


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)


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TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager 

DATE: May 11, 2010 (B of T) Date: May 20, 2010

TITLE: ZBA 10-02: 302 S. Grace Street

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:

1) 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 side yard from four feet (4') to six feet (6').

*The ZBA recommended denial of this variation by a 4-1 vote.*

2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

*The ZBA recommended denial of this variation by a 5-0 vote.*

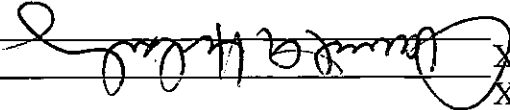
Please place this item on the May 20, 2010 Board of Trustees consent agenda.

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

Village Attorney X

Finance Director X

Village Manager X



Date \_\_\_\_\_

Date \_\_\_\_\_

5/19/10

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:** David A. Hulseberg, Village Manager

**FROM:** William Heniff, AICP,  
Director of Community Development 

**DATE:** May 20, 2010

**SUBJECT:** ZBA 10-02: 302 S. Grace Street

Please find the following items for Village Board consideration as part of the May 20, 2010 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 10-02;
3. Letter from Carmen Archer, neighbor at 303 S. Lombard Avenue
4. Plans associated with the petition.

This petition consists of two variation requests. The first variation request is to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6') and the second variation request is to allow a solid wood fence six feet (6') in height in the clear line of sight area. *The ZBA took 2 separate votes, one for each variation, and both variations were recommended for denial.*

Please place this petition on the May 20, 2010 Board of Trustees consent agenda.



**VILLAGE OF LOMBARD**  
 255 E. Wilson Ave.  
 Lombard, Illinois 60148-3926  
 (630) 620-5700 Fax (630) 620-8222  
 www.villageoflombard.org



May 20, 2010

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

**Subject: ZBA 10-02: 302 S. Grace Street**

Dear President and Trustees:

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

1) 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 side yard from four feet (4') to six feet (6').

2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on April 28, 2010.

Chairperson DeFalco opened the meeting for public comment. Nicole DiGiacomo and Kyle Kayson, 302 S. Grace, presented the petition. Ms. DiGiacomo stated that they are requesting a variation to replace an existing wood fence with a new vinyl fence. They have physical surroundings which makes their property unique. They live on Grace which is a busy street, four homes north of the Prairie Path. They encounter a great deal of noise from vehicular, foot and bike traffic. They also live close to the Lombard Police Department so they have police cars traveling at high speeds down their street. They have two dogs, one large one and one small one, so the larger dog would be able to jump over a 4' fence and the smaller dog would be able to fit through a 75% open fence. They also would lose a sizeable portion of their backyard in order to comply with code.

David A. Hulseberg  
 Village Manager

Trustees  
 Greg Alan Gron, Dist. 1  
 Richard J. Tross, Dist. 2  
 Zachary C. Wilson, Dist. 3  
 Dana L. Moreau, Dist. 4  
 Laura A. Fitzpatrick, Dist. 5  
 William "Bill" Ware, Dist. 6

Brigitte O'Brien  
 Village Clerk

William J. Mueller  
 Village President

*"Our shared vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses 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."*

Mrs. DiGiacomo gave examples of homes in the area, 197 Grace, 205 Highland, 352 Stewart and 256 Maple - all have fences 6' or taller and are located in close proximity to the driveway. Also, none of these houses are located as close to the Prairie Path as they are.

The purpose of having a 6' fence is to keep their animals safely enclosed. They moved to the area 2 years ago and they want to keep the noise to a minimum. They have wonderful neighbors and want to be considerate of them. Mrs. DiGiacomo feels that the difficulty does not lay with them, but with the ordinance. She noted that the fence has existed in its current location for many years and there have been no accidents or problems. She doesn't feel there is a risk to traffic. They have tried to be amenable to the clear line of sight and will place the fence at an angle by the driveway. The proposed fence will not alter the character of the neighborhood nor will it diminish property values, as the new fence will make the area more attractive. They are seeking to replace the fence with no change, but have compromised with the clear line of sight.

