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If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 2nd Floor

P. O. Box 1088

C/O Susan Walker

Austin, TX 78767-8810

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Case Number: C15-2010-0039 - 4921 Bull Creek Rd Contact: Susan Walker, (512) 974-2202 Public Hearing:

LOPAIN GRENT

Board of Adjustment, May 10, 2010

Your Name (please print)

☐ I am in favor ≪Tobject 7873 2705 West 49 1/2 St

Your address(es) affected by this application

Allocion Rezain

Signature

Daytime Telephone: 512 – 454 –7981

Comments: 2 high fence is inconsistent

neighborhood are 4'chain link fences Mostfences in our with our section,

SOUNT REDUCES 20

City of Austin-Planning & Development Review Department/ 2nd Floor

C/O Susan Walker

P. O. Box 1088

Austin, TX 78767-8810

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Contact: Susan Walker, (512) 974-2202

Public Hearing:
Board of Adjustment, May 10, 2010

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Austin, TX 78767-8810

C/O Susan Walker P. O. Box 1088

Signature AE 9-5133	Case Number: C15-2010-0039 – 4921 Bull Creek Rd Contact: Susan Walker, (512) 974-2202 Public Hearing: Board of Adjustment, May 10, 2010 C35EMAC4 Shows Your Name (please print) 2713 W. 49 12 S7 Your address(ex) affected by this application Your address(ex) affected by this application
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Your address(es) affected by this application
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If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 2nd Floor C/O Susan Walker

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P. O. Box 1088
Austin, TX 78767-8810

If you need assistance completing this application (general inquires only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

CASE # (15-2016-0039)
ROW # 10419656
CITY OF AUSTIN TP-0227000116

APPLICATION TO BOARD OF ADJUSTMENT GENERAL VARIANCE/PARKING VARIANCE

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.				
STREET ADDRESS: 4921 Bull Creek Road, Austin, Texas 78731				
LEGAL DESCRIPTION: Subdivision – William Schoenert Annex				
Lot(s) A Block Outlot Division				
I Benjamin T. White on behalf of myself affirm that on March 12, 2010, I				
hereby apply for a hearing before the Board of Adjustment for consideration to:				
ERECT ATTACH COMPLETE REMODEL _X _ MAINTAIN				
the fence along the Southern boundary of my property line as presently constructed in				
accordance with Building Permit Nos. 2008-051644BP and 2009-029382 BP, or				
alternatively, to allow me to maintain the present height of those sections of fence along				
the Southern boundary of my property adjacent to the lots commonly known as 2706,				
2708 and 2712 W. 49 ½ St., and lower the height of the section of fence adjacent to 2710				
W. 49 ½ St. to 6' in accordance with the terms of § 25-2-899(E). The subject property				
and each of the adjacent affected properties are located in an SF-1 district.				

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

The use of the Property for single family residential use is not at issue. The issue is the City of Austin's (the "City") interpretation and application of § 25-2-899 (D) & (E). The City's interpretation and enforcement of the code provision does not allow for a reasonable use because, the City's interpretation of §§25-2-899(D)&(E) together nullify a property owner's ability to act under one of these sections by itself. The result of the City's interpretation of these sections per Leon Barba's letter dated December 3, 2009 (enclosed), is that § 25-2-899(E) cannot be read by itself, without reference to §25-2-899(D). This is a patently incorrect application of ordinances and does not allow for a property owner to construct improvements to their property in accordance with a simple reading of the applicable provisions of the subject ordinance.

One purpose of erecting a solid perimeter fence is to maintain some level of privacy between neighbors. The purposes for which my fence was constructed was to (i) maintain the privacy of my backyard, (ii) shield my boat and other items from view of my neighbors and the general public in an effort to maintain the neighborhood's character and not create an eyesore, and (iii) to keep neighborhood children from accessing potentially hazardous situations in my backyard. Specifically, the City requested the construction of a privacy fence around my property back in 2008 in order to shield the view of my boat that I keep in my yard. The fence was built, in part, as a response to the City's request.

