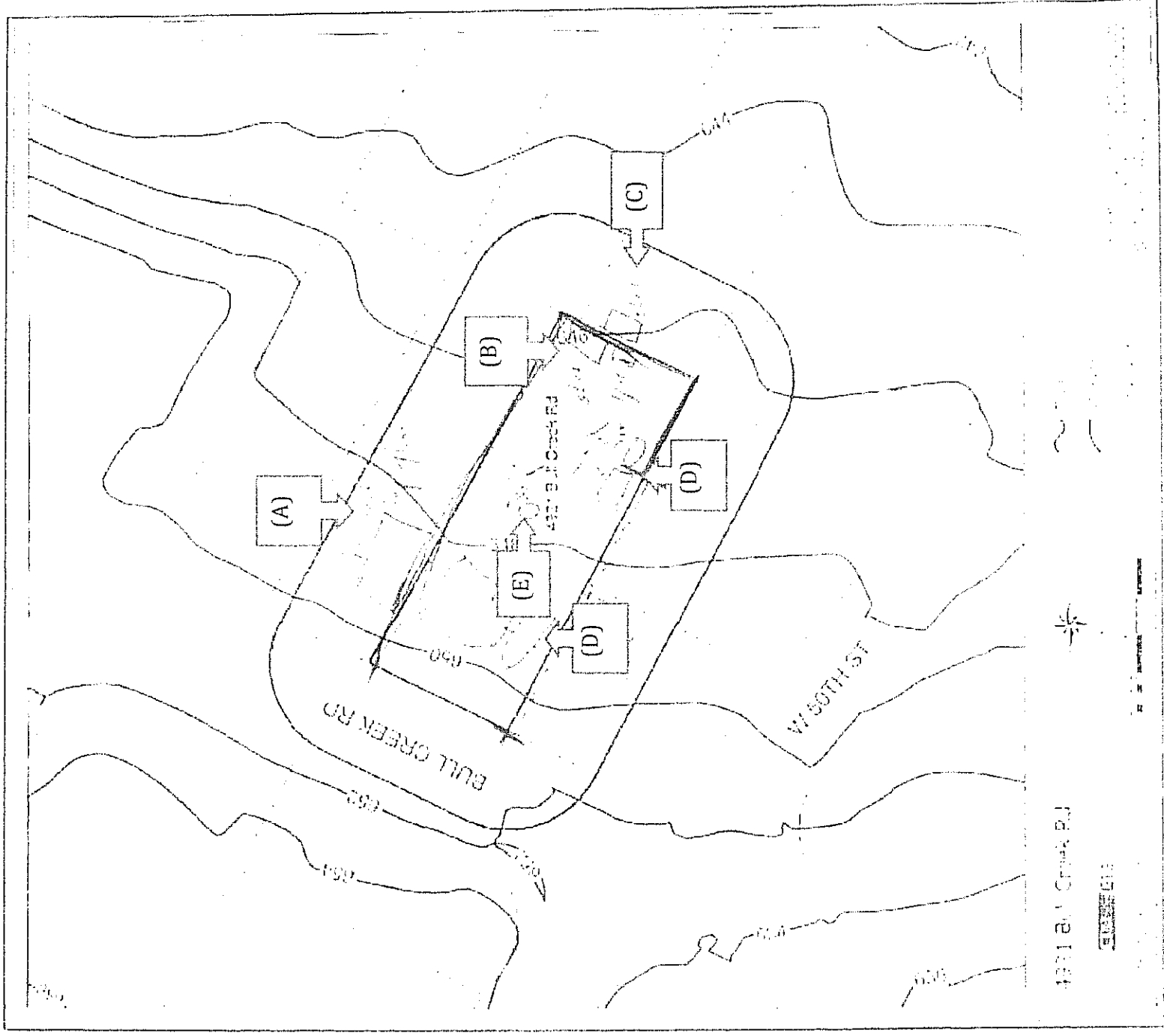


Attachment B(3): Barba Basis

Mr. Barba stated that he based his administrative decision on a drawing supplied to him by Cihock & White that illustrated easy access points to hazardous conditions in Mr. White's yard:



Attachment B(3): Barba Basis

The explanation of this drawing according to Mr. White & Mr. Cihock via Mr. Barba was as follows:

(A) The sketched "house next to prop line" indicates that the 4925 Bull Creek Road house abuts the property line adjacent to Mr. White's property [this is false].

(B) The sketched shed in Mr. White's yard is full of chemicals [White later denied this].

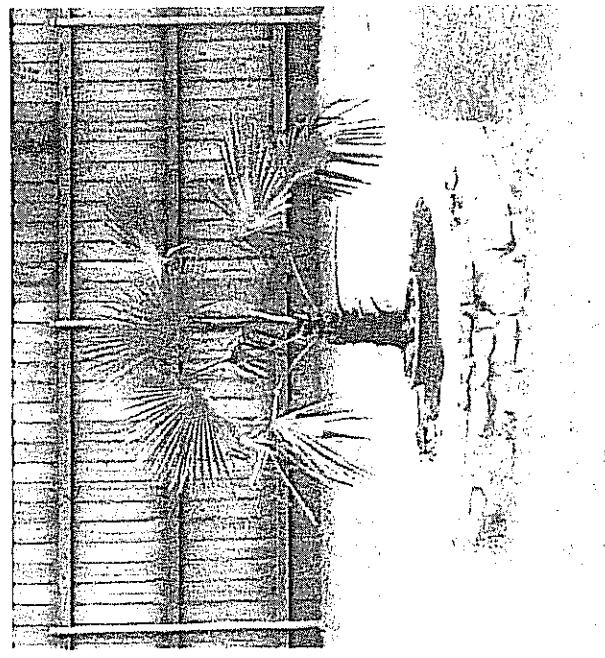
(C) The sketched shed at 4918 Finley abuts the property line adjacent to Mr. White's property [this is false].

(D) The sketched boats and jeep in Mr. White's yard are hazardous [this is false].

(E) The circular stone planter in Mr. White's yard was presented as a hazardous fire pit when it contained a single piece of wood as illustrated by a photo supplied by Mr. White to the City of Austin in November 2009:



Oddly, the "hazardous fire pit" turned back into a (presumably benign) planter as illustrated by this June 2010 photo:



Attachment C: Guernsey Email

**RE: No Response from Director Greg Guernsey and Ongoing Incompetence of City Staff & Fw:
Improper Notice of Public Hearing, BOA Case # C15-2010-0039**

Monday, June 14, 2010 5:00 PM

From: "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>
To: "David Orshalick" <dorshalick@yahoo.com>
Cc: "Ott, Marc" <Marc.Ott@ci.austin.tx.us>, "Kata F. Carbone" <kata@mail.utexas.edu>, ersolns@texas.net, trumanfenton@gmail.com, "Walker, Susan" <susan.walker@ci.austin.tx.us>, "Corpus, Grace" <Grace.Corpus@ci.austin.tx.us>, "Morrison, Laura" <Laura.Morrison@ci.austin.tx.us>, "Edwards, Sue" <Sue.Edwards@ci.austin.tx.us>, "Sandoval, Marie" <Marie.Sandoval@ci.austin.tx.us>, "Birkner, Donald" <Donald.Birkner@ci.austin.tx.us>, "Haught, Kathy" <Kathy.Haught@ci.austin.tx.us>, "McDonald, John" <John.McDonald@ci.austin.tx.us>, "Barba, Leon" <Leon.Barba@ci.austin.tx.us>

Hello David

I visited Ben White's property last week and had the opportunity to look at improvements and vehicles in his back yard. I also was able to look at the location of the adjoining structures/sheds on the adjacent properties. Based on this information I have decided that the permit for the eight (8) foot fence should not have been issued, because the structures to the north and east are not located close enough to the property line to enable a child to climb over a six foot fence to gain access to the property, and the improvements (fire pit, horseshoe pit, shed) and vehicles (jeep and boats) on Mr. White's property do not create a hazardous situation. This interpretation would also apply to the south property line, although a shed is located in close proximity to Mr. White's property line.

The actions taken by Ms. Susan Walker modifying the Board of Adjustment (BOA) notice for the April meeting and the interpretation of the variance request filed by Mr. White was incorrect and in error. Ms. Walker was mistaken on how this Code section should be applied to this BOA variance application. I will be working with my Staff in the near future to make sure this mistake does not happen again. As I stated previously, Staff does not make a recommendation regarding BOA variance requests. I understand that a new sign was not posted and a revised notice was not sent out for tonight's BOA meeting, because Ms. Walker got this case confused with another case that is on the agenda tonight that should have been posted for the July meeting.

I have contacted legal counsel for Mr. Ben White and informed him via voicemail message of my decision and expect that he will modify his pending BOA application prior to the July meeting. If you have any questions, please contact me via e-mail or at 974-2387.

Greg

Attachment D: 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 E: 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 F: Signatures 1-7

- F1. Letter from K. F. Carbone.
- F2. Letter from Mrs. Blanco.
- F3. Forged Blanco signature supplied by Mr. White to the City of Austin's Residential Permitting Department.
- F4. Letter from Mrs. Bond.
- F5. Forged Bond signature supplied by Mr. White to the City of Austin's Residential Permitting Department.
- F6. Questionable Gregg signature #1 supplied by Mr. White to the City of Austin's Residential Permitting Department.
- F7. 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 (amended application)

Page 20

F1. 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 1/2 Street
Austin, TX 78731

F2. 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 Teresa Blanco

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

Refutation to Variance Application for 4921 Bull Creek

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

F3. 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

F4. 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

F5. 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:

Signature:

Nash, Lorin
2706 W 49th St
Austin, TX 78731-5547

Deeb Ramzi
4925 Bull Creek Dr.
Austin, TX

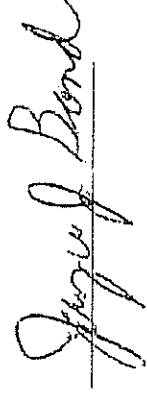
Tony Gregg
2712 49 ½ St.
Austin, TX

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



F6. 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

Dech Ramzi
4925 Bull Creek Dr.
Austin, TX

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

Wade Williams
2708 49 1/2 St.
Austin, TX

Blonquist, Gilbert Victor
4921 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

F7. 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 G: Gregg Letters

G1. Unsigned letter #1 from Mr. Gregg:

January 13, 2010

Mr. Leon Barba, P.E.
Building Official
Planning and Development Review Dept
PO Box 1088
City of Austin
Austin, Texas 78767

Dear Mr. Barba:

I recently became aware of the issue concerning the shared wooden fence that my neighbor, Ben White installed. Last year Mr. White took the initiative to replace a completely dilapidated fence between our two properties as well as between other neighbors. I understand that he got all the required permits and inspections. I paid a prorata share of the cost for my property. The fence greatly enhanced my property and I think it is an excellent addition to the neighborhood as a whole. I have a small backyard and having a high fence next to Mr. White's two story house gives my house added privacy as well as better security.

