

# CITY OF AUSTIN

# Board of Adjustment/Sign Review Board

# Decision Sheet

**DATE: Monday, June 13, 2011**

**CASE NUMBER: C15-2011-0061**

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

**APPLICANT: Michael Stabenfeldt**

**OWNER: David Stojanik**

**ADDRESS: 5800 GENTLE BREEZE TER**

**VARIANCE REQUESTED:** The applicants have requested a variance to increase the maximum allowable fence height requirement of Section 25-2-899 (D) from 6 feet in height to 8 feet in height in order to erect a solid fence along the rear and side street property lines in an “SF-2”, Single-Family Residence zoning district.

**BOARD'S DECISION: POSTPONED TO JULY 11, 2011 TO PROVIDE MORE INFORMATION FOR EVERY ADDRESS ON THIS APPLICATION AND HARDSHIP FOR EVERY LOT**

### 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

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

CASE # C15-2011-0661  
ROW # 10589923

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

TP-0133070127

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

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

STREET ADDRESS: 5800, 5801, 5805, 5809, 5813, 5817, 5821, 5825, 5828, 5829  
5800 - 5829 Gentle Breeze Terrace

LEGAL DESCRIPTION: Subdivision - Lot's 11, 19, 20, 21, 22, 23, 24, 25, 26, 27

Lot(s) \_\_\_\_\_ Block A Outlot \_\_\_\_\_ Division \_\_\_\_\_

I We \_\_\_\_\_ on behalf of myself/ourselves as authorized agent for  
\_\_\_\_\_ affirm that on \_\_\_\_\_,

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

(check appropriate items below)

☒ ERECT ☐ ATTACH ☐ COMPLETE ☐ REMODEL ☐ MAINTAIN

A 1170 linear foot, 8 ft. wooden  
privacy fence on the rear property line

in a SF-2 district.  
(zoning 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.**

5800-0133070127  
5801-0128  
5805-0129  
5809-0130  
5813-0131  
5817-0132

5821-0135070901  
5825-0902  
5828-0804  
5829-0903

**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:

See Attached

**HARDSHIP:**

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

See attached

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

See attached

**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:

See attached

**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:

N/A

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

**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 Michael K. Stabenfeldt Mail Address 5828 Gentle Breeze  
City, State & Zip Austin TX 78731

Printed Michael K. Stabenfeldt Phone 512-407-8919 Date 4/22/11

**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 David Stojanik Mail Address 5801 Gentle Breeze  
City, State & Zip Austin TX 78731

Printed David Stojanik Phone 7855016 Date 4/22/11

## Mesa Valley HOA Fence/ Findings of Fact

### Reasonable Use

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

Section 25-2-899, Subsection 8 states that " A solid fence along a property line may be constructed to a maximum height of eight (8) feet if each owner of the 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 of grade of at least two feet within 50 feet of the boundary between each 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 hazardous situation, including a swimming pool.

There is a grade change in excess of 30 feet from the intersection of Cross Valley Drive to the intersection of Mesa and 2222. The steep downhill slope allows glare from street lights and vehicular headlights to shine directly into the backyards and back portion of the seven single family homes that directly abut the ROW. Mesa Drive serves as the primary ingress and egress for this densely developed section of Northwest Hills and is heavily traveled. The proposed eight (8) foot fence will reduce noise and provide additional screening and a degree privacy normally enjoyed by single family development that abuts a residential collector of this type.

To the south there is a three story office building that is the headquarters for the Texas Alcoholic Beverage Commission. This building was built in the early 1980's prior to annexation and preceded the single family development; therefore Compatibility Standards are not in force and effect. The attached aerial demonstrates the proximity of the surface parking lot to Lots 21, 20 and 19. Additionally there is a cluster of utility boxes at the corner of Lot 21 which would enable a child to climb the existing six foot fence. The location of these boxes has been noted on the plat and photographs are attached. Correspondence from the adjacent commercial property owner consenting to the construction of an eight foot fence has been included in the submittal packet as well as a list of the owners of the affected lots in the subdivision.

It wasn't until we attempted to obtain a building permit that we learned that the City of Austin is considered an adjacent property owner. We were informed we would have to obtain a variance due to City of Austin's policy. We hope the Board will take into consideration our proximity to the adjacent commercial property, the steep grade of Mesa Drive, the utility boxes and our efforts to meet the conditions set forth in the Code to obtain a permit to build the fence.

## **HARDSHIP**

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

The buildable area of the property across the street is on the "inside" curve and has no access to Mesa Drive. This development is not affected by the same conditions due to way the property slopes and the location of the buildings. Our subdivision is the only single family development in the area that abuts commercial office development. Compatibility Standards for spacing and screening required between commercial and single family development are non-existent and cannot be met.

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

This is the last single family subdivision on Mesa Drive before it intersects with 2222. Unlike the surrounding single family development we are located adjacent to a commercial office building.

## **AREA CHARACTER**

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

Unlike many of other single family developments in the area the back property line of our subdivision abuts Mesa Drive. Attached you will find photographs which illustrate that the majority of houses in the immediate area face Mesa Drive which means they are set back further from street and generally sit at a higher elevation than the roadway. Our subdivision is oriented around Quiet Breeze Terrace which is a cul-de-sac. The eight foot fence will replace the individual six foot fence line that exists today and will not alter the character of the area. The fence does not interfere with line of sight for vehicular traffic and the steep downhill grade on which the fence will be built should visually diminish the additional two feet in height. Finally, the criteria set forth in 25-2-899 acknowledge and permit the additional height provided there is sufficient change in grade, property owner consent and utility boxes which enable a child to climb a six foot fence.

We respectfully request that the Board grant our variance request.

§ 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.

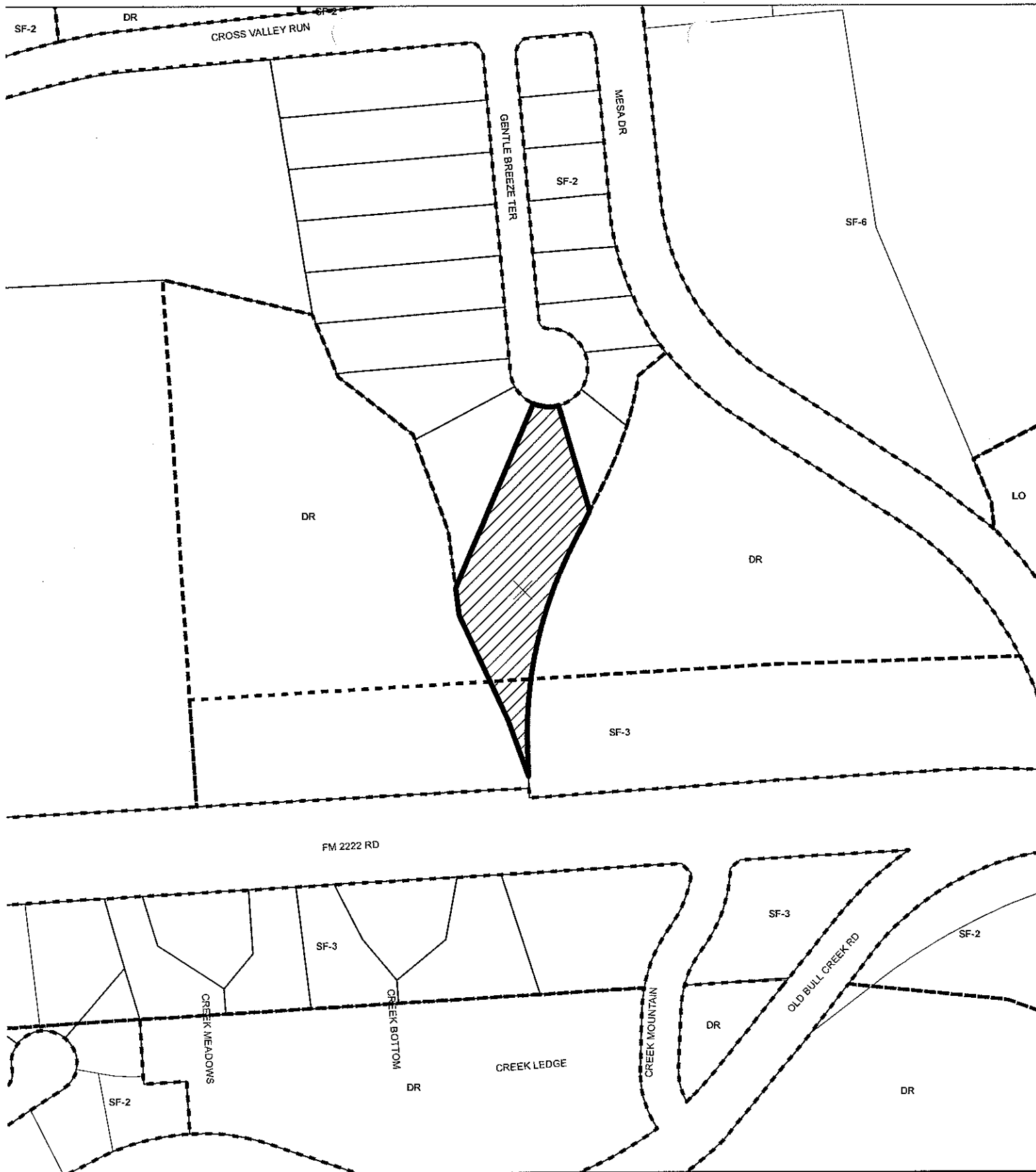
(C) The height restrictions of this section do not apply to an ornamental fence.

(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.



## BOARD OF ADJUSTMENTS

CASE#: C15-2011-0061  
 LOCATION: 5800 GENTLE BREEZE TERRACE  
 GRID: G28  
 MANAGER: S. WALKER

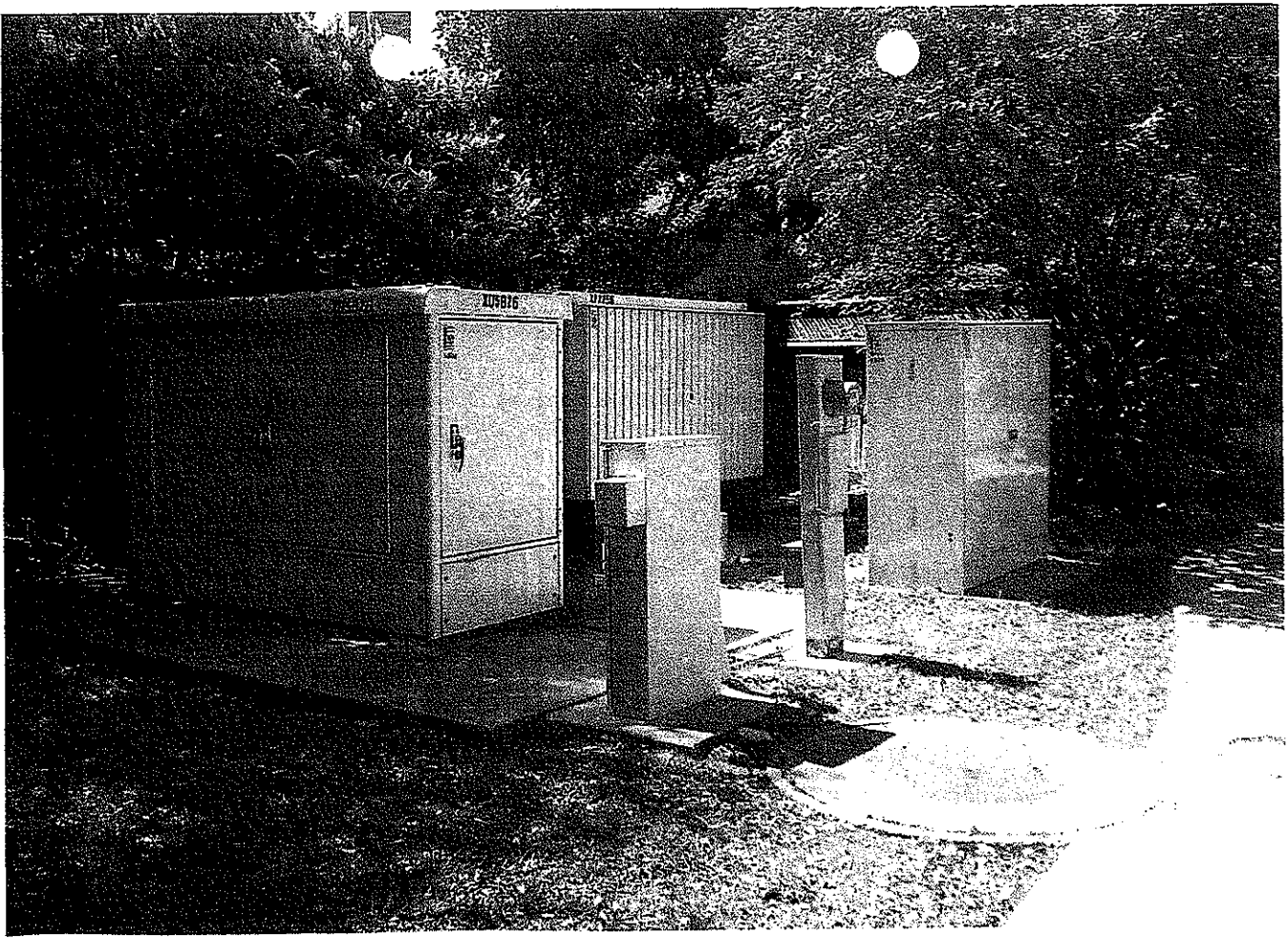


This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.





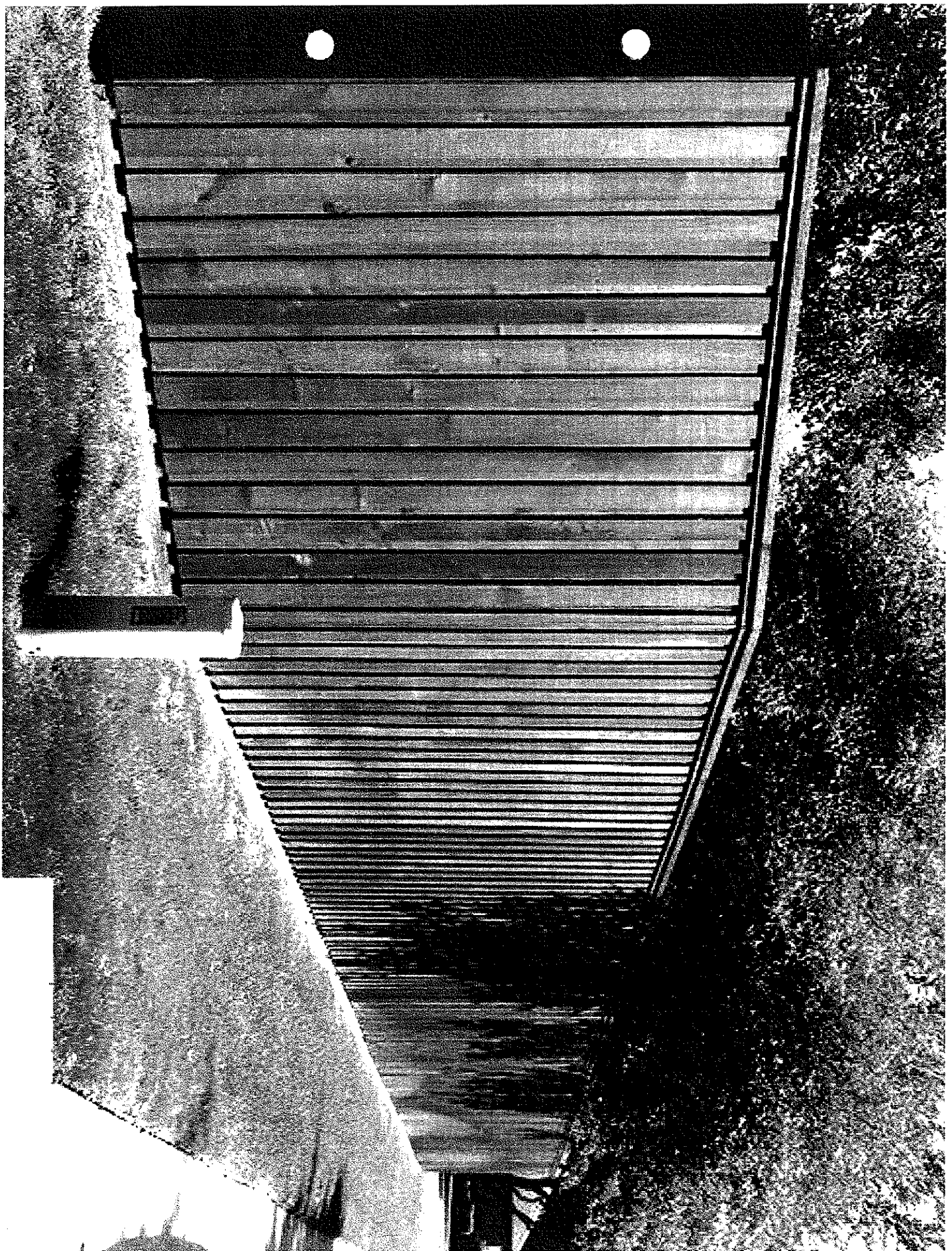




**UTILITY BOXES LOCATED ON COMMERICAL TRACT BEHIND LOT 21**







## 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](http://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: C15-2011-0061 5800,01,05,09,13,17,21,25,28,29

Gentle Breeze Terrace

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, June 13th, 2011

Lorraine Devan

Your Name (please print)

☒ I am in favor  
☐ I object

5805 Gentle Breeze Terrace, Austin TX 78731

Your address(es) affected by this application

*Lorraine Devan*

6/8/11

Signature

Date

Daytime Telephone: 512-423-8034

Comments:

I am in favor of increasing the fence height from 6 to 8 feet to increase security and privacy. Thank you!

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

City of Austin-Planning & Development Review Department/ 1st Floor

Susan Walker

P. O. Box 1088

Austin, TX 78767-1088

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Gentle Breeze Terrace

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, June 13th, 2011

*Philip A. Barger*

Your Name (please print)

☒ I am in favor  
☐ I object

5802 Gentle Breeze Terr. PM.

Your address(es) affected by this application

*Philip A. Barger* Signature *6/13/11* Date

Daytime Telephone: 512 680 9558

Comments:

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

City of Austin-Planning & Development Review Department/ 1st Floor

Susan Walker

P. O. Box 1088

Austin, TX 78767-1088

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Gentle Breeze Terrace

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, June 13th, 2011

Your Name (please print)

PAUL P. MEYER

☒ I am in favor  
☐ I object

Your address(es) affected by this application

5802 GENTLE BREEZE TERR

Philip Meyer

Signature

Date

6/13/11

Daytime Telephone:

512 680 9558

Comments:

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

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Austin, TX 78767-1088