

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)

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: July 24, 2007 (B of T) Date: August 9, 2007

TITLE: ZBA 07-09: 130 E. Sunset Avenue

SUBMITTED BY: Department of Community Development *DLK*

BACKGROUND/POLICY IMPLICATIONS:

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

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required corner side yard where a maximum height of four feet is permitted.

2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required front yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted.

(DISTRICT #4)

The Zoning Board of Appeals recommended denial of this petition.

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

Village Attorney X

Finance Director X

Village Manager X

Date

Date

Date

7-26-07

William T. Lichter

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: William T. Lichter, Village Manager
FROM: David A. Hulseberg, AICP
Assistant Village Manager/ Director of Community Development

DATE: August 9, 2007

SUBJECT: ZBA 07-09: 130 E. Sunset Ave.

Please find the following items for Village Board consideration as part of the August 9, 2007 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 07-09;
3. Plat of Survey; and
4. Plans associated with the petition.

Please contact me if you have any questions regarding the aforementioned materials.



VILLAGE OF LOMBARD

255 E. Wilson Avenue
Lombard, IL 60148-3931
(630) 620-5700 FAX: (630) 620-8222
TDD: (630) 620-5811
www.villageoflombard.org

August 9, 2007

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

Subject: ZBA 07-09; 130 E. Sunset Avenue

Dear President and Trustees:

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

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required corner side yard where a maximum height of four feet is permitted; and
2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required front yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted.

The Zoning Board of Appeals conducted a public hearing on June 27, 2007. The petitioners, James and Kathleen Bachman, clarified that they are seeking relief for a five-foot fence, not a six-foot fence. The fence is to secure their children and their property. Mrs. Bachman stated that the existing five-foot fence is worn and they wish to replace it. They are aware that they could install a six-foot ornamental fence but would rather maintain what they currently have. They also wish to close the gap on their north property line with a five-foot fence. She submitted a letter in support of the requested relief from the neighbor to the north, which she read into the record.

Mr. Bachman stated that they do not want to create a fortress. Mrs. Bachman stated that other people can see into their yard and their kids are afraid of their neighbors' dog. Mr. Bachman stated that the layout is unique to their property. They want to follow the rules, which is why they applied for relief first.

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

Village Manager
William T. Lichter

Trustees

Greg Alan Cron, Dist. 1
Richard J. Tross, Dist. 2
John "Jack" T. O'Brien, Dist. 3
Dana L. Moreau, Dist. 4
Laura A. Fitzpatrick, Dist. 5
Rick Soderstrom, Dist. 6

Village Clerk
Brittne O'Brien

Village President
William J. Mueller

Chairperson Defalco then opened the meeting for public comment.

Gerald Ahlgrim, 127 E. Sunset, stated that he can see beyond the fence and it does not close them in. He complained that people frequently run the stop sign and a tree was once run down.

Kathleen Ahlgrim, 127 E. Sunset, noted that the existing fence is in the clear line of sight area but the new fence would correct that problem.

Chairperson Defalco then requested the staff report.

Jennifer Backensto, Planner II, presented the staff report. The subject property previously had a legal nonconforming five-foot high solid fence within the corner side yard and within the clear line of sight area located along the corner of Garfield Street and Sunset Avenue. The proposed fence would also about the front yard of the adjacent property to the north along Garfield. The petitioner wishes to replace the legal nonconforming fence with a similar five-foot high solid fence. The Zoning Ordinance contains provisions that allow nonconforming fences to remain with the intention that, once a nonconforming 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. As such, the petitioner's replacement of the fence removed any legal nonconforming rights and requires that the new fence meet the four-foot height restriction and clear line of sight requirements.

The petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and safety. However, a variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. Staff cannot support the variation for the following reasons. Five-foot high fences are not permitted within front yards or corner side yards due to the visual obstruction they create. Similarly, there are additional restrictions placed upon fences that abut a neighbor's front yard to prevent as such a fence from blocking the view from the front yard of the neighboring property.

It is noted that the petitioner's house is located outside of the required twenty (20) foot side yard setback located along Sunset Avenue. By right, the petitioner would have the right to construct a six (6) foot high fence, starting from the southeast corner of the house – extending forty-four (44) feet to the east. To prevent fluctuation in height, the petitioner wishes to maintain the contiguous five (5) feet of fence for aesthetic purposes along Sunset Avenue.

