

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

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

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: July 25, 2007 (B of T) Date: August 9, 2007

TITLE: ZBA 07-06: 466 N. Main Street

SUBMITTED BY: Department of Community Development *John*

BACKGROUND/POLICY IMPLICATIONS:

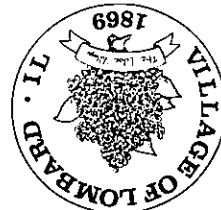
The Zoning Board of Appeals transmits for your consideration its recommendation relative to the above-mentioned petition. This petition requests variation to Section 155.205(A)(1)(c)(2) of the Lombard Zoning Ordinance to increase the maximum allowable fence height in a corner side yard from four feet (4') to five feet (5') in the R2 Single-Family Residence District. (DISTRICT #1)

The Zoning Board of Appeals recommended denial of this petition.

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

Village Attorney X
Finance Director X
Village Manager X
Date _____
Date _____
Date _____

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 *dah*
Assistant Village Manager/Director of Community Development
DATE: August 9, 2007
SUBJECT: ZBA 07-06: 466 N. Main Street

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

1. Zoning Board of Appeals referral letter;
2. IDRC report for ZBA 07-06; and
3. Plat of Survey.

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



VILLAGE OF LOMBARD
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 Lombard, IL 60148-3931
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August 9, 2007

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

Subject: ZBA 07-06; 466 N. Main Street

Dear President and Trustees:

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 five feet (5') in the R2 Single-Family Residence District.

The Zoning Board of Appeals conducted a public hearing on June 27, 2007. Keith Tapp, owner of the subject property, presented the petition. He began by outlining the list of documents that were included in the packet received by Zoning Board of Appeals members. He noted that the existing fence has replaced the original six foot (6') fence that was on the property when they purchased their home and that they tried to come to a mutual understanding and reconciliation outside prior to coming before the Zoning Board of Appeals. He then read his narrative that was submitted as part of his petition.

Mr. Tapp finished his presentation by commenting on the staff report. He mentioned that there was no clear line of sight issue related to his fence. He stated that the three inch (3") variance in fence height that is now allowed as a result of the 2005 fence text amendment, is too small. He added that he never received a copy of the fence handout.

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

Chairperson Defalco then requested the staff report.

Michelle Kulikowski, Planner I, presented the staff report. She stated that the petitioner received a permit to install a four foot (4') fence in the corner side yard and rear yard. She mentioned that after the fence was installed the Code

"Our shared *Vision* for Lombard is a community of excellence exemplified by its government working together with residents and business to create a distinctive sense of spirit and an outstanding quality of life."
 "The *Mission* of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

Village 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
 Dana L. Moreau, Dist. 4
 Laura A. Fitzpatrick, Dist. 5
 Rick Soderstrom, Dist. 6
 Village Manager
 William T. Lichter

Enforcement Division received a complaint regarding the height of the fence, and staff conducted a site visit and took measurements of the fence from several places inside the yard and from the public sidewalk. She noted that the measured fence height varied due to the change in grade and staff determined that portions of the fence exceeded the maximum allowable fence height, even after considering the allowable variations in fence height for grade variations and decorative finials as permitted under Section 155.205(A)(1)(c)(4). She stated that the fence measured as tall as five feet (5') in some portions of the corner side yard, and therefore, the petitioner is requesting a variation to allow a five (5') fence in a corner side yard.

Ms. Kuliukowski stated that there is a change in grade on the subject property. She noted that the elevation is highest at the southeast corner of the fenced area, and the grade slopes to the west and the south. She mentioned that the petitioner has represented the four foot (4') height measurement for the fence was taken at the highest elevation and a laser level was used to extend the fence to the west along the corner side property line. She stated that essentially, the top of the fence does not change as the grade slopes to the west, and therefore, the measured fence height varies depending on where the measurement is taken. She noted that at the southeast corner of the fenced area the fence height is four feet (4') and at the southwest corner, the fence height is five feet (5').

