

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

TO: Zoning Board of Appeals HEARING DATE: February 25, 2009
FROM: Department of Community PREPARED BY: Stuart Moynihan
 Development Associate Planner

TITLE

ZBA 09-01; 418 W. Wilson Avenue: 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 thirty-six and one half percent (36.5%).
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.

GENERAL INFORMATION

Petitioner/Owner: John Vittorini
 418 W. Wilson Avenue
 Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning: R2 Single Family Residential District

Existing Land Use: Single Family Residence

Size of Property: approximately 7,608 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 October 30, 2008.

1. Petition for Public Hearing.
2. Packet prepared by the petitioner which includes a written narrative, response to the Standards for Variations, a survey of the property as it currently exists, and additional documentation.
3. Photographs of the property provided by the petitioner.

DESCRIPTION

The subject property is located on the northern side of Wilson Avenue near the intersection of Wilson Avenue and Finley Road. 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. Overall, the property is currently at 36.5% open space.

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

The PES Division of Community Development has the following comments on the above petition:

- 1) The Code requirement of 50% open space serves both to limit the density on lots as well as the volume of stormwater runoff. Decks, and to some degree paver stones, are not strictly impervious as rainfall can pass between the planks and voids. However, the additional asphalt is impervious and thus the lot does not meet the 50% open space requirement. Therefore, the Private Engineering Services Division recommends denial and/or removal of the additional impervious areas.

- 2) In the attorney's written history of the events, he states that we do not require permits for brick patios, which is correct if the patios are placed at grade or no more than one step high. Photo Misc. #4 shows two steps coming down from the patio.
- 3) The attorney also states "...Mr. Vittorini himself graded the back yard and added new dirt and sod." Per §150.280, it is unlawful for any person to alter or change the elevation or grade of any lot or parcel of land within the Village, including, but not solely limited to landscaping, without having first obtained a permit for such alteration or change from the Department of Community Development. There is no record of permit for the "added dirt," thus, a grade and fill permit is required so that staff can determine the extent of fill and what further action may be required.

Public Works Engineering

Public Works Engineering has no comments on the above petition.

FIRE AND BUILDING

The Fire Department/Bureau of Inspectional Services has the following comments on the above petition:

The petitioner is requesting a variation to site improvements made with and without permits. In consideration of an open deck constructed from pavers (without a permit) and driveway extensions installed beyond the scope of the original driveway permits issued, the following should be considered. Patio surface area is considered to be a "deck" due to the surface being raised above existing grade level (2 risers at stairs). A "deck" is any surface that is not level with the surrounding grade and consists of a least a "step up", maximum 7 ¾" risers, to access the walking surface. A "patio" is more of a surface that is at grade level and does not require a "step up" to access the walking surface. With the construction of any raised surface of 2 or more risers, gripable handrails are required at the stairs. Even if the existing raised surface was void of any handrails, the current codes require the handrails.

Also, the addition of the additional asphalt surface on the rear and east side of the garage, was not included in the original permit submittal, but installed as an afterthought suggested by the paving contractor. This afterthought should have been addressed as an amendment to the original permit and a revised plat of survey submitted to Planning and Building for review. Since this was not addressed at time of installation, consideration should be given to possible removal of the additional surface or have the variation process addressed.

PLANNING

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. The existing site improvements were indicated and described to staff by both the petitioner and his contractor. Attachment A is an aerial photograph from 2006 that shows these improvements. These site improvements, drawn on the plat of survey, occupied 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." For accuracy, the permit also indicated: "Open Space at 50.3%." (See Attachment B.)

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 on the condition that the wood deck at the rear of the home was removed from the property in order to meet the open space requirement. The contractor verbally indicated that the deck had been removed and was replaced with sod.

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. (See Attachment C.) 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 (without a permit being issued).

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 36.5% 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 is not supportive of the setback variation for the deck. The petitioner's packet states that brick pavers do not require a permit. This statement is accurate as long as the pavers are installed at grade

level. The brick paver deck on the subject property does require a permit as it has more than one riser. Moreover, all properties are required to meet open space requirements, regardless of the permit requirement. 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.

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 established regulations. The property does not have physical surroundings, shape, or topographical features that differ substantially from other 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 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 difficulties have been created by the petitioner as a result of the preference for the deck's location and the desire to have greater impervious coverage than allowed by code.

5. *The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.*

Staff finds that the additional impervious surfaces on the property are substantial and have the potential to cause additional stormwater runoff and/or flooding on other properties.

6. *The granting of the variation will not alter the essential character of the neighborhood.*

Staff finds that these variations will alter the essential character of the neighborhood by allowing excessive bulk on the subject property. The added bulk caused by the brick paver deck is particularly problematic as it is within a setback area.

7. *The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the*

danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Staff finds that proposed open space variation may reduce and impair natural drainage on the subject property. Impaired drainage may result in drainage problems and flooding on adjacent properties.

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 09-01.

Inter-Departmental Review Group Report Approved By:

William J. Heniff, AICP
Director of Community Development

c: Petitioner