

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: September 8, 2008 (B of T) Date: September 18, 2008

TITLE: ZBA 08-14: 242 W. Berkshire Avenue

SUBMITTED BY: Department of Community Development *WLD*

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 corner side yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District. (DISTRICT #1)

The ZBA recommended approval of this petition.

Please place this item on the September 18, 2008 Board of Trustees agenda.

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

Village Attorney X

Finance Director X

Village Manager X *David A. Hulseberg*

Date \_\_\_\_\_

Date \_\_\_\_\_

Date *9/11/08*

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:** September 18, 2008

**SUBJECT:** ZBA 08-14; 242 W. Berkshire Avenue

Please find the following items for Village Board consideration as part of the September 18, 2008 Village Board meeting:

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 08-14; 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 approval 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



September 18, 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 08-14; 242 W. 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 corner side 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 August 27, 2008. Jerry Alm, owner of the subject property, presented the petition. Mr. Alm stated he was at the meeting to request a variation for his fence which runs along Elizabeth Street. He then submitted photographs of the fence to the Zoning Board of Appeals members and submitted them to the record. He stated that the original fence was constructed before he purchased the home in April 1998. Mr. Alm stated that he had constructed a new six foot fence as a replacement without knowledge that a permit was necessary.

"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."

Mr. Alm stated that Elizabeth Street is busy with through traffic and sidewalk traffic. He indicated that he is seeking the variation for the safety of this children, grandchildren, and pets. He stated that he is worried that an individual could climb a four foot fence and be bitten by his dog or worse drown in the pool. He stated the six foot fence is not a danger to the neighborhood. He also indicated the property abutting the rear of his property has a six foot fence in the corner side yard. He stated that he has moved the fence out of the clear line of sight area and agrees that this was a safety issue. However, he stated that the new fence has the benefits of safety and curbside appeal.

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

Chairperson Defalco opened the meeting for public comment.

Ray Kern, 303 W. Potomac Avenue, stated that he lives about one hundred feet northwest of Mr. Alm's residence. He stated that there has been a fence in the corner side yard on the subject property since about the 1960's. However, the

owner previous to Mr. Alm installed a six foot fence because of the children walking to and from Parkview School. He stated that in this opinion the new fence on the subject property is an enhancement to the neighborhood. Also, he indicated that a shorter fence would be an eyesore due to the six foot fence on the property to the rear of the subject property.

Chairperson Defalco then requested the staff report.

Stuart Moynihhan, Associate Planner, presented the staff report. Mr. Moynihhan stated that the subject property is located at the northeast corner of Elizabeth Street and Berkshire Avenue. The petitioner is requesting a variation to allow a fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The petitioner constructed the proposed fence in July of 2008 as a replacement for a previous non-conforming six foot (6') fence in the same area. The fence is located along a sidewalk easement on the western side of the property. 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 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 twenty-foot (20') by twenty-foot (20') clear line of sight triangle at the driveway on the subject property. The petitioner has agreed to move the fence out of the clear line of sight area.

Six foot high fences are not permitted within corner side yards due to the visual obstruction they create. 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 their request, the petitioners have raised a few issues related to privacy, safety, and traffic concerns. 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.

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. Many other properties with a similar layout and design have been able to meet the established regulations.

Staff finds that the fence could be constructed per the ordinance requirements either by lowering the fence height to four feet (4') or changing the location so that the fence is outside the corner side yard. The hardship has been created by the petitioner as a result of the petitioner's 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.

Chairperson Defalco opened the meeting for discussion among the members.

Mr. Tap asked the petitioner if he had obtained a permit previous to construction of the fence.

Mr. Alm stated that he had not but that he had no knowledge this was necessary.

Mr. Young asked if there was a similar case last year on Hammerschmidt Avenue in which a six foot fence was approved because the property was near a school and had a pool in the rear yard.

