

Moncada Consulting

Phil Moncada

1301 S. I-H 35 Suite # 204
Austin, Texas 78741

627-8815 cell
474-4923 fax

May 16, 2011

City of Austin
Susan Walker, Case Manager
Planning and Development Review
505 Barton Springs Road
Austin, TX 78704

**RE: Request for Reconsideration of BOA denial
3107 Kleinmann Residence Site Improvements**

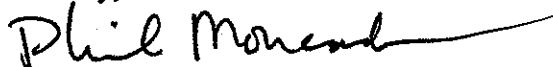
Dear Ms. Walker:

We are requesting a reconsideration from the City of Austin BOA as it relates to the denial of our fence height variance on May 9th, 2011. I have new information and believe the Board erred for the following reasons:

- Exhibit provided to Commission was incorrect and showed another lot which caused confusion.
- Daniel Llanes was allowed to speak at the hearing. Not only was he late, he failed to sign in and be sworn in as required by this Commission and its bylaws.
- The Commission allowed the residents at 3209 E Cesar Chavez to address the Commission and discuss site issues that were not germane to the discussion at hand. They spoke of outdoor decks and issues with people they did not identify. Not related to this case.
- The true hardship is that E. Cesar Chavez use to be a State Hwy. and the excessive traffic on this roadway creates a significant amount of noise. My client desire is to place a fence on the front of his lot to address the noise. We also have a topo elevation concern with the property being lower than the existing roadway. My client was also trying to shield some of the light that comes directly from across the street with the existing convenience store/ gas station.

Thank you in advance for your consideration to our request If you have any questions or need further information, please feel free to call me on my cell phone @ 512-627-8815.

Sincerely,



Phil Moncada
Agent for Project

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

DATE: Monday, May 9, 2011

CASE NUMBER: C15-2011-0023

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

APPLICANT: Phil Moncada

OWNER: Auspro Enterprises (Michael Kleinman)

ADDRESS: 3107 CESAR CHAVEZ ST

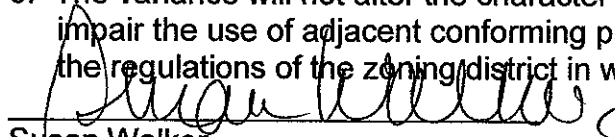
VARIANCE REQUESTED: The applicant has requested a variance to increase the maximum allowable fence height requirement of Section 25-2-899 (D) from 6 feet in height to 12 feet in height in order to erect a solid fence in a "GR-MU-CO-NP", Community Commercial – Mixed Use – Conditional Overlay – Mixed Use zoning district. The Land Development Code states that a solid fence constructed 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 MAY 9, 2011 (NOTIFICATION ERROR)
May 9, 2011 - The public hearing was closed on Board Member Jeff Jack motion to Deny (no hardship), Board Member Bryan King second on a 7-0 vote; **DENIED**

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

Walker, Susan

From: Welch, Sue
Sent: Monday, May 09, 2011 2:09 PM
To: Walker, Susan
Cc: Zavala, Cesar; Vaughn, Dennis
Subject: FW: Opposed to Brd. of Adjustment - case # C15-2011-0023

There was a typo in your email address.

SW

From: Daniel Llanes [mailto:dllanesrb@earthlink.net]
Sent: Monday, May 09, 2011 2:04 PM
To: Susan.Walker@ci.autin.tx.us; Welch, Sue
Cc: film4scott@yahoo.com; mike@bayerart.com
Subject: Opposed to Brd. of Adjustment - case # C15-2011-0023

Ms. Walker,

please accept this email as a **formal opposition by River Bluff Neighborhood Association to a variance request by Planet K, case # C15-2011-0023**. I will not be able to attend this evening's meeting, but some of our neighbors will and they will be expressing our position on the matter.

As you can see, I have cc'd Sue Welch with code compliance and am asking that she forward to you Planet K's file of non compliance.

