

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.

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 Moynihan, 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 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.

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 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. Moynihan 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

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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