

## Board of Adjustment STAFF REPORT

**Board of Adjustment:** 12/14/2016  
**Agenda Item:** 2016-5440

**Staff Contact:** Jeremy Frazzell  
**E-mail:** [jeremyf@pflugervilletx.gov](mailto:jeremyf@pflugervilletx.gov)  
**Phone:** 512-990-6300

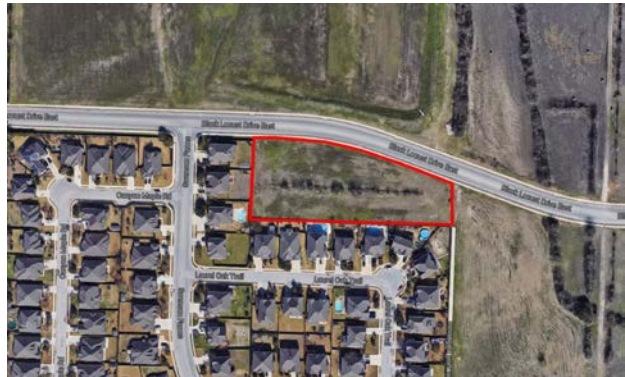
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**SUBJECT:** To receive public comment and consider a Variance to Subchapter 11.9 Fence and Wall Standards, for a proposed wood fence to be constructed on vacant property zoned Retail (R) district. (BOA1610-01)

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### LOCATION:

The subject property is located along the south side of E. Black Locust Dr., generally southeast of the Swenson Farms and E. Black Locust Dr. intersection. The south and west property lines of the subject property are adjacent to approximately ten single family homes in the Swenson Farms residential subdivision. The east property line is common with a tract owned by the Pflugerville Independent School District. The north property line is adjacent to E. Black Locust.



### HISTORY AND VARIANCE REQUEST:

The subject property was originally part of the larger tract to the north, now known as the Hill Country Bible Church tract. When Black Locust Dr. was extended eastward in 2002, the subject property became separated from the parent tract. In February 2004, the Hill Country Bible Church rezoned their entire property from Single Family Residential to Transitional Business. Over time, the nomenclature has changed to the current Retail (R) zoning district. The property has remained zoned as Retail and is vacant to date.

The applicant's home is on a lot in the Swenson Farms subdivision that abuts the subject property, with the rear of the property adjacent to the tract. The subject property became for sale and according to the applicant, they purchased the property to ensure control of the subject tract. Prior to purchase, the applicant met with the Planning Department to discuss options for using the property. Staff explained the current zoning does not permit a single family use and that any use or development of the property is required to be in compliance with the Retail zoning district, unless a rezoning to single family is proposed and ultimately approved. The applicant indicated the land would remain in its present state.

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The applicant purchased the property and initiated a follow up conversation with staff about the construction of a wood fence. He was told that a permit was not required if the fence did not exceed six feet in height. The applicant followed up with staff outside of the Planning Department to inquire if a wood fence could be constructed on the tract. That staff person did not confirm with the Unified Development Code and incorrectly advised the applicant that a wood fence was acceptable. Upon commencement of construction of the fence on the subject tract, a citizen inquiry was made to the Planning Department concerning the construction of a wood fence on the property. Staff informed Code Enforcement, who met with the applicant and requested construction to cease until a solution is reached.

The applicant immediately met with Planning Department staff and was told that the fence would need to be constructed of masonry material if an opaque fence is desired. The applicant has proposed a variance to allow for the six (6) foot tall wood board fence to be permitted on the property until such time that the property is developed.

### **CRITERIA FOR APPROVAL:**

The Board of Adjustment shall consider the following criteria in determining whether a zoning variance request is warranted:

- (a) The variance is not contrary to the public interest;
- (b) Due to special conditions, a literal enforcement of the chapter would result in an unnecessary hardship; and
- (c) By granting the variance, the spirit of the ordinance is observed and substantial justice is done.

### **UNIFIED DEVELOPMENT CODE:**

The property is currently unimproved and zoned Retail (R). Subchapter 11.9 of the Unified Development Code (UDC) identifies fences and walls shall be constructed of high quality materials, such as brick, stone, masonry fencing, stained cedar wood, and wrought iron. Table 11.9 specifies which types of fencing materials are permitted and prohibited based on the land use.

