

February 18, 2010

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

**Subject: ZBA 10-01; 41 S. 2nd 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 155.407(F)(2) of the Lombard Zoning Ordinance to reduce the required corner side yard setback from twenty feet (20') to sixteen and eight-tenths feet (16.8').
- 2) A variation from Section 155.407(F)(3) of the Lombard Zoning Ordinance to reduce the required interior side yard setback from six feet (6') to three and ninety-five one-hundredths feet (3.95').
- 3) A variation from Section 155.407(F)(4) of the Lombard Zoning Ordinance to reduce the required rear yard setback from thirty-five feet (35') to six feet (6').

The Zoning Board of Appeals conducted a public hearing on January 27, 2010.

Dustin Smith, 41 S. 2<sup>nd</sup> Avenue, presented the petition. He stated that the main reasons for his request were that he had a fire about five months ago and now the house has to be brought up to code. He said that in order to do this the setback variations would be necessary. He stated the insurance company will only reimburse him for the damages to the home, not to rebuild completely. He stated that there are other reasons. He is a landscape architect and would like to maintain the character of the site and some large trees on the property. Also, he would have to remove the detached garage to rebuild.

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 southeast corner of 2<sup>nd</sup> Avenue and Kenilworth Avenue and is improved with a one-story residence built in 1907. The existing home is non-conforming in the following respects:

- A setback of 0.42 from the rear (western) property line where a thirty-five foot (35') rear yard setback is required.
- A corner side yard setback of sixteen and eight-tenths feet (16.8') where twenty feet (20') is required.
- An interior side yard setback of three and ninety-two one-hundredths feet (3.92') where six feet (6') is required.

Following a July 25, 2009 house fire at the property, the Fire Department made a determination that the structure had been destroyed to greater than fifty percent (50%) of its value. As a non-conforming structure, the Zoning Ordinance requires that the structure be brought into full compliance with code. Rather than demolish the home, the owner has developed a new plan to construct a two-story residence on nearly the same footprint as the existing home. The plan would increase the rear yard setback to six feet (6') from the existing 0.42' and increase the interior side yard setback to 3.95' from 3.92'. The existing corner side yard setback of sixteen and eight-tenths feet (16.8') would remain the same. With the new plan, the petitioner has requested variations to reduce the required setbacks to the indicated measurements. The proposed plan, labeled "Site Plan", is included within the petitioner's submitted packet.

The new plan involves removal of the master bedroom and an office which are located at the far eastern side of the residence. The removed square footage will be made up for on the proposed second floor. The petitioner has indicated that replacing these areas on the western side of the home is undesirable. This would require the removal of two large trees that the petitioner would prefer to maintain. The petitioner has also indicated that placing the bedroom on the eastern side of the home is undesirable due to the proximity of the laundry area and utilities as well as distance from the bathroom and other living areas.

The Building Division comments on this petition indicate that improvements and repairs to the foundation will be necessary. This applies should the residence remain as a single-story structure or be expanded to two stories. The Building Division has indicated that the exterior walls appear to be structurally intact following an initial inspection. However, further evaluation will be necessary during the remodeling process.

Although the requested zoning relief is significant, staff is supportive of the proposed variations as the “Standards for Variations” have been met in the following respects:

1. Staff finds that both the configuration of the improvements on the lot and the existence of a few large trees would require the site to be completely redeveloped in order to construct a new residence of comparable size to the existing residence. Redevelopment would include removal of the residence, the detached garage, and most likely the large trees which are located in the buildable area of the lot. The plan that the petitioner has proposed would bring the property into closer compliance with code than the current layout of the property. Please see the attached Exhibit B which depicts the existing residence and garage, the proposed footprint, and the applicable required setbacks.
2. Staff finds that the conditions on the subject property are uncommon. It is rare within the Village for a property to contain a single-family residence which is located exclusively in the rear yard setback area. The degree of non-conformity regarding the rear yard setback is extreme and the petitioner is proposing to improve this condition by bringing it into closer compliance with the Zoning Ordinance. The petitioner has proposed to maintain the current corner side yard setback while increasing the interior side yard setback slightly.

