

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION

For Inclusion on Board Agenda

Resolution or Ordinance (Blue) *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: August 2, 2006 (B of T) Date: August 17, 2006

TITLE: ZBA 06-12: 125 S. Stewart Avenue

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests approval of a variation to Section 155.406 (H) to reduce the amount of open space on the subject property to 45.6 percent where a minimum of 50 percent open space is required, to allow for the construction of a residential addition within the R2 Single Family Residential District. (DISTRICT #4)

Staff is requesting a waiver of first reading.

The Zoning Board of Appeals recommended approval of this petition with one condition.

Fiscal Impact/Funding Source:
Review (as necessary):

Village Attorney X

Finance Director X

Village Manager X

Date

Date

Date

W. T. L. Lichter
8/3/06

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP
Assistant Village Manager/Director of Community Development
DGH

DATE: August 17, 2006

SUBJECT: ZBA 06-12: 125 S. Stewart Avenue

Attached please find the following items for Village Board consideration as part of the August 17, 2006 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 06-12;
3. An Ordinance granting approval of the requested variation; and
4. Plans associated with the petition.

In order to allow the petitioner to proceed with the reconstruction of the proposed deck, staff recommends that the Village Board waive a first reading of the aforementioned Ordinance.

Please contact me if you have any questions regarding the aforementioned materials.



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Village Clerk
 Brigitte O'Brien

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 Richard J. Tross, Dist. 2
 John "Jack" T. O'Brien, Dist. 3
 Steven D. Sebby, Dist. 4
 Kenneth M. Florey, Dist. 5
 Rick Soderstrom, Dist. 6

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

Subject: ZBA 06-12; 125 S. Stewart 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 a variation to Section 155.406 (H) to reduce the amount of open space on the subject property to 45.6 percent where a minimum of 50 percent open space is required, to allow for the construction of a residential addition within the R2 Single Family Residential District.

The Zoning Board of Appeals conducted a public hearing on June 28, 2006. Paul Bojan, 125 S. Stewart, presented the petition. He stated that he was not asking to decrease the amount of open space. He purchased the home in 1994 and now wishes to enclose a portion of the existing deck.

Chairperson Defalco then opened the meeting for public comment. There was no one present to speak for or against the petition. Chairperson Defalco then requested the staff report.

Jennifer Backens, Planner II, presented the staff report. The petitioner is requesting a variation to decrease the required open space from 50 percent of the lot area to 45.6 percent of the lot area. The property is currently nonconforming with 45.6 percent open space. The petitioner wishes to construct a three-season room addition over a portion of the existing deck. The addition is considered an expansion to the existing nonconformity and therefore requires a variation.

The Code requirement of 50 percent open space serves both to limit the density on lots as well as the volume of stormwater runoff. Decks are typically pervious since rainfall passes between the planks. However, the proposed addition over the deck would make the lot more than 50% impervious. Therefore, the Private Engineering Services Division recommends that the proposed addition be denied.

"Our shared *Vision* for Lombard is a community of excellence exemplified by its government working together with residents and business to create a distinctive sense of spirit and an outstanding quality of life."
 "The *Mission* of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

The 50 percent minimum percent open space requirement was added to the Zoning Ordinance in 1990. At that time, the subject property was improved with a single-family home, one-car garage, and driveway. In 1990, a permit was issued for a deck that met the open space requirement. In 1991, a permit was issued for a two-car garage and driveway extension that left the property with the 45.6 percent open space that exists today. In 1999, the current property owner received a permit for and constructed a second-story addition over the existing home. The nonconforming open space was noted in April of this year when the petitioner applied for a building permit to construct a one-story three-season room addition.

The standards of the Zoning Ordinance are set for the provision of open space, to preserve green space, and maintain the aesthetics of a suburban setting. The Village's Comprehensive Plan states "the existing visual and environmental character of Lombard's various residential neighborhoods should be preserved and enhanced." The open space standards within the R2 District help to achieve that goal by ensuring that lots do not have the appearance of being overbuilt and that a more intensive use of the property is prevented. Staff typically has only recommended approval for open space variations when there is an existing legal nonconforming situation and the proposed improvements will not increase the degree of nonconformity. Even though the proposed addition would not change the calculated open space percentage, the building addition is an expansion that would increase the visual impact of the structure and the overall bulk on the property.