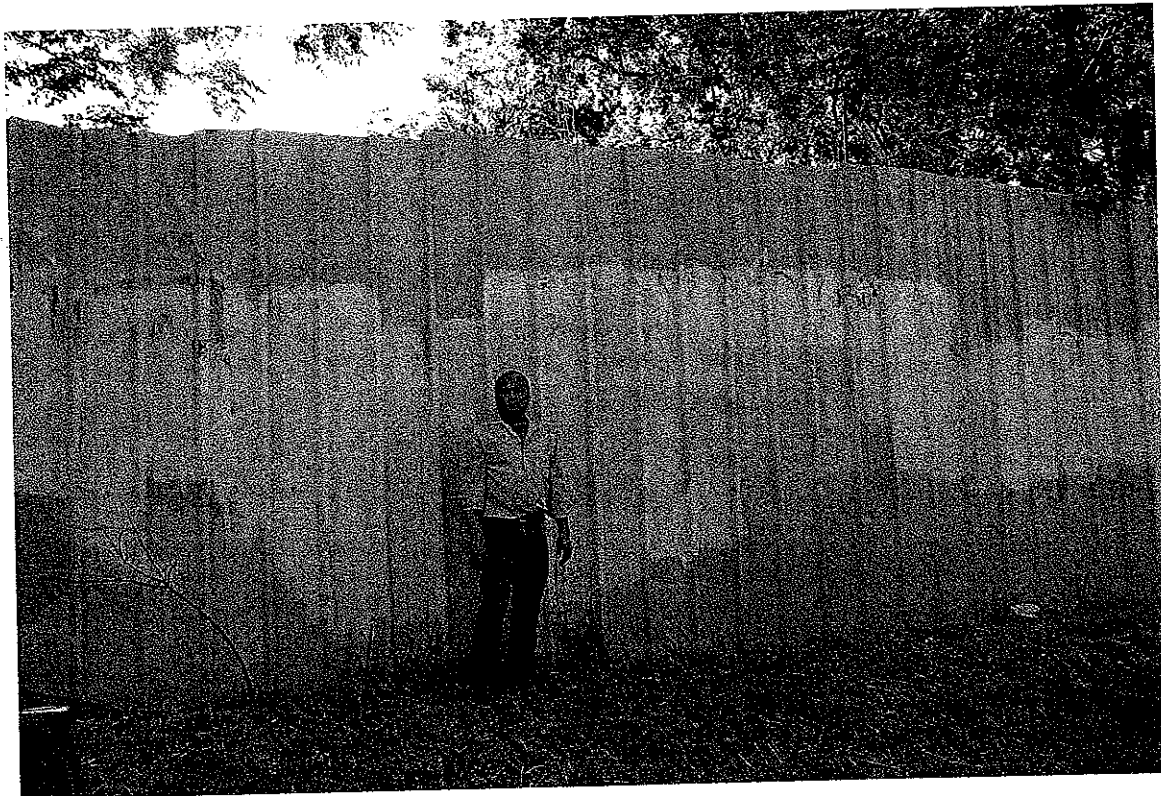
Planet K and its owners have established a history of illegal construction and operation, and have been hostile and physically threatening to some of our neighbors.