Upon original submittal, the existing fence was to be replaced in its exact location with a four (4) foot portion of the replacement being located within a clear line of sight area. To bring the fence into compliance to the letter of the Ordinance, the petitioner readily agreed to comply with any clear line of sight issues. On the southeast corner of the existing fence, a four (4) foot portion is

located within the thirty (30) foot clear line of site area located along Sunset Avenue and Garfield Street. As such, the petitioner has agreed to address the issue by placing the fence on an angle, as to not interfere with the aforementioned clear line of sight area. By replacing the fence, the property would no longer have any clear line of sight issues.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." Staff finds that there are no conditions related to the property that prevent compliance with the fence height regulations. The conditions are not unique to the subject property. The subject property is a reverse corner lot as its front yard abuts the front yard of the adjacent property at 610 N. Garfield. The Zoning Ordinance has specific fence regulations that apply to all reverse corner lots in relation to the abutting properties. The ordinance has not caused the hardship as the fence could have been constructed per the ordinance requirements. The hardship has been created by the petitioner as a result of the preference for the fence's height and location.

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, 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.

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

Chairperson Defalco asked where the front yard was. Ms. Backensto stated that it would be the yard facing Sunset.

Chairperson Defalco explained the requested relief. He noted that if security was desired the code was recently changed to allow a six-foot ornamental fence that would not create an obstruction. The petitioner stated that the six-foot fence could only be in the corner side yard but they are a reverse corner lot.

Chairperson Defalco asked if the petitioners were amendable to a six-foot ornamental fence for the entire 30-foot section adjacent to the neighbor's front yard. The petitioner stated that it wouldn't really go with the house and would prefer to leave the existing wood fence sections.

Chairperson Defalco stated that he had noticed some replacement slats on the fence. Mr. Bachman stated that the old fence was repaired with new posts to maintain it until their petition was either approved or denied. Mrs. Bachman stated that they did not initially understand the need for the variation.

Chairperson Defalco noted that the hedges on the subject property are too tall. The petitioners stated that they had been made aware of that.

Mrs. Ahlgram stated that it is a dangerous location with lots of animals around and the kids are in the yard all the time.

Mrs. Newman stated that if the old fence ever falls down, the petitioners would need to come back for a variation anyway.

Chairperson Defalco stated that the petitioners have the option to construct a six-foot high fence at the 30-foot setback line, but they would prefer to have the entire yard fenced in. The fence in the area closest to the street could be built within code. Mr. Bachman stated that they do not wish to do that. Mrs. Bachman stated that they just want to keep their existing fence and close off the northern corner.

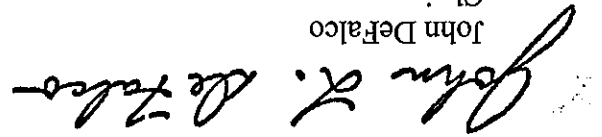
Chairperson Defalco thanked the petitioners for coming in to ask for relief before they constructed the fence.

Mr. Polley asked how old the children are. The petitioners stated that they are five and seven years old.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 4-0, submits this petition to the Corporate Authorities with a recommendation of denial for the requested variation.

Respectfully,

VILLAGE OF LOMBARD



John Defalco
Chairperson

Zoning Board of Appeals

att-

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

TO: Zoning Board of Appeals **HEARING DATE:** June 27, 2007

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

TITLE

ZBA 07-09; 130 E. Sunset Avenue: The petitioner requests approval of the following actions on the subject property located within the R2 Single-Family Residence District:

1. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required corner side yard where a maximum height of four feet is permitted; and
2. A variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to allow a six-foot high fence in a required front yard abutting the front yard of an adjacent lot where a maximum height of four feet is permitted.

GENERAL INFORMATION

Petitioner/Property Owner:

James Bachman
130 E. Sunset Avenue
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning:

R2 Single Family Residential District

Existing Land Use:

Residential

Size of Property:

14,800 square feet

Surrounding Zoning and Land Use:

North: R2 Single Family Residence District; Single Family Residences
South: R2 Single Family Residence District; Single Family Residences

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 May 24, 2007.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Plat of Survey, prepared by Schlaf-Sedig & Associates, Inc, dated September 23, 1999.
4. Site plan, prepared by the petitioner, showing fence location.
5. Photographs depicting previous fence and proposed areas for new fence.