Although the previous property owners created the existing nonconformity with regard to open space, the fact that the property does not currently meet code cannot be considered a hardship in and of itself. The necessary 352 square feet of open space could be created by removing pavement to create a ribbon driveway, installing grasscrete, or making other modifications.

To be granted a variation the petitioners must show that they have affirmed each of the "Standards for Variation." The petitioner's property does not have unique physical limitations that limit the owner from meeting the intent of the ordinance. The subject property is 8,000 square feet in size, which exceeds the minimum lot size of 7,500 square feet in the R2 District.

Staff finds that the conditions are not unique to the subject property. The design and layout of the petitioner's property is typical of any R2 Single Family Residential lot in the Village and there is nothing inherently unique about the subject property that warrants the open space relief. The hardship has not been caused by the ordinance and has instead been created by the extent of the existing and proposed improvements to the property, and granting the request could be injurious to neighboring properties because overbuilding single-family lots contributes to a loss of the neighborhood's suburban character.

Accordingly, staff recommends that this petition be denied. However, if the Zoning Board of Appeals finds that the existing deck would meet the standards for variations but the proposed

addition would not meet the standards, the ZBA could grant approval of a variation from the open space requirements in order to allow the deck to remain on the property as a legal, conforming structure. This action would allow the petitioner to replace the existing deck with a new deck of the same size if desired. Staff would not object to this variation.

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

Mr. Young noted that the petitioner would not be reducing the amount of open space but would be building over an existing deck. He asked if the deck would be considered pervious. Ms. Backensto stated that while the spaces between the boards could be included in an engineering calculation of pervious surface, pervious surface is not the same as open space and is not a factor in the petitioner's variation request.

Mrs. Newman asked why the garage permit was issued in 1991. Ms. Backensto stated that she did not know as the permit did not meet the open space requirements at that time. Chairperson Defalco noted that another permit, for a second-story addition, was issued in 1999.

Mr. Polley stated that the proposed addition would add bulk to the property. Mr. Young stated that the added bulk would be in the rear of the property and not directly visible from the street.

Chairperson Defalco noted that in a recent, similar case at 512 S. Craig Place (ZBA 06-08), the petitioner was requesting the variation in part to allow the rear entrance to be covered as it was considered the primary entrance to the home. He asked if this would be the case for the subject property. The petitioner stated that the primary entrance is currently the door on the side of the house. If constructed, the new addition could serve as a mudroom and become the primary entry. Mrs. Newman asked if the open deck would be considered pervious versus the proposed addition. Ms. Backensto stated that although the spaces between the boards of the deck could be considered pervious, the addition would be completely imperious.

Chairperson Defalco asked about the proposed dimensions of the addition. The petitioner stated that it would be 16 feet by 18 feet, or approximately 288 square feet. Mr. Young noted that the open space nonconformity currently exists, regardless of the addition. Chairperson Defalco stated that it was a question of bulk.

Mrs. Newman asked how high the deck was. The petitioner stated it was roughly five feet high. Mr. Bedard noted that although they would not be decreasing green space, they would be increasing the bulk on the property.

Chairperson Defalco stated that part of the hardship was the 1991 garage permit that created the nonconformity. The petitioner stated that he was still not clear why this issue did not come up in 1999. Ms. Backensto stated that staff's interpretation at that time considered the second story addition to be in compliance as it was over an existing permanent structure, but the proposed new addition would be over a more temporary type of structure. Mr. Young stated that he disagreed with staff's differentiation between permanent and nonpermanent structures.

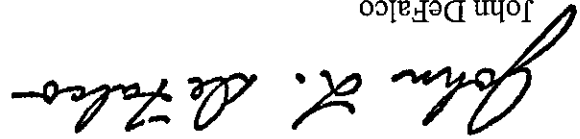
Mr. Bedard asked about the proposed construction. The petitioner stated that it would be frame. Mr. Bedard stated that he was not generally in favor of adding to the bulk on the property, but it would be difficult to deny the variation given the previous permits that had been issued in past years.

Mr. Polley asked if the addition would be used as an apartment. The petitioner stated that it would not be an apartment, but rather an extension of his single-family home. After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 4-1, submits this petition to the Corporate Authorities with a recommendation of approval for the requested variation, subject to the following condition:

1. The open space variation shall apply only to the existing and proposed improvements shown on the Plat of Survey dated May 18, 1994 and construction drawings dated April 17, 2006, submitted as part of this petition. Should the principal structure be damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its fair market value, the property must thereafter conform to the minimum fifty percent (50%) open space requirement.

Respectfully,

VILLAGE OF LOMBARD



John Defalco

Chairperson

Zoning Board of Appeals

att-

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

TO: Zoning Board of Appeals
FROM: Department of Community Development
PREPARED BY: Jennifer Backensto, AICP Planner II
HEARING DATE: June 28, 2006

TITLE

ZBA 06-12; 125 S. Stewart Avenue: The petitioner requests approval of a variation to Section 155.406 (H) to reduce the amount of open space on the subject property to 45.6 percent where a minimum of 50 percent open space is required, to allow for the construction of a residential addition within the R2 Single Family Residential District.

GENERAL INFORMATION

Petitioner/Property Owner: Paul R. Bojan
125 S. Stewart Avenue
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning: R2 Single Family Residential District
Existing Land Use: Single Family Residential
Size of Property: 8,000 Square Feet

Surrounding Zoning and Land Use

North: R2 Single Family Residential District; developed as Single Family Residences
South: R2 Single Family Residential District; developed as Single Family Residences
East: R2 Single Family Residential District; developed as Single Family Residences
West: R2 Single Family Residential District; developed as Single Family Residences

ANALYSIS

SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on May 25, 2006.

1. Petition for Public Hearing
2. Response to the Standards for Variation
3. Plat of Survey, prepared by Michael J. Emmert Surveys, Inc., dated May 18, 1994.
4. Construction drawings for proposed three-season room, dated April 17, 2006.

DESCRIPTION

The petitioner is requesting a variation to decrease the required open space from 50 percent of the lot area to 45.6 percent of the lot area. The property is currently nonconforming with 45.6 percent open space. The petitioner wishes to construct a three-season room addition over a portion of the existing deck. The addition is considered an expansion to the existing nonconformity and therefore requires a variation.

INTER-DEPARTMENTAL REVIEW COMMENTS

Fire and Building

Fire and Building have no comments on this petition.

Public Works Engineering

Public Works has no comments on this petition.

Private Engineering

The Code requirement of 50 percent open space serves both to limit the density on lots as well as the volume of stormwater runoff. Decks are typically pervious since rainfall passes between the planks. However, the proposed addition over the deck would make the lot more than 50% impervious. Therefore, the Private Engineering Services Division recommends that the proposed addition be denied.

Planning

Background

The 50 percent minimum open space requirement was added to the Zoning Ordinance in 1990. At that time, the subject property was improved with a single-family home, one-car garage, and driveway. In 1990, a permit was issued for a deck that met the open space requirement. In 1991, a permit was issued for a two-car garage and driveway extension that left the property with the 45.6 percent open space that exists today. In 1999, the current property

owner received a permit for and constructed a second-story addition over the existing home. The nonconforming open space was noted in April of this year when the petitioner applied for a building permit to construct a one-story three-season room addition.

Standards for Variations

The standards of the Zoning Ordinance are set for the provision of open space, to preserve green space, and maintain the aesthetics of a suburban setting. The Village's Comprehensive Plan states "the existing visual and environmental character of Lombard's various residential neighborhoods should be preserved and enhanced." The open space standards within the R2 District help to achieve that goal by ensuring that lots do not have the appearance of being overbuilt and that a more intensive use of the property is prevented.

Staff typically has only recommended approval for open space variations when there is an existing legal nonconforming situation and the proposed improvements will not increase the degree of nonconformity. Even though the proposed addition would not change the calculated open space percentage, the building addition is an expansion that would increase the visual impact of the structure and the overall bulk on the property.

Although the previous property owners created the existing nonconformity with regard to open space, the fact that the property does not currently meet code cannot be considered a hardship in and of itself. The necessary 352 square feet of open space could be created by removing pavement to create a ribbon driveway, installing grasscrete, or making other modifications.

To be granted a variation the petitioners must show that they have affirmed each of the "Standards for Variation". The following standards have not been affirmed:

1. *That because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner has been shown, as distinguished from a mere inconvenience if the strict letter of the regulations were to be applied.* Staff finds that the petitioner's property does not have unique physical limitations that limit the owner from meeting the intent of the ordinance. The subject property is 8,000 square feet in size, which exceeds the minimum lot size of 7,500 square feet in the R2 District.

