up than them.

Mr. Hatfield stated that this statement was accurate. He suggested that Mr. Vittorini work with his neighbors to install something in the low spot of the area.

Chairperson DeFalco asked if the neighbor to the east was present.

Al Rutherford, 414 W. Wilson Ave., stated that he is the neighbor to the east. He stated that the issue is the way the driveway is sloped from the front to the backyard. He asked that the driveway be returned to level from east to west.

Chairperson DeFalco asked him about Mr. Hatfield's trenching suggestion.

Mr. Rutherford stated that he did not think this would help much as the issue primarily occurs from the front of the house back to the garage where the driveway is sloped toward his property.

Mr. Vittorini stated that this slope was not changed. He stated that the garage had to be raised as part of the reconstruction.

Chairperson DeFalco stated that it sounded like the driveway is pitching to the east and the north. He asked Mr. Hatfield if trenching would work better if it started at the garage rather than the fence which is further south.

Mr. Hatfield stated that this would probably add some benefit but water would still end up at the low point of the neighborhood.

Mr. Kozar asked Mr. Rutherford if he has had any standing water since the gutters had been moved.

Mr. Rutherford stated that he had not had very much.

Mr. Kozar asked if he has had any water in his house.

Mr. Rutherford stated that he had not.

Mr. Tap asked if the high point of the driveway was where the end of the fence is located.

Mr. Vittorini stated that it is pretty close.

Mr. Tap asked if it would be possible to extend the trench past the fence to the garage.

Mr. Vittorini stated that he would have to remove his fence to do that.

Chairperson DeFalco asked if anyone was ready to make a motion. He stated that he did not see an issue with approving the first variation.

Mr. Tap stated that he would be more comfortable if some progress was made toward alleviating the flooding in the area.

Chairperson DeFalco stated that he thought the Board of Trustees should direct staff to work with the neighbors on this issue if appropriate.

Mr. Tap suggested that the trenching be added as a condition in the staff report.

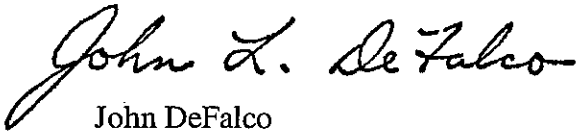
On a motion by Dr. Corrado and a second by Mr. Tap, the Zoning Board of Appeals recommended by a vote of 4 to 1 that the Village Board **approve** the zoning actions associated with ZBA 09-10, subject to the following conditions:

1. The petitioner shall remove all impervious surface indicated on the "Proposed Reductions" exhibit submitted as part of this public hearing.
2. The petitioner shall apply for and receive a building permit for the existing deck.

3. In the event that the pavement and paver bricks around the garage are removed, the site shall be left at original grade. Additional gravel or fill material is not permitted. Grade shall be consistent with what was previously at these locations prior to being improved and it shall match the grade with the adjoining properties. Final grade is subject to the approval of the Director of Community Development.
4. The downspout at the southeast corner of the home shall be extended into the front yard.
5. The approval related to this petition shall only apply to the existing construction. Any future construction on the subject property shall meet all current Code requirements.
6. The petitioner shall apply for and receive a permit to install a drainage trench to be backfilled with gravel along the eastern edge of the driveway on the subject property beginning from the southern property line extending north approximately seventy-seven feet (77'). The final design of this trench, including the dimensions, is subject to the approval of the Director of Community Development.

Respectfully,

VILLAGE OF LOMBARD



John DeFalco
Chairperson
Zoning Board of Appeals

East: R2 Single Family Residence District; Single Family Residences
West: R2 Single Family Residence District; Single Family Residences

ANALYSIS

SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on October 9, 2009.

1. Petition for Public Hearing.
2. Packet prepared by the petitioner which includes a written narrative, response to the Standards for Variations, a survey of the property as it currently exists, and a survey of the property showing proposed reductions of impervious surfaces.

DESCRIPTION

The subject property is located on the northern side of Wilson Avenue near the intersection of Wilson Avenue and Finley Road. The petitioner is requesting the open space and setback variations to address improvements that were made in excess of what is permitted by code, along with certain improvements made without a permit. In particular, the open deck (terrace), constructed from brick pavers, was built without a permit and is located within the required interior side yard setback. The deck, along with other recently constructed improvements, contributes to the deficiency in open space on the property.

