



## ZONING BOARD OF APPEALS STAFF REPORT

November 10, 2016

### HICKEY (16309 66<sup>th</sup> Court)

Variation from the Required Front Yard Setback for a Fence

#### Petitioner

Kevin Hickey

#### Property Address

16309 66<sup>th</sup> Court

#### PIN

28-19-409-016-0000

#### Parcel Size

0.14 acres ±  
(6,448 square feet)

#### Zoning

R-4 (Single-Family Residential)

#### Subdivision

Tinley Terrace

#### Publication

Daily Southtown  
(October 23, 2016)

#### Requested Action

Consider making a motion to recommend the requested Variation to the Village Board

#### Project Planner

Stephanie Kisler, AICP  
Planner I



*Photo of Petitioner's House (from 66<sup>th</sup> Court, Looking East)*

### SUMMARY OF VARIATION REQUEST

The Petitioner, Kevin Hickey, is requesting a twenty-three foot (23') Variation from Section V.B. Schedule II (Schedule of District Requirements) of the Zoning Ordinance where the front yard setback requirement is twenty-five feet (25').

This Variation would allow the Petitioner to install a new four-foot (4') tall open-style aluminum fence at a two foot (2') setback on the north (163<sup>rd</sup> Place) side of this corner lot at 16309 66<sup>th</sup> Court in the R-4 (Single-Family Residential) Zoning District and within the Tinley Terrace Subdivision where no fence previously existed. In addition the Petitioner is planning on replacing a 6' wooden fence along the east side of this property that was erected by the adjacent property owner and encroaches onto the Petitioner's property. A portion of this fence would extend into the front yard setback and therefore is prohibited without a Variation.

## VILLAGE STAFF COMMENTS

---

### **BACKGROUND & CONTEXT**

Staff has reviewed the Petitioner's Variation request, which would allow the Petitioner to install a new four-foot (4') tall open-style aluminum fence at a two foot (2') setback on the north (163<sup>rd</sup> Place) side of the property. The proposed fence is a new fence ; there was no fence previously at this location. The proposed fence would align with the wood fence on the adjacent property to the east (6607 163<sup>rd</sup> Place), located along its north property line with a two-foot (2') setback.

Staff located fence permit records for the fence at the adjacent property (6607 163<sup>rd</sup> Place) from 1968 and 1990, but found no record of a Variance for the fence's setback. This fence also appears to be deteriorating in condition (see photo below) and would likely require repair or replacement in the near future. A Variation would be required to remain in the same location. It is important for the ZBA to consider the fence on the adjacent property when reviewing the Petitioner's request because the granting of a Variation for the Petitioner likely set a precedent for when the next door neighbor's fence has to be replaced. In addition, it is important to note that the neighbor's fence that runs along the east side of the Petitioner's property was not constructed on the common property line but instead encroaches the Petitioner's property. The Petitioner will be removing the encroaching portion of the wood fence and replace it with a 6' solid PVC fence at a two foot (2') setback at the east property line.



*Photo Showing Existing Fence Along the North Property Line at 6607 163<sup>rd</sup> Place*



Diagram Showing Context Between 16309 66<sup>th</sup> Court and 6607 163<sup>rd</sup> Place

**ZONING**

The property is zoned R-4, so a twenty-five foot (25') setback is required for front yards per Section V.B. Schedule II (Schedule of District Requirements). The **Variation request** is for the fence to be installed at a two foot (2') setback from the north property line. Per Section III.H.1. of the Zoning Ordinance, Staff is able to grant an **Administrative Variation** of up to ten feet (10') from the required setback. This would allow the Petitioner to maintain a setback for the fence fifteen feet (15') from the property line parallel to 163<sup>rd</sup> Place. This would result in approximately a 25% reduction in the rear yard. The unfenced rear yard currently comprises approximately 1,998 SF; erecting a fence at the fifteen-foot (15') setback would result in an fenced area of approximately 1,498 SF. Installing a fence at the **permitted fence location (25' setback)** would align closely with the garage, and result in approximately a 45% reduction in the rear yard or an approximately 1,099 sf fenced yard.

LEGEND	
<b>Red Dashed Line</b>	Property Lines
<b>Pink Dotted Line</b>	25' Required Front Yard Setback Lines
<b>Yellow Line</b>	Existing Fence Location
<b>Purple Line</b>	Proposed Variation Request for Fence
<b>Blue Line</b>	Fence Allowed by Administrative Variation
<b>Green Line</b>	Fence Allowed by Code

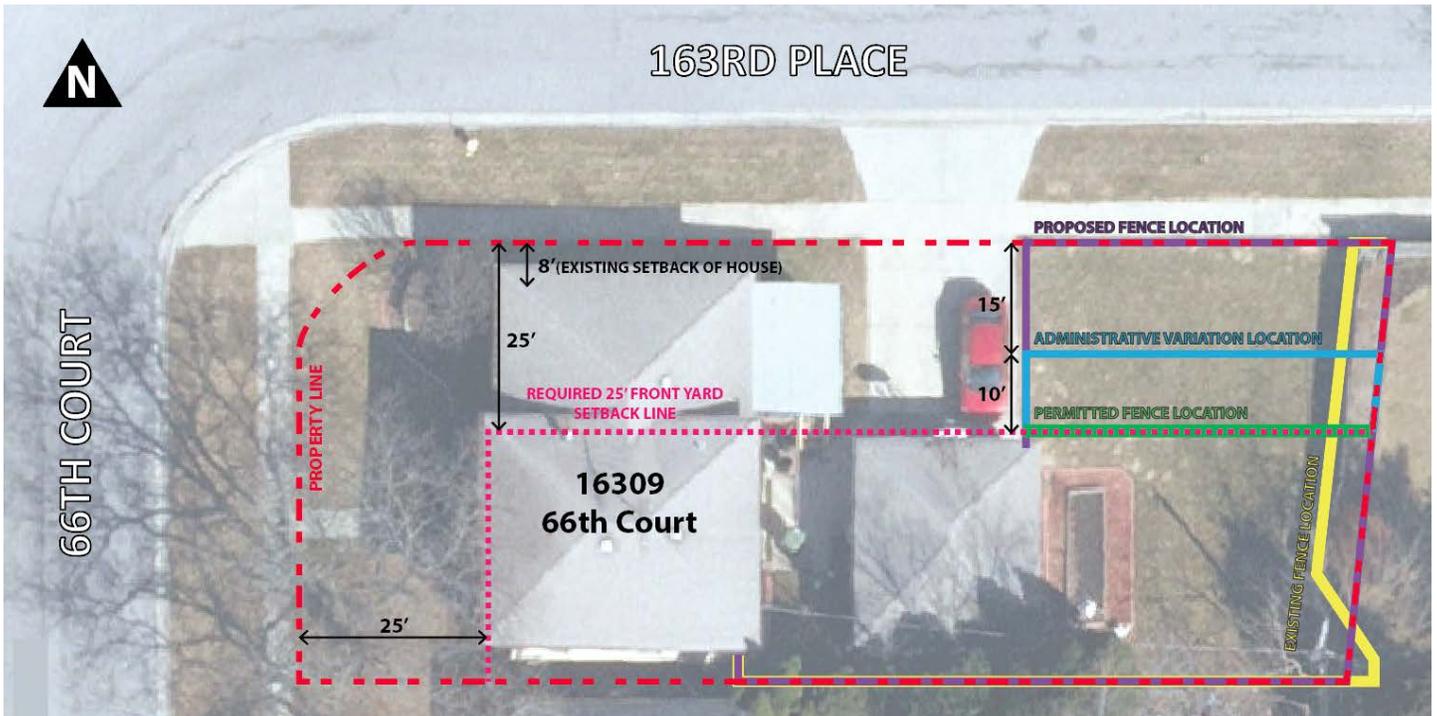


Diagram Showing Variation Request and Relevant Measurements

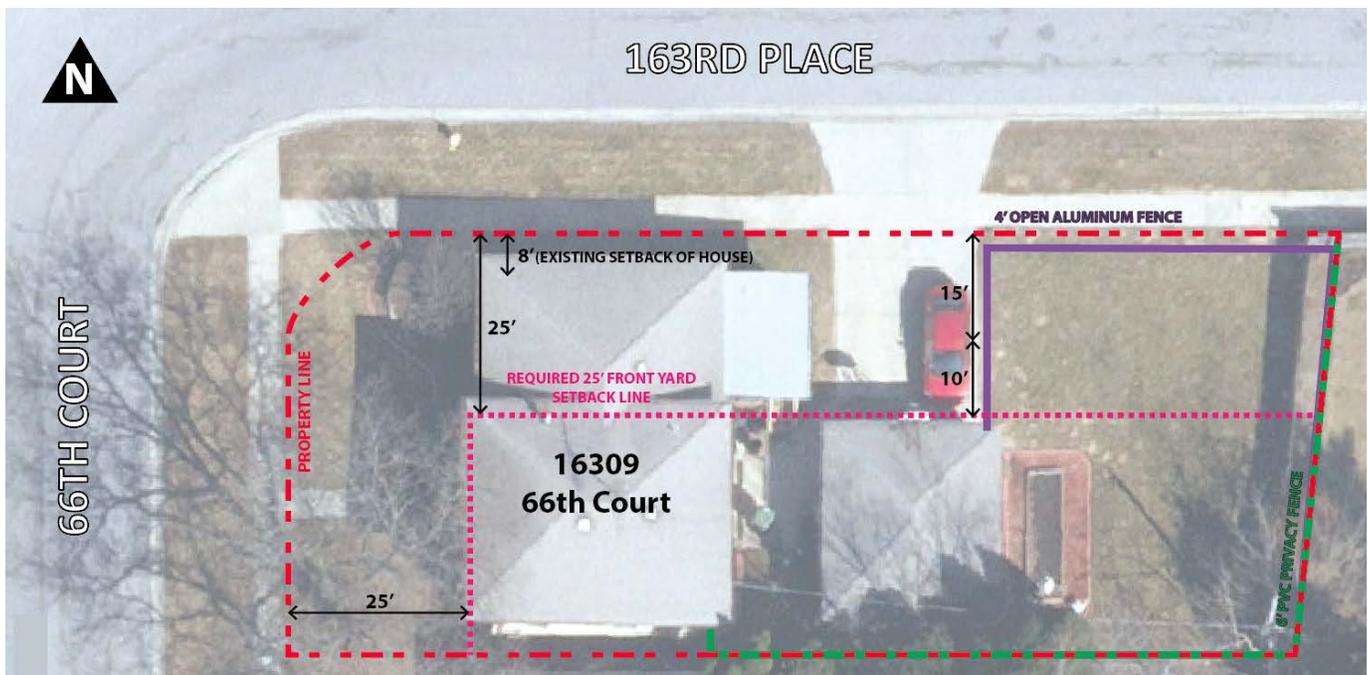
PROPOSED FENCE

The Petitioner proposes to install a new four-foot (4') tall open-style aluminum fence in alignment with the adjacent wood fence. Staff notes that there was no Variation granted for the fence at the adjacent property (6607 163<sup>rd</sup> Place) which is in deteriorating condition and may need replacement soon. Upon its replacement a Variation would be required to remain in its existing location. The ZBA may wish to consider the precedence of granting the requested Variation and the impact it may have for future Variation applications, especially regarding the adjacent property. It is unknown whether the adjacent property owner would want to erect a similar fence to the Petitioner (4' open style) or continue with the 6' PVC as proposed by the Petitioner along the common property line.



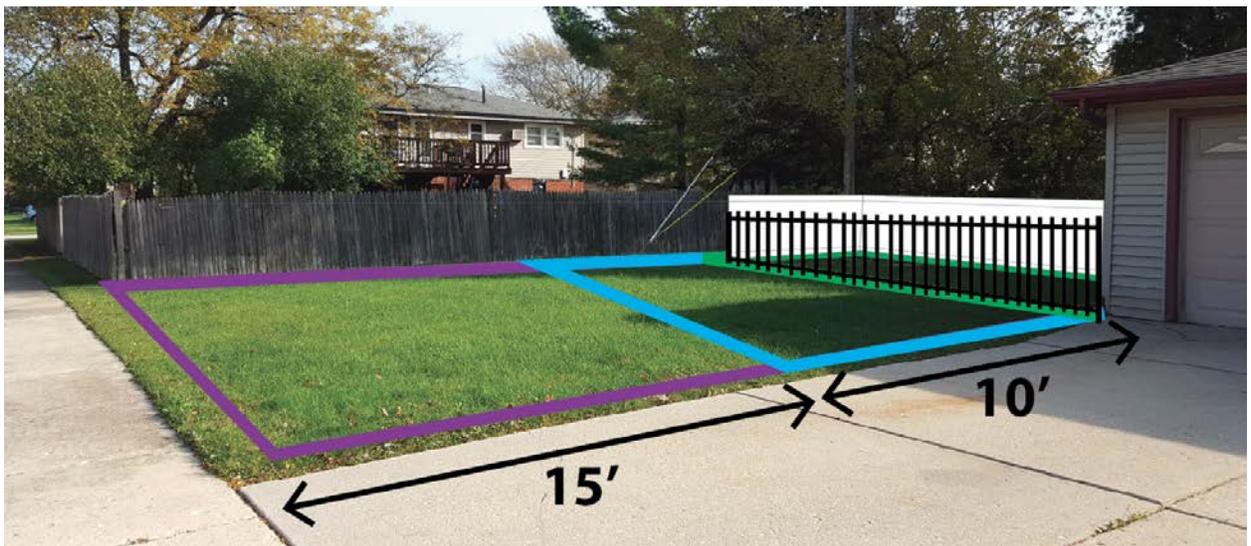
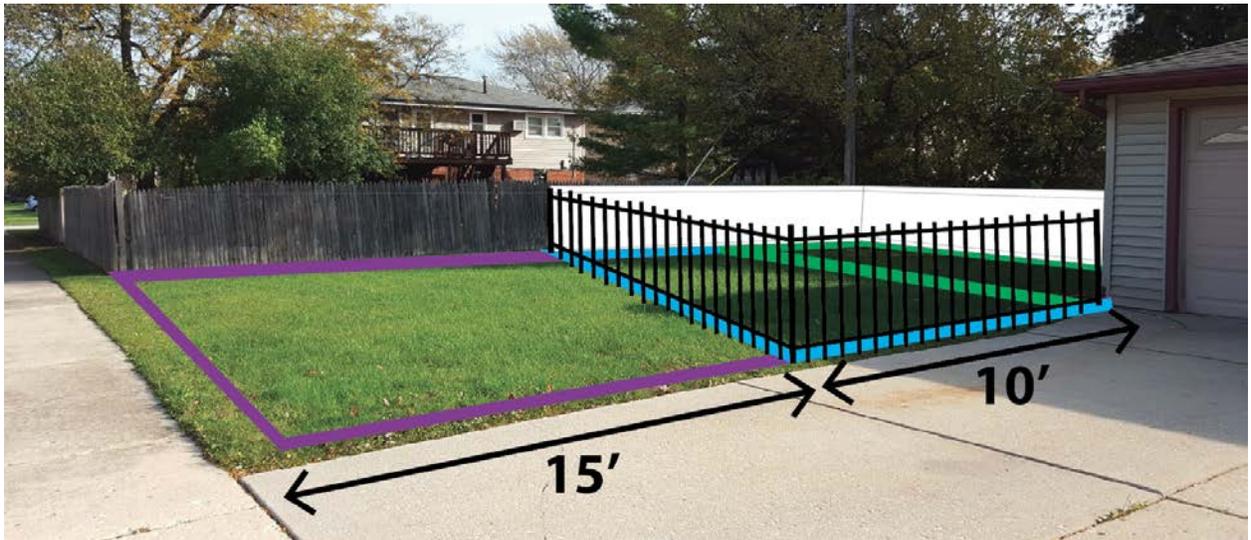
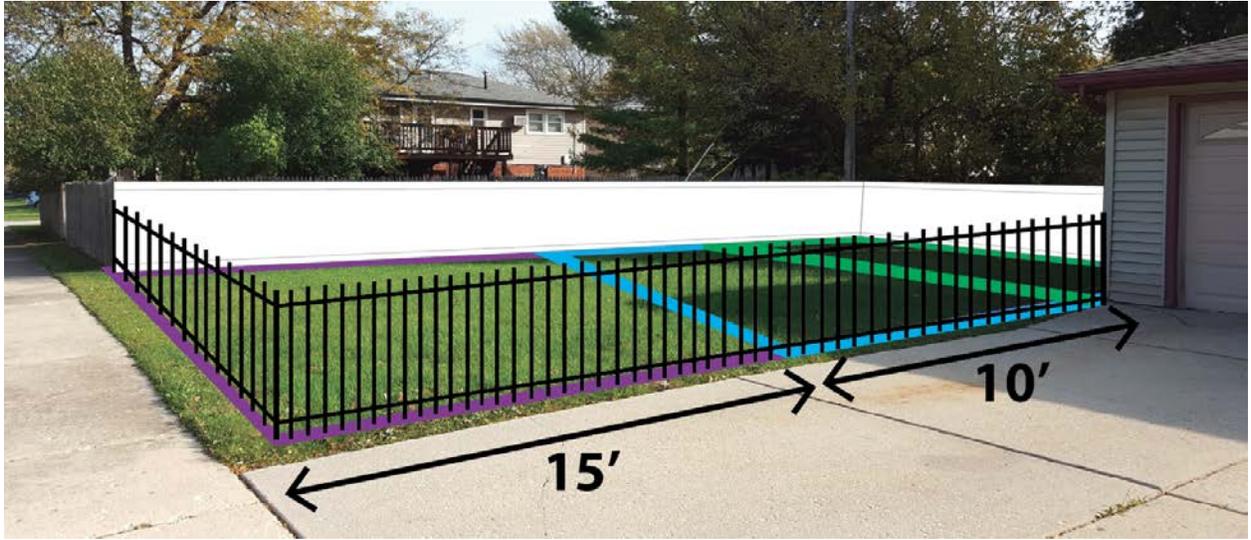
*Photo Showing the Currently Un-fenced Yard Area and Adjacent Existing Fence*

The ZBA should also note that the fence along the east side of the Petitioner’s property was installed by the adjacent property owner yet encroaches onto the Petitioner’s property. The Petitioner proposes to remove the section of the wood fence along his east property line and install a six-foot (6') tall PVC privacy fence in its place. While a privacy fence currently exists in this location, Staff notes that the Petitioner plans to extend the six-foot (6') tall PVC privacy fence to the north property line which also requires a Variation, .



*Diagram Showing Proposed Types of Fencing (4' Aluminum and 6' PVC)*

Staff has provided an estimated visual comparison of the **proposed fence location**, **administratively allowed fence location**, and the **permitted fence location** below.



**CONSIDERATIONS**

When considering any Variation request the Zoning Board of Appeals must consider safety, aesthetic impacts of the request, demonstrated hardship and the precedence that would be set if the request was granted. The ZBA may wish to consider the following:

1. Safety
  - Does the proposed fence have an impact on clear sight for driveways, sidewalks, or intersections?
2. Aesthetics
  - Does this fence alter the character of the neighborhood?
  - Is there a difference between height, style, and material of fencing when considering an appropriate location for the fence?
  - Should any portion of privacy fencing be allowed to be located on a front property line or within the required front yard setback?
3. Hardships
  - Does the Petitioner have a hardship?
  - Is the Variance request due to an inconvenience or is the request based off unique circumstances?
  - What is considered a ‘reasonable return of the property’ or reasonable amount of private rear yard?
4. Precedence
  - Is this situation unique to this lot?
  - By granting this Variation request, will other corner lots be able to be approved for the same kind of fence location?
  - What impact does the decision regarding this variation request play on the future requests for the adjacent property?

Staff has concerns regarding setting a precedent by granting a Variation that would allow locating a fence at a two foot (2’) setback, especially along 163<sup>rd</sup> Place, which does not have any other fence with that setback except for the fence on the adjacent property that was not granted a Variation in the past. Staff also notes that the Petitioner could erect a six-foot (6’) tall privacy fence at the administratively-allowed fifteen-foot (15’) setback or at the permitted twenty-five foot (25’) setback and still have private rear yard space. Staff recognizes the mitigating effect the open style four-foot (4’) tall fence has on the Variation request; however, Staff recommends the ZBA consider the precedence that an approval may have on future fence Variation applications for the property to the east, as well as other properties within the neighborhood. The ZBA may wish to consider what may be the best fence location for both properties. If the property to the east were to request another six-foot (6’) tall privacy fence at a two foot (2’) setback in the future, Staff recommends the ZBA provide direction as to what the impact that may have on the streetscape for 163<sup>rd</sup> Place.

It is important to note that the Petitioner is requesting a type and height of fencing that differs aesthetically from a six-foot (6’) tall wood privacy fence as exists on the adjacent property. The ZBA may wish to consider the opacity and height of the proposed fence when reviewing this request. Due to the open-style of the proposed fence, truncating the corner of the fence on the east side of the driveway may not be necessary. An open-style fence will allow for clear visibility for vehicles in the driveway to safely enter and exit the driveway.

Upon studying the character of the neighborhood and viewing other corner lots within the neighborhood, there is only one (1) property along 163<sup>rd</sup> Place that has a fence erected along its north property line, which is the adjacent

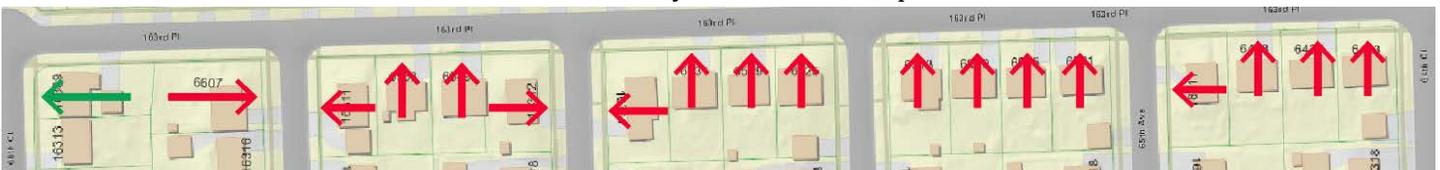
property to the east (6607 163<sup>rd</sup> Place). An analysis of corner lots within Tinley Terrace revealed that the majority of the fences either align with the setback of the home or do not have fences at all. Staff will provide additional corner lot locations with non-conforming fences at the public hearing.



*Photo Showing the Petitioner's Property (Looking South from 163<sup>rd</sup> Place)*

The Petitioner has presented a hardship due to the nonconforming setback of eight feet (8') (where twenty-five feet (25') is required) on the north side of the home; however, the Petitioner is not requesting to align the fence with the setback of the home. Instead, the Petitioner wishes to align the proposed fence with the existing fence to the east. In the past, some Variance requests were granted for other properties within the Village where the Petitioners requested to align the fence with the setback of the home. In this case, however it is important to note that the setbacks of the Petitioner's property and 6607 163<sup>rd</sup> Place are not the same; thus, there is not necessarily a equal comparison or obvious ideal location for fence setbacks on these two properties. A fifteen-foot (15') Administrative Variation for both properties would offer consistency for the two properties.

Staff also notes that the orientation of the lots along 163<sup>rd</sup> Place is inconsistent. The diagram below shows the location of the front doors for the homes along this section of 163<sup>rd</sup> Place. A green arrow indicates the Petitioner's property. The Petitioner's property is a mirror image of the adjacent property at 6607 163<sup>rd</sup> Place and this layout does not occur elsewhere on 163<sup>rd</sup> Place within this neighborhood. The other homes along 163<sup>rd</sup> Place that face east or west do not have fences within the north front yard setback, except for 6607 163<sup>rd</sup> Place.



*Block-End Lot Orientation Analysis Along 163<sup>rd</sup> Place in Tinley Terrace  
(Petitioner's Property Shown with Green Arrow)*

**DRAFT FINDINGS OF FACT AS PREPARED BY STAFF**

---

Per Section X.G.4. of the Zoning Ordinance, the Zoning Board of Appeals shall not recommend a Variation of the regulations of the Zoning Ordinance unless it shall have made Findings of Fact, based upon the evidence presented for each of the Standards for Variations listed below. Staff has prepared draft responses for the Findings of Fact (listed in bullet points) based on the information supplied by the Petitioner and the information researched by Staff as of October 7, 2016. The Zoning Board of Appeals may accept, delete, or amend the following findings based on information provided during the Public Hearing and enter them as part of the record.

- 1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the district in which it is located.**
  - The use of a private rear yard is considered a reasonable return on property. According to Staff's measurements, the Petitioner's east side of their yard has about 1998 total square feet of area. If the fence location meets code (at the 25' setback) there would be a loss of about 899 square feet of private rear yard space (approximately a 45% reduction, leaving about 1,099 square feet of private yard space within a fence. If the fence were to be located at the administrative variance location (15' setback), then there would be a loss of about 500 square feet of yard (approximately a 25% reduction) leaving about 1,498 square feet of private yard space.
- 2. The plight of the owner is due to unique circumstances.**
  - The nonconforming setback of the existing home is unique to this lot and impacts the amount of usable private yard space. The location of the existing detached garage also impacts the usable amount of yard space at the rear side of the home.
- 3. The Variation, if granted, will not alter the essential character of the locality.**
  - The erection of a four-foot (4') tall open style fence at the property line will alter the essential character of the vast majority of the street face along 163<sup>rd</sup> Place because there are no other fences within the northern front yard setback along 163<sup>rd</sup> Place other than the existing privacy fence at 6607 163<sup>rd</sup> Place, which was not granted a Variation and would require a Variation for replacement in the future.
- 4. Additionally, the Zoning Board of Appeals shall also, in making its determination whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts favorable to the Petitioner have been established by the evidence:**
  - a. The particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
  - b. The conditions upon which the petition for a Variation is based would not be applicable, generally, to other property within the same zoning classification;
  - c. The purpose of the Variation is not based exclusively upon a desire to make more money out of the property;
  - d. The alleged difficulty or hardship has not been created by the owner of the property, or by a previous owner;
  - e. 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; and
  - f. The proposed Variation will not impair an adequate supply of light and air to an adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

## **APPROPRIATE MOTION**

---

If the Zoning Board of Appeals wishes to make a motion, the following motion is written in the affirmative for the Board's consideration:

**“...make a motion to consider recommending that the Village Board grant the Petitioner, Kevin Hickey, a twenty-three foot (23’) Variation from Section V.B. Schedule II (Schedule of District Requirements) of the Zoning Ordinance where the front yard setback requirement is twenty-five feet (25’). This Variation would allow the Petitioner to install a new four-foot (4’) tall open-style aluminum fence at a two foot (2’) setback on the north (163<sup>rd</sup> Place) side of the property and allow a 6’ PVC privacy fence extending along the east property line to a two foot (2’) setback on this corner lot at 16309 66th Court in the R-4 (Single-Family Residential) Zoning District and within the Tinley Terrace Subdivision.”**

**...Based on the evidence provided at this hearing and the following:**

1. That the Petitioners have provided evidence establishing that they have met the standards for Variations contained in Section X.G.4. of the Zoning Ordinance.
2. *[any other facts or unique circumstances that the Zoning Board of Appeals would like to mention.]*

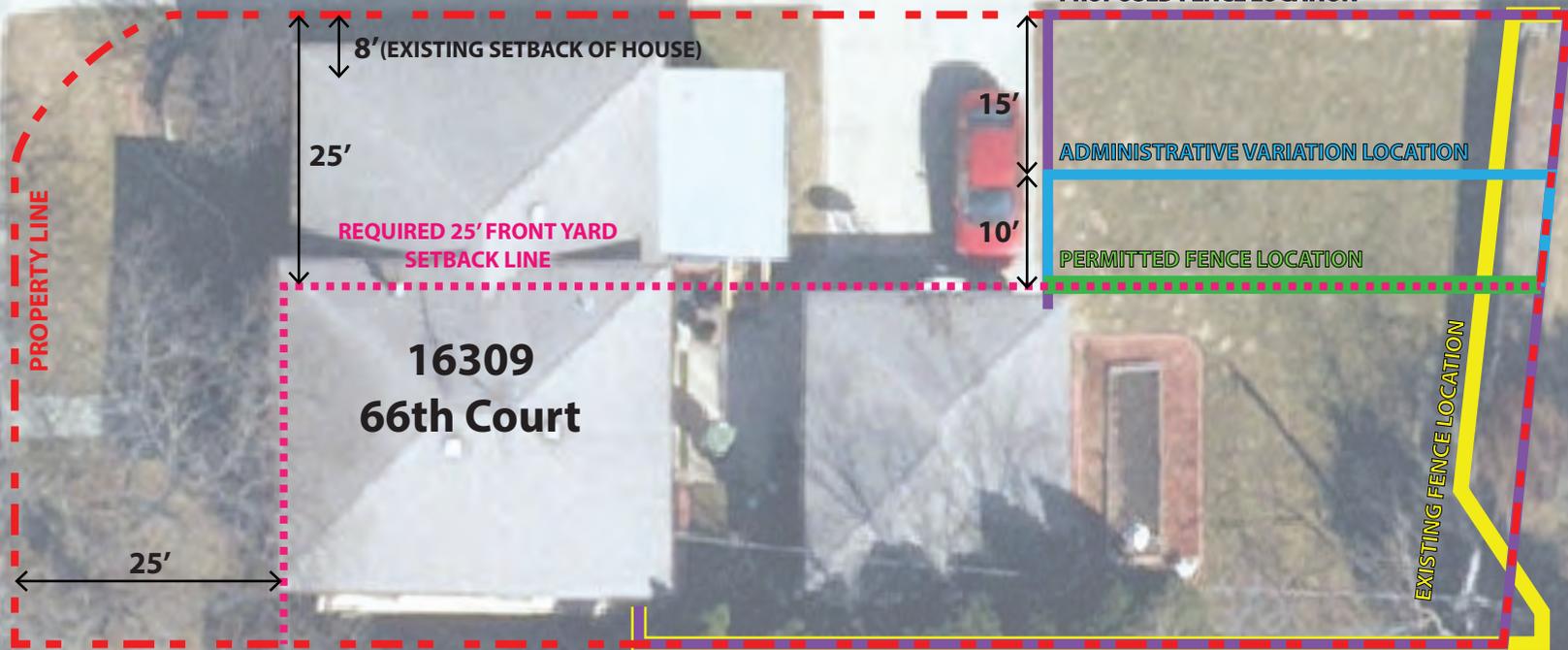
**...With the following conditions:**

1. *[any conditions that the Zoning Board of Appeals would like to recommend.]*



# 163RD PLACE

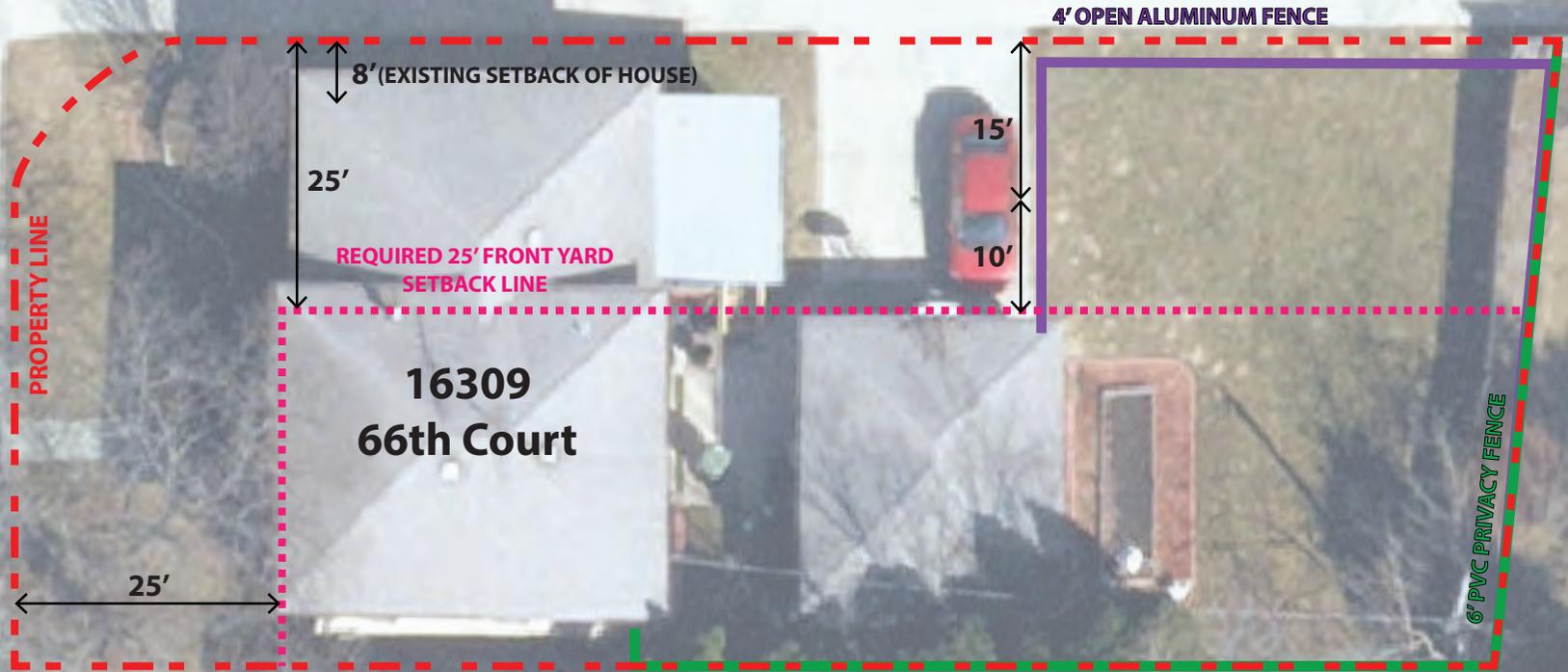
66TH COURT





# 163RD PLACE

66TH COURT



**16309  
66th Court**

163RD PLACE



PROPERTY LINE

25' FRONT YARD SETBACK

PROPOSED FENCE

EXISTING FENCE (NO VARIANCE)

ADMINISTRATIVELY ALLOWABLE FENCE

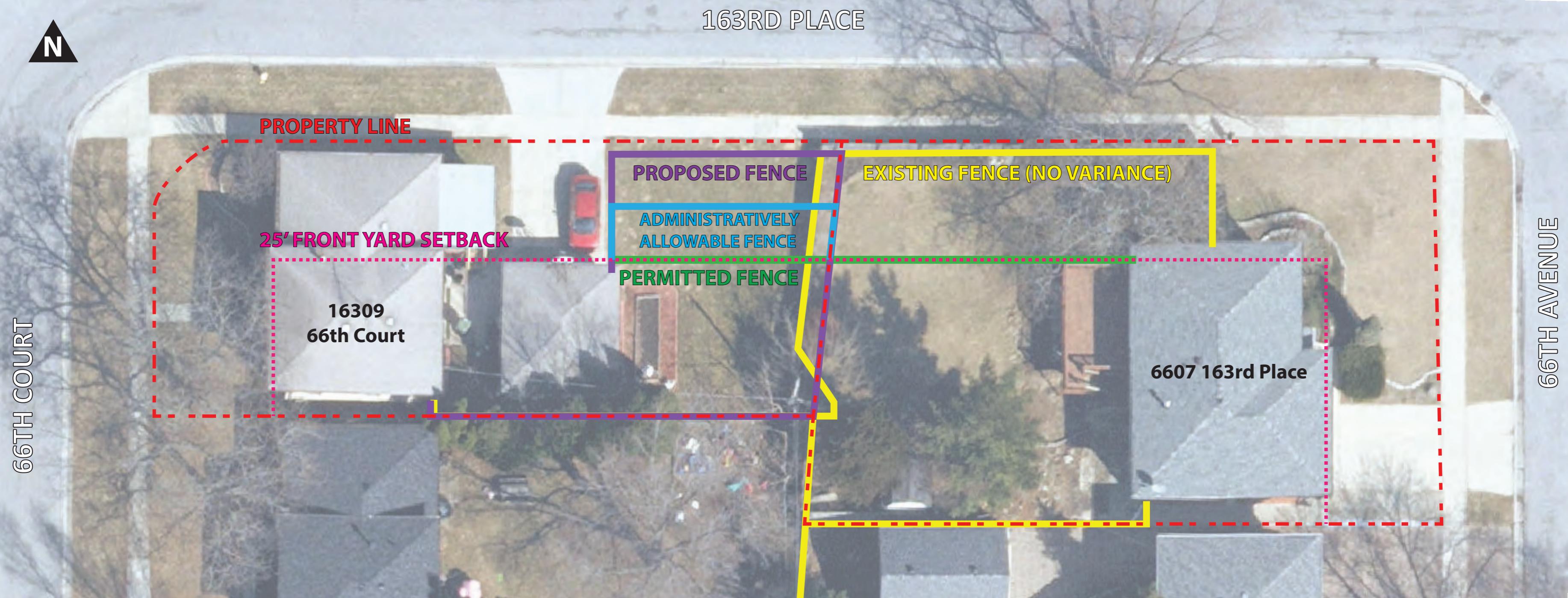
PERMITTED FENCE

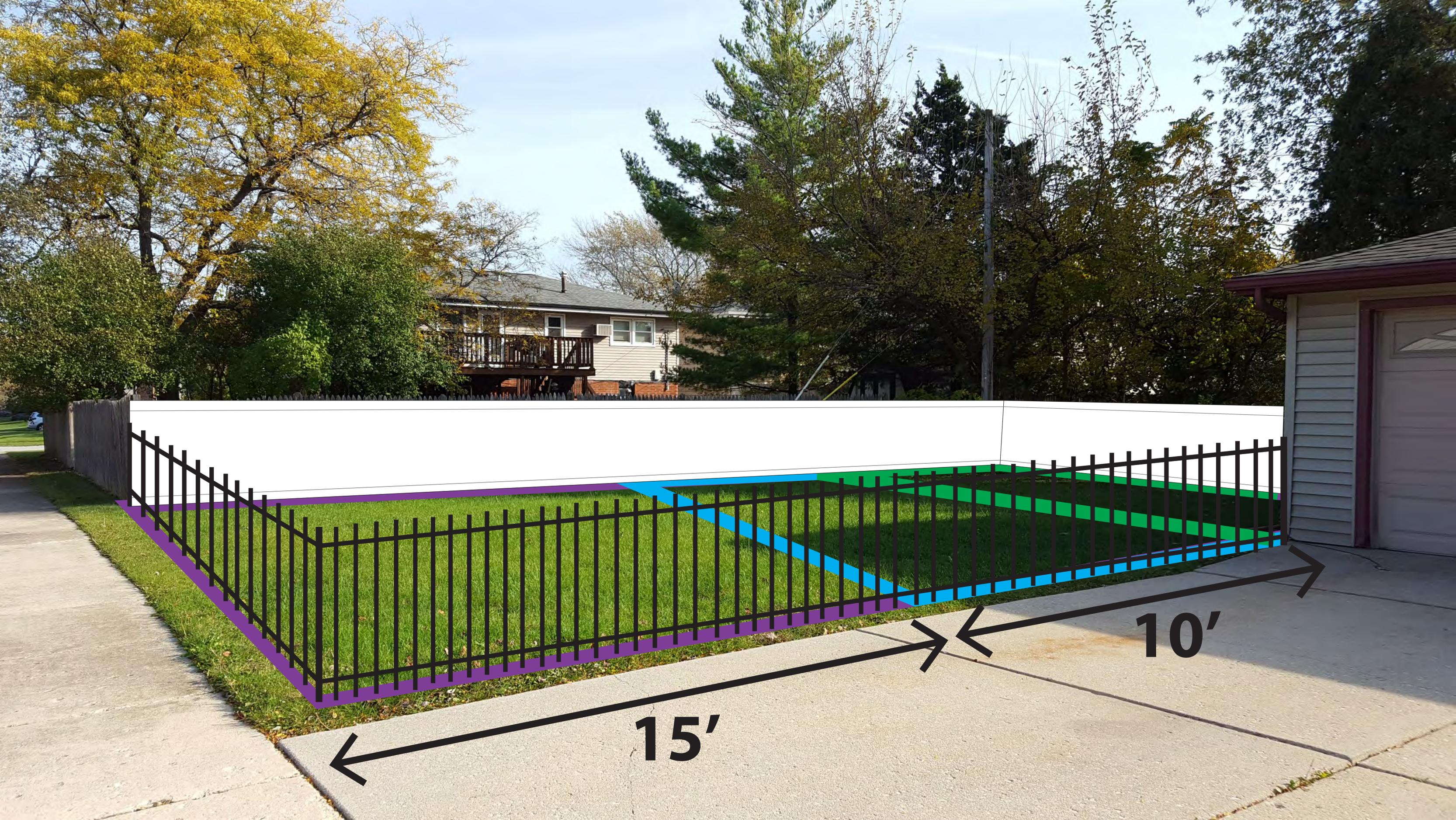
16309  
66th Court

6607 163rd Place

66TH COURT

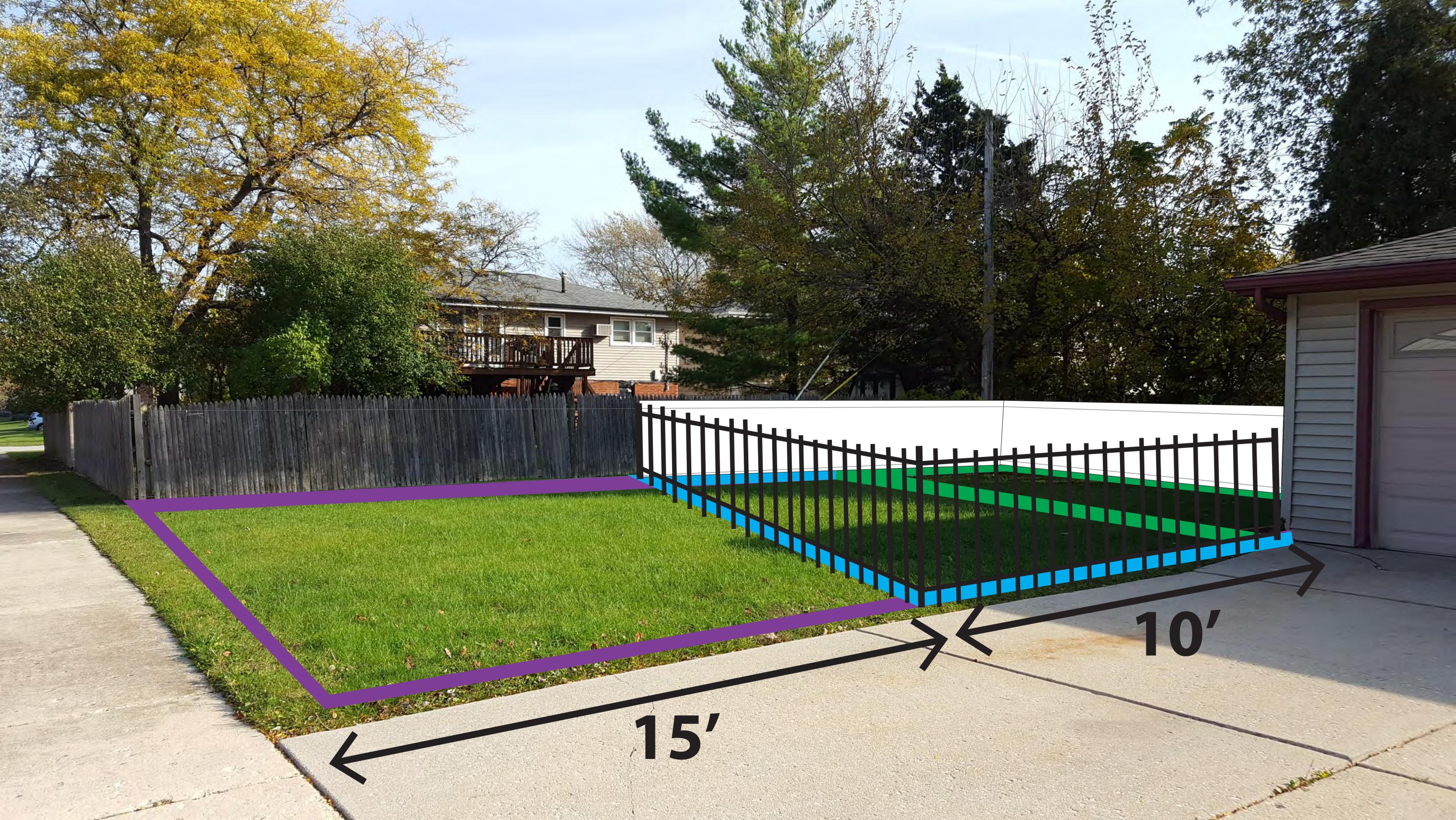
66TH AVENUE





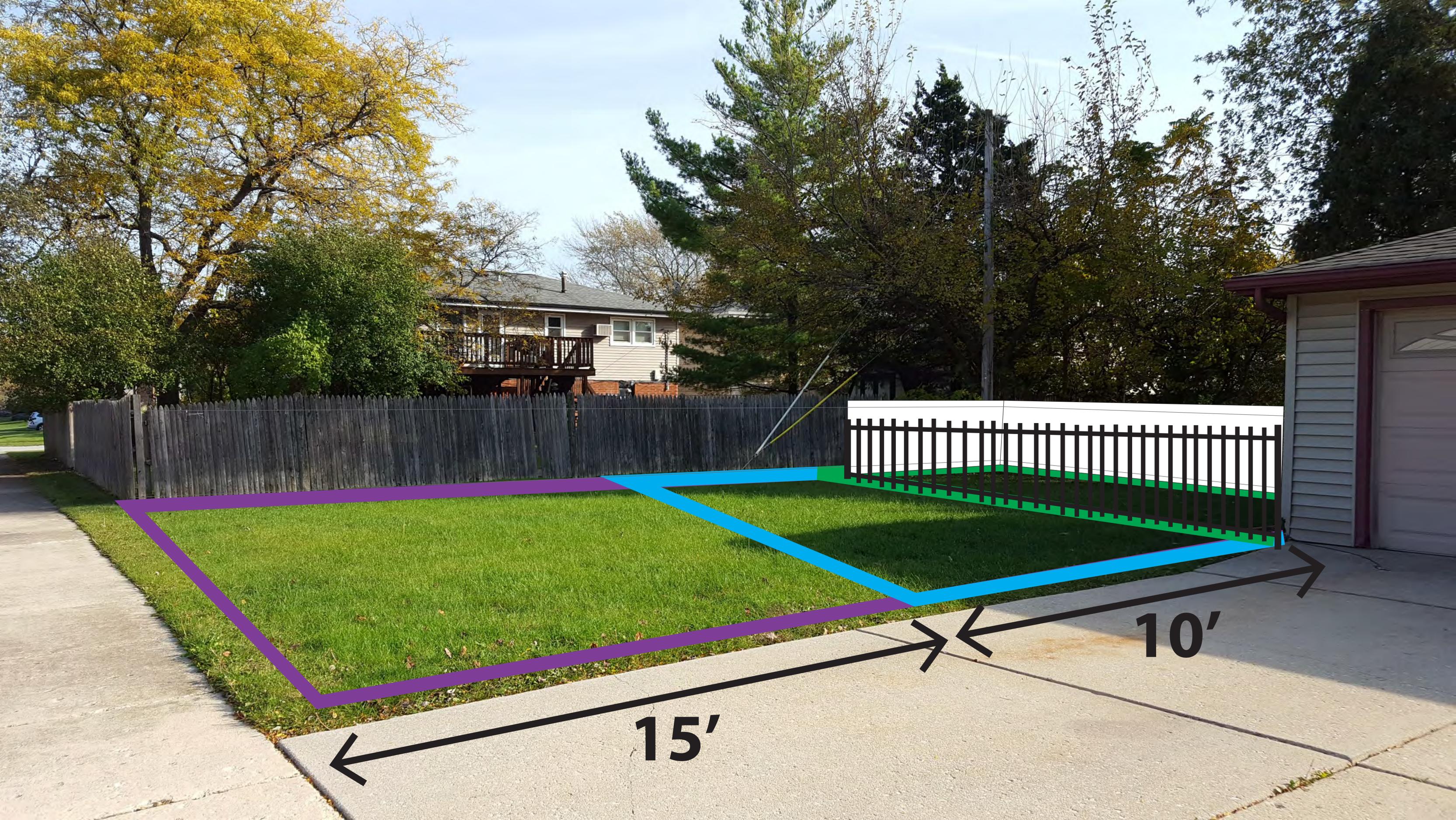
15'

10'



15'

10'



15'

10'



**VILLAGE OF TINLEY PARK**  
**APPLICATION FOR ZONING ORDINANCE VARIANCE**

The undersigned hereby Petitions the Village of Tinley Park Zoning Board of Appeals and/or Plan Commission to consider a Variation from the terms of the Zoning Ordinance as follows:

**PETITIONER INFORMATION**

Name: Kevin Hickey

Mailing Address: 16309 66<sup>th</sup> Ct.

City: Tinley Park State: IL Zip: 60477

Day Phone: [REDACTED] Evening Phone: N/A

Cell Phone: [REDACTED] Fax Number: N/A

Email Address: [REDACTED]

Nature of Petitioner's Interest in the property and/or relationship to the owner:  
(Applications received on behalf of the owner of record must be accompanied by a signed letter of authorization).

**PROPERTY INFORMATION**

Street Address: 16309 66<sup>th</sup> Ct.

Owners: Kevin Hickey  
Patricia Hickey

**SPECIFIC TYPE OF VARIANCE REQUESTED (See Examples Below):**

Examples of Specific Type of Variance Requested:  
This refers to the exact number of feet, the exact dimensions of a structure, exact height/type of fence.  
For example:

"A 15 foot Variance to the Front Yard Setback on the East side of the property to allow for a 6-foot tall cedar fence on this corner lot."

"A 180 square foot variance to the 720 square foot maximum allowable size of an accessory structure to allow for a 30 foot or 900 square foot garage on this residential property."

"A 10 foot variance to the 10 foot maximum allowable height for a sign to allow for a 20 foot high monument sign on this commercial property."

**REASON THAT THE VARIANCE IS NEEDED:** (See Examples below)

We would like to extend our fence 23 feet toward the street. This would allow us to not have a fence splitting the middle of our backyard and provide a safe area for children to play. The setback would align my fence with the neighbors fence

**Examples of Reasons that the Variance is needed:**

"We would like to extend our fence 15 feet toward the street from the front corner of the house so that we can enclose a pool, swing set, shed, landscaping, trees, side entrance, etc., and provide a safe area for our children to play"

"We would like to build an oversized garage on our property so that we may store our antique vehicle, snow mobiles, riding lawn mower, etc., inside, as well as our two other cars, which are currently parked in the driveway"

The Petitioner certifies that all of the above statements and other information submitted as part of this Application and Findings of Fact are true and correct to the best of his or her knowledge:

Signature



Date: 10-24-2016

Printed Name: Kevin Hickey

**OFFICE USE ONLY:**

Current Zoning on Property \_\_\_\_\_ Present Use \_\_\_\_\_

Notes

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FINDINGS OF FACT

### ADDITIONAL INFORMATION TO BE PRESENTED TO SUPPORT A VARIATION REQUEST FROM THE TERMS OF THE VILLAGE OF TINLEY PARK ZONING ORDINANCE

Section X.G.1 of the Village of Tinley Park Zoning Ordinance requires that the Zoning Board of Appeals determine compliance with the following standards and criteria. In order for a variance to be approved, the Petitioner must respond to all the following questions with facts and information to support the requested Variation:

- A. Describe the difficulty that you have in conforming with the **current** regulations and restrictions relating to your property, and describe how this hardship is not caused by any persons presently having an interest in the property. (Please note that a mere inconvenience is insufficient to grant a Variation). For example, does the shape or size of the lot, slope, or the neighboring surroundings cause a severe problem in completing the project in conformance with the applicable Ordinance requirement?

The current regulation would place our new fence in the middle of our backyard causing it to be aesthetically displeasing, and leaving a large portion of our lot unfenced causing a safety issue for children. Moving the fence would also align with neighbors existing fence

- B. Describe any difficulties or hardships that **current** zoning regulations and restrictions would have in decreasing your property value compared to neighboring properties.

The current regulation would cut in half the safe zone a fence would provide and not align with my neighbors fence

- C. Describe how the above difficulty or hardship was created.

I believe the current code was established after my home was built and does not make sense how my property is set up.

## FINDINGS OF FACT (Continued)

H. Describe how the requested Variance will not:

1. Impair an adequate supply of light and air to adjacent properties.

The fence applies to all height requirement set by Tinley Park

2. Substantially increase the congestion of the public streets.

Traffic flow will not be interrupted by a fence on my property.

3. Increase the danger of fire.

No source of ignition present

4. Impair natural drainage or create drainage problems on adjacent property.

Water will be able to flow freely under fence

5. Endanger the public safety.

No safety issues from a PVC fence

6. Substantially diminish or impair property values within the neighborhood.

Fence will increase property value by providing a safe zone for children playing

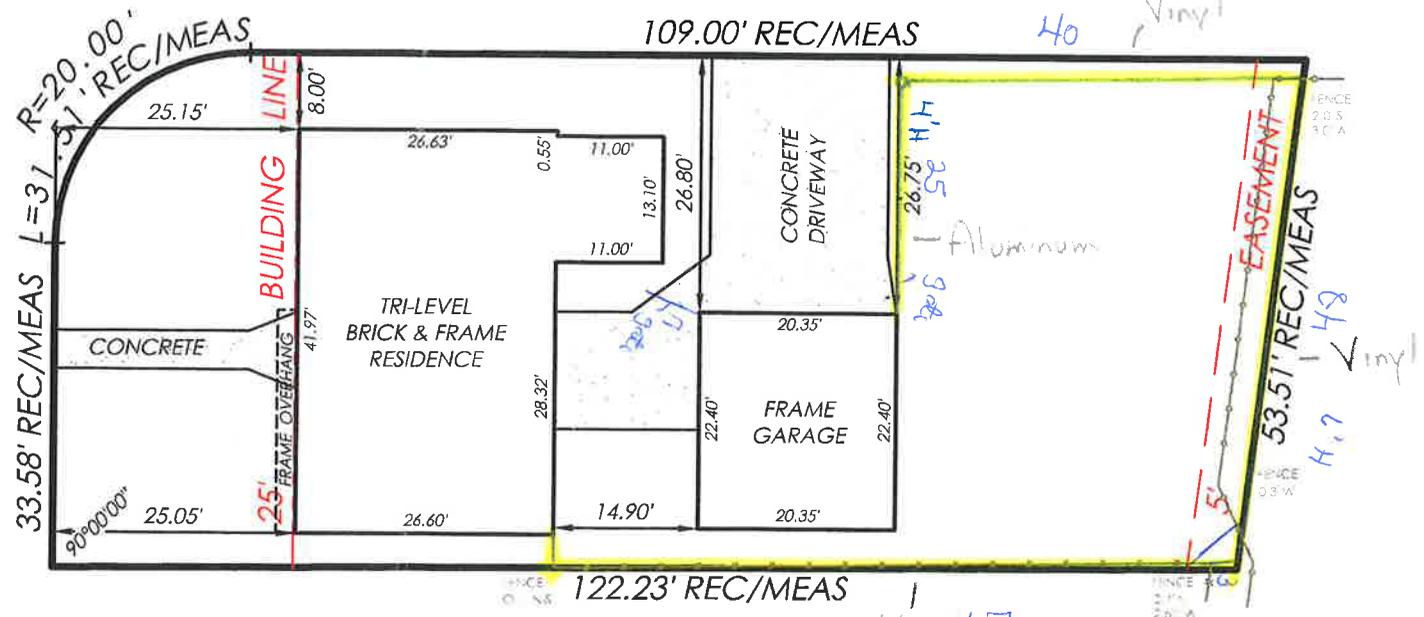


# PLAT OF SURVEY

18148 S. MARTIN AVE. HOMEWOOD, IL 60430 708-1-SURVEY (478-7839) 708-478-4076 FAX

## 163RD PLACE

66TH COURT



LOT AREA:  
6,612.3 SQ. FT.  
0.15 ACRES

LOT 264 IN TINLEY TERRACE UNIT NUMBER 8, BEING A SUBDIVISION OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AS PER CLIENT/AGENT, MONUMENTS NOT RECOVERED AT THE TIME OF THIS SURVEY WERE NOT RESET.

STATE OF ILLINOIS) S.S. STATE OF ILLINOIS REG. # 184-002702  
COUNTY OF COOK)

I HEREBY CERTIFY THAT THIS PROFESSIONAL SERVICE CONFORMS TO THE STANDARDS FOR A BOUNDARY SURVEY.

DATE: 05-20 2014

DATE OF LICENSE EXPIRATION: NOVEMBER 30 2014 DATE OF FIELD WORK COMPLETION: MAY 20 2014

REVIEW YOUR DESCRIPTION AND PHYSICAL EVIDENCE WITH THIS PLAT AND REPORT ANY DIFFERENCES YOU MAY FIND. VISIT US AT [STREAMLINESURVEY.COM](http://STREAMLINESURVEY.COM)

ALL DISTANCES AS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF. NO ANGLES OR DISTANCES ARE TO BE DETERMINED BY SCALING.

SCALE: 1"=20'  
JOB NO.: 14-0607  
ADDRESS: 16309 66TH CT.  
TINLEY PARK, IL  
P.I.N.: 28-19-409-016  
TOWNSHIP: BREMEN

ORDERED BY: HUTCHISON, ANDERS & HICKEY