

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 9, 2009.

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 a survey of the property showing proposed reductions of impervious surfaces.

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 (terrace), 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.

This petition is a follow-up on a previous petition, ZBA 09-01, which requested similar zoning relief. As part of ZBA 09-01, the petition requested a variation from the required fifty percent (50%) open space on the property to thirty-six and one-half percent (36.5%). Though the property remains currently at 36.5% open space, the petitioner has proposed to remove some impervious surfaces on the property that will bring the open space percentage up to forty-two and fifty-five one-hundredths percent (42.55%).

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

The PES Division of Community Development offers the following comments regarding the above petition:

- 1) With consideration to the historical drainage issues, PES does not support further relief from the open space requirements.

- 2) The property should be restored to meet the 50% open space requirement.
- 3) The grade of the rear yard should be returned to the original grade.

I have also attached the previous comments related to this petition from ZBA 09-01 for reference:

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 the following comments regarding the above petition:

If these deficiencies are the result of actions by the petitioner, then there is no reason that the property cannot be brought into full compliance with the codes, eliminating the need for variances.

FIRE DEPARTMENT

The Fire Department has reviewed the petition and has no comments.

BUILDING DIVISION

Upon review of the above referenced request, the Building Division referred to the following comments made by the Bureau of Inspectional Services regarding ZBA 09-01:

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

This petition is a follow-up on a previous petition, ZBA 09-01, which requested similar zoning relief. As part of ZBA 09-01, the petition requested a variation from the required fifty percent (50%) open space on the property to thirty-six and one-half percent (36.5%). Though the property remains currently at 36.5% open space, the petitioner has proposed to remove some impervious surfaces on the property that will bring the open space percentage up to forty-two and fifty-five one-hundredths percent (42.55%).

History

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. Attachment A is an aerial photograph from 2006 that shows these improvements. These site improvements were drawn on a plat of survey and were calculated by staff as occupying 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 because the contractor verbally indicated that the deck had been

removed and was replaced with sod. According to the previous calculation, this would allow the applicant to meet the open space requirement.

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. The deck was constructed without a permit.

The petitioner applied for the two required variations and a public hearing, ZBA 09-01, was held on April 13, 2009. The Zoning Board of Appeals recommended denial of both variation requests. The Board of Trustees subsequently denied the original petition on May 7, 2009.

Current Request

On May 26, 2009, Village staff met with the petitioner's attorney. The attorney presented a calculation showing what the petitioner believes the open space percentage on the property was prior to the garage fire. The petitioner states that the coverage on the property was 60.34% or 4590.36 square feet. Staff calculations from the survey provided indicate that this calculation is slightly off, the coverage being 59.72% or 4543.65 square feet. However, as all of the areas in question are proposed to be removed by the petitioner, the discrepancy does not alter the percentage of open space being requested by the petitioner. Staff is unable to confirm or deny the previous open space percentage on the property. However, it is the opinion of staff that the property probably was deficient in open space to some degree. Please see the attached aerial from 2006 (attachment A) which shows the improvements as they were before the garage fire. When the fifty percent (50%) open space requirement was added to the Zoning Ordinance in 1990, the subject property became non-conforming.

As part of this petition, the petitioner has proposed the removal of:

- A. Asphalt paving behind and to the east of the garage;
- B. Twenty feet of the brick walkway from the garage to the deck;
- C. A one-half foot strip of asphalt located along the eastern property line; and
- D. A two and one-half foot strip of asphalt located along the western edge of the driveway.

Previous to the construction of the brick paver deck at the rear of the home, a wooden deck was located in a similar position. The petitioner has indicated that this wooden deck was more than thirty years old and abutted the western property line. The 1978 Zoning Ordinance lists open terraces not over three (3) feet in height as a permitted encroachment in all required yards. No minimum side yard setback was associated with this provision. However, at the time the wooden deck was removed from the property it was a legal non-conforming structure with regard to the interior side yard setback. The removal of this deck has two effects regarding non-conformities on the subject property:

1. The property was brought into closer compliance with the requirement for fifty percent (50%) open space.
2. The legal non-conforming status of the wooden deck was brought into compliance.

Section 155.303(C) of the Zoning Ordinance states: "In the event that any nonconforming building or structure is damaged or destroyed, by any means, to the extent of more than fifty (50%) of the fair market value of such building or structure immediately prior to such damage, such building or structure shall not be restored unless such building or structure shall thereafter conform to all regulations of the zoning district in which such building or structure and use are located."

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 42.55% 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 has supported several of these cases, each for unique reasons. However, staff does not support open space variations in areas prone to flooding. Flooding in the area around 418 W. Wilson Avenue has been documented to Private Engineering Services. Staff feels that this is a significant concern and, therefore, does not recommend approval.

Staff is not supportive of the setback variation for the deck. 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. The deck also contributes to the deficiency in open space on the property. When the previously existing wood deck was removed from the property, the non-conformity was removed. The new deck should have been constructed to meet the setback requirement of two feet (2').

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.

Should the Zoning Board of Appeals find it appropriate to recommend approval of the requested variations, staff suggests that the following conditions be added to any motion for approval:

1. The petitioner shall remove all impervious surface indicated on the "Proposed Reductions" exhibit submitted as part of this public hearing.
2. The petitioner shall apply for and receive a building permit for the existing deck.
3. In the event that the pavement and paver bricks around the garage are removed, the site shall be left at grade. No additional gravel or fill material is permitted. Grade shall be consistent with what was previously at these locations prior to being improved and it shall match the grade with the adjoining properties. Final grade is subject to the approval of the Director of Community Development.
4. The downspout at the southeast corner of the home shall be extended into the front yard.
5. The approval related to this petition shall only apply to the existing construction. Any future construction on the subject property shall meet all current Code requirements.

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 09-10.

Inter-Departmental Review Group Report Approved By:

William J. Heniff, AICP
Director of Community Development

c: Petitioner