

May 20, 2010

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

**Subject: ZBA 10-02: 302 S. Grace Street**

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 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6').
- 2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

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

Chairperson DeFalco opened the meeting for public comment. Nicole DiGiacomo and Kyle Kayson, 302 S. Grace, presented the petition. Ms. DiGiacomo stated that they are requesting a variation to replace an existing wood fence with a new vinyl fence. They have physical surroundings which makes their property unique. They live on Grace which is a busy street, four homes north of the Prairie Path. They encounter a great deal of noise from vehicular, foot and bike traffic. They also live close to the Lombard Police Department so they have police cars traveling at high speeds down their street. They have two dogs, one large one and one small one, so the larger dog would be able to jump over a 4' fence and the smaller dog would be able to fit through a 75% open fence. They also would lose a sizeable portion of their backyard in order to comply with code.

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Ms. DiGiacomo gave examples of homes in the area, 197 Grace, 205 Highland, 352 Stewart and 256 Maple - all have fences 6' or taller and are located in close proximity to the driveway. Also, none of these houses are located as close to the Prairie Path as they are.

The purpose of having a 6' fence is to keep their animals safely enclosed. They moved to the area 2 years ago and they want to keep the noise to a minimum. They have wonderful neighbors and want to be considerate of them. Ms. DiGiacomo feels that the difficulty does not lay with them, but with the ordinance. She noted that the fence has existed in its current location for many years and there have been no accidents or problems. She doesn't feel there is a risk to traffic. They have tried to be amenable to the clear line of sight and will place the fence at an angle by the driveway. The proposed fence will not alter the character of the neighborhood nor will it diminish property values, as the new fence will make the area more attractive. They are seeking to replace the fence with no change, but have compromised with the clear line of sight.

Concluding Mr. Kayson stated they are trying to keep the distractions to a minimum and want to replace what is already existing.

Chairperson DeFalco asked if there was anyone present to speak in favor or against the petition.

Patrick Patton, 230 S. Grace Street, spoke on behalf of himself and his wife, Sheila, who was also in the audience. He noted they are in favor of the petition. He also indicated that he has a letter from his elderly neighbor at 303 S. Lombard, who is in favor of having a 6' wooden fence in the backyard. Mr. Patton stated that having a new solid fence is good for the neighborhood. Their larger dog is an olympic-type of athlete and would have no problem hurdling over a 4' fence. Distractions to the dogs will be kept to a minimum by having a solid fence, as the dogs will not be able to see through a solid fence, which will result in their barking being kept to a minimum.

Chairperson DeFalco then requested the staff report.

Michael Toth, Planner I, presented the staff report. The subject property is located at the southwest corner of Grace Street and Ash Street. The petitioner is requesting a variation to allow for the replacement of an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The fence is located along the Ash Street side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence would be removed in its entirety, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

The existing fence currently stands within the clear line of sight triangle at the driveway on the subject property. The proposed fence is indicated by the orange line below. The clear line of sight area at the intersection of the driveway and the public right-of-way is formed as a triangle

with legs extending twenty feet (20') north along the property line and twenty feet (20') west along the driveway.

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 the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of two canines. Specifically, the petitioner states that canines would be able to physically jump over a four (4) foot fence and slip through a fence that is 75% open construction (as required of a fence greater than two (2) feet in height in the clear line of sight area). While staff recognizes that some of these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship associated with the geographic state of the property.

Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner would be required to obtain a fence permit for the proposed fence.

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

Mr. Young asked staff if the petitioner's fence was legal non-conforming. Mr. Toth answered yes, that it was erected prior to the fence permit process.

Chairperson DeFalco noted that the properties previously mentioned by the petitioners were likely erected prior to the fence permit process and agreed with the petitioners that they probably do not meet code. He explained how staff noted the existence of fences prior to the fence permit process becoming effective. Now, due to the permit process, if an existing fence needs to be removed, the new fence would be required to meet the current zoning ordinance provisions. The purview of the ZBA is to listen to the petitioner's testimony and determine if the request is warranted relative to specific conditions that exist for each property. This Board takes a very strict interpretation of the clear line of sight issue. We have had other petitioners who have had large dogs and this Board has not seen that as a valid reason for a variation. He asked if they had the pool denoted on the Plat of Survey. Mr. Kayson answered that the pool was no longer there. Chairperson DeFalco then explained the potential danger to pedestrians using the sidewalk when there is not a clear line of sight, especially when someone is backing down the driveway.

Mr. Kayson asked their opinion of the angle of the fence proposed by the fencing company.

Mr. Young indicated that the 20' is not negotiable.

There was then discussion among the Board Members and the petitioners relative to the petitioner's request for a variation within the clear line of sight and how it was represented in Diagram 1 within the staff report. Mr. Toth explained the variation and the diagram.

Chairperson DeFalco asked the petitioners why they have a problem with the 20' clear line of sight area. Mr. Kayson answered that it cuts into the backyard useable space.

Mr. Kayson indicated that he didn't understand how 20' was picked rather than another number and asked for an explanation. Mr. Toth answered that the Village conducted different studies and interviewed various communities. He added that it has been a provision in our code for years. Mr. Young answered that the justification is that if you have a child on a bike and you are backing out of the driveway, you wouldn't be able to see.

Mr. Kayson stated that any sort of angle would be good and doesn't see a safe versus an unsafe angle.

Chairperson DeFalco noted that the ordinance was adopted by the Board of Trustees and is not under ZBA's purview to dispute it. Our responsibility is to look at existing property conditions and determine if there is a rationale for the variation. While the ordinance will mean that there will be a reduction in your enjoyment of your yard, the ZBA is not responsible for keeping your dogs in your yard.

Ms. DiGiacomo answered that if they didn't have the dogs they would not need the variation and wouldn't be here. She then asked what their recommendation would be on how to find a solution to this problem.

Chairperson DeFalco suggested keeping a 6' fence and adhering to the 20'x 20' clear line of sight triangle. This would keep both dogs secure and only cut back your usable yard space by approximately 100-125 square feet. You would also be reducing the noise and being good neighbors.

Mr. Tap asked if American Fence Professionals specified that you seek the permit and if they were aware of the Village rules. Mr. Kayson stated that it was up to them to get the variation and the fencing company knew the rules as they have previously performed work in the Village.

Chairperson DeFalco asked the Board Members if they wanted to vote on the petition as a whole or on each variation separately. Mr. Young suggested that each variation be voted on separately.

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**Variation #1 - A variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6').**

Young made a motion to approve the variation. As there was no second, the motion failed.

On a motion by Newman and seconded by Corrado the Zoning Board of Appeals recommended denial of the variation by a 4-1 vote.

**Variation #2 - A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.**

*Chairperson DeFalco noted that the following variation/vote should also include a 4' fence height in the clear line of sight area so the petitioner's wouldn't have to reapply and spend more money on petition fees.*

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

Respectfully,

VILLAGE OF LOMBARD

John DeFalco  
Chairperson  
Zoning Board of Appeals