According to Table 11.9, fencing materials for commercial uses may consist of wrought iron or masonry. Wood fencing materials are permitted for single family uses but are not permitted for commercial uses, with exception that a decorative split rail fence is permitted as part of the landscaping. The property is vacant, without a use, and zoned Retail (R) district which does not permit a single family use. The commercial standards are applicable given the aforementioned status of the property, which does not allow a wood board fence.

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**Table 11.9 - Fencing Materials**

Use	Wood	Chain Link	Wrought Iron	Masonry Product
Single-Family Detached Uses <sup>(4)</sup>	Permitted	Prohibited	Permitted	Permitted
(All districts)				
Single-Family Attached Uses <sup>(1)</sup>	Permitted <sup>(2)</sup>	Prohibited	Permitted	Permitted
(SF-MU, 2-F, CL3)				
Multi-Family Uses	Prohibited with exception <sup>(3)</sup>	Prohibited	Permitted	Permitted
Commercial Uses	Prohibited with exception <sup>(3)</sup>	Prohibited	Permitted	Permitted
(All districts except Industrial)				
Industrial Uses	Prohibited	Prohibited	Permitted	Permitted
(CI or Specific Use Permit)				
Industrial Uses	Prohibited	Permitted when not visible from, and set back at least 100 feet from, a public right-of-way line	Permitted	Permitted
(LI, GI only)				

<sup>(1)</sup>Single-Family Attached (3 or more units): Perimeter fencing adjacent to a public right-of-way with a continuous height greater than three (3) feet tall shall be prohibited.

<sup>(2)</sup>Single-Family Attached (3 or more units): Use of wood shall be limited to decorative fencing not taller than four (4) feet in height.

<sup>(3)</sup>Multi-Family and Commercial Use Exception: A split rail, natural wood fence may be utilized as a decorative feature and provide separation between uses if included as part of the landscape.

<sup>(4)</sup> Decorative fencing may be utilized when not visible from or adjacent to the public right of way.

**STAFF RECOMMENDATION:**

The Retail (R) zoning district is a non-residential zoning district that is intended to be used as a transition from less intensive land uses, to more intensive land uses. Permitted uses in the Retail zoning district are listed in Subchapter 4.3 of the Unified Development Code, but do not include single family use of the property. Use of the property as storage or warehouse is also not permitted in the R district.

The applicant has identified there is no intent to use the property, however at this time the applicant's rear fence has been removed to open up to the subject property. If the subject property is enclosed and remains zoned Retail (R), it may be difficult to enforce the use of the property regardless of the material used to create the boundary. Despite the outcome of the proposed variance, the use of the Retail zoned property will remain subject to the uses listed in Subchapter 4.3 of the Unified Development Code, which does not include single family use.

Opaque fencing enclosing a Retail (R) zoned property without a primary use is not typical, but can be considered if the fencing material is compliant with the Unified Development Code. The requirement for the masonry product for opaque fencing was added into the Unified Development Code in 2009 with the intent to ensure any fencing installed on a commercial property retains a long term aesthetic with minor required maintenance.

***If the variance is approved:***

If the variance is approved, the ability for a wood board fence to be used on the property will remain in effect for perpetuity and will run with the land, despite ownership, unless specific conditions are established by the Board of Adjustment with the approval. The applicant has identified the proposed fence is intended to be temporary and a means to secure the property, and will be converted in the future if the property is developed with a commercial use.

The proposed fence is anticipated to have a generally consistent aesthetic as the surrounding neighborhood, and is expected to be maintained by the current property owner. The proposed fence material is consistent with the neighborhood fence material currently along Black Locust, and not anticipated to be contrary to public interest. If the Board is to recommend approval, the following conditions are encouraged to be included with the approval, in no specific order:

1. The wood fence shall have a maximum height of six (6) feet, with three horizontal rails per section to reduce potential picket bowing.
2. The fence shall be routinely maintained, and stained at consistent intervals with the same color as the Swenson Farms perimeter fence facing Black Locust, to establish a consistent appearance in the area.
3. A physical separation between all adjoining residential properties, including the applicant's property in the adjacent subdivision, shall be provided until such time that

the subject tract is combined with adjacent lot(s) through the subdivision and rezoning process.

4. A zoning violation of the permitted use of the property per the zoning district, shall require the full extent of the wood fence to be removed.
5. Once a use in accordance with the zoning is established on the subject property, the full extent of the wood fence shall be removed unless otherwise permitted by the use and zoning district, and only when adjusted as applicable to be in accordance with the Unified Development Code.
6. As a temporary fence, the proposed fence shall not be required to comply with Subchapter 11.9 (E) of the Unified Development Code which states: "The maximum length of a continuous, uninterrupted fence or wall plane is 100 feet. Breaks shall be provided through the use of natural stone or brick columns, landscaped areas, transparent sections or a change in material."

***If the variance is denied:***

If the request is denied, the applicant may pursue a rezoning of the property to a single family residential district in order for the property to be used for single family use. The subject property will need to be combined with the adjacent lot through the subdivision process to view the overall tract as a cohesive property. The property line of the subject tract along Black Locust could then be considered a side street yard, and allow a fence to be generally at the property line if the fencing material is compliant with the Unified Development Code.

If the rezoning to a single family residential district is pursued and approved, but without the subdivision process joining the two properties, the Black Locust side of the subject tract will be considered a front yard. Fences in front yards are restricted to a three (3) foot height. Under the current UDC requirements, for the fence to be considered a residential subdivision perimeter fence, stone or brick columns approximately 120' apart along arterial or collector streets, or public view areas would be required.

