

VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT

TO: Zoning Board of Appeals HEARING DATE: September 27, 2006
FROM: Department of Community PREPARED BY: Jennifer Backensto, AICP
Development Planner II

TITLE

ZBA 06-20; 614 E. Berkshire Avenue: The petitioner requests approval of the following actions on the subject property located within the R2 Single-Family Residence District:

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required corner side yard where a maximum height of four feet is permitted;
2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required rear yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted; and
3. A variation from Section 155.205(A)(1)(e) to allow a solid fence within a clear line of sight area.

GENERAL INFORMATION

Petitioner: Joseph G. Laspisa
96 W. Moreland, #14
Addison, IL 60101

Relationship of Petitioner: Attorney for property owner

Property Owner: Nicholas Boulahanis
614 E. Berkshire
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning: R2 Single Family Residential District

Existing Land Use: Residential

Size of Property: 14,770 square feet

Surrounding Zoning and Land Use:

North: R2 Single Family Residence District; Single Family Residences
South: R2 Single Family Residence District; Single Family Residences
East: R2 Single Family Residence District; Single Family Residences
West: R2 Single Family Residence District; Single Family Residences

ANALYSIS

SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on August 23, 2006.

1. Petition for Public Hearing
2. Response to the Standards for Variation
3. Plat of Survey, prepared by Tyler Oaks Illinois Professional Land Surveyors, dated October 23, 2001.
4. Site plan, prepared by the petitioner, showing fence location.
5. Photographs depicting previous fence (painted) and newly constructed fence (unpainted).

DESCRIPTION

The subject property is a double lot located at the northwest corner of Berkshire Avenue and Vista Avenue. Previously, there was a legal nonconforming six-foot high solid fence within the corner side yard and within the clear line of sight areas along both sides of the driveway. The petitioner removed the entirety of the nonconforming fence and replaced it with a similar six-foot high solid fence. The petitioner's replacement of the fence requires that the new fence now meet the four-foot height restriction and clear line of sight requirements.

ENGINEERING

Private Engineering Services

From an engineering or construction perspective, PES has no comments.

Public Works Engineering

Public Works Engineering has no comments regarding this request.

FIRE AND BUILDING

The Fire Department/Bureau of Inspectional Services has no comments on this petition.

PLANNING

The subject property previously had a legal nonconforming six-foot high solid fence within the corner side yard and within the clear line of sight areas along both sides of the driveway. The fence also abutted the front yard of the adjacent property and had several sections that were in disrepair. The petitioner removed the entirety of the nonconforming fence and replaced it with a similar six-foot high solid fence. The Zoning Ordinance contains provisions that allow nonconforming fences to remain with the intention that, once a nonconforming 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. As such, the petitioner's replacement of the fence removed any legal nonconforming rights and requires that the new fence meet the four-foot height restriction and clear line of sight requirements.

The petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and crime. However, a variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. Staff cannot support the variation for the following reasons. Six-foot high fences are not permitted within front yards or corner side yards due to the visual obstruction they create. Similarly, there are additional restrictions placed upon fences that abut a neighbor's front yard to prevent a such a fence from blocking the view from the front yard of the neighboring property.

Within the petitioner's Response to Standards, three similar fences were mentioned (558 N. Vista, 550 N. Joyce, 400 E. View). None of these fences were ever granted zoning relief. Staff conducted a review of all fence variations granted since 1996 and found only one case within one-half mile of the subject property (ZBA 04-07, granting approval for a six-foot high wrought-iron fence within the front yard of the industrial property at 702 Western Avenue). Therefore, if any of the identified nonconforming fences were to be replaced, the replacement fencing would be required to meet all code regulations.

Staff does not support the variation request to allow a solid fence within a clear line of sight area as it poses a safety hazard. The purpose of the open construction fence requirement is to provide visibility of pedestrians and oncoming traffic.

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 or clear line of sight requirements.
- 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. The subject property is a reverse corner lot as its rear yard abuts the front yard of the adjacent property at 522 N. Vista. The Zoning Ordinance has specific fence regulations that apply to all reverse corner lots and clear line of sight areas within the Village.

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 ordinance has not caused the hardship as the fence could have been constructed per the ordinance requirements. The hardship has been created by the petitioner as a result of the 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.* Staff finds that the requested relief would be detrimental to the public welfare as visibility of pedestrians and traffic is diminished.
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.* Staff finds that the requested relief would negatively impact public safety as visibility of pedestrians and traffic is diminished.

Staff recommends that the petition be denied in its entirety. However, the existing single-family residence has a corner side yard setback of only 15 feet. If the Zoning Board of Appeals finds that it would be appropriate to continue the building line established by the residence, a variation could be granted with the condition that the fence be shifted 15 feet off the property line. If such a variation is considered for approval, the petitioner should be required to obtain a fence permit.

FINDINGS AND RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations for the requested relief. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Zoning Board of Appeals make the following motion recommending **denial** of the requested variation:

Based on the submitted petition and the testimony presented, the requested fence height variation **does not comply** with the Standards required for a variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings included as part of the Inter-departmental Review Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 06-20.

Zoning Board of Appeals

Re: ZBA 06-20

Page 5

Inter-Departmental Review Group Report Approved By:

David A. Hulseberg, AICP
Director of Community Development

DAH:JB

att-

c: Petitioner

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