

January 7, 2010

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

**Subject: ZBA 09-11; 617 E. Berkshire Avenue:**

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:

- 1) 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').
- 2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on December 16, 2009.

Nicholas Bruhn, 617 E. Berkshire Avenue, owner of the subject property, present the petition. He stated the house was newly purchased by him and his wife. He stated that his primary objective is to keep his residence and pedestrians safe. He wanted to discuss two issues, the height and clear line of sight for the fence. He stated that he would be willing to correct the clear line of sight except for about six inches to one foot of a gate area because of the placement of a post. He stated that he is, however, concerned about the height of the fence at four feet due to the presence of a school across the street.

Mr. Bruhn stated that he had visited the property at Pleasant and Vista mentioned in the staff report. They have an above ground pool which allows some added safety. He also stated that completely changing the fence would be very costly and it was built by the previous owner.

Elizabeth Wilson-Bruhn, 617 E. Berkshire Avenue, stated that she understood why the Village might want a four foot fence. However, she thinks that a sixth grader could jump it to get into the pool. It is a danger and she would not want that responsibility. Also, this fence is along the street between the house and the garage, not at the corner of the street.

Chairperson DeFalco explained what a corner side yard is and why a four foot fence is required.

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

Chairperson DeFalco then requested the staff report.

Stuart Moynihan, Associate Planner, present the staff report. The subject property is located at the southwest corner of Vista Avenue and Berkshire Avenue. The petitioner is requesting a variation to allow an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The previous owner of the property constructed the fence in October of 2009, without a building permit, as a replacement for an existing non-conforming six foot (6') fence in the same area. The fence is located along the Vista Avenue side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence has been replaced, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

The subject property currently has an existing solid wood fence six feet (6') in height within the corner side yard and within the clear line of sight area. This fence was constructed as a replacement for a non-conforming fence of the same height. The fence was constructed in October of 2009 by the previous property owner, without a building permit. After becoming aware of the fence replacement, the Village informed the previous property owner of the need for the requested variations. However, as the property was under contract and in the process of being sold, staff determined that it would be best to process the request after the sale. The new owner was informed of the need for variations prior to the closing, and they are now the petitioner.

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.

The newly constructed fence currently stands within the clear line of sight triangle at the driveway on the subject property.

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.

Within the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of an in-ground pool. Specifically, the petitioner identifies the pool as a hazard to children in the area and states that the existing fence would prevent them from seeing the pool and entering the property. Furthermore, the petitioner states that these concerns are exacerbated by the elementary school located across Vista Avenue. While staff recognizes that these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship.

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. *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 finds that there are no conditions related to the property that prevent compliance with the fence height regulations. The petitioner's property does not have physical surroundings, shape, or topographical features that differ substantially from other corner lots in the neighborhood as to be demonstrative of a hardship. The property is relatively flat and the existing topography does not impact the ability of the property owner from meeting the fence height provisions. There are no conditions which prevent the fence from being removed from the clear line of sight area.

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. Many other properties with a similar layout and design have been able to meet the established regulations. The presence of an in-ground pool and the proximity of a school are not unique or even rare circumstances in the Village. The nearby property at the corner of Vista Avenue and Pleasant Avenue, 616 E. Pleasant Avenue, has met the established regulations. This property also contains a pool. Building Code provisions require a 4' high fence around pools. The petitioner can meet both the Building Code and Zoning Ordinance by modifying the fence height to 4 feet.

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.*

Staff finds that the fence could be constructed per the ordinance requirements by lowering the fence to four feet (4'). The fence could also be moved out of the clear line of sight area or constructed to be seventy-five percent (75%) open. The hardship has been created by the petitioner as a result of the petitioner's preference for the fence's height and location.

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.*

It is staff's opinion that a solid wood fence located within a clear line of sight area could be injurious to the public welfare if the lack of visibility contributed to an accident.

6. *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.*

As stated above, the fence in the clear line of sight area could be a danger to public safety.

Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner should be required to obtain a fence permit for the proposed fence.

Mr. Bedard asked if the petitioner was aware of the violations when the home was under contract.

Mr. Bruhn stated that they were.

Chairperson DeFalco asked when staff became aware of the issues.

Mr. Moynihan stated that staff became aware following code enforcement actions. Staff informed the new owners previous to the sale and the previous owner paid for the public hearing.

Mr. Young stated that the ZBA has a history of supporting six foot fences when pools are involved. However, the clear line of sight is not negotiable.

Chairperson DeFalco asked the petitioner why the gate was at issue.

Mr. Bruhn stated that the fence post the gate is attached to is about one foot into the clear line of sight. There is also a concrete area behind it that would inhibit placing a new post.

Mr. Young asked if the clear line of sight could be looked at as nineteen by twenty-one foot triangle.

Mr. Moynihan stated the Zoning Ordinance calls for a twenty by twenty foot triangle.

Mrs. Newman stated that there is concern that the concrete would not allow a twenty by twenty foot.

Mr. Young stated that he thought the petitioner should fully meet the requirement.

Mr. Bedard stated that he did not see it as a large expense.

On a motion by Mr. Young and a second by Mr. Bedard, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board approve 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'), subject to the following condition:

1. In the event that the fence is damaged or destroyed by more than 50% of its value, the fence shall be required to comply with the fence height provisions listed in the Zoning Ordinance.

On a motion by Mr. Young and a second by Mr. Bedard, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board deny a variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

Respectfully,

**VILLAGE OF LOMBARD**

John DeFalco  
Chairperson  
Zoning Board of Appeals