

JUNE 25, 2014

Title

ZBA 14-07

Petitioner & Property Owner

Co-Petitioners: David & Andrea Linderman of 100 E. Taylor Road, and the Village of Lombard, 255 E. Wilson Avenue

Property Location

100 E. Taylor Road
(06-17-114-020)
Trustee District #6

Zoning

R2 Single Family Residence
(United Homebuilders
Resubdivision)

Existing Land Use

Single Family Home

Comprehensive Plan

Low Density Residential

Approval Sought

A variation to allow a forty-two inch (42") tall fence, that is not a minimum of 75% open space, within a clear line of sight area

Prepared By

Matt Panfil, AICP
Senior Planner



LOCATION MAP

PROJECT DESCRIPTION

On May 12, 2004 a fence permit (Permit No. 2004-00000771, attached) was issued to the property owners (David and Andrea Linderman) for 100 E. Taylor Road. The permit was issued specifically for a forty-two inch (42") tall vinyl picket fence. The permit did not provide information as to the required or proposed percentage of open space between the pickets.

As the Village of Lombard does not perform field inspections for new fences, it was not until April 2014 that the Village received a complaint regarding the location of the petitioners' fence, as constructed. A subsequent inspection revealed the fence to be located closer to the property line than approved and also to be of a design less than seventy-five percent (75%) open space.

The petitioner is requesting the ability to maintain the existing fence in its current location.

APPROVALS REQUIRED

Section 155.205 (A)(1)(e) states that no fences or walls more than two feet (2') in height shall be located within the clear line of sight area, as defined in Section 155.802 of the Zoning Ordinance, unless it meets all of the following criteria:

- (i) Fences or walls are of open construction, such as chain link without slats, wrought iron, cyclone, picket, or split rail fences.

PROJECT STATS

Lot & Bulk (Proposed)

Parcel Size: 9,648 sq. ft.

Fence Height 4'

Reqd. Setbacks & Proposed Dimensions (in parens.)

Front (west) 30' (36.8')

Side (north) 6' (8.0')

Corner Side 20' (21.4')
(south)

Rear (east) 35' (35.1')

Submittals

1. Petition for Public Hearing;
2. Response to Standards for Variation;
3. Existing Condition Photo, dated April 28, 2014;
4. Plat of Survey dated September 18, 2003; and
5. Building Permit No. 2004-00000771

(ii) Fences or walls are not of solid construction, such as board on board, solid wood, brick, concrete, or chain link with slats.

(iii) Deciduous trees around or adjacent to the fence are free of foliage and branches from ground level to eight feet (8') above ground level. All other plant materials which are around, adjacent to, or through the fence are no greater than two feet (2') in height.

(iv) Supporting members are no greater than six inches (6") in width.

In regards to instances where a private residential driveway intersects an improved right-of-way or street, Section 155.802 defines the clear line of sight area as, "the area formed by the intersection of the edge of the pavement of such private drive with the improved rights-of-way or street, twenty feet (20') away from the point of intersection."

Section 155.802 defines an open construction fence as, "a fence which has over its entirety at least 75% of its surface area in open space which affords a direct view through the fence."

Therefore, because the existing fence is not at least seventy-five percent (75%) open construction and is located within the twenty foot (20') clear line of sight area, a variation is required.

EXISTING CONDITIONS

In addition to the subject fence, the property is improved with a two-story frame single family residence with an attached garage. In order to help place the request in its proper context, planning staff offers the following:

Surrounding Zoning & Land Use Compatibility

	Zoning Districts	Land Use
North	R2	Single Family Home
South	Taylor Rd / R2	Single Family Home
East	R2	Single Family Home
West	Charlotte St / R2	Single Family Home

INTER-DEPARTMENTAL REVIEW

Building Division:

The Building Division has no issues or concerns regarding the project.

Fire Department:

The Fire Department has no issues or concerns regarding the project.

Private Engineering Services:

Private Engineering Services (PES) stated that as long as the fence is not permitted an increase from its current height, there is not an issue with the fence remaining as is.

Public Works:

Public Works has the following comment regarding the project:

1. The clear line of sight area per Village Code is twenty foot by twenty foot (20'x20') right triangle adjacent to the driveway. Opacity is important in this area for safety reasons, particularly for children walking or riding bikes on the public sidewalk. As such, it is recommended that the seventy-five percent (75%) minimum opacity be required for that triangular area. Options include moving/removing pickets or relocating the fence out of the clear line of sight area.

