

**ITEM 5**

**MEMORANDUM**

**TO:** Planning and Zoning Board

**DATE:** February 12, 2021

Public Hearing Case #2021-02-006- Pursuant to Belle Isle Code Sec. 50-102 (b) (5), Sec. 50-102 (b) (16) and Sec. 42-64, the Board shall consider and take action on a requested variance to place a fence with a gate in the front yard of a residential property, submitted by applicant PAUL LOPEZ located at 5811 LABELLE STREET, BELLE ISLE FL 32809 ALSO KNOWN AS PARCEL # 19-23-30-0000-00-002.

**Background:**

1. On January 29, 2021, the homeowner Paul Lopez submitted a request, application and required paperwork.
2. A Notice of Public Hearing legal advertisement was placed in the Saturday, February 13, 2021, Orlando Sentinel.
3. Letters to the abutting property owners within 300 feet of the subject property were mailed on February 12, 2021.

The Board may adopt all, some, or none of these determinations as part of their findings-of-fact. The Board may also add any additional findings-of-fact that are presented at the public hearing. The Board will need to determine if the criteria set forth in Chapter 42, Article III, Section 42-64(1) of the Land Development Code have been met, and approve, approve with conditions, or deny this request.

**SAMPLE MOTION TO APPROVE:**

"I move the criteria of **Sec. 50-102 (b) (5), Sec. 50-102 (b) (16) and Sec. 42-64** of the Belle Isle Land Development Code having been met **TO APPROVE** a fence with a gate in the front yard of a residential property, submitted by applicant PAUL LOPEZ located at 5811 LABELLE STREET, BELLE ISLE FL 32809 ALSO KNOWN AS PARCEL # 19-23-30-0000-00-002.

**SAMPLE MOTION TO DENY:**

"I move, the justifying criteria of the Belle Isle Land Development Code **Sec. 50-102 (b) (5), Sec. 50-102 (b) (16) and Sec. 42-64** having NOT been met **TO DENY** a fence with a gate in the front yard of a residential property, submitted by applicant PAUL LOPEZ located at 5811 LABELLE STREET, BELLE ISLE FL 32809 ALSO KNOWN AS PARCEL # 19-23-30-0000-00-002.

**SUBSECTION (D)**, a literal enforcement of the provisions of the zoning ordinances would result in unnecessary hardship and that said hardship is created by special conditions and circumstances peculiar to the land, structure or building involved, including but not limited to dimensions, topography or soil conditions.

**SUBSECTION (E)**, personal hardship is not being considered as grounds for a variance since the variance will continue to affect the character of the neighborhood after title to the property has passed and that the special conditions and circumstances were not created in order to circumvent the Code or for the purpose of obtaining a variance.

**SUBSECTION (F)**, the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

**SUBSECTION (G)**, the granting of the variance will be in harmony with the general purpose and intent of the Code, will not be injurious to the neighborhood, will not be detrimental to the public welfare, and will not be contrary to the public interest.



*April Fisher, AICP*  
PRESIDENT  
407.494.8789  
fisherpds@outlook.com

February 12, 2021

**Variance Application: 5811 LaBelle Street**

Applicant Request: PURSUANT TO BELLE ISLE CODE SEC. 50-102 (B) (5), SEC. 50-102 (B) (16) AND SEC. 42-64, THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO PLACE A FENCE WITH A GATE IN THE FRONT YARD OF A RESIDENTIAL PROPERTY, SUBMITTED BY APPLICANT PAUL LOPEZ LOCATED AT 5811 LABELLE STREET, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL # 19-23-30-0000-00-002.

**Existing Zoning/Use:** R-1-AA/ single-family home

This variance application seeks a variance from Sec. 50-102 (b) (5) (a) to allow a four-foot-high fence and gate in the front yard of the property.

Security and safety have been an issue on the subject property. It is next to the pedestrian lake access to Lake Conway. Because of this, people and pets have encroached onto the property in a nuisance manner. The applicant has provided information supporting the variance request with additional information about the security and safety issues encountered. Please see this information enclosed with this agenda item packet.

The board in granting an application for the variance may consider as justifying criteria, the following from Sec. 50-102 (b) (16):

1. A difference in grade between the property upon which the fence will be installed and the immediately adjacent property;
2. The height or construction materials of already existing abutting walls or fences; and/or
3. Conditions existing upon or occupational use of adjacent property creating an exceptional privacy or security need of applicant.

The requirements of Sec. 42-64 (1) except for subsections 42-64 (1) (d) and (1) (f) shall otherwise be met.

**Staff Recommendation**

Based on the applicant's identification that security and safety concerns, staff recommends approval of the requested variance. This is consistent with meeting the criteria established in Sec. 50-102 (b) (16) (3) which the Board may consider as justifying criteria according to the code.

**Additional Notes**

Please note that the Board may approve the proposed variance application as it is presented to them, approve with specific conditions, continue the application if additional information is being requested for consideration, or deny the application, citing which variance criteria are not met. A decision by the Board may be appealed by an aggrieved person to the City Council pursuant to Code Sec. 42-71.

5811 Labello St

City of Belle Isle

1600 Nela Avenue, Belle Isle, Florida 32809 \* Tel 407-851-7730 \* Fax 407-240-2222

APPLICATION FOR VARIANCE / SPECIAL EXCEPTION

DATE: 01/29/2021

P&Z CASE #: 2021-02-0016

VARIANCE  SPECIAL EXCEPTION  OTHER

DATE OF HEARING: \_\_\_\_\_

APPLICANT: Paul Lopez

OWNER: Paul Lopez

ADDRESS: 5811 Labello Street

Miami FL 32809

PHONE: 305-299-2409

PARCEL TAX ID #: 19-2330-0000-00-002

LAND USE CLASSIFICATION: Residential ZONING DISTRICT: R1AA

DETAILED VARIANCE REQUEST: See attached

SECTION OF CODE VARIANCE REQUESTED ON: \_\_\_\_\_

The applicant hereby states that the property for which this hearing is requested has not been the subject of a hearing before the Planning and Zoning Board of the kind and type requested in the application within a period of nine (9) months prior to the filing of the application. Further that the requested use does not violate any deed restriction of the property.