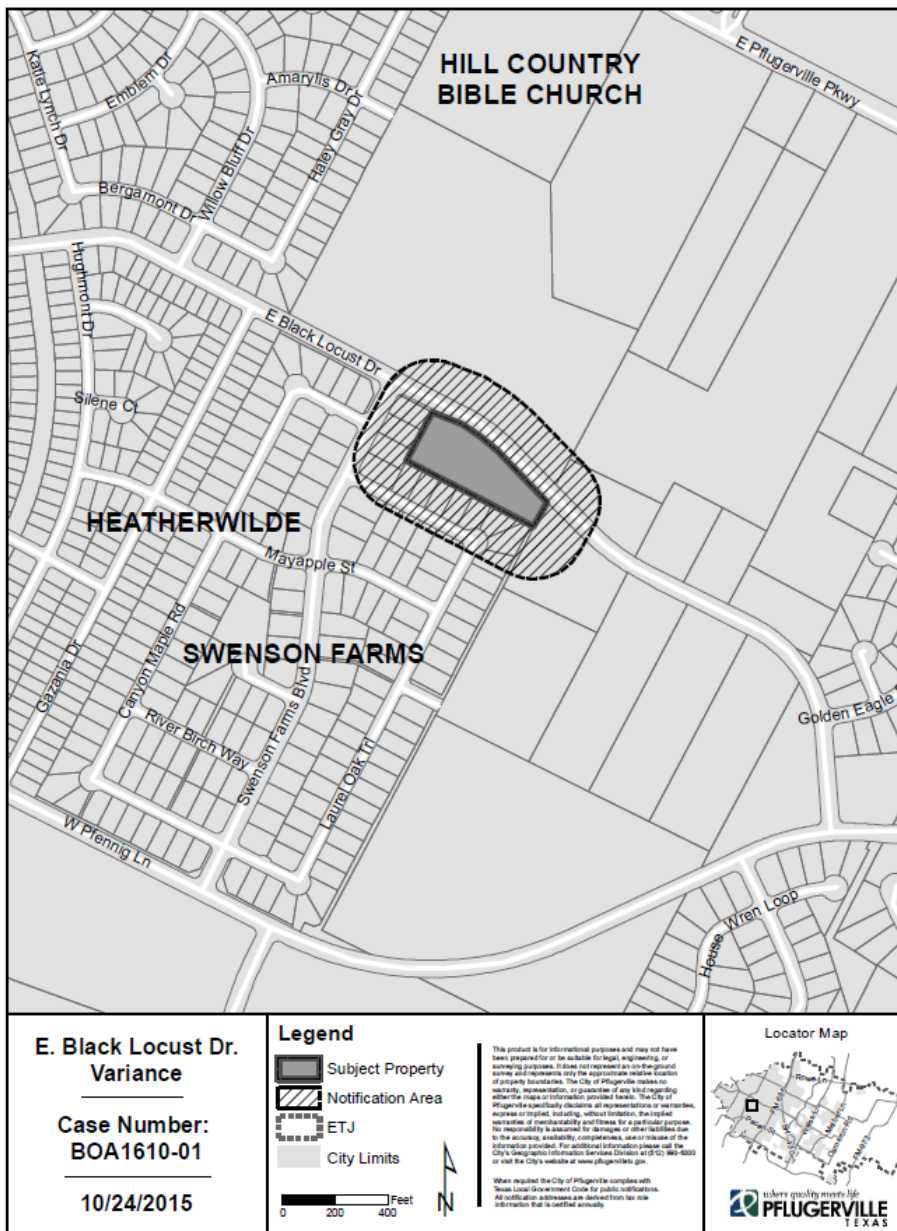
**NOTIFICATION:**

Notification was provided through publication, mail to property owners within 200-ft of the property, and signage on the property. Due to an inadvertent issue with the sign notice, re-notification was provided. Staff received a letter from a citizen expressing opposition to the variance. The opposition letter includes the following inaccurate statement: "Mr. Frazzell stated that Mr. Traugott told the City that because he wanted to leave his residential lot open to the commercial lot, and because of the swimming pool on his residential lot, his insurance company was requiring a barrier type fencing." What was explained over the phone was the applicant stated his insurance company requires the property to be fenced in. No other inquiries or letters were received.

**ATTACHMENTS:**

- Notification Map
- Images
- Applicant Letter of Request
- Letter of Opposition

**NOTIFICATION MAP:**



**IMAGES:**



North property line



East property line

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West property line and applicant lot

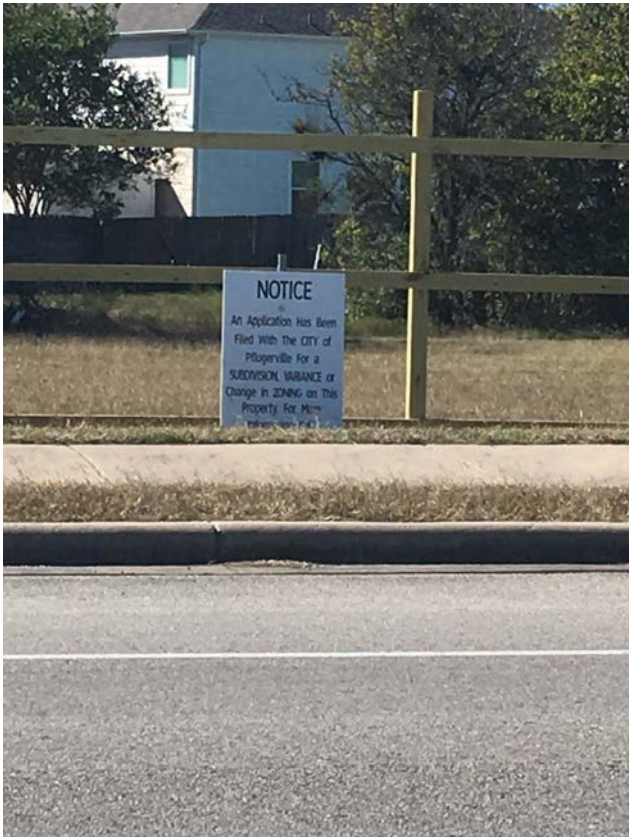


Existing and proposed fence line

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Existing fence facing Black Locust



Corrected public hearing signage  
Installed: 11/23/2016

October 23, 2016

Planning Department  
201-B East Pecan Street  
Pflugerville, TX 78691

**RE: Request for Fence Variance (Section 11.9) for ABS 53, SUR 5 BEBEE E, 2.35 Acres, Travis County, E. Locust Drive, Pflugerville, TX 78660**

Dear Planning Department:

My wife and I are respectfully requesting a variance for the above referenced vacant lot so we can continue erecting a cedar wood fence in keeping with the aesthetics of the neighborhood.