Chairperson Defalco stated that this was accurate and that the Zoning Board of Appeals had recommended approval in that case. He stated that at the previous Zoning Board of Appeals meeting another case had been heard with the same situation.

Chairperson Defalco stated that the Zoning Board of Appeals had a history of looking at fence height cases more closely when there is a pool involved.

Mr. Young stated that a clear precedent was in place.

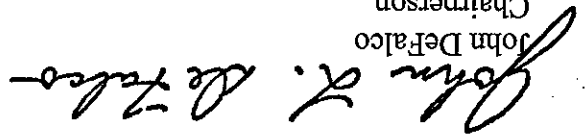
On a motion by Mr. Young and a second by Mr. Corrado, the Zoning Board of Appeals recommended by a vote of 5 to 0 that the Village Board approve a variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District.

Chairperson Defalco then asked that the record reflect that this recommendation for approval was influenced by the existence of the pool and the property's proximity to a school. The property's trapezoidal shape was also a consideration. Chairperson Defalco indicated that while the fence on Mr. Alm's property had been positioned outside of the clear line of sight area, the fence on the neighboring property had not been.

Re: ZBA 08-14  
September 18, 2008  
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Respectfully,

VILLAGE OF LOMBARD

A handwritten signature in black ink, reading "John D. DeFalco". The signature is written in a cursive style with a horizontal line at the end.

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  
**HEARING DATE:** August 27, 2008

**TITLE**

**ZBA 08-14; 242 W. Berkshire Avenue:** 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 corner side yard from four feet (4') to six feet (6') in the R2 Single-Family Residence District.

**GENERAL INFORMATION**

**Petitioner/Owner:**

Jerry Alm  
242 W. Berkshire Avenue  
Lombard, IL 60148

**PROPERTY INFORMATION**

**Existing Zoning:** R2 Single Family Residential District

**Existing Land Use:** Single Family Residence

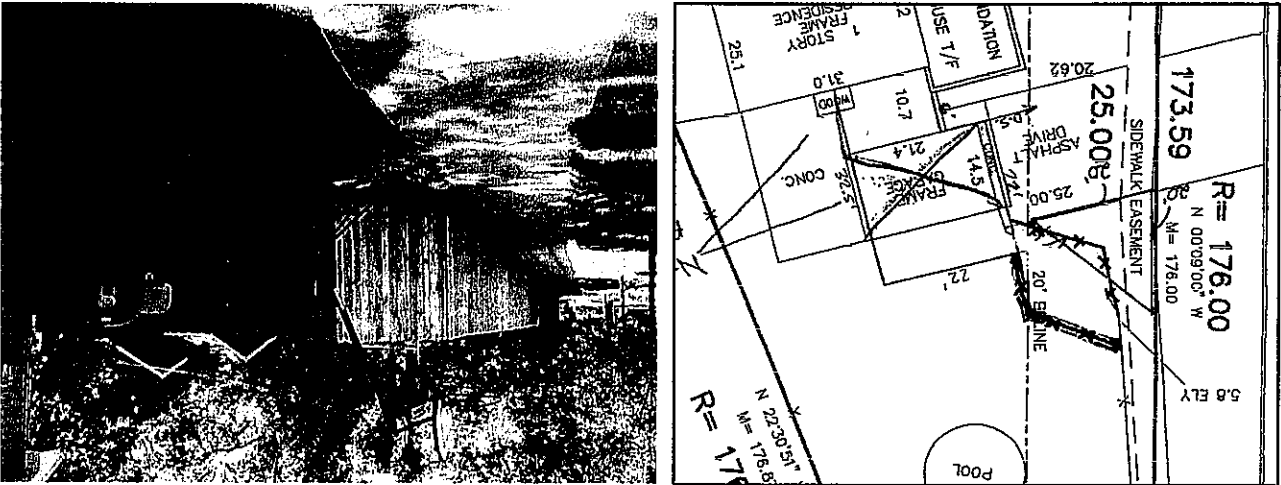
**Size of Property:** approximately 10,505 square feet

**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

will meet current code requirements. In time, this allows for full compliance with the Zoning Ordinance.