Three of my four adjacent neighbors located along the Southern boundary of my property have consented to the construction of solid fencing along our adjacent property lines in excess of 7' in accordance with the provisions of §25-2-899(E)(2). All signatures and consents have previously been provided to the city. However, the City has effectively ruled that §25-2-899(D) overrules and/or should be applied over and in addition to §25-2-899(E). This is an incorrect and unreasonable application of the code by the City. At a minimum, I should be permitted to maintain my fence in a manner that satisfies 25-2-899(E) without reference to 25-2-899(D) by lowering the height of the portion of fence adjacent to 2710 W. 49 ½ St. to 6' and leaving the portions of the fence adjacent to the remaining three neighboring properties at their present height.

Further, I am requesting a variance to allow the portion of the fence adjacent to 2710 W. 49 ½ St. to remain at its present height of 7'. By keeping this portion of my fence at its

present height (i) the privacy of my backyard is maintained, (ii) items kept in my backyard are shielded from public view (as requested by the City), and (iii) children are better kept from accessing potentially hazardous situations in my yard.

A plain reading of §25-2-899(D) would allow me to keep this portion of my fence at 7' by lowering the other portions of the fence along this boundary line to bring the average height of the fence to 6'. However, this would simply punish my neighbors who wish and have agreed to have the portions of the fence adjacent to their properties reach 7' and 8'. I am simply asking the board to allow me to do what I could otherwise do with this section of fence while still allowing me to achieve the desired goal with the other more agreeable neighbors.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

The fence was permitted under 2 permits, both of which were approved by the City's field inspector, and constructed in accordance with the permits at the shared expense of myself and several adjacent neighbors. The variance is unique in that six of my seven directly adjacent neighbors consented to the construction of the fence as built and now I have been told that one entire side of my fence does not comply with code. I do not want to rebuild the entire fence, the cost of which was shared with my neighbors, and the majority of which was agreed to by my neighbors.

Additionally, regardless of the topography map provided by the city, it is apparent from standing in my yard, that a 6' fence along the southern boundary of my property does not afford the privacy that a typical 6' fence should afford and certainly does not shield the view of my boat. A person of average height, standing flat-footed in my yard, can see directly into the rear windows of the house at 2710 W. 49 ½ St., and vice versa. The fence along this section is 7' because there is no valid reason to want to be able to look directly into your neighbors rear windows.

Finally, the section of fence along the boundary shared with 2710 W. 49 ½ St. is 7' in order to obstruct, or at least obscure my view of the non-permitted tower structure which the owners of that property have erected in their backyard. Pictures of this structure are enclosed with this application. "Clean hands" should be required in order for a party to lodge a complaint against another. My neighbor should not be enabled to construct unsightly, dangerous-looking, un-permitted structures on their property and then tell me that I should be forced to look at them. Such behavior creates a valid hardship.

(b) The hardship is not general to the area in which the property is located because:

No other properties in the area other than mine share the view of the rear yard of the property at 2710 W. 49 ½.

AREA CHARACTER:

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:

Several fences in the area are 7 feet and 8 feet in height. All 8 foot fence is along rear and side lot lines, and six of my seven adjacent neighbors have consented to the construction of the fence at its present height. All adjacent properties are residential. The purpose of the regulation is to allow privacy, shield unsightly items from public view, and also to protect against a hazardous situation. The fence along the Southern boundary of my property, as presently constructed, achieves each of these items. It is clear from the enclosed pictures that the fence is of quality construction and adds value to the property and the neighborhood.

PARKING: (Additional criteria for parking variances only.)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed Section 479 of Chapter 25-6 with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specific regulation because:

<u>N/</u>	Α		, , , , , , , , , , , , , , , , , , , ,		 .	<u> </u>	
2.	The granting of public streets in streets because:	i such a ma	e will not unner as to	result in th	e parking o	or loading of	f vehicles on raffic of the
<u>N/</u>	A	: : :			-		
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3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

To the contrary, the fence has been permitted and constructed in its present form to protect against potential safety hazards and to conform to the objections of the ordinance.

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

No change in use is requested. The fence, as built, enhances the residential use of the property and all adjacent properties.

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.

Printed Benjamin White Phone 512 4133492 Date 3-12-10

GENERAL INFORMATION FOR SUBMITTAL OF A VARIANCE REQUEST TO THE BOARD OF ADJUSTMENT

(The following is intended to provide assistance in explaining the variance process. These suggestions are not intended to be a complete or exhaustive guide in assisting you through this process.)

