



Department of Development Services  
205 Lawrence Street  
Marietta, Georgia 30060  
Brian Binzer, Director

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## STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2012-07 Legistar #: 20120101

Board of Zoning Appeals Hearing: Monday, February 27, 2012 – 6:00 p.m.

Applicant: Melissa W. & J. Parker Gilbert  
243 Kennesaw Avenue  
Marietta, GA 30060

Property Owner: Same as above

Address: 243 Kennesaw Avenue

Land Lot: 11580 District: 16 Parcel: 0780

Council Ward: 4 Existing Zoning: R-4 (Single Family Residential 4 units/acre)

**Special Exception / Special Use / Variance(s) Requested:**

1. Variance to increase the height of a fence in the side yard from 4 ft. to 6 ft. (Section 710.04).

### Statement of Fact

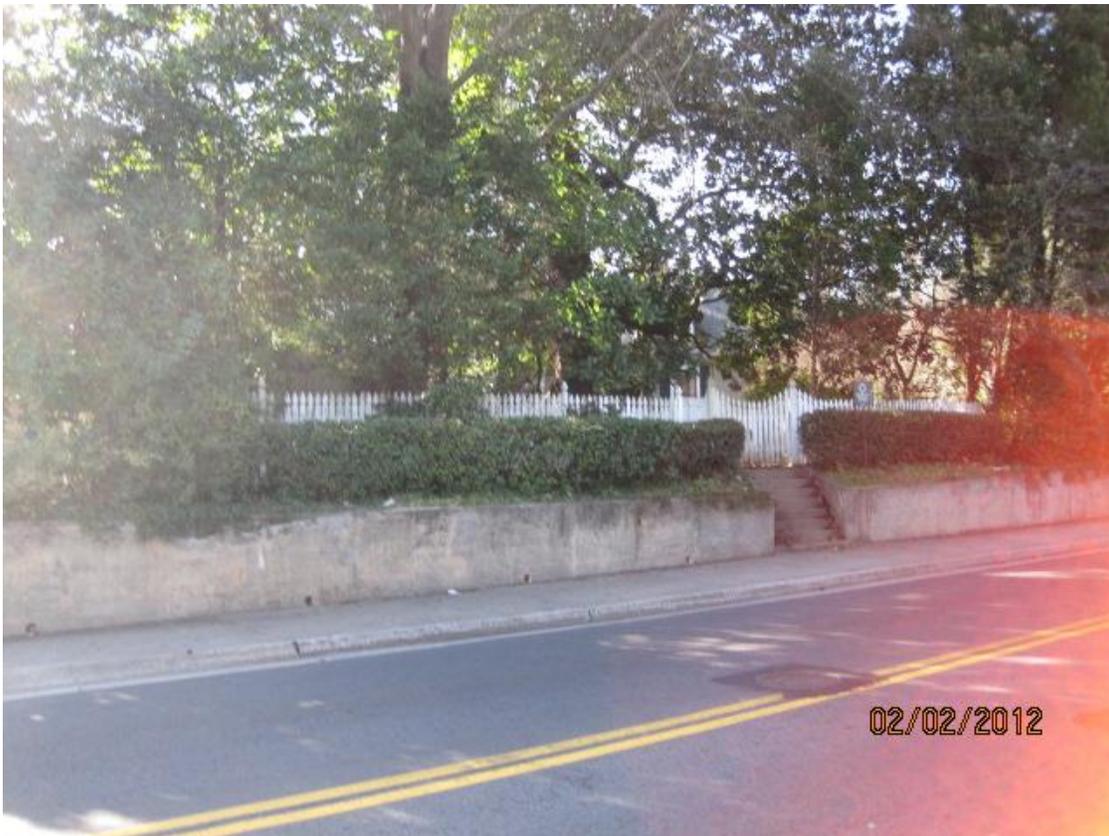
As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

**Criteria:**

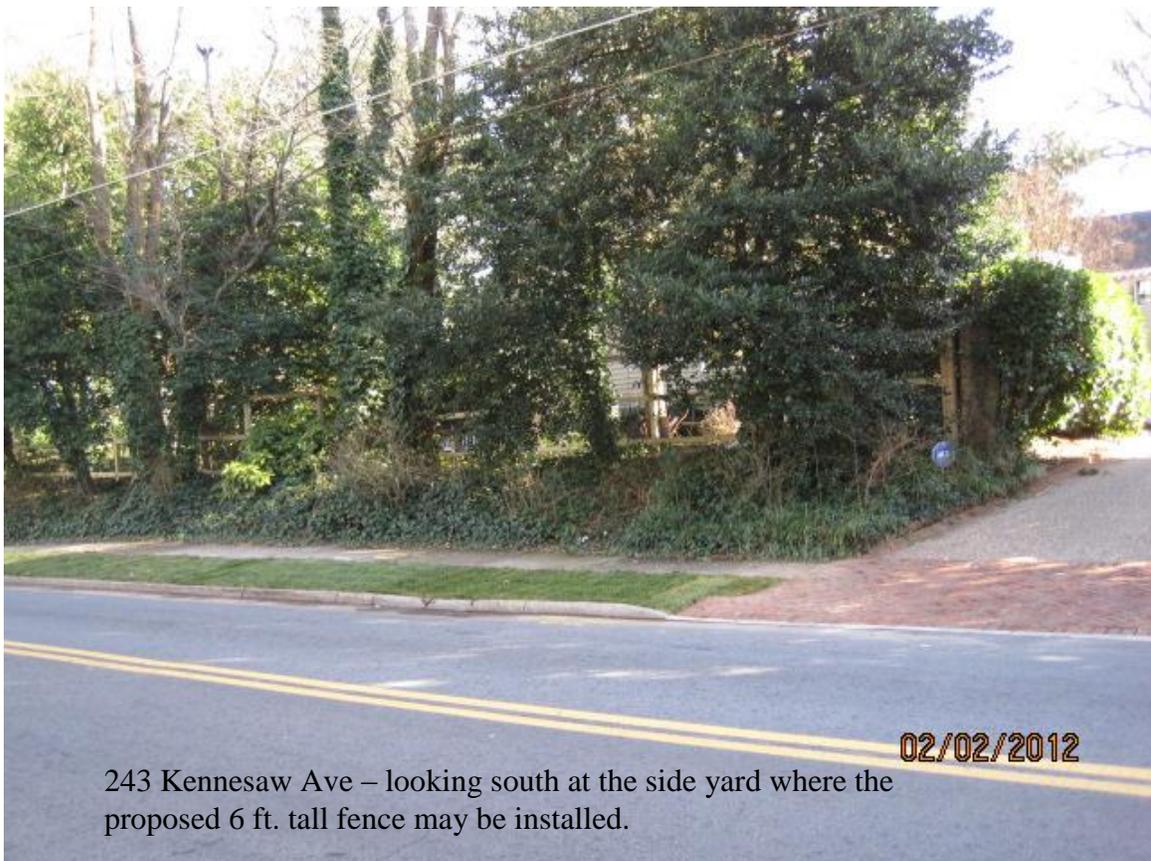
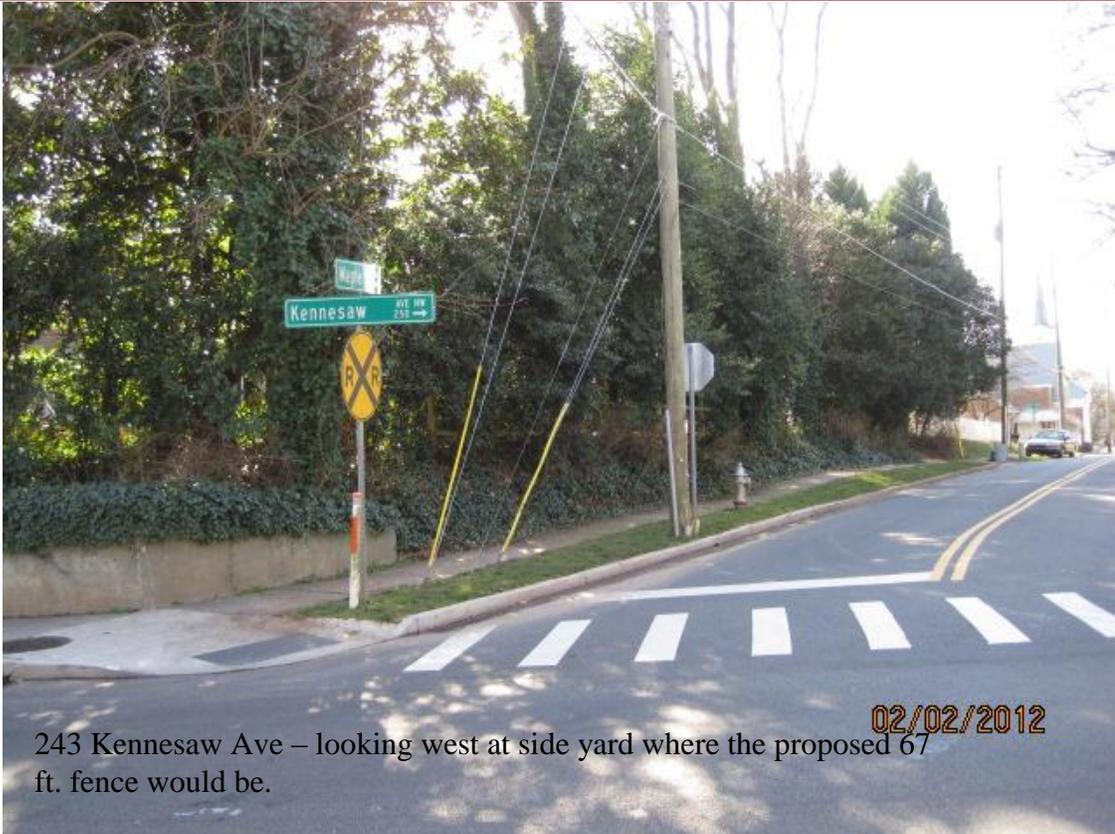
1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.

2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**



243 Kennesaw Ave – looking west at front entrance.





243 Kennesaw Ave – looking west at south side yard that abuts the church.  
New fence is installed.

**Recommended Action:**

**Approval.** The applicant and owner, Melissa and Parker Gilbert is requesting a variance at 243 Kennesaw Avenue that would allow them to replace a 6 foot tall fence that they removed to install a new wooden 6 foot tall fence. The property is zoned R4 (Single Family Residential 4 units/acre) and is located at the corner of Kennesaw Avenue (east/ front yard) and Maple Avenue (north/ south yard). Other surrounding properties are as follows to the rear/ west and southwest of the subject property are 2 single family houses that are zoned R4 (Single Family Residential 4 units/ acre), and the First Presbyterian Church’s parking lot is located along the south property line of the subject property and is zoned LI (Light Industrial). The subject property faces Kennesaw Avenue, and the existing 4 foot tall white picket fence along Kennesaw Avenue will remain. The fence shown in the picture above is the same type of fence that the applicant proposes to erect along Kennesaw Avenue and Maple Avenue.

According to the City’s zoning ordinance, Section 710.04(A.2.), residentially zoned districts are only allowed four foot (4’) tall fences made of decorative material (wood, brick, stone, or wrought iron) in side yards that are between the street and the front edge of the house. The

applicant's proposed fence is a wooden privacy fence that meets the requirement for material, but exceeds the allowable height restriction.

The applicant has reported that the purpose of the fence is to secure property and screen for privacy. According to the applicant, the previous 6 foot tall fence had become so rotten that the slats were loose and did not secure the family pet that was killed in December 2011. The proposed 6 foot tall fence will be located approximately 5 ft. to 6 ft. above street level on an existing concrete wall. Atop the wall is a row of mature landscaping that will obscure much of the fence such that it will not be visible from the street.

In 2011, there were three (3) variance cases along Kennesaw Avenue, St. Mary's Lane, St. Anne's Road, and Maxwell Avenue that requested variances to the height restriction on fences that are along public or private rights-of-way. Variance cases and the Board of Zoning Appeals decisions are listed below.

- **V2011-06 – Approved – 840 N. St. Mary's Lane and 697 Kennesaw Avenue**
  1. Variance to increase the maximum height of a fence within a yard fronting a public street from 4 ft. to 6 ft., and
  2. Variance to increase the maximum height of a fence within a side yard between the street and the front edge of the house from 4 ft. to 6 ft.
  3. Stipulation – Require 80% coverage of Leland Cypress between street and fence and require the fence to be stained.
  
- **V2011-07 – Approved – 651 St. Anne's Road**
  1. Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
  2. Variance to allow a wooden fence to be within 2 ft. of the public right-of-way.
  
- **V2011-08 – Approved – 213 Maxwell Avenue**
  1. Variance to allow an 8 ft. tall wooden fence along the yard fronting a public/private street;
  2. Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street;
  3. Variance to allow a wooden fence to be within 2 ft. of the public right-of-way;
  4. Denied variance to allow unfinished rear side of the fence to show (with the stipulation that the street side have vegetation along the fence).

Granting this variance is necessary for the preservation and enjoyment of the applicant's property, therefore *staff recommends approval of this variance request.*