I am hopeful that you and she will communicate before this evenings meeting.

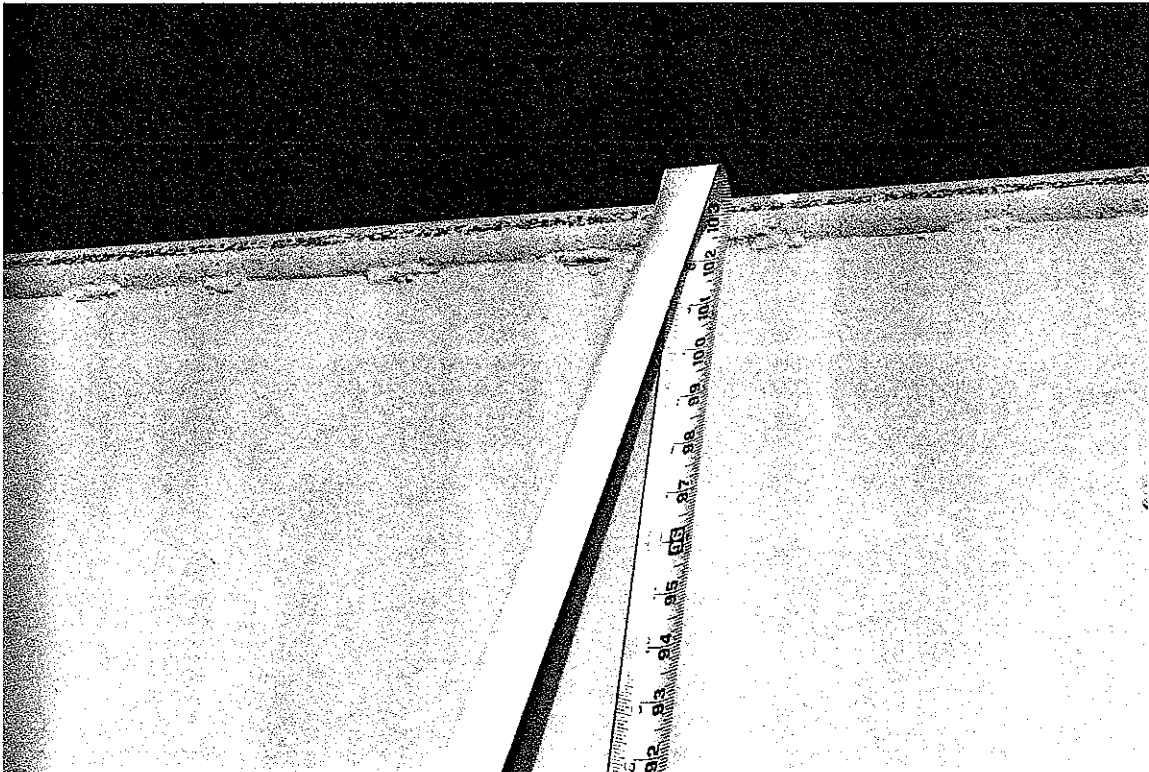
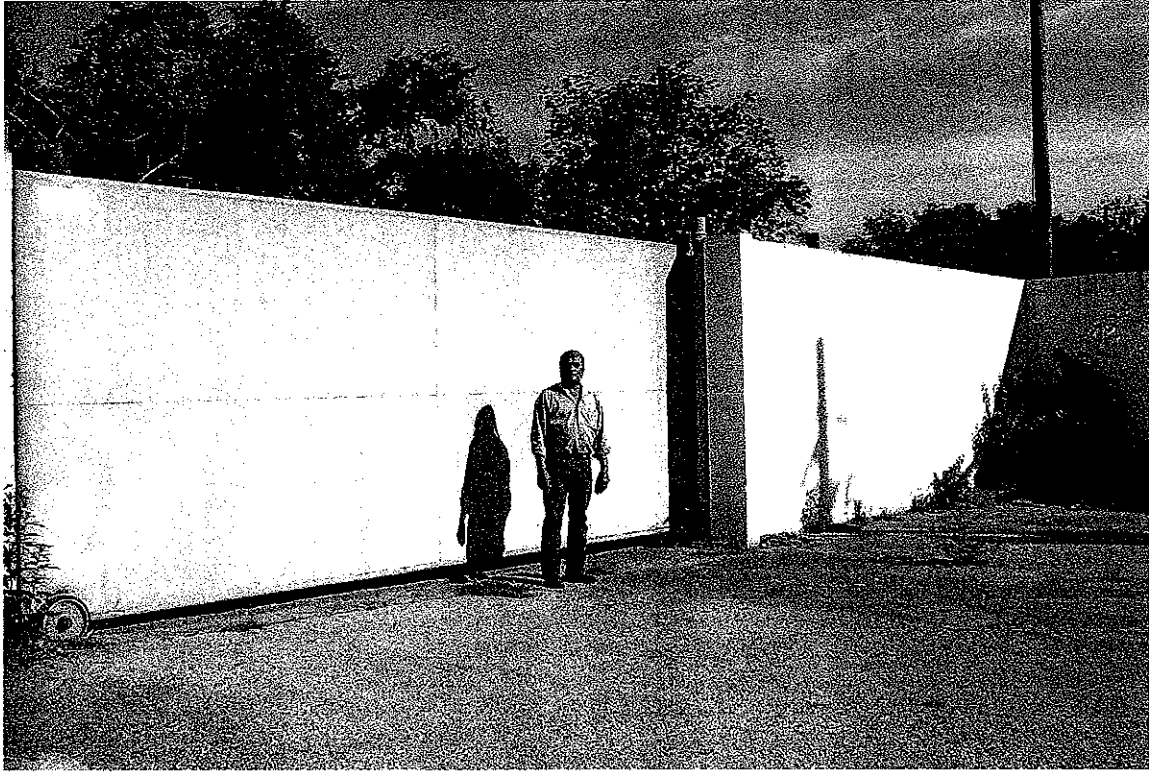
thank you,

Daniel Llanes
Chair, River Bluff Neighborhood Association
512-431-9665

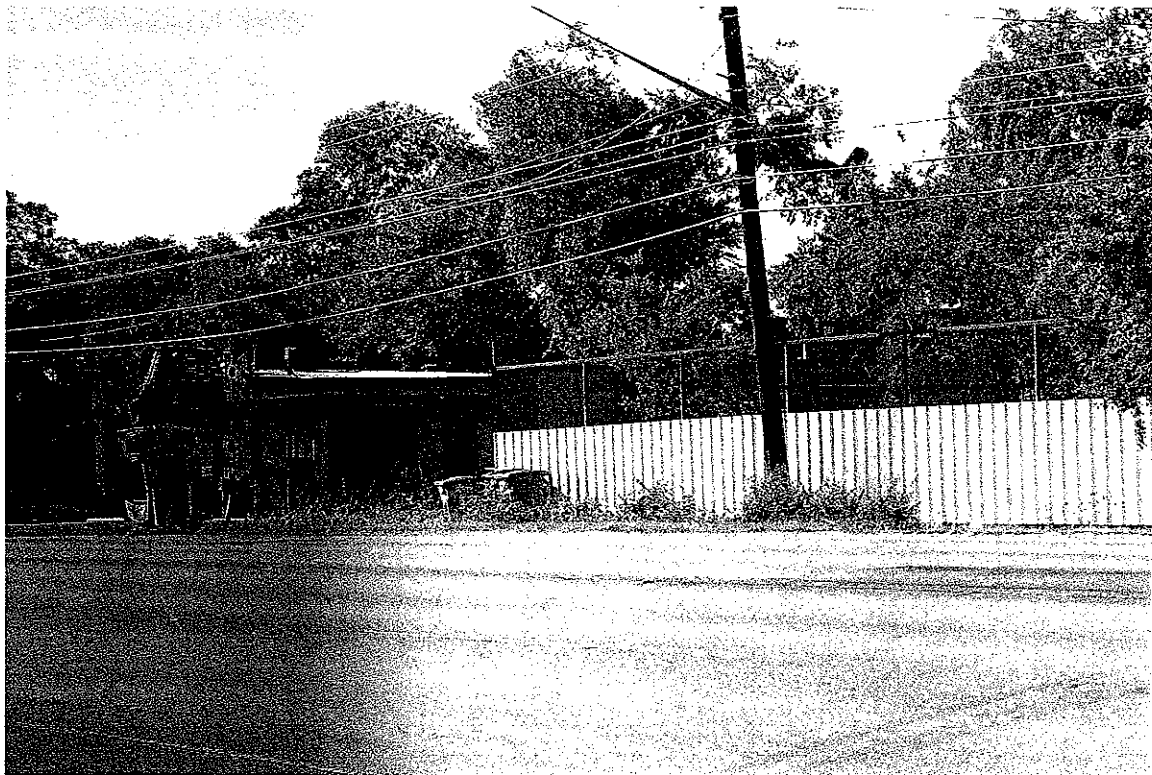
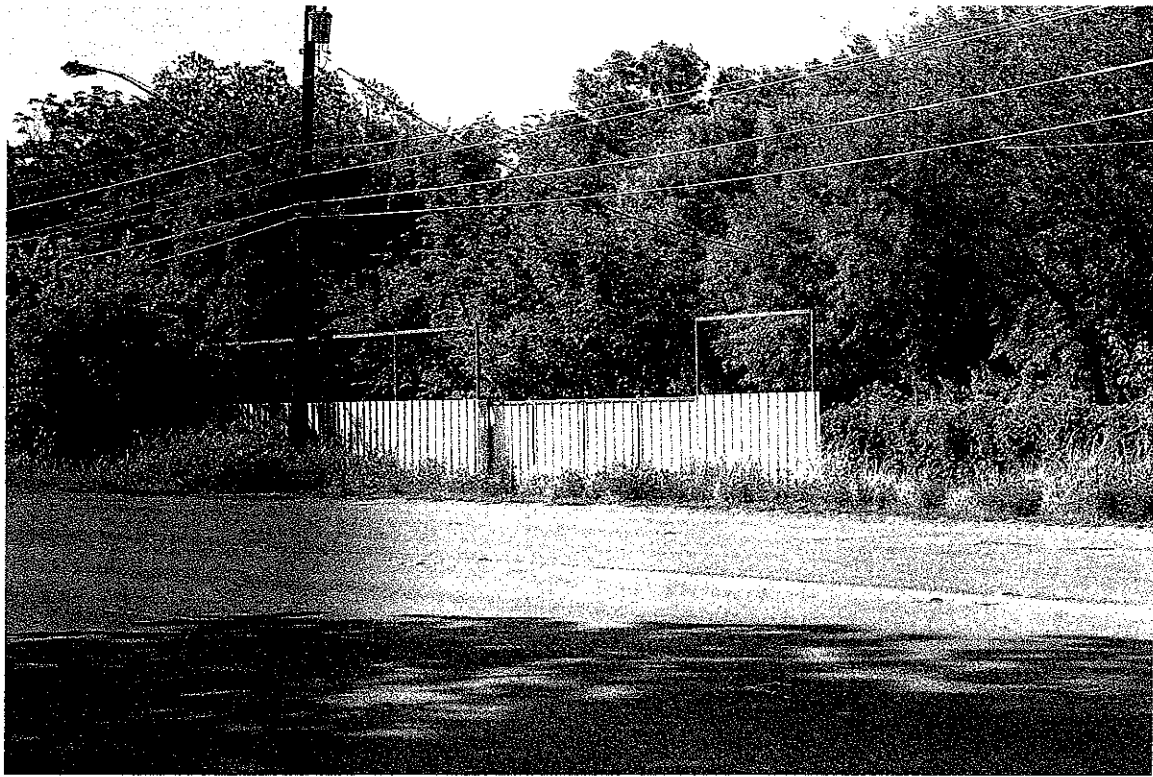
5/16/2011



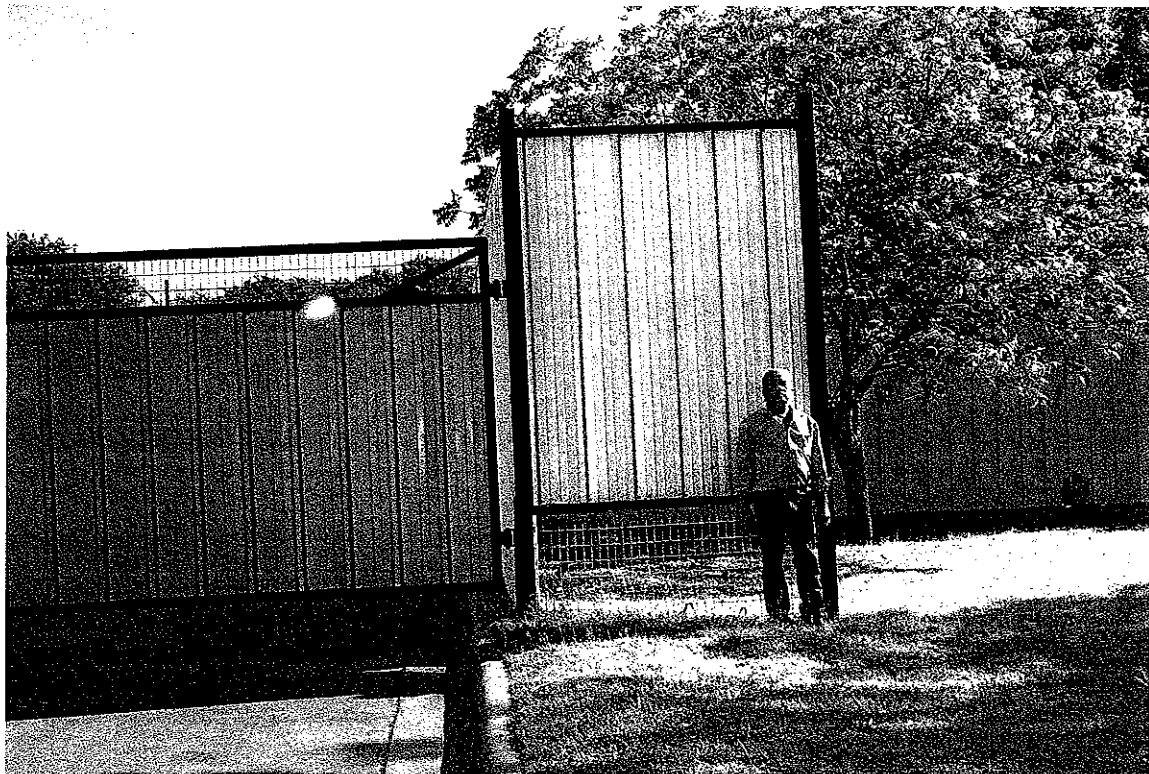
3212 E Cesar Chavez
Browning Auto Parts.
Fence on Tilley St. 10' tall