VARIANCE REQUIREMENTS:

General Requirements:

NOTE:

- A. A variance may be granted if, because of special circumstances of a property, the strict application of the Land Development Code regulations deprives the property owner of privileges that are enjoyed by another person who owns property in the area that has the same zoning designation as the property for which the variance is requested.
- **B.** A variance to a regulation may not grant special privileges that are inconsistent with the limitations on other properties in the area or in the district in which the property is located.

SUBMITTAL REQUIREMENTS: (Failure to complete the application or to submit all the required materials will result in non-acceptance of the application.)

- (1) A completed application indicating all variances being requested. An application must include proposed findings that will support requested variances. The required findings must address each variance being sought.
- (2) A site plan to scale indicating present and proposed construction and location and use of structures on adjacent lots.
- (3) A tax plat with subject property clearly marked indicating property within a 500-foot radius. These are available from the Travis Central Appraisal District at 8314 Cross Park Drive (834-9138).
- (4) Check made payable to the City of Austin for the Board of Adjustment application fee. (Residential zoning \$360. All other zonings \$660.)



Board of Adjustments

CASE#:

C15-2010-0039

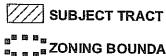
ADDRESS:

4921 BULL CREEK RD J27

GRID:

MANAGER:

SUSAN WALKER



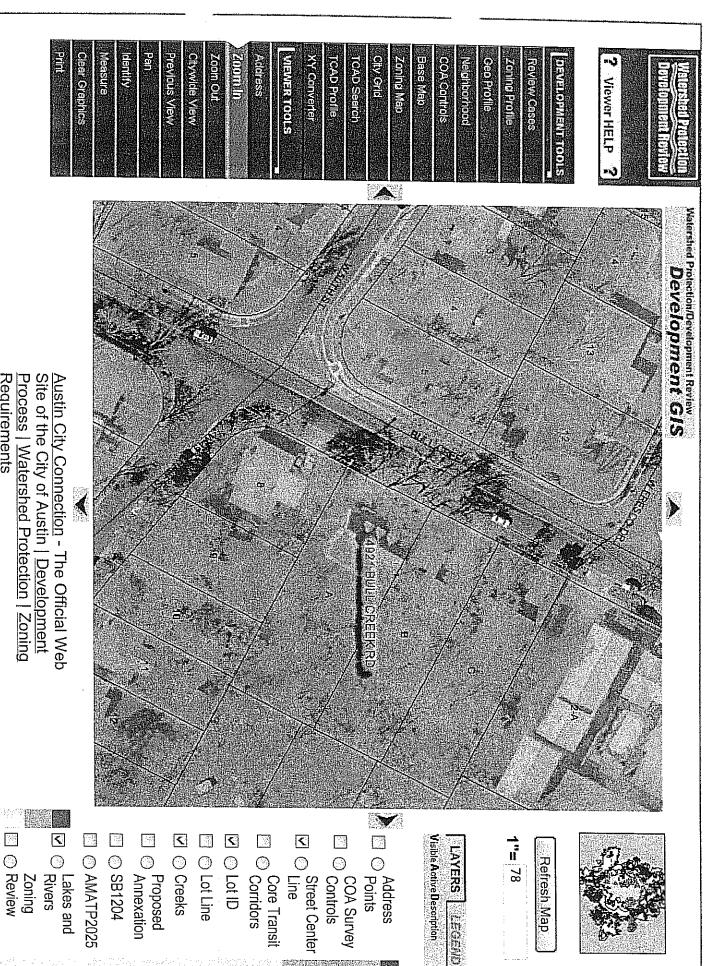
ZONING BOUNDARY





1" = 100'

This map has been produced by G.I.S. Services for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



