

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


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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: February 6, 2007 (B of T) Date: February 15, 2007

TITLE: ZBA 07-01: 501 N. Garfield 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 a variation to Section 155.205 (A)(1)(e)(2) to allow a solid fence within a clear line of sight area. (DISTRICT #4)

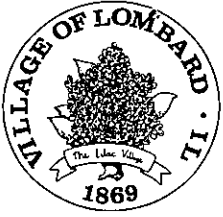
The Zoning Board of Appeals recommended *denial* of this petition.

Fiscal Impact/Funding Source:

Review (as necessary):


Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <u>William T. Lichter</u>	Date <u>2/7/07</u>

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

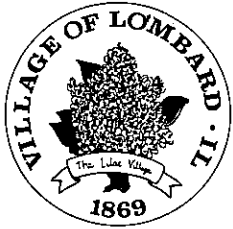
**DATE:** February 15, 2007

**SUBJECT:** ZBA 07-01: 501 N. Garfield Street

Please find the following items for Village Board consideration as part of the February 15, 2007 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 07-01;
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 60148-3926  
(630) 620-5700 FAX: (630) 620-8222  
TDD: (630) 620-5812  
www.villageoflombard.org

### Village President

William J. Mueller

### Village Clerk

Brigitte O'Brien

### Trustees

Greg Alan Gron, Dist. 1  
Richard J. Tross, Dist. 2  
John "Jack" T. O'Brien, Dist. 3  
Steven D. Sebby, Dist. 4  
Kenneth M. Florey, Dist. 5  
Rick Soderstrom, Dist. 6

### Village Manager

William T. Lichter

February 15, 2007

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

**Subject: ZBA 07-01; 501 N. Garfield Street**

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 a variation to Section 155.205 (A)(1)(e)(2) to allow a solid fence within a clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on January 24, 2007. Michael Mallon, owner of the subject property, presented the petition. He submitted a handout which included a summary of points for consideration as well as photographs of the fence. He began his presentation by clarifying the plan for the proposed fence. He noted that an eight foot (8') by eight foot (8') clear line of sight area would be removed from the fenced area, but ultimately, a ten and one-half foot (10.5') by eight foot (8') clear line of sight area would be maintained. The existing fence extends one and one-half feet (1.5') from the garage and then extends parallel to the driveway.

Mr. Mallon stated that his family has lived in the home for ten years. He noted that when he purchased the home, the fence as it is proposed conformed to Village Code. He mentioned that the Village Code was changed without any notification. He noted that there isn't any statistical data to support the rationale for the twenty foot (20') by twenty foot (20') clear line of sight area. He stated that the regulations were excessive in absence of any statistical data.

Chairperson DeFalco opened the meeting for public comment.

Joan Polley spoke against the petition. She stated that she drives past the petitioner's house noting that she lived on Berkshire. She stated that it frightens her because she wouldn't be able to see if a child were running into the street.

Chairperson DeFalco then requested the staff report.

"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."

Re: ZBA 07-01  
February 15, 2007  
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Michelle Kulikowski, Planner I, presented the staff report. She stated that the petitioner submitted a previous petition (ZBA 06-13) for a variation for a fence located on the subject property. She noted that originally, the petitioner was only asking for a height variation for the fence. However, the petitioner installed the fence prior to consideration by the Zoning Board of Appeals. She mentioned that the fence as installed did not meet the regulations for fences with clear line of sight areas. She stated that the petitioner then requested a second variation to allow the fence to remain as constructed with a solid fence within a clear line of sight area. She noted that the Lombard Board of Trustees approved the height variation for the fence and denied the variation to allow a solid fence within a clear line of sight. She mentioned that the petitioner has now submitted another petition requesting a variation to allow a solid fence within a clear line of sight area, and this petition is based on new plans that propose a different location for the fence. She stated that the proposed plans will cut-out an eight foot (8') by eight foot (8') area from the existing fence, and as the petitioner explained, it will essentially provide a ten and one-half foot (10.5') clear line of sight.

Ms. Kulikowski stated that the fence that the petitioner has installed in the clear line of sight area for the driveway consists of four inch (4") pickets with a two inch (2") opening. She mentioned that Section 155.205(A)(1)(e)(1) of the Lombard Zoning Ordinance states that fences over two feet (2') in height can only be located within a clear line of sight area if they are open construction. She noted that by definition, the fence is considered a solid fence as it only maintains approximately 33% of the surface area as open space. She stated that the definition of solid fence requires that at least 75% of its surface area in open space which affords a direct view through the fence.

Ms. Kulikowski mentioned that the petitioner is proposing to modify the existing fence by relocating portions of the fence to maintain a ten and one-half foot (10.5') by eight foot (8') clear line of sight area adjacent to the driveway. She noted that the Board of Trustees has approved similar variation requests in the past (ZBA 05-19). However, staff does not support the variation request to allow a solid fence within a clear line of sight area as it can pose a safety hazard. She mentioned that the purpose of the open construction fence requirement is to provide visibility of pedestrians and oncoming traffic.

