

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

**DATE: Monday, December 12, 2011**

**CASE NUMBER: C15-2011-0136**

Y \_\_\_ Jeff Jack  
 Y \_\_\_ Michael Von Ohlen Motion to PP to Jan 9. 2011  
 Y \_\_\_ Nora Salinas  
 Y \_\_\_ Bryan King 2<sup>nd</sup> the Motion  
 Y \_\_\_ Susan Morrison  
 Y \_\_\_ Melissa Hawthorne  
 Y \_\_\_ Heidi Goebel  
 - \_\_\_ Cathy French (SRB only)

**OWNER/APPLICANT: Daniel M Perez**


**ADDRESS: 6608 MITRA DR**

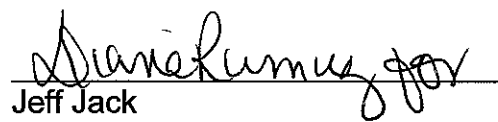
**VARIANCE REQUESTED:** The applicant has requested a variance to increase the maximum fence height requirement of Section 25-2-899 (D) from 6 feet in height to maximum of 10 feet in height for a portion of the fence in order to erect a solid fence along the south property line for a single-family residence in a "PUD", Planned Unit Development zoning district. The Land Development Code states that a solid fence constructed along property lines may not exceed an average height of six feet or a maximum height of seven feet.

**BOARD'S DECISION: POSTPONED TO January 9, 2011**

**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

  
Jeff Jack  
Chairman

**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 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: C15-2011-0136 - 6608 Mitra Drive**  
**Contact: Susan Walker, 512-974-2202**  
**Public Hearing: Board of Adjustment, December 12th, 2011**

Brian Wade

Your Name (please print)

I am in favor  
 I object

6708 Mitra Drive

Your address(es) affected by this application

*Brian Wade*  
 Signature

12/14/11  
 Date

Daytime Telephone: 512 426 4925

Comments: I support Mr. Peter's request for

a code variance at 6608 Mitra Dr, in

case # C15-2011-0136

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

City of Austin - Planning & Development Review Department  
Attn: Susan Walker  
Re: Case C15-2001-6608 Mitra Drive

Ms. Walker,

We are Gary and Natalie Gauci, 6612 Mitra Drive, Austin TX 78739. Our home is the adjacent home located next door to Daniel and Khristie Perez and share a common fence boundary with the Perez's.

The subject of the fence was brought to our attention by Mr. Perez several weeks ago on the date we first moved in to our new home. Since that time, the above named Code Variance has been requested and we have been asked to submit our approval/disapproval for the fence. At this time, we are neither in favor nor opposed to the fence.

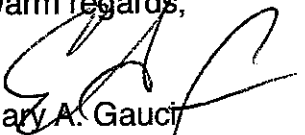
Ideally, my wife and I both agree that the most preferable solution would be one in which both homeowners find alternatives within the framework of their own said property. This would alleviate any potential for upset by either party.

If the City of Austin and the Meridian HOA agree to the Code Variance and there are no other feasible alternatives for the respective homeowners to take, we will sit down and discuss with Daniel and Khristie the fence and related options.

Our only request be that if both the City and HOA do approve this matter, that we have the first right of refusal regarding the final outcome of the fence, based on both economic and aesthetic feasibility.

If you should have any questions regarding this matter, please feel free to contact me directly.

Warm regards,



Gary A. Gauci  
512 484 3819

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

CASE # C15-2011-0136  
ROW # 10682659

TP-043157-02-19

**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: 6608 Mitra Dr. Austin, TX 78739

LEGAL DESCRIPTION: Subdivision - Meridian

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

I/We Daniel Perez on behalf of myself ourselves as authorized agent for  
\_\_\_\_\_ affirm that on October 18 2011

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

(check appropriate items below)

ERECT \_\_\_ ATTACH \_\_\_ COMPLETE \_\_\_ REMODEL \_\_\_ MAINTAIN

a new fence between two properties ( 6608 Mitra and 6612 Mitra Drive ) connecting the preexisting 6 ft fences at front and rear of backyard.

The new fence would stairstep from 6ft height of existing fence to a maximum height of 10 ft and stairstep back down to 6ft to connect to rear fence.

in a Residential 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.**

**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:

please see the attached sheet for explanations

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**HARDSHIP:**

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

please see the attached sheet for explanations

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

please see the attached sheet for explanations

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**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:

please see the attached sheet for explanations

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**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:
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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:

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3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

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

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**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  Mail Address 6608 Mitra Dr.

City, State & Zip Austin, TX 78739

Printed Daniel Perez Phone 512-431-4592 Date October 17, 2011

**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 6608 Mitra Dr

City, State & Zip Austin, TX 78739

Printed Daniel Perez Phone 512-431-4592 Date October 17, 2011

**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:**

### **REASONABLE USE:**

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

1. A 6-Foot fence height does not establish any privacy between neighbor's house and my own. The two houses have a 3+ foot slope between them and due to the neighbor's extreme house width ( 50 ft+ ) combined with the slope of the street, their foundation had to be elevated 4'4" on top of the already elevated slope. This creates a significant height difference ( 6'8" ft ) that negates any privacy, sound insulation, or other benefits a 6 or 8 foot fence would provide. Furthermore, because of the floorplan of the neighbor's house, the patios, dining areas, and living areas are direct mirrors of our own further eroding privacy as a significant number of windows as well as the patio face each other and provide unencumbered views and hearing of each others indoor and outdoor living spaces.

### **HARDSHIP:**

The hardship for which the variance is requested is unique to the property in that:

2 (a) The hardship is unique to the properties not only because of the unique topography but also because of the builder's limitation on floorplans. Due to the slope of the street, the neighbor's house floorplan had to be flipped and elevated because of foundation issues (The driveway had to be on the higher end of the street and level across). This created a scenario where the two floorplans became reflections of each other. (i.e. all windows and living areas of one house face the other). Normally a 6ft fence would solve the issue of privacy created by the floorplans, but because of the topography and steep elevation of the neighbor's house, the fence itself does not even reach the bottom of their floor to ceiling windows or patio.

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

2 (b) I have been unable to find any other houses that have a similar scenario in either height differential or floorplan situation. Furthermore, I purchased my home before any foundation was placed on the neighbor's lot and was never consulted about their choice or given any option to approve or deny. Thus, this hardship was not anticipated by me in anyway when purchasing the home. I have tried to find solutions to the issue without having to raise the fence height, but am unable to see any option that will provide the desired privacy and sound insulation. I would also like to note that my neighbors, who themselves chose the floorplan and realized the window situation and created the privacy issue, did not realize at the time how elevated the floorplan would be. It is my belief that if they had they would have made different decisions about the placement and or floorplan of their house. Given these considerations, I believe the hardship that both my neighbor and I face is quite unique as most people would never willingly or knowingly create such an unimpeded destruction of their own privacy. Also the topography of our street in particular is the steepest in the subdivision, and as their house was the last one built, their lot's topography could not be altered as other houses could.

**AREA CHARACTER:** How it affects the area?

3. Our neighbor desires the fence as much as we do, and they believe it will solve the problem just like we ourselves believe it will. It will not alter the character of their property other than to allow for privacy and will not impair the purpose of a privacy fence but will actually allow the privacy fence to provide its primary purpose namely privacy. The fence extension we desire is only between our two properties and it will only affect our neighbor and ourselves. People from the street will not be able to see the extension, and we have open green space behind us. In addition, the fence will be made from cedar and be an improvement upon the current fence. The current fence is made from substandard picket boards ( less than 3 inches in width ) and substandard fence posts ( less than 4" ). The fence builders who have seen my current fence question naming it a fence.





SUBJECT TRACT



ZONING BOUNDARY

CASE#: C15-2011-0136  
LOCATION: 6608 MITRA DRIVE



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Window  
Topography



7' window

Window

NO  
PRIVACY

7' window

4'4" foundation  
elevated

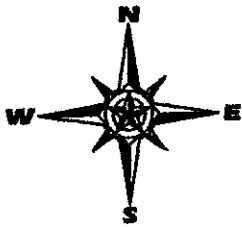
6' fence

2' slope

6612 13ft  
Mitra

9ft 6608  
Mitra

Scale 1 inch = 3 feet



SCALE: 1" = 30'

BLOCK "A"

LOT 145

**MITRA DRIVE**  
(50' P.O.W.)

N 73°44'49" E 165.00'  
5' B.L.

