



City of Austin Planning and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

APPEAL OF VARIANCE APPROVAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on an application for variance, the following form must be completed and filed with the Director of Planning and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Land Use Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-1225.

CASE NO. SPC-2014-0175A

DATE APPEAL FILED 3-6-15

PROJECT NAME RED BLUFF HOTEL

YOUR NAME Daniel Llanes- Govalle/Johnston

Terrace Neighborhood Contact Team/Riverbluff N.A

PROJECT ADDRESS 4701 RED BLUFF RD

SIGNATURE Daniel Llanes

AUSTIN, TX 78702

YOUR ADDRESS 4907 Red Bluff Rd

APPLICANT'S NAME Big Red Dog Engineering

CITY CONTACT Michael Simmons-Smith

YOUR PHONE NO. () WORK

(512) 431-9665 cell/HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☒ I communicated my interest by speaking at the Land Use Commission public hearing on (date) February 24, 2015
- ☐ I communicated my interest in writing to the Director or Land Use Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☒ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan
- ☐ Replacement site plan
- ☐ Land Use Commission Approval/Disapproval of a Site Plan
- ☐ Waiver or Extension
- ☐ Planned Unit Development (PUD) Revision
- ☒ Other: Approval of variance

Date of Decision: _____
Date of Decision: _____
Date of Decision: _____
Date of Decision: _____
Date of Decision: _____
Date of Decision: 2-24-2015

*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

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STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

The applicant requested three variances from the Waterfront Overlay established by the City of Austin Land Development Code in order to construct a proposed 53,000 sq. ft. (approx.) hotel and restaurant development on a 1.21-acre site at 4701 Red Bluff Road. The property sits on a bluff over the Colorado River opposite the City's Roy Guerrero Park.

The Waterfront Overlay establishes two setbacks, a primary and a secondary, on this and other properties in the Red Bluff Subdistrict in which development is restricted in order to preserve the river and its recreational enjoyment by the community. The subject property is almost entirely within the secondary setback. There is an existing warehouse structure on the property that was constructed prior to the adoption of the Waterfront Overlay.

The applicant purchased the subject property in 2014 with full knowledge of the existing development restrictions. The applicant also purchased a 1.09 acre undeveloped property directly across the street from the subject tract, largely unencumbered by the waterfront overlay, on which the intention is to construct other structural and parking components of an integrated hotel and mixed use project.

The applicant seeks variances from:

- (1) LDC § 25-2-721(B)(1), which prohibits the construction of any structure or parking whatsoever within the primary setback;
- (2) LDC § 25-2-721(C)(1), which permits only "fountains, patios, terraces, outdoor restaurants and similar uses" within the secondary setback; and
- (3) LDC § 25-2-721(C)(2), which limits impervious cover in the secondary setback to a maximum of 30%.

Applicable Code Section:

LDC § 25-2-713 permits variances from the Waterfront Overlay when:

- (1) the proposed project and variance are *consistent with the goals and policies of the Town Lake Corridor Study*, including environmental protection, aesthetic enhancement, and traffic; and
- (2) the variance is the *minimum required by the peculiarities of the tract*. (emphasis added)

Representatives of the Govalle/Johnston Terrace Neighborhood Contact Team and the River Bluff Neighborhood Association have met extensively with the applicant since May 2014 and worked out an agreement whereby they agreed not to object to the secondary setback variances in consideration of certain covenants by the applicant. The neighborhood organizations believe, however, that the applicant has not made a satisfactory case for the primary setback variance.

The approval of the primary setback variance by the Planning Commission failed to meet these standards, as follows:

- I. At the public hearings on Feb. 10 and Feb. 24, 2015, the applicant conceded that it could build a structure meeting its program requirements without encroaching on the primary setback, and presented plans showing such a structure. Where the applicant can build its intended structure without the requested variance, the variance is self-evidently not "the minimum required by the peculiarities of the tract."
- II. At the public hearing on Feb. 24, 2015, the applicant conceded that it could achieve its program requirements by remodeling the existing grandfathered structure on the tract. Where the applicant can remodel the existing structure to achieve its goals without the requested variance, the variance is not "the minimum required by the peculiarities of the tract."

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- III. At the public hearing on Feb. 24, 2015, the applicant's counsel baldly conceded that the sole purpose for the requested variance was "selfish"—economic reasons based on profitability rather than necessity. It is well-established under Texas law that economic hardship and frustration of the development objectives of the property owner are not adequate reasons to obtain a variance. See, e.g., *Battles v. Board of Adjustment and Appeals of the City of Irving*, 711 S.W.2d 297 (1986); *Board of Adjustment of City of San Antonio v. Willie*, 511 S.W.2d 591 (1974); see also Welch, *Basics of Zoning in Texas* (2009), at p. 9. **Where the only reason provided by the applicant for the variance is economic hardship, the law requires the variance be denied.**
- IV. Construction of a new hotel within the primary setback of the waterfront overlay is not consistent with the goals of the 1985 Town Lake Corridor Study. That study put out a call to "aggressively protect and enhance the scenic and recreational potential of the Colorado River" through conservation, parkland development and preservation. The study described the river below Longhorn Dam in the Montopolis Area as a bucolic remnant of "the Colorado River in early days: gravel and sandy bars, shallower waters easily fished by many species of water fowl and other birds, beds of submerged aquatic plants, and trees overhanging the banks..." The goal was to preserve this character in service of "recreational activities which include float-fishing, canoeing, general water-play, photography, bird-watching, picnicking, refuge and respite." Through efforts of the community, neighborhood, and city, that goal has largely been achieved to date, through the acquisition and restoration of Roy Guerrero Park and the Colorado River Wildlife Preserve, the termination and rezoning of incompatible land uses, and the limitation of new construction to single-family residences that leave a small imprint on the riverfront. **The primary setback prohibits the construction of any structures or parking in order to achieve this preservation goal. Adhering to that rule and limiting new construction to the secondary setback is what is consistent with the code and the goals of the study, and is an important precedent to set.**