

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) _____
Waiver of First Requested
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink) _____

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: October 25, 2006 (BOT) Date: November 2, 2006

TITLE: PC 06-29: 230 & 236 E. LeMoyné Avenue

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration its recommendation relative to the above-mentioned petition. The petition requests approval of a Minor Plat of Resubdivision in the R2 Single-Family Residence District, along with one of the following zoning actions:

a. A variation from Section 154.506 (G) of the Subdivision and Development Ordinance requiring lot lines to be approximately at right angles or radial to the adjacent street; or in the alternative,

b. A variation from Section 155.406 (F)(4) of the Zoning Ordinance to allow for a thirty-one foot (31') rear yard setback, where a minimum of thirty-five feet (35') is required. (DISTRICT #4)

The Plan Commission recommended *denial* of this petition.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____
Finance Director X _____
Village Manager X *W. Lichter*
Date _____
Date *10/25/06*

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP
Assistant Village Manager/Director of Community Development *DH/wh*

DATE: November 2, 2006

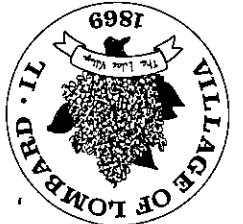
SUBJECT: PC 06-29: 230 & 236 East LeMoynes Avenue

Attached please find the following items for Village Board consideration as part of the November 2, 2006 Village Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 06-29; and
3. Plans associated with the petition.

The Plan Commission recommended denial of the request.

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VILLAGE OF LOMBARD
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 Lombard, IL 60148-3926
 (630) 620-5700 FAX: (630) 620-8222
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Village President
 William J. Mueller

Village Clerk
 Brigitte O'Brien

Trustees
 Greg Alan Gron, Dist. 1
 Richard J. Tross, Dist. 2
 John "Jack" T. O'Brien, Dist. 3
 Steven D. Seby, Dist. 4
 Kenneth M. Florey, Dist. 5
 Rick Soderstrom, Dist. 6

Village Manager
 William T. Lichter

November 7, 2006

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

Subject: PC 06-29; 230 & 236 E. LeMoyn Avenue

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner requests approval of a Minor Plat of Resubdivision in the R2 Single-Family Residence District, along with one of the following zoning actions:

a. A variation from Section 154.506 (G) of the Subdivision and Development Ordinance requiring lot lines to be generally perpendicular to the adjacent street; or in the alternative,

b. A variation from Section 155.406 (F)(3) of the Zoning Ordinance to allow for a four-foot (4') interior side yard setback, where a minimum six-foot interior side yard setback is required.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on October 16, 2006.

Phil Steffan, of Lakeside Management, LLC, representing the owner, presented the petition. He noted the requested relief. His intent is to keep the original structures on the property in conformance with the neighborhood. The existing homes are nice and are structurally sound and to redevelop the homes would not make sense. To allow the existing houses to remain, they would need relief in the backyard of Lot 1 of the proposed resubdivision. Staff initially suggested that they could create a line that went straight back into the property. However, that design would create a four foot variance on the 35 foot setback requirement. The other proposal provides a slight angle to the north on the proposed interior side yard lot line, but it creates a smaller back lot. All three properties comply with the 7,500 square foot minimum lot requirement. In the event they are not approved it jeopardizes the current house on the proposed Lot 1. They are looking to get past that and keep the two homes.

"Our shared *Vision* for Lombard is a community of excellence exemplified by its government working together with residents and business to create a distinctive sense of spirit and an outstanding quality of life."

"The *Mission* of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

Richard Fox, 638 N. Martha Street, noted that he lives a block and one-half away from the subject property. He referenced a previously granted setback variation at 502 N. Main as well as Lot 17 in Yorkshire Woods Subdivision. Their original plan would be to have a 1-1/2 degree jog in the property line angle, so it would not be perpendicular to the other lot lines.

Acting Chairperson Sweets then opened the meeting for public comment.

Dean Wilkins, 1049 S. Edson, owner of the property at 231 East North Avenue inquired about whether they trying to get an additional lot to build a future home. Mr. Steffan said yes. Mr. Wilkins asked if the houses would encroach into any easements. Mr. Steffan said no.

