ZONING BOARD OF APPEALS

INTER-DEPARTMENTAL REVIEW COMMITTEE REPORT

236 W. SUNSET AVENUE

SEPTEMBER 24, 2014

Title

ZBA 14-10

Petitioner

Jeffrey Lenz
236 W. Sunset Avenue
Lombard, IL 60148

Property Owner

Jeffrey Lenz
236 W. Sunset Avenue
Lombard, IL 60148

Property Location

236 W. Sunset Avenue
(06-06-201-040)
Trustee District #1

Zoning

R2 Residential Single Family

Existing Land Use

Residential Single Family

Comprehensive Plan

Low Density Residential

Approval Sought

A variation to increase the maximum allowable fence height in the corner side yard from four feet (4') to six feet (6').

Prepared By

Tami Urish
Planner I

LOCATION MAP

PROJECT DESCRIPTION

The petitioner is proposing to construct a fence that is six feet (6') in height where a fence is permitted to be four feet (4') maximum in the corner side yard.

APPROVAL(S) REQUIRED

The petitioner requests that the Village grant a variation from Section 155.205(A)(1)(c)(ii) 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') on the subject property located within the R2 Single-Family Residence District.

EXISTING CONDITIONS

The property contains a two-story frame single family residence with a detached garage. The front property line is located along West Sunset Avenue with driveway access and the corner side yard is located along North Elizabeth Street. The detached garage is accessed by a driveway onto Sunset Avenue. The home was constructed in 1933. The existing fence is a solid wood privacy and five feet (5') in height. The property owner is requesting to replace the fence at the same general location at a height of six feet (6').

PROJECT STATS

Lot & Bulk

Parcel Size:	13,371 sq. ft.
Building Size:	1,265 sq. ft.
Lot Cover:	26%

Reqd. Setbacks & Existing Dimensions (in parens.)

Front (South)	30' (26')
Corner Side (West)	20' (30' – 40')
Side (East)	6' (45')
Rear (North)	35' (53')

Surrounding Zoning & Land Use Compatibility

North, East, South and West:

R-2; Single Family Residential

Submittals

1. Petition for Public Hearing
2. Response to Standards.
3. Plat of Survey, prepared by Nelson Surveyors, LLC, dated 8/22/11; submitted 8/21/14
4. Site Plan (drawn on submitted Plat of Survey); submitted 8/21/14.
5. Existing conditions; photos submitted by petitioner on 9/15/14.

INTER-DEPARTMENTAL REVIEW

Building Division:
A full review will be conducted during the building permit review process.

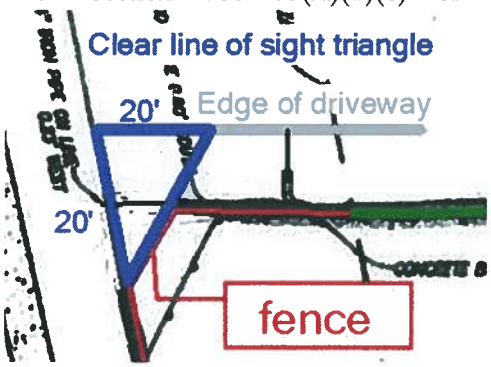
Fire Department:
The Fire Department has no issues/concerns regarding the project.

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

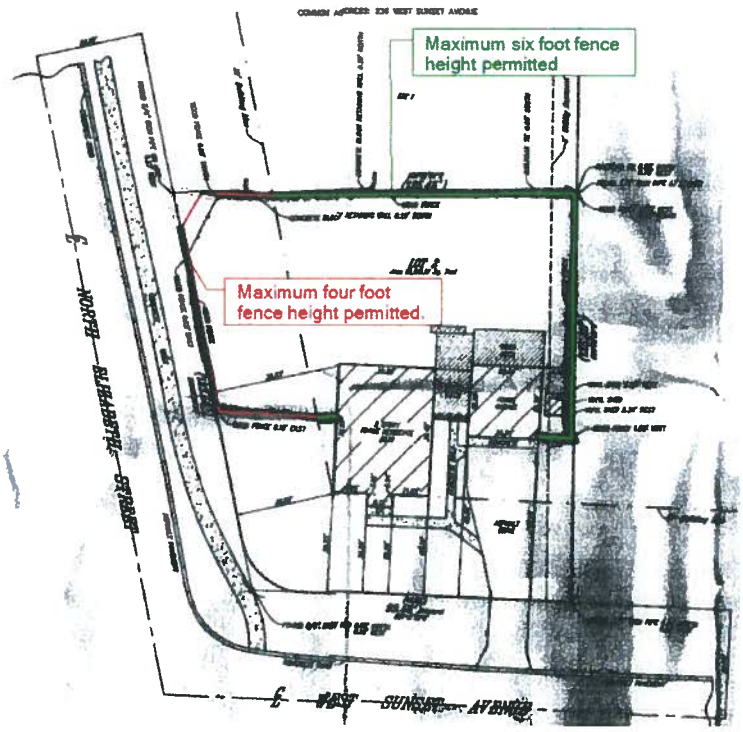
Public Works:
The Department of Public Works has no issues or concerns regarding the project.