Planning Services Division:

A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from other properties in the area. Within the response to the Standards for a Variation concerns were raised regarding privacy and security. The property owner also stated their belief that the fence is an aesthetic improvement to the block.

In order to be granted a variation each of the Standards for a Variation (responses attached) must be affirmed. Within the standards it is argued that the fence has existed as is for the last ten (10) years without altering the character of the neighborhood, injuring other property, or representing a danger to public safety.

Furthermore, by installing a picket fence the property owner's intent was to comply with Village Code. The property owner was aware of the open space requirement, but their understanding was that a picket fence in general was considered to be an open space design. The Code's seventy-five percent (75%) open space requirement was not clear to the property owner.

In consideration of precedent, staff has identified eight (8) similar cases that appeared before the Zoning Board of Appeals within the last ten (10) years. Each case involves a fence (or hedge) located within the clear line of sight area in a single-family residential zoning district. Of the eight (8) cases, staff recommended that the Zoning Board of Appeals recommend denial of the requested variation seven (7) times and approval of the requested variation once (ZBA 05-19).

One of the primary reasons cited by staff for the approval of ZBA 05-19 was that the fence provided a reasonable level of open space and did not exceed the four foot (4') maximum height allowed.

CASE NO.	DATE	ADDRESS	SUMMARY	ZBA	BoT
ZBA 05-19	12/1/2005	734S. Elizabeth St.	50% open, 4' tall fence within a Clear Line of Sight Area	Denial, 4-1	Approval, 6-0*

ZBA 06-13	9/21/2006	501 N. Garfield St.	33% open, 6' tall fence within a Clear Line of Sight Area	Denial, 6-0	Denial, 6-0
ZBA 06-20	12/7/2006	614 E. Berkshire Ave.	6' tall solid wood fence within a Clear Line of Sight Area	Modified to remove fence from Clear Line of Sight Area	
ZBA 07-01	2/15/2007	501 N. Garfield St.	33% open, 6' tall fence within a Clear Line of Sight Area	Denial, 5-0	Denial, 4-2
ZBA 09-11	1/21/2010	617 E. Berkshire Ave.	6' tall solid wood fence within a Clear Line of Sight Area	Denial, 5-0	Denial, 6-0
ZBA 10-02	5/20/2010	302 S. Grace St.	6' tall solid wood fence within a Clear Line of Sight Area	Denial, 5-0	Denial, 5-0
ZBA 11-02	6/2/2011	403 W. Ethel Ave.	6' tall solid fence within a Clear Line of Sight Area	Denial, 6-0	Modified to remove from Clear Line of Sight Area
ZBA 13-06	11/7/2013	521 S. Lewis Ave.	2.5' tall hedge within a Clear Line of Sight Area	None	Withdrawn

* Approved with the condition that at least a seven foot by seven foot (7'x7') Clear Line of Sight Area would be provided.

FINDINGS & RECOMMENDATIONS

As the petition has been brought forth in part by the Village, the Zoning Board of Appeals shall make findings of fact either in favor of or against the requested variation.

Motion for Approval:

If the Zoning Board of Appeals finds that it would be appropriate to grant the request, the Zoning Board of Appeals shall make the following motion recommending approval of the aforementioned variation:

Based on the submitted petition and the testimony presented, the requested variation **does comply** with the Standards for a Variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings as discussed at the public hearing, and those findings included as part of the Inter-Departmental Review Committee Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **approval** of ZBA 14-07, subject to the following conditions:

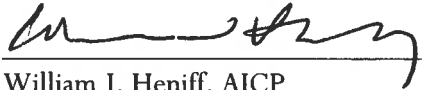
1. The zoning relief shall be limited to the existing forty-two inch (42") tall picket fence currently located on the subject property (as depicted in the attached photograph, made a part of this petition). In the event that the existing fence is damaged or destroyed to fifty-percent (50%) of its value, any new fence shall meet all Village Code requirements; and
2. If the existing fence is found to be located within the public right-of-way, the property owner shall enter into an encroachment agreement with the Village of Lombard, subject to approval by the President and Board of Trustees.

Motion Against:

If the Zoning Board of Appeals finds that it would not be appropriate to grant the request, the Zoning Board of Appeals shall 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 for a Variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings as discussed at the public hearing, and those findings included as part of the Inter-Departmental Review Committee Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 14-07.

