

August 9, 2007

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

**Subject: ZBA 07-09; 130 E. Sunset Avenue**

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests approval of the following actions on the subject property located within the R2 Single-Family Residence District:

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required corner side yard where a maximum height of four feet is permitted; and
2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required front yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted.

The Zoning Board of Appeals conducted a public hearing on June 27, 2007. The petitioners, Arben and Entella Ilo, introduced themselves. Mrs. Ilo stated that in August 2006 they decided to replace their fence with a five-foot vinyl fence after their attempts to repair the previous fence were unsuccessful. She stated that the Village asked them to paint the fence and that someone damaged a section of the fence. They purchased \$12,000 worth of materials to construct the new fence and reused the old fence posts. They were unaware of the fence height regulations. The fence is stepped to accommodate the changes in grade throughout the property.

The petitioners then passed out letters in support of the requested variation that had been signed by their neighbors. Mrs. Ilo stated that many people cut through their property to get to the high school and, with games going on until 10:00 p.m. or 11:00 p.m., they do not feel safe with only a four-foot high fence. The fence

cannot be modified because of the way the supports are. They did not intend to violate the regulations.

Mr. Ilo stated that they spent three years cleaning up the property to remove the bushes that filled the yard when they bought the house. He stated that he had personally spoken with all of the neighbors before constructing the fence and no one had a problem with it.

Mrs. Ilo added that the fence posts are six feet high but the slats are only five feet high.

Chairperson DeFalco then opened the meeting for public comment. No one was present to speak in favor of or against the petition.

Chairperson DeFalco then requested the staff report.

Jennifer Backensto, Planner II, stated that the petitioner replaced an existing fence to a height of six feet without a permit. As the petitioner's proposed fence is located within the required corner side yard setback and adjacent to a neighboring properties front yard setback, the four-foot height restriction is required.

The subject property previously had a legal nonconforming six-foot high solid fence within the corner side yard. The fence also abutted the front yard of the adjacent property. The petitioner removed the entirety of the nonconforming fence and replaced it with a similar six-foot high solid fence. The Zoning Ordinance contains provisions that allow nonconforming fences to remain with the intention that, once a nonconforming fence reaches the end of its useful life, any replacement fence will meet current code requirements. In time, this allows for full compliance with the Zoning Ordinance. As such, the petitioner's replacement of the fence removed any legal nonconforming rights and requires that the new fence meet the four-foot height restriction.

The petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and safety. However, a variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. Staff cannot support the variation for the following reasons. Six-foot high fences are not permitted within front yards or corner side yards due to the visual obstruction they create. Similarly, there are additional restrictions placed upon fences that abut a neighbor's front yard to prevent such a fence from blocking the view from the front yard of the neighboring property.

It is noted that there is a substantial grade deviation between the rear yard of the subject property and the abutting front yard of the adjacent property to the east. When viewed from the aforementioned neighboring property, the portion of the fence which abuts the property does not have the affect to that of a six (6) foot fence.

While there are grade deviations from the abutting front yard of the neighbor to the east, the issue lies primarily with the screening along Central Avenue. There is no relative grade deviation between the right of way portion of the subject property (in relation to the street) and the fence location. The majority of the fence that is subject to the variation has no grade deviation, so staff cannot consider grade deviation as a means for support of the variation. There are no clear line of sight issues pertaining to the fence on the subject property.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." Staff finds that there are no conditions related to the property that prevent compliance with the fence height regulations or clear line of sight requirements. The conditions are not unique to the subject property. Staff finds that the ordinance has not caused the hardship as the fence could have been constructed per the ordinance requirements. 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 in its entirety. However, if the Zoning Board of Appeals finds it appropriate to grant the variation, the petitioner would be required to obtain a permit for the existing fence.

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

Chairperson DeFalco asked about the letter that was sent asking the petitioners to paint the fence. Mrs. Ilo stated that she did not have a copy of the letter. Ms. Backensto stated that Village had no regulations regarding the color of fencing.

Mr. Ilo stated that high school students frequently cut through their property. Chairperson DeFalco stated that the Village Board creates the ordinances for the Village and in this case the height restrictions had been raised to allow fences up to four feet tall. Two years ago the Board looked at the fence codes but decided that they were adequate as written. The Zoning Board of Appeals looks at those codes and considers special situations, but the ZBA cannot judge the appropriateness of the codes in and of themselves. Mrs. Ilo stated that she does not feel that a four-foot height limit is always bad, but it does not fit their situation due to the traffic.

Chairperson DeFalco noted that they had constructed a five-foot fence in their neighbor's front yard. Mrs. Ilo stated that the neighbor's property sits three to four feet higher than their property, so the fence only appears to be two feet high from the neighbor's perspective. Chairperson DeFalco stated that if there was indeed a grade change, there could be a topographical hardship. He noted that the sidewalk is right next to the fence and there is no way for people to know what is right on the other side.

Dr. Corrado asked if the fence had been professionally installed. Mrs. Ilo stated that her husband had installed the fence. Mr. Ilo stated that he reused the old post holes.

Chairperson DeFalco asked who had sent the petitioner the letters regarding the fence. Ms. Backensto stated that the Building Department may have sent letters if the fence was in disrepair, but there were no regulations regarding paint color.

Chairperson DeFalco suggested that the petitioners double-check with the Village to see if a permit is needed before they perform additional work on their property. He noted that the slats are connected to the posts with brackets and asked if the brackets could be disassembled and the fence cut down. Mr. Ilo stated that they could not cut down the fence because there is a solid rail on the bottom and the top piece is molded in. He stated that he tried every way to fix the fence but could not.

Chairperson DeFalco stated that they could buy a four-foot high section to replace the non-compliant areas. Mrs. Ilo stated that she knows the ZBA cannot consider finances, but they have spent a large sum of money on the fence and it is a hardship to spend so much more money on repairs.

Mr. Polley stated that there was no apparent hardship in this case and a variation cannot be justified.

Chairperson DeFalco asked if the petitioners would be willing to reduce the height of the fence posts. Mr. Ilo said they would.

Dr. Corrado stated that the considerable amount of traffic due to the high school was a problem in this case and worthy of special consideration.

After due consideration of the submitted petition and the testimony presented for ZBA 07-10, a motion was made by Dr. Corrado to approve the requested variation with conditions requiring that the petitioner receive a building permit, limiting the variation to the existing fence, and requiring that the height of the fence posts be reduced to within three inches of the fence slats. The motion was seconded by Mr. Polley. The result of the roll call vote was 2 to 2. However, that was not sufficient for a recommendation to the Board. A motion to deny the requested variation was made by Mrs. Newman and seconded by Chairperson DeFalco. The result of the roll call vote was 2 to 2. As such, the ZBA forwards no recommendation relative to the requested relief.

Re: ZBA 07-10  
August 9, 2007  
Page 5

Respectfully,

VILLAGE OF LOMBARD

John DeFalco  
Chairperson  
Zoning Board of Appeals

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