Concluding Mr. Kayson stated they are trying to keep the distractions to a minimum and want to replace what is already existing.

Chairperson Defalco asked if there was anyone present to speak in favor or against the petition.

Patrick Patton, 230 S. Grace Street, spoke on behalf of himself and his wife, Sheila, who was also in the audience. He noted they are in favor of the petition. He also indicated that he has a letter from his elderly neighbor at 303 S. Lombard, who is in favor of having a 6' wooden fence in the backyard. Mr. Patton stated that having a new solid fence is good for the neighborhood. Their larger dog is an olympic-type of athlete and would have no problem hurdling over a 4' fence. Distractions to the dogs will be kept to a minimum by having a solid fence, as the dogs will not be able to see through a solid fence, which will result in their barking being kept to a minimum.

Chairperson Defalco then requested the staff report.

Michael Toth, Planner I, presented the staff report. The subject property is located at the southwest corner of Grace Street and Ash Street. The petitioner is requesting a variation to allow for the replacement of an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The fence is located along the Ash Street side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence would be removed in its entirety, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

The existing fence currently stands within the clear line of sight triangle at the driveway on the subject property. The proposed fence is indicated by the orange line below. The clear line of sight area at the intersection of the driveway and the public right-of-way is formed as a triangle

with legs extending twenty feet (20') north along the property line and twenty feet (20') west along the driveway.

Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. As such, the petitioner's replacement of the fence requires that the new fence meet the four-foot height restriction or that a variation be granted. A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area.

Within the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of two canines. Specifically, the petitioner states that canines would be able to physically jump over a four (4) foot fence and slip through a fence that is 75% open construction (as required of a fence greater than two (2) feet in height in the clear line of sight area). While staff recognizes that some of these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship associated with the geographic state of the property.

Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner would be required to obtain a fence permit for the proposed fence.

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

Mr. Young asked staff if the petitioner's fence was legal non-conforming. Mr. Toth answered yes, that it was erected prior to the fence permit process.

Chairperson Defalco noted that the properties previously mentioned by the petitioners were

likely erected prior to the fence permit process and agreed with the petitioners that they probably do not meet code. He explained how staff noted the existence of fences prior to the fence permit process becoming effective. Now, due to the permit process, if an existing fence needs to be removed, the new fence would be required to meet the current zoning ordinance provisions. The

purview of the ZBA is to listen to the petitioner's testimony and determine if the request is warranted relative to specific conditions that exist for each property. This Board takes a very strict interpretation of the clear line of sight issue. We have had other petitioners who have had large dogs and this Board has not seen that as a valid reason for a variation. He asked if they had the pool denoted on the Plat of Survey. Mr. Kayson answered that the pool was no longer there. Chairperson Defalco then explained the potential danger to pedestrians using the sidewalk when there is not a clear line of sight, especially when someone is backing down the driveway.

Mr. Kayson asked their opinion of the angle of the fence proposed by the fencing company.

Mr. Young indicated that the 20' is not negotiable.

There was then discussion among the Board Members and the petitioners relative to the petitioner's request for a variation within the clear line of sight and how it was represented in Diagram 1 within the staff report. Mr. Toth explained the variation and the diagram.

Chairperson Defalco asked the petitioners why they have a problem with the 20' clear line of sight area. Mr. Kayson answered that it cuts into the backyard useable space.

Mr. Kayson indicated that he didn't understand how 20' was picked rather than another number and asked for an explanation. Mr. Toth answered that the Village conducted different studies and interviewed various communities. He added that it has been a provision in our code for years. Mr. Young answered that the justification is that if you have a child on a bike and you are backing out of the driveway, you wouldn't be able to see.

Mr. Kayson stated that any sort of angle would be good and doesn't see a safe versus an unsafe angle.

