

February 15, 2007

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

**Subject: ZBA 07-01; 501 N. Garfield Street**

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests approval of a variation to Section 155.205 (A)(1)(e)(2) to allow a solid fence within a clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on January 24, 2007. Michael Mallon, owner of the subject property, presented the petition. He submitted a handout which included a summary of points for consideration as well as photographs of the fence. He began his presentation by clarifying the plan for the proposed fence. He noted that an eight foot (8') by eight foot (8') clear line of sight area would be removed from the fenced area, but ultimately, a ten and one-half foot (10.5') by eight foot (8') clear line of sight area would be maintained. The existing fence extends one and one-half feet (1.5') from the garage and then extends parallel to the driveway.

Mr. Mallon stated that his family has lived in the home for ten years. He noted that when he purchased the home, the fence as it is proposed conformed to Village Code. He mentioned that the Village Code was changed without any notification. He noted that there isn't any statistical data to support the rationale for the twenty foot (20') by twenty foot (20') clear line of sight area. He stated that the regulations were excessive in absence of any statistical data.

Chairperson DeFalco opened the meeting for public comment.

Joan Polley spoke against the petition. She stated that she drives past the petitioner's house noting that she lived on Berkshire. She stated that it frightens her because she wouldn't be able to see if a child were running into the street.

Chairperson DeFalco then requested the staff report.

Michelle Kulikowski, Planner I, presented the staff report. She stated that the petitioner submitted a previous petition (ZBA 06-13) for a variation for a fence located on the subject property. She noted that originally, the petitioner was only asking for a height variation for the fence. However, the petitioner installed the fence prior to consideration by the Zoning Board of Appeals. She mentioned that the fence as installed did not meet the regulations for fences with clear line of sight areas. She stated that the petitioner then requested a second variation to allow the fence to remain as constructed with a solid fence within a clear line of sight area. She noted that the Lombard of Trustees approved the height variation for the fence and denied the variation to allow a solid fence within a clear line of sight. She mentioned that the petitioner has now submitted another petition requesting a variation to allow a solid fence within a clear line of sight area, and this petition is based on new plans that propose a different location for the fence. She stated that the proposed plans will cut-out an eight foot (8') by eight foot (8') area from the existing fence, and as the petitioner explained, it will essentially provide a ten and one-half foot (10.5') clear line of sight.

Ms. Kulikowski stated that the fence that the petitioner has installed in the clear line of sight area for the driveway consists of four inch (4") pickets with a two inch (2") opening. She mentioned that Section 155.205(A)(1)(e)(1) of the Lombard Zoning Ordinance states that fences over two feet (2') in height can only be located within a clear line of sight area if they are open construction. She noted that by definition, the fence is considered a solid fence as it only maintains approximately 33% of the surface area as open space. She stated that the definition of solid fence requires that at least 75% of its surface area in open space which affords a direct view through the fence.

Ms. Kulikowski mentioned that the petitioner is proposing to modify the existing fence by relocating portions of the fence to maintain a ten and one-half foot (10.5') by eight foot (8') clear line of sight area adjacent to the driveway. She noted that the Board of Trustees has approved similar variation requests in the past (ZBA 05-19). However, staff does not support the variation request to allow a solid fence within a clear line of sight area as it can pose a safety hazard. She mentioned that the purpose of the open construction fence requirement is to provide visibility of pedestrians and oncoming traffic.

Ms. Kulikowski stated that the Standards for Variation have not been met. She stated that there are no conditions related to the property that prevent compliance with the fence height regulations or clear line of sight requirements. She noted that the regulations for fences within clear line of sight areas apply to all properties in all zoning districts. She mentioned that the hardship has been created by the petitioner as a result of the preference for the fence's location. She stated that the requested relief would be detrimental to the public welfare as visibility of pedestrians and traffic is diminished.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Young referenced the pictures that the petitioner submitted with his application. He asked why there was a picture of the condominium project on Main Street.

Mr. Mallon stated that the picture illustrates the inconsistencies with the clear line of sight regulation. He noted that the garage was within the clear line of sight area and was more of a visual obstruction than his fence. Ms. Kulikowski noted that the drive access shown in the picture is a one-way for cars to enter.

Mr. Bedard asked why the Village established the clear line of sight area for driveways at twenty feet (20').

Ms. Kulikowski stated that the clear line of sight regulations for driveways have been in affect at least since 1990. She noted that she was not familiar with why the clear line of sight area was established at twenty feet (20') as opposed to any other number. She mentioned that whenever a text amendment to the Zoning Ordinance is proposed, staff surveys the neighboring communities and how their code addresses that particular issue.

Chairperson DeFalco referred to the petitioner's statement that he was not notified about the change in the fence regulations. He noted that changes to the Zoning Ordinance must go through the public hearing process. He mentioned that the meetings are televised and open to the public. He also noted that typically a change to the Zoning Ordinance would go for two readings on the Board agenda.

Mr. Polley asked whether the contractor told the petitioner that the fence would be legal. The petitioner stated that the contractor did not. Mr. Polley asked whether the contractor applied for a permit. The petitioner stated that he applied for the permit himself.

Mr. Young stated that perhaps this issue is bigger than a zoning variance. He noted that if it is a bad ordinance, than it should be changed rather than having numerous petitions for the same zoning relief. He mentioned that granting of variances sets a precedence.

Mr. Bedard suggested that the Zoning Board of Appeals forward a recommendation to the Board of Trustees to look at the clear line of sight regulations.

Chairperson DeFalco noted that the role of the Zoning Board of Appeals is not to determine the justification for an ordinance. The Zoning Board of Appeals's role is to consider whether there is a hardship that warrants a variation.

Mr. Young stated that angling a fence along the twenty foot (20') by twenty foot (20') clear line of sight triangle would eliminate approximately two hundred (200) square feet from the fenced

yard. He noted that the petitioner's proposal would eliminate eighty-eight (88) square feet from the fenced yard.

Mr. Mallon noted that his proposal provides an eleven foot (11') clear line of sight along the sidewalk, which is a reasonable compromise.

Mr. Young asked staff to summarize the past ZBA case for the fence at 734 S. Elizabeth Street.

Mrs. Kulikowski noted that the petitioner for ZBA 05-19 received a fence permit, but the permit didn't specify that in order to meet the open fence requirement, the fence must be at least 75% open. She noted that the fence installed in the clear line of sight was approximately 50% open. She mentioned that the Zoning Board of Appeals recommended denial and the Board approved a variation to angle the fence to provide a seven and one-half foot (7.5') by seven and one-half foot (7.5') clear line of sight area.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 5-0, submits this petition to the Corporate Authorities with a recommendation of denial for the requested variation.

Respectfully,

**VILLAGE OF LOMBARD**

John DeFalco  
Chairperson  
Zoning Board of Appeals