

September 7, 2006

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

Subject: ZBA 06-13; 501 N. Garfield 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 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') and 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 September 7, 2006. Mike Mallon, owner of the property, presented the petition. He stated that the only usable area of his yard was to the east of the house. He mentioned that in April he started getting bids from fence contractors and after coming into the Village to inquire about fence regulations, he realized that he couldn't construct the fence as planned. He noted that he spoke with David Hulseberg (Director of Community Development) and Trustee Sebby regarding a fence variation. He said they would support a variation for fence height, but he will still have make an application and go through the variance process. Mr. Mallon stated that Mr. Hulseberg pointed out that an open fence was needed along the driveway and street.

Mr. Mallon mentioned that the fence contractor contacted him because he had an opening in his schedule. Mr. Mallon stated that he did not anticipate a problem with installing the fence right away since he had been assured that the variance would be approved. He noted that the fence along the driveway is open, but does not meet the 75% open requirement. He stated that chain link and wrought iron which are 75% open would not be appropriate and would not fit in. He noted that his fence is not too different from other fences in town. He stated that he doesn't see the Village's position on why 75% open is necessary in the clear line of sight area.

Michelle Kulikowski, Planner I, presented the staff report. She summarized the staff report dated July 26, 2006 addressing the requested variation to allow a six foot (6') fence in the corner side yard for the property at the northeast corner of Berkshire Avenue and Garfield Street. The petitioner is proposing to install a fence enclosing the portion of his lot east of the residence. Most of the fencing would be four feet (4') in height, but along the rear property line, a solid six foot (6') fence would extend from the northeast corner of the lot to a point eleven feet from the corner side property line. The remaining eleven feet (11') along the rear property line would have a four foot (4') fence and the transition from a four foot (4') fence to a six foot (6') fence would be aligned with the building line of the residence on the adjacent property.

Ms. Kulikowski noted that the residence on the subject property is setback twenty three feet (23') from the corner side property line and complies with the corner side yard setback, but the adjacent property to the east is only setback eleven feet (11') from the corner side property line, similar to many of the corner lots along Berkshire Avenue. Staff can support the variation because the subject property is not a reverse corner lot, and therefore, the solid six foot fence would not be adjacent to any portion of the front yard of the adjacent property to the east. There is a precedent for granting variations to allow a six foot (6') fences in corner side yards when they are aligned with the building line of a residence (ZBA 05-06). The six foot (6') fence will not alter the essential character of the neighborhood as it will be aligned with the building line of the majority of the residences along Berkshire Avenue, consistent with the intent of the fence height regulations for corner lots. She pointed out that the original staff report did mention that the portion of the four foot (4') fence within the clear line of sight of the driveway must be of open construction, and the Zoning Ordinance defines an open construction fence as a fence which has over its entirety at least 75% of its surface area in open space which affords a direct view through the fence

Ms. Kulikowski summarized Addendum One to the staff report noting that the Zoning Board of Appeals had continued the petition at the June 28, 2006 meeting in order to allow the petition to be re-advertised with an additional variation request. She noted that prior to the June 28th meeting, the petitioner installed the fence, and the portion of the fence within the clear line of sight area did not meet the open construction requirement. She stated that Section 155.205(A)(1)(e)(1) of the Lombard Zoning Ordinance states that fences over two feet (2') in height can be located within a clear line of sight area if they are of open construction. She referenced the definitions of "open construction fence" and "solid construction fence". She noted that the petitioner's fence in the clear line of sight area for the driveway consists of four inch (4") pickets with a two inch (2") opening and by definition, the fence is considered a solid fence, as it only maintains approximately 33% of the surface area as open space.

Ms. Kulikowski presented background information regarding fence regulations in the Village of Lombard. She stated that previous fence regulations prohibited fences within clear line of sight areas, but a 1999 text amendment to the Zoning Ordinance allowed fences within clear line of sight areas provided that any fence over two feet (2') in height was of open construction. She mentioned that the text amendment included definitions for open construction and solid fences distinguishing that that a fence had to be at least 75% open to be deemed an open construction fence. She also

mentioned that the text amendment also reduced the clear line of sight triangle at the intersection of a private driveway with a public street from thirty feet (30') to twenty feet (20'). She stated that a later text amendment in 2000 established the requirement for fence permits, and as a result of the new permit requirement, staff conducted a field study of all of the fences in Lombard creating an inventory of all of the fences that did not comply with current regulations. Ms. Kulikowski commented on the photographs of non-conforming fences submitted by the petitioner.

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

Mr. Young asked whether the petitioner received a fence permit. Ms. Kulikowski noted that a permit was not issued.

Mr. Young asked staff to refresh his memory with regard to the fence variation granted last year for the property at 734 S. Elizabeth. Ms. Kulikowski stated that the property owner had received a fence permit, but did not install the fence to meet the 75% open requirement for the portion within the clear line of sight. She stated that the Village Board of Trustees approved the variation with a condition that the fence be modified so as to leave a seven foot (7') clear line of sight triangle.

Chairperson DeFalco asked whether he had a professional company install the fence and whether that company does work in Lombard.

Mr. Mallon stated that he hired Brothers Fence out of Villa Park to install the fence.

Mr. Polley noted that they probably do a lot of work in Lombard and should be familiar with our regulations. He also stated that a child on the sidewalk would not be able to see a car backing out of the driveway because of the fence.

Mr. Mallon mentioned that the definition for solid fence stated that a chain link fence with slats was not a solid fence and he felt it was contradictory. He also asked about shrubs and hedges on corners in the clear line of sight area.

Ms. Kulikowski responded to the petitioner's comments. She noted that the Zoning Ordinance has provisions requiring solid fence enclosures for garbage dumpsters. She stated that the definition for solid fence was worded as such to prevent chain link fences with slats from being used for trash enclosures. She also noted that along property lines and in the clear line of sight area, hedges or any landscaping intended to create a visual screen are subject to the same height restrictions as fences.

Mr. Young asked if violations would be issued for the fences in the photographs submitted by the petitioner.

Ms. Kulikowski stated that those properties that did not receive a permit and were not on the 2000 non-conforming fence inventory could be subject to Code Enforcement Action.

Chairperson DeFalco noted that when the Village started requiring fence permits, notification letters were sent to local fence companies. He asked if staff could send a letter notifying Brothers Fence Company of Lombard's fence regulations.

After due consideration of the petition and testimony presented, the Zoning Board of Appeals found that the requested variation to allow a six foot (6') fence in a corner side yard complied with the Standards of the Zoning Ordinance. Therefore, on a motion by Mr. Bedard and a second by Mr. Polley, the Zoning Board of Appeals recommended approval of the aforementioned variation associated ZBA 06-13 by a roll call vote of 6 to 0, subject to the following conditions:

1. The fence shall be modified in order to comply Section 155.205(A)(1)(e) pertaining to fences within the clear line of sight area.
2. That the petitioner shall apply for and receive a building permit for the relocation of the fence on the subject property.
3. That the variation shall be limited to the existing residence. Shall the existing residence be reconstructed due to damage or destruction by any means, any fencing on the property shall meet all current height requirements.

In consideration of the second variation, the Zoning Board of Appeals found that the requested variation to allow a solid fence within a clear line of sight area did not comply with the Standards of the Zoning Ordinance. Therefore, on a motion by Dr. Corrado and second by Mr. Polley the Zoning Board of Appeals recommended denial of the aforementioned variation associated with ZBA 06-13 by a roll call vote of 6 to 0.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals

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