This petition is a follow-up on a previous petition, ZBA 09-01, which requested similar zoning relief. As part of ZBA 09-01, the petition requested a variation from the required fifty percent (50%) open space on the property to thirty-six and one-half percent (36.5%). Though the property remains currently at 36.5% open space, the petitioner has proposed to remove some impervious surfaces on the property that will bring the open space percentage up to forty-two and fifty-five one-hundredths percent (42.55%).

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

The PES Division of Community Development offers the following comments regarding the above petition:

- 1) With consideration to the historical drainage issues, PES does not support further relief from the open space requirements.

- 2) The property should be restored to meet the 50% open space requirement.
- 3) The grade of the rear yard should be returned to the original grade.

I have also attached the previous comments related to this petition from ZBA 09-01 for reference:

The PES Division of Community Development has the following comments on the above petition:

- 1) *The Code requirement of 50% open space serves both to limit the density on lots as well as the volume of stormwater runoff. Decks, and to some degree paver stones, are not strictly impervious as rainfall can pass between the planks and voids. However, the additional asphalt is impervious and thus the lot does not meet the 50% open space requirement. Therefore, the Private Engineering Services Division recommends denial and/or removal of the additional impervious areas.*
- 2) *In the attorney's written history of the events, he states that we do not require permits for brick patios, which is correct if the patios are placed at grade or no more than one step high. Photo Misc. #4 shows two steps coming down from the patio.*
- 3) *The attorney also states "...Mr. Vittorini himself graded the back yard and added new dirt and sod." Per §150.280, it is unlawful for any person to alter or change the elevation or grade of any lot or parcel of land within the Village, including, but not solely limited to landscaping, without having first obtained a permit for such alteration or change from the Department of Community Development. There is no record of permit for the "added dirt," thus, a grade and fill permit is required so that staff can determine the extent of fill and what further action may be required.*

Public Works Engineering

Public Works Engineering has the following comments regarding the above petition:

If these deficiencies are the result of actions by the petitioner, then there is no reason that the property cannot be brought into full compliance with the codes, eliminating the need for variances.

FIRE DEPARTMENT

The Fire Department has reviewed the petition and has no comments.

BUILDING DIVISION

Upon review of the above referenced request, the Building Division referred to the following comments made by the Bureau of Inspectional Services regarding ZBA 09-01:

The Fire Department/Bureau of Inspectional Services has the following comments on the above petition:

The petitioner is requesting a variation to site improvements made with and without permits. In consideration of an open deck constructed from pavers (without a permit) and driveway extensions installed beyond the scope of the original driveway permits issued, the following should be considered. Patio surface area is considered to be a "deck" due to the surface being raised above existing grade level (2 risers at stairs). A "deck" is any surface that is not level with the surrounding grade and consists of a least a "step up", maximum 7 ¾" risers, to access the walking surface. A "patio" is more of a surface that is at grade level and does not require a "step up" to access the walking surface. With the construction of any raised surface of 2 or more risers, gripable handrails are required at the stairs. Even if the existing raised surface was void of any handrails, the current codes require the handrails.

Also, the addition of the additional asphalt surface on the rear and east side of the garage, was not included in the original permit submittal, but installed as an afterthought suggested by the paving contractor. This afterthought should have been addressed as an amendment to the original permit and a revised plat of survey submitted to Planning and Building for review. Since this was not addressed at time of installation, consideration should be given to possible removal of the additional surface or have the variation process addressed.

PLANNING

This petition is a follow-up on a previous petition, ZBA 09-01, which requested similar zoning relief. As part of ZBA 09-01, the petition requested a variation from the required fifty percent (50%) open space on the property to thirty-six and one-half percent (36.5%). Though the property remains currently at 36.5% open space, the petitioner has proposed to remove some impervious surfaces on the property that will bring the open space percentage up to forty-two and fifty-five one-hundredths percent (42.55%).

History

On June 4, 2008, a permit was issued for a garage to replace one that was destroyed by fire. The garage was to be built on the existing concrete slab. Attachment A is an aerial photograph from 2006 that shows these improvements. These site improvements were drawn on a plat of survey and were calculated by staff as occupying 3,779 square feet of the zoning lot. The garage permit was issued with a sticker which indicated: "Improvements shown on these plans will leave the lot with the minimum 50% required open space. No further lot coverage is permitted." For accuracy, the permit also indicated: "Open Space at 50.3%." (See Attachment B.)

