

JANUARY 22, 2014

Title

ZBA 14-01

Petitioner & Property Owner

Tony & Missy Simek
444 S. Westmore-Meyers Rd.
Lombard, IL 60148

Property Location

444 S. Westmore-Meyers Rd.
(06-09-308-034)

Zoning

R2 Single Family Residence
(Robertson's Westmore
Subdivision)

Existing Land Use

Single Family Home

Comprehensive Plan

Low Density Residential

Approval Sought

A variation to allow a five foot (5') tall fence (of decorative materials and a minimum of 75% open space) in a front yard where four feet (4') is the maximum allowed.

Prepared By

Matt Panfil, AICP
Senior Planner



LOCATION MAP

PROJECT DESCRIPTION

On July 6, 2012 a fence permit was issued to the property owners (Mr. and Mrs. Anthony Simek) for 444 S. Westmore-Meyers Rd. The permit (attached) was issued specifically for a four foot (4') tall aluminum fence with a minimum 75% open space design. Furthermore, the plat submitted as part of the fence permit application specifically notes that the existing sidewalk is one foot (1') east and 1.10' south of the petitioners' property line.

As the Village of Lombard does not perform inspections for new fences, it was not until the fall of 2013 that the Village received a complaint regarding the height and location of the petitioners' fence, as constructed. A subsequent inspection revealed the fence to be approximately four feet six inches (4'6") tall with additional five inch (5") tall fence post caps. The inspection also indicated that the fence was not fully one foot (1') away from the sidewalk (images attached).

The petitioner is requesting the ability to maintain the existing fence height throughout their property.

APPROVALS REQUIRED

Section 155.205 (A)(c)(ii) states that fences, of any design, within a front yard shall not exceed four feet (4') in height, thus a variation for a five foot (5') tall in a required front yard is required.

PROJECT STATS

Lot & Bulk (Proposed)

Parcel Size: 8,358 sq. ft.
Fence Height 4'11" (with post caps)

Setbacks

Front (east) 25.95'
Side (north) 5'
Corner Side 26.95' (south)
Rear (east) 54.5'

Submittals

- 1. Petition for Public Hearing
- 2. Response to Standards for Variation
- 3. Existing Condition Photos, dated December 2, 2013
- 4. Proof of Ownership
- 5. Plat of Survey dated December 7, 2005.

No clear line of sight or corner side yard fence height variations are required due to the 75% open space design of the fence.

EXISTING CONDITIONS

In addition to the subject fence, the property contains a two-story stucco single family residence with a detached garage. In order to help place the request in its proper context, planning staff offers the following:

Surrounding Zoning & Land Use Compatibility

	Zoning Districts	Land Use
North	R2	Single Family Home
South	Washington Blvd / R2	Single Family Home
East	Westmore-Meyers Rd / R2	Single Family Home
West	Westmore-Meyers / R2	Single Family Home

INTER-DEPARTMENTAL REVIEW

Building Division:

The Building Division has the following comments regarding the project:

The fence is less than one foot (1') away from the sidewalk, indicating that it may have been installed in the right-of-way (Village property).

The Building Division requests that the petitioner either:

- a) Provide proof that the fence is entirely on their property via an updated Plat of Survey; or
- b) Relocate the fence so that it is at least one foot (1') from the sidewalk as indicated on the existing plat.

Fire Department:

The Fire Department has no issues or concerns regarding the project.

Private Engineering Services:

Private Engineering Services (PES) has no issues or concerns regarding the project.

Public Works:

Public Works has no issues or concerns regarding the project.

Planning Services Division:

A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from other properties in the area. Within their response to the Standards for a Variation, the petitioner raised concerns regarding the level of security because of the lot's location adjacent to a busy intersection. Prior to the installation of the fence there were burglaries to their cars and garage as well as damage to a parkway tree caused by a drunk driver. Even after installation of the fence, a would-be trespasser bent the fence trying to climb over it.

The petitioner also points out their intention to maintain a safe environment for vehicular and pedestrian traffic via their compliance with Village regulations regarding fence aesthetics, clear line of sight areas, and a minimum 75% fence opacity.

In order to be granted a variation the petitioner must show that they have affirmed each of the Standards for a Variation. Staff finds that standards three, five, six, and seven have been affirmed; however 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.*

While relocating the fence now will require a certain level of labor and effort that could be considered beyond a mere inconvenience, the required labor and effort is not the result of particular physical surroundings, shape, or topographical conditions of the specific property involved, but is the result of an error in construction of the fence. In regards to the overall height of the fence, technically there is no particular physical surrounding, shape, or topographic condition preventing the fence from being four feet (4') tall.

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.*

The lot is somewhat unique in that the existing front yard setback is legal nonconforming because the structure was built prior to current setback standards, but this does not prevent the overall height of the fence in the front yard from being four feet (4') tall or less. While staff agrees that there is an on-site condition, the traffic control utility box, which is taller and more visually obtrusive than the fence, its existence does not change the fact that a request for front yard fence height variation could be made by any other property within the R-2 Single Family Residential Zoning District.

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 alleged difficulty or hardship is the result of an error in the fence purchasing and construction process and not caused by the Zoning Ordinance, which does allow for fences of certain standards to be located within required front yards.

In consideration of precedent, staff has identified four similar cases that appeared before the Zoning Board of Appeals within the last ten (10) years. Each case involves a fence height variance for a required front yard within the R-2 Single Family Residential Zoning District. Of the four cases, staff recommended that the Zoning Board of Appeals recommend approval of the requested variation twice (ZBA 08-10 and ZBA 10-10) and denial of the requested variation twice (ZBA 04-10 and ZBA 08-08).

One of the primary reasons cited for the approval of ZBA 08-10 was that the lot in question had three street frontages, which the Zoning Ordinance dictates that two of those frontages are considered front lot lines. The ZBA approved a five foot six inch (5'6") fence along the front lot line which had no vehicular access.

In ZBA 10-10, one of the primary reasons cited for approval was that the fence was technically part of a 7.4 foot tall arch with signage atop the entrance gate of Lombard Cemetery and the remainder of the fence did not encroach past four feet (4') in height.

CASE NO.	DATE	ADDRESS	SUMMARY	ZBA	BoT
ZBA 04-10*	8/25/2004	7 W Greenfield Ave	4.5' tall fence within a required front yard	Approval, 5-1	Approval, 6-0
ZBA 08-08	6/25/2008	151 E Berkshire Ave	6' tall fence within a required front yard	Denial, 0-5	Approval, 6-0
ZBA 08-10	6/25/2008	591 S. Charlotte St	5.5' tall fence within a required front yard	Approval, 5-0	Approval, 6-0
ZBA 10-10	8/25/2010	460 S Main St	7.4' tall fence within a required front yard (sign over gate at Lombard Cemetery)	Approval, 6-1	Approval, 6-0

* As in ZBA 14-01, ZBA 04-10 was the result of the petitioner purchasing a fence slightly taller than expected.

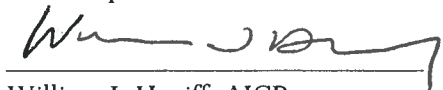
As in ZBA 04-10 and ZBA 08-08, staff recommends that the petition be denied. **However, if the Zoning Board of Appeals finds that it would be appropriate to grant the requested variation, staff recommends that the approval be conditional upon compliance with items "a" and "b" described in the Building Division review section.**

FINDINGS & RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations, in their entirety, 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 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 Committee Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 14-01.

Inter-Departmental Review Committee Report approved by:



William J. Heniff, AICP
Director of Community Development

c. Petitioner

SERVICES, LLC

KEYVIEW CT.
 N. ILLINOIS 60446
 (630) 226-9234

INDUSTRIAL PLOT 1000
 N 200'00" W (A)

LOT 187 IN ROBERTSON'S WESTMORE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 1, 1922 AS DOCUMENT 15663
 FENCE LOCATED WITHIN THE VILLAGES WATER METER READING DEVICE MUST HAVE THE TOUCHPAD RELOCATED. CONTACT THE WATER BILLING DEPARTMENT AT 630-620-5917.

IF SURVEY:
 FT. 0.19 ACRES MORE OR LESS

FIP 1/2' AT CABLER COMPANIES OR LOMBARD PUBLIC WORKS IS NOT THE RESPONSIBILITY OF THE UTILITY COMPANY OR THE VILLAGE OF IOMER (RD)

COMMUNITY DEVELOPMENT PLANNING SERVICES DIVISION APPROVED 7/6/11

LOT 168

CONCRETE WITHIN CLEAR LINE WORKSIGHT AREAS MUST BE OPEN CONSTRUCTION (MIN 75% OF SURFACE AREA IS OPEN)

FENCE 0.80x0.80 FT. 1/2' AT CABLER COMPANIES OR LOMBARD PUBLIC WORKS IS NOT THE RESPONSIBILITY OF THE UTILITY COMPANY OR THE VILLAGE OF IOMER (RD)

140.00 (R)(M)

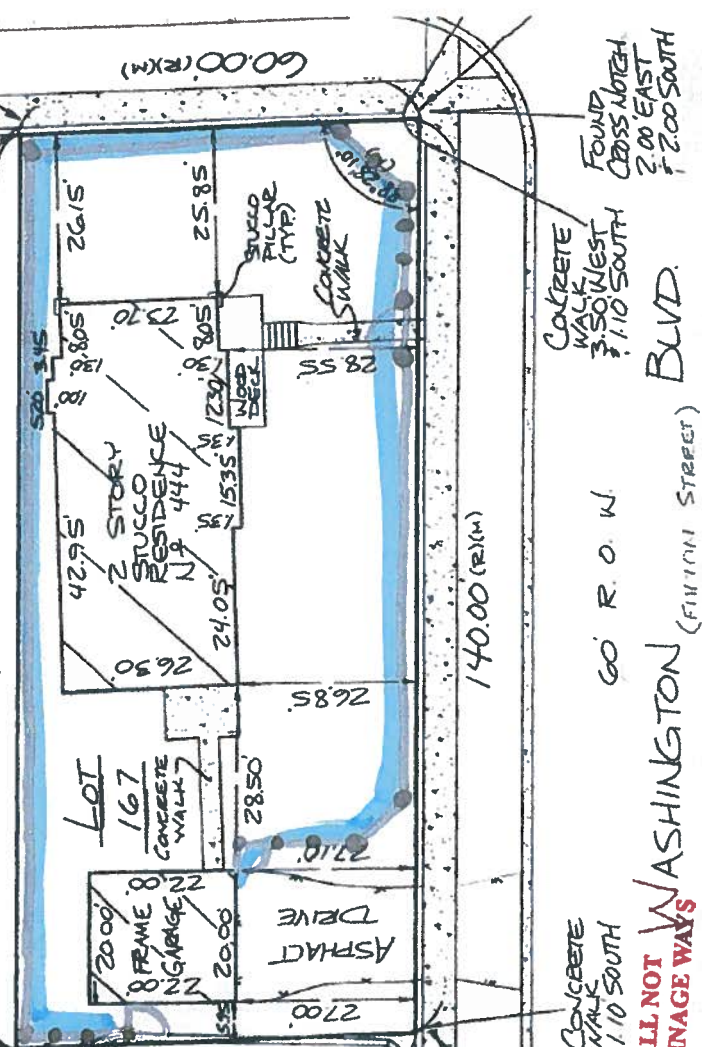
FENCE 45 SOUTH 20 LINE

ZAGSTONE 70 EAST

LOT 166

ZAGSTONE 10 NORTH 50 WEST

CALL TUE FIRST 48 HOURS BEFORE YOU DIG 1-800-892-0123



FOUND CROSS NOTCH 2.00 SOUTH 2.00 EAST

CONCRETE WALK 1.10 SOUTH

FENCES SHALL NOT BLOCK DRAINAGE WAYS

WASHINGTON (FINCHAM STREET)

BLVD.

FOUND CROSS NOTCH 3.50 WEST 1.10 SOUTH