Acting Chairperson Sweets then requested the staff report.

William Heniff, Senior Planner, presented the staff report which was submitted to the public record. The subject properties are located at the northwest corner of LeMoyné Avenue and Craig Place and are improved with existing residences. Each property meets current setback requirements. The property owner is proposing to subdivide the rear of the existing two lots to create a third lot, which would front Craig Place.

The proposed lots could be subdivided into three lots of record without requiring any zoning relief. However, the petitioner is seeking approval of companion zoning relief. The first request would create an irregularly shaped parcel, but would allow the existing residence at 230 E. LeMoyné to meet the 35-foot rear yard setback provisions. If the Village Board does not find this concept desirable, the petitioner would be amenable to zoning relief from the side yard setback requirements to allow for the rear side setback yard for the property at 230 E. LeMoyné to be 31 feet rather than the requested 35 feet.

The first option would grant a variation from the Subdivision and Development Ordinance requiring lot lines to be generally perpendicular to the adjacent street with the side lot lines being approximately at right angles or radial to street lines. The purpose of this regulation is to ensure that side lot lines are not "gerrymandered" or created in a manner that is inconsistent with traditional lot subdivisions. Moreover, it also ensures that other sections of the Village Code are not circumvented.

In this request, the petitioner's lot division would be placed sixty feet south of and parallel with the north property line for the first sixty feet of the proposed lot. However, in order for the new lot to be created without the need for a variation for the rear yard setback for the existing house at 230 E. LeMoyné, is to bend the interior lot line northward. This angle adjustment would establish the rear yard approximately 51.32 feet wide at the rear lot line. This bend would still ensure that the new lot meets the 7,500 square foot area minimum requirement.

Referencing the standards for variation within the Subdivision and Development Ordinance, staff's concern with supporting divisions of this nature is that it could create an undesirable precedent for future divisions of land in the Village. Staff notes that the intent of the code is to provide for lots that are consistent with the Ordinance objectives and would not be contrary to the manner in which other lots in the neighborhood have been divided. In this instance, the angled lot is being created to avoid setback relief.

As an alternative to the division request above, the petitioner included the alternate zoning request as well – that is, grant a variation from the rear yard setbacks from the lot to be created. This would create an interior lot line 31 feet from the rear yard of the 230 E. LeMoynes property. He then referenced staff's response to the standards for variations. He noted that no hardship exists that warrants granting of the relief and that granting such relief would create an undesirable precedent. As such, staff recommends denial of the petition in its entirety.

Acting Chairperson Sweetser then opened the meeting for discussion among the Plan Commission members.

Commissioner Burke stated that it sounded like one of the petitioners had evidence with precedence setting variations that have been granted by us or the Board - should we consider this item? Mr. Heniff noted that he was not immediately familiar with the referenced cases, so he could not offer a comparable response. If the Plan Commission feels that this information is critical in making a decision, the Commissioners could continue the petition so staff can look at that item and offer a response.

Commissioner Nelson stated that he went and looked at the house. There is a lot of room in the front and the house is built for 2 lots. He then went throughout the neighborhood and could not find the any others that are configured in the manner the petitioner was proposing. He asked how big the front yard is. Mr. Steffan stated that the existing home at 236 E. LeMoynes is set back 41.24 feet, from the sidewalk to the house.

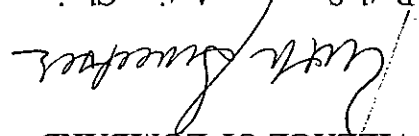
Commissioner Olbrysh asked the petitioner if he had an alternative proposal if the request for the relief is not granted. Mr. Steffan stated that they would have to research that. They are seeking relief in order to keep both existing homes as they are.

Commissioner Burke stated that when you review the plat you will note that all of the properties in the block are similar in size and are similarly configured. This plat does not follow the precedent and the desire for the variance does not meet the standards for variations.