On September 16, 2008, a permit was issued to allow the replacement of the existing driveway. The permit indicated that the driveway must be constructed with the same dimensions shown on the plat of survey with the exception of a thirty (30) foot by four (4) foot parking area in the front yard. This additional parking area was allowed because the contractor verbally indicated that the deck had been

removed and was replaced with sod. According to the previous calculation, this would allow the applicant to meet the open space requirement.

Upon an inspection of the lot by Building Division staff, it was discovered that additional impervious surfaces had been constructed which were not depicted on any of the permit applications. (See Attachment C.) These surfaces consist of:

- A. A two and one half foot strip of asphalt located along the eastern property line
- B. Asphalt paving behind and to the east of the garage
- C. A brick paver deck occupying the area to the rear and west of the residence
- D. A brick walkway from the garage to the deck.

As a result of this inspection, the petitioner was informed that his property did not meet the required 50% open space. Therefore, removal of impervious surfaces or a variation request would be necessary. The petitioner chose to request a variation and included a survey of the property as part of his petition. The survey indicated that the additional impervious surfaces brought the property to 36.5% open space. From the survey, staff determined that a second variation would be necessary as the brick paver deck was built 0.35 feet from the side property line where two (2) feet is required. The deck was constructed without a permit.

The petitioner applied for the two required variations and a public hearing, ZBA 09-01, was held on April 13, 2009. The Zoning Board of Appeals recommended denial of both variation requests. The Board of Trustees subsequently denied the original petition on May 7, 2009.

Current Request

On May 26, 2009, Village staff met with the petitioner's attorney. The attorney presented a calculation showing what the petitioner believes the open space percentage on the property was prior to the garage fire. The petitioner states that the coverage on the property was 60.34% or 4590.36 square feet. Staff calculations from the survey provided indicate that this calculation is slightly off, the coverage being 59.72% or 4543.65 square feet. However, as all of the areas in question are proposed to be removed by the petitioner, the discrepancy does not alter the percentage of open space being requested by the petitioner. Staff is unable to confirm or deny the previous open space percentage on the property. However, it is the opinion of staff that the property probably was deficient in open space to some degree. Please see the attached aerial from 2006 (attachment A) which shows the improvements as they were before the garage fire. When the fifty percent (50%) open space requirement was added to the Zoning Ordinance in 1990, the subject property became non-conforming.

As part of this petition, the petitioner has proposed the removal of:

- A. Asphalt paving behind and to the east of the garage;
- B. Twenty feet of the brick walkway from the garage to the deck;
- C. A one-half foot strip of asphalt located along the eastern property line; and
- D. A two and one-half foot strip of asphalt located along the western edge of the driveway.

Previous to the construction of the brick paver deck at the rear of the home, a wooden deck was located in a similar position. The petitioner has indicated that this wooden deck was more than thirty years old and abutted the western property line. The 1978 Zoning Ordinance lists open terraces not over three (3) feet in height as a permitted encroachment in all required yards. No minimum side yard setback was associated with this provision. However, at the time the wooden deck was removed from the property it was a legal non-conforming structure with regard to the interior side yard setback. The removal of this deck has two effects regarding non-conformities on the subject property:

1. The property was brought into closer compliance with the requirement for fifty percent (50%) open space.
2. The legal non-conforming status of the wooden deck was brought into compliance.

Section 155.303(C) of the Zoning Ordinance states: "In the event that any nonconforming building or structure is damaged or destroyed, by any means, to the extent of more than fifty (50%) of the fair market value of such building or structure immediately prior to such damage, such building or structure shall not be restored unless such building or structure shall thereafter conform to all regulations of the zoning district in which such building or structure and use are located."

Staff is not supportive of the open space variation for the following reasons:

- The open space requirements of the Zoning Ordinance are set for the provision of open space, to preserve green space, and to maintain the aesthetics of a suburban setting.
- The open space standards within the R2 District help to ensure that lots do not have the appearance of being overbuilt and that a more intensive use of the property is prevented.
- The request for an open space percentage of 42.55% is substantial.
- Impervious surfaces can inhibit the absorption of stormwater which results in additional runoff. The additional runoff can cause flooding on the subject property and surrounding properties.