I am strongly in favor of the fence as it is now and am not in a financial position to invest any additional funds in fencing. I hope you will allow the fence to stand as it is as it is greatly beneficial to all of the neighbors.

Good fences make good neighbors.

Yours,

Tony T. Gregg, P.E.
Owner of 2712 W 49.5 St

Attachment G: Gregg Letters (continued)

G2. Unsigned letter #2 from Mr. Gregg:

Walker, Susan

From: Tony Gregg [tgregg@gmail.com]
Sent: Friday, May 21, 2010 10:45 AM
To: Barba, Leon; Walker, Susan
Subject: 2710 W 49 1/2 St Fence issue

Dear Mr. Barba and Ms. Walker,

I recently sent in a form supporting the variance for the fence that Ben While built along side my yard at 2712 W 49 1/2 St and also behind 2710 W 49 1/2 St. I understand that the hearing has been postponed until June.

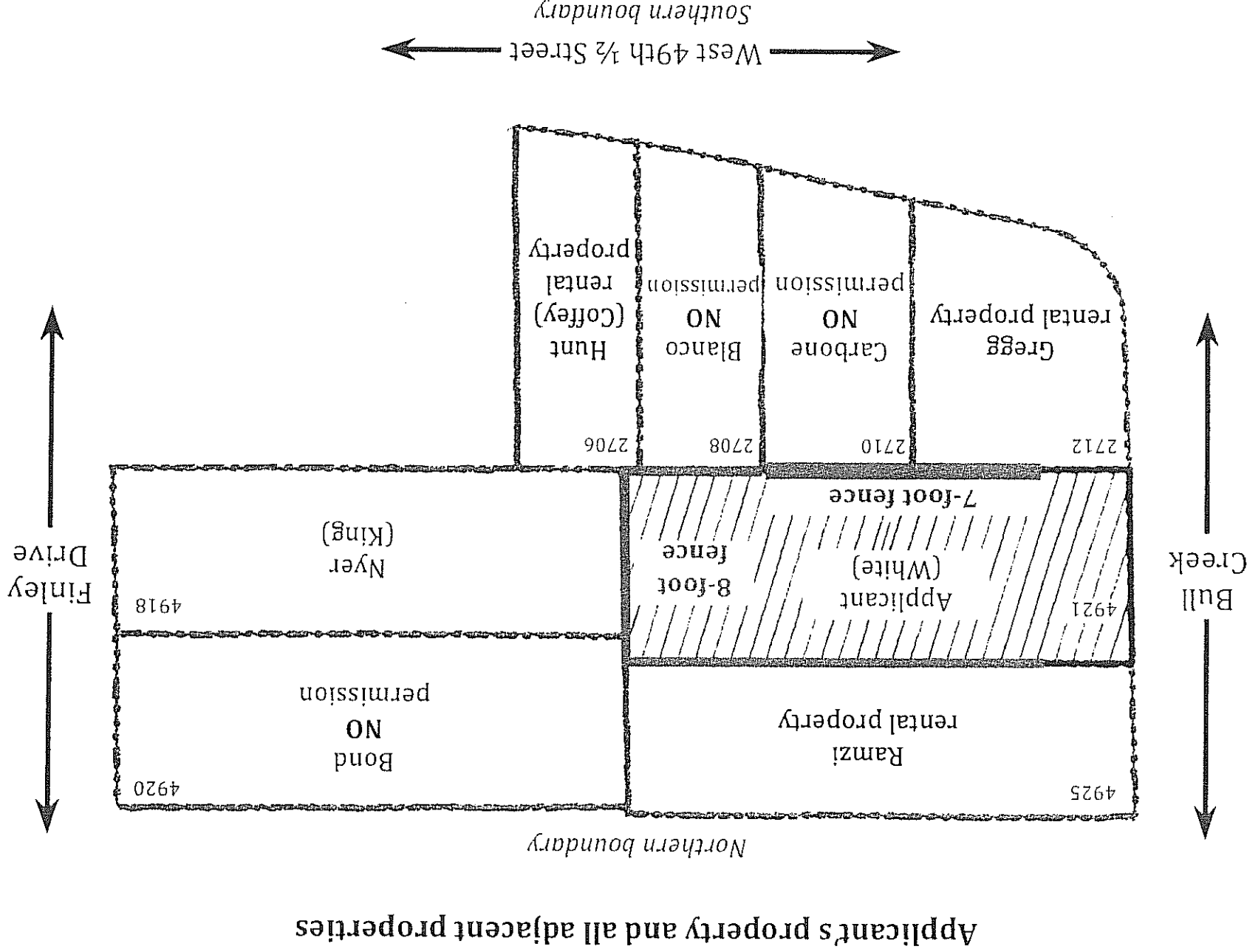
Ben had solicited prorata share contributions from myself and most of the other neighbors for this fence which replaced a 30 year old fence that was mostly rotten and falling down along side my yard. The height of 7 feet has enabled the small back yard of my property to have more privacy since Ben's house is two stories and can look into the yard. It would be a real hardship to have to reconstruct the fence. I hope that you will support the variance at the hearing.

If you need any other information from me, please contact me by email or at 512 547-8216.

Yours,

Tony Gregg

Attachment H: Adjacent Properties



Letter from Mr. Nyer:

Attachment I: Nyer Letter

June 23, 2010

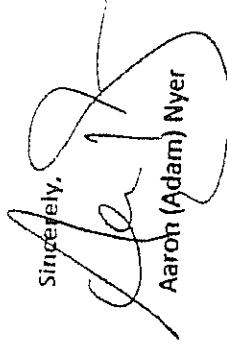
Re: 4918 Finley Dr. - Fence Installation

To Whom It May Concern:

Please let this letter serve as confirmation that as the prior home owner of 4918 Finley Dr., Austin, TX 78731 I entered into an agreement with my neighbor, Ben White, to have a fence installed between our two properties. We mutually agreed to install an 8' fence in an effort to shield the line of site between our two homes. We split the cost of the fence that divided our properties.

This fence was an added asset to the home and provided much needed privacy.

Sincerely,



Aaron (Adam) Nyer

Attachment J: King Letter

Letter from Mr. & Mrs. King:

June 24, 2010

Mr. Leon Barba, P.E.
Building Official
Planning and Development Review Dept
PO Box 1088
City of Austin
Austin, Texas 78767

Dear Mr. Barba:

We recently became aware of the issue concerning the shared wooden fence that my neighbor, Mr. Ben White, installed at 4921 Bull Creek Rd. We are writing in support of Mr. White's variance request to allow the fence to stand as-is.

Mr. White and the former owner of 4918 Finley, Mr. Adam Nyer, agreed upon a 8' fence to adequately shield the line-of-sight between their two homes, and split the cost of installing it. When we were considering buying 4918 Finley in September 2009, we liked the privacy afforded by the fence and considered the fence an asset to the home at 4918 Finley.

Additionally, we had no means of knowing about this dispute when we bought the house given that the fence was, in fact, permitted at the time of our home search in September 2009. Denying the variance and revoking the original permit at this time would effectively blind-side us into being partially financially responsible for changes to the fence.

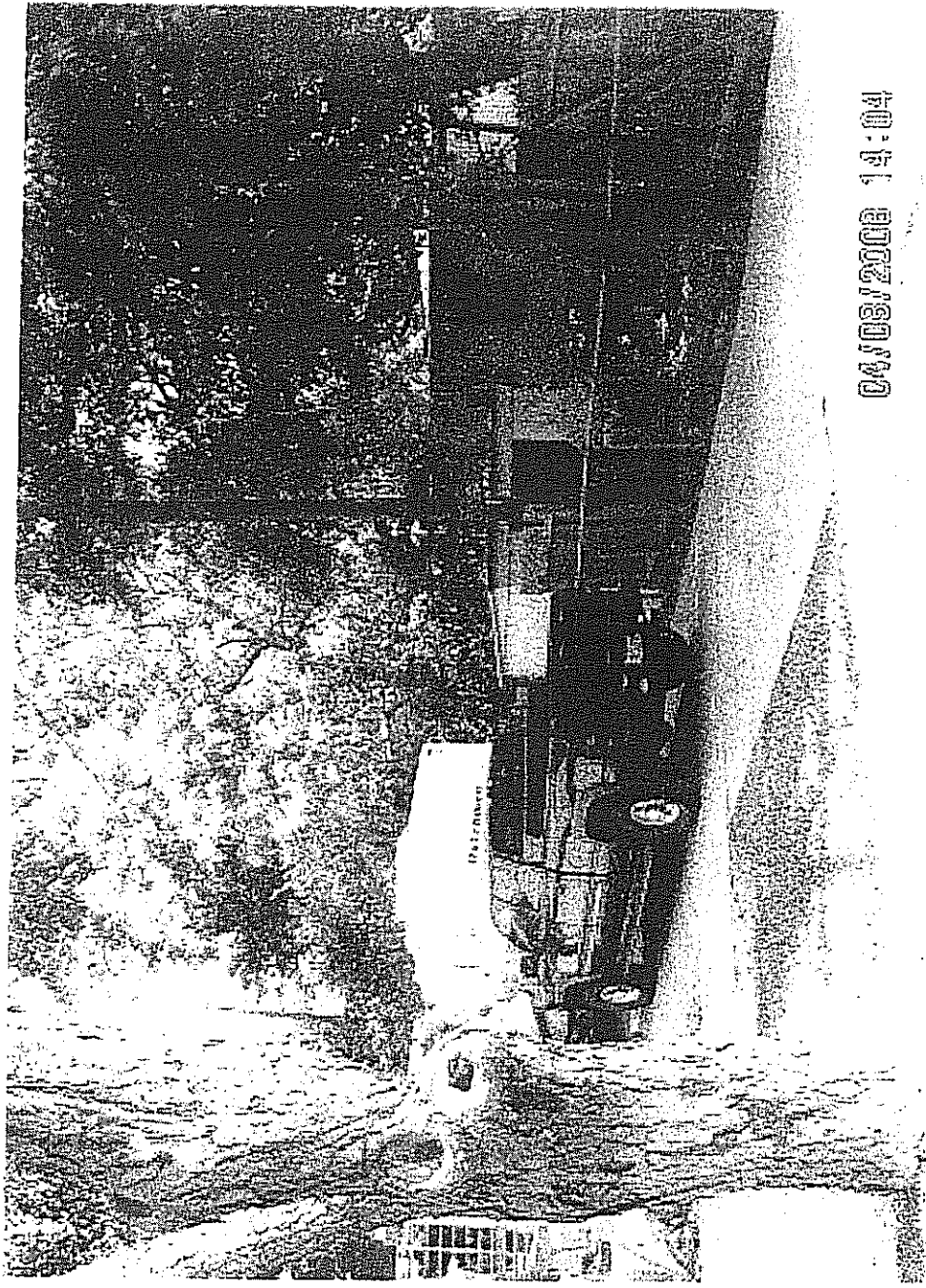
We are strongly in favor of the fence as it currently stands, and are not in a financial position to alter or replace the fence. We hope you will allow the fence to stand as it is greatly beneficial to us.

Regards,



John M. King & Elizabeth K. King
Owners of 4918 Finley Dr.

Attachment K: Gregg Chain Link Fence



4921 Bull Creek Road
Case CV -- 2008 022662

April 8, 2008
Investigator Khalid Marshall

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

Attachment L: Ramzi Letter

Letter from Mr. Ramzi:

910 14:43 From: Durham & Bassett Realty Group To: 512 833 6448 P. 2
... 22, 2010 10:41AM No. 5709 P. 2

June 22, 2010

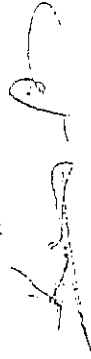
Planning and Development Review Dept
PO Box 1088
City of Austin
Austin, Texas 78767

To whom it may concern:

I recently became aware of the issue concerning the shared wooden fence that my neighbor, Ben White installed last year. Mr. White took the initiative to replace a completely dilapidated fence between our two properties as well as between other neighbors.

I am in favor of keeping this fence as is. I hope you will allow the fence to stand as it is as it is greatly beneficial to all of the neighbors.

Sincerely,



Deed Ramzi
Owner of 4925 Bull Creek Rd

Attachment M: 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 N: 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 O: Vantage Photo



Section of ornamental
fence at 2710 W. 49th
½ St., as viewed from
the property line
adjacent to applicant's
property 4921 Bull
Creek Rd.

Attachment P: Fence Photos

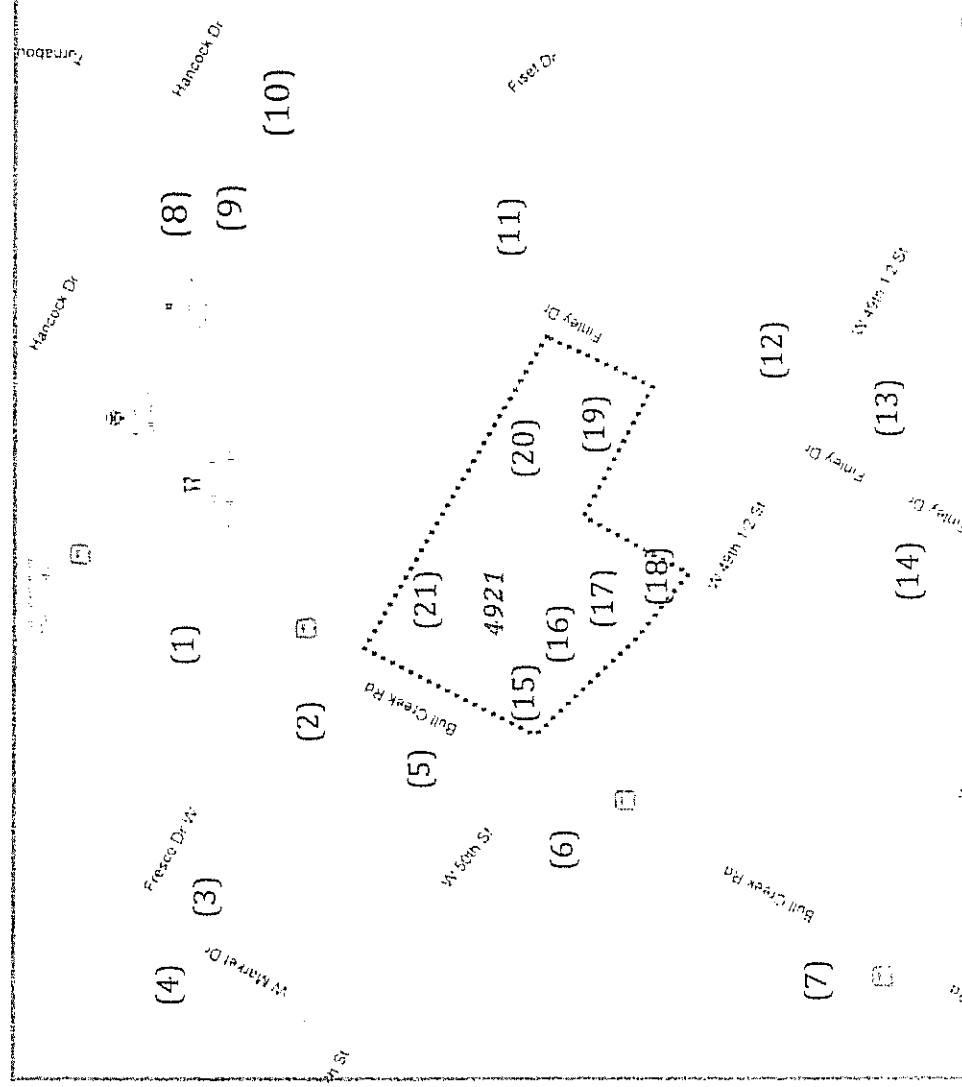
A small sample of fences near 4921 Bull Creek that are less than or equal to 6-ft. in height, confirming to Austin's Fence Code height requirements:

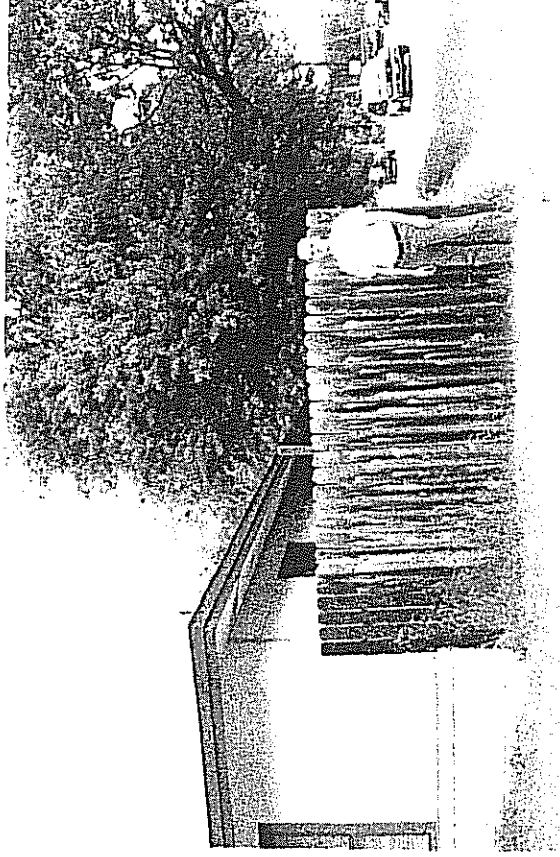
Outer Perimeter (properties nearby)

- (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)**

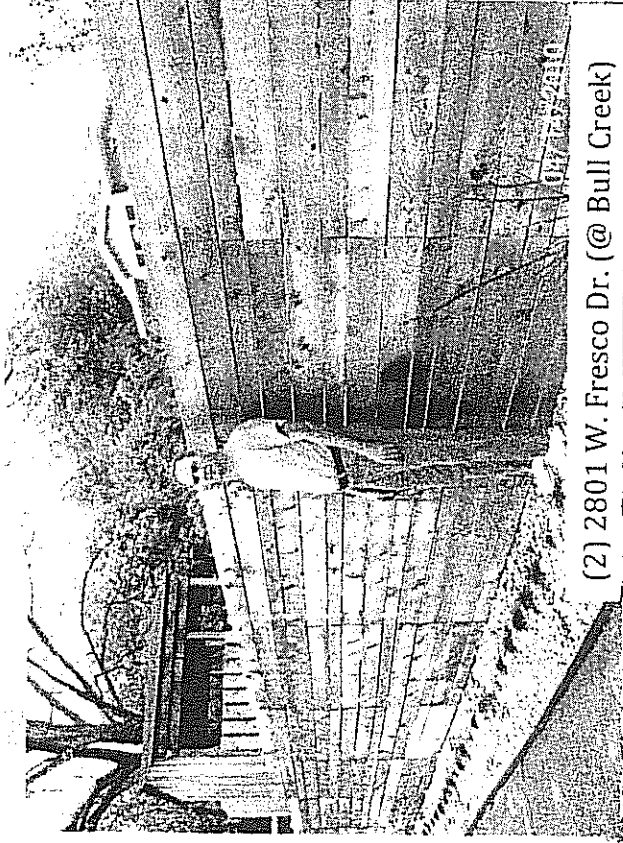
- (15) 2712 W. 49 ½ St.: Rental property
- (16) 2710 W. 49 ½ St.: No permission
- (17) 2708 W. 49 ½ St.: No permission
- (18) 2706 W. 49 ½ St.: Rental property
- (19) 4918 Finley Dr.: New owners
- (20) 4920 Finley Dr.: No permission
- (21) 4925 Bull Creek: Rental property