After due consideration of the petition and the testimony presented, the Plan Commission found that the requested variations do not comply with the standards of the Subdivision and Development Ordinance nor Zoning Ordinance. Therefore, the Plan Commission, by a roll call vote of 4 to 0, recommended to the Corporate Authorities, **denial** of the request for a conditional use associated with PC 06-29.

Respectfully,

VILLAGE OF LOMBARD



Ruth Sweetser, Acting Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission

**VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Lombard Plan Commission
FROM: Department of Community Development
HEARING DATE: October 16, 2006
PREPARED BY: William J. Heniff, AICP
Senior Planner

TITLE

PC 06-29; 230 & 236 East LeMoine Avenue: The petitioner requests approval of a Minor Plat of Resubdivision in the R2 Single-Family Residence District, along with one of the following zoning actions:

- a. A variation from Section 154.506 (G) of the Subdivision and Development Ordinance requiring lot lines to be approximately at right angles or radial to the adjacent street; or in the alternative,
- b. A variation from Section 155.406 (F)(4) of the Zoning Ordinance to allow for a thirty-one foot (31') rear yard setback, where a minimum of thirty-five feet (35') is required.

GENERAL INFORMATION

Petitioner/ Property Owner:
Lakeside Management Co. LLC
2555 Caliendo Circle
Montgomery, Illinois 60538

PROPERTY INFORMATION

Existing Land Use: Two Single-Family Residences
Size of Property: Approximately 25,260 square feet
Comprehensive Plan: Recommends Low Density Residential
Existing Zoning: R2 Single-Family Residence District

Surrounding Zoning and Land Use:

North:	R2 Single-Family Residence District; developed as single-family homes
South:	R2 Single-Family Residence District; developed as single-family homes
East:	R2 Single-Family Residence District; developed as single-family homes
West:	R2 Single-Family Residence District; developed as single-family homes

ANALYSIS

SUBMITTALS

This report is based on the following documentation, which was filed with the Department of Community Development on September 29, 2006:

1. Petition for Public Hearing, with response to standards.
2. Final Plat of Steffen's LeMoyno Resubdivision, prepared by Lambert & Associates Surveyors (with existing residence depicted on the proposed plat for reference).

DESCRIPTION

The subject properties are located at the northwest corner of LeMoyno Avenue and Craig Place, and are improved with existing residences. Each property meets current setback requirements. The property owner is proposing to subdivide the rear of the existing two lots to create a third lot, which would front Craig Place.

The proposed lots could be subdivided into three lots of record without requiring any zoning relief. However, the petitioner is seeking approval of companion zoning relief. The first request would create an irregularly shaped parcel, but would allow the existing residence at 230 E. LeMoyno to meet the 35-foot rear yard setback provisions. If the Village Board does not find this concept desirable, the petitioner would be amenable to zoning relief from the side yard setback requirements to allow for the rear side setback yard for the property at 230 E. LeMoyno to be 31 feet rather than the requested 35 feet.

The Zoning Ordinance (Section 155.102 (B)(3)) establishes the authority for reviewing companion variation requests associated with a plat application to the Plan Commission.

Please note that only one of the requested actions would be required to create a second buildable lot and let the existing residence to remain on the premises. Each of these actions will be discussed separately within the report below.

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

The Private Engineering Services Division has no objection to the request for approval from an engineering or construction perspective.

Public Works

The Department of Public Works has no comments regarding this application. However, they recommended that the final lot configuration should be reviewed to ensure code compliance if the subdivision option is approved.

FIRE AND BUILDING

The Bureau of Inspectional Services has no comments regarding this petition.

PLANNING

If the petitioner razes the rear portion of the house on 230 E. LeMoynes, the petitioner could subdivide the existing lots into three lots of record through an administrative plat of subdivision. However, as the proposed lots do not meet all other provisions of Village code, it is then classified as a Minor Plat of Subdivision. Below is a discussion of each option.

Option 1: Grant Relief from the Subdivision and Development Ordinance

The first option would grant a variation from Section 154.506 (G) of the Subdivision and Development Ordinance requiring lot lines to be generally perpendicular to the adjacent street with the side lot lines being approximately at right angles or radial to street lines. The purpose of this regulation is to ensure that side lot lines are not "gerrymandered" or created in a manner that is inconsistent with traditional lot subdivisions. Moreover, it also ensures that other sections of the Village Code are not circumvented.

In this request, the petitioner's lot division would be placed sixty feet south of and parallel with the north property line for the first sixty feet of the proposed lot. However, in order for the new lot to be created without the need for a variation for the rear yard setback for the existing house at 230 E. LeMoynes, is to bend the interior lot line northward. This angle adjustment would establish the rear

yard approximately 51.32 feet wide at the rear lot line. This bend would still ensure that the new lot meets the 7,500 square foot area minimum requirement.

In consideration of this action, the petitioner offered a response to standards for variations for provisions within the Subdivision and Development Ordinance. Staff offers the following comments:

Where the Plan Commission finds that extraordinary hardship or particular difficulties may result from strict compliance with these regulations, it may recommend to the Village Board of Trustees the approval of variations to the regulations of this Ordinance so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of these regulations; and further provided that the Plan Commission shall not recommend variations to the provisions of these regulations unless it shall make findings based upon the evidence presented to it in each specific case that:

a) The granting of the variation will not be detrimental to the public safety, health or welfare, or injurious to other property or improvements in the neighborhood in which the subject property is located.

Staff's concern with supporting divisions of this nature is that it could create an undesirable precedent for future divisions of land in the Village. Staff notes that the intent of the code is to provide for lots that are consistent with the Ordinance objectives and would not be contrary to the manner in which other lots in the neighborhood have been divided. Staff also notes that cul-de-sac lots also meet the intent of the code by having radial side lot lines. While staff readily admits that many lots in the Village are not completely rectangular in nature, their creation were the result of other subdivisions, that created remnant lots, the result of other divisions that were created prior to the current Ordinance regulations. In this instance, the angled lot is being created as a "run-around" from a variation from the lot area requirements.

Staff also notes that a similar petition was heard by the Plan Commission earlier this year (PC 06-23). Ultimately, the Village Board denied the petition.

b) The conditions upon which the request for a variation is based are unique to the property for which the variation is sought, and are not applicable, generally, to other property.

The existing lot is generally rectangular in shape, although the entire block was platted in a manner that created lots and blocks that were not at a 90 degree angle. The petitioner's plan divides the lots at an angle not consistent with traditional platting of lots in the Village.

c) 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 these regulations were carried out;

Staff notes that the topographical conditions of the lot do not preclude the lot from being divided consistent with code.

d) *Such variation or exception will not conflict with provisions of the Lombard Zoning Ordinance or Comprehensive Plan.*

Staff asserts that the angled lot concept is not consistent with the intent of the Zoning Ordinance or the Plan as it creates lots with irregular shapes based upon individual preferences rather than external development constraints.

The standards and requirements of these regulations may be modified in the case of Planned Developments when the Plan Commission finds that a plan and program for a new neighborhood unit or part thereof provides adequate public spaces and improvements for the circulation, recreation, light, air and public utilities service needs of the tract when fully developed, and which also provides such covenants or other legal provisions as will assure conformity and achievement of the plan.

Staff believes the standards are not met in this instance and therefore, staff recommends denial of this request.

Option 2: Grant Relief from the Zoning Ordinance

As an alternative to the division request above, the petitioner included the alternate zoning request as well – that is, grant a variation from the rear yard setbacks from the lot to be created.

In consideration of this action, staff offers the following response to the variations for provisions within the 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.*

Staff notes that there is nothing unique to the existing property that would constitute a particular hardship – it is just the petitioner's desire to keep the existing home at 230 E. LeMoyné on the premises as it exists without modifying the rear of the house. In consideration of this option, staff notes that it is the lot division which is creating the need for the variation – the existing residence at 230 E. LeMoyné does and would continue to meet code but for the actions of the petitioner.

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 typical of many other lots within the Village. With few exceptions, when corner and interior lots have been subdivided, the existing non-conforming homes are razed or modified.

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

Approval of this petition would allow the petitioner to sell off the rear portion of the lots while keeping the existing residence on the premises.