The newly constructed fence currently stands within the twenty-foot (20') clear line of sight triangle at the driveway on the subject property. This section of the fence is indicated by the yellow line below. The petitioner has agreed to move the fence out of the clear line of sight area. The fence will then follow the blue line.



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 their request, the petitioners have raised a few issues related to privacy, safety, and traffic concerns. 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.

## ANALYSIS

### SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on August 5, 2008.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Plat of Survey, (undated).

### DESCRIPTION

The subject property is located at the northeast corner of Elizabeth Street and Berkshire Avenue. The petitioner is requesting a variation to allow a fence six feet (6') in height in the corner side yard where a maximum height of four feet (4') is permitted. The petitioner constructed the proposed fence in July of 2008 as a replacement for a previous non-conforming six foot (6') fence in the same area. The fence is located along a sidewalk easement on the western side of the property. 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 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 comments that the fence as shown on the site plan should be installed to maintain clear line of sight from the garage driveway to the public walk.

#### PLANNING

The subject property currently has a non-conforming wood fence six feet (6') in height within the corner side yard. This fence was constructed as a replacement for a legal non-conforming fence of the same height. 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

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.

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 feet (4') or changing the location so that the fence is outside the corner side yard. The hardship has been created by the petitioner as a result of the petitioner's preference for the fence's height and location.

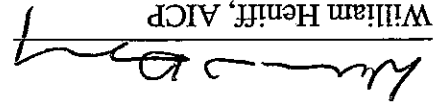
Staff recommends that the petition be denied on the grounds that a hardship has not been demonstrated.

## 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 08-14.

Inter-Departmental Review Group Report Approved By:

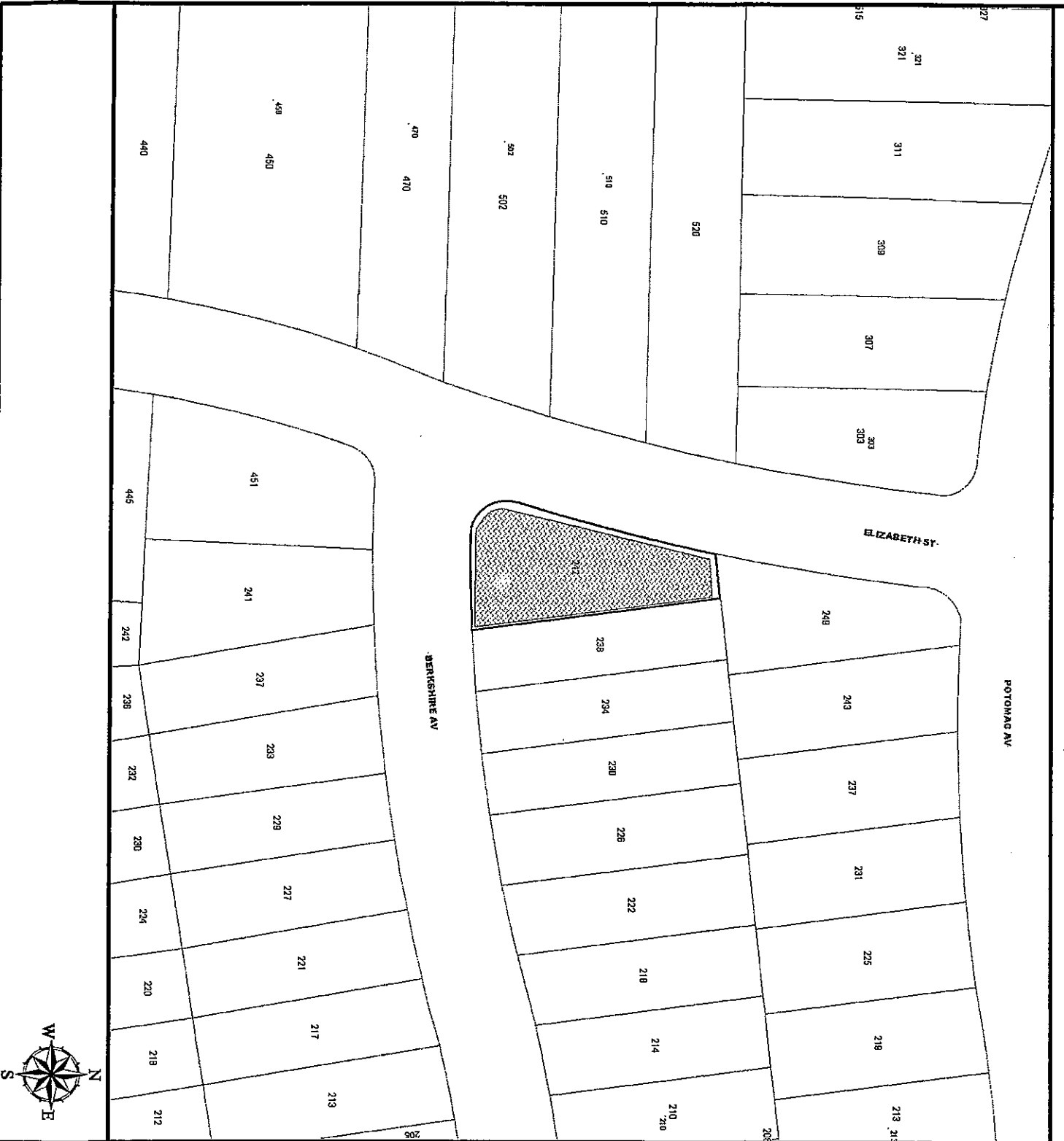
  
William Heniff, AICP

Acting Director of Community Development

WJH:SWM

c: Petitioner

# 242 W. Berkshire Ave.



• Active Cases

• Address Points

• Parcel Addresses

• Centerline

JURIS

--- RIVER

--- P&R

--- TOLLWAY

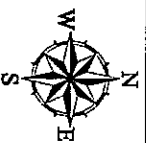
--- TRAIL

--- Boundary Agreement

□ Parcels

□ Trustee Boundaries

94 ft





My name is Patrick Heatley at 510 N. Elizabeth St, and I live directly across the street from 272 W Berkshire. The fence in question poses no problem to me especially since there already was an existing fence of the same size. In fact, the new fence is 100% aesthetically more pleasing than the old fence. Any questions, give me a call at 847-414-6965.





My name is Kevin Gilley I reside at  
502 N. Elizabeth St. The fence at 292  
W. Berkshire ~~is~~ is a nice look  
for the property & poses no threat to the  
village ordinance (630) 625 2989



ORDINANCE NO. \_\_\_\_\_

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

(ZBA 08-14: 242 W. 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') in the R2 Single-Family Residence District; and,

WHEREAS, a public hearing has been conducted by the Zoning Board of Appeals on August 27, 2008 pursuant to appropriate and legal notice; and,

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

WHEREAS, the President and Board of Trustees does concur with the findings of the Zoning Board of Appeals and have determined that it is in the best interest of the Village of Lombard to approve the requested fence height 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').

**SECTION 2:** This ordinance is limited and restricted to the property generally located at 242 W. Berkshire Avenue, Lombard, Illinois, and legally described as follows:

LOT 30 IN ELMORE'S NORTH VIEW, BEING A SUBDIVISION IN THE NORTH  
HALF OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD  
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED  
MARCH 26, 1927 AS DOCUMENT 232326, IN DUPAGE COUNTY, ILLINOIS.

Parcel No: 06-06-213-010

SECTION 3: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

First reading waived by action of the Board of Trustees this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk