

December 4, 2003

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

Subject: ZBA 03-25; 1000 W. Shedron Way

Dear President and Trustees:

Your Zoning Board of Appeals submits for your consideration its recommendation on the above referenced petition. The petitioner requests a variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner yard from four feet (4') to six feet (6') the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on November 19, 2003. Terri Hedding, the homeowner, presented the petition. Mrs. Hedding read from written comments. Mrs. Hedding stated that there is high visibility into her backyard since her home is on a corner lot. She stated that traffic is higher on her corner because she is located at one of two main entrances to the Pinebrook Subdivision. Mrs. Hedding stated that people use Lloyd as a short cut from Roosevelt to the industrial area and often ignore the "Do Not Enter" sign.

Mrs. Hedding stated that she is requesting the six foot fence for her family's safety due to their hearing disability. She feels that their disability is exposed to anyone who travels past their yard. Mrs. Hedding acknowledged the neighbors' letter. She stated that she was unaware of how they felt and was shocked by their comments. She said that she understood their point of view and has nothing personal against them, however she believes that they are unaware of her family's isolation and the barriers to exchanging neighborhood information. Mrs. Hedding stated that they have not been invited to any neighborhood meetings in the six years that they have lived there and doubted that a sign language interpreter would be provided.

Mrs. Hedding stated that they have no idea what is taking place in the neighborhood. She stated that she believes this makes her family vulnerable to violence. Mrs. Hedding described an incident that occurred in September 2003 in which children entered her yard without permission. She stated that she did not know the children nor who their parents were and would not be able to communicate with them due to her disability.

Mrs. Hedding referred to the neighbors concerns regarding the endangerment of their children at the bus stop. She stated that she didn't believe a fence would prohibit children from running into the streets. Mrs. Hedding stated that it was her opinion that parents should be responsible for the safety of their children and that they should not rely on her four foot fence for their protection.

Mrs. Hedding stated that she believed it would be easy for prowlers to enter her yard with the four foot fence. She cited research indicating that people with disabilities are more likely to be victims of violent crimes. Mrs. Hedding stated that communication barriers would prevent the timely investigation of any potential incidents at her home. Mrs. Hedding discussed another incident that occurred in March 2003 in which a man approached her in her garage. She stated that she did not know the man and she feared for her family's safety. Mrs. Hedding stated that the police were pursuing the man and arrested him in front of her home. She stated that she was unaware of the circumstances surrounding the incident due to the communication barriers. Mrs. Hedding stated that she believes a six foot fence would protect her family and will hide their disability from passersby.

Mrs. Hedding stated that she believes there is enough visibility between her house to the corner for parents to supervise their children waiting for the bus. She stated that she is willing to move the fence back sixty feet to allow for greater visibility to address concerns. Mrs. Hedding stated that she believed no homes in the area had been vandalized with graffiti. She stated that she believes that the graffiti on the stop sign was an expression of someone's opinion regarding the war in Iraq rather than affiliated with gang activity.

Mrs. Hedding stated that she believes there is adequate visibility from the corner of Shedron and Lloyd for police to view cars coming on Aspen. She also stated that the Americans with Disability Act is a federal law to protect people with disabilities. She stated that local governments are responsible to comply with the law and make reasonable accommodations for people with disabilities. Mrs. Hedding stated that the city is responsible for installing ramps at curbs to accommodate people in wheelchairs. She stated that she believes the Village of Lombard is responsible to provide reasonable accommodations for her because of her disability and to ensure that her family is safe by reducing the odds of the occurrence of a criminal act.

Chairperson DeFalco then opened the meeting for public comment. Tim Murphy, 1010 Shedron Way, referenced the letter sent on behalf of the neighbors. Mr. Murphy stated that Mrs. Hedding made a legitimate point regarding the high traffic at the corner. Mr. Murphy stated that he lives next door to the Heddings and because he is aware of their disability his eyes and ears are open to any suspicious activity. Mr. Murphy stated that as a parent he apologized for the misbehavior of any children in her yard. He stated that his wife is a teacher of children with disabilities so they have respect for the fact that the Heddings are disabled. Mr. Murphy stated that the neighbors take pride in the neighborhood and believe that a fence would close off and further isolate the Heddings. Mr. Murphy referenced the high traffic on the block and the large number of children. He stated that he believed the fence would obstruct the view of children and drivers. He also stated that a six foot fence on Lloyd became dilapidated. He stated that he was concerned that the weather would destroy the fence over time. Mr. Murphy stated that no matter what the outcome he wanted to assure Mrs. Hedding that they would receive information regarding neighborhood meetings.

Angela Clark, Planner I, gave the staff report. The petitioner requests a variation to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'). The petitioner's lot is located at the corner of Shedron Way and Lloyd Avenue. The petitioner would like to replace the existing four foot (4') chain link fence with a six foot (6') solid wood fence. A text amendment to increase the fence height in corner side yards to six feet (6') was workshopped before the Plan Commission in May 2002. Staff believed that the amendment could be supported provided that the proposed fence was not abutting the front yard of another property. Upon review of the proposed amendment, the Plan Commission believed that the current requirement should remain in place. The four-foot (4') height restriction of fences in corner side yards is intended to provide adequate visibility for pedestrian, bicycle, and vehicular traffic. This restriction is also intended to ensure that light and air flow are not obstructed on other properties, as well as for aesthetic purposes within neighborhoods.