We discovered that the lot is apparently a site on a geo-caching website, so we have individuals coming onto our property constantly. People also like to walk their dogs on the land and let their children run there. For these reasons, among liability issues in general, both our insurance carrier and family lawyer have directed us to erect a fence to secure the property and mitigate any potential damages from trespassers.

The lot is zoned commercial and when it went up for sale we were concerned that a 7-11 type structure would be built behind our house, reducing our property value, increasing traffic and removing our view of natural landscaping. For this reason we purchased the lot. We have no immediate intent to develop it for commercial, or any other use for that matter. We just want to leave the lot as-is and fence it.

As such wanting to stay within the aesthetics of the neighborhood and neighboring properties I spoke with a woman at the city planning to ask if I needed permits to put up a cedar fence. She stated it that no permits are required or issued for a 6 ft. fence, but if I wished to go to a 7 ft. or 8 ft. fence than I would have to ask permission.

I also went directly to city with a copy of my survey plat to confirm in-person what I was told on the phone before proceeding, so I could move forward with peace of mind knowing that I was allowed to proceed before spending money on materials or hiring labor.

They were kind enough to direct me to David Rodriguez. So I told him of our purchase and that this land was zoned retail but wanted to put up a 6 ft. Cedar fence around property for security purposes and to blend in with neighborhood surroundings. I explained that I would be following the same lines as are currently in place with the neighboring properties, including large setbacks and access to water wastewater easements.

He said he saw no problem with that, again stated no permits are required to put up this fence, and that I was free to proceed in doing what I had requested.

With the approval over the phone and in-person, I proceeded organizing the help, acquiring materials, renting a trailer and bobcat to drill the holes on October 4. I hired two men who worked tirelessly with me for a period approximately 1 ½ weeks, all with no issues nor notification otherwise. I spent approximately \$4,000 in time and materials. I had many neighbors inquire and thank me for how nice

the fence will look while building it and that they are in support of me trying to keep neighborhood looking similar.

After setting all 84- 4x4 posts getting all 2 x 4 installed to hang all the pickets. I receive a knock on the door on approximately October 18th from Senior Officer Mike Wilson asking if I had spoken with the city regarding the fence. I told him yes and showed him David Rodriguez card who granted me permission to proceed. Officer Wilson requested that I speak with city again. So I immediately went down to city again and spoke with Jeremy who stated that even though I was told to proceed by two (2) different city officials, now he told me to stop working on the fence and put in for a variance before continuing.

I would ask that the Board of Adjustment allow me to complete the cedar fencing to enclose the yard.

This fence is meant to be a temporary structure for safety and liability purposes only; if in the future we decide to develop this land into a retail environment we will be more than happy to change it to whatever is the applicable standard is for whatever use it may be used for in the future.

This variance request is not contrary to the public interest because it will not be being used as a retail environment and in the meantime will be mimicking all of the adjacent fencing in the community so as to not be an eye sore or a detriment to the area.

The special conditions of this situation would cause unnecessary financial hardship to remove the \$4,000 materials already spent (plus the labor costs to remove said materials) that was purchased only **after** permission was granted by two city officials in the first place.

There would be additional financial hardship to then purchase masonry materials and pay for the installation costs a second time, because the lot has to be fenced. It would also require me to hire engineers to confirm placement of entrances, exits and come up with a plan for a retail use, which I have neither the desire nor the ability financially at this time to do even if I wanted too.

The spirit of the ordinance, as I understand it, a parcel that is being implemented for commercial purposes is to be easily identifiable from a residential tract by the fencing materials. As we are not planning to build either commercial or residential properties but just leave it vacant, allowing us to continue raising the cedar fence would keep with the look with our Swenson Farm community and allow us to secure our property.

We appreciate your consideration with this variance request. As noted by our consistent communications with your office we want to work with you without generating undue financial hardship, keeping with the look and feel of the neighborhood, and mitigating our liability.

Thank you for your time and we look forward to working with you.