For reference purposes, staff has attached a table of recent cases involving open space variation requests. Staff has supported several of these cases, each for unique reasons. However, staff does not support open space variations in areas prone to flooding. Flooding in the area around 418 W. Wilson Avenue has been documented to Private Engineering Services. Staff feels that this is a significant concern and, therefore, does not recommend approval.

Staff is not supportive of the setback variation for the deck. The required setback for decks is necessary to limit bulk on the property, to protect the privacy of neighbors, and to prevent encroachment on neighboring properties. The deck also contributes to the deficiency in open space on the property. When the previously existing wood deck was removed from the property, the non-conformity was removed. The new deck should have been constructed to meet the setback requirement of two feet (2').

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:

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 established regulations. The property does not have physical surroundings, shape, or topographical features that differ substantially from other lots in the neighborhood.

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

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 difficulties have been created by the petitioner as a result of the preference for the deck's location and the desire to have greater impervious coverage than allowed by code.

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 additional impervious surfaces on the property are substantial and have the potential to cause additional stormwater runoff and/or flooding on other properties.

6. *The granting of the variation will not alter the essential character of the neighborhood.*

Staff finds that these variations will alter the essential character of the neighborhood by allowing excessive bulk on the subject property. The added bulk caused by the brick paver deck is particularly problematic as it is within a setback area.

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.*

Staff finds that proposed open space variation may reduce and impair natural drainage on the subject property. Impaired drainage may result in drainage problems and flooding on adjacent properties.

Should the Zoning Board of Appeals find it appropriate to recommend approval of the requested variations, staff suggests that the following conditions be added to any motion for approval:

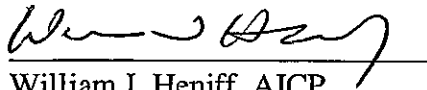
1. The petitioner shall remove all impervious surface indicated on the "Proposed Reductions" exhibit submitted as part of this public hearing.
2. The petitioner shall apply for and receive a building permit for the existing deck.
3. In the event that the pavement and paver bricks around the garage are removed, the site shall be left at grade. No additional gravel or fill material is permitted. Grade shall be consistent with what was previously at these locations prior to being improved and it shall match the grade with the adjoining properties. Final grade is subject to the approval of the Director of Community Development.
4. The downspout at the southeast corner of the home shall be extended into the front yard.
5. The approval related to this petition shall only apply to the existing construction. Any future construction on the subject property shall meet all current Code requirements.

FINDINGS AND RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations for the requested variation. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Zoning Board of Appeals make the following motion recommending **denial** of the aforementioned variation:

Based on the submitted petition and the testimony presented, the requested variation **does not comply** with the Standards required for a variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings included as part of the Inter-departmental Review Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 09-10.

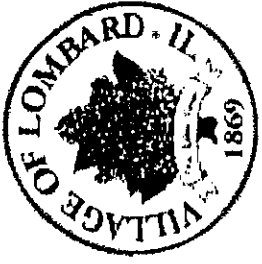
Inter-Departmental Review Group Report Approved By:



William J. Heniff, AICP
Director of Community Development

c: Petitioner

Attachment A - 418 W Wilson Ave (Spring 2006)



