

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).

Amended 7-12-10
CASE # C15-2010-0039
ROW # 10419656

CITY OF AUSTIN
SECOND AMENDED 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 July 12, 2010, I hereby file this
Second Amended Application to the Board of Adjustment for a Variance and apply for a
hearing before the Board of Adjustment for consideration to:

___ ERECT ___ ATTACH ___ COMPLETE ___ REMODEL X MAINTAIN

(i) that portion of the fence along the Southern boundary of my property line adjacent
to 2706, 2708 and 2712 W. 49 ½ St., the owners of which have agreed, consented
and contributed to the construction and maintenance of their respective portions of
the fence in their presently constructed condition in accordance with Building
Permit Nos. 2008-051644BP and 2009-029382 BP and City of Austin fence
ordinance Section 25-2-899(E), (ii) the present height of 7' for that section of
fence along the Southern boundary of my property line adjacent to 2710 W. 49 ½
St., and (iii) the present height of 8' of those sections of fence along the Eastern

and Northern boundaries of my property line adjacent to 4918 Finley, 4920 Finley and 4925 Bull Creek Rd., respectively, in accordance with Building Permit No. 2008-051644BP. The subject property and each of the affected properties are located in a S-F 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 since one property owner along this boundary has not consented to the

construction of the fence over 7', Section 25-2-899(E) cannot be applied to the portions of fence along this boundary adjacent to consenting lot owners. This appears to conflict with the intent of the ordinance as it clearly states that fence along a property line may be constructed to a maximum height of 8' "if each owner that adjoins a section of the fence that exceeds a height of 6' files a written consent to the construction of the fence." This misapplication of the ordinance results in one property owner effectively dictating what two other separate property owners can construct along their adjacent boundary lines under the ordinance. A better reading of the ordinance would apply the elements of Section 25-2-899(E) to each individual section of fence rather than the entirety of the fence so that each adjacent owner can determine the level of privacy and safety between their respective adjacent lots.

It is the documented intent of each of the lot owners of 2706, 2708 and 2712 W. 49 ½ St. to maintain their respective portions of fence at their present heights. Objecting lot owner cannot argue that fences as presently constructed obstruct any view of the neighborhood as giant bamboo growth in the rear yard of 2708 W. 49 ½ St. completely obstructs objecting neighbor's view of any 8' fence constructed along 2706 and 2708. Regardless of the City's interpretation of Section 25-2-899(E), I am requesting a variance for those sections of my fence adjacent to 2706, 2708 and 2712 W. 49 ½ St. to remain at their present height as intended and agreed to by each adjacent lot owner.

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. I should not be asked to construct a fence in a manner that shields my boat and personal items from public view and then be told that I cannot construct my fence in such a manner. This inconsistency puts me in a perpetual state of violation.

Finally, for those same reasons set forth above, I am also requesting a variance to allow the portion of fence adjacent to 4918 Finley, 4920 Finley and 4925 Bull Creek Rd. to remain at its present height of 8'. It is also the documented intent of each of these lot owners to maintain the height of these sections of fence at 8' as presently constructed. Each of the elements of Section 25-2-899(E)(2) has been satisfied. I applied for and was issued this permit over two years ago. The City has previously reviewed this portion of my fence and determined that the required elements were satisfied. I have relied on their issuance of the permit and subsequent ruling. I am requesting that a variance be issued for these portions of my fence to allow it to remain at its presently constructed height.

HARDSHIP:

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

The entire fence along the Southern boundary of my lot 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 variances requested are 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 ground-floor rear windows.

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.

With respect to the portions of fence along my Eastern and Northern property lines, on December 3, 2009, City of Austin Building Official Leon Barba with the Planning Development and Review Department, issued a letter ruling that the fence built on my property under Building Permit No. 2008-051644 BP was built in compliance with Chapter 25-2-899. Specifically, in his letter, Mr. Barba unequivocally states that "The 8 ft. fence is in compliance with Chapter 25-2-899 Fences as Accessory Uses, specifically Section (E) and Section (E)(2)". This ruling was the result of several meetings with Mr. Barba and a variety of other City of Austin staff members including Kathy Haight, John McDonald and Darren Cain, which culminated in a November 2009 meeting with Mr. Barba, Brent Lloyd, and at least three other participants.

This meeting and subsequent letter ruling occurred more than a year after the permits were applied for, issued, and the subject fence was constructed. In early June, 2010, I was contacted by Greg Guernsey to schedule a time for him to inspect the portion of my fence for which my variance application was pending. I was never under the impression that the 8' portion of my fence along the Northern and Eastern boundaries built under a permit that was later validated by Mr. Barba was in question. Subsequent to Mr. Guernsey's inspection of my yard, I received Mr. Guernsey's June 24, 2010 Notice of Intent to Suspend the permit for the 8 foot portion of my fence. The June 24 letter does not specify how the 8 foot fence fails to satisfy the conditions of 25-2-899(E)(2), however pursuant to his conversation with my attorney, it appears as though he has simply substituted his subjective interpretation of several elements of 25-2-899(E)(2) for Mr. Barba's with respect to the Eastern and Northern portions of my fence without providing me with any notice that these sections were still under consideration. Given the prior permit issuance, numerous meetings with City staff, review and scrutiny of the fence by City staff, and prior approval by Mr. Barba, I am unclear as to why now, nearly two years after the issuance of and half a year after the review and approval of the 8' portion of my fence, Mr. Guernsey has now spontaneously decided to provide me with notice of his intent to suspend this permit after the issue had seemingly been resolved some time ago.

- (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. No other property owner has been listed in any complaint as the fence in question lies entirely on my property.

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:

N/A

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

N/A

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.

NOTE: 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.

APPLICANT CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Benjamin T. White Mail Address 4921 Bull Creek Rd
City, State & Zip Austin TX 78731
Printed Benjamin T. White Phone 5124133992 Date 7-12-10

OWNERS CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Benjamin T. White Mail Address 4921 Bull Creek Rd
City, State & Zip Austin TX 78731
Printed Benjamin T. White Phone 5124133992 Date 7-12-10

PUBLIC HEARING INFORMATION

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- 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.

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Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

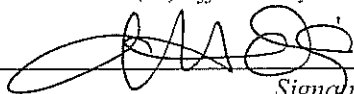
Public Hearing: Board of Adjustment, July 12, 2010

Amanda Harding

Your Name (please print)

2700 W. 49th St / 78731

Your address(es) affected by this application



Signature

☒ I am in favor
☐ I object

7/19/10

Date

Daytime Telephone: 554-7805

Comments: _____

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

P. O. Box 1088

Austin, TX 78767-8810

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Public Hearing: Board of Adjustment, July 12, 2010

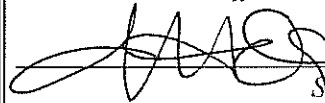
L. Amanda Harding

Your Name (please print)

☒ I am in favor
☐ I object

2700 W. 49th / 78731

Your address(es) affected by this application



Signature

7/19/10
Date

Daytime Telephone:

554-7805

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C/O Susan Walker

P. O. Box 1088

Austin, TX 78767-8810

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

DATE: Monday, July 12, 2010

CASE NUMBER: C15-2010-0039

____ Jeff Jack
____ Michael Von Ohlen
____ Nora Salinas
____ Bryan King
____ Leane Heldenfels, Chairman
____ Clarke Hammond, Vice Chairman
____ Heidi Goebel

APPLICANT: Benjamin White

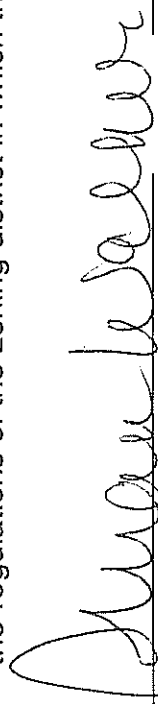
ADDRESS: 4921 BULL CREEK RD

VARIANCE REQUESTED: The applicant has requested a variance to maintain (i) the portion of the fence along the southern boundary of the property line adjacent to 2706, 2708 and 2712 West 49 ½ Street in their presently constructed condition in accordance with building permit numbers 2008-051644BP and 2009-029382BP and Section 25-2-899 (E) and (ii) the present height of 7 feet for the section of fence along the southern boundary of the property line adjacent to 2710 West 49 ½ Street in an "SF-1", Single Family Residence Large Lot zoning district.

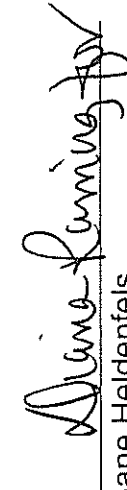
BOARD'S DECISION: Postponed to September 13, 2010, scope has expanded and will need additional variances; an interpretation appeal may be submitted.

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



Leane Heldenfels
Chairman

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and:

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Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, July 12, 2010

LORAIN GLAWE

Your Name (please print)

2705 WEST 49 1/2 ST

☐ I am in favor
☒ I object

Your address(es) affected by this application

~~2705~~

Lorain Glawe

7-6-10

Signature

Date

Daytime Telephone: 512-454-7981

Comments: See attached

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

P. O. Box 1088

Austin, TX 78767-8810

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Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, July 12, 2010

KATHLEEN CARBONE

Your Name (please print)

2710 WEST 49th 1/2 Street

Your address(es) affected by this application

[Signature]

Signature

☐ I am in favor
☒ I object

07 July 10

Date

Daytime Telephone: 454-6571

Comments: 7 + 8-ft fence is unsightly +
out of character in this dense
urban neighborhood.

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Contact: Susan Walker, (512) 974-2202

Public Hearing: Board of Adjustment, July 12, 2010

David Orshalick

Your Name (please print)

☐ I am in favor
☒ I object

2710 W 49th 1/2 St.

Your address(es) affected by this application

D. Orshalick

7/8/10

Signature

Date

Daytime Telephone:

971-1895

Comments:

An 8 ft. fence is only allowed by code under circumstances that do not exist for applicant's property. In addition, the findings required by the BOA for this variance have not been proven by the applicant. Please protect our neighborhood.

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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.ci.austin.tx.us/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. 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.

Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

Public Hearing: Board of Adjustment, July 12, 2010

John M. King

Your Name (please print)

☒ I am in favor
☐ I object

4918 Finley Dr.

Your address(es) affected by this application

John M. King

Signature

7/8/10

Date

Daytime Telephone: 708-302-3259

Comments: We really like the way the fence looks - we don't want to change it.

Thanks!

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

P. O. Box 1088

Austin, TX 78767-8810

Walker, Susan

152010-0039

From: Michael Cihock [mcihock@mcleanhowardlaw.com]
Sent: Friday, July 09, 2010 4:31 PM
To: Walker, Susan; Guernsey, Greg
Cc: Jeff Howard; Ben White
Subject: 4921 Bull Creek - Ben White's scheduled hearing on variance application
Attachments: Interpretation application 070910.doc

Greg and Susan:

As you know, this firm represents Ben White with respect to the permits for construction of the privacy fence in his yard. Mr. White's first amended application for variance is presently set for hearing next Monday, July 12, 2010. This amended application was filed with the City on June 7. As you know, on June 24, 2010, Mr. Guernsey provided a letter to Mr. White and this office notifying him of the City's intent to revoke a building permit that was issued in July of 2008. As permitted, Mr. White intends to file a zoning interpretation appeal to this most recent ruling. The application has been prepared and Mr. White is in the process of attaching the supplemental documents thereto for delivery to the City. The draft is attached and will be filed on Monday. At the same time, Mr. White intends to amend his application for variance, however, requiring him to amend an application for a variance to include a building permit that was issued two years ago, and has previously been upheld by Leon Barba (and Brent Lloyd) as being proper requires additional time to prepare, as well as prepare for an entirely different presentation to the Board of Adjustment.

For this reason, Mr. White is requesting that his application be pulled from the July agenda and re-set for September, in order for him to adequately prepare for an entirely different presentation of the appeal and a new variance. This request is not being made for any dilatory purpose. At a third party's request, the City inspected Mr. White's yard and revoked a permit that had been issued and determined to be valid for a period of two years. The appeal of this ruling should be heard along with the present variance application, which per Mr. Guernsey's recommendation (in email dated June 24) should be further amended to include a request for variance for the portion of the fence covered by the permit that was recently noticed for revocation. Mr. White deserves time to prepare an adequate presentation for these items together to the board.

We are requesting that City will pull this item from Monday's agenda and set it at a more appropriate time when all salient matters can be heard together. Thanks.

Michael

Michael J. Cihock
McLean & Howard, LLP
Barton Oaks Plaza, Building II
901 South MoPac Expressway, Suite 225
Austin, TX 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 law. If 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.

7/12/2010

K. F. Carbone
2710 West 49th ½ Street
Austin, TX 78731

May 1, 2010

Board of Adjustment
City of Austin
P.O. Box 1088
Austin, TX 78767

Re: CASE #C15-2010-0039
Mr. Benjamin T. White's request for fence height variance at 4921 Bull Creek

Dear Chair and Members of the Board of Adjustment,

My property is adjacent to 4921 Bull Creek. I ask that you reject Mr. White's variance request to maintain his fence height in excess of 6-ft. because it fails to meet any of the variance requirements:

- There are no special circumstances of the property that deprive the owner of privileges enjoyed by others in the area: the applicant's property is virtually identical to five contiguous properties and numerous other properties in the neighborhood.
- A 6-ft. fence satisfies all of the reasonable uses sought and listed by the applicant.
- There is nothing unique to the property to prevent compliance with the fence ordinance. Personal and financial claims listed by the applicant are not valid hardships. There is no hardship relating to the property that differs from other properties in the area.
- The applicant's fence alters the character of the area adjacent to his property as it creates an unsightly stockade or compound effect that blocks light, air, drainage, and views.

Granting this variance will subvert the clear intent of the ordinance and will confer a special privilege not enjoyed by others similarly situated in the neighborhood. In addition, many of the statements made by the applicant are false. For example, the applicant states that the fence was "constructed in accordance with the permits" but, according to City records, the 8-ft. fence was built without a permit. It was only after a Code Complaint was filed that a permit was subsequently and fraudulently obtained. Please see the attached document, *Refutation to Variance Application for 4921 Bull Creek*, for details.

In addition, the Allandale Neighborhood Association Executive Committee opposes Mr. White's variance request. Minutes of the April 22, 2010 ANA meeting read: "A motion was made to support the residents of 2710 W. 49th ½ St. and their opposition of a variance to allow a 7- and 8-ft. fence at 4921 Bull Creek. Motion was made by George Roman, seconded by Diane Swinney, motion carried unanimously."

Due to prior commitments, I will be out of the country on May 10, 2010 and thus unable to address the Board. Mr. Truman Fenton will speak on my behalf in opposition to this variance.

Thank you for your consideration and for your service to Austin.

Sincerely,



K. F. Carbone

Encl: Refutation, supporting documents and photos

Mr. White has made numerous misleading and false claims in his application for variance. His application fails to meet any of the required findings for Reasonable Use, Hardship, or Area Character, as detailed below (Mr. White's claims appear in bold type, followed by my responses).

Re: Cover page of variance application

Pg. 2: “constructed in accordance with Building Permit Nos. 2008-051644BP and 2009-02-9382 BP”

Neither permit is valid. The City has determined that both permits were issued in error (see A (1): McDonald Email and A (2): McDonald Chronology). The fence does not meet Code (see B: Barba Suspension). The second permit has since expired and, according to City of Austin assistant attorney Kathleen Buchanan, the City is filing suit against Mr. White to lower his fence height to the allowable 6-ft. average.

Pg. 2: “the subject property and each of the adjacent affected properties are located in an SF-1 district”

The majority of the adjacent properties are actually SF-2.

Re: Reasonable Use

Pg. 3, ¶1: “interpretation of §25-2-899 (D) & (E) together nullify a property owner’s ability to act under one of these sections by itself.”

This statement is an obfuscation; (D) & (E) are essential components of code to be applied singly or in tandem (see C: Fence Ordinance). The intent of the ordinance is clear: fences are not to exceed 7-ft. with an average height of 6-ft. unless an allowed exception is met, which Mr. White has not demonstrated.