Staff notes that the location of the garage is also non-conforming as Section 155.210(A)(2)(b) of the Zoning Ordinance requires that all detached accessory buildings be located behind the front wall of the principal building. However, staff has determined that no relief for the garage is necessary as no changes to the garage are proposed.

3. The petitioner does not stand to profit from the requested variations. The petitioner plans to utilize as much of the exiting residence as possible and they plan to live in the residence following restoration.
4. The degree of non-conformity on the property is due to the selected location for the residence, constructed in 1907 according to the petitioner, and the manner in which the lot was subdivided in 1908.
5. It is staff’s opinion that the requested variations will not have a detrimental effect on the public or the improvements on neighboring properties. In fact, the proposed plan is likely to improve safety over the current design of the property. The principal residence and the detached garage on the neighboring property to the east, 44 S. 3<sup>rd</sup> Avenue, are currently separated by approximately seven feet (7’). The new plan would create a separation of approximately twelve and one-half feet (12.5’) meeting the minimum requirements of the Zoning Ordinance.

As the petitioner indicated within his submitted statement, the new plan will also provide a clear path completely around the home. The Fire Department has indicated that this is desirable for firefighting and access purposes.

Staff believes that the additional height of the proposed second story is unlikely to have a negative impact on any of the adjacent residences. Each of the principal structures on the adjacent properties would be more than sixty (60') feet from the proposed house on the subject property. Please see the attached Exhibit C which depicts the proximity of the residences on adjacent properties.

6. Although the location of the residence, both currently and as proposed, is unusual within the neighborhood, the residence has occupied the same location for more than one hundred years. Further, the layout of 45 S. 3<sup>rd</sup> Avenue is similar to the subject property in that the detach garage is located closer to the front lot line than the principal residence.
7. As stated above, the proposed plan is unlikely to have any adverse effect on the neighborhood or the general public.

Staff is recommending approval of the petition subject to the conditions in the staff report.

Mr. Tap asked the petitioner if the house is habitable.

Mr. Smith stated that it is not. The fire was in the roof and holes were cut in the roof. There is no electricity. He stated that code upgrades are necessary even if the house is rebuilt as it was.

Mr. Young asked where the project was in the process and if there are architectural drawings.

Mr. Smith stated that he did not want to invest his limited funds in that if it might not be approved.

Mr. Young asked if the proposed project will be economically feasible.

Mr. Smith stated that he is asking for the second story because the roof will have to be rebuilt in any case. He stated that he could use some of his own resources for the second floor.

Mr. Young asked if these variations would expire in twelve months if the project was not completed.

Mr. Moynihan stated that construction would have to begin within twelve months. However, this could be extended by the Board of Trustees.

Re: ZBA 10-01  
February 18, 2010  
Page 5

Mr. Smith stated that he plans to begin the project as soon as he is approved and permits can be issued.

Chairperson DeFalco asked if the variations were not granted would insurance cover a new home within ordinance requirements.

Mr. Smith stated that he has had trouble getting a straight answer. However, the insurance company has indicated that they do not consider the home a total loss and will only pay for repairs. He stated that he would probably have to hire an attorney.

Chairperson DeFalco stated that the Zoning Board usually include a condition that states if a property has been destroyed greater than 50% of its value, it will have to meet code. Chairperson DeFalco felt that granting this variation could set a precedent.

Mr. Young stated that he did not think it was a precedent because he said that he is applying for the necessary relief and that this has been done for other non-conforming structures.

Chairperson DeFalco asked if the 2<sup>nd</sup> story addition was part of the variation request. Mr. Moynihan stated that is was included in their request.

Chairperson DeFalco asked if the property had a cinder block foundation.

Mr. Smith stated that it is a cinder block foundation.

On a motion by Mr. Tap and a second by Mr. Bedard, the Zoning Board of Appeals voted 3 to 2 that the Village Board approve the variation. The motion having failed, Mrs. Newman made a motion to deny the variation which was seconded by Chairperson DeFalco. The Zoning Board of Appeals voted 2 to 3 to deny the variation.

Based upon the testimony presented by the petitioner, the ZBA was unable to obtain four votes for either approval or denial of the petition. Therefore, this petition will be forwarded to the Village Board with no ZBA recommendation.

Respectfully,

**VILLAGE OF LOMBARD**

John DeFalco  
Chairperson  
Zoning Board of Appeals