

ZONING BOARD OF APPEALS

INTER-DEPARTMENTAL REVIEW COMMITTEE REPORT

201 W Madison Street

December 4, 2019

Title

ZBA 19-07

Petitioner & Property Owner

Kirsten Jennings
201 W. Madison Street
Lombard, IL 60148

Property Location

201 W. Madison Street

Zoning

R2 Single Family Residence

Existing Land Use

Single Family Home

Comprehensive Plan

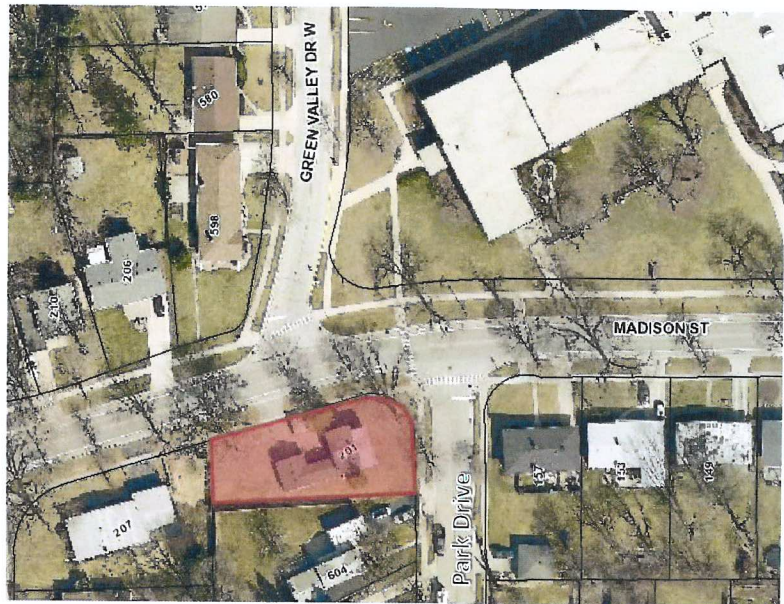
Low Density Residential

Approval Sought

A variation to allow a six foot (6') tall solid fence in the corner side yard; a variation to allow a six foot (6') tall solid fence in a clear line of sight of the subject property's driveway.

Prepared By

Tami Urish
Planner I



LOCATION MAP

PROJECT DESCRIPTION

The petitioner replaced an existing six foot (6') high solid wood fence with a six foot (6') high solid vinyl fence within their corner side yard (Madison Street frontage) without obtaining a building permit.

APPROVALS REQUIRED

There are two (2) distinct variations requested by the petitioner. First, Section 155.205(A)(1)(c)(ii) of the Lombard Village Code allows for six foot (6') high fences in a corner side yard only if it consists of open-construction decorative materials. "Fence-open construction" is defined by the Zoning Ordinance as a fence which has over its entirety at least sixty-six percent (66%) of its surface area in open space which affords a direct view through the fence. As the proposed fence is entirely opaque, a variance is required.

Second, Section 155.205(A)(1)(e) of the Lombard Village Code requires fences more than two feet (2') tall and located within the clear line of sight area to be of an open construction design. In regards to instances where a private residential driveway intersects an improved right-of-way or street, Section 155.802 defines the clear line of sight area as, "the area formed by the intersection of the edge of the pavement of such private drive with the improved rights-of-way or street, twenty feet (20') away from the point of intersection."

PROJECT STATS

Lot & Bulk (Proposed)

Parcel Size: 8,997 SF

Fence Height 6 feet

Reqd. Setbacks & Existing Dimensions (in parens.)

Front (east) 30' (33')

Side (south) 6' (8')

Corner Side 20' (15')
(north)

Rear (west) 25' (44')

Submittals

1. Petition for Public Hearing;
2. Response to Standards for Variation, Exhibit A;
3. Plat of Survey prepared by Gentile and Associates, dated October 31, 1986 with site plan, Exhibit B.
4. Photos, Exhibit C; and
5. Copy of as anonymous letter received by the Village.

EXISTING CONDITIONS

In addition to the existing fence, the property is improved with a split-level single-family residence. In order to help place the request in its proper context, planning staff offers the following:

Surrounding Zoning & Land Use Compatibility

	Zoning Districts	Land Use
North	Madison St./R2	Single Family Home and Madison Elementary School
South	R2	Single Family Home
East	Park Drive/R2	Single Family Home
West	R2	Single Family Home

INTER-DEPARTMENTAL REVIEW

Building Division:

The Building Division has no comments regarding the petition with the exception of the solid construction and height of the fence within the clear line of sight of the driveway is a safety concern.

Fire Department:

The Fire Department has no comments regarding the petition.

Private Engineering Services:

Private Engineering Services (PES) has no comments regarding the petition with the exception of the solid construction and height of the fence within the clear line of sight of the driveway is a safety concern.

Public Works:

The Department of Public Works has the following comment:
The fence as constructed obstructs pedestrians and drivers from avoiding the hazard posed by vehicles backing out of the driveway. As such, the fence should either be removed or be modified to 66% open within the 20-foot line-of-sight triangle adjacent to the driveway.

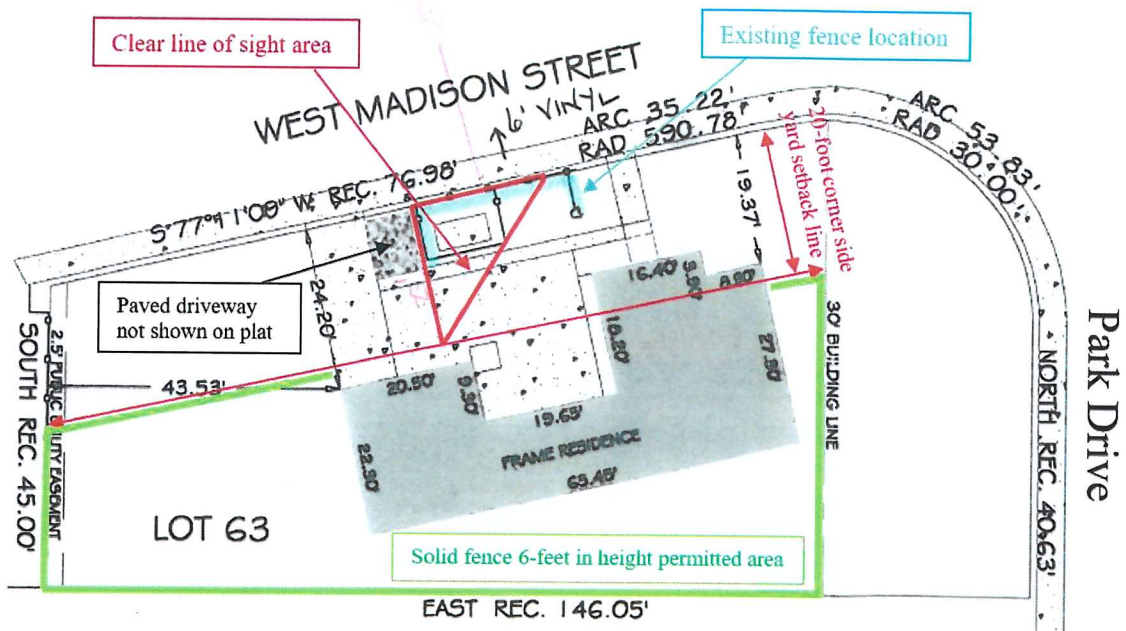
Planning Services Division:

A variation may only be granted if there is a demonstrated hardship that distinguishes the subject property from other properties in the area. Within the response to the Standards for a Variation concerns were raised regarding privacy and safety.

To be granted a variation, petitioners must show that they have affirmed each of the standards for variations outlined in Section 155.103(C)(7). Staff offers the following commentary on these standards with respect to this petition:

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 does not agree that the construction of a six foot (6') high solid fence, especially when located in a clear line of sight area, is a matter of need, but rather a matter of preference, and is therefore not a true hardship. If a six-foot (6') high solid fence is a necessity, the petitioner may, by right, construct such a fence twenty feet (20') south of the northern property line around the rear yard instead of within the clear line of sight area of the driveway.



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.

There are no unique features associated with the subject property's clear line of sight area.

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

This standard is affirmed.

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.

The petitioner was informed of the hazard of the fence and proceeded to finish the fence construction without a permit. Staff finds the alleged difficulty to be a matter of personal preference for a six foot (6') high solid fence in a clear line of sight area of the driveway. The petitioner can either angle the fence in such a manner so as to avoid the encroachment, or construct a fence of an open construction.

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 does find that the location of said fence in a clear line of sight area of the subject property's driveway represents a potential danger to the public welfare with an obstructed view of pedestrians and vehicles driving by on Madison Street. Also, there are two elementary schools in the immediate vicinity.

6. *The granting of the variation will not alter the essential character of the neighborhood.*

Staff notes that the proposed fence will be identical in location and height to the fence currently on the property. Conditions in the neighborhood will not change. However, the essential character of the neighborhood does not include fences in the clear line of sight areas of driveways or intersections. The other three corners of the intersection of Madison Street and Green Valley Drive/Park Drive do not have six-foot high solid fences in the corner side yards or the clear line of sight areas. The corner properties of the intersection of Madison Street and Elizabeth the next block to the west also do not have six-foot high solid fences in the corner side yards or the clear line of sight areas.

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

Staff finds that this standard is partially affirmed in that staff does not find the request for a six foot (6') high solid fence to be located within the corner side yard to endanger public safety. However, staff does find that the location of said fence in a clear line of sight area represents a potential danger to public safety. As an elementary school is located



directly across the street, young students walking toward the west/southwest along Madison will be encountering a potential danger routinely along with the general public.

In consideration of precedent, staff has identified six (6) similar cases that appeared before the Zoning Board of Appeals within the last fifteen (15) years. Each case involves a solid fence that exceeds the maximum height for a fence in a corner side yard as well as a solid fence within a clear line of sight area. Also, each case pertains to a single-family home located within a residential zoning district.

Of the six (6) cases, staff recommended that the Zoning Board of Appeals recommend denial of the requested clear line of sight area variation each time. Staff also recommended denial of the six foot (6') high fence in a

required corner side yard each case, except one (ZBA 06-13). In ZBA 06-13 staff recommended approval of the fence height variation because the petitioner was proposing a six-foot (6') high solid fence to encroach into the corner side yard setback only along a twenty-foot (20') segment of the rear property line. The petitioner constructed a four foot (4') high fence along the street frontage.

CASE NO.	DATE	ADDRESS	SUMMARY	ZBA	BoT
ZBA 06-13 & ZBA 07-01	9/21/2006 & 2/15/2007	501 N. Garfield St.	6' tall solid fence within a corner side yard and clear line of sight area	Denial, 6-0 & Denial, 5-0	Denial, 6-0 & Denial, 4-2
ZBA 06-20	12/7/2006	614 E. Berkshire Ave.	6' tall solid fence within a corner side yard, rear yard abutting the front yard of an adjacent lot, and clear line of sight area.	Modified to remove fence from Clear Line of Sight Area	
ZBA 09-11	1/21/2010	617 E. Berkshire Ave.	6' tall solid fence within a corner side yard and clear line of sight area	Denial, 5-0	Denial, 6-0
ZBA 10-02	5/20/2010	302 S. Grace St.	6' tall solid fence within a corner side and clear line of sight area	Denial, 5-0	Denial, 5-0
ZBA 11-02	6/2/2011	403 W. Ethel Ave.	6' tall solid fence within a corner side yard and clear line of sight area	Denial, 6-0	Modified to remove from Clear Line of Sight Area
ZBA 15-05	5/27/2015	601 N. Grace St.	6' tall solid fence within a corner side yard; 6' tall solid fence within the clear line of sight.	6' in corner side yard: Approval, 6-0 6' in clear line of sight: Denial, 6-0	6' in corner side yard: Approval, 6-0 6' in clear line of sight: Denial, 6-0

Staff finds that would set a long-range precedent that could be commonly applied to other properties creating wide spread hazards for the general public.

Additionally, existing conditions include a hot tub also in the CLOS area that the property owner agreed to store or move off the property. A permit is required if the property owner chooses to keep the hot tub on the property.



The Lombard Police Department inspected the site on November 26, 2019 at the request of the Planning staff and determined that there is a safety concern. The fence blocks the view of any pedestrian and/or bicyclist and the close proximity to a school contributes to this concern.

FINDINGS & RECOMMENDATIONS

The Department of Community Development has determined that the information presented **has not affirmed** the Standards for Variations, in their entirety, 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 for Variations required the Lombard Zoning Ordinance; and, therefore, I move that the Zoning Board of Appeals find that the findings as discussed at the public hearing, and those findings included as part of the Inter-Departmental Review Committee Report be the findings of the Zoning Board of Appeals and recommend to the Corporate Authorities **denial** of ZBA 19-07.

Inter-Departmental Review Committee Report approved by:

A handwritten signature in blue ink, appearing to read 'W. Heniff', is written over a horizontal line.

William J. Heniff, AICP
Director of Community Development

c. Petitioner

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STANDARDS FOR VARIATIONS

of the Lombard Zoning Ordinance and Lombard Sign Ordinance

The following is an excerpt from the Lombard Zoning Ordinance. A detailed response to all of these standards should be provided for all variations of the Lombard Zoning Ordinance and Lombard Sign Ordinance.

SECTION 155.103.C.7 OF THE LOMBARD ZONING ORDINANCE:

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

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

- The property sits front facing the corner side yard. Property front is 15.47' from sidewalk with the bottom of the front step 12' from sidewalk
- Patio and sidewalk are separated only by the fence
- Requesting Variations for both fence height and setback
- Homeowner Safety and Security are issues without this 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.

- Due to the close proximity of my patio to the sidewalk without the fence my private property would be visible and accessible to passersby. i.e. patio furniture, grill, sandbox/toys, garbage cans, etc. therefore security concerns
- On several occasions our cars have been broken into again due to the close proximity to the sidewalk, bike stolen as well as eggs thrown at my living room window even with the prior 6' fence
- Personal safety is also a concern. Madison Street is very busy with traffic coming from 6 different directions. Fence has contained my children growing up and now my grandchild. i.e. speeders, saran wrap wrapped across the street from street sign to street sign, garbage pickers running over pedestrian signs, etc.
- What is unique to this property is the odd shaped yard and placement of the home making what should ordinarily be in the "backyard"; be in the "front yard".

EXHIBIT A – Response to Standards - continued

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

- Variation will not increase any financial gain other than to provide the appearance of a well kept and properly maintained home.

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.

- This is correct

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.

- No, the variations will not be detrimental to the public. I have owned this property for 15 years and the previous fence of same dimensions was a non-issue.
- As noted in #2 there are 6 directions of traffic (EX-1)
- From my driveway (side WITH the fence) I have visibility to 3 directions of traffic:
 - Westbound on Madison (EX-2)
 - Northbound on Green Valley (EX-2)
 - Southbound on Green Valley (EX-3)
- From my driveway (side WITHOUT the fence) I have visibility to 2 directions of traffic:
 - Southbound Elizabeth (EX-4)
 - Eastbound Madison (EX-4)
 - NO visibility to Northbound Elizabeth (EX-4)
- For FULL visibility to all directions of traffic regardless of the fence, I would need to be in the driveway fringe (EX-5)

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

- The granting of the variations allow for improved aesthetics which enhances the overall character of the neighborhood.
 - Fence that was replaced (EX-6)
 - Replacement fence (EX-7)

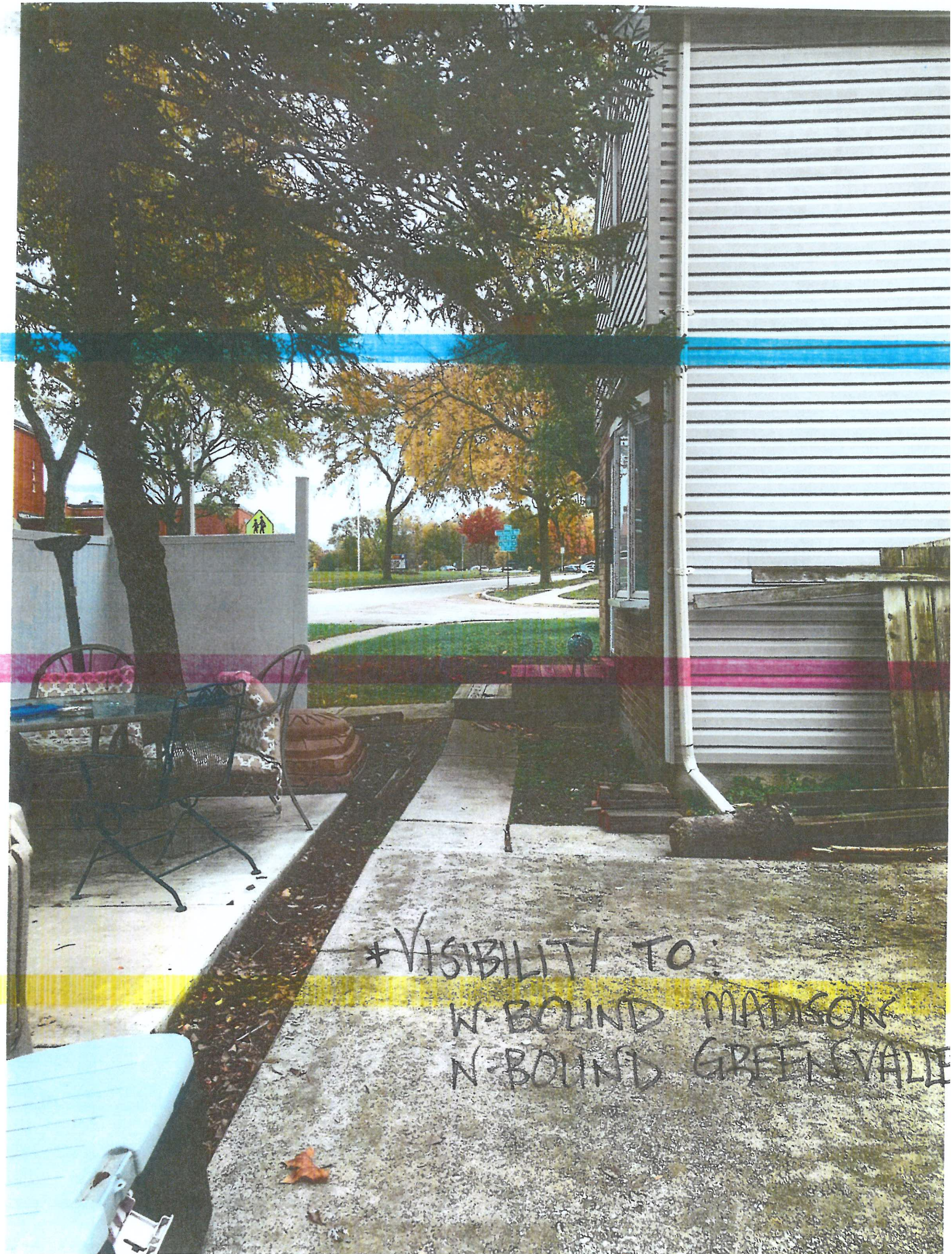
7. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety,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

- The variations will not affect any of the above-mentioned considerations.

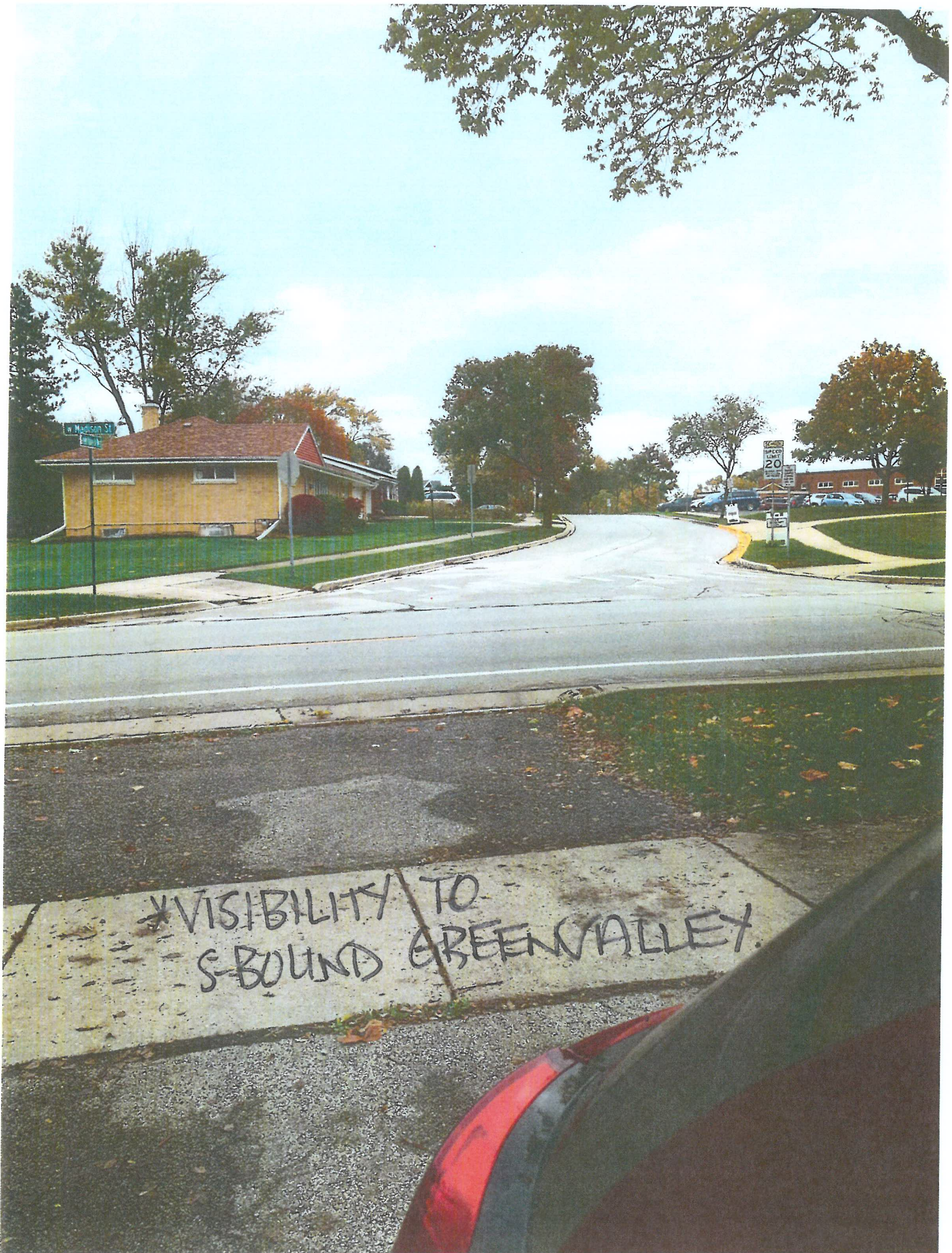
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Exhibit C – Photos submitted by petitioner
(See attached)



*VISIBILITY TO:
W-BOUND MADISON
N-BOUND GREEN VALLEY



*VISIBILITY TO
S-BOUND GREEN VALLEY.







BEFORE

EX-6



AFTER EX-7

Lombard Zoning Board of Appeals

Case No. ZBA 19-07, 201 W. Madison Street

We respectfully request you **DENY** the petitioner's request for approval of a variation from Section 155.205(A)(1)(c)(ii) of the Lombard Village Code to allow for a six foot high solid fence in a corner side yard. We also request you **DENY** the petitioner's request for approval of a variation from Section 155.205(A)(1)(e) of the Lombard Village Code to allow for a six foot high solid fence in the clear line of sight area of a driveway.

We live close to this address, and the old fence at the address was a certain obstruction when looking for traffic as we would attempt to pull onto Madison. Vehicles tend to travel on Madison at a decent rate of speed, and the fence creates a safety hazard. Furthermore, this is a major crossing area for school children with the school right across the street.

These two particular building codes seem to have been put into place for safety, rather than aesthetic purposes. We respectfully request you **DENY** the petitioner's requests for variances, as this should be a much safer intersection without the fence there.

Thank you.