Ms. Kuliukowski mentioned that the grade also slopes to the south toward the public sidewalk, which results in a taller fence height measurement on the exterior of the fence than on the interior of the fence. She stated that at the southeast corner of the fenced area, the grade transition is abrupt, resulting in a ditch approximately seven and one-half inches (7.5") deep immediately adjacent to the interior of the fence. She noted that at the highest elevation (southwest corner of the fenced area), the fence measures approximately four feet (4') on the interior of the fence and five feet (5') on the exterior. At the southwestern corner of the property where the grade levels out, the measurement of the fence is five feet (5') on both the interior and exterior side of the fence.

Ms. Kuliukowski explained that the Zoning Ordinance definition for a fence specifies that the height is measured from average grade. She also reviewed the Zoning Ordinance definition for average grade. She noted that staff has consistently used the concept of "average grade" for determining the height of structures. She stated that in circumstances where the grade changes substantially, measurements are taken from several points, and these measurements are averaged together to determine the height for the purposes of verifying compliance with the Zoning Ordinance.

Ms. Kuliukowski referenced a text amendment approved in 2005, which provided for a small amount of flexibility in the fence height calculation. She explained that the text amendment allows the maximum height of a fence to vary up to three inches (3") in order to allow for grade changes, clearance under fences for maintenance, and reasonable human error. The text amendment also stipulated that fence posts or decorative finials may not cause the fence to

exceed the maximum height limitation by more than three inches (3"). She noted that pursuant to Section 155.205(A)(1)(c)(4), the fence on the subject property may go as high as four feet three inches (4'3") and still comply with code, but because portions of the fence exceed four feet three inches (4'3"), the fence is considered non-conforming.

Ms. Kulkowski stated that staff finds that the grade of the property presents a hardship to a certain degree. She noted that at the southeast corner of the fenced area, the fence boards must be greater than four feet (4') to account for the ditch. Otherwise there would be a substantial gap under the fence when viewed from the public sidewalk. She stated that staff does not support the requested variation for the fence as installed. She mentioned that at the southwestern corner of the property, the grade is leveled out and the fence measures approximately five feet (5') on both the exterior and interior of the fence. She explained that the petitioner has not been able to demonstrate why a five foot (5') fence is necessary at this location and staff finds that the grading does not present a hardship at this location. She noted that the Code already provides some flexibility for minor grade changes and where there are substantial grade changes, fences should be installed in sections so that the top of the fence can change with the grade.

Chairperson Defalco opened the meeting for discussion among the members.

Mr. Polley asked why the five foot (5') fence was necessary. Mr. Tapp noted that he had two young children and a ninety-five pound (95 lb.) dog.

Mrs. Newman asked the petitioner why he bought sections of fence that were five feet (5') when he knew they are only suppose to be four feet (4'). Mr. Tapp stated that the fence was built on site and a laser level was used to determine the four foot (4') height.

Dr. Corrado asked if they had a professional build the fence and shouldn't they have read Lombard's regulations? Mr. Tapp stated that they talked to several fence companies and chose Cedar Rustic because they have done a lot of work in Lombard.

Chairperson Defalco asked about how grade is used as the reference point for determining fence height. If one end of the fence is four feet (4') high and the other is five feet (5') high, would the fence considered to be four and one-half feet (4.5')? Jennifer Backensto, Planner II, stated that essentially the measurements would have to average out to four feet (4') in order to be considered in compliance.

Chairperson Defalco noted that the north side of their property is not fenced off. He asked what keeps the petitioner's dog in the yard. Mr. Tapp noted that they had a yard sharing agreement and their yard together with the adjacent properties is fully enclosed.

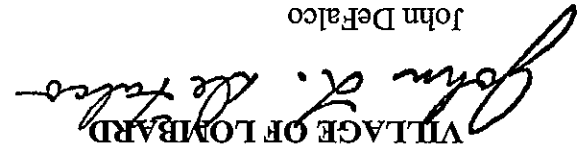
Chairperson Defalco asked staff whether Cedar Rustic received the courtesy letter that the Village sent out informing fence companies of Lombard's fence regulations. Ms. Backensto

stated that they had not. Chairperson DeFalco then requested that a fence handout be sent to Cedar Rustic.

Chairperson DeFalco noted another fence variation at School and Division. He asked whether the grade warranted a variation in this case.

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

Respectfully,


VILLAGE OF LOMBARD

John DeFalco

Chairperson

Zoning Board of Appeals

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

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

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

TITLE

ZBA 07-06; 466 N. Main Street: 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 five feet (5') in the R2 Single-Family Residence District.

GENERAL INFORMATION

Petitioner/Owner:
Keith Tap
466 N. Main Street
Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning: R2 Single Family Residential District
Existing Land Use: Single Family Residence
Size of Property: approximately 12,000 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: CR Conservation Recreation; Pleasant Lane School
West: R2 Single Family Residence District; Single Family Residences

ANALYSIS

SUBMITTALS

This report is based on the following documents, which were filed with the Department of Community Development on May 24, 2007.

1. Petition for Public Hearing.
2. Response to the Standards for Variation.
3. Written narrative, prepared by the petitioner, explaining the background and time line of events.
4. Plat of Survey prepared by RC Morrison Surveying Services and dated May 21, 1991.

DESCRIPTION

The subject property is located at the northwest corner of Crystal Avenue and Main Street. The petitioner received a permit to install a four foot (4') fence in the corner side yard and rear yard. After the fence was installed the Code Enforcement Division received a complaint regarding the height of the fence. Staff conducted a site visit and took measurements of the fence from several places inside the yard and from the public sidewalk. The measured fence height varied due to the change in grade. Staff determined that portions of the fence exceeded the maximum allowable fence height, even after considering the allowable variations in fence height for grade variations and decorative finials as permitted under Section 155.205(A)(1)(c)(4). The fence measured as tall as five feet (5') in some portions of the corner side yard. Therefore, the petitioner is requesting a variation to allow a five (5') fence in a corner side yard.

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 states that the height of the fence can not effect any line of sight for any emergency vehicles at the corner property.

PLANNING

Staff notes that there is a change in grade on the subject property. The elevation is highest at the southeast corner of fenced area, and the grade slopes to the west and the south. The petitioner has represented the four foot (4') height measurement for the fence was taken at the highest elevation and a laser level was used to extend the fence to the west along the corner side property line. Essentially, the top of the fence does not change as the grade slopes to the west. Therefore, the measured fence height varies depending on where the measurement is taken. At the southeast corner of the fenced area the fence height is four feet (4') and at the southwest corner, the fence height is five feet (5').

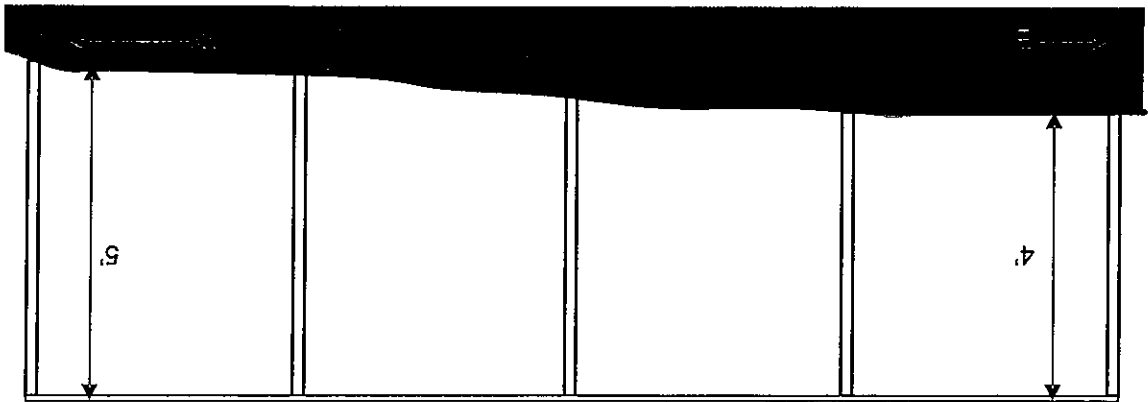


Figure 1: Elevation of the Existing Fence

However, the grade also slopes to the south toward the public sidewalk, which results in a taller fence height measurement on the exterior of the fence than on the interior of the fence. At the southeast corner of the fenced area, the grade transition is abrupt, resulting in a ditch approximately seven and one-half inches (7.5") deep immediately adjacent to the interior of the fence. At the highest elevation (southwest corner of the fenced area), the fence measures approximately four feet (4') on the interior of the fence and five feet (5') on the exterior. At the southwestern corner of the property where the grade levels out, the measurement of the fence is five feet (5') on both the interior and exterior side of the fence.

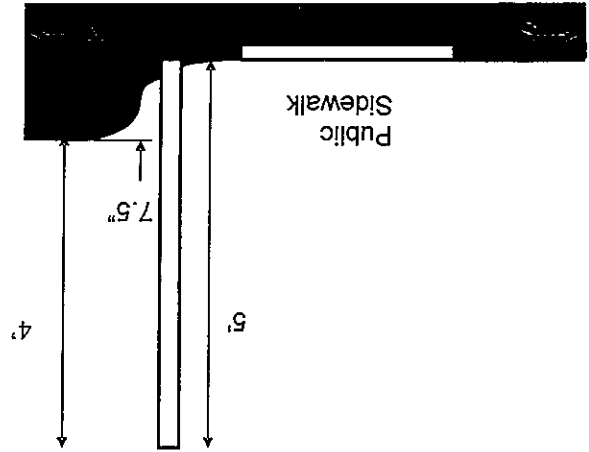


Figure 2: Section View of the Existing Fence

Measuring Fence Height

The definition for a fence specifies the manner in which the height is to be determined for the purposes of the Zoning Ordinance. The definition reads as follows:

FENCE is a free standing structure, made of metal, wire, wire mesh, masonry, plastic, wood, vinyl or a combination thereof, including gates, rising above ground level, measured from the grade at the location of the fence to the highest point of any component of the fence construction, including posts or any decorative elements, and used to delineate a boundary or as a barrier or means of protection, confinement, or screening”

The term “grade” is also defined in the Zoning Ordinance, which reads as follows:

GRADE is the average level of the finished surface of the ground adjacent to the exterior wall of the building or structure.

Staff has consistently used the concept of “average grade” for determining the height of structures. In circumstances where the grade changes substantially, measurements are taken from several points. These measurements are averaged together to determine the height for the purposes of verifying compliance with the Zoning Ordinance.

2005 Text Amendment

In 2005, as part of a comprehensive review of the fence regulations, the Board of Trustees approved a text amendment that provided for a small amount of flexibility in the fence height calculation. The text amendment allows the maximum height of a fence to vary up to three inches (3”) in order to allow for grade changes, clearance under fences for maintenance, and reasonable human error. The text amendment also stipulated that fence posts or decorative finials may not cause the fence to exceed the maximum height limitation by more than three inches (3”).