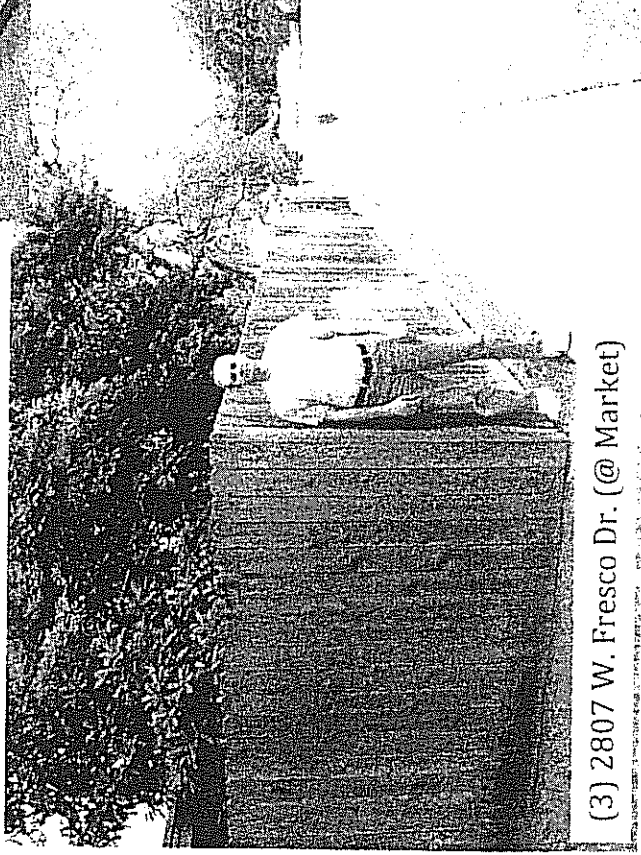


(1) 2800 W. Fresco Dr. (@ Bull Creek)

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



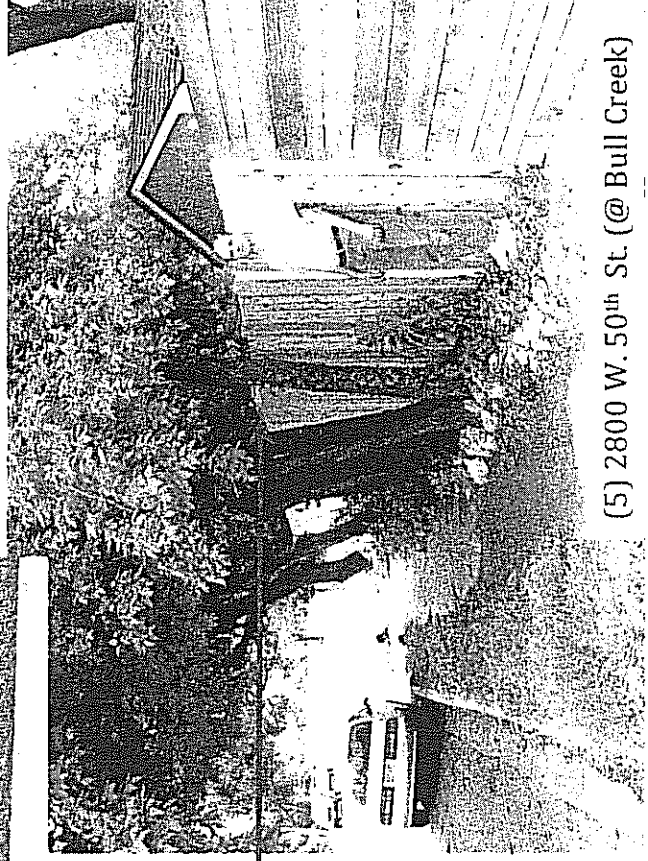
(2) 2801 W. Fresco Dr. (@ Bull Creek)



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



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

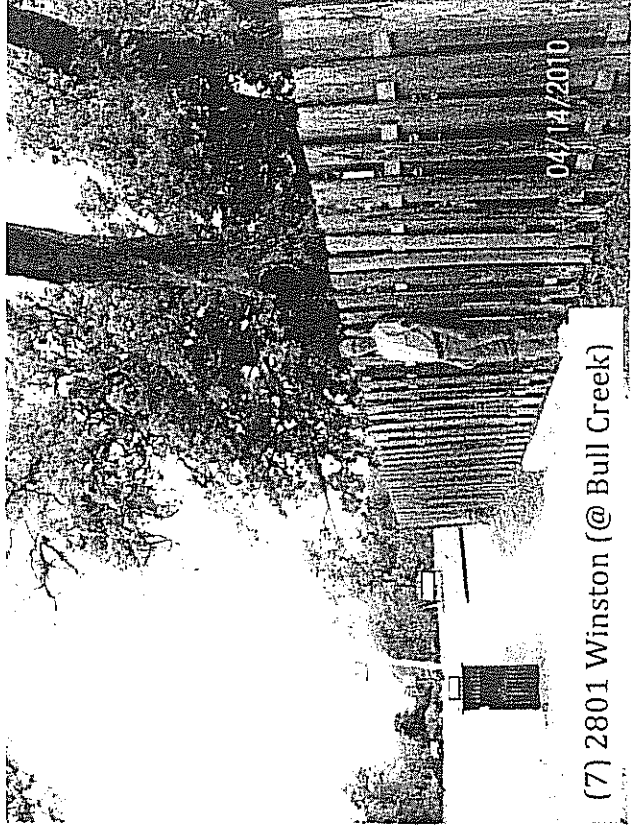


(5) 2800 W. 50th St. (@ Bull Creek)

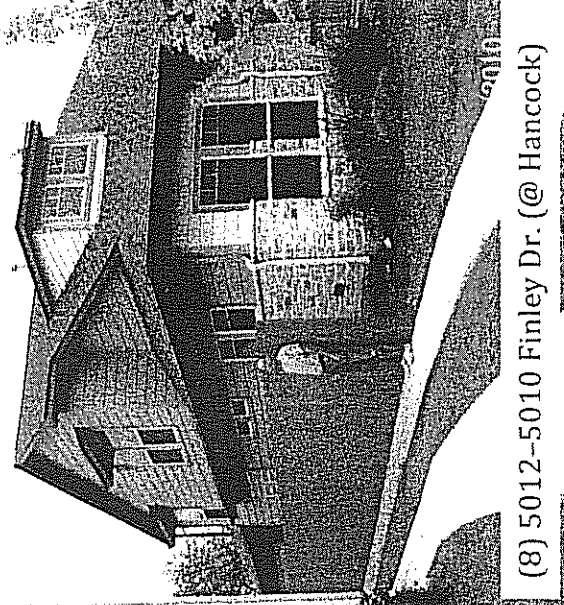
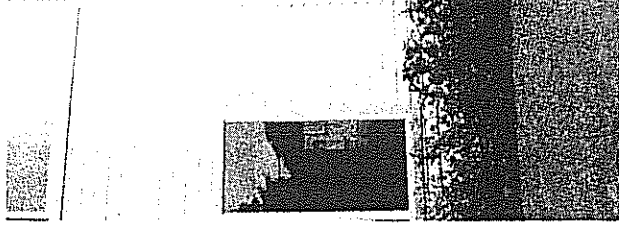
This is the fence that Mr. White uses in his fraudulent claim that "several fences in the area are 7 feet and 8 feet in height". It is less than 6-ft. high.



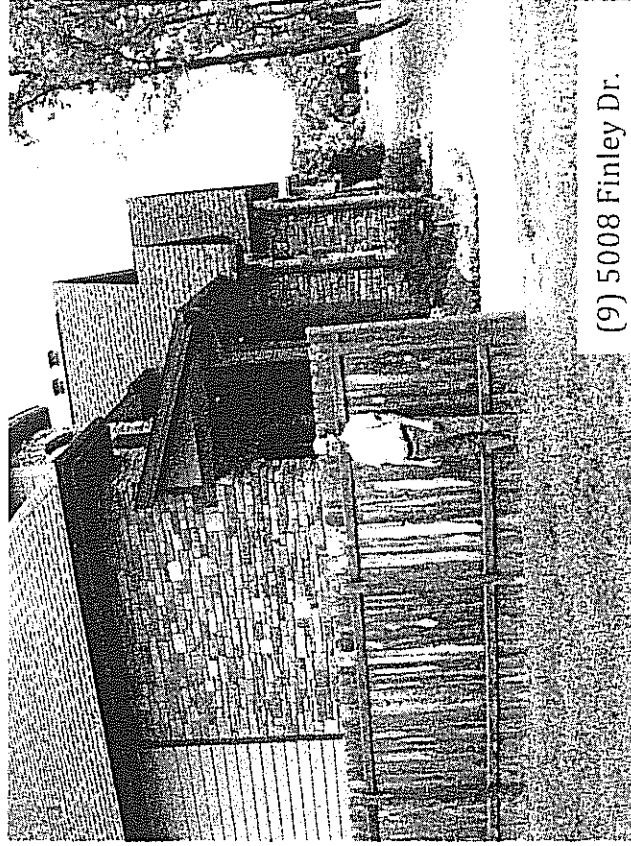
(6) 2801 W. 50th St. (@ Bull Creek)



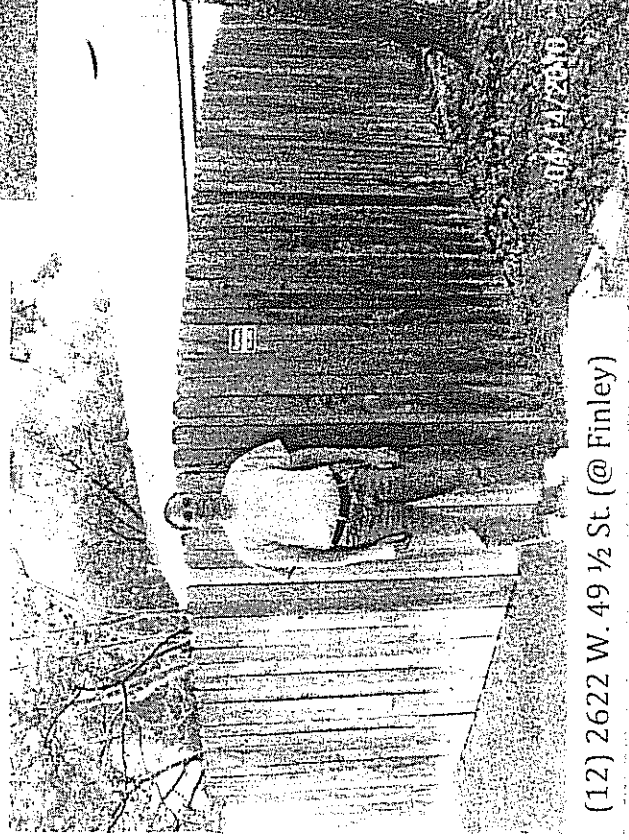
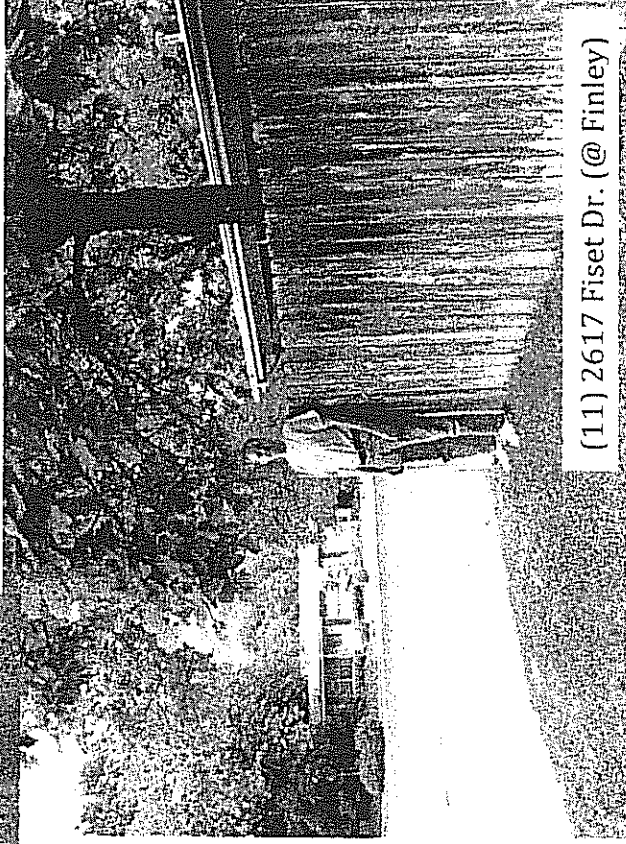
(7) 2801 Winston (@ Bull Creek)



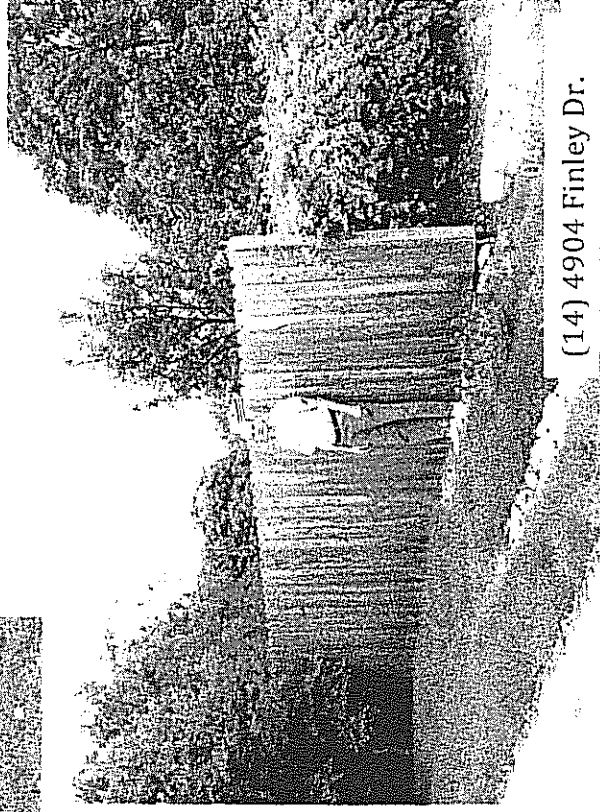
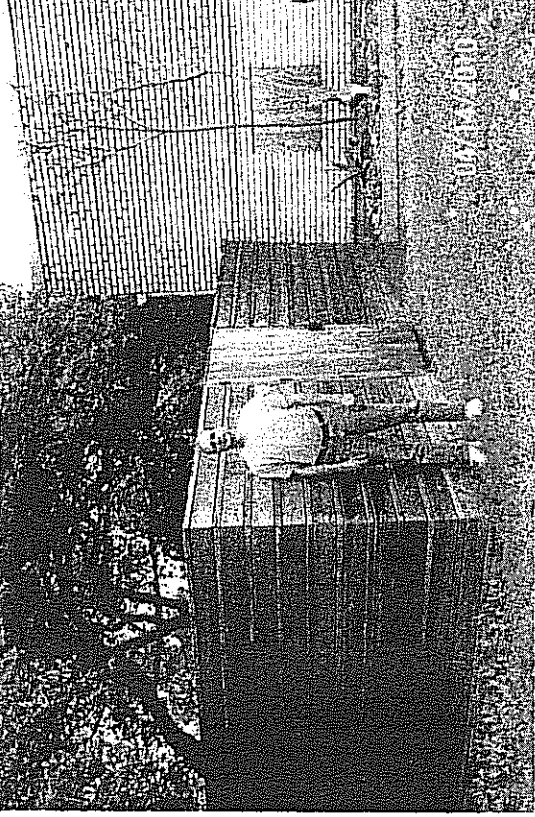
(8) 5012-5010 Finley Dr. (@ Hancock)



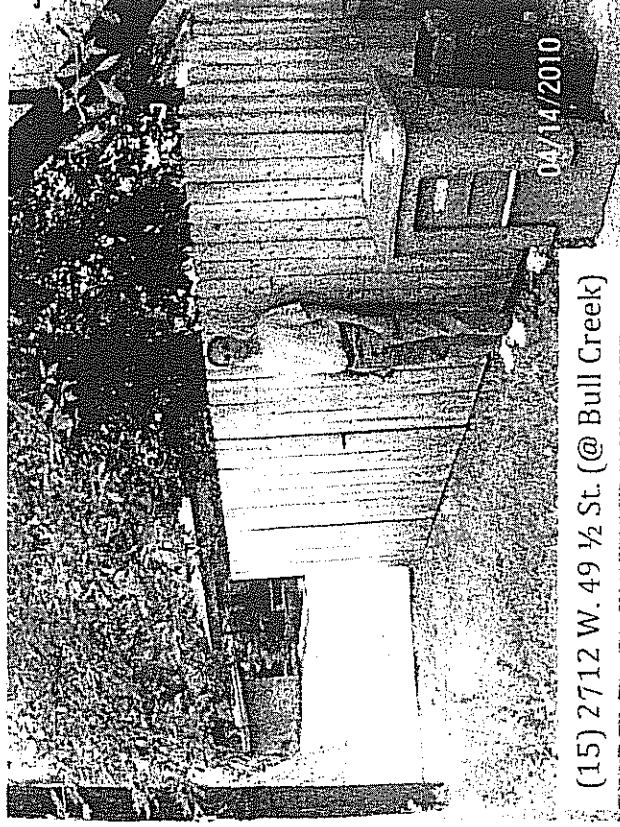
(9) 5008 Finley Dr.



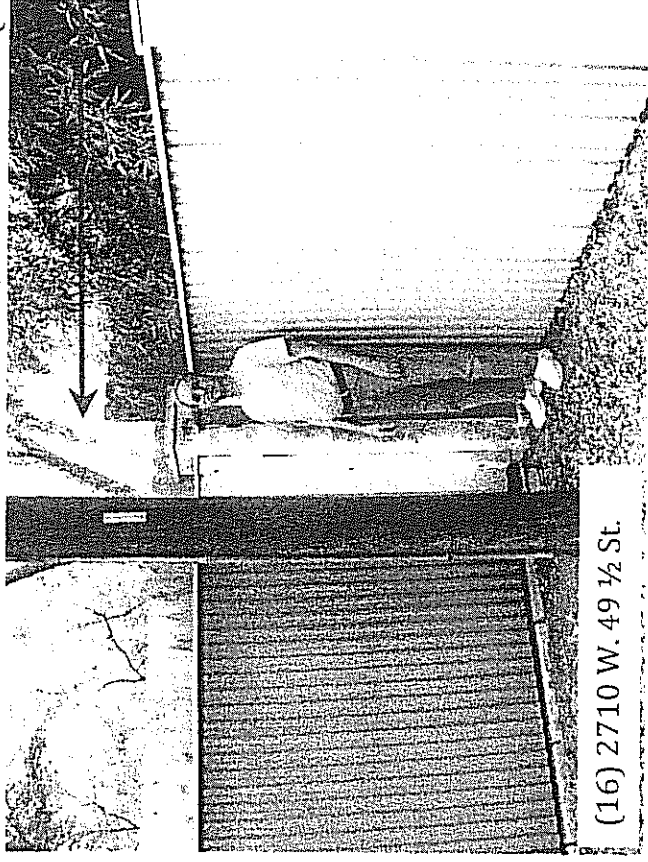
(13) 4907 Finley Dr. (@ W. 49 ½)



(14) 4904 Finley Dr.



(15) 2712 W. 49 ½ St. (@ Bull Creek)



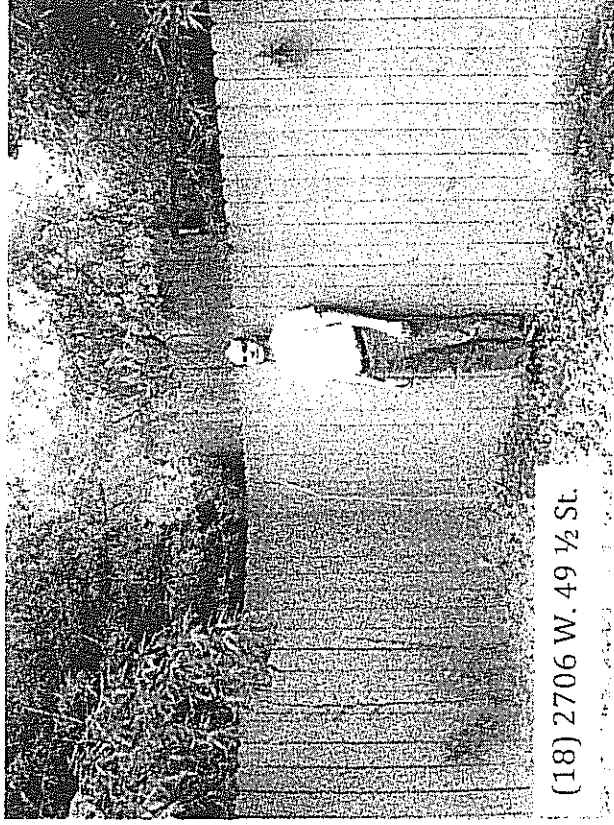
(16) 2710 W. 49 ½ St.

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.

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



(17) 2608 W. 49 ½ St.

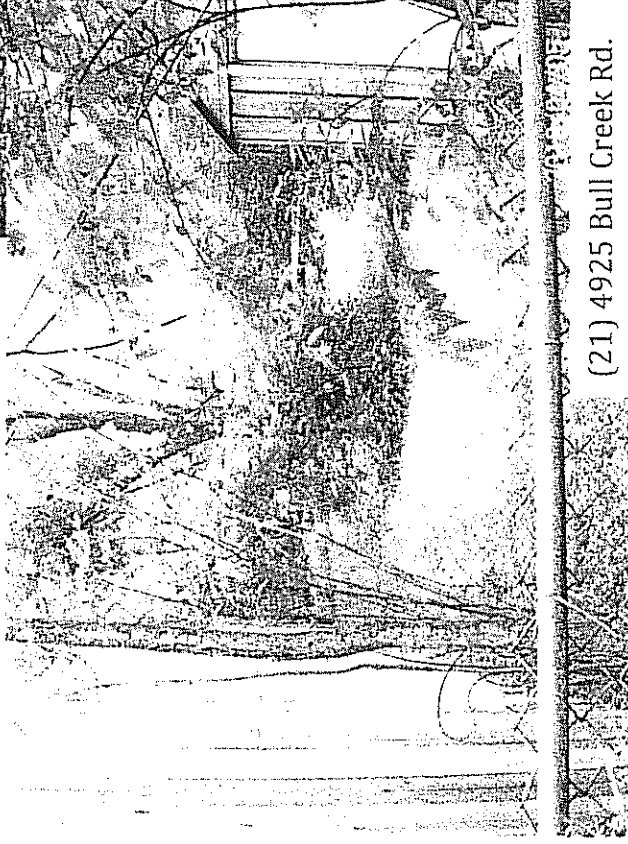
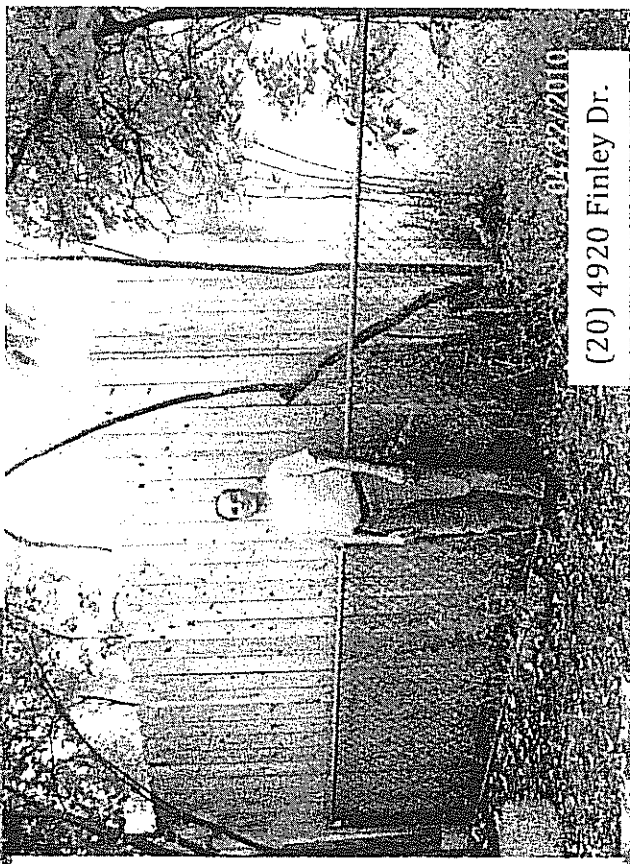


(18) 2706 W. 49 ½ St.

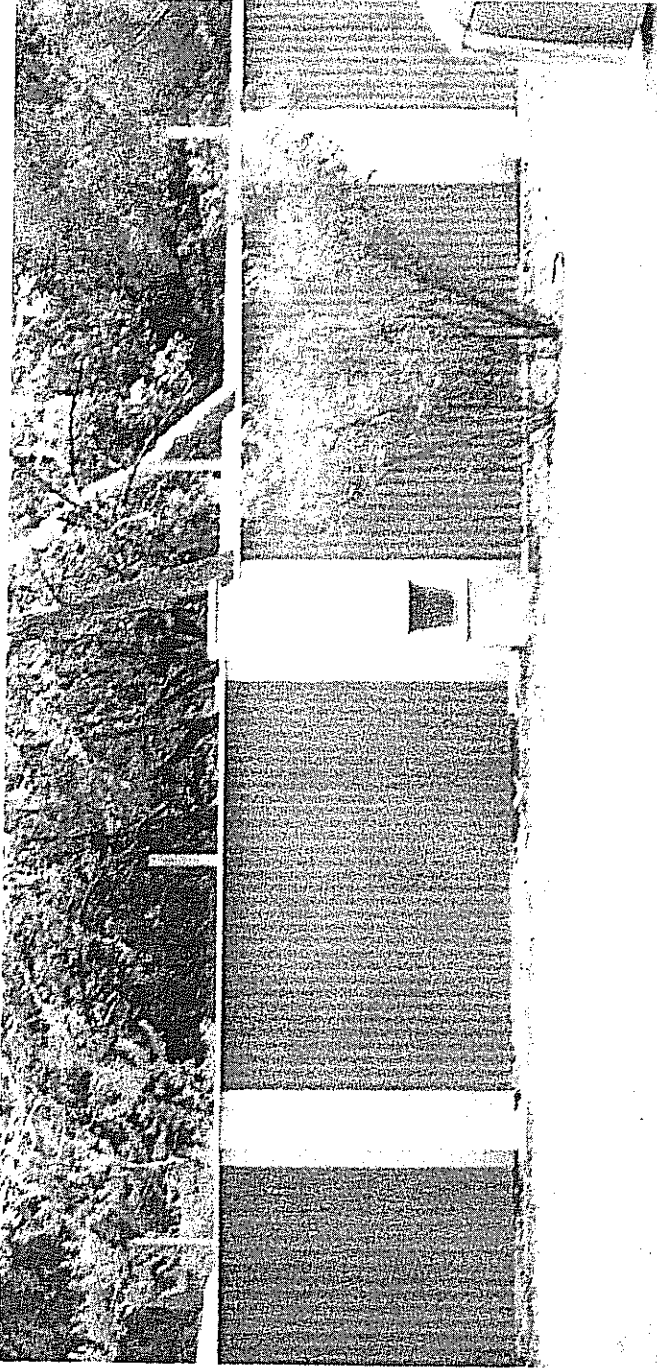
Mr. White's 8-ft. fence
behind the 6-ft. fence
at 2706 W. 49 ½ St.



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



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.



June 24, 2010

Mr. Leon Barba, P.E.
Building Official
Planning and Development Review Dept
PO Box 1088
City of Austin
Austin, Texas 78767

Dear Mr. Barba:

We recently became aware of the issue concerning
Mr. Ben White, installed at 4921 Bull Creek
variance request to allow the fence to stand

Mr. White and the former owner of 4918 F
adequately shield the line-of-sight between
When we were considering buying 4918 F
by the fence and considered the fence an

*New
letter*

wooden fence that my neighbor,
of Mr. White's

on a 8' fence to
the cost of installing it.
ed the privacy afforded
ley.

Additionally, we had no means of knowing about this dispute when... bought the house given
that the fence was, in fact, permitted at the time of our home search in September 2009.
Denying the variance and revoking the original permit at this time would effectively blind-side
us into being partially financially responsible for changes to the fence.

We are strongly in favor of the fence as it currently stands, and are not in a financial position to
alter or replace the fence. We hope you will allow the fence to stand as it is greatly beneficial
to us.

Regards,

John M. King, Elizabeth K. King

John M. King & Elizabeth K. King
Owners of 4918 Finley Dr.

June 23, 2010

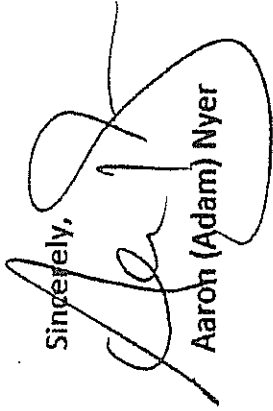
Re: 4918 Finley Dr. - Fence Installation

To Whom It May Concern:

Please let this letter serve as confirmation that as the prior home owner of 4918 Finley Dr., Austin, TX 78731 I entered into an agreement with my neighbor, Ben White, to have a fence installed between our two properties. We mutually agreed to install an 8' fence in an effort to shield the line of site between our two homes. We split the cost of the fence that divided our properties.

This fence was an added asset to the home and provided much needed privacy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aaron' or 'Adam', with a large, stylized flourish at the end.

Aaron (Adam) Nyer

010 14:43 From:
Jun 22, 2010 10:41AM

Durham & Bassett Realty Group

To: 512 833 6448 P.2
No. 5709 P. 2

June 22, 2010

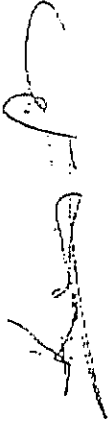
Planning and Development Review Dept
PO Box 1088
City of Austin
Austin, Texas 78767

To whom it may concern:

I recently became aware of the issue concerning the shared wooden fence that my neighbor, Ben White installed last year. Mr. White took the initiative to replace a completely dilapidated fence between our two properties as well as between other neighbors.

I am in favor of keeping this fence as is. I hope you will allow the fence to stand as it is as it is greatly beneficial to all of the neighbors.

Sincerely,



Deed Ramzi
Owner of 4925 Bull Creek Rd

January 13, 2010

Mr. Leon Barba, P.E.
Building Official
Planning and Development Review Dept
PO Box 1088
City of Austin
Austin, Texas 78767

Dear Mr. Barba:

I recently became aware of the issue concerning the shared wooden fence that my neighbor, Ben White installed. Last year Mr. White took the initiative to replace a completely dilapidated fence between our two properties as well as between other neighbors. I understand that he got all the required permits and inspections. I paid a prorata share of the cost for my property. The fence greatly enhanced my property and I think it is an excellent addition to the neighborhood as a whole. I have a small backyard and having a high fence next to Mr. White's two story house gives my house added privacy as well as better security.

I am strongly in favor of the fence as it is now and am not in a financial position to invest any additional funds in fencing. I hope you will allow the fence to stand as it is as it is greatly beneficial to all of the neighbors.

Good fences make good neighbors.

Yours,

Tony T. Gregg, P.E.
Owner of 2712 W 49.5 St

Walker, Susan

From: Joe Reynolds [joe-rey@texas.net]
Sent: Tuesday, July 06, 2010 7:30 PM
To: Walker, Susan
Subject: RE: BoA case C15-2010-0039 4921 Bull Creek

Susan, will you please send this e-mail to the BOA commissioners for their work books on this case.

Thank You - JoeR

Commissioners, I'm writing for Allandale Neighborhood Association (ANA) regarding Case #C15-2010-0039, a requested fence variance at 4921 Bull Creek Rd.

At its' April meeting the ANA Executive Committee voted unanimously to oppose this requested variance. ANA does not usually take a stand in fence cases; fences are usually neighbor-neighbor and without neighborhood wide significance. This case has proved different. The applicant, Mr. White, had previously spoken with our President and Vice-President, and subsequently misrepresented the substance of the conversations in dealings with City Staff. Further, at the June ANA Executive Committee meeting, Mr. White spoke and made statements and arguments that are contradicted by letters and e-mail from City Staff and provided by Public Information Request.

We ask that you carefully and thoroughly consider any claims and presentations made in this case. It has a history of bogus assertions to justify the fence. There was a claim of steep grade that was shown false. There was a claim of hazardous features, but there is no pool or fountain. Through an attorney there were improper claims of 'access points' that supposedly necessitated the 8ft height. Opponents will show forgery of neighbors' signatures. ANA's experience is in-line with these other instances.

Following is an example of how you might consider a claim that the height is needed to protect hazardous chemicals:

- 1) Quantities of extremely hazardous chemicals, like lye for drain cleaning and rat poison, are frequently stored in a kitchen or bathroom cabinets with the tight lid and warning labels considered enough to provide protection. They are considered "Consumer Goods."
- 2) Hazardous materials like propane for cookers, gasoline for mowers, pesticides and fertilizers are customarily stored in yards and carports, often unfenced ones. City code requires that chemicals like fertilizer and herbicides be stored under a roof to prevent their being washed into our creeks, but code doesn't require a fence. Temporary storage of consumer quantities of such materials is unregulated and needs no extraordinary protection. They also are considered "Consumer Goods."
- 3) Permanent storage of hazardous, non-consumer, chemicals IS regulated and requires permits from County, State, and Federal agencies, and notification of the Fire Department. Permits for storing hazardous chemicals are not generally approved in neighborhoods. Zoning prohibits them. The protection of these hazardous chemicals is specified in the permits, requiring chain link and barbwire fencing, 24-hour security, placards for emergency personnel, and special liability insurance. There is a difference between "Consumer Chemicals" and "Hazardous Chemicals."

So ask yourself, when considering an assertion, is the claim aside ordinary experience? If it is extraordinary, is it still permissible in the neighborhood setting? Or does the more likely case hold, the chemicals must be removed.

We ask that you consider ANY of the applicant's claims in this case at the level of detail shown above, and not accept anything at face value. Our experience shows that you should be skeptical.

The ANA Executive Committee voted to oppose this case and we ask that you deny the appeal.

--

Joe Reynolds
2611 West 49th St
Austin, Texas 78731
512-454-8880 [H]
512-297-4841 [C]

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

DATE: Monday, May 10, 2010

CASE NUMBER: C15-2010-0039

_____	Jeff Jack
_____	Michael Von Ohlen
_____	Nora Salinas
_____	Bryan King
_____	Leane Heldenfels, Chairman
_____	Frank Fuentes, Vice Chairman
_____	absent
_____	Heidi Goebel
_____	Melissa Hawthorne alternate

APPLICANT: Benjamin White

ADDRESS: 4921 BULL CREEK RD

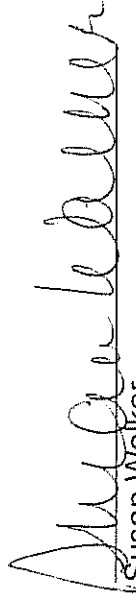
VARIANCE REQUESTED: The applicant has requested a variance from the maximum height of a solid fence requirement of Section 25-2-899 (D) from six feet in height to seven feet in height adjacent to the adjoining property at 2710 West 49 ½ Street (a.k.a. Lot 9, Resub of Block B; Fiset Place). The Land Development Code states that a solid fence along a property line may not exceed an average height of six feet or a maximum height of seven feet.

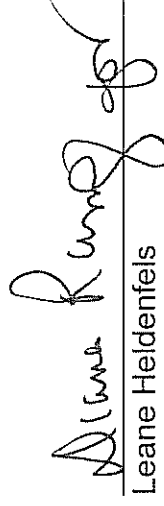
**BOARD'S DECISION: POSTPONED TO ~~JUNE 14, 2010~~ (RE-NOTIFICATION
NEEDED)**

July 12

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

Ramirez, Diana

15-2010-0039

From: Walker, Susan
Sent: Friday, May 07, 2010 2:45 PM
To: Caroline Reynolds; Baranovicht, Almira; Parker, RoxAnne
Cc: Ramirez, Diana; Guernsey, Greg; dbmc@texas.net
Subject: RE: 2nd NOTICE -- Defective public notice on the BOA hearing re 4921 Bull Creek Rd.

This case is being postponed to the June 14th meeting and will be renotified.

Thank you,

Susan Walker
Senior Planner
Planning & Development Review Department
Phone: 512-974-2202
Fax: 512-974-6536

-----Original Message-----

From: Caroline Reynolds [mailto:crsolns@texas.net]
Sent: Thursday, May 06, 2010 10:39 PM
To: Baranovicht, Almira; Parker, RoxAnne; Walker, Susan
Cc: Ramirez, Diana; Guernsey, Greg; dbmc@texas.net
Subject: 2nd NOTICE -- Defective public notice on the BOA hearing re 4921 Bull Creek Rd.

Dear Ms. Walker, et al:

On Monday this week, I wrote to Susan Walker that the public notice sign at 4921 Bull Creek Road had been removed from the upright and was lying on the ground. I also left Ms. Walker a voice mail. I drove by the subject property again this morning, May 6, and again late this afternoon. Both times there was no sign posted and there is a blank white laminated 'sign' on the ground next to the upright.

This message is to notify you that the public notice regarding next Monday's BOA consideration of the variance for the building permit for the subject site appears to be defective without proper public notice. The case needs to be either denied because the owner caused the notice to be deficient or a new hearing date should be set for rehearing after proper notice is made.

Additionally, the public notice appears to only involve the section of fence behind a single home on 49 1/2 Street. The fence permit was for the entire south fence line of the White property. It is doubtful that a small portion of a permit can be considered for a variance without considering the entire permitted entity. Such an anomaly may significantly flaw the City's decision on the subject fence, leaving the City open to lawsuit by one or more parties to the case.

The packet submitted to the BOA by Ms. Carbone strongly indicates that one or both fence building permits were issued in response to one or more falsified government documents, one of which appears to have included at least two forged signatures. Does the City plan to investigate or prosecute the party or parties that submitted the false documentation and signatures or will this matter be referred to the District Attorney for investigation?

--
Caroline Reynolds, P.E.

CR Solutions 512-454-8880 512-371-3151 fax
crsolns@texas.net
2611 West 49th St.
Austin, Texas 78731

C15-2610-0039

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 (6-7-10)

CASE # _____
ROW # _____

CITY OF AUSTIN
FIRST 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 March 12, 2010, I hereby apply for a hearing before the Board of Adjustment for consideration to:

____ ERECT ____ ATTACH ____ COMPLETE ____ REMODEL ☒ 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), and (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. The subject property and each of the affected properties are located in a S-F I 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.

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.

Finally, the section of fence along the boundary shared with 2710 W. 49 ½ St. is 7' in order to obstruct, or at least obscure my view of the non-permitted tower structure which the owners of that property have erected in their backyard. Pictures of this structure are enclosed with this application. "Clean hands" should be required in order for a party to lodge a complaint against another. My neighbor should not be enabled to construct

unsightly, dangerous-looking, un-permitted structures on their property and then tell me that I should be forced to look at them. Such behavior creates a valid hardship.

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

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

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

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

PARKING: (Additional criteria for parking variances only.)

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

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

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 Bongard V. White Mail Address 4921 Bull Creek Rd
City, State & Zip Aspen CO 81731
Printed Ben White Phone 512-613-3992 Date 6-7-10

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 _____ Mail Address _____

City, State & Zip _____

Printed _____ Phone _____ Date _____

Walker, Susan

From: Tony Gregg [ttgregg@gmail.com]
Sent: Friday, May 21, 2010 10:45 AM
To: Barba, Leon; Walker, Susan
Subject: 2710 W 49 1/2 St Fence issue

Dear Mr. Barba and Ms. Walker,

I recently sent in a form supporting the variance for the fence that Ben While built along side my yard at 2712 W 49 1/2 St and also behind 2710 W. 49 1/2 St. I understand that the hearing has been postponed until June.

Ben had solicited prorata share contributions from myself and most of the other neighbors for this fence which replaced a 30 year old fence that was mostly rotten and falling down along side my yard. The height of 7 feet has enabled the small back yard of my property to have more privacy since Ben's house is two stories and can look into the yard. It would be a real hardship to have to reconstruct the fence. I hope that you will support the variance at the hearing.

If you need any other information from me, please contact me by email or at 512 547-8216.

Yours,

Tony Gregg

5/21/2010

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, May 10, 2010

☒ I am in favor
☐ I object

For Gregg & Yolanda Rojas
Your Name (please print)

2712 W 49 1/2 St Austin 78731

Your address(es) affected by this application

[Signature]
Signature

5/10/2010
Date

Daytime Telephone: 512 547-8216

Comments: The fence is white constructed

greatly enhanced the aesthetic quality

of the area.

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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- 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;
- 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
 Board of Adjustment, May 10, 2010

☒ I am in favor
☐ I object

Your Name (please print) 2035 HARRIS ST
2715 W. 49th ST

Your address(es) affected by this application

(Signature)
 Signature

Daytime Telephone: 459-5133

Comments: _____

If you use this form to comment, it may be returned to:
 City of Austin-Planning & Development Review Department/ 2nd Floor
 P. O. Box 1088
 Austin, TX 78767-8810

PUBLIC HEARING INFORMATION

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

Juanita + Michael Osborn

Your Name (please print)

☐ I am in favor
☒ I object

2706 W 49th 1/2 St. Austin Tx 78731

Your address(es) affected by this application

[Signature]

Signature

5/11/10

Date

Daytime Telephone: (415) 250-5786

Comments: Mr White's fence exceeding 6ft in height establishes a stockade effect that is inconsistent with the character of the Shoalment section of Allandale. This inner city neighborhood of homes built in the 1950s has 4ft chain link fences or 6ft. privacy fences.

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

KATHLEEN CARBONE

Your Name (please print)

2710 WEST 49th 1/2 St.

Your address(es) affected by this application

☐ I am in favor
☒ I object

Signature

Date

Daytime Telephone:

454-6571

Comments:

Entire 7' + 8' fence is not code compliant. Built without a permit, without permission of adjacent neighbors, no 2' grade, etc. The applicant's resulting unsightly compound/stockade effect is inconsistent with Allandale homes.