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. The design and layout of the petitioner's property is typical of any R2 Single Family Residential lot in the Village and there is nothing inherently unique about the subject property that warrants the open space relief.

3. *The alleged difficulty or hardship is shown to be caused by this ordinance and has not been created by any person presently having an interest in the property.* Staff finds that the

hardship has not been caused by the ordinance and has instead been created by the extent of the existing and proposed improvements to the property.

4. *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 granting the request could be injurious to neighboring properties because overbuilding single-family lots contributes to a loss of the neighborhood's suburban character.

Additional Considerations

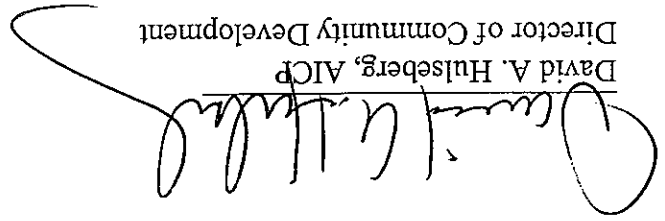
If the Zoning Board of Appeals finds that the existing deck would meet the standards for variations but the proposed addition would not meet the standards, the ZBA could grant approval of a variation from the open space requirements in order to allow the deck to remain on the property as a legal, conforming structure. This action would allow the petitioner to replace the existing deck with a new deck of the same size if desired. Staff would not object to this variation.

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 approval of the 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 accept the findings on the Inter-Departmental Review Committee as the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 06-12.

Inter-Departmental Review Group Report Approved By:


David A. Hulseberg, AICP
Director of Community Development

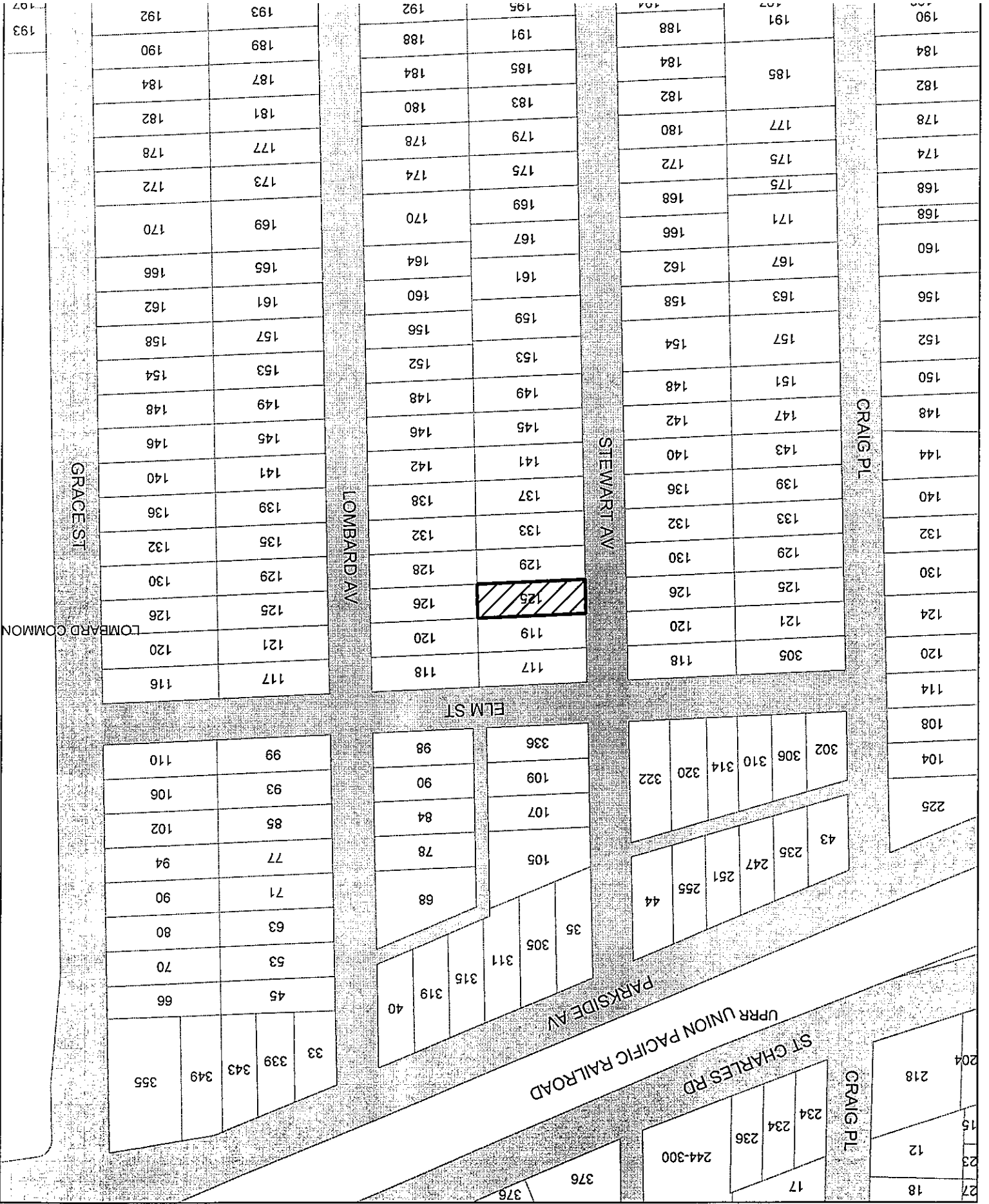
DAH:JB

att-

c: Petitioner

Location Map

ZBA 06-12




May 23, 2006

Village Officials

I am writing to you to request a variance in the building codes with regards to the green space requirement of 50% - our property, as it sits is at 45.6%. I have the lived at 125 S. Stewart ave. for the past 12 years and been a Lombard resident my entire life, with that being said, I have not changed the footprint of the house or lot since I moved in, yet when I requested a building permit to enclose a 3-season room on top of an existing deck at the back of my house, I was told that the permit could not be issued, since I am exceeding the green space requirement for this lot.

I did not build anything on this property to exceed the green space, the previous owners did, and The Village of Lombard building department issued permits for the work, on 2 separate occasions this could have come up and did not. As I said I purchased the house in 1994, and in 1990 a permit was issued for a deck, still within green space requirements, but in 1991 there was another permit issued for the garage and driveway, which is what put the property over the green space limit. (Both permits were issued before I owned the house) This issue could have come up in 1999 when I requested and was granted a permit for a second story on my house doubling the square footage of my house as well as doubling my property taxes, however this didn't come up then either. As I said earlier I did not create this issue and I am not requesting to increase the amount of green space covered I just want to enclose my **existing** deck to create a 3 season room.

Sincerely,

Paul Bojan

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A VARIATION
OF THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(ZBA 06-12: 125 S. Stewart Avenue)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, the subject property is zoned R2 Single Family Residence District; and,

WHEREAS, an application has been filed with the Village of Lombard requesting a variation from Title 15, Chapter 155, Section 405 (H) to reduce the amount of open space on the subject property to 45.6 percent where a minimum of 50 percent open space is required; and,

WHEREAS, a public hearing has been conducted by the Zoning Board of Appeals on July 26, 2006 pursuant to appropriate and legal notice; and,

WHEREAS, the Zoning Board of Appeals has forwarded its findings with a recommendation for approval to the Board of Trustees for the requested variations described herein, subject to conditions; and,

WHEREAS, the President and Board of Trustees have determined that it is in the best interest of the Village of Lombard to approve the requested variation.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That a variation is hereby granted from the provisions of Title 15, Chapter 155, Section 405 (H) to reduce the amount of open space on the subject property to 45.6 percent where a minimum of 50 percent open space is required.

SECTION 2: This ordinance is limited and restricted to the property generally located at 125 S. Stewart Avenue, Lombard, Illinois, and legally described as follows:

LOT 21 IN BLOCK 5 IN CAMBRIDGE MANOR, BEING A SUBDIVISION IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 1924 AS DOCUMENT 178816, IN DU PAGE COUNTY, ILLINOIS.

SECTION 3: This ordinance shall be granted subject to compliance with the following conditions:

1. The open space variation shall apply only to the existing and proposed improvements shown on the Plat of Survey dated May 18, 1994 and construction drawings dated April 17, 2006, submitted as part of this petition. Should the principal structure be damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its fair market value, the property must thereafter conform to the minimum fifty percent (50%) open space requirement.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2006.

First reading waived by action of the Board of Trustees this _____ day of _____, 2006.
Passed on second reading this _____ day of _____, 2006.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2006.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk