

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: David A. Hulseberg, Village Manager *DAH*

DATE: July 17, 2008 (B of T) Date: August 21, 2008

TITLE: ZBA 08-08: 151 E. Berkshire Ave.

SUBMITTED BY: Department of Community Development *WD*

BACKGROUND/POLICY IMPLICATIONS:

The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a front yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District. (DISTRICT #4)

The Zoning Board of Appeals recommended denial of this petition.

Also, the petitioner is requesting a waiver of fees (\$225.00) except those related to signage and advertising.

Trustee Moreau requested that this item be placed on separate action on the August 21, 2008 Board of Trustees agenda.

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

Village Attorney X

Finance Director X

Village Manager X *Lombard & Hulseberg*

Date _____

Date _____

Date *8/10/08*

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 *WH*
Acting Director of Community Development

DATE: August 21, 2008

SUBJECT: ZBA 08-08; 151 E. Berkshire Avenue

Please find the following items for Village Board consideration as part of the August 21, 2008 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 08-08; and
3. Plans associated with the petition.

Please contact me if you have any questions regarding the aforementioned materials. The Zoning Board of Appeals recommended denial of the zoning actions associated with the petition.

VILLAGE OF LOMBARD
 255 E. Wilson Ave.
 Lombard, Illinois 60148-3931
 (630) 620-5700 Fax (630) 620-8222
 www.villageoflombard.org



August 21, 2008

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

Village President
 William J. Mueller
 Village Clerk
 Brigitte O'Brien

Subject: ZBA 08-08; 151 E. Berkshire Avenue

Dear President and Trustees:

Trustees
 Greg Alan Gron, 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

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

Village Manager
 David A. Hulseberg

The Zoning Board of Appeals conducted a public hearing on June 25, 2008. Karen Herbert, owner of the subject property, presented the petition. She stated that her desire is to install a six foot fence on the west side of her property for security and privacy reasons. She indicated that she had sought previous zoning relief in 2001 to allow a roofed-over entrance in what the Village has designated her corner side yard. However, she believes it to be her front yard. Mrs. Herbert stated that due to drainage issues on the property the grading had to be adjusted. This caused her to lose her landscaping and walkways. PVC pipe was installed around the property to assist with drainage. Mrs. Herbert indicated that she believes she had suffered an undue hardship by having to correct this drainage issue without the assistance of the Village.

"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. Herbert stated that the property slopes somewhat toward the sidewalk which limits that privacy that could be provided by a four (4) foot fence. She stated that she has the support of her neighbors to construct a six (6) foot fence in its proposed location. She stated that the fence would add value to the neighborhood. She said that she understood the intention of the ordinance. However, it does not make sense in these circumstances. She further stated that she believed that due to these circumstances a variation should be granted.

Chairperson Defalco opened the meeting for public comment. No one spoke for or against the petition. Chairperson Defalco then requested the staff report.

Stuart Moynihan, Associate Planner, presented the staff report. Mr. Moynihan stated the subject property is located at the southeast corner of Berkshire Avenue and Garfield Street. The petitioner is requesting a variation to allow the installation of a fence six (6) feet in height in the required front yard where a maximum of four (4) feet is allowed. The petitioner states that a six (6) foot fence is necessary to provide privacy during usage of an elevated deck on the property.

The petitioner has indicated in her written response and response to the Standards for Variations that the yard along Berkshire Avenue is functionally the front yard rather than the yard along Garfield Street. However, the yard along Berkshire Avenue was previously established as the corner side yard in ZBA 06-01. As the residence was constructed ten and six tenths (10.6) feet from the corner side lot line, it is considered a legal non-conforming structure. This ZBA case granted a variation on the subject property to reduce the corner side yard setback from twenty (20) feet to six (6) feet to allow for the construction of a roofed-over entry stoop. If the petitioner were to be allowed to designate the yard abutting Berkshire Avenue as the front yard, it would cause a non-conformity with regard to the required front yard and rear yard setbacks. As the petitioner's action would then be the cause of the non-conformity, a variation would be necessary for the entire home.

Even if Garfield Street was established as the corner side yard, the setback for a six (6) foot fence would still be thirty (30) feet on the subject property as the rear yard of 151 E. Berkshire would about the thirty (30) foot front yard setback of 437 N. Garfield St.

While the petitioner has raised concerns about privacy and safety, a hardship has not been established on the property. A fence could be installed set back thirty (30) feet which would provide privacy on the deck and in the garden.

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.

Staff finds that the conditions are not unique to the subject property. The majority of nearby residences along Berkshire Avenue are oriented in a manner similar to the home on the subject property in that their primary entrances face Berkshire Avenue. With regard to these properties, the primary entrances are considered to be facing the corner side yard.

Staff finds that the fence could be constructed per the ordinance requirements either by lowering the fence height to four (4) feet or changing the location so that the fence is outside the front yard.

Staff recommends that the petition be denied on the grounds that a hardship has not been demonstrated.

Chairperson Defalco opened the meeting for discussion among the members.

Mr. Polley asked if the fence would cause any clear line of sight issues on Berkshire.

Chairperson Defalco responded that the fence would be out of any clear line of sight areas.

Mr. Tap asked if the space between the home and the fence would be ten (10) feet as the submitted plans seemed to indicate.

Mrs. Herbert responded that this was accurate and the fence would be set back twenty one (21) feet from the sidewalk.

Chairperson Defalco stated that the fence would have to be set back thirty (30) feet from the property line, not the sidewalk, to be allowed at six (6) feet in height.

Mrs. Herbert asked how the determination was made that the yard along Berkshire Avenue is the corner side yard.

Chairperson Defalco stated that this was the only way the front and back yard setbacks could be met. He also stated that a typical width at the front lot line is sixty (60) feet as it is on the subject property.

Mrs. Herbert stated that if you were to ask anyone where her front yard is they would point to what the Village considers her corner side yard.

Chairperson Defalco stated that the front yard setback is adjacent to Garfield Street even if a door faces Berkshire Avenue. He said that a six (6) foot fence could be constructed even with the house and would be within the ordinances.

Mrs. Herbert stated that she had paid for a landscape plan which enhances her property and a fence even with the home would interfere with that plan.

Chairperson Defalco stated that the neighbor on Garfield Street to the south would see a six (6) foot high fence for the first ten (10) feet in front of their property. It could not be guaranteed that the current owner to the south would be there forever, and there must be consideration of future owners.

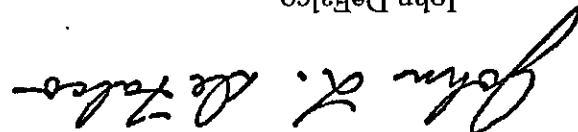
On a motion by Mr. Tap and a second by Mr. Corrado, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board deny a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence

Re: ZBA 08-08
August 21, 2008
Page 4

height in a front yard from four feet (4') to six feet (6') in the R2 Single-Family Residence
District.

Respectfully,

VILLAGE OF LOMBARD



John DeFalco

Chairperson

Zoning Board of Appeals

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

TO: Zoning Board of Appeals

FROM: Department of Community Development
PREPARED BY: Stuart Moynihan
Associate Planner

TITLE

ZBA 08-08; 151 E. Berkshire Ave.: The petitioner requests a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a front yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District.

GENERAL INFORMATION

Petitioner/Owner:

Karen Herbert
151 E. Berkshire Ave.
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning:

R2 Single Family Residential District

Existing Land Use:

Single Family Residence

Size of Property:

approximately 9,300 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 June 2, 2008.

1. Petition for Public Hearing.
2. Response to the Standards for Variations.
3. Written response, prepared by the petitioner, describing the property as it relates to the proposed fence and the need for a variation.
4. Plat of Survey prepared by Kabal Engineering Company, dated February 24, 1973, with proposed fence location.

DESCRIPTION

The subject property is located at the southeast corner of Berkshire Avenue and Garfield Street. The petitioner is requesting a variation to allow the installation of a fence six (6) feet in height in the required front yard where a maximum of four (4) feet is allowed. The proposed fence would be constructed approximately twenty (20) feet from the front lot line, thereby encroaching ten (10) feet into the required thirty (30) foot front yard. The petitioner states that a six (6) foot fence is necessary to provide privacy during usage of an elevated deck on the property. The fence would be placed in its proposed location because it is intended to enclose a recently constructed garden wall and future garden.

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

The Private Engineering Services Division has no comments on the subject petition.

Public Works Engineering

Public Works Engineering has no comments regarding this request.

FIRE AND BUILDING

The Fire Department/Bureau of Inspectional Services has no comments on the subject petition.