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P. O. Box 1088

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

Allandale Neighborhood Assn.
Your Name (please print)

☐ I am in favor
☒ I object

P.O. Box 10886, Austin 78766
Your address(es) affected by this application

Donna Beth McCormick, President 4/30/2010
Signature Date

Daytime Telephone: 512-453-2696

Comments: ANA Exec. Com. Mtg. 4/22/2010

Motion was made and passed:
to support the residents of 2710 W. 49 1/2 St.
and their opposition of a variance
to allow a 7 and 8 ft. fence at
4921 Bull Creek.

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

Randall L. Russell

Your Name (please print)

☒ I am in favor
☐ I object

2802 Winston Ct., Austin, TX 78731

Your address(es) affected by this application

Randall L. Russell 5/5/2010
Signature Date

Daytime Telephone: (512) 638-6337

Comments: I have no objection to the fence that Ben built around the perimeter of his property. The fence is well-built in terms of construction and materials and I think it adds value to the property.

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P. O. Box 1088
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Case Number: C15-2010-0039 – 4921 Bull Creek Rd

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

Lawrence R. & Betty A. House
Your Name (please print)

☐ I am in favor
☒ I object

2711 W. 49 $\frac{1}{2}$ St
Your address(es) affected by this application

Lawrence R. & Betty A. House
Signature

05-01-10
Date

Daytime Telephone: (512) 459-7852

Comments: _____

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Austin, TX 78767-8810

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Case Number: C15-2010-0039 - 4921 Bull Creek Rd
Contact: Susan Walker, (512) 974-2202
Public Hearing:
Board of Adjustment, May 10, 2010

Boyd
Joyce (please print)
7980 Finley Drive

☐ I am in favor
☒ I object

r address(es) affected by this application

~~Boyd~~
Signature
May 1, 2010
Date

Time Telephone: 512-459-6116

Comments:

See the right for more info

(id)

ou use this form to comment, it may be returned to:
y of Austin-Planning & Development Review Department/ 2nd Floor
/O Susan Walker
P.O. Box 1088
Austin, TX 78767-8810

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

Your Name (please print)

☒ I am in favor
☐ I object

2800 W. 50th Austin, TX 78731

Your address(es) affected by this application

Signature

Date

Daytime Telephone:

Comments: I am in favor Fence
Adds value. I am a real estate
appraiser and like the fence.

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C/O Susan Walker

P. O. Box 1088

Austin, TX 78767-8810

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

SARA SPEIGHTS

Your Name (please print)

2701 W. 49 1/2 St.

Your address(es) affected by this application

Sara Speights

Signature

6-1-10

Date

Daytime Telephone:

424-6842

Comments:

He did not follow the city rules. He seems to think he can manipulate city officials and do whatever he pleases.

☐ I am in favor
☒ I object

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P. O. Box 1088

Austin, TX 78767-8810

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

ROSEMARY SLACKS

Your Name (please print)

2713 W. 49th ST

Your address(es) affected by this application

Rosemary Slacks

Signature

5-6-10

Date

Daytime Telephone: 459-5193

Comments:

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Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

WESLEY G HENDERSON

Your Name (please print)

2800 WINSTON CT

AUSTIN, TX 78731

Your address(es) affected by this application

Wesley G Henderson

Signature

☒ I am in favor
☐ I object

05/05/2010

Date

Daytime Telephone: (512) 453-5143

Comments: _____

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

Contact: Susan Walker, (512) 974-2202

Public Hearing:

Board of Adjustment, May 10, 2010

JOHN K. VAN DYCK

Your Name (please print)

☐ I am in favor
☐ I object

4915 FINLEY DRIVE

Your address(es) affected by this application

John K. Van Dyck

Signature

5/4/10
Date

Daytime Telephone: 501-244-5371

Comments:

We have no interest in this case
My mother, Mary Ann Van Dyck, said
her property on Finley Drive last year.
Please remove her name from your
mailing list. Thanks,

John K. Van Dyck

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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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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, May 10, 2010

Tony Gregg & Yolanda Rojo
Your Name (please print)

☒ I am in favor
☐ I object

2712 W 49 1/2 St Austin 78731
Your address(es) affected by this application

Tony Gregg Yolanda Rojo
Signature

5/10/2010

5/10/2010
Date

Daytime Telephone: 512 547-8216

Comments: The fence Ben White constructed greatly enhanced the aesthetic quality of the area.

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

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

CASE # C15-2010-0039
ROW # 10419636

TP-0227000116

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

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

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED
INFORMATION COMPLETED.

STREET ADDRESS: 4921 Bull Creek Road, Austin, Texas 78731

LEGAL DESCRIPTION: Subdivision – William Schoenert Annex

Lot(s) A Block _____ Outlot _____ Division _____

I Benjamin T. White on behalf of myself affirm that on March 12, 2010, I

hereby apply for a hearing before the Board of Adjustment for consideration to:

____ ERECT ____ ATTACH ____ COMPLETE ____ REMODEL X MAINTAIN
the fence along the Southern boundary of my property line as presently constructed in
accordance with Building Permit Nos. 2008-051644BP and 2009-029382 BP, or
alternatively, to allow me to maintain the present height of those sections of fence along
the Southern boundary of my property adjacent to the lots commonly known as 2706,
2708 and 2712 W. 49 ½ St., and lower the height of the section of fence adjacent to 2710
W. 49 ½ St. to 6' in accordance with the terms of § 25-2-899(E). The subject property
and each of the adjacent affected properties are located in an SF-1 district.

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

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

REASONABLE USE:

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

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

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

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

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

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

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

HARDSHIP:

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

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

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

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

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

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

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

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

PARKING: (Additional criteria for parking variances only.)

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

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

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 White Phone 5124133992 Date 3-12-10

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 White Mail Address 4921 Bull Creek Rd
City, State & Zip Austin TX 78731

Printed Benjamin White Phone 5124133992 Date 3-12-10

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

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

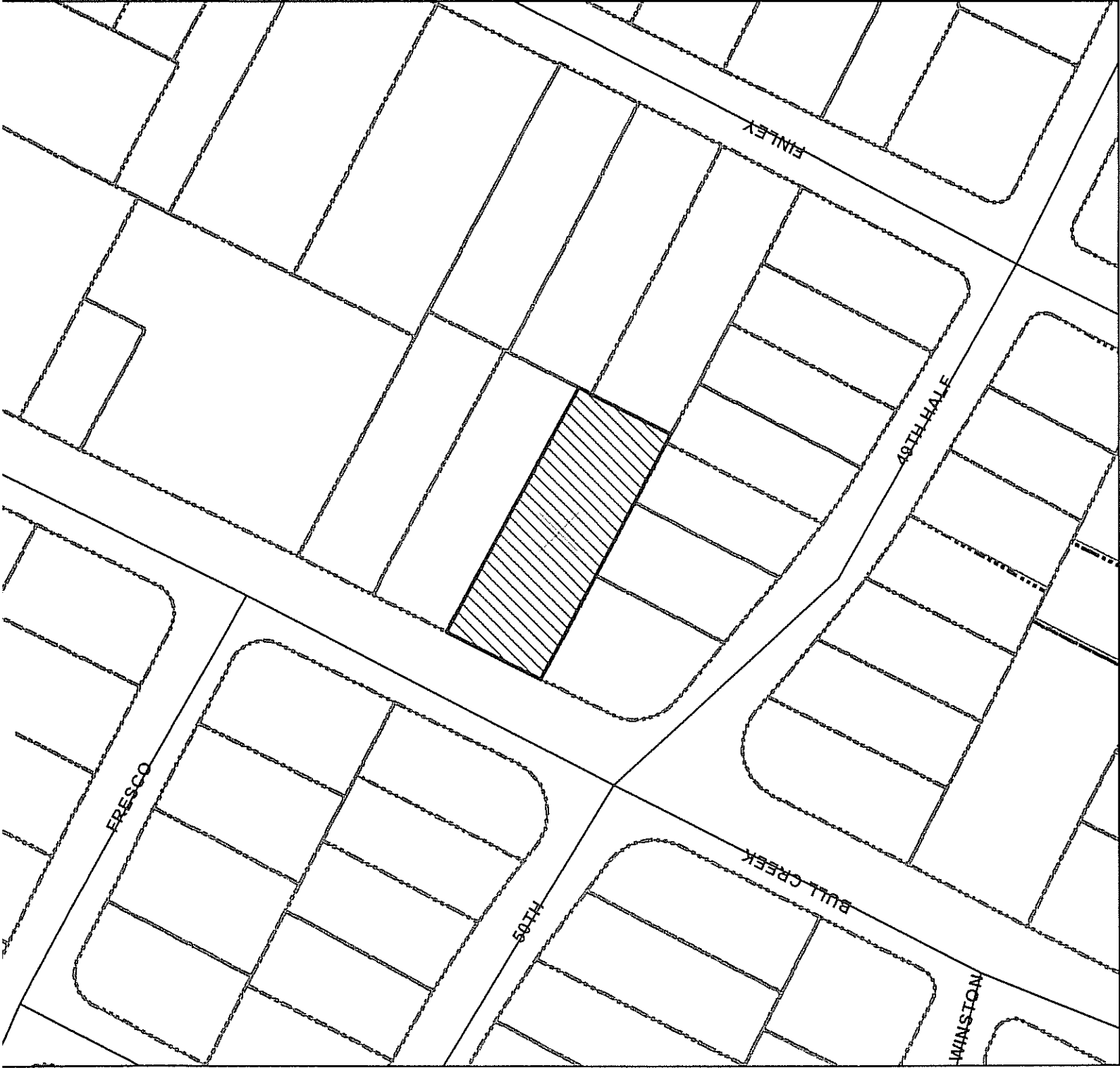
VARIANCE REQUIREMENTS:

General Requirements:

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

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

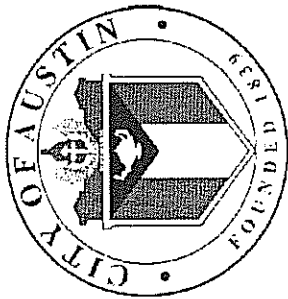
- (1) A completed application indicating all variances being requested. An application must include proposed findings that will support requested variances. The required findings must address each variance being sought.
- (2) A site plan to scale indicating present and proposed construction and location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



 **SUBJECT TRACT**
 **ZONING BOUNDARY**

Board of Adjustments

CASE#: C15-2010-0039
ADDRESS: 4921 BULL CREEK RD
GRID: J27
MANAGER: SUSAN WALKER



1" = 100'

OPERATOR: R PARKER

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