



Village of Lombard

Village Hall
255 East Wilson Ave.
Lombard, IL 60148
villageoflombard.org

Minutes Zoning Board of Appeals

*John DeFalco, Chairperson
Mary Newman, Raymond Bartels,
Greg Young, Keith Tap,
Ed Bedard and Val Corrado
Staff Liaison: William Heniff*

Wednesday, June 25, 2014

7:30 PM

Village Hall Board Room

Call to Order

Pledge of Allegiance

Roll Call

Present 6 - John DeFalco, Mary Newman, Raymond Bartels, Keith Tap, Ed Bedard, and Val Corrado
Absent 1 - Greg Young

Public Hearings

[140244](#)

ZBA 14-07: 100 E. Taylor Road

Requests that the Village grant a variation from Section 155.205 (A)(1) (e) of the Lombard Zoning Ordinance to allow an existing fence, of a design less than seventy-five percent (75%) open space, to remain within the clear line of sight area, located within the R2 Single Family Residence District (United Home Builders Resubdivision). (DISTRICT #6)

Mr. David Linderman, homeowner, presented the petition. Mr. Linderman stated that it was his desire to be compliant with the code when he obtained a building permit, which he submitted into the public record, and constructed the fence in 2004. It was Mr. Linderman's belief that the Village Code allowed for picket fences less than four feet (4') in height within the required corner side yard. Mr. Linderman was unaware that the code stipulated that any fence over two feet (2') in height and located within the clear line of sight area must be at least seventy-five percent (75%) open space in its construction.

Mr. Linderman has two children and two pets and he believes that the existing fence does not create a line of sight issue. He further believes the fence is appropriate in its design and fits the character of the surrounding neighborhood. Mr. Linderman reiterated that it was not his intention to mislead or violate the Village Code. Mr. Linderman said that he even called for an inspection upon completion of the

fence, but he did not receive a response from the Village until approximately ten (10) years later when he received a letter from Code Administration informing him of the violation.

Chairman DeFalco questioned if there was anyone present to speak in favor of or against the petition. Hearing none, staff was asked for their presentation.

Matt Panfil, Senior Planner, submitted the IDRC Report into the public record in its entirety. Mr. Panfil stated that a fence permit for a forty-two inch (42") tall vinyl picket fence was issued to the property owners in May, 2004. For clarification, Mr. Panfil stated that the Village does not conduct fence inspections and the reason Mr. Linderman received the letter from Code Administration is because the Village received an anonymous complaint in April, 2014. Per the Lombard Zoning Ordinance, any fence greater than two feet (2') tall and located within a clear line of sight area must be at least seventy-five percent (75%) open space. The clear line of sight area is the area formed by the intersection of the pavement of a private residential driveway with an improved right-of-way, twenty feet (20') away from the point of intersection.

Mr. Panfil reiterated two of the petitioner's comments. First, the fence has existed for over ten (10) years without significantly altering the character of the neighborhood, injuring other property, or representing a danger to public safety. Second, the petitioner's intent was to comply with Village Code. However, the minimum seventy-five percent (75%) open space requirement was not clear to the petitioner, who constructed a fence with approximately fifty percent (50%) open space.

In consideration of precedent, Mr. Panfil stated that staff identified approximately eight (8) similar cases that have been before the ZBA within the last ten (10) years. Of the similar cases, staff recommended denial of the requested variation seven (7) times and approval of the requested variation only once, Case No. ZBA 05-19. Mr. Panfil stated that in ZBA 05-19 the primary reasons staff supported the variation request was because the fence was less than four feet (4') tall and was approximately fifty percent (50%) open space, as is the case with the current petition.

Chairman DeFalco then opened the meeting for discussion by the ZBA members.

Mr. Bedard commented that he likes the fence and that he believes fifty percent (50%) open space construction is acceptable. Mr. Bedard asked if staff could conduct research as to why the Village Code

requires seventy-five percent (75%) open space.