PLANNING

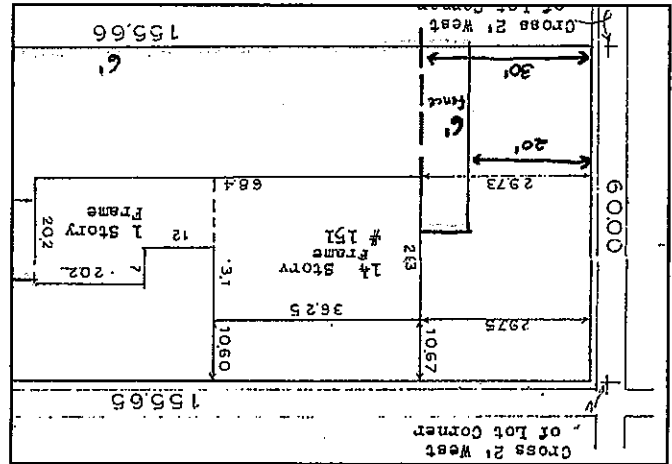
The residence on the subject property was constructed so that the primary entrance and front of the home face Berkshire Avenue. No door faces Garfield Street. The petitioner has indicated in her

written response and response to the Standards for Variations that the yard along Berkshire Avenue is functionally the front yard rather than the yard along Garfield Street. However, the yard along Berkshire Avenue was previously established as the corner side yard in ZBA 06-01. As the residence was constructed ten and six tenths (10.6) feet from the corner side lot line, it is considered a legal non-conforming structure. This ZBA case granted a variation on the subject property to reduce the corner side yard setback from twenty (20) feet to six (6) feet to allow for the construction of a roofed-over entry stoop. If the petitioner were to be allowed to designate the yard abutting Berkshire Avenue as the front yard, it would cause a non-conformity with regard to the required front yard and rear yard setbacks. As the petitioner's action would then be the cause of the non-conformity, a variation would be necessary for the entire home.

Even if Garfield Street was established as the corner side yard, the setback for a six (6) foot fence would still be thirty (30) feet on the subject property. The reason for this is that the Lombard Zoning Ordinance states that where a rear yard abuts the front yard of an adjacent lot the maximum fence height shall be four (4) feet. In this alternate situation, the rear yard of 151 E. Berkshire would abut the thirty (30) foot front yard setback of 437 N. Garfield St.

Response to Standards

A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area. While the petitioner has raised concerns about privacy and safety, a hardship has not been established on the property. A fence could be installed set back thirty (30) feet which would provide privacy on the deck and in the garden. This can be inferred from the site plan and photograph below:



In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variations." 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 a six (6) foot fence set back thirty (30) feet would provide the desired privacy.

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 majority of nearby residences along Berkshire Avenue are oriented in a manner similar to the home on the subject property in that their primary entrances face Berkshire Avenue. With regard to these properties, the primary entrances are considered to be facing the corner side yard. Therefore, fences in those front yards would be regulated in the same manner.

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 either by lowering the fence height to four (4) feet or changing the location so that the fence is outside the front yard. 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 on the grounds that a hardship has not been demonstrated.

FINDINGS AND RECOMMENDATIONS

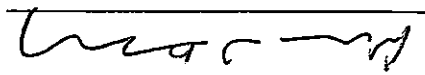
The Department of Community Development has determined that the information presented has not affirmed the Standards for Variations for the requested variation. Based on the above considerations, the Inter-Departmental Review Committee recommends that the Zoning Board of Appeals make the following motion 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 08-08.

Zoning Board of Appeals
Re: ZBA 08-08

Page 5

Inter-Departmental Review Group Report Approved By:



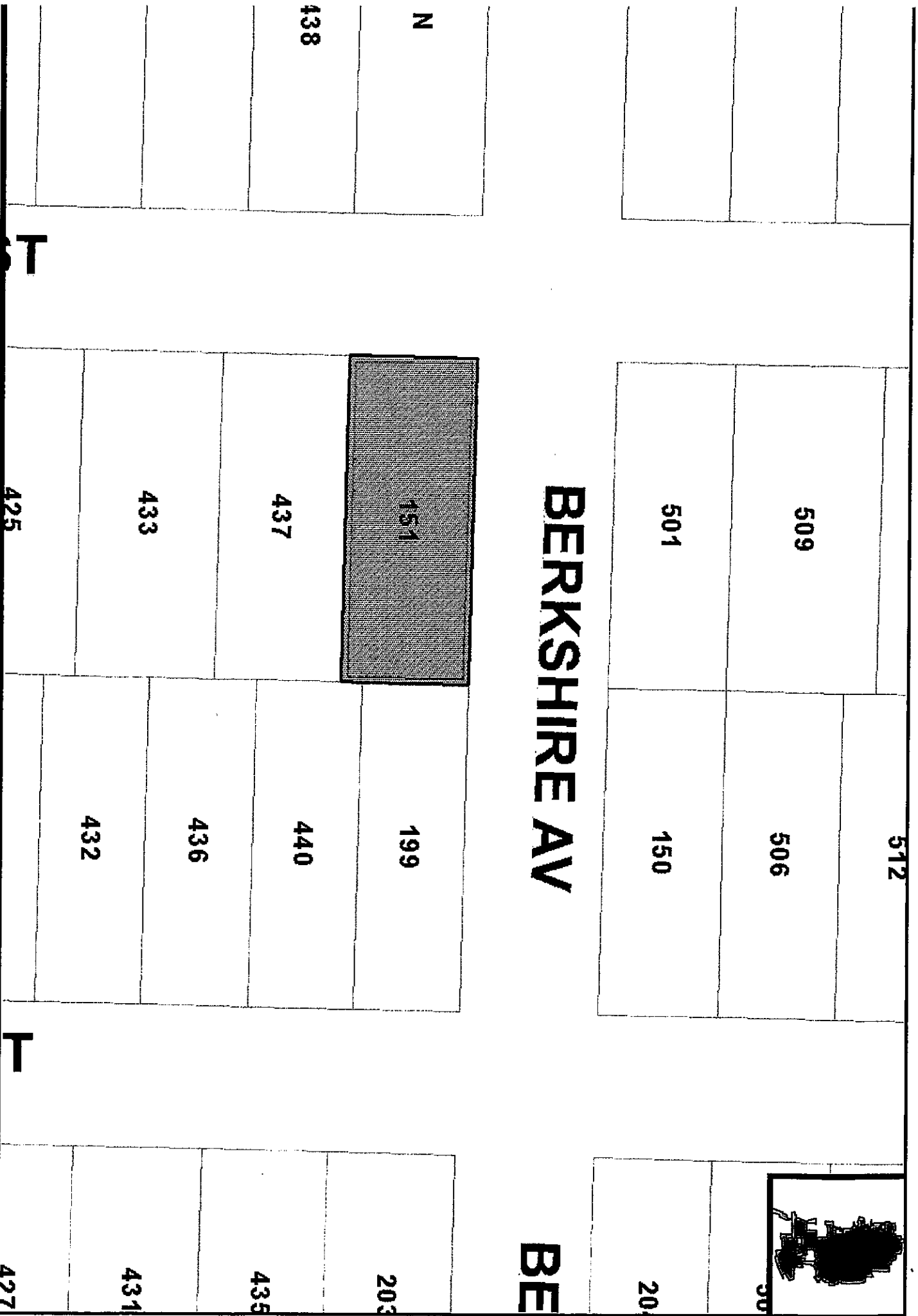
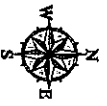
William J. Heniff, AICP

Acting Director of Community Development

WJH

C: Petitioner

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151 E. Berkshire Ave.

1 in. = 58.8 feet



WRITTEN RESPONSE FROM KAREN HERBERT

1. Our subdivision was created in the 1950's without adequate forethought into proper drainage.
 - a. Our home, at the bottom of the block, receives substantial water run-off from our neighbors to the south and had to be partially rebuilt in 2006 because of water damage.
 - b. We worked with the Village to completely regrade our property and install modern drainage equipment to divert the water away from the home and garage to approved locations.
 - c. We did this at substantial cost to ourselves with no financial help from the Village. We did it because we have lived in this location for 35 years and are good citizens who want to stay in Lombard.
 - d. As a result of this corrective investment, we had to lower the west side of our yard to facilitate water run-off. This means that our proposed fence will sit lower than our previous 6-foot fence did and, therefore, a 4-foot fence would provide no privacy whatsoever.
2. We need a 6-foot fence to deal with the substantial foot and car traffic along Garfield Street because of Pleasant Lane School drop-offs and pick-ups. Only a 6-foot fence will block onlookers as I use my yard and deck.
3. I was recently widowed and want privacy from the traffic, as well as some level of security, so that people don't see an older single woman as a potential victim.
4. The Village currently has my front yard zoned as my side yard, and my side yard zoned as my front yard, despite the clear reality of my front door (and street address) facing Berkshire Avenue.
 - a. The zoning laws goals are noble but the current application of these laws is not aligned with their intent.
 - b. If the house was truly zoned to match reality, we would be able to build our fence for the reasons stated above.

STANDARDS FOR VARIATIONS

SECTION 155.103.C.7 OF THE LOMBARD ZONING ORDINANCE

The regulations of this ordinance shall not be varied unless findings based on the evidence presented are made in each specific case that affirms each of the following standards:

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.

We believe the physical layout of our property very clearly shows that our side yard faces Garfield Street, not Berkshire Avenue. The house has always faced Berkshire, has its major entrances on Berkshire, and you would be hard pressed to find a citizen who would believe that our side yard is, in fact, our front yard. As a result of the Zoning Department's refusal to reconsider its application of this designation to our property, we would be forced to use front yard fencing requirements on our side yard and, thus, only install a 4-foot fence, because we could not meet the 30 foot setback requirements. We do, however, meet the 20 foot setback requirements of a side yard. Because of our regrading work noted above, the land slopes downward toward the sidewalk, which runs parallel to Garfield Street. While this is a good thing for drainage, it has the unintended effect of emphasizing the property at the higher elevation. A 4-foot fence provides completely inadequate visual barriers against the high traffic caused by our proximity to Pleasant Lane School.

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.

We do not have sufficient insight into other property owners' situations across Lombard to answer this question. In our immediate neighborhood, we believe our situation is unique.

3. The purpose of the variance is not based primarily upon a desire to increase financial gain.

There is no financial gain planned with a higher fence. We would like to lower the potential of burglary.

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.

We believe the ordinance itself may have logic, but the application of this standard to our property has been done illogically. As we stated above, the Village would be hard pressed to find citizens who would believe that our side yard is actually our front yard.

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.

We believe the dramatic, and very expensive, work we've done on our property has substantially improved the overall value of neighboring properties. The variance we request will complete the overall design of the property and we have letters of endorsement from our neighbors supporting the variance.

6. The granting of the variation will not alter the essential character of the neighborhood; and,

The neighborhood's character will remain intact.

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 with the neighborhood.

There are no negative repercussions to our request for the fence variance. It would not impair sight lines, and it is a tasteful extension of a classic Cape Cod home design.

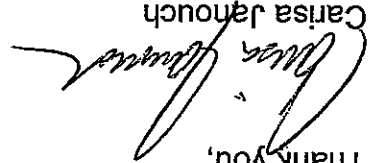
May 28, 2008

Village of Lombard

To Whom It May Concern:

I am a neighbor of Karen Herbert and live across the street from her on Garfield Street. I have a direct view of the west side of her home. She has shown me her landscaping plans for the entire property and I think they are well done and do not oppose them at all.

Thank you,



Carisa Janouch
442 N. Garfield St.
630-932-7807

June 1, 2008

Village of Lombard
Offices of Planning, Zoning, And Community Development

Subject: Zoning Variance – 151 E. Berkshire

As a direct neighbor of Mrs. Herbert, we would like to first, comment on the great job she and her late husband Paul have done in improving their property both inside and out. There has been some slow improvement in neighborhood properties and Gianna and I are fortunate to be able to look out on the nearly completed project across the street.

Residing on a corner lot, we can personally attest to challenges presented to outdoor living. Enjoying the limited outdoor season should be something one can do with a bit of privacy, day or night. The variance being sought will have no impact on neighboring residences, and substantial benefits for Mrs. Herbert. As a single female she deserves to have not only privacy, but the security that the proposed fence will offer.

On a closing note, we would suggest the Village consider reviewing the Fencing Ordinance at some point in the near future. There are a number of unsupported "safety" restrictions that affect the way that property owners enjoy their investments.

Please feel free to contact us with any questions.

