

#080765
Dated #4

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) _____
Recommendations of Boards, Commissions & Committees (Green) _____
Other Business (Pink) _____

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: January 2, 2009 (B of T) Date: January 15, 2009

TITLE: ZBA 08-16: 350 N. Fairfield Avenue

SUBMITTED BY: Department of Community Development *MD*

BACKGROUND/POLICY IMPLICATIONS:

The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests a variation to 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') in the R2 Single-Family Residence District.

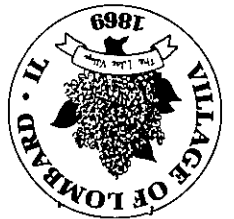
As there were neither four votes for approval or denial of the petition, it is being forwarded without a recommendation.

Please place this item on the January 15, 2009 Board of Trustees agenda under items for separate action.

Fiscal Impact/Funding Source:
Review (as necessary):
Village Attorney X
Finance Director X
Village Manager X

Date _____
Date _____
Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William Heniff, AICP *WH*
Director of Community Development

DATE: January 15, 2009

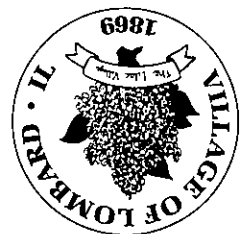
SUBJECT: ZBA 08-16; 350 N. Fairfield Avenue

Please find the following items for Village Board consideration as part of the January 15, 2009 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 08-16; and
3. Plans associated with the petition.

Please contact me if you have any questions regarding the aforementioned materials. The Zoning Board of Appeals was unable to obtain four votes for either approval or denial of the petition. Therefore, this petition is being forwarded to the Village Board with no recommendation.

Please place this petition on the January 15, 2009 Board agenda under items for separate action.



VILLAGE OF LOMBARD
255 E. Wilson Ave.
Lombard, Illinois 60148-3931
(630) 620-5700 Fax (630) 620-8222
www.villageoflombard.org

January 15, 2009

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

Subject: ZBA 08-16; 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 155.205(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') in the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on December 16, 2008. Mark Edison, owner of the subject property, presented the petition. Mr. Edison stated that in August 2003 he purchased the home and had planned to remodel. In August 2005, the Building Department informed him that new footings would be required as part of the proposed remodeling. Therefore, the garage and breezeway were demolished. In March 2006, his contractor left with his money and liens were placed on the home. Mr. Edison stated that after the liens expired he was able to get a second round of permits in June 2008.

Mr. Edison referenced his plat of survey and concrete stairs thereupon. He stated that the stairs lead into a bunker on the property about six feet (6') in depth. He called the bunker an attractive nuisance, attractive to children. He stated that a six foot (6') fence existed previously on the property and that he could have replaced it panel by panel. He stated that Code Enforcement stopped his contractor from replacing this fence and told him that a permit was necessary. He stated that he was informed of the need for a variation when he came in for a permit. He also stated that he intended to put in a pool on the property. He stated that he sought to replace the fence the right way rather to replace it panel by panel which he would consider devious. He stated that the previous fence went all the way to the driveway and was six feet (6') in height. Therefore, the new fence would be more compliant as it will be outside of the clear line of sight.

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."

Village Manager
David A. Hulseberg

Trustees
Greg Alan Gron, Dist. 1
Richard J. Tross, Dist. 2
John "Jack" T. O'Brien, Dist. 3
Dana L. Moreau, Dist. 4
Laura A. Fitzpatrick, Dist. 5
Rick Soderstrom, Dist. 6

Village President
William J. Mueller
Village Clerk
Brigitte O'Brien

Mr. Edison stated that he has unsolicited letters of support from neighbors. He asked that the Board consider the bunker and the pool as the need for the fence.

Chairperson Defalco opened the meeting for public comment. There was no one to speak in favor or against the petition.

Chairperson Defalco then requested the staff report.

Stuart Moyinhan, Associate Planner, 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 solid wood fence six (6) feet in height along the corner side lot line. As the Zoning Ordinance permits fences within the corner side yard to be no greater than four (4) feet in height, a variation is required.

The petitioner began construction of a six (6) foot fence within the corner side yard of the subject property without a permit being issued. Fence posts were placed along the corner side lot line and within the twenty (20) foot clear line of sight triangle at the driveway.

The petitioner was issued a permit for a six (6) foot fence along the interior side and rear property lines. However, a six (6) foot fence was constructed within the first twenty (20) feet of the rear property line. As this portion of the fence is within the corner side yard, it may be no greater than foot (4) feet in height. The variation will address this existing fencing as well as the proposed fencing in the corner side yard. The petitioner has agreed to build the proposed fence outside of the twenty (20) foot clear line of sight triangle.

The petitioner indicates that he is the owner of two dogs, one of which could scale a four (4) foot fence. He has also stated his intention to install an in-ground or above ground pool in the spring of 2009. The petitioner believes that with a four (4) foot fence, other animals could enter the subject property and harm or be harmed by his dogs. Further, he states that children could enter the property and be injured by the dogs or future pool.

The Zoning Board of Appeals has heard a number of fence height variation cases in recent years in which the petitioner asserted the presence of safety and/or privacy concerns due to a pool.

In all of these cases, with the exception of ZBA 04-08, the ZBA recommended approval. In each of the cases recommended for approval, the subject property had an existing pool. In ZBA 04-08, the petitioner had not yet constructed the pool but argued that there would be safety and privacy issues in the future. Staff and the ZBA both determined that future circumstances should not be sufficient grounds to recommend approval of a variation. It is staff's opinion that a similar determination should be made regarding the variation request at 350 N. Fairfield Avenue.

Staff finds that there are no conditions related to the property that prevent compliance with the fence height regulations. The property does not have physical surroundings, shape, or topographical features that differ substantially from other corner lots in the neighborhood.

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.

Staff finds that the fence could be constructed per the ordinance requirements either by lowering the fence height to four (4) feet 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 preference for the fence's height and location.

Staff is recommending denial of the petition as the Standards for Variations have not been met.

Mr. Young asked what the final outcome of ZBA 04-08 was.

Mr. Moynihhan stated that it was denied by the Village Board.

Mr. Young asked if the bunker would be outside the fence if it were set in twenty feet.

Mr. Edison stated that it would be.

Mr. Young stated that he felt the bunker was a more compelling reason for approval than a pool would be.

Mr. Edison indicated that his research showed that other nearby communities did not restrict the height of a fence to four feet (4').

Mr. Young stated that he had done some internet research and discovered that a Labrador could jump over a six foot (6') fence.

Chairperson DeFalco stated that the fence permitting process was started in 2000 because so many fences were being built outside of the established regulations. He informed Mr. Edison that his assumption that the original fence could have been replaced panel by panel was incorrect.

Michael Toth, Planner I, stated that a repair of up to twenty five percent (25%) of a fence could be repaired without a permit. However, this was the limit during a one year period.

Chairperson DeFalco stated that a six foot (6') fence could be allowed in the corner side yard if it was seventy five (75%) open and ornamental in nature. He stated that the average lot in Lombard is sixty feet (60') in width and that the petitioner's lot is seventy five feet (75') wide.

Therefore, fifty-five feet (55') of yard could be fenced in with a solid wood fence six feet (6') in height.

Chairperson Defalco asked how large the bunker is and if it could be covered with a steel plate.

Mr. Edison stated that is ten feet (10') by twelve feet (12') but is two feet (2') above grade. He said that a steel plate would be too expensive.

Chairperson Defalco stated that covering the bunker with a steel plate would not be very expensive.

Mr. Tap stated that he was troubled that the fence was constructed within the corner side yard after a permit was issued.

Mr. Edison stated that no work was done on the fence in that area after the permit was issued.

Mr. Tap asked if there is a fence along View Street.

Mr. Edison stated that there is not but that children do still walk along there.

Mr. Bedard stated that because the home to the west is located at the far west of the property there would be little impact on that home.

Mrs. Newman stated that the house could be torn down and rebuilt closer to the fence in the future. She stated that they should protect the property rights of the adjacent neighbor and not set a precedent with this type of approval.

Mr. Young stated that if the pool was already built these discussions would not be going on.

Mr. Edison stated that the bunker would be outside of the fence if built twenty feet (20') into the property. He stated that the property is currently uninsurable and that he can't afford a \$20,000 excavation. He stated that he would be financially ruined to try this.

Mr. Edison stated that he has been informed by his insurance salesman that a fifty-four inch (54") fence is the minimum with an attractive nuisance on the property. He stated that an attractive nuisance is still an issue with a six foot (6') ornamental fence as it can be seen. Children would be safer if they could not see the bunker and desire to play in it.

Chairperson Defalco asked if the petitioner would be willing to continue the petition to next month so the Building Department could find a solution to capping the bunker.

Mr. Edison stated that this would be undesirable though the bunker has been filled with wood chips.

Mr. Young stated that based on an attractive nuisance, he would vote to approve this petition. Mrs. Newman asked why the bunker had not been mentioned before the public hearing.

Mr. Moynihan stated that the petitioner had not informed him of the bunker's existence. He had not seen the bunker when visiting the property due to snow coverage.

Mr. Edison said that he could not commit to the bunker's presence in writing due to the insurance implications.

Chairperson DeFalco asked whether the petition should be continued or if they should vote on the variation.

Mr. Young stated that he wanted to be clear that the Zoning Board of Appeals would not be granting a variation due to jumping animals or a future pool.

Chairperson DeFalco agreed. He stated that an approval would include language similar to: based upon the testimony that there exists a concrete structure that is a hazardous nuisance on the property, the ZBA grants a variation for a six foot (6') fence in the corner side yard.

Mr. Young stated that he felt this is a unique situation that involves public safety.

Chairperson DeFalco asked the petitioner if a five foot (5') fence would be an acceptable compromise as the petitioner had testified that case law dictates a minimum of fifty-four inches (54").

Mr. Edison stated that the liability still exists with a five foot (5') fence and that a child could scale such a fence. He stated that this would be a compromise to the public safety and that he would like to mitigate the risk as much as possible.

Mr. Tap stated that he was concerned about the fence being in the clear line of sight area.

Chairperson DeFalco suggested that the ZBA add as a condition of approval that the fence not be located within the clear line of sight area and that the fence be built according to the plans submitted as part of the petition.

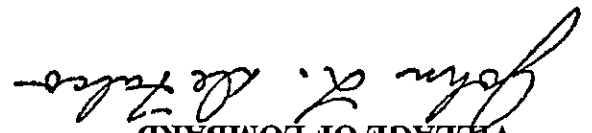
On a motion by Mr. Young and a second by Mr. Bedard, the Zoning Board of Appeals voted 3 to 2 that the Village Board approve the variation. The motion having failed, Mrs. Newman made a motion to deny the variation which was seconded by Chairperson DeFalco. The Zoning Board of Appeals voted 2 to 3 to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

Based upon the testimony presented by the petitioner, which included the introduction that there is a bomb shelter located on the subject property, the ZBA was unable to obtain four votes for

Re: ZBA 08-16
January 15, 2009
Page 6

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

**VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Zoning Board of Appeals
FROM: Department of Community Development
PREPARED BY: Stuart Moynihan
Associate Planner

TITLE

ZBA 08-16; 350 N. Fairfield Avenue: The petitioner requests a variation to 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') in the R2 Single-Family Residence District.

GENERAL INFORMATION

Petitioner/Owner:

Mark Edison
350 N. Fairfield Avenue
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning:

R2 Single Family Residential District

Existing Land Use:

Single Family Residence

Size of Property:

approximately 14,000 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 November 12, 2008.

1. Petition for Public Hearing.
2. Response to the Standards for Variations.
3. Written narrative, prepared by the petitioner, describing the need for a variation.
4. Plat of Survey prepared by Harrington Land Surveying, Ltd., dated June 10, 2008 and showing the location of the proposed fence.

DESCRIPTION

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 solid wood fence six (6) feet in height along the corner side lot line. As the Zoning Ordinance permits fences within the corner side yard to be no greater than four (4) feet in height, a variation is required.

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 comments: Clear line of sight must be maintained at the corner of the driveway.

PLANNING

The petitioner began construction of a six (6) foot fence within the corner side yard of the subject property without a permit being issued. Fence posts were placed along the corner side lot line and within the twenty (20) foot clear line of sight triangle at the driveway. The petitioner was informed by the Code Enforcement Division that a permit was necessary. At the time that the petitioner applied for the permit, he was informed that the fence could be no greater than four (4) feet in height within the corner side yard or a variation would be necessary.

The petitioner was issued a permit for a six (6) foot fence along the interior side and rear property lines. However, a six (6) foot fence was constructed within the first twenty (20) feet of the rear property line as shown below. As this portion of the fence is within the corner side yard, it may be no greater than four (4) feet in height. The variation will address this existing fencing as well as the proposed fencing in the corner side yard. The petitioner has agreed to build the proposed fence outside of the twenty (20) foot clear line of sight triangle.

The petitioner indicates that he is the owner of two dogs, one of which could scale a four (4) foot fence. He has also stated his intention to install an in-ground or above ground pool in the spring of 2009. The petitioner believes that with a four (4) foot fence, other animals could enter the subject property and harm or be harmed by his dogs. Further, he states that children could enter the property and be injured by the dogs or future pool. While staff recognizes these points are not unreasonable, staff does not believe these concerns are demonstrative of a hardship.

The Zoning Board of Appeals has heard a number of fence height variation cases in recent years in which the petitioner asserted the presence of safety and/or privacy concerns due to a pool.

Case Number	Address	Variation Request	ZBA Recommendation	BOT Action
ZBA 01-01	1053 E. Emerson Ave.	6' fence in corner side yard	No Recommendation	Approval
ZBA 02-16	240 E. Harrison Ave.	6' fence in corner side yard	Approval	Approval
ZBA 04-08	324 S. Ahrens Ave.	6' fence in corner side yard	Denial	Denial
ZBA 08-09	1601 S. Main Street	6' fence in corner side yard	Approval	Approval
ZBA 08-14	242 W. Berkshire Ave.	6' fence in corner side yard	Approval	Approval

In all of these cases, with the exception of ZBA 04-08, the ZBA recommended approval. In each of the cases recommended for approval, the subject property had an existing pool. In ZBA 04-08, the petitioner had not yet constructed the pool but argued that there would be safety and privacy issues in the future. Staff and the ZBA both determined that future circumstances should not be sufficient grounds to recommend approval of a variation. It is staff's opinion that a similar determination should be made regarding the variation request at 350 N. Fairfield Avenue.

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 property does not have physical surroundings, shape, or topographical features that differ substantially from other corner lots in the neighborhood.

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 (4) feet 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 preference for the fence's height and location.

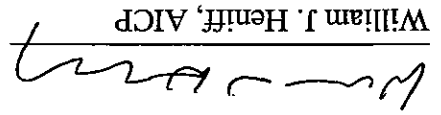
Staff recommends that the petition be denied on the grounds that a hardship has not been shown.

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 08-16.