Pg. 3, ¶2: “One purpose of erecting a solid perimeter fence”

The ordinance does not contain a stated purpose.

Pg. 3, ¶2: “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.”

Because Mr. White’s vehicles were parked in public view (not in his yard), he received code violation notice CV-2008-022662 stating, “The RV and boats are recreational vehicles and are required to be enclosed within a building or screened from public view.” Code requires a fence height of 6-ft. (see D: Accessory Uses Ordinance) which satisfies reasonable use. Yet even after the illegal construction of his fence, Mr. White would park his recreational vehicles in public view (CC-2008-078049 & CC-2009-095919).

Pg. 3, ¶3: “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... All signatures and consents have previously been provided to the city.”

This claim has no bearing on reasonable use. However, of 3 signatures Mr. White provided to the City of Austin’s Residential Permitting Department: the signature attributed to “Ernesto and Marin [sic] Blanco” is a forgery according to the Blancos; the signature attributed to “Joyce J. Bond” is a forgery according to Mrs. Bond; and two different signatures, both dated 6-5-08, are attributed to “Tony Gregg”, one or both of which may be invalid (see E: Letters 1-7).

Pg. 3, ¶13: “I should be permitted to maintain my fence in a manner that satisfies 25-2-899(E).”

This claim has no bearing on reasonable use. Regardless, Mr. White’s fence does *not* satisfy the ordinance for valid consents, change of grade, or access by a child to a hazardous situation.

Pg. 3, ¶14: “I am requesting a variance to allow the portion of the fence adjacent to 2710 W. 49th St. to remain at its present height of 7’ ”

A 6-ft. fence allows for reasonable use, and privacy and security are both adequately achieved. My 6-ft. fence already existed between our properties. I denied Mr. White permission to build or retain a fence higher than 6-ft. adjacent to mine on 03/20/08 (before construction) and on 01/29/10 (after construction), which Mr. White blatantly disregarded.

Pg. 4, ¶12: “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 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’.”

This is a subverted interpretation of the ordinance. Nevertheless, personal wishes have no bearing on reasonable use. In addition, the property owners (not neighbors) who *might* have consented are not party to his variance request.

Re: Hardship

Pg. 4, ¶1 of #2(a): “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, ... variance is unique in that six of my seven directly adjacent neighbors consented to the construction ... the cost of which was shared with my neighbors”

Mr. White, an employee of Durlman & Bassett Realty Group involved with property management and development, should be aware that the City of Austin has building ordinances. Yet Mr. White commenced building the majority of his fence on 05/11/08 without a permit. Since it was higher than 6-ft, Code Compliance was notified on 05/12/08 (CC-2008-036233). Mr. White subsequently received permit #1 on 07/02/08. This permit (2008-051644BP) was issued in error as stated in City records: the property does not meet the 2-ft. change in grade within 50-ft. of adjacent properties as Mr. White claimed, no plot plan was submitted, and adjacent property owner permissions were lacking.

Nine months later, on 04/07/09, Mr. White received permit #2 for the remaining 7-ft. fence section adjacent to my property (built on 06/03/09). This permit (2009-02-9382BP) was also issued in error as stated in City records: the property does not meet the 2-ft. change in grade within 50-ft. of adjacent properties as Mr. White claimed, no plot plan was submitted, and my permission was lacking (in fact, permission had been explicitly denied). The second permit has since expired and, according to City of Austin assistant attorney Kathleen Buchanan, the City is filing suit against Mr. White to lower his fence height to the allowable 6-ft. average along the entire south side of his property (spanning all four adjacent properties: 2706, 2708, 2710, and 2712 W. 49th ½ St.).

There are 7 properties adjacent to Mr. White's (two of which abut by only a few feet). Four of the property owners do not live in this neighborhood. Characterized by Mr. White as "several adjacent neighbors" who shared in the expense of his fence may be Ramzi, Nyer, and Gregg:

1. *4925 Bull Creek Road*: Mr. Deeb Ramzi, a real estate agent and manager of Deeb Properties, is the absentee landlord of this property.
2. *4918 Finley Drive*: Mr. Aaron Nyer, a real estate agent with Choban & Associates, sold this property after Mr. White's 8-ft. fence was built.
3. *2712 West 49th ½ Street*: Mr. Tony Gregg, an absentee landlord, paid for fencing the entire perimeter of this property by the same crew that Mr. White employed. In addition, Mr. White submitted 2 different "permission" signatures to the City of Austin attributed to "Tony Gregg", both dated 6-5-08, one or both of which may be invalid.

Of the remaining properties adjacent to Mr. White's:

4. *2706 West 49th ½ Street*: Mr. Louis Hunt, of Landstone Homes, was the builder and absentee landlord; he subsequently transferred ownership of this property to his brother-in-law, Mr. Donald Coffey, the current absentee landlord.
5. *2708 West 49th ½ Street*: Dr. & Mrs. Blanco did not give Mr. White permission to build his 8-ft. fence adjacent to their property; the signature attributed to "Ernesto and Marin [sic] Blanco" is a forgery according to the Blancos.
6. *2710 West 49th ½ Street*: I did not give Mr. White permission to build his 7-ft. fence adjacent to my property; rather, I explicitly denied his request.
7. *4920 Finley Drive*: Mrs. Joyce Bond did not give Mr. White permission to build his 8-ft. fence adjacent to her property; the signature attributed to "Joyce J. Bond" is a forgery according to Mrs. Bond.

Pg. 4, ¶1 of #2 (a): "I do not want to rebuild the entire fence"

The fence does not have to be rebuilt, merely lowered to an average height of 6-ft. Nevertheless, personal wishes are not a valid hardship.

Pg. 4, ¶2 of #2 (a): "regardless of the topography map provided by the city"

One may not disregard topography illustrating that a required change of grade does *not* exist.

Pg. 4, ¶2 of #2 (a): "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."

Mr. White violated this ordinance (see D: Accessory Uses), leaving his boats, trailers, and RV in his driveway and on the street even after building his fence (CC-2008-078049 & CC-2009-095919). Mr. White does not even shield his tallest boat behind the highest portion of his fence (see F: Boat Photo). Nevertheless, the ordinance was not written to allow fences to be as tall as the recreational vehicle a citizen happens to own. A 6-ft. fence adequately shields all of Mr. White's recreational vehicles as required by the Accessory Uses ordinance § 25-2-893.

Pg. 4, ¶2 of #2 (a): “A person of average height... can see directly into the rear windows of the house at 2710 W. 49 ½ St., and vice versa.”

Seeing windows is not the same as seeing *into* windows (see G: Window Photo). Unless Mr.

White uses binoculars to peep from his windows into my windows approximately 100 ft. away, visibility is virtually nil. Mr. White has a two-story house on his property; by his own logic, he should be seeking a variance to construct a fence 15-ft. high. Nevertheless, a personal reason does not constitute a valid hardship.

Pg. 4, ¶3 of #2 (a): “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.”

There is no such “tower structure”. There is, however, a section of ornamental fence in the side yard, allowable under §25-2-899 (see C: Fence Ordinance) and not requiring a building permit (see H: Vantage Photo, taken from the vantage point of Mr. White’s property).

Pg. 4, ¶3: “Pictures of this structure are enclosed”

Mr. White’s photos were taken from the vantage point of 49th ½ Street, not from his own property around the block (see H: Vantage Photo).

Pg. 4, ¶3: “My neighbor should not be enabled to construct unsightly, dangerous looking, unpermitted structures... such behavior creates a valid hardship.”

This statement is baffling, given that I have never received a notice of code violation. Regardless, conflicting aesthetic values or personal reasons do not constitute a valid hardship.

Pg. 4, ¶1 of #2 (b): “No other properties other than mine share the view of the rear yard of the property at 2710 W 49 ½.”

This claim is patently false as there are actually two additional properties (2712 and 2708 West 49th ½ St.) that share a view of the rear yard of 2710 West 49th ½ St. Again, personal reasons are not a valid hardship. Nevertheless, Mr. White has failed to demonstrate any hardship reason to grant a variance for the 8-ft. portion of his fence.

Re: Area Character

Pg. 5, ¶1 of #3: “Several fences in the area are 7 feet and 8 feet in height.”

This claim is also false, as photos of twenty-one 6-ft. privacy fences within the immediate vicinity show (see I: Fence Photos). The photo that Mr. White supplied to support this claim is of the fence at 2800 W. 50th St., which is actually 6 ft. high, not 7- or 8-ft. (see I: Fence Photo 5) .

Pg. 5, ¶1 of #3: “six of my seven adjacent neighbors have consented to the construction of the fence at its present height.”

Of the seven, 3 owners are absentee landlords (not neighbors) who may or may not have consented, and 4 owners most certainly did not consent (one is a recent purchaser).

Pg. 5, ¶1 of #3: “The purpose of the regulation...”

This claim has no bearing on the area character, and the ordinance does not state a purpose.

Pg. 5, ¶1 of #3: “shield unsightly items from public view”

A 6-ft. fence adequately shields Mr. White’s recreational vehicles as required by the ordinance, yet he continues to park them in his driveway or on the street.

Pg. 5, ¶1 of #3: “It is clear from the enclosed pictures that the fence is of quality construction”

Characterizing his fence as being “of quality construction” is inaccurate given that the bottom of the wooden fence rests directly on soil and blocks the natural flow of rainwater within the drainage easement between properties, and it is coming apart (see I: Fence Photos, 22, 23, 24).

Re: Parking [Not Applicable: the applicant does not seek a parking variance]

Pg. 5, #3: “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.”

The fence was built without a permit. Permits were subsequently issued in error. The applicant supplied the City with fraudulent data and forged permission signatures in order to obtain permits. The ordinance disallows a fence height exceeding 6-ft. as there are no structures permitting reasonable access by a child. The remedy to conform to the ordinance is to reduce the entire fence height to average 6-ft.

Pg. 5, #3: “The fence, as built, enhances the residential use of the property and all adjacent properties.”

Mr. White’s fence exceeding 6-ft. in height does *not* enhance the properties; rather, it establishes a compound or stockade effect that is inconsistent with the character of the Shoalmont section of Allandale, an inner-city neighborhood of homes built in the 1950s with 4-ft. chain-link fences between them; privacy fences subsequently built are 6-ft. high.

Re: Owners Certificate

Pg. 6: Signed “Benjamin T. White”

It is unclear whether Mr. White’s misrepresentations to the Board of Adjustment constitute perjury or fraud. However, his signature affirming that his statements to the Board “are true and correct”, and his submission of forged signatures to the City of Austin, strongly suggest that Mr. White’s actions warrant further scrutiny.

Attachment A (1): McDonald Email

From: McDonald, John
Sent: Tuesday, June 16, 2009 11:05 AM
To: Haught, Kathy; Barba, Leon
Subject: 4921 Bull Creek Road fence(s)
Importance: High

I have looked into the original permit for the eight foot fence around the perimeter of the property and the permit for the 7' fence along the souther property line and have found errors in both. The following is what I was going to send to Marie Sandoval. **It would be extremely helpful to measure all fences located on the property to accurately know the height of each fence section.**

2008-051642 PR A permit was issued for an eight foot solid fence on July 2, 2008 for the perimeter of the property. The inspections of this fence were finalized on July 24, 2008. No plot plan exists in the attachments. I have checked the contours on the property in GIS and there is not a change in grade of two feet within 50 feet of any adjoining properties and this is one of the requirements that has to be met. The applicant turned in six signatures from adjacent property owners and there are seven adjoining properties. Two of the six signatures do not match the owner of record at the Travis County Appraisal District (current record).

2009-029373 PR A permit for a seven foot solid fence along the southern property line was approved on April 7, 2009 and the building permit is still active. Since three signatures are missing from the original application for properties that border the southern property line, this permit was issued in error as well.

Let me know if you have any questions or if you feel all fences should be measured before this email goes out?

JMM

Attachment A (2): McDonald Chronology

4921 Bull Creek Road Fence Chronology

July 2, 2008 A residential application for an 8' privacy fence was submitted and approved. The notes in AMANDA state that letters were obtained from the adjacent property owners and there was a 2' change in grade within 50' of the property. Notes in AMANDA also state some areas of the fence will be 6'.

July 24, 2008 The final inspection of the 8' privacy fence was performed.

April 7, 2009 A residential application for a 7' wood fence along the southern property line was submitted and approved. Notes in AMANDA state code section 25-2-899 (D) allows for this fence to be permitted.

June 9, 2009 I received an email from Marie Sandoval inquiring about the two fence permits that were issued at 4921 Bull Creek Road.

June 9, 2009 To June 19, 2009 During this time I spoke with the reviewer and found out the project was not in compliance with the following provisions:

1. The subject property does not have a change in grade of 2' within 50' of any portion of the property or adjacent property. **A variance from the Board of Adjustments will be required.**
2. The second application for the 7' wood fence will never meet the requirement of an average of 6' since 60% or more of the lot has an eight foot fence. **A variance from the Board of Adjustments will be required.**
3. Neither application has a plot plan showing the locations or sizes of the proposed fence, which is required.

June 23, 2009 Donald Klesel of Building Inspections went to the site and confirmed fence locations and height. This reaffirmed that the 7' wood fence was not compliant as issued due to the amount of 8' fence located on the perimeter of the property.

July 14, 2009 Leon Barba, Kathy Haught, Donald Klesel and Darren Cain met with the property owner and his attorney and told them there were problems with both permits. At this time we had to confer with the Law Department on one issue and get back with the property owner. "(D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet." The Law Department stated that there are two separate and distinct height requirements in the problem sentence and that both would apply. No stand alone seven foot fences are allowed because they must have portion under seven that make an overall average of six feet.

Dan McNabb put a hold on the 7' wood fence inspection after the site visit.

July 20, 2009 I called the property owner to tell him about the compliance issues with both permits and he referred me to his attorney for any further communication on the matter.



City of Austin

Founded by Congress, Republic of Texas, 1839
Watershed Protection & Development Review Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

Attachment B: Barba Suspension

August 25, 2009

Certified: 7005 1820 0003 7584 9270

Benjamin T. White
4921 Bull Creek Rd.
Austin, TX 78731-5026

RE: **Notice of Intent to Suspend Permit Nos. 2008-051644 BP and 2009-029382 BP for fences located at 4921 Bull Creek Rd.**

In accordance with City Code Section 25-1-417 (*Notice of Intent to Suspend or Revoke*), this letter constitutes a Notice of Intent to Suspend Permit No. 2008-051644 BP issued on July 2, 2008 and Permit No. 2009-029382 BP issued on April 7, 2009.

In order to avoid suspension of the two referenced permits, as authorized by Section 25-1-411 (*Suspension of a Permit or License*), you are required to correct the following code violations on or before September 4, 2009.

Code Violations	Corrective Action Required
Section 25-2-899	Permit No. 2008-051644 BP was issued in error. The existing 8 foot fence is not in compliance with Section 25-2-899(E). <i>A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:</i> <i>(1) there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or</i> <i>(2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.</i> Redesign your project or request a variance from the Board of Adjustment.

Attachment B: Barba Suspension (cont.)

Code Violations	Corrective Action Required
Section 25-2-899	Permit No. 2009-029382 BP was issued in error. The existing 7 foot fence is not in compliance with Section 25-2-899 (D). <i>Except as otherwise provided in this section a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.</i> Redesign your project or request a variance from the Board of Adjustment.

Please do not hesitate to contact me if you have questions regarding the action required under this Notice.

Sincerely,



Leon Barba, P.E., Building Official
Planning and Development Review Department

cc: Greg Guemsey, Director, PDR
Don Birkner, Assistant Director, PDR
Brent Lloyd, Assistant City Attorney, Law Department
Dan McNabb, Building Inspection Division Manager, PDR
Michael J. Cihock – McLean & Howard, LLP

Attachment C: Fence Ordinance

§ 25-2-899 FENCES AS ACCESSORY USES.