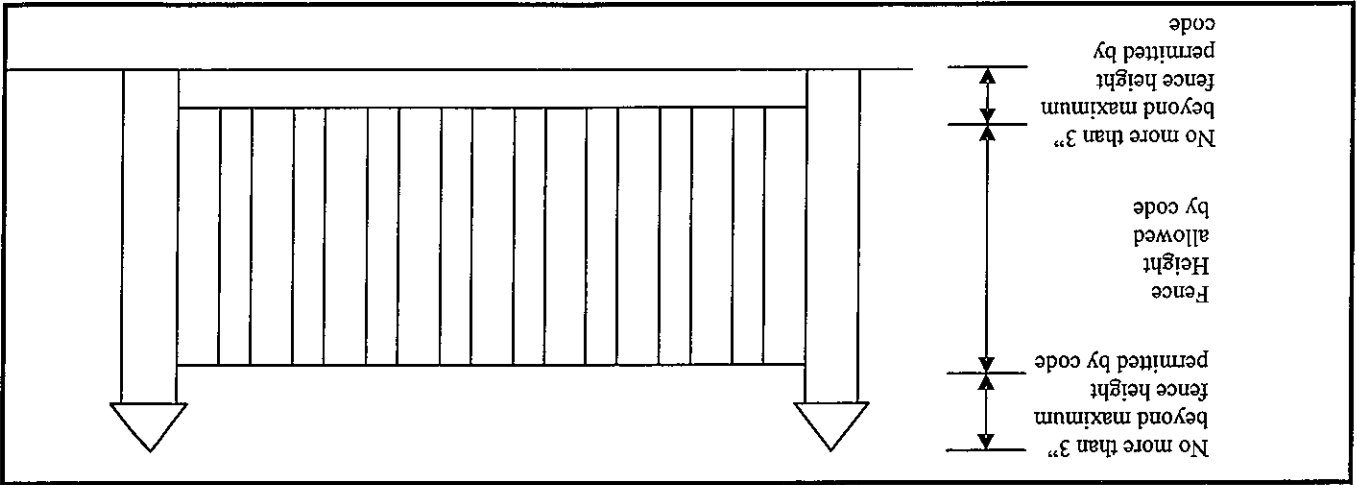


Figure 3 (From the Village of Lombard Fence Permit Handout)

Pursuant to Section 155.205(A)(1)(c)(4), the fence on the subject property may go as high as four feet three inches (4'3") and still comply with code. Because portions of the fence exceed four feet three inches (4'3"), the fence is considered non-conforming.

Standards for Variations

Staff finds that the grade of the property presents a hardship to a certain degree. At the southeast corner of the fenced area, the fence boards must be greater than four feet (4') to account for the ditch. Otherwise there would be a substantial gap under the fence when viewed from the public sidewalk.

However, staff does not support the requested variation for the fence as installed. At the southwestern corner of the property, the grade is leveled out and the fence measures approximately five feet (5') on both the exterior and interior of the fence. The petitioner has not been able to demonstrate why a five foot (5') fence is necessary at this location and staff finds that the grading does not present a hardship at this location. Furthermore, the Code already provides some flexibility for minor grade changes. Where there are substantial grade changes, fences should be installed in sections so that the top of the fence can change with the grade (see Figure 4 below).

