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Original Submission: March 02, 2024

**Resubmitted: October 25, 2024**

Town of Prosper Texas  
250 W First St  
Prosper TX 75078  
Attn: Chuck Ewings, Assistant Town Manager  
Daniel Salazer, Code Compliance Officer

SUBJECT: Backyard Fence Screening, Code compliance Appeal - 980 English Ivy Dr

Town of Proper Employees and Council:

I am resubmitting my appeal letter that was emailed back on March 02, 2024 regarding the screening material on the fence of my home.

**Background Information:**

- April 2015
  - Closed on the house located at 980 English Ivy Dr, Prosper TX 75078
  - Installed screening material on the metal fence to keep dogs and trash out of yard. And has since then assisted with reducing noise levels from FM 1385 and Highway 380.
- September 2015
  - Article 3.19 Fence Regulations (Ordinance 15-56) was adopted on 09/22/2015
  - Later amended: Ordinance 2021-41, Adopted 05/12/2020, Ordinance 2020-86, Adopted 11/24/2020, Ordinance 2023-66, Adopted 10/10/2023
- March 2023 –
  - Received a warning notice of screening material on my fence that was a violation of my development/homeowner association (HOA) landscaping plan citing 10.03.148
  - Multiple discussions with town staff over email and phone were held and I was advised to submit a variance request.
  - Research was completed on the road noise from the surrounding streets/highway.
- April 2023 –
  - Mr. Ewings confirmed that the Town was unable to locate a specific landscaping plan for Glenbrooke Estates
  - I submitted a request for variance approval to have screening material on my back yard fence. This was approved and I was not in violation of any “landscaping plan”.
- October 2023 –
  - Received another warning on my fence again about the screening material citing a different ordinance 3.19.001
  - Informed by Mr. Ewings that since my last correspondence that the Town Council did make amendments to the prohibition of screening materials and I was welcome to appeal
- March 2024
  - Submitted Written Appeal Letter based on the previous approval from April 2023
- October 2024
  - Received another notice citing 03.19.001 (Section 10 and/or 11)

Based on the following, I am requesting that I be allowed to leave the screening material on my back fence:

**1) Town Ordinances and Landscaping Plans**

- a. The town changed the ordinance under 09.03.001 after my initial variance request for 10.03.148 was approved.
- b. There is no landscaping plan for Glenbrooke Estates as outlined in 10.03.148. This also appears to be a requirement added or revised in the town ordinance in October 2021 which is after I purchased my home. So there is no violation for the sub-divisions plan.
- c. Screening material of some sort has been my fence since April 2015 that pre-dates any of the fencing requirements outlined in 03.19.001 that was added in September 2015. This ordinance grandfather's fences prior to this date. The screening material has been replace and/or repaired as needed during this time period.

**2) Living Screen Issues:**

- a. The Glenbrooke HOA has failed to provide an adequate "living screening" fence since moving in:
- b. Back fence line – has experience issued with the evergreens planted along the fence line to block out the noise from FM 1385 and Highway 380.
- c. Side fence – until the Fall of 2022 the screening material I had up could not be seen as there were multiple evergreen shrubs that covered this entire fence area.
- d. The Town contacted the HOA in 2023 and the landscaping along both sides of the metal fence were replaced for my house and others. This landscaping however is not thriving due to irrigation and drought conditions. And the "living" screen does not provide adequate protection from the noise and/or privacy to myself and my children.
- e. In addition, they are planting smaller plants within the allowance of the town ordinances which will take years to mature and provide a full living screen. As such, the current "living screen" does not provide adequate protection from the noise, does not restrain my dogs to the back yard, and does not provide privacy to my family.

**3) Fence Standards for homes Adjacent to the street**

- a. My residence does not back up to "open" spaces such as a hike/bike trails, parks, pond, etc.
- b. It is adjacent to two (2) main roads that are extremely busy and produce significant road noise even with the current screening materials
- c. The side of my house is adjacent to Glenbrooke Dr which is the main entrance to the development of around 400 houses.
- d. The rear of my house backs up to FM 1385 which is currently a two (2) lane rural road that is now a major road pending significant development and widening for the increased housing developments and apartments that are continually being added.
- e. As such I believe the standards under 3.19.001 (8) for Wooden Fence Standards would apply that states "lots or tracts that are adjacent to a street and visible from the street shall be constructed as board-on-board with a top rail

**4) Animal Control Requirements**

- a. Under 2.02.001 Restraint of Animals for section (b) as an owner of two (2) small dogs I am required to control and restrain them from running at-large or being at-large
- b. The screening material on the open metal fences provide protection to keep my two (2) dogs restrained within my back yard and prevent them bring running/being at large as they are small enough to fit through the bars of the metal fence.