Inter-Departmental Review Committee Report approved by:



William J. Heniff, AICP
Director of Community Development

c. Petitioner

EXHIBIT A: STANDARDS FOR VARIATIONS

The following is an excerpt from the Lombard Zoning Ordinance. A **detailed response** to all of these standards should be provided for all variations of the Lombard Zoning Ordinance and Lombard Sign Ordinance.

SECTION 155.103.C.7 OF THE LOMBARD ZONING ORDINANCE:

The regulations of this ordinance shall not be varied unless findings based on the evidence presented are made in each specific case that affirms each of the following standards:

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.*

The hardship pertains to the original placement of the fence in 2004. When the fence permit was issued, the fence was originally envisioned to be placed further to the north of the property line. However, recognizing the desire for privacy and security for the rear of the property and to recognize that the fence would be an asset to the rear yard and an aesthetic improvement to the block, the fence was installed to enclose the functional rear of the property. The hardship in this case would be that the existing fence would have to be substantially altered in a manner that would adversely impact the ability of the rear yard to be utilized for its intended purpose.

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.*

The subject property is a corner lot with the existing driveway accessing onto Taylor Avenue. In 2004 a fence permit was applied for and was issued by the Village for a fence within the corner side yard. The existing fence was constructed shortly thereafter and has not caused an issue since its installation in 2004. While the opacity requirement of 75% is not met by the fence design as constructed, the fence is a picket fence design that does provide for some a level of opacity.

3. *The purpose of the variation is not based primarily upon a desire to increase financial gain.*

The requested action is intended to address an existing fence issue. No financial gain would be derived by the approval of the requested relief.

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.*

The hardship caused by the ordinance would result in the loss of security and privacy for the area that functionally serves as part of the rear yard of the property. Moreover, the existing ordinance references picket fences within the types of fences permitted within the corner side yard, so the intent was to install a fence that met this requirement. However it was not deemed to be clear when the fence was constructed in 2004 that additional opacity requirements for open construction, set forth within Section 155.802 (definitions) would need to be met as well.

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.*

The fence in its current condition has not created an issue. The fence is 4 foot in height, which would allow for a level of visibility for motorists backing out of the driveway as well as those vehicles on Taylor Road. It is not a completely solid fence, so there is some level of visibility between the pickets themselves. In fact, the nature and design of this fence is the only encroachment into the clear line of sight area. There are no additional structures or vegetation that further decreases sight line visibility.

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

There are numerous cases in which existing hedgerows, solid fences ranging from 4 to 6 feet in height exist within the community. While most of these elements are legal nonconforming or installed prior to the Village's permit requirement starting in 2000, the existing fence on the property is no different than those fences throughout the community.

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.*

The fence and property meets these provisions. The fence still provides for a level of visibility for motorists and adult pedestrians. The nature of the picket fence is open which will not impact drainage in the neighborhood. It is also a well maintained fence which would not adversely affect property values in the neighborhood.

EXHIBIT B: PLAT OF SURVEY / BUILDING PERMIT NO. 2004-00000771



PLAT OF SURVEY

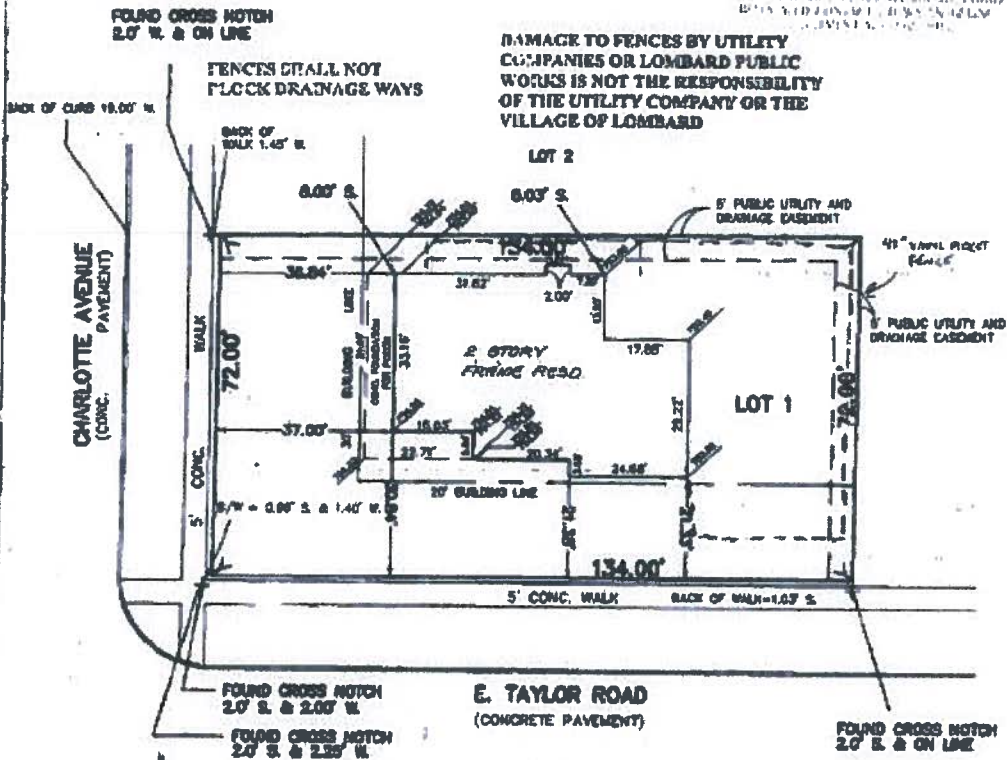
100 E. TAYLOR ROAD
LOMBARD, ILLINOIS 60148
PAGE 1 (2004-00000771)
REV. 09/02 00-0000

BY
GENTILE AND ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
FOUNDATION LOCATION

LOT 1 IN UNITED HOME BUILDERS RESUBDIVISION, A RESUBDIVISION OF LOTS 10 AND 11 IN BLOCK 8 IN ARTHUR T. MONTOSH AND COMPANY'S LOMBARD GARDENS, A SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 27, 2000 AS DOCUMENT R2200-087320, IN DUPAGE COUNTY, ILLINOIS.

PROPERTY COMMONLY KNOWN AS: 100 E. TAYLOR RD., LOMBARD, ILLINOIS

THE SURVEYOR HAS BEEN ADVISED BY THE
OWNER THAT THE UTILITIES ARE LOCATED
AS SHOWN ON THE PLAT AND THE
SURVEYOR HAS CONDUCTED A VISUAL
INSPECTION OF THE SAME.



DAMAGE TO FENCES BY UTILITY COMPANIES OR LOMBARD PUBLIC WORKS IS NOT THE RESPONSIBILITY OF THE UTILITY COMPANY OR THE VILLAGE OF LOMBARD

BENCHMARK: SQUARE CUT IN WALK IN FRONT OF 2 E. HARRISON STREET
ELEVATION 745.08

STAKE BENCHMARK: TAG BOLT OF HYDRANT LOCATED AT THE NORTHWEST CORNER OF CHARLOTTE AVENUE AND TAYLOR ROAD. ELEVATION 748.95

NOTE: FIELD INSPECTION AND RECORDS INDICATE THAT THERE IS NO SEWER ON TAYLOR ROAD.

NOTE:
EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES, RESTRICTIONS, COVENANTS, SUBDIVISION RESTRICTIONS, ZONING OR OTHER LAND-USE REGULATIONS; AND ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE SEARCH MAY REVEAL.

PLEASE GO TO DIGIT
FOR THE JULIE FURSTY
PLAT BEFORE YOU DIG

BASE SCALE: 1 INCH = 20 FEET
DISTANCES ARE MARKED IN FEET AND DECIMAL PARTS THEREOF
ORDERED BY: UNITED HOME BUILDERS
CHECKED BY: GNC
SURVEYED BY: J.M.H.
COMPARE ALL POINTS BEFORE BUILDING BY SAME AND AT ONCE REPORT ANY DISCREPANCY FOR DISCREPANCY OF SURVEY RESTRICTIONS NOT

STATE OF ILLINOIS ss
COUNTY OF DUPAGE ss

WE, GENTILE AND ASSOCIATES, INC. HEREBY CERTIFY THAT A SURVEY HAS BEEN MADE AT AND UNDER MY DIRECTION, OF THE PROPERTY DESCRIBED ABOVE, AND THAT THE PLAT HEREON DRAWN IS A CORRECT REPRESENTATION OF SAID SURVEY.

SEPTEMBER 18 2004

EXHIBIT C: EXISTING CONDITIONS PHOTO

100 E TAYLOR

4/28/14

9:05AM

MS2-4145JR