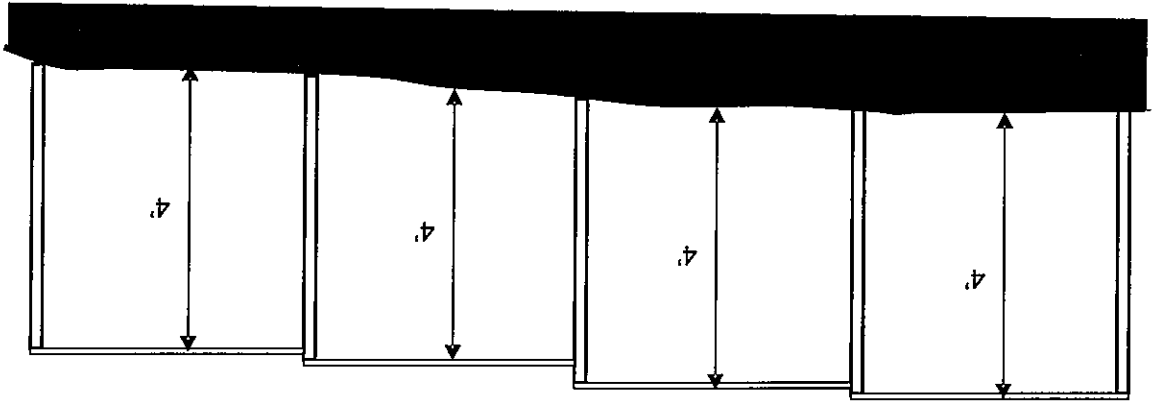


Figure 4

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

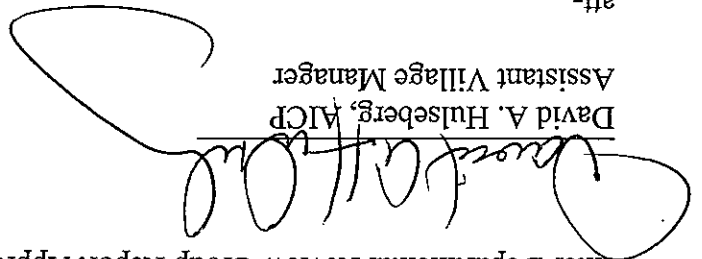
Inter-departmental Review Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 07-06.

Alternate Recommendation:

In the event the Board chooses to recommend approval of the requested relief or approval of a lesser degree of relief associated with ZBA 06-17, staff recommends that the following condition be added to the approval, as follows:

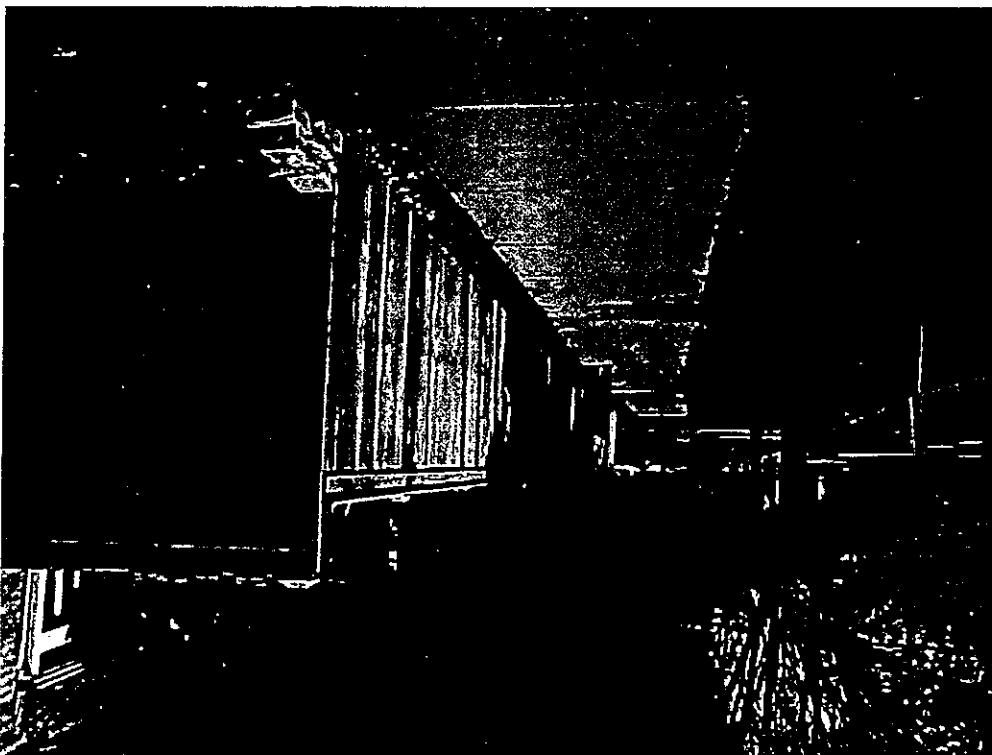
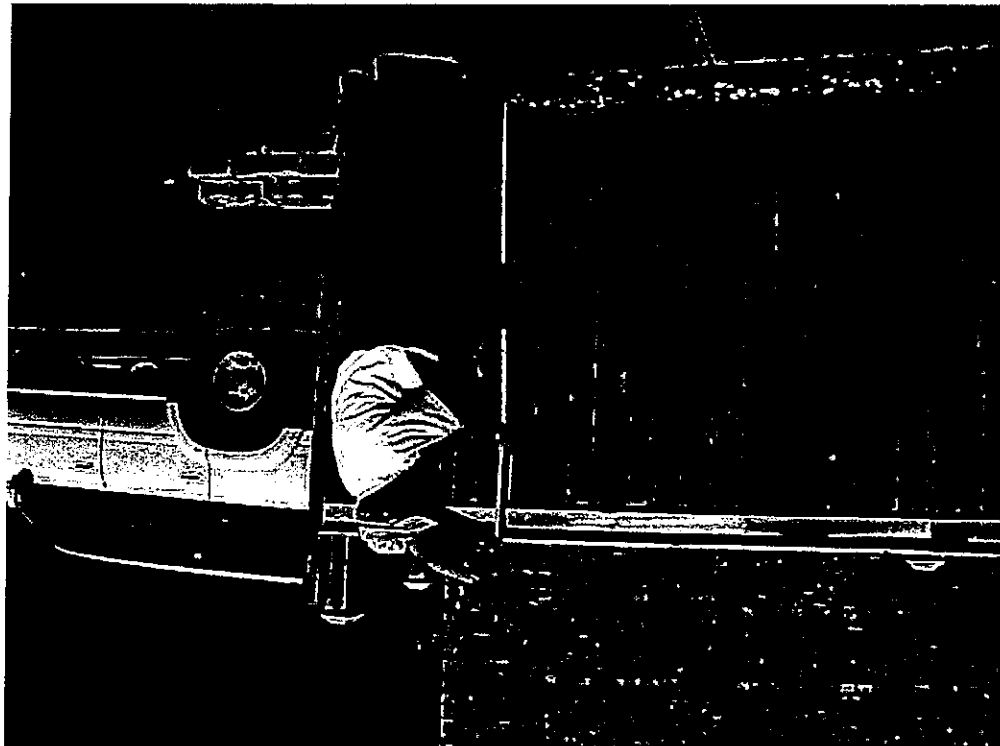
1. That the gate and portion of the fence extending from the garage to the corner of the property line be modified so that it is the same height/level as the remainder of the fence.

Inter-Departmental Review Report Approved By:



David A. Hulseberg, AICP
Assistant Village Manager

att-
c: Petitioner

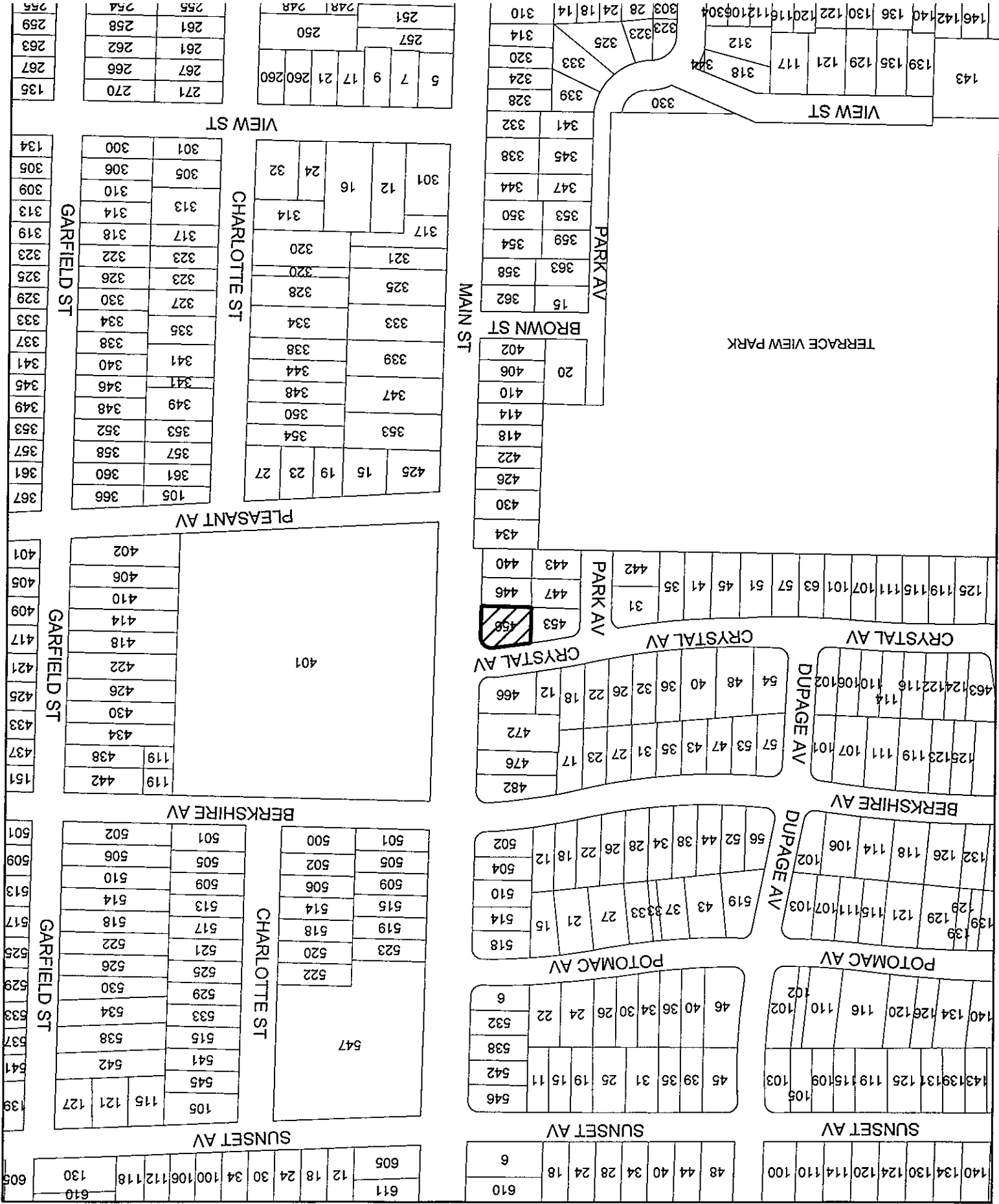


APPENDIX A: Pictures of the Subject Property



Location Map


ZBA 07-06



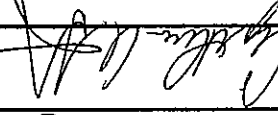
Statement of Position

We the undersigned, as home owners and neighbors adjacent to/or in proximity of the Tap residence located at 466 North Main Street, Lombard, IL, find the replacement fence installed in August 2006 to be pleasing by way of style, design, construction and size. Said fence does not create an imposition upon us or upon our neighboring property.

Name [print]	Address	Signature	Date
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B. MIKE ROBERTS	18 W. CRYSTAL AVE.		5-20-07
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Shawn Kohout	453 N. Park Ave.	Shawn Kohout	5-19-7
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Cynthia A. Stephenson	12 W. Crystal Ave		5/19/07
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I LOVE THE FENCE!

Jana Roberts	18 W. Crystal Ave	Jana Roberts	5-19-07
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Linda Bellido	472 N. Main		5-19-07
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JOLANTA MORYL	22 W. CRYSTAL AVE.	Jolanta Moryl	5-22-07
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