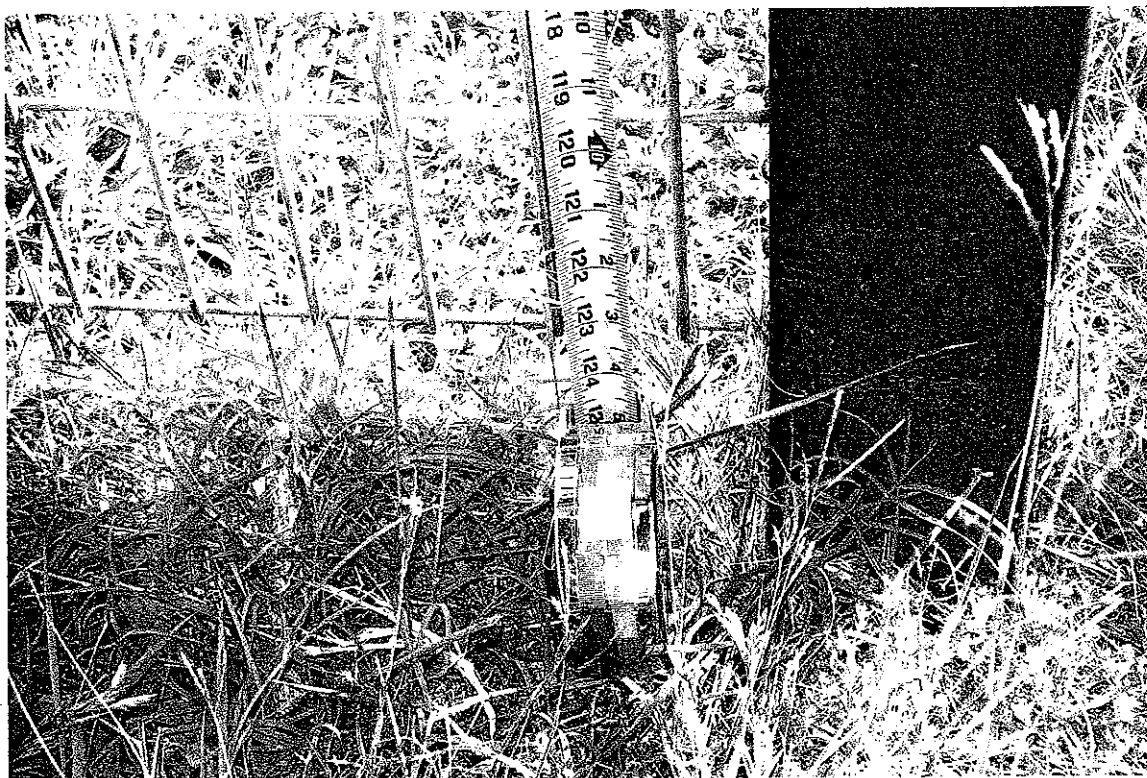
CAPITAL AUTO Air & Electric
2922 E. Cesar Chavez
104" = 8' 8"



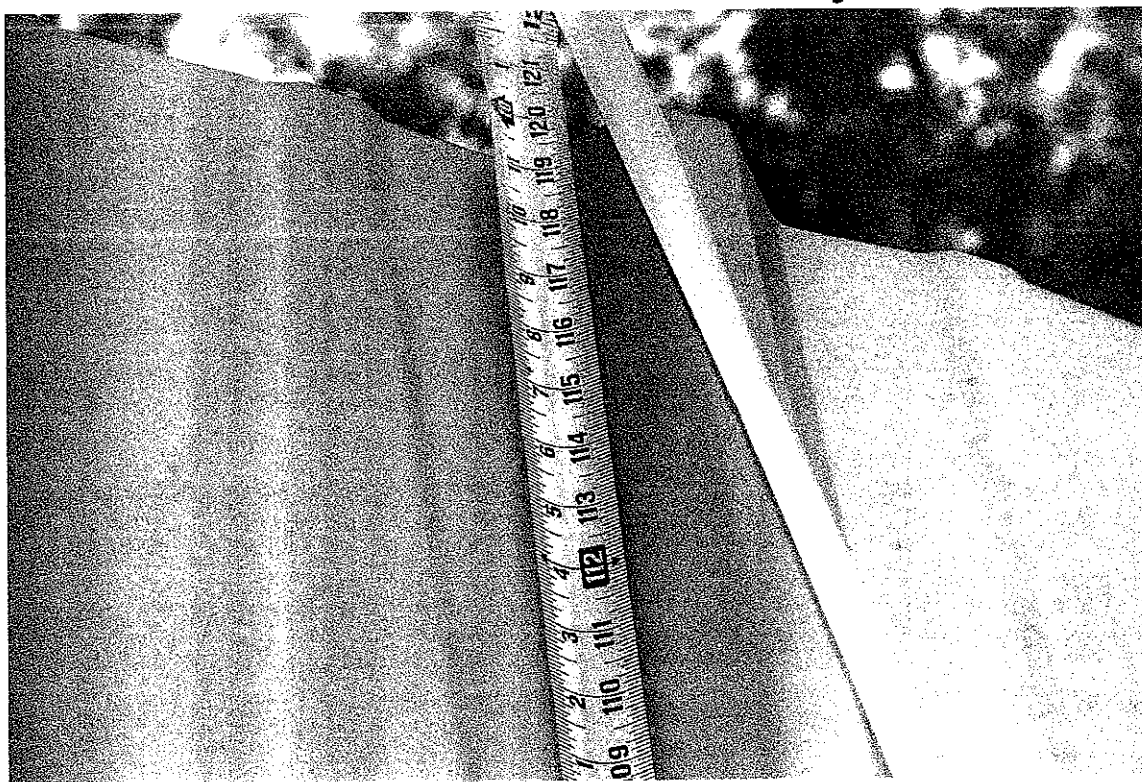
3107 E. Cesar Chavez
Fence.



3000 E. Cesar Chavez
across street fence is 10' high.



3,000 E. Ceano Chavy 10' 8"



~~3,000~~ E. Ceano Chavy 120" = 10'
3212

CITY OF AUSTIN

Board of Adjustment/Sign Review Board

CASE NUMBER: C15-2011-0023

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

APPLICANT: Phil Moncada

OWNER: Auspro Enterprises (Michael Kleinman)

ADDRESS: 3107 CESAR CHAVEZ ST

VARIANCE REQUESTED: The applicant has requested a variance to increase the maximum allowable fence height requirement of Section 25-2-899 (D) from 6 feet in height to 12 feet in height in order to erect a solid fence in a “GR-MU-CO-NP”, Community Commercial – Mixed Use – Conditional Overlay – Mixed Use zoning district. The Land Development Code states that a solid fence constructed 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 MAY 9, 2011 (NOTIFICATION ERROR)

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 inquires only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

CASE #

ROW #

C15-2011-0023

10561820

TP-0200120103

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: 3107 E Cesar Chavez

LEGAL DESCRIPTION: Subdivision – 2.953 Acres DOC # 2009049029

Lot(s) _____ Block _____ Outlot 65 Division 0

I/We Phil Moncada on behalf of myself/ourselves as
authorized agent for

_____ affirm that on February 10th
____, 2011,

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

(check appropriate items below)

X ERECT _____ ATTACH _____ COMPLETE _____ REMODEL _____ MAINTAIN

A SOLID CORRUGATED PANEL FENCE WITH A HEIGHT OF 12 FT

in a GR-MU-CO-NP _____ 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:

Owner believes the height restriction is unreasonable as it relates to the surrounding areas. He wants the fence for a sound barrier, security and to be able to use the fence for an art project mural.

HARDSHIP:

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

Mr. Kleinman purchased the property in 2009 and has cleaned up a lot of trash and debris from the site. He wants to be able to protect his residence and did not realize the amount of traffic and noise that exists along E Cesar Chavez at this location.

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

No other residential properties in area that have this amount of frontage on a collector street. The fence will provide some privacy and security as well.

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:

Other businesses in area have fences that exceed 8 ft in height, including Brooke Elementary School that has a fence that is over 10 ft in height with barbwire on top

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:

N/A

<p>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.</p>

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

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:

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

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 Phil Moncada Mail Address 1301 S. IH 35 Ste. 204
City, State & Zip Austin, TX 78741
Printed Phil Moncada Phone 512-621-8815 Date 2/9/11

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 Michael Kleinman Mail Address Box 13549 Av
City, State & Zip Austin TX 78711
Printed MICHAEL KLEINMAN Phone 512-837-5337 Date 2/9/11

owner: Auspro Enterprises, LP
Same address



SUBJECT TRACT



ZONING BOUNDARY

BOARD OF ADJUSTMENTS

CASE#: C15-2011-0023
 LOCATION: 3107 E CESAR CHAVEZ ST
 GRID: K21
 MANAGER: SUSAN 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.

LEGENDE

- [illegible]

SCALE: 1" = 30'

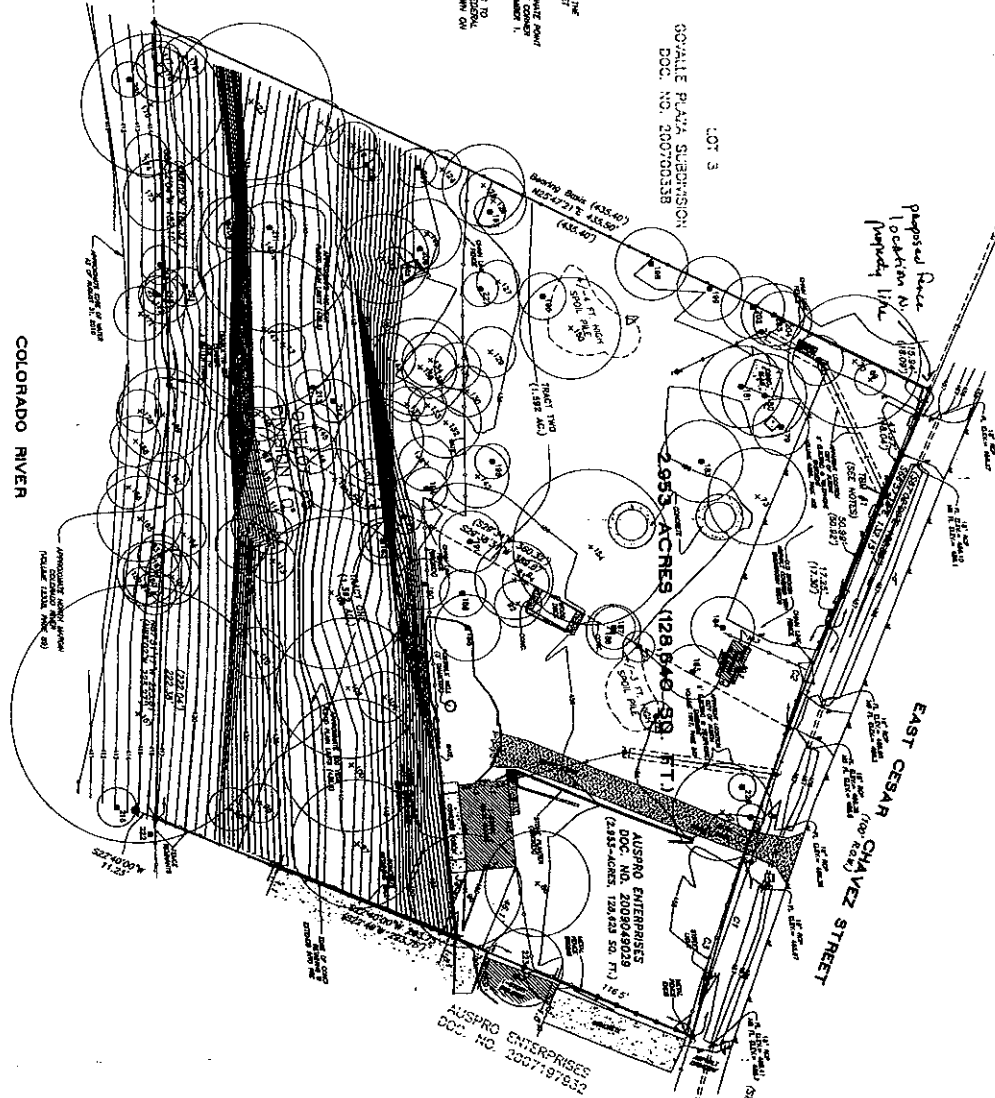
ADDRESS: 3107 E. CESAR CHAVE

3. NORTHWEST CORNER OF EAST 10th STREET AT BROADWAY A BEHOLDABLE CUP IN THE NORTHWEST CORNER OF THE

[illegible]

RECEIVED BY THE DIRECTOR, FBI, MAY 19 1964. THE FOLLOWING IS A SUMMARY OF THE INFORMATION CONTAINED IN THE ABOVE-ENTITLED MEMORANDUM: THE INFORMATION CONTAINED IN THE ABOVE-ENTITLED MEMORANDUM IS BEING FURNISHED TO YOU FOR YOUR INFORMATION. IT IS REQUESTED THAT YOU ADVISE THE DIRECTOR OF ANY DEVELOPMENTS WHICH MAY BE RECEIVED FROM THE SOURCE OF THE INFORMATION CONTAINED IN THE ABOVE-ENTITLED MEMORANDUM. THE INFORMATION CONTAINED IN THE ABOVE-ENTITLED MEMORANDUM IS BEING FURNISHED TO YOU FOR YOUR INFORMATION. IT IS REQUESTED THAT YOU ADVISE THE DIRECTOR OF ANY DEVELOPMENTS WHICH MAY BE RECEIVED FROM THE SOURCE OF THE INFORMATION CONTAINED IN THE ABOVE-ENTITLED MEMORANDUM.

SIGNED BY
 MONAHAN SURETINO, LP
Bob J. Hays
 J. L. RUSSELL
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5095
 EXPIRATION DATE, SEPTEMBER 13, 2010
 THIS SURVEY MAP IS VALID ONLY IF IT BEARS THE ORIGINAL
 SIGNATURE AND SEAL OF THE ABOVE SURVEYOR.



NUMBER	BELTA ANGLE	CHORD	DIRECTION	CHORD LENGTH	ARC LENGTH	RADIUS
C1	00°33'12"	S 70°52'48" E		321.20	321.45	1462.54
C2	02°07'15"	S 60°05'22" E		361.17	361.17	1462.54
C3	02°07'15"	S 60°07'15" E		355.84	355.84	1462.54
C4	09°33'17"	S 72°22'00" E		163.39	1462.54	1462.54
C5	-	S 72°22'00" E		163.41	1462.54	1462.54

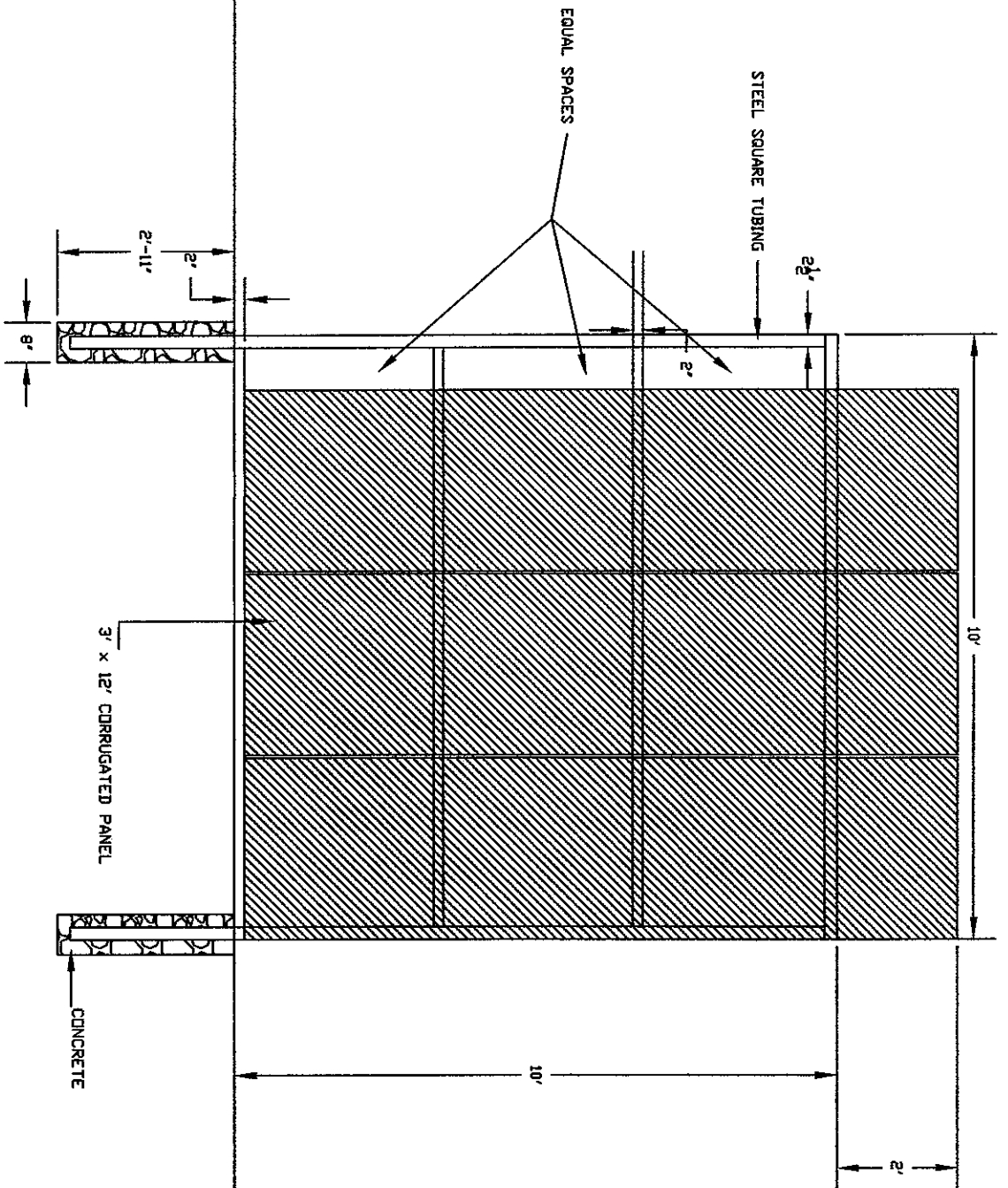
AUSPRO
DOC. NO. ENTERPRISES
2007197952

TREE LIST

[illegible][illegible]

U15-2011-0023 3107 E Cedar Street

Landmark
SURVEYING, LP
1301 S. CAPITAL OF TEXAS HWY.
BUILDING B, SUITE 315
DALLAS, TEXAS 75201
(214) 766-1100
FAX (214) 766-1101
WWW.LANDMARKSURVEYING.COM



AUTO GATE AUSTIN INC.

PAINT COLOR:

DRAWING #:

JOB NAME: PLANET K FENCE

AMOUNT:

DATE: 1-5-10