

May 20, 2010

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

**Subject: ZBA 10-04: 350 N. Fairfield Avenue**

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests a variation to Section 155.210(A)(2)(a) of the Lombard Zoning Ordinance to reduce the required corner side yard setback from twenty (20) feet to eight (8) feet to allow the construction of an accessory structure in the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on April 28, 2010.

Chairperson DeFalco opened the meeting for public comment.

Mark Edison, 350 N. Fairfield, presented the petition. Mr. Edison stated that this matter pertains to a shed he wants to construct over an existing bomb shelter. The bomb shelter is a water collecting concrete pit that has a long history. He gave the history of the property and stated that a fence was erected to the south of the bomb shelter for safety purposes. This fence was granted through a previous variation request made in December, 2008. Subsequent to the December, 2008 approval, he received a letter from the Fire Department indicating that he was in violation of property maintenance code and he requested that he remove the wood chips and fill the bomb shelter to encapsulate the structure.

When the fence variation appeared at the Board level, Trustee Tross was the only trustee that voted against it as he also asked for it to be encapsulated. Ultimately, to appease the Village, he tried to fill in the bomb shelter with mulch and dirt but the end result was noxious fumes as well as problems with animals, water accumulation and mosquitoes. He is now seeking to do what Trustee Tross asked him to do, as well as act on a recommendation from Keith Steiskal of the Building Division.

He believes that the Planning Department is missing the point. They believe he wants the shed for purposes of only having a shed. They reference the setback ordinance and he referenced paragraph 2 in the staff report, which states that the structure is screened by a fence. They fail to recognize that if the setback ordinance is to control the structures adjacent to the road, the fence is closer to the road than the structure. There is no purpose for the prohibition. Mr. Edison continued that this would not be an undue hardship because of the area. As a compromise, he will remove the existing shed. Mr. Edison stated that he has no need to construct a shed as this will cost him thousands of dollars. The only point is of the shed is to encapsulate the bomb shelter.

With regard to corner lots, Mr. Edison indicated that he noticed that south of St. Charles Road there is a plethora of structures on the lot line. Staff fails to recognize the conditions. The Fire Department is telling him to do it, Keith Steiskal tells him he supports it and the Planning Division is telling him no. Planning is not taking into consideration the conditions of the property.

Mr. Edison then questioned how many people from the Village have actually visited the property to take a look at it. He mentioned the letter from the Fire Department, which stated that he repair the hole, but he questioned they actually visited the property because there was snow cover on the property the date that the letter was written but yet he saw no evidence of footprints. He would pose that question and invite people to look at what he is trying to do.

Chairperson DeFalco asked if there was anyone present to speak in favor or against the petition. Hearing none, he requested the staff report.

Michael Toth, Planner I, presented the staff report.

The subject property is located at the northwest corner of View Street and Fairfield Avenue. The petitioner is requesting a variation to allow the installation of a shed, eight (8) feet from the corner side lot line on the southern portion of the property. As the Zoning Ordinance specifically prohibits the placement of accessory structures in the corner side yard, a variation is required.

The petitioner is proposing to construct a shed that is two-hundred (200) square foot in area and eleven (11) feet in height, in the corner side yard. The petitioner has indicated that the purpose of the shed is to cover an existing bomb shelter located on the southern portion of the subject property, within the corner side yard. The bomb shelter element was first introduced to the Zoning Board of Appeals at their December 16, 2008 meeting where the same petitioner sought approval to erect a six (6) foot fence in the corner side yard (ZBA 08-16). The petitioner desired to construct a six (6) foot tall fence under the auspices that the additional fence height would ensure that no persons could enter the yard, as the petitioner strongly advocated that the bomb shelter was an attractive nuisance and a public safety hazard. In 2009, the Village Board approved ZBA 08-16. As such, the six (6) foot fence was erected per the approved plan and still resides on the subject property today.

The petitioner has indicated that he has attempted to fill the bomb shelter structure, which has resulted in a health safety hazard by providing a refuge for insects and animals. While staff recognizes the presence of the bomb shelter on the subject property, such a structure does not constitute a geographic or topographic feature that would warrant a variation, nor does staff have the authority to recommend alternative methods of encapsulating the bomb shelter. The structure is situated below grade on the subject property. As such, staff finds that placing a two-hundred (200) square foot shed that stands eleven (11) feet in height would be an excessive method of encapsulating a below-grade structure. Furthermore, the bomb shelter is already screened from public access by the six (6) foot tall fence that was approved through ZBA 08-16. The petitioner has made reference that the shed would be screened by the existing six (6) foot fence; however, it should be noted that staff recommended denial of the six (6) foot fence associated with ZBA 08-16.

There is ample space on the subject property to construct a two-hundred square foot shed, without the need for a variation. As the staff report illustrates there is a sufficient buildable area for the placement of a two-hundred square foot shed. Staff notes that the petitioner has indicated that the existing shed would be removed in the event that the proposed shed were to be constructed.

Concluding, Mr. Toth stated that staff recommends that the petition be denied on the grounds that a hardship has not been demonstrated

Chairperson DeFalco then opened the meeting for discussion by the Board Members.

Mr. Young asked Mr. Edison if there was a health problem and a problem with water and animals before he attempted to fill in the bomb shelter with organic material because he didn't recall hearing that before. Mr. Edison answered no - before there was a structure encapsulating it. He explained how he tore down the existing home and built a new one, and removed the original fence. He requested a fence variation which was approved rather than try and circumvent the 4' height rule or being able to repair 25% of a fence without a permit

Chairperson DeFalco clarified that the ZBA ended up in a split decision, which meant it went to the Board with no recommendation. The variation was ultimately granted by the Board of Trustees.

