

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION  
For Inclusion on Board Agenda

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

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: Scott R. Niehaus, Village Manager  
DATE: June 10, 2014 (B of T) Date: June 19, 2014  
TITLE: ZBA 14-01; 444 S. Westmore-Meyers Road – Encroachment Agreement  
SUBMITTED BY: Department of Community Development *WN*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a request authorizing the signature of the Village President and Village Clerk on the attached right-of-way encroachment and waiver and agreement. (DISTRICT #5)

Staff recommends approval of this petition.

Fiscal Impact/Funding Source:

Review (as necessary):  
Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

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:** Scott R. Niehaus, Village Manager

**FROM:** William J. Heniff, AICP, Director of Community Development *WJA*

**DATE:** June 19, 2014

**SUBJECT:** ZBA 14-01; 444 S. Westmore-Meyers Road – Encroachment Agreement

Please find the attached Encroachment Agreement for Village Board consideration as part of the June 19, 2014 Village Board meeting:

At their meeting on February 6, 2014 the Village Board granted approval of a variation from Section 155.205 (A)(1)(c)(ii) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a front yard from four feet (4') to five feet (5') at 444 S. Westmore-Meyers Road. The associated Ordinance was granted with the condition, "if the existing fence is found to be located within the public right-of-way, the property owner shall either remove the existing fence from the public right-of-way or enter into an encroachment agreement with the Village of Lombard, subject to approval by the President and Board of Trustees."

Once the weather improved, staff was able to determine that the fence is in fact within the public right-of-way. The amount of encroachment varies between approximately four to six inches (4"-6") as can be seen in the attached photographs. Per the above condition, the property owner has agreed to enter into the attached encroachment agreement with the Village.

Please place this petition on the June 19, 2014 Board of Trustees consent agenda. Staff and the abutting property owner request that the Village Board authorize the signature of the President and Village Clerk on the attached right-of-way encroachment waiver and agreement.





**THIS DOCUMENT WAS  
PREPARED BY AND AFTER  
RECORDING RETURN TO:**

Village of Lombard  
Community Development Department  
255 E. Wilson Avenue  
Lombard, IL 60148

[The above space for recording purposes]

**RIGHT-OF-WAY ENCROACHMENT WAIVER AND AGREEMENT (HEREINAFTER  
THE "AGREEMENT")**

Re: Proposed Public Right-of-Way Use for Fence

We, \_\_\_\_\_, represent that we are the legal owners  
(hereinafter the "Owners") of real property legally described on EXHIBIT A attached hereto  
and made part thereof commonly known as: \_\_\_\_\_,  
Lombard, Illinois, 60148; PIN(s) #: 06-09-308-034; (hereinafter the "Property").

We have undertaken the following project at the above stated Property, that encroaches on the  
public right-of-way:

Project: Construction of a fence, at the location as shown on EXHIBIT B attached hereto and  
made part hereof (hereinafter the "Fence").

We understand that the Lombard Village Code does not allow for the construction of the Fence  
in the public right-of-way. We agree that the Fence constructed in the public right-of-way at the  
above property will be our responsibility to maintain, repair and replace, if necessary, due to any  
damage by the Village of Lombard (hereinafter the "Village") or other public agencies, or due to  
normal wear and tear.

We also understand that as a condition of the Village of Lombard granting permission to utilize the public right-of-way abutting the Property for the aforesaid purposes, the undersigned owners covenant and agree not to sue, and to protect, indemnify, defend and hold harmless, the Village of Lombard and its elected officials, officers, agents and employees from and against any and all claims, costs, actions, losses, demands, injuries and expenses of whatever nature, including but not limited to attorneys' fees, arising out of the Fence being located in the public right-of-way and/or from any acts or omissions by the Owners or the contractors, sub-contractors, agents or employees of the Owners in maintaining the Fence and/or in conjunctions with the use of the public right-of-way abutting the Property for the aforesaid purposes.

We understand that the terms and conditions contained herein apply uniquely to the public right-of-way adjacent to the Property at the above address, and with said use of the public right-of-way adjacent to the Property being limited solely to the extent that the Fence encroaches upon the public right-of-way as shown on **EXHIBIT B**, and it is the intent of ourselves and the Village to have the terms and conditions of this instrument run with the land and be binding on subsequent purchasers.

This agreement is being entered into pursuant to the requirements of Village of Lombard Ordinance No. 6917, adopted February 6, 2014, and recorded with the DuPage County Recorder's Office as document number R2014-018375 on March 6, 2014. In the event the Fence is ever destroyed or moved, such that the encroachment into the public right-of-way, as shown on **EXHIBIT B** no longer exists, this Agreement shall be null and void, and the Village shall record a document so indicating with the DuPage County Recorder's Office.

**This document shall be signed, notarized and recorded thereafter with the DuPage County Recorder's Office.**

**NOTE: ALL OWNERS MUST SIGN**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**NOTARY: State of Illinois, County of DuPage) SS**

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, known to me to be the same persons whose names are here subscribed to the foregoing instrument, and appeared before me this day in person and acknowledged that they signed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Signature: \_\_\_\_\_

[SEAL]

Accepted and approved by the Village of Lombard this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, pursuant to action taken by the President and Board of Trustees at the Village Board meeting hold on the \_\_\_\_\_ of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Keith Giagnorio, Village President

\_\_\_\_\_  
Sharon Kuderna, Village Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**

Legal Description of Property

LOT 167 IN ROBERTSON'S WESTMORE, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 1, 1922 AS DOCUMENT 156381, IN DUPAGE COUNTY, ILLINOIS.

# EXHIBIT B

Survey Showing the Extent of the Encroachment of the Fence into the Public Right-of-Way  
(As determined by the comparison of the known distance from the sidewalk to the property line to the measured distance from the fence to the sidewalk.)