While staff does not dispute the petitioner's concerns regarding safety in light of the petitioner's hearing impairment, staff cannot support the variation for the following reasons. Staff finds that the placement of a solid six foot fence within the proposed location poses several negative impacts. The proposed location of the fence falls within the front yard area of an abutting property. Code requires in such instances that the fence remain outside of the neighboring required front yard. Staff finds that placement of the fence adjacent to the neighboring front yard may be aesthetically displeasing as well as obstruct light and the view of that property. Staff also finds that placement of the proposed fence could detract from the desired visibility along the street intended by Code.

A variation may only be granted if there is a demonstrated hardship. The petitioner raised several issues within the response to the Standards for Variations. Many of the identified threats could potentially effect any corner lot within the Village of Lombard. Staff recognizes the petitioner's unique circumstances, however staff believes that the petitioner's safety concerns can be addressed within the requirements outlined in the Code. The petitioner may place a six foot fence on the property outside of the corner side yard and abutting front yard areas. The fence could be placed thirty feet (30') west of the eastern property line, enabling the petitioner to block visibility from the street without encroaching the corner side yard. Furthermore, granting of a variation requires that the petitioner show that they affirmed each of the "Standards for Variation". Staff finds that the following standards are not affirmed.

Staff finds that there is no demonstrated physical hardship, nor are there any unique topographical conditions related to this property that would prevent compliance with the ordinance. The petitioner's stated hardship in this instance is the petitioner's hearing impairment. Staff finds that the concerns raised by the petitioner can be reasonably accommodated within the Code requirements. Staff concurs with the petitioner's assessment that increased traffic is experienced on the corner lot. However this is not unique to the subject property, but rather characteristic of corner lots in general. The petitioner's lot is comparable to other corner lots in the single-family residential district. Staff finds that there are not any unique differences between the petitioner's lot and others with the same classification. Staff finds that the hardship has not been created by the ordinance. Staff finds that the placement of a six-foot (6') fence adjacent to a neighboring front yard may be aesthetically displeasing as well as restrict light and air flow to the neighboring property. While there are other properties in the neighborhood that have six-foot fences in the corner side yard, fence permits are not on file for the properties identified in the petitioner's responses to the Standards for Variations. The fences may have been constructed prior to the fence permit requirements or without permits.

Ms. Clark stated that if the Zoning Board finds that this request meets the Standards for Variations, staff recommends that a condition be placed on the variation to apply to the present homeowners, in light of the fact that the stated hardship applies specifically to them. Should the petitioner no longer reside at the subject property, the portion of the fence within the corner side yard shall be removed from the property.

Chairperson DeFalco then opened the meeting for discussion among the board members.

Mr. Young asked for clarification of fence requirements for corner properties. Ms. Clark stated that Mrs. Hedding could have a six foot fence by right on the western section of the property as well as the area west of the thirty foot building line on the northern border. She

stated that a solid six foot fence could be placed thirty feet west of the eastern border of the property.

Mrs. Newman inquired about the ADA issues. William Heniff, Senior Planner, stated that staff consulted with Village Counsel regarding the ADA requirements. Counsel concurred with staff's opinion that the requested variation is not directly related to the disability, as a reasonable accommodation could be achieved by placing the six foot fence within the setback requirements.

Mr. Young stated that several issues had been raised that were beyond the scope of the variation. He suggested that those issues be pursued with the Traffic Safety Committee.

Mr. Murphy asked if a six foot fence could be placed along the side that abuts his property. Chairperson DeFalco stated that six foot fences are permitted in interior side yards.

Mr. Young asked if hedgerows are permitted. Mr. Heniff stated that they would be subject to the same requirements as a fence.

Mr. Murphy asked what recourse was available to the neighbors in the event the fence became dilapidated. Mrs. Hedding stated that she would be responsible for the fence. Mr. Heniff stated that Mr. Murphy could contact the Village's Code Enforcement staff regarding such matters.

Mr. Young asked if there were any line of sight issues. Mr. Heniff stated that there were no sight issues as defined by Code. He stated that the driveway of the residence north of the Hedding's property is on the opposite side of the proposed fence.

Mr. Polley asked if Mrs. Hedding intended to replace the entire fence around the yard. Chairperson DeFalco clarified which sections of the fence required relief.

Dr. Corrado stated that a fence would further isolate the Heddings. Mrs. Hedding stated that they are currently isolated and it is more important to keep her family safe.

Dr. Corrado asked if the petitioner would consider placing a six foot fence going from the northeast corner of the home traveling toward the north lot line.

Mrs. Hedding asked if she would need a variation for a four foot fence in the corner side yard. Chairperson DeFalco stated that a variation would not be needed for a four foot fence. Mrs. Hedding said that she would take these options under consideration.

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After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals submits this petition to the Corporate Authorities with a recommendation for **denial** of the requested variation.

The roll call vote was 5-0 to recommend denial of ZBA 03-25.

Respectfully,

VILLAGE OF LOMBARD

John DeFalco
Chairperson
Zoning Board of Appeals

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