DESCRIPTION

The subject property is located at the northwest corner of Sunset Avenue and Garfield Street. There is a portion of legal nonconforming five (5) foot high solid fence along Sunset Avenue. The petitioner wishes to maintain the current building line and replace the existing five (5) foot fence (to the same height) and add an additional thirty eight and half (38.5) feet of five (5) foot fence along the eastern and northern portions of the property that would adjoin the permitted six (6) foot fence along the northern property line. As the petitioner's proposed fence is to be located within the required front yard setback and adjacent to a neighboring properties front yard setback, the four (4) foot height restriction and clear line of sight provision are required.

INTER-DEPARTMENTAL REVIEW COMMENTS

Private Engineering Services

The PES Division has no comment on this petition after visiting the site and seeing no impact to the sight distance triangle.

Public Works Engineering

Public Works Engineering has no comments regarding this request.

Fire and Building

Upon review of the above referenced request for variations in fence heights at the corner property, the Fire Department/Bureau of Inspectional Services has the following comment:
That the new fence height not interfere with any line of sight for emergency vehicles.

PLANNING

The subject property previously had a legal nonconforming five-foot high solid fence within the corner side yard and within the clear line of sight area located along the corner of Garfield Street and Sunset Avenue. The proposed fence would also about the front yard of the adjacent property to the north along Garfield. The petitioner wishes to replace the legal nonconforming fence with a similar five-foot high solid fence. The Zoning Ordinance contains provisions that allow nonconforming fences to remain with the intention that, once a nonconforming 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. As such, the petitioner's replacement of the fence removed any legal nonconforming rights and requires that the new fence meet the four-foot height restriction and clear line of sight requirements.

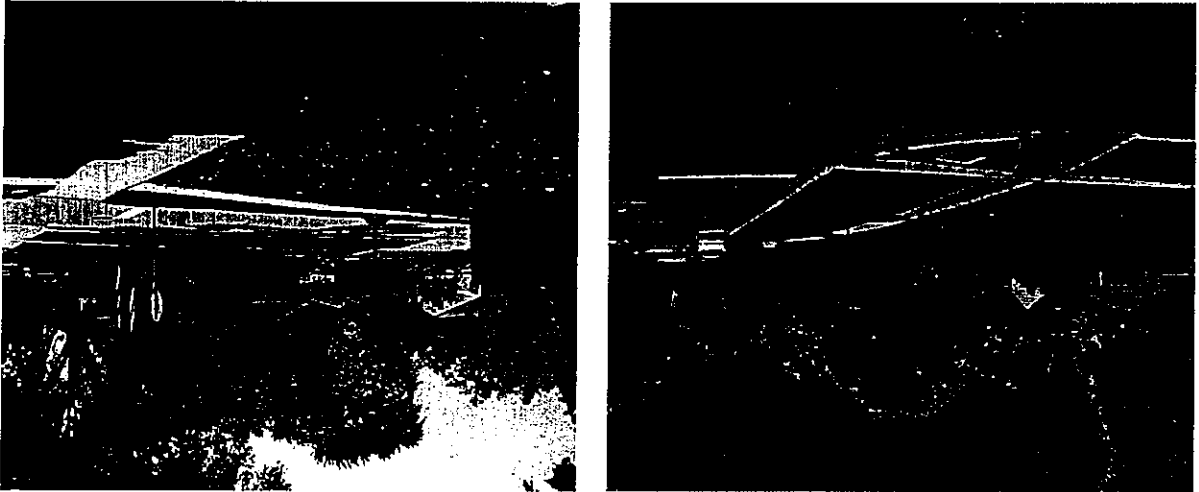
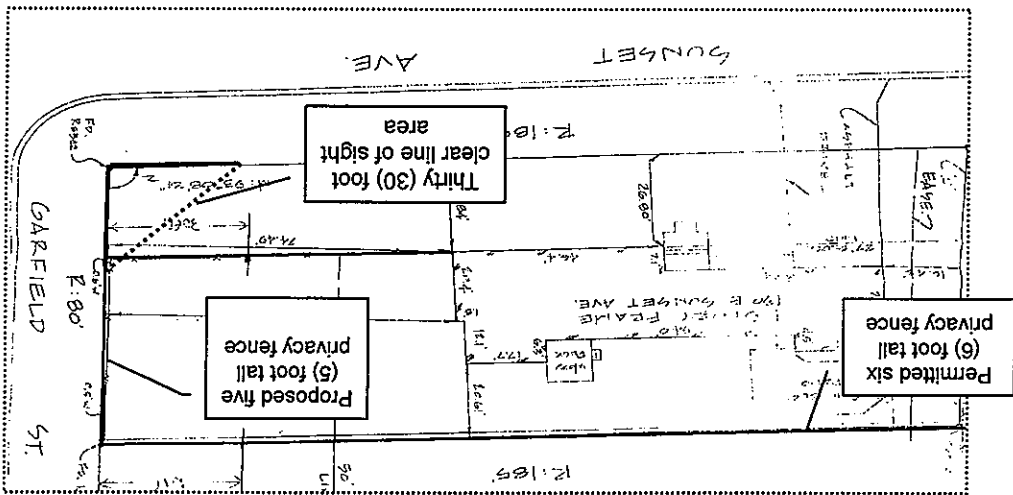
The petitioner raised several issues within the Response to the Standards for Variations with regard to privacy and safety. However, a variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. Staff cannot support the variation for the following reasons. Five-foot high fences are not permitted within front yards or corner side yards due to the visual obstruction they create. Similarly, there are additional restrictions placed upon fences that abut a neighbor's front yard to prevent as such a fence from blocking the view from the front yard of the neighboring property.

It is noted that the petitioner's house is located outside of the required twenty (20) foot side yard setback located along Sunset Avenue. By right, the petitioner would have the right to construct a six (6) foot high fence, starting from the southeast corner of the house -- extending forty-four (44) feet to the east. To prevent fluctuation in height, the petitioner wishes to maintain the contiguous five (5) feet of fence for aesthetic purposes along Sunset Avenue.

Clear Line of Sight

Upon original submittal, the existing fence was to be replaced in its exact location with a four (4) foot portion of the replacement being located within a clear line of sight area. To bring the fence into compliance to the letter of the Ordinance, the petitioner readily agreed to comply with any clear line of sight issues. On the southeast corner of the existing fence, a four (4) foot portion is located within the thirty (30) foot clear line of site area located along Sunset Avenue and Garfield Street. As such, the petitioner has agreed to address the issue by placing the fence on an angle, as

to not interfere with the aforementioned clear line of sight area. By replacing the fence, the property would no longer have any clear line of sight issues.



Southeast portion of the fence that would be angled to alleviate the clear line of sight issue.

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:

I. 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.

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. The subject property is a reverse corner lot as its front yard abuts the front yard of the adjacent property at 610 N. Garfield. The Zoning Ordinance has specific fence regulations that apply to all reverse corner lots in relation to the abutting properties.

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 ordinance has not caused the hardship as the fence could have been constructed per the ordinance requirements. The hardship has been created by the petitioner as a result of the preference for the fence's height and location.

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, 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.

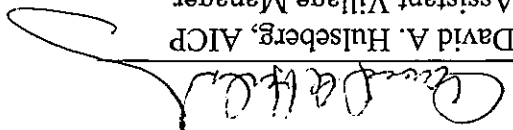
FINDINGS AND RECOMMENDATIONS

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

Based on the submitted petition and the testimony presented, the requested fence height 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 07-09.

Zoning Board of Appeals
Re: ZBA 07-09
Page 6

Inter-Departmental Review Group Report Approved By:


David A. Hulseberg, AICP
Assistant Village Manager

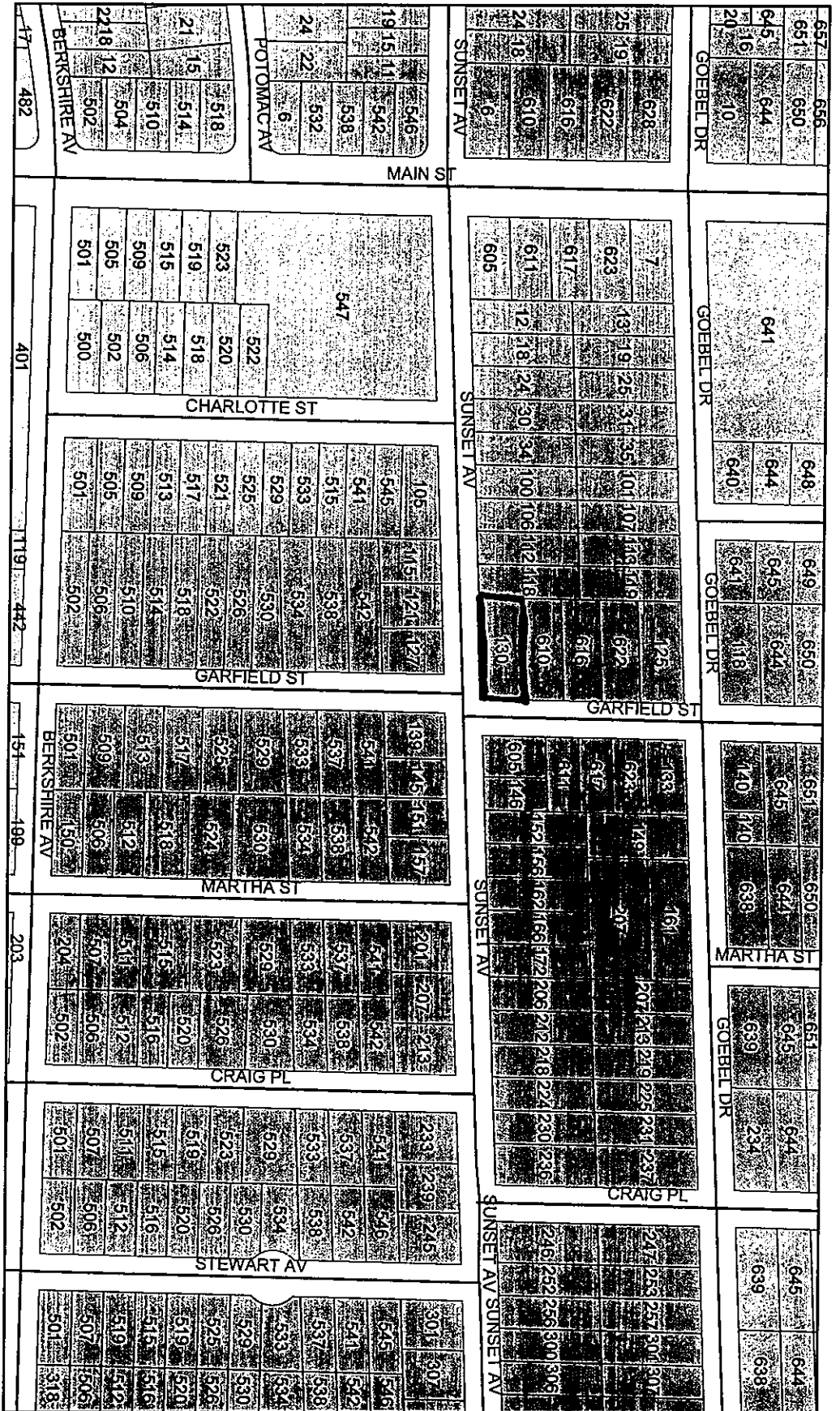
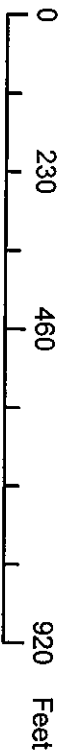
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att-
c: Petitioner

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130 E. Sunset Avenue



Response to Standards For Variations

1) The purpose of installing a 5-foot fence rather than a 4-foot fence is not a matter of convenience. It is more a matter of the safety and well-being of our children as well as creating a parameter for our lot that is aesthetically appealing. The location and distinctive design of our yard does not afford us the privacy necessary for our children to be able to enjoy the yard to its fullest benefit. As shown of the Plot of Survey, the front of our property is on Garfield Avenue. Since we have a Sunset address, the majority of our usable yard is on the East side of the house. Because of the design of our yard, this places the previously mentioned majority of the yard in a position where it is not possible to view our children's activities on the East side, while utilizing the yard to the north of our home.