Chairperson Defalco noted that the ordinance was adopted by the Board of Trustees and is not under ZBA's purview to dispute it. Our responsibility is to look at existing property conditions and determine if there is a rationale for the variation. While the ordinance will mean that there will be a reduction in your enjoyment of your yard, the ZBA is not responsible for keeping your dogs in your yard.

Ms. DiGiacomo answered that if they didn't have the dogs they would not need the variation and wouldn't be here. She then asked what their recommendation would be on how to find a solution to this problem.

Chairperson Defalco suggested keeping a 6' fence and adhering to the 20' x 20' clear line of sight triangle. This would keep both dogs secure and only cut back your usable yard space by approximately 100-125 square feet. You would also be reducing the noise and being good neighbors.

Mr. Tap asked if American Fence Professionals specified that you seek the permit and if they were aware of the Village rules. Mr. Kayson stated that it was up to them to get the variation and the fencing company knew the rules as they have previously performed work in the Village.

Chairperson Defalco asked the Board Members if they wanted to vote on the petition as a whole or on each variation separately. Mr. Young suggested that each variation be voted on separately.



Variation #1 - 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 side yard from four feet (4') to six feet (6').

Young made a motion to approve the variation. As there was no second, the motion failed.

On a motion by Newman and seconded by Corrado the Zoning Board of Appeals recommended denial of the variation by a 4-1 vote.

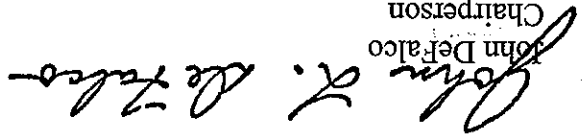
Variation #2 - A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

Chairperson Defalco noted that the following variation/vote should also include a 4' fence height in the clear line of sight area so the petitioner's wouldn't have to reapply and spend more money on petition fees.

On a motion by Newman and seconded by Tap the Zoning Board of Appeals recommended denial of the variation by a 5-0 vote.

Respectfully,

VILLAGE OF LOMBARD

  
John Defalco  
Chairperson

Zoning Board of Appeals



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

**TO:** Zoning Board of Appeals      **HEARING DATE:** April 28, 2010

**FROM:** Department of Community Development  
PREPARED BY: Michael S. Toth  
Planner I

**TITLE**

**ZBA 10-02; 302 S. Grace Street:** The petitioner requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:

1) 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 side yard from four feet (4') to six feet (6').

2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

**GENERAL INFORMATION**

**Petitioner/Owner:** Nicole DiGiacomo  
302 S. Grace St.  
Lombard, IL 60148

**PROPERTY INFORMATION**

**Existing Zoning:** R2 Single Family Residential District  
**Existing Land Use:** Single Family Residence

**Size of Property:** approximately 9,891 square feet

**Surrounding Zoning and Land Use:**

**North:** R2 Single Family Residence District; developed as Single Family Residences  
**South:** R2 Single Family Residence District; developed as Single Family Residences  
**East:** R2 Single Family Residence District; developed as Single Family Residences

West: R2 Single Family Residence 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 March 25, 2010.

1. Petition for Public Hearing.

2. Response to the Standards for Variation.

3. Plat of Survey, prepared by ARS Surveying Services, dated April 21, 2008.

### DESCRIPTION

The subject property is located at the southwest corner of Grace Street and Ash Street. The petitioner is requesting a variation to allow for the replacement of an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The fence is located along the Ash Street side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence would be removed in its entirety, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

### INTER-DEPARTMENTAL REVIEW COMMENTS

#### ENGINEERING

##### Private Engineering Services

The PES Division of Community Development has the following comment on the above petition:

1) For safety, the fence shall conform to the Village's line-of-sight requirements.

##### Public Works Engineering

Public Works Engineering has no comments regarding this request.

#### FIRE DEPARTMENT

The Fire Department has no comments regarding this request.

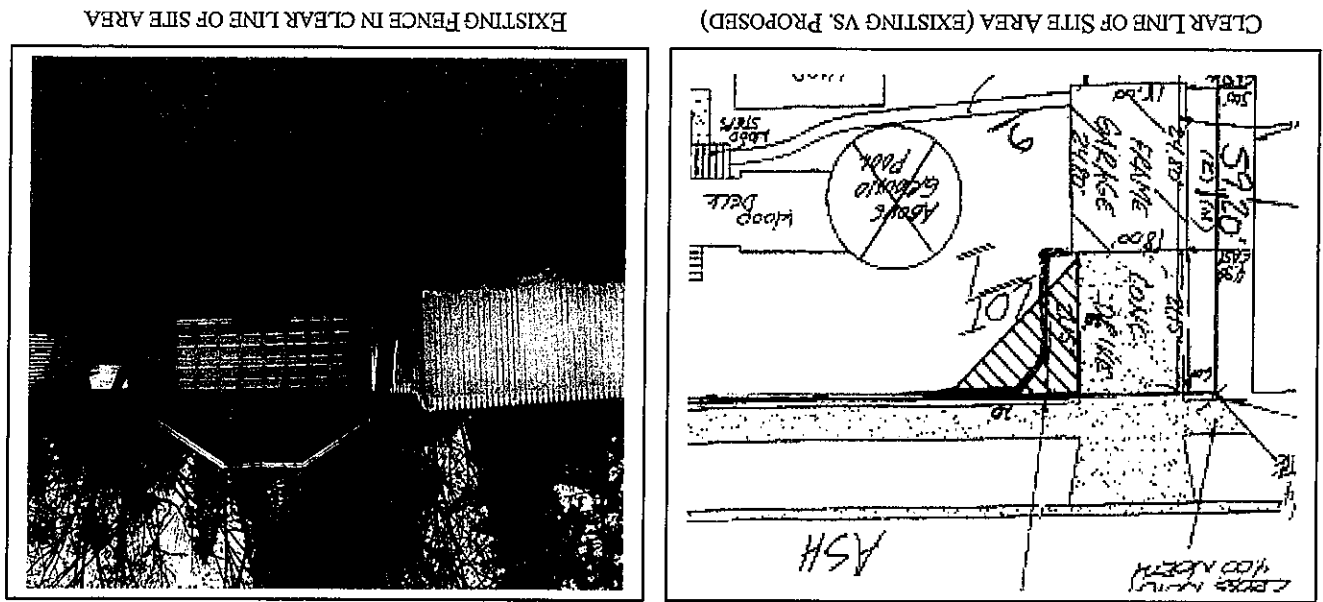
#### BUILDING DIVISION

The Building Division has no comments in reference to ZBA 10-02; 302 S. Grace Street.

**PLANNING**

The subject property currently has an existing solid wood fence six feet (6') in height within the corner side yard and within the clear line of sight area. The Zoning Ordinance allows non-conforming fences to remain in existence provided that once a non-conforming 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.

The existing fence currently stands within the clear line of sight triangle at the driveway on the subject property. The proposed fence is indicated by the orange line below. The clear line of sight area at the intersection of the driveway and the public right-of-way is formed as a triangle with legs extending twenty feet (20') north along the property line and twenty feet (20') west along the driveway. The clear line of sight triangle is shown in red. Staff notes that the pool no longer exists on the subject property.



Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. As such, the petitioner's replacement of the fence requires that the new fence meet the four-foot height restriction or that a variation be granted. A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area.

Within the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of two canines. Specifically, the petitioner states that canines would be able to physically jump over a four (4) foot fence and slip through a fence that is 75% open construction (as required of a fence greater than two (2) feet in height in the clear line of sight area). While staff recognizes that some of these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship associated with the geographic state of the property.

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 fence height regulations. The petitioner's property does not have physical surroundings, shape, or topographical features that differ substantially from other corner lots in the neighborhood as to be demonstrative of a hardship. The property is relatively flat and the existing topography does not impact the ability of the property owner from meeting the fence height provisions. There are no conditions which prevent the fence from being removed from the clear line of sight area.

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 to meet the established regulations. Canine ownership and the proximity to a collector street are not unique or even rare circumstances in the Village.