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.*

The Ordinance has been consistently applied and this request would be created by the person having interest in the property.

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.*

The relief could create an undesirable precedent for other residences in close proximity to the subject property.

6. *The granting of the variation will not alter the essential character of the neighborhood.*

The relief would place residences closer together than desired by Code.

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.*

Overall, staff believes that the standards for variations from the Zoning Ordinance are not met.

Compliance with the Comprehensive Plan

The Comprehensive Plan recommends the property be used for Low-Density Residential purposes. Low Density Residential uses are defined as residential areas with a net density of six (6) or less units per acre. Low Density Residential is primarily made up of single-family residential uses. The net density proposed is five and seventeen hundredths (5.17) units per acre, meeting the recommendation of the Comprehensive Plan.

However, within the housing and residential goals section, a concern is raised about encouraging infill development which is complementary with the scale and character of surrounding residential uses protecting residential areas. Staff has generally held that granting relief to provide for more dense development is not consistent with the objectives of the plan, particularly when there options available to ensure that the newly created lots are consistent with the Ordinance provisions and/or any lots created by the subdivision meet code.

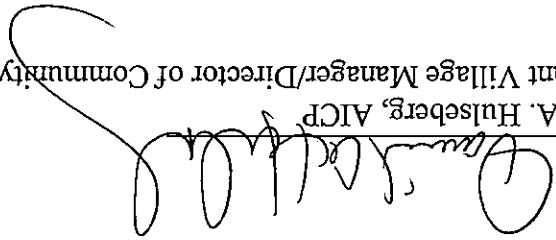
FINDINGS AND RECOMMENDATIONS

Staff believes that justification has been given for granting of the variation and that the standards for granting a variation have been met for the reasons noted above.

Based on the above considerations, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending denial of this petition:

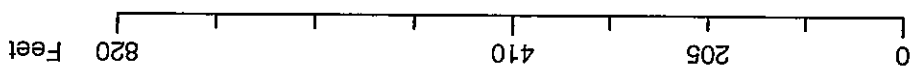
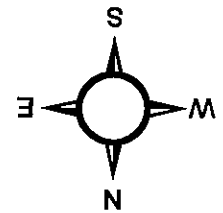
Based on the submitted petition and the testimony presented, the proposal does not comply with the standards required by the Lombard Subdivision and Development Ordinance nor the Zoning Ordinance; and, therefore, I move that the Plan Commission recommend to the Corporate Authorities **denial** of both requested actions associated with PC 06-29.

Inter-Departmental Review Group Report Approved By:


David A. Huliseberg, AICP
Assistant Village Manager/Director of Community Development

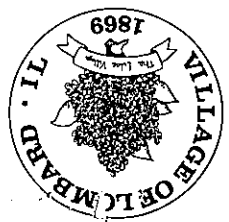
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c. Petitioner

PC 06-29 230/236 Lemoyne



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MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP
 Assistant Village Manager/Director of Community Development

DATE: December 7, 2006

SUBJECT: PC 06-29: 230 & 236 East LeMoynes Avenue

PC 06-29 is scheduled for consideration at the December 7, 2006 Village Board agenda. In advance of the meeting, staff offers the following documents for your reference:

1. A memorandum from staff presented to the Board members at the November 16, 2006 meeting.
2. A copy of a correspondence from the attorney for the petitioner. While the correspondence states that they are not interested in encumbering the property at 230 E. LeMoynes with a long-term deed restriction to preserve the existing residence, the petitioner has informed staff that they are now amenable to a long-term deed restriction.

For the Village Board's reference, staff and the Plan Commission recommended denial of the petition.

BOCHTE & KUZNIAR, P.C.
ATTORNEYS AT LAW
2580 FOXFIELD ROAD, SUITE 200
ST. CHARLES, ILLINOIS 60174
www.bochtekuzniar.com

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THEODORE L. KUZNIAR
MICHAEL T. NAVIGATO

TELEPHONE (630) 377-7770
FACSIMILE (630) 377-3479

November 21, 2006

David A. Hulseberg, AICP
Director of Community Development
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148

Re: PC 06-29

230 and 236 East Lemoyne Avenue, Lombard, Illinois

Dear Mr. Hulseberg:

As you are aware, my client, Lakeside Management Co., LLC is the owner of the properties located at 230 East Lemoyne and 236 East Lemoyne, both in the Village of Lombard, (hereinafter collectively referred to as the "subject property"). As you are further aware, my client has requested approval of a Plat of Resubdivision. As part of this request, my client respectfully requested either a minor zoning variance from Section 154.50.6(G) which requires side lot lines to be at appropriate right angles to the adjacent street, or a minor zoning variance from Section 155.40.6(F)(4) which requires a 35 foot rear yard set back to permit a 31 foot rear yard set back on 230 E. Lemoyne.

The Department of Community Development submitted a written report to the Board of Trustees recommending that each request for zoning relief be denied. The entitled matter came before the Board of Trustees on November 2, 2006. At the meeting, I presented my client's position that the Plat of Subdivision, as drafted, did not violate any Village of Lombard zoning ordinance. In the alternative, I presented my client's position that the zoning relief requested had been previously approved by the Board of Trustees in relation to other properties within the Village.

At the conclusion of the presentation, Trustee Stephen Sebby, whose district the subject property lies within, indicated that he was completely unaware of my client's request to approve the Plat of Resubdivision and request for zoning relief. At Mr. Sebby's suggestion, the matter was tabled until the next Board meeting (November 16, 2006) to allow further investigation and discussion into this matter.

BOCHTE & KUZNIAR, P.C.

David A. Hulseberg, AICP
Director of Community Development
Village of Lombard

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Subsequent thereto, there have been ongoing negotiations and discussions in an effort to reach an amicable resolution of the matter that will allow my client to resubdivide the subject property without removing the two existing residences. It is my understanding that the Village has suggested approval of the zoning relief requested if my client would agree to a deed restriction on each lot which would prohibit the destruction of each residence for a period of twenty (20) years. My further understanding is that the matter was again tabled at our request to allow further discussion and investigation into this proposal. This is the current state of this matter.

My client feels that it is important that you are apprised of the complete history of this matter from my client's perspective. The subject property can be resubdivided without any zoning relief by the removal of the current residences. However, this option would necessitate the destruction of two good houses in the Village, and would be contrary to the wishes of certain neighbors in the area. My client possesses letters from two different neighbors expressing their position that the existing residences not be removed.

My client was cognizant that the property located at 230 E. LeMoine would not have "sufficient rear yard set back" upon resubdivision depending on how the Villager interpreted Section 154.506(G). Prior to purchasing the subject property, my client presented a proposed Plat of Subdivision that created a jogged side lot line for the new lot (new rear lot line for the two existing lots). A jogged lot line had been previously approved within the Village on Second Street, between Maple Street and North Broadway and again on North Broadway at the Prairie Path. The Planning Commission suggested that my client not utilize a "jogged" line, but to attempt to make the lines as straight as possible with the understanding that the line would not be at a 90 degree angles to permit 230 E. LeMoine to have the requisite rear set back of 35 feet.

My client had its engineer re-draft the Plat of Subdivision to remove the jogged line. The new Plat of Subdivision contained a side line for the new lot that ran on a very minute angle. The angle created at the front line and side line (southeast corner) was 93 degrees, 5 minutes, 23 seconds, as opposed to a full right angle of 90 degrees, 0 minutes, 0 seconds. In the alternative, my client submitted an overlay of a side line that was drawn at a 90 degree right angle to the front line which resulted in a rear yard set back of 31 feet on 230 E. LeMoine in an effort to secure zoning relief from Section 155.406(F)(3).