Mr. Young asked how high above grade the structure is. Mr. Edison answered the pipe is 3' tall but when you speak to grade it's almost like a 1-1/2' dome. Like a big hump in the yard approximately 2-3' high with the grade.

Mr. Young asked how much it would cost to encapsulate this structure as you commented that it would cost thousands of dollars. Mr. Edison answered that it depends on the type of structure

that would be built. The BIS Department wants him to go to the underlying structure. That changes the cost.

Mr. Young asked him what it would cost to fill with concrete. Mr. Edison answered that he didn't know.

Mr. Young asked him what it would cost to get a demolition contract. Mr. Edison answered \$25,000. He added that they attempted to remove it during construction, but couldn't do it. Mr. Young asked if he would have to take out the whole thing or just the part above grade. Mr. Edison answered that it is solid concrete with reinforced rebar so you can't cut into it even using heavy equipment. They were built to withstand bombs.

Mr. Tap indicated that the petitioner mentioned that the Fire Department had an issue early on. Mr. Tap stated he was confused as he did not see any comments from the Fire Department in the IDRC portion of the staff report. Mr. Edison read into the record the letter that he received from the Fire Department dated January 26, 2009.

Chairperson DeFalco asked staff if the Building Department was under the direction of the Fire Chief. Mr. Toth answered that it previously was, but it is now under the Community Development Department. Chairperson DeFalco clarified that the Fire Department was overseeing the Building Division at that point.

Mr. Young asked if the letter sent by the Fire Department to the petitioner was in response to a complaint. The petitioner answered that it was in response to his comments that he wanted to build a hatch, Keith's observations, and Trustee Tross's comments at the Board meeting.

Chairperson DeFalco mentioned that Mr. Bedard asked about filling the shelter with stone and putting concrete on top. The erection of the fence did not eliminate the hazard. He had concerns for your son falling into the bomb shelter. You mentioned that you had control over your son but not over the neighborhood kids. Mr. Edison indicated that the condition was stricken as it was unlawful to condition that. Chairperson DeFalco asked if the erected fence helped you with your concerns about the neighbor kids. Mr. Edison answered that the fence was erected because it was a safety hazard. Chairperson DeFalco questioned whether it was erected not for yourself and your son but for other people. Mr. Edison answered that he was taking his comments out of context. Chairperson DeFalco stated that he suggested a steel plate, but it was not the purview of the ZBA to tell you what to do.

Mr. Edison stated that he was mistaking his testimony. He sought to erect the fence for neighbors traversing on his property if compliant with the ordinance. Chairperson DeFalco asked what the reason was for the 6' fence. Mr. Edison answered to prevent children from entering his property and getting into the area.

Chairperson DeFalco stated that we have ordinances that allow for a 4' fence.

Mr. Edison stated that the conversation to revert a condition is unlawful. He then made reference to Tom Bayer's finding that there was no nexus between the condition and the bomb shelter being on the property. Chairperson DeFalco stated he is not asking to revert a condition. The rationale you presented for a 6' fence was to try to keep people out of your yard due to the hazard that existed. He asked Mr. Edison if that hazard still existed. Mr. Edison answered that it is still a hazard with the 6' fence and the condition still exists.

Mr. Tap stated he was confused and asked if it was the petitioner's intent to use the below grade structure. Mr. Edison answered no, he would encapsulate it. The shed would be on top of the stairway. I would have to have the water ejected from the bottom pit. If I filled it with stone it would still have water. If I cover the hole, I still have the same issue. He indicated that there is an existing sump pump but it is not hooked up to electric. Mr. Tap referred to the IDRC comments from the Building Division, specifically #2, which states the shed is required to have a level of frost protection and reinforced with more concrete. Mr. Edison stated that he is looking to put the shed on the existing foundation.

Mr. Tap referred to the petitioner's written testimony, page 2, 3<sup>rd</sup> sentence, where he states that "on or about January 2009 he successfully argued the case for the fence variance....the removal of which is both cost preclusive as well as impossible...." and asked if he was saying it's more expensive to remove the structure than renovate it. Mr. Tap stated that in his opinion it seems that there are other less costly options than to encapsulate it. Mr. Edison answered less costly, yes, and it caused more problems.

Mrs. Newman asked the petitioner if he was getting water in the bomb shelter beforehand. Mr. Edison answered that there was a cover with a mini shed that he tore down. Mrs. Newman asked if he would replace the cover. The petitioner answered he would have the shed. Mrs. Newman asked what type of materials he would use. Mr. Edison answered wood shingles. Mrs. Newman questioned if that would hold water out. It seems that if you have an opening water will continue to seep in anyway and didn't think that it would help. Mr. Edison offered to put in a sump pump. There is one there now and I can dig out the debris in the pit and replace the sump pump.

Chairperson DeFalco stated that the ZBA doesn't have a response or the power to make a recommendation on what he can build or enclose. A hazard is on his property, which previously existed when it was filled with leaves, and he came before us and asked for a fence. We don't have the responsibility outright to tell him what he needs to do. Our responsibility is to determine whether or not a condition exists to grant a variation to contract a building on his property outside our ordinance. Discussion should not be what can or cannot be done. The homeowner has a responsibility to maintain his property and keep it safe for him and his family. While asking for a variation outside of our ordinances in that location we should look at if there is a condition that warrants that. The petitioner had no comment.

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Mr. Young confirmed with staff that the height nor the size is an issue, but it's the proximity to the lot line. Mr. Toth answered yes.

Mr. Tap stated that in his opinion and based on the facts, there are other available locations in which to build a shed that would be in compliance with the ordinance.

On a motion by Tap and seconded by Newman the ZBA recommended denial of the variation by a 5-0 vote.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco  
Chairperson  
Zoning Board of Appeals

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