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 fence could be constructed per the ordinance requirements by lowering the fence to four feet (4'). The fence could also be moved out of the clear line of sight area or constructed to be seventy-five percent (75%) open. The hardship has been created by the petitioner as a result of the petitioner's preference for the fence's height and location.

6. *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.*

As stated above, the fence in the clear line of sight area could be a danger to public safety.

Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends

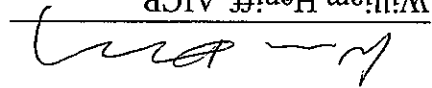
that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner should be required to obtain a fence permit for the proposed fence.

### FINDINGS AND RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations for the requested variations. 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 variations:

Based on the submitted petition and the testimony presented, the requested variations **do 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 10-02.

Inter-Departmental Review Report Approved By:



William Heniff, AICP

Director of Community Development

c: Petitioner





March 24, 2010

Written Response to the *STANDARDS FOR A VARIATION*

302 S. Grace St.  
Lombard IL 60148

1. Our home is located on Grace Street four houses north of the Prairie Path. This makes the area near our home particularly busy with pedestrian and bicycle traffic. In addition, we are located a few blocks north of the Lombard Police Department. This also makes our street a frequent route for high speed police traffic. These physical surroundings cause concern should our larger (53 pounds) dog jump over a 4' fence, or should our smaller (8 pounds) dog escape the yard through a slatted fence. The shape of our backyard property is such that if we move the fence in to comply with the current code, we would lose a sizable portion of our backyard. We also have longstanding flower beds, shrubs, and trees that would need to be removed should we set the fence in.

2. The location near the Prairie Path, Grace St. and police department are unique to our property and the varying sizes of our dogs make our family's situation unique as well. Our larger dog is very athletic and would have little problem in jumping over a height of 4'. Our smaller dog would be able to slip through a fence that would allow 75% visibility. The setbacks proposed in the ordinance would require a fence that would cause us to lose a sizable portion of our usable backyard.

3. The purpose of a 6' privacy fence is intended to protect the well being of our pets and provide some privacy on a busy corner lot. We do not stand to increase the value of our property with the addition of our fence. In addition, we are also very concerned about being good neighbors and limiting barking between our dogs and other people and dogs walking past our property.

4. This difficulty is associated with the ordinance and not created by any person presently having interest in the home. We bought this home two years ago and were not made aware by the sellers that the current fence is in violation of code. One of the primary reasons we bought this home was because we appreciated the spacious private backyard that provided security for our dogs. Had we been made aware that the fence was in violation, we would not have considered buying this home.

5. The granting of the variation will pose no detriment to public welfare or injurious to other property or improvements in the neighborhood. The proposed fence will be replacing the existing 6' privacy fence which has existed for many years with no detriment to public welfare. The proposed fence should have no clear line of sight issues.

6. The granting of the variation will not alter the essential character of the neighborhood. The proposed fence will be replacing a long standing existing 6' privacy fence. Several other similar homes in the immediate area also have fence heights greater than 4'.  
7. There will be no impairment on lighting or air to adjacent property. There will be no change to congestion of public streets. No increase in the danger of fire, natural drainage, or drainage on adjacent property shall occur. This should in no way diminish property values in the neighborhood. We are replacing an existing 6' privacy fence which has existed at the property for 10-15 years with no complaint from neighbors or public safety concerns.

I, Carmen Archer, at 303 South Lombard Avenue in Lombard, Illinois, am completely in favor of Kyle and Nicole at 302 South Grace Street, replacing their current 6 foot wooden fence with a new 6 foot vinyl fence.

I ask that the Village Board grant approval for their project.

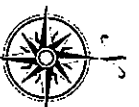
Thank you.

*Carmen Archer*  
4/17/10

Carmen Archer

*Thank you  
also to those at  
Lombard, Ill. 60148  
April 27th 2010  
Pat M. Lane 4/27/10*

# ZBA 10-02: 302 S. Grace Street



141 ft