


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. Huliseberg, Village Manager 

DATE: December 28, 2009 (B of T) Date: January 7, 2010

TITLE: ZBA 09-11: 617 E. Berkshire Avenue

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

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

1) A variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'). *The ZBA recommended approval of this variation with one condition.*

2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area. *The ZBA recommended denial of this variation.* (DISTRICT #4)

Please place this item on the January 7, 2010 Board of Trustees agenda.

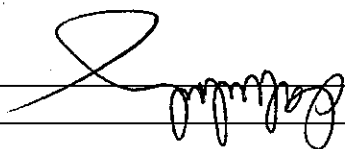
Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X

Finance Director X

Village Manager X



Date _____
Date _____
Date _____

12/27/09

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*
Director of Community Development
DATE: January 7, 2010
SUBJECT: ZBA 09-11; 617 E. Berkshire Avenue

Please find the following items for Village Board consideration as part of the January 7, 2010 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 09-11;
3. Plans associated with the petition; and
4. An Ordinance granting approval of variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6').

This petition consists of two variation requests for an existing fence on the subject property. The first variation is to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'). The Zoning Board of Appeals recommended approval (5-0) of this request. The second request is to allow for a solid fence within a clear line of sight area. The Zoning Board of Appeals recommended denial (5-0) of this request.

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

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



Village President
William J. Mueller

Village Clerk
Bridite O'Brien

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

Subject: ZBA 09-11; 617 E. Berkshire Avenue:

Dear President and Trustees:

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

Village Manager
David A. Hulseberg

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

- 1) A variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6').
- 2) A variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

The Zoning Board of Appeals conducted a public hearing on December 16, 2009.

"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."

Nicholas Bruhn, 617 E. Berkshire Avenue, owner of the subject property, present the petition. He stated the house was newly purchased by him and his wife. He stated that his primary objective is to keep his residence and pedestrians safe. He wanted to discuss two issues, the height and clear line of sight for the fence. He stated that he would be willing to correct the clear line of sight except for about six inches to one foot of a gate area because of the placement of a post. He stated that he is, however, concerned about the height of the fence at four feet due to the presence of a school across the street.

Mr. Bruhn stated that he had visited the property at Pleasant and Vista mentioned in the staff report. They have an above ground pool which allows some added safety. He also stated that completely changing the fence would be very costly and it was built by the previous owner.

Elizabeth Wilson-Bruhn, 617 E. Berkshire Avenue, stated that she understood why the Village might want a four foot fence. However, she thinks that a sixth grader could jump it to get into the pool. It is a danger and she would not want that responsibility. Also, this fence is along the street between the house and the garage, not at the corner of the street.

Chairperson Defalco explained what a corner side yard is and why a four foot fence is required.

Chairperson Defalco opened the meeting for public comment. No one spoke for or against the petition.

Chairperson Defalco then requested the staff report.

Stuart Moynihnan, Associate Planner, present the staff report. The subject property is located at the southwest corner of Vista Avenue and Berkshire Avenue. The petitioner is requesting a variation to allow an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The previous owner of the property constructed the fence in October of 2009, without a building permit, as a replacement for an existing non-conforming six foot (6') fence in the same area. The fence is located along the Vista Avenue side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence has been replaced, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

The subject property currently has an existing solid wood fence six feet (6') in height within the corner side yard and within the clear line of sight area. This fence was constructed as a replacement for a non-conforming fence of the same height. The fence was constructed in October of 2009 by the previous property owner, without a building permit. After becoming aware of the fence replacement, the Village informed the previous property owner of the need for the requested variations. However, as the property was under contract and in the process of being sold, staff determined that it would be best to process the request after the sale. The new owner was informed of the need for variations prior to the closing, and they are now the petitioner.

The Zoning Ordinance allows non-conforming fences to remain in existence provided that once a non-conforming fence reaches the end of its useful life any replacement fence will meet current code requirements. In time, this allows for full compliance with the Zoning Ordinance. The newly constructed fence currently stands within the clear line of sight triangle at the driveway on the subject property.

Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. As such, the petitioner's replacement of the fence requires that the new fence meet the

four-foot height restriction or that a variation be granted. A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from all other properties in the area.

Within the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of an in-ground pool. Specifically, the petitioner identifies the pool as a hazard to children in the area and states that the existing fence would prevent them from seeing the pool and entering the property. Furthermore, the petitioner states that these concerns are exacerbated by the elementary school located across Vista Avenue. While staff recognizes that these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." The following standards have not been affirmed:

1. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be applied.*

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

2. *The conditions upon which an application for a variation is based are unique to the property for which the variation is sought, and are not generally applicable to other property within the same zoning classification.*

Staff finds that the conditions are not unique to the subject property. Many other properties with a similar layout and design have been able to meet the established regulations. The presence of an in-ground pool and the proximity of a school are not unique or even rare circumstances in the Village. The nearby property at the corner of Vista Avenue and Pleasant Avenue, 616 E. Pleasant Avenue, has met the established regulations. This property also contains a pool. Building Code provisions require a 4' high fence around pools. The petitioner can meet both the Building Code and Zoning Ordinance by modifying the fence height to 4 feet.

4. *The alleged difficulty or hardship is caused by this ordinance and has not been created by any person presently having an interest in the property.*

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

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.*

It is staff's opinion that a solid wood fence located within a clear line of sight area could be injurious to the public welfare if the lack of visibility contributed to an accident.

6. *The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

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

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

Mr. Bedard asked if the petitioner was aware of the violations when the home was under contract.

Mr. Bruhn stated that they were.

Chairperson Defalco asked when staff became aware of the issues.

Mr. Moynihan stated that staff became aware following code enforcement actions. Staff informed the new owners previous to the sale and the previous owner paid for the public hearing.

Mr. Young stated that the ZBA has a history of supporting six foot fences when pools are involved. However, the clear line of sight is not negotiable.

Chairperson Defalco asked the petitioner why the gate was at issue.

Mr. Bruhn stated that the fence post the gate is attached to is about one foot into the clear line of sight. There is also a concrete area behind it that would inhibit placing a new post.

Mr. Young asked if the clear line of sight could be looked at as nineteen by twenty-one foot triangle.

Mr. Moynihan stated the Zoning Ordinance calls for a twenty by twenty foot triangle.

Mrs. Newnam stated that there is concern that the concrete would not allow a twenty by twenty foot.

Mr. Young stated that he thought the petitioner should fully meet the requirement.

Mr. Bedard stated that he did not see it as a large expense.

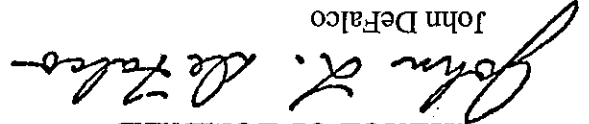
On a motion by Mr. Young and a second by Mr. Bedard, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board approve a variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'), subject to the following condition:

1. In the event that the fence is damaged or destroyed by more than 50% of its value, the fence shall be required to comply with the fence height provisions listed in the Zoning Ordinance.

On a motion by Mr. Young and a second by Mr. Bedard, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board deny a variation from Section 155.205(A)(1)(e) of the Lombard Zoning Ordinance to allow a solid wood fence six feet (6') in height in the clear line of sight area.

Respectfully,

VILLAGE OF LOMBARD



John DeFalco

Chairperson

Zoning Board of Appeals

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

TO: Zoning Board of Appeals **HEARING DATE:** December 16, 2009

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

TITLE

ZBA 09-11; 617 E. Berkshire Avenue: The petitioner requests that the Village take the following actions for the subject property located within the R2 Single-Family Residence District:

1) A variation from Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6').

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

GENERAL INFORMATION

Petitioner/Owner:

Elizabeth Wilson
617 E. Berkshire Avenue
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning:

R2 Single Family Residential District

Existing Land Use:

Single Family Residence

Size of Property:

approximately 7,622 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: CR Conservation Recreation District; developed as Schaefer Elementary School

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 November 24, 2009.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Plat of Survey, prepared by ARS Surveying Services, dated November 12, 2009.

DESCRIPTION

The subject property is located at the southwest corner of Vista Avenue and Berkshire Avenue. The petitioner is requesting a variation to allow an existing solid wood fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The previous owner of the property constructed the fence in October of 2009, without a building permit, as a replacement for an existing non-conforming six foot (6') fence in the same area. The fence is located along the Vista Avenue side of the property and conflicts with the clear line of sight area where the driveway meets the public right of way. As the existing non-conforming fence has been replaced, the new fence would be required to meet the current zoning ordinance provisions, unless a variation is granted by the Village.

INTER-DEPARTMENTAL REVIEW COMMENTS

ENGINEERING

Private Engineering Services

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

1. The fence should be moved out of the clear line of sight area.

Public Works Engineering

Public Works Engineering has no comments regarding this request.

FIRE DEPARTMENT

The Fire Department has reviewed the petition and has no comments.

BUILDING DIVISION

Upon review of the above referenced request for fence height variation from 4' to 6' in a corner side yard set back, the Building Division has the following comment:

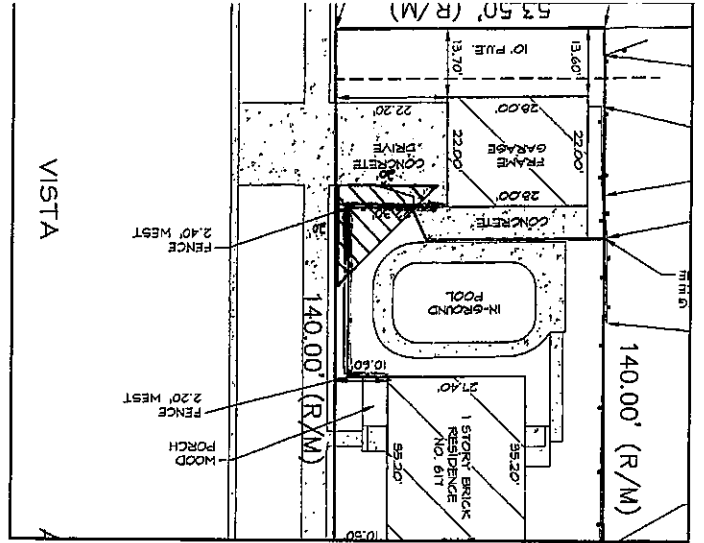
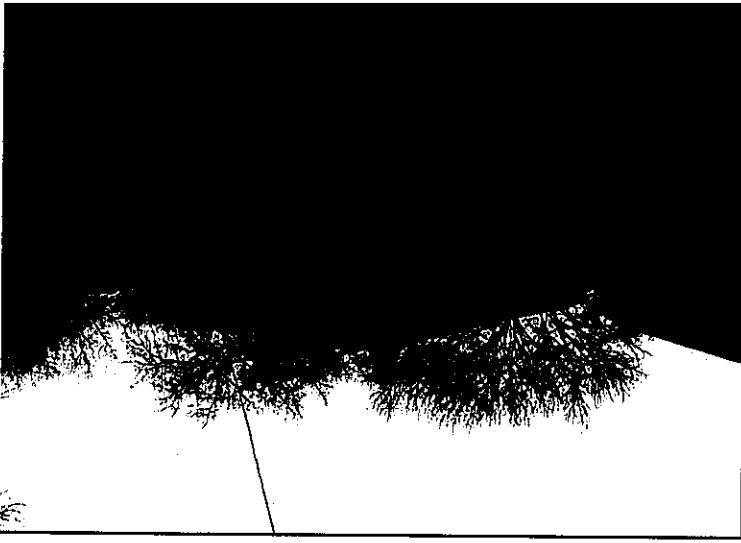
1. The fence height of 6' could be allowed if the clear line of site at the driveway is maintained. If the solid wood fence obstructs the line of site as a vehicle pulls out of the garage and the driver cannot see the sidewalk, this could very well pose a problem of causing an injury to a pedestrian or child traveling on the sidewalk. Thus keeping the line of site clear at the corner of the drive and walk is critical to the safety of pedestrians and the fence should be relocated to allow for this condition.

PLANNING

The subject property currently has an existing solid wood fence six feet (6') in height within the corner side yard and within the clear line of sight area. This fence was constructed as a replacement for a non-conforming fence of the same height. The fence was constructed in October of 2009 by the previous property owner, without a building permit. After becoming aware of the fence replacement, the Village informed the previous property owner of the need for the requested variations. However, as the property was under contract and in the process of being sold, staff determined that it would be best to process the request after the sale. The new owner was informed of the need for variations prior to the closing, and they are now the petitioner.

The Zoning Ordinance allows non-conforming fences to remain in existence provided that once a non-conforming fence reaches the end of its useful life any replacement fence will meet current requirements. In time, this allows for full compliance with the Zoning Ordinance.

The newly constructed fence currently stands within the clear line of sight triangle at the driveway on the subject property. The fence is indicated by the orange line below. The clear line of sight area at the intersection of the driveway and the public right-of-way is formed as a triangle with legs extending twenty feet (20') north along the property line and twenty feet (20') west along the driveway. The clear line of sight triangle is shown in red.



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

Within the response to standards, the petitioner has raised concerns regarding safety on the property due to the presence of an in-ground pool. Specifically, the petitioner identifies the pool as a hazard to children in the area and states that the existing fence would prevent them from seeing the pool and entering the property. Furthermore, the petitioner states that these concerns are exacerbated by the elementary school located across Vista Avenue. While staff recognizes that these concerns are reasonable, staff does not believe these concerns are demonstrative of a hardship.

