

December 1, 2005

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

Subject: ZBA 05-19; 734 S. Elizabeth Street

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests approval of the following actions on the subject property:

1. A variation to Section 155.205(A)(1)(C)(3) of the Lombard Zoning Ordinance to allow a fence in a rear yard abutting the front yard of an adjacent lot to exceed four feet in height.
2. A variation from Section 155.205(A)(1)(e)(2) to allow a solid fence within a clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on November 16, 2005. Jeanne Palmeri, owner of the property, presented the petition.

Ms. Palmieri stated that she moved into her new house two years ago. In 2003, her fence contractor applied for and received a permit for a picket fence within her corner side yard. She stated that the design of the fence was intended to provide additional security for an existing pool located within her back yard. The fence was constructed as it was proposed on the permit.

She stated that she received a violation notice relative to the fence this summer. The notice stated that the fence was a solid fence within a clear line of sight area and that the fence was too high within the rear of the property. After several discussions occurred between her and the Community Development staff relative to the fence, she said that she is making application to the Zoning Board of Appeals to allow the fence to remain as it was constructed. She stated that her rear neighbor does not object to the fence as it was constructed. She also stated that the fence does not pose an obstruction.

Chairperson DeFalco opened the meeting for public comment. No one spoke for or against the petition.

William Heniff, Senior Planner, presented the petition. He stated that the petitioner is requesting approval of two variations for an existing fence that was permitted and erected on the subject property in 2003. He noted that in 2005, staff found that the constructed fence did not meet all of the provisions of Village Code, and that zoning relief is necessary for the existing fence to remain on the premises as it was constructed.

Mr. Heniff stated that in December, 2003 a fence contractor applied for a fence permit on behalf of the petitioner. He noted that the fence permit was issued for a picket fence four feet (4') in height to extend from the southeast corner of the house along the driveway to the eastern property line, south along the eastern property line to the southeast corner of the lot, west along the south property line for twenty feet (20'). He mentioned that the permit also included a solid wood fence six feet (6') in height extending along the southern property line from the southwest corner of the property to twenty feet (20') from the southeast corner of the property and along the western property line behind the house for approximately thirty-five (35').

Mr. Heniff stated that code requires that the portion of the fence adjacent to the driveway within the clear line of sight area be of open construction, which is defined as seventy-five percent (75%) open. He noted that the existing fence is approximately fifty percent (50%) open. He stated that the subject property is a reverse corner lot, meaning that the corner side yard abuts the front yard of the adjacent property, and therefore, four feet (4') is the maximum height permitted for a fence within the eastern thirty feet (30') of the property. He noted that the four-foot (4') fence height is only maintained for the eastern twenty feet (20') along the southern property.

Mr. Heniff mentioned that staff feels an attempt was made to comply with the intention of the Zoning Ordinance when the fence was installed. He pointed out that spacing was provided between pickets within the clear line of sight area to open up the fence, and the fence height was dropped down to four feet (4') within the corner side yard setback. He noted that it is how the neighboring property is situated, with the front yard abutting the rear yard of the subject property, that requires a four foot fence be maintained for the entire thirty feet (30') along the rear property line. He stated that if the subject property was not a reverse corner lot, the fence would be in compliance with the fence height regulations.

Mr. Heniff noted that a precedent has been set by the approval of a similar variation request less than two blocks away from the subject property (ZBA 02-04). He stated that the degree of non-conformity presented in ZBA 02-04 was greater than the non-conformity presented as part of this petition. He noted that in that case, the approved variation allowed the entire fence within the corner side yard to be a solid six-foot (6') fence, and the variation request associated with this petition is to allow a ten-foot (10') portion of the fence to be six feet (6') in height. He mentioned that the remaining portion of the fence within the corner side yard meets the four-foot

(4') maximum height requirement. He also noted that the portion within the clear line of sight area does have a degree of transparency to it in that there is spacing between the pickets. He stated that the spacing is not enough to meet the seventy-five percent (75%) open surface area requirement for fences within the clear line of sight area. He noted that the fence is approximately fifty percent (50%) open.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Bedard discussed the constructed fence along the rear property line. He noted that the fence is six-feet in height but gradually tapers down to four-feet in height. He confirmed that the adjacent property owner did not have a problem with the fence as it was constructed.

Chairperson DeFalco then discussed the fence within the clear line of site area. He stated that he visited the property and backed in and out of the property and he noted that the fence does pose a visibility obstruction. Additionally, he noted that the opacity is less than 50% when the cross boards are taken into account.

He then asked if the fence could be altered to accommodate the clear line of sight provisions. He stated that many property owners angle their fences so that any sight obstructions are not present. Ms. Palmieri stated that she did not want to alter her fence as it would take away usable space within her rear yard.

Mr. Bedard then asked if the boards on the picket fence could be modified or trimmed to provide for increased visibility. Mrs. Palmieri stated that she did not want to trim the board as it could present a safety concern. By increasing the separation between boards, a child could get their head stuck in the fence or the spacing would allow for her children to walk through the fence. This would likely require her to add additional chicken wire to the existing fence. Upon further discussion of modifying the fence, she expressed concerns that cutting the fence may not be aesthetically pleasing as the stains would not match and that the structural integrity of the fence elements may be reduced.

Chairperson DeFalco then discussed various options to bring the fence into compliance and noted some of the options the Zoning Board of Appeals has recommended to other property owners in the past. He also noted that while the Village Board may have granted relief for fences in the clear line of sight area, the Zoning Board of Appeals has not recommended approval of these encroachments. He then discussed the fence at Elizabeth and Taylor Streets.

Ms. Palmieri noted that her intent was to comply with code. She noted that there are many other fences in the Village that have encroachments greater than her own fence. She also stated that she talked with her attorney on this issue and he raised a concern regarding enforcement of fence encroachments. She reiterated her desire to leave the fence as-is.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 5-0, submits this petition to the Corporate Authorities with a recommendation of **approval** for the first variation request from Section 155.205(A)(1)(C)(3) of the Lombard Zoning Ordinance to allow a fence in a rear yard abutting the front yard of an adjacent lot to exceed four feet in height, subject to the following condition:

1. The approved relief is only for the existing fence on the property. In event the fence is damaged, destroyed or is replaced, the new fence shall meet all provisions of the Zoning Ordinance.

The Zoning Board of Appeals, by a roll call vote of 4-1, submits this petition to the Corporate Authorities with a recommendation of **denial** for the second variation request from Section 155.205(A)(1)(e)(2) to allow a solid fence within a clear line of sight area.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals