

September 2, 2004

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

Subject: ZBA 04-10; 7 W. Greenfield

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:

Approve a variation from Section 155.205 (A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the permitted fence height in a required corner side and front yard from four feet (4') to four and a half feet (4.5').

The Zoning Board of Appeals conducted a public hearing on August 25, 2004. Mr. Timothy Moore and Mrs. Cathy Moore presented the petition. Mr. Moore stated the fence was sold as a four-foot fence. He stated that they spent time investigating different fences after contacting the Village about the maximum height requirements. He stated that they checked with the salesperson upon selection of the fence. Mr. Moore stated that after the fence was installed he measured the fence and discovered that the fence was actually four and a half feet tall. He notified the contractor and then called the Village and was informed of the enforcement policy. He stated that they decided to proceed with the variation request. Mr. Moore stated that they do not wish to alter the fence since the ornamentation is what causes it to exceed code. He stated that their yard is unique in the sense that it does not have a backyard and fronts Main Street. Mr. Moore stated that the neighbors like the fence. He stated that he feels that they selected a fence that compliments the neighborhood well.

Chairperson DeFalco then opened the meeting for public comment. Mr. Karl Hillman and Mrs. Jean Hillman, 233 N. Main, stated that they are the neighbors to the south of the Moore family. Mr. Hillman stated that the fence is a beautiful fence and believes that it is prudent given that they have four children. Mrs. Hillman

stated that the fence doesn't obstruct vision since it is not a privacy fence. She stated that the fence is better than the landscaping often found on corner lots.

Mr. Phil Pollard, of Complete Fence, stated that he was the fence contractor. Mr. Pollard stated that the petitioners were diligent about researching the code requirements and acknowledged the error on his part. He stated that the fence was listed as a four-foot fence, however in small print the manufacturer's specifications noted the fifty-two inch height. Mr. Pollard stated that this is the first time that a situation like this has occurred. He stated that the fence is beautiful and he would hate to see it torn down. He stated that he hoped some leniency could be given.

Angela Clark, Planner I, presented the staff report. Ms. Clark stated that the petitioners applied for and received a building permit to construct a four-foot, aluminum fence in the front and corner side yards of their property. The petitioners' fence contractor contacted staff after the fence was installed and asked what the regulations were regarding fence height on corner lots as well as the enforcement procedures for fences that exceeded the requirements. The contractor stated that the fence that was installed was slightly higher than four feet. Staff informed the contractor that four feet is the maximum allowable fence height in front and corner side yards and of the enforcement procedures. Ms. Clark stated that the contractor was also informed that in light of the Village's reliance on citizen complaints regarding fence height enforcement there were no guarantees that a violation would not be issued at some point in time for the fence. The property owner later contacted staff to verify the requirements and stated that they ordered a four-foot fence yet upon installation discovered that it was actually four and a half feet. Staff informed the petitioner that a variation was necessary to keep the fence at the current height.

As stated in previous cases, increasing the four-foot maximum height in corner side yards was workshopped before the Plan Commission, which recommended that the current requirements remain in place. Therefore, staff maintains previous recommendations to not support an increase in fence height in residential front and corner side yards. While the petitioner's fence is an attractive fence and poses no risk to the visibility of pedestrian, bicycle, and vehicular traffic, staff finds that supporting the variation would be inconsistent with previous recommendations. Ms. Clark stated that the code does not identify the type of fence when referring to height, therefore granting such a variation would not prevent the placement of other types of fences also of open construction, such as chain link, within front and corner side yard areas. She also noted that there were no physical hardships of the petitioner's lot that prevented compliance with the ordinance, but rather the contractor's erroneous placement of a taller fence.

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

Mr. Bedard noted the assembly of the fence. He asked if disassembling the screws could drop down the fence. Mrs. Moore stated that the ornamental part of the fence was not attached, therefore the fence would still exceed code.

Chairperson DeFalco noted the sphere and posts. He stated that if the fence were measure horizontally it would measure forty-six inches, but the posts would still measure fifty-two inches even if the fence were lowered. He stated that the code identifies fence height at the highest point including ornamentation or posts.

Mr. Moore stated that altering the fence would not match what they had purchased. He stated that he understands that code is code, however he believes that the code is meant to protect. He stated that there were no visibility issues with the fence and hoped there was some leeway that could be given for the fence.

Mr. Polley asked if the code considers this type of fence. He stated that the codes should be written more carefully. Ms. Clark stated that the code does not reference the type of fence when referring to height.

Mrs. Newman stated that in previous cases the concern has been visibility. She stated that there is not any visibility issue here.

Chairperson DeFalco reiterated that there was not an issue of visibility. He stated that the fence is attractive, however the ordinance does not take into consideration the openness of fences or ornamentation. He stated that the fence height regulations have been workshopped before the Plan Commission in the past and the decision was to leave the code as it is currently written.

Mrs. Newman asked was the workshop in response to board on board fences or open construction fences. Ms. Clark stated that she believed the issue was board on board fences.

Chairperson DeFalco stated that two months ago a fence appeared before the Zoning Board for a wrought iron fence in an industrial area. The request stated that the fence was 75% open. He stated that the ordinance is meant to provide visibility and safety. He stated that the ZBA couldn't dispute the ordinance and that their responsibility is to determine hardship.

Mr. Young stated that the contractor has taken responsibility for the error. He asked if there were any bonds that the contractor had to place with the Village. Ms. Clark stated that bonds are not required for fences.

Mr. Pollard stated that there would be costs involved to modify the fence.

Mr. Young asked if the height was discovered after the fence was erected. Mr. Pollard stated that he wasn't aware until the petitioner notified him.

Mr. Young asked if the fence could be constructed at three feet. Mr. Pollard stated that it could.

Mrs. Moore stated that a neighbor has a three-foot fence that the children love to climb. They felt that the four-foot fence was more appropriate.

Mr. Pollard stated that most communities are concerned with visibility and openness and that aesthetics typically aren't considered. He asked if there was room for review of this.

Chairperson DeFalco stated that the Board of Trustees has the ability to table the petition and research this further, but it is not under the purview of the Zoning Board.

Mr. Moore asked if that were a possibility. Ms. Clark stated that the action would have to come from the Board of Trustees.

Mr. Young stated that the hardship is on the contractor.

Chairperson DeFalco stated that the hardship is on the homeowner. He stated that the owners tried to comply and notified both the Village and the contractor.

Dr. Corrado asked if a stipulation could be placed that any future repair or replacement of the fence be restricted to four feet if the variation were to be approved.

Chairperson DeFalco stated that if a portion of the fence were damaged the repair would be regulated to four feet while the rest of the fence was still four and a half feet.

Mr. Young stated that the variation should be addressed as a definitive yes or no. He asked if the board had made such stipulations in the past. Mr. Corrado stated that they had. Mr. Young asked if they were adhered to by the Board of Trustees. Mr. Corrado stated that they had.

Mr. Bedard noted the previous meeting's fence petition. He stated that he noted items such as visibility should be addressed by the code considering it wasn't an issue with these fences due to location or open construction.

Chairperson DeFalco stated that this case brings the perfect opportunity for review of the fence code regulations.

Dr. Corrado asked if a review of the requirements could be included in the recommendation. Chairperson DeFalco discussed whether or not the recommendation could be worded in such a way that this could be accommodated.

Mrs. Newman asked if the ordinance itself was creating the hardship. Chairperson DeFalco stated that it is not the ordinance that creates the hardship because the fence could be constructed at a lower height.

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Mr. Moore stated that if the fence were denied they would get a fence at the appropriate height. He stated that they know that they can have a fence, yet they are asking that the openness be considered.

Chairperson DeFalco stated that since no bonds or inspections are required for fences we place the homeowner in a position where they have to work out any discrepancies with the contractor.

Mr. Young stated that given the ordinance it is difficult to approve a variation. He asked how the board could convey to the Board of Trustees that the ordinance should be reviewed.

Chairperson DeFalco stated that if no direction were given from the Zoning Board the item would not be on the consent agenda and would therefore be open for discussion. He asked that the discussion regarding review of the requirements be reflected in the minutes.

After due consideration of the petition and testimony presented the Zoning Board of Appeals found that the proposed variation does comply with the Standards of the Zoning Ordinance. Therefore the Zoning Board of Appeals recommended approval of ZBA 04-10 by a roll call vote of 5 to 1.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals

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