Planning Services Division:
The subject property is a reverse corner lot defined as a corner lot where the street side lot line of which is substantially a continuation of the front lot line of the first lot to its rear. Therefore, the maximum four (4) feet in height provision for a fence extends thirty (30) feet from the corner side property line as opposed to twenty (20) feet for a standard corner lot.

In addition, the adjacent property to the north contains a driveway in the defined front yard approximately eleven (11) feet away from the subject property's rear north property line. The clear line of sight area is a triangular-shaped area adjacent to intersecting access drives maintained to preserve clear visibility at the intersection. In the case of private residential driveways intersecting with improved rights-of-way or streets, the clear line of sight area is the area formed by the intersection of the edge of the pavement of such private drive with the improved rights-of-way or street, twenty feet (20') away from the point of intersection. The property owner proposes to construct the fence around the clear line of sight area at the northwest corner of the subject property in order to comply with Section 155.205(A)(1)(e) of the Zoning Ordinance.



Currently, the subject property contains a solid wood fence five feet (5') in height within the corner side yard. The Zoning Ordinance allows non-conforming fences to remain in existence provided that once a non-conforming 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.



Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. As such, the petitioner's replacement of the fence requires that the new fence meet the four-foot height restriction or that a variation be granted. A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area.

In order to be granted a variation the petitioner must show that they have affirmed each of the Standards for a Variation (responses attached). Staff finds that standards two, three, five, six, and seven have been affirmed. Standards one and four have not been affirmed but special consideration of circumstances is warranted.

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.*

   Staff does not agree that the construction of six foot (6') tall fence over the existing four foot (4') tall fence is a matter of need, but rather a matter of preference, and is therefore not a true hardship. The grade change is not unique and similar topographical conditions occur throughout the Village. In addition, the property is a reverse corner side yard

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.*

   Similar to standard one, staff finds the alleged difficulty to be a matter of personal preference for a six foot (6') tall fence rather than the existing four foot (4') tall fence and is not a true hardship caused by the Zoning Ordinance.

In consideration of precedent, staff has identified seventeen (17) similar cases that appeared before the Zoning Board of Appeals since 2005. Each case involves a request for a six foot (6') tall solid fence in a corner side yard in a single-family residential zoning district.

Of the seventeen (17) cases, staff recommended that the Zoning Board of Appeals recommend denial of the requested variation thirteen (13) times and approval of the requested variation four (4) times (ZBA 05-06, ZBA 06-13, ZBA 08-07, and ZBA 08-09). Staff supported ZBA 08-07 due to a unique grade change at the location. Staff supported ZBA 08-09 due to unique design circumstances that were approved legally prior to being annexed into the Village. Finally, staff supported both ZBA 05-06 and ZBA 06-13 because they maintained the existing building line of a legally nonconforming structure.

CASE NO.	DATE	ADDRESS	SUMMARY	ZBA	BoT
ZBA 05-02	4/21/2005	322 E. Elm St.	6' tall solid wood fence within a corner side yard.	Approval, 4-1	Approval, 6-0
ZBA 05-06	6/2/2005	324 S. Ahrens Ave.	6' tall wood picket fence within a corner side yard (15' off of property line)	Approval, 6-0	Approval, 6-0
ZBA 06-13	9/21/2006	501 N. Garfield St.	6' tall wood picket fence within a corner side yard.	Approval, 6-0	Approval, 6-0
ZBA 06-20	1/4/2007	614 E. Berkshire Ave.	6' tall solid wood fence within a corner side yard.	Approval, 5-1	Approval, 6-0
ZBA 07-06	8/9/2007	466 N. Main St.	5' tall solid wood fence within a corner side yard.	Denial, 4-0	Approval, 5-0
ZBA 07-09	8/9/2007	130 E. Sunset Ave.	6' tall solid wood fence within a corner side yard.	Denial, 4-0	Approval, 5-0
ZBA 07-10	8/9/2007	220 W. Central Ave.	6' tall solid wood fence within a corner side yard.	None, 2-2	Approval, 5-0
ZBA 08-04	5/15/2008	1005 E. Washington Blvd.	4' tall solid wood fence with a 1' tall lattice extension within a corner side yard.	Denial, 6-0	Approval, 6-0
ZBA 08-07	8/21/2008	197 S. Lombard Ave.	5' tall solid wood fence within a corner side yard.	None, 3-2	Approval, 6-0
ZBA 08-09	9/4/2008	1601 S. Main St.	6' tall solid wood fence within a corner side yard.	Approval, 5-0	Approval, 6-0
ZBA 08-14	10/2/2008	242 W. Berkshire Ave.	6' tall solid wood fence within a corner side yard.	Approval, 5-0	Approval, 6-0
ZBA 08-16	1/15/2009	350 N. Fairfield Ave.	6' tall solid wood fence within a corner side yard.	None, 3-2	Approval, 6-0
ZBA 09-09	10/15/2009	1107 Woodrow Ave.	6' tall solid vinyl fence within a corner side yard.	Approval, 5-0	Approval, 6-1
ZBA 09-11	1/21/2010	617 E. Berkshire Ave.	6' tall solid wood fence within a corner side yard.	Approval, 5-0	Approval, 6-0
ZBA 10-02	5/20/2010	302 S. Grace St.	6' tall solid wood fence within a corner side yard.	Denial, 1-4	Approval, 6-0
ZBA 11-02	6/2/2011	403 W. Ethel Ave.	6' tall solid fence within a corner side yard.	None, 3-3	Approval, 6-0
ZBA 11-03	5/19/2011	1147 E. Adams St.	6' tall solid wood fence with a corner side yard.	Approval, 4-1	Approval, 6-0
ZBA 13-05	11/7/2013	640 N. Charlotte St.	6' tall solid wood fence within a corner side yard.	Approval, 5-0	Approval, 6-0
ZBA 14-08	8/21/2014	551 N. LaLonde Ave.	6' tall solid wood fence within a corner side yard.	None, 3-2	Approval, 5-0

Staff recommends that the petition be denied because recommending approval would set a long range precedent that could be commonly applied to all corner side yards. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends that the petitioner adhere to the existing height of five feet (5') and address the clear line of sight issue. Maintaining the existing height of the fence is consistent with the current environment and it would not increase the physical degree of nonconformity.

FINDINGS & RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations 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 side yard setback variation to allow an attached garage:

Based on the submitted petition and the testimony presented, the requested variation **does not comply** with the Standards required for a variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals adopt that the findings included as part of the Inter-departmental Review Report as the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 14-10.

Alternate Recommendation

If the Zoning Board of Appeals finds that it would be appropriate to grant the request, the Zoning Board of Appeals shall make the following motion recommending approval of the aforementioned variation:

Based on the submitted petition and the testimony presented, the requested variation **does comply** with the Standards required for a variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings as discussed at the public hearing, and those 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 **approval** of ZBA 14-10 with the following conditions:

1. The fence height shall be limited to five feet (5') instead of the requested six feet (6');
2. The fence shall not be constructed in the driveway's clear line of sight area;
3. The petitioner shall apply for and receive a building permit for the proposed fence;
4. Such approval shall become null and void unless work thereon is substantially under way within 12 months of the date of issuance, unless extended by the Board of Trustees prior to the expiration of the ordinance granting the variation.

Inter-Departmental Review Committee Report approved by:

William J. Heniff, AICP
Director of Community Development

c. Petitioner

SECTION 155.103.C.7 OF THE LOMBARD ZONING ORDINANCE

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.

Our home sits significantly downhill from the west, where the fence in question would be located. A fence that is not as tall as our existing one would mean a direct line of sight into our yard. Due to this slope the effective height of a 4' fence in our situation would be 2'-3" 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.

Yes, our property and backyard is significantly downhill from the west compared to other homes.

3. The purpose of the variation is not based primarily upon a desire to increase financial gain.

There is no financial gain

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.

Yes, this is correct.

5. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

Correct, the fence creates no line of site issues whatsoever

6. The granting of the variation will not alter the essential character of the neighborhood; and,

Correct, our existing fence that is to be replaced is the same height as the proposed new fence that we would like to install.

7. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

None of the above applies in our circumstance.