(A) Except as otherwise provided in this chapter, a fence:

- (1) is permitted as an accessory use in any zoning district; and
- (2) must comply with the requirements of this section.

(B) In this section:

(1) an ornamental fence is a fence with an open design that has a ratio of solid material to open space of not more than one to four; and

(2) a solid fence is a fence other than an ornamental fence.

(C) The height restrictions of this section do not apply to an ornamental fence.

(D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.

(E) A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:

(1) there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or

(2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.

(F) A solid fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines.

Attachment D: Accessory Uses Ordinance

§ 25-2-893 ACCESSORY USES FOR A PRINCIPAL RESIDENTIAL USE.

- (A) For a principal residential use, this section prescribes the requirements for an accessory use.
- (B) This subsection provides for vehicle storage as an accessory use.
- (1) Not more than one motor vehicle for each licensed driver residing on the premises may be stored on the premises.
- (2) Notwithstanding the limitation of Subsection (B)(1), a private garage for the storage of not more than four motor vehicles is permitted.
- (3) Except for an antique vehicle or recreational vehicle, a motor vehicle with a capacity of one ton or greater is prohibited.
- (4) Not more than one commercial vehicle may be stored on the premises.
- (5) Except as provided in Subsection (B)(6), an inoperable motor vehicle may not be stored on an adjacent public right-of-way. A motor vehicle is inoperable if, for more than 72 hours, the vehicle:
- (a) does not have license plates or has license plates that have been expired for more than 90 days;
 - (b) does not have a motor vehicle safety inspection sticker or has a motor vehicle inspection safety sticker that has been expired for more than 90 days; or
 - (c) cannot be started or legally operated in a public right-of-way.
- (6) The prohibition of Subsection (B)(5) does not apply to:
- (a) an antique or recreational vehicle stored at an owner's residence; or
 - (b) a vehicle under repair for less than 60 days, if not more than one other vehicle is also under repair.
- (7) Up to two vehicles that are either antique or recreational vehicles may be stored on the premises, if the storage area is not a health hazard and is either in an enclosed building or screened from public view with a solid wood or masonry fence at least six feet high.

Attachment E: Letters

- E1. Letter from K. F. Carbone.
- E2. Letter from Mrs. Blanco.
- E3. Forged Blanco signature supplied by Mr. White to the City of Austin's Residential Permitting Department.
- E4. Letter from Mrs. Bond.
- E5. Forged Bond signature supplied by Mr. White to the City of Austin's Residential Permitting Department.
- E6. Questionable Gregg signature #1 supplied by Mr. White to the City of Austin's Residential Permitting Department.
- E7. Questionable Gregg signature #2 supplied by Mr. White to the City of Austin's Residential Permitting Department.

**Refutation to Variance Application for 4921 Bull Creek
CASE # C15-2010-0039, ROW# 10419656, TP-0227000116**

Page 13

E1. Letter from K. F. Carbone

To: Whom it May Concern
Re: Board of Adjustment variance application for 4921 Bull Creek Road
(CASE # C15-2010-0039/ROW# 10419656/TP-0227000116)
Date: April 12, 2010

My property is adjacent to 4921 Bull Creek Road.

I did not give permission to Mr. Benjamin T. White to build or maintain a fence higher than 6-ft. adjacent to my property, nor did I sign any form granting permission to do so.

I disapprove of Mr. Benjamin T. White's repeated violations of the City of Austin's Code of Ordinance. He built his 7-ft. to 8-ft. fence before applying for a building permit and he subsequently supplied the City of Austin with false information, including some forged "permission" signatures, in order to obtain a fence permit. Despite being informed of the true facts in this case, the City of Austin has failed to correct their errors or to enforce Mr. White's compliance with Code.

I oppose Mr. White's request for a variance before the Board of Adjustment to maintain any portion of his fence height in excess of 6-ft. because it is not in keeping with the character of the Shoalmont Section of Allandale, which is a long-established, inner-city neighborhood.



Kathleen F. Carbone
2710 West 49th ½ Street
Austin, TX 78731

Refutation to Variance Application for 4921 Bull Creek
CASE # C15-2010-0039, ROW# 10419656, TP-0227000116

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E2. Letter from Mrs. Blanco

To: Whom it May Concern
Re: Board of Adjustment variance application for 4921 Bull Creek Road
(CASE # C15-2010-0039/ROW# 10419656/TP-0227000116)
Date: April 12, 2010

We own the property at 2708 West 49th ½ Street adjacent to 4921 Bull Creek Road.

We did not give permission to Mr. Benjamin T. White to build or maintain a fence higher than 6-ft. adjacent to our property, nor did we sign any form granting permission to do so. The signature, purportedly supplying our approval on a letter submitted by Mr. White to the City of Austin Residential Permitting Department, is a forgery.

We disapprove of any violations of the City of Austin's Code of Ordinance by Mr. White. We have been informed that he built his 7 ft. to 8-ft. fence before applying for a building permit and he subsequently supplied the City of Austin with false information in order to obtain two fence permits.

We oppose Mr. White's request for a variance before the Board of Adjustment to maintain any portion of his fence height in excess of 6-ft. because it is not in keeping with the character of the Shoalmont Section of Allandale, which is a long-established, inner-city neighborhood.

Maria T. Blanco

Ernesto and/or Maria Blanco
205 Tower Drive
San Antonio, TX 78232-3623
(owners of 2708 West 49th ½ Street, Austin, TX 78731)

E3. Forged Blanco signature supplied by Mr. White to the City of Austin's Residential Permitting Department.

6-2-08

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:

Donald Coffee
2706 W 49th St
Austin, TX 78731

Signature:

Deeb Ramzi
4925 Bull Creek Dr.
Austin, TX

Tony Gregg
2712 49 1/2 St.
Austin, TX

Ernesto and Marin Blanco
2708 49 1/2 St.
Austin, TX

Ben White 10/13

Bond, J J
4920 Finley Dr
Austin, TX 78731-5639

Nyer, Aaron
4918 Finley Dr
Austin, TX 78731-5639

Refutation to Variance Application for 4921 Bull Creek
CASE # C15-2010-0039, ROW# 10419656, TP-0227000116

Page 16

E4. Letter from Mrs. Bond.

To: Whom it May Concern
Re: Board of Adjustment variance application for 4921 Bull Creek Road
(CASE # C15-2010-0039/ROW# 10419656/TP-0227000116)
Date: April 12, 2010

I own the property at 4920 Finley Drive adjacent to 4921 Bull Creek Road.

I did not give permission to Mr. Benjamin T. White to build or maintain a fence higher than 6-ft. adjacent to my property, nor did I sign any form granting permission to do so. The signature "Joyce J. Bond" dated 6-2-08, purportedly supplying my approval on the form submitted by Mr. White to the City of Austin Residential Permitting Department, is a forgery.

I disapprove of any violations of the City of Austin's Code of Ordinance by Mr. White. I have been informed that he built his 7 ft. to 8-ft. fence before applying for a building permit and he subsequently supplied and the City of Austin with false information in order to obtain two fence permits.

I oppose Mr. White's request for a variance before the Board of Adjustment to maintain any portion of his fence height in excess of 6-ft. because it is not in keeping with the character of the Shoalmont Section of Allandale, which is a long-established, inner-city neighborhood.


Joyce Bond
4920 Finley Drive
Austin, TX 78731

**Refutation to Variance Application for 4921 Bull Creek
CASE # C15-2010-0039, ROW# 10419656, TP-0227000116**

Page 17

E5. Forged Bond signature submitted by Mr. White to the City of Austin's Residential Permitting Department.

6-2-08

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:

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

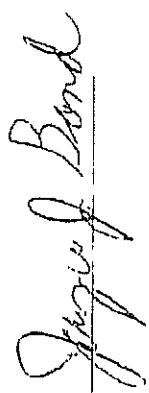
Wade Williams
2708 49 ½ St.
Austin, TX

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

Signature:



E6. Questionable Gregg signature #1 (hand dated 6-5-08) submitted by Mr. White to the City of Austin's Residential Permitting Department.

6-2-08

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

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

Tony Gregg 6-5-08

E7. Questionable Gregg signature #2 (hand dated 6-5-08) submitted by Mr. White to the City of Austin's Residential Permitting Department.

6-2-08

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 Gregg 6-5-08

Wade Williams
2708 49 ½ St.
Austin, TX

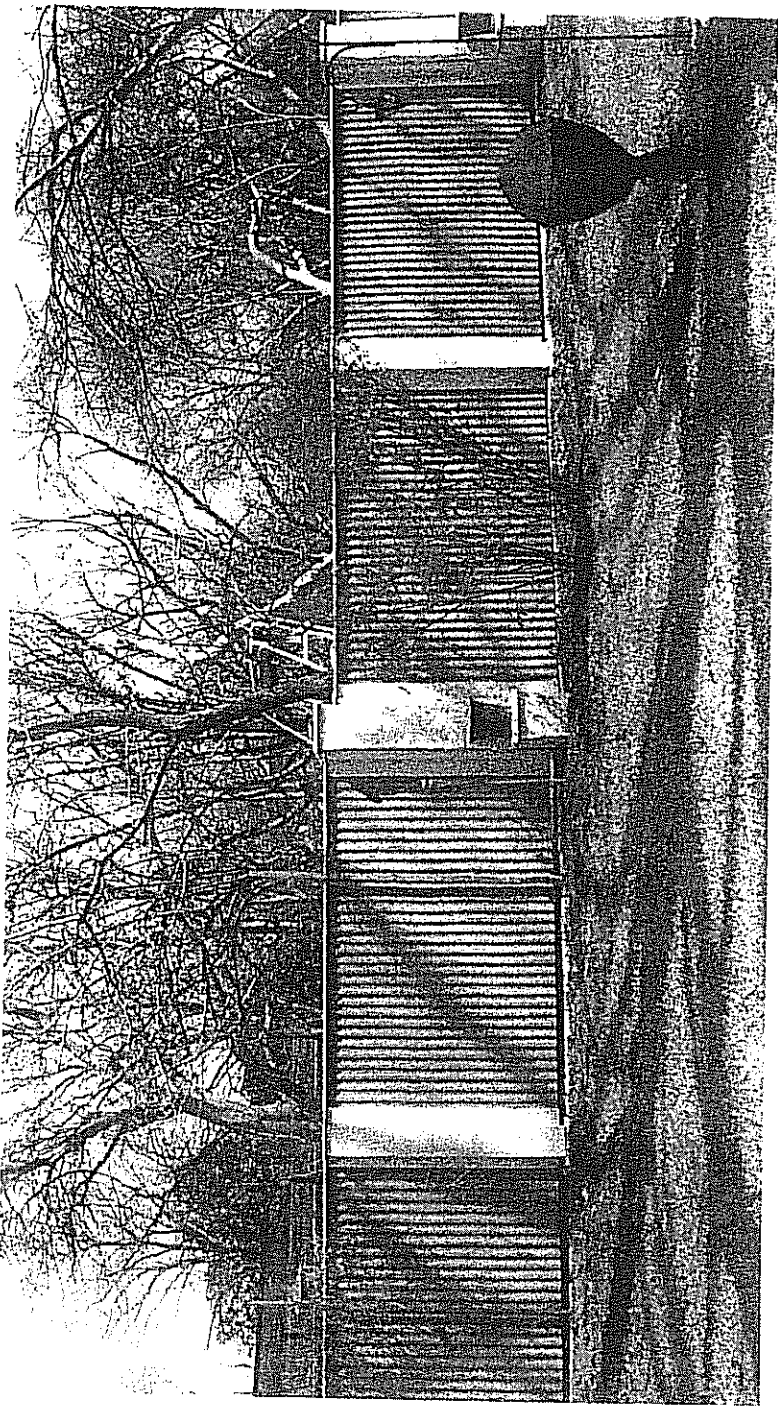
Blomquist, Gilbert Victor
4922 Finley Dr
Austin, TX 78731-5639

Bond, J J
4920 Finley Dr
Austin, TX 78731-5639

Nyer, Aaron
4918 Finley Dr
Austin, TX 78731-5639

Attachment F: Boat Photo

Photo taken prior to Mr. White's illegal construction of a 7-ft. fence from 2710 W. 49 ½ St. illustrating that he parks his tallest boat directly behind my 6-ft. fence.

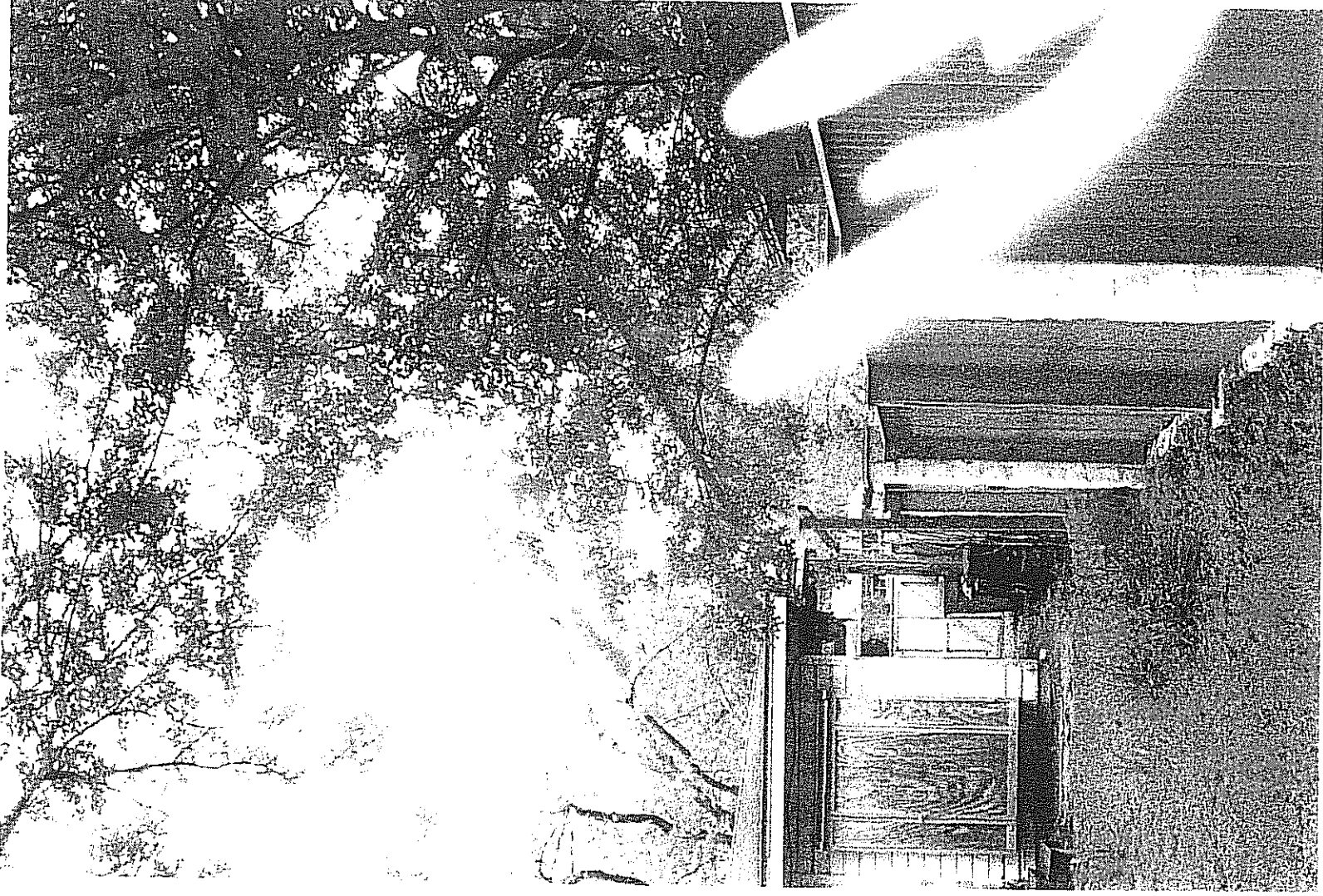


Attachment G: Window Photo

Photo taken (prior to Mr. White's illegal construction of a 7-ft. fence) from the yard 2710 W. 49 ½ St. looking toward 4921 Bull Creek, contradicting Mr. White's claim that, "a person of average height, standing flat-footed in the yard can see directly into the rear windows" [of either house].