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From a purely legal standpoint, my client is of the position that the Plat of Resubdivision 154.506(G) states that side lot lines shall be approximately at right angles to street lines. A court will give the language of the ordinance its plain and ordinary meaning. The term approximate does not mean exact, but means something close to exact. The subject property as it currently stands does not have side lot lines that are at 90 degree angles to the street lines. As evidence of the same, the west side lot line of 236 E. LeMoynes sits at 86 degrees, 37 minutes, 45 seconds to the street line, whereas the west side lot line of 230 E. LeMoynes sits at 86 degrees, 39 minutes, 4 seconds to the street line. Neither of the existing side lines on these properties are at exact right angles to the street line, but are at "approximate" right angles, as required by the ordinance. The angle at the street line created by the new side lot line that is 93 degrees, 5 minutes, 23 seconds, which is within the tolerance that already exists. The newly created side lot line is at as much an approximate right angle to the street line as are the current side lot lines. As such, my client is having a difficult time ascertaining why the Village is taking the position that the proposed Plat of Subdivision violates Section 154.506(G) and why zoning relief is required.

Notwithstanding the foregoing, my client was of the position that it would be more beneficial to both parties to apply for zoning relief as opposed to seeking judicial review of whether or not the proposed Plat of Subdivision violates Section 154.506(G). To my clients surprise, the Plan Commission recommended a denial of zoning relief for both the side lot line drawn at a minute angle and a rear set back of thirty-one feet (31') as opposed to thirty-five feet (35'). Considering the fact that the Plan Commission previously recommended approval of a thirty foot (30') set back at 502 N. Main Street, my client felt that precedent had been established to allow a four (4) foot set back variance.

With these facts in mind, it should be noted that it is my client's goal to work with the Village to reach a resolution that is beneficial to not only my client, but to the Village and the community in general. To this end, my client has no intention of removing the existing two residences, and in fact, has every intention of selling the two residences to the general public. However, the idea of long term deed restrictions amounts to a limitation on the free alienation of property and may make it extremely difficult to sell these properties to the general public.

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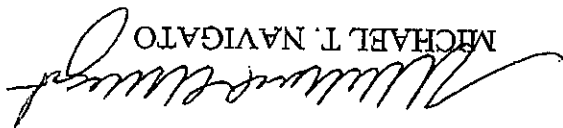
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Before reaching a final determination on the Village's proposal for long term deed restrictions, my client would respectfully request that the Village reconsider its position that the Plat of Subdivision submitted by my client violates Section 154.506(G). In addition, my client would further respectfully request an explanation why a variance of the rear set back by four (4) feet will not be approved when other properties within the Village have been granted rear yard set back variances. My client would simply like to be fully informed before considering its options.

Your attention to this matter is greatly appreciated. Please feel free to either contact myself or my client directly to discuss the matters contained herein.

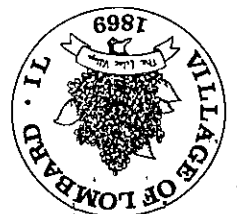
Very Truly Yours,

BOCHTE & KUZNIAR, P.C.



MICHAEL T. NAVIGATO

MTN:kp



MEMORANDUM

SUBJECT: PC 06-29: 230 & 236 East LeMoyno Avenue – Request for Continuance

The petitioner has requested a continuance to our next meeting of December 7, 2006. As a supplement to the items previously presented to the Village Board, staff offers the following additional information pertaining to PC 06-29.

Background:

Staff had been working with the petitioner to see what possibilities were available to subdivide the properties at 230 & 236 East LeMoyno into three legal lots of record. From a lot area and lot width standpoint, the properties could be subdivided into three lots of record by right through an administrative plat of subdivision. However, as the petitioner was seeking to allow the existing houses to remain, staff informed the petitioner that both the existing houses and the new house would have to meet the full provisions of the Zoning Ordinance. This includes meeting the 35-foot rear yard setback provisions. The detached garage on 236 East LeMoyno would have to be moved or removed.

In the initial discussions with the petitioner, staff noted that provided that all of the Zoning Ordinance provisions are met, the subdivision could be approved. However, staff noted that the plat would need to be reviewed so that we could determine that the code provisions are being followed.

