



## **ANALYSIS**

### **SUBMITTALS**

This report is based on the following documents, which were filed with the Department of Community Development on August 5, 2008.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Plat of Survey, (undated).

### **DESCRIPTION**

The subject property is located at the northeast corner of Elizabeth Street and Berkshire Avenue. The petitioner is requesting a variation to allow a fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The petitioner constructed the proposed fence in July of 2008 as a replacement for a previous non-conforming six foot (6') fence in the same area. The fence is located along a sidewalk easement on the western side of the property. 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.

### **INTER-DEPARTMENTAL REVIEW COMMENTS**

#### **ENGINEERING**

##### **Private Engineering Services**

The Private Engineering Services Division has no comments on the subject petition.

##### **Public Works Engineering**

Public Works Engineering has no comments regarding this request.

#### **FIRE AND BUILDING**

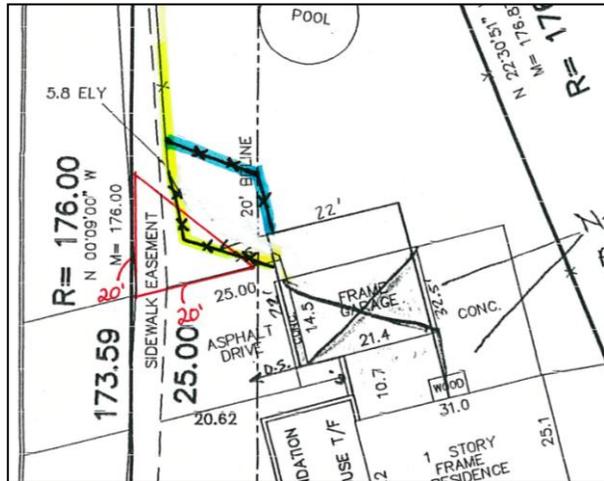
The Fire Department/Bureau of Inspectional Services comments that the fence as shown on the site plan should be installed to maintain clear line of sight from the garage driveway to the public walk.

#### **PLANNING**

The subject property currently has a non-conforming wood fence six feet (6') in height within the corner side yard. This fence was constructed as a replacement for a legal non-conforming fence of the same height. 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 twenty-foot (20') by twenty-foot (20') clear line of sight triangle at the driveway on the subject property. This section of the fence is indicated by the yellow line below. The petitioner has agreed to move the fence out of the clear line of sight area. The fence will then follow the blue line.



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 their request, the petitioners have raised a few issues related to privacy, safety, and traffic concerns. 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.

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.

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 either by lowering the fence height to four feet (4') or changing the location so that the fence is outside the corner side yard. The hardship has been created by the petitioner as a result of the petitioner's preference for the fence's height and location.

Staff recommends that the petition be denied on the grounds that a hardship has not been demonstrated.

## FINDINGS AND RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations for the requested variation. 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 aforementioned variation:

Based on the submitted petition and the testimony presented, the requested 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 08-14.

Inter-Departmental Review Group Report Approved By:

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William Heniff, AICP  
Acting Director of Community Development

WJH:SWM  
c: Petitioner