

**Department of Community Planning and Economic Development – Planning Division Report****Variance Request  
BZZ-3699****Date:** August 9, 2007**Applicant:** Joe Favor, on behalf of Jim Phelps and Nancy McGlynn Phelps**Address of Property:** 4551 East Lake Harriet Parkway**Contact Person and Phone:** Joe Favour, 612-359-9144**Planning Staff and Phone:** Molly McCartney, 612-673-5811**Date Application Deemed Complete:** July 17, 2007**End of 60 Day Decision Period:** September 15, 2007**Appeal Period Expiration:** August 20, 2007**Ward:** 13      **Neighborhood Organization:** East Harriet Farmstead Neighborhood Group**Existing Zoning:** R1 Single-family Residential District**Proposed Use:** Landscaping improvements to include open, decorative fencing, new entry gate and lighting, and new wall**Proposed Variances:**

- A variance to increase the height of an open, decorative fence from 4 ft. to 5 ft., 5 in. in the required front yard,
- A variance to increase the height of an open, decorative entry gate from 4 ft. to 9 ft., 3 in. in the required front yard,
- A variance to increase the height of a light atop a fence to 11 ft. 6 in., and
- A variance to increase a portion of a wall from 3 ft. to 6 ft. in height in the required corner side yard at 4551 East Lake Harriet Parkway in the R1 Single-family District and SH Shoreland Overlay District.

**Zoning code section authorizing the requested variance:** 525.520 (5)**Background:** The subject property is a single-family home on a corner lot at the intersection of East Lake Harriet Boulevard and West 46<sup>th</sup> Street. The property dimensions are 100 ft. by 230 ft (23,000 sq. ft.) with the existing two story Neo-Classical home is oriented to Lake Harriet. The property currently has a retaining wall and wrought iron fence along the property lines along the front and corner side yard. The existing fence is 5 ft. 6 in. in height, which is not in compliance with the current zoning code for an open, decorative fence in the required front yard of 4 ft. There is a curb cut and entry gate for vehicles

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from East Lake Harriet Boulevard on the northwest corner of the property. The garage can also be accessed through the alley.

The applicant is proposing landscaping work that includes changing to the front fence as well as a portion of the fence and wall in the corner side yard. The curb cut for vehicle access on the northwest corner of the property would be closed and the vehicle entry gate would be replaced with a pedestrian gate and fencing.

The applicant is also proposing to increase the height of a portion of the wall on the corner side yard along West 46<sup>th</sup> Street to 6 ft. The currently wall height is measured at 3 ft. along the corner side yard, but due to the retaining wall, the height of the wall from the public sidewalk exceeds 6 ft. The applicant has stated that this portion is proposed to be increased because it is in line with the termination of Humboldt Avenue South and that vehicle lights have become a visual nuisance both inside the home and outside. The applicant is proposing to increase the wall height to prevent vehicular lights from shining into the home and to create a more private side yard space.

### **Findings Required by the Minneapolis Zoning Code:**

- 1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

#### **Increase height of open, decorative fence in the required front yard:**

Strict adherence to the zoning code prevents the height of the proposed fence in the required front yard setback. The applicant is proposing to match height the existing fence that runs along the front of the property and add a pedestrian garage and lights. For a property with the lot size and home size, a larger fence and gate is a reasonable use of the property.

#### **Increase height of an open, decorative entry gate and light atop a fence in the required front yard:**

Strict adherence to the zoning code prevents the height of the proposed fence, garage and light in the required front yard setback. The applicant is proposing to match height the existing fence that runs along the front of the property and add a pedestrian garage and lights. The height of the entry gate and lights greatly exceed the required height and is not a reasonable use of the property.

#### **Increase height of a wall in the required corner side yard:**

Strict adherence to the zoning code prevents the height of the wall in this location. The applicant is proposing to increase the wall height to prevent vehicular lights from shining into the home and to create a more private side yard space. While lights can have great visual impact, they do not necessarily cause undue hardship on the property.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

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### **Increase height of open, decorative fence in the required front yard:**

The applicant is proposing to eliminate vehicle access from the Parkway and replace the vehicle gate with fencing and entry gate. The current fence has been in place prior to the current property owners' possession of the property. The applicant are eliminating a curb cut from a high-traffic parkway, thus coming into greater conformity with off-street parking requirements that encourage elimination of multiple vehicular access points for a single property.

### **Increase height of an open, decorative entry gate and light atop a fence in the required front yard:**

While the property is much larger than an average Minneapolis residential lot and is located near public biking and pedestrian path, the height of the proposed entry gate and lights greater exceed the allowed height in the required yard.

### **Increase height of a wall in the required corner side yard:**

Due to the configuration of the lot and the surrounding street pattern, Humboldt Avenue South terminates at West 46<sup>th</sup> Street. Vehicular lights have created a visual nuisance for the homeowners, and the increase wall height attempts to mitigate the visual impact. The configuration of the street pattern and location of the home on the lot is an unique circumstance not created by the applicants.

- 3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

### **Increase height of open, decorative fence in the required front yard:**

Granting the variance to increase the height of the fence, entry gate, and lights will be keeping with the spirit and intent of the fence height restrictions. The proposed fence will be the same height as the existing fence and is an open and decorative iron material. It will not impair views in or out of the property.

### **Increase height of an open, decorative entry gate and light atop a fence in the required front yard:**

Granting the variance for the entry gate and lights will not be keeping with the intent of the ordinance to limit the height of permitted obstructions in the front yard setback. While the proposed gate is construction of open and decorative iron material, the height is much more the allowed height of fencing in the front yard setback. While the lights atop the gate will add to visibility along East Lake Harriet Parkway, lights at a lower height can achieve the same results.

### **Increase height of a wall in the required corner side yard:**

Increasing the wall height along the public right of way is not keeping with the spirit and intent of the fence height restrictions. The solid wall along the public sidewalk will be increased and prevents views in or out, affecting natural visual surveillance of the area. Typically tall solid fences are allowed in the backyard of homes in areas that are not adjacent to sidewalks or close to adjacent homes. While the increased portion of the wall will not be adjacent to any homes, the wall height may impact safety along West 46<sup>th</sup> Street.

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4. **The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

**Increase height of open, decorative fence in the required front yard:**

The proposed variance would likely have no impact on congestion of area streets or fire safety, nor would the proposed addition be detrimental to the public welfare or endanger the public safety.

**Increase height of an open, decorative entry gate and light atop a fence in the required front yard:**

The proposed variance would likely have no impact on congestion of area streets or fire safety, nor would the proposed addition be detrimental to the public welfare or endanger the public safety. Increased lighting will add to visibility and can aid pedestrians and bicyclists along the Parkway.

**Increase height of a wall in the required corner side yard:**

Increasing the wall height along the public right of way may have safety impacts to the public sidewalk. The increase of solid wall along the public sidewalk prevents views in or out of the side yard, affecting natural visual surveillance of the area. Typically, tall solid fences or walls are allowed in the backyard of homes in areas that are not adjacent to public sidewalks or close to adjacent homes. While the increased portion of the wall will not be adjacent to any homes, the wall height may impact safety along West 46<sup>th</sup> Street.

**Recommendation of the Department of Community Planning and Economic Development Planning Division:**

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** the following variance:

- A variance to increase the height of an open, decorative fence from 4 ft. to 5 ft., 5 in. in the required front yard, subject to the following conditions:
  1. CPED–Planning Division review and approve the final site plan, floor plans, and elevation. All drawings will be measured to an architect or engineer’s scale.

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the following variances:

- A variance to increase the height of an open, decorative entry gate from 4 ft. to 9 ft., 3 in. in the required front yard,
- A variance to increase the height of a light atop a fence to 11 ft. 6 in., and
- A variance to increase a portion of a wall from 3 ft. to 6 ft. in height in the required corner side yard at 4551 Lake Harriet Boulevard in the R1 Single-family District and SH Shoreland Overlay District.