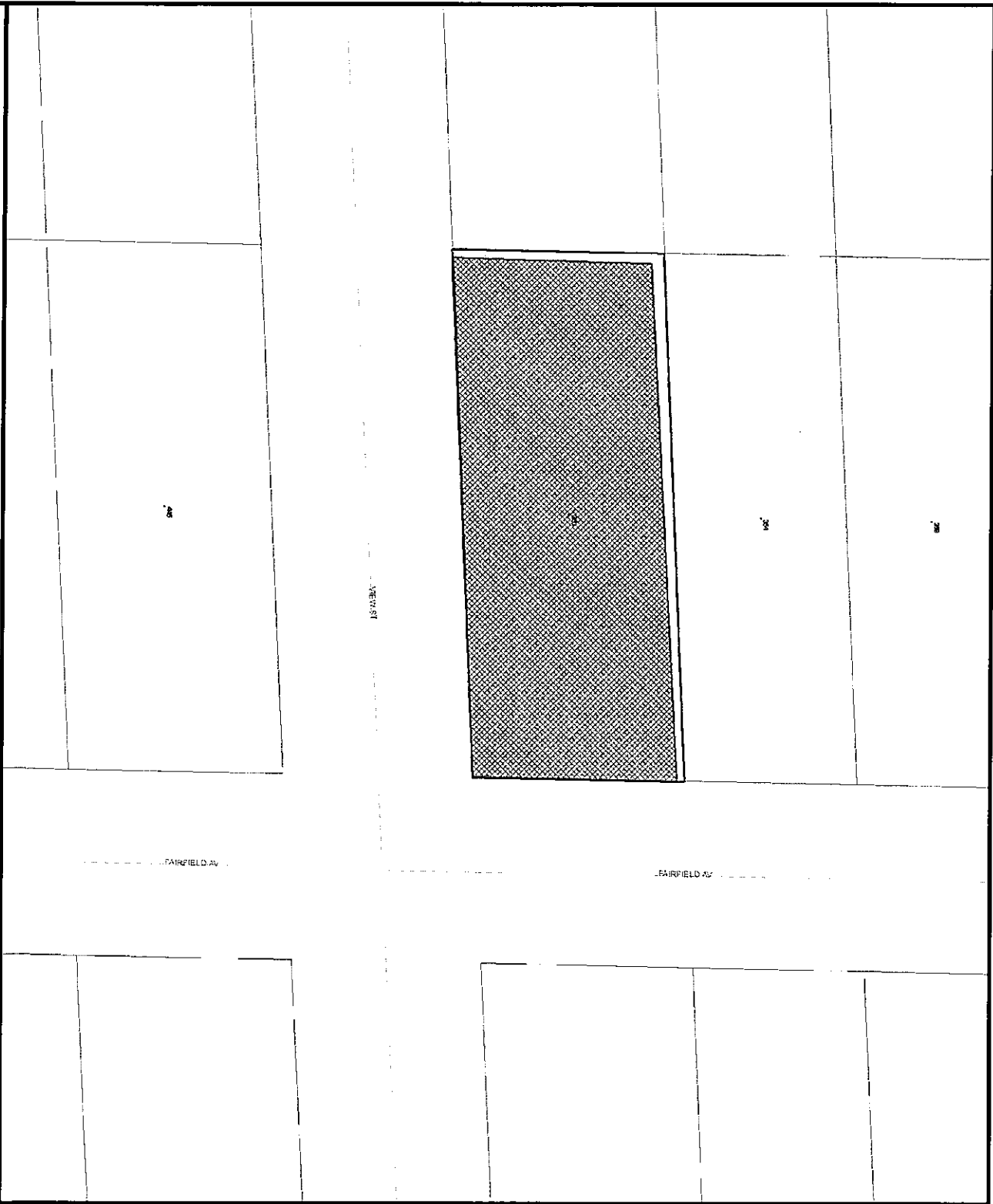
Inter-Departmental Review Group Report Approved By:


William J. Heniff, AICP

Director of Community Development

c: Petitioner

350 N. Fairfield Ave.



• Addresses

Centerline

JURIS

--- RIVER

--- R&R

— TOLLWAY

--- TRAIL



Parcels



limits-poly

• Active Cases

--- Boundary Agreement

50 ft



Law Office of Mark E. Edison P.C.

ONE TOWER LANE – SUITE 1700 • OAKBROOK TERRACE, ILLINOIS 60181

PHONE 630/495-3951 • FAX 630/495-9151

Mark E. Edison

Robert T. Metz
Of Counsel

November 12, 2008

Village of Lombard
Zoning Board of Appeals

Re: Fence Variance
350 North Fairfield
Lombard, Illinois 60148

To Whom It May Concern:

Please accept this missive and accompanying Petition For Public Hearing in regards to the erection of a fence for the subject property with a height of 6 feet.

With regard to the prohibition of a fence on the South (View) side of the property in excess of 4 feet and in the rear (West) property line Northernly 20 feet, said restriction creates a dangerous condition and unreasonable restriction of land use. Currently there exists child foot traffic and pedestrian traffic through the View side of the property. It is the homeowner's intention to install either an in-ground or above ground swimming pool in the rear of the property in the spring of 2009 (subject to village approval). The property owner also has a Labrador Retriever and a Jack Russel Terrier, the Labrador can easily scale a 4 foot fence and the Jack Russel Terrier cannot. Neither of the canines have ever demonstrated a propensity to attack, a 4 foot high fence allows other animals, inclusive of wild or domesticated dogs, coyotes, and children to easily enter the property and further exists a potential for harm to both the animals and those who enter the real estate.