Ms. Kulikowski stated that the Standards for Variation have not been met. She stated that there are no conditions related to the property that prevent compliance with the fence height regulations or clear line of sight requirements. She noted that the regulations for fences within clear line of sight areas apply to all properties in all zoning districts. She mentioned that the hardship has been created by the petitioner as a result of the preference for the fence's location. She stated that the requested relief would be detrimental to the public welfare as visibility of pedestrians and traffic is diminished.

Chairperson DeFalco opened the meeting for discussion among the members.

Mr. Young referenced the pictures that the petitioner submitted with his application. He asked why there was a picture of the condominium project on Main Street.

Mr. Mallon stated that the picture illustrates the inconsistencies with the clear line of sight regulation. He noted that the garage was within the clear line of sight area and was more of a visual obstruction than his fence. Ms. Kulikowski noted that the drive access shown in the picture is a one-way for cars to enter.

Mr. Bedard asked why the Village established the clear line of sight area for driveways at twenty feet (20').

Ms. Kulikowski stated that the clear line of sight regulations for driveways have been in affect at least since 1990. She noted that she was not familiar with why the clear line of sight area was established at twenty feet (20') as opposed to any other number. She mentioned that whenever a text amendment to the Zoning Ordinance is proposed, staff surveys the neighboring communities and how their code addresses that particular issue.

Chairperson DeFalco referred to the petitioner's statement that he was not notified about the change in the fence regulations. He noted that changes to the Zoning Ordinance must go through the public hearing process. He mentioned that the meetings are televised and open to the public. He also noted that typically a change to the Zoning Ordinance would go for two readings on the Board agenda.

Mr. Polley asked whether the contractor told the petitioner that the fence would be legal. The petitioner stated that the contractor did not. Mr. Polley asked whether the contractor applied for a permit. The petitioner stated that he applied for the permit himself.

Mr. Young stated that perhaps this issue is bigger than a zoning variance. He noted that if it is a bad ordinance, than it should be changed rather than having numerous petitions for the same zoning relief. He mentioned that granting of variances sets a precedence.

Mr. Bedard suggested that the Zoning Board of Appeals forward a recommendation to the Board of Trustees to look at the clear line of sight regulations.

Chairperson DeFalco noted that the role of the Zoning Board of Appeals is not to determine the justification for an ordinance. The Zoning Board of Appeals's role is to consider whether there is a hardship that warrants a variation.

Mr. Young stated that angling a fence along the twenty foot (20') by twenty foot (20') clear line of sight triangle would eliminate approximately two hundred (200) square feet from the fenced yard. He noted that the petitioner's proposal would eliminate eighty-eight (88) square feet from the fenced yard.

Re: ZBA 07-01  
February 15, 2007  
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Mr. Mallon noted that his proposal provides an eleven foot (11') clear line of sight along the sidewalk, which is a reasonable compromise.

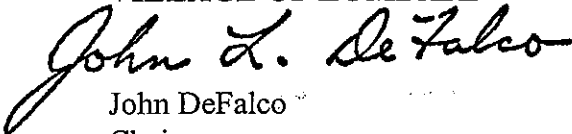
Mr. Young asked staff to summarize the past ZBA case for the fence at 734 S. Elizabeth Street.

Mrs. Kulikowski noted that the petitioner for ZBA 05-19 received a fence permit, but the permit didn't specify that in order to meet the open fence requirement, the fence must be at least 75% open. She noted that the fence installed in the clear line of sight was approximately 50% open. She mentioned that the Zoning Board of Appeals recommended denial and the Board approved a variation to angle the fence to provide a seven and one-half foot (7.5') by seven and one-half foot (7.5') clear line of sight area.

After due consideration of the submitted petition and the testimony presented, the Zoning Board of Appeals, by a roll call vote of 5-0, submits this petition to the Corporate Authorities with a recommendation of denial for the requested variation.

Respectfully,

**VILLAGE OF LOMBARD**

A handwritten signature in black ink that reads "John L. DeFalco". The signature is written in a cursive, flowing style.

John DeFalco  
Chairperson  
Zoning Board of Appeals

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

TO: Zoning Board of Appeals                      HEARING DATE: January 24, 2007

FROM: Department of Community              PREPARED BY: Michelle Kulikowski, AICP  
Development    Planner I

**TITLE**

**ZBA 07-01; 501 N. Garfield Street:** The petitioner requests a variation to Section 155.205 (A)(1)(e)(2) to allow a solid fence within a clear line of sight area.

**GENERAL INFORMATION**

Petitioner/Property Owner:      Michael J. Mallon  
    501 N. Garfield St.  
    Lombard, IL 60148

**PROPERTY INFORMATION**

Existing Zoning:                      R2 Single Family Residential District

Existing Land Use:                  Single Family Residential

Size of Property:                      8,558 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

**SUBMITTALS**

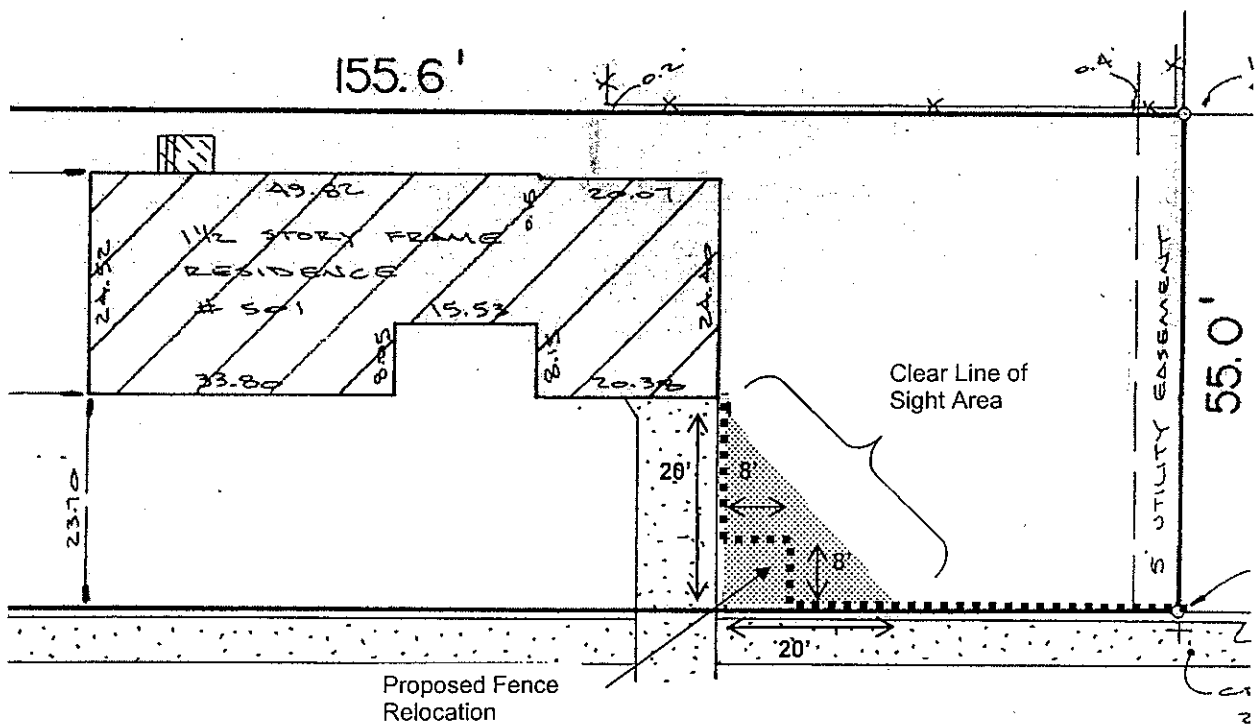
This report is based on the following documents, which were filed with the Department of Community Development on December 4, 2006.

1. Petition for Public Hearing
2. Response to the Standards for Variation
3. Plat of Survey, dated May 14, 1996, and prepared by American Survey Co.
4. Site plan, prepared by the petitioner, showing proposed fence type and location.

5. Photographs, taken by the petitioner, and dated December 2, 2006.

## DESCRIPTION

The petitioner submitted a previous petition (ZBA 06-13) a variation for a fence located on the subject property. Originally, the petitioner was only asking for a height variation for the fence. However, the petitioner installed the fence prior to consideration by the Zoning Board of Appeals. The fence as installed did not meet the regulations for fences with clear line of sight areas. The petitioner then requested a second variation to the fence to remain as constructed with a solid fence within a clear line of sight area. The Lombard Board of Trustees approved the height variation for the fence and denied the variation to allow a solid fence within a clear line of sight. The petitioner has now submitted another petition requesting a variation to allow a solid fence within a clear line of sight area. This petition is based on new plans that propose a different location for the fence. The proposed plans will essentially provide an eight foot (8') by eight foot (8') clear line of sight rather than the twenty foot (20') by twenty foot (20') clear line of sight area as defined by Code.





## INTER-DEPARTMENTAL REVIEW COMMENTS

### ENGINEERING

#### Private Engineering Services

The Private Engineering Services Division has no comment on petition ZBA 07-01 as long as the fence is constructed as shown in the petition package, setting the corner of the fence 8' from the drive.

#### 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 regarding this petition.

### PLANNING

The fence that the petitioner has installed in the clear line of sight area for the driveway consists of four inch (4") pickets with a two inch (2") opening. Section 155.205(A)(1)(e)(1) of the Lombard Zoning Ordinance states that fences over two feet (2') in height can only be located within a clear line of sight area if they are open construction. By definition, the fence is considered a solid fence as it only maintains approximately 33% of the surface area as open space. The Zoning Ordinance defines "*open construction fence*" and "*solid construction fence*" as follows:

**FENCE-OPEN CONSTRUCTION** is a fence which has over its entirety at least 75% of its surface area in open space which affords a direct view through the fence.

**FENCE-SOLID CONSTRUCTION** is a fence which has over its entirety less than a minimum of seventy-five percent (75%) open space in total for every one (1) foot of linear dimension. Chain link fences with slats do not constitute a solid fence.

The petitioner is proposing to modify the existing fence by relocating portions of the fence to maintain an eight foot (8') by eight foot (8') clear line of sight area adjacent to the drive way. The Board of Trustees has approved similar variation requests in the past (ZBA 05-19). However, staff does not support the variation request to allow a solid fence within a clear line of sight area as it can pose a safety hazard. The purpose of the open construction fence requirement is to provide visibility of pedestrians and oncoming traffic.

*Standards for Variations*

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. *That because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner has been shown, 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 or clear line of sight requirements.

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 regulations for fences within clear line of site areas apply to all properties in all zoning districts.

4. *The alleged difficulty or hardship is shown to be 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 location.

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.*

Staff finds that the requested relief would be detrimental to the public welfare as visibility of pedestrians and traffic is diminished

7. *The proposed variation will not impair an adequate supply of light and air to adjacent property and substantially 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.*

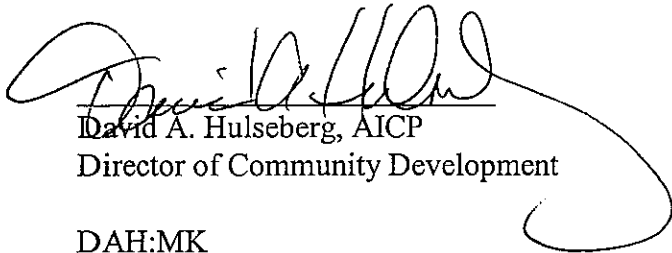
Staff finds that the requested relief would negatively impact public safety as visibility of pedestrians and traffic would be diminished.

**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 07-01.

Inter-Departmental Review Group Report Approved By:

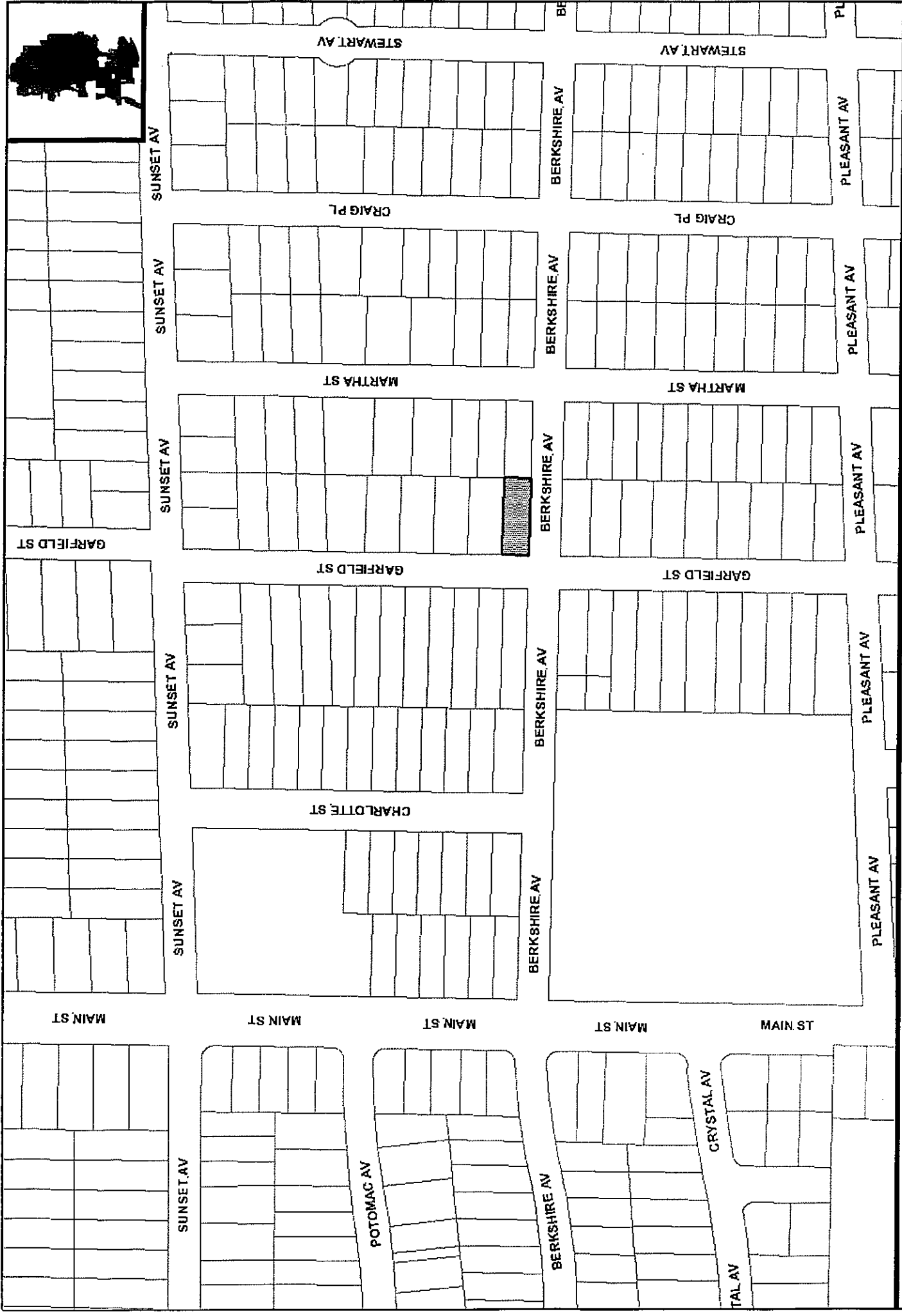


David A. Hulseberg, AICP  
Director of Community Development

DAH:MK

att-

c: Petitioner



ZBA 07-01: 501 N. Garfield St.