EXHIBIT A – PLAT OF SURVEY AND SITE PLAN

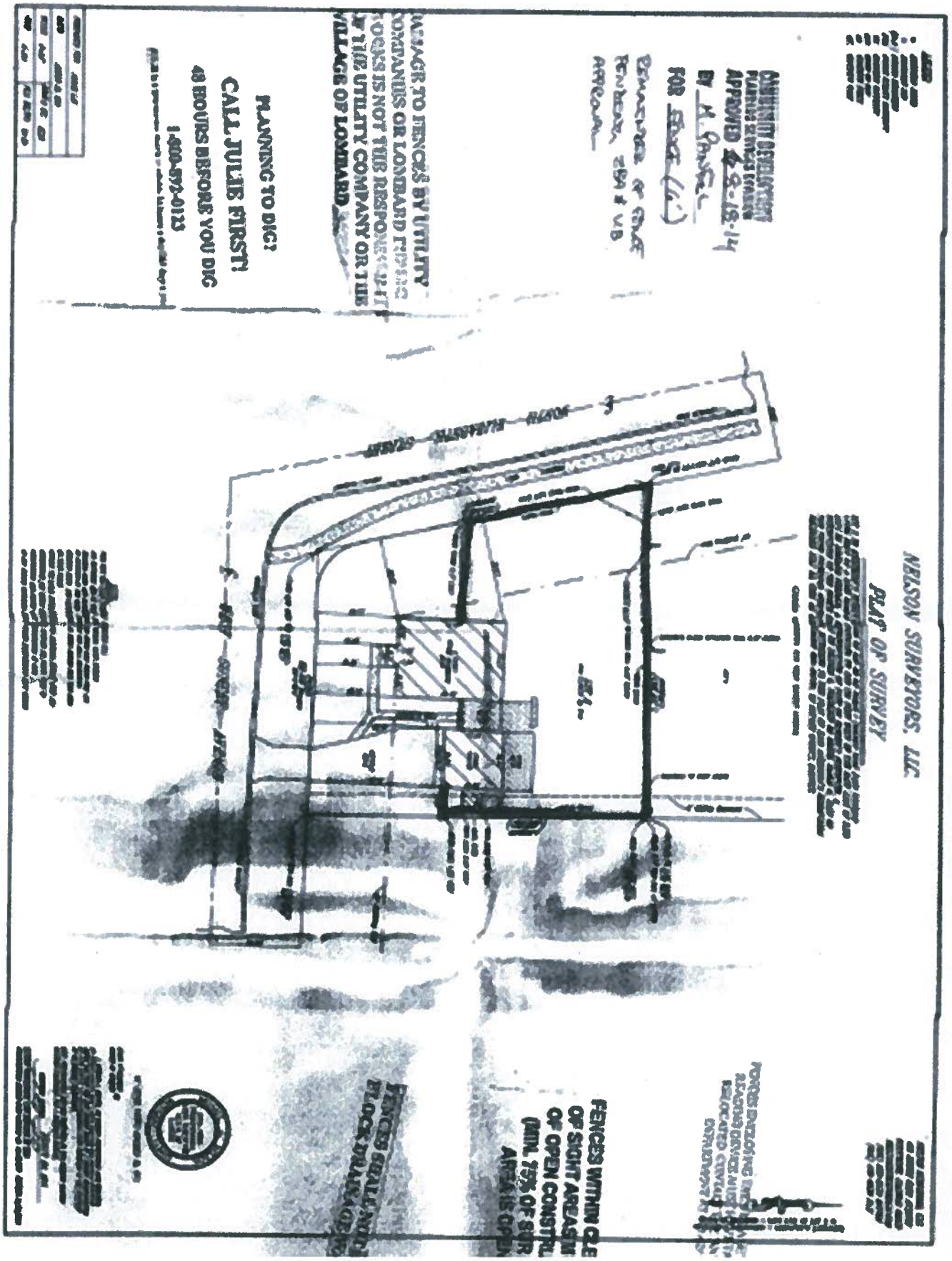


EXHIBIT B: ZBA 14-10, 236 W. SUNSET
EXISTING CONDITIONS

Photo 1

This photograph was taken at head height in our backyard looking West. You can see, due to the topography of our property, the top of our existing 6' tall fence sits no higher than our neighbor's foundation.

Photo 2

This photograph was taken at head height standing on the front corner of our property looking North. This photograph shows how much our property slopes from left to right. Existing fence is 6’ tall.

Photo 3

This photograph was taken at head height looking Northwest. You can see, due to the topography of our property, even at this angle the top of our existing 6' tall fence sits no higher than waist height at our neighbor's property.

Photo 4

Photo 5

Photo 6