



**ITEM FOR ENVIRONMENTAL BOARD AGENDA**

**BOARD MEETING**

**DATE REQUESTED:** July 20, 2011

**NAME & NUMBER OF PROJECT:** Judge's Overlook - SP-2011-0051D

**NAME OF APPLICANT OR ORGANIZATION:** ATS Engineers, Inspectors, and Surveyors  
(Marc Dickey, 328-6995)

**LOCATION:** 6916 FM 2244 Rd. (Bee Caves Rd)

**PROJECT FILING DATE:** February 22, 2011

**PDR/ ENVIRONMENTAL STAFF:** Brad Jackson, 974-3410  
brad.jackson@ci.austin.tx.us

**PDR/ CASE MANAGER:** Donna Galati, 974-2733  
donna.galati@ci.austin.tx.us

**WATERSHEDS:** Bee Creek Watershed, Water Supply Rural  
Drinking Water Protection Zone

**ORDINANCE:** Comprehensive Watershed Ordinance (current Code)

**REQUEST:** Variance requests are as follows:

1. To allow cut up to a maximum of 8 feet for driveway construction. (LDC Section 25-8-341).
2. To allow fill up to a maximum of 8 feet for driveway construction. (LDC Section 25-8-342).
3. To allow up to 21% impervious cover for the site.  
[LDC Section 25-8-454(D)(1)(a)]

**STAFF RECOMMENDATION:** Recommended with conditions.

**REASONS FOR RECOMMENDATION:** Findings-of-fact have been met.





## MEMORANDUM

**TO:** Betty Baker, Chairperson  
Members of the Zoning and Platting Commission

**FROM:** Brad Jackson, Senior Environmental Reviewer  
Watershed Protection and Development Review Department

**DATE:** July 20, 2011

**SUBJECT:** Judge's Overlook (SP-2011-0051D)  
6916 FM 2244 (Bee Caves) Rd.

Variance Requests: Variance from LDC 25-8-341 and 342 to allow cut not to exceed 8 feet and fill not to exceed 8 feet for construction of a driveway. Variance from LDC 25-8-454(D)(1)(a) to allow the development to construct up to 21% of impervious cover on the site.

The applicant is proposing to construct a commercial building on approximately 1.63 acres. The variances are needed for the driveway to access the lower portion of the site where a parking area and required fire lane are located. This site is currently under a City of Austin Red-Tag for construction of a parking area without a permit and cut over 4 feet in depth. This site plan seeks to remedy that illegal site work through construction of this commercial building and associated parking in the area of the illegal cut. The applicant has also designed the site to provide access to Canon Wren for the neighborhood to take advantage of a lighted intersection on the applicant's neighboring property. This light will allow the residents and school buses visiting the Bee Creek Subdivision on Canon Wren to make left turns onto Bee Caves Road in a safer manner than the unlighted intersection at Canon Wren and Bee Caves Road.

### Description of Project Area

This 1.63 acre site (gross site area) is situated in the COA 2-mile ETJ in the Drinking Water Protection Zone. The site is located within the Bee Creek Watershed, which is classified as Water Supply Rural. Topographically, the site slopes down from RR 2244 to the northeast from an elevation of 955 feet at RR 2244 to 905 feet at the northern property boundary. The majority of slopes (75%) onsite are between 0 and 15% in grade. About 25% of the slopes onsite are between 15 and 25%. There is only about 700 square feet of slopes over 25% onsite. The prior use of the site was a single-family residence which has since been demolished.

This site plan proposes a Unified Development Agreement (UDA) with four other contiguous lots, for a total of 12.194 acres of gross site area. The net site area of the UDA is 9.724 acres, of which 2.023 acres of impervious cover is proposed, or 20.80% impervious cover for the entire development.

The proposed office building and parking areas will have 0.653 acres of impervious cover, which is 22.7% of the net site area of the 2.874 acres included in the 3 lots to be added to the existing UDA. This site is requesting a variance to LDC 25-8-454(D)(1)(a) to allow up to 21% impervious cover for development of the 3,406.4 square feet of impervious cover required for connectivity to the Bee Creek Subdivision.

Two single-family lots on Canon Wren will be allocating their development rights to this site plan through the UDA. The two lots are undeveloped and contain 1.504 acres of net site area for inclusion in the UDA. When combined with the Judge's Overlook site's 1.371 acres of net site area, there will be a total of 2.874 acres net site area added to the UDA.

### **Vegetation**

According to the Soil Survey of Travis County, the site contains Brackett soils, rolling (B1D) and Brackett soils and rock outcrop (BoF). Brackett soils are described as shallow and well drained soils that develop under a prairie of mid to tall grasses and some trees. The geology at this site is characterized by thin clay soils covering weathered limestone. The site lies within the Glen Rose formation that consists primarily of limestone, dolomite and marl. The site vegetation consists of mostly multi-stem red oaks along with some cedar, live oak, ash and juniper. The southwest portion of the site where the redtagged cut was made has been cleared of all vegetation and the ground has been mulched.

### **Critical Environmental Features**

There are no Critical Environmental Features on or within 150 feet of this site.

### **Water/Wastewater**

The project will receive water service from the Water Control and Improvement District (WCID) No. 10. Wastewater will be treated through an on-site septic tank system.

### **Variance Requests**

The variances being requested by this project are as follows:

1. **Variance from City Code Section 25-8-341 for a cut exceeding four feet but not to exceed 8 feet.**
2. **Variance from City Code Section 25-8-342 for fill exceeding four feet but not to exceed 8 feet.**
3. **Variance from City Code Section 25-8-454(D)(1)(a) to allow the development to construct up to 21% of impervious cover on the site.**

On August 18, 2010, the applicant requested a variance to LDC 25-8-341/342 and for the construction of a driveway to access portions of their site. On January 26, 2011, the applicant requested a variance to LDC 25-8-63(C)(5) to allow up to 21% impervious cover for the site.

## Recommendations

Staff recommends granting the variance requests because the findings of fact have been met.

## Conditions

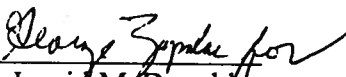
1. Areas of cut and fill will be revegetated with no greater than a 3:1 slope or be structurally contained.
2. Landscaping will be provided to ensure all parking areas are buffered from Bee Caves Road and Canon Wren Drive.
3. At least one tree will be planted within 50 feet of each uncovered parking space.
4. Implementation of an Integrated Pest Management (IPM) plan.
5. A water quality biofiltration pond will be constructed to capture and treat all new impervious cover proposed in this site plan.

If you have any questions or need additional information, please feel free to contact me at 974-3410.

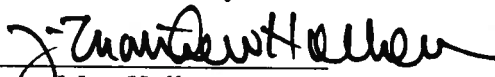


Brad Jackson, Senior Environmental Reviewer  
Planning and Development Review

Environmental Program Coordinator:

  
Ingrid McDonald

Environmental Resource Management:

  
Matt Hollon



## **Similar Cases**

**Unity Church (SP-02-0461D)** requested a variance from LDC 25-8-341/342 for cut/fill in excess of four feet. The applicant also requested a variance from LAO #84-1213L Section 13-3-651 for cut/fill in excess of four feet. The EV Board recommended approval on March 5, 2003 by a vote of 6-0-1-1, with the following conditions:

Staff conditions:

1. All disturbed areas are to be revegetated with native grass/flower seed mix.
2. All unstable cuts or fills with a gradient of more than 33 percent must be stabilized with a permanent structure.
3. This site will retain the natural Hill Country character by complying with Austin's Hill Country Roadway Ordinance.

**Additional Board Conditions (to which the applicant had agreed):**

4. The two seep-fed unclassified tributaries on the tract will be protected by continuous 50' development setbacks. In addition, septic system drain fields will be setback at least 150' from any portion of the tributaries.
5. An IPM plan will be provided for the site.