Michael and Gianna Mallon
501 N. Garfield

630.495.6279

BRIAN & COLLEEN CARROLL

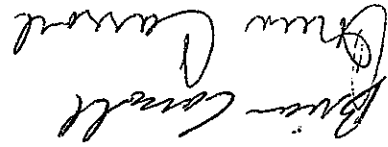
437 N Garfield ST
Lombard IL 60148

May 27, 2008

To whom it may concern,

We are Mrs. Herbert's neighbor directly to the south on Garfield Street, We have seen her proposed fence design, height, location, etc. and we have no objection to her proposed design.

Sincerely,

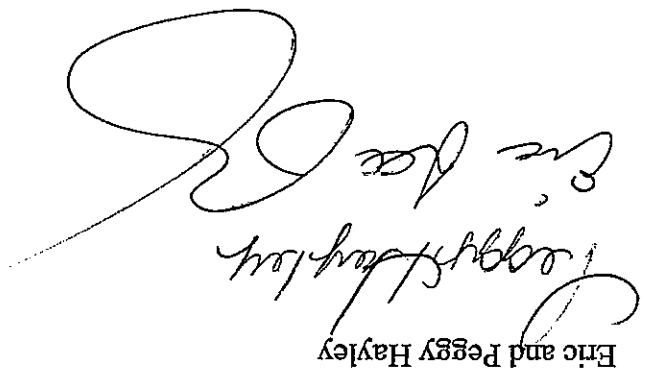


June 1, 2008

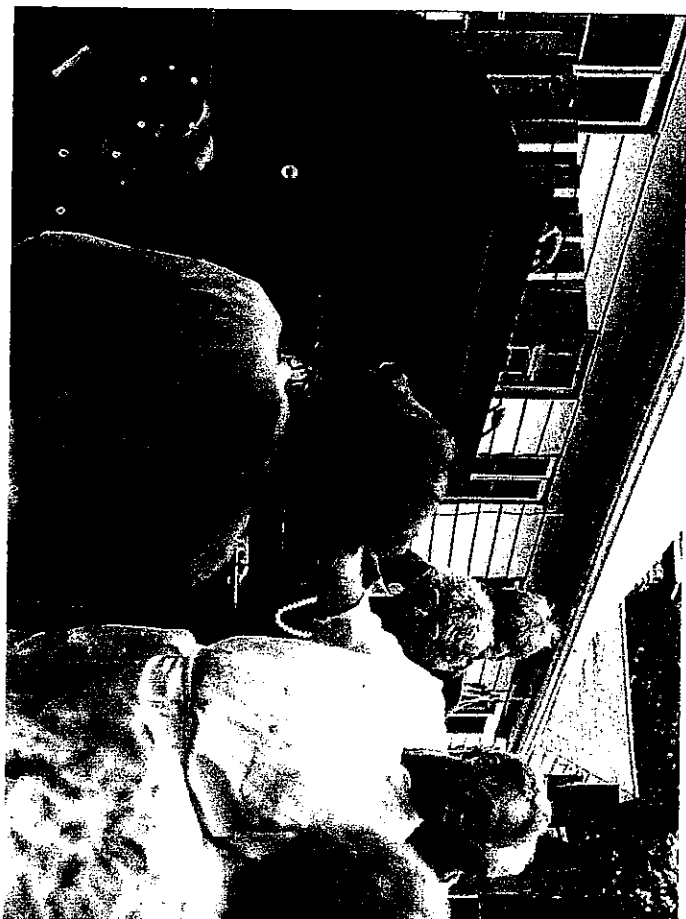
Village of Lombard, To Whom It May Concern:

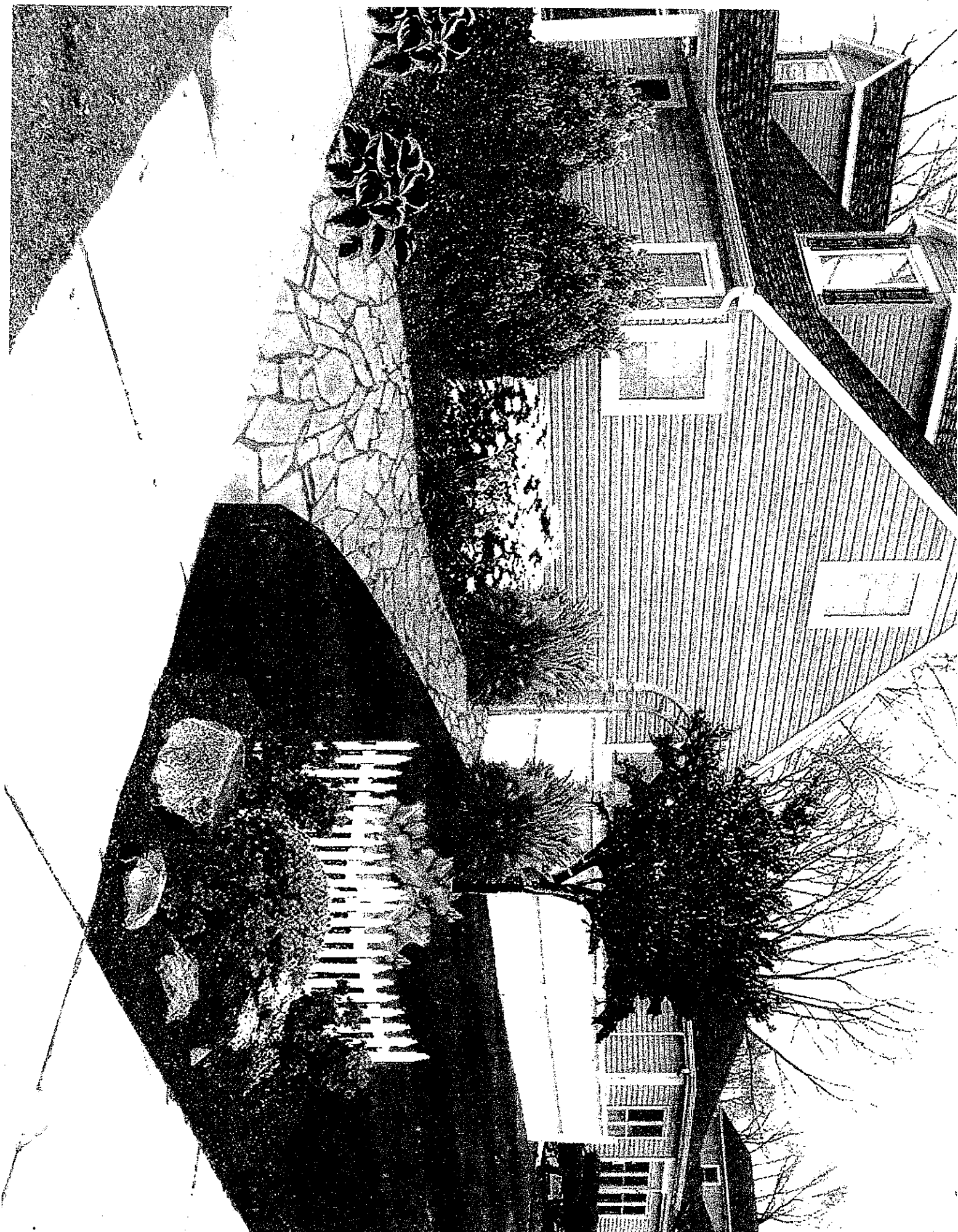
We live at 199 East Berkshire, just east of 151 East Berkshire (the Herbert residence). We have reviewed the landscaping plans for this property and we do not have any issues with any aspect of the plan. If there is any other information we can provide please do not hesitate to call us at 630-495-6312.

Sincerely,

Eric and Peggy Hayley


Photographs intended to show previous location of 6' fence.

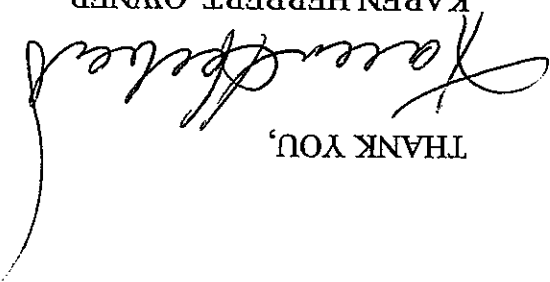




VARIATION REQUEST FOR FENCE
151 E. BERKSHIRE - LOMBARD, IL 60148

DUE TO THE SMALL SCOPE AND SIZE OF MY PROJECT, I WOULD LIKE TO
REQUEST A WAIVER OF ALL FEES, EXCEPT THOSE RELATED TO SIGNAGE
AND ADVERTISING.

THANK YOU,



KAREN HERBERT, OWNER
151 E. BERKSHIRE - LOMBARD