In order to be granted a variation the petitioner must show that they have affirmed each of the "Standards for Variation." The following standards have not been affirmed:

1. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be applied.*

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

2. *The conditions upon which an application for a variation is based are unique to the property for which the variation is sought, and are not generally applicable to other property within the same zoning classification.*

Staff finds that the conditions are not unique to the subject property. Many other properties with a similar layout and design have been able to meet the established regulations. The presence of an in-ground pool and the proximity of a school are not unique or even rare circumstances in the Village. The nearby property at the corner of Vista Avenue and Pleasant Avenue, 616 E. Pleasant Avenue, has met the established regulations. This property also contains a pool. Building Code provisions require a 4' high fence around pools. The petitioner can meet both the Building Code and Zoning Ordinance by modifying the fence height to 4 feet.

4. *The alleged difficulty or hardship is caused by this ordinance and has not been created by any person presently having an interest in the property.*

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

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.*

It is staff's opinion that a solid wood fence located within a clear line of sight area could be injurious to the public welfare if the lack of visibility contributed to an accident.

6. *The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

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

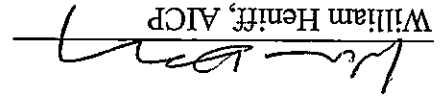
Staff recommends that the petition be denied in its entirety. However, if the Zoning Board of Appeals finds that it would be appropriate to grant a variation for fence height, staff recommends that petitioner adhere to the submitted plans and address the clear line of sight issue. Also, the petitioner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

FINDINGS AND RECOMMENDATIONS

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

Based on the submitted petition and the testimony presented, the requested variations **do not comply** with the Standards required for a variation by the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings included as part of the Inter-departmental Review Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 09-11.

Inter-Departmental Review Report Approved By:


William Heniff, AICP

Director of Community Development

c: Petitioner

617 E. Berkshire Ave.



50 ft

Standards For Variation – Written Response

1. The fence provides a safety cushion around the in ground pool. We as owners know we are responsible for anything and anyone using the pool and do not want a drowning on our hands because a child in the area who is taller than 4 feet will be able to see the pool, and be inclined to climb over the fence to trespass in the pool. A fence that is tall enough to completely obstruct the view of the pool from the outside will not give anyone the idea or opportunity to access the pool. Unlike other properties in the area, this property holds an in-ground pool. The extra height in the fence is warranted to prevent unauthorized access to the pool by jumping a shorter fence.
3. The fence does not add any financial gain. It is simply there to enclose the pool. The ordinance in this case would leave us as the property owners liable for actions that might be out of our control, ie. Trespassers attempting to swim in the pool without permission or supervision.
5. Granting this variance would greatly benefit the welfare of the public by removing any visible attraction the pool presents to a trespasser.
6. The variation does not alter the character of the neighborhood. The height of the fence only makes it safer.
7. In this case, the six foot tall fence only contributes to having a safe neighborhood.

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A VARIATION
OF THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(ZBA 09-11: 617 E. Berkshire Avenue)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, the subject property is zoned R2 Single Family Residence District; and,

WHEREAS, an application has been filed with the Village of Lombard requesting a variation from Title 15, Chapter 155, Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'); and,

WHEREAS, a public hearing has been conducted by the Zoning Board of Appeals on December 16, 2009 pursuant to appropriate and legal notice; and,

WHEREAS, the Zoning Board of Appeals has forwarded its findings and recommendations to the Board of Trustees with a recommendation of approval of the requested variation; and,

WHEREAS, the President and Board of Trustees does concur with the findings of the Zoning Board of Appeals; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interest of the Village of Lombard to approve the requested variation.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That a variation is hereby granted from the provisions of Title 15, Chapter 155, Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6'); and,

SECTION 2: This ordinance shall be granted subject to compliance with the following condition:

ATTEST:

William J. Mueller, Village President

Approved this _____ day of _____, 2010.

Absent: _____

Nays: _____

Ayes: _____

Passed on second reading this _____ day of _____, 2010.

First reading waived by action of the Board of Trustees this _____ day of _____, 2009.

Passed on first reading this _____ day of _____, 2010.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Parcel No: 06-05-221-005

LOT 1 IN BLOCK 13 IN LOMBARD VISTA, BEING A SUBDIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER AND OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 14, 1927 AS DOCUMENT 243024, IN DUPAGE COUNTY, ILLINOIS.

SECTION 3: This ordinance is limited and restricted to the property generally located at 617 E. Berkshire Avenue, Lombard, Illinois, and legally described as follows:

1. Should the fence be destroyed or deconstructed to fifty percent (50%) of its value, the fence shall be brought into full compliance with Village codes.

Brigitte O'Brien, Village Clerk
Published by me this _____ day of _____, 2010.

Brigitte O'Brien, Village Clerk