### **Munson Park Commercial Project (SP-2008-0088D)**

320 South Capital of Texas Highway (Loop 360)

Bee Creek Watershed, Water Supply Rural

- Granted cut up to a maximum of 13 feet and fill up to a maximum of 15 feet for construction of a driveway to access a commercial building.  
(LDC 25-8-341 and 342)

The EV Board recommended approval on September 17, 2008 by a vote of 7-0-1-0, with the following conditions:

1. All disturbed areas are to be revegetated with City of Austin Standard Specification 604s Seeding for Erosion Control.
2. All unstable cuts or fills with a gradient of more than 33 percent must be stabilized with a permanent structure.
3. The area extending 100 feet into the site from the Loop 360 right-of-way will retain or restore the natural Hill Country character by complying with Austin's Hill Country Roadway Ordinance.
4. The two seep-fed unclassified tributaries on the tract will be protected by continuous 50' development setbacks.
5. An IPM plan will be provided for the site.
6. The site will construct water quality facilities utilizing partial sedimentation/filtration to treat stormwater runoff.







**Planning & Development Review Department**  
**Staff Recommendations Concerning Required Findings**  
**Of Fact**

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**Application Name:** Judge's Overlook  
**Application Case No:** SP-2011-0051D

**Code Reference:** Land Development Code Section 25-8-341 Cut Requirements

**Variance Request:** To allow cut up to 8 feet for the construction of a driveway.

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A. Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.

*Yes. Considering the topography of the site, the variance is necessary to develop the property and provide connectivity with the adjacent property. Variances to change the topography are common in this area of the City of Austin.*

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

*Yes. The development is not based on a condition caused by the method chosen by the applicant to develop the property. The site's terrain slopes to such an extent that drive aisle must be recessed into the ground over 4 feet in places to provide the proper driveway slope for the safe passage of vehicles. In addition, TXDOT forbids the access of this property from FM 2244 and therefore the site must be accessed from Canon Wren.*

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

*Yes. The proposed cut is the minimum change necessary to construct the driveway considering the elevation difference between the two parking areas on the site.*

- c) Does not create a significant probability of harmful environmental consequences; and

*Yes. This variance does not create a significant probability of harmful environmental consequences. The area of illegal cut will be mostly covered by a building and parking area. This site plan will result in less of a probability of harmful*

*environmental consequences by fixing the redtag and bringing the site into compliance with city code.*

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

*Yes. The proposed project will result in water quality that is at least equal to the water quality achievable without the variance because the areas of cut and fill will be stabilized and restored. In addition, the site will be providing a biofiltration pond that will treat all newly constructed impervious cover.*

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):

1. The above criteria for granting a variance are met;  
N/A

2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and  
N/A

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.  
N/A

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Reviewer Name: Brad Jackson

Reviewer Signature:



Date: July 7, 2011

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Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (YES).



**Planning & Development Review Department  
Staff Recommendations Concerning Required Findings  
Of Fact**

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**Application Name:** Judge's Overlook  
**Application Case No:** SP-2011-0051D

**Code Reference:** Land Development Code Section 25-8-342 Fill Requirements

**Variance Request:** To allow fill up to 8 feet for the construction of a driveway.

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A. Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.

*Yes. Considering the topography of the site, the variance is necessary to develop the property and provide connectivity with the adjacent property. Variances to change the topography are common in this area of the City of Austin.*

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

*Yes. The development is not based on a condition caused by the method chosen by the applicant to develop the property. The site's terrain slopes to such an extent that a small portion, about 27 square feet, must be filled over 4 feet between the parking area and the building for pedestrian safety.*

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

*Yes. The proposed cut is the minimum change necessary to construct the driveway considering the elevation difference between the two parking areas on the site.*

- c) Does not create a significant probability of harmful environmental consequences; and

*Yes. This variance does not create a significant probability of harmful environmental consequences. The area of illegal cut will be mostly covered by a building and parking area. This site plan will result in less of a probability of harmful environmental consequences by fixing the redtag and bringing the site into compliance with city code.*

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

*Yes. The proposed project will result in water quality that is at least equal to the water quality achievable without the variance because the areas of cut and fill will be stabilized and restored. In addition, the site will be providing a biofiltration pond that will treat all newly constructed impervious cover.*

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):

4. The above criteria for granting a variance are met;

N/A

5. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and

N/A

6. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

N/A

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Reviewer Name: Brad Jackson

Reviewer Signature:



Date: July 7, 2011

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Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (YES).



**Planning & Development Review Department  
Staff Recommendations Concerning Required Findings  
Of Fact**

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|                             |   |
|-----------------------------|---|
| <b>Application Name:</b>    | <b>Judge's Overlook</b>   |
| <b>Application Case No:</b> | <b>SP-2011-0051D</b>  |
| <b>Code Reference:</b>      | <b>Land Development Code Section 25-8-454(D)(1)(a)</b>                                      |
| <b>Variance Request:</b>    | <b>To allow the development to construct up to 21% of impervious cover on the the site.</b> |

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- A. Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:
1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.  
*Yes. The additional impervious cover will actually be providing a higher level of safety to the neighboring property owners by providing a driveway from Canon Wren to the lighted intersection at the adjacent office building.*
  2. The variance:
    - a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;  
*Yes. The development is not based on a condition caused by the method chosen by the applicant to develop the property. The fact that Canon Wren does not have a light to safely turn left onto Bee Caves Road is not the fault of the applicant.*
    - b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;  
*Yes. The proposed additional impervious cover to connect Canon Wren Drive to the site is the minimum change necessary to provide access through the site for the neighborhood..*
    - c) Does not create a significant probability of harmful environmental consequences; and  
*Yes. This variance does not create a significant probability of harmful environmental consequences. The area of additional impervious cover will be treated by a biofiltration pond, in addition to all other impervious cover built under this site plan.*

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

*Yes. The proposed project will result in water quality that is at least equal to the water quality achievable without the variance because the entire proposed development will be treated by a biofiltration pond.*

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):

1. The above criteria for granting a variance are met;

N/A

2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and

N/A

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

N/A

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Reviewer Name:

Brad Jackson

Reviewer Signature:



Date: July 7, 2011

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Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (YES).



AT&T

**Engineers  
Inspectors  
& Surveyors**

FIRM REG. #2487

912 S. Capital of Tx Hwy  
Suite 450  
Austin, Texas 78746  
512.328.6995  
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Residential Engineering

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Compliance Inspectors  
& Plan Reviewers

Construction Consulting

August 18, 2010

City of Austin  
505 Barton Springs Road  
Austin, Texas 78704

**RE: Cut/Fill Variance Request  
#SP-2010-0050D (JUDGE'S OVERLOOK)**

Dear Ms. Li,

This letter is to formally request a waiver from the cut/fill requirements of the Land Development Code of the City of Austin Section 25-8-341/342 for the above mentioned project 'Judge's Overlook'. The Judge's Overlook is located at 6916 Bee Caves. It is not within a critical water quality zone or a water quality transition zone. The topography of the site slopes gradually back less than approximately 15% into the site for approximately 92 feet. It is at this point that the elevation of the site changes for a difference of 6 feet over approximately a 5 foot distance. For an additional 70 feet  $\pm$ , the site slopes less than 3%. It is in this first 170 feet that the site will be developed.

Along the southeast corner of the proposed building, an area of approximately 27 square feet will be filled more than 4 feet. Filling this area is necessary for pedestrian safety. Along the western side of the proposed building, an area of approximately 1,894 square feet (which represents less than 3% of the site) will require a cut greater than 4 feet in order to access the upper portion of the site from the driveway on Canon Wren. TxDOT requires that the site is accessed from Canon Wren.

The site will be developed in it's current configuration which has received a Land Status Determination number (C81-2009-0294). It will, however, receive the developmental allowances from lots 33 & 34 of the Bee Creek Hills Addition subdivision. These two lots have a drainage easement conveying the headwaters of a tributary of Bee Creek as well as the runoff from the lots uphill. Lots 33 & 34, through a recorded unified development document, will remain untouched by impervious cover. The Judge's Overlook site is designed to limit impervious cover to less than twenty percent (20%) and to also maintain a forty percent (40%) natural vegetative filter buffer downstream of the development portion of the lot. This will allow the property not to negatively impact the environment.

In view of this information, a waiver from the standard 4' max cut/fill requirements listed in the LDC is requested. Please contact me if you require any additional information.

Sincerely,

Marc Dickey  
Civil Department Manager



### Watershed Variances - Findings of Fact

As required in LDC Section 25-8-41, in order to grant a variance the Planning Commission must make the following findings of fact: Include an explanation with each applicable finding of fact.

Project: \_\_\_\_\_

Ordinance Standard: \_\_\_\_\_

#### JUSTIFICATION:

1. Are there special circumstances applicable to the property involved where strict application deprives such property owner of privileges or safety enjoyed by other similarly situated property with similarly timed development? YES/NO

2. Does the project demonstrate minimum departures from the terms of the ordinance necessary to avoid such deprivation of privileges enjoyed by such other property and to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences? YES/NO

3. The proposal does not provide special privileges not enjoyed by other similarly situated properties with similarly timed development, and is not based on a special or unique condition which was created as a result of the method by which a person voluntarily subdivided land. YES/NO

4. Does the proposal demonstrate water quality equal to or better than would have resulted had development proceeded without the variance? YES/NO N/A

5. For a variance from the requirements for development within the Critical Water Quality Zone and/or Water Quality Transition Zone: Does the application of restrictions leave the property owner without any reasonable, economic use of the entire property? YES/NO N/A

A variance requires all above affirmative findings with explanations/reasons.



## APPENDIX U FINDINGS OF FACT

### Watershed Variances - Findings of Fact

As required in LDC Section 13-2-505, in order to grant a variance the Planning Commission must make the following findings of fact: Include an explanation with each applicable finding of fact.

Project: Judge's OVERLOOK

Ordinance Standard: CUT & FILL OVER 4'

### JUSTIFICATION:

1. Are there special circumstances applicable to the property involved where strict application deprives such property owner of privileges or safety enjoyed by other similarly situated property with similarly timed development? YES/NO NO
2. Does the project demonstrate minimum departures from the terms of the ordinance necessary to avoid such deprivation of privileges enjoyed by such other property and to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences? YES/NO NO
3. The proposal does not provide special privileges not enjoyed by other similarly situated properties with similarly timed development, and is not based on a special or unique condition which was created as a result of the method by which a person voluntarily subdivided land. YES/NO NO
4. For a variance from the requirements for development within the Critical Water Quality Zone and/or Water Quality Transition Zone: Does the application of restrictions leave the property owner without any reasonable, economic use of the entire property? YES/NO N/A
5. For variances in the Barton Springs Zone, in addition to the above findings, the following additional finding must be included: Does the proposal demonstrate water quality equal to or better than would have resulted had development proceeded without the variance? YES/NO N/A

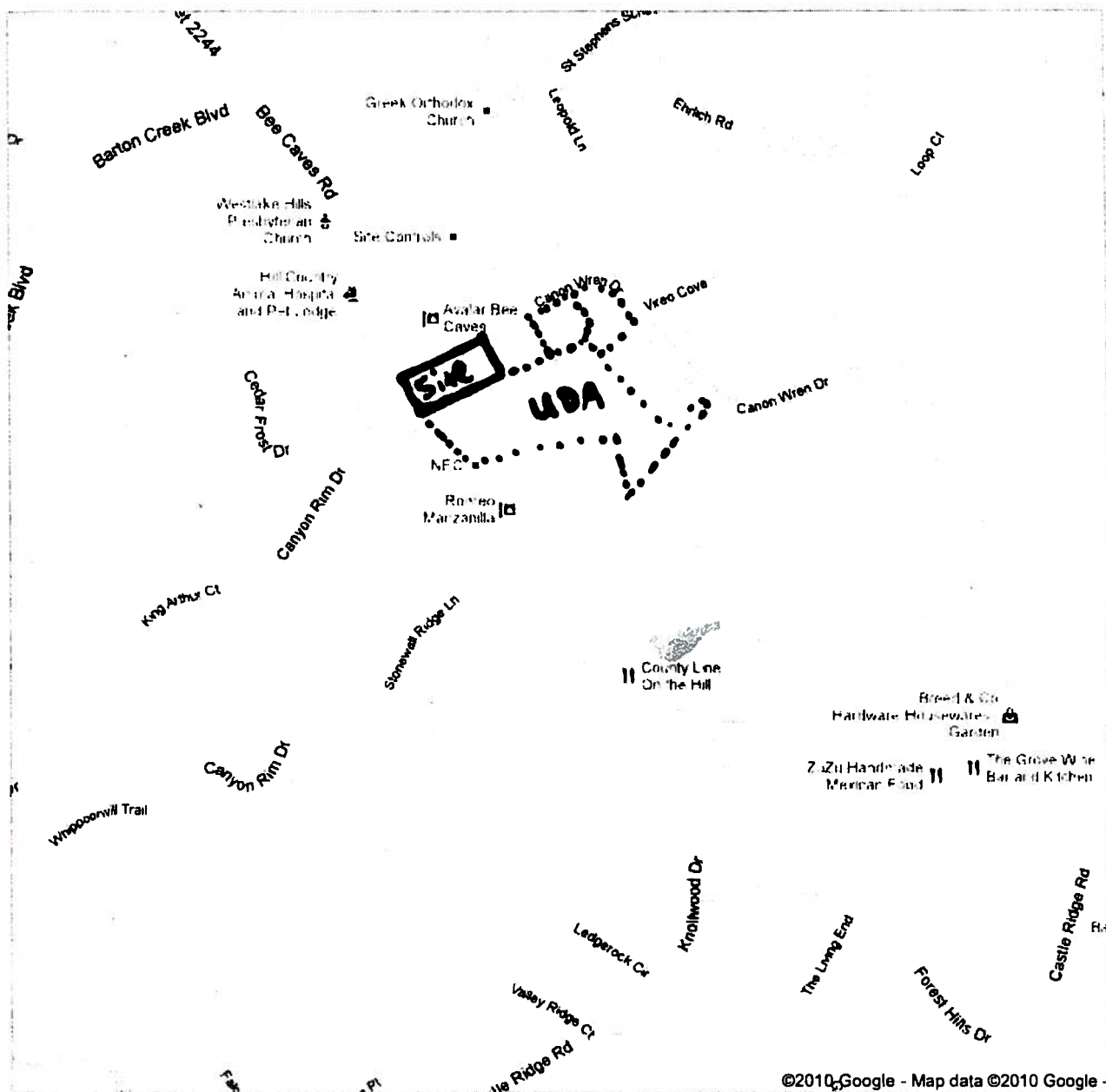
A variance requires all above affirmative findings with explanations/reasons.



**Driving Directions to Judge's Overlook  
6916 Bee Caves Road (FM 2244)**

From One Texas Center, take Barton Springs Road west towards Mopac (Loop One). Barton Springs Road will curve left under Mopac and join the Mopac access road. From the Mopac access road, take Bee Caves Road (2244) west towards Loop 360 (Capital of Texas Highway), pass under Loop 360 and continue west about a mile to the intersection of Bee Caves Road and Canon Wren. Turn right on to Canon Wren and the Judge's Overlook site is the lot on the right at the intersection of Bee Caves Road and Canon Wren.

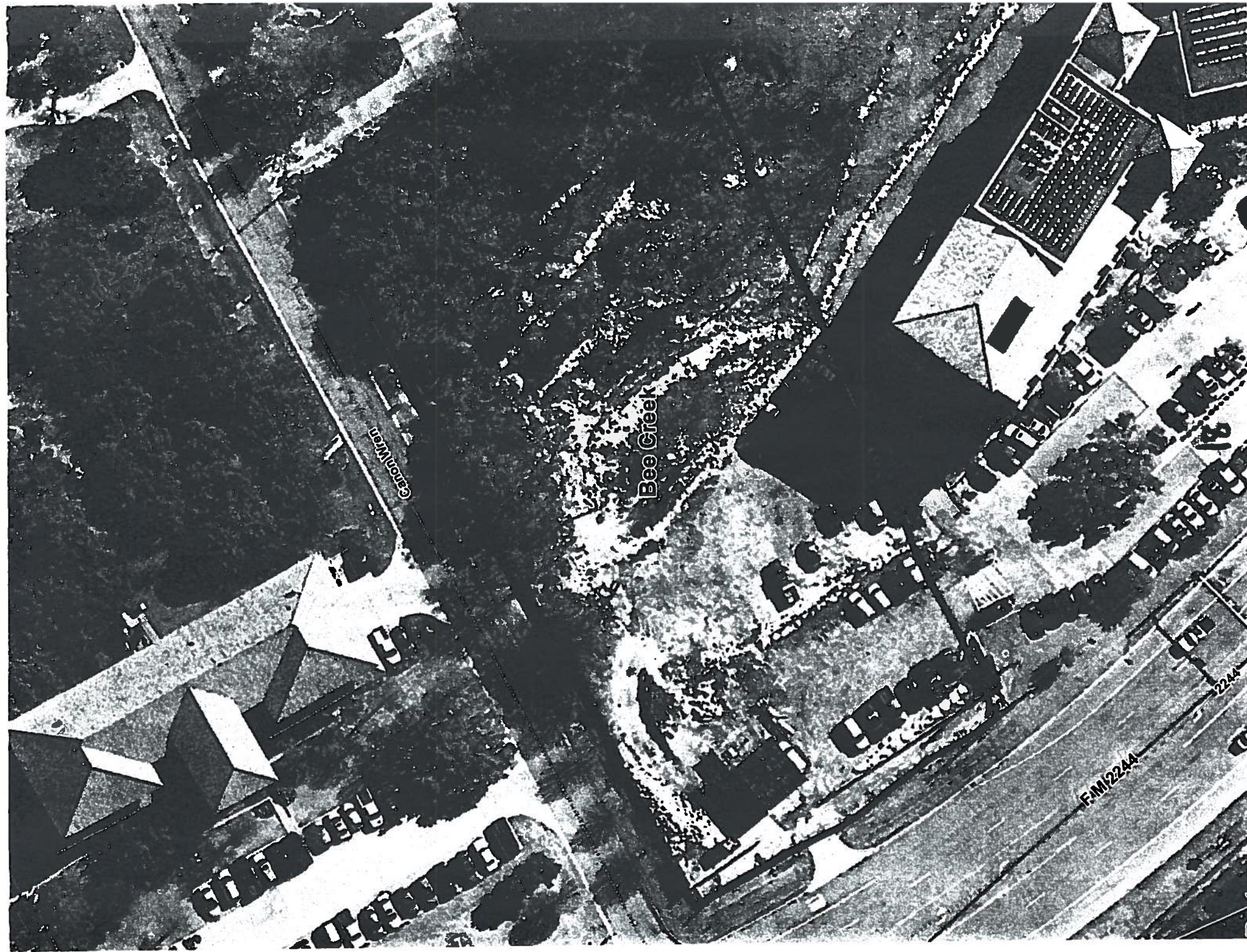
Google maps

Address 8916 Bee Caves Rd  
Austin, TX 78733Notes Judge's Overlook  
6916 Bee Caves Road