Mr. Bartels commented that he does not see a clear line of sight issue and also asked for the dimension of the parkway along Taylor Road because it looked wider than usual. It was estimated that the parkway was approximately twenty-feet wide.

Chairman DeFalco stated that in ZBA 05-19 the petitioner was asked to modify their request to provide at least a smaller clear line of sight area than the twenty foot (20') triangle required by Village Code. He then asked the petitioner if the fence posts could be removed and replaced in such a way as to create a diagonal line to increase visibility. The petitioner responded no to the question because the fence is PVC and the posts have pre-cut holes. The advantage of PVC is that it is very easy to maintain, but the disadvantage is that it is difficult to modify. Chairman DeFalco stated that it may be a better option than removing the fence.

Chairman DeFalco requested a clarification as to where the clear line of sight area starts. Mr. Panfil read the definition of clear line of sight area from Section 155.802 of the Lombard Zoning Ordinance,

Clear line of sight areas are triangular-shaped areas adjacent to intersecting, improved rights-of-way, private streets, or access drives maintained to preserve clear visibility at the intersection. In the case of intersecting, improved rights-of-way, the clear line of sight area is the area formed by the intersecting, improved rights-of-way lines 30 feet away from the point of intersection. In the case of private streets, the clear line of sight area shall be measured from the intersection of the easement line(s) of the private street with the easement line(s) of the other private street, the improved right-of-way, or edge(s) of pavement of a private driveway or access drive. 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 pavement of such private drive with the improved rights-of-way or street, 20 feet away from the point of intersection.

Mr. Linderman responded that it was his belief that the Village Code only required seventy-five percent (75%) open space for fences greater than four feet (4') tall. He asked what specifically the Village Code said in 2004 when he obtained the building permit. Chairman DeFalco stated that ZBA 05-19 addressed the clear line of sight area and he believes that portion of the Village Code has been in effect since 1999.

Mr. Linderman stated that because his lot is only seventy-feet (70') wide, relocating the fence would reduce his yard too much.

Mr. Tap asked the petitioner if the fence was built after the house was built, to which the petitioner responded yes. Mr. Tap then asked how much was the permit fee, to which Mr. Panfil stated that he is not certain what the fee was in 2004, but it currently is \$16.00 for a fence permit. Mr. Tap continued by stating that in this instance he finds it difficult to be punitive because a permit was applied and paid for and there was no inspection to confirm the fence's compliance with Village Code.

Dr. Corrado commented that the clear line of sight area regulations exist for safety reasons and the ZBA has enforced these regulations in the past. While there may have been no incidents to date, an accident could happen at any time.

Mr. Linderman responded that he has nine (9) year old and twelve (12) year old children and he too has safety concerns and acts accordingly, but in the ten (10) years of its existing, the fence has not presented any safety issues. Mr. Linderman stated that he is able to see people, including kids, walking.

Mr. Bedard stated that he had driven into the driveway and agrees with Mr. Linderman's assessment that there is sufficient visibility.

Chairman DeFalco commented that when people are in a hurry they may not see pedestrian and an accident could still occur. Chairman DeFalco also stated that the basic lot within the Village is approximately sixty feet (60') and that this lot is wider than other, not narrower as the petitioner suggested.

Mr. Bartels questioned the procedure for continuing the public hearing to a later date in order for staff to conduct more research into amending the Zoning Ordinance to allow for fifty percent (50%) open space fences within a clear line of sight area. Mr. Panfil stated that the petitioner could still request a vote be taken that evening.

Mr. Tap made a motion that the ZBA recommend the clear line of sight area variation for approval by the Village Board. Before a second could be made, Mr. Linderman stated that he believes that the way Village Code is currently written he is compliant. He asked for clarity as to where specifically in the Village Code his fence is not compliant. Chairman DeFalco stated the fence is not compliant with the clear line of sight area regulations. Mr. Linderman stated that he still feels he is compliant because he has built a fence of open construction. Chairman DeFalco responded that open construction fence is defined in the Zoning Ordinance as being at least seventy-five percent (75%) open space. Mr. Linderman stated that he has had an attorney review the Village Code and feels the minimum open space requirement is

not clear. Mr. Linderman continued that it was his understanding that by calling for an inspection and not receiving one he was compliant with Village Code.

