

November 19, 2009

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

**Subject: ZBA 09-10; 418 W. Wilson Avenue**

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 approve the following actions for the subject property located within the R2 Single-Family Residence District:

1. A variation from Section 155.407(H) of the Lombard Zoning Ordinance to reduce the minimum required open space on the subject property from fifty percent (50%) to forty-two and fifty-five one-hundredths percent (42.55%).
2. A variation from Section 155.212, Table 2.1, Footnote (A) of the Lombard Zoning Ordinance to reduce the required interior side yard setback to 0.35 feet (0.35') where two feet (2') is required to allow for an open deck not over three feet (3') above the average level of the adjoining ground.

The Zoning Board of Appeals conducted a public hearing on October 28, 2009.

Chairperson DeFalco opened the meeting for public comment. Jack Kozar, the petitioner's attorney, 250 E. St. Charles Rd., presented the petition. He stated that his client has been before the ZBA about six months ago with a similar request. Since that time, they have talked with the Village and the neighbors. Today, they are requesting a compromise. They believe they have found a solution and are asking for the ZBA's blessing. He stated the Vittorini's wish to stay in their current residence where they have invested in their property. He stated that the first variation request is to address the open space on the property which is less than fifty percent. The second variation is to address the setback of the deck which is about one-half foot from the side property line.

Mr. Kozar addressed the first variation request. He stated that the property was non-conforming before 1990 when the open space requirement was added to the

code. The property has been less than 40% open space for the past thirty years. He stated that many of the neighbors are also non-conforming. The neighbors concerns include water absorption and drainage. However, he stated that the brick pavers on the property are somewhat pervious, that the property's natural slope has not been changed, and that the petitioner has changed his gutters so that they flow away from the eastern neighbor. The last remaining gutter to be changed would go from the front of the house under the driveway to drain into the front yard. He stated that no neighbor has objected to excessive bulk on the property as identified by the Village. He stated that the first survey that was presented shows what the property has looked like for thirty years. The second survey shows what the petitioner is proposing to remove to get to 42.55% open space.

Mr. Kozar addressed the second variation request. He stated that the paver patio was built in almost exactly the same footprint as the original wood deck on the property. He stated that the issues regarding setbacks that staff has pointed out are not present in this case. He then submitted a letter from the neighbor to the west at 422 W. Wilson Avenue, Sharie Sisiliano, stating that she does not object to the variation. He stated that building the deck to two feet would cause a safety issue by creating a small ravine. The deck is not visible because of the adjacent six foot fence and should not be considered a detriment to neighbors.

Chairperson DeFalco then requested the staff report. Stuart Moynihan, Associate Planner, introduced Nick Hatfield as the Village's Private Development who was present to answer questions about drainage. Mr. Moynihan then read the staff report. The petitioner is requesting the open space and setback variations to address improvements that were made in excess of what is permitted by code, along with certain improvements made without a permit. In particular, the open deck, constructed from brick pavers, was built without a permit and is located within the required interior side yard setback. The deck, along with other recently constructed improvements, contributes to the deficiency in open space on the property.

This petition is a follow-up on a previous petition, ZBA 09-01, which requested similar zoning relief. As part of ZBA 09-01, the petition requested a variation from the required fifty percent (50%) open space on the property to thirty-six and one-half percent (36.5%). Though the property remains currently at 36.5% open space, the petitioner has proposed to remove some impervious surfaces on the property that will bring the open space percentage up to forty-two and fifty-five one-hundredths percent (42.55%).

On June 4, 2008, a permit was issued for a garage to replace one that was destroyed by fire. The garage was to be built on the existing concrete slab. These site improvements were drawn on a plat of survey and were calculated by staff as occupying 3,779 square feet of the zoning lot. The garage permit was issued with a sticker which indicated: "Improvements shown on these plans will leave the lot with the minimum 50% required open space. No further lot coverage is permitted."

On September 16, 2008, a permit was issued to allow the replacement of the existing driveway. The permit indicated that the driveway must be constructed with the same dimensions shown on the plat of survey with the exception of a thirty (30) foot by four (4) foot parking area in the front yard. This additional parking area was allowed because the contractor verbally indicated that the deck had been removed.

Upon an inspection of the lot by Building Division staff, it was discovered that additional impervious surfaces had been constructed which were not depicted on any of the permit applications. These surfaces consist of:

- A. A two and one half foot strip of asphalt located along the eastern property line
- B. Asphalt paving behind and to the east of the garage
- C. A brick paver deck occupying the area to the rear and west of the residence
- D. A brick walkway from the garage to the deck.

As a result of this inspection, the petitioner was informed that his property did not meet the required 50% open space. Therefore, removal of impervious surfaces or a variation request would be necessary. The petitioner chose to request a variation and included a survey of the property as part of his petition. The survey indicated that the additional impervious surfaces brought the property to 36.5% open space. From the survey, staff determined that a second variation would be necessary as the brick paver deck was built 0.35 feet from the side property line where two (2) feet is required. The deck was constructed without a permit.

The petitioner applied for the two required variations and a public hearing, ZBA 09-01, was held on April 13, 2009. The Zoning Board of Appeals recommended denial of both variation requests. The Board of Trustees subsequently denied the petition on May 7, 2009.

On May 26, 2009, Village staff met with the petitioner's attorney. The attorney presented a calculation showing what the petitioner believes the open space percentage on the property was prior to the garage fire. The petitioner states that the coverage on the property was 60.34% or 4590.36 square feet. Staff calculations from the survey provided indicate that this calculation is slightly off, the coverage being 59.72% or 4543.65 square feet. However, as all of the areas in question are proposed to be removed by the petitioner, the discrepancy does not alter the percentage of open space being requested by the petitioner. Staff is unable to confirm or deny the previous open space percentage on the property. However, it is the opinion of staff that the property probably was deficient in open space to some degree. When the fifty percent (50%) open space requirement was added to the Zoning Ordinance in 1990, the subject property became non-conforming.

The petitioner has proposed the removal of:

- A. Asphalt paving behind and to the east of the garage;

- B. Twenty feet of the brick walkway from the garage to the deck;
- C. A one-half foot strip of asphalt located along the eastern property line; and
- D. A two and one-half foot strip of asphalt located along the western edge of the driveway.

Previous to the construction of the brick paver deck at the rear of the home, a wooden deck was located in a similar position. The petitioner has indicated that this wooden deck was more than thirty years old and abutted the western property line. The 1978 Zoning Ordinance lists open terraces not over three (3) feet in height as a permitted encroachment in all required yards. No minimum side yard setback was associated with this provision. However, at the time the wooden deck was removed from the property it was a legal non-conforming structure with regard to the interior side yard setback. The removal of this deck has two effects regarding non-conformities on the subject property:

1. The property was brought into closer compliance with the requirement for fifty percent (50%) open space.
2. The legal non-conforming status of the wooden deck was brought into compliance.

Section 155.303(C) of the Zoning Ordinance states: "In the event that any nonconforming building or structure is damaged or destroyed, by any means, to the extent of more than fifty (50%) of the fair market value of such building or structure immediately prior to such damage, such building or structure shall not be restored unless such building or structure shall thereafter conform to all regulations of the zoning district in which such building or structure and use are located."

Staff is not supportive of the open space variation for the following reasons:

- The open space requirements of the Zoning Ordinance are set for the provision of open space, to preserve green space, and to maintain the aesthetics of a suburban setting.
- The open space standards within the R2 District help to ensure that lots do not have the appearance of being overbuilt and that a more intensive use of the property is prevented.
- The request for an open space percentage of 42.55% is substantial.
- Impervious surfaces can inhibit the absorption of stormwater which results in additional runoff. The additional runoff can cause flooding on the subject property and surrounding properties.

For reference purposes, staff has attached a table of recent cases involving open space variation requests. Staff has supported several of these cases, each for unique reasons. However, staff does not support open space variations in areas prone to flooding. Flooding in the area around 418 W. Wilson Avenue has been documented to Private Engineering Services. Staff feels that this is a significant concern and, therefore, does not recommend approval.

Staff is not supportive of the setback variation for the deck. The required setback for decks is necessary to limit bulk on the property, to protect the privacy of neighbors, and to prevent encroachment on neighboring properties.

Mr. Moynihan addressed deficiencies in the Standards for Variations which were identified in the staff report. He also indicated that staff has included five conditions that the ZBA should consider should they decide to recommend approval.

Chairperson DeFalco asked for comments from the members of the ZBA.

Mr. Tap asked if the neighbor to the west is the same as during the first request.

Mr. Kozar stated that it is.

Chairperson DeFalco asked if the driveway was originally permitted as two and one-half feet from the property line.

Mr. Moynihan stated that this was what the permit depicted. However, the petitioner had provided some pictures during the last public hearing that indicated that it had been closer to the property line.

Mr. Kozar stated that the petitioner would remove one-half foot of this area and some area on the west side of the driveway.

Chairperson DeFalco asked if the gutters on the garage had been adjusted.

Mr. Kozar stated that they had been made to discharge into the backyard.

Mrs. Newman stated that this would just delay the water moving to the east.

Mr. Kozar stated that this is the natural drainage flow but some water would be absorbed in the backyard.

Mr. Newman stated that the open space was still an issue.

Mr. Kozar stated that there is not much else to remove in the backyard except the garage.

Mr. Tap asked about the validity of the survey from the previous public hearing case.

Mr. Kozar stated that an accurate survey was provided then and now. There were some inaccuracies in the permitting process that were at issue.

Chairperson DeFalco asked Nick Hatfield if he had viewed the property.

Mr. Hatfield stated that he had done so.

Chairperson DeFalco asked if the driveway was pitched to the east.

Mr. Hatfield stated that there was some pitch and that some water had been moving to the east when it was raining during his visit.

Chairperson DeFalco asked if removing the one-half foot would present any opportunity to fix the problem.

Mr. Hatfield stated that a trench backfilled with stone could be installed where the driveway was being removed to help direct some water toward the street.

Chairperson DeFalco asked about the \$10,000 backyard drainage grant.

Mr. Hatfield stated that this is a 50% reimbursement and would be applied to the backyard issue specifically.

Mr. Vittorini stated that installing something in his backyard probably wouldn't help his neighbors because he is higher up than them.

Mr. Hatfield stated that this statement was accurate. He suggested that Mr. Vittorini work with his neighbors to install something in the low spot of the area.

Chairperson DeFalco asked if the neighbor to the east was present.

Al Rutherford, 414 W. Wilson Ave., stated that he is the neighbor to the east. He stated that the issue is the way the driveway is sloped from the front to the backyard. He asked that the driveway be returned to level from east to west.

Chairperson DeFalco asked him about Mr. Hatfield's trenching suggestion.

Mr. Rutherford stated that he did not think this would help much as the issue primarily occurs from the front of the house back to the garage where the driveway is sloped toward his property.

Mr. Vittorini stated that this slope was not changed. He stated that the garage had to be raised as part of the reconstruction.

Chairperson DeFalco stated that it sounded like the driveway is pitching to the east and the north. He asked Mr. Hatfield if trenching would work better if it started at the garage rather than the fence which is further south.

Mr. Hatfield stated that this would probably add some benefit but water would still end up at the low point of the neighborhood.

Mr. Kozar asked Mr. Rutherford if he has had any standing water since the gutters had been moved.

Mr. Rutherford stated that he had not had very much.

Mr. Kozar asked if he has had any water in his house.

Mr. Rutherford stated that he had not.

Mr. Tap asked if the high point of the driveway was where the end of the fence is located.

Mr. Vittorini stated that it is pretty close.

Mr. Tap asked if it would be possible to extend the trench past the fence to the garage.

Mr. Vittorini stated that he would have to remove his fence to do that.

Chairperson DeFalco asked if anyone was ready to make a motion. He stated that he did not see an issue with approving the first variation.

Mr. Tap stated that he would be more comfortable if some progress was made toward alleviating the flooding in the area.

Chairperson DeFalco stated that he thought the Board of Trustees should direct staff to work with the neighbors on this issue if appropriate.

Mr. Tap suggested that the trenching be added as a condition in the staff report.

On a motion by Dr. Corrado and a second by Mr. Tap, the Zoning Board of Appeals recommended by a vote of 4 to 1 that the Village Board **approve** the zoning actions associated with ZBA 09-10, subject to the following conditions:

1. The petitioner shall remove all impervious surface indicated on the "Proposed Reductions" exhibit submitted as part of this public hearing.
2. The petitioner shall apply for and receive a building permit for the existing deck.

3. In the event that the pavement and paver bricks around the garage are removed, the site shall be left at original grade. Additional gravel or fill material is not permitted. Grade shall be consistent with what was previously at these locations prior to being improved and it shall match the grade with the adjoining properties. Final grade is subject to the approval of the Director of Community Development.
4. The downspout at the southeast corner of the home shall be extended into the front yard.
5. The approval related to this petition shall only apply to the existing construction. Any future construction on the subject property shall meet all current Code requirements.
6. The petitioner shall apply for and receive a permit to install a drainage trench to be backfilled with gravel along the eastern edge of the driveway on the subject property beginning from the southern property line extending north approximately seventy-seven feet (77'). The final design of this trench, including the dimensions, is subject to the approval of the Director of Community Development.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco  
Chairperson  
Zoning Board of Appeals