Addresses

Centerline

JURIS

--- DPC TRAIL

--- RIVER

---+ R&R

--- TOLLWAY

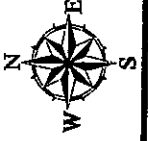
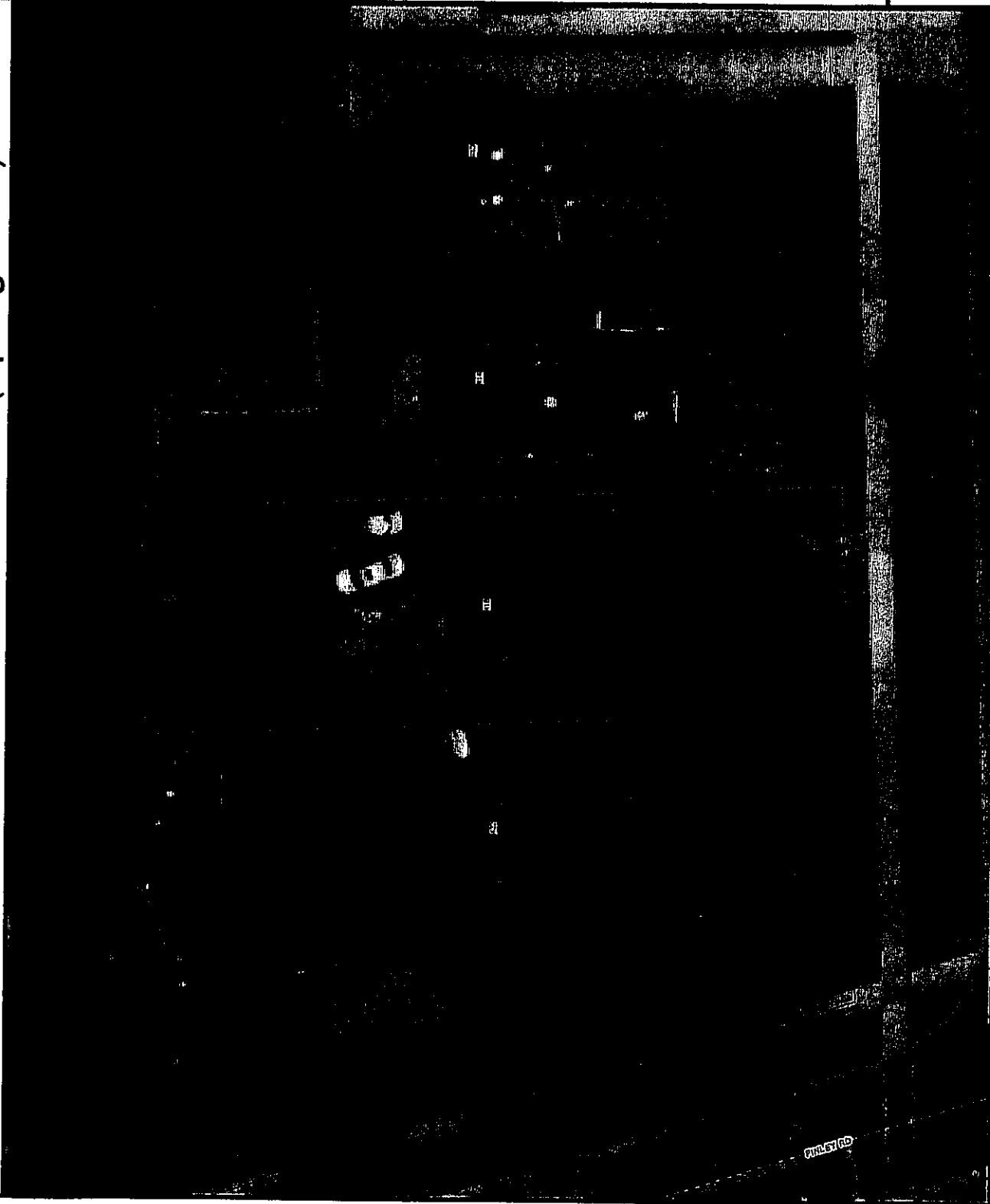
□ Parcels

□ Limits-poly

• Active Cases

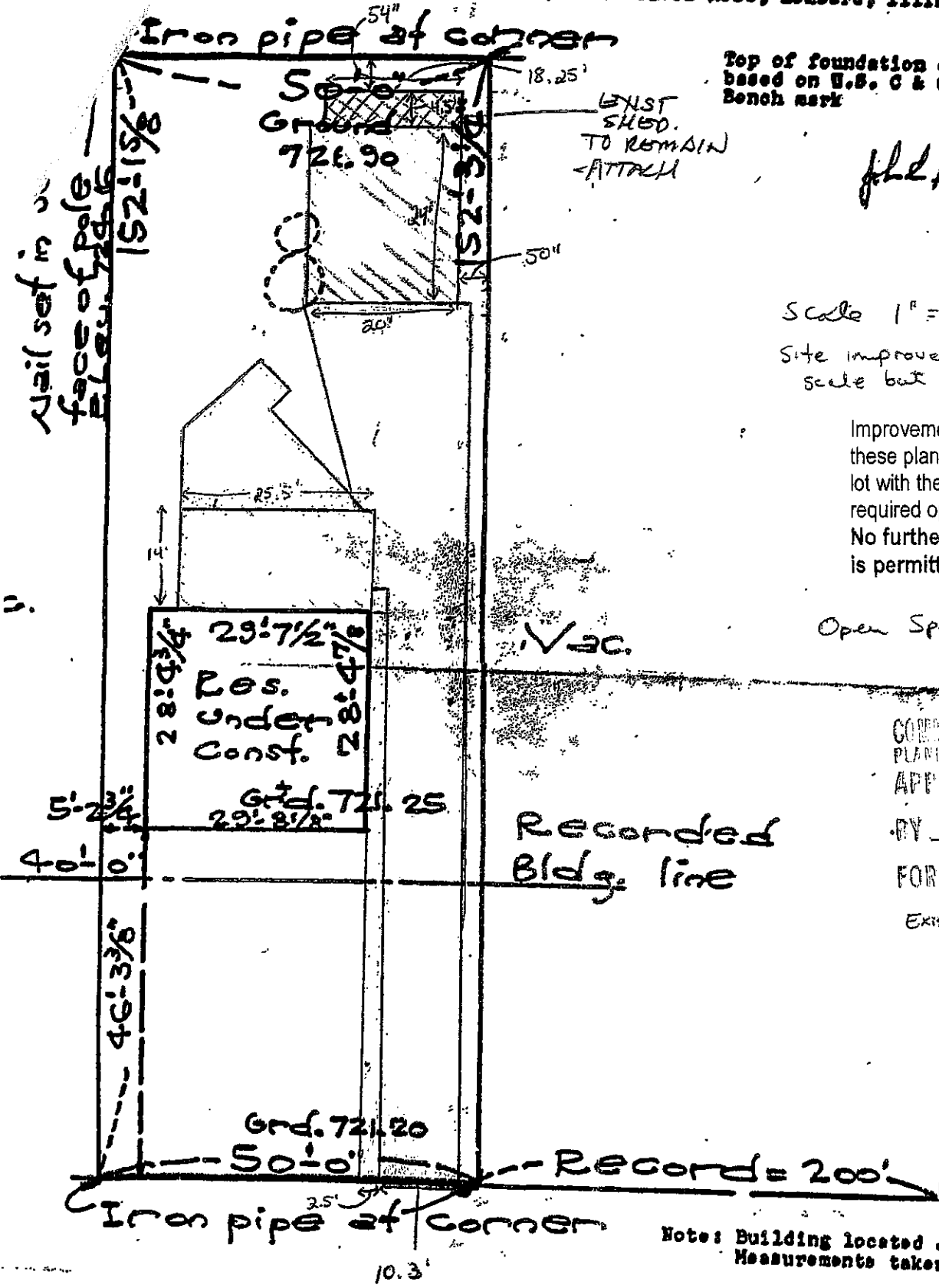
--- Boundary Agreement

31 ft



Public Highway of Section 15, Township 39 North, Range 11, East of the Third Principal Meridian, 1924 as Document No. 183462 in Du Page County, Illinois.

Commonly known as No. 418 W. Wilson Road, Lombard, Illinois.

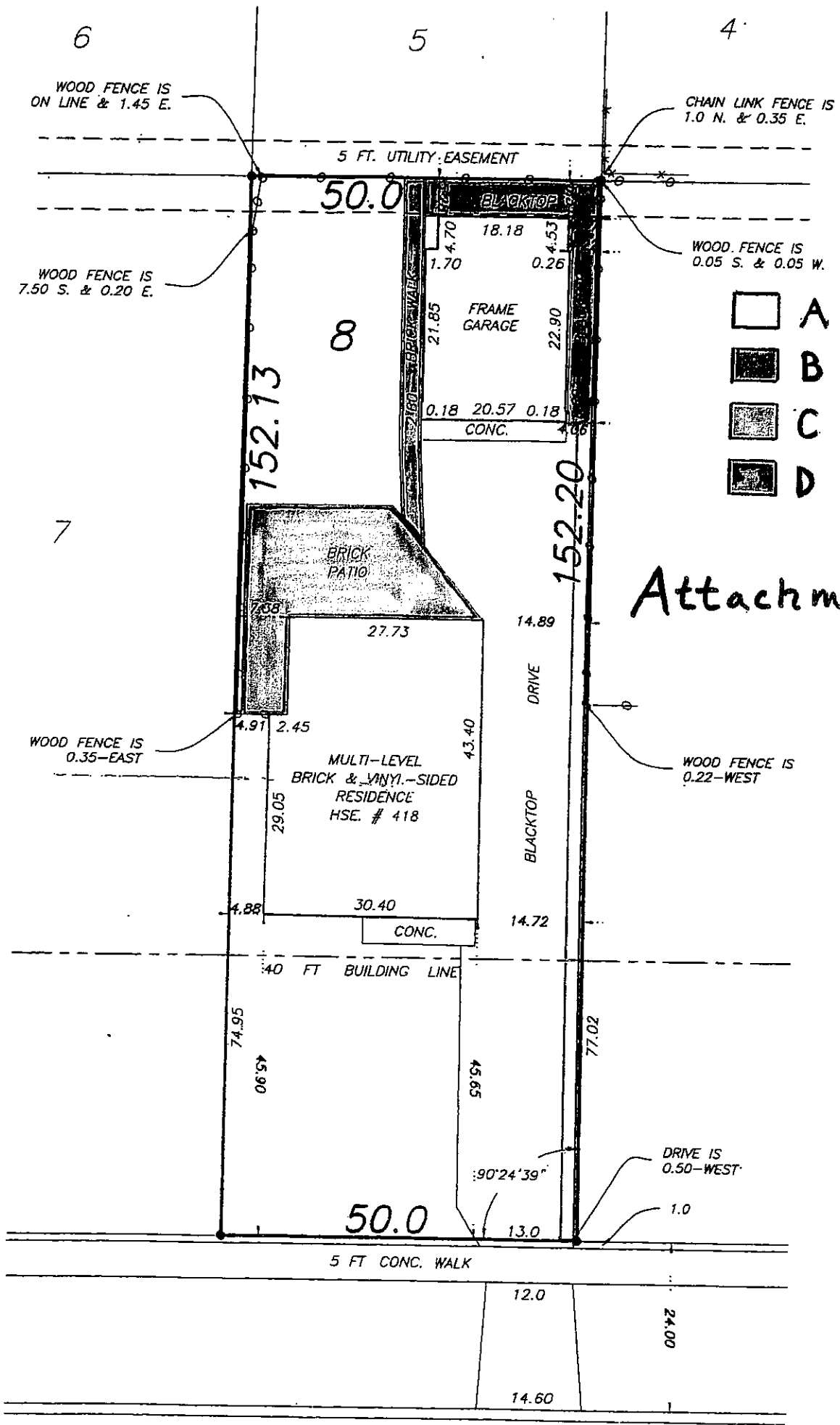


John Bush
BLDG. AM 7
APPR 3

COMMUNITY DESIGN
PLANNING SERVICE
APPROVED 5-20-08
BY SWM
FOR Detached Garage
Existing slab not to be enlarged

Note: Building located June 17, Measurements taken on four

Attachment B



- A
- B
- C
- D

Attachment (

JR. +

MILLSON

6

ROAD

Recent Open Space Cases for Single Family Residences

98-07	760 E. Madison Street	47.0%	Expansion of a detached garage	Approval	Approval	Approval
98-16	535 E. Berkshire Avenue	42.0%	Construction of asphalt parking area	Denial	Approval	Approval
99-08	200 N. Elizabeth Street	46.0%	Construction of a front porch and rear addition	Denial	Approval	Approval
99-29	241 S. Brewster Avenue	46.0%	Construction of a deck	Denial	No recommendation	Approval
01-05	1607 S. Norbury Avenue	48.7%	Construction of a shed	Denial	Denial	Denial
01-14	528 S. Lalonde Avenue	43.0%	Replacement of existing pool (legal non-conformity)	Approval	Approval	Approval
01-16	133 E. Central Avenue	35.0%	Deck, spa, and paver brick constructed without permit	Denial	Denial	Approval (on condition of removal of 220 sq. ft.)
02-11	112 N. Main Street	42.0%	Replacement of existing garage (legal non-conformity)	Approval	Approval	Approval
02-27	342 N. Martha Street	46.0%	Construction of a deck	Denial	Approval	Approval
04-09	345 S. Stewart Avenue	47.4%	Replacement of existing garage (legal non-conformity) with larger garage and additional asphalt	No recommendation	Approval	Approval
05-17	1105 E. Washington Boulevard	40.2%	Construction of additional driveway width	Denial	Denial	Denial
06-07	429 S. Craig Place	44.5%	Construction of a detached garage and driveway	Denial	Approval (reduced to 47%)	Approval (reduced to 49.2%)
06-08	512 S. Craig Place	47.1%	Replacement of existing deck (legal non-conformity) with new roof	Denial	Approval	Approval
06-12	125 S. Stewart Avenue	45.6%	Construction of a residential addition	Denial	Approval	Approval
07-04	314 S. Brewster Avenue	46.0%	Replacement of existing garage (legal non-conformity)	Approval	Approval	Approval