S 16°15'11" E 80.00'

FND CAPPED 1/2" I.R.  
N 16°15'11" W

LOT 144

LOT 259 OPEN SPACE CALLED LOT 25292

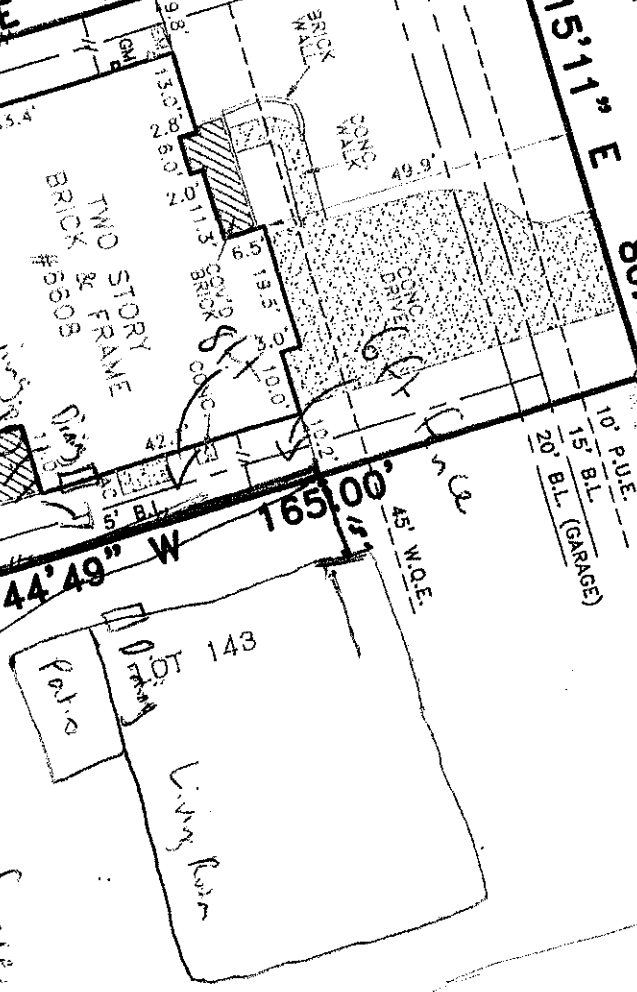
80.00' FND MAG NAIL

S 73°44'49" W 165.00'  
5' B.L.

SET CAPPED 1/2" I.R. (MINDROSE AUSTIN)  
10' P.U.E.  
15' B.L.  
20' B.L. (GARAGE)

FND CAPPED 1/2" I.R.

LOT 142  
LOT 141



*Handwritten notes:*  
100 ft fence extended height  
to 10 ft with  
staircase to 6 ft  
back yard and

**LEGEND**

- ELECTRIC BOX
- GAS METER
- ELECTRIC METER
- WATER METER
- WATER VALVE
- WROUGHT IRON FENCE
- WOOD FENCE
- WATER QUALITY EASEMENT
- BUILDING LINE
- PUBLIC UTILITY EASEMENT
- CONTROL MONUMENT

**NOTES:**

1) SUBJECT TO RESTRICTIVE COVENANTS BY DOC. NO. 200800070, DOC. NO. 2002151142, DOC. NO. 2002151193, DOC. NO. 2002151987, DOC. NO. 2002151985, DOC. NO. 2002151984, DOC. NO. 2002151986, DOC. NO. 2004180483, DOC. NO. 2006015521, AND DOC. NO. 2010018807, T.C.O.P.R.

2) BUILDING LINES SHALL CONFORM WITH THE APPROVED ZONING ORDINANCE NO. 020801-22 PER NOTE ON RECORDED PLAT.