

August 9, 2007

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

Subject: ZBA 07-09; 130 E. Sunset Avenue

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 located within the R2 Single-Family Residence District:

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required corner side yard where a maximum height of four feet is permitted; and
2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required front yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted.

The Zoning Board of Appeals conducted a public hearing on June 27, 2007. The petitioners, James and Kathleen Bachman, clarified that they are seeking relief for a five-foot fence, not a six-foot fence. The fence is to secure their children and their property. Mrs. Bachman stated that the existing five-foot fence is worn and they wish to replace it. They are aware that they could install a six-foot ornamental fence but would rather maintain what they currently have. They also wish to close the gap on their north property line with a five-foot fence. She submitted a letter in support of the requested relief from the neighbor to the north, which she read into the record.

Mr. Bachman stated that they do not want to create a fortress. Mrs. Bachman stated that other people can see into their yard and their kids are afraid of their neighbors' dog. Mr. Bachman stated that the layout is unique to their property. They want to follow the rules, which is why they applied for relief first.

Chairperson DeFalco then opened the meeting for public comment.

Gerald Ahlgrim, 127 E. Sunset, stated that he can see beyond the fence and it does not close them in. He complained that people frequently run the stop sign and a tree was once run down.

Kathleen Ahlgrim, 127 E. Sunset, noted that the existing fence is in the clear line of sight area but the new fence would correct that problem.

Chairperson DeFalco then requested the staff report.

Jennifer Backensto, Planner II, presented the staff report. The subject property previously had a legal nonconforming five-foot high solid fence within the corner side yard and within the clear line of sight area located along the corner of Garfield Street and Sunset Avenue. The proposed fence would also abut the front yard of the adjacent property to the north along Garfield. The petitioner wishes to replace the legal nonconforming fence with a similar five-foot high solid fence. The Zoning Ordinance contains provisions that allow nonconforming fences to remain with the intention 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. As such, the petitioner's replacement of the fence removed any legal nonconforming rights and requires that the new fence meet the four-foot height restriction and clear line of sight requirements.

The petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and safety. However, a variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. Staff cannot support the variation for the following reasons. Five-foot high fences are not permitted within front yards or corner side yards due to the visual obstruction they create. Similarly, there are additional restrictions placed upon fences that abut a neighbor's front yard to prevent as such a fence from blocking the view from the front yard of the neighboring property.

It is noted that the petitioner's house is located outside of the required twenty (20) foot side yard setback located along Sunset Avenue. By right, the petitioner would have the right to construct a six (6) foot high fence, starting from the southeast corner of the house – extending forty-four (44) feet to the east. To prevent fluctuation in height, the petitioner wishes to maintain the contiguous five (5) feet of fence for aesthetic purposes along Sunset Avenue.

Upon original submittal, the existing fence was to be replaced in its exact location with a four (4) foot portion of the replacement being located within a clear line of sight area. To bring the fence into compliance to the letter of the Ordinance, the petitioner readily agreed to comply with any clear line of sight issues. On the southeast corner of the existing fence, a four (4) foot portion is

located within the thirty (30) foot clear line of site area located along Sunset Avenue and Garfield Street. As such, the petitioner has agreed to address the issue by placing the fence on an angle, as to not interfere with the aforementioned clear line of sight area. By replacing the fence, the property would no longer have any clear line of sight issues.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." Staff finds that there are no conditions related to the property that prevent compliance with the fence height regulations. The conditions are not unique to the subject property. The subject property is a reverse corner lot as its front yard abuts the front yard of the adjacent property at 610 N. Garfield. The Zoning Ordinance has specific fence regulations that apply to all reverse corner lots in relation to the abutting properties. The ordinance has not caused the hardship as the fence could have been constructed per the ordinance requirements. The hardship has been created by the petitioner as a result of the preference for the fence's height and location.

Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation, staff recommends that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner should be required to obtain a fence permit for the proposed fence.

Chairperson DeFalco then opened the meeting for discussion by the Board Members.

Chairperson DeFalco asked where the front yard was. Ms. Backensto stated that it would be the yard facing Sunset.

Chairperson DeFalco explained the requested relief. He noted that if security was desired the code was recently changed to allow a six-foot ornamental fence that would not create an obstruction. The petitioner stated that the six-foot fence could only be in the corner side yard but they are a reverse corner lot.

Chairperson DeFalco asked if the petitioners were amendable to a six-foot ornamental fence for the entire 30-foot section adjacent to the neighbor's front yard. The petitioner stated that it wouldn't really go with the house and would prefer to leave the existing wood fence sections.

Chairperson DeFalco stated that he had noticed some replacement slats on the fence. Mr. Bachman stated that the old fence was repaired with new posts to maintain it until their petition was either approved or denied. Mrs. Bachman stated that they did not initially understand the need for the variation.

Chairperson DeFalco noted that the hedges on the subject property are too tall. The petitioners stated that they had been made aware of that.

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Mrs. Ahlgram stated that it is a dangerous location with lots of animals around and the kids are in the yard all the time.

Mrs. Newman stated that if the old fence ever falls down, the petitioners would need to come back for a variation anyway.

Chairperson DeFalco stated that the petitioners have the option to construct a six-foot high fence at the 30-foot setback line, but they would prefer to have the entire yard fenced in. The fence in the area closest to the street could be built within code. Mr. Bachman stated that they do not wish to do that. Mrs. Bachman stated that they just want to keep their existing fence and close off the northern corner.

Chairperson DeFalco thanked the petitioners for coming in to ask for relief before they constructed the fence.

Mr. Polley asked how old the children are. The petitioners stated that they are five and seven years old.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 4-0, submits this petition to the Corporate Authorities with a recommendation of denial for the requested variation.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals

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