

## PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, **you are not required to attend**. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
  - appearing and speaking for the record at the public hearing;
- and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: [www.austintexas.gov/devservices](http://www.austintexas.gov/devservices).

**D-1/1-LATE BACKUP**

Written comments must be submitted to the contact person listed on the notice before 9 a.m. the day of the public hearing to be added to the Late Back-up and viewed by the Board the night of the meeting. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. All comments received will become part of the public record of this case.

**Case Number: C15-2021-0057**

**Contact:** Elaine Ramirez; [elaine.ramirez@austintexas.gov](mailto:elaine.ramirez@austintexas.gov)

**Public Hearing: Board of Adjustment; December 13<sup>th</sup>, 2021**

ROB PARSONS

Your Name (please print)

☐ I am in favor  
☒ I object

1502 BLUEBONNET LN

Your address(es) affected by this application

[Signature]

Signature

12/7/21

Date

Daytime Telephone: 512-565-2321

Comments: ONE OF THE BEST THINGS ABOUT ZILKER IS THE  
NEIGHBORLINESS AND ACTIVITY BETWEEN HOMES AND STREET. THIS  
HOME, LIKE SEVERAL OTHERS, HAVE STARTED A TREND OF WALLING  
THEMSELVES OFF TO THE NEIGHBORHOOD. I REALIZE IN MANY  
CASES ALTHOUGH IT IS DISTASTFUL TO HIDE A BEAUTIFUL HOME  
BEHIND A WALL IT IS PERMITTED, HOWEVER, IN THIS CASE IT IS  
NOT PERMITTED AND I OBJECT TO ALLOWING A BAD SITUATION  
TO BE MADE WORSE.

**If you will be using this form to comment, please return it via e-mail to:**

Elaine Ramirez

Scan & Email to: [Elaine.Ramirez@austintexas.gov](mailto:Elaine.Ramirez@austintexas.gov)

# D-1/2-LATE BACKUP

**From:** Kurt Schultz  
**To:** [Ramirez, Elaine](#)  
**Subject:** Public hearing LD Code Variance. Case# C15-2021-0057 (2000 Peach Tree)  
**Date:** Wednesday, December 08, 2021 3:57:57 PM

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\*\*\* External Email - Exercise Caution \*\*\*

Dear Ms Ramirez,

Referring to Case Number C15-2021-0057

The applicant is requesting a variance from Land Development Code, Section 25-2-899 (D) Fences as accessory uses). I received a notice in the mail because I live within 500 feet

I have lived in and owned my house since 1995 and am against granting this variance for several reasons.

First and foremost is that we reported this deviation from code well before the fence was finished. When the pre-framing was started, it was obvious that the fence was going to be too high. It was reported to 311, who then referred me to Residential Review where I reported it again. I was then referred to Code Compliance where I reported it again. I was then referred to Code Violation where I reported it again and had several conversations with the inspector during the time the fence was under construction.

At least four (4) Notices of Violation were sent, along with a requirement allowing 30 days to comply (with accompanying fines mentioned

The other reasons have to do partly with the aesthetics of the neighborhood. Granting a variance like this will only encourage others to request variances which will further erode the character of the neighborhood. These types of fences result in what looks like "Compounds" that discourage the neighborliness of the neighborhood and make it feel more like a separated "Gated" community.

These kinds of additions also drive up property values which, because taxes are based on "market value", results in higher taxes for everyone in the neighborhood.

The fence is also built on a berm, so the effective height is well over seven (7) feet. The new owners also contend that there is a business across the street on the Bluebonnet side which justifies their request, but that business has been there for many, many years and the previous owner of the property had only a much shorter chain link fence which encompassed only half of his lot

The new owners also think that because there are a few other out of compliance fences in the neighborhood, that in itself should justify allowing a variance. I disagree and think that those fences should also be made to come into compliance. Also, by way of precedent, one other neighbor's fence in the same block was built out of compliance and they were forced to rebuild it and cut it down to be within compliance. Just because some builders circumvented the code should not be a justification for others to not follow the rules. Most of these builders are speculators and are just searching for features to increase their selling price and many think that a fine (if they get caught) is justifiable if it increases their profits (and they rarely get fined). I have previously worked in the home remodeling field and I have met a few unscrupulous builders so I know this from personal experience. I'm not saying that this builder was unscrupulous, but everyone should be held to the standard of the rules, and if a variance is requested, it should be before the construction is started. Anything built out of compliance without going through the proper channels should be brought into compliance. Again, mostly to ensure the continuing character of the neighborhood.

# D-1/3-LATE BACKUP

Thank you,

Kurt Schultz

Zilker neighborhood resident since 1980 and property owner since 1995

**CAUTION:** This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to [cybersecurity@austintexas.gov](mailto:cybersecurity@austintexas.gov).

## Zilker Neighborhood Association

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Zoning Committee • zoning@zilkerneighborhood.org • Austin, TX 78704

December 8, 2021

Re: 2000 Peach Tree Street, fence height variance, Case C15-2021-0057

December 13 Agenda Item D1

To: Board of Adjustment

c/o Elaine Ramirez, Development Review Dept., City of Austin

via email Elaine.Ramirez@austintexas.gov

Chair and Board Members:

The ZNA Zoning committee received an email from the owners of 2000 Peach Tree asking for our support of their fence variance request. We responded to them that we could not support the variance (see Attachment 1). The ZNA Zoning Committee has concluded that the proposed variance meets none of the criteria required to grant a variance based on the following:

*Reasonable use:*

**Applicants' finding:** "ADJOINING [sic] PROPERTY IS THE RIGHT-OF-WAY (NO CONSENT), TOPOGRPAHY OF PROPERTY RANGES 2FT. COMMERICAL PROPERTY ACROSS BLUEBONNET. FENCE DOES NOT EXCEED 7FT AT ANY POINT"

**ZNA response:** The applicants have not explained why a 7-foot fence is necessary for reasonable use. There are numerous houses in the neighborhood that meet the 6-foot requirement including ones across from commercial property and ones along the right-of-way. Although a pool is not mentioned in the BoA application for a variance, ZNA is aware that there is a swimming pool in the front of the yard. However, State law only requires that the swimming pool enclosure be 4-feet high. To conclude that a 6-foot fence height somehow prevents reasonable use would mean that every other property in the neighborhood could build a 7-foot fence along the street. A simple desire for a 7-foot fence along the street does not meet the definition of reasonable use.

*Hardship (a, unique; b, not general to the area):*

**Applicants' finding:**

- a) "ADJOINING [sic] PROPERTY IS THE RIGHT-OF-WAY (NO CONSENT), TOPOGRPAHY OF PROPERTY RANGES 2FT. COMMERICAL PROPERTY ACROSS BLUEBONNET. FENCE DOES NOT EXCEED 7FT AT ANY POINT"
- b) "ADJOINING [sic] PROPERTY IS THE RIGHT-OF-WAY (NO CONSENT), TOPOGRPAHY OF PROPERTY RANGES 2FT. COMMERICAL PROPERTY ACROSS BLUEBONNET.

FENCE DOES NOT EXCEED 7FT AT ANY POINT”

**ZNA response:** §25-2-899 allows an 8-foot solid fence if neighbors with adjacent property agree and meet certain other conditions. Although they have received letters of consent from two of their neighbors, the property also faces Bluebonnet and Peach Tree Streets on the other two sides. There is no exception for fences along the right-of-way, and not having neighbors on those two sides does not constitute a qualified hardship. Commercial property immediately adjacent to residential property or across an alley from residential property would allow an 8-foot fence, but the commercial property in this case is across a street and does not qualify. The code itself or lack of an exception in the code cannot be used as a qualifying hardship.

While the applicant states that the fence does not exceed seven feet in height, ZNA actually believes that much of the fence is over 7 feet tall along Bluebonnet, up to about 7 feet 4 inches. This doesn't even include the extra height created by the short retaining wall in front of the fence. However, the actual code violation is for exceeding the 6-foot average height along the length of the fence. The topography consideration refers to variation that is perpendicular to the fence, not parallel to the fence as is the case here. The property is quite flat along the bottom of the fence line.

Neither the presence of the adjacent right-of-way nor the topography of the lot is unique to the property. In fact, they are quite general to the area. Neither condition creates a qualifying hardship.

In communication with ZNA, the owners indicated that due to mixed and incorrect information their architect received from City of Austin officials, their architect designed and their builder built a fence that is 12 inches higher than the allowed height. We have seen no evidence of the mixed and incorrect information their architect may have received from City of Austin officials. In any case, the owner was first notified of the code infraction in a June 1, 2020 Notice of Violation and prior to issuance of the Certificate of Occupancy on July 13, 2020 and had plenty of time to correct the violation. The failure of their own architect to comply with the code, failure of City staff to adequately communicate, or failure of the City to enforce the code in a timely manner does not qualify as a hardship.

*Area character:*

**Applicants' finding:** “SIMILAR TYPE FENCING EXISTS ON PROPERTIES ALONG BLUEBONNET STREET. ADJOINING [sic] PROPERTY IS THE RIGHT-OF-WAY (NO CONSENT), TOPOGRPAHY OF PROPERTY RANGES 2FT. COMMERICAL PROPERTY ACROSS BLUEBONNET. FENCE DOES NOT EXCEED 7FT AT ANY POINT.”

**ZNA response:** The applicant provided some photos of others fences along Bluebonnet in their presentation to the Board. With the exception of the fence on page 10 of their presentation,



which appears to be over 8 feet in places and in definite violation of the code, two are certainly 6 feet or less while the others may be just a few inches greater than 6 feet in places. There may be some solid fences along the length of Bluebonnet Street and in the rest of the neighborhood that slightly exceed the requirement for a 6-foot average height and are in technical violation of the code, but the general character of the street is one of compliance with §25-2-899, and any fence code violations at other properties should be dealt with accordingly. Granting a variance would set a precedent for the rest of the neighborhood and would impair the purpose of the fence height regulations, permanently altering the character of the area.

That brings us back to the first restriction on variances:

**The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.**

The Board of Adjustment has considered similar variance requests over the years. We found an example that seems almost identical to 2000 Peach Tree. In 2009, the Board of Adjustment voted 7-0 to deny a variance at 1616 Enfield (decision provided as Attachment 2). This 2009 case involved a rock wall that had a maximum height of 7'9" and exceeded the average height of 6 feet. The owner of 1616 Enfield was required to reduce the height of their rock wall (a before and after photo is shown in Attachment 3). The Board of Adjustment should be consistent with past rulings or a special privilege will be granted.

In addition, there was another fence located along Bluebonnet (at 1512 Bluebonnet) that had exceeded the 6-foot height limit by two feet or so. The owners were apprised of the situation, and the cedar-post fence was voluntarily lowered without a Notice of Violation being issued. This fence, incidentally, is on page 11 of the applicant's presentation. Granting a variance at 2000 Peach Tree would provide the owners of 2000 Peach Tree Street with a special privilege not available to others in similar situations.

In the absence of a qualifying hardship, the ZNA Zoning Committee does not support variances that would undermine code compliance in the rest of the neighborhood. We therefore request that the Board of Adjustment deny the variance.

Sincerely yours,

Dave Piper

on behalf of the Zoning Committee  
of the Zilker Neighborhood Association

Ms. Burkhart,

Thanks for reaching out to the Zilker Neighborhood Association about the upcoming hearing at the Board of Adjustment (BoA) regarding the height of your fence. Just for the record, the ZNA did not report the fence to the city. The BoA is required to follow the city's land-use rules unless there is at least one of several "qualified hardships" which are well defined. We don't think the hardship you have stated qualifies under the BoA's rules.

On your behalf, Stuart Sampley submitted the application for a variance stating:

*"Adjoining property is the right-of-way (no consent), topography of property ranges 2 ft. Commercial property across Bluebonnet. Fence does not exceed 7 ft. at any point. Similar type fencing exists on properties along Bluebonnet Street."*

As you know, 25-2-899 allows an 8' solid fence if neighbors with adjacent property agree. You have received those letters from two of your neighbors, but since your property also faces Bluebonnet and Peach Tree Streets on the other two sides, that consent isn't possible there. Not having neighbors on those two sides does not constitute a qualified hardship.

While your fence may not exceed 7' in height, the actual code violation is exceeding the 6' average height. The topography consideration refers to variation that is perpendicular to the fence, not parallel to the fence, as yours is. Your property is quite flat along the bottom of the fence line.

While there may be a couple of other potential code violations along the length of Bluebonnet Street for solid fences that exceed 6', the general character of the street is one of compliance with 25-2-899. BoA hearings set precedents for land use through all of Austin. The ZNA has advocated adherence to zoning codes for decades to deter the steady creep of noncompliance. The BoA has denied variances for fence height without qualified hardships for many years, and we support that effort. Therefore we cannot support your variance request.

Sincerely,

Dave Piper

Secretary, Zilker Neighborhood Association

**CITY OF AUSTIN  
Board of Adjustment/Sign Review Board  
Decision Sheet**

**DATE: Monday, July 13, 2009**

**CASE NUMBER: C15-2009-0059**

☐ Y ☐ Greg Smith  
☐ - ☐ **Michael Von Ohlen OUT**  
☐ Y ☐ Yolanda Arriaga  
☐ Y ☐ Bryan King (**Motin to DENY**)  
☐ Y ☐ Leane Heldenfels, Vice-Chairman  
☐ Y ☐ Frank Fuentes, Chairman (**2<sup>nd</sup>**)  
☐ Y ☐ Nora Salinas  
☐ Y ☐ Heidi Goebel

**APPLICANT/OWNER: David Kelly**

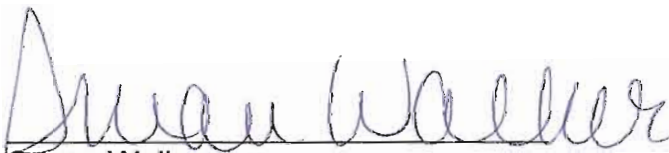
**ADDRESS: 1616 ENFIELD RD**

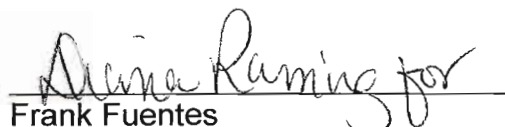
**VARIANCE REQUESTED:** The applicant has requested a variance to increase the maximum fence height requirement of Section 25-2-899 (D) from 6 feet in height to 7 feet 9 inches at the highest point in order to maintain a solid fence for a single-family residence in an "MF-3", Multi-Family Residence zoning district. The Land Development Code states that a solid fence constructed along a property line may not exceed an average height of 6 feet or a maximum height of 7 feet.

**BOARD'S DECISION: MOTION TO DENY BY BOARD MEMBER KING, SECONDED BY BOARD MEMBER FUENTES; VOTE 7-0; DENIED**

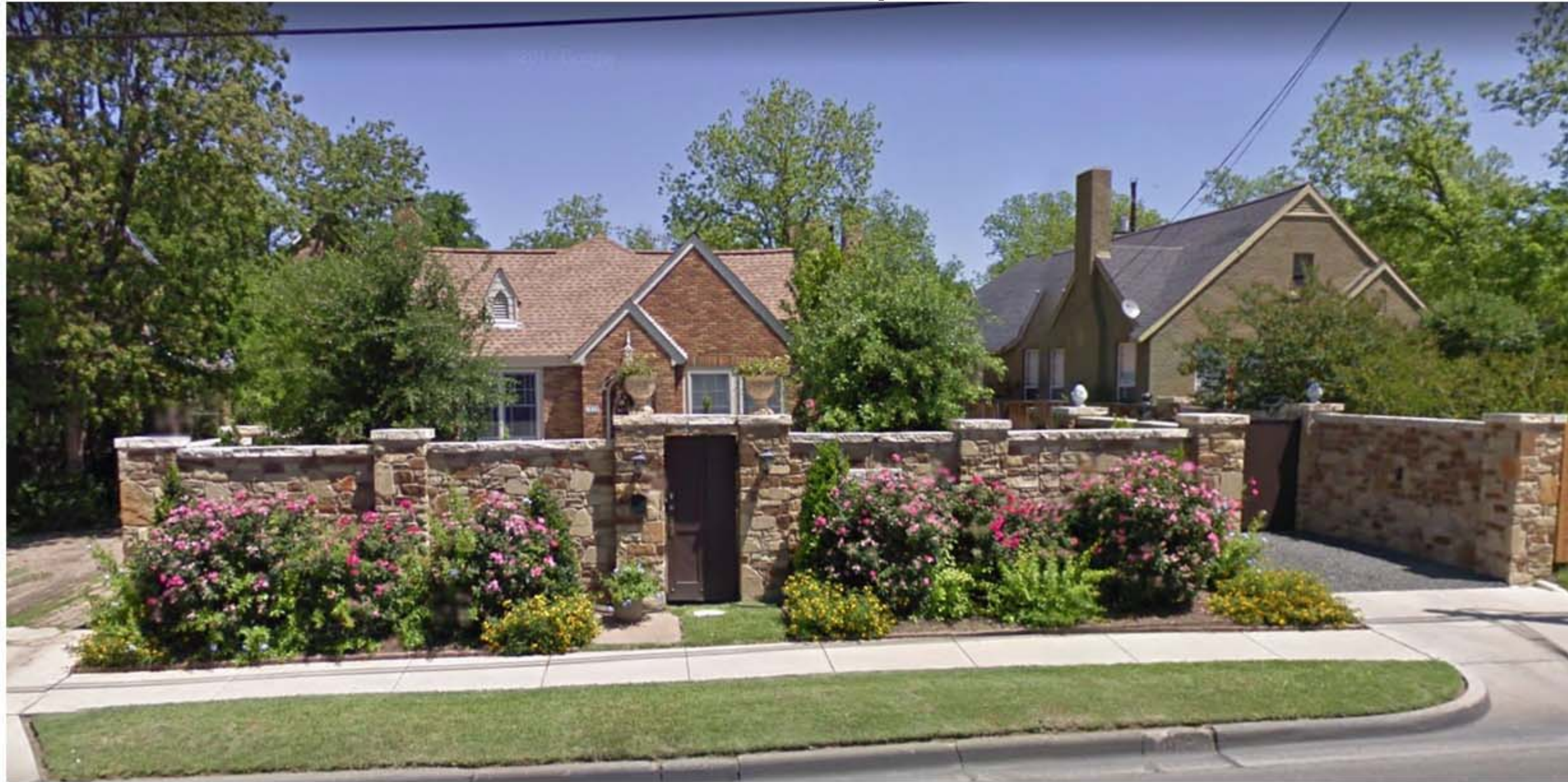
**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:  
  
(b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

  
Susan Walker  
Executive Liaison

  
Frank Fuentes  
Chairman



**1616 Enfield Rd - April 2009****1616 Enfield Rd - May 2013**