ORDINANCE NO. _____

**AN ORDINANCE APPROVING VARIATIONS
OF THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(ZBA 09-10: 418 W. Wilson Avenue)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, the subject property is zoned R2 Single Family Residence District; and,

WHEREAS, an application has been filed with the Village of Lombard requesting a variation from Title 15, Chapter 155, Section 155.407(H) of the Lombard Zoning Ordinance to reduce the minimum required open space on the subject property from fifty percent (50%) to forty-two and fifty-five one-hundredths percent (42.55%); and,

WHEREAS, an application has been filed with the Village of Lombard requesting a variation from Title 15, Chapter 155, Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for an open deck not over three feet (3') above the average level of the adjoining ground; and,

WHEREAS, a public hearing has been conducted by the Zoning Board of Appeals on October 28, 2009 pursuant to appropriate and legal notice; and,

WHEREAS, the Zoning Board of Appeals has forwarded its findings and recommendations to the Board of Trustees with a recommendation of approval of the requested variations; and,

WHEREAS, the President and Board of Trustees does concur with the findings of the Zoning Board of Appeals; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interest of the Village of Lombard to approve the requested variations.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That a variation is hereby granted from the provisions of Title 15, Chapter 155, Section 155.407(H) of the Lombard Zoning Ordinance to reduce the

minimum required open space on the subject property from fifty percent (50%) to forty-two and fifty-five one-hundredths percent (42.55%); and,

SECTION 2: That a variation is hereby granted from the provisions of Title 15, Chapter 155, Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for an open deck not over three feet (3') above the average level of the adjoining ground.

SECTION 3: This ordinance shall be granted subject to compliance with the following conditions:

1. The petitioner shall remove all impervious surface indicated on the "Proposed Reductions" exhibit submitted as part of this public hearing.
2. The petitioner shall apply for and receive a building permit for the existing deck.
3. In the event that the pavement and paver bricks around the garage are removed, the site shall be left at original grade. Additional gravel or fill material is not permitted. Grade shall be consistent with what was previously at these locations prior to being improved and it shall match the grade with the adjoining properties. Final grade is subject to the approval of the Director of Community Development.
4. The downspout at the southeast corner of the home shall be extended into the front yard.
5. The approval related to this petition shall only apply to the existing construction. Any future construction on the subject property shall meet all current Code requirements.
6. The petitioner shall apply for and receive a permit to install a drainage trench to be backfilled with gravel along the eastern edge of the driveway on the subject property beginning from the southern property line extending north approximately seventy-seven feet (77'). The final design of this trench, including the dimensions, is subject to the approval of the Director of Community Development.
7. The downspouts from the garage shall be directed to the west of the garage and discharge in the center of the rear yard on a grassed or landscaped area.

SECTION 4: This ordinance is limited and restricted to the property generally located at 418 W. Wilson Avenue, Lombard, Illinois, and legally described as follows:

Ordinance No. _____
Re: ZBA 09-10
Page 3

LOT 8 IN BLOCK 13 IN LOMBARD PARK MANOR, BEING A SUBDIVISION OF THE SOUTH ½ OF THE NORTHEAST ¼ (EXCEPT EAST 1 ACRE THEREOF) DEEDED TO PUBLIC HIGHWAY OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN RECORDED OCTOBER 9, 1924 AS DOCUMENT NO. 183452 IN DUPAGE COUNTY, ILLINOIS.

Parcel No: 06-18-218-008

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2009.

First reading waived by action of the Board of Trustees this _____ day of _____, 2009.

Passed on second reading this _____ day of _____, 2009.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2009.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published by me this _____ day of _____, 2009.

Ordinance No. _____
Re: ZBA 09-10
Page 4

Brigitte O'Brien, Village Clerk

H:\CD\WORDUSER\ZBA Cases\2009\ZBA 09-10\ORDINANCE 09-10.doc