Staff also noted the provisions set forth in Section 154.506 (G) of the Subdivision and Development Ordinance requiring lot lines to be approximately at right angles or radial to the adjacent street. Recognizing that if they were to divide the property using a 90-degree line off of Craig Place, it would result in the existing house at 230 East LeMoyno being 31 feet off of the new lot line. However, staff and the petitioner noted that as the adjacent property lot lines are not exactly at right angles, the petitioner should review what possibilities were available to subdivide the property and meet code. Staff noted that if the proposed interior lot line was consistent with the intent of this provision even though it was not exactly at a 90 degree angle, it

could be supported and approved. Staff also alternatively suggested that additional property could be acquired from the abutters north of the property to address this issue.

The petitioner continued to work with staff and submitted a concept resubdivision plan. In review of the plat (essentially the plat that was submitted to the Village as part of the public hearing), staff noted that the angle of bend appeared to be significant. However, as the code provisions uses the term "approximately", staff questioned whether the proposed resubdivision was actually in keeping with the intent of the code. Ultimately, staff asserted that the degree of bend is significant enough that it is really in not in keeping with the intent of the provisions. As such, staff informed the petitioner that as an administrative plat, staff could not approve it as it does not meet all of the provisions of the Ordinance. In order to receive approval, the petitioner would have to apply for and receive a variation from the Subdivision and Development Ordinance provisions. If the Board ultimately felt uncomfortable with granting the relief from the subdivision regulations, relief could be granted from the Zoning Ordinance for the 230 East LeMoine property to remain as is.

In consideration of the petition, staff's concern was that gertymandered lot lines could create an undesirable precedent, particularly when done to circumvent the Zoning Ordinance provisions. The petitioner further testified at the public hearing that the intent of the petition was to keep the houses so not be obligated to demolish the house at 230 East LeMoine. Staff notes that there are a number of actions that could be undertaken by the petitioner without granting any zoning relief, including:

1. Modify the existing house at 230 E. LeMoine to meet the 35-foot setback requirement.
2. Move the house on 230 E. LeMoine to meet the rear yard setback.
3. Demolish the house at 230 E. LeMoine in its entirety.

Staff believes the relief included within the petition was based exclusively upon the actions of the petitioner and that a hardship did not exist that would prevent compliance with Village Code. As such, staff ultimately did not support the petition and the Plan Commission concurred with the recommendation. In their findings, the Commission noted that the proposed lot division would be inconsistent with past lot divisions in the neighborhood.

The petitioner is considering on allowing deed restrictions on the 230 and the 236 E. LeMoine properties preventing demolition for a specified time period. In this manner, the existing homes would remain.

Recommendation:

Staff recommends that a continuance be granted until December 7, 2006.

November 13, 2006

SENT VIA EMAIL DELIVERY

Mr. David A. Hulseberg, AICP
Assistant Village Manager/Director of Community Development
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Re: Our Client: Lakeside Management Co., LLC
Property: 230 and 236 East Lemoyne Ave, Lombard
Agenda No. I 060591 PC06-29

Dear Mr. Hulseberg:

As you know, this office represents the interests of Lakeside Management Co., LLC regarding the property at 230 and 236 East Lemoyne Avenue, Lombard. As you further know, our client's request for zoning relief came before the Village Board of Trustees on November 2, 2006 under Agenda Letter I. At the request of trustee Steven Sebb, the matter was tabled to the next Village Board of Trustees meeting, which I understand is scheduled for Thursday, November 16, 2006.

During the timeframe that the matter has been tabled, there have been several discussions between yourself, my client, myself and the Village Attorney regarding reaching a resolution of this matter that would allow my clients to subdivide the property and secure the zoning relief requested. Unfortunately, due to the short time frame, my client and myself have not had an ample opportunity to evaluate certain proposals that have been suggested by your office, including the possibility of certain deed restrictions.

My client is desirous of considering the deed restriction option, but needs additional time to evaluate the same. As such, my client is respectfully requesting that a Motion be made at the Board of Trustees meeting scheduled for November 16, 2006 to table this matter until the next Board of Trustees meeting to allow my client further time to consider this proposal, as well as to meet with you for the purposes of discussing other options.

Should you have any questions regarding the above, please feel free to give my office a call.

Very Truly Yours,

BOCHTE & KUZNIAR, P.C.

MICHAEL T. NAVIGATO

MTN/IS