1 in. = 250.0 feet

12.03.06

Steve,

Attached is the variance packet submitted to the Village staff this afternoon. I spoke with Dave Hulseberg and he said that he would be willing to consider my revised fence design, but your support would be critical.

Based on our meeting a couple of weeks ago, I believe you felt my request was reasonable not only from a safety standpoint, but also that there appears to be quite a few "exceptions" both in residential and commercial areas to indicate that the 20 ft x 20 ft. Clear Line of Sight may be excessive in certain instances.

I appreciate your support. As I'm sure you picked up from our conversations, this has been a frustrating experience. I'm looking forward to starting off '07 with this behind us. I will be presenting at the 12/27 ZBA meeting as well as subsequent Village Board meetings.

If you have any input feel free to contact me. Otherwise let's plan to talk in between the 12/27 ZBA meeting and the January Village Board mtg.

Regards,

Mike Mallon

A handwritten signature in black ink, appearing to read "Mike Mallon", with a long horizontal flourish extending to the right.

501 N. Garfield  
Lombard, IL

630.204.8926 – mobile  
630.495.6279 - home

1.24.2007

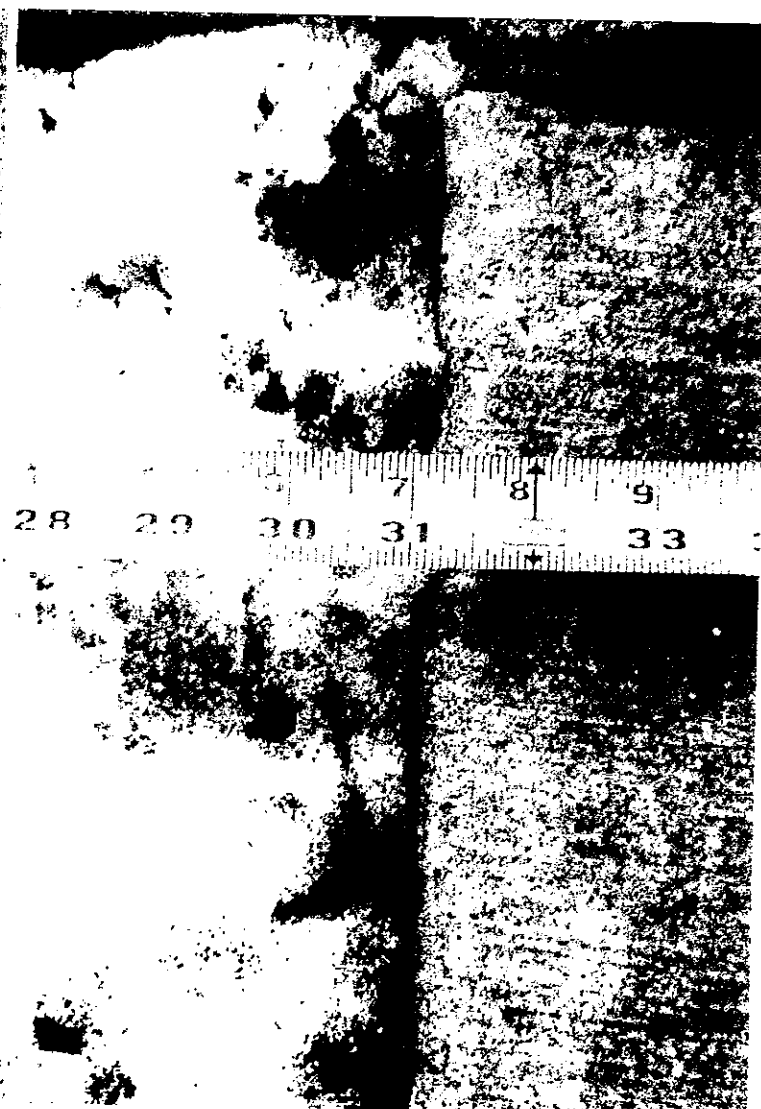
Subject: ZBA 07-01 – 501 N. Garfield, Lombard