Pets and swimming pools create an attraction to children, particularly when there exists such a high volume of child traffic in the neighborhood and may potentially result in a child drowning or injuring themselves on subject property. Such an injury can easily be prevented with a 6 foot fence and surrounding municipalities require a fence of that height per ordinance. The prohibition of such a fence should not exist as the public safety is a compelling reason to vary from the established ordinances which prohibit a fence with a height of 6 foot. Although the presumed intended function of said ordinance is public protection, said the function of the ordinance serves to create a situation more dangerous than that which would result from a variance and is clearly outweighed by the safety of local children and the safety of the public in the event a dog were to jump into the property and the owner was forced to break up a dog fight or in the event a dog was to escape the confines of the fence. These issues are easily prevented by the erection of a

fence high enough to prohibit the entry of outside animals and children, or in the event the owner's animal escaped from the property over the portion of the fence which was prohibited from extending past the 4 foot ordinance. With respect to the seven standards for variation, find same addressed below.

Section 155.103.C.7. of the Lombard Zoning Ordinance requires seven standards to be met to grant a variation, the following are responses to said standards:

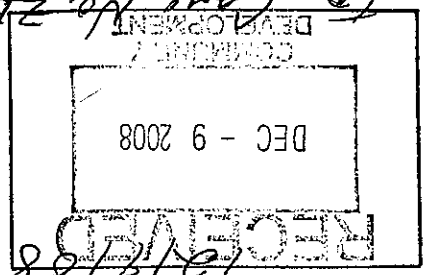
1. The existence of the real property and lot positioning results in restrictions not otherwise required for the placement of a fence on interior lots. Said height restrictions prohibiting erection of a fence in pertinent part not in excess of 4 feet in height prohibit the protection of the public, specifically children from potentially dangerous and hazardous situations and further do not allow the homeowner to protect their domesticated and non-violent pets. Said fence restrictions further contravene those standards set forth in local and surrounding municipalities which require a minimum fence height of 6 feet and further breach the duty of care owed to the public. If the strict letter of the regulations were to be applied requiring a fence of not greater than 4 feet it would be below the standard of care owed to the public and further result in a foreseeably hazardous condition posed to the public. A fence of 6 feet in height would certainly prevent the public and wild and or domesticated animals from passing over the fence.
2. The conditions which are unique inasmuch as the interior lots which are not set on the corners are not burdened by the 4 foot fence requirement.
3. The purpose of the variation is to protect the public, financial gain is not an element.
4. The difficulty or hardship has been created by the ordinance, the owners of the property are subject to said ordinance and have not created any condition causing public danger.
5. The granting of the variation will be beneficial to the public welfare and prevent injury to others and further will enhance the neighborhood as the proposed fence is a shadow fence which allows limited visibility into the property, however, it is such that prohibits ease of access over said fence.
6. The granting of the variation will not alter the character of the neighborhood as the fence is a replacement of a formerly existing fence which was of a lesser quality and of a height greater than 6 feet, the proposed fence is in fact a greater quality and shorter than the previous fence.
7. The variation will not impair light or air or increase congestion of public streets, or fire danger is present and natural drainage is not impaired, further the esthetic value of the fence and of a uniform fence is greater to the neighbors than the variant heights of a fence as required by the ordinance.

Respectfully submitted,

Mark E. Edison
Attorney at Law

To the ZBA members:

I'm writing in regard to case No. ZBA08-11



notice of public hearing on 12/16/08 for myself neighbor @ 353 N. Fairfield Ave

& also for my mom (who lives next door to 350 N Fairfield) about the height

of his fence. Myself & my mother who 83 years old are in support of his fence. It's not finished but the

work so far is beautiful. He order board on board. I think, you don't

notice the height. Because of the lot size in the neighborhood if don't

feel it would hinder in obstruction of traffic.

My mom and I have met the son- or, his wife and son too and feel they are a refreshing addition to

our neighborhood. If we spoken to him (son) and have seen the hard

work he put into the house for his family.

I and my mom are asking that you support the surmise petition and allow him a say just for

Thank you from
 Janet J. Brunson 353 N. Fairfield Ave
 Rita J. Brunson 354 N. Fairfield Ave
 + my mom