

March 17, 2005

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

Subject: ZBA 05-02; 322 E. Elm Street

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests a variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner yard from four feet (4') to six feet (6') the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on March 23, 2005. Larry Coveny presented the petition. Mr. Coveny stated that the fence in question had been six feet for over fifteen years. He stated that it was his intention to create an opening on the fence to give a clear line of sight. He stated that he has nearly collided with bicyclists as he exited the property. He stated that he did not obtain a permit because he did not know that he needed one since he was cutting the fence down. Mr. Coveny stated that he is not increasing the size or height of the fence. He stated that the neighbors approve of the change. Mr. Coveny stated that he was not informed that their fence was on a nonconforming fence list.

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

Angela Clark, Planner II, presented the staff report. She stated that the petitioner's fence was nonconforming and was recognized as such during a fence inventory conducted in the year 2000. She stated that the petitioner's modification of the fence required a variation since two feet of the fence had been removed and replaced with new materials. Ms. Clark stated that staff conferred with Village Counsel on the matter and it was counsel's opinion that the change would necessitate a variation. Ms. Clark noted that the

petitioner's fence was identified on a nonconforming fence list, however the inventory was conducted for internal purposes and homeowners were not notified. She stated that there was no demonstrated hardship and staff has maintained recommendations of denial for requests that involved the placement of lattice on a four foot fence, therefore staff recommended denial of the petition.

Chairperson DeFalco opened the meeting for discussion among the members. Chairperson DeFalco stated that the provisions of the code would allow for modifications of a nonconforming structure if the modifications were less than fifty percent. He stated that the modifications that were made appeared to be considerably less than fifty percent.

Ms. Clark stated that the petitioner was allowed to make minor changes and repairs under the code provisions, however the placement of the new materials required the variation. She stated that if any portion of the fence were removed the entire fence would have to comply with the current code requirements.

Mr. Bedard asked if the petitioner could replace the fence if it were damaged. Ms. Clark stated that repairs could be made to the fence if the damage was less than fifty percent of the fence. She stated that if more than fifty percent of the fence were damaged the fence would be restricted to four feet.

Mr. Young stated that the fence was going from nonconforming to somewhat conforming.

Chairperson DeFalco asked if the petitioner planned to continue the modifications for the length of the fence. Mr. Coveny stated that he originally planned to extend the modification for the length of the fence, but limited it to the area after receiving the notice from code enforcement.

Mr. Bedard asked if the entire fence had to meet code or just the modified portion. Ms. Clark stated that the entire fence must meet code once any portion of it had been altered. Mr. Bedard asked if he could reconstruct that portion to its previous height. Ms. Clark noted that because new materials were involved the fence must now meet the current code requirements.

Mr. Polley stated that the fence looked as though it were new or had been painted. Ms. Clark stated that staff had been to the property and believed the fence was an old fence as the backside of the fence was entirely gray. She stated that the side facing the street appeared to have been power washed.

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The ZBA members discussed what instances would require the entire fence to meet current code and which instances would conform with the repair and modification of nonconforming use provisions of the code.

Chairperson DeFalco stated that the modified portion of the fence was conforming when the petitioner cut it. He stated that the modified portion went from conforming to nonconforming once the lattice was attached to it.

The ZBA members discussed illegal versus nonconforming fences. Ms. Clark stated that the previous fence variations mentioned were illegal fences, as the code requirements were in place and those petitioners knowingly constructed fences outside of the requirements.

Mr. Young stated that the petitioner's fence was quite different from requests that have previously appeared before the board. He stated that the petitioner's fence was an existing fence that was nonconforming and the modifications have brought it more in line with the current code requirements.

Mr. Bedard agreed and stated that the modified fence was more conforming than its previous state.

Mr. Young asked if the variation were to be granted whether the owner could replace the entire fence with a new fence of six feet in height. Ms. Clark stated that the variation would be granted in perpetuity.

Chairperson DeFalco reiterated that previous petitions had been for newly erected fences rather than nonconforming fences that had been modified. He asked about the status of previous petitions that were denied. He asked what time frame the petitioners had been given to make the necessary changes. Ms. Clark stated the petitioners were given sixty days to modify their fences.

Chairperson DeFalco asked if the ZBA could include a timeframe for compliance such as ten years. Ms. Clark stated that she would have to consult Village Counsel regarding that.

Mrs. Newman noted that previous petitions had been approved for existing structures with provisions that any new structures meet code.

Mr. Polley asked if the petitioner were required to perform the modifications to the entire fence.

Mr. Young stated that he believed the option should be left to the petitioner.

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After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals submits this petition to the Corporate Authorities with a recommendation for **approval** of the requested variation subject to conditions.

1. That the petitioner shall apply for and receive a building permit for any proposed fencing or alterations to the fence on the subject property.
2. That the variation shall be limited to the existing fence and proposed improvements. Shall the fence be damaged or removed in the future, any new fencing on the property shall meet all current height requirements.

The roll call vote was 4 to 1 to recommend approval of ZBA 05-02.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals

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