By submitting the application, I authorize City of Belle Isle employees and members of the P&Z Board to enter my property, during reasonable hours, to inspect the area of my property to which the application applies.

Applicant shall provide a minimum of ten (10) sets of three (3) photographs in support of this application as follows: at least one (1) photograph of the front of the property and at least two photographs (from different angles) of the specific area of the property to which the application applies.

APPLICANT'S SIGNATURE 

OWNER'S SIGNATURE 

FOR OFFICE USE ONLY:	FEE: \$150.00	2/5/2021 Date Paid	CC 88469356 Check/Cash	HRP Rec'd By
Determination _____				
Appealed to City Council: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Action: _____				

## Variance Request-Application Supplement

### 1. Special conditions and/or circumstances (Section 42-64 (1) d

What are the special conditions and circumstances unique to your property? What would be the unnecessary hardship?

- **The special conditions are:**
  - a) The issue is with the south side of the house. The house is built roughly with the front pointing south. The driveway is located south west of the house, adjacent with a neighbor's driveway as well as a public beach driveway sloping down to Lake Conway.
  - b) There is no walkway for pedestrians on my side of the street but there is one on the other side of the street. **See picture #1**
  - c) The front of the house is then, because of a 90 degree south curve on the road, exactly on the way to the public beach. Consequently, a lot of the traffic to the public beach passes through my front yard.
  - d) Just after my house, going south, there is a pedestrian walkway. Pedestrian traffic coming from the south on this pathway end up directly on my front yard. Since many are just walking their dog, they end up on an open lot and there again, the issue of dogs relieving themselves on a seemingly empty lot appears. **See picture #2**
  - e) I see (and pick up) empty bottles of alcohol beverages on the front yard, a sign that it is used as a pathway (And hang out area) to the beach.
  
- **Unnecessary hardship:**
  - a) Because the physical location of the house, there is excessive pedestrian traffic on the front yard.
  - b) This excessive traffic is compounded by pets using the front yard as a playground and doggy park, creating an "unhealthy" situation. I think it's fair to say that no one really likes to get out of their house and walk through this.
  - c) Because of the open front yard, beachgoers simply use the yard as public area and use it as such and just hang out there. **See picture #2**
  - d) On Sunday January the 17th, the Belle Isle police came to the property because a man was found passed out by a neighbor, on the floor. I found his phone on my property, on the ground, in front of my door. A clear sign the man had been prowling the area, and actually came to the front door. I released the phone to the investigating police officer that same morning. The name of the trespasser is Jeremias Hernandez and he was taken away by the police. I did not press any charges but this was clearly a very worrisome event. I'm sure you can very easily check the facts on this event since the trespasser was taken into custody. This is a serious safety concern.

## **2. Not self created conditions, Section 42-64 (1) e**

### **How were the special conditions noted above created?**

This set of unique conditions existed prior to my purchasing the property. According to the City of Belle Isle documents I was able to gather, the house was originally built at this location in 1933.

It seems since then, the population growth might be behind the current situation.

## **3. Minimum possible variance, Section 42-64 (1)f**

**Can you accomplish your objective in another way? List alternatives you have considered and evidence as to why they are not feasible.**

- The first obvious solution was to tell people in a peaceful manner that this is a private property. That would suggest my being there at all time and it's just impossible.
- The second measure I took was to post sign purchased at the local Home Depot. Those signs had no effect and quickly ended up treated as fire hydrants by local pets. **See picture #3**
- I spoke to several neighbors who walk their dogs there but everybody assures me it's not their dog... **See picture #4**. The face of the dog is purposely blacked out as I don't mean to point out one particular 4 legged trespasser but like several others, he is clearly roaming the area of concern.
- The security issue can only be addressed by the local police as it was quickly addressed on January 17<sup>th</sup> and ended up in a trespasser being taken into custody.

## **4. Purpose and intent Section 42-64 (1) g**

**What effects will approval of the variance have on adjacent properties or the surrounding neighborhood?**

Because the area of the proposed variance is actually away from the public area frequented by pedestrian and has no public walkway, it does not in any way restrain traffic, either pedestrian or other. This area is surrounded by the street on the front, my driveway on the right and a huge oak tree to the left. My house only has two neighbors: one to the back and one to the left.

(respectively North and east) I took the time to speak to both of them and they both approved of my idea. Note that the north neighbors already has a fence between our properties.

There is already a concrete walkway for pedestrians on the other side of the street so legal foot traffic is absolutely not affected there. **See picture 5.**

Please note that on my original design of the fence line, I made sure the south east side would actually be inside of the property. I did that to reduce the fence line linear feet and more importantly, to avoid obstructing the beautiful lake view from the street. A few months back, when I purchased this property, this is the one thing that made me choose this location. **See picture 6.**

Also please note that for the front fence, I have picked the exact same design as the public fence used by the City of Belle Isle, located a few feet further: ornamental aluminum. I did so because I felt it would be important to keep a sense of harmony and character for this secluded area.

Because of these special circumstances, and the overwhelming list of negative effects to my property, I really think that allowing me to proceed with fencing this very small area as per my original request actually will not only solve my safety/hygiene/privacy issues but because the property is enclosed in a corner lot, the variance will not affect the City's rules on fence installation.









2





3





4







S



6