Best regards,



Henry and Lisa Traugott

## Jeremy Frazzell

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**From:** Stephanie Saldana  
**Sent:** Tuesday, November 22, 2016 9:34 AM  
**To:** Jeremy Frazzell  
**Subject:** Variance for Commerical Property at Black Locust and Swenson Farms Blvd  
**Attachments:** fence2.docx; VarianceSign.jpg; VarianceSign2.jpg

We wanted to submit formal comments regarding a proposed variance for fencing materials for the following property:

RE: Request for Fence Variance (Section 11.9) for ABS 53, SUR 5 BEBEE E, 2.35 Acres, Travis County, E. Locust Drive, Pflugerville, TX 78660 by Henri and Lisa Traugott

### **We respectfully request that the variance be denied.**

We are located within 200 feet of property, the back corner of the property borders our neighbors' property, a half-lot over from us. Our concerns regarding the variance request is as follows:

1. We completely agree that a wood fence is not a suitable material for a lot commercial/retail zoning due to the constant need to repair and replace the wood pickets and posts due to rot and weather. Many in Swenson Farms lost most or part of their fences in the May 2015 storms, the Traugotts included. In fact, the rear portion of their backyard fence has yet to be replace. When I stated this concern to Mr. Traugott, concern about the need for repair and timely repair of a wood fence, he stated that 1) He knew how to build fences well, and only used the best materials 2) That his backyard fence was repaired.

The second statement I believe to be untrue. I responded that his fence obviously wasn't repaired since his backyard is currently not fenced. He indicated that it was only open because of the recent pool construction. His pool construction did not commence until late August/September of this year, and his backyard is currently and has remained unfenced, and unfenced for over a year before the pool was constructed.

2. Another concern is that the variance will remain with the property and will carry on to future land owners. The Traugotts have indicated that they have no immediate intent to develop the property. However, there is no written contract with the neighborhood or legal obligation forbidding them from developing their property at any time. They own an apartment complex in Austin, and have made a living in real estate. The property could be sold at any time to someone who wants to immediately build some type of commercial/zoning building, and the variance for the less sturdy wood fence will continue.

3. We don't believe proper notice was given. The sign that was put on the property did not provide any details of when the public hearing was taking place or who to contact with concerns. (Pictures attached taken November 18, 2016.)

4. We believe Mr. Traugott has been misleading in the presentation of his variance request in the petition he has forwarded to the neighbors. He has indicated that the City is requiring him to have a "concrete" fence. I asked him at least three times for an example of a concrete fence – to which he could not provide. He continued with his argument that a wood fence was better.

When I told him, I could not recall a “concrete” fence at any business, he insinuated that the City was picking on him by requiring a fence type no one else is required to do. I asked him if the fence around the City Water Tanks at Black Locust and Pfening was considered “concrete” since it appeared to be some type of sturdy material, not wood. Again, no response but he eventually stated that the fence was not as sturdy as I think because it was falling down in many places. (Not sure which part he was specifically referring to so I can’t refute that.)

I spoke to Mr. Jeremy Frazzell of the City of Pflugerville. He clarified that the City did not tell Mr. Traugott that a “concrete” fence was required. Mr. Frazzell and I discussed the different types of fencing currently in place at commercial properties such as wrought iron and the Hardi-plank type fence around the Water Tanks. Mr. Frazzell stated that Mr. Traugott told the City that because he wanted to leave his residential lot open to the commercial lot, and because of the swimming pool on his residential lot, his insurance company was requiring a barrier type fencing. Mr. Frazzell then indicated that he told Mr. Traugott that a barrier type fence for a commercial property had to be constructed of “masonry” material, which includes: concrete, brick, and rock.

None of the information in Mr. Traugotts petition or on-line postings reflect the distinction in requirement of “masonry”, and the different fence options which fall under the “masonry” definition, which I find misleading. The petition nor on-line postings also do not emphasize that the barrier type fence is also a requirement of the insurance company and not solely the City of Pflugerville.

(see attachment of petition and online postings)

Again, we respectfully request that the variance be denied.

Manuel and Stephanie Saldana  
1223 Swenson Farms Blvd