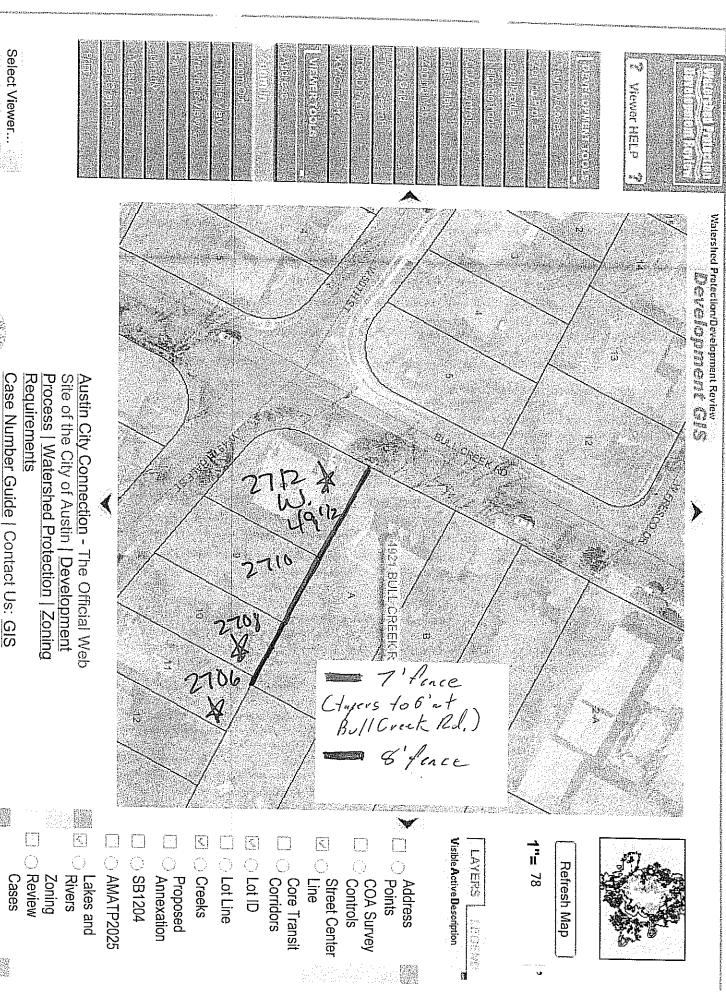
Select Viewer...

Requirements

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Outhdivision

Cases



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City of Austin Residential Permitting Department

Re: 4921 Bull Creek Rd-Fence Permit

The undersigned neighboring properties of 4921 Bull Creek Rd approve the fence, built on 5-25-08, that is 8ft tall. This letter is meant for the City of Austin to grant Ben White permit for the 8ft tall fence.

Name/Current Owner:	Signature:
Nash, Lorin 2706 W 49th St Austin, TX 78731-5547	
Deeb Ramzi 4925 Bull Creek Dr. Austin, TX	
Tony Gregg 2712 49 ½ St. Austin, TX	Tony Diegg 6-5-08
Wade Williams 2708 49 ½ St. Austin, TX	
Blomquist, Gilbert Victor 4922 Finley Dr Austin, TX 78731-5639	· .
Bond, J J 4920 Finley Dr Austin, TX 78731-5639	
Nyer, Aaron 4918 Finley Dr Austin, TX 78731-5639	

City of Austin Residential Permitting Department

Re: 4921 Bull Creek Rd-Fence Permit

The undersigned neighboring properties of 4921 Bull Creek Rd approve the fence, built on 5-25-08, that is 8ft tall. This letter is meant for the City of Austin to grant Ben White permit for the 8ft tall fence.

Name/Current Owner:	Signature:
Donald Coffee 2706 W 49th St Austin, TX 78731	
Deeb Ramzi 4925 Bull Creek Dr. Austin, TX	
Tony Gregg 2712 49 ½ St. Austin, TX	
Ernesto and Marin Blanco 2708 49 ½ St. Austin, TX	ample 10/13
Bond, J J 4920 Finley Dr Austin, TX 78731-5639	
Nyer, Aaron 4918 Finley Dr Austin, TX 78731-5639	

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6-1-12

City of Austin Residential Pennitting Deputations

Re: 4921 Bull Creek Rd-Pence Perinkt

The undersigned neighboring properties of 4921 Unit Carole Rel approve the scace, built on 5-25-08, that is 80 mil. This letter is mount for the City of Austri to grant Ben White permit for the 80 mill bence.

NamesCurrent Chancer		Signature:
Donald Coffee 2706 W 49th St Austin, TX 78731	10/19/09	Dunded fit !
Rech Romei 4925 Unif Creak Dr Austia, TX		
Tuny Gregg 2712 40 1/2 St. Austla, TX		
Linus(q and Marin Rianco 2708 49 % %; Austin, TX		· · · · · · · · · · · · · · · · · · ·
Donal, I I 4920 Finley Dr Aussin, TX 78731-3639		Provide actinguages and decomposition and
Nyer, Awon 4918 Finley Dr Austin, TX 78731-5619		

City of Austin

Austin's Community-Owned Electric Utility

www.austinenergy.com

Town Lake Center • 721 Barton Springs Road • Austin, Texas • 78704

03_09_10

Benjamin T. White 4921 Bull Creek Road Austin, Texas 78731

Re:

4921 Bull Creek Road

Lot A, William Schoenert Annex

Dear Mr. White

Austin Energy (AE) has reviewed your application for the above referenced property requesting for a variance for a fence at various heights of 6' to 8'. Austin Energy has no conflicts with this application as requested and shown on the attached red-stamped sketch.

Thank you for checking with us in advance. Should you have any questions, please feel free to contact me at 322-6015.

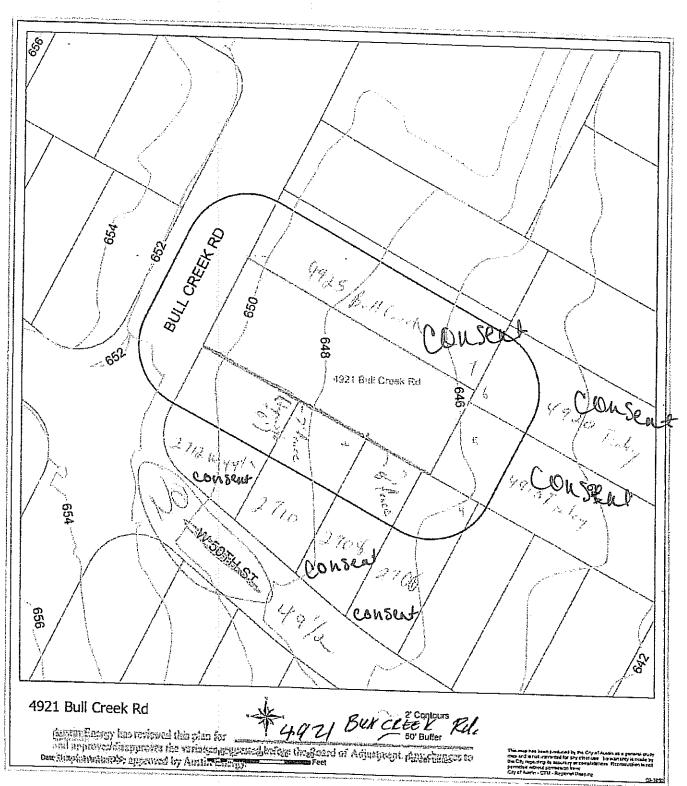
Sincerely,

Ricky Jackson

Public Involvement/Real Estate Services

Cc: Diana Ramirez and Susan Walker

APPROVED X DENIED	Agent's initials	RI R
NORTH X SOUTH	_MAPSCO PAGE#_55	4 12
Existing Clearance VIOLATION:		
NESC comment required:	YesNo	
OSHA comment required:	VesNo	
GIS Map reviewed:	Yes X No.	··· ·
Easements reviewed:	YesNo	
COMMENTS None	AMERICA III	
Olive Sala Market	The state of the s	**************************************
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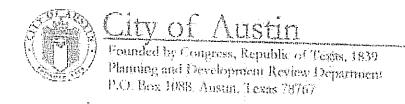


AUSTIN ENERGY

Rief Julian

Date

3-10-10 95 A B



December 3, 2009

Mr. Michael Cihock McLean & Howard, LLP 1004 Mopac Circle, Suite 100 Austin, Texas 78746

Re: Building Permit Nos. 2008-051644 BP and 2009-029382 BP

Dear Mr. Cihock:

Thank you for the information you provided at our November 16, 2009 meeting.

Following is our decision on the referenced permits:

 The requirements of the City Code for the issuance of Permit No. 2008-051644 BP have been met. The 8 ft. fence is in compliance with Chapter 25-2-899 Fences as Accessory Uses, specifically Section (E) and Section (E) (2).

Certified Mail: 7009 1680 0000 8642 1789

• The fence permitted under Permit No. 2009- 029382 BP is not in compliance with Section 25-2-899 (D). Without the adjacent property owner's approval, the fence along the property line along the south side of Mr. Ben White's property may not exceed an average height of six feet or a maximum height of seven feet. The property line is determined from the beginning of the lot (most westerly corner of the lot) to the end of the lot (most southerly corner).

However, this also means that the section of 8 ft fence on the south property line that was approved under the previous permit cannot be over 7 ft.

You have two options available:

1. Request a variance from the Board of Adjustment at the earliest available meeting or

2. Rebuild the fence in order to achieve an average height of six feet with a maximum height of seven ft.

Please provide a written response of your decision no later than December 11, 2009. If you choose option 2, please provide a time frame for completing the work.

Sincerely,

Leon Barba, P.E., Building Official

CC: Greg Guernsey, Director, PDR Don Birkner, Assistant Director, PDR Brent Lloyd, Assistant City Attorney, Law Department Dan McNabb, Building Inspection Division Manager, PDR Benjamin T. White If you need assistance completing this application (general inquires only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

CASE#_	
ROW#	

CITY OF AUSTIN APPLICATION TO BOARD OF ADJUSTMENT GENERAL VARIANCE/PARKING VARIANCE

WARNING: Filing of this appeal stops all affected construction activity.

INF	ASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED ORMATION COMPLETED.
STRE	ET ADDRESS: 4921 Bull Creek Road, Austin, Texas 78731
LEGA	L DESCRIPTION: Subdivision - William Schoenert Annex
Lot	(s) A Block Outlot Division
I/We E	enjamin T. White on behalf of myself/ourselves as authorized agent for
	nin T. White affirm that on, 2010,
hereby	apply for a hearing before the Board of Adjustment for consideration to:
	appropriate items below)
E	RECTATTACHCOMPLETEREMODEL X MAINTAIN
the fen	ce along the Southern boundary of my property line as presently constructed i
accorda	nce with Building Permit Nos. 2008-051644BP and 2009-029382 BP.
in a <u>S</u>	F-1 district. coning district)
NOTE suppor Findin being r	The Board must determine the existence of, sufficiency of and weight of evidence ting the findings described below. Therefore, you must complete each of the applicable is Statements as part of your application. Failure to do so may result in your application ejected as incomplete. Please attach any additional support documents.

Jackson, Ricky

From:

Long, Robert

Sent:

Tuesday, March 09, 2010 2:16 PM

To:

Jackson, Ricky

Subject:

FW: Application for Variance at 4921 Bull Creek Rd. Austin 78731

Attachments: COA Ruling Letter.pdf; First Page of Variance App (Tentative).pdf; Subject Fence Location.pdf

Here's another one.

Robert

From: Mike Cihock [mailto:mcihock@mcleanhowardlaw.com]

Sent: Tuesday, March 09, 2010 2:14 PM

To: Long, Robert

Subject: Application for Variance at 4921 Bull Creek Rd. Austin 78731

Robert:

Pursuant to our conversation, attached, please find the first page of my client's (Benjamin T. White) proposed application for variance with respect to the height of the perimeter fence on the Southern boundary of 4921 Bull Creek Rd., Austin, Texas 78731. I have also included a letter from the City of Austin with respect to the fence height to provide you with some background. Mr. White is hoping for a variance that would allow the fence to be left as presently constructed. As it stands, the fence is 8' tall along the boundaries of the two easternmost lots and approximately 7' tall along the two westernmost lots. In no event would any portion of the Southern fence line be more than 8 feet in height.

I have also attached pictures of the fence taken in late '09. As you can see, the 8' fence starts in the back, then abruptly changes to 7' for the remainder of the fence along the Southern boundary. The fence remains as it is shown in the pictures. Finally, I have attached a map/plan showing the location of the subject fence to give you a better idea as to location.

Please do not hesitate to call me with any questions you may have or with requests for any further materials you may need. My client is trying to submit his application to the Board of Adjustment by this Friday. Thanks,

(The pictures will follow as they would not go through together.)

Michael

Michael J. Cihock McLean & Howard, LLP 1004 Mopac Circle, Suite 100 Austin, Texas 78746 Telephone (512) 328-2008 Facsimile (512) 328-2409

CONFIDENTIALITY NOTICE: This communication is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable has it you are not the intended recipient of this information, you are notified that any use, dissemination, distribution, or copying of the communication is strictly prohibited.