Sunset Avenue is somewhat of a busy street, often used as a "cut-through" for motorist wishing to avoid the traffic on North Avenue. There is already an existing (approximately 20 year old) 5-foot fence in that area. We are requesting a variation of the ordinance so we can have approximately 38 ½ feet of 5-foot fence professionally installed. This section of fence will close the gap between the existing 5-foot fence and the new fence running along the northern border of the property. There are also aesthetic reasons for granting this variation which are addressed in item #6. Since the section requiring the variance is not visible to the traffic nor the main sidewalk area on Sunset, this would not create an adverse effect in any way. Despite the presence of Lilac bushes currently on the northern boarder where we are requesting the variation, passersby utilizing the sidewalk on the Garfield side of the property are granted a visible line of sight directly into our yard. A 4-foot fence does not give the "appearance" of security as compared to a 5-foot fence. Of course, it is every parent's responsibility to protect the well-being of their children, which we certainly do. However, the more are able to do to protect them as well as ensure the privacy of our home, the safer we will feel.

2) Based on research, we are not aware of another home in our area that has similar conditions upon which the request for variation is based. Here are few characteristics that make the property unique:

* 130 E Sunset is a corner lot where the majority of usable area is located on the corner. The yard is adjacent to corner with the house away from corner vs. a house that is adjacent to the corner with the yard away from the corner.

* 130 E Sunset currently has an existing 20 year old 5-foot fence

3) The purpose of the variation is not based on a desire to increase financial gain. As previously stated, it is a matter of aesthetics but also the desire for privacy and safety of our family. As a side note, we have had an issue with a neighbor's dog accessing the area which the variation is being requested, despite the presence of Lilac bushes. In addition to having a fear of large dogs, both of our children are allergic.

4) The hardship is caused by the ordinance requiring a 4-foot fence and has not been created by any person presently having interest in the property. We are merely trying to achieve a uniformity of our fence to enhance the curb appeal and symmetry of our home. The variation requested will facilitate that goal and solves the issue of privacy and safety.

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. Since the variance is requested on a corner of the property which is not adjacent to the cross streets, there is no issue with line of sight nor would it prevent additional improvement to sidewalk or street development.

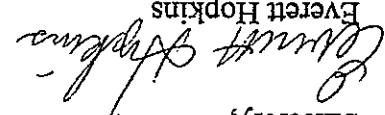
6) Not granting the variation will change the characteristics of the property and the immediate surrounding properties and would be contradictory to the Village of Lombard Residential Fence Permit Handout Under the heading "Why does the Village regulate fences?" item #2 states: *Fences higher than four feet (4) in the front yard of a single-family residential lot can create a fortress appearance.* This point would be valid if the logistics of our yard were in line with the Plot of Survey. But, as previously stated, our home has a Sunset address and the "front yard" of our single-family residential lot is considered our usable yard. In addition, the existing 5-foot fence for the entire parameter of the usable side yard, except for the area in which the variance is being requested, does not currently create a "fortress appearance". By not granting the variation, the new fence would create a noticeable difference in the aesthetics of the yard.

It is understandable as why a 6 foot fence may create a "fortress" appearance, which is why we are asking only for a 5-foot fence. A 5-foot fence is reasonable and will, in fact, match the existing 5-foot fence. It also states in item #2: *When fence heights vary substantially from one residential lot to another, the appearance and the character of the neighborhood can be adversely affected.* The fence heights on our property alone would vary significantly if no variation is granted.

7) The proposed variation will not affect any item mentioned in item #7.

Since I am unable to attend tonight's meeting, I would like the Board to know that I agree with the Bachmans regarding their request for a fence height variance. I have talked with them and understand their desire to keep their children protected and their property secure. Further, I would like to see a continuous run of five foot fence next to my property, not a fence that fluctuates in height. I think a five foot fence is a very reasonable request, especially since there is already a five foot fence on the property that has been there for a long time.

Sincerely,



Everett Hopkins
610 N. Garfield St.
630-627-6067