Attachment H: Vantage Photo



Section of ornamental fence at 2710 W. 49th St., as viewed from the property line adjacent to applicant's property 4921 Bull Creek Rd.

Attachment I: Fence Photos

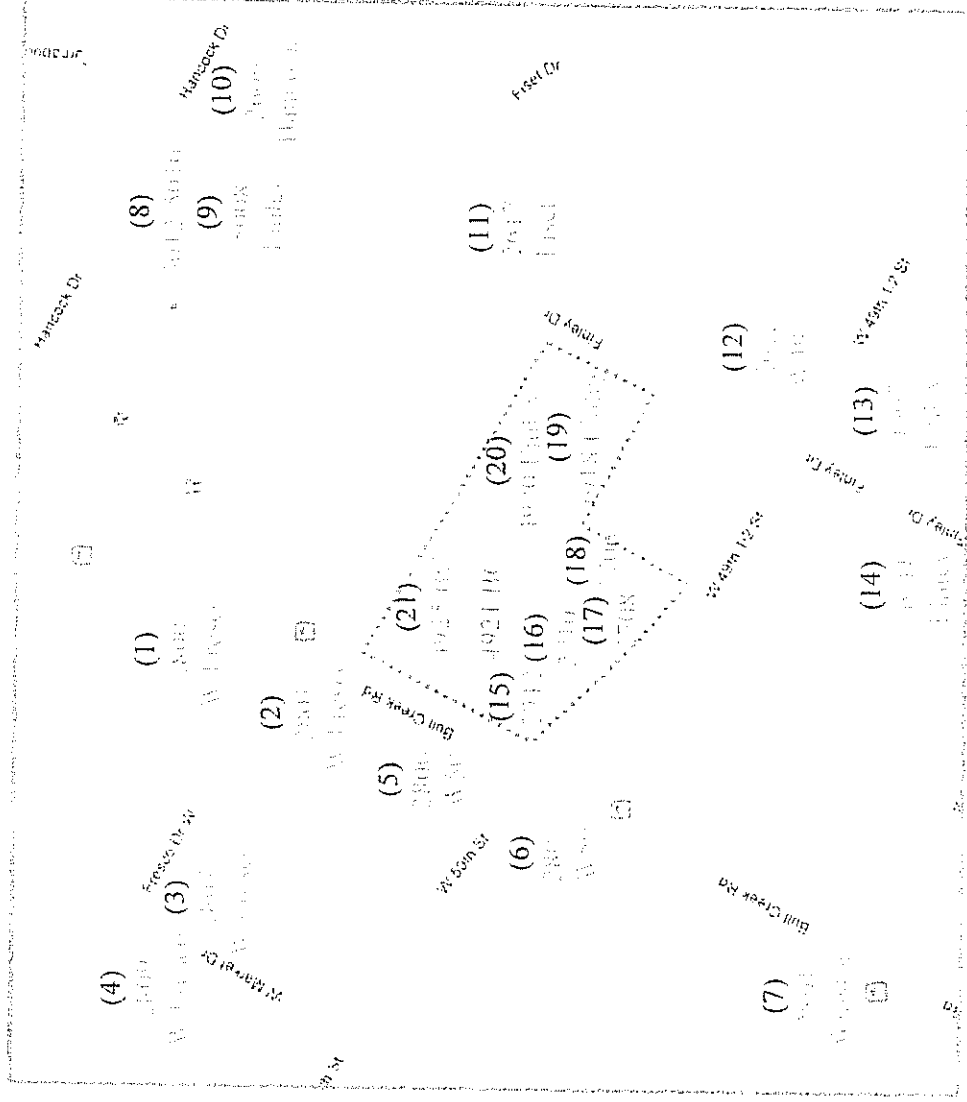
Small sample of 6-ft. high fences in the area of 4921 Bull Creek that conform to Code height requirements.

Outer Perimeter (properties in the immediate vicinity of 4921 Bull Creek)

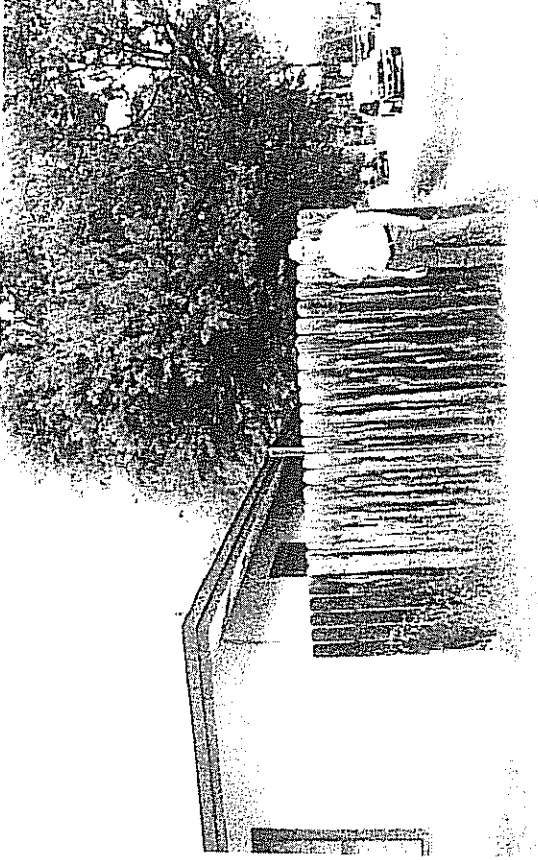
- (1) 2800 W. Fresco Dr. (@ Bull Creek)
- (2) 2801 W. Fresco Dr. (@ Bull Creek)
- (3) 2807 W. Fresco Dr. (@ Market)
- (4) 2809 W. Fresco Dr. (@ Market)
- (5) 2800 W. 50th St. (@ Bull Creek)
- (6) 2801 W. 50th St. (@ Bull Creek)
- (7) 2801 Winston (@ Bull Creek)
- (8) 5012-5010 Finley Dr. (@ Hancock)
- (9) 5008 Finley Dr.
- (10) 2609 Hancock Dr. (@ Finley)
- (11) 2617 Fiset Dr. (@ Finley)
- (12) 2622 W. 49 ½ St. (@ Finley)
- (13) 4907 Finley Dr. (@ W. 49 ½)
- (14) 4904 Finley Dr.

Inner Perimeter (properties adjacent to 4921 Bull Creek)

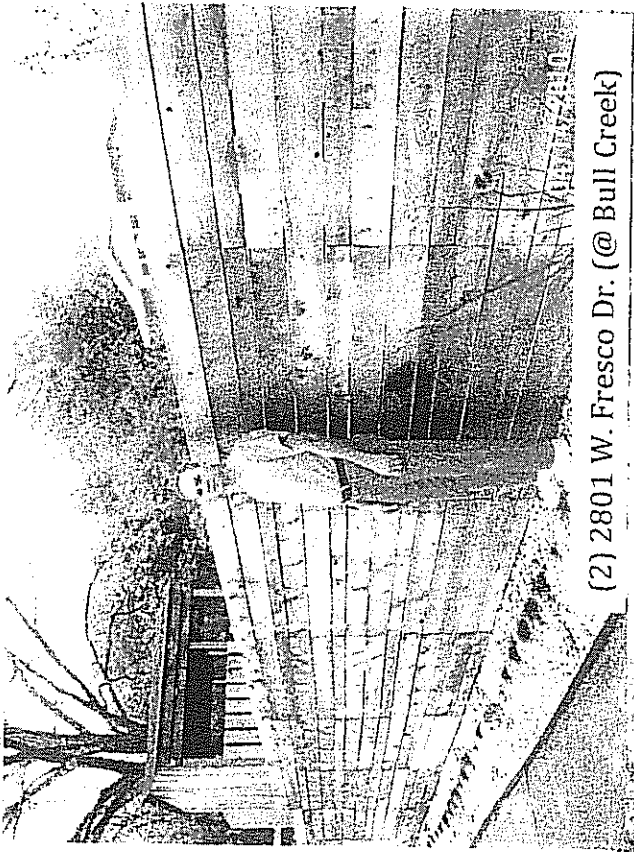
- (15) 2712 W. 49 ½ St. Absentee landlord
- (16) 2710 W. 49 ½ St. No permission
- (17) 2708 W. 49 ½ St. No permission
- (18) 2706 W. 49 ½ St. Absentee landlord
- (19) 4918 Finley Dr. (property sold)
- (20) 4920 Finley Dr. No permission
- (21) 4925 Bull Creek Rd. Absentee landlord



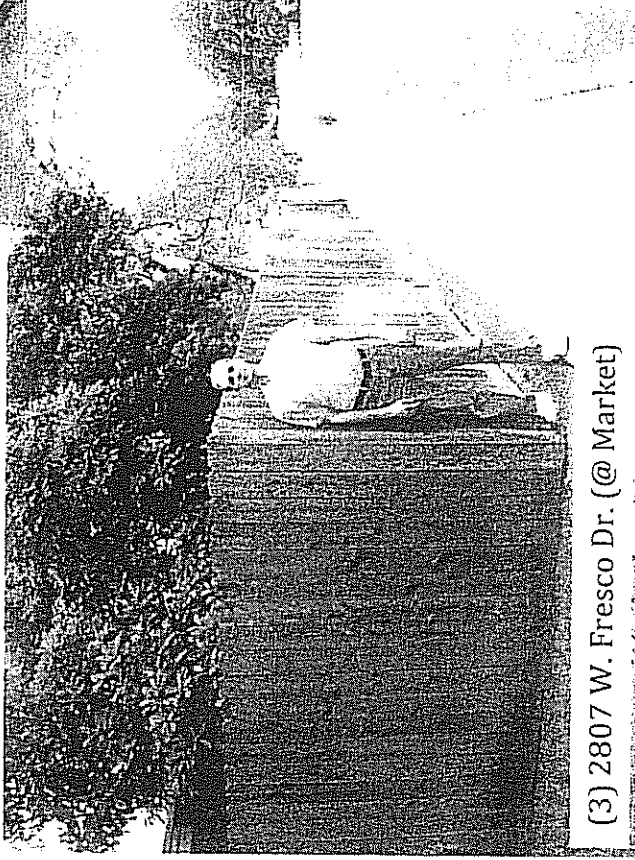
*The person standing
in each photo is 6-ft. tall.*



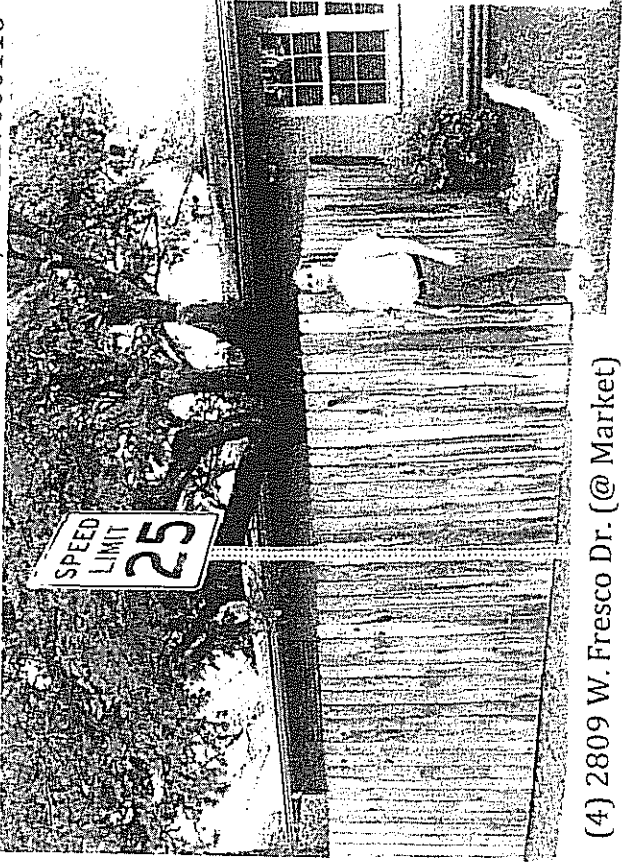
(1) 2800 W. Fresco Dr. (@ Bull Creek)



(2) 2801 W. Fresco Dr. (@ Bull Creek)



(3) 2807 W. Fresco Dr. (@ Market)

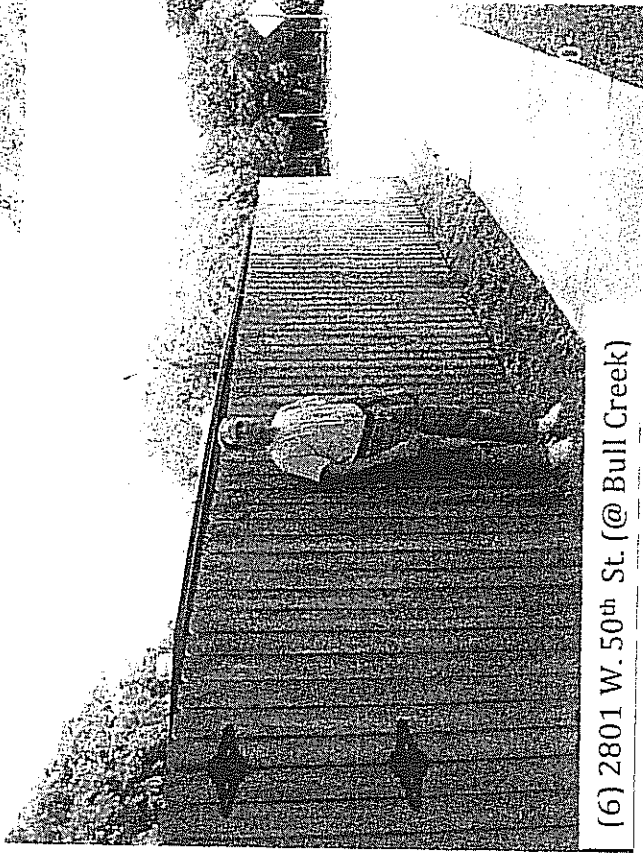


(4) 2809 W. Fresco Dr. (@ Market)

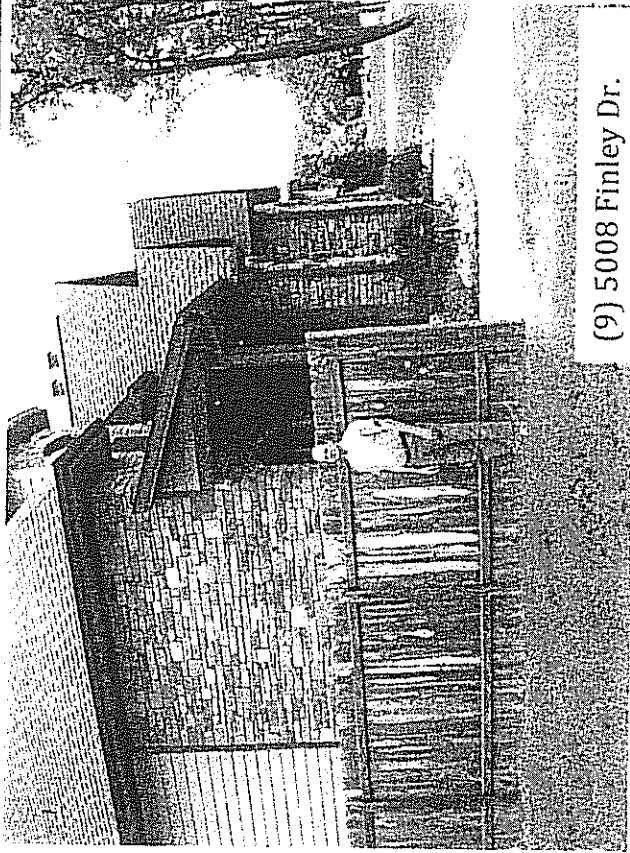
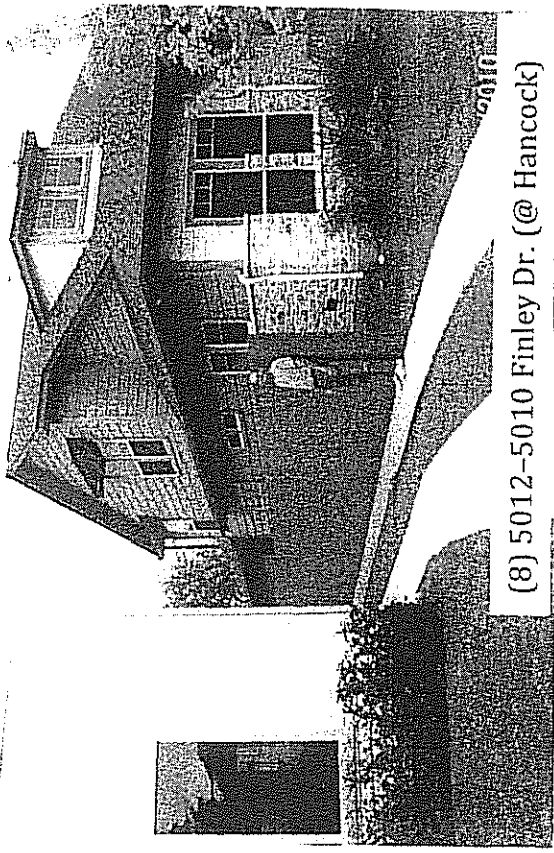
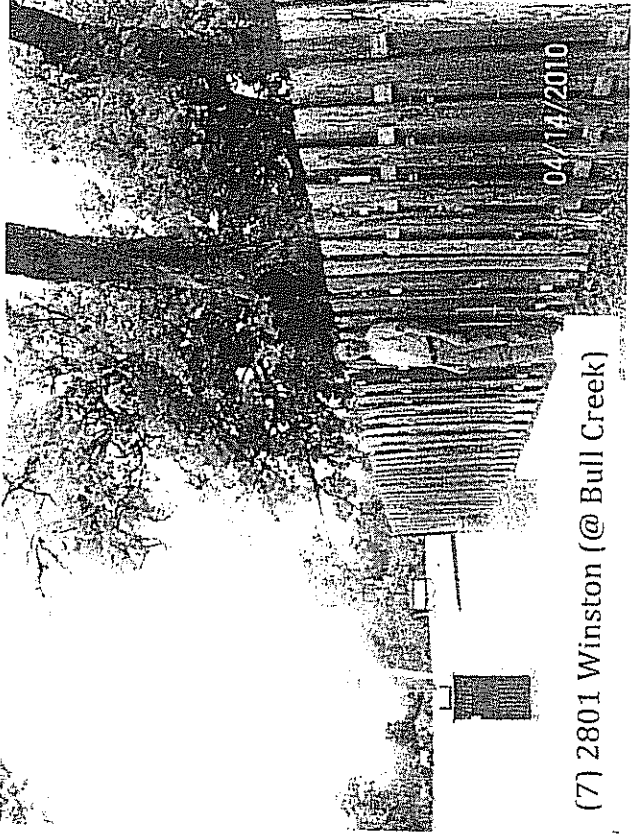
This is the 6-ft. fence that Mr. White uses in his fraudulent claim that "several fences in the area are 7 feet and 8 feet in height".

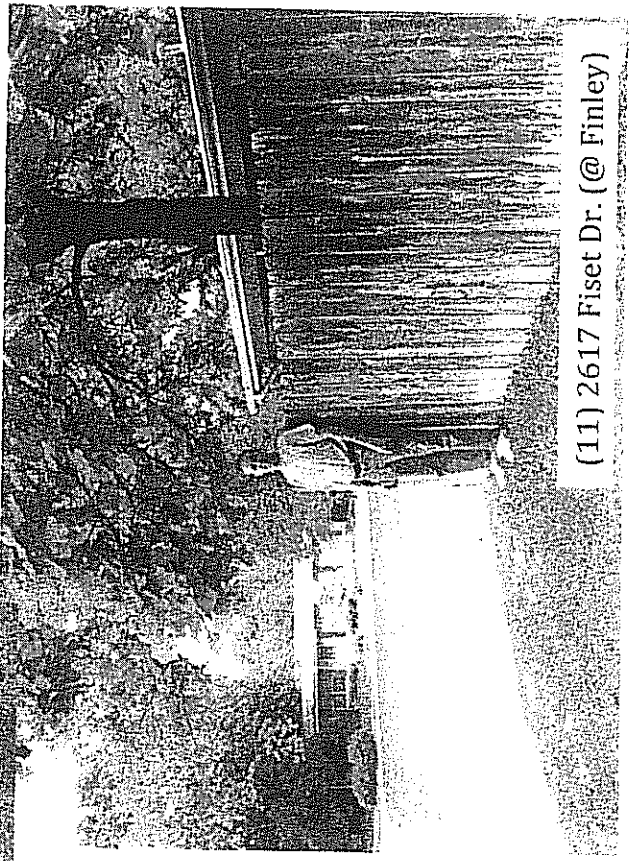
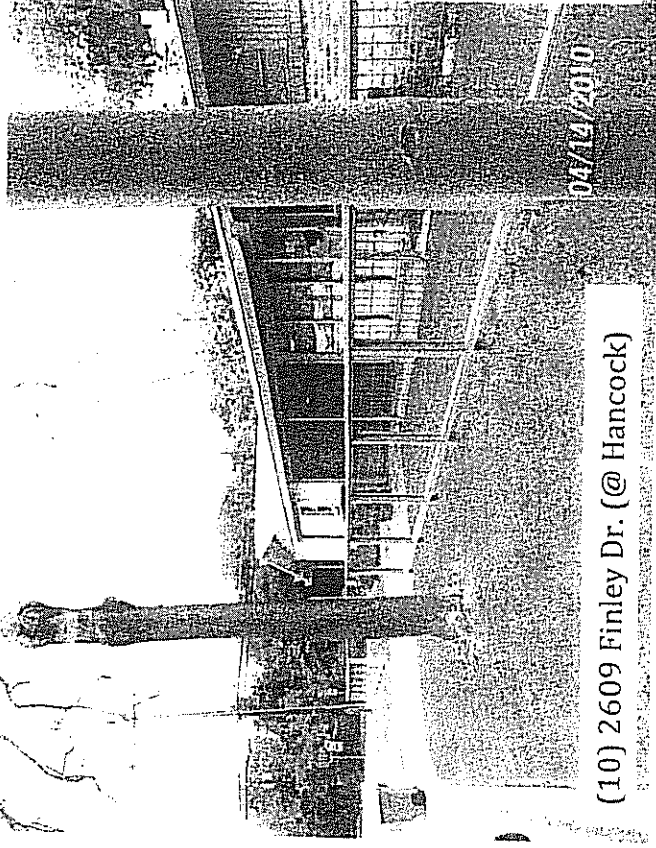


(5) 2800 W. 50th St. (@ Bull Creek)

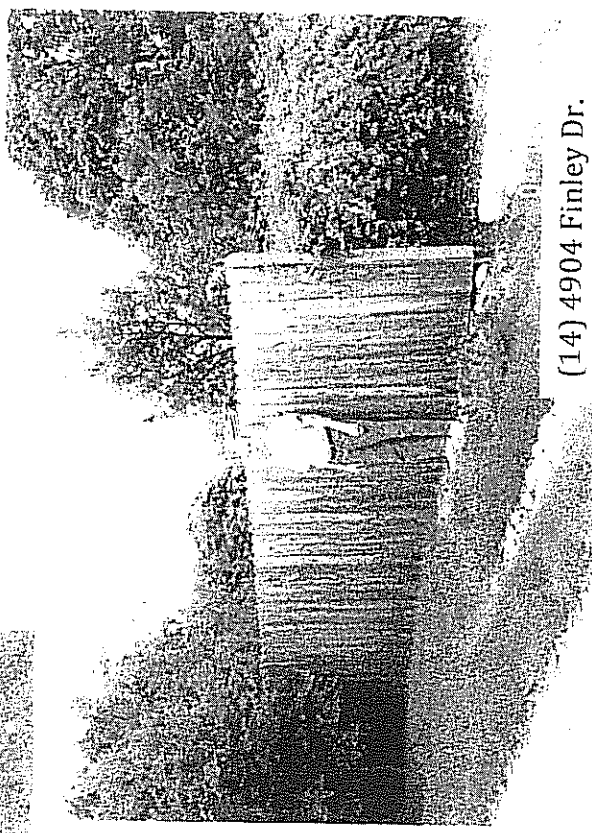
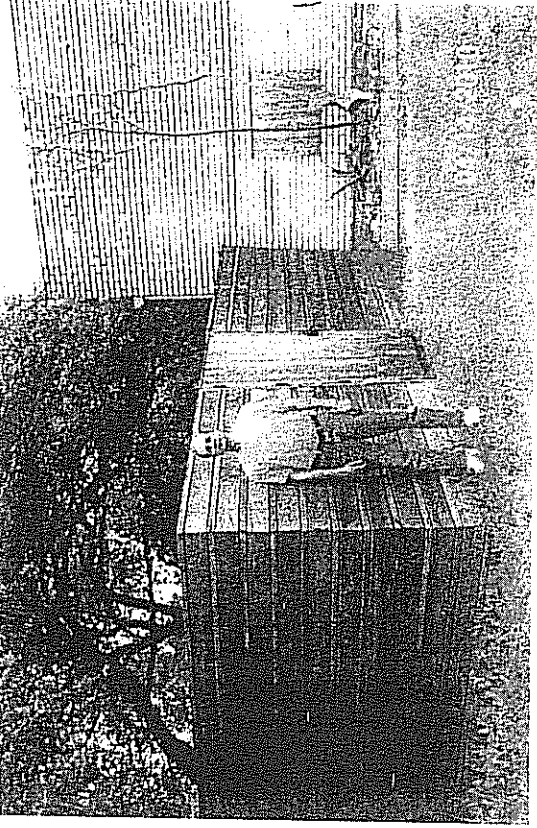


(6) 2801 W. 50th St. (@ Bull Creek)

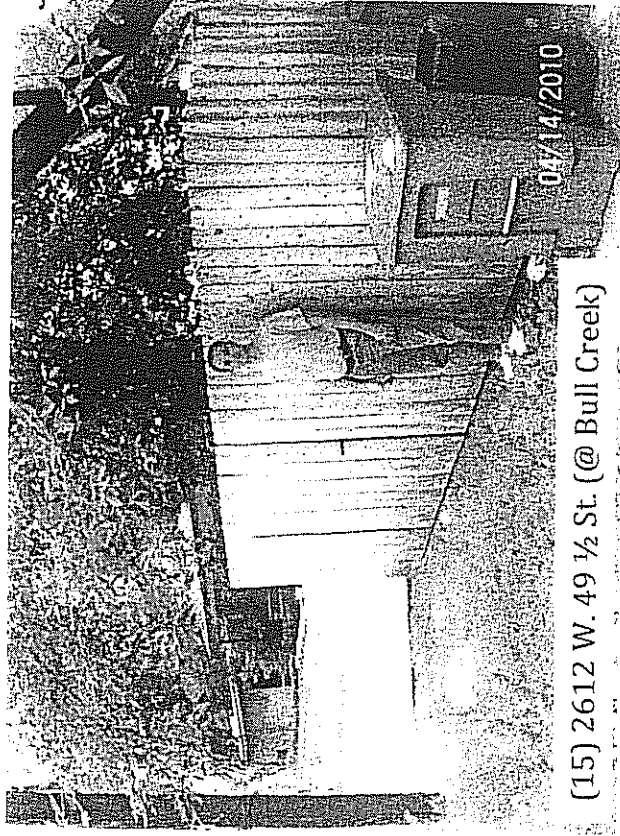




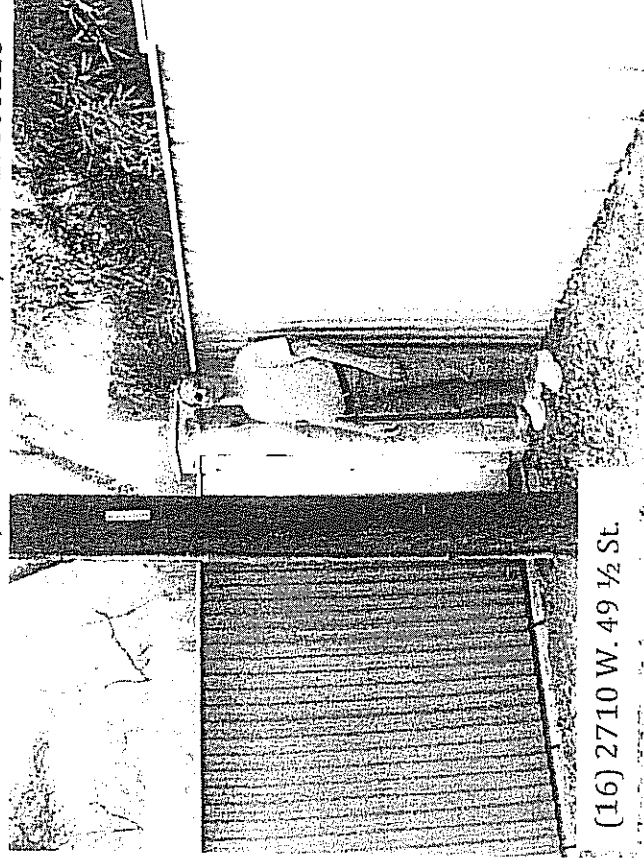
(13) 4907 Finley Dr. (@ W. 49 ½)



(14) 4904 Finley Dr.

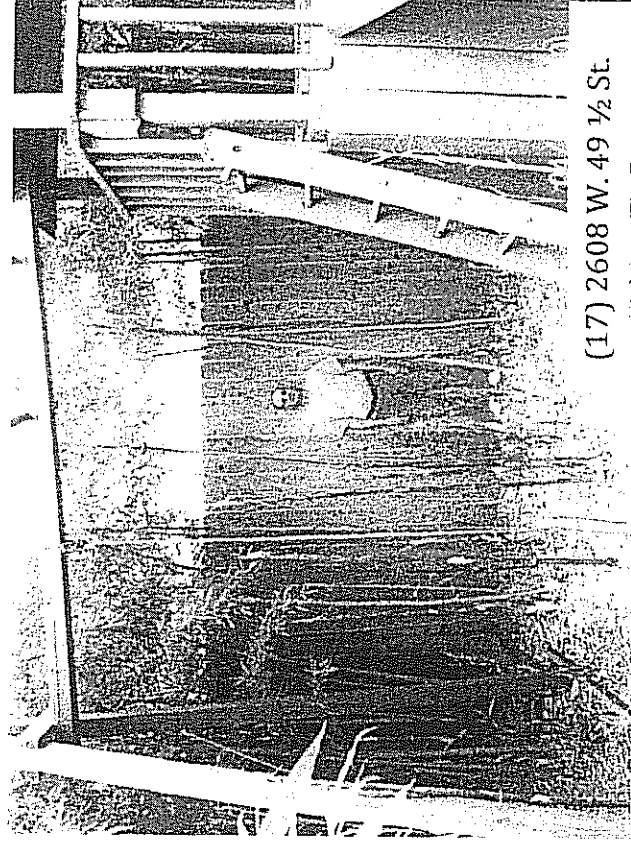


(15) 2612 W. 49 ½ St. (@ Bull Creek)



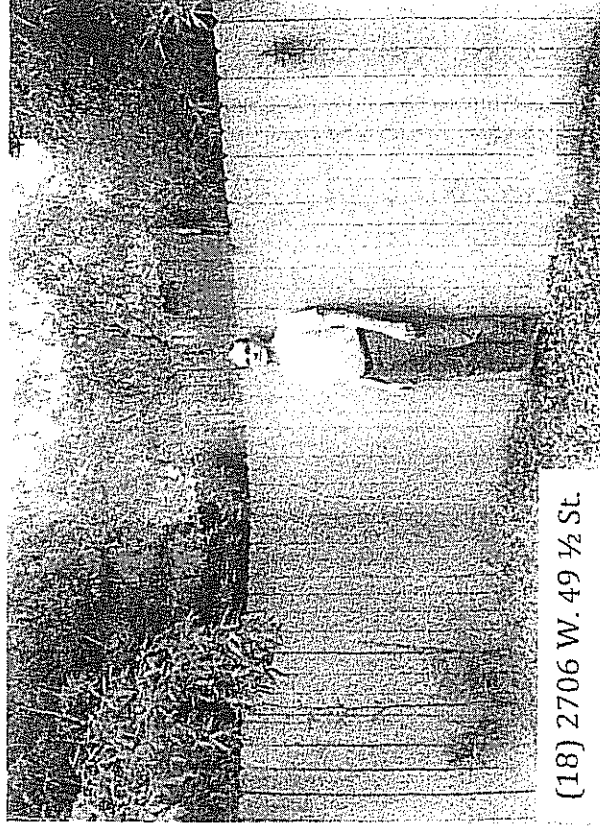
(16) 2710 W. 49 ½ St.

