

SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on June 5, 2006.

1. Petition for Public Hearing
2. Response to the Standards for Variation
3. Plat of Survey, dated May 14, 1996, and prepared by American Survey Co.
4. Site plan, prepared by the petitioner, showing proposed fence type and location.
5. Photographs, taken by the petitioner, and dated August 11, 2006.

DESCRIPTION

At the June 28th Zoning Board of Appeals meeting, The Zoning Board of Appeals continued the public hearing for ZBA 06-13 in order to allow the petition to be re-advertised to include an additional variation request. The original request was to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'). Staff noted in the staff report that the portion of the proposed fence within the clear line of sight area for the driveway would be required to be of open construction (75% open). Prior to the June 28th meeting, the fence was installed, and the portion of the fence within the clear line of sight area did not meet the open construction requirement. The petitioner is now requesting an additional variation to allow a solid fence within a clear line of sight area.

ANALYSIS

Staff previously discussed the fence height variation in the original staff report, and is still in support of the requested relief. Therefore staff will only address in this report the request to allow a solid fence within a clear line of sight area in this addendum report.

Background

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 open construction. The Zoning Ordinance defines "*open construction fence*" and "*solid construction fence*" as follows:

FENCE-OPEN CONSTRUCTION is 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.

FENCE-SOLID CONSTRUCTION is a fence which has over its entirety less than a minimum of seventy-five percent (75%) open space in total for every one (1) foot of linear dimension. Chain link fences with slats do not constitute a solid fence.

The petitioner has installed a four foot (4') fence in the clear line of sight area for the driveway consisting of four inch (4") pickets with a two inch (2") opening. By definition, the fence is considered a solid fence as it only maintains approximately 33% of the surface area as open space.



Non-conforming fences

The Village of Lombard did not have standardized fence regulations for all zoning districts until the 1990 Zoning Ordinance. In addition to fence height restrictions, the Ordinance also established clear line of sight areas and prohibited fences within any clear line of sight area. Restrictions for fences within clear line of sight areas were loosened in 1999 as a result of text amendments to the Zoning Ordinance (PC 99-23). The new restrictions allowed fences within clear line of sight areas provided that any fence over two feet (2') in height was of open construction. The text amendment included definitions for open construction and solid fences distinguishing that a fence had to be at least 75% open to be deemed an open construction fence. 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'). Staff introduced with the 1999 text amendments an additional amendment that would require building permits for fences, but it wasn't until a later text amendment in 2000 (PC 00-05) that the Zoning Ordinance was changed to require permits. As a result of the new permit requirement, staff conducted a field study of all of the fences in Lombard and created an inventory of all of the fences that did not comply with current regulations.

Staff has not pursued code enforcement action against the properties listed in the 2000 non-conforming fence inventory. Without a previous requirement for fence permits, it is difficult to determine when a fence was installed and whether it is legal non-conforming. The inventory is used to help track the non-conforming fences installed before 2000 so that they can come into compliance when it is time for the fence to be replaced. It is also used to distinguish between non-conforming fences installed before 2000 and those installed after 2000 without a permit.

The petitioner has submitted photographs of non-conforming fences in Lombard (See Appendix A). Staff has reviewed the pictures and cross referenced the properties with the 2000 non-conforming fence inventory and building permit files. A table of staff's findings is located in Appendix B. Of the sixteen properties mentioned by the petitioner, one received a variance to allow a solid fence in the clear line of sight and five were listed on the 2000 non-conforming fence inventory. Two properties received a fence permit and did not install the fence per code. The remaining did not receive a permit and were not listed on the 2000 non-conforming fence inventory, and can be subject to Code Enforcement action.

Standards for Variations

Staff does not support the variation request to allow a solid fence within a clear line of sight area as it poses a safety hazard. The purpose of the open construction fence requirement is to provide visibility of pedestrians and oncoming traffic. Staff finds that the hardship in this circumstance has been created by the petitioner. The petitioner was aware that a permit was required to install a fence and chose to install the fence without a permit. Furthermore, the petitioner had applied for a variation to install the fence and was aware of the variance procedures. The petitioner chose to install the fence prior to the public hearing, before any recommendations could be made

by the Zoning Board of Appeals and before any decisions could be made by the Board of Trustees.

In order to be granted a variation the petitioner must show that they have affirmed each of the “Standards for Variation”. The following standards have not been affirmed:

1. *That because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner has been shown, as distinguished from a mere inconvenience if the strict letter of the regulations were to be applied.*

Staff finds that the petitioner’s property does not have any physical limitations that limit the owner from meeting the intent of the ordinance.

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.*

Staff finds that the conditions are not unique to the subject property. The regulations for fences within clear line of site areas apply to all properties in all zoning districts.

3. *The alleged difficulty or hardship is shown to be caused by this ordinance and has not been created by any person presently having an interest in the property.*

Staff finds that 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 installing the fence without a permit.

4. *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.*

Staff finds that granting the request would be injurious due to encroachments in the clear line of sight.

5. *The proposed variation will not impair an adequate supply of light and air to adjacent property and substantially 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.*

Staff finds that the requested relief would negatively impact public safety as visibility of pedestrians and traffic would be diminished.

FINDINGS AND RECOMMENDATIONS

Staff recommends approval of the variation to reduce corner side yard setback for a fence, and denial of the clear line of sight variation. Should the Zoning Board of Appeals concur with this recommendation, staff suggests that prior to consideration by the Board of Trustees, that the

petitioner submit revised plans showing how the design will be changed to meet the rear yard setback.

The Department of Community Development has determined that the information presented **has affirmed** the Standards for Variations for the requested variation to increase the maximum allowable fence height, but has not affirmed the standards for variations for the requested variation to allow a solid fence within a clear line of sight area. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Zoning Board of Appeals make the following motion recommending **approval** of the aforementioned variation:

Based on the submitted petition and the testimony presented, the requested variation to increase the maximum allowable fence height **does comply** with the Standards for Variation in the Lombard Zoning Ordinance but the requested variation to allow a solid fence within a clear line of sight area does not comply with the Standards for Variations; and, therefore, I move that the Zoning Board of Appeals find that the findings included as part of the Inter-departmental Review Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **partial approval** of ZBA 06-13, 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.

Inter-Departmental Review Group Report Approved By:

David A. Hulseberg, AICP
Director of Community Development

DAH:MK
att-
c: Petitioner

APPENDIX A: Photographs of Non-Conforming Fences



15 E. Pleasant



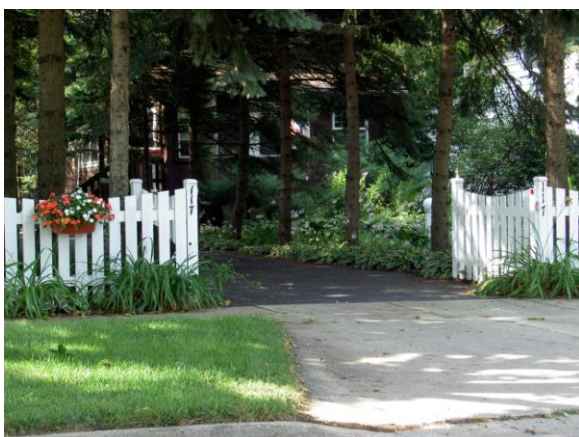
46 W. Goebel



57 W. Berkshire



100 E. Taylor



117 W. Greenfield



201 W. Madison



253 W. Crystal



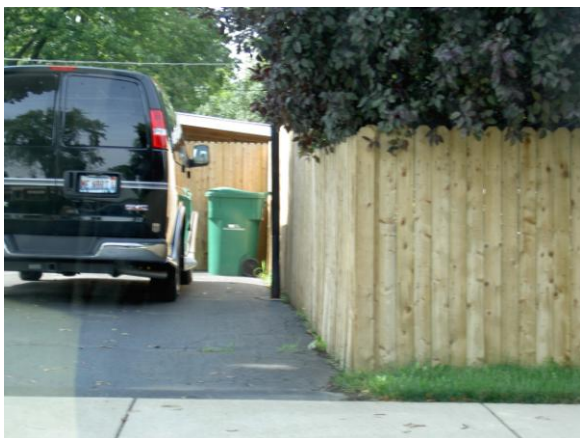
301 N. Charlotte



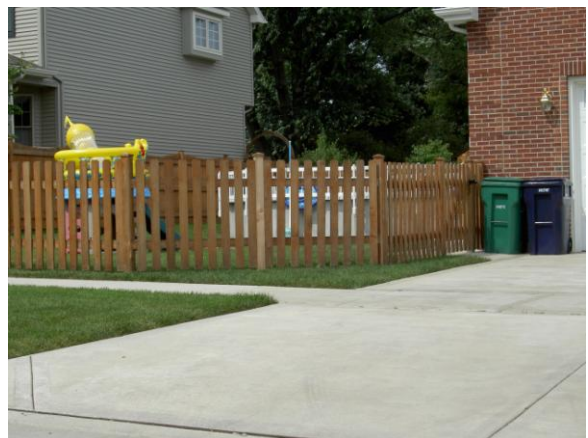
502 N. Main



546 N. Main



628 N. Main



734 S. Elizabeth



832 S. Elizabeth



832 S. Main



943 S. Charlotte



946 S. Lombard

APPENDIX B: Summary of Non-Conforming Fence Photographs

| Address | Non-Conforming Fence Height | Non-Conforming fence in clear line of sight area | Staff Comments |
|-------------------|------------------------------------|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 15 E. Pleasant | | X | No permit |
| 46 W. Goebel | X | X | No permit |
| 57 W. Berkshire | X | X | Listed on 2000 non-conforming fence inventory |
| 100 E. Taylor | | X | Permit issued in 2004 for picket fence. Installed fence does not meet opacity requirements. |
| 117 W. Greenfield | | X | No Permit |
| 201 W. Madison | X | X | Listed on 2000 non-conforming fence inventory |
| 253 W. Crystal | X | X | Listed on 2000 non-conforming fence inventory |
| 301 N. Charlotte | | X | Permit issued in 2004 for picket fence. Fence not installed according to plans and does not meet opacity requirements. |
| 502 N. Main | X | X | No Permit |
| 546 N. Main | X | X | No Permit |
| 628 N. Main | X | X | No Permit |
| 734 S. Elizabeth | | X | Received a variation (ZBA 05-19) |
| 832 S. Elizabeth | X | X | No Permit |
| 832 S. Main | X | X | Listed on 2000 non-conforming fence inventory |
| 943 S. Charlotte | | X | No Permit |
| 946 S. Charlotte | X | X | Listed on 2000 non-conforming fence inventory |