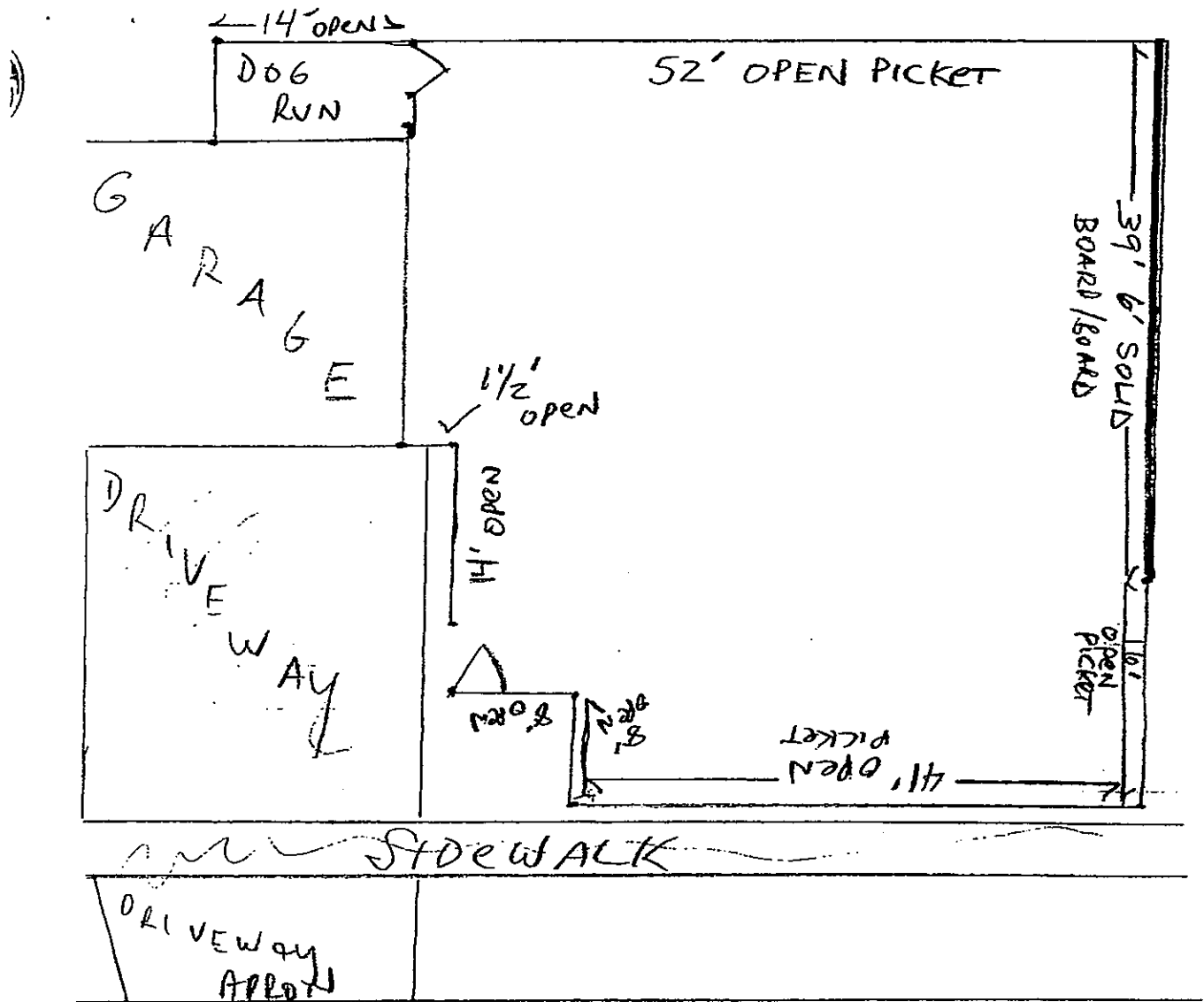
**Points for Consideration**

- **When we purchased our home, the fence as it's proposed conformed to Village Code**
- **The Village Code was changed without any notification.**
- **The risk to public safety is not supported by any factual data**
- **The proposed design, an 11 ft. long x 8 ft. deep cut-out provides a substantial view down the sidewalk.**
- **The proposed design, while not the mandated 20' x 20' triangle represents a very reasonable compromise without any safety concerns.**