Mr. White's 7-ft. fence
behind the 6-ft. fence at
2710 W. 49 ½ St, and
his 8-ft. fence behind
2708 W. 49 ½ St.



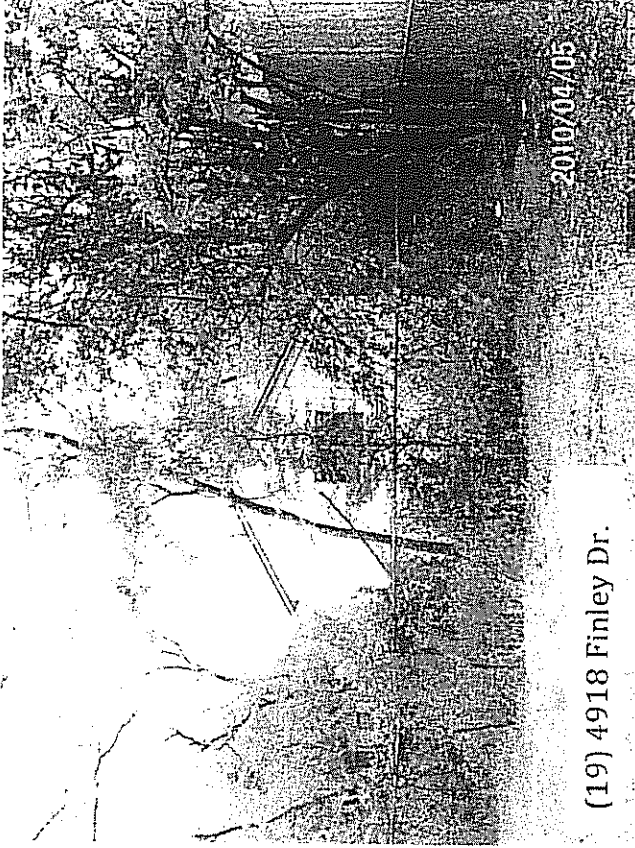
(17) 2608 W. 49 ½ St.

Mr. White's 8-ft. fence at
2708 W. 49 ½ St.



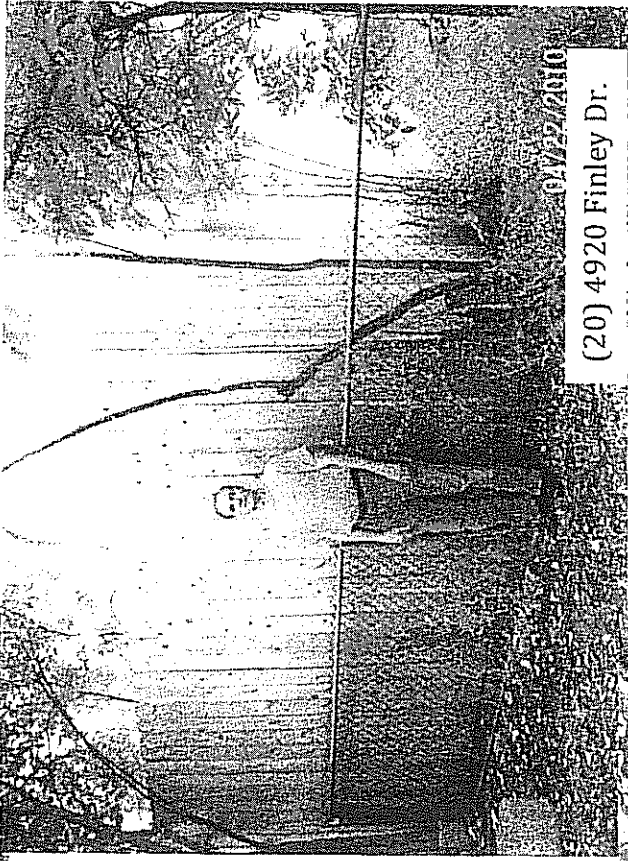
(18) 2706 W. 49 ½ St.

Mr. White's 8-ft. fence
behind the 6-ft. fence
at 2706 W. 49 ½ St.

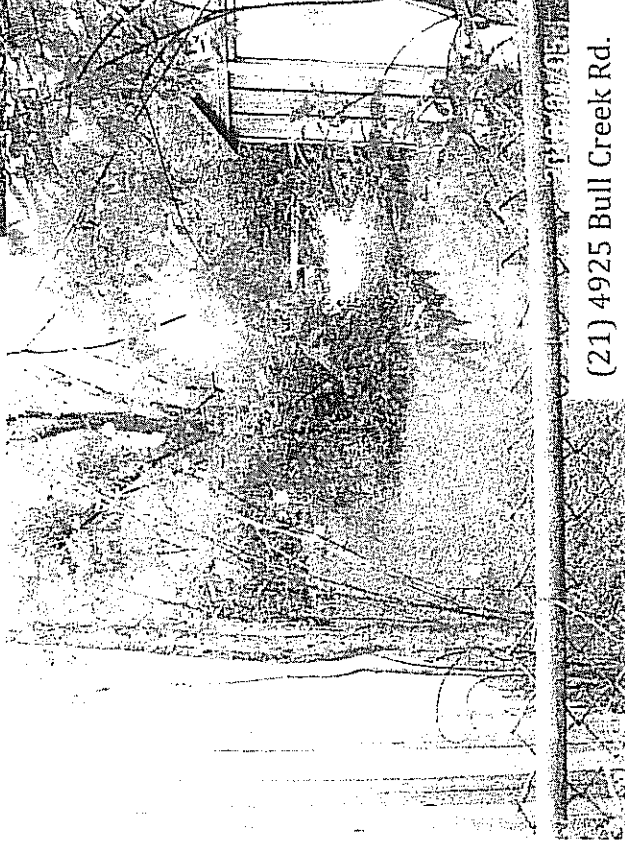


(19) 4918 Finley Dr.

Mr. White's 8-ft. fence behind
3 adjacent properties with 4-
ft. chain link fences.

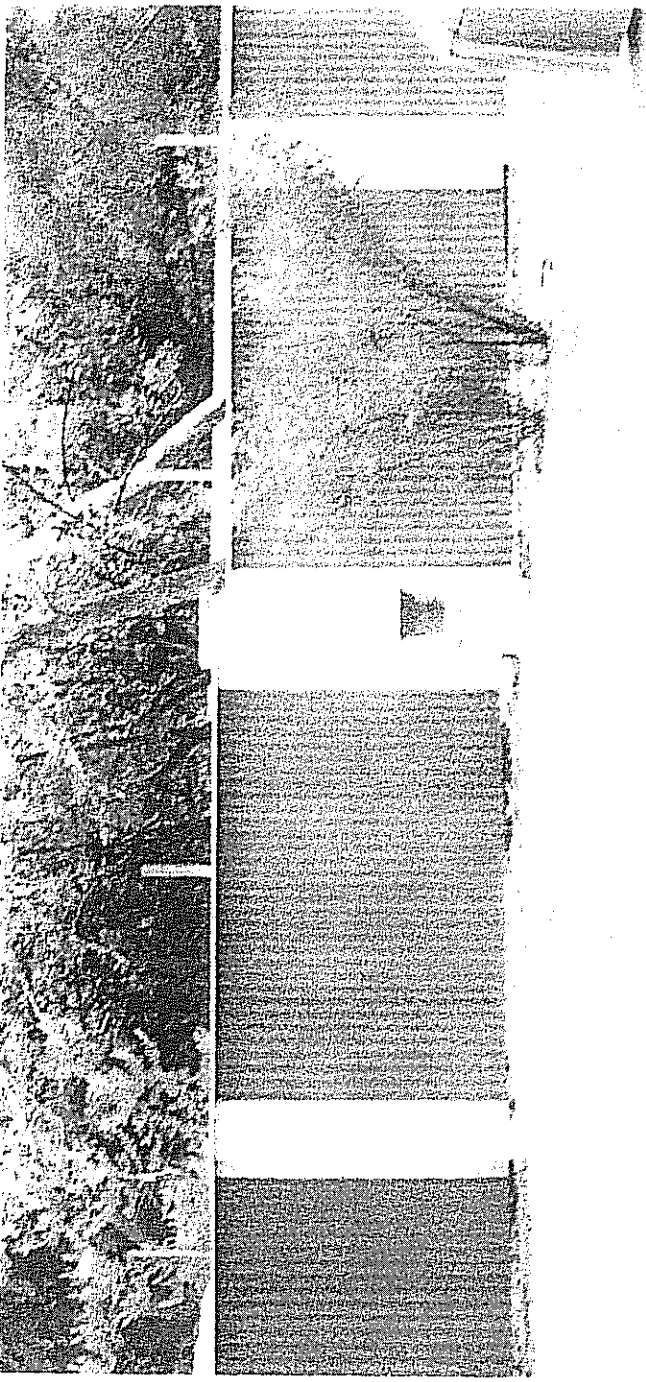


(20) 4920 Finley Dr.



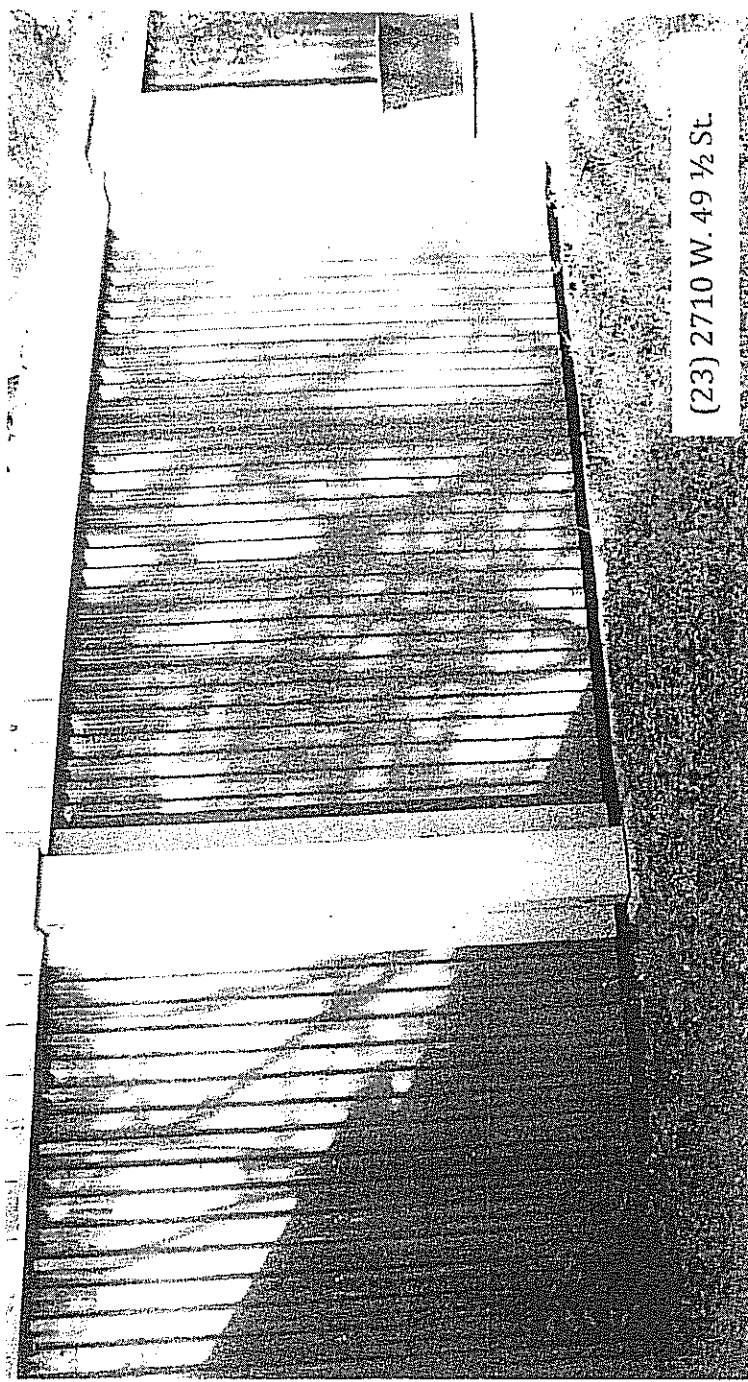
(21) 4925 Bull Creek Rd.

Before construction of 7-ft. fence: drainage gap is clearly visible beneath the existing 6-ft. fence at 2710 W. 49 ½ St.



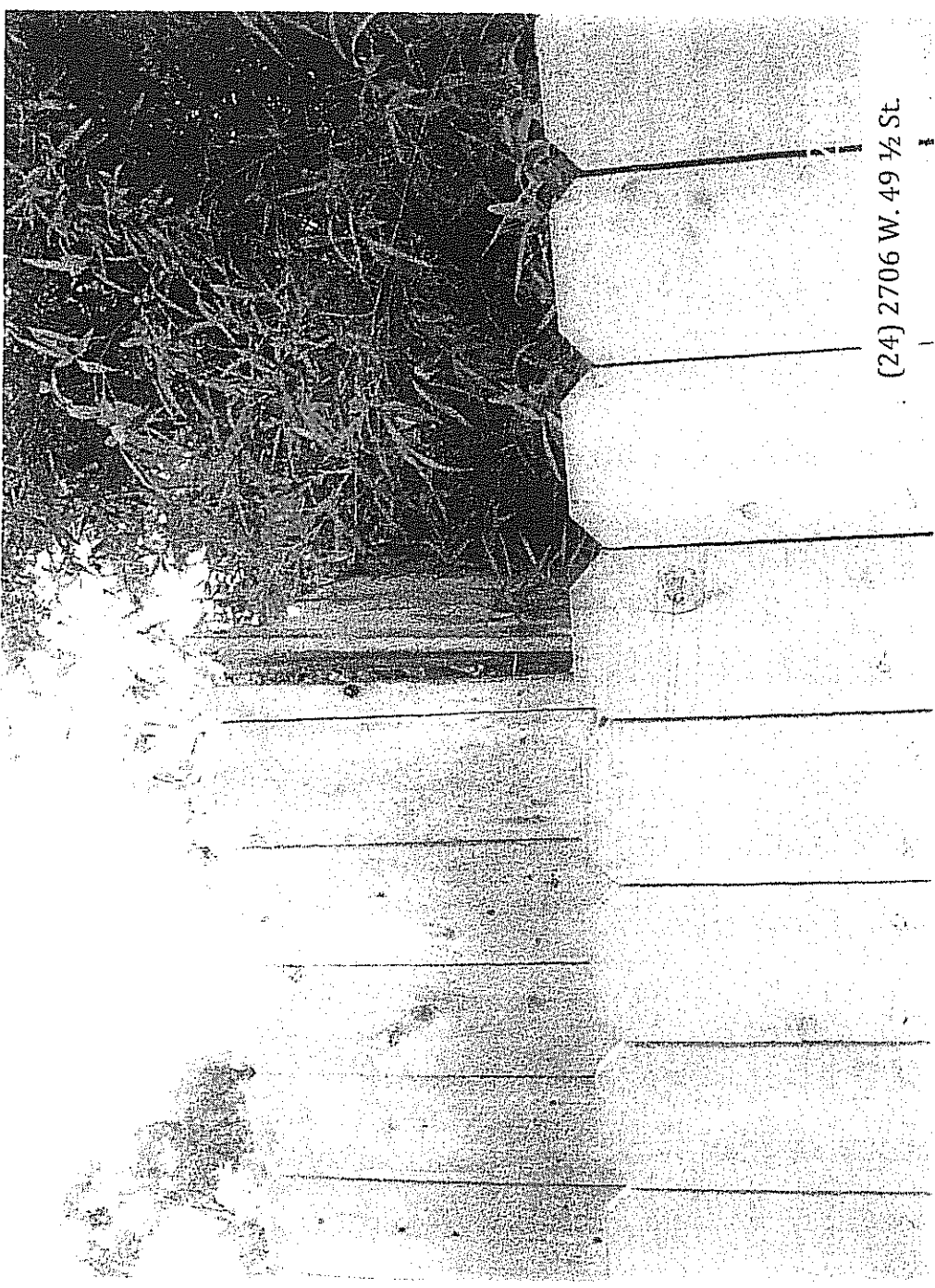
(22) 2710 W. 49 ½ St.

After construction of 7-ft. fence: drainage gap is blocked between the existing 6-ft. fence at 2710 W. 49 ½ St. and the new 7-ft. fence at 4921 Bull Creek



(23) 2710 W. 49 ½ St.

Contrary to Mr. White's claim that his fence at 4921 Bull Creek is of "quality construction", it is coming apart as shown behind the 6-ft. fence at 2706 W. 49 ½ St.



(24) 2706 W. 49 ½ St.

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.ci.austin.tx.us/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. 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.

Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

Public Hearing: Board of Adjustment, July 12, 2010

Jo Ann Hammer

Your Name (please print)

☐ I am in favor
☒ I object

2618 Fiset Dr.

Your address(es) affected by this application

Jo Ann Hammer

Signature

7 July 10

Date

Daytime Telephone: 453-8105

Comments: I object to developers coming in and trying to change the neighborhood

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

P. O. Box 1088

Austin, TX 78767-8810

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.

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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.

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Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. 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.

Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

Public Hearing: Board of Adjustment, July 12, 2010

Juanita Osborn

Your Name (please print)

☐ I am in favor
☒ I object

2706 W 49th + 1/2 St.

Your address(es) affected by this application

[Signature]

Signature

7/3/10
Date

Daytime Telephone: 415-250-5786

Comments: Mr. White's fence exceeding 6 ft in height establishes a compound or stockade effect that is inconsistent with the character of the Shoalmont section of Allandale, an inner-city neighborhood of homes built in the '50s with 4 ft chain link or 6 ft privacy fences.

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

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.

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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.ci.austin.tx.us/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. 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.

Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

Public Hearing: Board of Adjustment, July 12, 2010

Priscilla Robinson

Your Name (please print)

☐ I am in favor
☒ I object

2811 Hancock Dr.

Your address(es) affected by this application

Priscilla Robinson

Signature

Date

Daytime Telephone: _____

Comments: _____

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

P. O. Box 1088

Austin, TX 78767-8810

K. F. Carbone
2710 West 49th ½ Street
Austin, TX 78731

July 6, 2010

Board of Adjustment
City of Austin
P.O. Box 1088
Austin, TX 78767

Re: CASE #C15-2010-0039
Mr. Benjamin T. White's request for fence height variance at 4921 Bull Creek

Dear Chair and Members of the Board of Adjustment,

My property is adjacent to 4921 Bull Creek. I ask that you reject Mr. White's variance request to maintain his fence height in excess of 6-ft. because it fails to meet any of the findings of fact required by the Board of Adjustment:

- There are no special circumstances of the property that deprive the owner of privileges enjoyed by others in the area: the applicant's property is virtually identical to five contiguous properties and numerous other properties in the neighborhood.
- A 6-ft. fence satisfies all of the reasonable uses sought and listed by the applicant.
- There is nothing unique to the property to prevent compliance with the fence ordinance. Personal and financial claims listed by the applicant are not valid hardships. There is no hardship relating to the property that differs from other properties in the area.
- The applicant's fence negatively alters the character of the area adjacent to his property as it creates an unsightly stockade or compound effect that blocks light, air, drainage, and views.

Granting this variance will subvert the clear intent of the ordinance and will confer a special privilege not enjoyed by others similarly situated in the neighborhood. In addition, many of the statements made by the applicant are false. For example, the applicant states that the fence was constructed in accordance with building permits but, according to City of Austin records, the 8-ft. fence was built without a permit. It was only after a Code Complaint was filed that a permit was subsequently and fraudulently obtained. Mr. White later obtained a second permit through misrepresentations for a 7-ft. segment of fence adjoining a single property. Please see the attached document, *Refutation to Variance Application for 4921 Bull Creek*, for details.

In addition, the Allandale Neighborhood Association's Executive Committee opposes Mr. White's variance request. Minutes of the April 22, 2010 ANA meeting read: "Motion was made to support the residents at 2710 W. 49th ½ St. and their opposition to allow a variance for a 7- and 8-ft. fence at 4921 Bull Creek. Motion was made by George [Roman], seconded by Peggy [Maceo], motion carried unanimously."

Thank you for your consideration and for your service to Austin.

Sincerely,



K. F. Carbone

Encl: Refutation, supporting documents and photos

CASE # C15-2010-0039, ROW# 10419656, TP-0227000116 (amended application)

Mr. White has made numerous misleading and false claims in his application for variance. He fails to meet any of the required findings of fact for Reasonable Use, Hardship, or Area Character, as detailed below (Mr. White's claims appear in bold type, followed by documented refutations).

Re: Cover page of variance application

Pg. 2, item (i): [the fence was] "constructed... in accordance with Building Permit Nos. 2008-051644BP and 2009-029382 BP"

Neither permit is valid. Mr. White built his fence in May 2008 without a building permit, then obtained permits through fraudulent misrepresentation, inducing the City of Austin to issue permits in error.

The City subsequently determined that both permits were issued in error (see page 9, *Attachment A(1): McDonald Email* and page 10, *Attachment A(2): McDonald Chronology*).

The City subsequently determined that the fence does not meet Code (see pages 11–12, *Attachment B(1): Barba Intent to Suspend*).

Yet, after having met with Mr. White and his attorney, Michael Cihock, Mr. Barba changed his mind and made an administrative decision allowing Mr. White to retain the northern and eastern portions of his 8-ft. fence, but requiring that Mr. White lower the southern portion to an average height of 6-ft. (see page 13, *Attachment B(2): Barba Administrative Decision*). Mr. Barba has stated that he based his administrative decision on a drawing supplied to him by White & Cihock that illustrated access points to hazardous conditions in Mr. White's yard (see pages 14–15, *Attachment B(3): Barba Basis*).

In June 2010, Greg Guernsey overturned Mr. Barba's administrative decision by confirming and declaring that access points to Mr. White's yard and hazardous conditions in Mr. White's yard do not exist (see page 16, *Attachment C: Guernsey Email*).

The second permit for the southern fence portion has since expired, and, according to City of Austin assistant attorney Kathleen Buchanan, the City has filed suit against Mr. White to lower his fence height to the allowable 6-ft. average.

Pg. 2, item (ii): "The subject property and each of the affected properties are located in a S-F 1 district"

Lot size has no bearing on a fence variance request. However, four of the properties adjacent to the applicant's are actually SF-2, single family resident standard lots.

Re: Reasonable Use

Pg. 3, ¶1 of #1: "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."

This statement is an obfuscation; (D) & (E) are essential components of code to be applied singly or in tandem (see page 17, *Attachment D: Fence Ordinance*). The intent of the ordinance is clear: fences are not to exceed 7-ft. with an average height of 6-ft. unless an allowed exception is met, which Mr. White has not demonstrated.

Pg. 3, ¶12 of #1: “One purpose of erecting a solid perimeter fence...”

The Fence Ordinance does not address the purpose(s) of a fence.

Pg. 3, ¶12 of #1: “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.”

Because Mr. White’s recreational vehicles (including boats, trailers, and RVs) were parked in public view and not in his yard, he first received a code violation notice on March 28, 2008 (CV-2008-022662) stating, “The RV and boats are recreational vehicles and are required to be enclosed within a building or screened from public view.” Code requires a fence height of 6-ft. (see page 18, *Attachment E: Accessory Uses Ordinance*) which satisfies Reasonable Use. Yet even after the illegal construction of his 8-ft. fence, Mr. White continues to park his recreational vehicles in public view and continues to receive code violation notices:

1. May 13, 2008
2. October 3, 2008
3. June 3, 2009
4. August 25, 2009
5. September 16, 2009
6. February 1, 2010
7. June 2, 2010

Pg. 3, ¶13 of #1: “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... All signatures and consents have previously been provided to the city.”

This claim does not address zoning regulations and thus has no bearing on Reasonable Use.

Of these signatures that Mr. White provided to the City’s Residential Permitting Department: the signature attributed to “Ernesto and Marin [sic] Blanco” is a forgery according to the Blanco’s; two different signatures, both dated 6-5-08, are attributed to “Tony Gregg”, one or both of which may be invalid (see pages 19–26, *Attachment F: Signatures 1–7*).

In addition, two letters in support of Mr. White’s fence, allegedly submitted later by Mr. Gregg, are unsigned (see pages 27–28, *Attachment G: Gregg Letters*). Curiously omitted in these letters is the fact that Mr. Gregg paid for fencing all sides of his rental property by the same crew that Mr. White employed.

Pg. 3, ¶13 of #1: “This appears to conflict with the intent of the ordinance as it clearly states that fence along a property line may be constructed to a maximum height of 8’ if each owner that adjoins a section of the fence that exceeds a height of 6’ files a written consent to the construction of the fence.’”

Here, Mr. White mentions only one of three code requirements—consents (however bogus)—but neglects to state that he lacks one of two additional requirements necessary to satisfy the ordinance: change of grade or reasonable access by a child to hazards. The Fence Ordinance (page 17) dictates these requirements, not “one property owner” as Mr. White suggests.

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Pg. 4, ¶4 of #1: “It is the documented intent of each of the lot owners of 2706, 2708 and 2712 W. 49 ½ St. to maintain their respective portions of fence at their present heights.”

As previously mentioned, the signature provided to the City by Mr. White of “Ernesto and Marin [sic] Blanco” is a forgery. In fact, the owners of the 2708 property, Dr. and Mrs. Blanco, oppose a fence higher than 6-ft. (see page 21).

Pg. 4, ¶5 of #1: “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’” and “I should not be asked to construct a fence in a manner that shields my boat and personal items from public view and then be told that I cannot construct my fence in such a manner. This inconsistency puts me in a perpetual state of violation.”

A 6-ft. fence allows for Reasonable Use, and privacy and security are both adequately achieved. My 6-ft. fence already existed between our properties. I denied Mr. White permission to build or retain a fence higher than 6-ft. adjacent to mine on 03/20/08 (before construction) and on 01/29/10 (after construction), which Mr. White blatantly disregarded. Nevertheless, Mr. White’s “perpetual state of violation” has to do with the fact that he disregarded the allowable fence height stipulated by Code, he continues to park his recreational vehicles in public view instead of behind his fence, and he continues to receive code violation notices.

Re: Hardship

Pg. 4, ¶1 of #2(a): “The entire fence along the Southern boundary of my lot 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 variances requested are 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.”

Mr. White obtained permits through fraudulent misrepresentation, inducing the City to issue permits in error. Mr. White, an employee of Durham & Bassett Realty Group involved with property management and development, should be aware that the City of Austin has building ordinances. Yet Mr. White commenced building his 8-ft. fence on 05/11/08 without a permit. Since it was higher than 6-ft., Code Compliance was notified on 05/12/08 (CC-2008-036233). Mr. White subsequently received permit #1 on 07/02/08. This permit (2008-051644BP) was issued in error as stated in City records: the property does not meet the 2-ft. change in grade within 50-ft. of adjacent properties as Mr. White claimed, no plot plan was submitted, and adjacent property owner permissions were lacking.

Nine months later, on 04/07/09, Mr. White obtained permit #2 for one remaining fence segment (7-ft. high, built on 06/03/09) adjacent to my property, again through fraudulent misrepresentations, inducing the City to issue the permit in error. This permit (2009-029382BP) was issued in error as stated in City records: the property does not meet the 2-ft. change in grade within 50-ft. of the adjacent property as Mr. White claimed, no plot plan was submitted, and my permission was lacking (in fact, permission had been explicitly denied). The second permit has since expired and, according to City of Austin assistant attorney Kathleen Buchanan, the City has filed suit against Mr. White to lower his fence height to the allowable 6-ft. average along the entire southern boundary of his property (spanning all four adjacent properties: 2706, 2708, 2710, and 2712 W. 49th ½ St.). The lawsuit is postponed pending the outcome of this variance request.

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There are 7 properties adjacent to Mr. White's (see page 29, *Attachment H: Adjacent Properties*), 2 of which abut by only a few feet. Three of the property owners are absentee landlords who do not live in this neighborhood and whose rental properties are minimally maintained. Characterized by Mr. White as "several adjacent neighbors" and the "majority" of his neighbors who "shared in the expense" of his fence were in fact only 2: Nyer and Gregg.

1. *4918 Finley Drive*: Mr. Aaron "Adam" Nyer, a real estate agent with Choban & Associates, began marketing this property in 2007, quite some time before the King's purchased it. Claiming that the 8-ft. fence "provided much needed privacy" (see page 30, *Attachment I: Nyer Letter*), Mr. Nyer did not mention that, while White's house is more than 200-ft. away, the houses next door to Nyer's are much closer, yet are separated by a 4-ft. chain link fence. Mr. Nyer also neglected to mention that a few days after the 8-ft. fence was built, this residence was burgled (APD case #2008-5026210; stolen were: computer hardware, software, jewelry, precious metals, radios, TVs, VCRs, other). Irrespective of Mr. Nyer's financial contribution to Mr. White for the 8-ft. fence, it was built by and is owned by Mr. White. Mr. Nyer is not a party to Mr. White's variance request, nor is he a co-defendant in the City of Austin's lawsuit against Mr. White.

The current owners of 4918 Finley, John and Elizabeth King, stated in their support of Mr. White's fence, "Mr. Adam Nyer agreed upon a[n] 8' fence to adequately shield the line-of-sight between their two homes" (see page 31, *Attachment J: King Letter*).

The distance between these two houses exceeds 200-ft. The photo below illustrates the view from behind the 4918 Finley house looking toward 4921 Bull Creek. It shows dense trees, shrubbery, and a shed obliterating the view to all but a small portion of the fence, negating the claim that Mr. White and his 4918 Finley Drive neighbors could see into each other's houses more than 200 feet away *before* the fence was built.



Nevertheless, the general practice of neighbors living a mere 15-ft. away from one another (which is the standard distance between next-door houses in Austin) is to use window coverings for privacy, not to erect 8-ft. stockades.

Mr. and Mrs. King's statement that they "are not in a financial position to alter or replace the fence" is entirely irrelevant. The 8-ft. fence was built by and is owned by Mr. White. The Kings did not pay Mr. White for any portion of the fence, they are not a party to Mr. White's variance request, nor are they co-defendants in the City's lawsuit against Mr. White.

2. *2712 West 49th ½ Street:* Mr. Tony Gregg, an absentee landlord, paid for fencing the entire perimeter of this rental property by the same crew that Mr. White employed. In addition, Mr. White submitted 2 different "permission" signatures to the City of Austin attributed to "Tony Gregg", both dated 6-5-08, one or both of which may be invalid (see pages 25-26).

Two letters, allegedly submitted by Mr. Gregg in January and May 2010 in support of Mr. White's fence, are unsigned (see pages 27-28). They contain false and misleading statements, such as: [Mr. White] "got all the required permits and inspections"; [the fence] "is greatly beneficial to all of the neighbors"; "Ben had solicited prorata share contributions from myself and most of the other neighbors"; [White's fence] "replaced a 30 year old fence that was mostly rotten and falling down along side my yard." In fact, the fence that was removed was a perfectly intact 4-ft. chain link fence as illustrated by City Investigator Khalid Marshall's April 2008 photo (see page 32, *Attachment K: Gregg Chain Link Fence*). Portions of Mr. Gregg's "rotten" and "dilapidated" 6-ft. fencing were entirely on his own property, leaning up against the 4-ft. chain link fence between his lot and White's. Also spurious is Mr. Gregg's statement that he is "not in a financial position to invest any additional funds in fencing." If any portion of the fence paid for and owned by Mr. Gregg exceeds the height limitations stipulated by Code, he must be held liable to comply with Code, regardless of his financial difficulties. Nevertheless, Mr. Gregg is not a party to Mr. White's variance request, nor is he a co-defendant in the City of Austin's lawsuit against Mr. White for code violations (although perhaps he should be).

Of the remaining 5 properties adjacent to Mr. White's:

3. *4925 Bull Creek Road:* Mr. Deeb Ramzi, a real estate agent and manager of Deeb Properties, is the absentee landlord of this rental property. Mr. Ramzi falsely stated that "Mr. White took the initiative to replace a completely dilapidated fence between our two properties as well as between other neighbors" (see page 33, *Attachment L: Ramzi letter*). In fact, the entire fence that was replaced around White's yard was a perfectly intact 4-ft. chain link fence. The 8-ft. fence adjacent to Mr. Ramzi's property was built by, paid for, and is owned by Mr. White. Mr. Ramzi is not a party to Mr. White's variance request, nor is he a co-defendant in the City of Austin's lawsuit against Mr. White.
4. *2706 West 49th ½ Street:* Mr. Louis Hunt, of Landstone Homes, was the builder and absentee landlord of this rental property; he subsequently transferred ownership to his brother-in-law, Mr. Donald Coffey, the current absentee landlord. The 8-ft. fence adjacent to this property was built by, paid for, and is owned by Mr. White. Mr. Coffey is not a party to Mr. White's variance request, nor is he a co-defendant in the City's lawsuit against Mr. White.
5. *2708 West 49th ½ Street:* The owners, Dr. & Mrs. Blanco, did not give Mr. White permission to build his 8-ft. fence adjacent to their property; the signature attributed to "Ernesto and Marin [sic] Blanco" is a forgery according to the Blanco's (see pages 21-22). The 8-ft. fence adjacent to Blanco's property was built by, paid for, and is owned by Mr. White.

6. *2710 West 49th ½ Street*: I did not give Mr. White permission to build his 7-ft. fence adjacent to my property (see page 20); rather, I explicitly denied his request twice. The 7-ft. fence adjacent to my property was built by, paid for, and is owned by Mr. White.
7. *4920 Finley Drive*: Mrs. Joyce Bond did not give Mr. White permission to build his 8-ft. fence adjacent to her property; the signature attributed to “Joyce J. Bond” is a forgery according to Mrs. Bond (see pages 23–24). The 8-ft. fence adjacent to Bond’s property was built by, paid for, and is owned by Mr. White.

Pg. 4, ¶1 of #2 (a): “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.”

The fence does not have to be rebuilt entirely, merely lowered to an average height of 6-ft. The cost was *not* “shared with his neighbors”, nor was the “majority” agreed to by his neighbors. Regardless, White’s personal wishes are not a valid hardship.

Pg. 4, ¶2 of #2 (a): “regardless of the topography map provided by the city”

One may not disregard topography illustrating that the required 2-ft. change in grade within 50-ft. of all adjacent properties does *not* exist (see pages 9–10).

Pg. 4, ¶2 of #2 (a): “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.”

Mr. White violates the Accessory Uses Ordinance repeatedly, leaving his recreational vehicles in his driveway and on the street, even after his fence was built. Mr. White does not even shield his tallest boat behind the highest portion of his fence (see page 34, *Attachment M: Boat Photo*). Nevertheless, the ordinance was not written to allow fences to be as tall as the recreational vehicle a citizen happens to own. A 6-ft. fence adequately shields all of Mr. White’s recreational vehicles as required by the Accessory Uses Ordinance.

Pg. 4, ¶2 of #2 (a): “A person of average height... can see directly into the rear windows of the house at 2710 W. 49 ½ St., and vice versa.”

Seeing windows is not the same as seeing *into* windows (see page 35, *Attachment N: Window Photo*). Unless Mr. White uses binoculars to peep from his windows into my windows approximately 100 ft. away, visibility is virtually nil. Mr. White has a two-story house on his property; by his own distorted logic, he should be seeking a variance to construct a fence 15-ft. high. Nevertheless, once again, a personal reason does not constitute a valid hardship.

Pg. 4, ¶3 of #2 (a): “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.”

There is no such tower. There is, however, a section of ornamental fence for growing tomatoes in the side yard, allowable under §25-2-899 (see page 17) and not requiring a building permit (see page 36, *Attachment O: Vantage Photo*, taken from the vantage point of Mr. White’s property, illustrating that the structure is not visible from Mr. White’s property).

Pg. 4, ¶13 of #2: “Pictures of this structure are enclosed with this application.”

The structure is not visible from Mr. White’s property: his photos were taken from the vantage point of 49th ½ Street, not from his own property around the block (see page 36).

Pg. 4, ¶13 of #2 to Pg. 5, lines 1 & 2: “My neighbor should not be enabled to construct unsightly, dangerous looking, un-permitted structures and then tell me that I should be forced to look at them. Such behavior creates a valid hardship.”

This statement is baffling, given that no permit was required, I have never received a notice of code violation, nor have I ever told or forced Mr. White to look at anything. Nevertheless, Mr. White’s conflicting aesthetic values or personal reasons do not constitute a valid hardship.

Pg. 5, ¶1 of #2 (b): “No other properties in the area other than mine share the view of the rear yard of the property at 2710 W. 49 ½.”

This claim is patently false as there are actually two additional properties (2708 and 2712 West 49th ½ St.) that share a view of the rear yard of 2710 West 49th ½ St. Regardless, once again, White’s personal reasons are not a valid hardship.

Mr. White has failed to demonstrate *any* Hardship reason to grant a variance for his 7- and 8-ft. fence.

Re: Area Character

Pg. 5, ¶1 of #3: “Several fences in the area are 7 feet and 8 feet in height.”

This claim is false, as photos of numerous fences less than or equal to 6-ft. in height within the immediate vicinity show (see pages 37–44, *Attachment P: Fence Photos*).

The very photo that Mr. White supplied to support his false claim is of the fence at 2800 W. 50th St., which is actually less than 6 ft. high, not 7- or 8-ft. (see page 39, *Fence Photo 5*).

The Area Character is actually that of 4-ft. chain link and 6-ft. privacy fences.

Pg. 5, ¶1 of #3: “six of my seven adjacent neighbors have consented to the construction of the fence at its present height.”

Of the 7 adjacent properties: 3 are absentee landlords, not “neighbors” (they do not live in this neighborhood) who may or may not have consented; 3 owners did *not* consent; and 1 owner purchased their property after the fence was constructed.

Pg. 5, ¶1 of #3: “The purpose of the regulation...”

This claim has no bearing on Area Character, and the ordinance does not state a purpose.

CASE # C15-2010-0039, ROW# 10419656, TP-0227000116 (amended application)

Pg. 5, ¶1 of #3: “...is to allow privacy, shield unsightly items from public view...”

A 6-ft. fence adequately provides privacy and shields Mr. White’s recreational vehicles as required by the ordinance, yet he continues to park them in public view in his driveway or on the street.

Pg. 5, ¶1 of #3: “It is clear from the enclosed pictures that the fence is of quality construction”

Characterizing his fence as being “of quality construction” is inaccurate given that the bottom of the wooden fence rests directly on soil and blocks the natural flow of rainwater within the drainage easement between properties, and it is coming apart (see pages 45–46, *Fence Photos 22–24*).

Re: Parking [This entire section is N/A: the applicant does not request a parking variance]

Pg. 6, #3: “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.”

The fence was built without a permit. Permits were subsequently issued in error. The applicant supplied the City with fraudulent data and forged permission signatures in order to obtain permits. The ordinance disallows a fence height exceeding 6-ft. on White’s property, as there is no 2-ft. change in grade within 50-ft. of adjacent properties, there are no structures providing reasonable access by a child to the property, and no hazards exist on the property. The remedy to conform to the Fence Ordinance is to reduce the entire fence height to average 6-ft.

Pg. 6, #4: “The fence, as built, enhances the residential use of the property and all adjacent properties.”

Mr. White’s fence exceeding 6-ft. in height does *not* enhance the properties; rather, it establishes a compound or stockade effect that is inconsistent with the character of the Shoalmont section of Allandale, an inner-city neighborhood of homes built in the 1950s with 4-ft. chain-link fences between them; privacy fences subsequently built are 6-ft. high.

Re: Applicant Certificate

Pg. 6: Signed “Benjamin T. White”

It is unclear whether Mr. White’s misrepresentations to the Board of Adjustment constitute perjury or fraud. However, his signature affirming that his statements to the Board “are true and correct”, and his submission of forged signatures to the City of Austin, strongly suggest that Mr. White’s actions warrant further scrutiny.

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Attachment A(1): McDonald Email

From: McDonald, John
Sent: Tuesday, June 16, 2009 11:05 AM
To: Haight, Kathy; Barba, Leon
Subject: 4921 Bull Creek Road fence(s)
Importance: High

I have looked into the original permit for the eight foot fence around the perimeter of the property and the permit for the 7' fence along the souther property line and have found errors in both. The following is what I was going to send to Marie Sandoval. **It would be extremely helpful to measure all fences located on the property to accurately know the height of each fence section.**

2008-051642 PR A permit was issued for an eight foot solid fence on July 2, 2008 for the perimeter of the property. The inspections of this fence were finalized on July 24, 2008. No plot plan exists in the attachments. I have checked the contours on the property in GIS and there is not a change in grade of two feet within 50 feet of any adjoining properties and this is one of the requirements that has to be met. The applicant turned in six signatures from adjacent property owners and there are seven adjoining properties. Two of the six signatures do not match the owner of record at the Travis County Appraisal District (current record).

2009-029373 PR A permit for a seven foot solid fence along the southern property line was approved on April 7, 2009 and the building permit is still active. Since three signatures are missing from the original application for properties that border the southern property line, this permit was issued in error as well.

Let me know if you have any questions or if you feel all fences should be measured before this email goes out?

JMM

Attachment A(2): McDonald Chronology

4921 Bull Creek Road Fence Chronology

July 2, 2008 A residential application for an 8' privacy fence was submitted and approved. The notes in AMANDA state that letters were obtained from the adjacent property owners and there was a 2' change in grade within 50' of the property. Notes in AMANDA also state some areas of the fence will be 6'.

July 24, 2008 The final inspection of the 8' privacy fence was performed.

April 7, 2009 A residential application for a 7' wood fence along the southern property line was submitted and approved. Notes in AMANDA state code section 25-2-899 (D) allows for this fence to be permitted.

June 9, 2009 I received an email from Marie Sandoval inquiring about the two fence permits that were issued at 4921 Bull Creek Road.

June 9, 2009 To June 19, 2009 During this time I spoke with the reviewer and found out the project was not in compliance with the following provisions:

1. The subject property does not have a change in grade of 2' within 50' of any portion of the property or adjacent property. **A variance from the Board of Adjustments will be required.**
2. The second application for the 7' wood fence will never meet the requirement of an average of 6' since 60% or more of the lot has an eight foot fence. **A variance from the Board of Adjustments will be required.**
3. Neither application has a plot plan showing the locations or sizes of the proposed fence, which is required.

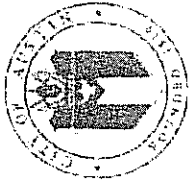
June 23, 2009 Donald Kiesel of Building Inspections went to the site and confirmed fence locations and height. This reaffirmed that the 7' wood fence was not compliant as issued due to the amount of 8' fence located on the perimeter of the property.

July 14, 2009 Leon Barba, Kathy Haight, Donald Kiesel and Darren Cain met with the property owner and his attorney and told them there were problems with both permits. At this time we had to confer with the Law Department on one issue and get back with the property owner. "(D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet." The Law Department stated that there are two separate and distinct height requirements in the problem sentence and that both would apply. No stand alone seven foot fences are allowed because they must have portion under seven that make an overall average of six feet.

Dan McNabb put a hold on the 7' wood fence inspection after the site visit.

July 20, 2009 I called the property owner to tell him about the compliance issues with both permits and he referred me to his attorney for any further communication on the matter.

CASE # C15-2010-0039, ROW# 10419656, TP-0227000116 (amended application)



City of Austin

Community Congress, Department of Planning and Development
 Watershed Protection & Development Review Department
 One Texas Center, 202 Barton Springs Road
 P.O. Box 10888 Austin, Texas 78767

August 25, 2009

Certified: 7005 1820 0003 7584 9270

Benjamin T. White
 4921 Bull Creek Rd.
 Austin, TX 78731-5026

RE: **Notice of Intent to Suspend Permit Nos. 2008-051644 BP and 2009-029382 BP for fences located at 4921 Bull Creek Rd.**

In accordance with City Code Section 25-1-417 (*Notice of Intent to Suspend or Revoke*), this letter constitutes a Notice of Intent to Suspend Permit No. 2008-051644 BP issued on July 2, 2008 and Permit No. 2009-029382 BP issued on April 7, 2009.

In order to avoid suspension of the two referenced permits, as authorized by Section 25-1-411 (*Suspension of a Permit or License*), you are required to correct the following code violations on or before September 4, 2009.

Code Violations	Corrective Action Required
Section 25-2-899	Permit No. 2008-051644 BP was issued in error. The existing 8 foot fence is not in compliance with Section 25-2-899(1). <i>A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:</i> <i>(1) there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or</i> <i>(2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.</i> Redesign your project or request a variance from the Board of Adjustment.

Attachment B(1): Barba Intent to Suspend

Attachment B(1): Barba Intent to Suspend (continued)

Code Violations	Corrective Action Required
Section 25-2-899	Permit No. 2009-029382 BP was issued in error. The existing 7 foot fence is not in compliance with Section 25-2-899 (D). <i>Except as otherwise provided in this section a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.</i> Redesign your project or request a variance from the Board of Adjustment.

Please do not hesitate to contact me if you have questions regarding the action required under this Notice.

Sincerely,



Leon Barba, P.E., Building Official
Planning and Development Review Department

cc: Greg Guernsey, Director, PDR
Don Birkner, Assistant Director, PDR
Brent Lloyd, Assistant City Attorney, Law Department
Dan McNabb, Building Inspection Division Manager, PDR
Michael J. Gilcock – McLean & Howard, LLP



City of Austin

Founded by Congress, Republic of Texas, 1839
Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78767

Attachment B(2): Barba Administrative Decision

December 3, 2009

Certified Mail: 7009 1680 0000 8642 1796

Benjamin T. White
4921 Bull Creek Road
Austin, TX 78732

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).
- 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).

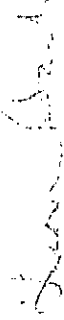
However, this also means that the section of 8 ft fence on the south property line that was approved under the previous permit cannot be over 7 ft.

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
Michael Chock - McLean & Howard, LLP

The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable accommodations and equal access to communications will be provided upon request.