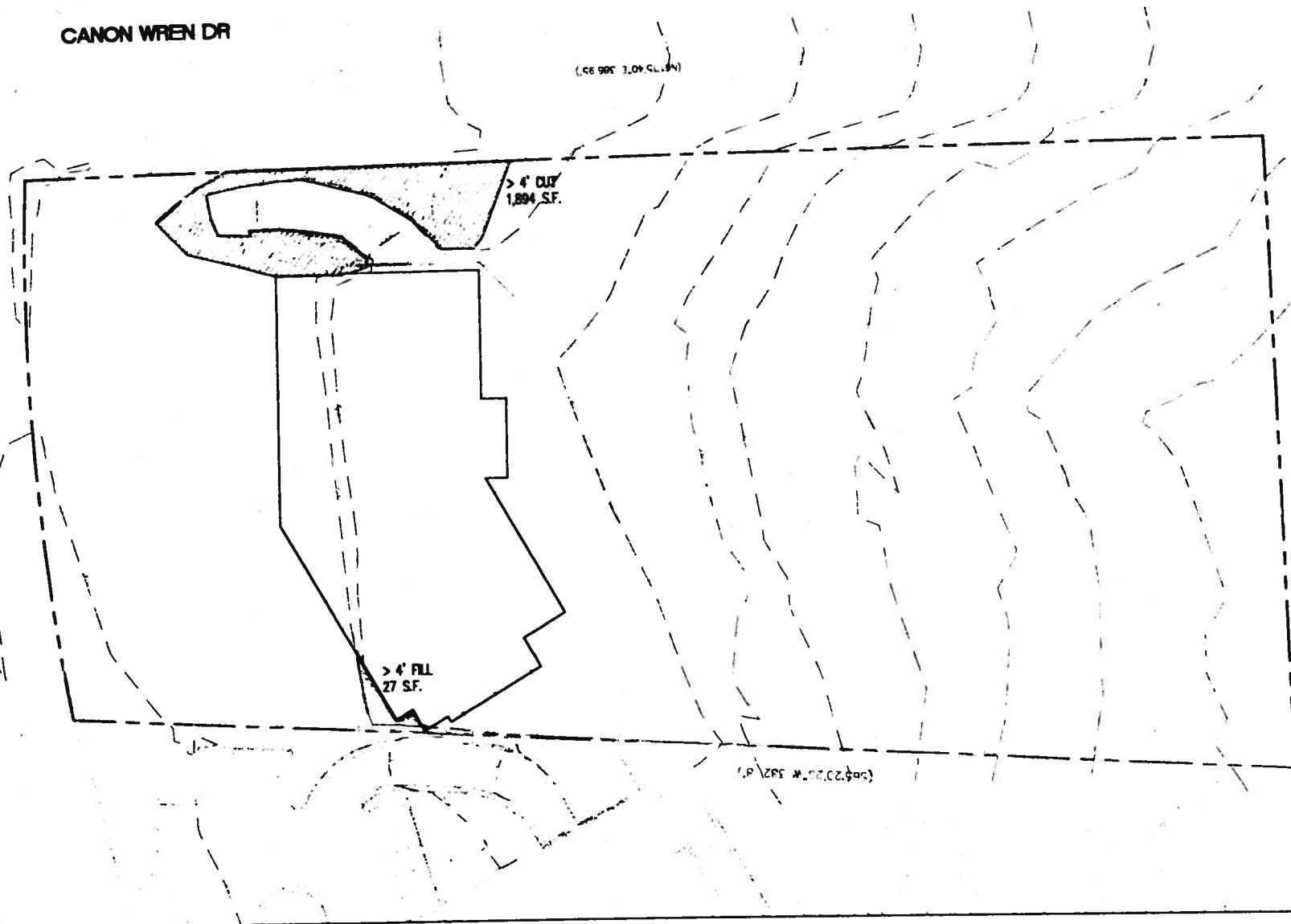




PROPOSED CUT AND FILL EXHIBIT

CANON WREN DR

BEE CAVES RD/FM 2244



10/1/2015

10

EXISTING CUT AND FILL EXHIBIT

CANON WREN DR

(.56 985 1.04 5.18N)

BEE CAVES RD/FM 2244

BUILDING  
LOCATION

> 4' CUT  
7,123 S.F.

(.8: 28P W. 52.0 2.69S)

(.6 96. 1.52 1.1...75)