

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

DATE: Monday, March 10, 2014

CASE NUMBER: C15-2014-0026

____ Jeff Jack
____ Michael Von Ohlen
____ Ricardo De Camps
____ Bryan King
____ Fred McGhee
____ Melissa Hawthorne
____ Sallie Burchett

APPLICANT: Bruce, Aupperle

OWNER: Rob, Roberts

ADDRESS: 3961 WESTLAKE DR

VARIANCE REQUESTED: Variance from Section 25-2-551 (B)(2) and (B)(5) permitting construction of a pedestrian incline elevator within the shoreline setback as a method of shoreline access in an LA - Lake Austin Zoning District.

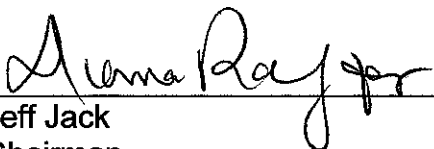
BOARD'S DECISION: The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to April 14, 2014, Board Member Michael Von Ohlen second on a 7-0 vote; POSTPONED TO APRIL 14, 2014. '

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:

Leane Heldenfels
Executive Liaison



Jeff Jack
Chairman

CITY OF AUSTIN – PLANNING AND DEVELOPMENT REVIEW DEPARTMENT
SITE PLAN APPLICATION – MASTER COMMENT REPORT



CASE NUMBER: SP-2013-0441DS
REVISION #: 00
CASE MANAGER: Christine Barton-Holmes
UPDATE: U1
PHONE #: 512-974-2788

PROJECT NAME: Pedestrian Incline Elevator for 3961 Westlake Drive
LOCATION: 3961 WESTLAKE DR BLDG BD UNIT 1

SUBMITTAL DATE: February 3, 2014
REPORT DUE DATE: February 18, 2014
FINAL REPORT DATE: February 19, 2014
1 DAY HAS BEEN ADDED TO THE UPDATE DEADLINE

STAFF REPORT:

This report includes all staff comments received to date concerning your most recent site plan submittal. The comments may include requirements, recommendations, or information. The requirements in this report must be addressed by an updated site plan submittal.

The site plan will be approved when all requirements from each review discipline have been addressed. However, until this happens, your site plan is considered disapproved. Additional comments may be generated as a result of information or design changes provided in your update.

If you have any questions, problems, concerns, or if you require additional information about this report, please do not hesitate to contact your case manager at the phone number listed above or by writing to the City of Austin, Planning and Development Review Department, P.O. Box 1088, Austin, Texas 78704.

UPDATE DEADLINE (LDC 25-5-113):

It is the responsibility of the applicant or his/her agent to update this site plan application. **The final update to clear all comments must be submitted by the update deadline, which is May 25, 2014.** Otherwise, the application will automatically be denied. If this date falls on a weekend or City of Austin holiday, the next City of Austin workday will be the deadline.

EXTENSION OF UPDATE DEADLINE (LDC 25-1-88):

You may request an extension to the update deadline by submitting a written justification to your case manager on or before the update deadline. Extensions may be granted for good cause at the Director's discretion.

UPDATE SUBMITTALS:

A formal update submittal is required. You must make an appointment with the Intake Staff (974-2689) to submit the update. Please bring a copy of this report with you upon submittal to Intake.

Please submit 3 copies of the plans and 3 copies of a letter that address each comment for distribution to the following reviewers. Clearly label information or packets with the reviewer's name that are intended for specific reviewers. No distribution is required for the Planner 1.

REVIEWERS:

Planner 1 : Rosemary Ramos
Environmental : Liz Johnston
Wetlands Biologist : Andrew Clamann
Site Plan : Christine Barton-Holmes

Environmental Review - Liz Johnston - 512-974-1218

Please be advised that additional comments may be generated as update information is reviewed. If an update has been rejected, reviewers are not able to clear comments based on phone calls, emails, or meetings, but must receive formal updates in order to confirm positive plan set changes.

- EV 1 Please submit an environmental assessment performed and documented by a qualified environmental professional as per LDC 25-8-121. Please do not provide Phase 1 environmental assessments as they do not meet the requirements specified in the LDC. [LDC 28-8-121 through 124, ECM 1.3.0]

UPDATE 1: According to ERM staff, a rimrock CEF is located on this property. Please update the plans and the EA accordingly.

- EV 2 Provide a fiscal estimate for erosion/sedimentation controls and revegetation based on Appendix S-1 of the Environmental Criteria Manual. The approved amount must be posted with the City prior to permit/site plan approval. [LDC 25-7-65, ECM 1.2.1.]

UPDATE 1: Comment pending.

EV 3-5 Cleared.

- EV 6 Please revise the proposed ESC to show the required silt fence or ESC at the spacing required per Table 1.4.5.G.1 of the ECM. The ESC should follow the contours, not run parallel to the contours.

UPDATE 1: Comment not addressed. At a minimum, show the location of the proposed tram footings with ESC downstream of each footing. Mulch log may be more appropriate than silt fence – please explore the option of mulch log rather than silt fence.

- EV 7 According to LDC 25-8-261(C) Along Lake Travis, Lake Austin, or Town Lake:

(1) a boat dock, pier, wharf, or marina and necessary access and appurtenances, is permitted in a critical water quality zone;

It appears that this property already has "necessary access" in the form of a series of pathways and switchbacks. Therefore the proposed tram appears to be over-and-above what is necessary. If the tram is to be constructed, please restore and revegetate the pathway.

UPDATE 1: Not addressed. If the existing access is not removed, please request an environmental variance to 25-8-261(C) for development not allowed in a Critical Water Quality Zone. FYI: It appears that there may also be the need for an environmental variance to reduce the buffer to a Critical Environmental Feature buffer. See EV 10 below.

- EV 8 Please provide revegetation information for the disturbed area within the CWQZ per standard 609.S.

UPDATE 1: Comment not addressed.

- EV 9 According to 25-2-551(B) (5) "Development is prohibited on land with a gradient that exceeds 35 percent. This prohibition does not apply to a fence, driveway, road or utility that cannot be reasonably placed elsewhere, or a pedestrian facility." A tram is a mechanized elevator and is therefore not a pedestrian facility. It appears a BoA variance will be required to allow the proposed tram.

UPDATE 1: Comment pending result of BoA variance.

NEW COMMENTS UPDATE 1

- EV 10 Variance package preparation will not take place until review is substantially complete and the variance fee is paid. In addition, the project cannot go before the Environmental Board until the project is substantially compliant with Code.
- EV 11 A Land Use Commission variance from LDC 25-8-261(C) and 25-8-281(C)(1)(a) is required. Please submit a request letter that identifies the scope of each variance and addresses the findings of fact per LDC 25-8-41(A). Pay variance fee of \$1430 for each variance and the one time notification fee of \$250.64 through intake. Contact staff to discuss proposed variance and determine information needed to assess and present the variance request.

Site Plan Review - Christine Barton-Holmes - 512-974-2788

TRAM COMMENTS

- SP 1 Pedestrian incline elevators, trams, and similar access methods are expressly prohibited within the 75-foot shoreline setback. Include this note on the site plan sheet: "Permanent improvements are prohibited within the shoreline setback area, except for retaining walls, piers, wharves, boathouses, marinas or a driveway to access the structures [LDC 25-2-551(B)(2)]". BOA review may be necessary. *U1 – Comment pending outcome of March 10 BOA hearing.*
- SP 2 –SP 4 Comments cleared
- SP 5 What is the slope where the tram is proposed? Please clarify. *U1 – Please provide this information on the site plan sheet.*
- SP 6 Comment cleared
- SP 7 Comment cleared
- SP 8 Demonstrate that the proposed shoreline access will comply with the requirements of Section 25-2-1066(B), by screening it from adjacent properties zoned SF-5 or more restrictive. *U1 – Comment pending – screening not shown.*

ADMINISTRATIVE COMMENTS

- SP 9 –SP 14 Comments cleared
- SP 15 The site is not appropriately zoned for the proposed use. Trams are not permitted in the LA zoning district. Site plan review and approval cannot be finalized until an SF zoning district is established by ordinance for the site (Section 25-1-61). *U1 – Comment pending outcome of March 10 BOA hearing.*
- SP 16 Comment cleared

FLASH DRIVE REQUIREMENT

- SP 17 All applications submitted for completeness check after 5/10/10 for Administrative Site Plan Revision, Consolidated Site Plan, Non-Consolidated Site Plan, CIP Streets and Drainage, Major Drainage/Regional Detention, and Subdivision Construction Plans will



City of Austin

Founded by Congress, Republic of Texas, 1839
Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78767

C15-2014-0024

May 29, 2013

Mr. Bruce Aupperle, P.E.
Aupperle Company
10088 Circleview Drive
Austin, TX 78733

Re: definition of *pedestrian facility* as it relates to trams in LA zoning

Dear Mr. Aupperle,

On 4/19/2013 you requested an interpretation of *pedestrian facility* as it relates to the LA – LAKE AUSTIN DISTRICT regulations in Section 25-2-551 of the City of Austin Land Development Code [LDC], specifically as it relates to the construction of trams. LDC Section 25-2-551(B)(5) reads:

Development is prohibited on land with a gradient that exceeds 35 percent. This prohibition does not apply to a fence, driveway, road or utility that cannot be reasonably placed elsewhere, or a pedestrian facility.

Since the term *pedestrian facility* is not defined in Section 25-1-21 – DEFINITIONS, we refer back to the applicable definitions in the Merriam-Webster Dictionary where the word *pedestrian* is defined as being of, related, or designed for walking, and *facility* as something that is built, installed, or established to serve a particular purpose. As such, a *pedestrian facility* would be something built or installed for walking, and would include such improvements as sidewalks, stairs, ramps, trails, and similar surface improvements that are designed to provide a walking surface.

A tram is an automated, self-propelled vehicle, travelling on a fixed track, carrying freight and/or passengers, and is therefore not considered a *pedestrian facility*. To construct a tram on property in the LA zoning district will require Board of Adjustment approval of variance from Section 25-2-551(B)(5) if located on slopes in excess of 35%, and a variance from Section 25-2-551(B)(2) if located within the shoreline setback area as defined in Section 25-2-551(D), in addition to any required Land Use Commission variances from applicable environmental regulations in LDC Chapter 25-8.

I hope this information is helpful.

Sincerely,

Christopher Johnson
Development Assistance Center Manager

C5204024

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

ROW

CASE # 015-2014-0026
11081291

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
GENERAL VARIANCE/PARKING VARIANCE

Tax 012909-0130

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

STREET ADDRESS: 3961 Westlake Drive

LEGAL DESCRIPTION: Subdivision - Lake Shore Addition

Lot(s) 109 Block _____ Outlot _____ Division _____

I/We Bruce S Aupperle on behalf of myself/ourselves as authorized agent for

Rod Roberts affirm that on Jan. 27, 2014,

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

(check appropriate items below)

☒ ERECT ☐ ATTACH ☐ COMPLETE ☐ REMODEL ☐ MAINTAIN

☐ a pedestrian incline elevator

in a LA 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:

Sections 25-2-551(B)(2) and 25-2-551(B)(5) of the City's LDC do not include a method of reasonable shoreline access for non-ambulatory individuals. Even though shoreline access is defined under Section 25-2-1172 as lifts, trams, incline elevators or escalators, those methods for access are not defined as pedestrian facilities as allowed by Section 25-2-551(b)(5). Although a driveway is

HARDSHIP: allowed by code as shoreline access in LA zoning, the very steep terrain would make construction of a negotiable driveway environmentally detrimental.

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

The natural steep slope, which is greater than 35%, from the home to the shoreline requires a method of lake shore access that provides a reasonable approach for non-ambulatory individuals.

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

The steep slope to the shoreline is unique to this location and the proposed pedestrian incline elevator will provide reasonable shoreline access for non-ambulatory individuals for the specified address.

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:

The proposed pedestrian incline elevator will be used for the specified property only, will be located in accordance with required setbacks, will provide necessary screening as required by code and be used only for pedestrian access to the shoreline.

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:

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  Mail Address 10088 Circleview Drive

City, State & Zip Austin, TX 78733

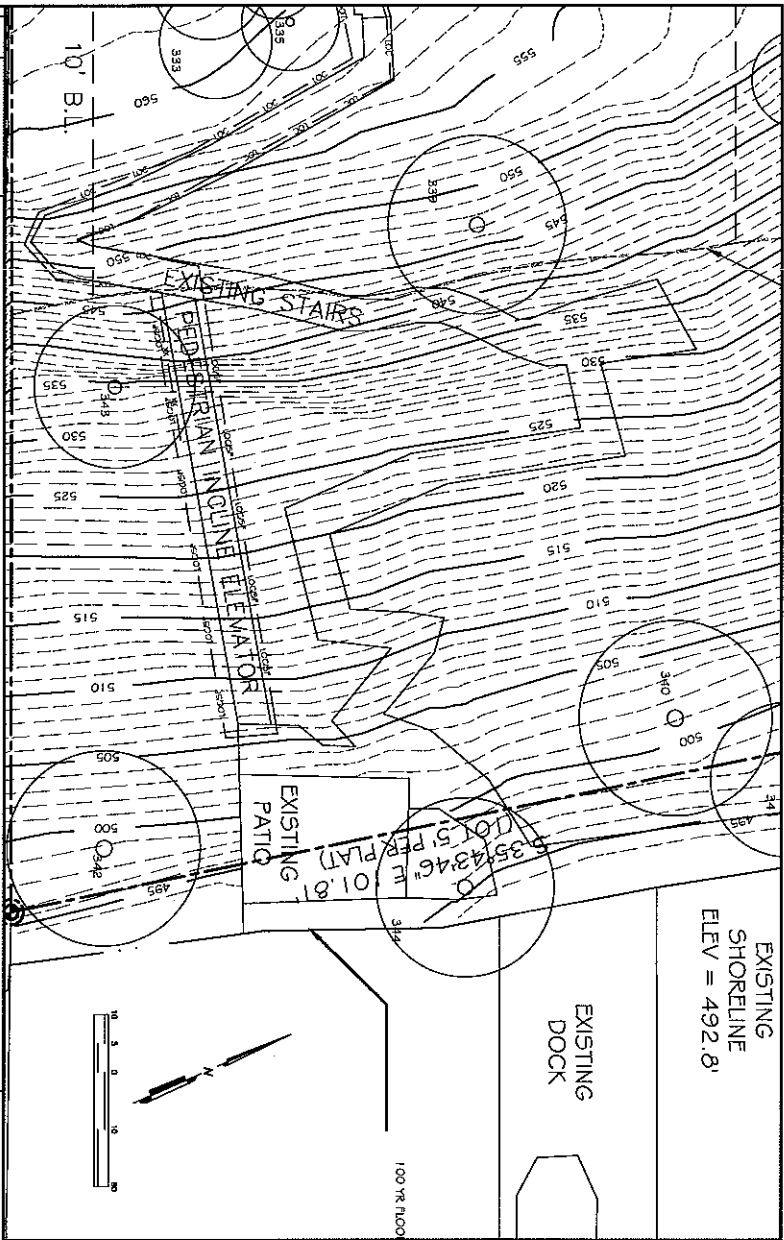
Printed Bruce S Aupperle, P.E. Phone 512-422-7838 Date 1/27/2014

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

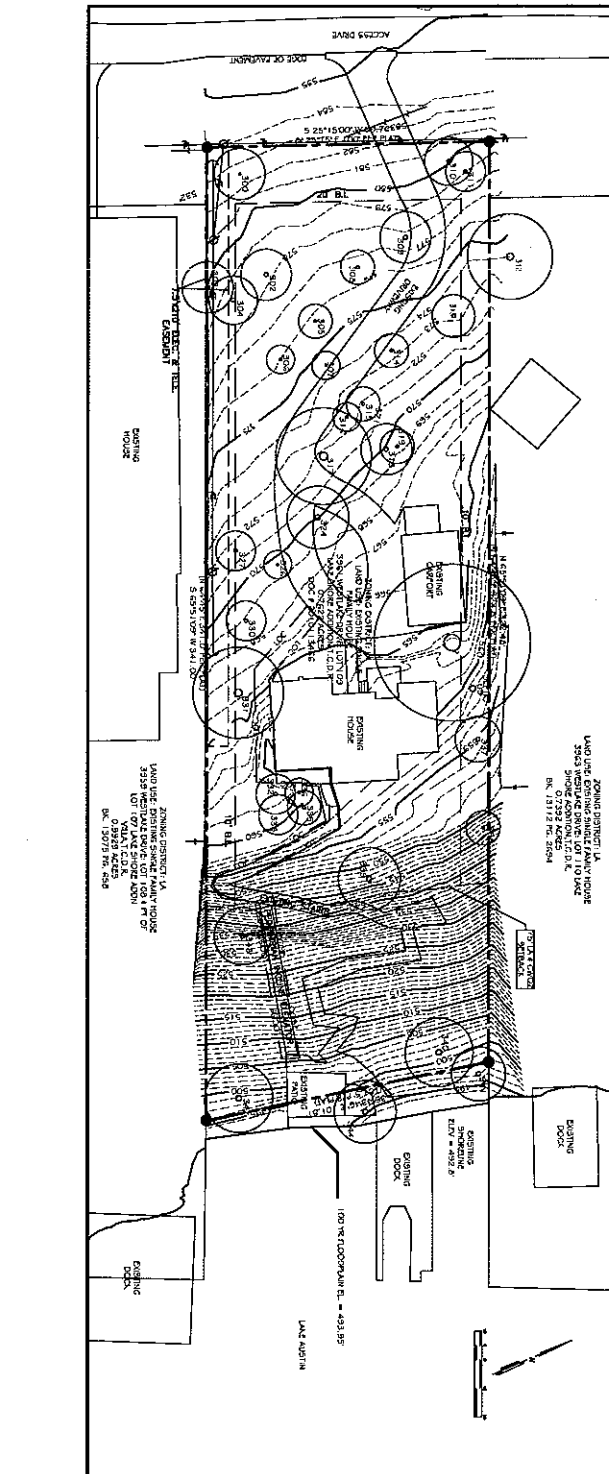
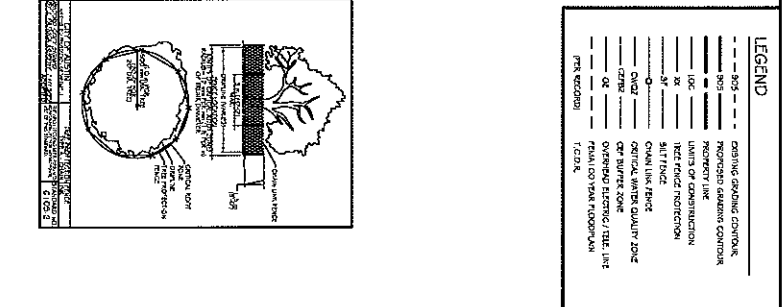
Signed _____ Mail Address _____

City, State & Zip _____

Printed _____ Phone _____ Date _____



NO.	DESCRIPTION	DATE
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Ramirez, Diana

From: Walker, Susan
Sent: Monday, January 27, 2014 10:35 AM
To: Ramirez, Diana; Heldenfels, Leane
Subject: FW: BOA Application for 3961 Westlake Drive - March 10, 2014
Attachments: Shoreline access Code requirements for pedestrian facilities.pdf; 3961 Authorization Letter Signed.pdf; 3961 boa-application.pdf; 3961 boa-exhibit.pdf

Diana,

This case is on the 2-10 agenda I think under bldg "bd". This is everything he has sent me and the invoice may be on the file or on the corner of the back of "Leane's" desk.

Hope everything is going ok.

Susan

From: bruce upperle [~~bruceupperle@me.com~~]
Sent: Monday, January 27, 2014 9:45 AM
To: Walker, Susan
Cc: Carolyn Aupperle; Rod Roberts
Subject: BOA Application for 3961 Westlake Drive - March 10, 2014

Susan:

Please find the subject BOA application attached.

Please review and let us know if you need anything else.

If needed, Carolyn can provide you a paper copy of the application and all related documents.

The boa-exhibit is 24"x36", but can be printed at the document size you recommend.

Carolyn will pay the BOA fee when you have the invoice ready.

Please contact us if you have any questions.

Thanks, Bruce S. Aupperle, P.E. Aupperle Company, 10088 Circlevue Drive, Austin, TX 78733 Phone & Fax: (512) 329-8241 Mobile: (512) 422-7838

From 25-5-3 SMALL PROJECTS.

(8) construction of a boat dock as an accessory use to a single-family residential use, duplex residential use, two-family residential use, or secondary apartment special use if shoreline modification or dredging is not required;

From 25-8-261 CRITICAL WATER QUALITY ZONE DEVELOPMENT.

(C) Along Lake Travis, Lake Austin, or Town Lake:

(1) a boat dock, pier, wharf, or marina and necessary access and appurtenances, is permitted in a critical water quality zone;

From 25-2-1172 DEFINITIONS.

(7) SHORELINE ACCESS means improvements constructed to provide a means of approaching the shoreline such as stairs, lifts, trams, incline elevators or escalators.

From 25-2-551 LAKE AUSTIN (LA) DISTRICT REGULATIONS.

(A) In this section:

(1) SHORELINE means the 492.8 topographic contour line along the shores of Lake Austin.

(2) SHORELINE SETBACK means a line parallel to the shoreline and at a distance from the shoreline that is prescribed in this section.

(3) SHORELINE SETBACK AREA means an area between the shoreline and the shoreline setback.

(B) This subsection applies in a Lake Austin (LA) district.

(1) A shoreline setback area is excluded from impervious cover calculations.

(2) A permanent improvement is prohibited in a shoreline setback area, except for a retaining wall, pier, wharf, boat-house, or marina, or a driveway to the structures.

(3) Not more than 30 percent of the woody vegetation within a shoreline setback area may be removed.

(4) Except for surveying or testing, vegetation within a shoreline setback area may not be removed before a building permit is issued. For surveying or testing, areas up to 15 feet wide may be cleared, and trees smaller than six inches in diameter may be removed.

(5) Development is prohibited on land with a gradient that exceeds 35 percent. This prohibition does not apply to a fence, driveway, road or utility that cannot be reasonably placed elsewhere, or a pedestrian facility.

Published in the Federal Register on July 26, 2011.

The Department of Justice regulations further state that a "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. An accessible "path of travel" may consist of walks and sidewalks; curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements; and also includes the restrooms, telephones, and drinking fountains serving the altered area.

A person in any type of wheelchair is considered to be a pedestrian and must follow pedestrian rules.

From Wikipedia

A pedestrian is a person traveling on foot, whether walking or running. In some communities, those traveling using tiny wheels such as roller skates, skateboards, and scooters, as well as wheelchair users^[1] are also included as pedestrians. In modern times, the term mostly refers to someone walking on a road or sidewalk, but this was not the case historically.

November 7, 2013

City of Austin
Planning and Development Review Department
PO Box 1088
Austin, TX 78716

To Whom It May Concern:

I own the property at 3961 Westlake Drive, a.k.a Lot 109 of Lake Shore Addition of Travis County, Texas. I wish to build a pedestrian incline elevator on the property to access my existing dock and shoreline area. Bruce S. Aupperle, P.E. and Aupperle Company are our authorized agents for the City of Austin applications needed for the subject property. Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Roberts", written over a large, loopy flourish.

Rod Roberts
6034 W. Courtyard Ste. 205
Austin, TX 78730