**5) FM 1385 Issues and Concerns**

- a. 980 English Ivy Dr backs up to FM 1385 which has grown from a quiet 2 lane rural road to a major thoroughfare for multiple subdivisions, campgrounds and multiple apartment complexes that continue to grow North of the Glenbrooke development.
- b. In addition a major shopping center to include Costco, an apartment complex, and hotel are going in front of Glenbrooke Estates parallel to Highway 380 which will only increase the traffic

on FM 1385 as well as traffic cutting through the neighborhood to go from FM 1385 and Fishtrap St/First St/Gee Rd

- c. The speed limit behind the home is 50 MPH but many drive much faster and due to the growth in the area there is significant road noise from the construction vehicles.
- d. TX DOT plans to widen FM 1385 in the next several years from a two (2) lane road to a multi-lane road with 3 lanes in each direction with a divided center median. Directly behind my home in 10-20 feet will be 7 lanes of a highly traveled urban road.
- e. With the noise study completed by Texas DOT, they recommended that an 8-foot barrier wall be built behind the homes in Glenbrooke that back up to FM 1385 which has been approved by the residences.
- f. There is significant traffic that goes in and out of the neighborhood daily, 24 hours a day past the home's two (2) lower-level bedrooms, family room, office, and back yard.

**6) Noise Level from the Road**

- a. After the HOA replaced the dead trees behind the home, the owner downloaded the app produced by the CDC and the National Institute for Occupational Safety and Health (NIOSH) version 1.2.6.42 to measure the sound noise around the property.
- b. Some measurements were taken inside the home as well as on the back porch.
- c. Most of the sound LAeq (average or equivalent sound level), Max level, and LCpeak (peak level) during these brief recordings exceed the 67 dB and exceeds the residential decibel level for exterior sound as noted in IAW 23 CFR 772.
- d. Mesh screen fences and living landscaping barriers are insufficient to address the sound as a hard structure is the only approved material to dampen the sound.

Date/End Time	Length	Location	LAeq	Max Level	LCPeak
03/29 11:23 AM	1 Hour 11 Mins	Outside Back Porch	64.9 dB	83.6 dB	104.0 dB
03/29 11:51 AM	0 Hour 25 Mins	Inside Family Room	46.6 dB	72.5 dB	98.5 dB
03/29 8:30 PM	0 Hour 2 Mins	Outside Back Porch	79.1 dB	102.0 dB	132.0 dB
03/29 11:05 PM	2 Hours 18 Min	Inside Family Room	54.0 dB	92.5 dB	121.3 dB
03/30 8:05 AM	0 Hour 59 Mins	Outside Back Porch	64.9 dB	95.2 dB	119.5 dB
03/31 12:39 PM	6 Hours 15 Min	Outside Back Porch	74.5 dB	101.8 dB	124.5 dB
04/03 11:33 PM	1 Hour 41 Mins	Outside Back Porch	54.0 dB	97.6 dB	123.2 dB
04/06 8:05 PM	0 Hour 2 Mins	Outside Back Porch	76.8 dB	93.1 dB	106.7 dB
04/08 6:13 PM	0 Hour 2 Mins	Outside Back Porch	71.4 dB	78.5 dB	90.2 dB

**7) Right to Privacy**

- a. Under the US Constitution and the Bill of Rights, all US Citizens are guaranteed under the Fourth Amendment to reasonable privacy.
- b. The US Supreme Court in Katz v. United States created the [Reasonable Expectation of Privacy Test](#) in Justice Harlan II's decision. In the decision, the Justice states that if both requirements of the test have not been met, then the Government has violated an individual's right to privacy. The two-part test:
  - i. The individual has exhibited an actual (subjective) expectation of privacy.
  - ii. The expectation is one that society is prepared to recognize as reasonable.
- c. The back yard of a residence is considered part of the home of a private citizen. As such this area shall be protected from the plain view doctrine as it is not an open field but private property.
- d. The homeowner has the responsibility to create their own privacy. As such the suggested use of ornamental fencing and plants is an unreasonable suggestion due to the visibility into one's private property and the lack of privacy provided by landscaping.

- e. Landscaping takes a long time to mature and is impacted by the weather and are not a permanent for of security. It is also unreasonably expensive to the typical homeowner to create sufficient privacy.

**8) Disabled Resident**

- a. The owner has a disabled 4-year-old Autistic son who requires significant support to complete daily tasks and has high sensory needs.
- b. Due to the noise and lack of privacy, the disabled 4-year-old was unable to play in his own backyard when the Town required the mesh screen to be removed previously and after the HOA removed the dead landscaping.
- c. This caused significantly more road noise in the back yard that flowed into the living spaces in the home. This greatly impacted the disabled child's sleep was caused a detriment to the entire family with sleep exhaustion and undue stress.
- d. The return of the mesh fencing and limited living screen installed by the HOA plus thick curtains purchased and installed in the home has reduced the noise but still much improvement is needed which is expected when TX DOT installs the masonry based sound barrier wall in the next couple of years.

Therefore the owner of the home is requesting that the previously approved variance be honored.

- 1) Mesh Screen on the back fence line along with the HOA's plan to correct the landscaping (currently additional living space is on hold while we wait on TX DOT's plans for the masonry barrier as some existing living space will need to be removed.
- 2) Bamboo fencing along the side fence that is adjacent to Glenbrooke Dr. Currently being repaired due to the recent storms. New bamboo and mesh to go behind it was ordered a few weeks ago.
- 3) Long-term the owner would like to build a wooden fence that goes along the property line on the south side of the home within the State and Town's Fencing Rules for Wooden Fences to provide additional barriers to the sound as well as privacy for the disabled child.

The general fencing regulations would not be violated in any way nor is the subjective "image" of Prosper impacted to these proposed variance requests. The image would be improved with owner being able to secure the privacy of her back yard. As well as protect the privacy of the family while reducing the noise nuisance from the road and traffic.

Thank you in advance for your consideration.

Respectfully

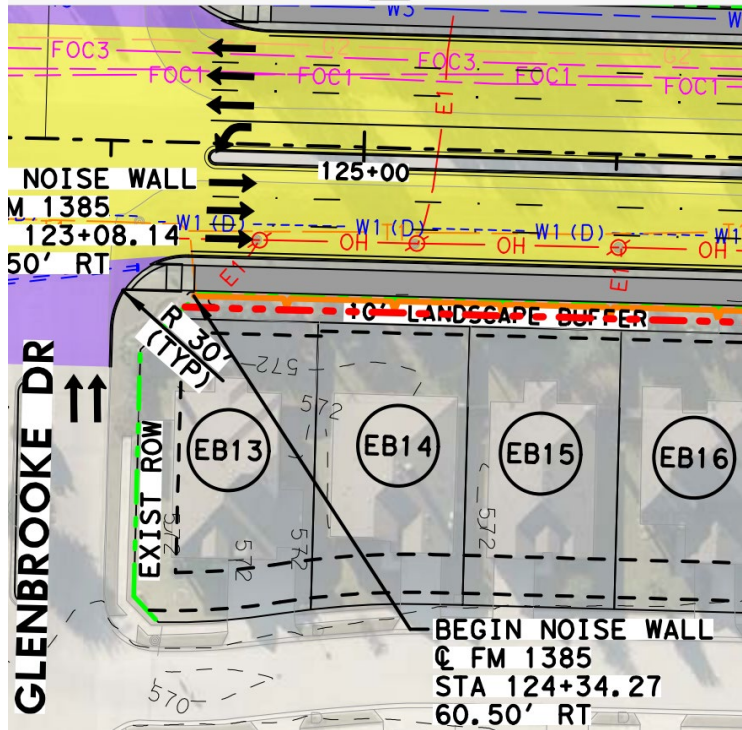


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Attachments:

- See Additional Pages for Images

TX DOT plan below which shows the road behind my residence with the plan 10-f



TX DOT Keep It Moving Design, June 2022 – Section 1 (FM 1385 from Hwy 380 to Union Park Blvd) - [Schematic Roll 1 - From US 380 to North of Union Park Boulevard.pdf \(keepitmovingdallas.com\)](#)

Dead Landscaping that the Glenbrooke HOA removed in the Fall of 2022 due to being severely impacted by drought:





Current Fencing with Bamboo Screen on South Fence along Glenbrooke Dr



Current Fencing with Mesh Screen on West Fence along FM 1385.