Respectfully Submitted,

Michael & Gianna Mallon  
501 N. Garfield

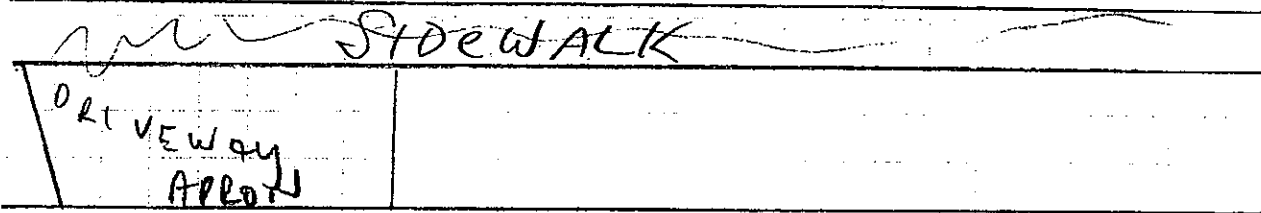
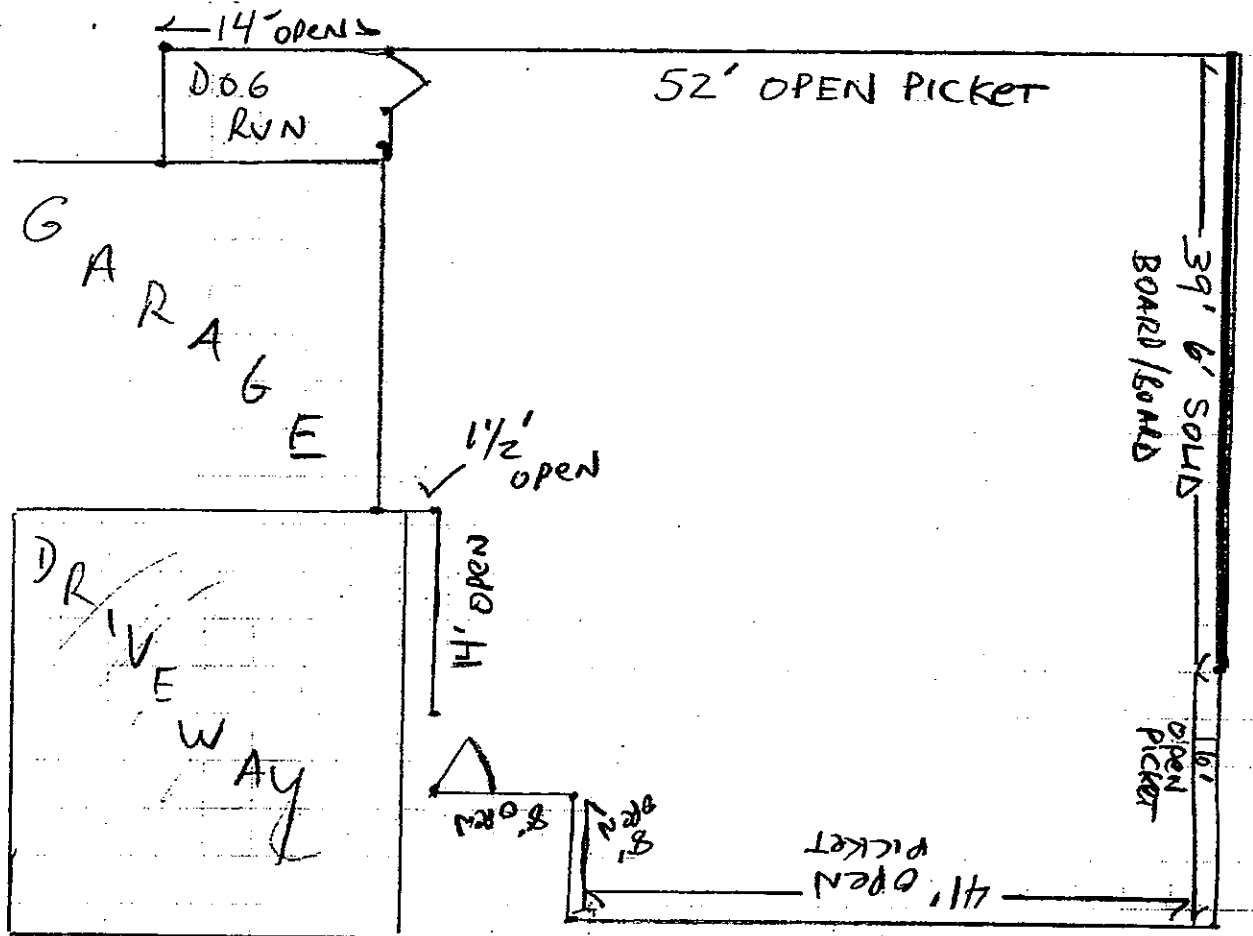




BERKSHIRE

1/4" = 3'





BERKSHIRE

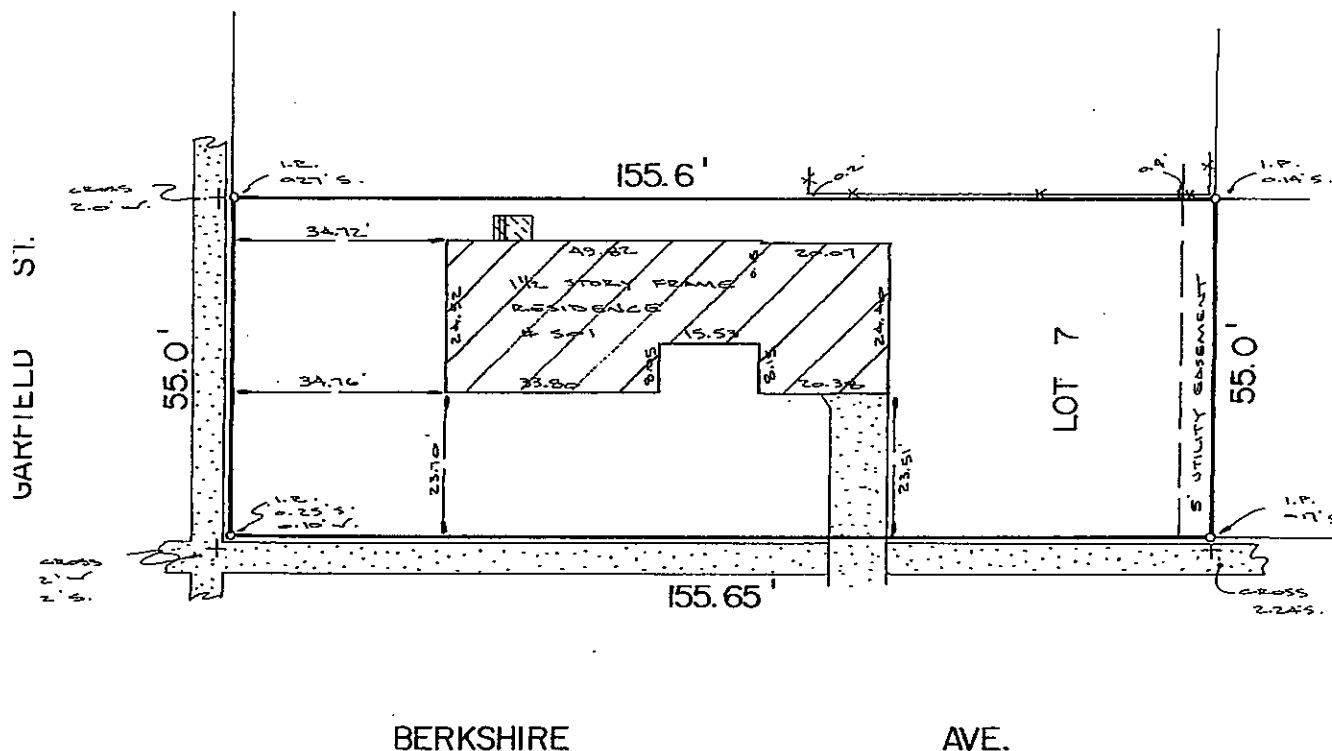
1/4" = 3'



Scale: 1" = 20'

# Plat of Survey

OF PROPERTY DESCRIBED AS: LOT 7 IN BLOCK 3 IN LILAC SQUARE ESTATES SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 9, 1951 AS DOCUMENT 618090 AND CERTIFICATE OF CORRECTION FILED OCTOBER 15, 1951 AS DOCUMENT 636729, IN DUPAGE COUNTY, ILLINOIS.



Order # 96136  
 Ordered by Cleal & Delveaux  
 Property address 501 N. Garfield St.  
 Lombard, IL

Distances are given in feet and decimal parts thereof

- o indicates iron stake found
- indicates iron stake set
- indicates fencing

State of Illinois )  
 County of McHenry ) SS

I, William M. TenBusch, an Illinois Professional Land Surveyor, do hereby certify that I have located the above shown buildings as of this 12th day of MAY, 1996

William M. TenBusch  
 Professional Land Surveyor # 2767

Refer to deed, title policy or local ordinance for any building lines or easements not shown. No dimension

State of Illinois )  
 County of McHenry ) SS

I, William M. TenBusch, an Illinois Professional Land Surveyor, do hereby certify that I have surveyed the above described property and that this plat is a true and correct representation of said survey as of this 12th day of MAY, 1996

William M. TenBusch  
 Professional Land Surveyor # 2767

Plat not valid without embossed seal

12.02.06

Zoning Board of Appeals  
Village of Lombard  
Lombard, IL

**Re: 501 N. Garfield – Standards for Variation**

Due to the orientation of our home on the lot (see Plat of Survey) and the fact that our driveway is only 20 ft. long, we feel that the 20 ft. x 20 ft. "Clear Line of Sight" triangle unnecessarily deprives us of valuable yard space. The proposed design will allow for 9 ½ ft. of unobstructed visibility down the sidewalk.

While the Clear Line of Sight is well intended in it's application, it unfortunately is not supported by any factual data. Consider the following:

**IDOT maintains no statistical data on pedestrian accidents related to fences.**

**Country Insurance and State Farm maintain no statistical data on safety relating to fences, other than electrified fences.**

**The Village of Lombard maintains no statistical data pedestrian accidents relating to fences.**

**The Village of Lombard has allowed for structures to be built on the Downtown district, which clearly violate this standard (example 1). If there existed a true danger to public safety, certainly the Village would have applied the CLS standards to the new downtown structures. By comparison these sites would have a greater safety threat due to higher levels of both pedestrian and automobile traffic.**

**Consider the many, older, corner lot fences, which have been grand fathered in. Certainly over time there would be some documentation of their hazard to the public.**

While the conditions of our property are not unique, the hundreds of homes situated on corner lots share them.

The only personal benefit to be gained by the issuance of this variance is the full use of our limited, outdoor living space.

It is our opinion that that the odd positioning of our home on the property as well as changes in the Village Code are the root cause of this variance request. When we purchased our home in 1996 the fence that is currently installed was conforming. The changes instituted in recent years have effectively limited the unencumbered use of our private property.

With respect to safety, the points in bold type stated above speak to the lack of information relating to the safety of the proposed installation. **An identical variance was issued for the property located at 734 S. Elizabeth with no ill effects.**

Since the installation of our fence, we have had nothing but compliments from neighbors. People we don't know have stopped to tell us how nice our looks and ask who installed it.

In past 2 ½ years we have invested over \$150,000 in improvements to our property. We feel that our project as well as others in the neighborhood has had a positive effect on the overall appearance, not to mention property values, of the surrounding area.

Good laws have a foundation in facts. Our country was founded on basis of personal freedom intersecting with public well-being. Any law that limits personal freedom should be held to the highest of standards.

Respectfully Submitted,

Michael & Gianna Mallon  
501 N Garfield  
Lombard, IL 60148

(630) 495.6279