Chairman DeFalco stated that for the requested variation, the ZBA is not examining if the current Village Code needs revision, but whether or not there is sufficient hardship to grant the variation.

A motion was made by Mr. Bartels, seconded by Mr. Tap, that the Zoning Board of Appeals recommend this petition for approval to the Corporate Authorities, subject to the following conditions:

- 1. The zoning relief shall be limited to the existing forty-two inch (42") tall picket fence currently located on the subject property (as depicted in the attached photograph, made a part of this petition). In the event that the existing fence is damaged or destroyed to fifty-percent (50%) of its value, any new fence shall meet all Village Code requirements; and**
- 2. If the existing fence is found to be located within the public right-of-way, the property owner shall enter into an encroachment agreement with the Village of Lombard, subject to approval by the President and Board of Trustees.**

The motion carried by the following vote:

Aye: 5 - Mary Newman, Raymond Bartels, Keith Tap, Ed Bedard, and Val Corrado

Nay: 1 - John DeFalco

Absent: 1 - Greg Young

[140245](#)

ZBA 14-08: 551 N. LaLonde Avenue

Requests that the Village grant 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 side yard from four feet (4') to six feet (6'), located within the R2 Single-Family Residence Zoning District (Lombard Vista Subdivision). (DISTRICT #4)

Mr. Patrick McKenna, homeowner, presented the petition. Mr. McKenna stated that he has lived in the existing home for three (3) years and is now looking to replace the existing four foot (4') tall solid wood fence with a new six foot (6') tall solid wood fence in the same location. Mr. McKenna stated that his lot is unique because LaLonde Avenue runs perpendicular to his backyard. Also, his existing fence appears even lower than four feet (4') from the right-of-way due to a change in grade. Due to the unique intersection of LaLonde Avenue and Sunset Avenue Mr. McKenna is concerned about safety and privacy.

Chairperson DeFalco questioned if there was anyone present to speak in favor of or against the petition. Hearing none, staff was asked for their presentation.

Mr. Panfil, Senior Planner, submitted the IDRC Report into the public record in its entirety. Mr. Panfil reiterated that the request is because there is a unique t-intersection on the north side of the petitioner's lot which raises security, safety, and privacy concerns. Also, the t-intersection causes traffic to face, and at night focus vehicle headlights, directly into the petitioner's rear yard.

Mr. Panfil stated that staff found the petitioner to meet standards for variation item numbers two, three, five, six, and seven. While staff did not find standards one and four to be affirmed, special consideration of the circumstances was warranted. Primarily, the request for a six foot (6') tall fence instead of a four foot (4') tall fence was found to be a matter of preference rather than need, but the Lombard Zoning Ordinance does not anticipate for the uniqueness of lots like the subject property. Revising the Zoning Ordinance to account for such lots would only be for the benefit of a few properties within the Village.

In consideration of precedent, Mr. Panfil stated that staff identified approximately seventeen (17) similar cases that involved a solid fence located within a corner side yard that appeared before the ZBA since 2005. Of the seventeen (17) cases, only one, ZBA 05-06, involved anything similar to a t-intersection. In this instance there was a slightly offset intersection, not a full t-intersection.

Mr. Panfil concluded that because there are few properties within the Village that are similar to the subject property, recommending approval would not set a long range precedent that could be commonly applied to other properties. Also, because the subject property is not a reverse corner lot, there is less of a visual impact to the neighbor to the east.

Chairperson DeFalco then opened the meeting for discussion by the ZBA members.

Mr. Tap asked if the new fence would be in the same location as the existing four foot (4') tall fence to which Mr. McKenna affirmed. Mr. McKenna added that the existing fence is in poor condition and in need of replacement.

Mr. Tap asked for and received clarity from staff as to where on the lot a four foot (4') tall fence is the maximum allowed. Mr. Tap then stated that he did not see a clear line of sight issue within the neighboring home. Mr. McKenna responded that he has approached the neighbor to the east who did not object to his proposal.

Chairperson DeFalco asked the petitioner which street is busier,

Sunset Avenue or LaLonde Avenue. Mr. McKenna responded that Sunset Avenue generally has the most traffic, usually westbound. Mr. DeFalco continued by asking if the headlights from vehicles affect the petitioner's enjoyment of his rear yard. Mr. McKenna responded yes.

Chairperson DeFalco asked the petitioner if his new six foot (6') tall fence could be built twenty feet (20') off of the property line. Mr. McKenna responded that the fence could be built in that location. Chairperson DeFalco stated that if the fence could be built twenty feet (20') off of the property line then no variation would be needed. Chairperson DeFalco stated that the headlights only face directly into the petitioners yard when traveling south on LaLonde Avenue and turning left onto Sunset Avenue. Chairperson DeFalco then informed the petitioner that there have been similar requests on other corner lots which have not been granted.

Mr. McKenna reiterated that his primary concern was for safety and he believed that the additional fence height would help protect his children from passersbys and would make the fence more visible to motorists. Chairperson DeFalco disagreed and stated that it would be possible to build a six foot (6') tall fence compliant with Village Code and still have a safe and approximately sixty-three foot (63') wide enclosed rear yard. Chairperson DeFalco reminded the petitioner that the ZBA needs to find a true hardship in order to grant the requested variation.

Mr. Bedard stated that he finds a hardship and made a motion, seconded by Mr. Bartels, that the ZBA recommend the corner side yard fence height variation for approval by the Village Board, subject to three (3) conditions.

Dr. Corrado asked why the Village requires no more than a four foot (4') tall fence within corner side yards. Chairperson DeFalco responded that fences can obstruct neighbors' views. Mr. McKenna stated that he believes the fence will be an aesthetic improvement and is an investment into the property.

Chairperson DeFalco then discussed with Mr. Bartels as to what would happen if the fence were to be extended to the front of the house.

A motion was made by Mr. Bedard, seconded by Mr. Bartels, that the Zoning Board of Appeals recommend this petition for approval to the Corporate Authorities, subject to the following conditions:

- 1. The subject property shall be developed in substantial conformance with the site plan drawn by the petitioner on the plat of survey, prepared by ARS Surveying Service, LLC, dated August 5, 2011;**

2. The petitioner shall apply for and receive a building permit for the proposed fence;

3. Such approval shall become null and void unless work thereon is substantially under way within twelve (12) months of the date of issuance, unless extended by the Board of Trustees prior to the expiration of the ordinance granting the variation.

The motion failed to receive a recommendation vote:

Aye: 3 - Raymond Bartels, Keith Tap, and Ed Bedard

Nay: 3 - John DeFalco, Mary Newman, and Val Corrado

Absent: 1 - Greg Young

A motion was made by Ms. Newman, seconded by Dr. Corrado, that the Zoning Board of Appeals recommends this petition for denial to the Corporate Authorities.

The motion failed to receive a recommendation vote:

Aye: 3 - John DeFalco, Mary Newman, and Val Corrado

Nay: 3 - Raymond Bartels, Keith Tap, and Ed Bedard

Absent: 1 - Greg Young

As the ZBA could not obtain four votes to either approve or deny the requested variation, the fence height in a corner side yard variation is forwarded to the Village Board with no recommendation.

Business Meeting

Approval of Minutes

A motion was made by Dr. Corrado, seconded by Ms. Newman, to approve the minutes of the May 28, 2014 meeting. The motion passed by a unanimous vote.

Planner's Report

New Business

Unfinished Business

Adjournment

A motion was made by Ms. Newman, seconded by Mr. Tap, to adjourn the meeting at 8:49 p.m. The motion passed by a unanimous vote.

John DeFalco, Chairperson
Zoning Board of Appeals

William J. Heniff, AICP, Director of Community Development
Zoning Board of Appeals